

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

FIRST SECTION

CASE OF PROVENZANO v. ITALY

(Application no. 55080/13)

JUDGMENT

STRASBOURG

25 October 2018

FINAL

25/01/2019

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



In the case of Provenzano v. Italy,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Guido Raimondi,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar*,

Having deliberated in private on 25 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 55080/13) 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 the son and the partner of an Italian national, Mr Bernardo Provenzano ("the applicant"). The application was lodged on the applicant's behalf on 25 July 2013. The applicant died on 13 July 2016. On 11 August 2016 the applicant's son, Mr Angelo Provenzano, expressed the wish to pursue the proceedings before the Court.

2. The applicant was represented by Mrs R.A. Di Gregorio, a lawyer practising in Palermo. The Italian Government ("the Government") were represented by their Agent, Mrs E. Spatafora, and their co-Agent, Mrs M.L. Aversano.

3. The applicant alleged, in particular, that he had not received adequate medical care in prison and that the continued imposition of the special prison regime to which he was subjected, notwithstanding his health status, breached his rights under Article 3 of the Convention..

4. On 6 July 2016 the complaints concerning Article 3 were communicated to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1933 and was detained in Milan up to the time of his death in 2016.

A. Background to the case

6. The applicant, who had been a fugitive on the run from the authorities (*latitante*) for over forty years, was arrested on 11 April 2006.

7. Several sets of criminal proceedings were brought against the applicant, as a result of which he was sentenced to several terms of life imprisonment for, amongst other offences, membership of a mafia-type criminal organisation, mass murder (*strage*), multiple homicide, aggravated attempted homicide, drug trafficking, kidnapping, criminal coercion, aggravated theft, and the illegal possession of firearms.

8. Other criminal proceedings against the applicant were ongoing at the time the application was lodged before the Court. In the context of one such set of proceedings, on 7 December 2012 the preliminary hearing judge (*giudice dell'udienza preliminare*, hereafter "the GUP") of the Palermo District Court ordered an expert evaluation of the applicant's health in order to assess his ability to understand and participate rationally in the preliminary hearing.

9. On 12 December 2012 the court-appointed experts carried out a first examination. However, they were unable to undertake further assessments, because on 17 December 2012 the applicant underwent surgery to remove a subdural haematoma, and was then in recovery (see paragraph 25 below). Based on their first examination conducted before the surgery and the applicant's past medical records, the experts nonetheless reported that the applicant had displayed reduced consciousness and responsiveness to his surroundings, as well as a limited ability to express himself.

10. By an order of 8 January 2013 the GUP adjourned the proceedings against the applicant until such time as he had recovered from the surgery.

11. Following a documented improvement in his condition, the GUP ordered a new expert evaluation, which was carried out on 1 March 2013. The experts found that the applicant's cognitive situation impaired his ability to interact with the outside world and communicate in a coherent and meaningful manner. They thus concluded that the applicant was not in a condition to consciously participate in the preliminary hearing.

12. By an order of 5 March 2013 the GUP suspended the proceedings against the applicant.

13. On 21 May 2014 the Guardianship Judge at the Milan District Court issued a guardianship order appointing the applicant's son, Angelo Provenzano, as his limited guardian (*amministratore di sostegno*).

The court observed that the applicant's son had previously been appointed as the applicant's legal guardian following the applicant's being sentenced to life imprisonment and the consequent legal incapacitation such a sentence entailed under domestic law. For the purposes of the proceedings before it, the court gave the applicant's son authority over decisions that concerned his health-care and personal assistance needs. The court also authorised the applicant's son to be served with the applicant's legal correspondence, and conferred upon him the power to appoint counsel in criminal and civil proceedings. On 27 May 2014 Angelo Provenzano was sworn in as the applicant's guardian.

14. The applicant was detained in several Italian correctional facilities. According to the material in the case file, he was detained in the Novara Correctional Facility from an unspecified date until 27 April 2011, when he was transferred to the Parma Correctional Facility. On 7 June 2013 he was admitted to the correctional wing (*reparto protetto*) of Parma General Hospital, where he remained until his transfer to the Treatment and Diagnostic Centre (*centro diagnostico terapeutico*) of the Milan Opera Correctional Facility on 5 April 2014. On 9 April 2014 he was admitted to the correctional wing of San Paolo Hospital in Milan, where he was hospitalised until his death.

B. The applicant's health, the medical care administered to him, and other relevant facts concerning the conditions of his detention

15. The applicant suffered from a number of chronic medical conditions, including vascular encephalopathy, hepatopathy linked to HCV (the hepatitis C virus), Parkinson's disease, and arterial hypertension. It is apparent from his medical history that he underwent a radical prostatectomy in 2003 and a partial thyroidectomy on an unspecified date. The applicant's clinical condition was also characterised by a decline in his cognitive functioning.

16. The prison medical records from May 2011 to April 2013 show that the applicant's health was regularly monitored by medical and nursing staff at the Parma Correctional Facility's health unit. In addition to such monitoring, there is a record of physicians being called to examine the applicant when he complained about specific ailments, or when they were requested by the nursing staff.

17. During the same period, the prison medical records show that a large number of specialist consultations were arranged and carried out. The applicant was examined by cardiologists, infectious disease specialists, urologists, endocrinologists, otolaryngologists, pulmonologists, orthopaedists, physiatrists, and nutrition specialists, and most of the examinations occurred on a regular basis. He also had several surgical consultations.

18. A large number of diagnostic tests were performed on him, ranging from routine blood tests and echocardiograms to various ultrasounds (renal, thyroidal, and abdominal), CAT (computerised axial tomography) scans, PET (positron emission tomography) scans, PSA (prostate-specific antigen) tests, X-rays, and colonoscopies.

19. With specific regard to the applicant's neurological situation, the medical register shows that he was examined several times by a neurologist, a psychiatrist and a psychologist, and that tests were performed.

20. Each entry in the medical register by prison medical staff includes a section on the therapeutic plan for the management of the applicant's chronic illnesses, health issues deriving from his prostatectomy and thyroidectomy, and other emerging health issues, with relevant drug dosages and a record of the medication administered.

21. On 17 October 2012 a doctor at the correctional facility's medical centre reported an increase in the applicant's blood pressure and transferred him to the emergency department of the civilian hospital in Parma, where he was diagnosed with a hypertensive crisis. A CAT scan and other diagnostic tests were performed, and the applicant was examined by specialists. The neurologist who examined the applicant described him as a subject with cognitive deterioration on a vascular basis. Following an improvement in his overall condition, he was discharged on 19 October 2012.

22. On 3 December 2012 the duty doctor transferred the applicant to the civilian hospital in Parma, as he appeared disorientated and was refusing to eat or take his prescribed medication. The duty doctor also reported that the applicant had fallen, with no consequences, but noted that this was among more than four accidental falls that had occurred.

According to the civilian hospital record, an ultrasound was performed and the applicant was examined by a neurologist, a psychiatrist and a nutrition specialist. The neurologist who examined him on 3 December detected signs of initial cerebral deterioration which could be attributed to degenerative and vascular causes, and the neurologist who visited him the next day found probable cognitive deterioration on a vascular basis. The applicant was declared fit to be discharged on 7 December 2012.

23. On 12 December 2012 the duty doctor was called by a prison officer, who reported that the applicant had slipped in his cell and fallen. He described the patient as alert and somewhat cooperative, although his verbal expression not readily comprehensible. He examined the applicant. He checked for signs of trauma and found none, and examined his pupils, which were isocoric, isocyclic and reactive to light. He concluded that no neurological deficits could be detected. He also examined, amongst other things, the applicant's heart rate, blood pressure, and blood sugar levels. While no repercussions worthy of note were registered, amongst other things, the doctor suggested that the applicant be placed with a cellmate so as to ensure, amongst other things, the timely signalling of any worsening of

his conditions. The doctor further recommended that his cell be equipped with a bed with safety rails.

24. On 15 December 2012 the duty nurse reported that the applicant had fallen out of bed while sleeping. The duty doctor examined him and found him to be alert, cooperative and oriented. The doctor noted what he described as minimal bruising above the applicant's right eye, and reported normal vital signs. He examined the applicant on another occasion on the same day, reported normal cardiorespiratory values, and instructed the nurse to monitor his vital signs.

25. On 17 December 2012 the duty nurse called the doctor, as the applicant was not responding to verbal or painful stimuli. He was transferred to the emergency room of the civilian hospital in Parma, where he underwent urgent surgery for the removal of a subdural haematoma. He was then placed in the hospital's long-term care unit, and later in its correctional wing.

26. In the application form it is stated that the applicant's counsel lodged a criminal complaint with the Parma public prosecutor alleging, amongst other things, that the prison administration had failed to properly care for the applicant, and that the he had been left without medical assistance following the fall on 15 December 2012. However, there are no specific details about when that complaint was lodged, and no information was provided as to its outcome.

27. On 18 February 2013 the hospital doctors decided that the applicant could be discharged.

28. On 26 February 2013 an inspection was carried out by two doctors from the correctional facility's medical unit to assess whether the premises where the applicant was to be accommodated on his return were compatible with his health and care needs.

