

# The ECHR and Italy

facts & figures



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## **Council of Europe**

Accession: 5 May 1949

## **European Convention on Human Rights**

Signed: 4 November 1950

Ratified: 16 October 1955

## **ECHR judges**

Raffaele Sabato (since 2019)

Guido Raimondi (2010-2019)

Vladimiro Zagrebelsky (2001-2010)

Benedetto Conforti (1998-2001)

Carlo Russo (1981-1998)

Giorgio Balladore Pallieri (1959-1980)

## **ECHR and Italy at 1 January 2023**

1st judgment: Artico v. Italy (13 May 1980)

Total number of judgments: 2,493

Judgments finding a violation: 1,915

Judgments finding no violation: 81

Friendly settlements/strikeout: 355

Other judgments: 142

Applications pending: 3,528

Applications finished: 47,080

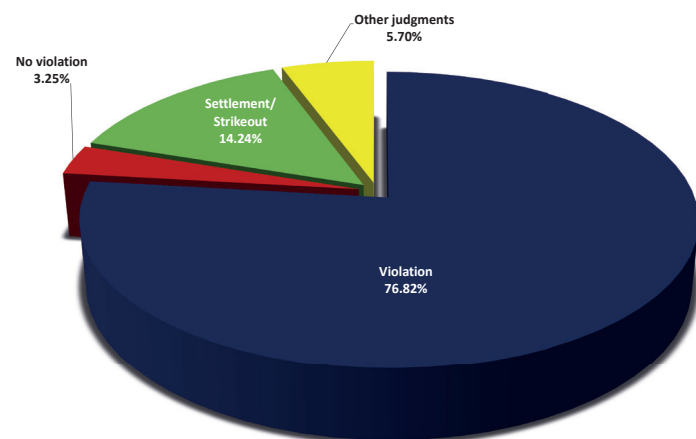
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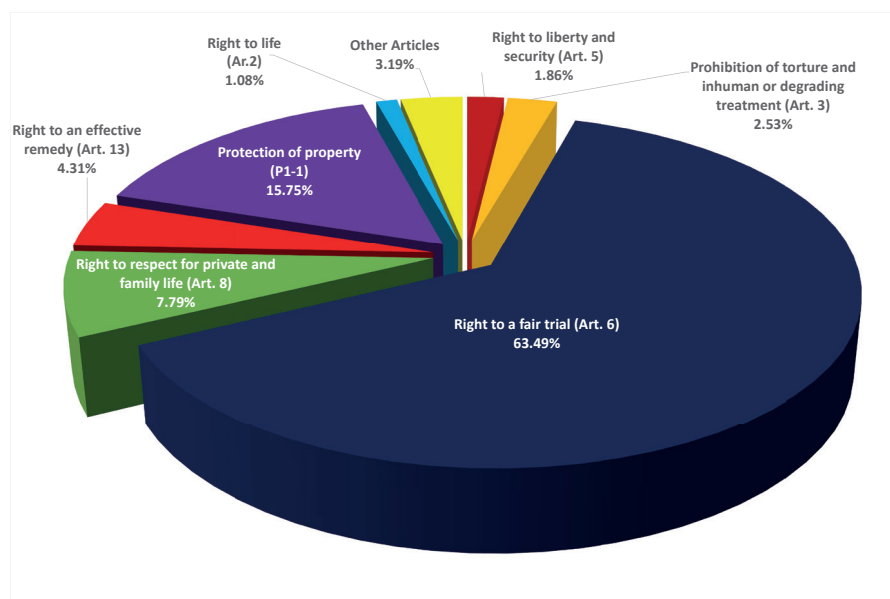
## Types of judgments

In more than 70% of the judgments delivered concerning Italy, the Court has given judgment against the State, finding at least one violation of the Convention.



## Subject-matter of judgments finding a violation

Over 60% of violations found concern Article 6 (right to a fair hearing), specifically the length or fairness of proceedings.



## Impact of the Court's judgments

The Committee of Ministers, the Council of Europe's executive organ, supervises compliance with the Court's judgments and adoption of the remedial measures required in order to prevent similar violations of the Convention in the future.

The Court's judgments have led to various reforms and improvements in Italy, relating in particular to:

### Conditions of detention / remedies

Correspondence between prisoners and lawyers and organs of the European Convention were excluded from monitoring in the new legislation of 2004, which sets limits to the monitoring and restrictions of prisoners' correspondence.

