

Demolition order for illegal construction under Italian law is restorative, not punitive

In its decision in the case of [Longo v. Italy](#) (application no. 35780/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a demolition order issued as part of a 1997 judgment convicting Mr Longo of unauthorised construction of a 200 sq. m agricultural warehouse in Sicily.

The Court held, in particular, that even though the demolition order in this case had been issued in the criminal jurisdiction, the purpose had been restorative – to return the site to its previous state – not punitive. Given this, there had been no “penalty” within the meaning of Article 7 of the Convention (no punishment without law) and the demolition order could not be subject to the limitation period. The Court rejected the complaint under that Article.

Principal facts

The applicant, Cesare Longo, is an Italian national who was born in 1946 and lives in Balestrate (Palermo, Italy).

Mr Longo built a 200 sq. m agricultural warehouse in the municipality of Partinico. Following an inspection in 1995, it was established that Mr Longo had not had a building permit for the building. He applied for a building amnesty in the same month, stating that the warehouse had been built in 1993.

In 1997 Mr Longo was found guilty of the offence of unauthorised construction. The Palermo Magistrate found that the applicant had built without a permit, the information given on the amnesty application had been incorrect, and the building had been erected after the legal amnesty period. He was sentenced to an overall suspended sentence of two months’ detention and a fine of 8 million Italian lire (approximately 4,130 euros). The demolition of the warehouse was ordered.

In October 1998 the Partinico municipality granted the building amnesty requested by the applicant. Following an appeal brought by Mr Longo, the fine was reduced, but the conviction and demolition order were upheld. Mr Longo’s argument that he had been granted an amnesty was considered “immaterial”, as the relevant conditions required by law had not been met.

In 2015 Mr Longo was ordered to comply with the demolition order, or demolition would be carried out by the authorities at his expense. He failed to do so.

In June 2016 he lodged an application for review of the enforcement order. He argued that demolition orders were “criminal” in nature and therefore, as more than ten years had elapsed since his conviction, the demolition “penalty” was time-barred. Furthermore, given that he had been granted an amnesty by the municipality, there was no longer a public interest in the demolition being carried out.

The application was dismissed. The Palermo Court of Appeal held that the building amnesty could not have been granted as the application had not met the conditions required by law; and that a demolition order was not a penalty, but a measure aimed at returning a site to its former condition. The request therefore fell outside the scope of Article 7 (no punishment without law) of the Convention, and the statute of limitations did not apply.

A subsequent appeal on points of law by Mr Longo was rejected.

According to the latest information provided to the Court, the demolition order had not been enforced.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 July 2018.

Relying on Articles 6 § 1 (right to a fair trial) and 7 (no punishment without law) of the Convention and Article 1 of Protocol No. 1 (protection of property) to the Convention, Mr Longo complained of the national courts' failure to characterise the demolition order as a penalty, and of a disproportionate interference with his property rights.

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

Ivana **Jelić** (Montenegro), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Ilse **Freiwirth**, *Section Registrar*.

Decision of the Court

Article 7

Mr Longo complained that the demolition order had been a criminal penalty and had therefore become time-barred under the law.

The Court, following a review of the domestic framework on building permits, regularisation and amnesties, and an assessment on the relationship between building regulations and criminal proceedings, noted that the demolition order had been made in accordance with section 7(9) of Law no. 47 of 1985 (incorporated into Article 31 § 9 of the Consolidated Law on Construction). Such a demolition order issued by a criminal judge was identical in nature to that issued by a municipal authority. It also noted that a demolition order was maintained even if the building did not belong to the perpetrator of the offence (but, for instance to legal entities, successors in title or third parties). Those elements showed that the intention behind such orders was to restore a site to its previous state independently of any punishment given to the offender.

The fact that the demolition order was issued by the criminal courts was not decisive, as criminal courts often ordered non-punitive measures (such as civil reparation for the victim of a crime).

Overall, the Court held that the demolition order had been mainly a restorative measure and it had not been a "penalty" within the meaning of Article 7.

The Court therefore declared this complaint inadmissible.

Article 6 § 1

Mr Longo complained that the Italian courts' characterisation of the demolition order as a restorative measure resulted in an infringement of his right to a fair trial.

The Court referred to its findings under Article 7 and reiterated that it was not its place to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention.

As Mr Longo had failed to allege any deprivation of his fair-trial rights, the Court declared this part of the application to be manifestly ill-founded.

[Article 1 of Protocol No. 1](#)

The Court noted that the warehouse had been built without permit, as confirmed by the Italian courts. Given Mr Longo's conviction, he could not reasonably rely on the legality of the construction.

The purpose of a demolition order was to restore a site to its former condition, and such orders were not subject to a limitation period. This was necessary to guarantee the effectiveness of building regulations and deter other potential offenders. Time having elapsed could not alter that conclusion.

Mr Longo would not bear an excessive burden if the demolition were carried out, and therefore the Court found this part of the application to be manifestly ill-founded.

The decision is available only in English.

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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.