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ITALIAN REPUBLIC
In the name of the Italian People
THE SUPREME COURT OF CASSATION, SIXTH
CRIMINAL SECTION

Composed of: Gaetano

De Amicis, Emilia Anna

President

Giordano

Paola Di Nicola Travaglini,

Pietro Silvestri

Rapporteur

Roberta Licci

Judgment No. Section

T**

UP 18 June 2026

R.G.N. 10481/2025

has delivered the following

JUDGMENT

on the appeals lodged by

1. Fabio De Pasquale, born in Messina on 08/09/1957
2. Sergio Maria Spadaro, born in Reggio Calabria on 3 July 1976;
3. the Presidency of the Council of Ministers;

against the judgment delivered by the Court of Appeal of Brescia on 16 October 2025;

having regard to the case files and having examined the appeals;

having heard the report presented by Councillor Pietro Silvestri;

having heard the Deputy Attorney General, Dr Cristina Marzagalli, who concluded that the contested judgment be set aside without referral;

having heard Mr Gianluca Di Domenico, acting in place of Mr Gian Filippo Schiaffino, counsel for the civil party, Mr Gianfranco Falcioni, who concluded by requesting that the appeals be dismissed;

having heard Mr Salvatore Faraci and Mr Eugenio Moretti, of the State Legal Service, in defence of the civilly liable party, the Presidency of the Council of Ministers, who concluded by insisting that the grounds of appeal be upheld;

having heard Mr Fabio Federico, replacing Mr Massimo Di Noia, counsel for the defendants, who concluded by insisting that the grounds for appeal be upheld;

FINDINGS OF FACT

1. The Brescia Court of Appeal essentially upheld the judgment by which Fabio De Pasquale and Sergio Maria Spadaro were convicted of the offence under Article 328 of the Criminal Code.

According to the charge set out in the indictment, the defendants, magistrates of the Public Prosecutor's Office at the Court of Milan and presiding over the so-called Eni–Nigeria case, heard at that same Court:

- having received from Dr Paolo Storari, also a magistrate serving at the Milan Public Prosecutor's Office and, together with Dr Laura Pedio, a co-prosecutor in another criminal proceeding linked to the present case (the so-called 'Eni false conspiracy' case), information—first in the form of verbal accounts and subsequently in documentary form—the latter contained in a number of emails sent by Storari, first at the time Public Prosecutor, and forwarded by him to the defendants by email on 15 February 2021, as well as, subsequently, in a further email dated 19 February 2021 sent to them directly by Storari — sufficient to demonstrate the falsity of the evidence provided to the prosecution by Vincenzo Armanna, who had acted as a witness against the main defendants in the Eni–Nigeria trial;

- and, after receiving an express request from Storari himself, conveyed by *email* dated 19 February 2021, to submit and use a series of documents (specified in the indictment) in the so-called Eni–Nigeria trial, making them available to the Court and the defence;

- they allegedly wrongfully refused to carry out acts falling within the scope of their office which, for reasons of justice, should have been carried out without delay and, in particular, they allegedly failed to file with the Public Prosecutor's Office, for the benefit of the defence, in accordance with Articles 358 – 430 of the Code of Criminal Procedure and Article 73 of Royal Decree No. 12 of 30 January 1941, documents (specified in the indictment) obtained in the separate proceedings, known as the 'Eni false conspiracy' case, which were relevant to the assessment of the credibility of Vincenzo Armanna himself;

- the defendants are alleged to have done so in contravention of the line they themselves had previously adopted, when they had submitted evidence to the Court in support of the alleged subornation of Armanna, evidence which had also emerged in the separate proceedings referred to above (as set out in the indictment).

As regards the civil rulings, the Court of Appeal limited the compensation awarded to the civil party solely to non-pecuniary damage 'arising from the loss of a defence *opportunity*'.

2. The defendants lodged an appeal, setting out 19 grounds.

2.1. The first ground alleges a breach of the law in relation to Article 328 of the Criminal Code, on the grounds that the Court found that there had been a refusal to perform official duties, despite the fact that the two Public Prosecutors had in fact taken a decision (an official act) and had referred the final decision to the Public Prosecutor within a reasonable timeframe.

The factual background is that: a) whilst the trial was 'substantially concluded' (the trial was at the stage of the so-called 'counter-replies'), the two Public Prosecutors had received an email (19 February 2021) from Dr Storari seeking to bring to the attention of the Court and the defence counsel certain conduct summarised in a report by the Guardia di Finanza; b) the note from the Guardia di Finanza in question was merely a draft, contained no attachments, was not signed by the person who drafted it, and had not even been filed in the separate related proceedings; c) the two appellants, having assessed the matter, sent an email on 5 March to the Public Prosecutor, Dr Francesco Greco, and the Deputy Public Prosecutor, Dr Laura Pedio, – who had forwarded it without comment – informing them that they had decided not to act on the request received, namely the feared supplementary investigation, unless otherwise instructed by the Public Prosecutor, thereby delegating the final decision to the latter.

Therefore, the action which, according to the prosecution's argument, had allegedly been refused, had in fact been taken, given the responsibility and discretion of the magistrates in charge of the proceedings and, above all, the fact that their conclusions had been endorsed by the Public Prosecutor and the Deputy Public Prosecutor.

It is argued that, unless one were to consider this to have been a mandatory act – that is, that the two Public Prosecutors in charge of the Eni–Nigeria case could not have taken any action other than that requested by Mr Storari, a Public Prosecutor other than the one in charge of the proceedings – the measure was in fact carried out.

In this regard, it should be noted that the public prosecutor in charge of the proceedings could never assume the role of a mere executor of the instructions of a person unconnected with the proceedings, whoever that person may be.

Therefore, in the present case, the two objective requirements for the offence of refusal to perform official duties: refusal and non-deferability.

As regards the first requirement, it should be noted that refusal consists of a declaration, or a firm, decisive and irrevocable failure to act, and that such a declaration must be accompanied by the definitive expiry of a time limit or the loss of any possibility of safeguarding the interests specified by the law.

In the present case, the two defendants never expressed an absolute and unchangeable refusal, but merely expressed their conviction that there was no need to carry out the requested act in view of the reasons they themselves had set out, referring their opinion to the Public Prosecutor and the Deputy Public Prosecutor, who concurred with it (reference is made not only to the note of 5 March, mentioned above, but also to a *letter* from Mr Spadaro, sent also on behalf of Mr De Pasquale, to Mr Storari, in which, in response to the latter's request, it was made clear that any final decision rested with the Public Prosecutor).

It should also be noted that the requirement that the action be urgent would not be met either, because, with regard to the email of 5 March, the next hearing in the trial had been scheduled for the following 17th and, therefore, the Public Prosecutor had sufficient time to decide.

In the present case, the materiality of the offence is lacking.

2.2. The second ground alleges a breach of the law and a defect in the reasoning, in that the Court failed to state that the acts referred to in points 1 to 4 of the charge (namely *WhatsApp* messages from a Telegram *chat* between Armanna and another individual, and certain notes from Vodafone summarised in a report by the Guardia di Finanza) were never 'sent' to the two appellants by Dr Storari.

The content of these documents – the so-called 'underlying documents' – was merely mentioned, incorporated and summarised in the *Word* documents attached to the emails sent by Dr Storari on three occasions, between 14 January and 4 February 2021, to his colleagues Greco and Pedio, or in the draft note from the Guardia di Finanza which Dr Storari himself had forwarded on 19 February 2021 to the two appellants in the present case.

In reality, these were documents drawn up by Dr Storari himself, in which he highlighted a series of circumstances deemed relevant to formulating 'a draft amounting almost to a request for a precautionary measure for slander' against Armanna and two other individuals; it should be emphasised that the documents referred to in the indictment against defendants 1 to 4 were never received by the current defendants.

On this issue – which is significant and was raised on appeal, namely whether the two defendants ever had access to the documents which, according to the prosecution's case, they did not file in the Eni–Nigeria proceedings – both judgments on the merits are either silent or evasive (there is a section of the appeal demonstrating this point).

2.3. The third ground alleges that the contested judgment is null and void on the grounds of a breach of Article 25 of the Constitution – Article 7 of the ECHR and Article 328 of the Criminal Code, in conjunction with Article 430(1) of the Code of Criminal Procedure, on the grounds that the Court of Appeal held that the Public Prosecutor had a legal obligation to carry out supplementary investigative measures, the omission of which would constitute the alleged offence.

It is argued that, according to the Court of Appeal, the obligation to file documents which, in the present case, is alleged to have been breached, derives from Articles 430, second paragraph, and 358 of the Code of Criminal Procedure.

This is a legally erroneous assumption.

The appellants argue, in fact, that: 1) the second paragraph of Article 430 of the Code of Criminal Procedure refers exclusively to documentation obtained at the behest of the Public Prosecutor conducting the proceedings through the supplementary investigative measures referred to in the first paragraph of that same article; 2) there is no connection between Article 358 and Article 430 of the Code of Criminal Procedure, as these provisions relate to different stages of the proceedings.

The interpretation given by the Court of Appeal would conflate different aspects and, in breach of Article 25 of the Constitution and Article 7 of the ECHR, would render the provision

referred to in the first paragraph of Article 430 of the Code of Criminal Procedure null and void, would extend the scope of the aforementioned Article 358, and would amend, *to the detriment of the accused*,

the provision supplementing the criminal provision referred to in Article 328, first paragraph, of the Criminal Code

It is emphasised that:

- a) the first paragraph of Article 430 of the Code of Criminal Procedure refers to a mere discretion and not to a legal obligation – ‘may be carried out’;
- b) the offence referred to in Article 328 of the Criminal Code would require a mandatory and cannot be postponed: ‘the refusal must be unjustified and the act must be performed without delay’;
- c) the refusal referred to in Article 328 of the Criminal Code cannot be established in relation to the failure to perform a discretionary act, that is, an act in respect of which the public prosecutor has the power to determine both the *manner* and the *timing*;
- d) the Court erroneously denied that, in the present case, the public prosecutor had absolute discretion; however, in reality, it failed to specify the underlying provision establishing the obligation to act, which would limit the provisions of the first paragraph of Article 430 cited above;
- e) the reference to the mandatory nature of criminal proceedings would also be inappropriate and, similarly, the reference to Constitutional Court judgment No 96 of 1997 would be incorrect; Article 358 cited would apply only during the preliminary investigation stage and would serve solely to ensure the public prosecutor’s correct decisions regarding the bringing of criminal proceedings;
- f) Furthermore, the Court’s assertion that, if one were to follow the defendants’ line of reasoning, one would have to conclude that, even if the public prosecutor became aware of conclusive evidence of the defendant’s innocence, he would still not be under an obligation to ‘file’ it, given that, on the contrary, the proper exercise of discretion would, in such a case, lead to the filing of that evidence (the public prosecutor would take the measure to secure the evidence (Article 430(1)) and notify the parties of its filing (paragraph 2));
- g) in the case in question, on the one hand, the discretion would have been exercised through assessments summarised in the note of 5 March, – as mentioned above – which set out the factual and legal grounds suggesting that the material reported by Dr Storari should not be acquired; and, on the other hand, this would not constitute conclusive evidence of innocence, as this had been ruled out by the trial judges themselves;
- h) the first paragraph of the aforementioned Article 430 not only confers a discretionary power but, indeed, limits it by prohibiting its exercise in certain cases ‘even if it were conclusive evidence of innocence’ (the reference is also to Article 430-*bis* of the Code of Criminal Procedure).

2.4. The fourth ground alleges a breach of multiple provisions, in that the Court held that the public prosecutor at the hearing has a legal obligation to file in his own case file trial findings made by another judge and brought to his attention.

The reference is, in addition to Article 70 of Royal Decree No. 12 of 1941, to Articles 53 and 430 of the Code of Criminal Procedure.

which are said to have a legal basis in supranational provisions as well.

