

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

FIRST SECTION

# CASE OF MORABITO v. ITALY

*(Application no. 4953/22)*

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Continued placement of elderly applicant, convicted of leadership of a Mafia-type criminal organisation, under special restrictive prison regime (section 41 *bis* regime), despite his progressive cognitive deterioration • Applicant's advanced age and length of time (almost twenty years) spent under special regime required particularly compelling reasons for any further extension • Domestic authorities' failure to provide such reasons • Legitimate doubt as to whether applicant, due to his progressive cognitive decline, still represented a danger and could maintain meaningful, practical contact with his criminal organisation • Domestic authorities' failure to address allegations that limited human interactions could be detrimental for the applicant's mental state and to consider lifting or easing some of the restrictions to accommodate his potential needs despite his explicit requests • In case-circumstances, extended application of the section 41 *bis* regime, during the period under the Court's examination, insufficiently justified and entailing a breach of Art 3 • Applicant's continued detention in prison *per se*, during the same period, not in breach of Art 3 in light of the adequate medical treatment provided to him for his multiple diseases

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 April 2025

**FINAL**

10/07/2025

*This judgment has become final under Article 44 § 2 of the Convention.*
*It may be subject to editorial revision.*



**In the case of Morabito v. Italy,**

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

Ivana Jelić, President,
Erik Wennerström,
Alena Poláčková,
Frédéric Krenc,
Alain Chablais,
Anna Adamska-Gallant, *judges,*
Antonio Balsamo, *ad hoc* judge,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 4953/22) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Giuseppe Morabito ("the applicant"), partially on 7 January 2022 and partially on 6 June 2022;

the decision to give notice to the Italian Government ("the Government") of the complaints raised under Article 3 of the Convention and to declare the remainder of the application inadmissible;

the withdrawal from the case of Mr Raffaele Sabato, the judge elected in respect of Italy (Rule 28 § 3 of the Rules of Court), and the decision of the President of the Section to appoint Mr Antonio Balsamo to sit as an *ad hoc* judge in the case (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court);

the parties' observations;

Having deliberated in private on 11 March 2025,

Delivers the following judgment, which was adopted on that date:

# INTRODUCTION

1. The case concerns the alleged incompatibility of the applicant's state of health with his continued detention in prison, the medical care provided to him, and his continued placement under the special prison regime provided for by section 41 *bis* of Law no. 354 of 26 July 1975 ("the section 41 *bis* regime") notwithstanding his progressive cognitive deterioration.

# THE FACTS

2. The applicant was born in 1934 and is currently detained in the Milan Opera Prison. He was represented by Ms G.B. Araniti, a lawyer practising in Reggio Calabria.

3. The Government were represented by their Agent, Mr L. D'Ascia.

4. The facts of the case may be summarised as follows.

5. The applicant, currently aged 90 years old, was convicted of being a leading member of a mafia-type criminal organisation. After several years of being a fugitive, in 2004 the applicant was arrested and imprisoned under the section 41 *bis* regime. After initially being detained in various prisons, in 2014 he was transferred to the Milan Opera Prison where he is currently still detained.

6. The applicant suffers from a number of diseases, the most severe being a prostate enlargement which has obliged him to use a catheter for over ten years and which causes frequent urinary tract infections; a bilateral inguinal hernia which has become worse over the years; hypertensive heart disease with episodes of angina; and polyarthritis. The applicant has also been diagnosed with progressive cognitive deterioration.

## I. THE MEDICAL EVIDENCE ON THE APPLICANT'S HEALTH AND TREATMENT

### A. The prison medical journal

7. The Government has provided the applicant's medical journal in respect of the entire period of his detention in the Milan Opera Prison, which shows that he has been taking a large number of medications, has been examined regularly by the doctors working in prison as part of the regional health administration (hereinafter, "prison doctors") and has undergone several examinations by specialists in various fields (including cardiology, psychiatry, neurology, urology, orthopaedics, and orthodontics). Generally, the applicant's condition was described as moderate or stable.

8. The medical journal provides some information on the treatment of certain of the applicant's health issues.

In 2014 the doctors suggested that it might be advisable to operate on the hernia, although a thorough risk assessment should be conducted. However, the applicant repeatedly refused surgery. From 2017 onwards, the doctors advised against surgery, since it presented excessive risks for a patient of advanced age who was suffering from multiple diseases: only in the case of acute complications would surgery be indicated. In the meantime, the applicant had been provided with a hernia belt, which he declined to use, and subsequently with a special support underwear, about which, equally, he complained to the prison doctors. In 2021 he was authorised to purchase other special underwear and, since he did not do so, on 3 May 2021 he was provided with a tailored bodysuit.

In respect of the hypertension, the journal shows that the applicant's condition was monitored by prison doctors and that he underwent multiple cardiology examinations, took medication and that his blood pressure was considered to be sufficiently under control.

The applicant's catheter was replaced regularly and antibiotics were prescribed to prevent infection; however, the applicant often refused the medication or asked for a different prescription, which according to the doctors was not indicated.

9. Several notes in the journal show that the applicant had also been assigned help with cleaning his cell, and that despite some mobility issues he could move autonomously in his cell, although he used a wheelchair for longer distances.

10. As regards the applicant's mental state, prior to his arrival at the Milan Opera Prison he had been diagnosed with depression. In Milan, he was regularly examined by the prison's psychiatrists, and no sign of any major psychiatric disease was reported. Notably, at a psychiatric examination on 19 November 2018, the specialist observed that the applicant was lucid and oriented and that he did not fully comply with the doctors' directions because of a personality characterised by persecutory traits and stubbornness, but he did not show other psychiatric symptoms.

11. In July 2014 the doctors observed signs of possible cognitive deterioration. A neurological examination was carried out in November 2014, when the applicant was described as partially oriented in space and time. He was diagnosed with cognitive deterioration and possible depression, for which antidepressants were prescribed. He was examined again in January 2015, when he was described as alert and well oriented in space and time, and in May 2017.

12. Neuropsychological examination and tests carried out in November 2017 showed multiple compromised areas of cognition combined with mild disorientation and generally slowing down which however, according to the specialist, could have been affected by the applicant's defeatist attitude.

At a further examination carried out on 14 November 2018, the specialist observed that the applicant replied correctly to questions but that the nursing personnel had reported short-term memory loss and diagnosed mild cognitive impairment.

On 14 December 2020 the applicant underwent another neurological examination and the specialist observed that he showed a marked slowing down and a tendency to confabulation, but no other disability.

13. Most of the prison doctors' notes over the years said that the applicant appeared lucid and oriented. Only occasionally did they mention signs of confusion and disorientation. On 25 July 2022, the prison doctors observed that the applicant was in a state of confusion and took him to hospital, where he was diagnosed with Alzheimer's disease.

14. Finally, the applicant was on multiple occasions placed in solitary confinement and excluded from activities with other prisoners, for unknown reasons. On these occasions, the prison doctors stated that the applicant would be able to cope with solitary confinement.

## B. The prison medical reports

15. A prison medical service report of 5 December 2017 listed the applicant's diseases with some additional clarifications. It stated, among other things, that the applicant's hernia was asymptomatic and that the doctors were now advising against surgery because of the high risk of an operation for an elderly person suffering from multiple diseases; and that his hypertension was under control. It further stated that the applicant had undergone neurological examinations and testing, which had shown some pathological results combined with other normal results, as well as some disorientation and delayed answers which could however also have been influenced by his defeatist attitude; at the same time, during a psychiatric assessment he had shown good understanding, a good attention span and an active will. Overall, the applicant's condition was reasonably good and was stable, in so far as was possible for a detainee of advanced age.

16. A report dated 30 August 2018 reiterated the same considerations, adding that the applicant could be adequately monitored and treated in prison.

17. A report by the prison medical service on 29 September 2022 repeated the same information, adding that the applicant had refused some of the examinations that had been advised and that he was provided with the necessary aids and treatments. It concluded that the applicant's condition was reasonably good, stable and compatible with detention in prison. Furthermore, in the daily management of the applicant's health he had not shown signs of an advanced cognitive deterioration and appeared lucid, oriented and capable of performing daily tasks.

18. Another report, dated 19 November 2022, stated that the applicant did not suffer from cancer; that he did not need an orthopaedic chair, no such suggestion having been made at any of the orthopaedic examinations that had been conducted over the years; that he was able to manage his own personal hygiene, although he had help with cleaning his cell and changing his bedsheets; that he moved autonomously in the cell and had a wheelchair for out of cell transfers; and that he had been provided with a tailored bodysuit.

## C. The private expert reports

19. Over the years, the applicant obtained a large number of private expert reports on his health.

Of those that have been provided to the Court, the first is an expert report produced by Dr F.L. on 24 February 2015, which – relying on neurocognitive tests – diagnosed a state of mild cognitive impairment which would likely develop into a form of dementia. That development, which could be slowed mainly by keeping mentally active doing things and maintaining relationships, would be aggravated by his being kept in detention, especially in the section 41 *bis* regime.

20. Another private report, provided by Dr F.M. on 15 December 2015, confirmed the progressive cognitive deterioration and added that the applicant was at high risk of cardiovascular events and suffered from frequent urinary tract infections. Overall, his diseases were chronic and would get worse, and required a large number of medical checkups and treatments that the applicant, because he suffered from cognitive deterioration, was unable to follow. He therefore considered that the applicant could not be adequately treated in prison.

21. A private report by Dr C.G. on 9 February 2017 stated that the applicant suffered from multiple diseases including cognitive deterioration that had been detected as early as 2015 and that his diseases were chronic, would inevitably worsen over time and required constant treatment including, in some cases, surgical intervention. It concluded that, taking into account the applicant's advanced age and his multiple diseases, his overall state of health was incompatible with detention in prison and required placement in an external healthcare facility.

22. A private report by Dr G.B.G. on 25 September 2021 reiterated that the applicant had a moderate form of dementia and needed assistance in performing daily tasks and in walking as well as multidisciplinary treatment for his various diseases, and concluded that his health condition was incompatible with detention in prison.

## II. THE SECTION 41 *BIS* REGIME PROCEEDINGS

23. When the applicant was imprisoned in 2004, the Minister of Justice ordered that he be held under the section 41 *bis* regime. That order was subsequently extended every two years.

24. The applicant's account of events starts with an order made by the Minister of Justice on 7 February 2018, extending the section 41 *bis* regime for two further years.

The additional restrictions imposed on the applicant consisted of: limited visits by family members and no visits by non-family members; a prohibition on using the telephone; limits on receiving money and parcels from outside the prison; a prohibition on participating in the elections for prison representatives; and a maximum of two hours out of doors per day and in a group of no more than four persons. Additionally, incoming and outgoing correspondence was to be monitored, subject to prior judicial authorisation.

The reasons given by the Minister of Justice to justify the extension of the special regime rested on information provided by the anti-mafia prosecuting authorities, according to which the applicant had been the leader of a criminal group which was still active, as shown by various criminal proceedings against its members. The applicant had not distanced himself from that organisation and there was no indication that he no longer had a leading role. The applicant also had a violent and aggressive attitude to the prison

personnel, for which he had been subject to disciplinary and criminal proceedings. The Minister therefore considered that the applicant's ties with the criminal organisation were still in place and that, in the absence of restrictive measures, he would be likely to resume contact with the organisation.

