



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

SECOND SECTION

CASE OF MESSINA v. ITALY (No. 2)

(Application no. 25498/94)

JUDGMENT

STRASBOURG

28 September 2000

FINAL

28/12/2000

In the case of Messina v. Italy (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, President,

Mr B. CONFORTI,

Mr G. BONELLO,

Mrs V. STRÁZNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr E. FRIBERGH, Section Registrar,

Having deliberated in private on 8 June 1999 and 7 September 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

Commenter [Note1]: To be checked.

PROCEDURE

1. The case originated in an application (no. 25498/94) against the Italian Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Antonio Messina ("the applicant"), on 22 December 1993.

2. The Italian Government ("the Government") were represented by their Agent, Mr U. Leanza, and their co-Agent, Mr V. Esposito.

3. The applicant alleged in particular infringement of his right to respect for his family life on account of the restrictions on family visits while he was a prisoner, of his right to respect for his correspondence on account of the fact that it was intercepted by the prison authorities, and of his right to an effective remedy against the decisions to extend the period for which he was to be subject to the special prison regime.

4. The application was referred to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was assigned to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 8 June 1999, the Court declared the application partly admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry.].

7. Both the applicant and the Government filed written observations on the merits of the case (Rule 59 § 1). The Court having decided, after consulting the parties, that there was no call to hold a hearing on the merits of the case (Rule 59 § 2 *in fine*), each party submitted written comments on the other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The trials

8. In a judgment delivered by the Marsala District Court on 21 December 1992 the applicant was sentenced to seven years' imprisonment and to payment of a fine, *inter alia* for drug trafficking and membership of a Mafia-type organisation. On 23 November 1993 he was extradited from Switzerland in order to serve his sentence. He was subsequently held in Como Prison. In a judgment of 6 March 1995, deposited with the registry on 30 May 1995, the Palermo Court of Appeal acquitted him of two charges and reduced his sentence to five years' imprisonment. The applicant lodged an appeal on points of law on 13 July 1995. That appeal was dismissed in a judgment of 26 January 1996.

9. On 18 January 1995 the judge at Caltanissetta District Court responsible for preliminary inquiries issued a warrant to have the applicant brought before him immediately on suspicion of the murder of an officer of the State legal service; the applicant was served with that warrant on the same day. The applicant was acquitted by the Caltanissetta Assize Court in June 1998. The proceedings are apparently still pending.

10. In further proceedings against the applicant for membership of a Mafia-type organisation and other offences linked with drug trafficking, he was acquitted of the first charge by the Trapani Assize Court in a judgment of 30 January 1999.

11. On 26 May 1995, in another set of proceedings before the Marsala District Court, the applicant was sentenced to seventeen years' imprisonment, *inter alia* for conspiracy to engage in international drug trafficking. In a judgment of 16 April 1997 the Palermo Court of Appeal acquitted the applicant of one charge and reduced the sentence for the other charges to ten years' imprisonment. An appeal on points of law by the applicant was dismissed in a judgment of 4 December 1998, deposited with the registry on 25 February 1999.

12. The applicant is serving a fourteen-year prison term to which he was sentenced by the Palermo Court of Appeal for false imprisonment, among other offences.

B. The special regime

13. By a decree of 26 November 1993 the Minister of Justice ordered that the applicant should be subject to the special prison regime for one year. This decree was grounded on public order and security considerations given the dangerousness of the Mafia and of the applicant in so far as he was presumed, according to police reports, to have maintained links with Mafia circles. Moreover, this decree, in derogation from the Prison Administration Act, imposed the following restrictions:

- no access to a telephone;
- no conversation or correspondence with other prisoners;
- no meetings with third parties;
- limits on visits by family members, with a maximum of one visit for one hour per month;
- no sums of money above a fixed amount to be received or sent out;
- only parcels containing clothing to be sent in from outside prison;
- no organisation of cultural, recreational or sports activities;
- no right to vote in elections for prisoners' representatives or to be elected as a representative;
- no handicrafts;
- no food requiring cooking to be purchased;
- not more than two hours per day to be spent outdoors.

14. By the terms of Article 2 of this decree, censorship of correspondence by the governor of a prison required previous authorisation by the court having jurisdiction.

15. On 26 November 1993 the governor of Como Prison transmitted to the Trapani Assize Court an application by the applicant for permission for additional visits and telephone calls, if possible on request. The President of the Assize Court allowed this application on 20 December 1993.

16. On 29 November 1993 the governor of Como Prison asked the Trapani Assize Court to authorise censorship of the correspondence of the applicant, who on 28 November 1993 had been served with the Minister of Justice's decree placing him under the special regime. On 30 November 1993 the President of the Trapani Assize Court gave his authorisation.

