

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

FIRST SECTION

CASE OF ASCIUTTO AND OTHERS v. ITALY

(Applications nos. 23169/16 and 3 others –
see appended list)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading punishment • Application to the applicants of the irreducible *ergastolo ostativo* life imprisonment regime under the 1992 version of section 4 *bis* of the Prison Administration Act, according to which prisoners convicted for mafia-related crimes who refused to cooperate with the judicial authorities were not entitled to parole • Newly introduced 2022 legal framework, insofar as interpreted by the domestic courts in a manner consistent with the Court's case-law, regarded as affording the applicants a realistic prospect of review of their life sentences under clear conditions • Review required to focus mainly on the prisoner's rehabilitation process, while allowing domestic courts to take into account residual dangerousness, provided a proper balance is maintained between the two considerations • Compatibility of the 30-year minimum imprisonment period to be assessed in the light of the particular circumstances of each case • No breach after the enactment of the reform and, in respect of one of the applicants, after the domestic court's decision in his case applying the ordinary life-sentence regime with the possibility of parole • Breach in relation to the preceding periods after the application of the *ergastolo ostativo regime* to the applicants • Situation of uncertainty with a lack of any clear and realistic prospect of early release • Findings in *Marcello Viola v. Italy (no. 2)* applicable in that respect
Art 7 • Heavier penalty • Retroactivity • Transformation by the domestic courts of initially reducible life sentences into irreducible ones, by applying the *ergastolo ostativo* regime after the criminal offences were committed, changed the scope of the original punishment by imposing a heavier penalty • Significant change of scope of penalty going beyond mere measures of enforcement, thus rendering Art 7 applicable • Lack of foreseeability contrary to the legal certainty principle
Art 7 • *Nullum crimen sine lege* • *Nulla poena sine lege* • Heavier penalty • Unforeseeable application of the *ergastolo ostativo* regime to the life sentence of one of the applicants despite "mafia-type" circumstances which triggered the application of that regime being ruled out by the judgment convicting him

Prepared by the Registry. Does not bind the Court.

STRASBOURG

3 September 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Asciutto and Others v. Italy,

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

Ivana Jelić*, President*,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the applications (nos. 23169/16 and 3 others – see appended table) 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 four Italian nationals, ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Italian Government ("the Government") of the complaints under Articles 3 and 7 of the Convention concerning the regime of life imprisonment known as *ergastolo ostativo* and to declare inadmissible the remainder of the applications;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by *Associazione Antigone Onlus*, who was granted leave to intervene by the President of the Section under Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court);

Having deliberated in private on 30 June 2026,

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

INTRODUCTION

1. The applications concern the irreducibility of the applicants' life sentences as a result of the application of section 4 *bis* of Law no. 354 of 26 July 1975 ("the Prison Administration Act"), as amended by Decree-Law no. 306 of 8 June 1992 (subsequently transposed into Law no. 356 of 7 August 1992) (hereinafter "section 4 *bis*") (see paragraph 87 below).

2. That provision introduced the regime of life imprisonment known as *ergastolo ostativo* (see *Marcello Viola v. Italy (no. 2)*, no. 77633/16, 13 June 2019) in respect of prisoners who had been convicted of one of the offences referred to in section 4 *bis* (notably, mafia-related crimes) and refused to "cooperate with the judicial authorities". Such prisoners were not entitled to conditional release, access to alternatives to detention or "prison benefits" (*benefici penitenziari* – hereinafter "sentence adjustments" – that is to say measures which aim at promoting a prisoner's rehabilitation).

3. In the present cases, the applicants complained that the prohibition on conditional release and sentence adjustments provided in section 4 *bis* had been applied to their life sentences despite the fact that the mafia-related offences they had committed were punishable by fixed-term imprisonment. However, the domestic courts responsible for enforcing sentences had interpreted the judgments convicting them as implying that the offences for which they had been sentenced to life imprisonment had clearly been committed using the so-called "mafia method" (*utilizzando il metodo mafioso*), even though the aggravating "mafia-type" circumstances (known as *aggravante del "metodo mafioso"* and *della "agevolazione mafiosa"*) referred to in section 7 of Decree-Law no. 152 of 13 May 1991 (subsequently transposed into Law no. 203 of 12 July 1991) (hereinafter "section 7") (see below paragraph 86) had either not been formally included in the charges against them or – in respect of application no. 17937/20 – had been ruled out by the convicting judgment (see below paragraphs 103-112). That had prompted the application of section 4 *bis*, with all the attendant consequences.

4. Additionally, (i) in applications nos. 23169/16, 23834/18 and 37683/19, the applicants complained of the retrospective application of section 4 *bis*, and (ii) in application no. 17937/20 the applicant complained of the lack of foreseeability of the penalty that had been imposed on him.

5. The applications raise issues under Article 3 and Article 7 of the Convention.

6. Following the Court's judgment in *Marcello Viola* (cited above) and Constitutional Court order no. 97 of 15 April 2021 (see paragraph 118 below), the Italian legislature amended, through Decree-Law no. 162 of 31 October 2022 (subsequently transposed – by means of amendments – into Law no. 199 of 30 December 2022) the relevant provisions; those amendments introduced the possibility for a prisoner convicted of one of the offences referred to in section 4 *bis* to secure for himself, under certain conditions, conditional release, alternative measures to detention, and sentence adjustments for those convicted for, *inter alia*, mafia-related crimes (see paragraphs 92-94 below).

THE FACTS

7. The applicants' personal details, the names of their representatives and the dates on which their respective applications were lodged are set out in the appended table.

8. The Government were represented by their Agent, Mr L. D'Ascia, State Attorney (*Avvocato dello Stato*).

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

I. APPLICATION No. 23169/16

10. The applicant is currently incarcerated in Naples Secondigliano Prison. He has been detained uninterruptedly since 29 June 1992.

A. The applicant's convictions

11. The applicant is currently serving cumulative life sentences, pursuant to a decision (*provvedimento di esecuzione di pene concorrenti*) (see paragraph 127 below) issued by the Reggio Calabria public prosecutor's office on 16 September 2015. The decision set the overall prison sentence to be imposed in relation to several judgments that had found the applicant guilty of numerous offences committed between 1984 and 1996 – including membership of a mafia-type criminal organisation under Article 416 *bis* of the Criminal Code, extortion, drug trafficking, unlawful possession of arms, and aiding and abetting in multiple aggravated murders.

12. Although some of the crimes (including the offence of membership of a mafia-type criminal organisation) had been committed after the entry into force of section 4 *bis* as amended by Decree-Law no. 306 of 8 June 1992 (see paragraph 87 below), the murders in relation to which life imprisonment were imposed on him had been committed *before* it had come into force. In particular, in so far as relevant to the present case, the applicant was sentenced to life imprisonment by judgments delivered by: (i) the Turin Assize Court of Appeal of 7 April 1995 convicting him of a murder committed on 26 November 1991; (ii) the Palmi Assize Court of 19 July 2000 convicting him of murder and other crimes – all committed between July and September 1991; (iii) the Reggio Calabria Assize Court of Appeal of 11 August 2000 convicting him of several crimes, including three murders – all committed in 1990; and (iv) the Reggio Calabria Assize Court of Appeal of 5 March 2002, convicting him of several crimes, including several murders – all committed between 1989 and 1991.

13. A further conviction for murder – committed on 25 June 1992, but not aggravated by "mafia-type" circumstances or membership of a mafia-type criminal organisation (see paragraphs 86 and 103-112) – was delivered by a judgment of the Torino Assize Court of Appeal on 5 March 2002, which sentenced the applicant to 28 years' imprisonment.

B. The applicant's detention

14. From the date of his arrest (on 29 June 1992), the applicant was held in daytime isolation for two years. Moreover, between September 1994 and July 2006, he was detained under the special prison regime provided for by section 41 *bis*, subsection 2 (hereinafter "section 41 *bis*") of the Prison

Administration Act (hereinafter that regime is referred to as "the 41 *bis* regime").

15. On 7 October 2005, the Ministry of Justice issued an order extending the 41 *bis* regime for another year on the basis of the prominent role that the applicant had played at the top of the mafia group known as "Asciutto Neri Grimaldi". The applicant appealed against the order. The Perugia court responsible for supervising the execution of sentences (*tribunale di sorveglianza*) set the order aside, finding that the authorities had merely restated the circumstances justifying the initial application of the special regime, and had failed to provide any specific evidence of his actual ability to maintain contacts with the organisation in question, despite his prolonged incarceration.