25. On 15 February 2018, the applicant filed a challenge to the extension order in the Rome court responsible for supervising the execution of sentences (*tribunale di sorveglianza* – "the sentence supervision court"), claiming among other things that the extension did not take into account his progressive cognitive deterioration, which affected his capacity to maintain contact with the criminal organisation, or the various other diseases he had which required constant specialist treatment and assistance. He supported his challenge with the private expert reports of 24 February 2015 and of 9 February 2017 (see paragraphs 19 and 21 above). The applicant asked mainly for the revocation of the special regime or, alternatively, for the lifting or easing of some of the restrictions.

26. Before any decision could be taken on the applicant's challenge, on 4 February 2020 the Minister of Justice ordered a further two-year extension. The reasons given, and the restrictions imposed, were the same as those in the previous order.

27. On 19 February 2020, the applicant filed a challenge to the new extension, on the same grounds as his earlier challenge.

28. The Rome sentence supervision court joined the two proceedings and appointed a medical expert to assess the applicant's state of health with particular regard to any physical or psychiatric conditions which could affect his mental capacity.

29. On 4 May 2020 the court-appointed expert, Dr M.F., filed his expert report, which included also a neuropsychological evaluation. He confirmed that the applicant suffered from several physical diseases and from cognitive deterioration.

The expert asserted that the applicant's numerous ailments had been underestimated by the prison medical service, and observed that the conclusions of prior medical reports stating that the applicant was in reasonably good condition were no longer true. In particular, he noted that the applicant suffered from frequent urinary tract infections with potentially serious and even lethal consequences. He also criticised the delays in diagnosing the cognitive deterioration, which had already been apparent in 2015 but had been diagnosed only on 14 November 2018 (see paragraph 12 above); the delays in taking note of the applicant's beliefs that he was being persecuted and in prescribing antipsychotics, despite the applicant's abnormal behaviour and his refusal of treatment; the underestimation of the hernia, which had been incorrectly described as asymptomatic; the fact that his hypertension was only partially under control; and the failure to test the applicant for diabetes despite his showing some symptoms of it.

Overall, the expert concluded that the applicant's physical diseases, if taken individually, did not affect his mental capacities, but that a combination of comorbidities in an elderly person could aggravate cognitive deterioration.

As to the applicant's cognition, the expert – who also relied on the results of neuropsychological tests – found that the applicant suffered from a major vascular neurocognitive disorder, commonly known as dementia. While it did not yet affect his capacity to perform basic daily tasks (and in this sense it was described as mild), it caused altered behaviour, confusion, memory loss and attention deficits. The tests demonstrated that there was no simulation of symptoms, showing rather that the applicant tried to hide his disease. The expert therefore concluded that the applicant's cognitive deficit significantly affected his mental capacity.

30. By a decision of 16 October 2020, the Rome sentence supervision court rejected the applicant's challenges to the two extension orders.

As to the applicant's physical problems, it stated that the section 41 *bis* regime did not entail any restriction on access to medical treatment. Nevertheless, noting that the court-appointed expert had expressed criticism of the medical care provided to the applicant, it observed that that issue was outside its jurisdiction and transmitted the case to the Milan sentence supervision court.

As to the applicant's cognitive state, the Rome sentence supervision court observed that – despite the expert's conclusions – the applicant's behaviour in prison and the content of his conversations with his family members showed that he had no remorse about his past, was anchored to a typical mafia mentality and still showed a strong and rational personality. The cognitive deterioration, therefore, was having less impact than had been suggested by the expert and did not affect the applicant's capacity to maintain contact with the criminal organisation.

31. The applicant appealed to the Court of Cassation which, on 8 July 2021, confirmed the sentence supervision court's findings.

32. On 7 January 2022, the applicant lodged the present application before the Court, complaining under Article 3 of the Convention about his continued placement under the section 41 *bis* regime despite his deteriorating health. He also lodged a request for an interim measure under Rule 39 of the Rules of Court, which was rejected by the Court (the duty judge) on 2 February 2022.

33. By an order of 2 February 2022, the Minister of Justice extended the application of the special prison regime for a further period of two years, with the same restrictions. The order contained, in addition to the grounds listed in the previous orders, some remarks on the applicant's cognitive state, affirming that – as stated by the sentence supervision court – the applicant's dangerousness remained unchanged.

34. The applicant filed a challenge to the new extension order, again relying on his cognitive decline and asking for an additional expert report.

35. On 3 November 2022, the Rome sentence supervision court rejected the applicant's challenge. The sentence supervision court took note of the above-mentioned report by Dr M.F. (see paragraph 29 above) and an additional expert report filed by Dr M.L. in separate proceedings on 10 August 2022 (see paragraph 49 below).

The additional expert report said that the applicant's mental capacities had remained the same, or had slightly worsened, since Dr M.F.'s report: the applicant was described as suffering from a major neurocognitive disorder, with a mild cognitive decline which was progressing slowly; he appeared lucid but was partially disoriented as to time and had memory loss, diminished reasoning capacity, attention deficits and a reduced ability to concentrate. When he had behaved aggressively towards some prison guards in March 2020, he had therefore been incapable of understanding what he was doing and in 2022 he had been incapable of following a court hearing. The applicant's age and progressive dementia meant that this incapacity was irreversible and he was not socially dangerous.

The sentence supervision court found, however, that the conclusions of the experts' reports had to be read in the light of the updated evidence, in particular that of a prison medical report dated 27 October 2022 which stated that the applicant's condition of health was fair, stable and consistent with his age and chronic diseases; that in his daily activities he did not show signs of significant cognitive deterioration, and he appeared lucid, oriented and capable of performing daily tasks.

The sentence supervision court further observed that the applicant still denied all responsibility for his actions and exhibited aggressive behaviour, that during family meetings he continued to make accusations against state bodies and to receive information on outside events, making hidden references to people involved in the criminal organisation he had previously belonged to.

Overall, the sentence supervision court concluded that the applicant's dangerousness and capacity to maintain contact with the criminal organisation remained unchanged.

36. The applicant appealed to the Court of Cassation and the outcome of these proceedings is unknown.

## III. THE APPLICATIONS FOR RELEASE ON HEALTH GROUNDS

37. On 31 July 2015, the applicant filed an application for the replacement of his detention in prison with home detention under Articles 147 of the Criminal Code and Article 47 *ter* of Law no. 354 of 26 July 1975. The application was rejected, on a provisional basis, by the Milan sentence supervision judge (*magistrato di sorveglianza*) on 28 September 2015 and then by the Milan sentence supervision court on 26 February 2016. The Milan court relied in particular on reports by the prison medical service, according

to which the applicant's health condition was stable and adequately monitored.

38. On an unspecified date, the applicant filed a further application, which was rejected by the Milan sentence supervision judge on 17 August 2017 and by the Milan sentence supervision court on 18 December 2017. The domestic courts relied, in particular, on two reports produced by the prison medical service on 12 October and 5 December 2017 (see paragraph 15 above), according to which the applicant, despite his multiple diseases and a mild disorientation, was overall in a reasonably good and stable condition. The sentence supervision court therefore considered that the applicant could appropriately be treated in prison.

39. The applicant appealed to the Court of Cassation, which found on 2 August 2018 that the examination of the applicant's state of health and the compatibility of it with his continued detention had not been sufficiently detailed, quashed the decision and remitted the case to the sentence supervision court.

40. In the meantime, the applicant had filed a new application on the same grounds. The sentence supervision court joined the proceedings and, on 29 November 2018, it rejected them both. It relied, in particular, on two reports produced by the prison medical service on 21 September and 15 November 2018, which reiterated that the applicant's condition was stable and reasonably good and that he could be treated in prison if he complied with the doctors' directions. The decision also pointed out that, if the applicant was released, he would be treated in the same manner. As to the applicant's cognitive deterioration, it referred to a neurological examination carried out on 13 November 2018 and found that the deterioration was still at an initial stage.

41. The applicant appealed, arguing that the decision had the same deficiencies that had previously been criticised by the Court of Cassation and insisting that an expert should be appointed; the public prosecutor agreed. Nevertheless, on 17 October 2019, the Court of Cassation dismissed the appeal, finding that the decision had been fully reasoned and that it was based on recent medical evidence.

42. On 20 March 2020, the applicant filed a further application for the replacement of his detention in prison with home detention, again asking for an expert report. On 9 June 2020, the Milan sentence supervision judge rejected the application, citing a medical report of 28 May 2020 according to which the applicant's state of health was stable and his conditions could be treated in prison.

On 2 March 2021, the sentence supervision court also rejected the application. It took into consideration the expert report issued by Dr M.F. in the Rome proceedings (see paragraph 29 above) and a recent report from the prison medical service according to which the applicant's condition was stable and reasonably good.

The applicant appealed to the Court of Cassation which, on 9 February 2022, dismissed his appeal.

43. On 20 May 2022, the applicant filed a new application for the replacement of his prison detention with home detention pointing out, among other things, that he had no caregiver. The outcome of this application is unknown, although in November 2022 the Government stated that the proceedings were still pending.

44. In addition to the proceedings discussed above, the applicant's lawyer and family members made a number of complaints to other domestic authorities, including criminal complaints, for lack of medical care and assistance. The outcome of these complaints is unknown.

45. On 6 June 2022, the applicant lodged an additional complaint before the Court, complaining under Article 3 of the Convention that his continued detention in prison was incompatible with his state of health and was preventing adequate treatment of his multiple diseases. He also lodged a second request under Rule 39 of the Rules of Court, in respect of which the Court informed him that the prior decision (see paragraph 32 above) still stood.

## IV. THE DISCIPLINARY AND CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

46. The applicant had carried out acts of aggression and caused damage in the prison. He was subject to an unspecified number of disciplinary and criminal proceedings.

47. In November 2019, a disciplinary sanction was imposed on the applicant for having thrown a dish and insulted a police officer. In a decision of 15 June 2020 the Milan sentence supervision court, relying on the expert report of Dr M.F. (see paragraph 29 above), found that the disciplinary proceedings had not taken into due account of the applicant's cognitive deterioration, and annulled the sanction.

48. Criminal proceedings had been commenced about an act of aggression towards the prison police which had occurred on 2 March 2020. On 28 April 2022, in the preliminary hearing of that case, the Milan judge observed that the applicant appeared to be "completely disoriented". She therefore postponed the hearing and ordered an expert report on his mental capacity at the time of the events of the case and on his capacity to stand trial.

49. The expert, Dr M.L., produced his report on 10 August 2022. The report has not been provided to the Court in full, but parts of it were cited in subsequent court decisions.

The report stated that the applicant suffered from a major neurocognitive disorder, with a mild cognitive decline which was progressing slowly; he appeared lucid, but was partially disoriented in time, had memory loss, a diminished reasoning capacity, a short attention span and a reduced ability to

concentrate. It concluded that, at the time of the events in question, the applicant had been incapable of understanding his situation and at present he did not have the attention span and capacity for concentration required to follow a court hearing. His incapacity would be irreversible, since it arose from his age and progressive dementia. Additionally, given his physical and intellectual ailments, the risk of further criminal behaviour was very limited, and he therefore should not be considered dangerous (see also paragraph 35 above).

50. On this basis, on 3 November 2022 the Milan District Court acquitted the applicant by reason of insanity in respect of the act of aggression which had occurred on 2 March 2020 (see paragraph 48 above).

51. On 14 November 2022, the Milan District Court took note of the applicant's incapacity to stand trial and discontinued other criminal proceedings against the applicant for acts that had taken place in 2017.

