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

FIRST SECTION

DECISION

Application no. 21670/24
Giuseppe CASAMONICA
against Italy

The European Court of Human Rights (First Section), sitting on 11 September 2025 as a Committee composed of:

Frédéric Krenc*, President*,
Raffaele Sabato,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 21670/24) 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 30 July 2024 by an Italian national, Mr Giuseppe Casamonica ("the applicant"), who was born in 1972, is currently detained in L'Aquila, and was represented by Ms I. Naso, a lawyer practising in Rome;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the foreseeability of the applicant's conviction for the offence of participation in a mafia-type organisation under Article 416 *bis* of the Criminal Code.

2. The applicant, together with several of his relatives and other co-defendants, was committed for trial for, *inter alia*, having led a mafia-type organisation known as the "Casamonica clan", which was active in the outskirts of Rome between approximately 2000 and 2018 and which engaged in extortion, usury and other activities involving the use of violence to obtain profit.

3. On 20 September 2021 the Rome District Court convicted the applicant of, *inter alia*, participation in a mafia-type organisation under Article 416 *bis* of the Criminal Code. The District Court considered that that provision had

been introduced in 1982 with the aim of punishing not only the criminal organisation specifically known as "the Mafia", but also any other criminal organisation using mafia-type methods, albeit in territories other than or narrower than those historically known to have Mafia presence.

4. In that connection, the District Court emphasised that, in accordance with Article 416 *bis*, paragraph 3 of the Criminal Code, what really characterised a criminal organisation as a "mafia-type" organisation, besides its name, was its way of functioning and, notably, its use of mafia-type methods, involving intimidation by the organisation's members in order to pursue its aims. Provided that the presence of such elements could be demonstrated in criminal proceedings, there was nothing preventing the application of Article 416 *bis* of the Criminal Code to new criminal organisations.

5. The District Court then observed that similar reasoning had already been given by the Court of Cassation in proceedings concerning other mafia-type criminal organisations active in the vicinity of Rome. In particular, it referred to, *inter alia*, the Court of Cassation's judgment no. 44156 of 2018 concerning the so-called "Spada clan", judgment no. 10255 of 2020 concerning the so-called "Fasciani clan", and no. 18125 of 2020 concerning the "Mafia Capitale", in which the Court of Cassation had designated those organisations as "new mafias" (*nuove mafie*) or "small mafias" (*piccole mafie*).

6. Lastly, the District Court referred to the Court of Cassation's settled case-law concerning the constituent elements of the offence under Article 416 *bis* of the Criminal Code, namely the existence of a criminal organisation perceived as such by the public, the use of intimidation by the organisation, and the *de facto* subservience to the organisation in the relevant territory, and held that, on the evidence before it, those elements had been established in the applicant's case. Specifically, it ascertained that the "Casamonica clan", which comprised several members of the Casamonica family bound together by ironclad family ties, had displayed its power by means of intimidation in an area in the outskirts of Rome in which it had repeatedly committed extortion and usury by resorting to violence and relying on the fear caused by its mere presence in the area.

7. On 29 November 2022 the Rome Court of Appeal, among other things, upheld the applicant's conviction for participation in a mafia-type organisation, endorsing the lower court's reasoning as to the scope of the offence under Article 416 *bis* of the Criminal Code and the applicant's role within the organisation.

8. By judgment no. 16472 of 16 January 2024, deposited with the registry on 19 April 2024, the Court of Cassation dismissed the relevant part of an appeal on points of law lodged by the applicant, in which he had alleged, *inter alia*, that the characterisation of new "small mafias" had arisen in domestic practice only in 2020 – that is, after the time of the commission of the offence

attributed to him – and that there had been some divergences in the interpretation of that concept. The Court of Cassation observed that, further to the lower courts' conclusions, since its introduction in the Criminal Code, Article 416 *bis*, paragraph 8, had expressly referred to organisations other than the Mafia, regardless of their local denomination, which pursued aims typical of mafia-type organisations by means of intimidation generated by the organisation.

9. The applicant's conviction for participation in a mafia-type organisation subsequently became final.

10. Under Article 7 of the Convention, the applicant complained that his conviction for participation in a mafia-type organisation had been the result of an unforeseeable departure from the case-law, in that the domestic courts' interpretation of Article 416 *bis* of the Criminal Code as also encompassing "small mafias" had been developed after the commission of the acts attributed to him and had been retrospectively applied in his case to his detriment.

THE COURT'S ASSESSMENT

11. The relevant principles as regards Article 7 of the Convention and the foreseeability of criminal law have been summarised in *Del Río Prada v. Spain* ([GC], no. 42750/09, §§ 77-80 and 91-93, ECHR 2013) and, most recently, in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 237-42, 26 September 2023).

12. At the outset, the Court notes that its examination rests on the premise that the applicant committed all the acts established in the domestic courts' findings of fact, which he did not dispute. It further considers that all the applicant's grievances hinge on the foreseeability of his conviction as a leader of a "small mafia" under Article 416 *bis* of the Criminal Code, based on what he assumed, in essence, was a new interpretation of the scope of the above-mentioned provision.

13. The Court observes that Article 416 *bis* of the Criminal Code punishes anyone who participates in a mafia-type organisation, providing for a more severe penalty for the organisation's leaders.

