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Subsidiary Maintenance Duty of Grandparents and Prior Enforcement Remedies

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ABSTRACT
This article examines Italian Supreme Court Order No. 2945 of 10 February 2026 concerning the substantive and evidentiary conditions governing the subsidiary maintenance duty of grandparents toward grandchildren under Article 316-bis of the Italian Civil Code. The decision confirms the dismissal of a claim against the paternal grandmother because the claimant parent failed to prove, in the lower courts, both service of the formal payment demand and further enforcement steps against known assets of the defaulting father, namely a bank account and a motor vehicle. The study contrasts this holding with precedents dispensing with prior attachment where the defaulting parent becomes deliberately untraceable, outlines the proportionate and non-joint nature of the obligation among grandparents of equal degree, and addresses the flawed defense reliance on Article 473-bis.21 of the Code of Civil Procedure alongside practical pleading requirements under Article 366.

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Subsidiary Maintenance Duty of Grandparents and Prior Enforcement Remedies

Italian Supreme Court of Cassation, Civil Division, Order no. 2945 of 10 February 2026: Proof of Enforcement Steps, Specificity of Cassation Appeals under Article 366 CPC, and Coordination with Article 316-bis Civil Code Precedents

CASE DOSSIER

COURT
Italian Supreme Court of Cassation

DECISION
Civil Division, Order of 10 February 2026, no. 2945

KEY PROVISIONS
Italian Civil Code, Article 316-bis • Italian Civil Code, Articles 147, 148, and 433 • Italian Code of Civil Procedure, Articles 360 and 366

HOLDING
dismissed the daughter's appeal against the paternal grandmother

JEL: K36, K15 • EuroVoc: 540, 2699 • Reading 10 min

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LEGAL PRINCIPLE / EDITORIAL HEADNOTE

An action under Article 316-bis of the Italian Civil Code against grandparents requires proving not only the financial insufficiency of both parents, but also the unsuccessful attempt to levy execution against known assets of the defaulting parent.

KEY TAKEAWAYS

01 Proof of enforcement steps
Where the defaulting parent owns known assets or a bank account, mere reference to a formal payment demand not produced in the merits proceedings does not trigger the grandparents' subsidiary duty.

02 Exemption for evasive untraceability
Prior attachment is not required where continuous changes of residence and employment render enforcement against the defaulting parent practically impossible.

03 Proportionate liability and adult grandchildren
The obligation binds all grandparents of equal degree proportionately without mandatory joinder and remains distinct from statutory alimony under Article 433 of the Civil Code.

04 Statutory error on ex officio powers
Counsel before the Supreme Court invoked Article 473-bis.21 CPC to demand ex officio tax police inquiries, whereas that provision governs only the appearance and conciliation hearing.

ABSTRACT

This article examines Italian Supreme Court of Cassation, Civil Division, Order no. 2945 of 10 February 2026 concerning the substantive and evidentiary conditions governing the subsidiary maintenance duty of grandparents toward grandchildren under Article 316-bis of the Italian Civil Code. The decision confirms the dismissal of a claim against the paternal grandmother because the claimant failed to prove, in the lower courts, both service of the formal payment demand and further **enforcement steps** against known assets of the defaulting father, namely a bank account and a motor vehicle. The study contrasts this holding with precedents dispensing with **prior attachment** where the defaulting parent becomes deliberately untraceable, outlines the proportionate and non-joint nature of the obligation among grandparents of equal degree, and addresses the flawed defense reliance on **Article 473-bis.21 of the Code of Civil Procedure** alongside practical pleading requirements under Article 366.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: Under Article 316-bis of the Italian Civil Code, intergenerational family solidarity operates as a statutory backup to parental maintenance duties, interacting with European standards on access to justice (Article 6 ECHR) when national courts scrutinize procedural specificity in cassation appeals under Article 366 CPC. **Comparative Common Law Lens:** Unlike UK and US family law systems, which generally restrict statutory child support obligations to legal parents without imposing enforceable secondary financial liability on grandparents, Italian *Civil Law* recognizes a proportionate, subsidiary obligation (*obbligazione sussidiaria e parziaria*) among ascendants of equal degree, strictly conditioned upon exhausting primary parental resources and enforcement remedies.