16. Between 2010 and 2012, the applicant lodged (i) two applications for prison leave (*permesso premio*) – a measure granted to prisoners who have demonstrated good behaviour (*condotta regolare*) in prison, who are enabled to spend a maximum of fifteen days outside the prison, and (ii) an application for the imposition of a semi-custodial regime (*semilibertà*) – allowing prisoners to spend part of the day outside prison in order to work or participate in activities useful for social reintegration. Both applications for prison leave were ruled inadmissible, since, at the time of the lodging of those applications, the applicant had not yet finished serving the fixed-term prison sentences imposed in respect of crimes that fell under section 4 *bis* of the Prison Administration Act. On 10 December 2012, the Naples court responsible for supervising the execution of sentences ruled admissible but dismissed on the merits the applicant's application for the imposition of a semi-custodial regime, on account of the relevant role the applicant had played within his mafia group, which was still active.

17. In 2013, the applicant lodged another application for prison leave, which was ruled inadmissible by the Naples judge responsible for supervising the execution of sentences (*magistrato di sorveglianza*). The Naples judge stated that the applicant's most recent conviction for murder (see paragraph 13 above) precluded eligibility (under section 4 *bis*) for prison leave. In particular, according to the Naples judge, the crime had to be considered to have been "mafia-related" – despite the fact that specific "mafia-type" circumstances (as set out in section 7) were neither included in the charges against the applicant nor referred to in the reasoning of the judgment (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 106-112 below).

18. Following the applicant's appeal, on 25 June 2014 the Naples court responsible for supervising the execution of sentences upheld the inadmissibility decision, generically stating that the applicant had been convicted of membership of a mafia-type criminal organisation and of murder, and had neither cooperated with the judicial authorities nor lodged a preliminary request under section 58 *ter* of the Prison Administration Act (see

paragraph 90 below) for an assessment of whether such cooperation could be deemed in his case to be "impossible" or "unenforceable" (hereinafter a "section 58 *ter* request").

19. The applicant appealed on points of law against that decision. He argued that he had already served the portion of his sentence relating to the crimes falling under section 4 *bis*; that portion could therefore be separated from the remaining portion of his sentence (*scioglimento del cumulo*), allowing access to sentence adjustments (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 129-131). Invoking the principle of rehabilitation enshrined in Article 27 § 3 of the Italian Constitution, and the Court's judgment in the case *Vinter and Others v. the United Kingdom* [GC] (nos. 66069/09 and 2 others, ECHR 2013), he argued that the imposition of an irreducible life sentence such as the so-called *ergastolo ostativo* under section 4 *bis* was unconstitutional. Referring to the requirement that a prisoner under the *ergastolo ostativo* regime cooperate with the judicial authorities in order to become eligible for conditional release he also argued that the application of section 4 *bis* ultimately resulted in the imposition of a more severe sanction regime on the basis of the post-conviction behaviour of the prisoner in question.

20. By order no. 21868 of 18 November 2015, the Court of Cassation, upheld the lower courts' decisions and ruled the applicant's appeal inadmissible, without addressing the merits of the issues raised by the applicant.

21. While the proceedings before the Court of Cassation were still pending, the applicant lodged two new applications for prison leave and a section 58 *ter* request. The first application for prison leave was ruled inadmissible, on the grounds of the applicant's failure to cooperate with the judicial authorities. The section 58 *ter* request was also ruled inadmissible by the Naples judge responsible for supervising the execution of sentences because it had not been lodged together with an application for sentence adjustment. A subsequent application for prison leave was put on hold by the Naples judge on 16 October 2015, in the light of the pending proceedings before the Court of Cassation (see paragraph 20 above) and then rejected on an unspecified date.

22. On 20 April 2016 the applicant applied to the Court.

C. The applicant's subsequent application for conditional release

23. Pending the application before the Court, the applicant lodged both a new section 58 *ter* request and an application for the imposition of a semi-custodial regime or (as an alternative) conditional release under Article 176 of the Criminal Code (*liberazione condizionale*). Both applications were rejected.

24. In particular, by order no. 2686 of 5 May 2017, the Naples court responsible for supervising the execution of sentences dismissed the section 58 *ter* request, on account of the prominent role the applicant had played at the head of the mafia clan known as "Asciutto Neri Grimaldi".

25. The same day, by its order no. 2685, the Naples court also ruled inadmissible the applicant's application for the imposition of a semi-custodial regime and conditional release, ruling that no evidence of cooperation with the judicial authorities had been provided, and that the "impossibility" and "unenforceability" of such cooperation had been excluded by order no. 2686 (see paragraph above).

26. The applicant lodged an appeal with the Court of Cassation, which (by orders nos. 259 and 260 of 12 July 2018) upheld both decisions.

27. A new application for prison leave was rejected by the Naples judge responsible for supervising the execution of sentences on 13 December 2018 and by the Naples court responsible for supervising the execution of sentences on 9 May 2019, which found that section 4 *bis* applied to the applicant's life sentences.

D. The applicant's application for the imposition of a semi-custodial regime following the coming into force of Decree-Law no. 162 of 2022

28. Following the reform of section 4 *bis* implemented by Decree-Law no. 162 of 31 October 2022 (see paragraphs 92-95 below), the applicant lodged a new application for the imposition of a semi-custodial regime. The application was allowed on 19 May 2023 by the Naples court responsible for supervising the execution of sentences. The Naples court took into account the applicant's active participation in the rehabilitation programme designed for him and the significant passage of time since the commission of the offences in question, which in the court's opinion outweighed the emphasis placed by the Anti-Mafia Public Prosecutor's Office on the applicant's past criminal conduct. The Naples court further stated that any exclusion from sentence adjustments that could not be attributed to specific and recent conduct on the part of a convicted person had been in breach of the principle of rehabilitation.

II. APPLICATION No. 23834/18

29. The applicant is currently incarcerated in Sulmona Prison. He has been detained uninterruptedly since 23 May 1994.

A. The applicant's convictions

30. The applicant is serving a life sentence on the basis of a decision issued by the Reggio Calabria public prosecutor's office in June 2002. The decision determined the overall prison sentence to be imposed in respect of three separate judgments: (i) a conviction for drug offences, committed between 1983 and 1984, for which he was sentenced to 11 years' imprisonment by the Messina Court of Appeal; (ii) a conviction for murder, committed in 1989, for which he was sentenced to life imprisonment by the Reggio Calabria Assize Court of Appeal, and (iii) a conviction for membership of a mafia-type criminal organisation until 1995, for which he was sentenced to 13 years' imprisonment by a judgment of the Reggio Calabria Assize Court of Appeal of 2 April 2001.

31. By a subsequent decision issued by the same public prosecutor's office on 7 July 2004, he was also sentenced to daytime isolation for an overall period of seven months.

B. The applicant's detention

32. From the date of his arrest (23 May 1994) until July 2022 the applicant was held under a high-security prison regime (*regime di alta sicurezza*) in the light of his conviction for membership of a mafia-type criminal organisation under Article 416 *bis* of the Criminal Code (a crime covered by section 4 *bis*).

33. In 2014, he lodged a request to be transferred to a different prison area and for the standard regime governing telephone calls and visits (*regime ordinario di colloqui visivi e telefonici previsti per il regime di media sicurezza*) to be applied to him, arguing that he had already served the portion of sentence relating to the crime under Article 416 *bis* (see paragraph 30 above), which could therefore be separated from the remaining portion of his sentence. The prison authorities refused that request.

34. The applicant appealed against the prison authorities' decision to the Pavia judge responsible for supervising the execution of sentences. On 2 May 2016, the Pavia judge rejected the appeal, stating that the applicant's conviction for murder fell within the scope of section 4 *bis*. The judge observed that "in the light of the fact that the crime in question [had been] committed before the entry into force of section 7 [which defined the "mafia-type"] aggravating circumstances, [it had not been possible to cite such] circumstances in the charges against the applicant". However, despite the fact that the crime had not been aggravated by "mafia-type"

circumstances (as set out in section 7), the Pavia judge nevertheless interpreted the reasoning behind the ruling of the Reggio Calabria Assize Court of Appeal (see paragraph 30 above) as indicating that the murder had been "mafia-related" – thereby justifying the application of section 4 *bis* (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 106-112). In particular, according to the judgment, the murder in question had been committed within the framework of violent conflict between rival mafia clans in Reggio Calabria, premeditated by the applicant and committed while he had been a fugitive.

