Metodo Giuridico
Ius et Ratio • ISSN 3103-7305

ITALIAN JOURNAL OF LAW & CASE LAW • ISSN 3103-7305
CASE NOTE • CIVIL LAW & CIVIL PROCEDURE • 13 NOVEMBER 2026

Affidavits of Service in Supreme Court Appeals: Procedural Defects and Forfeitures

Order no. 4343/2026 of the Italian Supreme Court of Cassation, Civil Division consolidates incurable non-proceedability under Article 369 of the Code of Civil Procedure and evidentiary preclusions in accelerated proceedings

GM Giovanni Ercole Moscarini Civil Law & Civil Procedure 13 November 2026 Reading time 13 min

Current Legal Framework as of 5 November 2026: The case law of the Supreme Court of Cassation reaffirms the mandatory requirement to file the electronic affidavit of service of the challenged decision, establishing that an accelerated disposition proposal under Article 380-bis of the Italian Code of Civil Procedure bars any belated documentary filing.

ABSTRACT

This contribution examines the regime of **non-proceedability of Supreme Court appeals** resulting from the failure to file the **electronic affidavit of service** of the challenged judgment, in light of Order no. 4343/2026 rendered by the **Italian Supreme Court of Cassation, Civil Division**. The analysis explores the systematic interplay between Article 369, paragraph 2, no. 2, of the Italian Code of Civil Procedure and the **accelerated summary disposition procedure** governed by Article 380-bis, confirming the strict evidentiary bar established by Article 372 and the imposition of **aggravated liability sanctions** for abusive litigation under Article 96.

Key Takeaways

- **Non-proceedability safeguarding *res judicata*:** The duty to file the affidavit of service under Article 369 of the Code of Civil Procedure protects procedural public policy and prevents any cure through the opposing party's failure to object.
- **Inapplicability of Article 372 of the Code of Civil Procedure:** The right to submit new documents in cassation proceedings is strictly confined to the admissibility of the appeal and does not extend to requirements of proceedability.
- **Inadmissibility of belated cure in accelerated proceedings:** Producing the affidavit of service or certified electronic mail (PEC) delivery receipts as attachments to a request for adjudication under Article 380-bis is untimely and cannot prevent an *ex officio* dismissal.
- **Statutory pecuniary sanctions:** Where the request for adjudication is dismissed in accordance with the delegated judge's proposal, the appellant faces mandatory sanctions under Article 96, paragraphs 3 and 4, alongside the doubling of the unified court fee.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Civil Law & Civil Procedure

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Order of 26 February 2026, no. 4343 — Failure to file the electronic affidavi

Legal Principle / Editorial Headnote

Failure to file the affidavit of service of the challenged judgment entails the non-proceedability of the appeal before the Supreme Court of Cassation pursuant to Article 369 of the Italian Code of Civil Procedure; because this requirement safeguards the public policy interest in res judicata, the omission cannot be cured under Article 372 nor through documentary submissions attached to a request for adjudication under Article 380-bis.

01. SYSTEMATIC FRAMEWORK OF ORDER NO. 4343/2026 OF THE ITALIAN SUPREME COURT OF CASSATION, CIVIL DIVISION

The legal regime governing **procedural preclusions** in proceedings on points of law before the Supreme Court constitutes one of the foundational pillars of procedural public policy. By Order no. 4343 of 26 February 2026, the **Italian Supreme Court of Cassation, Civil Division** reaffirmed the strict formal boundaries established by Article 369 of the Code of Civil Procedure regarding the filing of documents required for the admissibility and proceedability of the appeal. The core issue concerns the filing of the **affidavit of service in Supreme Court appeals** (*relata di notifica*), the omission of which prevents the Supreme Court from verifying the **timeliness of the appeal** against the supervening procedural finality (*res judicata*) of the challenged judgment[1]. The decision aligns with the settled nomophylactic line of authority linking statutory forfeiture (*decadenza*) to the procedural self-responsibility of the appealing party, in terms analogous to the principles articulated with respect to the time limit for Supreme Court appeals under the Fornero labour procedure and certified electronic mail notice regarding the commencement of peremptory time-bars.