The aforementioned Article 53 concerns the full autonomy of the public prosecutor during the hearing and, therefore, his independence in decision-making; the first paragraph of Article 430 is said to serve to confirm the first provision.

The Court of Appeal is said to have erroneously held that those documents, highlighted by Dr Storari, were of benefit to the defendants and that the two appellants had no freedom of choice, as they were compelled; in maintaining this, the Court “interferes drastically with the very procedural decisions that had been taken by the two Public Prosecutors”; it should be noted that the judgment itself, in a contradictory manner, limited the obligation to produce documents—with regard to the dozens of documents cited in the Financial Police’s report, to which Dr Storari referred—only to those specified in the indictment, thereby itself recognising a discretionary power of selection.

2.5. The fifth ground alleges a breach of the law in relation to Article 358 of the Code of Criminal Procedure, in that the Court held that this provision, ‘even in the light of the reform of the so-called fair trial, applies also during the trial, inasmuch as the Public Prosecutor always acts in the interests of justice’.

The issue is as set out above.

It should be added that: a) as held by case-law and legal doctrine, the provision referred to in the aforementioned Article 358 – the breach of which is not subject to any procedural sanction

– does not concern the right of defence and the principle of impartiality, but rather the proper conduct of proceedings for the prosecution of criminal offences, and does not fall ‘among the mechanisms designed to realise the principle of equality between the prosecution and the defence at every stage and level of the proceedings’ (Constitutional Court judgment No. 96 of 1997); b) the provision would apply only to the preliminary investigation stage, to the suspect and not to the accused, and would therefore be incompatible with Article 430 cited above; c) the public prosecutor’s decision as to whether or not to carry out certain activities would be beyond review.

Nor could any different conclusions be reached by reference to Article 111 of the Constitution and Article 73 of Royal Decree No. 12 of 1941, as these are provisions of general principle which, owing to their general nature, would not be suitable to serve as supplementary non-criminal provisions defining the offence in question.

2.6. The sixth ground alleges a breach of the law in relation to Article 328 of the Criminal Code and Article 25 of the Constitution, on the grounds that the Court held that the public prosecutor in charge of the proceedings was under an obligation to file documents and records resulting from investigations carried out by another public prosecutor in a different set of proceedings, which, moreover, were never forwarded.

It is argued that only the documentation relating to supplementary investigative activities which the trial prosecutor decides, at his or her discretion, to carry out must be filed pursuant to paragraph 2 of the aforementioned Article 430: ‘documentation relating to the activities indicated in paragraph 1’.

The obligation to file such documents would arise only if and when the public prosecutor in charge of the trial decides to carry out supplementary investigative activities and, therefore, not – as the Court of Appeal held – in respect of activities carried out by another judge in separate proceedings.

In the present case, as the public prosecutor in charge of the proceedings had decided not to carry out any supplementary investigative activities, no obligation to file existed.

It should be added that, with regard to the investigative activities carried out in another set of proceedings by another magistrate, the obligation to file would have arisen only if the public prosecutor in charge had requested that his colleague provide the material or, in the event of the results of the parallel investigation being forwarded without a prior request, if the public prosecutor had nevertheless ordered that the material be included in his own file.

In this regard, the assertion contained in the contested judgment – that there is a complete equivalence between the conduct of supplementary investigative activities by the trial prosecutor and the transmission of documents from another proceeding, and therefore that such supplementary activities were in fact carried out by another prosecutor – would be incorrect (in this regard, legal scholarship is cited and it is argued that a judgment of the Court of Cassation relied upon by the Court of Appeal – No. 31512 of 2012 – is irrelevant; it is contended, however, that this judgment actually serves to confirm the defence's arguments).

2.7. The seventh ground alleges a breach of the law and a defect in reasoning regarding the finding of liability.

The premise is that, for the alleged offence to have been committed, the act in question must have been 'required' and the refusal must have been unjustified; therefore, it is argued, cases in which the conduct nevertheless complied with another provision of law would be irrelevant.

In the present case, not only was the act not required, but there were numerous legal grounds for considering that other provisions existed which did not permit the acquisition and filing of those documents and the subsequent filing.

In particular, as early as in the note of 5 March, referred to above, the appellants had highlighted how, in addition to a series of errors and the non-decisive nature of the evidential value, the so-called 'underlying' documents to the draft prepared by the Guardia di Finanza could not be filed by them on the basis of the final part of the first paragraph of Article 430 of the Code of Criminal Procedure.

On this point, the Court of Appeal erroneously held that the reference in question was irrelevant because: (a) the telephone had been voluntarily handed over by Armanna following a production order; (b) Armanna had not yet been under investigation for the offence of slander; (c) the investigations in question had been carried out in separate proceedings concerning different charges and individuals.

On this point, however, reference is made to the principle established by the Joint Divisions in judgment No. 8 of 23 February 2000, Romeo, according to which 'new evidence obtained by the public prosecutor after the delivery of a judgment dismissing the case may be used for the purposes of setting aside that judgment and subsequently applying a personal precautionary measure against the acquitted defendant, provided that such evidence was obtained *from other sources* during investigations unrelated to the proceedings already concluded, or stems from other proceedings, or was discovered by chance or voluntarily provided, and in any event is not the result of investigations aimed at verifying and further examining the facts that emerged.

It is argued that, in the so-called 'Eni – Complotto' proceedings, investigations were in fact being carried out specifically to verify and examine in greater depth the evidence that had emerged in the 'Eni – Nigeria' trial: thus, not evidence gathered incidentally or found by chance, but activity falling within the scope of the latter part of paragraph 1 of Article 430 of the Code of Criminal Procedure.

The Court of Appeal's assertion that Armanna had not yet been under investigation in the Eni – Conspiracy case, given that Mr Storari had sent Prosecutor Greco and Deputy Prosecutor Pedio a draft application for a precautionary measure on grounds of slander against Amara and Armanna, from which it clearly emerged that Storari himself could only have applied for the precautionary measure against those individuals insofar as they were entered in the register of reported offences.

From a further perspective, it should be noted that the two proceedings could not be regarded as distinct because, on the contrary, the investigations carried out in the so-called 'Eni – Conspiracy' proceedings were aimed precisely at verifying and examining in greater depth the evidence that had emerged in the 'Eni – Nigeria' trial: in this regard, it should be noted that the request for the handover of the mobile phone, which contained the chat messages that were to have been admitted as evidence in the 'Eni - Nigeria trial, had arisen from the fact that on 2 November 2020 a journalist had presented himself at the Public Prosecutor's Office and produced a series of chat messages "which had been handed over to him by Armanna and which concerned conversations between the latter, Descalzi and Granata, in which the Eni executives guaranteed his reinstatement".

Therefore, the request for the handover of the mobile phone was intended to verify the authenticity of these chats and, consequently, to reveal, on the one hand, the falsity of Armanna's statements in the Eni - Nigeria trial, and, on the other hand, the slander constituting the offence at the centre of the linked Eni – Conspiracy proceedings: it should be added that investigations had been carried out which were unrelated to the Eni – Conspiracy trial and the offence of slander but which were, instead, intended to establish Armanna's credibility in the Eni - Nigeria trial.

2.8. The eighth ground alleges a breach of the law in relation to the judgment on liability, on the grounds that the Court held that there was a legal obligation on the part of the

defendants to request and file documents obtained unlawfully in the so-called 'Eni-Conspiracy proceedings.

The argument is that the current defendants were convicted for failing to file, in the Eni-Nigeria proceedings, documents which, according to the Court of Cassation, could not even have been filed in the proceedings in *question*, namely the Eni-Conspiracy proceedings.

In the so-called 'Conspiracy' proceedings, the defence teams for Descalzi and Granata had requested that, amongst other things, the very chat messages referred to in points 1, 2 and 3 of the charge be filed, and the Public Prosecutor and the Judge for Preliminary Investigations had rejected that request; An appeal to the Court of Cassation was lodged against that rejection, and the Court of Cassation upheld the rejection of the appeal: consequently, in the 'Eni - conspiracy' proceedings, no chat messages other than those sent by Armanna himself to the journalist could be admitted.

In the present case, however, according to the Court of Appeal, the full contents of Armanna's mobile phone should have been obtained and examined and, in particular, the other *chats* – those subsequently sent by Dr Storari, relating not to the relations between Armanna, Descalzi and Granata, but between Armanna and other individuals referred to in the charge – should also have been 'downloaded'.

The extraction of chats from Armanna's mobile phone was a procedure which Dr Storari had requested in the Eni-Nigeria proceedings but which had already been deemed *unlawful* in the *original* proceedings.

Such an *unlawful* act could not have constituted the basis for a to obtain and file the evidence in another set of proceedings.

2.9. The ninth ground alleges a defect in reasoning regarding the misrepresentation of the evidence.

The Court's assertion that the defence's argument—according to which the *chats* indicated by Dr Storari could not have been filed 'because they were extracted following a forensic copy still under examination'—is unfounded is erroneous; according to the Court, however, the technical examination of Armanna's mobile phone began on 12 November 2020 and ended the following day: 'the judicial police records also state that these technical operations were suspended in order to resume in "full file system" mode, but that this did not mean that the examination was still ongoing in March 2021' (as stated in the judgment).

The appellants, on the other hand, contend that the content of the documents 'would suggest the opposite'; an examination of the report on the delegated non-repeatable technical examinations of 18 January 2021 — which is attached — would appear to confirm that, with regard to the devices handed over by Armanna, 'the Public Prosecutor deemed it necessary to carry out further non-repeatable technical examinations on the same device that had been examined on 12 November 2020'; it is further noted that the report of 8 April 2021 also attests, on the one hand, that on 12 and 13 November 2020,

‘forensic copying operations ... were suspended on 13 November 2020’ and, on the other hand, that the subsequent operations carried out on 18 January 2021 ‘were unsuccessful and will continue today’.

Furthermore, reference is made to the minutes of 20 July 2021, which acknowledge a notice, pursuant to Article 360 of the Code of Criminal Procedure, issued on 15 July 2021 regarding the examination of the device handed over by Armanna.

Finally, in the order of 21 July 2021 appointing the technical expert, Dr Pedio herself had decided to carry out further investigations ‘following the completion on 20 July 2021 of the forensic data acquisition procedures’ from Armanna’s telephone.

Therefore, contrary to the findings of the Court of Appeal, the examination of Armanna’s telephone had not been completed on 13 November 2020 but on 20 July 2021: at the time the two appellants became aware of the existence of Armanna’s chat messages, they also learnt that investigations under Article 360 of the Code of Criminal Procedure were still ongoing in the ‘Eni-Complotto’ proceedings.

It is therefore argued that, where data extraction from an electronic device is underway as part of a technical procedure under the aforementioned Article 360 – a procedure which cannot be concluded because it has been suspended – it would not be possible to transfer the digital evidence from that device to another trial, as the extraction process is still ongoing.

2.10. The tenth ground alleges a breach of the law in that the Court held that there was an obligation to produce the *data* contained in a mobile phone without, however, there having been a specific prior seizure order, as well as a defect in reasoning regarding the alleged common knowledge of the possibility of extracting a single *chat*.

In the present case, there was only a seizure order relating to the chat between Armanna, Granata and De Scalzi, and not for the other *chats*.

According to the Court, however, the messages relating to *the other chats* were admissible because, on the one hand, such acquisition ‘had been preceded by a seizure order or, in any event, by the proper acquisition of their storage device’ and, on the other hand, the possibility of extracting individual chats from a forensic copy was well known.

The defence’s argument is that ‘the other’ chats could not have been obtained in the absence of a specific seizure order relating to them and that, therefore, they could not be obtained either in the conspiracy proceedings – as the Court of Cassation had clarified – or in the other proceedings.

2.11. The eleventh ground alleges a breach of the law in that the Court held there was an obligation to produce the documents specified in the indictment during the 2021 reply phase, after the Court of First Instance, a year earlier, had emphasised that any such request must meet the requirement of decisiveness.

