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MINISTERS' DEPUTIES

Notes on the Agenda

CM/Notes/1419/H46-20

2 December 2021

**1419<sup>th</sup> meeting, 30 November – 2 December 2021 (DH)**

Human rights

**H46-20 Trapani group v. Italy (Application No. 45104/98)**

Supervision of the execution of the European Court's judgments

Reference documents

DH-DD(2021)1063, DH-DD(2021)1129, CM/Del/Dec(2017)1302/H46-16

Application	Case	Judgment of	Final on	Indicator for the classification
45104/98	TRAPANI	12/10/2000	12/01/2001	Complex problem
40696/98	MUSO (No.1)	14/12/1999	14/03/2000	
55431/09	BARLETTA AND FARNETANO	26/03/2020	26/03/2020	

**Case description**

The *Trapani* group of cases (formerly part of the *Ceteroni* group) concerns the excessive length of proceedings before the civil courts (violations of Article 6 § 1 and 8 in the case of *Barletta and Farnetano*).<sup>[1]</sup>

**Status of execution****1. Last examination by the Committee of Ministers (1302<sup>nd</sup> meeting, December 2017)**

The Committee of Ministers examined the execution of judgments concerning the excessive length of civil proceedings most recently at its 1302<sup>nd</sup> meeting (DH) of December 2017.

With regards to the individual measures the Committee decided to close 1 723 cases in which the question of the individual measures was settled (including the leading case *Ceteroni*).

With regards to the general measures, the Committee noted the encouraging results achieved regarding the average length of civil proceedings before courts of first instance and specialised company courts and encouraged the authorities to continue closely monitoring the impact of the measures adopted in order to consolidate these results and further reduce the average length of contentious civil proceedings. The Committee also noted with satisfaction the consolidation of the positive trend in backlog clearance observed since 2011 and encouraged the authorities to continue their efforts to achieve the complete elimination of the multi-year backlog and to provide the Committee with updated information. With regards to civil proceedings before the Court of cassation, it noted with concern a negative trend in terms of an increase of such cases and their average length.

It invited the authorities to provide their analysis of the situation, based on complete and up-to-date statistics, in particular as regards courts of appeal (for which no data had been submitted) and the Court of Cassation, to be able to fully assess the impact of the measures adopted and the status of execution of this group of cases. The Committee decided that questions concerning general measures will continue to be followed in the cases *Trapani* and *Muso* (No. 1).

**2. Developments since the Committee's examination**

The authorities submitted two action reports on 15 and 28 October 2021 (DH-DD(2021)1063 and DH-DD(2021)1129). The main information provided and that available in the public domain can be summarised as follows:

Individual measures: In the case of *Barletta and Farnetano*, domestic proceedings which were still pending at the time the judgments of the European Court became final, have been completed at the appeal stage.<sup>[2]</sup>

General measures:*a) Legislative measures in the process of adoption*

A comprehensive reform of civil justice is one of the key points of the Italian recovery and resilience plan which sets out the reforms to be implemented with the support of the EU (Next Generation EU plan) for emerging stronger from the COVID-19 pandemic. This plan was presented by Italy in May 2021 and approved by the European Commission in June 2021.<sup>[3]</sup>

In this context, on 21 September 2021, the Italian Senate approved a Delegation Law<sup>[4]</sup> conferring the power to the government to adopt, within one year from the entry into force of this law, the necessary legislative measures to ensure the simplification, expeditiousness and streamlining of civil proceedings, in accordance with the principles and the guidelines outlined in the Delegation Law (for more details see DH-DD(2021)1063).

The objective of this reform to be achieved by 2026 is the reduction of the backlog of civil cases before first instance and appeal courts by 90% and of the global average duration of proceedings at all level of jurisdiction by 40% compared to the data of 2019.[5]

The reform enhances the recourse to alternative forms of disputes resolution (i.e. mediation, arbitration and assisted negotiation) notably through the establishment of tax deductions of the legal costs of these proceedings and the broadening of their mandatory application (e.g. to employment contracts).

With regards to first instance proceedings, the reform foresees the concentration of most of the trial activities (including the indication of the evidence the party intend to use) at the first hearing. This will enable the judge already at the beginning of the proceedings to propose a friendly settlement to the party or, if the case allows, to adopt an immediate decision. Moreover, the judge will be able, under specific circumstances (e.g. when the claim is manifestly founded or unfounded), to issue interim measures to grant or reject the main claim while proceedings on the merit follow their course.

As regards appeal proceedings, the reform establishes a stricter filtering mechanism empowering Courts of appeal to declare manifestly ill-founded (with a concisely motivated ruling) appeals that do not have a reasonable probability of being upheld. Moreover, to ensure an effective use of time and human resources, the Bill establishes that the Court of Appeals sitting as a single judge can carry out several procedural activities to prepare the case in view of its decision by a panel.

