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FROM PRINCIPLE TO DESIGN: RETHINKING SELFSUFFICIENCY IN CASSATION APPEALS IN THE DIGITAL AGE*

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ABSTRACT: This paper examines the principle of self-sufficiency in appeals to the Italian Court of Cassation, historically characterised by interpretative uncertainty and fluctuating case law, which has fostered increasingly lengthy and redundant pleadings. Against the backdrop of digital justice and the dematerialisation of procedural documents, it investigates the potential of assisted drafting tools, interactive templates, and emerging AI-based systems to enhance the clarity and concision of cassation appeals, in line with evolving European and national regulatory frameworks on artificial intelligence

KEYWORDS: principle of self-sufficiency; appeals before the Court of Cassation; AI-assisted drafting; digital transformation of justice; legal design.

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1. INTRODUCTION: THE PRINCIPLE OF SELF-SUFFICIENCY BETWEEN *FORM* AND *FORMALISM*

In the framework of proceedings before the Court of Cassation, the principle of self-sufficiency [*id est* principio di autosufficienza del ricorso (*rectius:* dei motivi di ricorso) per cassazione] of the appeal has long occupied a paradoxical position. Conceived as a mechanism for rationalising access to review on points of law and as a safeguard of clarity and argumentative completeness, it has gradually evolved into a source of systemic instability, fuelling a vicious cycle of escalating defensive burdens, fluctuating lines of authority, and increasingly unpredictable outcomes[1]. It is therefore essential to distinguish between *form* and *formalism*: the former, understood as the functional architecture of the pleading, constitutes a precondition for intelligibility and for the effective operation of adversarial proceedings; the latter, conceived as the heterogeneous and at times redundant superimposition of procedural requirements, ultimately betrays the very function it purports to secure.

The substantial body of case law in which the principle of self-sufficiency has featured prominently—quantitatively extensive and qualitatively uneven—has not resulted in its systematic consolidation. On the contrary, it has accentuated the principle's protean character, generating a plurality of interpretative lines which are often mutually incompatible. In this context, self-sufficiency has progressively lost its functional anchorage, operating at times as a surrogate for the specificity of the grounds of appeal, at others as a selective threshold for access to cassation review, and at others still as an instrument for managing the Court's caseload. The consequences directly affect the right of defence, legal certainty, and the predictability of judicial decisions.

The result is a system in which the fear of a declaration of inadmissibility prompts counsel to adopt drafting strategies marked by excessive caution, leading to increasingly lengthy, repetitive, and unfocused appeals. Far from enhancing the intelligibility of the grounds advanced, this argumentative hypertrophy obscures their essential core, burdens the Court of Cassation, and, paradoxically, contributes to the very congestion that formalism ostensibly seeks to contain. Self-sufficiency, once conceived as a bulwark of clarity, thus

[1] A similar scenario led Proto Pisani, A. (2015). *Il ricorso per cassazione in Italia*. *Foro Italiano*, V, p. 192, to observe that the case law of the Supreme Court, rather than constituting a source of guidance, ultimately becomes a source of disorientation.

Emblematic in this regard is the passage by Ricci, E. F. (2010). Sull'«autosufficienza» del ricorso per cassazione: il deposito dei fascicoli come esercizio ginnico e l'avvocato cassazionista come amanuense. *Rivista di diritto processuale*, p.737: "As an object of nomophylactic reflection, the issue of the requirements of the appeal is highly fashionable, while 'self-sufficiency' is a concept sufficiently elastic to encompass an entire universe. A cursory computer search reveals that, from 2005 to the present, decisions concerning the 'self-sufficiency' of the appeal number more than two hundred and ninety, with an upwa rd trend in recent years; and highly diverse are the directions in which the repercussions of this unsuspected cornerstone of the *ius quo utimur* may be felt, even though in every case (the sole unifying feature) it is the admissibility of the appeal that ultimately bears the cost".

becomes a sword of Damocles hanging over counsel and, simultaneously, a factor of systemic inefficiency[2].

Attempts to confine the principle within more determinate boundaries, from the legislative reform introduced by Legislative Decree No. 40 of 2 February 2006 to subsequent soft law initiatives, such as the Memoranda of Understanding concerning drafting standards, have revealed evident structural limitations. On the one hand, the indeterminate wording of the statutory provisions has left considerable scope for divergent interpretations; on the other, the non-binding nature of the guidelines has prevented them from exerting a stable influence on drafting practices and judicial approaches.

Against this background, it is increasingly apparent that the "self-sufficiency question" cannot be addressed solely at a doctrinal or interpretative level. The issue lies not merely in the theoretical definition of the principle or in the identification of its normative foundation, but more fundamentally in the concrete modalities governing the drafting of appeals before the Court of Cassation and in the now unbalanced relationship between form and substance in the initiating pleading. It is precisely on this terrain that the present proposal seeks to shift the analytical focus, from what self-sufficiency ought to be to how it may be effectively implemented without degenerating into formalism.

From this perspective, the article advances the introduction of a structured drafting template for appeals under Article 360 of the Italian Code of Civil Procedure, conceived not as an additional formal constraint but as an instrument of structural rationalisation. Building on recent regulatory developments, most notably Ministerial Decree No. 110 of 7 August 2023 and the 2023 Memorandum of Understanding on civil proceedings before the Court of Cassation, the proposed model rests on a logically and functionally organised architecture, articulated into mandatory and guided sections designed to ensure clarity of exposition, targeted completeness, and argumentative coherence. In this manner, form is restored to its proper function, ensuring intelligibility, accurate identification of the relevant procedural materials, and the determinacy and cogency of the grounds, while formalism is countered through practical tools (structured guidance boxes, alerts for omissions or inconsistencies, and self-sufficiency checklists) aimed at preventing both deficiencies and redundancies.

The objective is not to introduce an additional filter on access to cassation review, nor to further intensify procedural burdens on counsel, but to provide a systemic response to the crisis of self-sufficiency by restoring it to a role consistent with its original rationale. In this sense, the drafting template operates as an instrument of legal design, capable of orienting forensic

[2] On this point, see also Poli, R. (2014). *Le Sezioni Unite sul regime dei motivi specifici del ricorso per cassazione. Rivista di diritto processuale*, 183 ff., where cassation proceedings are described as "a veritable obstacle course by which the Court defends itself against the excessive number of incoming appeals."

writing towards shared standards of clarity and concision, reducing the risk of purely formal findings of inadmissibility and, at the same time, facilitating the Court's evaluative task.

The article ultimately seeks to demonstrate that a structural solution grounded in guided standardisation of the drafting process may help reconcile the demands of procedural efficiency with the effective protection of individual legal positions, thereby rescuing the principle of self-sufficiency from the interpretative drifts that have progressively eroded its systemic coherence.

The central thesis advanced is that the crisis of self-sufficiency stems not from an interpretative deficit but from a structural one: only a guided drafting model, potentially supported, in due course, by intelligent technological tools, can restore the principle to its functional limits and recover its original normative rationale.

2. FROM PRAETORIAN ROOTS TO FORMALISTIC DEVIATIONS: SELF-SUFFICIENCY BETWEEN MISAPPLICATIONS AND INITIAL ATTEMPTS AT REBALANCING

The principle[3] of self-sufficiency is of judge-made origin. In shaping the structure of appeals before the Court of Cassation, the Court's rulings have therefore performed a distinctly orienting function, operating as genuine "interpretative compasses"[4]. Since the Court of Cassation has positioned itself as a pioneer in constructing the cassation appeal, contributing to moulding its architecture and progressively redefining its boundaries, the seemingly most natural course would be to derive the meaning of the principle directly from its case law.

Yet, as has been aptly observed, "the dense accumulation of headnotes invoking the so-called principle of self-sufficiency of the cassation appeal presents so variegated a landscape as to be practically unusable for those seeking to apply it, in its current form, in order meaningfully to distinguish cases of genuine inadmissibility from those in which reliance upon the rule would amount to a perilous formalism; to such an extent as to justify the doubts of those who have questioned whether such a principle is imposed for the convenience of the judge or in the interest of the opposing party, criticising it as the outcome of an eccentric doctrinal preoccupation, destined

[3] Although it is commonly designated as a "principle", part of the scholarly literature contests the terminological accuracy of this label, considering it more appropriate to qualify it as a "modality" of the preliminary conditions governing the admissibility of the appeal or, alternatively, as an essential requirement thereof. Balletti, B. (2006). Il ricorso per cassazione e il c.d. principio dell'autosufficienza. *Diritto e giustizia,* 105 ff, esp 120.

[4] Eloquent in this respect is the passage by Sassani, B. (2016). *Da Corte a Ufficio Smaltimento: ascesa e declino della "Suprema". Judicium*. *https://www.judicium.it*, according to whom: "And thus, while banks proceed to write their own rules governing compulsory enforcement, the upper echelons of the Supreme Court 'have written for themselves' their own rules governing cassation proceedings".

solely to increase the length of the appeal, to the exclusive benefit of the public purse"[5].

The picture emerging from the Court's decisions is therefore anything but homogeneous. Although even a cursory search of any legal database yields an exceptionally high number of rulings employing the expression "self-sufficiency", such terminological proliferation falls far short of enabling the identification of a clear and unitary definition of the requirements governing the proper drafting of a cassation appeal.

The celebrated metaphor advanced by Chiarloni—likening the Court of Cassation to a "supermarket"—[6] aptly conveys the extent of this interpretative fragmentation: for every hermeneutic orientation one can readily find another of the opposite tenor, so that, amidst shelves stocked with antithetical lines of authority, the interpreter may select, according to convenience, the precedent most conducive to his or her thesis.

2.1. The origins and development of the principle of selfsufficiency: from the burden of identification to the burden of transcription

from a historical perspective, the expression "self-sufficiency" made its first appearance in the landmark judgment Cass., 18 September 1986, No. 5656, in which the Court reviewed the refusal to admit certain evidentiary requests, in circumstances where the appellant had failed to specify the relevant evidentiary items[7].

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[5] Evangelista, S., Canzio, G. (2005). Corte di cassazione e diritto vivente. *Foro Italiano*, p. 84.

[6] The reference is to Chiarloni, S. (2002). Ruolo della giurisprudenza e attività creative di nuovo diritto. *Rivista trimestrale di diritto e procedura civile*, p. 6; Id. (2012). Un ossimoro occulto: nomofilachia e garanzia costituzionale dell'accesso in cassazione. In C. Besso & S. Chiarloni (Eds.), *Problemi e prospettive delle corti supreme: esperienze a confronto*. Quaderni del Dipartimento di Giurisprudenza dell'Università di Torino, Napoli, 2012, p. 21; Id. (2013). *Ragionevolezza costituzionale e garanzie del processo. Rivista di diritto processuale*, p. 525.

[7] It was precisely this omission that inevitably led the Court to dismiss the appeal, finding that the challenge suffered from an incurable lack of specificity, such as to preclude any substantive review of the complaint, in strict adherence to the formal and substantive parameters governing access to review on points of law. In setting out the grounds for its decision, the Supreme Court clarified that no complaint may be entertained at the cassation stage where it lacks a specific indication of the evidence whose admission was refused, of the facts to which such evidence relates, and of the causal link between the impugned decision and the alleged omission. In such circumstances, it becomes impossible, on the one hand, to identify the elements necessary to assess the decisiveness of the alleged defect in reasoning and, on the other, to ensure compliance with the principle of self-sufficiency of the cassation appeal. That principle requires that the allegations advanced be complete and exhaustive from the outset, excluding the possibility that deficiencies affecting the initiating pleading may be remedied by the reviewing court through supplementary inquiries extending beyond the mere examination of the arguments articulated in the appeal.

In the Court's view, in the case at hand the formulation of the appeal was manifestly inadequate to meet these requirements, amounting instead to a mere reference to informational sources external to the appeal itself. Such a drafting technique resulted in an inadmissible construction *per relationem*, devoid of the requisite argumentative autonomy.

An examination of that decision, an undisputed milestone in the delineation of the principle of self-sufficiency, constitutes a crucial stage in tracing its genesis, marking its earliest points of consolidation and thereby defining the trajectory along which subsequent doctrinal and jurisprudential developments would unfold. The first element that emerges concerns the very origin of the principle, which, in the perspective articulated by the aforementioned judgment, appears as nothing more than a particular expression of the broader and already established requirement of specificity of the grounds of appeal. Nor did this judicial construction undergo any substantial transformation in the following decade[8], during which the principle was repeatedly reaffirmed in its original guise, translating into the imposition upon the cassation appellant of a precise and punctual "topographical" indication within the appeal, namely, the identification of the specific procedural act or hearing record to which the complaint referred[9].

In light of the foregoing considerations, a point of fundamental importance emerges: contrary to what has often been maintained, the judgment in question cannot properly be regarded as the founding decision, in any absolute sense, of the requirement of self-sufficiency, which in fact finds its roots in the earlier and more general principle of specificity. The true contribution of the decision lies not in the introduction of an innovative principle, but rather in its capacity to crystallise an already familiar procedural requirement in a newly coined formula: the term "self-sufficiency". The genuinely innovative dimension of the ruling thus resides in an operation of linguistic rationalisation which, without altering the substance of the underlying obligation, supplied a lexically effective label that has since come to encapsulate a fundamental—though already sedimented—procedural burden.

Although devoid of structural novelty, the decision nevertheless produced a disruptive effect: it furnished subsequent case law with a new vocabulary through which to reformulate an existing obligation, thereby triggering a gradual semantic transformation of the principle. From that point onwards, later decisions amplified its practical reach. While the original operational core of the principle of self-sufficiency was initially confined to the ground of appeal concerning defects in reasoning under Art. 360(1)(5) of the Italian Code of Civil Procedure (c.p.c.), that perimeter soon proved insufficient to contain its inherent expansive force. From the outset, the hermeneutic scope of the principle appeared destined to transcend its original context, progressively extending first to the ground of error in law (*vizio in iudicando*) under Art. 360(1)(3) c.p.c., and subsequently to procedural defects (*vizio in procedendo*) under No. 4 of the same provision[10].

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[8] See, in this regard, Cass. 19 giugno 1995, n. 6927.

[9] Cf. Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, *Judicium*. *https://www.judicium.it*, p. 3. On this point, see also Bossi, F. (2015). Il contenuto del ricorso per cassazione e il c.d. principio di autosufficienza (Nota a Cass. 11 luglio 2014, n. 15882). *Giurisprudenza italiana*, p. 1119.

