

Bid by four prisoners to have life sentences reduced using reviews of enforcement orders: rejected as out of time

In its decisions in the cases of **Prinari v. Italy**, **Cotena v. Italy**, **Rotolo v. Italy** and **Gelsomino v. Italy** (application nos. 20402/16, 15717/16, 38908/15, 74064/17) the European Court of Human Rights has unanimously declared the applications **inadmissible**. The decisions are final.

The cases concerned the rejection of the applicants' separate applications to the Italian authorities for a reduction in their life sentences to 30 years' imprisonment within proceedings for the review of the enforcement order relating to their sentences (*incidente di esecuzione*).

The Court found that the applicants had attempted to use reviews of enforcement orders to have their sentences changed by the Italian courts. They had incorrectly believed that the six-month time-limit had run from the decisions in that regard. The Court ruled that as that had been an ineffective remedy, earlier decisions in their cases before other courts had to be considered the "final" ones. Given that the applications had been lodged more than six months after these decisions, the Court held that they had been lodged out of time.

Principal facts

The applicants, Giovanni Prinari, Salvatore Cotena, Antonino Rotolo, and Giovanni Gelsomino are Italian nationals who were born respectively in 1963, 1958, 1946 and 1967. The applicants are detained respectively in Sulmona, San Gimignano (Siena), Opera (Milan) and Parma (all Italy).

All four applicants were convicted of multiple serious crimes, some related to organised crime, dating from the 1980s and 1990s, including murder. Cumulatively their crimes carried a tariff of life imprisonment with daytime isolation.

Three legislative changes came into force. Law no. 479 of 1999 reinstated the possibility (previously denied) for defendants liable to a sentence of life imprisonment to be tried under the summary procedure (a simplified process whereby a case can be decided as the file stands – *allo stato degli atti* – at the preliminary hearing). It provided that in the event of a conviction following trial under such a procedure, life imprisonment was to be replaced by 30 years' imprisonment. Section 4 *ter* of Decree-Law no. 82 of 2000 provided that prisoners liable to a life sentence could ask to be tried under the summary procedure at their next hearing. Lastly, pursuant to section 7 of Decree-Law no. 341 of 2000, only those liable for a life sentence *without* daytime isolation were eligible for the summary procedure.

Following the European Court's judgment in [Scoppola v. Italy \(no. 2\)](#) (no. 10249/03), all the applicants asked to access the simplified summary procedure, or to have their sentences reduced to 30 years' imprisonment. The Italian courts ruled their applications inadmissible.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 31 July 2015 (Mr Rotolo), 16 March (Mr Cotena) and 4 April 2016 (Mr Prinari), and 9 October 2017 (Mr Gelsomino).

Relying on Articles 7 (no punishment without law), Mr Gelsomino and Mr Prinari complained that the denial of access to the summary procedure had deprived them of the benefit of the more lenient provision and therefore a lighter sentence, while Mr Cotena and Mr Rotolo complained that the

domestic courts had failed to apply the more lenient sentence provided for by the law in connection with the summary procedure.

Mr Cotena and Mr Rotolo also relied on Article 6 (right to a fair trial) to argue, respectively, that if the former's trial had ended earlier, they would have received the more lenient penalty of 30 years' imprisonment, or that the latter had been forced to give up his right to a lighter punishment by the entry into force of Decree-Law no. 341 of 2000.

Mr Prinari also relied on Article 13 (right to an effective remedy).

The decisions in the cases were given by a Committee of three judges, composed as follows:

Péter **Paczolay** (Hungary), *President*,
Gilberto **Felici** (San Marino),
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Registrar*.

Decision of the Court

The Government argued that the applications had been lodged outside the six-month time-limit, which had applied at the time, ordinarily following the final decision in a case before the national courts (the time-limit that applies today is four months).

In the current cases, the Italian Constitutional Court had found that section 7 of Decree-Law no. 341 of 2000 was unconstitutional. Therefore the appropriate method of having a life sentence reduced had been via a review of the enforcement order.

However, the Constitutional Court and the plenary Court of Cassation had separately specifically held that the benefit of the more lenient penalty of thirty years' imprisonment could be granted only to those who had made a request to be tried under the summary procedure while Law no. 479 of 1999 had been in force and had been sentenced afterwards. Therefore the applicants had not been entitled to a reduction of their sentence via a review of the enforcement orders. At that point it should have been understood that their chosen remedy had been ineffective.

Given this, the last effective court decision had not been their appeals on points of law or applications for review of the enforcement orders, but rather the earlier requests lodged before other courts. As the applications to the European Court in these cases were all lodged more than six months after those decisions in the cases before the lower Italian courts, the Court considered them to have been lodged out of time. It therefore declared the applications inadmissible.

The decision is available only in English.

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