



Resolution 1388 (2004)¹

The Italian Law on legitimate suspicion

Parliamentary Assembly

1. The Parliamentary Assembly recalls the importance of the proper administration of justice, in accordance with the case-law of the European Court of Human Rights, carried out in a reasonable time frame by independent, impartial judges. It attaches the same importance to the separation of powers, which is a guarantee of democracy.
2. It is with the utmost attention, therefore, that it follows changes made to the organisation of the judiciary in Council of Europe member states. The enactment in November 2002 of the Italian Law on Legitimate Suspicion, known as the "Cirami Law" after its author, was examined in this perspective.
3. The Cirami Law introduced into the Code of Criminal Procedure the notion of legitimate suspicion as one of the reasons which could be used for requesting the transfer of a case from one court to another. The legitimate suspicion is founded on serious local circumstances likely to disturb the course of the proceedings. There is no limit to the number of requests for transfer on grounds of legitimate suspicion. It is sufficient to raise further grounds which may relate to facts already known that have not yet been relied upon.
4. Simply pleading legitimate suspicion brings about a stay of proceedings, pending the decision of the Court of Cassation on its merits. If the Court of Cassation finds that the legitimate suspicion is well founded, it must refer the case to another court, which must reopen the proceedings *ab initio*. Even if the Court of Cassation finds that the legitimate suspicion is unfounded, if one of the judges is replaced in the course of the trial, the proceedings must be started again *ab initio*.
5. The consequences of the application of this law are the following:
 - 5.1. it slows down the course of justice, even though Italy has been condemned on several occasions by the European Court of Human Rights because of the excessive length of proceedings;
 - 5.2. it takes the case out of the hands of the rightful judge and virtually leaves the choice of judge to the defendant;
 - 5.3. it undermines trust in the judiciary, for unlike when the impartiality of an individual judge is challenged, legitimate suspicion tarnishes the reputation of the entire court system;
 - 5.4. it is inimical to the principle of equality for everyone before the law, as only those defendants able to afford the cost of lengthy legal proceedings can avail themselves of it.
6. This is why, with a view to avoiding the consequences of the Cirami Law, the Assembly invites the Government of Italy:
 - 6.1. to bring, as soon as possible, the domestic law in question into line with such guidelines and principles on securing the rule of law and the independence of the judiciary as have been elaborated and approved by the institutions of the Council of Europe, either through recommendations of the Committee of Ministers, resolutions of the Parliamentary Assembly or the case-law of the European Court of Human Rights;

1. Assembly debate on 24 June 2004 (23rd Sitting) (see [Doc. 10124](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Leutheusser-Schnarrenberger). Text adopted by the Assembly on 24 June 2004 (23rd Sitting).



6.2. to repeal the Cirami Law;

6.3. to implement the recommendations of the special rapporteur of the United Nations contained in document E/CN.4/2003/65/Add.4, concerning, inter alia, judicial reform, the proceedings involving the Prime Minister and his associate, the judgments handed down by the courts and the political activities of judges.