According to the Court, this issue – namely, that the Court of First Instance had placed limits on the expansion of the preliminary investigation – was refuted by the ‘extensive documentary evidence submitted by the appellant public prosecutors on 21 January 2021’.

The appellants’ argument is that the fact that the public prosecutors in the Eni–Nigeria case had considered the documents, which they had requested to be admitted, to be decisive, would in no way preclude those same public prosecutors from considering the documents specified in the indictment to be non-decisive; It should be added that by February 2021 the situation had changed further, as the hearing phase had also concluded and the court was awaiting the closing arguments.

The defendants, therefore, had simply complied with what the Court had ruled, and the wording of the indictment itself does not in any way define those documents – which, according to the prosecution, should have been admitted – as decisive, but merely as relevant.

In this regard, it is emphasised that Prosecutor Greco himself had considered those documents to be non-decisive.

2.12. The twelfth ground alleges that the judgment is null and void in relation to Articles 522 and 604(1) of the Code of Criminal Procedure, on the grounds that the defendants were convicted of an offence different from that described in count 2 of the indictment, which was entirely amended at the hearing on 20 February 2024, following the examination of Colonel Seragusa.

It had been argued on appeal that the Court had drafted its reasoning by referring to the original charge rather than the amended one.

The Court rejected this ground of appeal, on the one hand, considering the argument to be overcome in light of a highly detailed preliminary investigation, and, on the other hand, citing a judgment of the Court of Cassation according to which the appeal court may remedy even the absolute lack of grounds in the first-instance judgment by virtue of its powers of full jurisdiction, that is to say, by drawing up the missing grounds in full.

In reality, this would be an erroneous reference, as the first-instance judgment was not devoid of reasoning but had provided a complete statement of reasons, albeit in relation to a different fact.

The Court should have declared the judgment null and void pursuant to Article 604 of the Code of Criminal Procedure.

2.13. The thirteenth ground alleges a breach of Article 25 of the Constitution and Article 7 of the ECHR, on the grounds that the Court provided an unprecedented and not reasonably foreseeable interpretation of the offence of refusal to perform official duties, having convicted the defendants for the failure to fulfil an obligation which, at the time of the conduct in question, was not provided for by law.

In the present case, the principles of predictability, accessibility and the ability of the public prosecutor to be aware of the legal requirement were allegedly breached; indeed, there is not even a single judgment convicting a public prosecutor of the offence under Article 328 of the Criminal Code for failing, during the trial, to file supplementary investigative material gathered in another proceeding; the

denied the public prosecutor's discretion, nor has any public prosecutor ever been convicted for failing to submit documents which were not even available to them.

This is, therefore, an unprecedented and not reasonably foreseeable interpretation.

2.14. The fourteenth ground alleges a breach of the law in that the Court held that the submission of the Bigotti video (referred to in point 5 of the indictment), which took place in July 2019, constituted a refusal to submit a document of criminal relevance, despite the trial having continued until 17 March 2021.

Unlike the others, this is a document that was actually filed, and it should be added that the indictment itself formally specifies 17 March 2021 as the deadline for the performance of the act.

On this point too, the judgment is flawed.

2.15. The fifteenth ground alleges a breach of the law and a defect in reasoning, in that the Court held that the Bigotti video should have been filed earlier; a statement which fails to take account of the agreement reached between the parties, as mentioned above, and despite the fact that three other proceedings

— one in Messina, another in Milan and another in Rome — in which that video constituted a piece of evidence.

Therefore, the refusal was not unjustified, given the agreement between the parties — which had also been reached with the Court at the start of the trial — not to allow issues specific to the Eni – Conspiracy proceedings to 'enter' the trial.

According to the Court, however, there had been no such agreement; this assertion, however, is contradicted by the Court's own statement, namely that the agreement had existed but had in fact subsequently 'fallen through' when, on the eve of Armanna's examination, the Public Prosecutors had carried out 'a wide-ranging investigation under Article 430 of the Code of Criminal Procedure'.

A contradictory argument on a matter that also affects the determination of criminal intent.

The judgment also appears to have downplayed the significance of that video in the other pending proceedings; a video which, moreover, had not even been submitted in its entirety.

2.16 The sixteenth ground alleges a defect in the reasoning regarding the finding of liability; the issue concerns the proof of intent: this ground refers to all the previous arguments.

2.17. The seventeenth ground alleges a breach of the law and a defect in the reasoning due to the erroneous application of the adverb 'unduly' referred to in Article 328 of the Criminal Code.

This adverb would also influence the assessment of intent, as it would emphasise the need for awareness that one is acting in breach of the duties imposed; in this case too, the arguments are reiterated aimed at demonstrating that there were a number of statutory provisions which prevented the defendants from believing that there was a legal obligation to

request and file the documents specified in the charge and that, therefore, carry out supplementary investigative work.

The Court's assertion that the appellants' the appellants' incorrect assessment of the non-criminal provision, namely the obligation to file.

2.18. The eighteenth ground alleges a defect in reasoning regarding the finding of intent in relation to points 1 and 2 of the indictment.

The issue concerns the significance of the note, already mentioned, by which on 5 March the two responded in writing to Dr Storari's request.

A note, as already mentioned, addressed to the Public Prosecutor and the Deputy Public Prosecutor, which the Court erroneously deemed to corroborate the existence of intent.

It is argued, however, that in that note the two defendants set out the reasons why, at that time, they believed that those elements did not constitute something that could genuinely contribute to the parties' case and that would be of decisive importance in the Eni Nigeria trial (there is a lengthy account of this point).

2.19. The nineteenth ground alleges a defect in the reasoning regarding the finding of evidence of criminal intent in relation to points 3–4 of the charge. The issue is essentially the same.

3. The Presidency of the Council of Ministers has also lodged an appeal to the Court of Cassation, in its capacity as the civilly liable party.

This appeal is divided into two parts.

The first concerns the establishment of the offence, the existence of which is denied both in theory and in practice.

Two grounds of appeal have been put forward.

3.1. The first alleges a breach of the law and a defect in reasoning in relation to the finding of liability and the establishment, even in the abstract, of the alleged offence.

It is argued that the act in question is no longer classified as an offence under the law; the issue concerns the relationship between Article 328 of the Criminal Code and Article 3 of Law No. 117 of 13 April 1988, which defines the so-called 'denial of justice', which, pursuant to Article 2 of that same Law, constitutes a basis for liability on the part of magistrates.

Article 3 provides: "Denial of justice constitutes the refusal, omission or delay by a judge in performing acts of his or her office where, once the statutory time limit for performing the act has elapsed, the party has lodged an application to obtain the order and thirty days have elapsed without result, without justifiable cause, from the date of filing with the registry. If no time limit is specified, thirty days must in any event have elapsed without result from the date on which the application seeking the order was filed with the registry."



The applicant's argument is that there is an overlap between the circumstances referred to referred to in Article 3 of the aforementioned Act and that referred to in the first paragraph of Article 328 of the Criminal Code.

In particular, it cannot be argued that the two offences govern different areas and are therefore not incompatible with one another, having regard, moreover, to Article 13 of Law No. 117 of 1988, which excludes the applicability of the special provisions on civil liability where the act constitutes a criminal offence: it should be noted that this would, in effect, render Article 3 inapplicable, because the offence of obstruction of justice would always constitute the criminal offence of refusal or omission to perform official duties.

The relationship between the two provisions should, however, be governed by the principle of speciality under Article 15 of the Criminal Code; consequently, in the present case, the provision set out in Article 3 of Law No. 117 of 1988 should prevail, as it is the special provision.

Historical grounds, which are set out in a detailed and precise manner, would also support this view.

3.2. The second ground alleges a breach of the law and a defect in the reasoning in relation to the finding of liability and the concrete elements constituting the alleged offence.

The issue, albeit with different nuances, is the one already discussed; there was no obligation to file the documents and there was no intent.

4. The second part of the appeal, on the other hand, concerns the civil aspects, and four grounds have been set out.

4.1. The first ground alleges a breach of the law and a defect in reasoning; the issue concerns to the right to be sued.

Law No. 117 of 1988 excludes its application in cases where, as in the present case, the basis for the magistrate's civil liability constitutes a criminal offence; the Court of Appeal is alleged to have breached Article 13 of the Act in question by holding that that provision does not derogate from the general rule set out in Article 4 of the same Act, namely the provision establishing the general standing of the Presidency of the Council of Ministers.

In particular, Article 13 of the Act provides:

"Any person who has suffered damage as a result of an act constituting a criminal offence committed by a judge in the exercise of his or her duties is entitled to compensation from the judge and the State. In such a case, the civil action for compensation for damage and its pursuit, including against the State as a civilly liable party, are governed by the ordinary rules".

As the provision refers to the ordinary rules, it would refer to Article 2049 of the and, therefore, the party liable to the claim for compensation should be deemed to be the employer, in its capacity as the appointing authority, that is to say, the Ministry of Justice alone.

Article 328 of the Criminal Code itself is intended to protect the public administration alone, which, in this case, would consist of the Ministry of Justice, which, moreover, would be the victim of the offence.

4.2. The second ground alleges a breach of the requirement that the claim and the judgment correspond, as the Court ordered the Administration to pay compensation for damage that had never been claimed, the civil party having limited itself to seeking compensation for pecuniary damage and non-pecuniary damage consisting of damage to its image and reputation.

Thus, there was no reference to non-pecuniary damage arising from the loss of a defence *opportunity*, and the Court is alleged to have breached Article 112 of the Code of Civil Procedure.

4.3. The third ground alleges a breach of the law in relation to the burden of proof. The argument is that even if that 'evidential' material had been filed, the position of the civil party, Falcioni, would not have changed significantly, as it would have consisted of documentation relating to circumstances entirely unrelated to his case.

In other words, the existence of that *opportunity* would have had to be proven, just as the causal link between the conduct and the injured party's defence *opportunities* would have had to be proven.

4.4. The fourth ground alleges a breach of the law regarding the civil party's legal costs, which were ordered to be borne by the defendants and the civilly liable party in equal shares of 50 per cent, whilst failing to rule on the costs of the first-instance proceedings.

5. The defendants have submitted seven new grounds of appeal, which revisit and further develop the issues underlying the original grounds of appeal.

LEGAL CONSIDERATIONS

1.1 The appeals are well founded.

2. It is worth noting at the outset that the subject matter of the proceedings does not concern the assessment of the general propriety of the conduct of the two appellants or the non-negotiable duty of loyalty and impartiality on the part of the Public Prosecutor.

The issue concerns criminal law and the specific nature of the offence provided for in Article 328, first paragraph, of the Criminal Code: the question is whether the conduct actually exhibited by the two defendants falls within the scope of the alleged offence.

Not every possible breach of the duty of fairness in itself constitutes a criminal offence.

3. The case is based on a fundamental premise, namely that the two defendants were obliged to make available to the parties to the Eni-Nigeria proceedings those 'elements' referred to by Dr Paolo Storari, who, together with Dr Laura Pedio — Deputy Public Prosecutor at the Public Prosecutor's Office attached to the Court of Milan — in the related proceedings known as the 'Eni conspiracy' case.

The appellants were allegedly obliged to do as Dr Storari requested because those elements were objectively relevant to the defence, in that they were capable of undermining the stability of the prosecution's case on which the Eni–Nigeria trial was based and, conversely, demonstrated the bias and, therefore, the unreliability of certain key witness statements in that trial.

By breaching this obligation and failing to make these 'documents' available to the parties, the defendants allegedly refused to perform a duty which, for reasons of justice, should have been carried out without delay.

4. What must therefore be ascertained is, first and foremost, whether, from an objective standpoint and

in terms of the legal characterisation of the offence:

- were the two defendants obliged to obtain the 'documentation' that Dr Storari had indicated, that is to say, whether such acquisition was a duty, mandatory and necessary;
- whether, in the present case, there was a criminally relevant refusal on the part of the two appellants to carry out that act;
- whether, if so, that refusal was unjustified.

