



## Italian law must provide for judicial review of telephone-tapping measures affecting individuals who are not parties to criminal proceedings

In today's **Chamber** judgment<sup>1</sup> in the case of [Contrada v. Italy \(no. 4\)](#) (application no. 2507/19), which concerned the lawfulness of the interception of the applicant's telephone conversations and the search of his home and other properties (measures ordered in the context of murder proceedings in which the applicant was not directly involved), the European Court of Human Rights reached the following findings.

By a majority, the Court declared **the applicant's complaint concerning the search of his home inadmissible for failure to exhaust domestic remedies**. It noted that the applicant had not applied to have the measure reviewed by the domestic courts – as provided for in Articles 257 and 324 of the Code of Criminal Procedure – before lodging his application with the Court.

Unanimously, the Court held that there had been a **violation of Article 8 (right to respect for private life and correspondence)** of the European Convention on Human Rights with regard to the interception and transcription of the applicant's telephone communications. It found that Italian law did not afford adequate and effective guarantees against abuse to individuals who had been subjected to an interception measure but who, since they were not suspected or accused of involvement in an offence, were not parties to the proceedings. In particular, those individuals were unable to apply to a judicial authority for an effective review of the lawfulness and necessity of the measure and to obtain appropriate redress, as applicable.

### Principal facts

The applicant, Bruno Contrada, is an Italian national who was born in 1931 and lives in Palermo (Italy). He is a former senior police officer and Deputy Director of the Civil Secret Service ("SISDE").

#### *Facts associated with previous cases*

Following criminal proceedings launched in 1996, Mr Contrada was convicted for supporting a mafia-type organisation. His conviction became final on 8 January 2008<sup>2</sup>. The domestic courts found, in particular, that between 1979 and 1988, in his capacity as police officer and then as Principal Private Secretary to the Anti-Mafia High Commission and Deputy Director of the SISDE, he had systematically contributed to the activities and to the achievement of the criminal aims of the mafia-type organisation referred to as "Cosa Nostra".

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](http://www.coe.int/t/dghl/monitoring/execution).

<sup>2</sup> The events associated with the criminal proceedings against the applicant gave rise to the cases *Contrada v. Italy* (24 August 1998, *Reports of Judgments and Decisions* 1998-V), *Contrada v. Italy (no. 2)* (no. 7509/08, 11 February 2014) and *Contrada v. Italy (no. 3)* (no. 66655/13, 14 April 2015).

### *The facts of the present case*

In 2017, as part of criminal investigations into the 1989 murder of a police officer (A.A.), the public prosecutor's office ordered the urgent tapping of five telephone lines used by Mr Contrada. The investigations were focused on three individuals – two presumed members of Cosa Nostra and one police officer (A.G.) – but Mr Contrada himself was not a suspect.

According to the public prosecutor's office, the initial investigation had established that the murdered police officer had been part of an undercover secret-service unit, which had been tasked with tracking down Mafia members who were wilfully evading prosecution (*latitanti*). However, A.G. and other police officers in that unit – including Mr Contrada, their official superior at the relevant time – had allegedly been corrupted by Mafia clans. Those officers had also allegedly attempted to hinder the investigations and one such individual, after being questioned, had immediately contacted Mr Contrada. Moreover, Mr Contrada himself had not been fully cooperative when questioned by the investigators. To uncover the facts and identify the other members of the unit in question, the public prosecutor's office decided that it was essential to monitor the reactions of the allegedly corrupt police officers and Mr Contrada immediately and, for that reason, to intercept Mr Contrada's telephone conversations.

The Palermo investigating judge authorised the telephone tapping that same day, in accordance with Articles 266 and 267 of the Code of Criminal Procedure and Law no. 203 of 1991. He considered that there was sufficient evidence against the three suspects to believe that the offences of homicide and membership of a mafia-type criminal organisation had been committed. Furthermore, in the light of the investigation's findings, it was likely that conversations on the facts underlying the proceedings would take place between the applicant and the individuals involved. The interceptions were initially ordered for a 40-day period, which was subsequently extended several times. The measure was lifted on 28 July 2018. On 3 August 2018 the investigating judge authorised the public prosecutor's office not to file the transcripts of the intercepted conversations until the preliminary investigation had ended.

In 2018 the public prosecutor's office also ordered a search of the applicant's home and two other properties used by him, because the telephone interceptions had revealed the existence of buildings in which the applicant was storing documents and which were thus far unsearched. Those searches took place on 29 June 2018. The applicant submitted that it was on that day, on reading the search warrant, that he learned that his telephone lines had been tapped and conversations recorded. He claimed to have received no copies of the relevant judicial decisions.

The investigation into A.G. was subsequently discontinued following the latter's death. The two other suspects were committed for trial on 5 June 2020.