01. INTRODUCTION: SUPREME COURT OF CASSATION ORDER NO. 2945/2026 AND THE SUBSIDIARY MAINTENANCE DUTY OF GRANDPARENTS

With Italian Supreme Court of Cassation, Civil Division, Order no. 2945/2026[1], filed on 10 February 2026, the Supreme Court once again measures the evidentiary boundary of the subsidiary maintenance duty of grandparents toward their grandchildren. The dispute arises from a concrete situation of economic vulnerability, in which an unemployed mother seeks from the paternal grandmother the maintenance allowance left unpaid by the father. Dismissing the daughter's appeal against the adverse merits rulings, the Court clarifies the enforcement effort mandated by Article 316-bis of the Civil Code. That burden becomes decisive whenever the primary obligor holds identifiable assets or bank accounts.

§ 2 The ruling merits close attention because it dispels two recurring oversimplifications. On the one hand, mere **parental default** does not open recourse against grandparents without prior enforcement verification. On the other hand, the order engages with precedents dispensing with **prior attachment** in cases of deliberate evasion. The resulting framework clarifies both the evidence required in the merits courts and the procedural flaws that bar review in cassation.

02. PROCEDURAL HISTORY AND GROUNDS OF APPEAL

§ 3 At the origin of the litigation examined by Supreme Court of Cassation, Civil Division, Order no. 2945/2026[1] lies the father's failure to pay a monthly maintenance allowance of EUR 300. The father had already been stripped of parental responsibility by the Tribunal of Foggia on 25 October 2017. The mother applied for a payment decree under Article 316-bis of the Civil Code against the paternal grandmother to secure the monthly contribution for her minor daughter. After the presidential application was denied, the subsequent opposition was likewise dismissed by the Tribunal of Foggia on 4 May 2023.

§ 4 On appeal, the Court of Appeal of Bari upheld the dismissal, while shifting the decisional pivot relative to the court of first instance. Although acknowledging that the mother was unemployed, lacked public benefits, and resided in housing held under a precarious gratuitous loan, the appellate court identified a major evidentiary gap. Neither the **formal payment demand allegedly served** on 26 February 2018 nor a **negative third-party garnishee declaration** had been entered into the record. By contrast, the father held a bank account, possessed intermittent earning capacity, and owned a motor vehicle subsequently transferred to his cohabiting partner.

§ 5 Against the appellate judgment, the daughter, having reached the age of majority, lodged an appeal in cassation setting out two grounds of complaint. The first ground alleged **infringement of Articles 316-bis of the Civil Code** and 473-bis.21 of the Code of Civil Procedure, contesting the requirement to prove repeated enforcement attempts against a deliberately untraceable debtor. Within the same ground, the appellant contended that the unified family procedure effective from 28 February 2023 obliged the appellate court to order *ex officio* **tax police investigations** into the father's finances.

§ 6 The second ground alleged nullity of the judgment and **omitted examination of a decisive fact** under Article 360(1)(4) and (5) of the Code of Civil Procedure. According to the appellant, the formal payment demand of 26 February 2018 had been part of the case file since first instance. Failure to assess

it therefore amounted to misreading of evidence, rendering the reasoning merely apparent under Article 132 CPC. Examining the two grounds jointly, the Supreme Court dismissed the appeal.

03. SUBSTANTIVE PREREQUISITES, ENFORCEMENT BURDEN, AND APPORTIONMENT AMONG GRANDPARENTS

3.1 — Exegesis of Article 316-bis of the Civil Code and Financial Insufficiency of Both Parents

§ 7 The statutory analysis must begin with the wording of Article 316-bis(1) of the Civil Code, which incorporates the framework of Article 148 of the Civil Code. Today the latter provision expressly directs spouses to fulfil their duty "in accordance with Article 316-bis". In its opening sentence, parents must provide for their children "in proportion to their respective assets and according to their capacity for professional or domestic work". Only in the following sentence does the secondary tier arise. "When the parents do not have sufficient means", the statute states, "the other ascendants, in order of proximity, are bound to supply the parents themselves with the necessary means".

