

ITALY

The eyes have it: Spectacles are ‘goods’ not ‘economic resources’, rules Court of Cassation

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On 5 October 2020, in an unprecedented ruling, Italy’s Supreme Court of Cassation ruled on a case concerning a well-known Italian company’s alleged 2014 violation of the European Union’s 2012 Iran embargo.

The facts

In 2014, leading global eyewear producer Safilo was fined €35,000 by Italy’s Ministry of Economy and Finance for attempting to export eyewear worth a modest €68,397 to Iran. The transaction would have been accomplished through a third-party Iranian company acting as an intermediary – but this company was included on the list of physical and legal entities sanctioned by EU regulation 267/2012.

Safilo appealed the fine in the Court of Padua, which accepted its reasons, but due to opposition from the Ministry of

Economy and Finance the dispute dragged on to the Venice Court of Appeal and finally the Court of Cassation.

The rules and the decision

Article 2 of regulation 267/2012 prohibited the direct or indirect sale to any Iranian entity of the goods and technology detailed in annexes I and II, among which eyeglasses did not appear. Moreover, in paragraph 3 of article 23, the regulation prohibited making economic resources available to the Iranian natural or legal persons listed in annexes VIII or IX.

The Ministry of Economy and Finance based its allegation of infringement on the fact that, in its opinion, providing eyewear to the Iranian entity was equivalent to providing economic resources – because the eyewear, if resold on the market, could be transformed into economic or financial assets

from which the intermediary could benefit. According to this reading of regulation 267/2012, supplying the eyewear would have been considered illegitimate, and Safilo’s conduct should have been considered a violation of article 23(3).

In its order, the Italian Supreme Court contested the Ministry’s interpretation of the regulation on the basis of two considerations.

First, the regulation’s purpose was not to prohibit the export of all goods to Iran in general, and therefore the export of eyewear in specific, but merely to restrict the products – mostly dual-use and intended for the Iranian petrochemical sector – that were expressly listed in the regulation.

Second, the notion of ‘economic resource’, as provided for in article 1(h) and article 23 of the regulation, must not be confused with that of ‘good’

solely on the assumption that a product, if sold, could give rise to monetary profit.

In fact, in the opinion of the Court of Cassation, the Ministry’s reading would endorse total and absolute equivalence between a ‘good’ and an ‘economic resource’ – between which the regulation had been expressly intended to differentiate.

If the Ministry’s interpretation had been taken to an extreme, it could have paradoxically led to banning even the export of food products to Iranian companies, as foodstuffs were potentially suitable for resale and would have guaranteed a profit margin.

On this basis, after six years and examination by three separate courts, the Court of Cassation’s Order no. 21267 definitively rejected the Ministry of Economy and Finance’s appeal and ordered the amount of the fine to be returned to Safilo.