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Communication from Italy concerning the case of Marcello Viola v. Italy (no. 2) (Application No. 77633/16) - *The appendices in Italian are available upon request to the Secretariat.*

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Réunion : 1459e réunion (mars 2023) (DH)

Référence du point : Bilan d'action (20/01/2023)

Communication de l'Italie concernant l'affaire Marcello Viola c. Italie (n° 2) (requête n° 77633/16) ***(anglais uniquement)*** - *Les annexes en italien sont disponibles sur demande au Secrétariat.*

Rappresentanza Permanente d'Italia presso il Consiglio d'Europa

VIOLA v. Italy
Application n° 77633/16
Judgement of 13 June 2018, final on 7 October 2019

Action Report

A) CASE SUMMARY

This case concerns a violation of Article 3 of the Convention on account of the irreducibility of the applicant's whole life sentence imposed for belonging to a mafia-type criminal organisation.

The European Court found that the irrebuttable presumption enshrined in domestic law, that the applicant's failure to cooperate with the judicial authorities automatically meant that he was still dangerous and therefore ineligible for release on licence, meant that any real progress he made towards rehabilitation could not be taken into account, thus restricting the possibility of reviewing of his sentence to an excessive degree (§§ 128 and 137).

Under Article 46, the Court found out that the case disclosed a structural problem which had already resulted in several pending applications and which could lead to many more. It indicated that the authorities should ensure, preferably by introducing legislation, the possibility of reviewing whole life sentences in those cases where the prisoner failed to cooperate with the justice system. It stressed, however, that the procedural possibility of applying for such a review did not mean that the prisoner would be released if still found constituting a danger for society (§§ 141-144).

B) INDIVIDUAL MEASURES

Just satisfaction

As regards just satisfaction, the Court held that no sum was due to the applicant and that the finding of a violation of Article 3 of the Convention was sufficient to compensate any non-pecuniary damage suffered (§ 148). The sums awarded by the Court in respect of costs and expenses have been promptly paid.

Domestic proceedings

Following a judgment of the Italian Constitutional Court of October 2019, the applicant[1] has filed an application for permit award (*permesso premio)* to the L'Aquila judge responsible for the execution of sentences.

As regards this proceeding, the Supervisory Magistrate (decision of 28.9.2020) and the Supervisory Court of L'Aquila (decision of 9.3.2021) rejected the request on the basis of the multiple elements acquired into the case-file. (*see attachements*)

In particular, the National Anti-Mafia and Anti-Terrorism Directorate (D.N.A.), the District Anti – Mafia Prosecutor (D.D.A) at the Court of Reggio Calabria and the Police Headquarters of Reggio Calabria, gave a contrary opinion to the request, thus supplying information on to the position of the applicant and on his connections

[1] The applicant has been convicted of crimes of mafia association with the role of leader and promoter of the same name "cosca" operating in Taurianova and 8 murders, with the connected crimes of kidnapping, concealment of a corpse, detention and illegal carrying of weapons.

with the mafia organization of origin, highlighting, *inter alia*, : the persistent activity of the same name 'Ndrangheta cosca - of which the applicant had been one of the leaders- proved by recent judicial measures, even of conviction, against some of its members; the recent arrest of the applicant's wife, for her active role in supporting the long fugitive life of a prominent member of the association; the appellant's persistent link with the organisation remarked in the proceedings on the prevention measures (misure di prevenzione) applied against him; the outcome of the asset investigations against the association and the disproportion between the income of the appellant's family and its concrete economic availability, symptomatic of a continued support by the organization. The rulings also pointed out that even the updating Report on the prisoner's observation did not reveal any signs of dissociation or withdrawal from the association, even if it acknowledged his positive behaviour within the prison.

Therefore, according to all the elements acquired, the merits courts dealing with the case found out the actuality of the links with organized crime and rejected the applicant's request.

