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

FIRST SECTION

DECISION

Application no. 32077/12
Grazia BRAMBILLA
against Italy

The European Court of Human Rights (First Section), sitting on 16 October 2025 as a Committee composed of:

Frédéric Krenc*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 32077/12) 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 16 May 2012 by an Italian national, Ms Grazia Brambilla ("the applicant"), who was born in 1957, lives in Teramo and was represented by Mr G. Thuan Dit Dieudonné, a lawyer practising in Strasbourg;

the decision to give notice of the application to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the fairness of judicial proceedings before tax courts, instituted by the applicant to challenge a tax assessment notice on the basis of which she had been ordered to pay tax surcharges and a tax fine.

2. In 2003 the Tax Authority (*Agenzia delle entrate*) initiated an audit of the applicant, focusing on certain transactions she had made in 2001 (a year in respect of which she had not filed a tax return). In particular, the applicant had made two large cash deposits on 12 and 30 October 2001, which she had reinvested immediately afterwards.

3. In July 2005 the Teramo Tax Office invited the applicant to clarify the nature of those transactions, warning her that, pursuant to Article 32 of Presidential Decree no. 600 of 1973 ("Decree no. 600/1973"), any information or document not submitted at that stage could not be taken into account in subsequent administrative or judicial proceedings.

4. On 23 September 2005 the applicant and her sister, A.B., submitted a joint written statement explaining that the sums in question had been payouts from several life insurance policies taken out by A.B.'s husband in A.B.'s favour. Since the husband's estate had been the subject of litigation at the time, A.B. had withdrawn the payouts and deposited them in the applicant's bank account.

5. On 24 November 2005 the Teramo Tax Office sent the applicant a tax assessment notice (*avviso di accertamento*). Determining that she had not submitted relevant documents justifying the origin of the sums, it found that she had failed to declare an income of 2,960,000,000 Italian lire (ITL), corresponding to about 1,528,712 euros (EUR). It therefore ordered her to pay additional taxes amounting to EUR 699,582.18, plus statutory interest, and a fine amounting to EUR 839,498.61.

6. Between December 2005 and January 2006 A.B. sent several letters to the insurance company and the bank, asking for documents in support of her claim that the sums had come from life-insurance payouts. On 4 January 2006 she received copies of the insurance policies in question and documents confirming that she had been entitled to payouts amounting to ITL 2,480,939,555 (EUR 1,281,298.35) and indicating that they were not subject to tax.

7. On 23 January 2006 the applicant lodged a request for the reconsideration (*ricorso in autotutela*) of the tax assessment notice, submitting the documents received by A.B. on 4 January 2006. Subsequent attempts at a settlement were unsuccessful.

8. On 20 May 2006 the applicant lodged an application with the Teramo Provincial Tax Court (*Commissione Tributaria Provinciale* – "the CTP"), seeking the annulment of the tax notice.

9. On 7 July 2006 she submitted supporting documents, including those already submitted alongside the request for reconsideration and additional documents received from the bank on 4 May 2006 attesting that A.B. had withdrawn the payouts on 30 October 2001 and an additional sum of ITL 500,000,000 on 12 October 2001.

10. The Tax Office argued that those documents were inadmissible on the basis of Article 32 of Decree no. 600/1973, as they had been neither provided upon its invitation to submit supporting documents (see paragraph 3 above) nor submitted alongside the initial application with an explanation for the delay; in any event, according to the Tax Office, those documents did not justify the transfer of money from A.B. to the applicant.

11. By a decision of 5 March 2007, the CTP upheld the applicant's application and annulled the tax assessment notice. Finding that Article 32 of Decree no. 600/1973 only applied in cases of intentional failure to submit documents and not in cases of simple negligence, the CTP considered that the documents submitted by the applicant constituted sufficient evidence that the sums had been provided by A.B. The Tax Office appealed.

12. In the meantime, the applicant had been charged in criminal proceedings for failing to file a tax return. By a judgment of 4 December 2007, the Teramo District Court acquitted her, finding that the relevant sums had belonged to A.B. The judgment was not contested and became final.

13. By a judgment of 10 February 2009, the L'Aquila Regional Tax Court (*Commissione Tributaria Regionale* – "the CTR") quashed the first-instance decision and upheld the tax assessment notice. It considered, in particular, that pursuant to Article 32 §§ 4 and 5 of Decree no. 600/1973 and Article 52 of Presidential Decree no. 633 of 1972, documents which had not been submitted to the Tax Office at the administrative stage could not be taken into account in subsequent proceedings, regardless of whether the failure to submit them had resulted from an intentional omission or from negligence.

14. The applicant appealed to the Court of Cassation against the judgment of the CTR. Her three grounds of appeal were entitled "violation by the Tax Office of Article 32 §§ 4 and 5 of Decree no. 600/1973", "violation by the Tax Office of Article 51 of Presidential Decree no. 633 of 1972" and "violation by the Tax Office of Article 52 of Presidential Decree no. 633 of 1972". She essentially reiterated the facts leading up to the deposit of the sums in her bank account, pointing out that during the administrative stage she had not been in possession of supporting documents. However, she had informed the administrative authorities that A.B. had the relevant documents, which she had subsequently submitted. She argued that her initial failure to submit the documents had thus been the result of neither an intentional omission nor negligence. She also stated that the CTR "had not duly examined the grounds for the tax claim; otherwise, from the documents that had been submitted, it would have ascertained" that she had not owed any tax on the sums in question.