### Excessive length of civil proceedings

Various sets of laws were adopted between 1989 and 1991 in order to rationalise the organisation of the civil court system and accelerate the handling of the cases. The backlog of such cases pending for more than three years was brought below the relevant national average indicators.

### Public care of children, adoption

Supervision of childcare measures was strengthened through amendments in 2003 of the law on State guardianship. This included modalities governing how the responsibility is to be exercised and how the parents and other members of the family are to maintain their links with the child.

A new law entered into force in 2007 to prescribe new rules for the adoption of minors, including an "adoptability declaration" procedure for the parents.

### Access to medically-assisted procreation

Access to medically-assisted procreation was ensured for persons with genetic diseases following a decision by the Constitutional Court in 2015.

### Access to information on one's biological mother

In 2013, by a Constitutional Court's judgment, a child abandoned at birth was granted the possibility to gain access to information on his/her birth mother. In 2015, a law enshrining this right was elaborated.

## Selected cases

### Case of Guerra and Others (19 February 1998)

The forty applicants all lived in Manfredonia, about one kilometre away from a factory which produced fertilisers and other chemical products and had been classified as high-risk. The factory has since been closed, but while it was operating several emissions of toxic substances and an explosion resulted in numerous instances of poisoning. The Court considered that the Italian authorities had not provided the applicants with information about the risks and about what to do in the case of an accident in the chemical factory.

*Violation of Article 8 (right to respect for private and family life)*

### Case of Cordova (no. 1) (30 January 2003)

Agostino Cordova, a public prosecutor in Palmi at the relevant time, lodged a criminal complaint against two members of parliament, alleging defamation. His complaints were unsuccessful as the Italian courts found that the acts in question were covered by parliamentary immunity.

*Violation of Article 6 § 1 (right to a fair trial)*

### Case of Perna (6 May 2003)

Giancarlo Perna, a journalist, was convicted of aggravated defamation following the

publication of an article in the daily newspaper *Il Giornale* incriminating the then Principal Public Prosecutor in Palermo. The Court considered that the disputed article transmitted a clear and unambiguous message to the effect that the judge had abused his powers, and that the applicant had at no point attempted to prove the truthfulness of his allegations.

*No violation of Article 6 (right to a fair trial)*

*No violation of Article 10 (freedom of expression)*

### Case of Maestri (17 February 2004)

In November 1993 Angelo Massimo Maestri, a judge, was the subject of disciplinary proceedings on account of his membership from 1981 to March 1993 of a Masonic lodge affiliated to the Grande Oriente d'Italia di Palazzo Giustiniani.

The Court noted that under Italian legislation at the material time the applicant, even in his capacity as a judge, could not have realised that his membership of a Masonic lodge was liable to attract disciplinary sanctions.

*Violation of Article 11 (freedom of assembly and association)*

### Case of Sejdic (1 March 2006)

Ismet Sejdic complained of his conviction by default without

having had the opportunity to present his defence to the Italian courts. Since he had been untraceable, the authorities had considered that he was deliberately evading justice and declared him a "fugitive". He had been convicted in absentia and sentenced to 21 years and eight months' imprisonment for murder and illegally carrying a weapon.

The Court pointed out that persons convicted in absentia had the right to obtain a fresh determination of the merits of the charge against them by a court, unless it had been established that they had waived their right to appear in court to defend themselves.

*Violation of Article 6 (right to a fair trial)*

### Case of Scordino (no. 1) (29 March 2006)

The case concerned both the effectiveness of the "Pinto Act", which introduced the possibility of lodging a complaint with the Italian courts in respect of excessively long proceedings, and the right to receive compensation for expropriation. The Court invited Italy to take all measures necessary to ensure that the domestic decisions were not only in conformity with the Court's case-law but were also executed within six months of being deposited with the registry.

*Violations of Article 6 (right to a fair trial)*

*Violation of Article 1 of Protocol No. 1 (protection of property)*

### Case of Saadi (28 February 2008)

The case concerned the possible deportation of Nassim Saadi to Tunisia, where he claimed to have been sentenced in 2005, in his absence, to twenty years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism. The Court held that, if the decision to deport the applicant to Tunisia were to be enforced, there would be a of the Convention

*Violation of Article 3 (prohibition of torture and inhuman or degrading treatment)*

### Case of Lautsi and Others (18 March 2011)

This case concerned the presence of crucifixes in State school classrooms in Italy, which the applicants alleged was contrary to the right to education, and particularly to the right of parents to provide their children with education and teaching compatible with their religious and philosophical convictions.

