

CIA Renditions: Judgment in Milan

Criminal charges against 26 American officials

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An Italian court hearing criminal charges against 26 American officials and a smaller group of Italians arising out of a CIA extraordinary rendition has ruled today. The case relates to the CIA's snatching of a Muslim cleric known as Abu Omar off the streets of Milan in 2003. He was whisked off to Egypt, where he was tortured before being released. Italian prosecutors noted that the American action botched a prosecution they had prepared against Abu Omar for participation in a terrorist conspiracy. Here's a summary of the court's decision from [Reuters](#):

The heaviest sentence — eight years in prison — was handed down to the former head of the CIA's Milan station, Robert Seldon Lady, while 21 other former agents got five years each. U.S. Air Force Lieutenant Colonel Joseph Romano was also sentenced to five years, despite a request from the Pentagon that the case should be tried by U.S. courts.

[Judge Oscar] Magi dropped the case against three Americans, including a former CIA Rome station chief, because of diplomatic immunity. Charges were also dropped against five Italians, including the former head of the Sismi military intelligence service, Nicolo Pollari, because evidence against them violated state secrecy rules. However, the judge sentenced two more junior Sismi agents to three years in prison as accomplices, indicating Italian authorities were aware of the abduction.

A more comprehensive discussion of the decision can be read in [La Repubblica](#).

The case was tried in absentia after the Americans fled and the United States refused to extradite them. The judge's written decision is now due within forty-five days. The prosecutors have announced that they intend to appeal the decisions acquitting senior Italian officials, and possibly other aspects of the case. The American defendants, who were represented by counsel during the trial, are also likely to lodge appeals, and to contest the fact that the case proceeded in absentia.

The decision came despite strenuous efforts by the American and Italian governments to shut the case down. The Italian government argued that prosecutors were using official secrets to make their case and appealed the matter to the Constitutional Court, which upheld the objection. The Milan court concluded that, even striking the official secrets from the trial record, sufficient evidence existed to proceed. In its final verdict, the court also suggested that a number of defendants were guilty but, once official secrets were extracted, the evidence was insufficient to convict. The court also found that three individuals had diplomatic immunity and thus would also escape punishment despite copious evidence

establishing their guilt. Among them was the CIA's former Rome station chief, Jeff Castelli, whom prosecutors saw as the plot's ringleader.

The convicted Americans face arrest only if they travel outside the United States, since U.S. authorities have made it clear that they will not cooperate with European authorities pursuing CIA kidnapping cases. However, Italian prosecutors can now issue a European Arrest Warrant for the seizure and removal to Italy of any of the 23 Americans, should they set foot in the European Union.

Most observers, however, view the sentence as largely symbolic. When legal proceedings are concluded, it is widely expected that the United States and Italy will work out a resolution of the matter involving an act of clemency. The case serves principally to establish that the CIA extraordinary renditions program, especially when it involves torture or torture-by-proxy, is viewed as a criminal act, subjecting all who support it to potential prosecution.

The Milan decision offers a useful contrast with the [decision of an American appeals court in New York](#) dealing with another rendition case on Monday. In both cases, the courts considered claims of immunity, state secrecy, and a torture victim's claim to compensation for his sufferings. In both cases, the United States applied enormous political pressure to shut down the case. Yet the outcomes could not have been more different. In the New York case, the Court of Appeals bowed to government pressure to refuse to hear the torture victim's appeal. The decision, rendered by a group of largely Republican judges, is filled with breezy language openly acknowledging that the case turned on an extraordinary rendition, and suggesting that this was simply a policy choice for the government. The Italian court proved zealously independent of government influence from the beginning of the case down to judgment. It viewed extraordinary rendition linked to torture as a particularly grave crime, taking careful note of the historical precedents that supported that perspective. While the court accepted that state secrecy concerns restricted the court's consideration of certain evidence, it nevertheless proceeded and rested its conclusions on evidence that was not protected. Similarly, the Italian court gave claims of immunity narrow applicability, so that only a handful of defendants could rely upon them. The court took the view that these highly technical defenses would give government actors some comfort, but it rejected the idea that they could escape accountability for a serious crime altogether.

The most telling difference focuses on the rights of the torture victim. The New York court concluded that the victim's claims were overwhelmed by the government's interest in protecting political actors against embarrassment. The Italian court insisted not only on the punishment of the perpetrators but also on the compensation of the torture victim. The Milan court sentenced the defendants to pay compensation to Abu Omar and his wife of €1.5 million (\$2.3 million).

The American State Department stated that it was "disappointed" by the decision.

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