The Court of Cassation, by judgment of 11 May 2022, annulled the reject decision by the Supervisory Court of L'Aquila and referred anew the case to it for further consideration of any possible risk of connections of the applicant with the criminal organization. The next hearing before the Supervisory Court has been set on 24 January 2023.

This shows, therefore, that, as indicated by the Court, the applicant's claim for benefit received a thorough examination on its merits by the national courts despite the failure of cooperation.

At present, there is no information of a request for conditional release by the applicant. The matter is, therefore, in the hands of the applicant, who, in the light of the changed regulatory framework, has real prospects of having his request for conditional release examined on the merits by a judge, even in absence of cooperation. Moreover, since these are facts predating the recent reform, he could take advantage of the transitional regulatory regime (see below for more details),

which allows access to the measure under the more favorable preconditions provided by the previous regime.

As for the personal relations, it's noted that the applicant enjoys regular video meetings and calls with family members.

C) GENERAL MEASURES

Constitutional Court and domestic courts' case law

As to the general measures, reference is preliminarily made to the **Constitutional Court Judgement n. 253 of 2019**, that declared the non- compliance with constitution of the regulatory framework on the penitentiary benefit of permit award for those convicted of the so called obstructive crimes (*reati ostativi),* including the participation to a mafia- type criminal organization charged on the applicant (*see attachment)* .

Subsequently, also the **domestic case-law** embodied those principles and established the admissibility under certain conditions of the permit award even for those detained for obstructive crimes (*reati ostativi)* who have failed to cooperate with justice system.

The judgment of the Court of Cassation (n. 38832/22) in the recent applicant's proceeding (see above), where the following considerations were held, is an important example of what mentioned above.

In the case of convicted persons, such as this applicant, who are serving a sentence for "first-category" obstructive crimes, it must be taken into account the regulatory framework issuing from the intervention made by the Constitutional Court in its judgment no. 253 of 2019. This one focused on a relative presumption (beyond the hypotheses of cooperation with justice or of impossibility or inexistence of cooperation), therefore able to be overcome under certain conditions and with certain evidentiary rules, of the continued dangerousness of the convicted person. The

absolute presumption has disappeared, as a result of the aforementioned judgment of the Judge of Laws.

In such cases, the favourable outcome of the application for the benefit of the permit award is specifically subordinate to the acquisition of elements such as to exclude, both the actuality of links with organised crime and the danger of the re-establishment of such links.

The preparatory checks prior to the ascertainment of the indicated conditions must, therefore, be extended, in addition to the ordinary prerequisites of the permit award, to the possible existence of elements, concrete and specific, which are suitable to exclude not only the actuality of the connections between the convicted person and the organized, terrorist or subversive criminality - requirement expressly provided for by Art. 4-bis, para 1-bis, Law No. 354, 26 July 1975 - but also the danger of the re-establishment of such connections, taking into account the circumstances of the case.

The jurisprudence of legitimacy (Sez. 1, no. 33743 of 14/7/2021, Marazzotta Rv. 281764) has, in this regard, specified that, after the Constitutional Court's judgment no. 253 of 2019, the non-cooperating offender who wishes to accede the permit award may confine himself to alleging factual elements, such as, for example, the absence of post-prison proceedings, the absence of seized mailing or the active participation in re-educational work, which, even if only in a logical sense, are able to counter the presumption of a persisting dangerousness provided for by the law, while it is, on the other hand, up to the judge to complete, if necessary, the trial investigation, also ex officio, remaining , in any case, indefectible the acquisition of information from the National Anti-Mafia Prosecutor, the territorially competent District Prosecutor and the Committee for Public Order and Security.

All this, with a view on the concrete examination of the "individualising" elements that feature the re-educational path of the detainee, from which it can be assumed the current projection to sever the mafia criminal links and not to reactivate them in the future (Sez. 5, No. 19536 of 28/02/2022, Barranca, Rv. 283096).

