

Italy

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

➤ **Risk of ill-treatment upon expulsion**

By a legislative Decree of 2015, the protection of the European Convention was extended to asylum seekers taken on board naval or coast guard ships during operations on the high seas.

Hirsi Jamaa and Others
 (27765/09)
 Final Resolution
 CM/ResDH(2016)221

➤ **Conditions of detention / remedies**

Preventive and compensatory remedies, including a reduction of sentence in cases of placement in substandard prison conditions, were provided for following 2013-2014 legislative amendments. Moreover, an Ombudsman for persons deprived of their liberty, was established and a computerised system was created to monitor the prison space and inmates and guide the reallocation of prisoners detained in overpopulated facilities. In the course of a further reform, the competence for penitentiary health care was transferred from the Ministry of Justice to the National Health Service, the latter ensuring that detainees benefit from health care services equivalent to those offered to other citizens.

Torreggiani and Others
 (43517/09+)
 Final Resolution
 CM/ResDH(2016)28

Cirillo group (36276/10)
 Final Resolution
 CM/ResDH(2019)327

➤ **Right to liberty and security**

In 1989, the Code of Criminal Procedure provided that all measures restricting personal liberty had henceforth to be taken by the investigating judge upon receipt of a reasoned request from the public prosecutor or the judge of first instance, that the judge must rule within five days on any application by the accused seeking release from detention on remand as well as a right to compensation for wrongful detention in certain circumstances.

Brincat (13867/88)
 Final Resolution
 CM/ResDH(94)46

Bezicheri (11400/85)
 Final Resolution
 CM/ResDH(90)12

Ciulla (11152/84)
 Final Resolution
 CM/ResDH(90)13

In 1995, the Code of Criminal Procedure was amended to strengthen existing guarantees, providing that a judicial decision ordering pre-trial detention may be annulled *ex officio* if its necessity has not been explicitly justified in the light of specific criteria.

Vaccaro (41852/98)
 Final Resolution
 CM/ResDH(2005)90

Correspondence between prisoners and lawyers and organs of the European Convention were excluded from monitoring in the new legislation of 2004, which sets limits to the monitoring and restrictions of prisoners' correspondence.

Calogero Diana
 (15211/89+)
 Final Resolution
 CM/ResDH(2005)55

Labita (26772/95)
 Final Resolution
 CM/ResDH(2009)83

➤ **Functioning of justice**

▢ **Fairness of proceedings**

The possibility, in criminal proceedings, of one and the same judge conducting the investigative phase and the trial phase was repealed in 1989 in a new Code of Criminal Procedure. The abrogation concerns, in particular, the district judge's power to carry out police or investigative measures.

Lanzano (14725/89)
 Final Resolution
 CM/ResDH(96)315

Furthermore, the presence of a defence lawyer became henceforth obligatory in hearings before the Court of Cassation. The appointment of a lawyer by the Court of Cassation shall be notified without delay to the appellant as well as the date set for the hearing thirty days in advance.

Biondo (8821/79)
 Final Resolution
 DH(89)30

Changes to the Constitution, in 1999, gave constitutional rank to a number of requirements of fair trials. A 2001 reform introduced improved safeguards as regards the use of testimony during investigations by a person who decides to

Craxi N° 2 (34896/97)
 Final Resolution
 CM/ResDH(2005)28

remain silent during trial, thus preventing convictions exclusively on evidence the defendant had never been able to refute. The guarantees in case of *in absentia* proceedings were improved to allow appeals against judgments rendered *in absentia* at first instance even if the normal deadlines have expired.

➤ Reopening of criminal proceedings

In 2014, the Code of Criminal Procedure was amended so that, in the event of a conviction in absentia, the time limit for appealing the judgment is reopened, at the accused's request, unless the accused has had effective knowledge of the proceedings or judgment and voluntarily waived the right to appear in the proceedings or to challenge the judgment. In this regard, the burden of proof lies with the judicial authorities.

➤ Execution of final judicial decisions

In the framework of legislative reforms in 2012, 2013 and 2014, guarantees were adopted for the due enforcement of domestic judicial decisions, in particular, ordering the payment of debts by public administration. These guarantees included the setting up of a central state fund to ensure payment.