29. On the same day the prison management issued a report summarising the structural changes that had already been carried out in view of the applicant's return – such as the installation of a new bed with safety rails – and changes which were scheduled. Those scheduled changes included, amongst other things, an intervention in respect of the electrical system, planned for the same day, in order to plug in a special mattress to prevent bedsores and install an oxygen tank for medical emergencies.

30. On 1 March 2013 a personalised care plan had been drawn up by the correctional facility's medical unit in view of the applicant's return. The plan outlined the applicant's general and specific needs, and included a schedule of regular medical examinations, a nutrition and hydration plan, and a plan to avoid bedsores and other consequences of long-term bed rest. Specialist consultations to follow up on the applicant's medical conditions were requested and scheduled. The care plan also concerned assistance which the applicant required with daily tasks he could no longer perform, such as taking care of his personal hygiene on a daily basis. It also provided for the management of his incontinence and scheduled times at which his

incontinence pads should be changed, with provision for additional changes according to his needs.

31. On 5 March 2013 the applicant was transferred back to the Parma Correctional Facility. The medical register from that date to the date of his transfer to the civilian hospital in Parma shows that, in addition to the treatment of his chronic conditions, the applicant underwent physiotherapy sessions to improve his mobility, coupled with passive mobilisation, also during the night, in order to avoid bedsores.

32. On 7 June 2013 the applicant was admitted to the civilian hospital in Parma. He was diagnosed with a bacterial infection and a yeast infection. Following a consultation with an infectious disease specialist, he was prescribed treatment. He remained hospitalised in the civilian hospital until his transfer on 5 April 2014. The material on file indicates that, during this period of hospitalisation, the applicant had daily medical examinations, periodic visits from specialists, and diagnostic tests.

33. On 29 June 2013 the applicant's son lodged a criminal complaint with the Parma public prosecutor, alleging that his father was not being properly cared for, in that his underwear, which had been collected from the correctional facility on 22 June 2013, had been stained with bodily fluids. No information was provided by the parties as to the outcome of those proceedings.

34. On 10 October 2013 the Parma Prison administration submitted a report on the applicant to the General Directorate for the Treatment of "Section 41 *bis*" Detainees. The report attested that an inspection had been carried out by the local health authority on 26 February 2013 (see paragraph 28 above). It also certified and provided documentation to the effect that health-care assistants and nurses had taken care of the applicant's personal hygiene on a daily basis as of 5 March 2013, in accordance with the instructions set out in the personalised care plan (see paragraph 30 above).

35. On 23 December 2013 the hospital in Parma submitted a report updating the Parma Prison administration on the applicant's clinical situation. He was diagnosed by the reporting doctor as suffering from serious cognitive deterioration. He was described as being necessarily bedridden due to a hypokinetic syndrome, and completely dependent on others.

The applicant's neurological situation was described as stable yet having deteriorated. His verbal expression, when present, was characterised by the production of a few incomprehensible syllables, which meant that the reporting doctor had had difficulties in assessing his degree of comprehension.

The applicant was receiving artificial nutrition and hydration via a nasointestinal feeding tube which had been put in place on 6 September 2013 due to his confirmed inability to feed himself.

36. On 29 January 2014 the Emergency Department of Parma General Hospital submitted a report updating the Director of Parma Prison on the applicant's clinical situation. The first part of the report mainly repeated the findings of the report of 23 December 2013. Another part focused on the applicant's cognitive status. In this respect, the reporting doctor stated that, during medical examinations, the applicant sometimes answered simple questions when he was verbally stimulated, but his expression was mostly incomprehensible.

37. On 19 March 2014 Parma General Hospital submitted another report updating the Parma Prison administration on the applicant's clinical situation. Amongst other things, the reporting doctors had identified progressive atrophy of his muscular apparatus and the presence of small lesions caused by bedsores. His neuro-cognitive situation remained unchanged. If asleep, he woke up when stimulated. He rarely uttered intelligible words or carried out elementary tasks when stimulated. His verbal expression, when present, was described as incomprehensible. The reporting doctor confirmed the previous report's finding to the effect that the applicant was completely dependent on others for everything. Since the insertion of the nasointestinal feeding tube, his necessary daily calorie intake had been ensured, with a consequent improvement in his nutritional status and weight.

38. On 5 April 2014 the applicant was released from Parma General Hospital. On the same day he was transferred to the Treatment and Diagnostic Centre of the Milan Opera Correctional Facility and was scheduled to be transferred to San Paolo Hospital for, amongst other things, an examination by a neurologist and an oncologist, a re-evaluation of his artificial nutritional support strategy, and a general re-evaluation of his treatment.

39. On 9 April 2014 the applicant was transferred to San Paolo Hospital in Milan, where he remained until the time of his death.

40. It is apparent from the material on file that, during his period of hospitalisation at San Paolo Hospital, the applicant had daily medical examinations, periodic visits from specialists and a wide range of tests (routine blood tests, regular monitoring of glycaemia, renal, hepatic and thyroid function, blood pressure, cardiac frequency, and daily hydration monitoring, as well as diagnostic tests such as CAT scans). There is evidence of treatment of the applicant's bedsores and treatment to prevent the problem being aggravated, treatment of urinary infections linked to long-term catheterisation, treatment of intestinal problems and adjustments to the applicant's hydration and nutritional support.

41. On 11 April 2014 the applicant underwent a neuropsychological examination by a specialist in San Paolo Hospital. He was described as being alert but not complying with instructions, aside from very simple ones. The reporting doctor stated, *inter alia*, that if the applicant was left on his own he voiced scarcely comprehensible sentences lacking a framework

or grammatical structure. One of the conclusions the doctor reached was that the applicant's lack of cooperation made it impossible to evaluate and quantify his cognitive status.

42. On 11 June 2014 the head of the ward where the applicant was hospitalised submitted a report updating the court in Rome responsible for the execution of sentences ("the Rome Court") on the applicant's clinical situation. The reporting doctor confirmed the findings of the report by the Parma General Hospital authorities of 19 March 2014 in terms of the applicant's neuro-cognitive situation, which he described as seriously compromised, as well as his progressive muscular atrophy, lack of mobility, and complete dependence on others. The reporting doctor concluded that there had been a serious deterioration in the applicant's clinical state, and his condition was worsening. As to nutrition, in addition to the nasointestinal tube, artificial nutritional support had to be provided by central venous access. In the doctor's opinion, in the light of his current state of health, the applicant could only receive adequate medical treatment in a long-term care unit within a hospital. The doctors certified that the facility in which he was hospitalised had the necessary medical staff and equipment to provide adequate care and treatment, and recommended that he remain in the hospital.

43. On 8 August 2014 a report was submitted by two independent medical experts appointed by the Milan Court. The experts had been asked to provide an assessment of the applicant's overall state of health and to specify, *inter alia*, whether he could receive adequate treatment in the hospital ward where he was currently detained.

Following consideration of a summary of his medical history, clinical chart and other health documentation, the experts provided an account of their examination of the applicant, whom they recorded as being hospitalised in the Internal Medicine Division, in the "[section] 41 *bis* area" of the hospital's correctional wing. He was described as bedridden and was noted as being physically restrained because of his attempts to remove his feeding tube. His language and elocution could not be assessed; when greeted, he uttered things which were incomprehensible, to the experts and also to the health staff he had contact with on a daily basis. His state of consciousness was only examinable in terms of his being awake or asleep, and neither his space-time orientation nor his thought function could be conclusively assessed. His degree of collaboration was hard to gauge, owing to his incomprehensible verbal expression.

The experts described the applicant's clinical situation as complex and characterised by multiple pathologies, although none of those pathologies were at an acute stage. The pathologies with the greatest functional impact were identified as being extrapyramidal syndrome and serious cognitive decline. The applicant's being permanently bedridden, and the need for artificial nutrition and a permanent urinary catheter were permanent conditions not likely to improve. The experts reiterated his complete lack of

autonomy in terms of performing basic everyday functions, and highlighted the need to provide him with constant assistance for his nutrition, hydration, personal hygiene, and to prevent complications linked to long-term bed rest. His cognitive situation was described as having worsened since the previous neuropsychological examination (see paragraph 41 above).

As to the applicant's continued hospitalisation – albeit in the context of detention – and the adequacy of the care he received, the experts considered that San Paolo Hospital guaranteed an excellent level of treatment and the presence of clinical specialists who could ensure timely interventions in the event of complications. The absence of the kind of treatment which the applicant was receiving at that point would lead to his death in a very short time.

44. In a medical report of 11 August 2014 submitted by San Paolo Hospital to the Milan Opera Prison administration, the reporting doctor described the applicant's condition as stable and reiterated the presence of a serious cognitive decline that made the applicant unable to maintain interactions with people and take care of himself.

45. The latter findings were confirmed in a subsequent report issued on 17 September 2014.

46. Various other reports were issued by doctors of San Paolo Hospital in Milan between April 2015 and March 2016. The applicant's clinical situation was generally described as stable, although his neurological functions were characterised as being in progressive decline (report of 12 June 2015) and his cognitive functioning was described as having seriously deteriorated (report of 17 March 2016). Throughout the entire period the applicant was bedridden and received all his hydration and nutritional support via a nasointestinal feeding tube.