## V. SUBSEQUENT DEVELOPMENTS

52. The applicant's medical journal during the second half of 2022 and 2023 shows that he continued to be examined by prison doctors and specialists on frequent occasions. He was usually described as lucid and oriented and in reasonably good condition.

53. On 4 February 2023, the applicant filed a new application for the replacement of his prison detention with home detention. On 6 April 2023, the Milan sentence supervision judge rejected the application, relying, in particular, on a report of the prison medical service of 1 February 2023 according to which the applicant was in a fair and stable condition. The report further stated that the applicant had no acute symptoms; that he could manage his own personal hygiene and had been assigned help with cleaning his cell; that he used a wheelchair to move around outside his cell; and that he appeared oriented, had an active will and did not show any lack of understanding when questioned.

54. On 24 May 2023, the applicant was taken to hospital urgently because of acute abdominal pain and other symptoms. The hospital said that surgical intervention for his hernia had become vital, despite the high risk it would pose for an old and sick patient. The Milan sentence supervision judge therefore ordered that the applicant's detention in prison be replaced by home detention, to be served at Milan Hospital, for a period of 15 days.

55. The surgery took place on 29 May 2023. According to a subsequent medical report dated 7 June 2023, the patient had some post-operative complications but his situation had gradually stabilised; he was now alert, cooperative and reasonably well-oriented and would reply rationally when questioned. He needed help for some daily tasks, such as eating and personal hygiene.

56. On 12 June 2023, the Milan sentence supervision judge extended the home detention order, to last as long as the doctors considered it necessary for the applicant to remain in hospital. The sentence supervision judge took note of the applicant's request to be transferred to a healthcare facility and of the opposition to home detention of the anti-mafia prosecuting authority, which considered that the applicant, if placed in home detention, might resume the management of the activities of the criminal organisation. The sentence supervision judge considered that the applicant could be adequately treated in prison and ordered that, once discharged, he should return there.

57. On 14 June 2023, the applicant lodged another request under Rule 39 of the Rules of Court, arguing that his return to prison would pose significant risks for his health. On 15 June 2023, the Court (the duty judge) rejected the request.

58. On 20 June 2023, the applicant was discharged from hospital. The hospital discharge report said that he was lucid and cooperative, needed help with eating, moving about and personal hygiene, and that he should continue to take exercise and, if possible, should have physiotherapy.

59. The applicant returned to prison the next day. The section 41 *bis* regime was treated as having come to an end because of the period of home detention and the applicant was placed on an ordinary wing.

60. The medical journal for this period states that the applicant was in a reasonably good condition. At first he was assigned nursing assistance for personal hygiene and walking. He had a cycle of physiotherapy, was regularly monitored and followed the treatment prescribed for him.

61. On 20 June 2023 the applicant filed a new application for the replacement of prison detention with home detention. On 24 July 2023, the sentence supervision judge rejected the application, relying on a prison medical service report of 6 July 2023 which said that he was being assisted with his personal hygiene by paramedics; that he had initially had help with mobility but had regained his autonomy and could now walk in his cell and used a wheelchair for longer distances; and he could now feed himself. He could therefore be adequately assisted in prison.

62. The applicant filed an additional private expert report which Dr G.B.G. had produced on 24 August 2023. This report reiterated that the applicant suffered from dementia and mobility issues with a high risk of falling and that he needed help with performing daily tasks, and that his condition was therefore incompatible with detention in prison.

63. On 6 December 2023, the Milan sentence supervision court also rejected the application, based on an updated report of the prison medical service of 9 November 2023 which contained essentially the same conclusions as the previous report (see paragraph 61 above).

64. The applicant appealed to the Court of Cassation which, on 12 July 2024, quashed the earlier decision and remitted the case to the sentence supervision court for a more thorough assessment of the impact of detention

in prison on the applicant's state of health. According to the latest information, these proceedings are still ongoing.

65. On 14 November 2023, the Minister of Justice ordered the reinstatement of the section 41 *bis* regime. The applicant filed a challenge, relying on a new private expert report produced by Dr F.R. on 25 January 2024. This said that the applicant had moderate to severe dementia, was fragile and suffered from mobility issues, and should be placed in a residential facility instead.

On 30 May 2024, the Rome sentence supervision court ordered a new expert report on the applicant's cognitive abilities. The report, issued on 14 October 2024, reiterated that the applicant suffered from senile dementia and found that his capacity of understanding was severely limited, if not entirely absent. No further update on these proceedings has been provided to the Court.

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. DEFERRAL AND REPLACEMENT OF DETENTION

66. The domestic law concerning the provision of medical care in prison and the requests for deferral of the execution of a sentence for health reasons or its replacement with home detention have been recently summarised in *Tarricone v. Italy*, no. 4312/13, §§ 44-52, 8 February 2024 and in *S.M. v. Italy*, no. 16310/20, §§ 24-27, 17 October 2024.

## II. SECTION 41 *BIS* REGIME

67. Section 41 *bis* of Law no. 354 of 26 July 1975 ("the section 41 *bis* regime"), as amended by subsequent legislation, gives the Minister of Justice the power to suspend the application of the ordinary prison regime. The relevant domestic law in this respect has been summarised in *Provenzano v. Italy*, no. 55080/13, §§ 83-90 and 92, 25 October 2018.

68. In particular, the suspension of the ordinary prison regime may be ordered for four years for detainees who have been convicted of a number of serious crimes, including membership of a mafia-type criminal organisation and related crimes, in order to prevent further contact with the criminal organisation (subsection 2). The special regime may subsequently be extended for further periods of two years, where the ability of the detainee to maintain contact with the criminal organisation to which he belonged has not abated (subsection 2 *bis*).

69. The Court of Cassation has clarified in this respect that the extension of the section 41 *bis* regime must be justified by a persistent capacity of the prisoner to maintain contact with the criminal organisation, and also that the ability to maintain contact may be affected by the deterioration of a detainee's

health, especially when he or she suffers from a particularly serious disease (see, for instance, judgments no. 16019 of 2016 and no. 32405 of 2017).

# THE LAW

70. The applicant complained under Article 3 of the Convention about two distinct but overlapping issues: his continued detention in prison despite his multiple diseases and without adequate medical treatment and assistance, and his continued placement under the section 41 *bis* regime, despite his progressive cognitive deterioration. The relevant provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

## I. ADMISSIBILITY

### A. The parties' arguments

71. The Government objected to the admission of those parts of the applicant's complaints which were based on new facts that had arisen after the domestic courts' decisions which had been challenged in the initial complaints submitted to the Court on 7 January and 6 June 2022. They argued that those parts of the complaint were inadmissible for non-exhaustion of domestic remedies, in that proceedings were still pending at the domestic level.

72. While they raised the objection in general terms in respect of both parts of the applicant's complaints, they referred more specifically to the diagnosis of Alzheimer's disease (see paragraph 13 above), the decision of the Milan judge in the preliminary hearing of 2022 (see paragraph 48 above) and, more generally, to the circumstances raised with the domestic court on 20 May 2022 (see paragraph 43 above).

73. Additionally, the Government claimed that the complaints were inadmissible because they were of a fourth-instance nature and would require the Court to reassess issues which were of their nature a matter for the domestic courts.

74. The applicant insisted that his complaints, including the additional submissions and documents, were admissible.

75. The applicant further argued that the Government's observations on the admissibility of his complaints had been submitted out of time.

### B. The Court's assessment

76. As a preliminary consideration, the Court notes that the Government's observations were submitted on 29 November 2022, within the deadline set. The Court therefore dismisses the applicant's allegations in this respect.

77. The Court notes that, after lodging the application, the applicant submitted further information on subsequent events.

78. The Court reiterates that nothing prevents applicants from clarifying or elaborating upon their initial submissions during the Convention proceedings; if they do so, the Court has to take the additional submissions into account when it conducts its examination. However, if such additions amount in effect to raising new and distinct complaints, those complaints must comply, like any other, with the admissibility requirements (see, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 122 and 135, 20 March 2018 and *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 147, 1 June 2023).

79. As regards the definition of the scope of initial complaints, the Court has also clarified that a complaint comprises two elements, namely factual allegations and the legal arguments underpinning them (see *Radomilja and Others*, cited above, § 110 and *Fu Quan, s.r.o.*, cited above, § 137).

80. Taking this into account, the Court does not agree with the Government that the recitation of any fact which occurred after the "challenged" decisions (which may be taken to mean the decisions referred to at paragraphs 31 and 43 above) must be declared inadmissible. The applicant's complaints in the present case do not concern the content of the domestic decisions as such but, on the one hand, his continued detention in the alleged absence of adequate medical treatment and, on the other hand, his continued placement under the section 41 *bis* regime. These are the complaints made to the Court, and the Court must determine whether the subsequent factual updates are a mere elaboration or a new complaint.

81. The Court observes that, in cases concerning the provision of medical care in prison, the underlying facts tend by their nature to develop over time. In such cases, the Court generally takes factual updates provided by the parties during the proceedings, such as a development in the applicant's health condition or in the treatment provided, into account (see, for instance, *Rooman v. Belgium* [GC], no. 18052/11, §§ 153-68, 31 January 2019 or *Cosovan v. the Republic of Moldova*, no. 13472/18, §§ 80-86, 22 March 2022, which concerned uninterrupted periods of detention).

82. Conversely, when the applicant's submissions relate to separate events which did not constitute part of a "continuing situation", the Court treats them as a new complaint (see, *mutatis mutandis*, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 97, 20 September 2018).

83. The concept of continuing detention has been elaborated in cases concerning conditions of detention or the provision of medical care in prison where compliance with the six-month time-limit needed to be assessed; in such cases, compliance with the admissibility requirement is assessed separately for each period of continuing detention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012 and, for a recent example, *Tarricone v. Italy*, no. 4312/13, §§ 59-62, 8 February 2024).

84. The Court considers that the same concept can also be used to determine whether the applicant's submissions are mere updates to the same set of facts that was initially complained about or new allegations constituting a substantially new complaint.

85. In the present case, as regards the part of the applicant's complaint that concerns his continued detention and the medical treatment provided to him in prison, the Court notes that he was detained in prison from 2004 until his hospitalisation on 24 May 2023 and again from 21 June 2023 onwards (see paragraphs 54 and 59 above). The Court has already found that a short period of absence during which an applicant is hospitalised has no impact on the continuous nature of the detention (see *Shirkhanyan v. Armenia*, no. 54547/16, §§ 118-19, 22 February 2022, with further references). Nevertheless, in the present case, the applicant was not only hospitalised for almost a month, but this took place under a different regime from that of his detention in prison, which the sentence supervision judge had replaced with home detention (see paragraphs 54 and 56 above). The Court considers that, in these circumstances, there was a significant change in the applicant's detention regime, entailing an interruption of continuity.

86. As regards the part of the applicant's complaint concerning his placement under the section 41 *bis* regime, the Court notes that, after the applicant's return to prison on 21 June 2023, the special regime was treated as having come to an end and he was placed in an ordinary wing. It was only on 14 November 2023 that the section 41 *bis* regime was reinstated (see paragraphs 59 and 65 above). In the circumstances, the Court considers that the original period under the special regime had been discontinued.

87. The applicant's allegations concerning the events that took place after his hospitalisation on 24 May 2023 therefore concern new sets of facts, giving rise to substantially new complaints.

88. The Court notes that the domestic proceedings in respect of these new complaints are still ongoing (see paragraphs 64 and 65 above). It therefore considers that the complaints regarding the applicant's continued detention in prison, medical treatment and placement under the section 41 *bis* regime after 24 May 2023 are premature and must be rejected under Article 35 §§ 1 and 4 of the Convention. Conversely, in respect of the remaining part of the application it rejects the Government's objection of non-exhaustion.

