



Italy should have flexibly adapted formal requirements during transition from paper-based to online processing of Court of Cassation cases

The case of [Patricolo and Others v. Italy](#) (applications nos. 37943/17, 54009/18 and 20655/19) concerned inadmissibility decisions handed down by the Court of Cassation in the applicants' appeals on points of law. They were given for the failure to comply with the formal requirements originally designed for paper-based processing and adapted by those court decisions to the context of documents lodged electronically before the lower courts.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

no violation Article 6 § 1 (access to court) of the European Convention on Human Rights in respect of the **application of Mr Patricolo and Ms Brutti**, as the decision to reject their appeal had not hindered their right of access to a court.

a violation Article 6 § 1 in respect of the **applications of Immobiliare Il Castelletto, and Ms Angeloni and Mr Roda**, as the Court of Cassation had been in a transitional phase from paper-based to electronic processing, and not giving the applicants a fair chance to submit the relevant attestation at a later stage of the proceedings had gone beyond the aim of ensuring legal certainty and the proper administration of justice, and had prevented the applicants from having their case determined on the merits.

Principal facts

The applicants are four Italian nationals, Mario Patricolo, Milvia Brutti, Marcella Angeloni and Fausto Roda, who were born in 1953, 1945, 1950 and 1949 respectively, and one limited liability company, Immobiliare Il Castelletto S.R.L. based in Casarile (Italy). The Italian nationals live in Caprino Veronese (Mr Patricolo), Lazise (Ms Brutti), and San Lazzaro di Savena (all Italy).

The applicants in each application lodged appeals on points of law with the Court of Cassation, which were declared inadmissible for failure to lodge with that court's registry a notice of service of the decisions they wanted to appeal against.

Mr Patricolo and Ms Brutti (no. 37943/17) lodged their appeal on points of law in the context of civil proceedings against their former lawyer, following an overturning by the Verona Court of Appeal of a judgment in their favour. The Court of Cassation's inadmissibility decision was given on 30 November 2016.

Immobiliare Il Castelletto (no. 54009/18) lodged its appeal on points of law in the context of enforcement proceedings against it, in particular a challenge to a garnishee order before the Milan District Court. On 9 May 2018 the application was rejected by the Court of Cassation.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2017 the Bologna Court of Appeal overturned a judgment and declared a contract of sale – to which Ms Angeloni and Mr Roda (no. 20655/19) were parties – to be ineffective. They appealed on points of law to the Court of Cassation, which rejected their application on 5 October 2018.

Complaints, procedure and composition of the Court

Relying mainly on Articles 6 § 1 (access to court), the applicants complained that the decisions of the Court of Cassation to declare their appeals on points of law inadmissible for failure to comply with the formal requirements and time-limits set out in Article 369 of the Code of Civil Procedure and section 9 of Law no. 53/1994 had amounted to excessive formalism and had unjustifiably restricted their right of access to a court.

The applications were lodged with the European Court of Human Rights on 18 May 2017, 8 November 2018 and 5 April 2019 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Péter **Paczolay** (Hungary),
Ivana **Jelić** (Montenegro),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Ilse **Freiwirth**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The question in this case revolved around whether the Court of Cassation had restricted the very essence of the applicants' right of access to a court. The purpose of the restrictions in law had been to uphold the principle that final judgments should not be subject to appeal (*res judicata*) and to ensure expeditious proceedings. The Court agreed that this was a legitimate aim, namely the proper administration of justice.

Concerning **Mr Patricolo's and Ms Brutti's** application, the Court noted that those applicants had failed to lodge the notice of service of the contested judgment within the deadline (20 days) set out in Article 369 § 1 of the Code of Civil Procedure. They argued that this provision amounted to excessive formalism.

Since the notice of service of the contested judgment was necessary for the Court of Cassation to verify compliance with the principle of *res judicata*, the Court considered that failure by the applicants to comply with the abovementioned deadline resulted in the Court of Cassation being prevented from assessing whether the time-limits for filing appeals had been complied with and, therefore, from deciding on the admissibility of the appeal, without requiring further steps and without delay. The contested measure therefore was adequate to achieve the legitimate aim pursued.

Moreover, given the Court of Cassation's role – reviewing whether the law had been applied correctly – the Court accepted that the procedure followed by the Court of Cassation could be a formal one, especially in proceedings such as those of this application, where the applicants had been represented by a specialist lawyer who was a member of the Supreme Court Bar. As such, the

decision to reject the application had not hindered the applicants access to a court. There had been **no violation** of Article 6 § 1 of the Convention in application no. 37943/17.

As regards the applications of **Immobiliare Il Castelletto** and **Marcella Angeloni and Fausto Roda**, the Court noted that the applicants had lodged – within the abovementioned deadline – a paper copy of the contested judgments together with the notice of service sent by certified email. However, these applicants had failed to submit an attestation that the paper copy of the notice of service was an authentic copy of the original. On that basis the Court of Cassation had declared their appeals on point of law inadmissible.

With reference to the relevant legislative provisions and to the Court of Cassation's case-law, and noting that they had been represented by specialist counsel, the European Court held that the law had been foreseeable for the applicants. At the time hard copies of certified emails had also to be submitted to the Court of Cassation's registry, with an attestation that these were authentic copies, while the court transitioned to an electronic system. This had not been overly burdensome, and the failure to do so had amounted to a procedural error for which the applicants had been responsible as parties before the Italian courts.

However, despite the applicants' omissions and contrary to the situation observed by the Court in relation to application no. 37943/17, the Court of Cassation had still been able to assess compliance with the time-limits for lodging an appeal at the earliest stage of the proceedings. Moreover, relying also on the CEPEJ's Guidelines on electronic court filing and digitalisation of courts (CEPEJ (2021)15) and on the views expressed by the Consultative Council of European Judges (CCJE) on the use of information technologies in the judiciary, the Court held that in the context of the transition from paper-based to electronic proceedings the need to adapt formal requirements designed for paper documents calls for some flexibility in their application to electronic ones. Under these circumstances, declaring the appeals inadmissible, without giving the applicants a fair chance to submit the attestation at a later stage had gone beyond the aim of ensuring legal certainty and the proper administration of justice and had prevented the applicants from having their case determined on the merits by the Court of Cassation.

There had accordingly been a **violation** of Article 6 § 1 in applications nos. 54009/18 and 20655/19.

Just satisfaction (Article 41)

The Court held that Italy was to pay Ms Angeloni and Mr Roda 6,000 euros (EUR) jointly in respect of non-pecuniary damage, and EUR 9,000 in respect of costs and expenses, and to Immobiliare Il Castelletto EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.