35. The applicant lodged an appeal against the Pavia judge's decision. He emphasised that he had previously requested a fresh determination of his overall prison sentence on the basis of the alleged continuity between (i) the facts that had given rise to the conviction for murder and (ii) those relating to his membership of a mafia-type criminal organisation; however, the request had been rejected by a decision of 21 February 2006 delivered by the Reggio Calabria Assize Court of Appeal. According to the Assize Court of Appeal, there was no continuity between the above-mentioned facts, which did not form part of the same criminal plan (*disegno criminoso*), given that the crime of membership of a mafia-type criminal organisation had been committed at a later time than the murder. Consequently, the applicant contended that it would be inconsistent, in the light of that conclusion, not to separate the portion of sentence already served for the offence covered by section 4 *bis* from the portion he had yet to serve. By order no. 46 of 19 December 2016, the Milan court responsible for supervising the execution of sentences rejected the appeal, upholding the Pavia judge's decision.

36. The applicant lodged an appeal on points of law with the Court of Cassation, complaining of (i) the retrospective application of the "aggravating circumstances" criterion set out in section 7 to his conviction for murder and (ii) the fact that, as a consequence of the application of the aggravating-circumstances criterion during the enforcement of his sentence, all the restrictions related to section 4 *bis* had automatically been applied to him. The Court of Cassation, by judgment no. 54130 of 15 November 2017, upheld the lower courts' decisions. It reiterated the interpretation that, once the murder in issue had been considered linked to the mafia context:

> "a failure to cite aggravating circumstances under section 7 of Decree-Law no. 152 of 1991 appears irrelevant, as the latter could not have been formally applied to the applicant, owing to the principle of non-retroactivity of unfavourable criminal law set out in Article 2 of the Criminal Code, given that the crime had occurred prior to the entry into force of the provision in question. This, however, does not prevent the offence in issue from being substantially included in the scope of offences falling under the application of section 4 *bis*."

37. On 11 May 2018 the applicant lodged his application with the Court.

C. The applicant's subsequent application for conditional release

38. Pending the proceedings before the Court, the applicant lodged an application for conditional release, which was rejected.

39. On 21 March 2019, the Milan court responsible for supervising the execution of sentences ruled the application inadmissible owing to the applicant's failure to lodge a section 58 *ter* request and to the fact that he had not served the minimum period provided by Article 176 of the Criminal Code as a condition of being granted sentence adjustments. The applicant lodged an appeal on points of law, complaining both of the retroactive application of section 4 *bis* to his case and of the method applied by the Milan court to calculate the minimum period under Article 176 of the Criminal Code. The Court of Cassation, by its order no. 12704 of 22 April 2020, ruled the applicant's appeal inadmissible for the same reasons as those given in the Milan court's decision.

D. Most recent developments

40. A subsequent application for prison leave was dismissed on the merits by the Pavia judge responsible for supervising the execution of sentences on 20 December 2019 and by the Milan court responsible for supervising the execution of sentences on 18 June 2020. Both domestic courts ruled that the murder in question had been aggravated by the "mafia-type" circumstances surrounding it. Even so, taking into account Constitutional Court judgment no. 253 of 23 October 2019 (see paragraphs 113-114 below), they both ruled the applicant's application admissible; however, they dismissed it owing to the applicant's failure to take part in the rehabilitation programme designed for him.

41. Similarly, a new application for conditional release was ruled admissible, but was dismissed on the merits by the L'Aquila court responsible for supervising the execution of sentences. In particular, by its order no. 1254 of 10 May 2022, the L'Aquila court acknowledged that the applicant had already served the sentence imposed on him in respect of his conviction for membership of a mafia-type criminal organisation (which was to be considered the only crime to fall under section 4 *bis*); it further noted that the murder had been committed before the introduction of the latter provision and could not fall under its scope. On the merits, however, the L'Aquila court held that (i) the applicant's previous high criminal profile and prominent role as the head of the mafia clan known as the "Araniti" – which was still active in the Province of Reggio Calabria, together with (ii) the limited extent of his participation in the rehabilitation programme (albeit admittedly owing to his advanced age) rendered the application premature.

42. By its order no. 1076 of 21 July 2022, the L'Aquila judge responsible for supervising the execution of sentences allowed a new application lodged

by the applicant for the ordinary regime concerning telephone calls and visits to be applied to him. In its reasoning, the judge referred to the L'Aquila court's decision on the admissibility of the conditional release, and stated that heavier prison regime could not be retrospectively imposed upon the applicant.

43. By order no. 2869 of 2 September 2022, the L'Aquila judge responsible for supervising the execution of sentences also allowed a new application for prison leave lodged by the applicant. That decision was subsequently overturned (following an appeal lodged by the public prosecutor) by the L'Aquila court responsible for the enforcement of sentences on 18 November 2022. Reiterating the judgment of the Constitutional Court no. 32 of 12 February 2020 (see paragraph 115 below), which made a distinction – in respect of the applicability of the principle of non-retroactivity of criminal law – between conditional release and other sentence adjustments, the L'Aquila court held that the conviction for murder had to be considered as falling within the scope of section 4 *bis*. However, the court assessed the merits of the application in the light of the principles set out in the Constitutional Court judgment no. 253 of 2019 and deemed that it had been lodged prematurely in the light of the applicant's limited participation to the rehabilitation programme designed for him.

III. APPLICATION No. 37683/19

44. The applicant is currently incarcerated in Parma Prison. He has been detained uninterruptedly since 6 February 1991.

45. He was granted legal aid and was represented by Ms. Veronica Manca, a lawyer practising in Trento.

A. The applicant's convictions

46. The applicant is serving cumulative life sentences, pursuant to a decision of the Public Prosecutor's Office at the Court of Caltanissetta of 23 January 2008, which determined the overall prison sentence in relation to 12 judgments that found the applicant guilty of numerous offences – including membership of a mafia-type criminal organisation, unlawful possession of arms, multiple aggravated murders, attempted murders, and mass murders (*stragi*). All the crimes were committed between August 1981 and February 1991.

B. The applicant's detention

47. Between 1991 and 2003, the applicant was detained under the special prison regime provided for by section 41 *bis*. During that time, he was held in daytime isolation for an overall period of three years.

48. While still being held under the 41 *bis* regime, the applicant lodged an application for prison leave that was ruled admissible but dismissed on the merits by the L'Aquila judge responsible for supervising the execution of sentences on 17 May 2002, and by the L'Aquila court responsible for supervising the execution of sentences on 24 October 2002. The domestic courts recognised that the applicant had already served the portion of his sentence relating to the crimes falling within the scope of section 4 *bis*, which could therefore be separated from the remaining sentences (see, in respect of the relevant domestic case-law concerning separation of cumulative sentences, paragraphs 129-131 below). However, they dismissed the application owing to the fact that the applicant was serving his sentence under the 41 *bis* regime (which indicated the level of danger that he posed).

49. On 28 December 2003, the Ministry of Justice issued an order extending the 41 *bis* regime in the applicant's case. The applicant appealed against the Ministry's decision. In an order of 4 June 2003, the Rome court responsible for supervising the execution of sentences found that the Ministry had based its decision on the fact that the criminal organisation in question was still active and that the applicant had played a significant role in its past activities – but without providing any specific and updated information to prove that the applicant continued to maintain contact with that organisation. The Rome court therefore ended the application of the special prison regime.

50. By an order of 7 March 2005, the Caltanissetta judge responsible for supervising the execution of sentences allowed an application lodged by the applicant for the ordinary regime concerning telephone calls and visits to be applied to him; the court also ordered his transfer from the high-security prison area where he had been detained until that moment. The Caltanissetta judge held that the applicant was at that time detained in order to serve a series of sentences for multiple homicides; although those homicides had undoubtedly been committed within a mafia context, the aggravating circumstances under section 7 had not been included in the charges against the applicant, as those offences had occurred before the above-cited legislation had come into force.

51. In 2014, the applicant lodged a new application for prison leave. By an order of 16 September 2014, the application was ruled admissible by the Reggio Emilia judge responsible for supervising the execution of sentences but was dismissed on the merits.

52. The applicant appealed to the Bologna court responsible for supervising the execution of sentences; by an order of 4 May 2015 that court upheld the first-instance decision, whose concise reasoning had indicated a need to gather further information concerning the applicant's participation in the rehabilitation programme.

53. The applicant lodged an appeal on points of law with the Court of Cassation, complaining of a lack of reasoning in the Bologna court's decision.

The Court of Cassation allowed the applicant's appeal and remitted the case to the Bologna court for further consideration.