§ 8 The plural subject in the statutory condition grounds the rule of **shared financial insufficiency** of both parents. Invoking this framework, Supreme Court of Cassation, Civil Division, Order no. 2945/2026[1] reiterates that the subsidiary maintenance duty of grandparents does not arise from the mere default of one parent. Rather, non-payment must stem from an actual lack of resources and the other parent must be unable to meet the child's needs alone. Similarly, Supreme Court of Cassation, Civil Division, Order no. 28446/2023[2] quashed a Florence appellate ruling that had overlooked the mother's failure to claim a **foreign family allowance** of EUR 558 in Germany.

§ 9 Order no. 28446/2023 confirms the claimant parent's duty to mobilize every accessible resource, including public welfare benefits. The obligation to take legal action against a primary obligor who possesses economic means likewise remains intact. Nevertheless, partial or sporadic payments do not bar recourse against grandparents. Supreme Court of Cassation, Civil Division, Order no. 1673/2026[3] upheld a monthly allowance of EUR 100 per grandchild charged to the paternal grandfather. In that dispute, **meagre and sporadic sums** paid by the father failed to cover the children's needs alongside the mother's precarious jobs.

§ 10 A strict balance thus emerges between child protection and the autonomy of extended family units. The legal system does not convert grandparents into automatic sureties for an unpaid parental share, but requires courts to assess the combined resources and earning capacity of both parents. Only where joint parental support proves objectively inadequate, or unenforceable despite the custodial parent's initiatives, may next-tier generational solidarity be activated.

3.2 — When a Formal Payment Demand Suffices and When Attachment Against the Defaulting Parent Is Required

§ 11 To obtain maintenance contributions from grandparents under Article 316-bis of the Civil Code, the creditor parent must prove **prior attachment** whenever the obligor holds bank accounts or attachable assets. Exemption from forced execution operates instead only where the debtor renders himself **deliberately untraceable**, making enforcement impracticable.

§ 12 This juncture reveals the true boundary drawn by Supreme Court Order no. 2945/2026 relative to immediately preceding case law. In the ruling of 10 February 2026, the appellant challenged the Bari

Court of Appeal's reference to the lack of proof of repeated enforcement attempts. The Supreme Court declared the complaint inadmissible after isolating the actual *ratio decidendi* of the contested judgment. The record lacked both the **formal payment demand allegedly served** and any negative garnishee statement, even though the father held a bank account and a motor vehicle later transferred to his partner.

§ 13 The existence of assets identified by the opposing party thus shifts the evidentiary burden resting on the subsidiary claimant. A preliminary notice of payment does not suffice where the primary obligor maintains a serviceable address, performs occasional work, and owns registered property or banking relationships. In such circumstances, the claimant must prove the initiation of **further enforcement steps** beyond the formal demand. She must also establish their unsuccessful outcome.

§ 14 A different outcome was reached in Supreme Court of Cassation, Civil Division, Order no. 13345/2023[4], filed on 16 May 2023, and reaffirmed upon revocation review by Order no. 25067/2024[5], filed on 18 September 2024. In that case, the paternal grandparents challenged a monthly allowance of EUR 200 precisely on the ground that no attachments had been levied against their son's assets or bank accounts. The Court first corrected the Milan Court of Appeal's reasoning under Article 384 CPC, clarifying that the mechanism is not subrogation but **subsidiary liability**. It then dismissed the appeal because the mother lived in public housing on EUR 612 per month and could not collect owing to the father's **continuous changes of residence** and employment.

§ 15 In that setting, marked by a criminal conviction under Article 570 of the Criminal Code, Order no. 13345/2023 foregrounded a practical prerequisite. Identifying a debtor's residence and employer is indispensable to levy execution on a claim. Subsequently, Order no. 25067/2024 declared the grandparents' revocation petition inadmissible, confirming the exemption in the face of evasive conduct. Case law thereby avoids sterile formalism. It calibrates the evidentiary threshold to the concrete enforceability of the claim against the primary debtor.