The statutory architecture introduced by the delegated legislature through Legislative Decree no. 149/2022 has reinforced the need for a **strict chronological sequence** in defensive pleadings and filings. The intersection between the ordinary review of documentary prerequisites and the new mechanism of **accelerated summary disposition** under Article 380-bis of the Code of Civil Procedure prompts a closer examination of the parties' procedural powers. A request for adjudication filed following the delegated judge's proposal does not operate as a restoration of expired deadlines, nor does it permit **belated evidentiary supplements**. Legal certainty and the stability of *res judicata* prevail over an individual litigant's interest in obtaining a ruling on the merits.

The order under review provides an occasion to reconstruct the intricate procedural framework governing **incurable nullities** and procedural bars. Far from merely noting the inadequacy of subsequent documentary filings, the ruling coordinates the sanctioning mechanism set forth in Article 96 of the Code of Civil Procedure with the overarching protection of judicial efficiency. Viewed from this systematic perspective, the lack of timely documentary proof carries a dispositive weight that absorbs and precludes any examination of the substantive grounds of appeal raised by the appellant.

02. THE LEGAL REGIME GOVERNING THE AFFIDAVIT OF SERVICE IN SUPREME COURT APPEALS

2.1 — The Public-Law Function of Filing under Article 369 of the Code of Civil Procedure and the

Certainty of Res Judicata

Article 369, paragraph 2, no. 2, of the Italian Code of Civil Procedure places upon the appellant the mandatory burden of filing, on pain of **non-proceedability of the appeal** (*improcedibilità*), a certified copy of the challenged judgment together with the **affidavit of service**, whenever service of the judgment has taken place. This statutory obligation does not reflect a mere bureaucratic formality, nor is it designed to protect a disposable private interest of the litigants. On the contrary, the Supreme Court emphasizes that the rule is specifically aimed at verifying the **timeliness of the appeal**, thereby safeguarding the public-law imperative of legal certainty and compliance with the binding force of procedural *res judicata*[2]. Once the judgment has been served, the right to petition the court of last resort may be exercised solely within the short statutory time-bar of sixty days.

Because this procedural constraint is non-waivable by the parties, any passive acquiescence or affirmative acknowledgement by the respondent is legally irrelevant. Neither a failure to object on the part of the respondent filing a counter-appeal brief nor even an express admission that service occurred on a specific date can cure the **defect of proceedability**. As established by Supreme Court case law, the sanction exerts a deterrent function against omissions that obstruct the proper institution of appellate review. With regard to temporal limits and the finality of judicial decisions, systematic insight may also be drawn from scholarship examining overcoming unconstitutional civil res judicata, which illustrates how the legal order conditions access to appellate remedies upon strict compliance with statutory preclusions.

It follows that the appellant's own statement in the introductory notice of appeal attesting that the challenged judgment was served constitutes a **binding procedural fact**. Pursuant to the principle of procedural self-responsibility, a litigant must bear the legal consequences of its own assertions. Failure to timely file the **affidavit of service in Supreme Court appeals** deprives the Panel of the ability to ascertain whether the challenge was lodged within the statutory deadline, thereby compelling a **declaration of non-proceedability** that must be raised *ex officio*[1].

2.2 — The So-Called Logical Resistance Test and Alternative Channels of Evidentiary Acquisition

The case law of the Supreme Court of Cassation has carved out a narrowly defined sphere within which failure to attach the affidavit of service does not result in a declaration of non-proceedability. The primary corrective criterion is known as the **logical resistance test** (*prova logica di resistenza*). This assessment entails a chronological comparison between the date of publication of the challenged decision and the completion of service of the notice of appeal. Where the appeal is served within **sixty days from the publication** of the judgment, the filing requirement under Article 369 of the Code of Civil Procedure may be dispensed with. Under such circumstances, the timeliness of the appeal is established *a priori*, since the short statutory time-bar could not possibly have expired prior to the initiation of service.

Where, however, the sixtieth day from publication has already elapsed by the time the appeal is served, the logical resistance test inevitably fails. In that scenario, non-proceedability can be averted exclusively if the probative document has been **acquired** ***aliunde*** into the case file. This occurs where the **affidavit of service** has been duly filed by the respondent upon entering an appearance in the proceedings. The principle of common acquisition of evidence enables the Panel to verify timeliness by relying on the opposing party's documentary submissions, thereby remedying the inaction of the burdened party.

A further narrow exception concerns the acquisition of the proof of service through the mandatory **transmission of the court clerk's file** from the lower court. Yet this channel operates solely in special proceedings where statute expressly ties the running of the appellate time limit to official notice served by the court registry. Absent those specific statutory

prerequisites, failure to file the certified service documentation triggers an **absolute procedural bar**, insusceptible to implied cure or to the granting of supplemental defensive deadlines.

