

May 2005

Pellegriti v. Italy (dec.) - 77363/01

Decision 26.5.2005 [Section III]

Article 35

Article 35-1

Exhaustion of domestic remedies

Effective domestic remedy

Applicant who did not appeal to the Court of Cassation: *preliminary objection allowed*

The applicant, a medical practitioner in the private sector, was given a disciplinary sanction by the Council of the Medical Association for advertising in newspapers and telephone directories, in breach of the legislation in force. He appealed, arguing that the relevant law was not applicable, reasonable or consistent with Community law. At the same time, he applied to the Chairman of the Medical Association to have the sanction revoked, contending that in the absence of enforcement measures the law in question could not be applied and that such advertisements were permitted by previous regulations which were still applicable. His submissions relied on a Constitutional Court judgment and a Court of Cassation judgment. The Court of Appeal confirmed that the advertisements published by the applicant had amounted to a breach of the law punishable by a disciplinary sanction. The sanction was reduced pursuant to a new law. The applicant did not appeal to the Court of Cassation. In his application he alleged a violation of Article 10 of the Convention, complaining that the damage he had sustained in not being able to inform the general public about his activities was the direct result of the content of the law in question and that a judgment of the Court of Cassation would not have been able to remedy that situation.

Inadmissible under Article 10 (non-exhaustion): An appeal to the Court of Cassation was among the remedies which, in principle, had to be exhausted in order to comply with Article 35 § 1. In the present case that remedy had been accessible to the applicant. Furthermore, the Court of Cassation could have quashed the impugned decision and set aside the disciplinary sanction; it could also have declared that the relevant law was not applicable, which would have rendered ineffective the provisions being challenged by the applicant. Such an appeal had therefore been capable of putting an end to the interference of which the applicant had complained in his application. As to that remedy's prospects of success, the applicant could have raised before the Court of Cassation the legal arguments which he had already submitted. While it was not for the Court to speculate as to how the Court of Cassation would have dealt with those submissions, it was to be noted that the applicant had relied on judgments of the Constitutional Court and the Court of Cassation itself that apparently supported his position. That being so, it could not be concluded that an appeal to the Italian Court of Cassation had no reasonable prospect of success: preliminary objection allowed (non-exhaustion).

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This summary by the Registry does not bind the Court.

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