47. According to the most recent medical reports on file, issued by San Paolo Hospital in Milan on 9 and 13 July 2016, the applicant's clinical condition deteriorated severely and he entered a preterminal phase. The report of 13 July 2016 states that the applicant's relatives were granted access to his room and he died on the same day.

C. Domestic proceedings concerning the applicant's health and detention

48. It is apparent from the material in the case file that, during the applicant's detention in Parma and Milan, his lawyers lodged applications with different courts responsible for the execution of sentences, seeking the suspension of his prison sentence for medical reasons under Articles 146 and 147 of the Criminal Code (see paragraphs 81 and 82 below for the relevant domestic law provisions) and the replacement of his detention with more lenient custodial measures.

49. By a decision of 3 May 2013 the Bologna court responsible for the execution of sentences ("the Bologna Court") held that there were no

grounds for modifying the applicant's sentence on health grounds. The court found that the applicant's medical conditions were not in such an advanced state that he was no longer responding to treatment, a necessary condition for the application of Article 146 of the Criminal Code.

The court also found that discretionary suspension of the sentence under Article 147 was not warranted. It considered that it could not be stated that the applicant's medical conditions required treatment which could not be provided in custody, albeit custody coupled with admission to a civilian hospital whenever necessary. The Bologna Court considered that he had received and was receiving medical treatment, frequent medical examinations, and diagnostic tests. It underlined that the applicant had been admitted to a civilian hospital when the necessary treatment could not be administered in the correctional facility, even for extended periods of time. It also noted that the proximity of the civilian hospital to the correctional facility made it possible for the applicant to be admitted to the emergency department in a timely fashion and whenever necessary.

The court reiterated that a court deciding on discretionary suspension of a sentence on health grounds must also take into account, as a relevant factor, the possibility that the individual applying for the suspension might engage in criminal behaviour (see paragraph 82 below). In this regard, the court considered that the applicant was a "socially dangerous" person who had been arrested after many years as a fugitive, and who was being tried for and had already been convicted of extremely serious crimes.

50. By a decision of 27 August 2013 the Bologna Court held that there were no grounds for modifying the applicant's sentence on health grounds. The court found that the applicant's medical conditions were not in such an advanced state that he was no longer responding to treatment. Moreover, the court considered that he would not benefit from additional or alternative medical treatment if his sentence were suspended.

The court was also not persuaded that the conditions for discretionary suspension under Article 147 obtained. It noted that the medical documentation it had considered showed that the applicant's medical conditions were being adequately monitored and treated in the correctional facility, with external hospitalisation being sought when required. Referring to the medical reports in its possession, the court noted that the applicant was responding positively to treatment and in the manner expected, given his advanced age and the nature of his medical conditions.

As in its decision of 3 May 2013, the court further considered the danger that the applicant, a socially dangerous individual, could commit criminal offences in the event of his sentence being suspended. In this connection, the court considered that, notwithstanding the applicant's proven cognitive deficit, the documentation available to it did not allow it to exclude his – albeit fluctuating and diminished – ability to comprehend and communicate.

51. The applicant appealed against the decision before the Court of Cassation. On 4 April 2014 the Court of Cassation dismissed the appeal. It

reiterated the Bologna Court's findings to the effect that the applicant's health conditions were being adequately monitored, and the necessary medical treatment was being administered in the correctional facility, with external hospitalisation when required. The court was satisfied that the Bologna Court had relied on the most recent medical reports in its possession in concluding that the conditions required for a stay of execution of the applicant's sentence under Articles 146 and 147 of the Criminal Code had not been met.

52. By a decision of 3 October 2014 the Milan Court held that there were no grounds for modifying the applicant's sentence on health grounds. In making its assessment, the court relied on the content of the report by the two independent experts it had appointed (see paragraph 43 above). The court reiterated that, in cases such as the one under examination, the primary consideration had to be the best interests of the detainee in terms of safeguarding his health. The court considered that the applicant was not being detained in a correctional facility, but rather he had been placed in a highly specialist civilian hospital which could provide him with the most appropriate and effective care and treatment for his medical conditions. Moreover, in the court's view, his placement in the correctional unit and not within the general hospital population guaranteed an even higher level of attention and vigilance with respect to his critical health conditions. The court concluded that the applicant's situation at the time of the decision was the one that best secured his right to health. The applicant appealed against that decision before the Court of Cassation.

53. By a decision of 11 November 2014 the Bologna Court held that there were no grounds for modifying the applicant's sentence on health grounds. It first of all reiterated and expressed its agreement with the conclusions of the Milan Court in its decision of 3 October 2014. It referred to the reports prepared by the medical staff at San Paolo Hospital and the independent medical experts appointed by the Milan Court in concluding that, notwithstanding the seriousness of the applicant's medical conditions, he was not being detained in a correctional facility, but rather in a civilian hospital, and was responding to the treatment administered in that setting.

54. By a decision of 9 June 2015 the Court of Cassation dismissed the applicant's appeal lodged against the Milan Court's decision of 3 October 2014. It considered that the reasoning of the Milan Court hinged on the need to safeguard the detainee's right to health to the fullest extent possible, and could not be deemed to be at odds with the provisions of the Criminal Code regulating stays of execution of prison sentences for health reasons.

55. By a decision of 11 July 2016 the Milan judge responsible for the execution of sentences (*magistrato di sorveglianza*) decided, on a provisional basis and pending a decision of the court responsible for the execution of sentences, that no urgent interim measure entailing a stay of execution of the applicant's sentence was warranted. The judge found, *inter alia*, that the applicant was being treated in a facility that guaranteed

excellent levels of care and which had medical and nursing staff of an extremely high quality, and that his detention in the hospital did not conflict with the common understanding of humanity.

D. The prison regime provided for in section 41 *bis* of the Prison Administration Act

56. On 13 April 2006 the Minister of Justice issued a decree ordering that the applicant should be made subject to the special prison regime provided for in the second subsection of section 41 *bis* of the Prison Administration Act (see paragraphs 83 - 86 below for the domestic law provisions).

57. The 2006 decree imposed the following restrictions:

– restrictions on visits by family members (a maximum of a single one-hour visit per month);

– no visits with non-family members;

– a prohibition on using the telephone;

– no sums of money above a fixed amount to be received or sent out;

– no more than two parcels to be received per month, not exceeding a certain weight, but permission to receive two special parcels per year containing clothing and bed linen;

– no right to participate in elections for prisoners' representatives or to be elected as a representative;

– no handicrafts;

– no food requiring cooking to be purchased;

– no more than two hours' outdoor exercise per day, of which one could be spent in the library facilities, gym, and so on, and in groups of no more than four persons.

58. In addition, incoming and outgoing correspondence was to be monitored, subject to prior authorisation by the judicial authority.

59. The application of the special regime was subsequently extended for periods of one or two years, via extension orders issued on 5 April 2007, 3 April 2008, 2 April 2009, 1 April 2010, 28 March 2012, 26 March 2014 and 23 March 2016.

60. On 8 March 2013, in an application addressed to three different courts for the execution of sentences (Bologna, Rome and Parma) as well as to the Minister of Justice, the applicant's counsel sought revocation of the special prison regime provided for by section 41 *bis* of the Prison Administration Act, a key argument being that, in the light of the deterioration in the applicant's cognitive functioning, the reasons as to why the regime had been applied originally were no longer relevant.

61. On 22 July 2013 the District Anti-Mafia Prosecution Office (*Direzione Distrettuale Antimafia*, hereafter "the DDA") of Caltanissetta expressed a favourable opinion on revocation of the special prison regime. The office acknowledged that there had been a deterioration in the

applicant's health, noting his compromised cognitive functioning, as evidenced by the medical documentation available to it. It noted in particular the conclusions of the report by the experts appointed by the Palermo GUP (see paragraph 11 above) to the effect that the applicant's cognitive functioning had deteriorated and his ability to communicate had been impaired. In the light of such findings, the office expressed the opinion that the reasons which had initially justified the imposition of the special prison regime no longer obtained.

62. By a decision of 27 August 2013 the Rome Court declared the applicant's application of 8 March 2013 inadmissible. It considered that the power to revoke the imposition of the section 41 *bis* special prison regime *per se* rested with the Minister of Justice. The court only had jurisdiction in relation to applications lodged against decisions issued by the Minister of Justice, such as orders to renew the application of the special regime or refusals by the Minister to revoke orders for the regime. The court was therefore precluded from examining the merits of the application.

63. On 21 November 2013 the applicant's counsel lodged an application with the Minister of Justice seeking revocation of the section 41 *bis* special prison regime. On an unspecified date the Minister of Justice dismissed the application. The decision was served on the applicant's son on 11 February 2014.

64. On 13 February 2014 the applicant's counsel lodged an application against the latter decision with the Rome Court. He reiterated the arguments advanced in the application of 8 March 2013.

1. Renewal order of 26 March 2014

65. On 26 March 2014 the Minister of Justice issued an order renewing the application of the special prison regime for two years. It was found that the applicant's ability to maintain contact with members of the criminal organisation had not ceased, and regard was also had to his "particular and concrete dangerousness".

66. The order reiterated the rationale underlying the special prison regime, and restated in particular that its imposition constituted a preventive measure in the interests of ensuring public safety and order, and did not serve any punitive purpose.

