ABSTRACT

PHD THESIS: The reasonable time of the european and national trial

The principle of reasonable time of the trial is an "imperative for all proceedings", to ensure “a not administered justice with delays that may compromise the effectiveness and credibility." It has a multi-level protection in international or regional conventions, in addition to national, legal sources, integrating and complementing each other, beyond the differences.

In particular, it is an aspect of the due process, exemplarily summarized in art. 6 ECHR, under which everyone has right to a fair and public hearing within a reasonable time. This is a personal, absolute and uncompressible right, operated directly by the individuals before the Court.

In the European Union, it is provided in article 47 of the Charter of Fundamental Rights of the European Union, proclaimed in Nizza on 7th December 2000, proclaimed again in Strasbourg on 12nd December 2007 and, today, it is binding after the coming into force of the Lisbon Treaty (1st December 2009), under article 6 of the Treaty on the Functioning of the European Union, which refers to the Charter, giving it the same legal value as the Treaties. The legal system of the European Union has a functional and organic autonomy, but it is influenced by the ECHR, especially about the development of its catalog of fundamental rights. In this regard, the definition of a “trial within a reasonable time” is an interesting aspect of this interaction, about the use of conventional rules and case law as a direct source on the one hand, and the attempt to assert an independent guarantee of the right of the EU on the other one. This right in the legal system of the EU summarizes the evolution of case law about this guarantee. In the ECHR, however, this guarantee is first provided in article 6 ECHR, and then it has progressively defined by the European Court of the human rights.

In Italian legal system, this principle is stated in article 111, second paragraph of the Constitution, according to the Constitutional Law of 23rd November 1999, n. 2 and, also, in the law of 24th March 2001, n. 89, known as the "Legge Pinto", enacted to deflate the litigations before the Court of Strasbourg, originated from the slowness of Italian trials, with only a remedial purpose. The principle of subsidiarity, which binds the national protection to remedies under the Convention, imposes a dynamic co-interference between the two levels of jurisdiction, in a continuous, reciprocal interaction. The article 2 of the Legge Pinto refers to the Art. 6 ECHR; this aspect would lead to apply in Italian legal system, the definition of the protected interest and the conditions for the application of the rule as interpreted by the ECHR, but the courts of merit and legitimacy since the first applications, in some cases, assume a different position from the judgment of the Court of Strasbourg. Concrete and pragmatic cases show this dialogue, highlighting the common points and those of contrast and the degree of integration over the years between Italian and European courts.

The crisis of overall efficiency in this context not only national, leads to establish a set of remedies to deflate the litigation and to increase the efficiency of the courts. The same Court in Strasbourg "victim of its success," riskes a breach of reasonable time which is "paradoxical", only if we think of its constant attention to the time trial of the individual Member States. In this respect, the Protocol XIV introduces some amendments, to consolidate the functions of the Court and to solve clearly unfounded legal actions. The European Union's judicial system, like ECHR, during the years, is confronted with the progressive increase in the number of appeals and the need to contain the time trial. So, a series of corrective measures and reforms have been introduced to

ensure a more efficient justice, primarily affecting the institutional order of the EU. In Italy, the priority should be given to civil justice, whose situation, in terms of duration of judgments, is far more serious than the criminal and administrative judgments.