89. As to the objection regarding the fourth-instance nature of the complaints, the Court considers that it relates to the merits of the case and it will be examined in that context.

90. The Court finds that the applicant's initial complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, and must therefore be declared admissible.

# II. MERITS

## A. Complaint concerning the applicant's continued detention and the medical treatment provided to him

### *1. The parties' arguments*

#### (a) The applicant

91. The applicant argued that because of his advanced age and numerous chronic diseases, his state of health was incompatible with detention in prison, especially under the section 41 *bis* regime.

92. He claimed that he was not being cared for; that he lacked the necessary assistance with personal hygiene and with cleaning his cell; and that he had had to resort to finding his own solutions to contain his painful hernia, for which he had not had access to the necessary surgical intervention. He also mentioned cancer and complained that he had not been provided with an orthopaedic chair.

93. The applicant relied extensively on Dr M.F.'s report of 4 May 2020, which said that he suffered from frequent urinary tract infections which could have very serious and even lethal consequences, especially because the applicant did not comply with the treatment prescribed for him; that the applicant had only been examined by a psychiatrist and prescribed antipsychotic medication on 14 November 2018; that contrary to the statements of the prison medical reports the hernia was not asymptomatic; that his hypertension was not controlled, as he had high blood pressure; and that he had not been examined for signs of diabetes (see paragraph 29 above).

94. Additionally, he relied on the Dr M.L.'s report of 10 August 2022, which said that his ailments were irreversible and he was suffering from progressive dementia (see paragraphs 35 and 49 above).

#### (b) The Government

95. The Government acknowledged that the applicant suffered from multiple diseases, which is not unusual in an elderly person, but argued that these were neither terminal nor particularly acute, and nor were they life-threatening.

96. The Government also observed that – contrary to the applicant's allegations – he did not suffer from any cancer. The diseases he did suffer from, with the exception of progressive cognitive deterioration, had not got worse and he had not developed any new adverse condition, which indicated that his treatment had been adequate.

97. The Government relied, in particular, on the prison medical service reports of 21 September 2018 and on 29 September 2022 (see paragraphs 40 and 17 above) and on Dr M.F.'s expert report of 4 May 2020 (see paragraph 29 above), which showed that the applicant's condition was stable.

98. In respect of the applicant's allegations of specific deficiencies in his treatment, the Government pointed out the following: the use of an orthopaedic chair had not been prescribed by the orthopaedic specialists; the applicant was able to manage of his own personal hygiene and he had been assigned a caregiver to clean his cell and change his bedsheets; he could move about in the cell by himself and had a wheelchair if he needed to move further; he had been provided with a tailor-made bodysuit to contain his hernia; his catheter was replaced regularly and antibiotics were prescribed.

The applicant had also undergone a large number of specialist examinations, of which the Government provided an extensive list compiled from the applicant's medical journal; medical examinations were carried out frequently, sometimes even daily or twice a day, depending on the applicant's needs, and on those occasions further examination by a specialist could be prescribed. When he could not be treated in prison, the applicant had been hospitalised. Lastly, the applicant had always been duly informed about the results of his examinations and what had been prescribed, and he could ask for assistance in case of need and could be examined by his own private doctors if he so wished.

99. The Government also pointed out the applicant's challenging attitude, and his distrust of and sometimes aggressive behaviour towards the medical personnel.

100. As to the domestic courts' assessment of the applicant's state of health and its compatibility with detention, the Government claimed that the domestic decisions had taken into account not only the prison medical reports but also Dr M.F.'s independent expert report of 4 May 2020, in which he had reached substantially similar conclusions. Overall, the domestic courts had conducted a thorough assessment of the applicant's state of health and reached reasoned conclusions based on the available medical evidence.

*2. The Court's assessment*

101. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (*Rooman*, cited above, § 141). The general principles concerning the obligation to preserve the health and well-being of prisoners, in particular, through the provision of the required medical care, have been summarised in *Rooman*, cited above, §§ 144-48) and, more recently, in *Tarricone v. Italy* (cited above, §§ 71-80). Specifically, when examining whether the detention of a person who is ill is compatible with Article 3 of the Convention, the Court will take into account: (a) the prisoner's state of health and the effect on it of the manner of execution of his or her imprisonment, (b) the quality of care provided, and (c) whether or not the applicant should continue to be

detained in view of his or her state of health (see also *Potoroc v. Romania*, no. 37772/17, § 63, 2 June 2020).

**(a) The applicant's state of health**

102. As regards the first element of the Court's examination, it is undisputed that the applicant suffered from multiple chronic diseases (see paragraphs 6 and 95 above). In the period under examination, these diseases did not show signs of significant aggravation, with the exception of the hernia – which had made it necessary for the applicant to be hospitalised urgently and operated on (see paragraph 54 above) – and of the applicant's progressive cognitive deterioration. Overall, his health was described by the prison medical journal and the prison reports as reasonably good and stable (see paragraphs 7 and 15-17 above); nevertheless, Dr M.F. stated in his expert report that he considered that the gravity of the applicant's illness had been underestimated (see paragraph 29).

103. As to the effects of the conditions of his imprisonment, the applicant argued that the section 41 *bis* regime aggravated his diseases. There is, however, no indication that the special regime limited the applicant's access to medical care or otherwise affected the progression of his physical diseases; the issue of its effects on his cognitive deterioration is closely related to that examined under the applicant's second complaint, and will be therefore examined in that context (see paragraph 144 below).

**(b) The quality of care**

104. The applicant complained about inadequate care both in general terms, claiming that he had not been given any medical attention, and specifically about certain instances of treatment and examination.

105. There is extensive medical evidence of the treatment the applicant was given, including medication and frequent examination by prison doctors and specialists (see paragraphs 7-18 and 52 above). The evidence shows that the applicant's allegations about the lack of medical attention given to him are unfounded.

106. As to his more specific complaints, he claimed first of all that he lacked the necessary assistance with personal hygiene and with cleaning his cell. In this respect, the Government have provided evidence of multiple medical assessments saying that the applicant could manage his own personal hygiene (see paragraph 18 above). Insofar as he complained about a lack of assistance with cleaning his cell, the available evidence shows that such assistance was provided (see paragraph 9 and 18 above).

107. As to the delay in operating on his hernia, the medical journal shows that surgery was initially proposed and repeatedly refused by the applicant, until the doctors indicated that it was no longer advisable unless the applicant developed acute complications, because it was a high risk procedure (see

paragraph 8 above). The applicant did develop complications in May 2023 and the surgery was immediately carried out (see paragraphs 54-55 above). Furthermore, in so far as the applicant complained that he had to resort to finding his own solutions to contain his hernia, there is evidence that he was provided with containing underwear on multiple occasions and in May 2021 he was given a tailored bodysuit (see paragraphs 8 and 18 above).

108. There is no indication that the applicant suffered from cancer, nor that he needed an orthopaedic chair, and the applicant's allegations in this respect are therefore unsubstantiated.

109. As regards the criticisms expressed by Dr M.F. in his report (see paragraph 29 above), which was extensively cited by the applicant in support of his claims, these concerned, first of all, the frequent urinary tract infections, in respect of which however neither the expert nor the applicant claimed that there was any failure on the part of the prison medical service: on the contrary, it appeared that the applicant was monitored and given treatment (see paragraph 8 above). The expert then criticised the fact that no psychiatric examination had been carried out until 14 November 2018, but this however does not appear to be true given the medical evidence provided by the Government, which showed that regular psychiatric examinations had also been carried out before that date (see paragraphs 10-12 above). As to the alleged underestimation of the applicant's condition, since the hernia was described as asymptomatic and the hypertension as controlled, the Court observes that – aside from the wording used to describe those diseases – there is ample evidence that they were monitored, treated and that they were under control (see paragraph 8 above). Lastly, the expert criticised the failure to check for diabetes; while it does not appear that diabetes was tested for, neither the applicant, nor the private reports he relies on, say that he developed the disease at any time.

110. In the light of all of the foregoing, the Court finds that the underestimation of the applicant's illness criticised by the expert did not result in a lack of medical treatment or in delays reaching the threshold of Article 3 of the Convention. There is therefore not enough in the case-file to conclude that the medical care provided to the applicant was inadequate at the relevant time.

#### (c) Continued detention

111. The applicant argued that he should have been released, on the one hand because he could not be provided with adequate treatment and assistance in prison and on the other because the detention of a detainee suffering from multiple diseases at an advanced stage was inhuman.

112. In this respect, the Court reiterates that the Convention does not lay down any "general obligation" to release a prisoner for health reasons, even if he or she is suffering from a disease which is particularly difficult to treat. Nevertheless, in particularly serious cases situations may arise where the

proper administration of criminal justice requires humanitarian measures (see, for example, *Cosovan*, cited above, § 78, and *Dorneanu v. Romania*, no. 55089/13, § 80, 28 November 2017). The Court has previously taken into account, in the examination of the compatibility of an applicant's state of health with detention, the availability of medical treatment in prison (see, for example, *Helhal v. France*, no. 10401/12, §§ 54-55, 19 February 2015, and *Cara-Damiani v. Italy*, no. 2447/05, § 75, 7 February 2012).

113. In the present case, the Court has already concluded that there was no failure in treating the applicant's diseases (see paragraphs 105-110 above). While the applicant's state of health was undoubtedly characterised by multiple serious diseases, these were neither terminal nor at such an advanced stage as to render the detention inhuman (compare with, among others, *Cosovan*, cited above, § 88 and *Dorneanu*, cited above, §§ 93-99).

114. Additionally, the domestic courts examined the applicants' applications for release in a detailed and reasoned manner. They relied on multiple up-to-date medical reports compiled by the prison medical services, which showed univocally that the applicant could be, and was, adequately treated in prison (see paragraphs 16-17, 37-38, 40, 42 and 53 above). Although the domestic courts did not consider it necessary to appoint an expert to examine further whether the applicant's state of health was compatible with his imprisonment, they took Dr M.F.'s report from the section 41 *bis* regime proceedings (see paragraph 42 above) into account. That report, while criticising some aspects of the applicant's treatment, at no point suggested that he could not be treated in prison or that his condition had deteriorated so far as to require his release (see paragraph 29 above).

#### (d) Conclusion

115. Given the above considerations, the Court finds that the applicant's continued detention, in light of the adequate treatment provided to him for his multiple diseases, did not constitute inhuman or degrading treatment. Therefore, there has been no violation of Article 3 of the Convention in this respect.

## B. Complaint concerning the applicant's continued placement under the section 41 *bis* regime

### *1. The parties' arguments*

#### (a) The applicant

116. The applicant argued that his continued placement under the section 41 *bis* regime despite his progressive cognitive deterioration and his multiple diseases was unjustified and constituted inhuman or degrading treatment. Not only could he no longer be considered dangerous for the

purposes of section 41 *bis* because of his progressive cognitive deterioration but also the very restrictive regime could aggravate the condition.

117. He pointed out, in particular, that there was ample evidence of the deterioration of his cognition. The domestic courts relied exclusively on the generic reassurances provided by prison doctors, without properly taking into account other medical evidence and, in particular, the reports of the court-appointed experts who had diagnosed cognitive deterioration (see paragraphs 29 and 35 above).