67. The order also reviewed some of the applicant's convictions for extremely serious crimes, including multiple aggravated homicides, aiding and abetting mass murder (*stragi*), and criminal association, which indicated his high level of responsibility in the criminal organisation.

68. The order further gave an overview of information provided by different police bodies, prosecution offices, the Anti-Mafia Investigations Directorate, and the Minister of the Interior, which had been requested with a view to ascertaining the persistence of the conditions justifying the extension of the regime (*istruttorie relative alla preesistente attualità ed alla permanente gravità delle esigenze di prevenzione ai fini della proroga*).

It also summarised opinions issued by the DDAs of Florence and Caltanissetta in February 2014 and by the National Anti-Mafia and Counterterrorism Prosecution Office (*Direzione Nazionale Antimafia e Antiterrorismo*, hereafter "the DNA") and the Palermo DDA in March 2014.

69. The order stated that the Palermo, Caltanissetta and Florence DDAs had expressed an unfavourable opinion as to the renewal of the restrictions, in the light of the applicant's health conditions. However, it stated that the Palermo DDA had found that the applicant was still socially dangerous.

70. The order focused in particular on the findings of the DNA, which outlined the applicant's criminal profile as well as Cosa Nostra's (the Sicilian Mafia) ongoing criminal activities, and called attention to the fact that one of the most prominent members of the applicant's criminal organisation was still on the loose. As per the text of the order, the DNA further found that, on the basis of the expert medical evidence in its possession, it could not be concluded that there had been a complete annihilation of the applicant's attention, comprehension and orientation abilities at that time, but rather only a – non-quantifiable – deterioration. This, in turn, could not exclude the possibility that the applicant could communicate orders to the criminal organisation if detained in the context of a normal prison regime. The applicant's health was also addressed in terms of whether the imposition of the special prison regime was hindering the medical treatment that he needed in view of his health problems, which, in the office's opinion, it was not. The DNA concluded that the renewal of the restrictions was still considered necessary.

71. The order also focused on the Minister of the Interior's opinion summarising the findings of recently concluded investigations confirming the applicant's prominent role in the criminal organisation. The outcome of such investigations had also shed light on the means by which the applicant's support network had enabled him to remain in hiding, the communication system between himself and prominent fugitives during their time in hiding, and his use of coded messages to convey the organisation's strategies.

2. First set of proceedings before the Rome Court

72. On 31 March 2014 the applicant lodged an application against the Minister of Justice's renewal order of 26 March 2014. The applicant's counsel argued that the special prison regime ought to be suspended due to the applicant's psychophysical condition, and provided medical documentation in support of that argument.

73. By a decision of 5 December 2014 the Rome Court dealt with the applications of 13 February 2014 and 31 March 2014 jointly and dismissed them both. Some salient points of the decision may be summarised as follows.

The court reviewed the applicant's arguments and the medical documentation available to it and focused on the applicant's neurological

condition. It quoted extracts from a report of a neuropsychological examination performed on the applicant on 25 November 2014 indicating that he was bedridden, that he alternated between being asleep and being awake, and that, if appropriately stimulated, he sometimes formulated words that made sense or carried out elementary tasks. The applicant was described as alert and occasionally "reachable", but the report noted that he did not comply with instructions. The court noted that a conclusive assessment of his cognitive skills had not been possible due to his severely compromised motor function, coupled with his inability to concentrate and general lack of cooperation.

The court thus acknowledged the existence of a serious decline in the applicant's cognitive functioning. However, notwithstanding that decline, on the basis of the medical documentation available to it, the court concluded that it could not with absolute certainty rule out the possibility of the applicant being able to convey criminally relevant messages pertaining to the organisation's criminal activities via family members or other individuals if he were allowed unregulated contact with the outside world. The court also relied on reports from health-care staff in the hospital ward which indicated that the applicant had transient moments of lucidity alternating with moments of confusion, and that at times he replied to their questions in a comprehensible manner. In conclusion, in the court's view, the applicant's clinical status could not be considered such as to preclude the communication of messages or criminal instructions.

The court reiterated that the applicant, the leader of Cosa Nostra for decades, was considered to be an individual who posed a great threat to national security and society at large. It further reiterated that during his time in hiding he had relied on a solid support network and managed to run the criminal organisation through so-called *pizzini*, apparently simple messages which concealed orders for the criminal network. Thus, in the court's view, the criminal organisation could obtain instructions for carrying out criminal activities by receiving even simple messages from the applicant, given his position within the organisation. It also noted that one of the key and most dangerous individuals belonging to the applicant's organisation was still a fugitive at the time.

Based on the foregoing considerations, the court concluded that the extension of the section 41 *bis* prison regime was still fully justified, in the interests of public order and safety.

3. The renewal order of 23 March 2016

74. On 23 March 2016 the Minister of Justice issued an order renewing the application of the special prison regime for another two years. As with the 2014 order, he held that the applicant was still able to maintain contact with members of the criminal organisation who were still at large, and also had regard to his "particular and concrete dangerousness". The minister

confirmed the renewal of all the restrictions in place (see paragraph 57 above). Some salient points of the order may be summarised as follows.

75. As with the 2014 order, the Minister of Justice reiterated the regime's rationale and purpose and provided an overview of information provided by different police bodies, prosecution offices, and the Minister of the Interior – information which had been requested with a view to ascertaining the persistence of the conditions justifying the extension of the regime. The order summarised opinions issued by the DDAs of Florence, Caltanissetta and Palermo in February 2016 and the DNA in March 2016.

76. The order acknowledged that the Caltanissetta and Florence DDAs had confirmed their previous negative opinion as to the renewal of the regime with regard to the applicant, and that the Caltanissetta DDA had relied on the deterioration in the applicant's health to reach its conclusions, while the Florence DDA's opinion had hinged on the finding that there were no longer any ongoing criminal investigations involving the applicant. On the other hand, the Palermo DDA and the DNA confirmed that there was a need for the renewal of the special prison regime.

77. As reported in the order, the Palermo DDA had concluded that the application of the section 41 *bis* regime was still absolutely necessary to prevent and interrupt the applicant's lasting and dangerous relations with the outside world and with other detainees which would allow him to pursue the illegal activities that he had headed for decades. The DDA focused on, *inter alia*, the applicant's criminal history and his leadership role in Cosa Nostra, reviewing his decisive participation in a large number of criminal acts, from mass murder to extortions, and noting the control he had exercised over economic activities which had allowed him to acquire considerable assets. The DDA provided details on the support network which the applicant had had within the organisation – the network had allowed him to stay in hiding for over forty years and manage multiple aspects of the criminal enterprise ranging from resolving disputes to commissioning murders. It highlighted that a prominent member of the criminal organisation was still on the run from the authorities.

With regard to the applicant's health, the Palermo DDA stated that, on the basis of the clinical information in its possession, it agreed with the Rome Court's decision (see paragraph 73 above), and it quoted an extract from the decision in which the court had stated that it could not rule out with absolute certainty the applicant's being able to convey criminally relevant messages pertaining to the organisation's criminal activities.

78. As reported in the order, the DNA concluded that the combination of elements that had warranted the initial application of the special prison regime remained unchanged in its view. It relied primarily on the applicant's "criminal profile", his multiple convictions for heinous crimes, and the ongoing activities of Cosa Nostra and its continuous reorganisation, in addition to the fact that a prominent member of the criminal organisation

who had had a documented relationship with the applicant in the past was still on the run.

With regard to the applicant's health, the DNA reiterated the content of its 2014 opinion on the extension of the special prison regime and quoted extracts from it to the effect that the imposition of such a regime in no way interfered with the applicant's medical care, and modifying the regime would not have an impact on his health. The DNA also quoted an extract from its 2014 opinion where it had found that, based on the documentation available to it, it did not appear that the applicant's attention, comprehension and orientation in space and time had completely ceased, but had only deteriorated.

4. Second set of proceedings before the Rome Court

79. On 8 April 2016 the applicant's counsel lodged an application against the Minister of Justice's renewal order with the Rome Court.

80. On 16 September 2016 the Rome Court discontinued the proceedings due to the applicant's death.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Suspension of a prison sentence on health grounds

81. The relevant parts of Article 146 of the Italian Criminal Code ("mandatory suspension of sentences") provide that:

> The execution of a penalty of a non-pecuniary nature shall be suspended: ...
>
> (3) with respect to a person suffering from full-blown AIDS or serious immunodeficiency ... or [some] other particularly serious illness resulting in his or her state of health being incompatible with detention, when the illness is at such an advanced stage that it no longer responds to treatment, according to medical certification by the prison or external medical service.

82. The relevant parts of Article 147 of the Italian Criminal Code ("discretionary suspension of sentences") provide that:

> The execution of a penalty of a non-pecuniary nature may be suspended:
>
> ... if a sentence involving the deprivation of liberty is enforced against an individual suffering from serious physical infirmity ... [such a measure] shall not be adopted, or, if it is adopted, shall be revoked if there is a concrete danger of criminal offences being committed.

B. Section 41 *bis* special prison regime

83. Section 41 *bis* of the Prison Administration Act (Law no. 354 of 26 July 1975), as amended by Law no. 356 of 7 August 1992 and Law no. 94 of 15 July 2009, gives the Minister of Justice the power to suspend the application of the ordinary prison regime in whole or in part, by

means of a reasoned decision, on the grounds of public order and security, in cases where the ordinary prison regime would conflict with these requirements.