54. On 21 December 2017, the Bologna court responsible for supervising the execution of sentences held that the applicant's convictions concerned multiple serious offences that had been committed using the so-called "mafia method" (see below paragraphs 106-112) and with the aim of facilitating the activities of the mafia clan to which the applicant had belonged and within which he had played a prominent role (*reggente*). In the light of those circumstances, the Bologna court took into account the fact that he had neither cooperated with the judicial authorities nor shown any signs of repentance, and it dismissed the application on the merits, deeming that his "positive" behaviour while serving the sentences and his commitment to the rehabilitation programme designed for him were not enough to allow him access to the sentence adjustments for which he had applied.

55. The applicant lodged an appeal on points of law, challenging the Bologna court's assessment.

56. On 29 April 2019, the Court of Cassation ruled inadmissible the applicant's appeal, stating that the offences for which the applicant had been convicted fell within the scope of section 4 *bis*, and in any case precluded access to sentence adjustments, the applicant having never displayed any willingness to cooperate with the judicial authorities. In its judgment, the Court of Cassation also held that the requirement of "regular" conduct on the part of a prisoner (which was necessary to obtain prison leave) could not in any event be considered to have been satisfied by the applicant's mere participation in the rehabilitation programme designed for him, in the absence of critical review in respect of the offences committed (*minima disponibilità a riflettere sulle proprie condotte* given that there was no indication that he regretted or had demonstrated remorse).

57. On 9 July 2019, the applicant applied to the Court.

58. Pending the above-mentioned domestic proceedings, the applicant meanwhile lodged a new application for prison leave. In an order of 28 December 2016, the Reggio Emilia judge responsible for supervising the execution of sentences ruled the application admissible, stating that the applicant had already served the portion of his cumulative sentences relating to the crimes listed under section 4 *bis*. However, the judge dismissed the application on the merits, on the grounds that the prisoner's behaviour and rehabilitation process needed to be further assessed.

C. The applicant's application for conditional release

59. On an unspecified date in 2019, pending the proceedings before the Court, the applicant lodged an application for conditional release with the Bologna court responsible for the enforcement of sentences. The Bologna court ruled that the committed offences fell within the scope of section 4 *bis*;

however, it postponed taking a decision on the matter because separate proceedings further to a section 58 *ter* request lodged by the applicant were pending.

D. The applicant's further application for prison leave

60. Meanwhile, the applicant lodged a new application for prison leave, which was ruled inadmissible by the Reggio Emilia judge responsible for the enforcement of sentences. The judge ruled that the crimes committed were covered by section 4 *bis* and took into account that the Bologna court responsible for the enforcement of sentences had meanwhile rejected the applicant's section 58 *ter* request.

61. The applicant appealed to the Bologna court responsible for the enforcement of sentences; on 2 March 2023 (that is to say, following the coming into force of Decree-Law no. 162 of 2022 – see paragraphs 92-95 below) the court rejected the appeal. In its reasoning, the court held that all the offences committed fell within the scope of section 4 *bis*; it followed that, at the time of the adoption of the first-instance decision (which had been issued by the Reggio Emilia judge before Decree-Law no. 162), the applicant was precluded from eligibility for any kind of adjustment to his prison sentence. Such a prohibition could only have been overcome if it could have been verified that the applicant had cooperated effectively with the judicial authorities, or if such cooperation had been deemed "impossible" or "unenforceable". The Bologna court also took into account the legislative reform of section 4 *bis* (see paragraph 92-95 below), which allowed access to sentence adjustments even in the absence of cooperation with the judicial authorities, provided that the prisoner was able (i) on the one hand, to demonstrate that he had fulfilled any and all pecuniary sanctions and civic obligations that he had had in respect of the victims of his crimes (or that such fulfilment was absolutely impossible), and (ii) on the other hand, to demonstrate by adducing specific elements – different and additional to "positive" prison conduct and participation in the rehabilitation process – in order to exclude the existence of any current links with organised crime, as well as the risk that those links might restored in the future (even if indirectly or through third persons). In the light of the reformed legislation (which required supplementary evidentiary activity of a particularly complex nature) and maintaining that such an activity could not be carried out at second instance, the court rejected the appeal and upheld the Reggio Emilia judge's decision.

IV. APPLICATION No. 17937/20

62. The applicant is currently incarcerated in Parma Prison. He has been detained uninterruptedly since 22 December 1989.

A. The applicant's convictions

63. The applicant is serving cumulative life sentences, pursuant to a decision of the Lecce public prosecutor's office issued on 3 September 2002, which determined the overall prison sentence in relation to eight judgments that found the applicant guilty of numerous offences – including membership of a mafia-type criminal organisation, drug trafficking, unlawful possession of arms, and multiple murders.

64. In particular, in so far as relevant to the present case, the applicant was sentenced to life imprisonment by the Lecce Assize Court's judgment of 13 February 1997 – a judgment that was upheld by the Lecce Assize Court of Appeal of 25 January 1999. Those judgments convicted the applicant of the offences of drug trafficking and membership of a "mafia-type" criminal organisation (committed until January 1993), and of four murders and two attempted murders. All the murders and attempted murders were committed between 1989 and 1990, except for one murder, which was committed on 2 July 1992. In the first-instance proceedings, the Lecce Assize Court included "mafia-type" circumstances under section 7 in the charges against the applicant, but ruled them out in the judgment convicting the applicant, since the offence in issue was itself punishable by life imprisonment.

65. According to the judgment, the applicant had played a leading role in the mafia clan known as the "De Tommasi", which was affiliated to the "Sacra Corona Unita" mafia organisation. In particular, he was described as a member of the so-called "executive council" of the above-mentioned mafia clan, and had retained his authority to give orders during his first years in prison.

B. The applicant's detention

66. Until March 2005, the applicant was detained under the special prison regime provided for in section 41 *bis* of the Prison Administration Act. Between October 2003 and October 2004, he was also held in daytime isolation.

67. On 17 September 2004, the Ministry of Justice issued an order extending the 41 *bis* regime in the applicant's case for an additional year. Following an appeal by the applicant, that order was subsequently set aside on 17 March 2005 by the Perugia court responsible for supervising the execution of sentences. In allowing the applicant's appeal, the Perugia Court found that the Ministry's extension order had not taken into account updated information indicating that the structure of the criminal organisation to which the applicant had once belonged had changed and that the applicant was no longer part of it.

68. In 2008, the applicant lodged a first application for prison leave, which was ruled admissible but dismissed on the merits by the Catanzaro judge and

the Catanzaro court responsible for supervising the execution of sentences. The domestic courts took into account the applicant's progress towards rehabilitation but indicated that his conduct needed to be further assessed.

69. By an order of 11 June 2009, the Lecce Court of Appeal, deciding on an application lodged by the applicant for the remission of part of his sentence (*indulto*), held that the applicant had already served the portion of his sentence concerning offences covered by section 4 *bis* of the Prison Administration Act. The court accordingly deemed that section 4 *bis* was not applicable to the remaining offences in respect of which the sentence was still being served.

70. In 2017 the applicant lodged a new application for prison leave, citing the progress that he had made towards rehabilitation (and in particular his commitment to law studies – he gained a first-class degree in Law, with a thesis on Constitutional Law); the applicant further submitted that his conduct had been "positive" throughout his detention. By an order of 18 December 2017, the application was ruled inadmissible by the Reggio Emilia judge responsible for supervising the execution of sentences, since the applicant had been convicted of offences falling within the scope of section 4 *bis* and had failed to lodge a section 58 *ter* request. The applicant lodged an appeal with the Bologna court responsible for supervising the execution of sentences, complaining that he had already served the portion of sentence concerning the offences covered by section 4 *bis*. He also emphasised that the served portion of his sentence had indeed been separated from the remaining sentences by the Lecce Court of Appeal's order of 11 June 2009 (see paragraph 69 above). He further argued that the remaining sentences to be served concerned murders which had not been aggravated by "mafia-type" circumstances (as provided for in section 7) and which therefore did not fall within the scope of section 4 *bis* of the Prison Administration Act.

71. By order no. 7 of 7 January 2019, the Bologna court rejected the applicant's complaints. The court specified that – notwithstanding the exclusion of any "mafia-type" circumstances (as described in section 7) from the judgments convicting him – it appeared from the reasoning of those judgments that the murders had indeed been committed using the so-called "mafia method" or in order to facilitate the activities of the mafia clan to which the applicant had belonged and within which he had played a prominent role (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 106-112 below).