THE EVIDENTIARY DIVIDING LINE ON FORCED EXECUTION

The exemption from prior attachment in Orders no. 13345/2023 and no. 25067/2024 presupposes continuous untraceability preventing identification of residence and employer. Where instead a usable address and known assets exist, Order no. 2945/2026 requires proof of unsuccessful enforcement.

3.3 — Proportionate Nature of Grandparents' Liability, Third-Party Joinder, and Limits Toward Adult Grandchildren

§ 16 Alongside prior enforcement, the application of Article 316-bis of the Civil Code encompasses economic apportionment across family branches and the temporal duration of the duty. In Italian Supreme Court of Cassation, Civil Division, Judgment no. 8980/2023[6], filed on 30 March 2023, the Court defined the nature of the obligation binding ascendants of equal degree. The duty is solidaristic and subsidiary, without forming a **joint and several obligation** under Article 1294 of the Civil Code. Each grandparent answers solely in proportion to his or her own means. The obligation is therefore **proportionate (*parziaria*)** and creates no mandatory joinder between paternal and maternal grandparents.

§ 17 This classification carries concrete procedural consequences in the same precedent. In proceedings brought by the paternal grandmother for *rebus sic stantibus* modification of the initial decree, the Court corrected the Rome Court of Appeal's reasoning under Article 384 CPC. In an autonomous modification

proceeding, parties who did not participate in the original proceeding may indeed be summoned. However, absent mandatory joinder, refusal to authorize **third-party joinder under Article 106 CPC** remains a discretionary assessment of the merits judge, without prejudice to an independent action for revision or contribution.

§ 18 As regards duration of support for adult grandchildren, Order no. 1673/2026 draws a sharp distinction between Article 316-bis and statutory alimony under Article 433 of the Civil Code, which hinges on a state of need. On remand, the Court of Appeal of Lecce had ordered Financial Police inquiries concerning two grandchildren born in 1997 and 2000. Those inquiries established up to which year they remained without sufficient income or access to welfare benefits. Upholding that scrutiny, the order clarifies that the contribution cannot extend beyond reasonable age limits and requires verification of earning capacity.

DECISION / COURT	STANCE	CORE PRINCIPLE
Supreme Court of Cassation, Civil Div., Order, 10 February 2026, no. 2945	**Strict / Dismissed**	Confirms dismissal where proof is lacking in the merits courts of both the formal demand and further enforcement steps on the father's known assets and bank account.
Supreme Court of Cassation, Civil Div., Order, 16 May 2023, no. 13345	**Exemption / Evasion**	Grandparents' liability is subsidiary rather than subrogatory; prior attachment is not required where the father continuously changes residence and employment.
Supreme Court of Cassation, Civil Div., Order, 18 September 2024, no. 25067	**Aligned**	Declares revocation against Order no. 13345/2023 inadmissible, confirming the enforcement exemption where an Article 570 Criminal Code conviction exists.
Supreme Court of Cassation, Civil Div., Order, 12 October 2023, no. 28446	**Dual Insufficiency**	Requires insufficiency of means of both parents and obliges the claimant to seek available foreign family allowances or public subsidies.
Supreme Court of Cassation, Civil Div., Judgment, 30 March 2023, no. 8980	**Proportionate / Procedure**	Classifies the duty among equal-degree ascendants as proportionate and non-joint, excluding mandatory joinder while permitting summons in revision proceedings.
Supreme Court of Cassation, Civil Div., Order, 25 January 2026, no. 1673	**Evolving / Limits**	Distinguishes Art. 316-bis from alimony under Art. 433 Civil Code, grants relief despite sporadic paternal payments, and sets temporal bounds for adult grandchildren.