03. POST-CARTABIA ACCELERATED PROCEEDINGS AND THE INAPPLICABILITY OF ARTICLE 372 OF THE CODE OF CIVIL PROCEDURE

3.1 — The Sub-Proceeding under Article 380-bis of the Code of Civil Procedure and Forfeiture of Motions for Revocation

The procedural reform enacted by Legislative Decree no. 149/2022 profoundly reshaped chamber proceedings before the Supreme Court of Cassation. The mechanism of the **accelerated summary disposition proposal** set forth in Article 380-bis of the Code of Civil Procedure serves a docket-clearing function, enabling the delegated reporting judge to issue a concise preliminary assessment whenever an appeal appears manifestly inadmissible, non-proceedable, or unfounded. Upon receiving official communication of the decree, the appealing party faces a strict binary choice: acquiesce in the proposal, thereby triggering the termination of the proceedings, or file a formal **request for adjudication** within the peremptory time-bar of forty days.

In litigation practice, unorthodox attempts have emerged seeking to challenge this preliminary judicial screening through atypical motions. Order no. 4343/2026 firmly censures the filing of a **motion for revocation** directed against the accelerated disposition proposal. The Panel characterizes such an initiative as radically irregular, noting that the statutory framework confers no power of self-correction or *ex officio* revocation upon the delegated judge. The sole statutorily prescribed remedy is a **request to schedule** a chamber hearing before the full Panel, whereby the litigant assumes the procedural risk of a collegial dismissal.

Failure to activate the chamber sub-proceeding along the exact tracks mandated by the Code consolidates the preclusive effects of the preliminary screening stage. As consistently reaffirmed by Supreme Court case law, the identification of an *ex officio* procedural defect frames the subsequent review of the Panel, preventing defensive arguments unsupported by timely documentary evidence from altering the outcome of the adjudication[3].

3.2 — The Strict Scope of Admissible Documents and Incurable Non-Proceedability

The appellant's attempt to cure the omitted filing of the affidavit of service simultaneously with the request for adjudication runs into the insurmountable barrier of Article 372 of the Code of Civil Procedure. That provision prohibits the submission of new documents in cassation proceedings, allowing an exceptional derogation solely for documents concerning the admissibility of the appeal or the nullity of the challenged judgment. Settled Supreme Court case law categorically rules out extending that exception to **grounds of non-proceedability**. Article 369, paragraph 2, no. 2, of the Code of Civil Procedure expressly classifies the filing of the affidavit of service as a requirement of proceedability, distinguishing it from the documentary submissions governed by subparagraph no. 4 of the same provision.

> Failure to file the affidavit of service admits of no belated cure in cassation proceedings, for the certainty of statutory forfeiture and the finality of res judicata prevail over the tactical discretion of the litigants.

Both the wording and the underlying rationale of the statute foreclose any expansive interpretation. Even assuming *arguendo* that the concept of documents under Article 372 of the Code of Civil Procedure could encompass the served copy of the challenged decision, the outcome would remain unchanged. The deadline for filing that copy is prescribed by the Code on **pain of non-proceedability** rather than mere inadmissibility[1]. Non-proceedability sanctions the inaction of a party who fails to perform the preparatory acts necessary to advance the proceedings within the peremptory time limit of twenty days from the last service of the appeal.

Consequently, producing the electronic delivery receipt or certified electronic mail (PEC) message as an attachment to the request for adjudication under Article 380-bis of the Code of Civil Procedure is **untimely and legally ineffective**. The accelerated disposition stage does not reopen statutory forfeiture deadlines that already expired during the introductory phase. Constitutional compliance and adherence to fair trial guarantees rest upon the advance predictability of procedural rules, the breach of which entails the **immediate disposition** of the dispute in conformity with the accelerated proposal.

3.3 — When Non-Proceedability Applies and the Limits of Documentary Cure

Non-proceedability under Article 369, paragraph 2, no. 2, of the Code of Civil Procedure applies whenever the appellant declares that the challenged judgment was served without filing the corresponding affidavit of service within twenty days, unless service of the appeal was completed within sixty days from publication of the judgment or the document was duly produced by the respondent.