These are issues that must be assessed individually.

5. As regards the first of the issues raised, namely that relating to the mandatory nature of the act which the defendants allegedly refused to perform, the Court of Appeal explained why, from a legal standpoint, the act would have been obligatory.

This is a line of reasoning which the appellants have criticised at length and which, as already mentioned, centres on the interpretation of Articles 358–430 of the Code of Criminal Procedure, as well as Article 111 of the Constitution; it is a detailed line of reasoning, developed through a step-by-step argument with intermediate stages, as has already been discussed.

6. In reality, this line of reasoning cannot be accepted for several reasons relating not only to the correct application of criminal law with regard to Article 328, first paragraph, of the Criminal Code, but, above all, to the procedural rules referred to by the trial judges and indicated above.

In general, with regard to Article 328, first paragraph, of the Criminal Code, it is not disputed that refusal necessarily implies the expression of a will not to perform the act; a will that may be expressed in any form: orally, in writing, in a solemn or formal manner, but also implicitly; however, it must always consist of conduct capable of indicating the agent's negative will (Section 6, No. 2339 of 21 January 1998, Genco, Rv. 209979).

The act that is refused is of criminal significance because it 'must' be carried out without delay; that is to say, it is an act which, for reasons of justice or public safety, or of

or hygiene and public health, the public official 'must' carry out in such a way as to achieve the effects specific to it in relation to the interest being protected.

Such acts are not, in other words, all those generically related to reasons of justice, but only those which, for such reasons, 'must' be carried out promptly (see Section 6, No. 42589 of 26 February 2009, B, Rv. 245000-01; Section 4, No. 19358 of 6 March 2007, Masotti, Rv. 236609-01; Section 6, No. 5596 of 11 February 1999, Sammartino, Rv. 213899-01).

Therefore, acts that are obligatory, to be performed without delay for reasons of justice: acts that are binding, at least in their issuance, which the public official must necessarily perform; the obligatory nature of the act exists not only in cases where, as in the present case, there is a subjective request that takes the form of a demand to which the active party's conduct constitutes an unjustified refusal, but also in those where, irrespective of the existence of a request or an order, there is a substantial urgency requiring the act to be performed, made evident by facts so objective that the public official's failure to act amounts to a refusal.

The issue arises with particular significance, as in the present case, in relation to acts in criminal proceedings which are not, however, covered by mandatory protocols; that is to say, acts which are discretionary and which, nevertheless, appear necessary not so much in terms of the decision to carry them out as such, but rather by virtue of the progressive development of the proceedings, their outcomes, and the pursuit of the general investigative aims of the criminal trial.

These are procedural acts that remain discretionary in nature, in respect of which the law normally provides not for procedural invalidity but for forms of oversight relating to the efficiency and functionality of the investigation, its long-term viability, the lawfulness of the public prosecutor's conduct, and the latter's responsibilities, which, as will be discussed, take various forms (on this subject, Section 6, No. 42589 of 26 February 2009, B, cited above).

In the present case, the Court of Appeal held, as mentioned, that a procedural act – the filing of the documents and records transmitted by Dr Storari – was beyond any discretionary assessment by the two appellants in this case precisely because it served the necessary investigative purposes of the proceedings.

A procedural act which, for systemic reasons linked to the purpose of the trial, the sanctity of its fact-finding function, the principle of equality of the parties and the right to be heard, should in any event have been carried out without delay; a duty linked to such fundamental principles, the failure to comply with which would have constituted an unjustified refusal.

The source of this obligation, of this self-evident duty, was found essentially in Articles 358 and 430 of the Code of Criminal Procedure.

7. As regards Article 358 of the Code of Criminal Procedure, Law No. 81 of 16 February 1987, entitled

‘Legislative authorisation to the Government of the Republic to enact the new Code of Criminal Procedure’, had prescribed the implementation in criminal proceedings of the features of the

‘adversarial system, in accordance with the principles and criteria’ specifically set out (Article 2, paragraph 1, nos. 1–105): among these, the ‘power and duty of the public prosecutor to conduct investigations for the purposes of bringing criminal proceedings and ascertaining specific facts, including evidence favourable to the defendant’ (Article 2, paragraph 1, no. 37).

The criterion of delegation was, however, incorporated through two distinct provisions: the public prosecutor ‘carries out all activities necessary for the purposes set out in Article 326’ (i.e. for decisions relating to the prosecution: Article 358 of the Code of Criminal Procedure, first clause) ‘and also carries out investigations into facts and circumstances in favour of the person under investigation’ (so-called investigations in favour of the suspect: Article 358, second clause). It has been correctly noted in legal scholarship that whilst the delegating provision constructed the public prosecutor’s power to conduct investigations in a unified manner for the purposes of bringing criminal proceedings (a unified meaning made explicit by the phrase ‘including’ elements favourable to the accused), the provision set out in Article 358 appears, on the other hand, to be interpreted in a multifunctional sense (in this regard, the repetition of the conjunction and adverb: ‘and also carries out’).

It has been pointed out that whilst the literal meaning of the enabling provision clearly allows elements favourable to the defendant to be included within a unified function of the investigations—that is, one instrumental to the prosecution and the ascertainment of , the statutory in the Code, seems, instead, to distinguish between the activities necessary for decisions relating to the conduct of criminal proceedings and the investigations in favour of the person under investigation, which are textually placed alongside the former without, at least explicitly, sharing their objectives. It has been lucidly pointed out once again that what the enabling act expressed in almost comprehensive terms (using the phrase ‘including’) has been translated in the Code into a sort of juxtaposition, thereby accentuating a not inconsiderable divergence.

It is precisely this divergence that gave rise to and developed the idea that the public prosecutor’s activities – and, in particular, those conducted ‘in favour’ of the suspect – are not merely functional to decisions on criminal prosecution: in carrying out investigative activities ‘in favour’ of the suspect, the public prosecutor fulfils different obligations and is guided by principles that are distinct from and additional to those relating to the exercise of criminal prosecution.

This line of reasoning appears, to some extent, to corroborate the prosecution’s arguments accepted by the trial judges in the present case, as it would, in theory, make it possible to establish an obligation – namely, that of conducting investigations in favour of the suspect – which is independent of decisions relating to the prosecution of the case and which is, instead, underpinned by other values and principles that, in this instance, are alleged to have been breached.

8. This is an approach which, however, stands in contrast to the line taken by the Constitutional Court, which, as early as in Judgment No. 88 of 1991, explained the meaning and scope of the principle of the general completeness of preliminary investigations.

On that occasion, the Court emphasised that Articles 326–358 of the Code of Criminal Procedure should be interpreted as a unified whole and not in isolation; in particular, with regard to the identification of evidence, reference was made to a twofold fundamental function within the structure of the new proceedings: on the one hand, ‘to enable the public prosecutor to exercise the various available options’ and ‘to induce the defendant to accept alternative procedures’; on the other hand, to curb ‘practices involving the “apparent” exercise of prosecution’, since initiating judicial review on the basis of ‘investigations that are too superficial, incomplete or lacking’ would have resulted in an ‘unjustified increase in the burden of the trial’.

A judgement which, from an objective standpoint, linked the conduct of investigative acts in favour of the suspect to the need for investigative completeness and to the principle of mandatory prosecution, as set out in Article 112 of the Constitution; a judgement which also identified, from a subjective perspective, the role assigned to the public prosecutor by Directive No. 37 of the delegated legislation: not ‘merely that of an accuser, but rather that of an organ of justice obliged to seek out all evidence relevant to a just decision, “including evidence favourable to the accused”’.

Thus, investigative activities in favour of the suspect find their functional basis in the requirement for the completeness of investigations and in the decisions relating to the prosecution of criminal proceedings.

8.1. It is well known that this systemic framework has undergone profound changes in subsequent years due to the emphasis placed on the principle of the non-dispersion of evidence, the establishment of new balances, new interpretations of the public prosecutor’s role, and the many instances of overlap between investigations and court proceedings (see, by way of example only, Constitutional Court, judgment No. 24 of 1992, concerning indirect evidence from the judicial police; Constitutional Court, No. 254 of 1992, concerning the reading of statements made by the persons referred to in Article 210 of the Code of Criminal Procedure; Constitutional Court, judgment No. 255 of 1992, concerning objections during the examination of witnesses).

A shift in the system and perspective in relation to which Article 358 has, however, remained unchanged, even following the introduction of the regulations on defence investigations (Law No. 397 of 7 December 2000).

8.2. Legal scholarship, including recent works, has explored this topic in depth.

Without claiming to be exhaustive, reference has been made to a compensatory function that Article 358 – insofar as it provides for the duty to conduct investigations also in favour of the suspect – is said to have fulfilled, at least at a certain point in time, within the system; a function resulting from the asymmetry of the original model established by the new Code of Criminal Procedure, in which, in contrast to the breadth of powers held by the

public prosecutor would hold, were contrasted by the weak provisions of Article 38 of the implementing provisions of the Code of Criminal Procedure, concerning defence investigations.

From another perspective, reference was made above all to the need for sanctions arising from the fact that a breach of Article 358 of the Code of Criminal Procedure would constitute a classic case of an offence without penalty, given that failure to comply with the provision would entail no procedural consequences and no sanctions (nullity, inadmissibility): in short, an ineffective provision.

8.3. It was precisely this approach that formed the basis for doubts as to the constitutional legitimacy of the provision in question on the grounds of a breach, amongst others, of Article 24(2) of the Constitution, in that the right of defence 'would find its fullest expression precisely in the public prosecutor's obligation to gather evidence in favour of the defendant' (Messina Magistrates' Court, Order No. 610 of 20 April 1996).

9. It was against this backdrop that the decision of the Constitutional Court No. 96 of 1997, which clarified that:

- the obligation enshrined in Article 358 of the Code of Criminal Procedure is 'designed to ensure the proper and rational conduct of criminal proceedings', without aiming to realise the principle of equality between the parties or to implement the right to a defence, but rather stems from the public nature of the prosecution service (see Constitutional Court Decision No. 190 of 1991) and on the duties that the public prosecutor is required to fulfil in the context of the decisions which, pursuant to the combined provisions of Articles 358 and 326 of the Code of Criminal Procedure, he must take regarding the conduct of criminal proceedings;

- the principle of mandatory prosecution does not, in fact, entail an obligation to bring proceedings whenever the public prosecutor receives a report of an offence, but must be rationally balanced against the aim of avoiding the initiation of unnecessary proceedings (see, Constitutional Court judgment No. 88 of 1991) and that this aim is also achieved through the obligation to carry out investigations in favour of the person under investigation; an obligation closely linked to the provisions of the Code, which, at the conclusion of the preliminary investigations, presents the public prosecutor with the choice between requesting the case be dismissed and bringing criminal proceedings, it being understood, however, that the request for dismissal is subject to judicial review in order to ensure the effective application of the constitutional principle of the mandatory nature of criminal prosecution (as stated verbatim by the Court).

This approach has been adopted by the Court of Cassation, which, on several instances has clarified that the need to ascertain facts and circumstances in favour of the person under investigation entails an assessment of the merits, which is not only precluded at the Court of Cassation but is also reserved 'solely to the public prosecutor, who must exercise this power also as an organ of justice, that is to say, as a party sui generis', without being, in

that capacity bound by the defence's instructions (see, amongst others, Section 1, No. 30196 of 14 October 2025, Cosentino, n.m.; Section 3, No. 47013 of 13 July 2018, L., Rv. 274031 - 01).

Therefore, contrary to the assumptions of the Court of Appeal, the provision set out in Article 358 of the Code of Criminal Procedure relates to the objective aspect of preliminary investigations and to the requirement that they should, as a rule, be comprehensive in accordance with Article 112 of the Constitution and the proper conduct of criminal proceedings, but not to the principle of equality of the parties or, more generally, to the right to a defence.

