



Hands Off Cain
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Hands Off Cain Mission

Hands off Cain is a non-profit organisation founded by the **Nonviolent Radical Party, Transnational and Transparty** in 1993 with the aim to abolish the death penalty. The name of the organisation is taken from the Genesis – along with the “eye for an eye” principle, the first Book of the Bible reminds that “the Lord set a sign for Cain, lest any finding him should smite him”. Thus, Hands Off Cain stands for justice without vengeance.

Hands Off Cain was one of the organisations that campaigned for the adoption of the United Nations [Moratorium on the use of the death penalty](#), and the following six Moratoria adopted up-to-date. This landmark success prompted the organisation to extend the scope of its mission beyond the abolition of the death penalty *stricto sensu* in order to challenge other penalties that are akin to capital punishment. In this context, Hands Off Cain launched a campaign aimed at abolishing a special form of life imprisonment without parole that is referred to, in the Italian legal jargon, as *Ergastolo Ostativo*.

The Ergastolo Ostativo in Italy

The *Ergastolo Ostativo* is special form of life imprisonment without parole resulting from the combination of article 22 of the criminal code and article 4-bis § 1 of the law on the penitentiary system. The former establishes life imprisonment (*Ergastolo*) as the heaviest punishment known to the Italian legal system. The latter provides a list of serious criminal offences (like *mafia* and terrorism) and restricts access to parole and all other alternative measures to detention for those who have been found guilty thereof.

Contrary to the letter of article 22 of the criminal code, life imprisonment in Italy is not actually “perpetual”. Drawing upon the principle that “**punishment must tend to rehabilitation**” (**article 27 § 3 of the Italian Constitution**) since 1974 the Constitutional Court found that all life prisoners must be provided with a concrete prospect to access parole measures based on their progress toward rehabilitation after serving a minimum tariff.

Article 4-bis § 1 escapes this logic: those who are convicted and sentenced to imprisonment for one of the criminal offences therein listed are not eligible for parole and other alternative measures to detention unless they cooperate with the authorities and provide substantial assistance in gathering evidence or in identifying and capturing other suspects.

According to data from the Italian Ministry of Justice, to-date **1,174 individuals** are serving an *Ergastolo Ostativo*.

The right to “hope against hope”

In 2017 Hands Off Cain launched a campaign to raise awareness on, and bring legal challenges against, the *Ergastolo Ostativo*.

On the one hand, the campaign aimed at shedding light on the harsh conditions of detention suffered by the prisoners currently serving an *Ergastolo Ostativo* by giving them the opportunity to engage in various activities and feature in the docu-film [Spes Contra Spem](#), which gives unique insight into the serious human rights violations suffered as a direct result of the prohibition to access parole measures established by article 4-*bis*.

On the other hand, Hands Off Cain played a leading role in the litigation to challenge the operation of article 4-*bis* by

- submitting to the Human Rights Committee individual communications on behalf of 252 individuals who are currently serving an *Ergastolo Ostativo* (registered on 2 April 2019 with no. G-RC/CCPR/19/ITA/1);
- contributing to the *amicus* filed by the University of Milan in the case of [Viola v. Italy](#) before the European Court of Human Rights;
- intervening as a third party in [case no. 253/2019](#) before the Italian Constitutional Court.

These legal initiatives had far-reaching effects.

With a judgment of **13 June 2019** (final on 7 October 2019) the European Court of Human Rights found that the *Ergastolo Ostativo* breaches article 3 of the European Convention on Human Rights and indicated to the Italian Government the need to enact a comprehensive reform of the system to access probation measures.

This conclusion was shared by the Constitutional Court, which, with a judgment of **23 October 2019** (published on 4 December 2019), declared the *Ergastolo Ostativo* to be unconstitutional.

The 2019 Universal Periodic Review of Italy and the *Ergastolo Ostativo*

The judgments of the European Court of Human Rights and the Italian Constitutional Court show that there is consensus at national and international level as to the inhumane and cruel nature of the *Ergastolo Ostativo*. Yet, relying on national security, the Italian Government has never committed to implement these judgments and amend the relevant legislation.

For this reason, Hands Off Cain participated in the 2019 Universal Periodic Review of Italy by [asking questions](#) to the Italian delegation and lobbying foreign Governments to hold Italy accountable.

These vows did not go unheard – the representatives of **Austria, Denmark, Germany, the Republic of Korea and the Russian Federation** recommended Italy to “ensure the fundamental rights of detainees” including by “extending the use of alternative measures to detention”, while the Zambia prompted the Italian Government to “bring the special detention regime in line with international human rights standards”.

Conclusions & Recommendations

Against this background, Hands Off Cain will participate in the presentation of the Outcome Report by Italy at the Human Rights Council on 12 March 2020 in order to reiterate its concerns as to the non-implementation of the judgments of the European Court of Human Rights and of the Constitutional Court which place the Italian Government under the legally binding obligation to amend the legislation on access to probation and other alternative measures to detention and bring an end to the special regime of imprisonment that is the *Ergastolo Ostativo*.

Namely, Hands Off Cain presents the following recommendations to the Italian delegation:

- adopt a comprehensive reform of the system to access parole and other alternative measures to detention aimed at introducing the possibility, for all life prisoners, to access a review mechanism that would allow the domestic authorities to consider whether their progress towards rehabilitation are so significant that continued detention can no longer be justified on legitimate penological grounds – as indicated by the European Court of Human Rights in the case of *Viola v. Italy*;
- allow prisoners convicted and sentenced for mafia under article 416-*bis* of the criminal code to access special leaves under article 30-ter of the law on the penitentiary system even in the absence of the cooperation required by article 4-*bis* in every case where it is possible to exclude the existence of actual links between the prisoner and organised crime – as established by the Constitutional Court in judgment no. 253/2019; and more generally
- bring to an end the inhumane and degrading punishment that is the *Ergastolo Ostativo* and reassert the right of every prisoner to be treated in accordance with her/his inherent and inalienable dignity.

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