72. The applicant lodged an appeal on points of law. Invoking both Article 7 of the Convention and the Court's case-law concerning case-law development consolidated after the commission of an offence (see *Contrada v. Italy (no. 3)*, no. 66655/13, 14 April 2015), he complained that he had been subjected to a penalty that was heavier than that which could be applied to the crime for which he had been convicted. That sentence had been imposed, on the basis of the subsequent case-law concerning the possibility to establish which crimes were to have been deemed aggravated by "mafia-type"

circumstances (as set out in section 7) – despite the fact that no "aggravating circumstances" had been cited by the convicting judgment.

73. By judgment no. 45336 of 7 November 2019, the Court of Cassation dismissed the applicant's complaints. In the reasoning of that decision, the Court of Cassation reiterated its case-law – developed from 2001 (namely, judgment no. 29379 of 27 June 2001) onwards – see paragraphs 106-108 below) – regarding the criteria to be applied in order to assess which crimes were to be deemed to have been aggravated by "mafia-type" circumstances under section 7.

74. On 20 April 2020 the applicant applied to the Court.

C. The applicant's section 58 *ter* request and his subsequent application for conditional release

75. Pending the proceedings before the Court, the applicant lodged several new applications for prison leave, the imposition of a semi-custodial regime and conditional release; at the same time he lodged a section 58 *ter* request.

76. The domestic courts suspended the examination of all the other applications, in order to first examine the applicant's section 58 *ter* request. In particular, by order no. 1984 of 21 May 2021, the Bologna court responsible for supervising the execution of sentences stated that – no matter whether or not any "mafia-type" aggravating circumstances had been taken into account in the judgments convicting the applicant (see paragraph 64 above), and regardless of the date on which the offences in question had been committed – those offences had to be considered to have been covered by section 4 *bis*. Taking into account both the applicant's leading role within the "De Tommasi" mafia clan and the fact that the criminal proceedings had not ascertained all the details concerning the commission of the offences in question, the court refused the applicant's section 58 *ter* request.

77. Consequently, the applicant's application for the imposition of a semi-custodial regime was ruled inadmissible by the Bologna court responsible for supervising the execution of sentences; his application for conditional release is still pending, according to the most recent information available to the Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

78. The legal framework and practice concerning the treatment of prisoners and the regime of life imprisonment known as *ergastolo ostativo* is in part set out in the Court's judgment in the case of *Marcello Viola* (cited above, §§ 29-48).

I. RELEVANT DOMESTIC LAW

A. The Constitution

79. The second paragraph of Article 25 of the Constitution provides that "no punishment may be inflicted except by virtue of a law in force at the time the offence was committed".

80. Article 27 § 3 of the Italian Constitution provides that punishments must not be "inhuman" (*Le pene non possono consistere in trattamenti contrari al senso di umanità*) and must be aimed at rehabilitating the convicted offender.

B. The Criminal Code

81. Life imprisonment (*ergastolo*) is regulated by Article 22 of the Criminal Code.

82. Article 176 of the Criminal Code provides for the conditions a prisoner should satisfy to be considered for conditional release (see *Marcello Viola*, cited above, § 30). In particular, prisoners sentenced to life imprisonment may be considered for conditional release when they have served at least twenty-six years in prison.

C. Section 4 *bis* of the Prison Administration Act (Law nº 354 of 26 July 1975)

1. Decree-Law no. 152 of 13 May 1991

83. Section 4 *bis* of the Prison Administration Act was firstly introduced by section 1 of Decree-Law no. 152 of 13 May 1991 (subsequently transposed into Law no. 203 of 12 July 1991). Section 4 *bis* limited access to measures serving as alternatives to detention and sentence adjustments in respect of prisoners convicted of one of the offences referred to therein. In its initial wording, it read as follows:

> "1. Permission to work outside prison, prison leave, and alternative measures to detention provided for in Chapter VI [of Title I] may be granted to those convicted for crimes committed for the purposes of terrorism or the subversion of the constitutional order, for crimes committed taking advantage of the conditions laid down by Article 416 *bis* of the Criminal Code [concerning the crime of membership of a mafia-type organisation] or with the aim of facilitating the activities of the organisations referred to therein, [or] for crimes referred to in Articles 416 *bis* and 630 of the Criminal Code ... only if elements have been adduced that exclude the current existence of links with organised or subversive crime. To those convicted of the crimes referred to in Articles 575, 628 § 3 [and] 629 § 2 of the Criminal Code ...., the aforementioned benefits may only be granted if there are no elements to suggest the existence of links with organised or subversive crime."

84. The same conditions applied to the assessment of a prisoner's eligibility for conditional release under Article 176 of the Criminal Code (section 2 of the mentioned Decree-Law).

85. Section 4 of Decree-Law no. 152 of 1991 clarified that the new regime governing access to conditional release and sentence adjustments only applied to individuals convicted of crimes committed after the entry into force of the new legislation.

86. Section 7, concerning "mafia-type" aggravating circumstances (known as *aggravante del "metodo mafioso"* and *della "agevolazione mafiosa"*), provided as follows:

> "1. For crimes punishable by a penalty other than life imprisonment that have been committed taking advantage of the conditions laid down by Article 416 *bis* of the Criminal Code or with the aim of facilitating the activities of the organisations referred to therein, the penalty is increased by between one third and one half."

2. Decree-Law no. 306 of 8 June 1992

87. Section 15 of Decree-Law no. 306 of 8 June 1992 (subsequently transposed into Law no. 356 of 7 August 1992) partially amended section 4 *bis*. The amendment introduced a ban on eligibility for conditional release, sentence adjustments and alternative measures to detention in respect of prisoners convicted of one of the offences listed in that provision who refused to "cooperate with the judicial authorities". As a consequence, such prisoners were to serve an irreducible life sentence under the so-called *ergastolo ostativo* regime (see *Marcello Viola*, cited above, § 32). The parts relevant to the present case read as follows (emphasis added):

> "1. ... permission to work outside prison, prison leave and alternative measures to detention provided for in Chapter VI [of Title I], may be granted to prisoners and persons held in compulsory confinement for the following offences [but] *only in the event that the person concerned has cooperated with the judicial authorities for the purposes of section 58 ter of the present Act*: crimes committed taking advantage of the conditions laid down by Article 416 *bis* of the Criminal Code [concerning the crime of membership of a mafia-type organisation], or committed with the aim of facilitating the activities of the organisations referred to therein, or crimes addressed in Articles 416 *bis* and 630 of the Criminal Code ... To those convicted of the crimes committed for the purpose of terrorism or the subversion of the constitutional order, or of crimes referred to in Articles 575, 628 § 3 [and] 629 § 2 of the Criminal Code ...., the aforementioned benefits may only be granted if there are no elements to suggest the existence of links with organised or subversive crime."

88. Section 15(2) of Decree-Law no. 306 of 1992 provided that those measures could be withdrawn in respect of prisoners who were already – on the date on which the decree-law came into force – benefitting from alternative measures to detention or imprisonment.

89. Section 58 *ter* of the Prison Administration Act set out the requirements for "cooperation with the judicial authorities": the convicted prisoner should provide the authorities with information that is decisive in

terms of preventing any further consequences of the offence or assisting in the establishment of the facts and the identification of the perpetrators of criminal offences (see *Marcello Viola*, cited above, § 33 and § 97).

90. Exceptions were subsequently introduced following Constitutional Court judgments (nos. 306 of 1993, 357 of 1994 and 68 of 1995) with regard to situations where cooperation with the judicial authorities had to be considered "unenforceable" or "impossible" owing to a convicted prisoner's limited involvement in the offence in question – as established by the judgment convicting him, or by a thorough verification of the facts of the case in question and of the respective responsibilities of those involved as established by a final ruling – provided that evidence existed ruling out any current ties between the prisoner and organised crime (see *Marcello Viola*, cited above, § 32 and §§ 45-46).

91. Section 4 *bis* has been subsequently amended over time, and the list of crimes falling within its scope has been progressively extended (in this regard see paragraphs 102, 113 and 118 below).