10. It has, moreover, been rightly pointed out that, following its original formulation (Constitutional Court, Judgment No. 88 of 1991), the principle of the completeness of investigations has been developed over time in a variety of further respects.

One may refer to the reform of the summary trial procedure (Law No. 479 of 16 December 1999, the so-called 'Carotti' Act): the public prosecutor — as the Constitutional Court had specified — must, when conducting preliminary investigations, take into account 'that, on the basis of the evidence gathered, the defendant may request and obtain a trial under the summary procedure' and therefore may not 'refrain from preparing a comprehensive body of evidence with a view to bringing criminal proceedings' (Constitutional Court, 9 May 2001, No. 115),

Reference may be made to the new rules on the dismissal of a case on the grounds that the report of an offence is unfounded, the application for which is currently linked to investigative findings that do not allow for 'a reasonable prospect of conviction' (Article 408(1) of the Code of Criminal Procedure, as amended by Legislative Decree No. 150 of 10 October 2022, implementing Law No. 134 of 27 September 2021, known as the 'Cartabia' reform).

Reference may also be made to the identical rule of procedure, as applied to a decision to dismiss the case at the preliminary hearing (Article 425(3) of the Code of Criminal Procedure) and at the new pre-trial hearing (Article 554-Per(1) of the Code of Criminal Procedure).

In reality, from a systematic perspective, the principle of the completeness of preliminary investigations — originally formulated 'for the purposes' of bringing criminal proceedings and the need to avoid unnecessary trials — has, on the one hand, retained its original meaning and its connection with the bringing of criminal proceedings, but, on the other hand, it has been enriched and given further specific substance because it is now linked to the requirement that the public prosecutor's decision to bring criminal proceedings must be tied to 'the outcome' of the proceedings.

In this context, one can therefore agree with the view in legal scholarship that it is precisely the requirement that the bringing of criminal proceedings be assessed in light of the 'outcome' underlying it that restores to Article 358 of the Code of Criminal Procedure its role and its systemic coherence.

This is a provision that serves as a warning; a provision that finds its natural operational place in the preliminary investigation phase and which, as has been noted,

a precise rule of conduct for the public prosecutor directing the investigations, who is required to assess with caution and reasonableness the soundness, meaning, scope and overall structure of the prosecution's case: in this lies the need to carry out investigations that also favour the suspect.

A criminal prosecution brought without rigorous consideration of exculpatory evidence is more likely to be dismissed by the court from the very outset.

11. This approach was essentially reaffirmed by the Constitutional Court in Judgment No. 58 of 2026, in which the challenges to the constitutionality of Article 554-Per of the Code of Criminal Procedure – introduced by Article 32(1), lettera d), of Legislative Decree No. 150 of 10 October 2022 (Implementation of Act No. 134 of 27 September 2021, granting the Government delegated powers to improve the efficiency of criminal proceedings, as well as on restorative justice and provisions for the swift conclusion of judicial proceedings), raised with reference to Articles 3, first and second paragraphs, 111, second paragraph, 112 and 117, first paragraph, of the Constitution, the latter in relation to Article 6(1) of the European Convention on Human Rights, in so far as it does not provide for the application, to the extent compatible, the provision set out in Article 422 of the Code of Criminal Procedure, or, in the alternative, in so far as it does not provide that the judge may order, even of their own motion, the taking of evidence from which it is evident that it is decisive for the purposes of a judgment dismissing the case.

11.1. This is a detailed judgment, in which the Court, also in the light of Article 111 of the Constitution, has expressly observed that:

- the current constitutional order grants the public prosecutor a position of independence in the exercise of his functions precisely to enable him to fulfil his duty to bring criminal proceedings '*without fear or favour*': that is, free from the risk of undue influence that might lead him to fail to bring criminal proceedings against those who have in fact committed offences, or even to unjustly prosecute innocent persons;

- the mandatory nature of criminal prosecution serves to ensure the equal application of criminal law to all citizens, with a view to preventing the risk of a 'discriminatory exercise of criminal prosecution (or inaction)' (Judgment No. 88 of 1991, point 2 of *the Legal Rationale*, on the link between the mandatory nature of criminal prosecution and the guarantee of equality amongst citizens; Judgment No. 84 of 1979, point 3 of *the Legal Rationale*, on the need to ensure that

'criminal proceedings are not unduly omitted', Judgment No. 121 of 2009, paragraph 7 of *the Legal Grounds*; on the link between the mandatory nature of criminal prosecution and the independence of the public prosecutor, Judgments No. 111 of 1993, paragraph 6 of *the Legal Grounds*, No. 88 of 1991, paragraph 2 of *the Legal Grounds*, as well as, under the Code of

1930, judgments No. 96 of 1975, paragraph 2 of *the Legal Grounds*, and No. 190 of 1970, paragraph 2 of *the Legal Grounds*),

- a non-discriminatory decision on whether or not to bring criminal proceedings presupposes, 'upstream', that the public prosecutor has carried out, in the specific individual case, investigations that are as comprehensive as possible.

11.2. Furthermore, regarding the requirement for the completeness of investigations, it has been clarified that:

- negligent, or even intentionally incomplete, investigations leading to a decision *not* to bring criminal proceedings violate the *rationale* underlying Article 112 of the Constitution, namely to ensure the equal application of criminal law to all citizens;

- *the bringing* of criminal proceedings based on incomplete investigations proves, on the other hand, as already highlighted in Judgment No. 88 of 1991, to be merely 'apparent', because it is, from the outset, unsuitable for leading to a judicial finding of the offence;

- the bringing of criminal proceedings in the absence of adequate investigations not only gives rise to a trial that is 'objectively superfluous' (judgement No. 88 of 1991, point 3 of *the Legal Rationale*), as it is destined to result, with a high degree of probability, in an acquittal, but also leads to a trial that causes unnecessary prejudice to interests and rights of undoubted constitutional significance: from the avoidable drain on the resources of the criminal justice system, which has limited resources to fulfil, with the necessary promptness, its functions of safeguarding the conditions for an orderly and peaceful social coexistence, to the unreasonable curtailment of the constitutional rights (personal and property rights) of the accused, whose lives are invariably disrupted by the pending criminal proceedings, which often also cause serious harm to their professional and personal lives:

- it is precisely the hard-won and now widespread awareness of such infringements of rights and interests of high constitutional significance that now renders untenable the idea of a generalised '*favour actionis*', according to which 'in cases of doubt' criminal proceedings should be

'be brought and not omitted' (as stated in the frequently cited Judgment No. 88 of 1991, point 3 of *the Legal Rationale*);

- the principle of mandatory prosecution, on the other hand, must now be correctly understood — in accordance with what is now unequivocally enshrined in many provisions of the Code of Criminal Procedure (Articles 408(1), 425(3) and 554-Per(1) of the Code of Criminal Procedure) — in the sense that the public prosecutor has a duty to conduct *thorough investigations* in every single case, enabling him to assess whether *the initial report of a criminal offence* is in fact supported, at least on the basis of the current case file, by evidence of such substance and consistency as to make the defendant's conviction at trial reasonably foreseeable, in accordance with the standard of proof beyond reasonable doubt; only if the answer is in the affirmative shall the public prosecutor have a duty to bring criminal proceedings: otherwise, the opposite rule applies, namely that such proceedings must be waived (with the consequent obligation to request the dismissal of the report of an offence that has not been sufficiently substantiated, despite the conduct of effective and diligent investigations).

11.3. Furthermore, with regard to Article 358 of the Code of Criminal Procedure, it has been emphasised that:

- it is precisely the considerations just set out that imply a duty on the part of the public prosecutor to seek, *of his own accord*, evidence capable of refuting the original prosecution case (on this point, Order No. 96 of 1997), as well as a duty to carefully consider the defence arguments that the person under investigation has chosen to put forward to the prosecutor during the investigation itself, or following notification of its conclusion;

- these duties stem from the need to base the prosecution on an epistemically sound prosecution case, which can only be deemed as such where it has already been adequately weighed against reasonable alternative hypotheses, including those that may have been put forward by the person under investigation themselves;

- Only investigations that are, as a rule, comprehensive – including evidence in favour of the defendant – are capable of placing the defendant in the best possible position to exercise his right to make an informed choice in favour of an alternative procedure (see, again, Judgment No. 88 of 1991, paragraph 4 of *the Legal Rationale*), which forms an integral part of his right to a defence (*see, amongst others*, Judgments No. 2 of 2025, point 6.1 of *the Legal Grounds*, No. 174 of 2022, point 3.3 of *the Legal Grounds* and further references therein): this is an outcome which the current procedural framework has a clear interest in encouraging, in the interests of the system's overall efficiency; it is, in fact, essentially on the basis of the body of evidence constituted by the evidence gathered by the public prosecutor that the defendant must make their own assessments as to whether to settle the case under the summary procedure, to request the application of a sentence pursuant to Article 444 of the Code of Criminal Procedure, not to oppose the summary conviction order, or even to request the suspension of proceedings with a probation order; and, fundamentally, on the basis of that same body of evidence, the judge must — in summary proceedings — decide on the defendant's liability and, where appropriate, impose a sentence, as well as — in the other cases mentioned — assess whether the conditions for an acquittal under Article 129 of the Code of Criminal Procedure are met and, where applicable, the appropriateness of the proposed sentence. In any event, this must take into account the evidence in favour of the defendant, including that relating to the degree of their liability, which the public prosecutor has (as required) sought out.

11.4. Ultimately, the Constitutional Court concludes that 'dutiful' criminal prosecution, in accordance with the logic of Article 112 of the Constitution, is only that which is conducted with prudence and responsibility, on the basis of comprehensive investigations that have not overlooked evidence in favour of the defendant.

11.5. Thus, even in its most recent case law, the Constitutional Court has strongly reaffirmed the principle that the public prosecutor's duty to carry out investigations in favour of the suspect is instrumental to the proper

conduct of criminal proceedings: a duty that arises and develops during the pre-trial investigation.

12. In the light of the above analysis, it is possible to draw certain conclusions which highlight that the reasoning adopted by the Brescia Court of Appeal with regard to the scope of application of Article 358 of the Code of Criminal Procedure and the possibility that said provision might constitute the source of a legal obligation on the part of the two defendants to perform the act – the filing of the documentation indicated by Dr Storari – which they unduly refused, cannot be accepted.

In particular:

a) Article 358 of the Code of Criminal Procedure establishes a specific rule of conduct which, as mentioned, arises and operates within the preliminary investigation phase;

b) a mandatory rule of conduct, compliance with which by the public prosecutor is linked to the proper conduct of criminal proceedings, namely the requirement that criminal proceedings be brought only on condition that the investigations are complete and adequate in relation to the outcome sought;

c) any error or abuse on the part of the public prosecutor who, during the preliminary investigation stage, brings criminal proceedings in breach of the said procedural rule – that laid down in Article 358 of the Code of Criminal Procedure - does not result in a specific procedural sanction, but entails the risk, on the one hand, of an erroneous or, worse still, a careless or inadequate decision regarding the bringing of criminal proceedings, which is bound to be overturned, and, on the other hand, of the imposition of sanctions that may apply at various levels of liability, such as: 1) civil liability for damages caused in the exercise of judicial functions, pursuant to Law No. 117 of 13 April 1988; 2) disciplinary liability for breach of the Code of Ethics for the Ordinary Judiciary – which, in Article 13, governs the conduct of the public prosecutor in the exercise of their duties (the first paragraph of Article 13 of the Code of Ethics states that ‘the public prosecutor shall act impartially in the performance of their role’); the second paragraph contains a provision that reiterates and elaborates on the provisions of Article 358 of the Code of Criminal Procedure, stipulating that the public prosecutor ‘shall conduct his or her investigation in pursuit of the truth, including by gathering evidence in favour of the suspect, and shall not withhold from the court the existence of facts favourable to the suspect or the accused’); 3) criminal proceedings, whilst, however, respecting the requirement that the offence must be specifically defined by law;

d) the public prosecutor is required to make a prognostic assessment and, therefore, to bring criminal proceedings only where the evidence gathered during the investigation allows for a reasonable likelihood that the prosecution’s case will be upheld in court.