118. The applicant also criticised the Rome sentence supervision court (see paragraph 35 above) for deciding on the impact of his cognitive deterioration without ordering an additional expert report.

119. Furthermore, the domestic courts' decisions that he continued to be dangerous conflicted with the decisions that he had already been lacking the capacity to understand his own conduct in 2020 and had not had the capacity to stand trial in 2022 (see paragraphs 50-51 above).

**(b) The Government**

120. The Government argued that the extension of the section 41 *bis* regime had been justified, in that the domestic courts had taken into account the applicant's cognitive decline before concluding that it had not affected his continuing capacity to maintain contact with the criminal organisation to which he had belonged.

121. In particular, the domestic courts had extended the special regime because of several elements indicating that the applicant continued to present a danger: the seriousness of the offence of which he had been convicted; his leading role in the organisation; his behaviour in prison, which showed a lack of remorse about his past and a firm entrenchment in the mafia subculture; information that the organisation in question was still active; and material obtained by bugging his conversations with family members during which he received information on the activities of the organisation.

122. The Government acknowledged that the applicant suffered from cognitive decline, as confirmed by the expert reports of Dr M.F. and Dr M.L. However, they had not said that the applicant's mental condition was incompatible with the special regime. The domestic courts had considered the matter of cognitive decline appropriately and concluded that it did not hinder the applicant's capacity to maintain contact with the criminal organisation. That conclusion rested on the applicant's having a rational and active will, as shown by his conversations with his family members and referred to in the prison doctors' statements. Additionally, the section 41 *bis* regime did not limit his access to medical care in any way.

123. The Government drew a comparison between the present case and *Provenzano v. Italy* (no. 55080/13, 25 October 2018), in which not only had the applicant's state of health deteriorated further than in the present case but the Court found a violation only in respect of a period for which no

assessment of the applicant's state of health had been conducted. It found no violation when the sentence supervision courts had taken the applicant's deteriorating health into consideration.

124. Lastly, the Government argued that there was no contradiction between the domestic courts' decision to extend the special regime and the findings relating to the applicant's capacity to stand trial and to understand his own actions, as they dealt with different questions. The first dealt with the question of whether the applicant was capable of maintaining contact with criminal organisations; the second, the question of whether the applicant could follow a series of court hearings of several hours and whether he had had full understanding of his conduct when he had shown aggression towards prison officers.

### *2. The Court's assessment*

#### (a) General principles

125. The Court has repeatedly acknowledged that public order considerations may lead a State to introduce high security prison regimes for particular categories of detainees. While a special prison regime is not of itself contrary to Article 3, under that provision the State must ensure that people are detained in conditions which are compatible with respect for their human dignity and which do not subject them to distress or hardship greater than the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see, among others, *Epure v. Romania*, no. 73731/17, § 73, 11 May 2021, *Horych v. Poland*, no. 13621/08, § 88, 17 April 2012, and *Van der Ven v. the Netherlands*, no. 50901/99, § 50, ECHR 2003-II).

126. In this respect, the Court has stated that, while extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and the effects of the measure on the person concerned (see, among others, *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, § 123, 28 November 2023, *Bamouhammad v. Belgium*, no. 47687/13, § 135, 17 November 2015, *Rzakhanov v. Azerbaijan*, no. 4242/07, § 64, 4 July 2013, and *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005).

127. Measures entailing even relative isolation cannot be imposed on a prisoner indefinitely and should be based on genuine grounds and ordered only exceptionally and with the necessary procedural safeguards and after every precaution has been taken (see *Schmidt and Šmigol*, cited above, § 125, and *Rzakhanov*, cited above, § 73). In order to avoid any risk of arbitrariness, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and should provide

substantive reasons in support; the reasons given should be increasingly detailed and compelling as time goes by. Furthermore, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that solitary confinement remains appropriate (see *Fenech v. Malta*, no. 19090/20, § 66, 1 March 2022, *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, §§ 105-06, 18 March 2014, and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 139, ECHR 2006-IX).

128. Additionally, the Court has stated that all forms of isolation without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities (see, among others, *Horych*, cited above, § 98, *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 204, ECHR 2014 (extracts), and *Rzakhanov*, cited above, § 73). On this basis, in a number of cases the Court has taken into consideration whether, according to the available medical evidence, the prolonged application of additional restrictions was having a negative impact on the detainee's mental health (see *Bamouhammad*, cited above, §§ 141-44, *Khider v. France*, no. 39364/05, §§ 119-22, 9 July 2009, and *Lorsé and Others v. the Netherlands*, no. 52750/99, §§ 68-69, 4 February 2003).

129. As regards, in particular, the section 41 *bis* regime, the Court has already had ample opportunity to assess it in a large number of previous cases and has concluded that, in the circumstances of those cases, it did not violate Article 3, even when it had been imposed for lengthy periods of time (see, among others, *Enea v. Italy* [GC], no. 74912/01, §§ 63-67, ECHR 2009, *Paolello v. Italy* (dec.), no. 37648/02, §§ 26-29, 24 September 2015, and *Argenti v. Italy*, no. 56317/00, §§ 19-23, 10 November 2005). The Court has also acknowledged the purely preventive and security – rather than punitive – purposes of the special prison regime at issue, and its aim of severing contact between detainees and their criminal networks (see *Provenzano*, cited above, § 150)

130. In such cases, the Court has acknowledged that, generally speaking, the extended application of certain restrictions may place a prisoner in a situation that could amount to inhuman or degrading treatment. However, it could not define a specific length of time after which the minimum threshold of severity required to fall within the scope of Article 3 would be met. On the contrary, the length of time must be examined in the light of the circumstances of each case, which entails, *inter alia*, ascertaining whether the renewal or extension of the restrictions in question was justified or not (see *Enea*, cited above, § 64, and *Argenti*, cited above, § 21). The Court considers, however, that if restrictions are imposed under the section 41 *bis* regime for a substantial length of time, detailed and compelling reasons should be given (see paragraph 127 above) which take into account the evolution of the prisoner's state of health and of other circumstances of the specific case during the course of the special regime.

131. In a number of previous cases, the Court has examined whether the applicant had submitted sufficient evidence for it to conclude that the extension of the section 41 *bis* regime was unjustified (see *Enea*, cited above, § 65, and compare *Provenzano*, cited above, § 151).

132. In this connection, the Court has also stressed that subjecting an individual to additional restrictions without providing sufficient and relevant reasons for the application or extension of such a regime may be perceived as arbitrary, thus undermining the detainee's human dignity and entailing an infringement of Article 3 (see *Provenzano*, cited above, § 152-53, and, *mutatis mutandis*, *Csüllög v. Hungary*, no. 30042/08, § 36-37, 7 June 2011). In these cases the Court therefore inquired whether the domestic authorities had undertaken a genuine reassessment of the justification for the extension of the section 41 *bis* regime, relying on sufficiently detailed and compelling reasons and taking into account any changes in the applicant's situation which could cast doubt on the continuing need for the imposition of the restrictions (*Provenzano*, cited above, § 153). On this basis, the Court stated that, in renewing the imposition of the section 41 *bis* regime on a detainee suffering from progressive cognitive deterioration, the domestic authorities should have provided detailed and compelling reasons for the renewal, taking into account that particular change of circumstances (ibid., §§ 154-57).

**(b) Application to the present case**

133. In the present case, the applicant complained about the extension of the section 41 *bis* regime because, on the one hand, his progressive cognitive deterioration had rendered the additional restrictions unjustified and, on the other, such restrictions could further aggravate that cognitive deterioration (see paragraph 116 above).

134. The Court will therefore examine, first of all, whether the extension of the restrictions was justified and based on an individualised assessment and whether it took into account the change of circumstances put forward by the applicant.

135. For the purpose of this examination, the Court will bear in mind that the applicant was, at the time of the application, 88 years old and had been subjected to the section 41 *bis* regime since 2004: he was therefore older than the applicants in all the previous section 41 *bis* cases examined by the Court, and had been subjected to that special regime for longer than most of them. While neither of these circumstances is, in itself, sufficient to conclude that the extension of the special regime was unjustified, they mean that particularly compelling reasons are required for any further extension. This is even more true since, under domestic law, every extension of the section 41 *bis* regime is ordered for a fixed period of two years (see paragraph 68 above), which makes it difficult to adapt to a situation that may develop rapidly, such as cognitive decline in an elderly person.

136. The Court reiterates that the section 41 *bis* regime is intended to sever contact between detainees and their criminal organisation. In this connection, it acknowledges that the domestic authorities, in their decisions on the extension of that regime, have given specific reasons for believing that the applicant continues to present a danger, namely: his criminal past and his leading role in the organisation; the fact that the organisation in question appeared to be still active; and the fact that the applicant had not distanced himself from the organisation and had behaved violently and aggressively in prison (see paragraphs 24 and 26 above).

137. Nevertheless, it is undisputed that for a few years now the applicant has been suffering from progressive cognitive decline. The medical documentation available to the Court in this regard prompts some legitimate doubt as to whether the applicant still represents a danger and as to whether he could maintain any meaningful, practical contact with his criminal organisation (see *Provenzano*, cited above, § 151). It appears from the medical documentation available to the Court that the applicant had started showing signs of possible cognitive deterioration as far back as 2014 and that subsequent neurological examinations had detected some signs of it (see paragraph 11 above); in the following years, he started showing some disorientation and slowdown and, in November 2017, he was diagnosed with a mild cognitive impairment (see paragraph 12 and 15 above). A number of private expert reports which also relied on the results of neurocognitive tests described the applicant as suffering from a mild cognitive impairment that was likely to develop into dementia (see paragraphs 19-21 above).

138. These developing circumstances were not taken into account in either the extension order of 7 February 2018 or that of 4 February 2020 (see paragraphs 24 and 26 above).

139. When the applicant challenged the first extension order, the domestic courts remained inactive for about two years. It was only after the subsequent extension order and a new challenge by the applicant that the Rome sentence supervision court joined the two proceedings and appointed an expert to address the issue of the applicant's cognitive impairment (see paragraph 28 above). The expert also relied on a neuropsychological evaluation and diagnosed the applicant with a major vascular neurocognitive disorder, commonly known as dementia; he acknowledged that the disorder had not yet affected the applicant's capacity to perform daily tasks, but observed that it had caused behavioural alterations, confusion, memory loss and attention deficits, concluding that it had significantly affected the applicant's mental capacity (see paragraph 29 above). Nevertheless, the sentence supervision court chose not to rely on the results of that expert report but to conclude instead that – looking at the prison doctors' notes and the content of the applicant's conversations with his family – the expert had overestimated the applicant's cognitive deterioration, which would not yet prevent him from resuming contact with the criminal organisation (see paragraph 30 above).

140. The Court is not fully convinced by the reasons given by the sentence supervision court for treating the applicant as still being dangerous.

The first element addressed by the domestic court was the prison doctors' statements which, however, were not the result of thorough examination but of mere passing comment – without further investigation – that the applicant appeared lucid and oriented. Such notes could at most prove that the applicant was still sufficiently lucid to perform daily tasks (something which had also been acknowledged by the court-appointed expert), without explaining how, despite his cognitive deterioration, he could still contribute in any meaningful way to the activities of a criminal organisation.

As to the second element, namely the material obtained by bugging the applicant's meetings with his family, that merely showed that the applicant had received certain information from his family members and had protested aggressively against the authorities, without showing any intention or capacity to resume contact with the criminal organisation.