3. Decree-Law no. 162 of 31 October 2022

92. Following Constitutional Court order no. 97 of 15April 2021 (see paragraph 118 below), a reform of section 4 *bis* was implemented by Decree-Law no. 162 of 31 October 2022 (subsequently transposed, with amendments, into Law no. 199 of 30 December 2022), which reintroduced the possibility for a prisoner convicted of one of the offences referred to in section 4 *bis* to secure for himself – under certain conditions – conditional release, alternative measures to detention, and sentence adjustments even where that prisoner has not "cooperated with the judicial authorities". In particular, such a possibility mainly relies on a prisoner's ability to demonstrate by adducing specific elements – different and additional to their "positive" prison conduct and participation to the rehabilitation process – that he has no current links with organised crime and that there is no risk of him becoming involved again in organised crime in the future – even only indirectly or through third persons.

93. The amended version of section 4 *bis* – that is, the parts thereof that are relevant to the present case – reads as follows (emphasis added):

> "1. Permission to work outside prison, prison leave and the alternatives to detention provided for in Chapter VI with the exception of early release may be granted to prisoners and persons held in compulsory confinement for the following offences, only in the event that the person concerned has cooperated with the judicial authorities for the purposes of section 58 *ter* of the present Act: crimes committed for the purpose of terrorism, including international terrorism, or subversion of the democratic order through acts of violence; any of the crimes dealt with in Articles 416 *bis* and 416 *ter* of the Criminal Code or crimes taking advantage of the conditions laid down by that Article or committed with the aim of facilitating the activities of the organisations referred to therein ... . The [above-mentioned] provision ...also applies in respect of the enforcement of sentences imposed for crimes other than those indicated therein, in

relation to which the judge [overseeing] the criminal proceedings or the judge responsible for the enforcement of the sentence has ascertained that they were committed in order to carry out or conceal one of the crimes referred to in that provision, or to obtain or secure to the convicted person or others the product or profit or price or impunity in respect of such crimes.

1 *bis*. The measures referred to in subsection 1 may also be granted *even in the absence of cooperation with the judicial authorities* for the purposes of section 58 *ter* to prisoners or persons held in compulsory confinement for crimes committed for the purpose of terrorism, including international terrorism, or the subversion of the democratic order through acts of violence; any of the crimes dealt with in Articles 416 *bis* and 416 *ter* of the Criminal Code; or crimes committed taking advantage of the conditions laid down by that Article or committed with the aim of facilitating the activities of the organisations referred to therein, ... *provided that* [those prisoners or persons] [i] demonstrate that they have fulfilled [all] civic obligations and pecuniary sanctions arising from the conviction or that such fulfilment is absolutely impossible, and [ii] adduce *specific elements – different and additional* to their regular prison conduct, their participation in the rehabilitation process and the mere declaration that they have severed ties to the criminal organisation – which permit to *exclude both the existence of current links* with organised crime ... and with the context in which the crime has been committed, *as well as the risk that those links may be restored* in the future even if indirectly or through third persons, [the assessment of these elements should be undertaken] taking into account both the individual and environmental circumstances, the reasons eventually given [by the prisoner] concerning the lack of cooperation [with the judicial authorities], the critical appraisal of the criminal conduct and any other available information. For the purpose of [deciding whether or not to grant] the benefits, the judge shall also assess the existence of initiatives taken to benefit the victims – both in the form of compensatory measures and of restorative justice. ...

1 *bis*.1.1. A decision granting the measures provided for in subsection 1 [may contain] provisions that [pre-empt] the risk that links [may be] restored with organised crime ... or that prevent the convicted persons from engaging in activities or having personal relationships that could lead to the commission of other crimes or the reestablishment of connections with organised crime ... For this purpose, a judge may order that the convicted person should not reside in one or more municipalities or should reside in a specific municipality.

2. For the purpose of [deciding whether or not to] grant the benefits referred to in paragraph 1, the judge or the court responsible for supervising the execution of sentences shall obtain detailed information through the provincial committee for public order and safety that has authority in the place of detention of the convicted person. In any event, the judge shall decide within 30 days of his [lodging] the request for information. The governor of the [prison] in which the convicted person is detained may be summoned to [sit on] the aforementioned provincial committee. In the cases referred to in paragraphs 1 *bis* and 1 *bis.*1, the judge shall obtain ... [for the purposes of] verifying the validity of the elements cited by the applicant detailed information regarding the ongoing activity of the criminal organisation to which the applicant belonged (*perdurare dell'operatività del sodalizio criminale di appartenenza*) or the criminal context (*contesto criminale*) in which the crime was committed, the criminal profile of the detainee or internee and their position within the association, any new charges [that have been made] or precautionary or preventive measures that have taken against them and, where significant, disciplinary infractions committed during detention. Also, the judge [i] shall ... request the opinion of the public prosecutor at the court that issued the first-instance sentence or, in the event of convictions for the crimes

> indicated in Article 51, paragraphs 3 *bis* and 3 *quater*, of the Code of Criminal Procedure, [the opinion of] the public prosecutor at the court of the district capital where the first-instance sentence was pronounced and the National Anti-Mafia and Anti-Terrorism Prosecutor Directorate, [ii] acquire information from the director of the penal institution where the applicant is detained or interned, and [iii] order [to be carried out] in respect of the applicant, his or her family members and connected persons, investigations regarding [their] income and assets, lifestyle, any economic activities carried out, and the existence of pending or final preventive measures in respect of [those] individuals or [their] property. The opinions, information, and results of the investigations referred above shall be transmitted to the requesting judge within 60 days of the request. The term may be extended by an additional 30 days [in the event that] the investigations [are complex]. After that term has expired, the judge shall issue a decision even in the event that the opinions, information, and results of the requested investigations are lacking. If the investigation reveals indications of current ... links with organised, terrorist, or subversive crime or [indications] of the context in which the crime was committed, or a risk that such links have been restored, it is up to the convicted person to provide within a reasonable period adequate ... evidence to the contrary (*elementi di prova contraria*). In any case, in a decision granting or refusing benefits, the judge shall specifically indicate the reasons for [his or her] acceptance or rejection of the application, taking into account the opinions acquired pursuant to the fifth period... [emphasis added]."

94. Furthermore, section 2 of Decree-Law no. 162 of 2022 established that conditional release could not be granted to life prisoners convicted of the offences indicated in section 4 *bis*, subsection 1, until the prisoner concerned had served 30 years in prison.

95. Section 3 of the Decree clarified that the provision extending the application of section 4 *bis* to the enforcement of sentences imposed for crimes other than those indicated therein – but committed for the purpose of carrying out or concealing one of the listed crimes, or to secure proceeds thereof or impunity [therefor] – only applied to individuals convicted of crimes committed after the entry into force of the Decree (that is to say 31 October 2022).

II. RELEVANT DOMESTIC CASE-LAW

A. Constitutional case-law regarding the scope of conditional release in respect of life sentences

96. In respect of life sentences imposed under Article 22 of the Criminal Code (so-called *ergastolo comune*), the Constitutional Court had long since clarified in its case-law, that life sentence is to be considered compatible with the principle of rehabilitation enshrined in Article 27 § 3 of the Constitution to the extent that the national legal framework provides the possibility for life prisoners to be considered eligible for conditional release (see constitutional judgments no. 264 of 7 November 1974 and no. 161 of 12 March 1997).

97. In particular, in its judgment no. 161 of 1997, the Constitutional Court held *inter alia*,

> "...[I]f conditional release is the only mechanism that, by virtue of its existence in the legal system, makes life sentence compatible with the principle of rehabilitation – and therefore with the Constitution – then the reciprocal proposition is evidently valid: [that is to say] this penalty shall conflict with the Constitution if ... the readmission of the prisoner to [the possibility of] conditional release is absolutely precluded."

B. Case-law regarding section 4 *bis* of the Prison Administration Act prior to the Court's judgment in *Marcello Viola (no. 2)*

1. Case-law of the Constitutional Court

98. In the early cases involving section 4 *bis* (as amended in 1992) (see paragraphs 87-90 above), the Constitutional Court assessed its constitutionality in relation to Article 27 § 3 of the Constitution (see *Marcello Viola*, cited above, §§ 39-43).

99. In particular, Constitutional Court judgment no. 306 of 11 June 1993 found the provision set out in section 15 of Decree-Law no. 306 of 1992 (allowing the withdrawal of alternatives to detention already granted under the previous legislation – see paragraph 88 above) to be unconstitutional in respect of Article 27 § 3 of the Constitution. On that occasion, the Constitutional Court did not address the issue relating to the compatibility of the new legal framework under section 4 *bis* with the principle of non-retroactivity of criminal law protected by Article 25, § 2 of the Constitution; rather, it merely acknowledged that this aspect could have "deserved serious consideration". Additionally, referring to the principles of individualised and progressive treatment of prisoners – "also considered in connection with Article 25 § 2 of the Constitution" – the court found that the withdrawal of already-granted measures could not be legitimately ordered unless the current existence of links with the organised crime had been ascertained. (As to the reasoning of the judgment, see further in *Marcello Viola*, cited above, § 39.)

