



**Conviction for drink-driving offence:
compliance with principle of non-retrospective effect
of harsher criminal legislation but lack of reasoning
in cassation judgment**

In today's **Chamber** judgment¹ in the case of [Felloni v. Italy](#) (application no. 44221/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights,
and

no violation of Article 7 (no punishment without law).

The case concerned criminal proceedings which led to Mr Felloni's conviction for driving while unfit through drink. Mr Felloni alleged that his prison sentence was the result of the retrospective application of harsher criminal legislation. In particular, he complained that he had not been granted the benefit of mitigating circumstances, in accordance with the law in force at the time of the facts and subsequently amended. He also complained about a lack of reasoning in the judgment of the Court of Cassation before which he had raised this defence.

The Court found that the Court of Cassation had failed in its duty to give reasons for its decision as to Mr Felloni's defence on the question of mitigating circumstances.

It nevertheless concluded that Mr Felloni had not been penalised as a result of his case being examined under a new criminal law which had become applicable after the facts.

Principal facts

The applicant, Riccardo Felloni, is an Italian national who was born in 1978 and lives in Ferrare (Italy).

In 2007 criminal proceedings were brought against Mr Felloni on a charge of driving while unfit through drink.

In 2011 the District Court sentenced Mr Felloni to a one-month suspended prison term and a fine of 900 euros (EUR). The court also ordered the suspension of his driving licence. He appealed, pleading not guilty and, in the alternative, raised the defence of mitigating circumstances under Article 62 *bis* of the Criminal Code, arguing in particular that he had no criminal record.

In 2012 the Court of Appeal upheld Mr Felloni's conviction and sentence. It dismissed his plea of mitigating circumstances, finding that the absence of a criminal record no longer permitted a reduction in sentence. It found no other mitigating factor and could not take account of his behaviour at the trial, during which he had shown no sign of remorse. The Court of Appeal also had regard to the fact that, subsequent to the offence in question, Mr Felloni had once again been arrested in his vehicle while under the influence of drink.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Felloni appealed on points of law, submitting in particular that Article 62 *bis* of the Criminal Code had been amended by Law no. 125 of 2008 and that the new rule had therefore entered into force after the offence was committed.

In 2014 the Court of Cassation denied Mr. Felloni's appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial), Mr Felloni submitted that the Court of Cassation had failed in its duty to give reasons for its decision.

Under Article 7 (no punishment without law), he alleged that he had been sentenced under a harsher criminal law applied retrospectively to his case. In particular, he complained that he had not been granted the benefit of mitigating circumstances in accordance with the legislation in force at the material time, as subsequently amended by another law.

The application was lodged with the European Court of Human Rights on 17 July 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 § 1 (right to a fair hearing)

The Court found that the Court of Cassation had failed to respond to Mr Felloni's ground of appeal no. 6 concerning the allegedly retrospective application of Law no. 125 of 2008 to his case and the refusal of the courts below to grant him the benefit of mitigation. The highest court had merely declared inadmissible all the grounds of appeal raised by Mr Felloni on the basis that they sought to call into question the version of the facts established by the lower courts.

The Court was not convinced that the question raised by Mr Felloni in his ground of appeal no. 6 had concerned a factual question outside the remit of the Court of Cassation. It further found that the question of the allegedly retrospective application of the legislation on mitigation had been one of Mr Felloni's principal grounds of appeal, such that it had required a specific and explicit response.

Mr Felloni had therefore not been guaranteed an effective examination of his arguments or a response allowing him to understand the reasons for their dismissal. Consequently, the Court of Cassation had failed in its duty to give reasons for its decisions. There had thus been a violation of Article 6 § 1 of the Convention.

Article 7 (no punishment without law)

The Court observed that the Bologna Court of Appeal had assessed Mr Felloni's case under the new text of Article 62 *bis* of the Criminal Code, as amended by Law no. 125 of 2008, which had entered into force after the offence had been committed.

The Court was of the view that it had to address the question whether the domestic courts had applied the legislation whose provisions were most favourable to the defendant.

It found that the criminal law in force at the relevant time did not provide for any automatic acknowledgment of mitigating circumstances when the convicted person had no criminal record; under the Criminal Code this was just one of the criteria that could be taken into account in the discretionary assessment by the court under Article 133 of the Code.

Even though Law no. 125 of 2008 had amended Article 62 *bis* of the Code by limiting the court's discretion in the factors taken into account for sentence reduction, it had not reformed the system of mitigating circumstances by rendering inoperative a legal criterion which might have been favourable to Mr Felloni.

The Bologna Court of Appeal had rejected Mr Felloni's plea of mitigating circumstances after performing a holistic examination of the factors indicated in Article 133 of the Criminal Code and carrying out an in-depth assessment of his conduct. It had thus concluded that no circumstance justifying a reduction in sentence, including his conduct during the trial, and not even his conduct after the commission of the offence, could be considered favourably. Mr Felloni had not shown any sign of remorse during the trial, on the contrary he had committed the same offence again while the criminal proceedings were pending.

Consequently, the Court found that the setting of Mr Felloni's sentence had followed the weighing up of all the relevant factors. In that context, there was nothing to suggest that the Court of Appeal, if it had not examined the case under new Law no. 125 of 2008, would have granted him the benefit of mitigating circumstances and taken account of his lack of criminal record. Mr Felloni had not therefore been penalised on account of the consideration, under the new law, of facts which had pre-dated the entry into force of that legislation. There had therefore been no violation of Article 7.

Just satisfaction (Article 41)

The Court held, by six votes to one, that Italy was to pay Mr Felloni 2,500 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Turković expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.