The Court therefore has doubts that the reasons adduced by the domestic court for believing that the applicant still represented a danger to society, because of the risk that he would keep or resume contact with the criminal organisation, were sufficiently compelling to justify a further extension of the special regime.

141. Regardless, the Court notes that in the subsequent period the signs suggesting the applicant's cognitive decline progressively increased. While the prison doctors' notes continued to state, for the most part, that the applicant appeared lucid and oriented (see paragraphs 13, 17 and 52 above), on 25 July 2022 the applicant was taken to hospital in a state of confusion and diagnosed with Alzheimer's disease (see paragraph 13 above). In other proceedings the judges had started to take note of the applicant's cognitive deterioration; in particular, in one case the judge had observed that the applicant appeared completely disoriented and had appointed an expert to determine his capacity to stand trial and his understanding at the time of the events in the case (see paragraph 48 above). According to the subsequent report of 27 October 2022, the applicant was suffering from a major neurocognitive disorder, with a mild cognitive decline which was progressing slowly; he appeared lucid but was partially disoriented in time, had memory loss, diminished reasoning capacity, attention deficits and a reduced ability to concentrate. The report stated that the applicant had been incapable of understanding his own conduct as far back as 2020 and that he was, at present, unable to follow court hearings; it further found that he represented no danger, given his dementia and physical impairments (see paragraph 49 above). On this basis, the applicant was acquitted of the crimes he had been accused of committing in 2020, on the grounds of insanity, and other proceedings were discontinued because he lacked the capacity to stand trial (see paragraphs 50-51 above).

142. Despite the increasing signs of the applicant's cognitive deterioration, on 2 February 2022 the special regime was extended for two further years and on 3 November 2022 the Rome sentence supervision court again concluded that the experts had overestimated the severity of the applicant's cognitive deterioration, since he appeared lucid in his daily life: these conclusions rested as before on the prison doctors' notes and on the material obtained by bugging the applicant's family visits (see paragraph 35 above).

143. The Court considers that, in light of the ample evidence of the applicant's deteriorated cognitive state, neither the order of 2 February 2022 nor the subsequent court decision provided sufficiently compelling reasons to justify the continued application of the special regime.

It takes note, in this respect, of the Government's argument that the sentence supervision court's decision did not directly contradict either the expert's report or the decisions stating that the applicant lacked the capacity to understand his own conduct and the capacity to stand trial, as those were dealing with different issues (see paragraph 124 above). Nevertheless, the Court fails to see how a person suffering from an undisputed cognitive decline – and even diagnosed with Alzheimer's disease – and who was incapable of understanding his own conduct or following a court hearing could at the same time maintain sufficient capacity to keep or resume – at such an advanced age, after almost twenty years spent under a particularly restrictive regime – meaningful contact with a criminal organisation. It considers that, at the very least, it would have required more detailed reasoning, based on thorough specialist examination, to reach such a conclusion.

144. Additionally, the Court observes that the applicant – relying mainly on the private expert report of 2015 (see paragraph 19 above) – also argued that the section 41 *bis* regime could potentially accelerate his cognitive deterioration, because of the severe limitations it imposed on human interaction and on recreational activities. The Court cannot speculate as to whether the special regime has indeed aggravated the progress of that disease, although it is possible that the restrictions on socialisation may have had an impact on it (see paragraph 128 above). In any event, it notes that the allegation that limited interactions could be detrimental for the applicant's mental state was not addressed either by the Minister's orders or in the court decisions, which merely stated that the applicant's access to medical treatment was unrestricted.

145. Furthermore, the Court finds it significant that the domestic authorities did not consider the opportunity of lifting or easing some of the additional restrictions in order to accommodate the applicant's potential needs despite explicit requests submitted by him (see paragraph 25 above; contrast with *Enea*, cited above, § 66).

146. In the light of the foregoing, the Court is not persuaded that the Government have convincingly demonstrated that, in the particular circumstances of the present case, the extended application of the section 41 *bis* regime was sufficiently justified.

147. It therefore finds that there has been a violation of Article 3 of the Convention in respect of this part of the complaint.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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."

149. The applicant asked the Court to order the revocation of the section 41 *bis* regime and either his release or the replacement of detention in prison with home detention and placement in a healthcare facility. In the alternative, he asked for non-pecuniary damage in an equitable amount. He did not claim any amount in respect of costs and expenses.

150. The Government claimed that no just satisfaction claim had been filed.

151. In the present case, the Court finds a violation of Article 3 only in respect of the applicant's continued placement under the section 41 *bis* regime until 24 May 2023. In this respect, it considers that the finding of a violation is sufficient to compensate for the non-pecuniary damage sustained.

## FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning the detention in prison and placement under the section 41 *bis* regime after 24 May 2023 inadmissible and the remainder of the application admissible;

2. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention in respect of the applicant's continued detention and of the medical treatment provided to him in prison;

3. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the applicant's continued placement under the section 41 *bis* regime;

4. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 10 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Ilse Freiwirth | Ivana Jelić |
| Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Balsamo is annexed to this judgment.

# PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE BALSAMO

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III. CONCLUSION

## I. THE SECTION 41 *BIS* REGIME AND THE NEED FOR INTEGRAL PROTECTION OF HUMAN RIGHTS

1. The present judgment contains a very significant definition of the nature and function of the special prison regime provided for by section 41 *bis* of the Prison Administration Act (Law no. 354 of 26 July 1975). The acknowledgement of the purely preventive and security – rather than punitive – purposes of this special prison regime, aimed at severing contact between detainees and their criminal networks, is fully consistent with the principles of the Court's case-law, the historical evolution of the provisions of domestic law and the key role that such provisions can play in the context of modern strategies to combat organised crime.

2. In this connection, there is a clear continuity between the present judgment, the previous one delivered on 25 October 2018 in the case of *Provenzano v. Italy* (no. 55080/13, § 150) and the Court's well-established case-law according to which 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. On several occasions, the Court has considered that, before the introduction of the special regime, many dangerous prisoners had been able to maintain their positions within the criminal organisations to which they belonged, exchange information with other prisoners and with the outside world, and organise and procure the commission of criminal offences. The Court took 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, it noted that numerous States parties to the Convention had high-security regimes for dangerous prisoners, and these regimes were also based on separation from the prison community, accompanied by tighter supervision (see *Messina v. Italy (No. 2)*, no. 25498/94, § 66, 28 September 2000). In that context the

Court acknowledged that, given the fact that family visits frequently served as a means of conveying orders and instructions to the outside, restrictions on visits, and accompanying controls, could not be said to be disproportionate to the legitimate aims pursued (see *Enea v. Italy* [GC], no. 74912/01, § 126, ECHR 2009; *Salvatore v. Italy* (dec.), no. 42285/98, 7 May 2002; and *Bastone v. Italy* (dec.), no. 59638/00, ECHR 2005-II).

3. The above-mentioned principles are highly appropriate with regard to the root causes and evolutionary dynamics of the special prison regime. A discipline of this kind had been prefigured by Judge Giovanni Falcone, whose legacy lives on through the global commitment of the international community to preventing and combating organised crime[1]. But it was only following his sacrifice that section 41 *bis* was introduced in the Prison Administration Act by Decree-Law no. 306 of 8 June 1992, adopted just two weeks after one of the most dramatic events in the history of the Italian Republic: the "Capaci massacre", in which Giovanni Falcone, Francesca Morvillo and three police officers lost their lives. The Decree-Law was converted into Law no. 356 of 7 August 1992, enacted just after the "Via D'Amelio massacre", in which the anti-mafia prosecutor of Palermo, Paolo Borsellino, was assassinated along with five police officers in charge of his escort. Both of these attacks, considered to be the most serious expressions of the strategy of mafia terrorism, were made possible by a decision of the governing body of "Cosa Nostra" taken with the participation of mafia bosses who were in prison at the time, as confirmed by final judgments[2]. Behind the introduction of the new statute was the awareness of the danger represented by the ability of mafia-type organisations to manage the network of relationships between the prison environment and the outside world through a wide range of communications, the confidential content of which was immediately understandable only to people involved in related criminal activities.

4. Despite the violent reaction against the new prison regime by the Sicilian mafia, which carried out three terrorist attacks in Florence, Milan and Rome, respectively, in 1993, the Italian State maintained and stabilised the regulation provided for in section 41 *bis*, which was subsequently amended in order to enhance its preventive function.

Furthermore, the Italian Constitutional Court has clarified that the application of the section 41 *bis* regime is subject to precise limits, such that the only restrictions that may legitimately be imposed are those that are

[1] As underlined in the Resolution adopted by the UN General Assembly on 21 March 2024, which declared 15 November the International Day for the Prevention of and Fight against All Forms of Transnational Organized Crime, "paying special tribute to all those persons, such as Judge Giovanni Falcone, whose work and sacrifice paved the way for the adoption of the Convention [against Transnational Organized Crime], and affirming that their legacy lives on through our global commitment to preventing and combating organized crime".

[2] See judgments nos. 6262/2003 and 42990/2008 of the Court of Cassation.

material to ensuring the essential need "to prevent and impede connections between prisoners belonging to criminal organisations, as well as between them and members of such organisations still at liberty" (judgment no. 376/1997). Such a limitation is in line with the rationale of the statute itself, which "aims to contain the dangerousness of the prisoners subject to it, even in its possible projections outside the prison, preventing connections between members of criminal organisations among themselves and with other members who are at liberty: connections that could be established precisely through those contacts with the outside world that the prison system normally favours as tools for social reintegration" (judgments nos. 97/2020, 186/2018, 105/2023 and 30/2025).

5. The section 41 *bis* regime has had important effects, as is also demonstrated by the fact that, in the last thirty years, no other large-scale mafia terrorist attack has been carried out in Italy. In situations where the right to life may be at stake, there is no doubt as to the existence of a positive obligation on the State to take all appropriate measures to safeguard the lives of those within its jurisdiction. The relevance of section 41 *bis* in this regard remains evident in the present historical period. In fact, the availability of new communication tools and the widespread sharing of spaces have recently allowed imprisoned mafia bosses who were not subjected to the section 41 *bis* regime to exercise their dominion both inside the prison, by subjugating other inmates, and outside, by ordering violent reprisals against their enemies and planning further illegal activities.

6. Particular situations have also emerged in which the section 41 *bis* regime has gone hand in hand with the development of rehabilitation pathways that would otherwise have been completely prevented by persistent contact between prisoners and criminal organisations. In the last trial concerning the "Capaci massacre" an informer (*collaboratore di giustizia*) considered to be highly reliable explained as follows: "[E]leven years of 41 *bis* gave me the possibility, the opportunity to be the person I am today. Personally, I say that those eleven years of 41 *bis* were blessed"[3]. There is therefore no absolute contradiction between the section 41 *bis* regime and the "right to hope", affirmed on a number of occasions by the Italian Court of Cassation[4] on the basis of the principles drawn from the Court's case-law, starting with the concurring opinion of Judge Power-Forde in the *Vinter and Others v. the United Kingdom* case ([GC], nos. 66069/09 and 2 others, ECHR 2013) and continuing with the judgment in the *Matiošaitis and Others v. Lithuania* case (nos. 22662/13 and 7 others, § 180, 23 May 2017).

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[3] Minutes of the hearing of 3 October 2014 of trial no. 1/2014 held before the Caltanissetta Assize Court, pp. 112-113. The audio recording of the hearing is available at https://www.radioradicale.it/scheda/422492/processo-madonia-salvatore-ed-altri-strage-di-capaci-bis (last accessed 3 April 2025)

[4] See, among other authorities, judgment no. 7428/2017 and order no. 18518/2020 of the Court of Cassation.