Without prejudice to the fact that the assessment, in concrete terms, of the elements capable of overcoming the presumption of the actuality of links with organised crime must meet criteria "of particular rigor, proportion to the strength of the constraint

imposed by the criminal association of which the definitive abandonment is required" (thus the Constitutional Court in the cited judgment No. 253 of 2019), the demonstrative burdens imposed on the one seeking for the permit cannot be based, to a decisive extent, on his subjective attitude.

Moreover, in the same vein is the most recent decision of the Constitutional Court, which, by declaring, in Judgment no. 20 of 2022, that the question of legitimacy raised with reference to the difference in the burden of proof required from those who, respectively, have not cooperated with the justice system by choice or because objectively unable to do so, was unfounded, considered that whether the application is granted or is not depends on the objective situation examined by the supervising court, to which the system, not unreasonably, is anchored in order to establish its presumptive force and, consequently, to define the probative regime necessary to overcome it (*Court of Cassation n. 38832/22, § 4 – not official translation- see attachment*).

As further proof of the change in the internal system in convention oriented terms, reference is made also to the **jurisprudence of the merits courts**.

As mere example, it is referred to a decision on the merits, in which a prisoner, sentenced to life imprisonment for mafia-type offences, was granted a permit award on the basis, not only of a positive course of treatment in prison, but also of rigorous concrete evidence indicating an actual dissociation from the criminal context to which he belonged, including the publication in an online newspaper of a letter begging the pardon of the victims, considered as a distancing from past actions and repudiation of previous criminal connections (*Tribunale di Sorveglianza Perugia n. 587/2021 – see attachment*)

The **Constitutional Court**, by **Ordinance n. 97 of 2021**, on the issue of constitution compliance of the impossibility for those life-sentenced for mafia-type crimes and not cooperating with justice to benefit from the conditional release, raised by the Supreme Court, found the contrast with the constitution of the relevant regulatory framework as it stood (*see attachment*).

In particular, the Constitutional Court has, *inter alia*, held, in the same vein of its precedent Judgment No. 253 of 2019 on the subject of the permit award (*permesso premio*), that *the presumption of dangerousness incumbent on a person sentenced to life imprisonment for mafia-related offences who does not cooperate with the courts is not, per se, in tension with the constitutional parameters referred to by the referring court. It is not at all unreasonable (…) to presume that he maintains ties with the criminal organisation to which he originally belonged. But, indeed, this tension is highlighted where it is established that cooperation is the only path available to the life-sentenced person to accede to the assessment on which his return to liberty meaningfully depends. Even in such a case, the presumption in question must, then, become relative and can be overcome by contrary evidence that can be assessed by the supervisory court.*

The absolute nature of the presumption of actuality of links with organised crime prevents, in fact, the supervisory magistrate from assessing - after a long period of incarceration, which may have led to significant transformations in the prisoner's personality (Judgment No. 149 of 2018) - the entire prison course of the convicted life prisoner, in contrast with the re-educative function of punishment, understood as the recovery of even such a convicted person to social life, pursuant to Article 27, third paragraph, of the Constitution.

The absoluteness of the presumption is based on a generalisation, which may be contradicted, for example under the certain and strict conditions already provided for by the same Judgment No. 253 of 2019, by the formulation of contrary allegations that belie its assumption, and which, precisely, must be able to be the subject of specific and individualising assessment by the supervisory magistracy, particularly in the case where the prisoner has faced a long prison course, as is the case for those sentenced to a life –sentence (see § 7 – not official translation).

As to the extraordinary seriousness of the crimes in question and the need that the presumption of dangerousness of the detainee convicted for these crimes be overcome only by means of strict evidences of missing links with the original criminal organization, the Court has held that , *as said, also in the case currently under examination , the presumption of dangerousness weighing on the convicted person for the crime of mafia association and/or for crimes of "mafia context", who has not cooperated with*

the justice system, must be able to be overcome also on the basis of factors different from the cooperation and indicative of the re-socialisation course of the person concerned. However, this presumption remains, since, as said, it is not at all unreasonable to assume that he/she retains his links with the criminal organisation to which he/she originally belonged.