100. In its judgment no. 504 of 14 December 1995, the Constitutional Court declared section 4 *bis* to be unconstitutional to the extent that, in the absence of cooperation with the judicial authorities, it precluded the granting of access to prison leave to individuals who (i) had been convicted for crimes committed before the issuance of Decree-Law no. 306 of 1992 and, (ii) at the moment of the entry into force of Decree-Law no. 306, had already been granted one or more spells of prison leave. The court clarified that, despite the fact that prison leave – unlike alternatives to detention, which extinguished (*estingue*) the status of detainee of the person concerned – did not "innovate the status of detainee" (*non innovano assolutamente lo status di detenuto*), it nevertheless had to be considered to constitute "a crucial instrument [that could be used] for the purpose of the treatment" (*strumento curciale ai fine del trattamento*) of prisoners. Accordingly, it held that the impossibility of continuing the progressive treatment already in place – resulting from the statutory ban set out in section 4 *bis* and in the absence of

any reason relating to the behaviour of the persons concerned – had to be regarded as incompatible with the rehabilitative purpose of the penalty.

101. By judgment no. 273 of 5 July 2001, the Constitutional Court ruled for the first time on the compatibility of section 4 *bis* in respect of Article 25 § 2 of the Constitution, holding that Decree-Law no. 306 of 1992 had not modified the conditions that had to be met in order to qualify for conditional release, but had merely introduced a "statutory presumption that a lack of cooperation with the judicial authorities constituted an indication that a convicted prisoner maintained criminal links (see, for further details, *Marcello Viola*, cited above, § 40).

2. Case-law of the Court of Cassation regarding the retrospective application of the amendments to section 4 bis

102. By judgment no. 24561 of 30 May 2006, the Combined Divisions of the Court of Cassation – ruling on the issue of the retrospective application of Law no. 38 of 23 April 2009 which had extended the list of crimes covered by section 4 *bis* of the Prison Administration Act to include crimes involving sexual violence – held that the provisions concerning the enforcement of sentences and alternatives to detention did not relate to the determination of the crime and the imposition of the penalty, but only to the methods of the enforcement of that penalty; therefore, they did not have the character of substantive criminal law and were thus subject to the principle of *tempus regit actum* and not to Article 25 of the Constitution (see also, among many others, judgments nos. 30792 of 18 September 2006, 29155 of 15 July 2008, 46924 of 9 December 2009, 6910 of 22 February 2012, 11580 of 12 March 2013, 52578 of 18 December 2014, and 37578 of 9 September 2016).

3. Case-law of the Court of Cassation regarding "mafia-type" circumstances set out in section 7 of Decree-Law no. 152 of 1991

103. According to the case-law of the Court of Cassation, the legal consequences of "mafia-type" aggravating circumstances set out in section 7 (see paragraph 86 above) go beyond the resulting increase in sentences imposed.

104. Endorsing the approach that had developed in its case-law since 2002 and consistently applied in the majority of its judgments (see in particular judgments nos. 20499 of 10 January 2002, 5651 of 17 January 2006, 1811 of 22 December 2006, 41332 of 24 October 2006, 46598 of 21 November 2007, 14623 of 4 March 2008, 13492 of 13 March 2008, and 32555 of 16 May 2008), in its judgment no. 337 of 9 January 2009 the Combined Divisions of the Court of Cassation stated that any attendant "mafia-type" circumstances would trigger the application of special procedural rules, and would have legal effects on the treatment afforded in prison to those convicted of crimes

that had been "aggravated" by such circumstances – including the application of section 4 *bis* of the Prison Administration Act.

105. In the light of the above-noted considerations, the Court of Cassation held that – regardless of the fact that section 7 explicitly limited its scope to "crimes punishable by a penalty other than life imprisonment" (see paragraph 86 above) – that provision should be interpreted as allowing "mafia-type" circumstances to be referred to crimes for which the potential penalty could be life imprisonment. In such cases, such circumstances would not have the effect of increasing the sentence imposed but they should still be included in the charges and taken into consideration by the judge hearing the case in question, so that they might have different effects. In the reasoning of the judgment, the court emphasised in that regard the importance of including those aggravating circumstances in the charges in order to guarantee the defendant's defence rights.

106. At the same time, in other judgments the Court of Cassation held that the prohibition regarding conditional release and sentence adjustments set out in section 4 *bis* of the Prison Administration Act applied – even when "mafia-type" aggravating circumstances under section 7 had not been formally included in the charges against convicted prisoners – if the use of so-called "mafia method" had nonetheless been implied in the reasoning of the judgment.

107. In the early cases relating to the issue (see, in particular, judgments no. 29379 of 27 June 2001, no. 17816 of 11 July 2008, and no. 4091 of 7 January 2010), the Court of Cassation concisely stated that it is for the judge or the court responsible for supervising the execution of sentences to verify whether the judgment convicting the prisoner had established that the offences in question had been committed using the "mafia method".

108. By judgment no. 34022 of 11 July 2007, the Court of Cassation stated that that the 1992 amendments to section 4 *bis* of the Prison Administration Act (see paragraph 87 above) had been conceived as retrospective provisions that were also to be applied to offences that had been committed before the entry into force of those provisions since they concerned only the enforcement of the penalty imposed for such offences. As to the list of crimes to be covered by the prohibition regarding conditional release or other favourable measures set out in section 4 *bis*, the court held that any crime committed "with the aim of facilitating the activities" of the criminal organisations referred to in Article 416 *bis* of the Criminal Code was to be considered included in that list. Such an aim, according to the Court of Cassation,

> "is a particular subjective characterisation (specific intent) [that is to be added] to the defined offence (*una particolare qualificazione soggettiva (dolo specifico) che si aggiunge alla figura delittuosa tipica*), and does not necessarily constitute an aggravating circumstance."

109. On these grounds, the court concluded that, although the increase in sentence provided for by section 7 was not applicable to crimes that could be punished with life imprisonment, nor in any case to crimes committed before its entry into force, the existence of a "mafia purpose" could nevertheless be assessed by the judge responsible for supervising the execution of sentences.

110. The most recent judgments on the issue (see judgments 6065 of 21 February 2017, 473 of 10 July 2018, 33565 of 21 May 2019 and no. 41235 of 26 June 2019) further clarified that such assessment fell within the power of judges and courts responsible for supervising the execution of sentences to "interpret" final judgments and to clarify their content. A similar power to "interpret" final judgments on the part of judges and courts responsible for supervising the execution of sentences was previously recognised by the Court of Cassation in respect of other situations (see, in particular, judgments no. 36 of 9 January 1996 concerning pardon and no. 4077 of 6 July 1995 concerning the execution of security measures).

111. By judgment no. 44168 of 13 June 2016 (which, however, was not followed in the subsequent case-law), the Court of Cassation held that whenever "mafia-type" circumstances had been included in the charges against the convicted prisoners, but ruled out by the judgment convicting them, the courts responsible for supervising the execution of sentences did not have the power to hold that the crime in question had been committed using the "mafia method".

112. In judgment no 42815 of 10 October 2016, the Court of Cassation drew a distinction between offences committed before and after the introduction of section 7, stating that the above-mentioned "substantial approach" (which allowed judges and courts responsible for supervising the execution of sentences to take into account "mafia-type" circumstances – even in the absence of their being included in the charges) should be applied only to crimes committed before the entry into force of Decree-Law no. 152 of 1991. To this regards the Court of Cassation held, *inter alia*:

> "The prohibition imposed by section 4 *bis* could not have had immediate effect if it had referred only to crimes aggravated under section 7: the aggravating circumstances had, indeed, been introduced by the same law and could not have been included in charges [brought] in respect of previous acts; consequently, the prohibition would have become effective in respect of crimes deemed under section 7 to be aggravated only if [those crimes had been] committed after its entry into force on 13 May 1991 ...
>
> The descriptive formulation adopted by section 4 *bis* allowed, on the contrary, the extension of the prohibition ... to offences committed before [the entry into force of Decree-Law no. 152 of 1991], to which the aggravating circumstances [as set out in Decree Law no. 152] could not be applied, leaving it up to the judges and courts responsible for supervising the execution of sentences when they evaluated prisoners' applications for sentence adjustments) to assess whether the offences in issue had been committed using the so-called "mafia method" ...
>
> This case-law, however, only concerns crimes committed before the entry into force of Decree-Law no. 152 of 1991; ... the court considers that it could not apply to offences

committed at a subsequent time, when the aggravating circumstances could have been included in the charges but were not.