[10] On this point, see Caporusso, S. (2008). Autosufficienza del ricorso per cassazione e divieto di esame diretto degli atti processuali. In S. Pagliantini, E. Quadri, & D. Sinesio (Eds.), *Scritti in onore di*

This expansion of its sphere of application, unsupported by a corresponding statutory anchor, gradually transformed self-sufficiency into an increasingly all-encompassing principle, applied across heterogeneous contexts and with varying degrees of intensity[11]. Whereas its original core consisted in the so-called duty of localisation—that is the precise indication by the appellant of the procedural stage at which the relevant document had been produced and of its exact placement within the pertinent case file—with the advent of the new millennium this requirement was progressively supplanted by a far more onerous obligation: the full transcription, within the body of the ground of appeal, of the procedural documents upon which the complaint was founded[12].

Under this renewed framework, the formalistic configuration[13] of the principle of self-sufficiency found one of its most incisive applications in complaints concerning the refusal, at the merits stage, to admit means of proof. Thus, whereas at an earlier stage the Supreme Court had required the appellant to provide a precise and detailed indication of the content of the evidence whose admission in the proceedings on the merits was allegedly denied,

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Marco Comporti. Milano, pp. 457– 458: "Initially, that is, in the second half of the 1980s, the principle was coined by the court of legitimacy exclusively with regard to the ground under art. 360, no. 5, c.p.c., in order to express the need for complaints concerning omitted, insufficient or contradictory reasoning not to be sought outside the text of the appeal or, in any event, to be inferred *per relationem* through reference to acts from the previous stages of the proceedings. Subsequently, however, the scope of operation of the principle of self-sufficiency was gradually extended to encompass the grounds set out in art. 360, nos. 3 and 4, c.p.c., with the result of elevating self-sufficiency to a 'content-form requirement of the appeal additional to those expressly provided for in art. 366'. The Supreme Court, indeed, probably driven by the need to reduce its caseload, carried out a form of generalisation of that principle and, even in the absence of a specific statutory basis, did not hesitate to apply the sanction of inadmissibility whenever the assessment of the complaints would have required access to the acts of the previous stages of the proceedings". To the same effect, Rusciano, S. (2007). Il contenuto del ricorso per cassazione dopo il d.lgs. 40/2006. *Corriere giuridico,* p. 283. The Author observes: "In recent years, moreover, the expansion of the principle in question has become even more evident, as it has concerned not only the very notion of self-sufficiency but also its field of application: self-sufficiency, initially referred to and limited to the sole defect in reasoning under art. 360, no. 5 c.p.c., now also applies with regard to nos. 3 and 4 of the aforementioned art. 360".

[11] With regard to the persistent oscillations in the case law, see Ricci, G. F. (2019). Il velo squarciato: la Suprema Corte apre la porta al sindacato di legittimità sul giudizio di fatto. *Rivista di diritto processuale*, p. 364, who observes: "What is most disconcerting is the attitude of the case law itself, which continuously oscillates between the more rigorous interpretation—requiring the transcription within the appeal of the act or document upon which the complaint is focused—and the more liberal interpretation, which confines itself to demanding compliance with less stringent requirements".

[12] Among the decisions reflecting the former, stricter approach, see Cass. 25 marzo 1999, n. 2838, ECLI:IT:CASS:1999:2838CIV; Cass. 10 marzo 2000, n. 2802, ECLI:IT:CASS:2000:2802CIV; Cass. 13 settembre 2000, n. 12080, ECLI:IT:CASS:2000:12080CIV; Cass. 1° giugno 2001, n. 7434, ECLI:IT:-CASS:2001:7434CIV; Cass. 1° agosto 2001, n. 10484, ECLI:IT:CASS:2001:10484CIV; Cass. 10 novembre 2001, n. 13963, ECLI:IT:CASS:2001:13963CIV; Cass. 5 marzo 2003, n. 3284, ECLI:IT:CASS:2003:-3284CIV; Cass. 14 aprile 2003, n. 5886, ECLI:IT:CASS:2003:5886CIV; Cass. 10 agosto 2004, n. 15412, ECLI:IT:CASS:2004:15412CIV; Cass. 18 novembre 2005, n. 24461, ECLI:IT:CASS:2005:24461CIV.

[13] On the dichotomy between the "rigorous" and the "indulgent" versions of self-sufficiency, see Chiarloni, S. Il diritto vivente di fronte alla valanga dei ricorsi in cassazione: l'inammissibilità per violazione del c.d. principio di autosufficienza. *Judicium. https://www.judicium.it*. The same distinction is taken up and further developed by Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., *passim*, who differentiates between a "light" and a "strong" version of the principle.

this requirement subsequently evolved into a far more exacting imperative: the complete reproduction, within the body of the appeal, of the articulated witness evidence, a mere generic reference to the evidentiary headings and the factual circumstances to which they related being deemed insufficient for the purposes of compliance with the principle in question[14].

The application of such rigour certainly did not spare other forms of evidence. In the case of a complaint concerning the refusal to admit formal examination, the Supreme Court required the exact reproduction of the factual circumstances forming the subject matter of the questions to which the party was to be subjected[15]. Likewise, in relation to the refusal to admit a decisive oath, the Court demanded the precise transcription, within the appeal, of the formula in which the oath had been articulated[16]. Similarly, where the appe-

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[14] On this point, cf. Cass. 17 maggio 2006, n. 11501, ECLI:IT:CASS:2006:11501CIV, which states: "It is necessary, indeed, to apply the principle of law, decisive of any other issue, according to which an appellant before the Court of Cassation who alleges defects in the judgment connected with the refusal of the trial judge to admit witness evidence, or with that judge's failure to evaluate a document, bears the burden both of demonstrating the existence of a causal link between the alleged error and the decision actually rendered, and of specifically indicating in the appeal, including by means of full transcription, the concrete circumstances forming the subject matter of the evidentiary headings or the exact content of the document allegedly disregarded. This is in order to enable the court of legitimacy to verify the validity and decisiveness of the rejected evidentiary submissions solely on the basis of the cassation appeal, in light of the principle of self-sufficiency governing that pleading, without the need for supplementary inquiries and without any possibility that reference *per relationem* to other acts or defensive submissions filed in the previous stages of the proceedings may serve a substitutive function". In the same terms, Cass. 6 agosto 2003, n. 11895 (ECLI:IT:CASS:2003:11895CIV); Cass. 18 giugno 2004, n. 9711, ECLI:IT:CASS:2004:9711CIV.

[15] In this regard, reference may be made to Cass. 5 giugno 2007, n. 13085, ECLI:IT:CASS:2007:-13085CIV, which states: "It must be reiterated, in conformity with a more than consolidated line of authority of this Court acting as court of regulation, that where, by means of an appeal in cassation, complaint is made of the refusal by the trial judge to admit oral evidence, the appellant bears the burden of indicating in the appeal the evidentiary headings that were not admitted, failing which the appeal must be deemed inadmissible (Cass. 12 maggio 2000, n. 6115). An appeal in cassation challenging the refusal by the trial judge to admit oral evidence must therefore contain, on pain of inadmissibility, in compliance with the principle of self-sufficiency, the indication of the evidentiary schedule (Cass. 9 maggio 2000, n. 5876). An appellant who, in cassation proceedings, complains of the failure to admit evidence bears, in particular, the burden of specifically indicating the factual circumstances forming the subject matter of that evidence, in order to enable the court of legitimacy to review the decisiveness of the facts sought to be proved; such review, by virtue of the principle of self-sufficiency of the appeal, must be carried out solely on the basis of the appeal itself, without the possibility of supplementation by reference to other procedural acts (Cass. 12 maggio 1999, n. 4684). In light of the principle of self-sufficiency of the appeal, the Court of Cassation must be placed in a position to carry out its own assessment, as to the relevance and decisiveness of the evidence not admitted by the trial judge, exclusively on the basis of the submissions contained in the pleading, any deficiencies therein being incapable of remedy through supplementary inquiries (Cass., sez. un., 24 febbraio 1998, n. 1988). It being legally undisputed as set out above, it is observed that, in the present case, although the appellants complained that the judges on the merits had refused to admit the formal interrogation of PEDONE Fernando, who had attained the age of majority only in the course of the proceedings, they failed to transcribe in the appeal the content of the factual circumstances on which he would have been required to respond".

[16] On this point, see Cass. 30 maggio 2002, n. 7923, ECLI:IT:CASS:2002:7923CIV: "It follows that, in compliance with the principle of self-sufficiency of the appeal in cassation, an appellant who complains of the refusal by the trial judge to admit evidentiary requests bears the burden of analytically indicating in the appeal the factual circumstances forming the subject matter of the requested and unadmitted evidence (Cass. 15 giugno 1999, n. 5945 Cass. 12 maggio 1999, n. 4684; Cass. 7 gennaio 1998,

llant complained of the omission or erroneous assessment of documentary evidence, the Court held that, in accordance with the principle of self-sufficiency of the cassation appeal, the grounds advanced must enable it to carry out an adequate review solely on the basis of the submissions contained in the initiating pleading, any deficiencies therein being incapable of remedy through supplementary inquiries. This position therefore translated into the imposition upon the appellant of the burden of accurately reproducing the content of the document alleged to have been omitted or improperly evaluated[17].

The strictness of this approach did not abate even in disputes involving a court-appointed expert report (*consulenza tecnica d'ufficio*), which were likewise subjected to particularly stringent requirements. Accordingly, where the impugned judgment departs from the findings of the technical assessment carried out, it is insufficient for the appellant merely to assert in general terms that the reasoning is flawed or inadequate, or to invoke evidentiary elements susceptible of a different evaluation and to draw conclusions divergent from those reached by the trial judge. Rather, it is necessary to reproduce in full the portions of the expert report allegedly disregarded, accompanied by specific, analytical, and detailed critical arguments demonstrating the logical and legal shortcomings of the reconstruction adopted by the court *a quo*[18].

It should further be noted that the requirement of full transcription has also emerged in disputes involving the application of secondary legal provisions. Given the inapplicability of the principle *iura novit curia* in this context, the Supreme Court is not under an obligation to possess direct knowledge of such sources; their production falls upon the parties, unless the court is vested with investigative powers enabling it to secure autonomous access to them independently of the parties' procedural activity[19].

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n. 72). Since, in the present case, the appellant failed to reproduce in the appeal the formula in which the decisive oath had been articulated, the ground of appeal is inadmissible".

[17] In these terms, Cass. 20 febbraio 2003, n. 2527, ECLI:IT:CASS:2003:2527CIV; Cass. 14 aprile 2003, n. 5886, ECLI:IT:CASS:2003:5886CIV. Reference is also made to Cass. 30 agosto 2004, n. 17369, ECLI:IT:CASS:2004:17369CIV.

[18] On this issue, see furthermore Cass. 13 giugno 2007, n. 13845, ECLI:IT:CASS:2007:13845CIV, which provides: "As regards the alleged deficiencies of the court-appointed expert report, it is necessary to reiterate the principle according to which 'a party who attributes to the court-appointed expert report deficiencies in fact-finding or errors of assessment, or who complains of erroneous evaluations contained therein (and in the judgment that adopted it), must, first and foremost, fully transcribe in the appeal in cassation at least the salient and contested passages and subsequently set out the specific content of the criticisms raised against them, in order to highlight the errors committed by the trial judge in merely adopting the report and in wholly disregarding the objections formulated with respect to the expert's findings and conclusions. In sum, the criticisms directed at the expert report and at the judgment must display such a degree of specificity as to enable the Court of Cassation to assess their decisiveness directly on the basis of the appeal itself.' In the present case, however, the appellant reproduced neither the contested passages of the expert report nor the criticisms addressed to it, thereby failing to comply with the principle of self-sufficiency of the appeal".

For a more in-depth analysis, see Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "… Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., pp. 6–7.

[19] Ibidem: "Consequently, so the Court reasons, in cases where the judge is vested with investigative powers, as occurs at the merits stage, he or she may acquire direct knowledge independently of the activity carried out by the parties, who may confine themselves to indicating the elements necessary for

Finally, the principle reaches its highest degree of applicative rigour when the Court, in reviewing the interpretation of a judgment delivered on the merits, makes the admissibility of the appeal contingent upon the full reproduction of the impugned decision, comprising both its reasoning and its operative part, together with a specific indication of the procedural location in which the final judgment may be found and examined[20].

2.2. Legislative attempts in 2006 and 2009 to codify the self-sufficiency principle and the judiciary's uneven response

As an immediate and almost inevitable consequence of this escalation of procedural burdens, defensive practice underwent a marked shift towards hyper-formalism. In their fear of succumbing to the abyss of a declaration of inadmissibility, counsel increasingly resorted to redundancy and excessive argumentation, producing appeals that became progressively longer and more unwieldy. In an effort to avert the risk of inadmissibility, defensive activity frequently degenerated into a purely reproductive exercise: counsel were transformed into veritable amanuenses[21], indiscriminately transcribing every

locating such regulatory acts; at the cassation stage, by contrast, in the absence of such investigative powers on the part of the judge, the principle of self-sufficiency requires, on pain of inadmissibility of the appeal, the full transcription of the secondary provisions alleged to have been violated".

In confirmation of the foregoing, cf. Cass. 2 dicembre 2004, n. 22648, ECLI:IT:CASS:2004:-22648CIV; Cass. 16 novembre 2005, n. 23093, ECLI:IT:CASS:2005:23093CIV; Cass. 29 maggio 2006, n. 12786, ECLI:IT:CASS:2006:12786CIV.

[20] See Cass. 29 settembre 2007, n. 20594, ECLI:IT:CASS:2007:20594CIV, which states: "It has been held that 'the interpretation of an external res judicata may also be carried out directly by the Court of Cassation with full jurisdiction, within the limits, however, in which the res judicata is reproduced in the cassation appeal, by virtue of the principle of self-sufficiency governing that form of challenge, with the consequence that, where the interpretation adopted by the trial judge is considered incorrect, the appeal must reproduce the text of the res judicata alleged to have been erroneously interpreted, with joint reference to both the reasoning and the operative part, since the operative part alone may be insufficient to understand the judicial command (Cass. n. 26227 del 2006). Moreover, the Joint Sections of the Court have clarified that "the principle that an external res judicata may be raised in cassation proceedings, provided that it results from the acts produced in the merits proceedings, must be coordinated with the requirement of completeness and self-sufficiency of the appeal, such that the appellant relying on that res judicata must indicate the procedural stage and the circumstances in which those acts were produced (Cass. sez. un. n. 1416 del 2004). It has also been observed that 'with reference to the procedural regime prior to D.Lgs. n. 40 del 2006, in order to satisfy the requirement of so-called self-sufficiency of a ground of appeal in cassation concerning, pursuant to art. 360 c.p.c., n. 5 (the same applies where the assessment must be carried out for the purposes of reviewing a defect under art. 360 c.p.c., n. 3, or a defect constituting error in procedendo under numbers 1, 2 and 4 of that provision), the evaluation by the trial judge of documentary evidence requires not only that the content of such evidence be reproduced in the appeal, but also that the procedural stage of the merits proceedings in which the production occurred be indicated, as well as the location within the court file or the parties' files, respectively acquired and produced in the cassation proceedings, where it may be found".