04. PLEADING FLAWS, CRITICAL REMARKS, AND LITIGATION STRATEGY

4.1 — Critical Remark on Article 473-bis.21 CPC, Specificity under Article 366 CPC, and Protection of Maintenance Claims

§ 19 On the procedural level, Supreme Court Order no. 2945/2026[1] offers a twofold lesson regarding cassation drafting and applicable procedure. Reclassifying the second ground as an *error in procedendo*, the panel finds a breach of Article 366(1)(6) of the Code of Civil Procedure. The provision mandates

"the specific indication, for each ground, of the procedural acts, documents, and contracts or collective agreements on which the ground is based". Attaching the formal demand to the electronic cassation file does not suffice if its prior production in the lower courts is not proved.

§ 20 Even setting aside a formalistic reading of self-sufficiency to safeguard access to justice, the formal payment demand of 26 February 2018 was absent from the lower court records. Moreover, the complaint left untouched the second *ratio decidendi* of the contested judgment concerning the absence of **further enforcement steps** and attachment. This rigour echoes what has already been noted regarding the non-set-off of child maintenance claims[D1]. Although family maintenance enjoys strong legal safeguards, any subjective shift of liability remains bound by strict statutory prerequisites.

> ***Family subsidiarity protects children without relieving the parent from pursuing enforcement against known assets, yet cannot harden into a formal barrier when the obligor systematically evades tracing.***

§ 21 Finally, an autonomous **critical remark** is warranted regarding the defense complaint grounded in Article 473-bis.21 of the Code of Civil Procedure to invoke *ex officio* tax police inquiries. The Court dismissed this point *ratione temporis*, since the proceedings began prior to 28 February 2023. In the author's view, a manifest **error of statutory subsumption** was already present in the appeal brief. The current wording of Article 473-bis.21 CPC regulates solely party appearance and conciliation. It provides: "At the hearing, the judge hears the parties, jointly or separately, in the presence of their respective counsel, and attempts conciliation".

4.2 — Applied Distinguishing, Borderline Cases, and Practical Guidance for Counsel

§ 22 Defining the prescriptive reach of Supreme Court Order no. 2945/2026 requires a rigorous **applied distinguishing** from adjacent situations already decided in cassation. The duty to prove enforcement acts beyond a formal demand does not operate where the parent repeatedly changes residence and employment, as in Order no. 13345/2023[4] and Order no. 25067/2024[5]. Equally distinct is the scenario of partial, inadequate payments examined in Order no. 1673/2026[3]. The principle of Order no. 28446/2023[2] regarding the duty to apply for all available public subsidies also stands firm.

§ 23 A delicate **evidentiary grey area** remains open and is bound to recur in family courts. Consider the case where the defaulting parent holds a bank account with no usable balance or a vehicle devoid of residual value. In such situations, the subsidiary maintenance duty of grandparents could not be blocked by mere formal title. Nevertheless, the claimant will still have to produce a negative third-party garnishee declaration or the unsuccessful outcome of an electronic asset search.

§ 24 In terms of **practical guidance for counsel**, the custodial parent's claim under Article 316-bis of the Civil Code rests on the burden of proof under Article 2697 of the Civil Code. Counsel must file from the first instance the enforceable title and the served payment demand. Negative enforcement records, civil registry certificates, and proof of the claimant's own income insufficiency must also be produced. Before the Supreme Court, every document must be pinpointed within the lower court records pursuant to Article 366(1)(6) CPC.

§ 25 Symmetrical considerations govern the grandparents' defense within the twenty-day opposition period under Article 316-bis(3) of the Civil Code. Respondent grandparents may prove the existence of bank accounts, jobs, or attachable assets belonging to the defaulting parent. They may likewise point to unexploited resources available to the other parent. Once substantive prerequisites are established, they may seek to join other ascendants under Article 106 CPC. Under Judgment no. 8980/2023[6], a discretionary refusal still leaves open an independent action for revision or contribution.

DEFENSIVE STRATEGY AND EVIDENTIARY PRECLUSIONS UNDER ARTICLE 316-BIS CIVIL CODE

The claimant parent avoids dismissal only by filing in the merits courts proof of enforcement steps attempted against known accounts and assets, or of the obligor's continuous untraceability. Conversely, grandparents raise the existence of attachable assets, uncollected public subsidies, and proportionate contribution by other ascendants.