The reasons for such a generalisation are well known. Belonging to a mafia-type association implies, as a rule, a stable adherence to a criminal association, strongly rooted in the territory, characterised by a dense network of personal connections, endowed with particular intimidating power and capable of protracting over time (judgment no. 253 of 2019; in precautionary matters, judgments no. 48 of 2015, no. 213 and no. 57 of 2013, no. 164 and no. 231 of 2011; order no. 136 of 2017).

These reasons, it is worth reiterating, are of very considerable importance and have by no means faded in the progress of time. It is well possible that the associative bond remains unaltered even after lengthy imprisonment, precisely because of the characteristics of the criminal association in question, until the subject makes a choice of radical detachment, such as the one generally expressed by cooperating with the justice (see § 8 - not official translation)

In judgment no. 253 of 2019, this Court has already ruled that, in relation to those convicted of crimes of affiliation to a mafia association (and for crimes connected to it), characterised by the specific criminological connotations just described, for the sole purpose of access to the permit award, the concrete assessment of events capable of overcoming the presumption of actual links with organised crime - on the part of all the authorities involved, and first and foremost on the part of the Suprvisory magistrate - must fulfil criteria of particular rigour, proportionate to the strength of the constraint imposed by the criminal association of which the definitive abandonment is demanded.
In that case, in addition to the prison regulations in force, the upholding pronouncement referred to constitutionally necessary profiles of an evidentiary nature.
Even in the present case, and indeed in this one a fortiori, the presumption of social dangerousness of the non-cooperating life prisoner, although no longer absolute, can certainly not be overcome by virtue of regular prison conduct alone or mere participation in the re-

education process, and not even by reason of a mere declared dissociation. A fortiori, for the access to conditional release of a (non-cooperating) lifer convicted for offences connected with organised crime, and for the connected assessment of his sure repentance, it will therefore be necessary to acquire other, congruous and specific elements, such as to exclude both the actuality of his connections with organised crime and the risk of their future restoration (see § 9 - not official translation) .

The Court, therefore, in the light of these findings and in view of the need for a more harmonious revision of the entire framework of prison benefits in the case of obstructive crimes (*reati ostativi)*, referred to the Parliament the task of providing for a renewed regulation of the matter and adjourned to the public hearing of 10 May 2022.

On 10 May 2022, the Constitutional Court further postponed the decision to the public hearing on 8 November 2022, also due to the advanced state of parliamentary work.

Recently, the **Constitutional Court, by Ordinance No. 227 of 10 November 2022,** taking note of the supervened discipline set by the DL. N. 162/2022 that has transformed from absolute to relative the presumption of dangerousness preventing the granting of benefits and alternative measures in favour of non-cooperating detainees, has referred back the case to the Supreme Court in order for the latter to assess the question anew in the light of the *ius superveniens*. (*see attachment*)

Regulatory framework

At a **legislation level**, it is pointed out that the process of the legislative reform process of the subject matter has engaged the Parliament, since the previous parliamentary term, when a text was approved by the Chamber of Deputies and extensively examined also by the Senate without reaching the final approval due to the dissolution of the Chambers.

In order to comply with the Constitutional Court Ordinance (see above), the Government has issued the **Decree-Law No. 162 of 31 October 2022** - concerning "Urgent measures on the subject of the prohibition of the granting of penitentiary benefits to prisoners or internees who do not cooperate, as well as on the subject of the entry into force of Legislative Decree No. 150 of 10 October 2022, on SARS-COV-2 vaccination obligations and the prevention and combating of illegal gatherings" -, then converted into **Law n. 199 /2022**.

The following amendments have been made to the relevant laws.