[21] It was precisely this dynamic that led Ricci, E. F. (2010). Sull'«autosufficienza» del ricorso per cassazione: il deposito dei fascicoli come esercizio ginnico e l'avvocato cassazionista come amanuense. *Rivista di diritto processuale*, p. 738, to observe: "The figure of the cassation lawyer has in turn changed, with an expansion of the catalogue of requisite qualities. Today, such a lawyer must also (and perhaps

conceivable textual reference, with the paradoxical effect of suffocating, under the weight of argumentative excess, the very substance of the legal issue submitted for review on points of law[22]. Thus, the remedy turned into an obstacle: the work of the judges became more onerous, the reading of appeals increasingly exhausting, and the procedural machinery, burdened by unnecessary verbosity, ground to a halt amidst delays and inefficiencies[23], to the detriment of the principle of the reasonable duration of proceedings. The progressive tightening, in the case law, of the requirements associated with the principle of self-sufficiency, together with the inevitable defensive hypertrophy that ensued, underscored the need for legislative intervention aimed at restoring a more balanced configuration of cassation proceedings. That need was addressed by D.lgs. 2 febbraio 2006, n. 40, entitled «Modificazioni al codice di procedura civile in materia di processo di cassazione in funzione nomofilattica e di arbitrato», through the introduction of two significant innovations designed to curb the excesses of an increasingly pervasive formalism. Among the reforms of particular relevance in this context was, first and foremost, the introduction of art. 366-bis[24], which required the appellant—whether principal or incidental[25]—to accompany each ground of appeal falling within the scope of art. 360, primo comma, nn. 1, 2, 3, 4, with

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above all) be a careful amanuensis and copyist, faced with an operational dilemma: should the necessary transcriptions be incorporated into the body of the appeal, or, after having been mentioned and identified therein, may they instead take the form of separate 'appendices' to be attached ('stapled', in professional jargon) to the pleading? The latter solution is more rational, yet it may give rise to doubts as to the admissibility of such 'staplings', thereby opening the way to further debate. Moreover, since defensive caution may induce counsel to be generous in their transcriptions (wherever placed), one cannot exclude that, sooner or later, an issue may arise concerning their dimensional limits (with the result that the cassation lawyer would also have to assume the role of an inspector of weights and measures)".

[22] See Verde, G. (2006). *Profili del processo civile* (Vol. 2). Napoli, p. 292.

[23] In similar terms, Consolo, C. (2008). *Le impugnazioni delle sentenze e dei lodi*, Padova, p. 245.

[24] It should be noted that the provision was repealed by L. 18 giugno 2009, n. 69. For further analysis, see Ricci, E. F. (2009). Il quesito di diritto nel ricorso per cassazione: istruzioni per l'uso. *Rivista di diritto processuale*, p. 550.

[25] Dispelling any doubt, Rusciano, S. (2012). Nomofilachia e ricorso in cassazione. Torino, p.153, observes: "Although the legislature in 2006 had 'forgotten' to amend art. 371 c.p.c. by including a reference to the new art. 366 bis, it must be held, as a matter of interpretation, that the formal requirement also applies to the incidental appeal. This conclusion follows from the simple reference in the aforementioned art. 371 to art. 366 c.p.c., which, in turn, under no. 4 provides (provided), on pain of inadmissibility, that the appeal must contain 'the grounds upon which cassation is sought, with an indication of the provisions of law relied upon, in accordance with art. 366 bis.'" On this point, see also De Cristofaro, M. (2007). Sub art. 366. In C. Consolo & F. P. Luiso (Eds.), *Codice di procedura civile commentato*. Milano, p. 2957: "Such a conclusion is reached both in light of the fact that the reference encompasses all provisions governing the formal and completeness requirements for lodging the appeal, which condition its admissibility and procedural viability, such that it would appear rather incongruous for the incidental appellant not to be subject to the same burden; and in view of the connection between the requirement imposed upon the parties to articulate the question of law and the corresponding obligation upon the Court to state the principle of law in all cases of appeal brought under no. 3 of art. 360, as well as in appeals based on any of the other possible grounds where it considers that it has resolved questions of law of particular importance, an obligation which clearly applies to all grounds of appeal advanced by the parties, regardless of whether they are contained in the principal or the incidental appeal".

the formulation of a specific question of law (*quesito di diritto*). Conversely, in relation to the ground under n. 5 of the same provision, the appellant was required, on pain of inadmissibility, to indicate clearly the disputed fact in respect of which the reasoning was alleged to be omitted or contradictory, or to set out the reasons why the asserted insufficiency of the reasoning rendered the decision incapable of justification.

It is difficult not to perceive behind this provision the shadow of a veritable gentlemen's agreement[26] between the higher judiciary and the legislature. Fully aware of the Court of Cassation's need to stem the relentless flow of incoming appeals, and of the deflationary function that the principle of self-sufficiency had surreptitiously come to perform, the legislature replaced that sword of Damocles with a new instrument, less exacting in form, yet equally effective in substance: the obligation to formulate a question of law, non-compliance with which would entail a declaration of inadmissibility and thereby contribute to the pursuit of the same deflationary objective[27].

Nor does the 2009 reform appear to have departed from the underlying rationale of the previous intervention. Although art. 366-bis was repealed, the legislature simultaneously introduced further mechanisms which, albeit structurally different, pursue the very same aim: the access filter to the Court of Cassation under art. 360-bis[28] and the so-called "filter section".

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[26] The expression is borrowed from Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "… Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., p. 14.

[27] With regard to the rationale underlying that provision, Ibidem: "The rationale of the legislative innovation as a whole is revealed by the legislature itself in the explanatory report accompanying the decree: it consists, on the one hand, in the need 'to provide the Court, as well as the responding party, with a framework that is as immediate, complete and self-sufficient as possible of the complaints upon which it will be called to rule, and to facilitate its task of locating the acts and documents on which they are based'; and, on the other hand, in the intention to 'tighten the mesh' of review in Cassation, thereby excluding the admission of merits judgments that are not subject to challenge at the stage of review on points of law. It should also be borne in mind that the provision set out in art. 366 bis c.p.c. offered considerable practical advantages, especially in light of the generally moderate and reasonable interpretation, save for some initial 'exaggerations', adopted by the Supreme Court. In particular, in my view, that rule assisted the appellant in drafting the appeal, enabling him or her to summarise—perhaps after grounds extending over seven or eight pages—the legal issue in just a few lines, thereby reducing the risk of a finding of lack of specificity of the ground. Consequently, by allowing the complaint submitted to the Court of Cassation to be circumscribed with greater precision and analytical clarity, it reduced the danger of inadmissibility rulings hastily reasoned and founded upon the excessive generality of the ground". A similar position is taken by Rusciano, S. (2012). *Nomofilachia e ricorso in cassazione*, cit., p. 154, who explains: "The required formulation of the question of law or the identification of the disputed fact was, in the legislature's intention, functional to 'facilitating the reading of the cassation appeal and, therefore, the prompt identification of the issues to be resolved, with a view to a swift decision'; the indirect objective was to confine the Court's review to issues that can genuinely constitute the subject matter of a cassation decision, to operate a natural selection of appeals, and to prevent access to the Court of those challenges which, behind apparent complaints of law, in reality seek to submit factual issues, often already examined on appeal, to the scrutiny of the court of legitimacy." On this issue, see also Proto Pisani, A. (2006). *Lezioni di diritto processuale*. Napoli, p. 529, who considers that the introduction of these new grounds of inadmissibility responded to the need to "reduce the number of appeals lodged by lawyers not accustomed to practising before the Court of Cassation".

[28] See, on this point, by Rusciano, S. (2012). *Nomofilachia e ricorso in cassazione*, cit., pp. 161–162: "The repeal of art. 366 bis by the 2009 reform, although it formally eliminated the sanction of inadmis-

Tracing the legislative trajectory backwards to the 2006 reform, one encounters what most likely constitutes its most significant innovation: the introduction of a new paragraph, no. 6, into art. 366 c.p.c., which enriched the initiating pleading of cassation proceedings with an additional requirement of form and content, namely the specific indication of the procedural acts, documents, and collective agreements or contracts upon which the appeal is founded.

The rationale underlying this provision is, *ictu oculi*, evident. It marks the legislature's first attempt to reclaim regulatory control and to curtail the—until then virtually unbounded—discretionary power exercised by the Court in shaping the contours of self-sufficiency, thereby delineating the outer limits[29] of its operation[30]. That limit appears, with good reason, to correspond precisely to the third level of self-sufficiency previously discussed, defined by the duty of localisation. By implication, it entails the exclusion of any obligation of full transcription, an obligation which, as previously noted, properly pertains to a distinct and subsequent level of completeness.

Further, albeit indirect, confirmation of this interpretation may be drawn from art. 369, secondo comma, n. 4, c.p.c. By requiring the appellant not only to specify in the appeal the procedural acts, documents, and collective agreements or contracts upon which the complaint is based, but also to file them subsequently, that provision would be deprived of its very rationale were one

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sibility of a ground of appeal where it was not accompanied by a question of law or where the latter was incorrectly formulated, did not, however, bring about the definitive disappearance of that requirement of the cassation appeal. With the introduction of art. 360 bis, the legislature in fact imposed additional burdens upon the appellant, including the indication of the legal issues decided by the trial judge. This entails a requalification of the question of law: from a requirement of the ground of appeal, prescribed on pain of inadmissibility, to an element of the appeal aimed at improving the formulation of the complaint, perhaps necessary in order to overcome the 'filter'; from a condition of inadmissibility to a mere drafting technique of the appeal. From this perspective, and in light of the new art. 360 bis c.p.c., the question of law constitutes a complementary element in relation to the complaint: it is a requirement of the appeal intended to supplement the ground of challenge, pertaining to the manner in which the complaint itself is formulated". Along the same lines, see also Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., pp. 14–15.

[29] See Tedoldi, A. (2006). La nuova disciplina del procedimento di cassazione: esegesi e spunti. *Giurisprudenza italiana*, p. 2011, who argues that the reform in question affected the scope of the principle by tempering the "excessive discretionary power" previously attributed to the Court.

On this point, see also Tiscini, R. (2007). Il giudizio di cassazione riformato. *Giusto processo civile*, p. 523 ff.., in particular 546, where the Author observes that these innovations preclude any renewed abuse of the principle of self-sufficiency.

To the same effect, Caporusso, S. (2008). Autosufficienza del ricorso per cassazione e divieto di esame diretto degli atti processuali, cit., p. 465.

[30] Cf. Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., pp.12–13; Rusciano, S. (2007). Il contenuto del ricorso per cassazione dopo il d.lgs. 40/2006, cit., p. 280, who further clarifies: "It should, however, be clarified that the combination of these amendments concerns the individual ground of appeal and not, strictly speaking, the content of the appeal as a whole. This clarification is not merely formal, but contributes to a more accurate interpretation of the provisions in question: indeed, where there is a failure to attach a procedural act or document, a failure to indicate their location, or non-compliance with the aforementioned art. 366-bis, the sanction must affect not the entire appeal but only the individual ground".

to consider full transcription of the relevant elements and circumstances contained in those acts to be mandatory.

Moreover, the same interpretative trajectory appears to be supported by the wording of the third paragraph of the same provision. Within the normative framework established by the reform in question[31], it provided that "il ricorrente deve chiedere alla cancelleria del giudice che ha pronunciato la sentenza impugnata o del quale si contesta la giurisdizione la trasmissione alla cancelleria della Corte di cassazione del fascicolo d'ufficio; tale richiesta è restituita dalla cancelleria al richiedente munita di visto, e deve essere depositata insieme col ricorso"[32].

Yet, notwithstanding its undeniable cogency, this interpretative approach cannot be regarded as the sole possible exegetical key. Authoritative voices have questioned the univocal character of the reading just examined, noting that the textual datum does not lend itself to a single, incontrovertible interpretation[33]. On the contrary, its wording appears open to multiple constructions, leaving room for competing interpretative reconstructions which, though divergent, each find support within the statutory language itself.

It has further been observed that, even if one endorses this orientation and thus considers the mere indication of documentary elements sufficient, the resulting duty of localisation, while advantageous in sparing the Court of Cassation the need to search *aliunde* for the acts underlying the complaints, would nonetheless entail significant collateral implications. In particular, pursuant to art. 366, primo comma, n. 6 c.p.c., a declaration of inadmissibi-

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[31] That paragraph was subsequently repealed by D.lgs. 10 ottobre 2022, n. 149, as amended by l. 29 dicembre 2022, n. 197.

[32] This interpretative approach finds support in the positions expressed by Rusciano, S. (2007). Il contenuto del ricorso per cassazione dopo il d.lgs. 40/2006, cit., p. 289; Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., p. 15. See also Caporusso, S. (2008). Autosufficienza del ricorso per cassazione e divieto di esame diretto degli atti processuali, cit., p. 471; Chiarloni, S.Il diritto vivente di fronte alla valanga dei ricorsi in cassazione: l'inammissibilità per violazione del c.d. principio di autosufficienza, cit., p. 5; Balena, G. (2023). *Istituzioni di diritto processuale civile* (Vol. 2). Bari, p. 467.