84. Subsection 2 *bis* of section 41 *bis* provides that the Minister of Justice may issue an order renewing the application of the special prison regime unless it emerges that the ability of the detainee to maintain contact with the criminal organisation to which he belonged no longer obtains.

85. The same subsection lists some of the factors to be taken into account in order to ascertain whether the defendant has the above-mentioned ability to maintain contact: his criminal profile, the position he occupied in the criminal enterprise, the continuation of the criminal enterprise's activity, new prosecutions against the detainee which have previously not been taken into account, the results of incarceration, and the living standards of the detainee's family.

86. The same subsection further specifies that the mere passage of time does not constitute, of itself, a sufficient element to exclude a defendant's ability to maintain contact with the criminal organisation of which he was a member.

87. Subsection 2 *quinques* of section 41 *bis* provides that an application (*reclamo*) against a renewal order may be lodged with the Rome court responsible for the execution of sentences, which will verify, by examining the arguments put forward in the application and the findings listed in the renewal order, whether the criteria provided for by law for the adoption of such a decision have been complied with.

88. Subsection 2 *sexies* of section 41 *bis* provides that an appeal against the decision of a court responsible for the execution of sentences may be lodged with the Court of Cassation, solely on the grounds of violation of the law (*violazione di legge*).

89. The scope of appeals before the Court of Cassation against the decisions of courts responsible for the execution of sentences on renewal orders of the section 41 *bis* special prison regime was delimited on many occasions by the Court of Cassation. According to that court, the scope of such an appeal does not render an impugned decision amenable to challenges based on defective reasoning (*vizio di motivazione*), unless that reasoning is entirely absent or flawed to the point that it is merely apparent and non-existent, that is, lacking the minimum requirements of coherence, completeness, and logic (see, among other authorities, *Trombetta*, Criminal Section I, no. 2984 of 22 January 2014). In a recent ruling (*Oppedisano*, Criminal Section I, no. 11620 of 19 February 2016), the Court of Cassation recapitulated the following principles on the scope of its review:

> "It must be noted at the outset that the appeal at issue is based on section 41 *bis* subsection 2 *sexies* of Law no. 354 of 1975 and subsequent amendments. In accordance with these provisions, the decision of a court responsible for the execution of sentences concerning an application against a ministerial decree renewing the application of the special prison regime is open to appeal before the Court of Cassation 'for breach of the law'. Now, in accordance with the present court's long-

> standing and well-established interpretation (Cass. pen. 13.03.92, p.c. in c. Bonati), a breach of the law with respect to [a court's] reasoning is rooted in constitutional provisions (paragraphs 6 and 7 of Article 111) and exists where there is either a total absence of reasoning, or where the reasoning at issue may be deemed to be fictitious or contradictory ... the first [situation] occurs when the judicial authority employs standardised and routine expressions, while the second [situation] occurs when the judicial authority has recourse to decisive arguments that conflict with one another. What is excluded from the notion of breach of the law are all other cases where the court's reasoning may be viewed as insufficient and not entirely precise in the manner in which it addresses the applicants' arguments."

90. The same judgment reviewed the manner in which the Court of Cassation had applied the latter general principles to the specific context of appeals against the decisions of courts responsible for the execution of sentences under section 41 *bis*, subsection 2 *sexies*, of Law no. 354 of 1975:

> "According to the interpretation of the present court (Cass., section I, 9.01.2004, n. 449; 14.11.2003 n. 5338; 9.11.2004, n. 48494), in the context of different prison regimes, the notion of breach of the law ... also encompasses the absence of reasoning, which in turn encompasses all those cases in which the [relevant] reasoning lacks the minimum requirements of coherence, completeness and logic, to the extent that it becomes merely apparent or entirely unsuitable for conveying, in a comprehensible manner, the logical steps followed by the judge, or when the arguments employed in the decision are so uncoordinated and lacking the necessary logical passages that they conceal the reasons on which the decision is based."

C. Other domestic law

91. Legislative Decree No. 146 of December 2013 established a new preventive remedy allowing a detainee to complain of any violation of his or her rights before a supervisory judge (*magistrato di sorveglianza*).

D. Other domestic material

92. In April 2016 the Italian Senate's Commission for the Protection and Promotion of Human Rights (*commissione straordinaria per la tutela e la promozione dei diritti umani*) published a report on the section 41 *bis* special prison regime (*Rapporto sul Regime Detentivo Speciale – Indagine Conoscitiva sul 41 bis*). Amongst a number of other recommendations, the following recommendation was made:

> The Commission also recommends more accurate evidence gathering (*istruttoria*) by the offices involved in the renewal of the application of the special prison regime, in order to avoid the imposition of the regime with respect to persons who are mentally incapacitated (*incapaci di intendere e di volere*).

THE LAW

I. PRELIMINARY ISSUE

93. Following the applicant's death on 13 July 2016, his son, Mr Angelo Provenzano, informed the Court of his wish to pursue the application in his father's stead (see paragraph 1 above).

94. The Government requested that the application be struck out of the list of cases in accordance with Article 37 of the Convention, challenging the right of the applicant's son to pursue the application. They contended, *inter alia*, that the applicant's son could not claim to be an indirect victim, because the alleged breach of Article 3 of the Convention had not affected him personally, and the right invoked by the applicant, which was linked to his personal and intimate sphere, was non-transferable in nature. They added that the applicant's son had limited his submissions to expressing his intention to pursue the proceedings, without explaining the grounds for his alleged legitimacy as a successor, beyond providing his birth certificate and stating his personal interest in pursuing the case.

95. At the outset, the Court reiterates the need to distinguish cases in which an applicant has died in the course of proceedings from cases where an application has been lodged with the Court by an applicant's heirs after the death of the victim (see *Ergezen v. Turkey*, no. 73359/10, § 28, 8 April 2014; *Fairfield v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI; and *Biç and Others v. Turkey*, no. 55955/00, § 20, 2 February 2006). The Court further highlights that, in the light of its well-established case-law, the issue of whether a person may be considered an indirect victim is only relevant where the direct victim dies before bringing his or her complaint before the Court (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 97-100, ECHR 2014).

96. In cases such as the present one, where the applicant died after lodging an application, the Court has consistently accepted that the next of kin, close family member or heir may, in principle, pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], cited above, § 97; *Fartushin v. Russia*, no. 38887/09, § 33, 8 October 2015; and *Vaščenkovs v. Latvia*, no. 30795/12, § 27, 15 December 2016). The Court reiterates that it is not only material interests which the successor of a deceased applicant may pursue by his or her wish to maintain the application. Human rights cases before the Court generally also have a moral dimension, and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII). Thus, in cases where the direct victim has died after the lodging of an application, the decisive factor is not whether the rights at

issue are transferable to heirs willing to pursue an application, but whether the persons wishing to pursue the proceedings can claim a legitimate interest in seeking that the Court decide the case on the basis of the applicant's desire to use his individual and personal right to lodge a case before the Court (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014). Nor has the Court found it decisive that the person wishing to pursue the application is not the legally recognised heir under domestic law (see *Malhous v. the Czech Republic*, cited above).

97. Turning to the present case, the Court observes that the person seeking to pursue the proceedings before it is the applicant's son, and thus a close family member. The document produced by the son, namely his birth certificate, attests to the existence of the family relationship.

98. The Court further notes that the applicant's son was appointed the applicant's legal guardian in the light of the applicant's legal incapacitation following his being sentenced to life imprisonment, and was also appointed and sworn in as the applicant's limited guardian (*amministratore di sostegno*) in May 2014. Finally, the Court observes that he introduced the present application on the applicant's behalf at a time when he was acting as the applicant's legal guardian (see paragraphs 1 and 13 above).

99. In view of the above, and having regard to the circumstances of the present case, the Court is satisfied that Mr Angelo Provenzano has a legitimate interest in pursuing the application. At his request, it will therefore continue to deal with the case. For practical reasons, Mr Bernardo Provenzano will continue to be called "the applicant", although Mr Angelo Provenzano is now to be regarded as such.

100. The Court therefore dismisses the Government's request to strike the application out of its list of cases.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

101. The applicant complained that his detention was incompatible with his age and health conditions. He further complained that the domestic authorities had not taken all necessary measures to safeguard his health and well-being in detention, and that the continued imposition of the section 41 bis special prison regime entailed a violation of Article 3, which reads as follows:

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

A. Admissibility

102. The Government made a preliminary objection of non-exhaustion of domestic remedies and asked the Court to reject the application as inadmissible under Article 35 §§ 1 and 4 of the Convention. In the light of the circumstances of the present case, the Court considers that it would be

appropriate to examine the two limbs of the applicant's complaint under Article 3 separately.

1. Complaint concerning the incompatibility of the applicant's detention with his health

103. The Government observed in this respect that the applicant had had several remedies at his disposal, the first one being the possibility to seek the deferral of his prison sentence for health reasons before the courts responsible for the execution of sentences. While they accepted that the applicant had made use of the latter avenue of redress on four occasions and obtained unfavourable decisions by the courts responsible for the execution of sentences, they pointed out that on only two occasions had the applicant appealed against such decisions before the Court of Cassation, which in any event had dismissed his appeals. The Government also argued that the applicant had had a further avenue of redress which he had not made use of, namely the remedy introduced by Legislative Decree No. 146 of 2013, allowing an inmate to complain of any violation of his or her rights to a supervisory judge (see paragraph 91 above).

