



## Litigants complaining about overcrowding in Italian prisons must use the new remedies introduced by the Italian State

In its decisions in the cases of [Stella v. Italy \(application no. 49169/09\)](#) and [10 other applications](#), and [Rexhepi v. Italy \(no. 47180/10\)](#) and [seven other applications](#), the European Court of Human Rights has unanimously declared the applications inadmissible. These decisions are final.

The cases concerned the issue of prison overcrowding in Italy following the application of the pilot judgment procedure in [Torreggiani and Others v. Italy](#) (nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10), delivered by the Court on 8 January 2013. The situation complained of by the applicants concerns about 3,500 applications which are currently pending before the Court and which will be examined at a later date.

After having examined the new individual remedies introduced by the Italian State following the application of the pilot judgment procedure, the Court considered that it had no evidence enabling it to find that those remedies did not offer, in principle, prospects of appropriate relief for the complaints submitted under Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. It followed that the applicants' complaint concerning overcrowding in prisons had to be rejected for non-exhaustion of domestic remedies.

### Principal facts

The applicants are ten Italian nationals and a Ukrainian national in the first case, and six Albanian nationals and two Serbian nationals in the second. They have all been held in various prisons in Italy and claim that they were kept in overpopulated cells which had insufficient ventilation, lighting and heating.

The Court applied the pilot judgment procedure in the case of [Torreggiani and Others v. Italy](#) (nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10), delivered on 8 January 2013. It noted that prison overcrowding in Italy represented an endemic and structural problem that was incompatible with the European Convention on Human Rights.

### Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained about their conditions of detention.

The applications were lodged with the European Court of Human Rights between 20 August 2009 and 8 September 2010 in the first case, and between 12 August and 18 October 2010 in the second case.

The decisions were given by a Chamber of seven, composed as follows:

Işıl Karakaş (Turkey), *President*,  
Guido Raimondi (Italy),  
András Sajó (Hungary),  
Nebojša Vučinić (Montenegro),  
Egidijus Kūris (Lithuania),  
Robert Spano (Iceland),  
Jon Fridrik Kjølbro (Denmark), *Judges*,

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 3

The Court noted that, following the application of the pilot judgment procedure in the case of *Torreggiani and Others*, the Italian State had enacted a number of legislative measures aimed at resolving the structural problem of overcrowding in prisons, had reformed the law to allow detained persons to complain to a judicial authority about the material conditions of detention and had introduced a compensatory remedy providing for damages to be paid to persons who had been subjected to detention contrary to the Convention.

The applications in the present case had been lodged before the entry into force of the new legislative provisions. Desiring to assert the crucial importance of its subsidiary role, the Court considered that there were grounds in the present case for departing from the general principle that the exhaustion requirement should be assessed with reference to the time at which the application was lodged and that this exception could apply to all similar cases pending before it.

With regard to the preventive remedy, the Court noted that, as of 22 February 2014, persons detained in Italy could lodge a judicial complaint with the judge responsible for the execution of sentences in order to complain of serious breaches of their rights, which included the right to enjoy sufficient living space and to enjoy appropriate physical living conditions.

In line with the action plan presented to the Court in November 2013, the Italian State had put in place a series of substantive measures intended to resolve the structural problem of overcrowding in prisons. Several legislative provisions had been enacted with a view to promoting greater use of alternatives to detention and to reducing the sentences laid down for minor offences. The renovation of existing prison buildings and the construction of new premises had increased the number of places available and permitted a better distribution of prisoners.

With regard to the compensatory remedy, the Court noted that the new remedy introduced by Legislative Decree no. 92/2014 was accessible to everyone who alleged that he or she had been imprisoned in Italy in physical conditions that were contrary to the Convention. This remedy concerned the present applicants, as well as all those who had lodged an application that was currently pending before the Court and not yet declared admissible. It provided for a reduction in sentence or compensation for persons who had been imprisoned in conditions contrary to Article 3 of the Convention.

In conclusion, the Court considered that it had no evidence on which to find that the remedies in question did not offer, in principle, prospects of appropriate relief for the complaints submitted under Article 3 of the Convention. Consequently, litigants complaining of the overcrowding in Italian prisons were under an obligation to use them. The applicants were required to use the remedy introduced by Legislative Decree no. 92/2014 in order to obtain acknowledgment of the violation and, where appropriate, adequate compensation. With regard to those applicants who might still be detained in poor conditions, the Court held that they were to submit a complaint to the judge responsible for the execution of sentences under section 35 *ter* of the Prison Administration Act, with a view to obtaining an immediate improvement of their living conditions in prison. This conclusion in no way prejudged a possible re-examination of the remedy's effectiveness and the capacity of the domestic courts to establish a uniform case-law that was compatible with the requirements of the Convention.

The Court rejected the applicants' complaint concerning prison overcrowding for failure to exhaust domestic remedies and declared the applications inadmissible.

*The decision 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.