17. On an unspecified date the applicant challenged the decree of 26 November 1993 before the Ancona court responsible for the execution of sentences. He objected to being placed under the special regime and complained of its vexatious nature. The court rejected the appeal on an unspecified date in 1995.

18. The applicant was subsequently transferred several times to prisons in Trapani, Ascoli Piceno, Termini Imerese, Pianosa, Palermo and Porto Azzurro, often for the sole purpose of allowing him to participate in the hearings of the appeal proceedings taking place in Palermo.

19. On 7 December 1993 the governor of Termini Imerese Prison made an application to the Trapani Assize Court and to the Marsala District Court requesting authorisation to allow the applicant visits by members of his family (the applicant is married and has three daughters). The President of the Assize Court granted his authorisation on 9 December 1993.

20. On an unspecified date an application for censorship of the applicant's correspondence to be authorised was made by the prison to the Macerata court responsible for the execution of sentences. On 22 August 1994 the Macerata court responsible for the execution of sentences allowed that application for a period of six months.

21. On 24 August 1994 the applicant appealed against that decision to the Ancona and Trapani courts responsible for the execution of sentences. The result of those appeals is unknown.

22. In a decree of 29 November 1994 the Minister of Justice ordered that the applicant be placed under the special prison regime again, from 29 November 1994 to 28 May 1995, on the ground that the conditions justifying that measure continued to exist. The restrictions were the same as those imposed by the previous decree.

23. On 6 December 1994 the applicant appealed against this decree to the Ancona court responsible for the execution of sentences. He complained of being placed under the special regime and, in particular, of the restriction on visits by family members.

24. In a decision of 27 March 1995 the Ancona court responsible for the execution of sentences rejected the appeal in part, holding that imposing the special prison regime on the applicant was justified and that the decree complained of was based on adequate grounds. As for the restrictions imposed by that decree, the court found that the list of minimal conditions of detention laid down in section 14 *quater* of the Prison Administration Act should apply in relation to visits by family members. Consequently, the court struck down the ban on receiving more than one family visit per month and ruled that the applicant would in future be entitled to four.

25. On 30 March 1995 the applicant appealed on points of law against that decision. He argued that the conditions of detention to which he was subjected were inhuman and that the special prison regime had been extended by decrees based on inadequate grounds. The public prosecutor also appealed against the decision. In a judgment of 10 October 1995, deposited with the registry on 31 October 1995, the appeals were declared inadmissible on the ground that the parties no longer had standing, since the decree of 29 November 1994 had expired on 28 May 1995, before the Court of Cassation delivered its judgment.

26. In a decree of 27 May 1995 the Minister of Justice ordered application of the special prison regime to be extended until 26 November 1995, on the ground that the conditions justifying the measure continued to exist.

27. On 5 June 1995 the applicant lodged an appeal against the above decree with the Ministry of Justice, to be transmitted, if necessary, to the Ancona court responsible for the execution of sentences. He complained, *inter alia*, of the lack of real grounds justifying extension of the special regime and argued that the restrictions placed on visits and time outdoors and the prohibition of the purchase of food requiring cooking were not only contrary to section 14 *quater* of the Prison Administration Act and incompatible with the aim of rehabilitation, but also vexatious. He asked for application of the special regime to be countermanded and for permission to receive visits from his wife and his daughters without being separated from them by glass partitions and to make telephone calls. The applicant also emphasised that he was being held far from his family and the place where the trial was taking place. The outcome of that appeal is not known.

28. In a decree of 24 November 1995 the Minister of Justice ordered, on similar grounds, that application of the special prison regime be extended to 23 May 1996. On 27 November 1995 the applicant challenged the above order in the Florence court responsible for the execution of sentences.

29. In a decree of 21 May 1996 application of the special regime was once again extended by six months. The grounds for that decree and the restrictions imposed were the same as those of the previous decrees. On 30 May 1996 the applicant challenged the above decree in the Florence court responsible for the execution of sentences.

30. On 2 October 1996 the applicant applied to the Florence court responsible for the execution of sentences for a date to be fixed for hearing his appeals of 27 November 1995 and 30 May 1996.