104. The applicant contended that he had only failed to appeal against one decision issued by the Bologna Court because he had been transferred to Milan in the meantime. He further stated that while he had been detained in Milan, he had pursued proceedings before the Court of Cassation. He argued that all the proceedings had ended unfavourably for him.

105. The Court reiterates that where more than one potentially effective remedy is available, the applicant is only required to use one remedy of his or her choice (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts)).

106. In the present case, given that the applicant lodged several applications raising his complaints related to his health and detention before the courts responsible for the execution of sentences, the Court considers that he was not required to avail himself of an additional legal avenue in order to fulfil the requirements under Article 35 § 1 of the Convention. Moreover, the Court observes that the applicant appealed against the decision of the Bologna Court of 27 August 2013 and the decision of the Milan Court of 3 October 2014 before the Court of Cassation. The Court is prepared to accept that this suffices for it to find that the applicant exhausted domestic remedies under Article 35 § 1 of the Convention for the purposes of this part of the application.

2. Complaint concerning the continued imposition of the section 41 bis *special prison regime*

107. The Government submitted that, under section 41 *bis* of the Prison Administration Act, it was possible to lodge an appeal on points of law with the Court of Cassation against the decisions of a court responsible for the execution of sentences, on the grounds of "violation of the law". Given the existence of such a remedy, with respect to the renewal of the special prison regime in 2014, the applicant ought to have lodged an appeal against the Rome Court's decision of 5 December 2014, but had failed to do so.

108. The applicant contested the Government's argument in a generic manner.

109. The Court reiterates its well-established case-law to the effect that Article 35 § 1 of the Convention provides for a distribution of the burden of proof, and that it is incumbent on the Government claiming that domestic remedies have not been exhausted to satisfy the Court that the remedy which they claim the applicant has not used was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 71, 17 September 2009; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 57, ECHR 2013 (extracts); and *Davydov and Others v. Russia*, no. 75947/11, § 233, CEDH 2017 (extracts)).

110. The Court reiterates at the outset that the domestic decision under scrutiny – the decision of the court responsible for the execution of sentences ruling on an application against the ministerial decree renewing the application of the section 41 *bis* special prison regime – in addition to not being open to challenge on questions of fact, could not be challenged on the basis of the full range of grounds available for a review on points of law by the Court of Cassation, but only on the grounds of violation of the law (see paragraph 88 above). In turn, violation of the law has been narrowly interpreted by the Court of Cassation, which raised the threshold and restricted those grounds to cases where the reasoning of the court responsible for the execution of sentences in relation to the matter complained of was missing altogether, or frustrated by such serious flaws that the grounds on which the decision was based were virtually indiscernible (see paragraph 89 above).

111. The Court observes that the essence of the applicant's complaint hinges on the argument that, in the light of his severe and medically documented cognitive decline, the original reasons for imposing the special prison regime no longer obtained and therefore lacked justification. Domestically, he brought that complaint before the Rome Court, which addressed and dismissed his arguments in a decision which he does not

contest as being riddled by the kind of flaws required to meet the threshold for a review by the Court of Cassation.

112. The Court further notes that, in articulating their non-exhaustion argument, the Government have not provided any supporting documentation indicating that the applicant's complaint could have fallen within the scope of the permitted grounds for a review by the Court of Cassation.

113. Accordingly, in the light of the specificity of the remedy at issue, which entails limitations on access, coupled with the nature of the applicant's complaint, the Court concludes that, in the particular circumstances of the present case, the Government have failed to discharge the burden of proof incumbent on them in claiming non-exhaustion.

114. With reference to the renewal of the special prison regime in March 2016 and the period which ensued, the Government did not raise a specific non-exhaustion objection. They did, however, call the Court's attention to the fact that proceedings lodged by the applicant before the Rome Court against the Minister's 2016 renewal order had been discontinued due to the applicant's death (see paragraph 80 above).

3. Conclusions

115. It follows from the foregoing considerations that the Government's non-exhaustion objections must be dismissed.

116. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Complaint concerning the incompatibility of the applicant's detention with his health, allegations of inadequate medical care, and other aspects of conditions of detention

(a) The parties' submissions

117. The applicant submitted that his detention was incompatible with his old age and health conditions, and that the domestic authorities had not taken all necessary measures to safeguard his health and well-being in detention.

118. With reference to his detention in Parma, the applicant complained that his health and well-being had not been adequately monitored and protected, and that he had not received sufficient medical attention. He argued that his condition had not been adequately monitored and assessed, particularly following his falls in December 2012, and that he had been left without medical assistance, which had in turn led to his hospitalisation and surgery being delayed. He further contended that his bed had not been

equipped with safety rails and that he ought to have been placed in a cell with a cellmate, in order to ensure the timely detection of any problem that might have arisen with respect to his health. The applicant further asserted that, despite his inability to care for himself and his incontinence problems, he had not been adequately washed and changed.

119. With regard to his detention in Milan, the applicant complained in a general manner about the fact that he was still subject to detention measures, albeit in a civilian hospital, and that, despite his health problems, he had not been granted a more lenient custodial measure.

120. The Government submitted firstly that the domestic courts had assessed the applicant's state of health on numerous occasions and had found that it was not incompatible with detention. They provided an overview of the domestic decisions dismissing the applicant's complaints, and cited numerous findings by the domestic courts (see paragraphs 49 - 54 above).

121. As regards the medical care provided, the Government pointed out that during his period of detention in Parma, owing to his state of health, the applicant had been placed in a facility which had a health-care department capable of providing care appropriate to his condition. He had also been admitted to hospital outside prison when necessary. In support of their submissions, the Government listed and summarised the applicant's external hospitalisations between October 2012 and June 2013. In the Government's view, the numerous health reports on file and those submitted with their observations indicated that the applicant had had specialist consultations, diagnostic tests and check-ups during his stay at the correctional facility in Parma.

122. Referring to the events of December 2012, the Government contended that, while the applicant had fallen a number of times between 3 and 17 December 2012, he had immediately had medical examinations and, when necessary, had been hospitalised. The Government further highlighted that in view of the applicant's discharge from Parma General Hospital, on 25-26 February 2013 he had been examined by two doctors in order for his health and care needs upon his return to prison to be established. The same doctors had inspected the area of the correctional hospital wing in which the applicant was to be detained on his return, so as to establish what adjustments would be required to accommodate his needs (see paragraph 28 above). In particular, the Government highlighted that a bed with safety rails and an electrical mattress to prevent bedsores, a clinic for physiotherapy sessions, and a space for exercising with a walking frame had been made available. Following his return, the applicant's health conditions had been constantly monitored.

123. As regards the hygiene conditions of the applicant's detention in Parma, the Government referred to a report issued on 11 October 2013 by the director of the Parma Correctional Facility, a report issued on 3 January 2013 by the manager of the Parma Correctional Facility's health

programme, and the personalised care plan developed on 1 March 2013 by the correctional facility's medical unit. According to those documents, which the Government enclosed with their observations, the applicant had been assisted in the performance of daily tasks which he was no longer able to perform; his personal hygiene had been ensured; and as of 7 March 2013 arrangements had been made for his room to be cleaned through a supervised programme for housekeeping work by detainees.

124. Upon his transfer to the Milan Opera Correctional Facility, the applicant had been immediately examined by the head of the health unit, who had recommended that he be hospitalised in order for diagnostic tests to be performed and a therapeutic strategy to be defined. On 9 April 2014 he had been transferred to San Paolo Hospital in Milan. His hospitalisation had been subsequently extended. The Government enclosed a number of medical reports issued between April 2015 and March 2016 attesting to the evolution of the applicant's clinical situation and the medical care provided to him. They pointed out that his health had worsened on 9 July 2016 and on 12 July 2016 his family had been allowed access to the hospital room to visit him.

125. The Government concluded by stating that the applicant had received proper and adequate medical care and treatment, regular check-ups, and the prevention of the worsening of his conditions had been ensured, thus protecting his physical integrity.

(b) The Court's assessment

126. The Court reiterates that 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III; *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

127. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła*, cited above, § 94, and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 116, ECHR 2014 (extracts)), and that, given the practical demands of

imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, § 94, and *Idalov v. Russia* [GC], no. 5826/03, § 93, 22 May 2012). In most cases concerning the detention of ill persons, the Court has examined whether or not the applicant received adequate medical assistance in prison (*Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 178, ECHR 2016).

128. In this connection, the "adequacy" of medical assistance remains the most difficult element to determine. The Court reiterates that the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (see *Khudobin v. Russia*, no. 59696, § 83, ECHR 2006-XII), that diagnosis and care are prompt and accurate (see *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006, and *Hummatov*, cited above, § 115), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Blokhin v. Russia* [GC] no. 47152/06, § 137, ECHR 2016).

129. On the whole, the Court reserves a degree of flexibility in defining the required standard of health care, deciding it on a case-by-case basis (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

130. Lastly, as far as the standard of proof is concerned, the Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Enea*, cited above, § 55).