➤ Remedies against excessive length of civil proceedings

Various sets of laws were adopted between 1989 and 1991 in order to rationalise the organisation of the civil court system and accelerate the handling of the cases. Thus, First Instance Courts with jurisdiction over civil proceedings succeeded, through appropriate organisational measures, to reduce the average length of civil cases. The backlog of such cases pending for more than three years was brought below the relevant national average indicators.

Furthermore, between 2011 and 2013, promising results were achieved by First Instance Courts and Courts of Appeal concerning the average length of divorce and legal separation proceedings.

The backlog of administrative cases was also reduced. More generally, the effectiveness of the compensatory remedy for unreasonably lengthy proceedings (Pinto Law) was improved as necessary budgetary funds were ensured and proceedings were speeded up.

➤ Remedies against excessive length of criminal proceedings

The Code of Criminal Procedure of 1989 set up simplified procedures with a view to reducing the number of hearings before the trial court and introduced the possibility for the defendant and the public prosecutor to propose the imposition of a given penalty, which was used in 50% of the new cases. The Court of Cassation accelerated proceedings dealing with criminal appeals and caught up on its backlog in 1990.

F.C.B. (12151/86+)
Final Resolution
CM/ResDH(2011)122

Huzuneanu (36043/08)
Final Resolution
CM/ResDH(2021)75

Ventorino (357/07)
Final Resolution
CM/ResDH(2016)316

Zanghi (11491/85)
Final Resolution
CM/ResDH(95)82

A.C. (27985/95+)
Final Resolution
CM/ResDH(2015)247

Andreoletti (29155/95+)
Final Resolution
CM/ResDH(2015)246

Di Bonaventura (14147/88+)
Final Resolution
CM/ResDH(2016)358

Mostacciuolo (64705/01+)
Final Resolution
CM/ResDH(2017)289

Motta (11557/85)
Final Resolution
CM/ResDH(92)26

➤ Enforcement of eviction decisions rendered by courts

Successive reforms of the legal framework governing the eviction of tenants after the expiry of their leases and the improved implementation of judicial enforcement decisions made less necessary recourse to legislation suspending evictions. In 2004, this legislative practice was declared unconstitutional by the Constitutional Court. In addition, several effective remedies for securing compensation in case of enforcement delays were introduced, particularly through automatic compensation in the event of legislative suspension, for failure of the police to provide assistance as well as for delays in judicial and enforcement proceedings (Pinto Law). The availability of these remedies led to a significant reduction of complaints by landlords, as shown by national statistical data.

Immobiliare Saffi
(22774/93+)

Final Resolution
CM/ResDH(2007)84

➤ Protection of private and family life

➤ Public care of children, adoption

Supervision of childcare measures was strengthened through amendments in 2003 of the law on State guardianship. This included modalities governing how the responsibility is to be exercised and how the parents and other members of the nuclear family are to maintain their links with the child; measures stipulate that the duration of the placement in public care must be indicated in the placement orders, that any significant event must be reported to the judge, and that the child's relations with and return to its family of origin must be facilitated. Moreover, safeguards in adoption proceedings were improved, notably as regards better information and greater involvement of parents from the onset of the procedure, including the right of children to be heard by the judge, following a series of legislative reforms in 2001, 2007, 2012 and 2013. An Ombudsman for childhood and adolescence was established in 2011.

Scozzari and Giunta
(39221/98+)

Final Resolution
CM/ResDH(2008)53

Todorova (33932/06)

Final Resolution
CM/ResDH(2010)172

Roda and Bonfatti
(10427/02+)

Final Resolution
CM/ResDH(2016)27

Piazzini group (36138/09)

Final Resolution
CM/ResDH(2019)121

➤ Access to medically-assisted procreation

Access to medically-assisted procreation was ensured for persons with genetic diseases following a decision by the Constitutional Court in 2015.