In support of this orientation, see also Succio, R. (2019). Il principio di autosufficienza dei motivi di ricorso alla Suprema Corte: alcune considerazioni. *Rassegna tributaria*, pp. 73–74, according to whom: "The term 'indicazione' referred to in art. 366, comma primo, n. 6, c.p.c., appears here to constitute a textual element of no small importance in favour of the thesis advocating a less radical application of the principle; it should therefore be interpreted as a precise and punctual, unequivocal and comprehensive reference to the location of the act or document. It thus amounts to a 'duty of localisation', since to indicate the document in this context means to localise it, and in order to localise it it is necessary to make known to the Court the procedural locus in which it was introduced into the proceedings. In particular, if it concerns a procedural act, it must be specified whether it relates to the first-instance or appellate proceedings, the nomen under which it was identified therein in the pleading that referred to it, the procedural party responsible for its production, and, more directly, the number assigned to it within the party's file or the progressive number attributed to it if produced *aliunde*. […] Lastly, it should be noted in favour of this non-hyper-rigorous thesis the argument that the interpretation of the procedural system which favours a full decision on the merits of the case should in any event be preferred (also for reasons of systemic coherence) over one leading to a decision on purely procedural grounds."

[33] On this point, see De Cristofaro, M. (2007). Sub art. 366, cit., p. 2951.

lity might follow whenever the judge considers that the required indication fails to satisfy the standard of precision demanded, thereby identifying a potential circumvention of the provision. In this way, the Court would effectively be empowered to declare inadmissible even appeals that might otherwise prove well-founded [34].

To avert this risk, the sanction of inadmissibility for violation of art. 366, primo comma, n. 6 c.p.c. should be confined to cases of omitted or insufficient indication of those acts and documents that are genuinely indispensable to the intelligibility of the ground of appeal. Only in such circumstances would the failure of localisation assume decisive relevance, translating into an objective impossibility of fully identifying the alleged defect.

The paradoxical outcome is thus evident: the legislative remedy designed to anchor self-sufficiency within clearer and more determinate boundaries reveals itself, in turn, to be an elusive construct, susceptible to divergent interpretations and, above all, to distortions in application. Rather than curbing the risk of arbitrary declarations of inadmissibility, it risks amplifying it, becoming itself a vehicle for decisions that frequently appear contestable.

Indeed, an examination of the case law following the 2006 reform reveals "a constellation of non-dialoguing decisions" [35], incapable of coalescing into a coherent hermeneutic line. Despite this fragmentation, one constant feature persists: a margin of discretion so expansive as to verge upon arbitrariness, within which the Court of Cassation moves with near-complete freedom in redefining, from case to case, the weight and scope of the burdens deriving from the principle at issue.

Thus, the ambitious legislative attempt to circumscribe more clearly the scope of self-sufficiency soon collided with a jurisprudence that, far from stabilising, continued to oscillate between antithetical orientations, thereby perpetuating the very uncertainties the reform was intended to dispel. It is therefore unsurprising that, notwithstanding the legislative addenda, a considerable body of decisions [36] persists in requiring the full transcription of the acts underlying the appeal, thereby anchoring the principle to its most rigorous—and by now anachronistic—configuration.

But the matter does not end there. The reform not only failed to resolve the ambiguities that had necessitated its introduction; it ultimately furnished the pretext for the emergence of an additional paradigm of completeness, supported by even more stringent burdens. Under this construction, the introduction of art. 366, primo comma, n. 6 c.p.c. is read as giving rise to a

[34] Thus, Caporusso, S. (2008). Autosufficienza del ricorso per cassazione e divieto di esame diretto degli atti processuali, cit., pp. 468–470.

[35] Santangeli, F. Sui mutevoli (e talora censurabili) orientamenti della Suprema Corte in tema di autosufficienza: in attesa di un (auspicabile) intervento chiarificatore delle Sezioni Unite. *Judicium*. *https://www.judicium.it*

[36] For references, see Cass. 24 febbraio 2010, n. 4434, ECLI:IT:CASS:2010:4434CIV; Cass. 3 marzo 2010, n. 5091, ECLI:IT:CASS:2010:5091CIV; Cass. 19 aprile 2010, n. 9300, ECLI:IT:CASS:2010:9300CIV.

supplementary obligation—namely, localisation—which, rather than replacing the pre-existing duty of transcription, operates alongside it. The result is the coexistence of two distinct but equally indispensable requirements for admissibility, thereby imposing a dual burden upon the appellant[37].

Yet adherence to the most rigorous configurations of self-sufficiency has not gone entirely untempered. Alongside the tightening of formal requirements, one encounters—albeit sporadically—interpretative openings which, without disavowing the dogma of full reproduction, tend to mitigate its rigidity. A first indication of such moderation emerges in decisions where the Court, while not denying the necessity of reproducing the content of the procedural act, recognises the attachment of the document to the appeal as an acceptable alternative[38]. In certain instances, the Court appears willing to go further still, accepting that a sufficiently clear, complete, and structured summary, capable of rendering the essential contours of the dispute immediately intelligible, may adequately satisfy the burdens flowing from the principle of self-sufficiency[39].

Despite the predominance of a rigorist jurisprudential approach, dissenting voices persist. By returning to a more faithful adherence to the *littera legis* and to the ratio underlying the reform, these positions stand in counterpoint to prevailing formalism. Under this alternative reading, self-sufficiency is emancipated from its formalistic excesses: at times it is restored to the familiar boundaries of localisation; at others it is rediscovered in its original character as an integrative corollary of the principle of specificity[40], with the consequent exclusion of full transcription from the catalogue of indispensable prerequisites for access to review on points of law[41].

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[37] In confirmation of the foregoing, see Cass. 23 marzo 2010, n. 6937, which states: "For the proper fulfilment of the burden imposed upon the appellant by no. 6 of art. 366 c.p.c., to indicate specifically in the appeal also the procedural acts upon which it is based (and to transcribe them in full with reference to the parts subject to complaint), it is necessary, in compliance with the principle of self-sufficiency of that procedural act, that they also be identified with reference to the sequence of documentation concerning the conduct of the proceedings as a whole, as transmitted to the Court of Cassation, in order to make their examination possible." In the same terms, Cass. 16 marzo 2012, n. 4220, ECLI:IT:CASS:2012:4220CIV; Cass. 9 aprile 2013, n. 8569, ECLI:IT:CASS:2013:8569CIV.

[38] See, for example, Cass. 20 aprile 2010, n. 9379, ECLI:IT:CASS:2010:9379CIV, in which the Court observes that the appellant "avrebbe dovuto riportare (ovvero allegare al ricorso) il contenuto dell'appello proposto".

[39] Cf. Cass. 17 marzo 2020, n. 6517, ECLI:IT:CASS:2020:6517CIV.

[40] On this point, see Cass., sez. un., 22 maggio 2012, n. 8077, ECLI:IT:CASS:2012:8077CIV, in which it is affirmed that the principle of self-sufficiency constitutes a corollary of the requirement of specificity of the grounds of appeal, now embodied and clarified by arts. 366, comma 1, n. 6, and 369, comma 2, n. 4 c.p.c.

[41] See Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., pp. 19–20: "The more perceptive, albeit minority, case law of the Supreme Court thus appears to have correctly interpreted and enhanced the legislative amendments introduced by the 2006 reform, properly grasping their rationale and the judicial policy choices underlying them, essentially reviving the originally 'light' version of self-sufficiency, understood exclusively as a duty of 'localisation' of the act. The Court of Cassation, in compliance with that institutional agreement concluded with the reforming legislature, expressly goes so far as to exclude the necessity of transcribing, on pain of inadmissibility, the acts forming the basis of the appeal, requiring exclusively, pursuant to the principle in question—the specification of the procedural stage in which the document,

The instability permeating the interpretative landscape is further exacerbated by the emergence of a minority line of authority which, overturning the perspective adopted by the prevailing case law, not only strips full transcription of any relevance, but even goes so far as to declare the appeal inadmissible on that very ground[42]. From this standpoint, the mechanical reproduction of the content of procedural acts amounts to little more than an implicit referral back to the acts themselves, a result indistinguishable from that which would follow were the appeal reduced to a mere inventory of documents, leaving it to the Court to examine them and extract the essential information.

Such an approach effectively shifts onto the Court of Cassation an activity which, being inherent in the content of the appeal as a party's pleading, properly falls within the appellant's prerogative. The consequence is a distortion of the Court's institutional role and an additional prolongation of the time required to dispose of the proceedings, in manifest tension with the principle of the reasonable duration of the trial[43].

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though identified in its essential elements within the appeal, was produced in the merits proceedings". Emblematic on this point is Joint Sections of the Court of Cassation, 31 October 2007, No. 23019, which states: "With reference to the first objection, it must be clarified that D.Lgs. 2 February 2006, No. 40, art. 5, which is applicable *ratione temporis* to the present appeal, by amending the wording of art. 366 c.p.c., established that the appeal in cassation must contain, on pain of inadmissibility, the 'specific' indication of the procedural acts and documents upon which it is founded; where that requirement is complied with, the amended text of art. 369 c.p.c., No. 4, sanctions with procedural inadmissibility (*improcedibilità*) the failure to file, together with the appeal, the aforementioned acts and documents. The new discipline governing appeals in cassation is marked by greater rigour, in order to ensure the precise identification of the scope of the dispute devolved to the court of review on points of law, by imposing, on pain of inadmissibility, both the formulation of questions of law in the cases provided for by art. 360 c.p.c., Nos. 1, 2, 3 and 4, and the clear indication of the disputed facts in the case provided for by No. 5 (art. 366 bis c.p.c.), as well as the specific indication of the procedural acts, documents and collective agreements or contracts upon which the appeal is based (art. 369 c.p.c., No. 4). Whereas previously it was sufficient, in order to guarantee the self-sufficiency of the appeal in cassation, that the questions submitted to the court of review could be inferred with sufficient clarity from the text of the appeal in relation to the acts and documents contained in the parties' files of the merits proceedings, whose non-filing did not, according to the interpretation adopted in the case law, entail the sanction of procedural inadmissibility in cases where examination of those acts and documents was deemed unnecessary for the purposes of the decision, and to those further documents filed within the limits permitted by art. 372 c.p.c., there is now required the 'specific' indication of the acts and documents forming the basis of the appeal, in order to achieve the absolute and precise delimitation of the *thema decidendum*, by precluding the court of review from exceeding the scope of the questions submitted to it and from grounding its decision on findings other than those emerging from the acts and documents specifically indicated by the appellant". In the same vein, Court of Cassation, 17 July 2008, No. 19766, in which the Supreme Court clarifies: "Indeed, the requirement set out in art. 366 c.p.c., No. 6, in order to be satisfied, presupposes that it be specified in which procedural stage the document, although identified in the appeal (as in the present case), was produced, since to indicate a document necessarily means, in addition to specifying the elements that identify it, to state where in the proceedings it may be found".

In confirmation of this orientation, see Court of Cassation, 2 December 2008, No. 28547, ECLI:IT:CASS:2008:22648CIV; 12 December 2008, No. 29279, ECLI:IT:CASS:2008:29279CIV; 23 September 2009, No. 20535, ECLI:IT:CASS:2009:20535CIV; 13 November 2009, No. 24178, ECLI:IT:CASS:2009:24178CIV.

[42] See, for example, Joint Sections of the Court of Cassation, 17 July 2009, No. 16628, ECLI:IT:CASS:2009:16628CIV; Court of Cassation, 22 September 2009, No. 20393, ECLI:IT:CASS:2009:20393CIV; Court of Cassation, 24 July 2013, No. 18020, ECLI:IT:CASS:2013:18020CIV.

[43] In confirmation of the foregoing, see Joint Sections of the Court of Cassation, 9 September 2010, No. 19255, ECLI:IT:CASS:2010:19255CIV.

Moreover, this drafting technique proves wholly incapable of complying with Article 366(1)(3) of the Code of Civil Procedure. Rather than incorporating into the body of the appeal a clear exposition of the facts of the case, it refers their identification to sources external to the pleading itself, thereby depriving that provision of its nature as a formandcontent requirement of the initiating act in cassation proceedings.

If, therefore, the legislative intent underlying the reform was transparent—namely, to confine selfsufficiency within clearer boundaries and to purge it of the formalistic accretions that had distorted its function—its practical implementation has proved far more elusive.

In the present author's view, the causes of this failure are attributable to a dual responsibility. A significant part undoubtedly lies with the legislative choice itself: the vagueness of the statutory wording, far from permitting a unitary reading, facilitated the proliferation of conflicting interpretations and, at times, even encouraged the stratification of additional requirements upon appellants. Yet the more decisive contribution to this fragmentation derives from the case law of the Court of Cassation. In particular, the Joint Sections, entrusted with the primary task of "ensuring the exact observance and uniform interpretation of the law, and the unity of national objective law"—have, in practice, fallen short of that mandate, endorsing divergent interpretations over time and thereby undermining their role as guardians of legal unity.

2.3. The reform's failure and the institutional reaction of 2013

If, therefore, the intent underlying the reform was unequivocal (*i.e*. to confine self-sufficiency within clearer boundaries, purging it of the formalistic accretions that had distorted its function), its practical implementation proved far more arduous. In the present author's view, the causes of this failure are attributable to a dual responsibility. A significant share undoubtedly lies with the legislative choice: the vagueness of the statutory wording, far from lending itself to a unitary interpretation, facilitated the proliferation of divergent readings and at times even fostered the layering of additional burdens upon the appellant. Yet the more decisive contribution to this fragmentation derives from the jurisprudence of legitimacy. In particular, the Joint Sections, primarily entrusted with the task of "ensuring the exact observance and uniform interpretation of the law, and the unity of national objective law"[44], ultimately fell short of that mandate, endorsing conflicting interpretations over time and thereby compromising their role as guarantors of legal unity.

A (belated) attempt to curb the interpretative excesses that had characterised the application of the principle of self-sufficiency from its inception may

[44] Art. 65 of R.D. No. 12 of 30 January 1941.

be found in the letter dated 17 June 2013[45] from the then First President of the Court of Cassation, Giorgio Santacroce, to the then President of the National Bar Council, Guido Alpa. That letter constitutes the first tangible sign of an institutional awareness, on the part of the Court, of the crisis affecting the institute. It marks, for the first time at an official level, the delineation of guidelines intended to govern the drafting of appeals, employing language that places particular emphasis on the requirements of conciseness and clarity.

The first of these requirements, conciseness, finds its paradigmatic expression in a 20-page limit, albeit subject to exceptional derogation where the extraordinary complexity of the case demands more extensive treatment. In such instances, the requirement may nonetheless be deemed satisfied where the pleading is accompanied by a summary, not exceeding two or three pages, highlighting the salient aspects of the dispute and the issues of greatest legal significance.

As to clarity, the letter recommends the inclusion of an index or summary in each pleading, so that the judge may be guided clearly and immediately in its reading and comprehension.