131. Turning to the circumstances of the present case, the Court observes that the applicant suffered from a number of chronic medical conditions, including Parkinson's disease, vascular encephalopathy, hepatopathy linked to HCV, and arterial hypertension, as well as a serious, progressive decline in cognitive functioning (see paragraph 15 above). The medical documentation on file also indicates that, in addition to being affected by chronic conditions, the applicant's health deteriorated over time. He was described in December 2013 as having become permanently bedridden due to a serious impairment of his motor skills, and from September 2013 at least he had to receive artificial nutrition via a feeding tube owing to his inability to feed himself (see paragraph 35 above).

132. Having established the applicant's health conditions, and given that there is no dispute as to the seriousness and progression of those conditions over time, the Court finds it necessary to assess the adequacy of the medical

care afforded to him in order to determine whether the requirements of Article 3 of the Convention have been respected.

133. As to the period of the applicant's detention in Parma from April 2011 to April 2013, the Court notes at the outset that the applicant was detained in a facility equipped with a correctional clinical centre (*centro clinico penitenziario*), as highlighted by the Government. The prison medical register and other medical reports on file show that during this period the applicant's health was regularly monitored by medical and nursing personnel (see paragraph 16 above). Moreover, evidence of the existence of a therapeutic strategy can be found in the entries in the prison medical register (see paragraph 20 above).

134. During the same time frame, the applicant had a large number of specialist consultations with respect to his chronic illnesses and other health issues arising during the course of his detention (see paragraph 17 above). The medical documentation on file further indicates that he underwent a wide array of tests on a regular basis – tests ranging from routine blood tests to specialist tests (see paragraph 18 above). When necessary, he was transferred to a civilian hospital in order to undergo tests that could not be performed in-house or to receive the required treatment (see paragraphs 21, 22, and 25 above), and was transferred back to the correctional facility when the hospital physicians certified that he could be discharged.

135. With specific reference to the aftermath of the applicant's falls in December 2012, based on a reading of the prison medical register, the Court cannot conclude that his condition was not monitored or that he was left without medical assistance. In this respect, the Court points out that, according to the entries on the medical register, following his fall on 12 December, the applicant was visited and examined by the duty doctor (see paragraph 23 above). On 15 December the duty doctor examined the applicant twice following his fall and ordered the monitoring of his condition by nursing staff, and the applicant was transferred to the emergency room of a civilian hospital when he was found to be unresponsive (see paragraph 24 and 25 above). The Court further notes that the applicant has not contested the Government's assertions and submitted documentation to the effect that he received medical attention following these incidents. Moreover, aside from reporting the existence of a criminal complaint lodged with respect to the above-mentioned incidents, the applicant did not provide any information as regards the outcome of the complaint before the domestic authorities (see paragraph 26 above). In the light of the foregoing considerations, and on the basis of the information submitted, the Court finds that there is insufficient evidence for it to draw conclusions as to whether or not the prison medical personnel were medically negligent and whether this, in turn, led to the applicant's hospitalisation and surgery being delayed.

136. The Court acknowledges the applicant's further argument that certain precautions to avoid his falling again were not taken. While the

Court is not persuaded by the contention that the authorities were under an obligation to place him with a cellmate in order to ensure his supervision, the Court does express concern about the fact that, prior to his having another fall, the applicant's bed was not equipped with safety rails, despite the doctor's recommendation of 12 December 2012 (see paragraph 23 above). However, while the Court acknowledges this shortcoming, it does not consider that it suffices to raise, by itself, an issue under Article 3. As highlighted by the Government, who provided documentation to this effect, prior to the applicant's return to the correctional facility in March 2013, certain measures, including the provision of a bed equipped with safety rails, were put in place, in addition to other structural measures designed to accommodate the applicant's needs upon his return (see paragraph 29 above).

137. To the extent that the applicant appears to be complaining about his detention in Milan, the Court reiterates that, following several months of hospitalisation in a civilian hospital in Parma, on 5 April 2014 the applicant was transferred to the medical centre in the Milan Opera Correctional Facility, and on 9 April 2014 he was admitted to San Paolo Hospital, where he remained until the time of his death in July 2016. Therefore, the Court highlights that as of 9 April 2014 the applicant was detained in a long-term care unit of a civilian hospital, albeit in a correctional wing. Based on the material submitted in relation to this period, the Court has no reason to doubt that the applicant received adequate medical care in a hospital which the domestic courts described as a centre providing excellent medical care (see paragraph 43 and 55 above), where his health was regularly monitored and treatment for his multiple medical issues was constantly administered (see paragraph 40 above).

138. The Court further observes that the applicant had the opportunity to apply to the domestic courts for an assessment of the compatibility of his detention with his health. The two decisions submitted in relation to his period of detention in Parma indicate that the domestic courts assessed the medical evidence before them and concluded that the applicant's medical conditions were being adequately monitored and treated in the correctional facility, with external hospitalisation being sought when required (see paragraphs 49-51 above). In the domestic decisions concerning the applicant's detention in San Paolo Hospital in Milan, the domestic courts relied on medical documentation and a report prepared by two court-appointed independent experts in concluding that the applicant was receiving appropriate and effective medical treatment in a civilian hospital setting (see paragraphs 52-54 above).

139. As to the applicant's allegation that his hygiene needs were not properly catered for, the Court notes at the outset that the applicant has not elaborated on his claim by providing details such as the period of time during which the alleged treatment took place. The complaint lodged at domestic level in this respect (see paragraph 33 above) concerns one

occasion, on 22 June 2013, when the applicant's son collected a bag of the applicant's underwear from the correctional facility and complained about their being soiled, but no information was provided by the applicant as to the outcome of such proceedings. Moreover, the Government provided documentation to the effect that there had been provision for the management of the applicant's incontinence and daily personal hygiene needs, and that those needs had been taken care of as of 5 March 2013 (see paragraphs 30 and 34 above). This has not been contested by the applicant. In the light of the foregoing considerations, the Court considers that it has insufficient elements at its disposal to enable it to draw conclusions as to whether or not the applicant's hygiene and personal care needs were met.

140. Having regard to the preceding paragraphs, and assessing the relevant facts as a whole, the Court does not find it established that the applicant's detention *per se* could be considered incompatible with his – albeit serious – health conditions and advanced age, or that, given the practical demands of imprisonment, his health and well-being were not adequately protected.

141. There has, accordingly, been no violation of Article 3 in so far as this part of the complaint is concerned.

2. Complaint concerning the continued application of the section 41 bis *special regime*

(a) The parties' submissions

142. The applicant contended that his continued detention under the special prison regime provided for by section 41 *bis* of the Prison Administration Act was in breach of Article 3. He argued that, in the light of his state of health, particularly the severe deterioration in his cognitive functioning, the original reasons for imposing the special prison regime no longer obtained.

143. The Government disputed that there had been a violation of Article 3 on account of the continued imposition of the section 41 *bis* special prison regime. After highlighting the applicant's prominent role in the Mafia and his dangerousness, they reiterated that the special prison regime laid down in section 41 *bis*, as highlighted in their observations, constituted a preventive measure – thus serving no punitive purpose – whose primary aim was to prevent detainees from maintaining contact with members of their criminal organisation, within or outside prison.

144. The Government referred to the Court's case-law in which the Court had assessed different aspects of the special regime and had found them compatible with the Convention. They quoted, in particular, *Gallico v. Italy*, no. 53723/00, 28 June 2005; *Argenti v. Italy*, no. 56317/00, 10 November 2005; *Campisi v. Italy*, no. 24358/02, 11 July 2006; *Enea v. Italy* [GC], no. 74912/01, ECHR 2009; *Madonia v. Italy*, no. 55927/00, 6 July 2004; and *Genovese v. Italy* (dec.), no. 24407/03, 10 November 2009.

145. The Government added that, in any event, owing to the applicant's serious health conditions, he had spent most of his detention in civilian hospitals, where some restrictions could not be implemented.

146. As to the justification for the continued imposition of the special prison regime, the Government pointed out that that it was based on the applicant's continuing social dangerousness, coupled with the seriousness of the crimes he had committed, and was dictated by preventive security requirements. They added that all decisions renewing the regime had exhaustively enumerated the reasons in support of the extension.

(b) The Court's assessment

147. The Court notes at the outset that it has already had ample opportunity to assess the section 41 *bis* regime in a large number of cases before it, and has concluded that, in the circumstances of those cases, the imposition of the regime does not give rise to an issue under Article 3, even when it has been imposed for lengthy periods of time (see, amongst many other examples, *Enea*, cited above; *Argenti*, cited above; *Campisi v. Italy*, no. 24358/02, 11 July 2006; and *Paolello v. Italy* (dec.) no. 37648/02, 24 September 2015). In such cases, the Court has consistently held that, when assessing whether or not the extended application of certain restrictions under the section 41 *bis* regime attains the minimum threshold of severity required to fall within the scope of Article 3, 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 impugned restrictions was justified or not (see, amongst many other authorities, *Enea*, cited above, § 64; *Argenti*, cited above, § 21; *Campisi*, cited above, § 38, 11 July 2006; and *Paolello*, cited above, § 27); and, *mutatis mutandis*, *Ramirez Sanchez v. France* [GC], no. 59450/00, § 145, ECHR 2006-IX).