7. Since the Convention must be read as a whole and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 48, ECHR 2005-X), and considering that "tackling transnational organized crime and its root causes in an effective manner is essential for ensuring that individuals, including women, children and vulnerable members of society, are able to enjoy their human rights and fundamental freedoms"[5], the section 41 *bis* regime is of noteworthy importance as a means of protecting the right to life and other fundamental values. At the same time, it must be stressed that subjecting an individual to a set of additional restrictions, which are imposed by the prison authorities at their discretion, without providing sufficient and relevant reasons based on an individualised assessment of necessity, would undermine that individual's human dignity and entail an infringement of the right set out in Article 3 of the Convention (see *Provenzano*, cited above, § 152).

8. Given the dual and complex impact of the section 41 *bis* regime on fundamental rights, the Court has held that, when assessing whether the extended application of certain restrictions attains the minimum threshold of severity required to fall within the scope of Article 3 of the Convention, the length of time in question must be examined in the light of the circumstances of each case, which entails, *inter alia*, ascertaining whether the renewal or extension of the impugned restrictions was justified or not (see, among many other authorities, *Enea*, cited above, § 64; *Argenti v. Italy*, no. 56317/00, § 21, 10 November 2005; *Campisi v. Italy*, no. 24358/02, § 38, 11 July 2006; and *Paolello v. Italy* (dec.) no. 37648/02, § 27, 24 September 2015).

9. In this connection, firstly, the Court found no violation of Article 3 of the Convention where the restrictions imposed as a result of the special prison regime were necessary to prevent the applicant, who posed a danger to society, from maintaining contacts with the criminal organisation to which he belonged, noting that that the national authorities had fulfilled their obligation to protect the applicant's physical well-being by monitoring his state of health carefully, assessing the seriousness of his health problems and providing him with the appropriate medical care, and that there was no evidence showing that the extension of those restrictions had been patently unjustified (see *Enea*, cited above, §§ 60-67, and compare *Riina v. Italy* (dec.), no. 43575/09, § 28, 11 March 2014).

10. Secondly, in the *Provenzano* judgment (cited above, §§ 149-58), the Court considered that the extension of the application of the section 41 *bis* regime in respect of the applicant had not been sufficiently justified in so far as the domestic authorities had failed to make an explicit assessment of his health situation, which was characterised by a serious cognitive deterioration

[5] As underscored by Resolution 10/4 adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime.

that had undeniably worsened over time. This aspect had thus distinguished that case from those where health problems were limited to the physical sphere but did not affect an applicant's mental capacity; in fact, the picture which emerged from the medical documentation available to the Court might at least have cast some legitimate doubt on the applicant's persistent dangerousness and his ability to maintain meaningful, constructive contact with his criminal association. The Court expressed an essential methodological consideration, namely, the necessity of inquiring whether the domestic authorities entrusted with the task of deciding on the renewal of the application of the section 41 *bis* regime had undertaken a genuine reassessment taking into account any relevant changes in the applicant's situation which could cast doubt on the continuing need for the imposition of those measures.

11. The judgment delivered on 25 October 2018 in the *Provenzano* case (cited above) affirmed important principles not only of law but also of humanity; it therefore constitutes the fundamental starting point for an in-depth examination of the present applicant's case from the perspective of integral protection of human rights, which is absolutely essential in the current context of growing attention given to the section 41 *bis* regime by the governmental authorities of other European States seeking to determine which measures might be useful to tackle the continuation of organised crime from prison.

## II. THE INCONSISTENCY BETWEEN THE PRESENT JUDGMENT AND THE COURT'S WELL-ESTABLISHED CASE-LAW, INCLUDING *PROVENZANO V. ITALY*, AS TO THE INTERPRETATION AND APPLICATION OF ARTICLE 3 OF THE CONVENTION

12. In the *Provenzano* case (cited above), the Court held that there had been no violation of Article 3 of the Convention on account of the renewed application of the special prison regime on 26 March 2014, despite evidence of the applicant's cognitive deterioration and reports of incoherence in his verbal expression, since the sentence supervision court, in its decision of 5 December 2014, had examined ample medical documentation, including a recent neuropsychological expert report requested shortly before issuing the decision, and had made an independent assessment on that basis, reaching a reasoned conclusion to the effect that the possibility that the applicant could convey criminally relevant messages to the criminal organisation in question could not be ruled out with absolute certainty (see *Provenzano*, § 154).

13. Instead, the Court found that there had been a violation of Article 3 of the Convention as a result of the renewed application of the special prison regime on 23 March 2016, since there had been no trace in the related order of an explicit, autonomous assessment by the Minister of Justice of the

applicant's cognitive situation at the time the decision had been made. It is worth noting that, in the period between the issuing of the renewal order in March 2014 and the issuing of the renewal order on 23 March 2016, the applicant's already severely compromised health situation had further deteriorated: the medical experts had highlighted his complete lack of autonomy in performing basic everyday functions, to the extent that he had had to be hydrated and fed artificially owing to his inability to feed himself. In fact, by September 2014, he had already been described as unable to maintain interactions with people. The Court therefore concluded that there was insufficient evidence, in the reasoning of the order, of a genuine reassessment having been made with regard to relevant changes in the applicant's situation, in particular his critical cognitive decline (see *Provenzano*, cited above, § 156-58).

14. In my view, the applicant's situation in the present case was perfectly congruent with the situation in the *Provenzano* case, in respect of which the Court found no violation, and was completely different from the one in respect of which it found a violation of Article 3.

This conclusion is based on an overall assessment of the decisions taken by the domestic authorities, the available medical documentation, the material obtained by bugging the applicant's meetings and the main characteristics of the criminal organisation to which he belongs.

The extended application of the section 41 *bis* regime was sufficiently justified, taking into account the continuity between the applicant's leadership role and his ability to maintain significant contact, while in prison, with a very powerful mafia-type association like the 'Ndrangheta, without his persistent dangerousness being hindered by the evolution of his health conditions.

15. A thorough and holistic analysis of the decisions delivered on 16 October 2020 and 3 November 2022 by the Rome sentence supervision court leads to the conclusion that the domestic judicial authorities made a genuine assessment of the justification for extending the application of the section 41 *bis* regime, taking into account all changes in the applicant's situation, including the actual extent of his cognitive deterioration.

Indeed, as with the renewed application of the special prison regime on 26 March 2014 in the *Provenzano* case, in the present case the Rome sentence supervision court examined ample medical documentation, including a recent expert report requested shortly before issuing its decision of 16 October 2020, and, on the basis of this documentation, made an independent assessment, reaching a reasoned conclusion to the effect that the possibility that the applicant could convey criminally relevant messages to the criminal organisation in question could not by any means be ruled out.

Furthermore, the Rome sentence supervision court carefully examined the evolutionary dynamics of the applicant's cognitive deterioration, taking into account the effects of the special prison regime, and explained the reasons for

which the applicant could still have been able to resume meaningful contact with the criminal organisation in question.

16. In particular, the expert report by Dr M.F., who diagnosed the applicant with a major mild vascular neurocognitive disorder, commonly known as mild dementia, was duly taken into account by the Rome sentence supervision court, which, in its decision of 16 October 2020, adduced detailed, convincing and compelling reasons for concluding that the applicant still represented a danger to society, mainly on the basis of the material obtained by bugging his meetings with his family and his persistent leadership role in the most dangerous mafia-type organisation in Italy, namely, the 'Ndrangheta.

Among the material obtained by bugging the applicant's meetings with his family, it is worth mentioning the content of the conversation of 21 March 2019, containing a clear reference to the absence of any change in the situation of the organised crime environment in which he was embedded. It is certainly correct to read this reference in conjunction with the previous conversations in which his son-in-law, Francesco Stilo, had communicated to Mr Morabito, as the historic and undisputed leader of the organised crime group that bears his name, updates on the implementation of an important public works contract awarded to the IMC company, managed in the interest of the mafia group (see page 5 of the decision adopted on 16 October 2020).

17. The relevance of the above-mentioned conversations is closely connected to the family structure that characterises the 'Ndrangheta, guaranteeing the secrecy and power of this mafia-type organisation, in which there has always been a very small number of informers. It is no coincidence that the basic organisational structure of the 'Ndrangheta, the "'ndrina", almost always corresponds to the blood family and takes its name from the head of that family, rather than from the territory to which it belongs. The family dimension of the 'Ndrangheta groups is considered crucial for their cultural continuity and criminal stability, as highlighted by the most authoritative criminological and sociological studies.

18. The 'Ndrangheta, which originated in Calabria in the nineteenth century, has spread worldwide since the 1950s[6] and has now expanded to more than 84 countries[7]. It is currently considered the most powerful and dangerous form of mafia in Europe[8]. It has replaced the Sicilian mafia as a

[6] Nicaso, A., and M. Danesi, *Organized Crime. A Cultural Introduction*, Routledge, 2021.

[7] As highlighted in the *Threat assessment* of the "INTERPOL cooperation against Ndrangheta - I-CAN" project, available at https://www.interpol.int/Crimes/Organized-crime/Projects/INTERPOL-cooperation-against-Ndrangheta-I-CAN-Phase-2 (last accessed 3 April 2025); see Gratteri, N., and A. Nicaso, *Il Grifone*, Mondadori, 2023.

[8] Dalla Chiesa, N., "The long march of the 'Ndrangheta in Europe", *Zeitschrift für die gesamte Strafrechtswissenschaft*, De Gruyter, 2021, p. 71.

main broker in international drug trafficking and has developed a privileged relationship with large South American and Mexican cocaine suppliers[9].

The key difference between the 'Ndrangheta and other mafias is the role of kin: blood family and membership of the crime family overlap to a great extent within the 'Ndrangheta. The 'ndrine consist almost entirely of persons belonging to the same family lineage. The overlap between blood family and mafia family seems to have helped the 'Ndrangheta expand beyond its traditional territory[10]. Indeed, the familial bond has not only worked as a shield to protect secrets and enhance security but has also helped to maintain its identity in the territory of origin and to reproduce it in territories where the family has migrated[11]. The 'Ndrangheta's engagement with political, economic and social institutions has been facilitated by its organisational environment, made up of dynasties, that is to say, multi-generational families where family business overlaps with criminal business[12]. Such family clans, which are all 'Ndrangheta-type organisations in their own right, aim to acquire socio-political and economic privileges and advantages by leveraging their surname and capitalising on their reputation, which is usually built on violence and transmitted from one generation to the next through twisted forms of education and cultural manipulation[13].

Like "Cosa Nostra", the 'Ndrangheta can be regarded as an alternative legal order to that of the State: through secrecy, these mafia-type associations present themselves as self-sufficient entities, independent of the State; with the help of violence, they guarantee the effectiveness of their own legal order and prosecute any violations of it[14]. A lesson that can be drawn from Italian history is that the accumulation of money and power by mafia-type associations is often followed by targeted killings of members of civil society and public workers who carry out their duties without bowing their heads to the leaders of criminal organisations.

19. The method adopted by the Court, which "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" (see *Messina*,

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[9] Catino, M., "Italian Organized Crime since 1950", *Crime and Justice*, University of Chicago Press, 2020, p. 73.

[10] Varese, F., "How Mafias Migrate: The Case of the 'Ndrangheta in Northern Italy", *Law & Society Review*, Cambridge University Press, 2006, p. 423.