The Court considered that, in principle, the issue of the presence of religious symbols in classrooms fell within the State's margin of appreciation in the absence of any European consensus on the issue, provided that decisions taken in this sphere did not lead to a form of indoctrination.

*No violation of Article 2 of Protocol No. 1 (right to education)*

## Case of Giuliani and Gaggio (24 March 2011)

The applicants were relatives of Carlo Giuliani, a demonstrator who had died when he had been involved in the clashes during the G8 Summit in Genoa in 2001. Carabinieri officers had been attacked by demonstrators armed with crowbars, pickaxes and blunt instruments, and one officer, after issuing a warning, had opened fire, fatally injuring Carlo Giuliani in the face.

Having regard to the circumstances of the case, the Court found that although the use of force had been regrettable, it had not been disproportionate. It also noted that the Italian authorities had conducted an effective investigation into the death.

*No violation of Article 2 (right to life)*

*No violation of Article 13 (right to an effective remedy)*

*No violation of Article 38 (adversarial examination of the case)*

in the marine environment, but it nevertheless pointed out that that situation could not absolve them from their obligation not to remove a person who would run the real risk of being subjected to treatment prohibited under Article 3 in the receiving country. Moreover, the Court noted that the applicants had been transferred to Libya without any examination of their individual situations. The Italian authorities had failed to carry out any kind of identification procedure, merely embarking the applicants and then disembarking them in Libya. The applicants' removal had been of a collective nature in breach of the Convention.

*Violations of Article 3 (prohibition of inhuman and degrading treatment)*

*Violation of Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens)*

*Violation of Article 13 (right to an effective remedy) in conjunction with Article 3*

*Violation of Article 13 in conjunction with Article 4 of Protocol No. 4*

## Case of Hirsi Jamaa and Others

(23 February 2012)

The case concerned a group of Somali and Eritrean migrants who had left Libya in 2009 with the aim of reaching the Italian coast. They had been intercepted at sea and taken back to Libya by the Italian authorities.

The Court was aware of the pressure on States from the increasing influx of migrants, which was particularly difficult

## Case of Centro Europa 7 S.R.L. and di Stefano (7 June 2012)

The case concerned the inability of an Italian television company to broadcast despite holding a lawful broadcasting licence, as it had not been assigned the requisite frequencies.

The Court found that the Italian authorities had failed to put in place an appropriate legislative and administrative framework guaranteeing effective media pluralism.

*Violation of Article 10 (freedom of expression and information)*

*Violation of Article 1 of Protocol No. 1 (protection of property)*

## Case of Parrillo (27 August 2015)

The case concerned the prohibition in Italy of embryo donations for scientific research purposes.

The applicant and her partner, who has since died, had had recourse to medically assisted reproduction techniques. She had hoped to donate the embryos obtained by in-vitro fertilisation to advance scientific research and promote the discovery of therapies for diseases which are currently incurable or difficult to cure.

The Court considered that in connection with this sensitive issue Italy should enjoy a wide margin of appreciation, as confirmed by the lack of any European consensus and of international instruments on this subject.

*No violation of Article 8 (right to respect for private life)*

## Case of Nasr and Ghali (22 February 2016)

The case concerned the "extraordinary rendition", that is to say the abduction by CIA agents, with the cooperation of the Italian

authorities, of the Egyptian imam Abu Omar, who had been granted political refugee status in Italy, followed by his transfer to Egypt, where he was held in secret for several months.

The Court ruled that the legitimate principle of "State secret" had obviously been applied by the Italian executive in order to prevent those responsible for the actions in this case to have to account for those actions. The investigation and consequent proceedings had failed to lead to the punishment of the persons responsible, so that they had ultimately benefited from impunity.

- as regards Mr Nasr:

*Violation of Article 3 (prohibition of torture and inhuman or degrading treatment),*

*Violation of Article 5 (right to freedom and safety),*

*Violation of Article 8 (right to respect for private and family life),*

*Violation of Article 13 (right to an effective remedy) in conjunction with Articles 3, 5 and 8;*

- as regards Ms Ghali:

*Violation of Article 3 (prohibition of torture and inhuman or degrading treatment)*

*Violation of Article 8 (right to respect for private and family life),*

*Violation of Article 13 (right to an effective remedy) in conjunction with Articles 3 and 8*

## Case of Case of Paradiso and Campanelli (24 January 2017)

The case concerned the taking into care by the Italian welfare services of a nine-year-old child who was born in Russia as the result of a gestational surrogacy agreement concluded with a Russian woman by an Italian couple, owing to the lack of any biological relationship.