Law No 354 of 26 July 1975 (Penitentiary System).

- In art. 4 bis §1 (which - in the event of conviction for certain serious offences indicated as obstructive - excludes the concession of the measures of assignment to work outside and of the alternative measures to detention, except in cases of cooperation with justice (pursuant to Article 58 *ter* of the Prison Regulations or Article 323 *bis* of the Penal Code), it is provided that once that the judge of cognition has ascertained the existence of a qualified connection between the non-obstructive crime and the obstructive crime (or, in particular, when the obstructive crime is committed "to execute or conceal one of the offences referred to in the first sentence, or in order to obtain or ensure the product or profit or the price or the impunity of said offences"), it is not possible to proceed with the dissolution of the cumulation, so that access to the benefits and alternative measures remains subject to the more onerous regime , even in case the sentence for the non-obstructive crime is being served.
- In Article 4 *bis* § 1 bis further subparagraphs have been introduced in order to identify the conditions for access to the above-mentioned benefits.
  In particular, according to the new provisions the overcoming of the prohibition of benefits in the absence of cooperation may take place - even in the case of impossible and inexcusable cooperation - in the presence of the following concomitant conditions:

- demonstration by the applicants that they have fulfilled their civil obligations and obligations of pecuniary restore resulting from the sentence or the absolute impossibility of such fulfilment.
- allegation by the applicants of specific elements that, in addition to a positive prison course, make it possible to exclude both the actuality of links with organised, terrorist or subversive crime and with the context in which the offence was committed, and the danger of re-establishing such links, even indirect or through other persons.

Thus, the elements that the applicant has to submit in order to accede to the benefits must be different and additional to:

- the regular prison conduct;
- the participation of the detainee in the re-educational programme;
- the mere declaration of dissociation from the criminal organisation to which he may belong.

The supervisory judge must, in this regard:

- take into account the personal and environmental circumstances, any reasons put forward in support of non-cooperation, the critical review of the criminal conduct and any other available information;
- ascertain the existence of initiatives taken by the person concerned in favour of the victims, both in the form of compensation and in that of restorative justice.

Then, as to criminal association crimes, the absolute legislative presumption that the commission of certain crimes demonstrates the author's membership of organised crime, or his connection with the same, and constitutes, therefore, an index of social dangerousness incompatible with the admission to extramural prison benefits is overcome by the new rules.

For specific non-association crimes, the burden of allegation is much lighter. It is limited to the submission of elements suitable for excluding links with the criminal context in which the crime was committed (*§ 1.1bis.1 of art. 4 bis*), unless the detainees concerned have been convicted also of the criminal conspiracy aiming at the commission of those crimes (*§ 1.1bis.2 of art. 4 bis*)

In brief, prisoners and internees for mafia-related crimes and, in general, crimes of an associative nature, may benefit from alternative penitentiary measures, provided that they prove the fulfilment of civil obligations and obligations of pecuniary reparation resulting from the conviction, or "the absolute impossibility of such fulfilment" and allege specific elements (other than and in addition to regular prison conduct, their participation in the re-educational process and the mere declaration of dissociation from the criminal organisation to which they could belong) able to exclude the actual existence of links with organised crime, terrorist or subversive criminality and with the context in which the crime was committed, as well as the danger of the re-establishment of such links, even indirectly or through third parties.

As to the procedure, in paragraph 2 of Article 4 *bis,* new rules are provided, concerning the proceeding for granting prison benefits to non-cooperating prisoners convicted of so-called obstructive crimes.
In particular, the supervisory judge, before deciding on the petition, is obliged to seek the opinion of the public prosecutor at the court who delivered the first instance sentence or, in the case of convictions for the serious crimes indicated in Article 51, paragraphs 3 *bis* and 3 *quater* of the Code of Criminal Procedure, of the public prosecutor at the court of the district where the judge who delivered the first instance sentence is located and of the National Anti-Mafia and Anti-Terrorism Prosecutor.