14. It further notes, as the Rome District Court did (see paragraph 4 above), that Article 416 *bis*, paragraph 3 of the Criminal Code defines a mafia-type organisation as one in which the members use intimidation and the subsequent creation of *de facto* subservience to the organisation and a code of silence (*omertà*) in order to, *inter alia*, commit crimes, acquire control over economic activities, and obtain illicit gains.

15. It also takes note of the fact that, as pointed out by the Court of Cassation in the applicant's case (see paragraph 8 above), Article 416 *bis*, paragraph 8 of the Criminal Code expressly includes within its scope organisations other than the Mafia, regardless of their local denomination,

which pursue aims typical of mafia-type organisations by means of intimidation generated by the organisation.

16. In that connection, the domestic courts considered that the criminal organisation led by the applicant could be characterised as a mafia-type organisation if the constituent elements of the offence provided for by Article 416 *bis* of the Criminal Code, as interpreted by settled domestic practice (see paragraph 6 above), were made out.

17. The Court acknowledges the applicant's allegation that a similar interpretation, involving the application of Article 416 *bis* of the Criminal Code to so-called new mafias, was adopted by the Court of Cassation for the first time in 2020 – that is, after the time of the commission of the acts attributed to him (see paragraphs 5 and 8 above). However, it considers that that fact alone cannot suffice to call into question the foreseeability of his conviction. It reiterates that even a new interpretation of the scope of an existing offence may be reasonably foreseeable for the purposes of Article 7 of the Convention, provided that it is reasonable in terms of domestic law and is consistent with the essence of the offence (see *Saakashvili v. Georgia*, nos. 6232/20 and 22394/20, §§ 142 and 152, 23 May 2024; see also, among other authorities, *Yüksel Yalçınkaya*, cited above, § 239; *Del Río Prada,* cited above, § 93; *Berardi and Mularoni v. San Marino*, nos. 24705/16 and 24818/16, § 44, 10 January 2019; and *Parmak and Bakır v. Turkey*, nos. 22429/07 and 25195/07, § 59, 3 December 2019).

18. At this juncture, the Court attaches special significance to the provision of Article 416 *bis*, paragraph 8 of the Criminal Code (see paragraph 15 above), which appears to have been intentionally drafted by the legislature in such a way as to allow for the criminalisation of any criminal organisation which, despite being independent of the Mafia, acted in an identical manner.

19. The Court further notes that the Court of Cassation's case-law cited by the domestic courts in the applicant's case (see paragraph 5 above) provided further clarification as to the adaptation of Article 416 *bis* of the Criminal Code to the features of "new" criminal organisations. In judgment no. 10255 of 2020 in particular, the Court of Cassation, while acknowledging at the outset that the provision was couched in somewhat broad terms, emphasised the need to adopt a strict approach focused on a detailed assessment of the objective features of each criminal organisation in order to verify whether, in the pursuit of their goals, they acted using the methods of "traditional" mafia-type organisations (as defined in the relevant domestic practice; compare *Bavčar v. Slovenia*, no. 17053/20, § 152, 7 September 2023). In doing so, it interpreted the offence in the light of the principle of legality and having regard to the principle that the situations in which criminal-law provisions are applicable must be exhaustively defined by law (*principio di tassatività*). According to the Court of Cassation, this strictly "objective" approach was necessary to prevent the risk of vague and arbitrary

interpretations and also fulfilled the requirement of reasonable proportionality between that aim and the severe penalties envisaged by Article 416 *bis* of the Criminal Code.

20. The Court considers that, by taking that approach, the Court of Cassation engaged in the gradual clarification of the rules of criminal liability through judicial interpretation, which is not outlawed by Article 7 of the Convention "provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen" (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 141, ECHR 2008, quoted in *Jasuitis and Šimaitis v. Lithuania*, nos. 28186/19 and 29092/19, § 111, 12 December 2023). The present case must therefore be distinguished from the cases in which the Court has dealt with the issues of conflicting case-law (see *Žaja v. Croatia*, no. 37462/09, 4 October 2016) or of departure from well-established case-law (see *Del Río Prada*, cited above).

21. The Court consequently finds that the domestic courts' interpretation in the applicant's case merely consisted of the application of the criteria set out in Article 416 *bis*, paragraph 3 of the Criminal Code to describe a mafia-type organisation (see paragraph 4 above) as a criminal organisation which, albeit different from the Mafia in historical and geographical terms, was identical in terms of its strategy and course of action. This exercise was carried out by way of establishing the presence of all constituent elements of the offence in an individualised manner, as required by Article 7 of the Convention (compare and contrast *Yüksel Yalçınkaya* cited above, § 267).

22. It is the Court's view that, as such, the interpretation at issue was both reasonable and consistent with the essence of the offence (see, *mutatis mutandis*, *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 821, 25 July 2013; *Berardi and Mularoni*, cited above, § 54; and *Total S.A. and Vitol S.A. v. France*, nos. 34634/18 and 43546/18, § 67, 12 October 2023).

23. In the light of the foregoing considerations, the Court is satisfied that the conclusions drawn by the domestic courts as regards the scope of the relevant domestic provision (namely Article 416 *bis* of the Criminal Code) and as regards the application of that provision to the conduct of the applicant fell well within the courts' remit to interpret and apply national law, and that the applicant could reasonably have foreseen that his conduct would render him criminally liable under that provision (see *Saakashvili*, cited above, § 155).

24. The Court therefore finds that the applicant's complaints are manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 October 2025.

Liv Tigerstedt Deputy Registrar	Frédéric Krenc President