It is further emphasised that these indications must also govern the drafting of the individual grounds of appeal, which should be concise and focused, in order to avoid what may be described as a "fragmentation" of the issue constituting the core of the complaint, through repetitive formulations that undermine the overall coherence of the reasoning.

The letter also clarifies that such recommendations are in no way incompatible with the principle of self-sufficiency of the appeal to the Court of Cassation. That principle does not require the full transcription of the documents underpinning the appeal; rather, it demands a concise indication of the documentary passages decisive for the proper understanding and assessment of the case by the court of legitimacy.

lthough formally addressed to counsel, with the declared aim of guiding them in the proper drafting of appeals, this clarification appears to pursue a broader objective. In reality, it reads as a subtle attempt to influence the interpretation of the principle of self-sufficiency itself, directing judges towards its correct application. In the present author's view, were these remarks truly directed at practitioners alone, they would have been entirely devoid of practical effect. Even had counsel scrupulously followed the recommendation by omitting full transcription, the almost unanimous case law of the time would nonetheless have resulted in a declaration of inadmissibility for lack of self-sufficiency, thereby rendering adherence to the directive not merely futile but potentially detrimental.

It is noteworthy, finally, that the First President—unlike the legislator—did not resort to indeterminate or ambiguous formulae, but adopted a position

[45] For further analysis, reference may be made to the text of the letter (2013_Lettera_Cnf.pdf).

of unequivocal clarity. Nevertheless, the intended corrective effect once again failed to materialise. The path already entrenched in judicial practice proved too deeply rooted to be altered by so mild an intervention, and the requirement of full transcription continued to resonate in the immediately subsequent case law[46].

In light of the more than decade-long persistence, within the jurisprudential landscape, of an approach that has never truly abandoned the imposition of full transcription, it appears evident that only an authoritative intervention could prove genuinely decisive.

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[46] Santangeli, F. (2014). Autosufficienza. Ieri, oggi, domani. "…Eppur si muove…". Dal peccato di omissione al peccato di commissione, cit., pp. 45–48, provides an overview of the positions adopted, in the subsequent two-year period, by the different divisions of the Court of Cassation. The principal trends may be summarised as follows.

With regard to the First Division: "The First Division of the Court of Cassation, in matters concerning contractual interpretation, maintains the position that 'in compliance with the principle of specificity of the grounds and self-sufficiency of the appeal, the full transcription of the entire contractual regulation of the relationship, or of the contested part thereof, is required, even where the judgment has referred to it, reproducing only part of its content, whenever such partial reproduction does not allow for a reliable reconstruction of the different meaning which the appellant seeks to attribute to it.'" Similarly, in challenges directed at a court-appointed expert report, it requires both the indication of the circumstances and elements to be subjected to review on points of law and the full reproduction of the portions of the expert report criticised. Yet, in another decision, again concerning challenges to expert reports, the necessary indication of the specific grounds of criticism is not accompanied by an obligation to transcribe the contested passages. On this point, see Cass. 15 May 2013, No. 11699, ECLI:IT:CASS:2013:11699CIV; Cass. 3 September 2013, No. 20131, ECLI:IT:CASS:2013:20131CIV; Cass. 4 June 2014, No. 12547, ECLI:IT:CASS:2014:12547CIV. There are, however, cases in which self-sufficiency is confined to the mere indication of the grounds of appeal; see, for example, Cass. 10 February 2014, No. 2962. "The Second Division of the Court of Cassation has clarified that a party challenging a judgment for failure to rule on a claim or objection bears, pursuant to the principle of self-sufficiency of the appeal and on pain of inadmissibility for lack of specificity, the burden not only of specifying in which pleading or hearing record the claim was raised, but also of setting out the arguments advanced in support of that request. It considers inadmissible, for breach of the principle of self-sufficiency, a ground alleging failure to examine private writings where their text has not been reproduced in the appeal; it approves the full transcription of documentary and testimonial evidence carried out by the appellant in compliance with the principle of self-sufficiency." For references, see Cass. 4 January 2013, No. 94, ECLI:IT:CASS:2013:94CIV; Cass. 9 January 2013, No. 316, ECLI:IT:CASS:2013:316CIV; Cass. 8 February 2013, No. 3137, ECLI:IT:CASS:2013:3137CIV. The Third Division, in certain instances, requires, on pain of inadmissibility, the full transcription of the content of the acts upon which the appeal is founded (Cass. 12 December 2014, No. 26155); in other cases, however, it appears satisfied with their mere localisation (Cass. 10 February 2015, No. 2489). The Fourth Division, where defects concerning *ultra petita* or *extra petita* rulings are alleged, has required the transcription of the ground of appeal within the appeal in cassation (Cass. 15 January 2013, No. 817); a similar approach is adopted with respect to contractual clauses whose re-examination is sought before the Court of Cassation (Cass. 15 November 2013, No. 25728). At times, however, in order to deem the principle of self-sufficiency satisfied, it has considered sufficient the analytical indication of the documents allegedly not examined (Cass. 16 January 2013, No. 892). The Fifth Division has required the complete reproduction of the passages of the reasoning contained in a tax assessment notice alleged to have been misinterpreted or disregarded by the court of merits (Cass. 4 April 2013, No. 8312; Cass. 19 April 2013, No. 9536; Cass. 17 October 2014, No. 22003). However, the same Author notes that: "In other decisions, by contrast, it is held that the appellant in cassation who intends to complain of the failure to examine, or erroneous assessment of, a document by the court of merits bears a dual burden: to indicate in which procedural phase and in which party file the document is located, and also to highlight its content within the appeal in cassation, being permitted either to transcribe it or merely to summarise it in its precise terms." On this issue, see Cass. 22 January 2013, No. 1435, ECLI:IT:CASS:2013:1435CIV.

2.4. The 2013 memorandum of understanding on cassation appeal drafting and the supreme court's response

Yet the hoped-for decisive intervention did not materialise, neither in the form of a legislative pronouncement nor through a ruling of the plenary bench. Where one might have expected an authoritative act, the matter instead culminated in an unprecedented solution: a genuine instance of institutional mediation. Thus, on 17 December 2015, the First President of the Court of Cassation, Giorgio Santacroce, and the President of the National Bar Council, Andrea Mascherin, signed not one but two Protocols of Understanding[47] on the drafting rules governing grounds of appeal, one concerning civil and tax matters, the other criminal proceedings[48].

Although formally external to the hierarchy of legal sources, the initiative sought to steer drafting practice, in the hope of stabilising an interpretative framework otherwise destined to persist in uncertainty.

The document emerged in response to a dual tension: on the one hand, the Supreme Court faced the pressing need to safeguard the efficiency of cassation proceedings, increasingly burdened by the proliferation of defensive pleadings whose excessive argumentative development often proved an obstacle rather than an aid to judicial comprehension; on the other hand, practitioners felt compelled to shield themselves from the pitfalls inherent in the jurisprudential application of the principle of self-sufficiency, whose multiple doctrinal constructions had fostered defensive prolixity driven less by substantive argumentative necessity than by the apprehension of a detrimental declaration of inadmissibility[49].

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[47] Regarding the meaning and scope of this instrument, Turroni, D. (2018), I Protocolli d'intesa e la loro rilevanza giuridica: tra regola e fatto. *Giurisprudenza italiana*, p. 790, observes: "In ordinary usage, the 'memorandum of understanding', transposed from diplomatic practice, is a programmatic declaration whereby several parties undertake to carry out certain actions (to promote initiatives, rules of conduct, devise solutions, pursue objectives) […] In the context of civil justice, the term refers to documents that identify shared rules of conduct concerning procedural activity, which the signatories undertake to promote within their respective spheres of competence. Typically, the signatories are the heads of the offices concerned and the presidents of the bar associations; occasionally, representatives of civil justice observatories or other representative organisations active in the field of justice are also involved."

[48] The drafting of the texts was entrusted to two joint working groups composed on an equal footing of Justices of the Court of Cassation and members of the National Bar Council, in implementation of the understandings reached between the Presidents at their meeting of 30 July of the preceding year. As regards the criminal Protocol, it was prepared with the contribution of President Giovanni Conti, Justice Matilde Cammino of the Court of Cassation, and members of the National Bar Council Rosa Capria (Secretary) and Stefano Savi (Coordinator of the Criminal Procedure Commission), with the valuable input of Professor Giorgio Spangher. The Protocol concerning civil and tax matters, for its part, was drafted by Justices Giovanni Mammone and Raffaele Botta of the Court of Cassation, together with members of the National Bar Council Andrea Pasqualin and Carlo Allorio, coordinators respectively of the Civil Procedure Commission and the Tax Procedure Commission.

[49] The objective pursued by the Protocol emerges unequivocally from its recitals, which state: "The Court of Cassation, represented by the First President, Giorgio Santacroce, and the National

In pursuing these objectives, the Protocol aimed at the substantive simplification of party pleadings, positioning itself as a genuine drafting vademecum. By laying down clear and stringent limits as to length and content, it sought to preserve an appropriate balance between form and substance, thereby ensuring the prompt and effective usability of the pleading by the adjudicating court[50].

With regard to the effective scope of self-sufficiency, the Protocol ultimately positioned itself as the long-awaited response to a question that had long animated legal debate: what specific burdens flow from this principle? In an intervention marked by clear discontinuity with consolidated jurisprudential trends, it reaffirmed and at the same time strengthened, the stance previously articulated by the First President, unequivocally dispelling the assumption that full transcription could constitute an obligation incumbent upon the appellant[51]. Since, as noted, case law had continued to move in the opposite direction, reiterating a practice that, in effect, burdened appellants with requirements lacking any genuine normative foundation, the significance of this statement lies in its decisive rupture with the past, severing the bonds of a formalism that had by then become devoid of legitimacy.

Under this renewed framework, the only residual obligation upon the appellant ought to have been that of providing an accurate indication of the page

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Bar Council, represented by its President, Andrea Mascherin, in the conviction that the time is ripe for a shared acknowledgement: 1) of the difficulties encountered in managing proceedings before the Court of Cassation: (a) on the one hand, as a result of the proliferation of appeals, counter-appeals and briefs disproportionate in the exposition of grounds and arguments; and (b) on the other, owing to the acknowledged difficulty of defining in a clear and stable manner the meaning and limits of the so-called principle of self-sufficiency of the appeal as developed in the case law; 2) considering that the excessive length of party pleadings may hinder effective comprehension of their essential content, with adverse consequences for the clarity and expedition of the decision; 3) further considering that such overextension may be, at least in part, the product of counsel's reasonable concern to avoid findings of inadmissibility for lack of self-sufficiency, and that there is therefore a need more precisely to define the limits of that principle in light of concrete and effective normative data; 4) deeming that a significant simplification may result from the adoption of a drafting model for appeals that delineates their substantive limits and facilitates their immediate comprehension by the adjudicating court, without the failure to comply with dimensional limits entailing an automatic procedural sanction […]".

[50] For further reference, the full text of the Protocol is freely accessible on the official website of the Court of Cassation and on the website of the National Bar Council.

[51] Indeed, the text of the document expressly states: "Compliance with the principle of self-sufficiency does not entail an obligation to reproduce in full, within the appeal or the counter-appeal, the acts or documents to which reference is made therein. The aforementioned principle must be deemed satisfied, even with respect to appeals falling within the jurisdiction of the Tax Section, where: 1) each ground advanced in the appeal complies with the requirements of specificity laid down by the Code of Civil Procedure; 2) in the text of each ground, where required, the act, document, contract, or collective agreement on which the ground is based is identified (art. 366(1)(6) c.p.c.), together with a specific indication of the precise location (point) within the act, document, contract, or collective agreement to which reference is made; 3) in the text of each ground, where required, the time (statement of claim or originating application, appearance in the proceedings, written submissions, etc.) of the filing of the act, document, contract, or collective agreement, as well as the procedural stage (first instance, second instance, etc.) in which such filing occurred, are indicated; 4)the acts, documents, contract, or collective agreement referred to in the appeal and counter-appeal are attached to the appeal (in a separate booklet, to be added to the party's file relating to the previous stages of the proceedings), pursuant to art. 369(2)(4) c.p.c."

and, where appropriate, the line or paragraph, where the Court of Cassation could readily locate the relevant passage, thereby fulfilling what has authoritatively been termed an obligation of "internal localisation"[52]. In parallel, the appellant would also be required to identify the file and the specific repository in which the procedural act or document grounding the appeal is contained, thus complying with the corresponding obligation of "external localisation."

The use of the conditional tense is by no means incidental. In practice, the recommendations proved largely *tamquam non essent*[53]. Notwithstanding the Protocol's attempt to inaugurate a change of direction, the jurisprudential landscape remains dotted with decisions in which the Court persists in requiring full transcription of the documents forming the basis of the appeal[54]. In so doing, it manages the paradoxical feat of disregarding the very guidelines

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[52] See Consolo, C. (2016). Il Protocollo redazionale CNF – Cassazione, Glosse a un caso di soft law (… a rischio di esser riportato quale hard black letter rule). *Giurisprudenza italiana*, p. 2775. The distinction between "internal" and "external" localisation is likewise taken up by Succio, R. (2019). Il principio di autosufficienza dei motivi di ricorso alla Suprema Corte: alcune considerazioni, cit., p. 82, who, with regard to so-called external localisation, further observes: "The indication of the 'time' of production also contributes to fulfilling the burden of external localisation, in that the parties must refer to the procedural moment at which a given pleading was filed and, with respect to documents, to the specific document, identified by the number assigned to it by counsel, contained in the file relating to the relevant stage of the proceedings. This burden is accompanied by the additional requirement of subsequent attachment in a separate booklet, which is to be added to the party's file from the previous stages".

[53] See also Giunchedi, F., & Sassani, B. (2021). La cruna dell'ago (a proposito del principio di autosufficienza). *Archivio penale*, p. 8.