The supervisory judge shall also:

- acquire information from the management of the institute where the applicant is detained;

- order, with regard to the applicant, to members of his family and to persons connected to him, verifications on the income and patrimonial conditions, on the standard of living, on the economic activities carried out, if any, and on the pending or final measures of personal or patrimonial prevention.

As regards to the timing of the procedure, the reform provides that, in cases under §§ 1 bis and 1 bis 1, the opinions, with any preliminary requests, and the information and results of the investigations, have to be rendered within sixty days from the request, with a possible extension of further thirty days depending on the complexity of the investigations, and that after this deadline the judge must decide even in the absence of the opinions and information requested.
In the event that the investigation carried out reveals evidence of the current existence of links with organised, terrorist and subversive crime or with the context in which the offence was committed, or of the danger of the re-establishment of such links, the convicted person is burdened to provide, within a reasonable period of time, suitable evidence to the contrary.

In this decision, the judge must specifically indicate the reasons for granting or rejecting the benefits, also considering the opinions acquired.

In case of prisoners' subject to the special prison regime provided for in Article 41 *bis* of the Penitentiary System, the granting of benefits is subject to the prior revocation of that regime.

A new paragraph 2 *ter of* Article 4-*bis* specifies that the functions of public prosecutor for the hearings of the surveillance court concerning the granting of penitentiary benefits to persons convicted of serious offences referred to in Article 51, paragraphs 3 *bis* and 3 *quater*, of the Code of Criminal Procedure may be performed by the public prosecutor at the court of the district where the first instance sentence was pronounced (In this regard, it is recalled that Article 678 of the Code of Criminal Procedure, which governs the surveillance proceedings, specifies in paragraph 3 that

the functions of the public prosecutor are exercised, before the surveillance court, by the public prosecutor at the court of appeal and, before the surveillance magistrate, by the public prosecutor at the court where the surveillance office is located).

The provision - paragraph 3 *bis* of Article 4 *bis*- concerning the impossibility of granting penitentiary benefits to persons convicted of intentional crimes when the National Anti-Mafia and Anti-Terrorism Prosecutor or the District Prosecutor has represented the actuality of links with organised crime has been suppressed.

With reference to the benefits of outside work (Article 21 of the Penitentiary System) and permit award (Article 30 ter of the Penitentiary System), there is the competence of the Supervising Court - instead of the current competence of the supervising magistrate- in cases concerning the offences:
- committed for the purposes of terrorism, including international terrorism and subversion of the democratic order through the perpetration of acts of violence;
- of mafia association referred to in Article 416 *bis* of the Criminal Code or committed by availing oneself of the conditions provided for in that article or with the aim of facilitating mafia associations.
These are, therefore, some of the offences included in the broader list referred to in Article 4 *bis* of the Penitentiary System.

The Law- Decree no. 152 of 1991 (*Urgent measures to combat organised crime and for transparency and good performance of administrative activity*)

As to the conditional release, the Law Decree no. 152 of 1991 extends the restrictive discipline for access to prison benefits provided for in Article 4 *bis* of the Penitentiary System also to it.
The reform in question intervened on the law-decree to reiterate (in comparison with the previous discipline) that access to conditional release is subject to the fulfilment

of the conditions for the granting of other benefits and the procedural rules laid down in Article 4bis o.p as currently amended.

