



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 42693/23
Giuliano SOLENNI and Tiziana MIANI CALABRESE
against Italy

The European Court of Human Rights (First Section), sitting on 24 September 2026 as a Committee composed of:

Erik Wennerström, *President*,

Raffaele Sabato,

Alain Chablais, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 42693/23) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 2 December 2023 by two Italian nationals, Mr Giuliano Solenni and Ms Tiziana Miani Calabrese (“the applicants”), who were born in 1956 and 1955 respectively, live in Verona and were represented by Mr E. Lizza and Mr G. Solenni, lawyers practising in Rome and Verona;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns civil proceedings relating to the enforcement of a mortgage loan agreement concluded between the applicants and Cassa di Risparmio del Veneto S.p.A. (“the bank”), leading to the sale of the applicants’ property.

2. The applicants challenged the enforcement of the loan agreement, arguing that the interest applied was unlawful (on account of, *inter alia*, alleged usury and irregularities in the amortisation plan) and that the debt had been incorrectly calculated. Their challenge – concerning a claim for 1,041,911.18 euros (EUR) – was largely rejected by the District Court, which upheld the bank’s claim and ordered only a minor adjustment to the terms of

the loan. That decision was confirmed by the Court of Appeal, which endorsed the relevant case-law on the treatment of interest.

3. The applicants then lodged an appeal on points of law with the Court of Cassation on several grounds. However, they initially failed to file proof of service of the appellate judgment, as required by Article 369 § 2 (2) of the Code of Civil Procedure (“the CCP”).

4. Following receipt of a “proposal for accelerated determination of the case” (*proposta di definizione accelerata* – “PDA”) of possibly inadmissible or manifestly ill-founded appeals by a single judge under Article 380 *bis* of the CCP, the applicants made use of their right under paragraph 2 of that provision to request a formal decision on the appeal within the prescribed 40-day time-limit. In their subsequent written submissions, they also produced the missing document.

5. By order no. 18487/2023 of 3 August 2023, the Court of Cassation declared the appeal inadmissible (*improcedibile*) for failure to comply with Article 369 § 2 (2) of the CCP. It ordered the applicants to pay EUR 18,200 to cover the opposing party’s costs, EUR 25,000 as an additional equitable sum to the opposing party because of negligent litigation (Article 96 § 3 of the CCP), and a fee of EUR 5,000 to the Judicial Fines Fund (*Cassa delle Ammende*) in accordance with Article 96 § 4 of the CCP.

6. Relying on Article 6 § 1 of the Convention, the applicants complained that the Court of Cassation had applied procedural requirements in an excessively formalistic manner. They further alleged that the measures imposed had had a punitive and deterrent effect, thereby impairing their right of access to a court. Lastly, the applicants complained under Article 1 of Protocol No. 1 to the Convention that the alleged lack of access to a court had resulted in the confirmation of erroneous judgments, leading to an unjustified debt and the forced sale of their home.

THE COURT’S ASSESSMENT

A. Alleged violation of Article 6 § 1 of the Convention

7. As regards the excessive formalism complaint under Article 6 § 1 of the Convention, the applicants complained that the date of service of the appellate judgment had been undisputed and that the missing document had been submitted before the appeal was examined.

8. The Court observes that this complaint is essentially the same as that examined in *Patricolo v. Italy* (nos. 37943/17 and 2 others, §§ 77-85, 23 May 2024), where it found that requiring proof of service of a decision within the statutory time-limit did not constitute excessive formalism if the document had not been submitted within that period or included in the case file. In the present case, the applicants failed to comply with the time-limit set by Article 369 of the CCP, and there is no indication that the relevant document

was otherwise available to the Court of Cassation at the time. Accordingly, this complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

9. As regards the alleged breach of the right of access to a court, the Court reiterates that this right is not absolute and may be subject to limitations, which fall within the State's margin of appreciation. Such limitations must not impair the very essence of the right and are compatible with Article 6 § 1 only if they pursue a legitimate aim and are proportionate to that aim (see *Grzęda v. Poland* [GC], no. 43572/18, § 343, 15 March 2022). In this context, the Court distinguishes between financial requirements that prevent access to a court and those imposed after proceedings have been completed: while the former may constitute a barrier to justice, the latter do not, as such, deprive applicants of effective access where their claims have been fully examined and determined. This is particularly so in respect of courts of cassation, whose procedures may be more formal given that they follow proceedings before courts with full jurisdiction; in that context, filtering mechanisms, including summary procedures for manifestly ill-founded appeals and the imposition of costs, pursue the legitimate aim of ensuring the proper administration of justice and the effective functioning of supreme courts (see, *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018; *Stankov v. Bulgaria*, no. 68490/01, § 52, 12 July 2007; and *Sace Elektrik Ticaret ve Sanayi A.Ş. v. Turkey*, no. 20577/05, 22 October 2013).