[11] Commissione Parlamentare d'inchiesta sul fenomeno della mafia, Relazione sullo stato della lotta alla criminalità organizzata in Calabria. XIII Legislatura, doc. XXIII, no. 42. Rome, Camera dei Deputati, 2000, p. 102.

[12] Sergi, A., and A. Lavorgna, "Intergenerational and technological changes in mafia-type groups: a transcultural research agenda to study the 'ndrangheta and its mobility", *SN Social Sciences*, 2024, p.191-92.

[13] Sergi, A., "'Ndrangheta Dynasties: A Conceptual and Operational Framework for the Cross-Border Policing of the Calabrian Mafia", *Policing*, Oxford University Press, 2020, p. 3.

[14] Paoli, L., *Mafia Brotherhoods: Organized Crime, Italian Style*, Oxford University Press, 2003, p. 18 and 130.

§ 66, and *Bastone,* both cited above), leads to acknowledging the full correctness of the reasoning developed in the decision delivered on 16 October 2020 by the Rome sentence supervision court, which noted that the psychiatric pathology from which the applicant was suffering did not in any way preclude his social dangerousness and his ability to maintain relationships with members of the criminal group and convey directives to the outside world if admitted to a less restrictive prison regime. It is also worth noting the relevance of the aggressive attitude shown by the applicant who, in the conversation of 21 May 2020, expressed his intention to disfigure a healthcare worker.

A consistent assessment was made by the Rome sentence supervision court in its decision of 3 November 2022, also based on the interception of conversations in the last months of 2021 in which the applicant continued to rail against the judiciary and the prison police and to receive information from members of his family.

20. For the above reasons, it is correct to conclude that the extended application of the section 41 *bis* regime appeared to be sufficiently justified on the basis of an individualised assessment of the concrete situation of the applicant, who, even in recent times, had shown a strong hatred towards members of public institutions dealing with his case and had maintained a prominent position within one of the most dangerous organised criminal groups.

21. The assessment of the actual danger associated with the applicant's ability to interact with other members of the 'Ndrangheta, thus leading to the commission of serious crimes, was corroborated through careful verification of his current health condition.

In particular, the decision delivered on 16 October 2020 by the Rome sentence supervision court, based on an in-depth assessment of all available evidence, ruled out that the current special prison regime could lead to a worsening of the applicant's living conditions or authorise a limitation of the level of healthcare provided to him.

The subsequent decision of 3 November 2022 underscored that the recent report from the territorial health service (whose staff was independent from the prison administration) attested that no sign of a significant state of cognitive decline could be seen from the patient's daily clinical management and that he appeared lucid, oriented and able to carry out the tasks of daily life, while understanding questions and answers correctly. Physiological motor difficulties rather than cognitive difficulties were reported.

22. Such an assessment, which ruled out that the applicant's cognitive deterioration had gradually increased in the most recent period, is fully confirmed by several other reports and by the communication sent on 28 May 2023 by the San Paolo Hospital - University Centre, which described Mr Morabito as an "alert, lucid collaborating patient".

For completeness, the consistency between that description and those contained in subsequent medical reports, up to the one released on 15 June 2024 by the staff of the San Paolo Hospital (which mentions an "alert, lucid, oriented and collaborating patient"), should be noted.

It is therefore clear that the objective evidence subsequently collected also demonstrates the correctness and reliability of the reasoning developed in the judicial decision of 3 November 2022, according to which "the sources of information coming from persons in a position to observe the interested party's daily life represented Morabito's psychological condition as objectively less serious than that occasionally reported by the expert, because it emerges that the interested party, in his relationships with the operators, with the doctors, and, naturally, in the content of the conversations with his family members ... appears lucid, capable of understanding the context [and] of relating to others adequately".

It is certainly worth noting the relevance of this evaluation, based on data constantly collected by highly specialised medical professionals who were independent from, and sometimes external to, the prison administration, for establishing whether the applicant maintained sufficient capacity to resume meaningful contact with the criminal organisation. That question was thus answered in the affirmative and in a completely persuasive manner, with the added clarification that any amplification of the effects of chronic neurocognitive disease on the preservation of the patient's mental faculties was found to be non-existent in reality.

23. Consequently, no doubts as to the applicant's persistent dangerousness and ability to maintain significant contact with the criminal organisation could be raised on the basis of his mental condition, which was by no means comparable to that of Mr Provenzano, who had been unable to maintain interactions with people or take care of himself, to the extent that he had had to be hydrated and fed entirely through a feeding tube. Furthermore, unlike the applicant, Mr Provenzano, after his arrest, had only had a past leadership role within the criminal organisation in question, and there was no evidence of the participation of his closest relatives in the same organisation.

24. The issue at stake is obviously the applicant's ability to interact effectively with other people closely linked to him through a two-fold family and organisational bond, sharing the same vision and the same disvalues in a criminal environment.

For this reason, decisive relevance cannot be attributed to the judgments issued in November 2022 by the Milan District Court, which acquitted the applicant, by reason of insanity, of the aggression perpetrated on 2 March 2020 and discontinued the other criminal proceedings against him for acts committed in 2017, taking note of his incapacity to stand trial.

On the one hand, incapacity to stand trial indicates the inability to act in a legal environment: more specifically, the right of an accused under Article 6 of the Convention to participate effectively in his or her criminal trial

presupposes that "the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed". According to the Court's case-law, the defendant should be able, *inter alia*, "to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence" (see, for example, *Stanford v. the United Kingdom*, § 30, 23 February 1994; *V. v. the United Kingdom* [GC], no. 24888/94, §§ 85 and 89-90, ECHR 1999-IX; *S.C. v. the United Kingdom*, no. 60958/00, § 29, ECHR 2004-IV; *Vaudelle v. France*, no. 35683/97, §§ 48-49 and §§ 55-56, ECHR 2001-I; *Liebreich v. Germany* (dec.), 8 January 2008; and *F.S.M. v. Spain*, no. 56712/21, § 59, 13 March 2025). Clearly, this is a concept that cannot be extended to the rules governing a criminal network.

On the other hand, the state of mental incapacity only excludes criminal responsibility, but not the dangerousness of offenders with a mental disorder and the resulting need for a risk-based approach to public protection. Authoritative scholars have stressed that, in fact, the offence categories of the mentally disordered are similar to those of other offenders[15]. It is no coincidence that the detention of a person with a mental disorder may be necessary where the person needs control and supervision to prevent him from causing harm to other persons (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 133, 4 December 2018, and *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV).

25. It is therefore perfectly logical to conclude that, the above conditions being met, the applicant's cognitive deterioration did not in any way exclude the persistent danger he posed to public and individual safety on account of his prominent role in a mafia-type association of the utmost importance. At the same time, the applicant's inability to act in a legal environment did not prevent him from acting in a criminal environment that recognised his authority and observed the same rules that had guided his activities.

Mental insanity and incapacity to stand trial are factors that entail the impossibility of being convicted and of effectively participating in criminal proceedings. They do not, however, rule out the application of a measure – such as the section 41 *bis* regime – designed to serve purely preventive and security (rather than punitive) purposes and aimed at severing contact between prisoners and criminal networks.

Consequently, there is no contradiction between the decisions of the Rome sentence supervision court and the judgments of the Milan District Court in respect of the applicant.

26. In my opinion, there is an evident inconsistency between the present judgment and the one delivered on 25 October 2018 in the *Provenzano* case

[15] Ashworth, A., *Sentencing and Criminal Justice*, Cambridge University Press, 2005, p. 374.

as to the interpretation and application of Article 3 of the Convention with regard to the applicant's continued placement under the section 41 *bis* regime.

The present judgment significantly departs from the methodological principles laid out in the previous judgment, according to which there is no violation of Article 3 of the Convention on account of the renewed application of the special prison regime, despite the cognitive impairment of the person concerned, provided that the national judicial authorities, on the basis of a thorough examination of the medical documentation, have carried out an independent assessment and reached the reasoned conclusion that the possibility that the applicant might convey criminally relevant messages to the criminal organisation in question cannot be ruled out (see *Provenzano*, cited above, § 154).

The question arises as to the risk of not adopting the approach of "judicial self-restraint" closely linked to the "fourth-instance doctrine", which can in principle extend to all the substantive provisions of the Convention, being one of the practical manifestations of the principle of subsidiarity.

Thus, according to well-established case-law, "it is not the Court's role to assess itself the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action" (see *Perlala v. Greece*, no. 17721/04, § 25, 22 February 2007, and *Kemmache v. France (No. 3)*, § 44, 24 November 1994).

However, in the present case, the Court may have substituted its own assessment of the facts for that of the national courts. Moreover, the related observations, which were decisive for the finding of a violation, may appear questionable, being based on the prevalence attributed to reports drawn up periodically by experts, when compared with the very different picture that emerged in the context of a continuous, years-long process of observation, visits and diagnostic-therapeutic treatments also carried out by doctors from outside the prison administration.

27. Furthermore, in conducting its assessment of the facts, the present judgment does not follow the method previously adopted in the Court's case-law which "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" (see *Messina*, § 66, and *Bastone*, both cited above).

Indeed, the present judgment "acknowledges that the domestic authorities, in their decisions on the extension of [the special prison] regime, have given specific reasons for believing that the applicant continues to present a danger, namely: his criminal past and his leading role in the organisation; the fact that the organisation in question still appeared to be active; and the fact that the applicant had not distanced himself from the organisation and had behaved violently and aggressively in prison". At the same time, however, it raises doubts concerning the reasons given by the sentence supervision court for

treating the applicant as still being dangerous and carries out a different assessment of the medical documentation and the material obtained by bugging the applicant's meetings with his family, thereby detaching them from a comprehensive consideration of the particular characteristics, activities and structure of the specific mafia group in question.

Moreover, the applicant's cognitive decline and advanced age are seen as factors that prevented him from maintaining sufficient capacity to preserve or resume meaningful contact with the 'Ndrangheta, without taking into account both its organisational environment – made up of "dynasties", namely, multi-generational families where family business and criminal business overlap – and its system of alternative rules from those governing the legal order of the State.

28. It is also worth noting that, in addition to providing compelling reasons based on an individualised assessment of necessity, the national authorities fulfilled their obligation to protect the applicant's physical well-being by carefully monitoring his state of health and providing him with the appropriate medical care. Accordingly, absent any evidence showing that the extension of the impugned restrictions was unjustified, the present case deserved to be treated in a manner consistent with other similar cases, such as *Enea* (cited above) and *Riina* (cited above), in which the Court found no violation of Article 3 of the Convention on the same grounds.

## III. CONCLUSION

29. For the above reasons, I both fully endorse the significant definition provided in the present judgment as to the nature and function of the section 41 *bis* regime and, in so doing, respectfully disagree with the majority of the Chamber as to the finding of a violation of Article 3 of the Convention in respect of the applicant's continued placement under the section 41 *bis* regime.

In my opinion, had they been applied consistently, the principles laid down by the Court in in the *Provenzano v. Italy* judgment (cited above) and in the other judgments cited above would have led to the conclusion that there had been no violation of Article 3 of the Convention in the case at hand as well.

The present judgment thus significantly departs from the previous case-law and raises the need for clarification of the relevant basic principles governing the interpretation and application of Article 3 of the Convention in relation to a legal issue of general importance that has serious implications for Italy, where the section 41 *bis* regime applies to a large number of persons and is deemed necessary to ensure the security of the State and the protection of fundamental rights against the threats posed by organised crime and terrorism.