



Italian remedy against a pre-trial detention order for an accused person who cannot be traced is not compatible with the Convention

In today's **Chamber** judgment¹ in the case of [Rizzotto v. Italy](#) (application no. 20983/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 4 (right to speedy review of the lawfulness of detention) of the European Convention on Human Rights.

The case concerned the lawfulness of a pre-trial detention order, and the procedural safeguards secured under Article 5 § 4 (right to speedy review of the lawfulness of detention) of the Convention.

The Court found that Mr Rizzotto had never had the opportunity in person to support his application for release because a similar application had already been made without his knowledge by an officially appointed lawyer. The Court reiterated that the primary fundamental guarantee flowing from Article 5 § 4 of the Convention was the right to an effective hearing by the judge examining an appeal against detention. It observed that the applicant had also had his application for a review of the lawfulness of his detention rejected without being given a hearing.

The Court concluded that the Italian legal system had not provided the applicant with procedural safeguards complying with Article 5 § 4 of the Convention.

Principal facts

The applicant, Mr Salvatore Stefano Rizzotto, is an Italian national who was born in 1972 and lives in Florida.

On 16 September 2010 the Palermo investigating judge ordered the pre-trial detention of Mr Rizzotto on account of his involvement in criminal proceedings for drug-trafficking. Since Mr Rizzotto could not be found, the authorities deemed him to be a fugitive and appointed a lawyer to represent him. On 13 October 2010 the lawyer appealed to the Palermo District Court against the order for the applicant's pre-trial detention, relying on Article 309 of the Code of Criminal Procedure. The court dismissed the appeal.

On 6 December 2010 Mr Rizzotto was arrested in Malta. He appointed a lawyer of his own choosing. The lawyer appealed against the pre-trial detention order. On 20 December 2010 Mr Rizzotto was extradited to Italy and remanded in custody in Rome.

On 3 January 2011 a hearing was held in the Palermo District Court. Mr Rizzotto, who was still in custody in Rome, did not attend and was represented by his lawyer. The court declared the appeal inadmissible on the grounds that the applicant had already exercised his right of appeal in the form of the appeal lodged by his officially appointed lawyer while he had been untraceable.

Mr Rizzotto appealed on points of law. The Court of Cassation dismissed the appeal, relying on the "single appeal" principle, whereby an appeal lodged by counsel, whether chosen or officially

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.

appointed, on behalf of an accused who has absconded prevents the latter from personally lodging any further appeal or requesting an extension of the time allowed for appealing.

In the meantime Mr Rizzotto had applied to the Palermo preliminary investigations judge to set aside the detention order and, in the alternative, to replace the order with a less restrictive measure. The judge dismissed his application, and Mr Rizzotto did not appeal.

On 14 September 2011 the Palermo District Court sentenced Mr Rizzotto to two years and eight months' imprisonment and fined him 12,000 euros. On 20 July 2012 the applicant was released after having served his sentence.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 5 § 4 (right to speedy review of the lawfulness of detention), the applicant complained that he had not had an effective judicial review of the lawfulness of his pre-trial detention, adding that there had been several shortcomings in the proceedings.

The application was lodged with the European Court of Human Rights on 4 April 2012.

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),
Gilberto **Felici** (San Marino),
Raffaele **Sabato** (Italy),

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

Decision of the Court

Article 5 § 4

The Court observed that the question arose as to whether the Italian legal system had afforded Mr Rizzotto procedural safeguards complying with the requirements of Article 5 § 4 of the Convention.

First of all, it noted that Italian law did indeed offer the possibility of challenging the grounds for a decision ordering deprivation of liberty, by means of an appeal under Article 309 of the Code of Criminal Procedure. Nevertheless, it observed that the appeal lodged by the lawyer instructed by Mr Rizzotto against the order by the sentence-execution judge had been declared inadmissible by the special division of the Palermo District Court on the grounds that a similar application had already been made by an officially appointed lawyer while Mr Rizzotto had been untraceable. However, as the lawyer appointed by the authorities to represent Mr Rizzotto in the proceedings had decided to appeal against the pre-trial detention order without the knowledge of Mr Rizzotto, who had been untraceable, the Court found that it was beyond doubt that Mr Rizzotto had not had the opportunity either to communicate with the officially appointed lawyer, or to put forward his own arguments in support of the application for release, or to be heard by the court.

The Court observed that Mr Rizzotto had never had the opportunity in person to support the application for release, despite the fact that this was the primary fundamental guarantee flowing from Article 5 § 4. The remedy under Article 309 of the Code of Criminal Procedure had not afforded the appropriate safeguards.

Secondly, the Court noted that Italian law offered the possibility, under Article 299 of the Code of Criminal Procedure, of applying to set aside a detention order with a view to securing a review of the lawfulness of ongoing detention. It nevertheless observed that the applicant had had his application rejected without even being given a hearing. In accordance with Article 299, an application of this kind did not require a hearing to be held, and the judge was not obliged to examine the accused unless the latter requested a hearing, and only if he put forward new facts in support of his application. In that connection, the Court emphasised again that a detainee's right to a hearing derived directly from the Convention and could not be made conditional on a specific request by the detainee. In any event, since this was the first time Mr Rizzotto had sought to secure a review of the lawfulness of his detention and no new facts had thus been submitted to the court's scrutiny, a request for a hearing would in any event have been declared inadmissible. That being so, the Court found that an application to set aside the detention order had likewise not constituted a remedy complying with Article 5 § 4 of the Convention in the circumstances of the case.

In view of all the above factors, in the specific situation where an untraceable accused had been the subject of a detention order and an appeal had previously been lodged without his knowledge by an officially appointed lawyer, the Court held that the procedure in Italy did not comply with the provisions of Article 5 § 4.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

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.