10. The Court notes that Article 380 *bis* of the CCP establishes an efficiency-oriented filtering procedure whereby a single judge carries out a preliminary assessment of appeals, particularly with a view to identifying cases that are possibly manifestly inadmissible or unfounded. While this initial scrutiny is intended to streamline proceedings, the PDA does not deprive the parties of judicial review, as they retain the possibility of requesting that the case be examined by a panel. However, where the panel's final decision confirms the preliminary assessment, Article 380 *bis* provides that the panel may apply the measures established under Article 96 §§ 3 and 4 of the CCP.

11. Those measures serve a dual purpose: under paragraph 3, the party which pursued manifestly ill-founded proceedings may be ordered to pay an additional equitable sum to the opposing party, as compensation for compelling it to defend itself against the continuation of the claims; under paragraph 4, a fee may be imposed, payable to the Judicial Fines Fund (*Cassa delle Ammende* – a State body), on account of the misuse and consequent waste of judicial resources. As regards the determination of the amounts, the amount under paragraph 3 is fixed on an equitable basis, whereas the sum under paragraph 4 is set within a statutory range of EUR 500 to EUR 5,000. That framework ensures that such measures are both subject to judicial discretion and tailored to the circumstances of the case, in line with the case-law of the Court of Cassation sitting as Combined Divisions (judgment

no. 36069 of 27 December 2023), which excludes the automatic application of these measures and requires an *in concreto* assessment of conduct characterised by bad faith or, at least, gross negligence – namely the pursuit of claims devoid of any reasonable legal foundation.

12. The Court observes that those measures are clearly grounded in domestic law and pursue the legitimate aim of deterring abusive or unmeritorious recourse to the Court of Cassation, thereby safeguarding judicial efficiency. Measures of this kind, aimed at preventing an excessive accumulation of cases, contribute to the proper administration of justice and fall within the States' margin of appreciation (see *Stankov*, cited above). Accordingly, their existence or application cannot, *in abstracto*, be regarded as impairing the right of access to a court; rather, it must be determined whether, in the circumstances of the case, a reasonable relationship of proportionality has been maintained between the aim pursued and the means employed.

13. The Court notes that the applicants, despite a preliminary finding by the single judge that their appeal was manifestly inadmissible, nonetheless chose to seek a determination on the merits by a panel. The eventual declaration that their appeal was inadmissible thus resulted from the upholding by the panel of the said single judge's preliminary finding that the applicants had failed to comply with a clear and foreseeable procedural requirement governing proceedings before the Court of Cassation. As a consequence, the mechanism under Article 380 *bis* of the CCP was triggered and the measures under Article 96 of the CCP referred to above were applied to the applicants.

14. The Court will thus have particular regard to the circumstances of the case as well as the nature and functioning of the impugned mechanism. Firstly, the applicants, who were represented by counsel, lodged an appeal on points of law against a judgment of the Court of Appeal concerning a claim amounting to over one million euros (see paragraph 2 above). In those circumstances, the procedural requirements governing access to the Court of Cassation, as well as the consequences of non-compliance, were sufficiently clear and foreseeable. This is all the more so given that, at the stage of the preliminary assessment by the single judge, the applicants had already been informed of the likely outcome of the proceedings and of the award of legal costs in favour of the opposing party in the amount of EUR 15,000.

15. The Court further observes that the applicants had the benefit of a full examination of their claims at two levels of jurisdiction. The impugned restriction therefore concerns access to the Court of Cassation, whose procedural rules may legitimately be more formal and restrictive in nature (see *Levages Prestations Services v. France*, 23 October 1996, *Reports of Judgments and Decisions* 1996-V). In this context, the application of a summary filtering mechanism, such as the one provided for under Article 380 *bis*, cannot in itself be regarded as disproportionate.

16. Turning to the amounts of the measures applied in the present case, the Court reiterates that the award of legal costs and the additional equitable sum to the opposing party under Article 96 § 3 of the CCP reflects the “loser pays” principle and pursues the legitimate aim of discouraging abusive litigation. Having regard to the considerable value of the dispute, it does not consider the additional equitable sum of EUR 25,000 to the opposing party to be excessive. Likewise, the fee imposed under Article 96 § 4 of the CCP was set within the statutory limits, thereby preserving a margin of discretion for the domestic court, even though it was determined at the upper limit in view of the considerable value of the case. Unlike systems providing for automatic or uncapped penalties, the existence of minimum and maximum thresholds reflects a legislative assessment of proportionality, which is further individualised through judicial determination in each case (contrast *Sace Elektrik Ticaret ve Sanayi A.Ş.*, cited above, §§ 26 et seq.).

17. In the absence of any indication that the measures were arbitrary, punitive, or capable of producing a chilling effect, the Court concludes that, having regard to the State’s margin of appreciation, their application did not amount to a disproportionate restriction on the applicants’ right of access to a court. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

18. As regards the applicants’ complaint under Article 1 of Protocol No. 1 to the Convention, the Court notes that this complaint is closely linked to the Article 6 § 1 complaints. Having found those inadmissible, it considers that there is no appearance of a violation of the applicants’ property rights in the present case. This complaint is therefore also manifestly ill-founded and must be rejected within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 October 2026.

Liv Tigerstedt
Deputy Registrar

Erik Wennerström
President