Costa and Pavan
(54270/10)

Final Resolution
CM/ResDH(2016)276

➤ Access to information on one's biological mother

In 2013, by a Constitutional Court's judgment, a child abandoned at birth was granted the possibility to gain access to information on his/her birth mother. In 2015, a law enshrining this right was elaborated.

Godelli (33783/09)

Final Resolution
CM/ResDH(2015)176

➤ Gender reassignment

Legislative measures adopted in 2011, and the evolution in the relevant case-law of the Court of Cassation and the Constitutional Court, ensured that domestic courts can order a change in the forename when they authorise a gender reassignment surgery or, for individuals choosing not to undergo such surgery, once they have ascertained that the gender transition process is serious, unambiguous and definitive.

S.V. (55216/08)

Final Resolution
CM/ResDH(2020)131

► Freedom of expression

▢ Defamation

Following developments in the case-law of the Constitutional Court between 2003 and 2015, parliamentary immunity in defamation matters has been excluded with regard to statements not linked to the exercise of a parliamentary function.

Patrino, Cascini and Stefanelli (10180/04+)
Final Resolution
CM/ResDH(2016)119

▢ Television broadcasting

Respect for the requirement of information pluralism and the right to competition was improved in 2014, when the role and competences of the authority on the regulation of broadcasting (AGCOM), an independent administrative body, for the granting of a license as well as the control of transfers of ownership of radio and television companies and operations of media concentration were clarified.

Centro Europa 7 S.R.L. and Di Stefano (38433/09)
Final Resolution
CM/ResDH(2017)104

► Protection against discrimination

▢ on the ground of nationality

In 2013, the law was amended and now family allowance is paid to EU nationals as well as to other long-term resident foreigners.

Dhahbi (17120/09)
Final Resolution
CM/ResDH(2015)203

▢ on the ground of sexual orientation

A Law permitting the civil union of committed and stable same-sex relationships was adopted in 2016, allowing for same-sex partnerships' legal recognition and for a foreign partner to obtain a residence permit for family reunification purposes.

Oliari and Others (18766/11+)
Final Resolution
CM/ResDH(2017)182
Taddeucci and McCall (51362/09)
Final Resolution
CM/ResDH(2018)125

► Protection of property rights

▢ Compensation for expropriation

The Court of Cassation changed its case-law to grant compensation for the consequences of failures by the forces of order to enforce judicial eviction orders. Once the principle was accepted in 1988, the Court of Cassation progressively refined and applied it, defining the obligations of the administration with regard to compensation.

C.A.R. S.r.l. (23924/94)
Final resolution
CM/ResDH(2010)213

Safeguards for landowners against emergency expropriations (the procedure can be initiated only as a means of last resort when there are exceptional public interest reasons for it) were improved.

Belvedere Alberghiera S.R.L. (31524/96+)
Final resolution
CM/ResDH(2017)138

▢ Adjustment of allowances to inflation rate

As concerns the impossibility for persons accidentally contaminated following blood transfusions or by the administration of blood derivatives to obtain an annual adjustment based on the inflation rate of the supplementary component (the "IIS") of the compensation allowance they benefit from, the authorities – as from 2012 - guaranteed that the IIS is henceforth submitted to an annual adjustment. Furthermore, the authorities at central and regional level paid on the basis of budgetary allocations, to the persons accidentally

M.C. and Others (5376/11)
Final Resolution
CM/ResDH(2021)30

contaminated (or their heirs), the arrears corresponding to the adjustment of the IIS from the date the compensation allowance was granted. In particular, the arrears to be paid by the central and regional authorities were cleared before the end of 2014 and 2018 respectively.

► *Electoral rights*

◻ *Bankruptcy and restrictions of electoral rights and of legal capacity*

The rules unjustifiably imposing a blanket suspension of electoral rights for five years counting from the declaration of bankruptcy and limitations on the legal capacity of the person in bankruptcy (notably prohibition to exercise a number of professional activities) were abolished in 2006.

Albanese (77924/01)

[Final Resolution
CM/ResDH\(2008\)45](#)

*Abbatiello, Federici,
Maugeri, Scassera
(39638/04+)*

[Final Resolution
CM/ResDH\(2008\)75](#)