31. In a decree of 19 November 1996 the Minister of Justice once again extended application of the special regime by six months; that decision was based on grounds similar to those of the previous decrees. On 21 November 1996 the applicant challenged the decree in the Florence court responsible for the execution of sentences. The court dismissed the applicant's appeal in a decision of 11 February 1997. Basing its decision on the Constitutional Court's judgment no. 351/1996, the court held that extension of the application of the special regime to the applicant was justified in the light of the information gathered by the police and judicial authorities. However, it struck down some of the restrictions previously placed on the applicant, namely suspension of the rehabilitation programme; restrictions on visits by family members; the prohibition of parcels containing anything other than clothing; the ban on the purchase of food requiring cooking and the restriction of time spent outdoors to two hours per day. The applicant appealed on points of law against the above decision. The hearing in private

was set down for 30 September 1997. On that date the appeal was declared inadmissible as being devoid of purpose, the decree's period of validity having in the meantime expired.

32. On 4 February 1997 the Minister of Justice ordered that the applicant be permitted to replace the monthly visit by his family with a telephone call, to receive one additional parcel per month and two special parcels per year, and to use the kitchens.

33. In a decree of 19 May 1997 the Minister of Justice once again extended application of the special prison regime by six months. That decision was based on grounds similar to those of the previous ones. The applicant challenged the above decree in the Florence court responsible for the execution of sentences, which dismissed his appeal in a decision of 7 August 1997, ruling that extension of application of the special regime to the applicant was justified in the light of the information gathered by the police and judicial authorities. However, it struck down some restrictions previously imposed, namely suspension of the rehabilitation programme, restrictions on visits by family members, the prohibition of parcels containing anything other than clothing, the ban on the purchase of food requiring cooking, and the restriction of outdoor exercise to two hours per day. The applicant appealed on points of law against the above decision but in a judgment of 19 January 1998 his appeal was ruled inadmissible as being devoid of purpose, since the decree's period of validity had expired in the interim.

34. On 29 August 1997 the applicant applied to the Macerata judge responsible for the execution of sentences, complaining of the regime under which he had been placed. The judge dismissed that appeal in a decision of 15 October 1997, deposited with the registry on the following day. He noted that the restrictions the applicant had complained of had been imposed by the prison authorities by means of departmental orders which, without exception, implemented the Minister of Justice's decrees and were therefore lawful; he further emphasised that defendants – unlike convicted persons – were not required to participate in the rehabilitation programme on account of the principles of the presumption of innocence and the freedom to defend oneself.

35. In a decree of 21 November 1997 the Minister of Justice extended the special regime for six months and ordered the governor of the prison to apply to the competent court for authorisation to censor all the applicant's correspondence. On 23 November 1997 the governor of Trapani Prison applied for authorisation to the Livorno judge responsible for the execution of sentences, who informed the judge who had jurisdiction, namely the Trapani judge responsible for the execution of sentences. The latter ordered censorship of the applicant's correspondence for six months, starting on 21 November 1997.

36. On 28 November 1997 the applicant appealed against the decree of 21 November 1997 to the Ancona court responsible for the execution of sentences, which transmitted his appeal on 1 December 1997 to the Palermo District Court. The Palermo District Court returned it to the Ancona court on 2 May 1998 as jurisdiction over the matter had changed in the interim (see paragraph 46 below *in fine*). By a decision of 7 May 1998, deposited with the registry on 11 May 1998, the Ancona court responsible for the execution of sentences dismissed the appeal.

37. In a decision of 4 February 1998 the Minister of Justice revoked the restriction on outdoor exercise.

38. In a decision of 21 May 1998 the Minister of Justice ordered that the applicant should cease to be subject to the special regime.

C. Censorship of the applicant's correspondence with the European Commission of Human Rights and with his family

39. A number of letters and the observations sent by the applicant to the Secretariat of the European Commission of Human Rights through his wife arrived with censors' stamps from the prisons of Pianosa, Palermo, Porto Azzurro, Ascoli Piceno and Trapani. Censorship continued until June 1998.

40. Letters sent by the applicant to his wife, in particular those of 19 and 21 October 1997 were censored; the applicant was informed of this on 21 and 28 October 1997.

41. The appeals by the applicant to the courts responsible for the execution of sentences were censored by the prison authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The special regime

42. Section 41 *bis* of the Prison Administration Act (Law no. 354 of 26 July 1975), as amended by Law no. 356 of 7 August 1992, gives the Minister of Justice the power to suspend application of the ordinary prison regime as laid down in Law no. 354 of 1975 in whole or in part, by means of a decision stating grounds which is subject to judicial review, for reasons of public order and security in cases where the ordinary prison regime would be inadequate to meet these requirements.

43. Such a measure can be applied only to prisoners charged with or sentenced for the offences mentioned in section 4 *bis* of the Act, which includes offences relating to Mafia activities.

44. Under the terms of section 6 of Law no. 11 of 7 January 1998, application of the section 41 *bis* special regime was extended until 31 December 2000.