148. Turning to the case at hand, the Court will first examine the Government's argument as to the impracticability of the imposition of certain restrictions (see paragraph 145 above). In this respect, the Court notes that the Government have not specified which restrictions, in their view, had ceased to apply in practice, or which detention periods in the different hospitals they were referring to. Nor have they provided any evidence in that regard. The Court further observes that, even when detained in hospital settings, the applicant was confined to correctional wards, and reporting physicians in Milan referred to the applicant's detention in a "[section] 41 *bis* area" of the hospital (see paragraph 43 above). It may therefore be assumed that a certain number of restrictions were still practicable in such settings. In any event, it remains undisputed that the impugned restrictions were formally in place, following nine consecutive renewals, from the time of the applicant's initial incarceration in 2006 up to his death in 2016 (see paragraph 59 above). Moreover, in view of the manner in which the applicant's complaint was framed, the Court notes that

he did not focus on specific restrictions whose application, individually or globally, subjected him to inhuman or degrading treatment. Rather, the essence of the complaint appears to be that in the light of his worsening state of health in general, and in particular the severe deterioration in his cognitive functioning, the reasons for imposing the restrictions no longer obtained, thus rendering their imposition unwarranted.

149. In the light of the foregoing, the Court will proceed to examine whether the extension of the restrictions could be said to raise an issue under Article 3, focusing in particular on whether or not such an extension could be said to have been justified.

150. The Court acknowledges the Government's arguments on the purely preventive and security – rather than punitive – purposes of the special prison regime at issue, and its aim to sever contact between detainees and their criminal networks (see paragraph 143 above), as well as the arguments put forward with regard to the justification for the imposition of the measures (see paragraph 146 above). Indeed, the applicant had been an extremely dangerous individual and a prominent leader of one of the largest existing criminal organisations. The picture which emerges from the national authorities' decisions to renew the imposition of the measures is clear and persuasive in this respect. The authorities provided detailed accounts, based on evidence provided by different State bodies and agencies, of, amongst other things, the applicant's criminal history, his past leadership role within the criminal organisation, the support network which he had relied on during his time in hiding, his multiple convictions for heinous crimes, and the continuing existence and current state of activity of the criminal organisation in Italy and abroad (see paragraphs 65-71 and 74-78 above). Even the court responsible for the execution of the sentence, which was called upon to review the 2014 renewal order, highlighted the applicant's leadership within the organisation and the great danger he had posed to society, as well as the unique network of supporters who had enabled him to run the organisation for decades, even while in hiding (see paragraph 73 above).

151. However, without underestimating the importance of the considerations contained in the above paragraph and their weight in relation to the assessment of whether or not to renew the restrictions, as will be further explained below, the Court is not persuaded that, in the present case, those considerations could suffice, on their own, as justification for the renewal of the measures. In this respect, the Court points out that the applicant's health situation was characterised by a serious cognitive deterioration which undeniably worsened over time. This aspect thus distinguishes the present case from those where – albeit serious – health problems are limited to the physical sphere but do not affect an applicant's mental capacity. The picture which emerges from the medical documentation available to the Court, summarised at paragraphs 15–47 above, is one which may at least cast some legitimate doubts on the

applicant's persistent dangerousness and his ability to maintain meaningful, constructive contact with his criminal association. Thus, the Court cannot state, as it has done in a number of previous cases concerning the section 41 *bis* regime, that the applicant failed to submit any evidence to it which could lead it to conclude that the extension of those restrictions was unjustified (see, amongst many others, *Enea*, cited above, § 65; *Argenti*, cited above, § 21; and *Riina v. Italy* (dec.), no 43575/09, § 28, 11 March 2014).

152. The Court reiterates that the very essence of the Convention is respect for human dignity, and that the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective (*Svinarenko and Slyadnev*, cited above, § 138). In this connection, the Court considers that subjecting an individual to a set of additional restrictions (see paragraph 57 above), 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 his human dignity and entail an infringement of the right set out in Article 3.

153. Against this backdrop, given the specific facts of the present case, the Court finds it necessary to inquire whether the domestic authorities entrusted with the task of deciding on the renewal of the application of the section 41 *bis* regime undertook 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 (see, *mutatis mutandis*, *Horych*, cited above, § 92). In circumstances such as the ones under scrutiny, such a reassessment appears to have been necessary in order to avoid the risk of abuse or arbitrariness.

154. Turning to the facts at hand, the Court notes that in relation to the period between the issuing of the renewal order in March 2012 and the renewal of March 2014, there is evidence that the applicant's health deteriorated considerably and he had to undergo a neurosurgical intervention (see paragraph 25 above). Evidence of cognitive deterioration, already noted in medical reports from 2012 (see paragraphs 9, 21 and 22 above, was described as serious in a medical report from December 2013 (see paragraph 35 above), and the applicant's verbal expression was reported to be incoherent and incomprehensible (see paragraphs 35 and 36 above). The Court notes with some concern that the 2014 renewal order did not devote much attention to the applicant's cognitive deterioration, despite its seriousness and potential impact on the continuing need for special restrictive measures. The only evidence of such a situation having been acknowledged in the order is in the parts reporting the summarised findings of certain anti-Mafia prosecution offices (see paragraphs 69 and 70 above). Having said this, the Rome Court reviewed the 2014 order, and there is evidence in the text of the decision that, in doing so, it examined ample

medical documentation, including a recent neuropsychological expert report that it had requested shortly prior to the issuing of the decision (see paragraph 73 above). On the basis of such documentation, the court made an independent assessment and reached a reasoned conclusion to the effect that the possibility that the applicant could convey criminally relevant messages to the organisation could not be ruled out with absolute certainty (ibid.). Thus, the Court cannot conclude that the applicant's condition was not genuinely reassessed so as to take into account his changing circumstances when the order was renewed in 2014.

155. Turning to the Minister of Justice's renewal order of 23 March 2016, the Court notes that the Government called the Court's attention to that order in particular, in support of the position that the continued imposition of the measures was justified. The medical evidence available to the Court shows that in the time that elapsed between the issuing of the renewal order in March 2014 and the issuing of the renewal order of 23 March 2016, the applicant's already severely compromised health situation deteriorated even further. By way of example, in August 2014 his cognitive situation was described as having worsened since the month of April, and the medical experts highlighted his complete lack of autonomy in performing basic everyday functions, to the extent that he had to receive all his hydration and nutrition artificially due to his inability to feed himself. In September 2014 he was described as unable to maintain interactions with people or take care of himself (see paragraph 45 above). The medical reports from 2015 and 2016 submitted by the Government disclose a further progressive decline of his cognitive functions, which were described as "extremely deteriorated" in March 2016 (see paragraph 46 above). In addition, the applicant continued to be bedridden and to receive all hydration and nutritional support through a feeding tube until he entered a preterminal stage just a few months after the issuing of the order, in July 2016.

156. Given the seriousness of the situation, the Court considers that in renewing the imposition of the section 41 *bis* regime in March 2016, not only should the statement of reasons militating in favour of renewal have been increasingly detailed and compelling, but the applicant's evolving cognitive deterioration needed to be taken into account (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, §§ 119-22, ECHR 2013 (extracts). While the order provides a detailed account of the applicant's criminal history, his prominent role in the criminal organisation, and the proven, continuing activity of such an organisation, the Court notes that, aside from the two references described in paragraphs 77 and 78 above, which refer to reports by the Palermo DDA and the DNA, there is no other mention in the order of the applicant's cognitive situation. Moreover, there appears to be no discernible trace in the text of the order of an explicit, autonomous assessment by the Minister of Justice of the applicant's cognitive situation at the time the decision was

made. The limited space afforded to such circumstances and the lack of an explicit assessment make it difficult for the Court to ascertain in what manner and to what extent such circumstances were weighed up when assessing whether to renew the restrictions. Accordingly, the Court cannot but conclude that there is 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.

157. 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 in 2016 was justified.

158. There has accordingly been a violation of Article 3 of the Convention, for the period following the renewal of the section 41 *bis* regime on 23 March 2016.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. 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."

A. Damage

160. In respect of non-pecuniary damage, the applicant claimed 150,000 euros (EUR) or any other amount the Court should find appropriate.

161. The Government contested that amount.

162. The Court points out that it has found a violation of the Convention only with regard to one aspect of the applicant's complaint concerning the renewal of the section 41 *bis* special prison regime (see paragraphs 157 and 158 above). In the circumstances of the case, it considers that the finding of a violation is sufficient to compensate for the non-pecuniary damage sustained.

B. Costs and expenses

163. The applicant also claimed EUR 20,000 for costs and expenses incurred before the Court.

164. The Government contested that amount, and highlighted that in any event the applicant had not submitted any documentation in support of his claim.

165. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the fact that the applicant did not provide any documentary evidence demonstrating what costs he had actually and necessarily incurred, the Court rejects his claim for reimbursement of costs and expenses and makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Accepts* the *locus standi* of the applicant's son, Mr Angelo Provenzano, to pursue the application in his father's stead;

2. *Declares* the application admissible;

3. *Holds* that there has been no violation of Article 3 of the Convention in respect of the conditions of detention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the renewed application of the special prison regime on 23 March 2016;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

6. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Linos-Alexandre Sicilianos President