### Complaints, procedure and composition of the Court

Before the Court, Mr Contrada complained of an unjustified interference with his rights under Article 8 (right to respect for private life, home and correspondence) and the lack of an effective judicial review of the contested measures, which had been ordered in the course of proceedings to which he had not been a party. In that regard, he claimed to be a victim of a violation of Article 6 (right to a fair hearing), Article 8 and Article 13 (right to an effective remedy) of the Convention.

The application was lodged with the European Court of Human Rights on 11 December 2018.

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

Marko **Bošnjak** (Slovenia), *President*,  
Alena **Poláčková** (Slovakia),  
Lətif **Hüseynov** (Azerbaijan),  
Péter **Paczolay** (Hungary),

Gilberto Felici (San Marino),  
Erik Wennerström (Sweden),  
Raffaele Sabato (Italy),

and also Ilse Freiwirth, *Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that a warrant had been issued to search the applicant's home and other buildings used by him, that a decision had been taken to intercept his telephone communications, and that those measures had been implemented. It therefore considered that the applicant could claim to be a victim of a violation of Article 8 of the Convention.

#### ***Regarding the search***

The Court observed that under Italian law an application for review, within the meaning of Article 257 of the Code of Criminal Procedure, could be made with regard to a search warrant accompanied by a seizure order, provided that goods had indeed been seized. Taking into account the Court of Cassation's case-law on the matter, the Court considered that that remedy would have allowed the domestic courts to rule on the lawfulness and necessity of the search.

The Court next noted that, had the search been recognised as unlawful, the applicant could subsequently have had the search warrant revoked and all seized items returned, which would have prevented such items, related to his private life, from being used in the ensuing criminal proceedings. The Court considered that in the present case that form of redress would have amounted to an appropriate remedy for the alleged violation of Article 8. The applicant had not, however, provided an adequate explanation for his decision not to apply to the domestic courts for review (as provided for in Articles 257 and 324 of the Code of Criminal Procedure) before bringing his complaints before the Court. It therefore, by a majority, declared the complaint concerning the search of the applicant's home inadmissible for failure to exhaust domestic remedies.

#### ***Regarding the telephone tapping***

The Court noted that the applicant had been the victim of an interference with his right under Article 8 of the Convention.

In the Court's view, that interference had had a legal basis in Italian law and the accessibility of the law did not raise any issue. The Court further considered that the domestic law, as interpreted by the Court of Cassation's established case-law, indicated with sufficient precision the persons who could have their telephone tapped, and in what circumstances and conditions. In consequence, the domestic law met the Convention's foreseeability requirement in the special context of the interception of communications.

The Court considered that the present case concerned the specific situation of individuals who were covered by an interception warrant but who, since they had not been involved in committing the offence, were not parties to the criminal proceedings in which the warrant had been ordered and implemented. The question therefore arose as to whether those individuals enjoyed the same adequate and effective guarantees against abuse as those afforded to the parties to the proceedings.

In that connection, the Court noted that Italian law provided that the parties to proceedings be immediately informed when interception operations had ended. They also had to be granted access to the related recordings and transcripts, along with all relevant judicial decisions, so that they could challenge the lawfulness and necessity thereof, as appropriate.

However, no such subsequent notification of the measure was provided for where the individuals whose communications were being intercepted were not parties to the proceedings. Save for an oversight or other chance event, those persons might never know that they had been under surveillance.

In the present case, although the applicant had not been informed that his telephone had been tapped, he had learned of the measure indirectly while reading the search warrant. However, no remedy was available to persons who were not parties to criminal proceedings but became aware that they were under surveillance, enabling them to seek judicial review of the telephone tapping. In this regard, the Court had previously found that depriving an individual subjected to interception of the effective possibility of retrospectively challenging such a measure also deprived him or her of an important guarantee against abuse.

The Court concluded that Italian law did not afford adequate and effective guarantees against abuse to individuals who had been subjected to an interception measure but who, since they were not suspected or accused of involvement in an offence, were not parties to the proceedings. In particular, there was no provision whereby those individuals could apply to a judicial authority for an effective review of the lawfulness and necessity of the measure and to obtain appropriate redress, as applicable.

In view of these shortcomings, the Court found that Italian law did not meet the “quality of law” requirement and was incapable of keeping the interference to what was “necessary in a democratic society”. There had accordingly been a violation of Article 8 of the Convention.

### Other articles

The Court held that there was no need to examine the complaint under Articles 6 and 13 of the Convention.

### Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage.

### Separate opinion

Judges Hüseyinov and Felici expressed a joint partly dissenting opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: + 33 3 90 21 42 08

**We are happy to receive journalists’ enquiries via either email or telephone.**

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

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

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

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

**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.