45. The measures which may result from application of section 41 *bis* are the following:

- a ban on participating in the preparation of food and organising prisoners' recreational activities;
- a ban on visits by persons other than family members, a cohabitant or a lawyer;
- a maximum of two visits and one telephone call per month;
- censorship of all the prisoner's correspondence except for that with his lawyer;
- not more than two hours per day to be spent outdoors;
- no extra visits allowed for good conduct;
- restrictions on acquiring or receiving from outside prison personal possessions authorised by the prison's internal rules;
- no more than two parcels per month;
- no sums of money to be received from outside prison or sent out;
- no handicrafts involving the use of dangerous tools.

46. Section 14 *ter* of the Prison Administration Act provides for an appeal (*reclamo*) to the court responsible for the execution of sentences (*tribunale di sorveglianza*) against a decree of the Minister of Justice imposing the special regime within ten days from the date on which the person concerned receives a copy of the decree. Such an appeal does not have suspensive effect. The court must take a decision within ten days. Section 4 of Law no. 11 of 7 January 1998 requires an appeal to be lodged with the court responsible for the execution of sentences which has geographical jurisdiction over the prison where an appellant is serving his sentence. An appeal to the Court of Cassation lies against the decision of the court responsible for the execution of sentences.

47. The Italian Constitutional Court, having been asked to rule on whether such a system complied with the principle of non-encroachment on matters reserved for the legislature, held (in judgments nos. 349 and 410 of 1993) that section 41 *bis* was compatible with the Constitution. It observed that while the special prison regime within the meaning of the provision in question was in practice laid down by the Minister, an appeal lay against a ministerial decree to the courts responsible for the execution of sentences, which had the power to review both the need for such a measure and the actual measures to be applied to the prisoner concerned, which in any event ought never to entail inhuman treatment.

48. Nevertheless, the Constitutional Court held, on the basis of Article 15 of the Constitution, which provides, *inter alia*, that restrictions on correspondence may be imposed only by means of a court decision whose grounds are stated, that the power to order censorship of a prisoner's correspondence belonged to the courts alone. As a result, section 41 *bis* could not be interpreted to include a power on the Minister of Justice's part to take measures relating to prisoners' correspondence.

49. However, the Court of Cassation has held that the courts responsible for the execution of sentences should confine themselves to reviewing the lawfulness of a ministerial decree as such, and could not usurp the role of the administrative authorities in the choice of the actual measures to be taken. On the other hand, the courts responsible for the execution of sentences have in practice gone so far as to review whether each specific measure is in accordance with the aim pursued by the administrative authorities. The result of this had been that decisions of the courts responsible for the execution of sentences had often remained unexecuted, and this had given rise to conflicts between those courts and the administrative authorities.

50. In judgment no. 351 of 14-18 October 1996 the Constitutional Court established the principle that the power of judicial review by the courts responsible for the execution of sentences extended to the practical arrangements for implementation of a measure, regard being had both to the aim pursued and to the fundamental rights guaranteed by the Constitution. The Court of Cassation, moreover, changed the line of its case-law on the question even before the Constitutional Court's judgment, by allowing the court responsible for the execution of sentences to strike down, in whole or in part, the application of unlawful measures (see judgments nos. 6873 of 12 February 1996 and 684 of 1 March 1996).

51. On 7 February 1997, applying the principles laid down by the Constitutional Court in the above-mentioned judgment, the Prison Administration Department of the Ministry of Justice sent a circular letter to the governors of prisons regarding organisation of the wings where prisoners subject to the special regime are held. This circular contained, *inter alia*, the following instructions: prisoners would from then on be allowed to use the kitchens; they would have access to rooms equipped for sporting activities and to a library; visits by family members could be replaced by telephone calls; the use of glass partitions would continue but, as a result, the searching of visitors need not be so strict.

52. In judgment no. 376 of 26 November-5 December 1997 the Constitutional Court reaffirmed that section 41 *bis* was compatible with the Constitution, while changing and clarifying the interpretation to be given to it. It held, *inter alia*, that decrees imposing the special regime had to be based on genuine public-order and security grounds, and that decisions to extend application of the regime also had to be based on sufficient grounds which were independent of those which had justified the imposition of the rules in the first place. The Constitutional Court held that the special regime should not amount to inhuman treatment or hinder the prisoner's rehabilitation, which would be contrary to Article 27 of the Constitution. It nevertheless stated that at no time did section 13 of the Prison Administration Act cease to apply, under which the treatment to which a prisoner is subjected must respect his personality, and a rehabilitation

programme must be prepared and adapted on the basis of scientific observation of the prisoner's personality and with his cooperation.