Contrary to what is stated in the contested judgment, the issue is not related to the principle of equality of the parties or to the right of defence, but rather to the need to establish a system characterised by efficiency and safeguards in which the judge is

in turn required to rigorously apply the new legal rule underpinning the order to dismiss the case in all instances where the public prosecutor has failed to properly apply the identical rule governing requests for the case to be dismissed.

A weak criminal prosecution – because it is conducted without carrying out investigations in favour of the suspect and is therefore incomplete – leads, almost as a matter of course, to a decision to dismiss the case at the preliminary hearing.

13. Within this framework, the Court of Appeal's assumption – that the provision of Article 358 of the Code of Criminal Procedure itself establishes the obligation to supplement the investigation, which the defendants allegedly refused to carry out – reveals its objective groundlessness.

For, whilst Article 358 does indeed lay down a rule of conduct that is obligatory but functional to the proper conduct of criminal proceedings and the pursuit of the underlying objective, in the sense described above, such a statutory provision, on closer inspection, cannot constitute the source of an objectively different obligation—namely, that relating to the carrying out of supplementary investigative measures which, according to the approach adopted by the trial judges, would in turn be mandatory, undifferentiated, all-encompassing, and enforceable even during the trial proceedings.

This constitutes a functional, unsystematic extension not permitted by the provision invoked, which was in fact misapplied in order to render—by distorting its function—a further procedural option binding and mandatory, an option which, as will be explained, is itself discretionary: namely, that relating to the conduct of supplementary investigative measures.

Precisely because of the *rationale* and objectives underlying Article 358 of the Code of Criminal Procedure, the appellants were by no means obliged, under that provision, to carry out supplementary investigative activities at that stage of the trial.

14. The same conclusion is reached by examining the other relevant provision, Article 430 of the Code of Criminal Procedure, which the Court of Appeal relied upon to hold that the act which the defendants allegedly refused to perform was mandatory and necessary under Article 328 of the Criminal Code.

15. Once the preliminary investigations have been concluded, the filing of the application for committal for trial does not preclude the conduct of further investigations, either by the public prosecutor or by the private parties: all parties may, during the preliminary hearing, carry out 'supplementary investigative activities', pursuant to Article 419(3) of the Code of Criminal Procedure; once the order commencing the trial has been issued, the parties may carry out 'supplementary investigative activities', pursuant to Article 430 of the Code of Criminal Procedure.

Article 430 of the Code of Criminal Procedure is divided into two paragraphs, the second of which is subordinate to the first.

The first paragraph of Article 430 of the Code of Criminal Procedure grants the public prosecutor a power – ‘may’ carry out supplementary investigative activities – and, above all, sets out what the public prosecutor may not do: they may not carry out acts ‘for which the participation of the defendant or their defence counsel is required’.

Pursuant to paragraph 2 of Article 430, any investigations carried out must be filed immediately with the public prosecutor’s office, with the parties being entitled to inspect them and obtain copies; to ensure that this possibility is made known, Article 18 of the Implementing Regulations of the Code of Criminal Procedure requires the public prosecutor’s office to notify the defence counsel of the filing without delay.

There is no doubt that supplementary investigative activities — insofar as they are, by definition, carried out outside the court hearing — are, on the one hand, not subject to coercion and, on the other, not subject to restriction, because their conduct is left to the exclusive discretion of the person holding the investigative power (on this subject, see, amongst others, Section 2, No. 6816 of 5 February 2026, Ambrisi, Rv. 289482 - 01; Section 4, No. 4913 of 15 January 2020, Visentini, Rv. 278434 - 01).

As this is a procedure that takes place once the framework – constituted by the charge – has already been defined and incorporated into the order commencing proceedings, the supplementary investigation referred to in Article 430 of the Code of Criminal Procedure is subject to a logical limitation, essentially consisting of its relevance to the subject matter of the charge as set out in the indictment.

It is reasonable to accept the premise that supplementary investigative activities, taking place after the order commencing proceedings, can only operate within the scope of the charges, as specified in the requests already made by the public prosecutor.

It is the public prosecutor who, in the exercise of their autonomy and assuming the relevant responsibility, decides whether to carry out supplementary investigative activities, pursuant to paragraph 1 of Article 430 of the Code of Criminal Procedure.

On this subject, it has been rightly pointed out that the public prosecutor’s impartiality—which is linked to the duty of fairness—manifests itself differently depending on the stages of the investigation and the trial; the public prosecutor must be ‘more impartial’ during the preliminary investigation stage, when they are essentially more ‘on their own’ – that is, without continuous interaction with the defence (hence the rule laid down in Article 358 cited above) – whilst, conversely, in any subsequent procedural developments, and in particular during the trial, their role as a party is emphasised.

This does not mean that the public prosecutor’s general duties of impartiality and fairness, and the rules of conduct deriving from them (gathering evidence in favour of the person under investigation, filing the relevant documents), are limited and confined to specific stages of the proceedings or the trial; rather, they always characterise the actions of the public prosecutor, from the start of the investigation until the conclusion of the trial; these absolute duties, moreover, are given specific substance through the rules of procedure which, however,

are based on the discretionary nature, the non-restrictability and the non-coercibility of the public prosecutor's actions.

16. The first paragraph of Article 430 of the Code of Criminal Procedure confers discretionary power upon the public prosecutor and does not impose an obligation to carry out supplementary investigative activities such that a refusal to do so would be relevant for the purposes of Article 328, first paragraph, of the Code of Criminal Procedure.

Nor does the obligation to carry out such activities arise from Article 358 of the Code of Criminal Procedure, the function of which has been discussed, for the reasons set out above.

The second paragraph of Article 430 lays down a consequential rule: if the public prosecutor decides to carry out supplementary investigative measures, he must then, immediately, file the relevant documentation and notify the parties.

The provision set out in Article 430 of the Code of Criminal Procedure operates on two distinct levels; what is mandatory is not, in fact, the conduct of supplementary investigative activities, but 'only' the conduct following the discretionary decision to carry out such supplementary activities.

17. Much debate has taken place during the trial on the merits as to who holds the power to decide whether or not to carry out supplementary investigations, that is to say, whether that decision rests solely with the public prosecutor 'in charge of the case', or whether it may also be taken by another public prosecutor, perhaps, as in the present case, from the same office and in their capacity as the prosecutor in charge of another proceeding linked to the main one, that is, the one in which the documentation relating to the supplementary investigation should be filed.

The Court of Appeal, having erroneously asserted that supplementary investigative measures are mandatory under Articles 358 – 430 of the Code of Criminal Procedure, essentially held that such supplementary investigation may also be carried out by another public prosecutor, that is, by a magistrate other than the one in charge of the proceedings, and that the latter, to whom the documents should be forwarded, would nevertheless be obliged to file "automatically" the documents received, in accordance with Article 430(2) of the Code of Criminal Procedure.

According to the Court of Appeal, this reasoning is supported by a number of judgments handed down by this Court and, in particular, by Section 2, No. 31512 of 24 April 2012, Barbaro.

18. This, too, is a flawed legal approach.

18.1. It has been correctly pointed out in legal scholarship that it would be objectively unreasonable to consider that, with regard to documents and records originating from sources external to the proceedings and the trial — that is, from other judicial offices, administrative bodies, associations or individual citizens — the prosecuting prosecutor does not possess the same power of discernment and assessment that unquestionably

possesses during the course of the investigation, and is instead unconditionally obliged to 'pass on' to the *trial* court everything that is forwarded to him.

The rules of conduct, impartiality, and the need to assess fairly and decide whether to carry out supplementary investigative activities can only apply to the public prosecutor in charge of the proceedings, that is, the magistrate who bears responsibility for those proceedings.

It would be objectively peculiar to consider that supplementary investigative activities could be carried out by another public prosecutor from the same office – perhaps in charge of a case concerning related facts – and that, with regard to such activities, the public prosecutor in charge of the proceedings *ad quem* is merely, and always, an organ obliged to simply receive the material, that is to say, one who can do nothing other than file all the material forwarded to him.

It has already been noted how the public prosecutor's duties of impartiality and loyalty, the their scope and content – beyond the sphere of investigations (preliminary and supplementary) – are defined and implemented in practice through procedural rules, and that the resulting rules of conduct are not automatic or unconditional but are inevitably shaped, on a case-by-case basis, in the light of the considered assessments made by the prosecuting magistrate in the exercise of his or her discretionary powers, and the clarity of his or her reasoning.

When faced with external communications or requests of various kinds, the public prosecutor in charge is required to assess their significance – under his own responsibility; the prosecutor in charge is not a mere recipient, an empty vessel that can be filled on the basis of others' assessments, even if those assessments are made by the prosecutor in charge of proceedings concerning related offences.

There is, moreover, a need for coordination of investigations, transparency and timely information to those in charge of the office: this point will be addressed below.

18.2. In this context, the Court of Appeal's reference to the 'Barbaro' judgment, mentioned above, to justify the possibility that supplementary investigative work may be carried out in practice by a public prosecutor other than the one in charge of the proceedings, as well as the assertion that the latter is obliged to incorporate it, must be regarded as objectively incongruous and incorrect.

It is worth quoting part of the reasoning in the judgment in question:

'the legislature has stipulated that the documentation relating to the activities referred to in paragraph 1 of Article 430 of the Code of Criminal Procedure must be "immediately" filed with the Public Prosecutor's office.... The term 'immediate' (like the obligation to give notice, which must take place 'without delay') emphasises the need for the parties to the proceedings to be notified promptly so as to allow for the examination of the material obtained and the preparation of any necessary defences. It must therefore be stated that (bearing in mind that the question is raised in relation to the activities of the Public Prosecution Service) the Public

Public Prosecutor's Office would be obliged to file the supplementary investigation document as soon as it has been drawn up or has come into its possession. However, the reality of court proceedings does not allow for the formulation of rigid theoretical principles, as account must be taken of specific situations in which the prosecution is unable to proceed with the 'immediate' filing of the supplementary investigation document, either because the latter requires further and indispensable investigation through the carrying out of additional investigative measures, or because the Public Prosecutor may find themselves in circumstances where 'immediate' filing is objectively impossible, for example, having to examine a voluminous body of preliminary investigation material made available to them by another authority. the adverb 'immediately' must be understood in relation to the specific circumstances in which the Public Prosecutor is operating; the Public Prosecutor may face an objective difficulty in immediately identifying the documents to be filed [Court of Cassation, Section IV, 6 November 2007, Rv 238950; see also, most recently, Court of Cassation, Section II, 4 May 2011, No. 236211; to this may be added the distinct and not uncommon scenario in which the supplementary investigation unfolds through the performance of several distinct acts, which are not simultaneous but are interlinked and connected, with the consequence that it is reasonable for the 'immediacy' of filing to coincide with the completion of the final act of the segment of supplementary investigation carried out, since it is not possible, for a wide variety of reasons (not least that relating to the confidentiality of the investigation), to proceed with the immediate, piecemeal filing of the individual documents at the time each is completed. ”

Furthermore, “the evidence arising from supplementary investigations may be of an endogenous or exogenous nature in relation to the so-called main proceedings, depending on whether such evidence is generated directly within the case file used by the Public Prosecutor in bringing the criminal proceedings that led to the trial, or externally to it, that is, in separate criminal proceedings, whether initiated at the same Public Prosecutor's office or at the Public Prosecutor's offices of other courts; in this second case, the supplementary investigation consists of incorporating into the Public Prosecutor's file for the so-called 'receiving' trial the minutes and documents that were produced *aliunde* (that is, in other and separate proceedings constituting an 'exogenous' source of material relevant to the evidence in the receiving trial)' (as stated verbatim in the judgment).