[54] See, inter alia, Court of Cassation, 11 February 2015, No. 2617, ECLI:IT:CASS:2015:2617CIV; 18 May 2017, No. 19507, ECLI:IT:CASS:2017:19507CIV; 23 June 2017, No. 15737, ECLI:IT:CASS:2017:-15737CIV; 17 January 2019, No. 10210, ECLI:IT:CASS:2019:10210CIV; 10 April 2019, No. 9990, ECLI:IT:CASS:2019:9990CIV;. Reference should also be made to Court of Cassation, 27 October 2017, No. 995, ECLI:IT:CASS:2017:995CIV, which states: "Having regard to the foregoing, it must be observed that the thesis advanced by the employee in support of the criticism is manifestly deficient from the standpoint of self-sufficiency, since it fails to reproduce in full the wording of the judgment […]. The case law of this Court has long emphasised the necessary coordination between the principle according to which the interpretation of an external judgment may be carried out directly by the Court of Cassation with full jurisdiction, and the principle of the necessary self-sufficiency of the appeal. It has indeed affirmed that 'The interpretation of an external judgment may also be undertaken directly by the Court of Cassation with full jurisdiction, provided, however, that the judgment is reproduced in the appeal in cassation, by virtue of the principle of self-sufficiency governing this form of challenge. Consequently, where the interpretation given by the court of merits is deemed incorrect, the appeal must reproduce the text of the judgment alleged to have been misinterpreted, including both the reasoning and the operative part, since the operative part alone is insufficient to comprehend the judicial command' [see, in the reasoning, Cass. 31 July 2012, No. 13658, ECLI:IT:CASS:2012:13658CIV; Cass. 15 October 2012, No. 17649, ECLI:IT:CASS:2012:17649CIV; to which add Cass. 13 December 2006, No. 26627, ECLI:IT:-CASS:2006:26627CIV; Joint Sections, 27 January 2004, No. 1416, ECLI:IT:CASS:2004:1416CIV. That line of authority has further stressed that grounds of appeal in cassation founded upon an external judgment must comply with the requirements laid down in art. 366(1)(6) c.p.c., which constitutes the normative embodiment of the principle of self-sufficiency (cf. Cass. 18 October 2011, No. 21560; Cass. 30 April 2010, No. 10537; Cass. 13 March 2009, No. 6184); this applies both with regard to the reproduction of the text of the judgment having res judicata effect, since a mere summary is insufficient for that purpose (cf. Cass. 11 February 2015, No. 2617), and with regard to the specific indication of the procedural location in which it may be found and examined in the present proceedings in cassation (see Cass. No. 21560/2011)". To the same effect, see Court of Cassation, 8 March 2018, No. 5508, ECLI:IT:CASS:2018:5508CIV; 16 October 2018, No. 31341, ECLI:IT:CASS:2018:31341CIV.

it had itself delineated, assuming simultaneously the role of rule-maker and transgressor of its own prescriptions.

It follows that, rather than constituting the definitive settlement of the debate concerning the true scope of the principle of self-sufficiency[55], the Protocol instead gave rise to a further question: what is its legal nature, and what degree of binding force may it legitimately claim?

A first strand of scholarship[56] has unhesitatingly classified the Protocol among instruments of soft law, construing it as a set of directives devoid of binding force[57], unless the parties voluntarily elect to comply, and in any event lacking any direct legal consequences in the event of non-observance.

A different interpretative current[58] advances a more nuanced reconstruction. It discerns in the Protocol the contours of a form of consensual regu-

[55] The scholarly output on this topic is vast. Among the many contributions, particular mention should be made of Rusciano, S. (2017). Ancora autosufficienza del motivo di ricorso per cassazione. Ma non era iniziata l'era della sinteticità degli atti?, note to Cass. 9 May 2017, No. 112312, *Judicium*. *https://www.judicium.it*. The decision under comment is an order in which the Court of Cassation once again declared the appeal inadmissible, relying on the most stringent construction of the principle. On that occasion, the Supreme Court reaffirmed that: "In relation to claims for damages concerning statements alleged to be defamatory in the press, the party challenging the assessment carried out by the court of merits as to the defamatory nature of the article […] is required, in compliance with the principle of self-sufficiency, to identify, if necessary by reproducing it directly, where required in light of the object of the criticism advanced in the ground of appeal, and, where the assessment so permits, indirectly, the content of the article in the portion to which the criticism refers, also specifying where the Court may examine it in order to verify that the reproduced content corresponds to the actual text". Such an approach prompts the following reflection on the part of the author: "[…] It invokes the principle of self-sufficiency along the lines of a body of case law that, by now, appeared to have been superseded. On the one hand, art. 366 c.p.c. does not seem to impose upon the appellant an obligation of full transcription of the act or document to which the complaint refers, but rather, at most, the distinct requirement of localisation; on the other hand, as clarified by the Protocol of Understanding between the Court of Cassation and the National Bar Council concerning the drafting rules for grounds of appeal in civil and tax matters (17 December 2015), 'compliance with the principle of self-sufficiency does not entail an obligation of full transcription, within the appeal or counter-appeal, of acts or documents to which reference is made therein.' Today, even more than in the past, the principle of self-sufficiency of the complaint (which inevitably entails an overgrown pleading) appears to have been definitively supplanted by another, more up-to-date criterion that ought to inform the drafting technique of judicial acts: the principle of conciseness. This principle has already received express normative recognition in the field of administrative proceedings (Decree of the President of the Council of State of 22 December 2016—pursuant to art. 13-ter of the implementing provisions to the Code of Administrative Procedure, as amended by Decree-Law No. 168/2016, converted into Law No. 197/2016) and, albeit in the form of a mere exhortation, in electronic civil proceedings (art. 16-*bis*, para. 9-*octies*, Decree-Law No. 179/2012) and is shortly to become the guiding canon for pleadings in civil proceedings as well".

[56] Among the proponents of this line of thought are Consolo, C., (2016) *Il Protocollo redazionale CNF – Cassazione, Glosse a un caso di soft law (… a rischio di esser riportato quale hard black letter rule)*, cit., pp. 2768 ff.; Menicucci, M. (2019). Considerazioni sull'autosufficienza, il giudicato, i vani sforzi imposti all'avvocato, il grado di legittimità in generale. *Il Lavoro nella giurisprudenza*, p. 779; Cappello, F. Le linee guida per la redazione del ricorso in Cassazione: natura ed efficacia temporale; il principio della sinteticità e chiarezza degli atti processuali. *Judicium.* www.judicium.it

[57] There are, however, those who maintain that, although the Protocols generally have the value of *moral suasion* with regard to the internal organisation of judicial offices, they are instead binding upon judges. On this point, see Graziosi, G. La nuova figura del giudice civile tra riforme processuali, moduli organizzativi e protocolli d'udienza. *Judicium.* www.judicium.it.

[58] See also Punzi, C. (2016). Il principio di autosufficienza e il "Protocollo d'intesa" sul ricorso in cassazione. *Rivista di diritto processuale,* pp. 585 ff.; Panzarola, A. (2016). La difesa scritta e orale in

lation grafted onto the normative framework governing appeals before the Court of Cassation, thereby enriching its regulatory architecture. Although devoid of binding force in the strict sense, it functions as an operational guide for forensic practice, orienting defence counsel in the drafting of appeals and judges in their interpretation of the principle of self-sufficiency. Understood in this light, the Protocol echoes the logic of the French *contrat de procédure*: an agreement between judges and lawyers aimed at crystallising shared practices into regulatory standards which, while lacking coercive enforceability, nonetheless assume tangible regulatory significance in the management of proceedings[59].

A further approach, by contrast, underscores its atypical nature which, by reason of its peculiar features, eludes ordinary classifications, observing that the Protocol does not stem from the spontaneous development of practice, but rather originates from an agreement between institutional actors, vested with authority to represent the two professional categories involved, namely the judiciary and the legal profession. Moreover, although not accompanied by sanctions of inadmissibility or improcedibility, its breach is not devoid of consequences, since it may be reflected in the judicial determination of litigation costs[60].

Despite the plurality of interpretative positions, the debate converges upon a common denominator: the denial of the Protocol's direct binding force. If it is accepted that it does not lay down mandatory rules, it follows that the adjudicating panel, in assessing the appeal, may legitimately depart from it, an approach that appears consistent with Article 101 of the Constitution, which provides that "Judges are subject only to the law", thereby excluding any subordination to sources of a different nature. Yet such a position is not without

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cassazione dopo il Protocollo d'intesa Mascherin-Santacroce e la legge 25 ottobre 2016 n. 197. *Il giusto processo civile*, p.1061 ff.

[59] Caponi, R. (2008). Autonomia privata e processo civile: gli accordi processuali. *Rivista Trimestrale di Diritto e Procedura Civile*, p. 112, who observes that: "A separate discussion, as an expression of a form of collective autonomy involving not only the parties but also the judicial offices, is warranted by the practice of the "contrat de procédure", initiated in the French legal system […] In this direction, within the Italian legal order, moves the experience of the civil justice observatories: a group of judges, lawyers, court personnel and university professors freely undertake to act, through joint or coordinated initiatives, in order to attempt to alleviate, insofar as possible, the inefficiency of civil justice within a given local context. Among the principal activities of the observatories is the "codification" of self-regulated and shared practices, collectively oriented towards promoting efficiency in the management of proceedings (the 'protocols')"». With regard to their legal nature, the same Author notes: «As to the effectiveness of the rules contained in the protocols, it is not binding in character but merely persuasive; however, this does not exclude the possibility of qualifying them as legal norms, if one accepts the view according to which law is characterised by "consisting in the creation of a body of 'norms' intended to operate within the social structure of a community and in conferring upon the precepts they express a particular 'effectiveness', which renders them more or less strictly 'binding' (where the constraint is weaker, one speaks of the 'persuasive' effectiveness of norms)"». The quotation is drawn from Pizzorusso, G. (1998). Sistemi giuridici comparati. Milano, p. 6.

For further discussion, see Caponi, R. (2007). L'attività degli osservatori sulla giustizia civile nel sistema delle fonti del diritto. *Foro italiano*, V, *passim*.

[60] On this issue, see Succio, R. (2019). Il principio di autosufficienza dei motivi di ricorso alla Suprema Corte: alcune considerazioni, cit., p. 82.

internal tensions, as it may lead to the incongruous outcome whereby counsel, having scrupulously complied with the Protocol's directives, might nonetheless see the appeal declared inadmissible for lack of self-sufficiency, on the ground that it omits the verbatim reproduction of the documents upon which it relies. Such a result would not only substantially frustrate the very function of the Protocol, but would also undermine the parties' legitimate expectations, eroding the relationship of reliance upon which it is predicated.

Nonetheless, it has been observed that the coexistence and harmonisation of the two seemingly antithetical considerations—on the one hand, the non-binding nature of the Protocol, together with judicial independence in the interpretation of procedural law; and, on the other, the reliance interests of parties who have diligently adhered to its prescriptions—are not entirely unattainable. A possible solution might lie in the adoption of a technique akin to that employed in cases of overruling, which, by affording protection to those who, as a result of a shift in settled case law, incur a breach of procedural rules, enables them to remedy the defect identified, even in the absence of an express provision or beyond the ordinary time limits[61].

3. THE SELF-SUFFICIENCY PRINCIPLE UNDER SCRUTINY: THE *SUCCI ET AUTRES* V. ITALY AFFAIR

3.1. Formalism *vs*. The right to justice: the self-sufficiency principle before the ecthr

In a legal landscape in which formalism exceeds its organising function, caselaw oscillates between discordant solutions and judges multiply mutually irreconcilable interpretative paths, with the result that procedural law risks losing its centre of gravity and drifting away from the ultimate horizon of adjudication: the effective protection of individual legal rights. Thus, access to justice, an inalienable and universal right, finds itself suspended in an

[61] Turroni, D. (2018), I Protocolli d'intesa e la loro rilevanza giuridica: tra regola e fatto, cit., pp. 790–791. The Author further develops the analysis, observing that: "The foreseeable objection concerns the difference between the two phenomena. A consolidated line of case law, upon which the protection of legitimate expectations in procedural matters is grounded, is obviously not the same as a 'protocol' signed by representatives of the relevant professional bodies and judicial offices. The former is the result of a jurisprudential orientation that is generally shared and maintained over time; the latter, by contrast, is a declaration that does not necessarily express a settled position on the legal issue. If one starts from the premise that a stable line of authority is required in order to generate legitimate expectations as to the resolution of a point of law, then 'protocols' would in many cases lack the necessary prerequisites. This objection, however, seems to me capable of being overcome, at least with regard to the protocols concluded by the Court of Cassation, which has the function of ensuring uniform interpretation of the law (nomofilachia) among its institutional duties (Art. 65 of the Judicial Organisation Act). A memorandum of understanding such as those at issue constitutes an important policy statement capable of generating a high degree of legitimate expectation. In any event, the protection of parties who comply with it is a necessary, besides acceptable, counterpart in order to confer upon these documents the requisite credibility on their most significant aspects, and to prevent them from being reduced to mere compilations of practice".Inizio moduloFine modulo

unresolved tension: on the one hand, the need to ensure rigour and systemic coherence; on the other, the risk that an excess of form may turn into an insurmountable obstacle to the very right at stake[62].

It is precisely within this framework that the judgment in *Succi and Others v. Italy*, delivered by the European Court of Human Rights on 28 October 2021, must be situated. The Court was called upon to scrutinise the conduct of the Italian Court of Cassation in the light of Article 6 § 1 of the European Convention on Human Rights. On that occasion, the Grand Chamber was seised of three applications, joined for a single examination, in which the applicants alleged a violation of their right of access to a court following declarations of inadmissibility issued by the Court of Cassation, which had prevented a full examination of their respective claims[63].

Although the grounds underlying those rulings were heterogeneous, they converged on the principle of selfsufficiency as the core of the dispute. According to the applicants, that principle operated as an excessively stringent filter which, in its intransigence, ultimately erected a barrier to the exercise of their substantive rights.

The judgment does not merely resolve the specific dispute; rather, it serves as a catalyst for broader reflection on the procedural system as a whole. The crux lies in the delicate boundary between the legitimate need for rigorous procedural discipline and the danger that such rigour may entail the sacrifice of judicial protection. The Strasbourg Court, called upon to navigate this fragile equilibrium, positions itself as the arbiter of an unresolved tension, one in which justice risks dissolving within the meshes of a formalism that has become an end in itself.

The first application[64] concerned a dispute arising from eviction proceedings relating to the lease of commercial premises. The case culminated, at the appellate stage, in a judgment of the Court of Appeal of Catania which, fully upholding the first instance decision, declared the lease terminated and ordered the immediate surrender of the properties.

Considering his rights to have been infringed, the applicant, acting as manager of the tenant company, lodged an appeal with the Court of Cassation

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[62] With regard to situations in which formal rigour conceals a case of *denegata giustizia*, see Chiarloni, S. Il diritto vivente di fronte alla valanga dei ricorsi in cassazione: l'inammissibilità per violazione del c.d. principio di autosufficienza, cit., *passim*.

