



The principles that the criminal law may not be applied retroactively and must be foreseeable were not respected in a case involving a charge of aiding and abetting a mafia-type organisation from the outside

In today's **Chamber judgment**¹ in the case of [Contrada v. Italy \(no. 3\)](#) (application no. 66655/13), the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 7 (no punishment without law) of the European Convention on Human Rights.

The case concerned the issue of whether the actions for which the applicant was convicted and sentenced to ten years' imprisonment constituted a criminal offence at the time when they were committed.

The Court held that the offence of "aiding and abetting a mafia-type organisation from the outside" had resulted from a development in the case-law which had begun toward the end of the 1980s and was consolidated in 1994, and that it was not therefore sufficiently clear and foreseeable for Mr Contrada at the time of the events in respect of which he was charged (1979-1988).

Principal facts

The applicant, Bruno Contrada, is an Italian national who was born in 1931 and lives in Palermo.

Mr Contrada was sentenced to ten years' imprisonment for aiding and abetting a mafia-type organisation by a judgment of the Palermo District Court of 5 April 1996, in respect of acts which were carried out between 1979 and 1988. The court noted that, in his position as a police officer, and subsequently Principal Private Secretary to the Anti-Mafia High Commission and Deputy Director of the Civil Secret Service (SISDE), Mr Contrada had systematically contributed to the activities of the mafia-type association known as "*Cosa nostra*" and to the attainment of its criminal aims, particularly by supplying information about police investigations and operations concerning certain members of the organisation.

Mr Contrada lodged an appeal, arguing, among other points, that at the time of the events in question, the offence of aiding and abetting a mafia-type organisation from the outside (*concorso esterno in associazione di stampo mafioso*) had not been foreseeable, given that it had been created through case-law adopted at a later date. By a judgment of 4 May 2001, the Palermo Court of Appeal quashed Mr Contrada's conviction on the ground that no criminal offence had been committed.

After the case had been remitted by the Court of Cassation, another section of the Palermo Court of Appeal, in a judgment of 25 February 2006, upheld the initial judgment convicting the applicant, holding that the first-instance court had correctly applied the principles developed in the case-law in this area. The court of appeal stated that the offence of aiding and abetting a mafia-type organisation from the outside had been established by the Court of Cassation in two judgments of 1994 and 1995, then confirmed in 2002 and 2005. In addition, the court of appeal noted, as it had in its judgment of 4 May 2001, the difference between the concepts of aiding and abetting a mafia-

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.

type organisation from the outside – where the individual systematically acts with the accomplices – and collusion – where the individual provides occasional assistance to an accomplice.

An appeal by Mr Contrada on points of law was subsequently dismissed by the Court of Cassation on 8 January 2008.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law) of the Convention, Mr Contrada complained that the offence of aiding and abetting a mafia-type organisation from the outside had resulted from case-law which was developed after the events for which he was convicted.

The application was lodged with the European Court of Human Rights on 4 July 2008.

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

Päivi Hirvelä (Finland), *President*,
Guido Raimondi (Italy),
George Nicolaou (Cyprus),
Ledi Bianku (Albania),
Nona Tsotsoria (Georgia),
Paul Mahoney (United Kingdom),
Krzysztof Wojtyczek (Poland),

and also Françoise Elens-Passos, *Section Registrar*.

Decision of the Court

Article 7 (no punishment without law)

The Court reiterated its case-law on the principle of “no punishment without law”² and examined whether the wording of the relevant provisions and how they were interpreted by the domestic courts between 1979 and 1988 had permitted the applicant to appreciate the legal consequences of his actions.

The Court noted firstly, as the Palermo District Court had pointed out in its judgment of 5 April 1996, that the existence of the offence of aiding and abetting a mafia-type organisation from the outside had been the subject of conflicting case-law by the Italian Court of Cassation, which mentioned it for the first time in 1987³. The Court of Cassation had initially refused to recognise the offence, especially in judgments of 1989 and 1994⁴, while recognising the existence of the offence of possible assistance to a mafia-type organisation in judgments of 1987, 1992 and 1993⁵. It was not until its *Demistry* judgment of 5 October 1994 that the Court of Cassation reviewed this question as a whole for the first time and, in order to end the case-law conflicts, finally accepted that the offence of aiding and abetting a mafia-type organisation from the outside did exist.

The Court then noted that in its judgment of 25 February 2006 the Palermo Court of Appeal had relied on judgments which had all been delivered after the events in respect of which the applicant had been charged⁶. In addition, Mr Contrada’s complaint to all of the courts, concerning the

² Summarised in the Grand Chamber judgment in *Del Rio Prada v. Spain*, no. 42750/09. See §§ 136 and 137 of today’s judgment.

³ *Cillari* judgment, no. 8092, 14 July 1987.

⁴ Judgments in the cases of *Agostani*, no. 8864, 27 June 1989, and *Abbate and Clementi*, nos. 2342 and 2348, 27 June 1994.

⁵ Judgments in the cases of *Altivalle*, no. 3492, 13 June 1987; *Altomonte*, no. 4805, 23 November 1992; *Turiano*, no. 2902, 18 June 1993; and *Di Corrado*, 31 August 1993.

⁶ Judgments in *Demistry*, no. 16, 5 October 1994; *Mannino* no. 30, 27 September 1995; *Carnevale*, no. 22327, 30 October

principles that the criminal law may not be applied retroactively and must be foreseeable, had not been examined in detail by the Italian courts, which had merely analysed, in detail, whether the offence of aiding and abetting a mafia-type organisation from the outside did indeed exist within the domestic legal system; they had not, however, answered the question of whether the applicant could have been aware of the offence at the time of the events for which he was charged.

Thus, given that the offence in question had resulted from developments in the case-law, beginning towards the end of the 1980s and consolidated in 1994 (the *Demiry* judgment), it had not been sufficiently clear and foreseeable for Mr Contrada at the time of the events in question (1979-1988). In consequence, the Court concluded that there had been a violation of Article 7.

Article 41 (just satisfaction)

The Court held that Italy was to pay Mr Contrada 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 for 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.