



Breach of freedom of movement as a result of special supervision and compulsory residence order

In today's **Grand Chamber** judgment¹ in the case of **de Tommaso v. Italy** (application no. 43395/09) the European Court of Human Rights held:

- unanimously, that there had been a **violation of Article 2 of Protocol No. 4 (freedom of movement)** to the European Convention on Human Rights on account of the lack of foreseeability of the relevant Act, and a **violation of Article 6 § 1** of the Convention on account of the lack of a public hearing in the Bari District Court and Court of Appeal;
- by fourteen votes to three, that there had been **no violation of Article 6 § 1 (right to a fair hearing)**; and
- by twelve votes to five, that there had been **no violation of Article 13 (right to an effective remedy)**.

The case concerned preventive measures imposed for a duration of two years on the applicant, who complained of a violation of Article 5 (right to liberty and security), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy) of the Convention and Article 2 of Protocol No. 4 (freedom of movement).

The Court found, firstly, that the obligations imposed on Mr de Tommaso had not amounted to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention, but merely to restrictions on his freedom of movement.

Next, the Court held that Act no. 1423/1956, the statutory instrument forming the basis of the individual preventive measures imposed on Mr de Tommaso, had satisfied the requirement of accessibility. However, it found that the Act in question had afforded the courts a wide discretion without providing a sufficiently clear indication of the scope or manner of exercise of such discretion. The imposition of preventive measures had not been sufficiently foreseeable and had not been accompanied by adequate safeguards against the various possible abuses. Having been couched in vague and excessively broad terms, the Act had not satisfied the foreseeability requirements established in the Court's case-law.

With regard to the fairness of the proceedings, the Court considered that the proceedings as a whole had been conducted in accordance with the requirements of a fair hearing, but noted that the Government had acknowledged that there had been a violation of Article 6 § 1 in that the hearings in the Bari District Court and Court of Appeal had not been public. It also observed that the Constitutional Court had declared unconstitutional the provisions of the Act that had not afforded individuals the opportunity to request a public hearing in proceedings for the application of preventive measures.

Principal facts

The applicant, Mr Angelo de Tommaso, is an Italian national who was born in 1963 and lives in Casamassima (Italy).

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 22 May 2007 the Bari public prosecutor recommended that the Bari District Court place Mr de Tommaso under special police supervision for two years under Act no. 1423/1956 and impose a compulsory residence order on him. The public prosecutor submitted that Mr de Tommaso, who had previous convictions for drug trafficking, absconding and unlawful possession of weapons, associated with criminals and was a dangerous individual.

Mr de Tommaso challenged the prosecutor's recommendation, arguing that there had been a case of mistaken identity and that no criminal charges had been brought against him since a conviction dating back to 2002.

In a decision of 11 April 2008 the Bari District Court placed Mr de Tommaso under special supervision for two years. It held that the requirements laid down in the Act were satisfied, there being no doubt that he was dangerous. In the District Court's view, Mr de Tommaso had active criminal tendencies, and the evidence showed that he had derived most of his means of subsistence from criminal activity.

On 14 July 2008 Mr de Tommaso appealed to the Bari Court of Appeal. In a decision of 28 January 2009 the Court of Appeal allowed his appeal and quashed the preventive measure in its entirety. It held that there was no proof that Mr de Tommaso was dangerous. He had been convicted in March 2003 of drug trafficking and handling illegal weapons and had served a sentence of four years' imprisonment. Accordingly, his most recent drug-related illegal activities dated back to more than five years before the preventive measure had been ordered. All that the Court of Appeal could hold against him was an offence of absconding, committed on 14 December 2004 while he had been subject to a compulsory residence order. The Court of Appeal also pointed out that the offences of 25 and 29 April 2007 that the District Court had attributed to Mr de Tommaso had not been committed by him but by another person with the same name. Lastly, it found that the District Court had omitted to assess the impact of the rehabilitation purpose of the sentence on Mr de Tommaso's personality.

Complaints, procedure and composition of the Court

Relying on Article 5 (right to liberty and security) and Article 2 of Protocol No. 4 (freedom of movement), the applicant complained that the preventive measure imposed on him had been arbitrary and its duration excessive. Relying on Article 6 § 1 (right to a fair hearing), he complained that the hearings in the District Court and the Court of Appeal had not been public, and that the proceedings had been unfair. Lastly, under Article 13 (right to an effective remedy), he asserted that he had no effective remedy by which to seek redress in the domestic courts.

The application was lodged with the European Court of Human Rights on 28 July 2009. On 25 November 2014 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 20 May 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

András **Sajó** (Hungary), *President*,
Guido **Raimondi** (Italy),
Josep **Casadevall** (Andorra),
Işıl **Karakaş** (Turkey),
Mark **Villiger** (Liechtenstein),
Boštjan M. **Zupančič** (Slovenia),
Ján **Šikuta** (Slovakia),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Kristina **Pardalos** (San Marino),
Paulo **Pinto de Albuquerque** (Portugal),

Helen Keller (Switzerland),
Ksenija Turković (Croatia),
Dmitry Dedov (Russia),
Egidijus Kūris (Lithuania),
Robert Spano (Iceland),
Jon Fridrik Kjølbro (Denmark),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 5

Having regard to the effects of the special supervision and the manner of its implementation, the Court found that the obligations imposed on Mr de Tommaso had not amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention, but merely to restrictions on his freedom of movement. The complaint under Article 5 therefore had to be rejected.

