



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Legal summary

July 2026

R.B. v. Italy - 20409/23

Judgment 16.7.2026 [Section I]

Article 7

Article 7-1

Nulla poena sine lege

Nullum crimen sine lege

Applicant's conviction for the offence of production of child pornography based on the application of a new interpretation of the statutory provision defining that offence: *no violation*

Facts – In September 2020 the applicant was convicted after trial of sexual assault under Article 609-bis of the Criminal Code ("the CC"), and production of child pornography under Article 600-ter § 1 of the CC. The relevant acts took place between 2014 and 2016 and concerned the sexual assault of the minor niece of his live-in partner, L.B., and using her to create pornographic content depicting her. The applicant was sentenced to an overall term of nine years' imprisonment and a fine of 80,000 euros (EUR). Specifically, for the offence of child pornography under Article 600-ter § 1, he received a sentence of seven years' imprisonment and a EUR 50,000 fine.

In his appeal against his conviction the applicant contended, *inter alia*, that the Combined Divisions of the Court of Cassation ("Combined Divisions") – by their judgment no. 51815 of 2018 which had been relied upon by the trial court – had unforeseeably departed from their settled case-law, namely, that established by Combined Divisions' judgment no. 13 of 2000 which had held that Article 600-ter § 1 required that a clear risk of the dissemination of the pornographic content in question be ascertained in each case; in the absence of such a risk, the act of producing the child pornography in question would be classified as falling under the provision of Article 600-quater of the CC – the offence of possessing or accessing child pornography that attracted a significantly less severe penalty. The Court of Appeal upheld the applicant's conviction maintaining the sentence imposed under Article 600-ter § 1. His appeal on points of law was dismissed by the Court of Cassation; thus his conviction became final.

Law – Article 7:

Article 600-ter § 1, as in force at the relevant time, punished whomever, using minors under the age of eighteen years, realised pornographic displays or performances, or produced pornographic material, or recruited or induced minors under the age of eighteen years to take part in pornographic displays or performances, or otherwise gained profit from such performances. The applicant's actions had been classified by the domestic courts as the "production" of pornographic material. It was not disputed that the photographs found in his computer and mobile telephone depicting L.B. had

amounted to pornographic material. The question in the present case was whether the applicant could have known from the wording of the relevant provisions that his conduct would have rendered him criminally liable under Article 600-ter § 1. Foreseeability had to be appraised from the angle of the convicted person at the time of the commission of the offence charged and the foreseeability of judicial interpretation related to the elements of the offence.

According to judgment no. 13 of 2000, perpetrators' conduct had to be assessed on a case-by-case basis in order for it to be verified whether the conduct in question disclosed a real risk of the dissemination of the child pornography; in the absence of such a risk, the production of child pornography would be judged to constitute "possession" under Article 600-quater. The Court noted the applicant's contention that that interpretation had been consistently followed by the domestic courts until 2018. By virtue of judgment no. 13 of 2000 the Combined Divisions had ensured that the above-noted interpretation had become case-law.

If the applicant had been convicted under Article 600-quater a maximum penalty of three years' imprisonment could have been imposed. As a result of his actions being classified as falling within the scope of Article 600-ter § 1, the applicant had faced a term of imprisonment of between six and twelve years; ultimately a penalty of seven years' imprisonment had been imposed. However, the fact that the applicant's conduct could have fallen within the scope of another criminal provision did not dispense the Court from assessing whether at the material time he could reasonably have foreseen that he would have faced being convicted of the offence of production of child pornography under Article 600-ter § 1. Indeed, the qualitative requirements of accessibility and foreseeability implied in the term "law" had to be satisfied as regards both the definition of an offence and the penalty that the offence in question carried.

In judgment no. 51815 of 2018, the Combined Divisions, while noting two cases which had not been in line with the its well-established case-law, had stated that the offence of child pornography had been interpreted as a "specific risk of harm" offence – that was, meeting the criteria set out in their previous judgment no. 13 of 2000 – "virtually in the entirety" of its case-law. When convicting the applicant under Article 600-ter the courts had relied on judgment no. 51815 of 2018 in which the requirement to ascertain a real risk of dissemination of the pornographic material had been set aside as being "surpassed by the evolution of the statutory framework and, in any event, anachronistic" in so far as it pertained to a social context and to a standard of technological development that had radically changed. The Court noted that that judgment had not interpreted the offence of Article 600-ter in a manner going beyond the wording of that provision which clearly criminalised the production of child pornography. Moreover, the conclusion that it was no longer necessary to ascertain a real risk of dissemination of that material had been reached based on an overview of the evolution of the domestic and international legal framework concerning the criminalisation of child pornography. In particular, the version of Article 600-ter § 1 in force at the relevant time had resulted from legal amendments introduced in 2012 in order to bring the domestic statutory framework into line with the parameters set by the Lanzarote Convention and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011. Further, the previous interpretation of Article 600-ter had originated from the need to mitigate the severity of the penalties provided by that provision in its version predating those amendments and within a context where no definition of "child pornography" had been provided by the relevant legislation. Regarding technological developments, the Combined Divisions emphasised the current widespread availability of a device connected to the Internet and the constant access to communication technologies to consider that nowadays any production of images or videos had the potential to be disseminated.

In judgment no. 51815 of 2018 the Combined Divisions had carefully analysed the domestic and supranational legislation concerning child pornography and extensively explained why they had considered the new interpretation to be more in line with the need to increase protection for the dignity and proper sexual development of minors, which they had considered to be infringed (in and of itself) by any production of child pornography. Additionally, they had overtly addressed the issue of the effects of the new interpretation and held that ruling out the need to ascertain a real risk of dissemination of pornographic content had not widened its scope, since such a risk was now widespread and since the social and technological framework – as well as the national and supranational framework – had significantly changed. In particular, the need for a case-by-case assessment was nowadays no longer relevant, given that everyone had access to the Internet and to devices facilitating content sharing.

Against that backdrop, the Court was of the view that, rather than reversing a pre-existing line of case-law, by judgment no. 51815 of 2018 the Combined Divisions had advanced a novel application of the concept of the production of child pornography to a factual background that had been different to the one assessed in their judgment no. 13 of 2000 – that is, a context in which the risk of dissemination of pornographic material was always present, being inherent in the availability of a computer, a tablet or a smartphone. The Court agreed with the existence of this inherent risk. It also shared the Court of Cassation's concerns as regards the need to ensure the adequate protection of the integrity, well-being and self-development of children, and reiterated that in respect of serious acts such as the sexual abuse of children it fell upon the member States to ensure that efficient criminal-law provisions were in place.

Article 7 of the Convention was not incompatible with judicial law-making and did not outlaw the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development was consistent with the essence of the offence and could reasonably be foreseen.

Although the applicant might have fallen victim to a novel application of the concept of "production of child pornography", which held that that concept was no longer confined to pornography intended for use by third parties, that application had been based on a reasonable evolutive interpretation of Article 600-ter § 1 and had been both compatible with its wording and "consistent with the essence of the offence". Neither could the Court discern any flagrant non-observance or arbitrariness in the application of the law in question to the applicant. In that connection, it noted that child pornographic material had been found on the applicant's phone and computer and the Court of Appeal when dealing with the applicant's argument that his conviction under Article 600-ter had not been foreseeable, had observed that it had been common knowledge that the risk of dissemination was inherent in the use of instruments suitable for dissemination.

Accordingly, and, in the light of the specific circumstances of the present case, the interpretation and application of national law by national courts had not produced consequences that were inconsistent with the Convention.

Conclusion: no violation (four votes to three).

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