18.3. Therefore, contrary to what was stated in the contested judgment:

a) if the document or record is forwarded to the public prosecutor in charge of the proceedings by a different public prosecutor, who is in charge of a different set of proceedings, the act of supplementing the investigation is not that carried out by the other public prosecutor but becomes 'supplementary' only if the public prosecutor in charge of the proceedings issues an act of incorporation, acquiring the material transmitted, which thereby 'enters' the separate receiving proceedings;

b) this act of acceptance is not, in turn, automatic, but follows an assessment and selection by the public prosecutor in charge of the proceedings;

c) this assessment is, as mentioned, subject to a logical constraint, essentially consisting of the 'relevance', the specific content and the usefulness of the elements that have emerged - through the work of the other public prosecutor – in relation to the 'framework' constituted by the charge; a limitation which relates to and is influenced by the stage of development of the proceedings, the purpose and scope of the supplementary investigation to be carried out, and the relationship between the supplementary investigation and the facts to be proven;

d) the public prosecutor in charge of the proceedings, following this assessment, decides whether and what evidence to obtain.

The supplementary investigation is not carried out by the 'other' public prosecutor — a natural person - who, in reality, merely forwards the records and documents which he believes may be relevant to the other proceedings; these documents are, however, examined by the public prosecutor in charge of the other proceedings, who decides whether and what to 'admit'; thus, only following this discretionary assessment do the limits of the obligation to file the admitted material become clear, in accordance with Article 430(2) of the Code of Criminal Procedure.

18.4. It follows that the act which the two appellants allegedly refused was not an act which, pursuant to Article 328(1) of the Code of Criminal Procedure, 'had to' be carried out for reasons of justice – that is, an act which, on the basis of Dr Storari's assessments, could not be avoided – because, in reality, it was a typically discretionary act which, as such, required the two appellants, as the parties to the Eni–Nigeria proceedings, to make technical assessments.

This was an act in respect of which the public prosecutor in charge of the preliminary and supplementary investigations was required to make assessments – for which he assumed responsibility – regarding relevance, pertinence, authenticity and consistency.

Consequently, even the reference to Article 430 of the Code of Criminal Procedure made by the trial judges

to establish the procedural obligation on the part of the two defendants to carry out the act *in question* — the filing of the documentation received from Dr Storari — must be regarded as legally incorrect.

19. It is now possible to examine, from a different perspective, whether, in the present case, there has been an act of refusal, criminally relevant, within the meaning of Article 328, first paragraph, of the Criminal Code.

It has already been stated that refusal, which may take any form, must denote a clear manifestation of the intention not to perform the required act.

The issue concerns the coordination of investigations within the same office, how such coordination was carried out in this case, the specific conduct of the defendants and that of the person in charge of the Public Prosecutor's Office; this issue is significant because the documents and records forwarded by Dr Storari concerned an offence linked to that which is the subject of the Eni–Nigeria proceedings.

It is not in dispute that the appellants not only replied to Dr Storari but, on 5 March 2021, they informed the Public Prosecutor and the Deputy Public Prosecutor – who was, moreover, a co-prosecutor in the related proceedings – of their assessment – whether correct or incorrect – that they did not consider it appropriate to proceed with the acquisition of those records and documents, whilst leaving the decision, however, to Dr Greco and Dr Pedio.

19.1. It is worth referring to the statements made by Dr Francesco Greco, then Public Prosecutor at the Court of Milan, and Dr Laura Pedio, then Deputy Public Prosecutor at that Public Prosecutor's Office and co-prosecutor, together with Dr Storari, in the so-called 'Eni – Conspiracy' case.

It is apparent from the contested judgment that Dr Greco:

- had received from Dr Storari “a deluge of lengthy emails — cobbled together *using a cut-and-paste technique from files labelled as falsehoods...*”;
- had found the material “rather complicated and... practically impossible to read for someone with little time available” and had struggled to form an opinion;
- had considered that material to be “marginal, non-decisive stuff” still “in the making” with regard to the Eni–Nigeria trial, which was based predominantly on documentary evidence;
- had, in any case, “passed it all on to De Pasquale”;
- had received, a few days later, a note from the two defendants “containing a detailed analysis of the situation” and had “filed it on record”;
- had not deemed it appropriate to call a meeting;
- that he had considered there to be ‘legal issues’ regarding the admissibility in the Eni – Nigeria of the documentation forwarded by Dr Storari (see p. 21 et seq. of the contested judgment).

As regards Dr Laura Pedio, who was under investigation – for ‘failing to promptly enter Vincenzo Armanna’s name in the register of persons under investigation for the offence of slander committed against Eni executives De Scalzi and Granata, with the aim of avoiding possible repercussions on the Eni–Nigeria trial’ – and whose case was dismissed, the contested judgment reveals:

- that, at the time, Armanna’s involvement was ‘under scrutiny as part of ongoing investigations and that the time was not yet ripe to take precautionary measures’ in the Eni — Conspiracy proceedings, contrary to what Dr Storari had feared;
- that, in particular, after examining the draft drawn up by Dr Storari, she had expressed a negative opinion on the request for precautionary measures ‘exercising the discretionary power’ deriving from her role as Deputy Public Prosecutor;
- that she had not changed her opinion on the matter “even after reassessing it with the benefit of hindsight
in hindsight”;

- that she had not noticed that the *email* sent by the current appellants on 5 March 2021 “did not address all the issues raised by Dr Storari” (see p. 23 et seq. of the contested judgment).

19.2. The statements made by Dr Greco and Dr Pedio – unless one wishes to hypothesise a general collusion to the detriment of Dr Storari and a widespread breach of the duties of loyalty and fairness, to which even those in charge of the Public Prosecutor’s Office would, in some way, not have been entirely unconnected – run counter to the prosecution’s case as accepted by the Court of Appeal.

The two defendants assessed that material and considered that it should not be admitted as evidence; they informed the senior officials of the Office of this, to whom they deferred the decision; the Public Prosecutor and the Deputy Public Prosecutor, who were jointly in charge of the so-called ‘Eni – Conspiracy’ proceedings, made assessments that were essentially consistent with those of the current appellants, and it is by no means clear why, according to the Court of Appeal, De Pasquale and Spadaro should have considered that their assessment was not shared.

Greco and Pedio had been informed and remained silent; they raised no objections, asked for nothing, did not consider that the matter required further investigation, did not convene any meetings, and did not seek explanations either before or after.

In the ‘Eni – Complotto’ proceedings, which were at the investigation stage, sensitive assessments were underway and, therefore, even from the point of view of coordinating the investigations, it is unclear why it should be claimed that the two defendants arbitrarily, and for their own ends, decided not to proceed.

On this point, the contested judgment is essentially assertive and one-sided.

It has already been stated that what would have been rejected was an act in respect of which the public prosecutor in charge of the preliminary and supplementary investigations was required to assess the relevance, pertinence, authenticity and consistency of the evidence to be used for his discretionary decisions.

The decision to ‘involve’ the senior officials of the Office runs counter to the prosecution’s line of argument adopted by the trial judges because, regardless of its intrinsic correctness, it represents not an act of refusal but one of objective and necessary transparency; an act which reveals that the defendants did not act with the intention of concealment, improbable obfuscation or self-referentiality, but sought a natural dialogue with the managers of their office.

The conduct of the defendants cannot be separated from that of the Office’s senior managers, who were fully involved and did nothing to express any disagreement with the decision not to acquire and file the documents forwarded by Dr Storari, or to highlight – contrary to the conclusions reached by the appellants – the need to acquire them.

Moreover, this is a context which must also, to some extent, be viewed in conjunction with what emerges from the contested judgment in relation to the

statements made by Dr Marco Tremolada, President of the Panel before which the Eni–Nigeria trial was held at first instance, who reported that:

- Armanna's credibility had already been undermined and compromised during the trial;
- the documentation proving the 'fraudulent conduct of the witness', had it been admitted, would merely have 'facilitated the effort made to substantiate' the unreliability of Armanna himself.

Thus, on the one hand, there was an assessment by the defendants who left the decision to the Public Prosecutor, which was essentially endorsed by him and by the Deputy Public Prosecutor, co-prosecutor in the so-called 'Eni – Conspiracy' proceedings; and, on the other hand, there was an assessment by the President of the panel of judges that the documentation in question was not decisive.

The documentation that Mr Storari had highlighted was not self-evident and would not have altered the outcome of the trial.

The legal characterisation of the offence cannot be altered by virtue of a vague retrospective assessment, which is influenced by the degree — greater or lesser — of scrutiny one wishes to exercise over the discretionary judgement entrusted to the public official.

19.3. And so, it is not even clear why, according to the Court of Appeal, an act of refusal would be objectively established.

It has already been stated that to refuse an act means to express the intention not to carry it out; it has already been stated that refusal is a subjectively attributable omission, unequivocally relating to an act that must be carried out without delay and which the official unduly decides, instead, not to carry out.

In the present case, the defendants considered – rightly or wrongly – in the exercise of their discretionary powers, that they were not required to proceed with the acquisition of those records and documents, and referred the decision to the Public Prosecutor and the Deputy Public Prosecutor, who endorsed it.

Therefore, that act was not mandatory; it did not relate to evidence of decisive self-evidence; and the defendants, on closer inspection, did not refuse anything because they did not express a clear intention not to carry out the act, having deferred the decision to others who, in fact, concurred with it.

20. This issue is intertwined with the requirement that the refusal, as relevant under Article 328, first paragraph, of the Criminal Code, must be unjustified.

20.1. This is an element of the offence that is interpreted in various ways.

According to one school of interpretation, the phrase constitutes a special requirement of unlawfulness whereby significance is attributed solely to those forms of refusal which, on the one hand, find no justification in the law and in the administrative regulations governing the

duty to act, and, on the other hand, are in conflict with laws and administrative regulations governing competences and procedures.

According to another school of thought, however, it would be a superfluous element because it would not contribute to the identification of the typical offence but would merely expressly reiterate the unlawfulness of the conduct, as already outlined by the provision.

In this regard, this Court has explained that the adverb 'unduly', inserted into the text of the provision, by characterising the omission of official acts as an offence involving so-called 'express' or 'special' unlawfulness, qualifies the subjective element—not in the sense of requiring specific intent, but to emphasise the necessity of awareness that one is acting in breach of the duties imposed (Section 6, No. 33565 of 15 June 2021, Esposito, Rv. 281846; see also Section 6, No. 2274 of 15 November 1984, filed 1985, Bertoli, Rv. 168219; Section 6, No. 8534 of 9 June 1982, Contu, Rv. 155315).

20.2. In fact, this is an element that already characterises the objective elements of the offence.

Whether one wishes to refer to the first of the approaches indicated, or, on the other hand, to adopt the second of the approaches described, in the present case, not only can a criminally relevant refusal, in the sense indicated above, not be established, but even if one were to hypothesise such a refusal, it would not be of an improper nature.

Following the second line of reasoning, it has already been stated that the conduct attributed to the defendants is not arbitrary and is not accompanied by the awareness of failing to perform an act which, on the contrary, should have been performed.

The defendants, whether one agrees with them or not, considered that this supplementary investigative activity was neither required nor necessary, based on a conviction that was in fact shared by both the Public Prosecutor and the Deputy Public Prosecutor.

Article 328, first paragraph, of the Criminal Code does not impose criminal sanctions for general negligence, imprudence or a lack of institutional sensitivity on the part of a public official, but rather for the conscious refusal to perform an act that is objectively obligatory and which the public official knows they are required to carry out.

The same conclusion is reached even if one were to adopt the first line of reasoning, as mentioned.

The documents attached to the appeal show that, following the technical investigation carried out in the 'Eni – Complotto' proceedings—aimed at verifying the authenticity of only *the chat messages* exchanged between Armanina, De Scalzi and Granata, the latter two had requested, in those proceedings, access to the full contents of the mobile phone handed over by Armanina and, therefore, also to the other *chats*—a request for access to the contents of those very *chats* which Dr Storari subsequently sought to obtain in the Eni–Nigeria trial.

