



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

FIRST SECTION

CASE OF RIZZETTO AND OTHERS v. ITALY

(Application no. 40209/23)

JUDGMENT

STRASBOURG

22 January 2026

This judgment is final but it may be subject to editorial revision.

In the case of Rizzetto and Others v. Italy,

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

Frédéric Krenç, *President*,

Raffaele Sabato,

Alain Chablais, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 40209/23) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 6 November 2023 by three individuals, whose relevant details are set out in the appended table (“the applicants”), represented by Mr P. De Falco, a lawyer practising in Pianiga (Venice);

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

the parties’ observations.

Having deliberated in private on 18 December 2025,

Delivers the following judgment, which was adopted on that date:

I. THE CIRCUMSTANCES OF THE CASE

1. The case concerns civil proceedings in which the applicants, respectively the parents and brother of R.M., lodged a claim for compensation in respect of the damage they had allegedly suffered as a result of R.M.’s death in a car accident. The applicants requested compensation for non-pecuniary damage in respect of both the loss of their family relationship (*danno da perdita del rapporto parentale*) and personal injury (*danno biologico*).

2. The applicants submitted to the domestic courts an expert report attesting that they had each sustained personal injury. The report highlighted that the first and second applicants had been suffering from a chronic depressive disorder since Mr R.M.’s death, for which they had been attending psychotherapy sessions and had been prescribed anxiolytic and hypnotic medication through the National Health Service. Both applicants were diagnosed as suffering from permanent personal injury with a 20% reduction in their level of functioning. As for the third applicant, the report did not mention any specific treatments for psychological conditions, but it noted that he had developed anxiety and an adjustment disorder following the death of his brother and that he required medical treatment for insomnia. The expert concluded that he had sustained permanent damage entailing a 7% reduction in his level of functioning.

3. The District Court found that the applicants had sustained damage from the loss of their close relative and awarded them, in respect of non-pecuniary

damage arising as a whole from R.M.'s death, the sum of 340,000 euros (EUR) each to the first and second applicants and EUR 144,130 to the third applicant. The amounts were subsequently reduced by 25% in the light of the fact that negligence on the part of R.M. had been a contributing factor in the accident.

4. The applicants appealed, asserting that they had asked the lower court to appoint an expert to assess the damage they had sustained, but that their request had been rejected and it had therefore been impossible to obtain a specific assessment of their personal injury.

5. The Court of Appeal upheld the first-instance judgment in relation to the applicants' request to have the court appoint an expert, holding that, in the absence of clear evidence of personal injury, the request was not sufficiently justified ("*meramente esplorativa*") and could not therefore be granted. However, the Court of Appeal departed from the first-instance judgment in that it referred to the expert report submitted by the applicants in order to evaluate the extent of their personal injury. Relying on the Court of Cassation's case-law, the Court of Appeal considered that personal injury could only be assessed on the basis of objective clinical evidence and diagnostic tests (such as CT or MRI scan). As the applicants had failed to adduce such evidence (notwithstanding the expert report attesting that they had attended psychotherapy sessions through the National Health Service), their claim in respect of personal injury was dismissed. However, their claim as concerned damage resulting from the loss of the family relationship was upheld as was the amounts awarded.

6. Following an appeal by the applicants, the Court of Cassation acknowledged that, in the case at issue, the reasoning adopted by the Court of Appeal was "questionable" (*discutibile*) emphasising that the applicants could not reasonably be asked to produce any objective clinical evidence in support of their request to have the court appoint an expert, given that the health conditions in question could not be assessed in an objective manner (by way of, for example, a CT or MRI scan). Moreover, it found that the need to provide objective clinical evidence of personal injury had not been established as a criterion by the domestic case-law cited by the Court of Appeal and pointed out that it is in fact possible to admit a court-appointed expert report where "the assessment must be carried out using specialised technical knowledge". Nevertheless, it concluded that the point made by the lower court, although questionable, had had no impact on the essence of its reasoning, which had led it to the correct conclusion that the applicants had not sustained personal injury. Indeed, the harm suffered by the applicants had been correctly categorised as damage resulting from the loss of the family relationship, which, although indisputably severe, had not been of such a nature as to transcend its inherent character and meet the criteria for another category of non-pecuniary harm, namely personal injury in the form of mental illness.

II. RELEVANT DOMESTIC LAW

7. In the event of the death of a close relative, the heirs may bring two types of action for compensation in respect of the damage caused: *jure proprio* and *jure hereditatis*.

An action for compensation in respect of damage *jure proprio* can be brought in cases where family members have suffered personal injury on account of the loss of a relative, that is, where their psychophysical integrity has been impaired, their ability to interact with the outside world has been severely impacted, and their lifestyle has been fundamentally and radically changed. For personal injury to be established, it is necessary to prove the existence of a mental health condition caused by the event in question. As confirmed by the Court of Cassation's judgment no. 18284 of 25 June 2021, the death of a close relative may also give rise to damage related to the irreversible loss of the personal relationship previously enjoyed with the deceased – that is, damage in respect of the loss of the family relationship (*danno da perdita del rapporto parentale*) – in its fundamental emotional and moral dimensions (such as the care, affection, and support on which the relationship was based).

Secondly, the heirs of the deceased may bring an action for compensation in respect of damage *jure hereditatis* with regard to damage that the victim may have personally suffered between his or her injury and death.

III. COMPLAINT

8. The applicants complained of a violation of Article 6 § 1 of the Convention, alleging that their request for an assessment by a court-appointed expert, which would have been decisive for the purpose of proving that they had suffered personal injury, had been arbitrarily rejected. They further asserted that the rejection of their claim for compensation in respect of personal injury had been grounded on mere assumptions and had lacked an objective foundation.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Admissibility

9. The Government pointed out that the amounts awarded as compensation for the loss of the family relationship had been higher than the amounts normally granted for non-pecuniary damage of a similar nature, thereby depriving the applicants of their victim status.