53. Section 27 of the Act also remained applicable. This provided that cultural, sporting and recreational activities should be promoted and organised in prisons – as should any other activity allowing the expression of the prisoners' personalities within the rehabilitation programme. These activities had to be organised, of course, in such a way as to prevent any contact between the person concerned and the Mafia or criminal environment from which he came. Emphasising that the special regime had to respect the aim of returning the prisoner to normal society, the Constitutional Court held that the principle of the presumption of innocence was not infringed by the fact that the special regime could be imposed on suspects before a final conviction. In fact, application of the special regime did not stand in the way of early release (see the Constitutional Court's judgment no. 349 of 1993), which presupposed the prisoner's previous participation in the cultural, sporting and recreational activities provided for in section 27 of the Prison Administration Act.

54. On 6 February 1998, in accordance with the principles laid down by the Constitutional Court in the above-mentioned judgment, the Prison Administration Department of the Ministry of Justice sent a circular letter to prison governors concerning the organisation of the wings where prisoners subject to the special regime are held. This circular included, *inter alia*, the following instructions:

- outdoor exercise time was to be increased to four hours per day, but care was to be taken to ensure that outdoor exercise did not become an opportunity for meeting or making contact with other persons presumed to be associated with the Mafia;
- the outdoor exercise yards in Secondigliano and Pisa Prisons were to be equipped for physical exercise and sport;
- one or more rooms for social, cultural or recreational activities were to be provided in each wing to which prisoners subject to the special regime were permanently assigned or which were occupied by them for medical reasons;
- on the question of work, the circular stated that where it was not possible to equip a prison appropriately prisoners should have access to premises equipped for this purpose in other prisons, with measures in place to exclude any opportunity of meeting or making contact with other persons presumed to be associated with the Mafia;
- visits by children under 16 years of age could take place without a glass partition; if the visit took place in the presence of other persons, partition-free access was to be authorised for the children only and was not to exceed one-sixth of the total duration of the visit in length;
- prisoners subject to the special regime could receive parcels containing foodstuffs apart from those requiring cooking, because they were not to be

allowed to use the kitchens except for the purpose of making hot drinks or heating up pre-cooked food.

B. Relevant provisions concerning the supervision of correspondence

55. Section 18 of Law no. 354 of 26 July 1975, as amended by section 2 of Law no. 1 of 12 January 1977, provides that the authority empowered to order the censorship of prisoners' correspondence is the court before which proceedings are pending (whether the investigating court or the trial court) until the delivery of the first-instance judgment, and the court responsible for the execution of sentences during any subsequent proceedings. Section 18 also provides that the court with jurisdiction may order the monitoring of a prisoner's correspondence in a decision stating reasons, but it does not set out the cases in which such a decision may be made.

56. In practice, the censorship concerned means interception of all the correspondence of the prisoner subject to the order, which is then read by the judicial authority which ordered it, by the governor of the prison or by prison staff designated by the governor. The letters are then marked with the censor's stamp, which serves as proof that they have been read (see also Article 36 of Presidential Decree no. 431 of 29 April 1976, implementing the above-mentioned Law no. 354). This supervisory measure cannot lead to the erasing of words or sentences, but the judicial authority may order that one or more letters should not be delivered. In such cases, the prisoner must be immediately informed of this. Such an order may also be made provisionally by the governor of the prison, who must, however, inform the judicial authority.

57. Lastly, with regard to the remedies available against censorship of correspondence, the Court of Cassation has stated in several decisions that it constitutes an administrative act. Moreover, the Court of Cassation has affirmed in its settled case-law that Italian law does not provide remedies in this respect; nor can censorship form the subject of an appeal on points of law since it does not concern the prisoner's personal liberty (Court of Cassation judgments nos. 3141 of 14 February 1990 and 4687 of 4 February 1992).

58. Section 35 of the Prison Administration Act provides that prisoners may make sealed applications or complaints to the following authorities :

- the governor of the prison, prison inspectors, the Director-General of Prisons and the Minister of Justice;
- the judge responsible for the execution of sentences;
- the judicial and health authorities which inspect the prison;
- the President of the Regional Council; and
- the President of the Republic.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE RESTRICTIONS ON FAMILY VISITS

59. The applicant alleged a violation of his right to respect for his family life on account of the restrictions on the number of family visits and the rules governing such visits.

60. Article 8 of the Convention provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

61. The Court observes that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life. However, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Ouinas v. France*, application no. 13756/88, Commission decision of 12 March 1990, Decisions and Reports (DR) 65, p. 265).

62. In the present case the applicant was subject to a special prison regime which involved restrictions on the number of family visits (not more than two per month) and imposed measures for the supervision of such visits (prisoners were separated from visitors by a glass partition).