This request was rejected by the Deputy Public Prosecutor, Dr Pedio, and also, following an objection, by the Judge for Preliminary Investigations; it was pointed out that,

on that occasion, as the forensic full copy of *the smartphone* contained information that was different from and in addition to that for which the investigation had been ordered and, therefore, “not only unrelated to the subject matter of the evidence, but which should rightly be excluded from duplication and external disclosure”; in particular, it was pointed out that the subject matter of the investigation ordered in the ‘Eni – Complotto’ proceedings related solely to those specific chats (see Annexes 4 and 5 to the appeal).

The Court of Cassation, in its judgment No. 22795 of 22 March 2022, in turn dismissed the appeals lodged by Granata and De Scalzi against the order of the Milan Preliminary Investigating Judge, as mentioned above.

Therefore, with regard to the Eni – Complotto proceedings and the subject matter of the evidential investigation that had led to the seizure of that device, it was correctly held that said investigation could not be extended to the other *chats* contained on that telephone.

In other words, the principles established regarding the seizure of evidence were correctly applied: the subject of the seizure is not the device containing the sensitive data (the mobile phone), but rather only the data extracted from the mobile phone which serves the purpose of establishing the offence under investigation (see, *inter alia*, Section 6, No. 34265 of 22 September 2020, Aleotti, Rv. 279949 — 01 and, at length, in the grounds).

The subject of the seizure is not the device itself, nor even the so-called ‘medium copy’ – that is, the forensic copy that reproduces the entire contents of the electronic device – but only the data extracted from that copy because it is deemed relevant for the purposes of proving the offence.

This, and this alone, guarantees the proportionality of the measure and the concrete verifiability of the link of relevance between what is ‘seized’ and the offence under investigation, which the seizure is intended to prove.

Therefore, those *chat messages* which Mr Storari strongly requested be admitted into the Eni–Nigeria proceedings could not be admitted, for the reasons stated, into the Eni–Conspiracy proceedings: they could not be accessed in those proceedings unless through a further order explaining the reasons why, even with regard to those additional *chat messages*, proceedings should be brought and why their content would be relevant to the offence that was intended to be proven.

It follows that the content of those additional *chat messages*, access to which was correctly denied in the Eni–Conspiracy proceedings, could not be automatically included in the Eni–Nigeria proceedings either, because such inclusion would in any case have lacked a legal basis; in other words, a new authorising order was required to extend the scope of the investigation and access to the data on that telephone.

On this point, the Court of Appeal’s assertion that the acquisition of that data was lawful by virtue of the Public Prosecutor’s original order

concerning the 'device', is seriously flawed (see p. 93 of the contested judgment).

The content of those *chats* could not be regarded as automatically subject to acquisition, and the refusal attributed to the defendants cannot be considered 'unjustified' because, in reality, on the basis of the above, that decision was in accordance with the principles and rules of law governing the seizure of evidence.

Conversely, the seizure of the contents of those *chats* would have been improper, as requested by Mr Storari.

21. In the light of the reconstruction carried out, the following conclusions may be drawn:

- the act which, according to the prosecution's case, the two appellants allegedly refused to perform was not a mandatory act—that is, one required by law—either under Article 358 of the Code of Criminal Procedure or under Article 430 of the Code of Criminal Procedure;
- it was not an act which, for reasons of justice, had to be carried out necessarily and automatically without delay, but concerned procedural steps not covered by mandatory protocols, the 'necessity' of which did not relate to the decision to carry them out – which was largely discretionary – but rather to the broader perspective and the pursuit of the investigative aims of the criminal proceedings;
- it was an act involving delicate discretionary assessments, falling within the remit of the public prosecutor in charge of the proceedings;
- the supplementary investigative activity is inescapable and cannot be curtailed; it concerns the public prosecutor in charge of the proceedings and cannot technically be carried out by a different public prosecutor — a natural person — who may, of course, bring to the attention of the former any acts or documents which he considers may be useful for ascertaining the facts forming the subject matter of the separate proceedings — perhaps related — without, however, such an initiative lead to the adoption of a binding act and, above all, without precluding the existence of an independent discretionary power on the part of the public prosecutor in charge of the proceedings;
- there was no criminally relevant act of refusal, no attributable omission, nor any clear manifestation of an intention on the part of the two appellants not to carry out the act, because the decision was essentially left to the Public Prosecutor of Milan and the Deputy Public Prosecutor of that same office, who in fact endorsed the appellants' view;
- the failure to obtain the *chat records* reported by Dr Storari not only did not concern decisive exculpatory evidence, but was not improper.

22. These are conclusive findings from a logical and legal standpoint which, in themselves, reveal the Court of Appeal's misapplication of criminal law and make it possible

to avoid addressing the numerous other issues that were also raised in the appeals (the defendants' lack of actual access to the documents indicated in points 1 to 4 of the indictment, the existence of intent, the fact that the technical examination of Armanina's telephone in the proceedings in *question* had not been completed, and the time limits that had been imposed by the Court of Milan on the acquisition of evidence).

22.1. The considerations set out above must also be reiterated with regard to the so-called 'Bigotti video', dated 28 July 2014, which the Milan Public Prosecutor's Office is said to have had in its possession in April 2017; it is not disputed that this video was relevant to several proceedings, nor that certain defence counsel were already aware of it as early as February 2018, nor even that the video was subsequently produced at the trial, at the request of the defence, in July 2019 – that is, well before the deadline indicated in the indictment ('17 March 2021'), namely two years before the decision in that trial.

The prosecution's argument is that the criminally relevant refusal consists in the fact that the video was not made available to the parties immediately – that is, during the preliminary hearing, bearing in mind that the indictment was issued on 20 December 2017 – but only when its production was requested during the trial by the defendants' defence teams.

What is being contested is the delay with which that video was made

22.2. In this case too, however, setting aside the possible existence of procedural defects – which, in reality, do not appear to have been raised at any point during the trial – and further legal issues that might have suggested against proceeding immediately with the production of that video, what remains unclear is why, if that video had been so significant, none of the defence lawyers – who had had access to it since February 2018 – had requested its inclusion in the record.

On this specific issue, I, Dr Tremolada, have myself clarified in the present proceedings that the defence, on this point, expressed, during the Eni–Nigeria trial, a 'veiled complaint and then... an explicit challenge'.

It follows that, on this point too, it is by no means clear why there should have been an act of undue refusal, since neither the reason why that video should necessarily have been filed earlier nor the reason why its production had not been requested by the defence lawyers – who had had access to that video for some time – was made explicit.

23. The contested judgment must therefore be set aside without referral, as the offence does not exist, with the consequent revocation of the civil rulings.

24. With regard to the appeal lodged by the Presidency of the Council of Ministers, in its capacity as the civilly liable party for the criminal offence alleged against the defendants, it has already been stated that

it is structured in part through the raising of grounds of appeal that overlap with those put forward by the defendants in relation to the aspects concerning the assessment of liability.

It must, however, be noted as a preliminary point that the party lacks standing to be sued of the party.

24.1. Law No. 117 of 13 April 1988, on compensation for damages caused in the exercise of judicial functions and on the civil liability of magistrates, provides, in Article 2, that anyone who has suffered unjust damage as a result of conduct, an act or a judicial measure carried out by a magistrate with intent or gross negligence in the exercise of their functions, or as a result of a denial of justice, may bring an action against the State to obtain compensation for damages.

The subsequent Article 4 contains, in relation to this type of civil tort, specific procedural rules: it establishes, in fact, that the Prime Minister is the 'sole' defendant and that an action for damages may be brought only once the ordinary means of appeal or other remedies provided for against interim and summary measures have been exhausted, and, in any event, when it is no longer possible to amend or revoke the order or, if such remedies are not provided for, when the proceedings at the relevant level in which the event causing the damage occurred have been exhausted.

Where, however, the unlawful act alleged to have caused the damage consists, as in the present case, of a criminal offence committed by a judge in the exercise of his or her duties, the provisions of Article 13 below apply, according to which the civil action for damages against the judge and the State, as the civilly liable party, and the bringing of such an action are governed by the ordinary rules.

24.2. According to one interpretative view, even an action for compensation for damage caused by a criminal offence committed by a judge in the performance of his or her duties should be brought, pursuant to Article 4(1) of Law No 117 of 1988, against the Prime Minister, and not against the Minister of Justice (see Section 6, No. 13450 of 28 September 2000, Galdieri, Rv. 217627).

In this regard, it has been argued on the basis that, as the damage relates to the exercise of judicial functions, the Minister of Justice (whose institutional remit is limited to the organisation and operation of services relating to justice) cannot be held liable, but rather the entity representing the political and governmental synthesis of the State-community, given the "constitutional – even before legal – significance of the 'function of Justice, administered in the name of the people', which must be characterised by impartiality and independence".

24.3. This is an interpretative approach whose justifying basis needs to be considered.

The Court of Cassation has already explained, in a manner with which one can agree, how the two provisions under consideration cannot be interpreted as overlapping, that is to say, by considering them applicable

in the case of an action for damages arising from an offence committed by a magistrate in the exercise of their duties, the provisions set out in Article 2 of the Act in question, which applies where the source of the damage consists of conduct that does not constitute an offence and is characterised by intent or gross negligence (Section 6, No. 8551 of 28 January 2026, Tecnoconsult s.r.l., Ref. 289684 — 01)

This would, in fact, constitute an interpretative solution that would essentially nullify the meaning and scope of the reference to ordinary provisions contained in Article 13, and, in particular, to that provided for in Article 2049 of the Civil Code, which provides for the joint liability of the employer for a tort committed by their employee. Therefore, where the civil action is brought to obtain compensation for damage caused by an offence committed by a magistrate in the course of their duties, the right to be sued lies with the employer of the offender, that is, the Minister of Justice, and not the Prime Minister's Office.

Article 4 of Law No. 117 of 1988 must, in fact, be correctly understood as a provision concerning only claims for compensation arising from a civil tort committed by a judge (namely, conduct, an act or a judicial decision characterised by wilful misconduct or gross negligence in the exercise of judicial functions, or a denial of justice).

In such cases, by way of derogation from the ordinary rules and, in particular, from the direct liability of the perpetrator of the tort, only the Office of the Prime Minister is designated as the defendant, without prejudice, in any event, to the right of the judge to intervene at any stage and level of the proceedings pursuant to Article 105 of the Code of Civil Procedure (see Article 6).

This conclusion is objectively supported by the wording of Article 13 of the aforementioned Act, which, with regard to damage arising from an offence committed by a judge in the exercise of his or her duties, refers instead solely to the ordinary rules.

In such a case, therefore, a civil action may be brought directly against the judge, as well as against the civilly liable party, who, pursuant to Article 2049 of the Civil Code, is to be identified as the Minister of Justice.

It must therefore be held that the action for compensation for damage caused in the exercise of judicial functions as a result of a criminal offence committed by a judge in the exercise of his or her duties must be brought against the Minister of Justice and not against the Prime Minister's Office

24.4. It follows that the Presidency of the Council of Ministers, as the civilly liable party, must be found to lack standing to be sued.

P.Q.M.

Sets aside the contested judgment without referral, as the claim is unfounded.

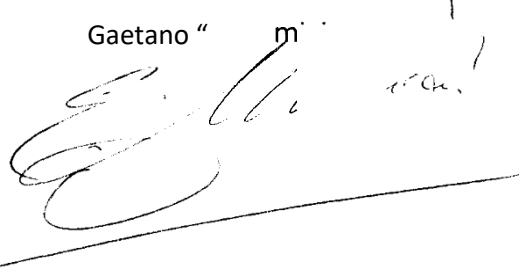
It declares that the civilly liable party, the Prime Minister's Office, lacks standing to be sued.

It revokes the civil rulings.

So decided in Rome, on 18 June 2026.

Th ons Drafting
e C rie Councillestri
Silv

The Chair
Gaetano " m"



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