Several changes to the existing rules on application of conditional release (paragraph 2 of Article 2 of Decree-Law no. 152 of 1991) to those sentenced to life imprisonment for the so-called obstructive offences (*reati ostativi)* and not cooperating with justice, referred to in paragraph 1 of Article 4 *bis*, have been provided:

- the application for conditional release can be made after they have served 30 years of their sentence (for those sentenced to life imprisonment for a non-obstructive offence, and for collaborators, the 26-year requirement remains);
- it takes 10 years from the date of conditional release to extinguish the sentence of life imprisonment and to revoke the personal security measures ordered by the judge (for those sentenced to life imprisonment for a non-obstructive offence, and for co-operators, it takes 5 years);
- probation - always ordered for those sentenced to conditional release - is accompanied by a prohibition to meet or otherwise maintain contact with persons convicted of the serious offences referred to in Article 51, paragraphs 3 bis and 3 quater, of the Code of Criminal Procedure; persons subject to prevention measures referred to in letters a), b), d), e), f) and g) of Article 4 of d. No. 159 of 2011 (the so-called Code of Anti-Mafia Laws); persons convicted of offences referred to in the aforementioned letters.

About the transitional regime applicable to prisoners convicted of obstructive crimes committed before the reform, it has been provided that alternative measures to detention may be granted in accordance with the procedure introduced by the new provision (Article 4a § 2) provided that evidence is acquired to rule out the actual existence of links with organised, terrorist and subversive crime.
In addition, for the purposes of granting conditional release, those sentenced to life imprisonment are not subject to the stricter conditions set out in the said amendment.

Law No. 646 of 1982

The amended Article 25 of Law No. 646 of 1982 currently sets forth the possibility for the *Guardia di Finanza* to carry out tax investigations against detainees to whom the prison regime provided for in Article *41 bis* of the Penitentiary System has been applied (lett. a).

In this respect it's recalled that according to Art. 41 *bis* of the Penitentiary System when serious reasons of public order and security exist, including at the request of the Minister of the Interior, the Minister of Justice also has the power to suspend, in whole or in part, for those detained or interned for any of the offences referred to in the first sentence of paragraph 1 of Article 4 *bis* or, in any case, for an offence committed by availing oneself of the conditions or for the purpose of facilitating mafia-type association, in relation to which there is evidence suggesting the existence of links with a criminal, terrorist or subversive association, the application of the rules of treatment and of the institutions provided for by this Decree-Law which may be in concrete conflict with the requirements of order and security.

The measure of suspension is adopted by reasoned decree of the Minister of Justice, also at the request of the Minister of the Interior, after hearing the office of the public prosecutor conducting the preliminary investigations or the office of the prosecuting judge and after obtaining any other necessary information from the National Anti-Mafia and Anti-Terrorism Directorate, the central police bodies and those specialised in the fight against organised, terrorist or subversive crime, within their respective competences.

It lasts four years and may be extended in the same form for successive periods of two years each. The extension is ordered when it appears that the ability to maintain links with the criminal, terrorist or subversive association has not ceased, taking into account specific conditions. The mere passage of time does not constitute, in itself, a sufficient element to exclude the ability to maintain links with the association or to demonstrate that the association has ceased to operate (paragraph 2-*bis*).

As said above, following the **Constitutional Court Ordinance No. 227 of 10 November 2022,** the case concerning the application of conditional release has been further referred to the Supreme Court for a new assessment in the light of these new statutory regulations.

In conclusion, it's worth to be noted that the current discipline has fully aligned with the principles set by the ECtHR. In fact, also detainees convicted for mafia-type crimes, even in the absence of any cooperation with justice, under certain conditions justified by the seriousness and peculiarity of the crimes concerned, can benefit from alternative penitentiary measures, including the conditional release in favor of those sentenced to life-imprisonment.

The strengthened evidentiary regime now envisaged by the reform, with a view to proven dissociation from the criminal context and equally certain exclusion of the risk of new contacts, finds its full justification in the particular criminal connotation of the offences in question, consistently highlighted by all domestic and international courts that have dealt with issues related to mafia crimes and the ensuing implications on security and public order, including the European Court of Human Rights.