The Court considers that these restrictions constitute interference with the exercise of the applicant's right to respect for his family life, guaranteed by Article 8 § 1 of the Convention (see *X v. the United Kingdom*, application no. 8065/77, Commission decision of 3 May 1978, DR 14, p. 246).

63. Such interference is not in breach of the Convention if it is “in accordance with the law”, pursues one or more of the legitimate aims contemplated in paragraph 2 of Article 8 and may be regarded as a measure which is “necessary in a democratic society”.

64. The Court notes that the security measures affecting the applicant were ordered under section 41 *bis* of Law no. 354 of 1975 and were accordingly “in accordance with the law”. It considers in addition that they pursued legitimate aims under paragraph 2 of Article 8 of the Convention, namely the protection of public safety and the prevention of disorder or crime.

65. As to the necessity of the interference, the Court reiterates that to be necessary “in a democratic society” the interference must correspond to a pressing social need and, in particular, must remain proportionate to the legitimate aim pursued (see, among other authorities, the *McLeod v. the United Kingdom* judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52).

66. The Court notes that the regime laid down in section 41 *bis* is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they will maintain contact with criminal organisations. In particular, it notes that, as the Government pointed out, before the introduction of the special regime imprisoned Mafia members were able to maintain their positions within the criminal organisation, to exchange information with other prisoners and the outside world and to organise and procure the commission of serious crimes both inside and outside their prisons. In that context, the Court takes into account the specific nature of the phenomenon of organised crime, particularly of the Mafia type, in which family relations often play a crucial role. Moreover, numerous States party to the Convention have high-security regimes for dangerous prisoners. These regimes are also based on separation from the prison community, accompanied by tighter supervision.

67. That being the case, the Court considers that the Italian legislature could reasonably consider, in the critical circumstances of the investigations of the Mafia being conducted by the Italian authorities, that the measures complained of were necessary in order to achieve the legitimate aim.

68. The Court still has to consider whether the extended application of the special regime to the applicant infringed his rights under Article 8 of the Convention.

69. It observes in the first place that the applicant was subject to the special regime for approximately four and a half years, from 26 November 1993 (see paragraph 13 above) to 21 May 1998 (see paragraph 38 above), on account of the very serious offences of which he had been convicted and of which in some cases he still stood accused, particularly crimes linked to the Mafia.

70. The Government submitted that the necessity of extending application of the special regime was on each occasion assessed with the greatest care by the relevant authorities. In that connection, the Court considers that, while it is true that, as the applicant said, the grounds given in the decrees which extended application of the special regime were set out each time in almost identical terms, it cannot disregard the fact that during the period between November 1993 and May 1998 when he was subject to the special regime the applicant was summoned to appear before a judge on suspicion of murdering an officer of the State legal service, he was sentenced to seventeen years' imprisonment and he was on trial for membership of a Mafia-type organisation in further pending proceedings.

71. In the light of these considerations, the Court is in no doubt of the necessity of applying the special regime to the applicant for the whole duration of the period in issue.

72. Moreover, the Court notes that the applicant was not subject to the restrictions on family visits laid down by section 41 *bis* for the whole of the period during which the special regime was applied to him. By two decisions of the President of the Trapani Assize Court of 9 and 20 December 1993 (see paragraphs 15 and 19 above) he was authorised for the first time to receive extra visits from his wife and daughters. Later, by a decision of 27 March 1995 (see paragraph 24 above), the Ancona court responsible for the execution of sentences rescinded the restrictions on family visits, authorising the applicant to receive four visits per month. When the restrictions were reintroduced by a decree of 19 November 1996, the Florence court responsible for the execution of sentences rescinded them again by a decision of 11 February 1997. On 4 February 1997 the Minister of Justice gave orders that the monthly visit could be replaced by a telephone call. The restrictions in question were reintroduced by a decree of 21 November 1997 (see paragraph 35 above), but were relaxed by the circular of 6 February 1998 (see paragraph 54 above), which implemented the Constitutional Court's judgment of 26 November 1997.

73. The Court considers that these decisions attest to the Italian authorities' concern to help the applicant maintain contact with his close family, in so far as that was possible, and thus strike a fair balance between the applicant's rights and the aims it was sought to achieve through the special regime.

74. In the light of the above considerations, the Court considers that the restrictions of the applicant's right to respect for his family life did not go beyond what is necessary in a democratic society for the protection of public safety and the prevention of disorder or crime, within the meaning of Article 8 § 2 of the Convention.