In the Court's view, agreeing to leave the child with the applicants, perhaps with a view to enabling them to adopt it, would have amounted to legalising the situation which they had created in breach of various important provisions of Italian law.

*No violation of Article 8 (right to respect for private life)*

## Case of Talpis (2 March 2017)

The applicant had submitted that the Italian authorities had failed to protect her against the domestic violence inflicted on her by her alcoholic husband, which in 2013 had led to her son's death and to her own attempted murder. She had alerted the police on several occasions and lodged complaints of ill-treatment and threats.

The Court ruled, in particular, that through their inertia the Italian authorities had created a situation of impunity conducive to the reputed acts of violence that had led to the murder and attempted murder in issue. Moreover, the Court considered that the applicant

had suffered discrimination as a woman on account of the inertia shown by the authorities, which had underestimated the violence in question and had thus essentially condoned it.

*Violation of Article 2 (right to life)*

*Violation of Article 3 (prohibition of inhuman or degrading treatment)*

*Violation of Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3*

## Case of Orlandi and Others (14 December 2017)

In this case, six homosexual couples had complained of their inability to register their marriages celebrated abroad or to have them recognised in Italy.

The Court pointed out that States were free only to allow heterosexual couples to marry, but that homosexual couples needed to be recognised legally and to protect their relationship. It also noted that the situation had changed in Italy in 2016 with the adoption of new legislation on same-sex civil unions.

*Violation of Article 8 (right to respect for private and family life)*

## Case of Berlusconi (27 November 2018)

Silvio Berlusconi, the former President of the Council of Ministers of Italy, had been removed by the Senate from his office as senator in November 2013 on account of his conviction for tax evasion; he

relied on several violations of the Convention before the ECHR.

The Court considered that there was no particular human rights issue requiring the continued examination of the case, having regard to all the facts of the case, and in particular the applicant's rehabilitation in May 2018 and his desire to withdraw his application.

*Striking out of the list of cases*

## Case of G.L. (10 September 2020)

The applicant, a non-verbal autistic girl, had been deprived of specialist schooling support in 2010 and 2012, even though such support had been prescribed by law.

The Court concluded that the applicant had suffered discrimination on account of her disability, pointing out that the discrimination against the girl had been particularly serious in that it had affected her primary schooling, which provided the foundations for education and social integration, as well as the first experiences of living together.

*Violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education)*

## Case of Beg S.p.a. (25 May 2021)

The case concerned the arbitration of a dispute relating to an agreement on hydroelectric energy supplies with a view to the production of electricity in Albania, involving the applicant company and ENELPOWER, the successor of ENEL, the former national electricity company. The applicant company complained of bias on the part of the arbitration board because one of its members had sat on the governing board of ENEL and had worked as a consultant for that company.

Having regard to the close links between one of the members of the arbitration board and ENEL, and therefore to his connections with ENELPOWER, the Court ruled that the arbitration board could not have been deemed objectively impartial.

*Violation of Article 6 § 1 (right to a fair trial)*

## Case of J.L. (27 May 2021)

At the material time in 2008 the applicant had been an art history and drama student.

The case concerned criminal proceedings against seven men whom the applicant had accused of gang rape and who had been acquitted by the Italian courts. In the proceedings before the Court the applicant had criticised the Italian authorities for having failed to protect her right to respect for her private life and personal integrity in the framework of the criminal proceedings conducted following her complaint.

The Court asserted that the judicial authorities ought not to reproduce sexist stereotypes in their judicial decisions, minimise gender violence, or expose women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system.

*Violation of Article 8 (right to respect for private life and personal integrity)*

## Selected measures to execute judgments

### General measures

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#### Case of Calogero Diana (15 November 1996)

Monitoring of the applicant's correspondence during his detention.

**Legislative amendment prohibiting the arbitrary inspection of prisoners' correspondence.**

#### Case of Lucà (27 February 2001)

Conviction of the applicant solely on the basis of pre-trial statements made by a co-accused person whom he was not allowed to cross-examine.

**Constitutional and legislative amendments, by virtue of which statements made without observing the adversarial principle cannot be used in criminal proceedings against the accused without the latter's consent.**





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