Mapping the operational boundaries of documentary cure reveals an uncompromising foreclosure of belated submissions. The strictness enforced by the Supreme Court applies irrespective of electronic transmission methods. It is unavailing to argue that service was carried out via **certified electronic mail (PEC)** or that the digital files were theoretically accessible to the opposing parties. The burden of certifying conformity and attaching the electronic acceptance and delivery receipts rests indefectibly upon the party invoking review on points of law[2]. Any omission translates into a procedural defect incapable of remediation during the course of the proceedings.

The body of case law developed over the past two years confirms the uniformity of this nomophylactic approach, as illustrated in the following comparative overview of recent rulings:

Decision	Alignment	Operative Legal Principle
Supreme Court of Cassation, Civil Division, Order no. 4343/2026	Consistent	Failure to file the electronic affidavit of service entails incurable non-proceedability outside the scope of Article 372 and renders any cure within accelerated proceedings ineffective.
Supreme Court of Cassation, Civil Division, Order no. 27722/2026	Consistent	The public-law function of *res judicata* bars cure through non-contestation; a PEC receipt attached to a request for adjudication is untimely.
Supreme Court of Cassation, Civil Division, Order no. 34903/2025	Consistent	Serving the appeal more than sixty days after publication precludes reliance on the logical resistance test in the absence of an affidavit of service.

The comparative table clearly demonstrates the steady convergence of Supreme Court jurisprudence toward rigorous preclusive enforcement. Mandatory statutory forfeiture deadlines leave no room for discretionary flexibility. Protecting legitimate procedural expectations and ensuring expeditious cassation review require the appealing party to conduct a thorough verification of the electronic court file prior to completing entry on the docket.

04. PECUNIARY SANCTIONS, ABUSE OF PROCESS, AND CRITICAL ASSESSMENT

4.1 — Aggravated Liability under Article 96 of the Code of Civil Procedure and the Sanction Payable to the Fine Fund

The aspect carrying the greatest **financial impact** and professional responsibility within accelerated proceedings lies in the sanctioning mechanism governed by the final paragraph of Article 380-bis of the Code of Civil Procedure. That provision stipulates that whenever the Supreme Court decides the appeal in conformity with the delegated judge's proposal, the Court shall apply the pecuniary measures set forth in paragraphs 3 and 4 of Article 96 of the Code of Civil Procedure. This statutory mechanism rests upon a codified assessment of **abuse of process**, presumptively triggered where a litigant insists on full collegial adjudication despite the presence of an incurable formal defect.

In Order no. 4343/2026, the Supreme Court strictly enforced this mandate, ordering the appellant to pay an equitably assessed sum to each of the three respondents who filed counter-appeals, in addition to a pecuniary penalty payable to the public **Fine Fund** (*Cassa delle ammende*)[1]. The order thus combines a compensatory measure in favour of the opposing litigants with a public-law fiscal deterrent aimed at curbing the improper burdening of judicial dockets. Alongside these awards, the Court also declared that the statutory prerequisites were met for doubling the unified court fee.

The severity of this financial exposure demonstrates that requesting collegial adjudication cannot be treated as a routine or automatic defensive reflex. Counsel admitted to practice before the Supreme Court of Cassation is called upon to make a measured assessment of whether pursuing the appeal remains tenable. Where the reporting judge's proposal rests on an incontrovertible objective fact — such as the failure to file the **affidavit of service in Supreme Court appeals** — pressing forward with the proceedings constitutes **aggravated procedural liability** that exposes the client to substantial pecuniary consequences.

4.2 — Case-Specific Distinguishing and Litigation Strategies for Legal Practitioners

When formulating a **litigation strategy** in cassation proceedings, appellate counsel must engage in rigorous **operational distinguishing** so as to separate irreversible preclusions from situations in which the procedural sanction does not materialize. Unlike appeals served beyond the sixtieth day from publication, the rule mandating a declaration of non-proceedability **does not apply** where service of the appeal was completed within the short sixty-day time limit calculated directly from the date of publication of the judgment. Under those circumstances, the respondent cannot successfully raise **procedural objections** on this ground, since the timeliness of the challenge is objectively established by the filing date of the decision itself.

An equally **distinct procedural scenario** arises where a belated cross-appeal is left unpursued following an accelerated disposition proposal. As clarified by Supreme Court case law, where the proposal addresses both the main appeal and the cross-appeal, and only the main appellant files a request for adjudication, the cross-appeal is deemed waived and extinguished pursuant to Article 380-bis of the Code of Civil Procedure[2]. In that event, the pecuniary sanction under Article 96 payable to the Fine Fund (*Cassa delle ammende*) and the doubling of the unified court fee **do not extend** to the acquiescing cross-appellant, falling exclusively upon the party who persisted in abusive litigation.