There has therefore been no violation of Article 8 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE MONITORING OF CORRESPONDENCE

75. The applicant further complained under Article 8 of the Convention about the monitoring of his correspondence with his family and with the European Commission of Human Rights by the Pianosa prison authorities.

76. The Government asserted in the first place that the applicant had frequently handed over unsealed letters to the prison authorities for them to be sent to the addressees, thus implicitly waiving their confidentiality. Moreover, not all of the applicant's correspondence had been censored (the Government cited the instance of the appeal sent by the applicant on

21 November 1996 to the Florence court responsible for the execution of sentences).

77. At bottom, the Government did not deny that there had been a violation of Article 8; they informed the Court that on 20 November 1996 the Criminal Cases Department at the Ministry of Justice had requested the Prison Administration Department to take steps to solve the problem of the censoring of correspondence with the Commission. On 18 April 1997 the Prison Administration Department had informed the Ministry of Justice of a draft amendment to section 35 of the Prison Administration Act, which would have the effect of including the Strasbourg institutions in the list of authorities to which prisoners could send sealed letters.

78. The Court considers that there has been “interference by a public authority” with the applicant's exercise of his right to respect for his correspondence, as guaranteed by Article 8.

79. Such an interference will contravene Article 8 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and, furthermore, is “necessary in a democratic society” in order to achieve them (see *Labita v. Italy* [GC], no. 26772/94, § 179, ECHR 2000-IV).

80. With regard to the lawfulness of the interference, the Court observes that monitoring of the applicant's correspondence was authorised by decisions of the President of the Trapani Assize Court (see paragraph 16 above), the Macerata judge responsible for the execution of sentences (see paragraph 20 above) and the Trapani judge responsible for the execution of sentences (see paragraph 35 above). It was based on section 18 of Law no. 354 of 1975 (see *Labita* cited above, § 180).

81. The Court has already held that section 18, which does not lay down rules on either the period of validity of the measures for monitoring prisoners' correspondence or the reasons which may warrant them, does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the public authorities in the relevant sphere (see the *Calogero Diana v. Italy* judgment of 15 November 1996, *Reports* 1996-V, pp. 1775-76, §§ 29-33, and the *Domenichini v. Italy* judgment of 15 November 1996, *Reports* 1996-V, pp. 1799-800, §§ 29-33).

82. The Court emphasises that to date neither the amendment of section 35 of the Prison Administration Act mentioned by the Government (see paragraph 77 above) nor the bill presented to the Senate by the Minister of Justice on 23 July 1999 which was intended to change the applicable law to bring it into line with the Court's judgments in the *Calogero Diana* and *Domenichini* cases (see *Labita* cited above, § 177) seem to have been adopted. Moreover, several other applications which likewise concern the monitoring of prisoners' correspondence are pending before the Court.

83. In short, the interference with the applicant's exercise of his right to respect for his correspondence was not “in accordance with the law” within

the meaning of Article 8 of the Convention. That conclusion makes it unnecessary to verify in the present case whether the other requirements of paragraph 2 of Article 8 were satisfied.

There has therefore been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

84. The applicant further alleged that he did not have an effective remedy against the decisions extending application of the special regime to him, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

85. He complained in particular of the fact that his appeals against the decrees extending application of the special regime to him had not been examined by the courts responsible for the execution of sentences until several months after their date of promulgation, even though they remained valid for only six months. In addition, he had never obtained a decision by the Court of Cassation, which had on each occasion considered his appeals on points of law when the validity of the decrees concerned had already expired.

86. The applicant further asserted that appeals to the courts responsible for the execution of sentences were ineffective in that successive decrees extending application of the special regime did not take account of earlier decisions in which the courts concerned had declared certain restrictions void.

87. The Government submitted that the applicant had had an effective remedy in the courts responsible for the execution of sentences, and had, moreover, made use of it on a number of occasions, sometimes successfully.

88. With regard to the applicant's appeals on points of law, the Government accepted that these had been declared inadmissible for lack of standing, since the impugned ministerial decrees had in the meantime expired. They observed, however, that the possibility of appealing on points of law against decisions of the courts responsible for the execution of sentences constituted an additional safeguard which was not essential for the purposes of Article 13 of the Convention.

89. The Court reiterates that Article 13 guarantees the availability of a remedy at national level to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, its effect is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of an “arguable” Convention complaint and to grant appropriate relief (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96,

§ 135, ECHR 1999-VI, and *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VIII).

90. Since the merits of the applicant's complaint under Article 8 have been examined, it cannot be said that it was not arguable (see, among other authorities, the *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, pp. 23 and 25-26, §§ 52, 59 and 64).