05. CONCLUSIONS

§ 26 In light of the analysis conducted, Supreme Court Order no. 2945/2026[1] does not narrow the subsidiary maintenance duty of grandparents toward grandchildren. Rather, the decision reinforces the concreteness of **evidentiary fact-finding** in the merits courts. Where the parent holds a bank account or known assets, grandparents are not liable absent proof of enforcement steps beyond a formal payment demand. Conversely, the exemption established by Order no. 13345/2023[4] remains intact in the face of continuous **deliberate untraceability**.

§ 27 From a family law policy perspective, it is desirable that *ex officio* investigative powers in post-reform proceedings lighten the burden of asset searches resting on the vulnerable parent. Prompt judicial verification of the primary obligor's income and accounts would safeguard children swiftly. Grandparents would thus be called upon only when the primary parental tier genuinely lacks attachable resources.

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Table of Authorities & References Cited

I. STATUTORY PROVISIONS

Italian Civil Code, Article 316-bis – Contribution to child maintenance and subsidiary duty of ascendants

Italian Civil Code, Articles 147, 148, and 433 – Parental duties toward children, cross-reference to maintenance contribution, and statutory alimony

Italian Code of Civil Procedure, Articles 360 and 366 – Grounds of appeal in cassation and duty of specific indication of procedural acts

Italian Code of Civil Procedure, Article 473-bis.21 – Appearance hearing and conciliation attempt in family proceedings

II. CASE LAW CITED

[1] **Italian Supreme Court of Cassation, Civil Division, Order of 10 February 2026, no. 2945** OUTCOME: dismissed the daughter's appeal against the paternal grandmother. PARA.: §§ 1–3 (the subsidiary duty under Art. 316-bis Civil Code requires proof in the merits courts of both the formal demand and further enforcement steps against known assets and bank accounts of the defaulting parent, alongside specificity under Art. 366(1)(6) CPC).

[2] **Italian Supreme Court of Cassation, Civil Division, Order of 12 October 2023, no. 28446** OUTCOME: upheld the second and fourth grounds of the grandparents' appeal, dismissed the first, and quashed and remanded. PARA.: §§ 6–8 (subsidiary liability arises only from objective insufficiency of both parents and requires the claimant to apply for available public benefits or family allowances).

[3] **Italian Supreme Court of Cassation, Civil Division, Order of 25 January 2026, no. 1673** OUTCOME: dismissed the paternal grandfather's appeal against the remand judgment. PARA.: §§ 4–4.4 (distinguishes Art. 316-bis from alimony under Art. 433 Civil Code, confirms relief despite meagre sporadic paternal payments, and delimits duration for adult grandchildren).

[4] **Italian Supreme Court of Cassation, Civil Division, Order of 16 May 2023, no. 13345** OUTCOME: dismissed the grandparents' appeal with correction of reasoning under Art. 384 CPC. PARA.: § 2 (liability under Art. 316-bis is subsidiary rather than subrogatory and does not require prior attachment where the defaulting parent becomes untraceable by continuously changing residence and employment).

[5] **Italian Supreme Court of Cassation, Civil Division, Order of 18 September 2024, no. 25067** OUTCOME: declared inadmissible the revocation petition against Order no. 13345/2023. PARA.: §§ 2.4–2.5 (confirms the validity of the exemption from prior attachment where evasive conduct and a conviction under Art. 570 Criminal Code prevent execution against the father).

[6] **Italian Supreme Court of Cassation, Civil Division, Judgment of 30 March 2023, no. 8980** OUTCOME: dismissed the paternal grandmother's appeal with correction of reasoning under Art. 384 CPC. PARA.: §§ 4–5 (the duty of equal-degree ascendants is proportionate and non-joint without mandatory joinder, while other co-obligors may be summoned in autonomous modification proceedings).

III. LEGAL SCHOLARSHIP CITED

[D1] Metodo Giuridico, La non compensabilità dei crediti di mantenimento del figlio [Non-Set-Off of Child Maintenance Claims]. Analysis of the protective regime and operational limits of child maintenance claims in family law

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