Concerning the proceedings before the Court of Cassation, a fast-track procedure before a single judge for manifestly ill-founded applications is established. Moreover, it will be possible for lower courts under certain circumstances to seek a preliminary binding ruling of the Court of Cassation on new and complex legal questions which are likely to arise in numerous disputes. This possibility should ultimately contribute to reduce the appeals before this jurisdiction.

The reform also covers enforcement proceedings in respect of which it simplifies the formal requirements for a judicial decision to become enforceable, shortens the procedural deadlines for the sale of the debtor seized goods and enhances the powers of the judge to compel the party's abidance with the judicial decision whose execution is sought.

To reinforce the capacity of civil law jurisdictions to effectively process the pending cases, the reform foresees the strengthening and extension to the Court of Cassation of support teams (*ufficio del processo*) which assist the judges and carry out all the necessary preliminary activities (legal research, documents drafting, administrative tasks, IT operations) to facilitate and accelerate the examination of the cases.

To secure the effectiveness of this operation, a campaign of extensive recruitment of human resources on fixed-term three-year contracts (around 16 500 employees) for the period 2021-2024 is ongoing.[6]

#### *b) Statistical data*

##### *Average length of civil proceedings*

The authorities indicate that on 30 June 2021, the disposition time[7] of first instance civil proceedings (including enforcement and non-contentious proceedings) was 353 days (it was 375 days in 2017). The average length of appeal proceedings was 658 days (it was 712 days in 2017).

With regards to first instance and appeal proceedings, significant variations in disposition time may still be observed depending on the subject-matter of the proceedings and the jurisdiction involved.[8]

In this context the average length in 2020 of contentious civil proceedings before first instance courts was 880 days[9] (1031 days before appeal courts)[10] and that of employment proceedings was 464 days[11] (836 days before appeal courts).[12]

The average length proceedings before the Court of Cassation on 30 June 2021 was 1256 days (it was 1291 days in 2017).

##### *Backlog clearance*

On 30 June 2020, there were 3 321 149 civil proceedings pending before all levels of jurisdictions (3 719 284 in 2017 and approximately 5.7 million on 30 June 2011).[13]

The clearance rate[14] of first instance and appeal courts in 2020 was 100,5% and 113% respectively. These jurisdictions in the period 2016 – 2021 reduced significantly their backlog of cases pending for more than three years at first instance (minus 28%) and two years in appeal (minus 40%).

The clearance rate of the Court of Cassation in 2020 was 82.2% and its backlog of cases pending for more than two years increased by 11% in the period 2016 – 2021.

#### **Analysis by the Secretariat**

##### Individual measures:

With regards to the *Barletta and Farnetano* case, the Committee may wish to invite the authorities to keep it informed on whether a cassation appeal was filed in the domestic proceedings and in that case to notify these proceedings to the highest court with a view to speeding them up.

##### General measures:

##### *- Ongoing legislative reform*

The ongoing legislative reform to address the efficiency of civil justice is a positive development to be noted with interest as it confirms once more the strong resolve of the Italian authorities to secure a reasonable length of civil proceedings.

The reform appears to be comprehensive (it covers all three levels of jurisdiction and also enforcement proceedings) and to address different critical aspects of the complex and longstanding problem of the excessive length of civil proceedings (e.g. undue recourse to judicial proceedings, insufficient human resources, time consuming and fragmented procedures, scarce digitalisation of the process). It has realistic objectives (i.e. 40% reduction of the global average length of civil proceedings and 90% of backlog reabsorption at first instance and appeal compared to 2019) and adequate financial resources to achieve them (Italy will receive substantial funds in the context of the Next Generation EU plan).[15] Moreover, it provides a precise timeline for the adoption of the necessary measures by the Government (2022-2023) and the achievement of the intermediate and final objectives (by 2024 and 2026).

This legislative reform, whose implementation is also monitored and financially supported by the European Union, appears to represent an opportunity to be seized by the authorities to secure the permanent and effective functioning of the civil justice system bearing also on the wide ranging legislative measures previously adopted and the significant progress already achieved which were previously noted with satisfaction by the Committee (see CM/Del/Dec(2015)1243/H46-11 and CM/Del/Dec(2017)1302/H46-17).

It seems therefore important that the authorities rapidly finalise and concretely implement the envisaged measures and provide information on their impact at all levels of civil jurisdiction.

- *Impact of the adopted measures on the disposition time and the backlog clearance*

The available data shows with regards to first instance proceedings a further consolidation in the period 2017-2021 of the progress achieved and previously noted in terms of disposition time and backlog clearance. Similar positive results can be noted with regards to the courts of appeal for which data was not available at the last examination (2017).

