

The Italian Court of Cassation on the plagiarism of song lyrics

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The Italian Court of Cassation, in the grounds of judgment n. 3340/15 (published on 19th February), stated important principles about the plagiarism of literary texts, specifically regarding musical works.

On the merits, the dispute consisted in the alleged plagiarism of the lyrics of “Zingara”, the song written by Albertelli and Riccardi (the exploitation rights of which are owned by RMG Ricordi S.p.A.) by the equally famous song “Prendi questa mano Zingara” by De Gregori, produced by Sony Music Entertainment S.p.A. In the first instance proceedings, the District Court of Rome recognised the plagiarism because of identical lines in the two songs. Later, however, in the appeal proceedings, the Court overturned the first instance decision: according to the Court of Appeal, despite the identical lines indicated by the District Court, the overall meaning of the lyrics, as well as the music of the two songs, were “completely different”, which excluded the existence of plagiarism.

Both the losing and winning parties filed a complaint against that decision on appeal before the Supreme Court, posing specific questions of law. In particular, the Supreme Court was asked to clarify, among others, two fundamental issues, i.e.:

1. *“if the reproduction of a famous, original and complete fragment of a song lyric in another song amounts (in itself) to plagiarism, even if partial“;*
2. whether, to the purposes of the exclusion of the plagiarism of a song’s lyrics, *“it is sufficient and not contradictory to say that the textual identity of some specific lines of the lyrics of another song”* is not relevant, if there is *“a difference between the musical part and between the remaining part of the lyrics of the songs at issue”*.

In the decision under review, the Court of Cassation stated first that a single significant fragment of a song’s lyrics can be protected under the Italian copyright law, and that the copyright is certainly violated in the case where a literary work is unlawfully copied in one of its components only (in the case at issue in the lyrics only).

Secondly, the Supreme Court stated that it is not *“necessary that the plagiarism of the poetic-literary element of a song invests an extensive part of it, in fact it can be limited to the heart of the lyrics, as long as this has, in the new literary work, a role which is not different from the one it had in the allegedly plagiarised original work“*. However, the Court also found that *“the transposition of a fragment of a song in the lyrics of another song does not itself constitute plagiarism. In fact the District Court, to this purpose, has to ascertain if the fragment included in the lyrics of the new song has or has not retained its own poetic-literary meaning or if it shows, in a clear and evident way, a semantic gap compared to that which it had in the lyrics of the original song“*.

In the case at issue – the Supreme Court states – the Court of Appeal found that the fragment in question cannot be considered the “heart” of either of the two songs’ lyrics, and it ruled out plagiarism, due to the combination of four specific circumstances: “the fact that the copied fragment had been (slightly) modified; the complete diversity of the remaining part of the lyrics, once the copied fragment is removed; the completely different topics dealt with in the new song; and the complete diversity of the music”. All of these elements – the Court stated, in rejecting the appeal – led to exclude plagiarism, since in its transposition the copied fragment at issue assumed an artistic meaning that is very different from the one it had in the original work.

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