

**Court of Cassation, Third Civil Section, Judgment no. 370 of 10 January 2023  
(President: Travaglino Giacomo; extender and relator Cricenti Giuseppe; Rv. 666957 – 01)**

**(*Ius sepulchri* – secondary right to sepulchre – right to exercise of worship – personality rights – cremation without the consent of the deceased’s spouse or next of kin – compensation for non-patrimonial damage)**

The Court of Cassation in the present judgment includes among the manifestations of the right to exercise of worship, recognised and guaranteed by Article 19 of the Italian Constitution, as well as among the personality rights protected by Article 2 of the Italian Constitution, the so-called “secondary right to sepulchre”, which is held by the spouse and relatives of the deceased and whose content involves not only the right to access the tomb to perform acts of worship and piety towards the remains of their relatives, but also the claim to the respect due to the remains and, therefore, to prevent any transformation likely to cause injury.

The constitutional relevance of the “interest in the cult of the dead” underlying the “secondary right to the sepulchre” allows the Court of Cassation to affirm the compensability of non-patrimonial damage pursuant to Article 2059 of the Italian Civil Code arising from an its violation, which, in the case in question, took the form of the cremation, following the exhumation, of the corpse without the consent of the spouse of the deceased in breach of Article 3, letter g), law no. 130 of 30 March 2001 (“*Disposizioni in materia di cremazione e dispersione delle ceneri*”: “Dispositions on cremation and dispersal of ashes”), since the imposition of a specific form of worship was deemed to be detrimental to the respect due to the corpse (see for the discipline of cremation in Canon law, ANNA GIANFREDA, *La disciplina della cremazione nell’ordinamento canonico: prime riflessioni a proposito dell’Istruzione della Congregazione per la Dottrina della Fede* Ad resurgendum cum Christo, in [this Review](#), 2, 2016, pp. 53-80).

The ruling in question represents a novelty in the jurisprudential panorama on the issue of *ius sepulchri*, in which the interest underlying the “secondary right to the sepulchre” had never been expressly considered from the point of view of the right to religious freedom, but rather from that of a mere right of enjoyment having as its object the tomb (cf., in this sense, Cass., I Civ. Sect., judgement no. 246 of 7 February 1961; Rv. 880956 - 01, in *Giustizia civile*, 1, 1961, p. 597, and in *Giurisprudenza italiana*, 1, 1962, p. 609, where it is qualified in terms of a real right of enjoyment over other people’s property) or in a perspective common to some personality rights subject to provisions of law (Art. 10 Italian Civil Code and articles 93-96 law 22 April 1941, no. 633: cf., in this sense, Trib. Rome, 4 April 1973, in *Il diritto di famiglia e delle persone*, 1974, p. 1080 ff., referred to by the judgment in comment). Discusses about a “constitutionally relevant right” - although without taking a clear position in this sense - Administrative Regional Court of Piemonte, I Sect., sentence no. 321 of 19 March 2018 (in [this Review](#), 1, 2018, p. 447 - point 10.2).

For further contributions in this *Review* about *ius sepulchri* - albeit on aspects other than the “secondary right to sepulchre” - see SILVIA BALDASSARRE, *Diritto alla sepoltura nei reparti speciali e attestazione di fede*, [2, 2019, pp. 396-407](#), and PAOLO DI MARZIO, *Le unioni familiari, la filiazione e la protezione dei bisognosi*, in *Cassazione nel 2018*, [2, 2019, pp. 472-529](#), espec. pp. 500-501).

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