In this connection, it is encouraging to observe with regards to these courts that despite some unavoidable repercussion of the COVID-19 pandemic on the statistics of the year 2020, a slow but constant positive trend in the reduction of these parameters can be observed since 2016. This data seems to reflect the positive impact of the measures adopted by the Italian authorities to tackle the root causes of the multifaceted and longstanding problem of the excessive length of civil proceedings.<sup>[16]</sup>

The authorities should however continue to monitor the situation and pursue their efforts to ensure that this positive tendency is consolidated in the future and that the disposition time of contentious civil proceedings notably before appeal courts is further reduced. The implementation of the interventions foreseen by the ongoing legislative reform of civil justice should provide further impetus in this direction.

With regards to proceedings before the Court of Cassation, the concerning situation previously noted by the Committee<sup>[17]</sup> in terms of average length and number of pending cases persists and seems to indicate that the targeted reforms adopted by the authorities in 2016 did not yield the expected results.<sup>[18]</sup>

It is noted in this connection that the ongoing civil justice reform includes several measures aimed at improving the performance of this jurisdiction and further interventions to contain one of the major sources of incoming cases are in the process of adoption.<sup>[19]</sup>

It remains nevertheless essential, having regards to the longstanding absence of any significant progress, that the authorities address the situation before the Court of Cassation as a matter of priority to rapidly invert this negative and persisting trend.

#### Conclusion

In their action reports, the authorities consider that they have fulfilled their obligations under Article 46 and request that the examination of this group to be closed. However, having regards to the persisting concerning situation of proceedings before the Court of Cassation and the importance of ensuring the finalisation and concrete implementation of the ongoing legislative process of reform of civil justice and to assess its impact, the continuation of the Committee's supervision of the execution of this group appears still necessary before carrying out a comprehensive and possibly conclusive assessment of the response given by the authorities to this long-lasting issue.

Financing assured: YES

[1] The judgment in the case of *Barletta and Farnetano*, which concerns the excessive length of civil proceedings on medical negligence, was issued and became final on 26/03/2020 and was added to this group.

[2] On 15 July 2021 the Court of Appeal of Salerno issued a judgment dismissing the appeal of the applicants.

[3] In its recovery and resilience plan Italy requested a total of 191.5 billion EUR. See Recovery and Resilience Facility (europa.eu)

[4] DDL No. 3289 on *Delegation to the Government for the efficiency of the civil process and for the revision of the regulation of tools for alternative resolution of disputes and urgent measures to rationalize the procedures in the field of the rights of individuals and families as well as in matters of forced execution*.

[5] Intermediate objectives are envisaged for the end of 2024 (minus 65% of backlog before first instance courts and minus 55% for the appeal courts in comparison with the 2019 data).

[6] See Law decree No. 80 of 9 June 2021, converted into Law No. 113 of 6 August 2021. In addition, the justice system had been already reinforced, in the period 2015-2021, by the hiring of further 9 000 employees in different capacities (of which 3 750 in 2020-2021). With regards to the judiciary an increase of the national organic of 600 units has been foreseen by law and procedures to fill the positions is ongoing and expected to be completed by 2022.

[7] The disposition time is an indicator performance elaborated by the CEPEJ which is calculated by dividing the number of pending cases at the end of a particular period by the number of resolved cases within that period, multiplied by 365.

[8] See statistical data of the Ministry of Justice available at: - *Procedimenti Civili - flussi* (giustizia.it) and *Movimento e durata dei procedimenti civili in Tribunale e in Corte d'appello, 2014-2020*.

[9] 670 days in 2017, 660 days in 2018, 668 days in 2019.

[10] 1021 days in 2017, 922 days in 2018 and 832 days in 2019.

[11] 389 days in 2017, 401 days in 2018, 378 days in 2019.

[12] 628 days in 2017, 659 days in 2018, 591 days in 2019.

[13] See the Report by the President of the Court of Cassation presented on 29 January 2021, available at: *Corte di Cassazione - Inaugurazioni Anno Giudiziario*

[14] The clearance rate is an indicator performance elaborated by the CEPEJ which is the ratio obtained by dividing the number of resolved cases by the number of incoming cases in a given period, expressed as a percentage.

[15] In its recovery and resilience plan, approved by the EU Commission in June 2021, Italy requested a total of 191.5 billion EUR to implement all the reforms envisaged in the plan including that of the civil justice system.

[16] It is recalled that since 2015, when the situation in terms of backlog and length was considered most worrying, the Italian Government has made civil justice one of the priority areas of action.

[17] See CM/Del/Dec(2017)1302/H46-16.

[18] The procedure for dealing with appeals in cassation was fundamentally reformed by Law Decree No. 168/2016, converted into Law (No. 197/2016) adopted on 25 October 2016.

[19] Tax proceedings bear heavily on the number of pending cases before the Court of Cassation (50%). A legislative reform of tax courts which aims also at reducing the number of incoming cases before this jurisdiction is ongoing. In this context, the Commission of experts set up by the Ministry of Justice and the Ministry of Economics and Finance ended its preparatory works in June 2021. See also the European Commission 2021 Rule of Law Report Country Chapter on the rule of law situation in Italy.

#### Related documents

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