91. The Court observes that an appeal without suspensive effect to the court responsible for the execution of sentences lies against decrees of the Minister of Justice imposing the special regime. Such an appeal must be lodged within ten days from the date on which the prisoner receives a copy of the decree. The court must rule within ten days (see paragraph 46 above). An appeal on points of law lies against the decision of the court responsible for the execution of sentences.

92. The Court notes that nobody has disputed that the courts responsible for the execution of sentences have jurisdiction to review decisions of the Minister of Justice imposing the special regime and to set aside such decisions where they decide that prisoners' complaints are well-founded, or that they did so on a number of occasions (see paragraphs 24, 31 and 33 above). The applicant submitted on the other hand that the remedy in those courts was ineffective on account of the failure to comply with the statutory time-limit for adjudication.

93. In the present case, there were nine decrees imposing the special regime on the applicant. Although he challenged each of these, not one of the decisions on his appeals was given before the statutory time-limit. The dates of the relevant rulings were as follows:

- the appeal of 6 December 1994 was decided on 27 March 1995 (three months and three weeks later);
- the appeal of 21 November 1996 was decided on 11 February 1997 (approximately two months and three weeks later);
- the appeal against the decree of 19 May 1997, lodged at the latest on 29 May 1997, was decided on 7 August 1997 (approximately two months and one week later);
- the appeal of 28 November 1997 was decided on 7 May 1998 (five months and ten days later).

The outcome of the appeals of 5 June 1995, 27 November 1995 and 30 May 1996 is not known.

94. The Court acknowledges that the time taken to hear an appeal may cast doubt on its effectiveness. That does not mean, however, that the right guaranteed by Article 13 of the Convention is infringed merely by failure to comply with a statutory time-limit.

95. In order to determine whether the delays in adjudicating the appeals lodged by the applicant made the remedy in question ineffective, the Court must take account of two factors in particular, namely the limited period of validity (six months) of each decree imposing the special regime and the

fact that the Minister of Justice is not bound by any decision the court responsible for the execution of sentences may have taken to rescind all or part of the restrictions imposed by the previous decree, which means that immediately after the expiry of the period of validity of one of these decrees he can issue a new decree reintroducing the restrictions struck down by the court. In the Court's opinion, the applicable legislation lays down a time-limit of only ten days for adjudication partly because of the seriousness of the special regime's impact on prisoners' rights and partly because the impugned decision remains valid for only a limited time.

96. The Court cannot avoid the conclusion that the systematic failure to comply with the statutory ten-day time-limit considerably reduced, and indeed practically nullified, the impact of judicial review of the decrees issued by the Minister of Justice. For example, in the present case the court responsible for the execution of sentences struck down restrictions on family visits three times (see paragraphs 24, 31 and 33 above), but because of the delay in reaching those decisions (of about seven months in total) the applicant suffered the restrictions concerned for longer than was necessary. Moreover, the same restrictions were reintroduced only two to three months after they had been lifted (see paragraphs 26, 33 and 35 above).

97. That being the case, the Court considers that an appeal to the court responsible for the execution of sentences did not constitute an effective remedy with regard to the applicant's arguable complaint of an infringement of the right to respect for his family life guaranteed by Article 8 of the Convention. That conclusion makes it unnecessary for the Court to consider in addition the question of the systematic rejection of the applicant's appeals on points of law.

There has, accordingly, been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

99. The applicant claimed two thousand million Italian lire for non-pecuniary damage.

100. The Government submitted that, were the Court to find a violation of the Convention, that finding would in itself constitute sufficient just satisfaction.

101. The Court considers, like the Government, that in the circumstances of the case the finding of a violation of the Convention in itself constitutes sufficient just satisfaction (see the *Domenichini* and

Calogero Diana judgments cited above, p. 1802, § 45, and p. 1778, § 44, respectively).

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been no violation of Article 8 of the Convention on account of the restrictions on family visits;
2. *Holds* unanimously that there has been a violation of Article 8 of the Convention on account of the monitoring of correspondence;
3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;
4. *Holds* by six votes to one that the finding of a violation in itself constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in French, and notified in writing on 28 September 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Bonello is annexed to this judgment.

C.L.R.
E.F.

PARTLY DISSENTING OPINION OF JUDGE BONELLO

(Translation)

I do not agree with the majority's conclusion that the finding of violations of Articles 8 and 13 of the Convention in itself constitutes sufficient just satisfaction for the non-pecuniary damage alleged by the applicant. I consider that such “non-redress” is inadequate whatever the court of justice concerned, and is in addition in contradiction with the terms of the Convention, as I have explained in detail in my partly dissenting opinion in *Aquilina v. Malta* ([GC] no. 25642/94, ECHR 1999-III).