Article 2 of Protocol No. 4

The Court observed that Act no. 1423/1956 was the legal instrument that had formed the basis for the individual preventive measures imposed on Mr de Tommaso. The measures had therefore had a legal basis in domestic law.

First of all, the Court considered that Act no. 1423/1956 satisfied the requirement of accessibility. Examining whether the effects of the Act had been foreseeable in terms of the individuals targeted by the preventive measures, the Court observed that the imposition of such measures remained linked to a prospective analysis by the domestic courts, since neither the Act nor the Constitutional Court had clearly identified the “factual evidence” or the specific types of behaviour which had to be taken into consideration in assessing the danger to society posed by the individual, and which could give rise to preventive measures. The Court therefore considered that the Act had not contained sufficiently detailed provisions as to what types of behaviour were deemed to pose a danger to society. It noted that the District Court had based its decision on the existence of “active” criminal tendencies on Mr de Tommaso’s part, albeit without attributing any specific behaviour or criminal activity to him. Furthermore, as grounds for the preventive measure the District Court had mentioned the fact that Mr de Tommaso had no “fixed and lawful occupation” and that his life was characterised by regular association with prominent criminals and the commission of offences. In other words, the court had based its reasoning on the assumption of “criminal tendencies”, a criterion that the Constitutional Court had previously found insufficient to define a specific category of individuals. The Court thus considered that since the law in force at the relevant time had not provided a clear indication of the scope or manner of exercise of the very wide discretion conferred on the domestic courts, it had not been formulated with sufficient precision to offer protection against arbitrary interferences and to enable Mr de Tommaso to regulate his conduct and foresee to a sufficiently certain degree the imposition of the preventive measures.

As regards the measures imposed on Mr de Tommaso, the Court observed that some of them were worded in very general terms and that their content was extremely vague and indeterminate; this applied in particular to the obligations to “lead an honest and law-abiding life” and to “not give cause for suspicion”. It was therefore impossible for Mr de Tommaso to ascertain the precise content of some of the requirements to which he had been subjected while under special supervision.

The Court considered that Act no. 1423/1956 had left the courts a wide discretion without indicating with sufficient clarity the scope of such discretion and the manner of its exercise. Accordingly, the

imposition of preventive measures on Mr de Tommaso had not been sufficiently foreseeable and had not been accompanied by adequate safeguards against the various possible abuses.

The Court thus found that the Act had been couched in vague and excessively broad terms and had not satisfied the foreseeability requirements established in the Court's case-law. Neither the individuals to whom the measures could be applied nor the content of certain of the measures had been defined with sufficient precision and clarity. The Court concluded that the interference with Mr de Tommaso's freedom of movement could not be said to have been based on legal provisions complying with the Convention requirements of lawfulness. There had therefore been a violation of Article 2 of Protocol No. 4 to the Convention on account of the lack of foreseeability of the Act in question.

Article 6 § 1

With regard to the fact that the hearings had not been held in public, the Court reiterated that while a public hearing constituted a fundamental principle enshrined in Article 6 § 1, the obligation to hold such a hearing was not absolute. It noted that the Government had acknowledged that there had been a violation of Article 6 § 1 in that the hearings in the Bari District Court and Court of Appeal had not been public. It further observed that the Constitutional Court had declared section 4 of Act no. 1423/1956 and section 2 *ter* of Act no. 575/1965 unconstitutional in that they had not afforded individuals the opportunity to request a public hearing in proceedings for the application of preventive measures relating to property.

Furthermore, in the Court's view, the circumstances of the case had dictated that a public hearing should be held, bearing in mind that the domestic courts had had to assess aspects such as the applicant's character, behaviour and dangerousness, all of which had been decisive for the imposition and application of the preventive measure. The Court therefore held that there had been a violation of Article 6 § 1.

Lastly, as regards the complaint that the proceedings had been unfair, the Court observed that Mr de Tommaso's main grievance was that the Bari District Court's assessment of the evidence had been arbitrary. It pointed out, however, that the Court of Appeal had found in his favour and quashed the preventive measure. The Court concluded that the proceedings as a whole had been conducted in accordance with the requirements of a fair hearing and that there had been no violation of Article 6 in this respect.

Article 13 taken together with Article 2 of Protocol No. 4

The Court observed that Mr de Tommaso had been able to appeal to the Bari Court of Appeal and argue that the special supervision and compulsory residence order had been imposed unlawfully. After reviewing the terms and proportionality of the special supervision order, the Court of Appeal had quashed it.

The Court considered that Mr de Tommaso had had an effective remedy under Italian law affording him the opportunity to raise his allegations of violations. There had therefore been no violation of Article 13 taken together with Article 2 of Protocol No. 4 to the Convention.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 11,525 in respect of costs and expenses.

Separate opinions

Judges Raimondi, Villiger, Šikuta, Keller and Kjølbros expressed a joint concurring opinion; Judge Judge Dedov expressed a concurring opinion; and Judges Sajó, Vučinić, Pinto de Albuquerque and Kūris each expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

George Stafford (tel: + 33 3 90 21 41 71)

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.