

Author's note

The author of these lines was recently informed of the news that he was hoping for, that with ruling no. 19499 dated 16 July 2008, Chief Justice Vincenzo Carbone and Judge Rapporteur Alfonso Amatucci of the Italian Court of Cassation, in its highest expression en banc, established the principle of law in the matter discussed. A complete copy of the ruling, consisting of the grounds of the decision and the judgement, has been inserted into the Italian legislative text.

As long ago as 13 April 1977, Judge Rapporteur Alfonso Amatucci commented favourably on the author's first writings entitled "Monetary revaluation and market interest", in *Foro Italiano* no. 1388. The thesis proposed for many decades by the author of these lines in all his writings is that the greater damage from default should only extend to the difference between market interest and legal interest.

The only motive that arouses some perplexity in the author is the recourse to the special yield of Government bonds rather than the normal yield consisting of bank interest on deposits or investments, depending on the proof offered by the creditor, such as his customary behaviour.

The author stands firm on his age-old conviction that the greater damage should be identified as any higher bank interest on deposits or investments, which must be proved by the creditor suffering the loss.

Nonetheless, in the author's opinion, in cases where there is no other proof, a judge may indeed refer to the principle of equity and therefore for this reason also to Government bonds.

This ruling thus appears to have put an end to the lengthy and prominent legal controversy in Italy, and also constitutes a precedent for similar cases that may arise in other countries.

Readers will find the complete and original text of the ruling of the Court of Cassation en banc dated 16/07/2008 no. 19499 written in Italian.