[63] In this respect, it is worth recalling that the European Court of Human Rights has already had occasion to address the issue of the right of access to justice, with particular regard to appellate proceedings. Indeed, in its judgment of 5 April 2018, *Zubac v. Croatia*, the Strasbourg Court clarified that, although Member States are not required to structure their judicial systems on multiple levels by providing for a system of double or triple instances, where such a system is established it must comply with the procedural guarantees enshrined in Article 6 of the European Convention on Human Rights. Nevertheless, it is acknowledged that, in the context of appellate proceedings, those guarantees may assume a different configuration, thus justifying, by reason of their nature, more stringent admissibility criteria, provided that this does not result in an unreasonable restriction of the right of defence.

[64] n. 55064/11, *Succi*.

on 2 March 2010, advancing five grounds of appeal. By Order No. 4977/2011, however, the Sixth Civil Section declared the appeal inadmissible for breach of Article 366(1), Nos. 4 and 6, of the Code of Civil Procedure.

In particular, the Supreme Court censured the serious structural deficiencies affecting the appeal, noting the absence of a heading capable of clearly identifying the alleged defects, the failure to refer to any of the grounds exhaustively listed under Article 360 c.p.c. and the omission of specific documentary references supporting the arguments advanced[65].

The second appeal[66], on the other hand, originated from a claim for damages brought by the owner of a property against a municipality for harm caused to the building as a consequence of works carried out in the vicinity of his property. Although the Tribunal had initially upheld the claim, the Court of Appeal of Naples overturned that decision and, excluding the liability of the public authority, attributed the damage to the private company awarded the contract. Consequently, on 16 December 2006, the applicant brought the matter before the Supreme Court, alleging the violation and misapplication of certain provisions of the Civil Code, as well as the omission or insufficiency of the reasoning of the second-instance judgment with regard to a disputed fact deemed decisive for the resolution of the dispute.

By judgment of 14 February 2013, no. 3652, the Supreme Court declared the appeal inadmissible, finding a breach of Articles 366, first paragraph,

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[65] In order to ensure greater clarity and completeness of the exposition, it is appropriate to reproduce the passage of the judgment at issue that is decisive for a full understanding of the matter addressed: "With reference to Article 360 c.p.c., no. 4, it is reiterated that cassation proceedings, unlike appellate proceedings, are proceedings at *critica vincolata*, that is, limited to the grounds specifically provided for in Article 360. Accordingly, they require, on the one hand, for each ground of appeal, a heading (*rubrica*) clearly indicating the reasons why that particular ground, among those expressly set out in Article 360 c.p.c., is invoked; on the other hand, they require an illustration of each individual ground, setting out the arguments relied upon in support of the challenge to the decision embodied in the contested judgment and a detailed specification of the considerations which, in relation to the ground as expressly indicated in the heading, justify the quashing of the judgment. With reference to no. 6 of Article 366 c.p.c., it is reiterated that it is settled case-law that, following the reform introduced by Legislative Decree no. 40 of 2006, the amended Article 366, paragraph 1, no. 6, in addition to requiring the 'specific' indication of the acts and documents on which the appeal is based, also requires that the procedural stage at which the document, though identified in the appeal, was produced be specified. Where such specific indication concerns a document produced in the proceedings, it presupposes identification of where it was produced in the proceedings on the merits and, pursuant to Article 369, paragraph 2, no. 4, that it also be filed in the proceedings before the Court of Cassation. In other words, where an appellant in cassation intends to complain of the omission or erroneous assessment of a document by the court of merit, he is subject to a dual obligation, imposed by Article 366, paragraph 1, no. 6, to file the document and to indicate its content. The first obligation must be fulfilled by specifying precisely in the appeal the procedural stage and the party's file in which the document is located; the second must be fulfilled by transcribing or summarising in the appeal the content of the document. Failure to comply with even one of these obligations renders the appeal inadmissible. The principal appeal does not comply with the above principles, since the five grounds on which it is based lack headings indicating the defects complained of and references to the cases governed by Article 366 c.p.c., and also lack reference to and indication of the documentation on which the supporting arguments are based". For the full text of the judgment and the passages not expressly cited here, reference is made to Cass., 28 February 2011, no. 4977, ECLI:IT:CASS:2011:4977CIV.

[66] No. 37781/13, *Pezzullo*.

no. 4, 366-bis[67], and 375, fifth paragraph of the Code of Civil Procedure. The *dictum* rested on two related *rationes decidendi*:[68] on the one hand, the questions of law departed from the model delineated by the case law of the Court of Cassation, lacking a concise yet precise exposition of the relevant factual elements, of the solutions adopted by the courts of merit in relation to the grounds advanced, and of the statutory provisions whose correct application would have led to a different outcome. For those reasons, they appeared abstract and generic, devoid of effective decisiveness and of concrete reference to the case under review, and did not permit, on their mere reading, either the identification of the solution adopted in the impugned judgment or a precise delineation of the terms of the challenge. On the other hand, the documents relied upon in support of the appeal were referred to without adequate textual reproduction of the relevant passages or, where such reproduction was present, without precise indication of their location in the case files of the proceedings on the merits, thereby preventing their immediate retrieval.

The applicants in the third case[69] under examination challenged before the Supreme Court the judgment of the Court of Appeal of L'Aquila which, reforming the decision rendered at first instance by the Tribunal of Teramo, had reduced the amount of damages awarded to them as compensation for the loss suffered as a consequence of the death of a relative in a road traffic accident. An appeal on points of law was lodged against that judgment on 21 December 2011, articulated in four grounds of complaint. Nevertheless, by order of 17 September 2013, no. 21232, the Court of Cassation declared the appeal inadmissible for breach of Article 366, first paragraph, no. 3, of the Code of Civil Procedure, noting the failure to comply with the requirement of conciseness in the summary statement of the facts.

Indeed, the appeal was characterised by a slavish reproduction of the content of the pleadings filed in the proceedings on the merits, adopting a technique of mere "assembly" of those acts, without any critical selection of the factual elements of relevance. Such a *modus operandi* not only impaired the effective understanding of the *thema decidendum*, but also stood in open contrast with the principle enunciated by the *Sezioni Unite* in judgment of 11 April 2012, no. 5698, which reiterated that the literal and uncritical transcription of procedural acts not only appears superfluous, since no comprehensive account of the entire procedural history is required, but is even antithetical to the need for a clear and concise exposition of the *res iudicanda*, as it in fact shifts onto the Court the burden of identifying *ex post* the aspects that are genuinely relevant for the purposes of the decision.

Faithful to a broad methodological approach, the Court precedes its examination of the issues directly submitted to its jurisdiction with a systematic

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[67] It should be noted that the provision was subsequently repealed by Law no. 69 of 18 June 2009.

[68] On this point, see also the Report published on 30 November 2021 by the Office of the *Massimario* of the Court of Cassation, no. 116, currently available on the institutional website of the Court of Cassation.

[69] No. 26049/12, *Di Romano et al.*

inquiry aimed at probing the scope of the principle of *autosufficienza* and testing its compatibility with the guarantees enshrined in Article 6 § 1 ECHR[70]. The assessment unfolds in two essential and intrinsically connected stages: first, whether there exists a legitimate aim capable of justifying the restrictions imposed on the drafting of appeals; and, once that aim is established, whether those restrictions are proportionate to the objective pursued[71].

In the interpretation advanced by the Strasbourg Court and in light of the observations submitted by the Italian Government and the settled caselaw of the Court of Cassation, the principle of self-sufficiency emerges as a mechanism designed to facilitate the immediate comprehension of the legal issues raised, enabling the court of review to decide the case without resorting to additional acts or documents. The principle thus operates as an essential instrument for preserving and strengthening the Court of Cassation's function of ensuring the uniform interpretation of the law (*nomofilachia*). On this basis, the European Court of Human Rights (ECtHR) readily acknowledged the legitimacy of the aim pursued by self-sufficiency, recognising it not merely as a drafting technique intended to streamline the Court of Cassation's work, but as an element embedded within a broader conception of the legal order one in which efficiency and clarity serve legal certainty and the proper administration of justice.

Far more delicate, however, is the proportionality limb. The ECtHR held that the considerable backlog and high volume of appeals—however substantial—could not, in themselves, justify a purely formalistic construction of limitations on remedies. Such an interpretative turn would risk overstepping the fine line between the legitimate rationalisation of access to jurisdiction and a covert erosion of the right of access to a court. In this perspective, the Strasbourg judges observed, at least until Cass., 11 April 2012, No. 5698 and Cass., 22 May 2012, No. 8077[72], an approach by the Court of Cassation incli-

[70] With regard to the formal requirements governing an appeal on points of law, the Court refers to the judgments in *Sturm v. Luxembourg* (no. 55291/15, §§ 39–42, 27 June 2017), *Miessen v. Belgium* (no. 31517/12, §§ 64–66, 18 October 2016), *Trevisanato v. Italy* (no. 32610/07, §§ 33–34, 15 September 2016), *Papaioannou v. Greece* (no. 18880/15, §§ 46–51, 2 June 2016), and *B□leš and Others v. the Czech Republic* (no. 47273/99, § 62, ECHR 2002-IX).

[71] In this connection, the ECtHR refers to a now well-established line of case-law, expressly citing the judgments in *Zubac v. Croatia* (no. 40160/12, 5 April 2018) and *Trevisanato v. Italy* (no. 32610/07, 15 September 2016).

[72] In this regard, see the analysis by Pagnotta, M. La Corte EDU legittima il principio di autosufficienza del ricorso per cassazione (pur condannandone una applicazione eccessivamente sproporzionata e formalistica…). *Judicium*. www.judicium.it: «In this passage of the judgment, the ECtHR does not miss the opportunity to emphasise that the application by the Court of Cassation of the principle of self-sufficiency reveals a tendency on the part of the Court itself to focus on formal aspects that do not appear to correspond to the legitimate aim previously identified and described by the Strasbourg Court, particularly with regard to the obligation to reproduce in full the documents referred to in the grounds of appeal. This "tendency" to which the European Court refers must be traced back to the so-called "logic of rejection" which, for years now, has characterised every level of adjudication in our legal system, also as a result of the legislature which, through repeated interventions and various reforms of procedural law, has scattered throughout the Code numerous grounds of inadmissibility (an example being the so-called "filtro d'appello" provided for under Article 348-bis c.p.c.), whose sole function appears, more often than not, to be that of discouraging and sanctioning those who bring proceedings before the courts».

ned to emphasise strictly formal aspects, thereby exceeding both the original ratio of *autosufficienza* and the legitimate purpose underpinning it. Emblematic of this tendency is the imposition of an obligation of full transcription of documents relied on in the grounds of appeal, coupled with the unpredictability of the resulting restrictions on access to review on points of law.

It follows that, where self-sufficiency is bent to purely casemanagement logics, transforming it into a tool for handling caseload pressures, it departs from its legitimising rationale, subordinating the protection of fundamental rights to an essentially administrative concern and thereby disturbing the equilibrium between the system's functional needs and the safeguarding of the right to a fair trial. In this regard, the ECtHR noted that such a tendency lies, in part, in the structure of *autosufficienza* itself, which requires the appellant to set out, already in the initiating pleading, all factual and legal elements relevant to each ground of appeal, so that the Court of Cassation may decide the dispute exclusively on the basis of the appeal, without supplementing its cognitive framework through autonomous examination of the file.

For these reasons, the ECtHR considered irrelevant, in the case at hand, the comparison advanced by the Italian Government with appealfiltering mechanisms adopted in other European legal systems. In those systems, the criteria for filtering concern substantive admissibility (e.g., the importance of the legal issue or the nature of the dispute), not formandcontent requirements of the appeal. They therefore operate on a different plane from self-sufficiency and are closer to Article 360bis c.p.c. Confirming this inapplicability, the Court also rejected any assimilation between the *autosufficienza* requirement and the Strasbourg Court's own filtering and admissibility conditions: Article 47 of the Rules of Court provides that any application under Article 34 ECHR must be submitted on the Registry's official form, in compliance with clear and foreseeable formal requirements set out in documents accessible to applicants.

3.2. Between procedural legitimacy and disproportionate constraints

Tthat being said, the European Court of Human Rights reached differing conclusions in the cases submitted to its scrutiny, finding a violation of Article 6 § 1 of the Convention in only one of the three joined applications. In that instance[73], it considered disproportionate an interpretative practice leading to the declaration of inadmissibility of an appeal where its reading, by reference to the salient passages of the appellate judgment and to the documents cited, made it possible to understand with sufficient clarity the subject matter of the dispute, the course of the proceedings at the merits stage, and the scope of the complaints raised. In the view of the Grand Chamber, in application

[73] The reference is to application no. 37781/13.

no. 55064/2011 those elements were fully identifiable both from the standpoint of their legal classification—namely, the type of defect alleged among those enumerated in Article 360 c.p.c.—and from that of their substantive content. In the case at hand, the ECtHR observed that, contrary to what had previously been maintained by the Supreme Court, each ground of appeal specified in its heading the defect complained of and the statutory provisions relied upon; moreover, the contested passages of the second-instance judgment were reproduced in the statement of facts and, as regards the relevant documents, their essential parts had been transcribed, accompanied by precise references to the original acts, thus enabling their immediate identification among those lodged together with the appeal.

A different conclusion was reached in the second case. On that occasion, the Strasbourg judges, having ruled out any incompatibility between the *quesito di diritto* under Article 366-bis c.p.c. and the guarantees enshrined in Article 6 ECHR, reiterating in this respect what had already been affirmed in *Trevisanato v. Italy*, found that the applicant had, on several occasions, failed to indicate the references to the statutory provisions invoked as well as to the passages of the appellate judgment under challenge, in clear breach of the settled case-law of the Court of Cassation. The ECtHR emphasised the specific nature of cassation proceedings, of the process as a whole, and of the role entrusted to the Supreme Court in that context, while also underscoring the particular obligations incumbent upon counsel for the applicant[74]. Taken together, these factors led the Court to conclude that, in that case, the declaration of inadmissibility did not amount to a distorted or formalistic application of the principle at issue, but rather constituted the inevitable outcome of an appeal manifestly lacking the minimum requirements necessary to enable effective review of the complaints raised.