Indeed, the ECtHR itself, precisely in another judgment concerning the same applicant, has shown awareness of the mafia phenomenon and already endorsed the extraordinary rigour and caution adopted by the State in dealing with questions relating to persons responsible for mafia offences, finding the State's conduct compliant with Convention and fully justified by needs of security and public order (*M. V. c. ITALIA- n. 45106/04- judgment of 5.10.2006 : § 69. In the Court's opinion, it is undeniable that the transfer of such a prisoner entails particularly stringent security measures and a risk of absconding or attacks. It may also provide the detainee with an opportunity to renew contact with the criminal organisations to which he is suspected of belonging.* (…) *§ 71. At the same time it should be pointed out that the applicant was accused of serious crimes related to the Mafia's activities. The fight against that scourge may, in certain cases, require the adoption of measures intended to protect, in particular, public safety and order and to prevent other criminal offences (see Pantano v. Italy, no. 60851/00, §*

69, 6 November 2003). With its rigid hierarchical structure and very strict rules and its substantial power of intimidation based on the rule of silence and the difficulty in identifying its followers, the Mafia represents a sort of criminal opposition force capable of influencing public life directly or indirectly and of infiltrating the institutions (see Contrada v. Italy, 24 August 1998, § 67, Reports 1998-V). It is not therefore unreasonable to consider that its members may, even by their mere presence in the courtroom, exercise undue pressure on other parties in the proceedings, especially the victims and pentiti.)

D) CONCLUSIONS

In the light of the foregoing, the Government highlights the meaningful changes of the domestic system in accordance with the principles established by the Court in the case at hand.

The current legal framework, in fact, as inferable also by the proceeding lastly filed by the applicant and by the domestic case-law(see above), provides for a concrete opportunity for all persons convicted of mafia offences to access, even in the absence of cooperation, to the prison benefits and, in particular, for those sentenced to life imprisonment, such as the applicant, to have access to conditional release.

The legislative reform put in place by the State has, thus, introduced in the system the concrete perspective for a detainee or life prisoner convicted of mafia crimes to have his/her request for penitentiary benefits or release and his/her development towards a reeducation and the restore of a law-abiding lifestyle examined by a court.

As to the functioning of this assessment mechanism, the Court itself, in the judgment concerned, has stated that Contracting States enjoy a wide margin of appreciation in deciding the appropriate length of prison sentences for certain offences, and the mere fact that a life sentence can, in practice, be served in its entirety does not render it non-reducible (László Magyar, cited above, § 72). Accordingly, the possibility of reviewing of perpetual imprisonment implies the possibility for the convicted person to request a release, but not necessarily to obtain release if he/she continues to constitute a danger for society *(judgment § 144*).

Moreover, the Court, aware of the extraordinary danger for society posed by the crimes of which the applicant has been convicted (judg. *§ 130*), has established that a legal presumption of dangerousness may be justified, in particular when it is not absolute but can be contradicted by proof to the contrary *(judg. § 131*), and that, in such a criminal context, it's absolutely reasonable that the State may require the demonstration of 'dissociation' from the mafia environment even in ways other than collaboration (*judg. § 143*).

That being said, it is worth pointing out that the mechanism for assessing the dissociation of the convicted person and the lack of danger to society provided for by the current system, as described above, responds perfectly to the Court's indications, providing that, even in the absence of cooperation, the presumption of dangerousness inherent in this type of offence and of persistent links with organized crime and the danger of the re-establishment of such relations can be overcome by means of an 'enhanced' evidentiary regime, which takes into account both the course of treatment and other congruous and specific elements, including a preliminary and in-depth investigation activity on the part of the competent authorities closest to the facts ascribed to the offender.

In the light of the foregoing and of all the elements submitted, the Government deems to have put in place all the measures, on an individual and a general level, involved in the implementation of the judgment concerned and to have duly fulfilled all its obligations under art. 41 and 46 of the Convention.

In consideration of that, the Government submits to the attention of the Committee of Ministers all the efforts deployed and the meaningful steps taken in such a complex matter, kindly asking for a positive appreciation of the remarkable results achieved and the closure of the monitoring of the case.