15. By a decision dated 8 November 2011 and published on 12 December 2011, the Court of Cassation declared the applicant's appeal inadmissible, as it did not rest on one of the admissibility grounds set out in Article 360 of the Code of Civil Procedure ("the CCP"). The reasoning of the rapporteur's proposal (which was included in the decision) was more detailed, outlining that the applicant had failed to indicate the grounds on which the appeal was based, as required by point 4 of Article 366 of the CCP; in fact, the appeal did not refer to errors of law made by the CTR in its judgment, but rather to errors made by the Tax Office, and essentially asked for a re-examination of

the facts of the case, such a request not being admissible before the Court of Cassation.

16. The applicant complained, under Article 6 of the Convention, that the judicial proceedings in the tax courts had violated her right to a fair trial, since the refusal under Article 32 §§ 4 and 5 of Decree no. 600/1973 to allow her to submit documents not previously submitted at the administrative stage had rendered her defence impossible and had placed her at a substantial disadvantage *vis-à-vis* the public authorities.

THE COURT'S ASSESSMENT

17. The Government argued that the applicant had not correctly exhausted the available domestic remedies, as her appeal to the Court of Cassation had been declared inadmissible. They pointed out that the applicant had not diligently complied with domestic procedural rules, as she had not raised complaints on points of law and had complained of errors made by the Tax Office and not by the CTR.

18. The Court reiterates that the obligation to exhaust domestic remedies requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 72 and 80, 25 March 2014, with further references). Consequently, domestic remedies have not been exhausted when an appeal is not accepted for examination because of a procedural mistake by the applicant (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010).

19. In the present case, the Court of Cassation declared the appeal inadmissible on account of the applicant's failure to rely on one of the admissible grounds for appeal set out in Article 360 of the CCP. The rapporteur's proposal, referenced by the Court of Cassation, further stated that the appeal was inadmissible in accordance with point 4 of Article 366 of the CCP, as it failed to clearly indicate the grounds on which it was based: the grounds relied on by the applicant did not concern errors of law in the judgment appealed against, but errors made by the Tax Office, meaning that the appeal essentially amounted to a request for the Court of Cassation to re-examine the facts, thereby falling outside the admissible grounds for appeal (see paragraph 15 above).

20. The Court takes note of the applicant's submission that, in her appeal to the Court of Cassation, she had criticised the assessment made by the CTR (and not by the Tax Office) and had clearly indicated which provisions had been infringed. In the applicant's view, it had been sufficiently clear that she was criticising errors of law made by the CTR, which had simply adhered to the assessment made by the Tax Office. She had therefore sufficiently

clarified the scope of her appeal, and she argued that holding otherwise (as the Court of Cassation had done) might raise an issue of lack of access to a court.

21. The Court refers, in this connection, to the general principles set out in respect of the restrictions on access to superior courts (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 80-99, 5 April 2018, and *Succi and Others v. Italy*, nos. 55064/11 and 2 others, §§ 71-72, 28 October 2021, with further references).

22. The Court notes that the inadmissibility decision was based on Article 360 and point 4 of Article 366 of the CCP. The former set out, at the relevant time, the admissible grounds for appeal, which included, *inter alia*, errors of law and the absence, insufficiency or contradictory character of the reasoning of the judgment appealed against in respect of a decisive fact. It was therefore unequivocally established that an appeal to the Court of Cassation could not merely ask for a new assessment of the facts of the case. As to point 4 of Article 366 of the CCP, it provided that the grounds for the appeal had to be indicated in order for it to be declared admissible.

23. The applicant did not contest those admissibility criteria *per se*, nor did she argue that they had been insufficiently clear or had imposed an excessive burden on her. She instead argued that they had been mistakenly applied in her case.

24. It is not the Court's task to resolve disputes over the interpretation of the admissibility requirements imposed by domestic law, unless such an interpretation results in a breach of the Convention (see *Zubac*, cited above, § 81). The Court does not find that the Court of Cassation applied the domestic procedural rules in an arbitrary or excessively formalistic manner. Although the applicant's appeal referenced domestic provisions, it did not clearly explain how they had been infringed by the judgment appealed against and merely stated that the CTR had erred in its assessment of the facts of the case; in such circumstances, it was not unreasonable to find, as the Court of Cassation did, that the appeal was not clearly based on one of the admissible grounds set out in Article 360 of the CCP. The applicant did not, in the Court's view, display the requisite diligence in complying with domestic procedural law when lodging her appeal, particularly given that she was assisted by a lawyer (ibid., § 93).

25. The Court therefore finds that the applicant failed to submit her complaints to the Court of Cassation in compliance with the domestic procedural requirements.

26. It follows that the application must be declared inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 November 2025.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President