From the standpoint of the **burden of proof** and sound case management, appellate counsel must safeguard compliance with **statutory forfeiture deadlines** from the very moment electronic service of the challenged decision occurs. The duty of electronic filing requires submitting concurrently, within twenty days from the last service of the notice of appeal, not only the judgment extracted from the digital court file bearing an attestation of conformity, but also the bailiff's return of service or the certified electronic mail (PEC) acceptance and delivery receipts complete with full certification metadata. Upon receiving an accelerated disposition proposal grounded in such an omitted filing, the sole technically rational course of action consists in refraining from requesting adjudication, thereby accepting termination of the appeal so as to avert burdensome pecuniary awards.

05. CONCLUDING REMARKS AND SYSTEMATIC PERSPECTIVES

The interpretive stance reaffirmed by the Supreme Court consolidates a rigorous conception of procedural forms, understood not as sterile technicalities but as essential safeguards ensuring equality of arms and the reasonable duration of proceedings. Timely filing of the **affidavit of service in Supreme Court appeals** stands confirmed as a primary and irreplaceable procedural burden, breach of which permanently bars access to review on points of law. Protecting procedural public policy and the finality of *res judicata* leaves no room for uncertainty regarding the timeliness of an appeal[1].

The synergy between the sanction of non-proceedability and the post-Cartabia accelerated disposition procedure shapes a regime marked by heightened preclusive stringency. The delegated judge's proposal operates as an effective judicial filter: demanding a collegial ruling in the face of an indisputable documentary omission turns the exercise of the right of defence into an undue impairment of judicial efficiency. The substantial pecuniary sanctions imposed under Article 96 of the Code of Civil Procedure reflect a firm nomophylactic commitment to deterring dilatory litigation conduct.

Ultimately, Order no. 4343/2026 delivers an unmistakable warning for appellate practice. Within electronic proceedings before the Supreme Court of Cassation, the completeness and timeliness of the party's digital file constitute indispensable requirements. The professional self-responsibility of cassation counsel plays a decisive role, demanding meticulous verification of service records and attestations of conformity from the outset of the introductory phase.

References & Authorities Cited

Statutory Provisions

- Article 369 of the Italian Code of Civil Procedure — Filing of the appeal before the Supreme Court of Cassation and list of mandatory documents required on pain of non-proceedability.
- Article 380-bis of the Italian Code of Civil Procedure — Accelerated summary disposition procedure for inadmissible, non-proceedable, or manifestly unfounded appeals.
- Article 372 of the Italian Code of Civil Procedure — Prohibition on submitting new documents in cassation proceedings and narrow statutory exceptions.

Article 96 of the Italian Code of Civil Procedure — Aggravated procedural liability for abusive litigation and pecuniary penalty payable to the Fine Fund (*Cassa delle ammende*).

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Order of 26 February 2026, no. 4343** — Failure to file the electronic affidavit of service under Article 369, paragraph 2, no. 2, of the Code of Civil Procedure entails incurable non-proceedability of the appeal, which cannot be remedied under Article 372 nor through documentary submissions attached to a request for adjudication following an accelerated disposition proposal. Outcome: declared inadmissible on procedural grounds (non-proceedable). Para.: Reasons for the Decision.

2. **Italian Supreme Court of Cassation, Civil Division, Order of 24 October 2026, no. 27722** — The public-law function safeguarding procedural *res judicata* precludes curing an omitted affidavit of service through the respondent's failure to contest; filing the certified electronic mail (PEC) message as an attachment to the request for adjudication is legally ineffective. Outcome: main appeal declared non-proceedable and cross-appeal declared extinguished. Para.: Reasons for the Decision.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 30 December 2025, no. 34903** — Where the electronic affidavit of service is absent from the digital court file and more than sixty days have elapsed from publication of the challenged judgment, the appeal is non-proceedable and cannot rely on Article 372 of the Code of Civil Procedure. Outcome: declared inadmissible on procedural grounds (non-proceedable). Para.: Reasons for the Decision.

GM

Giovanni Ercole Moscarini

AUTHOR • METODO GIURIDICO

Attorney at the Rome Bar

Practises civil law and administrative law. For Metodo Giuridico he analyses statutory developments and judicial trends across both fields.