10. The applicants contested the Government's objection, submitting that damages in respect of personal injury – which was a different category of non-pecuniary damage compared to the loss of the family relationship – had not been included in the amounts awarded to them by the domestic courts.

11. The Court refers to the relevant principles set out in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 180, ECHR 2006-V) and points out that, in the present case, the alleged violation is connected to a different ground for compensation, in that it is linked to the domestic courts' refusal to acknowledge the personal injury allegedly suffered by the applicants and the arbitrary exclusion of the evidence they had submitted in that regard.

12. The Court therefore concludes that, having regard to the applicants' complaint, no redress has been afforded to them and the authorities have failed to acknowledge either expressly or in substance that there has been a violation of their rights.

13. Accordingly, the Court dismisses the Government's preliminary objection and notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The applicants argued that their request for a court-appointed expert to assess the extent of their personal injury had been arbitrarily disregarded by the courts. As a consequence, the domestic courts had failed to award them compensation for the non-pecuniary damage they had sustained in that regard.

15. The Government submitted that the appointment of an expert fell within the discretionary power of the domestic courts and that, in the domestic judgments in the case at issue, the applicants' request had been refused on the grounds that further medical assessments had not been needed in order to decide the issues raised by them, given the extent of the available information. The Government argued that, although not stated explicitly by the courts, that reasoning had been sufficiently clear.

16. The Court refers to its judgments in *García Ruiz v. Spain* ([GC], no. 30544/96, § 28, ECHR 1999-I) and *Moreira de Azevedo v. Portugal* (23 October 1990, §§ 83-84, Series A no. 189) for a summary of the relevant general principles concerning the admissibility of evidence, emphasising that this is primarily a matter for regulation by the national courts. It is also for the national courts to assess the relevance of the proposed evidence. The Court's sole task in connection with Article 6 of the Convention is to examine applications alleging that the domestic courts have failed to observe specific procedural safeguards laid down in that Article or that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing (see

Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 197, ECHR 2012).

17. In ascertaining whether the proceedings as a whole were fair, the Court examines the way in which evidence was taken (see *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII). In that context, it is the duty of the national courts to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 59, Series A no. 288). Although they have a certain margin of appreciation in choosing arguments and admitting evidence, domestic courts are obliged to justify their activities by giving reasons for their decisions (see *Suominen v. Finland*, no. 37801/97, §§ 36-37, 1 July 2003; *Carmel Saliba v. Malta*, no. 24221/13, § 73, 29 November 2016; and *Perić v. Croatia*, no. 34499/06, § 21, 27 March 2008).

18. In the present case, the Court notes from the outset that the applicants submitted a claim for compensation in regard of both loss of their family relationship and for personal injury; these being separate grounds which each could form the basis for non-pecuniary damage. To prove the claim of the personal injury suffered, they engaged an expert to assess the harm to their psychological integrity and submitted the resulting report (see paragraph 2 above). They subsequently requested to have a second assessment carried out by a court-appointed expert. The request was rejected by the domestic courts; the Court of Appeal considered, in particular, that it was not sufficiently justified, pointing out that, in support of the request, objective diagnostic tests be submitted. However, according to the Court of Cassation's subsequent clarification, the applicants could not reasonably be asked to produce any objective clinical evidence in support of their request to have the court appoint an expert, given that the health conditions in question could not be assessed in an objective manner. Moreover, it found that the need to provide objective clinical evidence of personal injury had not been established as a criterion by the domestic case-law cited by the Court of Appeal. In particular, the Court of Cassation held that the reasoning adopted by the Court of Appeal was "questionable" (*discutibile*) and indeed emphasised that it is in fact possible to admit a court-appointed expert report where "the assessment must be carried out using specialised technical knowledge" (see paragraph 6 above). Despite these findings, the Court of Cassation concluded that it had had no impact on the essence of the Court of Appeal's reasoning, which had led it to the correct conclusion that the damage sustained by the applicants had not been of such a nature as to amount to personal injury to their psychological integrity.

19. The Court notes that, notwithstanding that the assessment required specialised technical knowledge and that the applicants had submitted an expert report finding that they had indeed suffered personal injury, the domestic courts did not appoint an expert for the purpose of medically

assessing the extent of the alleged personal injury and yet concluded that the harm suffered by the applicants had not been sufficiently serious to amount to that specific category of non-pecuniary damage. In addition, although the Court of Cassation acknowledged that it was indeed possible to grant the request for a technical expert opinion, it did not ensure that the applicants were actually afforded the opportunity to make use of such an assessment. The Court also observes that, in the absence of such an assessment, it remains unclear which factors the domestic courts took into account in reaching their conclusion, especially in the light of the medical findings included in the expert report submitted by the applicants, which had indicated that the alleged harm had significantly affected their psychological integrity.

20. In the light of the foregoing, the Court considers that the applicants did not have the benefit of fair proceedings in so far as the courts' refusal to obtain the evidence proposed was concerned. That being so, the Court, without speculating on the possible outcome of the domestic proceedings had a report by a court-appointed expert been obtained, concludes that there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 22 January 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Frédéric Krenc
President

APPENDIX

List of applicants:

No.	Applicant's name	Year of birth	Place of residence
1.	Giorgio RIZZETTO	1949	Portogruaro (Venice)
2.	Susanna TONIOLO	1961	Portogruaro (Venice)
3.	Massimiliano RIZZETTO	1981	Sesto Al Raghena (Pordenone)