With regard to the third—and final—application[75], the ECtHR held that the application of the principle of self-sufficiency, insofar as it requires, in the statement of facts, an exercise of synthesis and clarity and demands that counsel engage in critical selection of the relevant factual elements so that the exposition is functional to the grounds of appeal, does not entail a violation of Article 6 § 1 of the Convention. In the case at hand, the appeal consisted of a mere reproduction of extensive passages from the judgment of the Court of Appeal, including the appellants' submissions, part of the appeal, and the reasoning and operative part of the impugned decision. Such a modus operandi inevitably conflicted with the requirement, clearly inferable from Article 366 c.p.c. and from the interpretation already provided at that time by the Supreme Court, to furnish a structured account of the relevant facts, selected in advance in light of the complaints advanced[76].

[74] In this regard, the Court relies on the judgment of the ECtHR, 5 April 2018, *Zubac v. Croatia*, § 82.

[75] Application no. 26049/14.

[76] For further analysis, which cannot be undertaken in this context, see the Report published on 30 November 2021 by the Office of the *Massimario* of the Court of Cassation, no. 116, in particular pp. 10–14.

3.3. Not a condemnation, but a caution: towards a more elastic understanding of the self-sufficiency principle

although, at first glance, certain passages of the judgment under consideration might suggest a stern rebuke of the now entrenched line of case law, almost as though the entire architecture of the principle of self-sufficiency were being called into question, a more discerning reading reveals a markedly different underlying rationale. The very fact that, of the three joined applications, the Court dismissed two would seem to dispel any hypothesis of a systemic condemnation: had the institution been deemed tout court incompatible with Convention guarantees, the review would necessarily have led to a uniform outcome, and the Court could scarcely have done otherwise than uphold all the complaints. Even more revealing is the circumstance that, before engaging with the individual cases, the Strasbourg judges expressly acknowledged not only the full legitimacy of the principle of self-sufficiency, but also reaffirmed its utility, endorsing its organising function within cassation proceedings[77].

It follows that the true import of the judgment[78] does not lie in an invitation to abandon the instrument of self-sufficiency, whose rationality is, on the contrary, expressly affirmed, but rather in an exhortation to reinterpret it from a more flexible standpoint, free from those formalistic rigidities that risk, at times, undermining its systemic function.

What is censured, therefore, is not the principle per se, but the mechanical and schematic manner in which it has been applied: the admissibility of the appeal has been made to depend upon a series of pre-packaged requirements, at times full transcription, at others internal and external localisation, the fulfilment of which often appears less a concrete necessity than an act of deference to an abstract formula.

The extensive body of case law examined clearly demonstrates how excessive rigidity has too frequently generated pleadings that, while formally impeccable, are superabundant, repetitive, and disordered, with the paradoxical consequence that, rather than genuinely facilitating the immediate comprehension of the grievances, the core of the dispute becomes diluted within a labyrinth of superfluous prescriptions.

The invitation implicitly addressed to the Court of Cassation is thus to reaffirm the principle in a manner more faithful to its teleological function: not by insisting upon a rigid catalogue of formalities to be observed pedissequa-

[77] In the same vein, see Biavati, P. (2021) Il principio di autosufficienza del ricorso in Cassazione al vaglio della Corte Edu. *Questione giustizia*.

[78] With regard to the reception of the judgment in the case law of the Court of Cassation, reference should be made to the thorough analysis by Diana, M. (2023). Si riaccendono i riflettori sul principio di autosufficienza: la sentenza Succi c. Italia e il suo recepimento da parte della Corte di cassazione. *Il diritto processuale civile italiano e comparato*, pp. 635 ff.

mente, but by requiring that the pleading contain, in itself, all the elements necessary to enable the meaning and scope of the complaints to be grasped from the mere reading of the appeal. It is then for counsel to determine how best to achieve that objective, calibrating the drafting of the appeal to the specific features of the dispute and assessing, case by case, when transcription is appropriate, when a concise indication suffices, and when, conversely, excessive textual reproduction amounts to an unjustified burden.

4. BEYOND INTERPRETATION: A STRUCTURAL RECASTING OF SELFSUFFICIENCY IN THE DIGITAL AGE

In light of the foregoing considerations, this contribution maintains that the persistent crisis of self-sufficiency cannot be resolved either through yet another interpretative redefinition of the principle or through regulatory interventions lacking effective binding force. Such an approach, repeatedly adopted over time, has proven capable of addressing only the effects of the problem, without impacting its structural causes. What is required, instead, is a shift in the analytical focus: from the principle to the structure of the act, from the abstract rule to the concrete architecture of the appeal to the Court of cassation.

From this perspective, self-sufficiency can no longer be conceived as a conceptual category to be refined at the definitional level; rather, it must be understood as a problem of legal design in forensic drafting, capable of being addressed upstream, by intervening in the form-function relationship of the pleading, rather than downstream, through selective criteria applied *ex post*. The critical issue, therefore, does not lie in determining what self-sufficiency ought to be in abstract terms, but in the way it is, in practice, incorporated into the material configuration of the appeal, thereby affecting its intelligibility, its argumentative structure, and its capacity to fulfil the specific function of cassation review.

A further systemic consideration must be added. The "self-sufficiency question" appears to reflect a deeper structural tension affecting the overall framework of cassation proceedings and, more specifically, the Supreme Court in its concrete operation. The formalistic drift assumed by the principle and the increasingly frequent recourse to declarations of inadmissibility seem, at least in part, attributable to the Court's need to manage the substantial influx of appeals through mechanisms designed to regulate access to cassation review.

If the true systemic bottleneck lies in the excessive workload borne by the Court of Cassation, any attempt to resolve the crisis solely by recalibrating the doctrine of self-sufficiency risks constituting a partial remedy, one that addresses consequences rather than causes. In such a scenario, it is legitimate to question whether, once the principle of self-sufficiency has been redefined or curtailed, the Court might not identify new selective criteria,

and then others still, in a potentially unending proliferation of "access filters" devised to contain the flow of appeals. It follows that any solution confined to regulating the principle of self-sufficiency is destined, at most, to operate as a temporary palliative, incapable of addressing the system's underlying structural fragility.

Within this framework, the present project seeks to offer an innovative and practically viable response to the—still pressing—critical issues connected with the drafting of appeals under Article 360 c.p.c., with a view to optimising and standardising the formulation of complex pleadings in full compliance with the formal and structural requirements established by the most recent regulatory interventions in the field, namely the 2023 Protocol on civil proceedings before the Court of Cassation and Ministerial Decree no. 110 of 7 August 2023.

Developed within the Research Centre in European Private Law (ReCEPL), now a Jean Monnet Centre of Excellence under the ReCEPL4STAI programme, and grounded in a structured and ongoing collaboration between legal scholars and researchers in STEM disciplines with the aim of establishing an integrated Law & STEM Laboratory on Artificial Intelligence, the project introduces a pre-structured interactive template organised into logical and functional fields that guide counsel throughout the entire drafting process, thereby ensuring uniformity, rigour, and completeness. The use of guided boxes, automated alerts, and checklists serves to prevent omissions and redundancies, facilitating the work of practitioners while simultaneously assisting the Court in its evaluative function by presenting pleadings that are clearer, more homogeneous, and more readily analysable.

The innovation is further enhanced through the integration of intelligent components for the preliminary verification of the completeness and logical consistency of the appeal, as well as through the development of a predictive admissibility simulator based on machine-learning techniques, capable of providing counsel with a probabilistic assessment of the likely outcome of the grounds advanced.

Its implementation would yield a twofold benefit. On the one hand, counsel would be guided in drafting the appeal through a logical-functional structure designed to prevent redundancy and argumentative dispersion, thereby reducing the risk of inadmissibility rulings and freeing pleadings from the textual overaccumulation that has progressively undermined their intelligibility. On the other hand, judges would be presented with appeals of a uniform configuration, endowed with a clear and functional expository architecture, facilitating the analysis of the grounds raised and ensuring the prompt identification of the issues submitted to the Supreme Court. The adoption of the template would thus translate into significant time savings for both actors: counsel, by avoiding unnecessary argumentative repetition, could focus the drafting process on the essential elements; judges, in turn, would be confronted with clearer and more structured pleadings, with evident gains in terms of the expeditious exami-

nation of complaints. The systemic impact of such an intervention would be reflected directly in procedural economy, fostering swifter handling of appeals and thereby contributing to the reduction of pending caseloads.

The proposed solution therefore seeks to outline a new methodological paradigm for forensic drafting, potentially extendable, subject to appropriate adjustments, to other categories of procedural acts.

Further confirmation of the need to rethink self-sufficiency in structural, rather than merely interpretative, terms emerges from the reflections developed around the recent reformulation of Article 121 c.p.c., when read within the broader framework of the digital transformation of civil proceedings. The progressive dematerialisation of justice, marked by the centrality of electronically filed written submissions and by the increasing prominence of decision-making formats detached from in-person hearings, has profoundly affected not only the modalities of filing pleadings but, above all, the way they are accessed and read by judges. It is now an established fact that procedural acts are conceived, transmitted, and read almost exclusively in digital format. This circumstance is far from neutral. Research in cognitive psychology and neuroscience demonstrates that screen reading, particularly of lengthy and complex texts, differs significantly from reading on paper: it tends to be faster yet less in-depth, more fragmented and less reflective, with diminished levels of sustained attention and overall comprehension (the so-called *screen inferiority effect*)[79]. Digital reading typically favours orientative and discontinuous modes (skimming), to the detriment of the concentrated and analytical engagement (deep reading) that complex legal texts would require[80].

Within this context, the expectation that an appeal to the Court of Cassation may be effectively understood through prolix, redundant texts lacking a clear expository architecture appears not merely unreasonable, but structurally dysfunctional. Complexity sits uneasily with the screen: the immaterial act requires a visual structure capable of facilitating comprehension, reducing cognitive load, and rendering logical transitions immediately perceptible. It is therefore unsurprising that recent regulatory interventions, most notably Ministerial Decree No. 110 of 7 August 2023, have placed marked emphasis on visual clarity, schematic organisation, and structural articulation, laying down detailed criteria concerning division into rubricated sections, the use of keywords, indexes, and hyperlinks. All such measures converge in a single direction: the simplification of the visual and graphic usability of procedural pleadings.

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[79] This is confirmed by the european project E-READ (*Evolution of Reading in the Age of Digitisation*), funded under the European COST programme and active between 2014 and 2019, which brought together approximately 200 scholars from 33 countries to investigate the impact of digitalisation on reading practices.

For a more in-depth analysis, see Giabardo, C. V. (2024). Chiarezza e sinteticità degli atti nella cornice della digitalizzazione. In G. Gioia (Ed.), Chiari e sintetici. Come scrivere in maniera efficace gli atti processuali secondo gli esperti. Pisa, pp. 44–55.

[80] Nardi, A. (2022). *Il lettore "distratto". Leggere e comprendere nell'epoca degli schermi digitali*. Firenze; Id. (2015). Lettura digitale vs lettura tradizionale: implicazioni cognitive e stato della ricerca. *Form@re – Open Journal per la formazione in rete.*

In light of these considerations, the proposal for a guided and structured drafting model appears not merely opportune but systemically coherent with the evolution of digital civil procedure. It enables the requirements of self-sufficiency, clarity, and conciseness to be translated into a textual architecture capable of reducing the reader's cognitive burden, preventing argumentative dispersion, and enhancing the substantive legal content of the pleading. In this way, the design of the act constitutes a rational response both to the crisis of self-sufficiency and to the new material conditions under which judicial functions are exercised, confirming that the solution to the problem must lie in a structural rethinking of forensic drafting in the era of digital justice.

In this sense, the proposal for a guided and structured drafting model stands in full continuity with the needs arising from the digitisation of proceedings. It operationalises the demand for "digital clarity," incorporating self-sufficiency not as a rule to be verified *ex post*, but as a design criterion to be embedded *ex ante*, capable of reducing cognitive effort, optimising comprehension time, and improving the overall quality of cassation review. The functionality of the template thus lies not only in preventing inadmissibility rulings, but in its capacity to align forensic drafting with the concrete material and cognitive conditions of contemporary adjudication.

Further significant confirmation of the utility of the proposed solution derives from analyses devoted to the concrete modalities through which judges read judicial pleadings[81]. As has been observed in the literature, the issue does not lie solely in the abstract quality of forensic writing, but in the fact that judges, despite their high capacity to process complex texts, do not materially possess the time required for a complete, sequential, and in-depth reading of all the documents contained in a case file. In a context marked by structural information overload, engagement with procedural pleadings inevitably occurs through mechanisms of selection, visual scanning, and hierarchical organisation of information.

It has been convincingly noted that judicial reading increasingly takes the form of a strategic and orientational activity, grounded in the rapid identification of the text's pivotal points, through techniques of skimming and cognitive prioritisation. From this standpoint, the expectation of an exhaustive and linear reading of a pleading, especially where it is prolix, redundant, and devoid of a clear expository architecture, proves unrealistic, if not counterproductive. It follows that the communicative effectiveness of a procedural act depends less on the quantity of information conveyed than on its structural organisation and on the text's capacity to guide the reader toward the essential core of the claim and the grounds advanced.

[81] On the topic, see Acerboni, G. (2024). Sintesi e chiarezza degli atti processuali. Un contributo linguistico. In G. Gioia (Ed.), *Chiari e sintetici. Come scrivere in maniera efficace gli atti processuali secondo gli esperti.* Pisa, esp. pp. 84–86; Spallino L., Sono i giudici lettori profondi?, in *https://www.dirittopa.it/it/interventi/cpa/sono-i-giudici-lettori-profondi/*

From these premises emerges a notion of clarity that does not exhaust itself in linguistic style or formal concision, but instead primarily concerns the editorial structure of the act. Comprehension of the defensive strategy is achieved, first and foremost, "at a glance", through a clear, coherent, and recognisable drafting model that enables the judge to orient himself immediately within the text; only subsequently is such understanding deepened through informational completeness and the quality of legal argumentation.

Comparative experience confirms this trajectory. One need only consider the application form of the European Court of Human Rights, which imposes a predefined and rigid structure precisely in order to ensure comprehensibility, uniformity, and immediacy of the application, irrespective of the complexity of the underlying facts. The standardised format does not curtail the right of defence; rather, it enhances its effectiveness by guiding the presentation of information according to readability criteria functional to the proceedings.

All these elements—normative, cognitive, empirical, and comparative—thus converge toward a single conclusion: in digital justice, form is function. In an environment in which judicial reading is necessarily selective, in which textual complexity is amplified by the digital medium, and in which written submissions increasingly replace oral advocacy, the procedural act must be designed, not merely drafted.

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