"If, in fact, the wording used in section 4 *bis* ... had been required ... in order to extend the ban on granting sentence adjustments to offences committed before ... once the new legislation entered into force and introduced the aggravating circumstances set out in section 7, then the ordinary rules of criminal procedure would have had to apply ... . Consequently [in the latter case], in the enforcement phase, the evaluation made by the trial judge cannot be modified."

C. Evolution of the case-law regarding section 4 *bis* following the Court's judgment in *Marcello Viola (no. 2)*

1. Case-law of the Constitutional Court

113. Shortly after the Court's judgment in the case *Marcello Viola*, cited above, in judgment no. 253 of 23 October 2019, the Constitutional Court declared section 4 *bis* unconstitutional in respect of Articles 3 and 27 § 3 of the Constitution. The Constitutional Court held that the provision breached the principle of rehabilitation given the fact that it denied prison leave to prisoners who had been convicted for mafia-related crimes and who refused to cooperate with the judicial authorities – even in the event that there were adequate elements to indicate that the prisoner in question did not have current connections with organised crime and that there was no risk that those links might be restored in the future.

114. The relevant parts of the judgment read as follows:

" ... the amended provision relies on the statutory presumption that the commission of certain crimes proves the author's affiliation to or connection with organised crime, and thus represents an indicator of dangerousness (*indice di pericolosità sociale*) to society that is not compatible with the granting of extramural measures (*benefici penitenziari extramurari*) to the convicted person. The choice to cooperate with the judicial authorities is accordingly assumed as the only [choice] capable of removing the obstacle to the granting of those benefits, owing to its 'rescissory' value of the ties with the criminal organisation [in question] (*in ragione della sua valenza "rescissoria" del legame con il sodalizio criminale*)...

The presumption itself it is not constitutionally illegitimate. It is not unreasonable to presume that a convicted person who does not cooperate [with the judicial authorities] maintains links with the criminal organisation [in question]..., provided that such a presumption is relative and not irrebuttable and can therefore be overturned in the event that evidence to the contrary is provided.

While a provision based on the relative nature of such a presumption would remain within the limits of a legislative choice that, from a constitutional point of view, is consistent with both the special preventive purpose and the imperative of resocialisation inherent to the penalty, a provision that assigns an absolute character to the presumption of current connections with organised crime cannot be considered to be in line with Articles 3 and 27 § 3 of the Constitution ...

... [I]n the light of the principles of reasonableness, of proportionality of sentence[s] and of [their] rehabilitative purpose, it is one thing to attribute a reward (*valenza premiale*) to ... someone who, even after conviction, provides useful and effective

cooperation with the judicial authorities; ... it is quite another to impose a harsher treatment on a convicted person who does not cooperate, who is presumed *iuris and de iure* to be a person rooted in the organised crime and, for that reason, [is] dangerous to society ....

As set out in section 4 *bis*, subsection 1 of the Prison Administration Act, a lack of cooperation with the judicial authorities gives rise to further negative consequences that are not directly connected to the crimes that have been committed – [thus] essentially worsening the conditions governing the enforcement of the sentence imposed at the end of the trial ...

In addition, the [fact] that an application for prison leave must be ruled *in limine* inadmissible – without the judge responsible for the enforcement of sentences [first conducting] a concrete evaluation of the convicted person's personal situation – is in breach of Article 27 § 3 of the Constitution.

Prison leave ... constitutes a peculiar instrument [employed in] the comprehensive treatment programme. It allows "the prisoner to benefit from the first breaths of freedom (*i primi spazi di libertà*) for rehabilitative purposes" (judgment no. 188 of 1990), [which have a] "re-educational and propulsive" purpose (*funzione "pedagogico-propulsiva*") (judgments nos. 504 of 1995, 445 of 1997 and 257 of 2006) ...

Accordingly, the inadmissibility of an application for prison leave may halt the rehabilitation process from the very beginning, thus frustrating a detainee's commitment to [making] progress."

115. A few months later, the Constitutional Court, in its judgment no. 32 of 12 February 2020, declared unconstitutional Law no. 3 of 9 January 2019, which extended the list of offences falling within the scope of section 4 *bis* to corruption and other crimes against the public administration (*delitti contro la pubblica amministrazione*). The court found the law to be in breach of Article 25 § 2 of the Constitution in so far as it transformed the "nature of the penalty" and applied to individuals convicted for crimes committed before its entry into force. The court stated that the well-established interpretation according to which the prohibition on the retroactivity of criminal law did not apply to measures regulating the enforcement of sentences needed to be adjusted, introducing an exception whereby subsequent legislation did not merely involve changes in the methods of enforcement of the penalty provided by law at the time of the offence but rather allowed for the transformation of the "nature of the penalty" and its "concrete impact on the convicted person's personal freedom". In this regard, the court held, *inter alia*,

"[T]his occurs, paradigmatically, when a penalty that – at the time of the committed offence- could be served 'outside' the prison – as a result of a subsequent legislative reform – is transformed without changing its *nomen juris* into a penalty that must be served 'inside' the prison. The difference between 'outside' and 'inside' is radical: qualitative, rather than quantitative. The penalty to be served in such a case becomes something different from that provided at the time of the offence; the retroactive application of the legislative changes is consequently to be deemed to be inadmissible under Article 25 § 2 of the Constitution.

> This conclusion also applies when the difference between 'outside' and 'inside' is appreciated as a result of prognostic evaluations related, respectively, to the type of penalty that was reasonably expected at the time of the commission of the offence on the basis of the legislation then in force and the one that is instead to be reasonably expected under the amended legislative framework."

116. At the same time, the Constitutional Court made a distinction "between alternatives to detention, conditional release and conditional suspension of a sentence, on the one hand, and sentence adjustments, on the other hand. As regards the former, the court found those alternatives to have a clear impact on the penalty in terms of the degree of the restriction on personal liberty and "marked rehabilitative purpose" (*accentuata vocazione rieducativa*), concluding that legislation enacting stricter conditions in respect of access to these measures fell within the sphere of criminal law and therefore needed to be subjected to the principle of the non-retroactivity of criminal law. By contrast, as regards prison leave, the court held in particular,

> "[W]hile the significant impact of these measures on the level of [severity] of the penalty [imposed on] a convicted person cannot be denied, this court does not believe that legislative reforms that are limited to the introduction of stricter conditions governing access to these measures[i.e. prison leave] give rise to a change in the nature of the penalty to be enforced compared to the one prescribed at the time of the events in question, such as to invoke the constitutional guarantee in issue."

117. The conclusions reached by Constitutional Court judgment no. 32 of 2020 were confirmed by subsequent decisions (namely, Constitutional Court orders no. 49 of 11 March 2020, no. 84 of 22 July 2020, and no. 193 of 31 July 2020).

118. By order no. 97 of 15 April 2021, the Constitutional Court – having been called upon to answer the question of the constitutionality in relation to Articles 3 and 27 § 3 of the Constitution of the regime of life imprisonment known as *ergastolo ostativo* under section 4 *bis* – asked Parliament to amend the aforementioned provision. The court clarified that, by contrast with its previous judgment no. 253 of 2019 (concerning the prohibition on access to prison leave under section 4 *bis*), in the case at hand the interests at stake were even more fundamental (*la posto in gioco è ancora più radicale*), since both (i) the conditions under which a life sentence could be considered to be compatible with the Constitution and (ii) (from the prisoners' perspective) the very possibility of hoping for an end of the penalty were at issue. Referring to the principles developed by the Court's case-law – starting from *Kafkaris v. Cyprus* [GC], no. 21906/04, ECHR 2008, and, in particular, *Marcello Viola*, (cited above) – the Constitutional Court held that, while it was not unreasonable to assume that convicted persons who did not cooperate with the judicial authorities maintained links with the criminal organisation to which they originally belonged, the presumption of dangerousness that such persons posed to society needed to be seen as a relative presumption. The irrebuttable presumption of dangerousness to society prevents the taking into

account of any progress made by that prisoner towards rehabilitation in breach of the rehabilitative purpose of Article 27 of the Constitution.

2. Case-law of the Court of Cassation

119. In its judgment no. 17203 of 28 February 2020, the Court of Cassation returned to the issue of the retrospective application of the law that extended the list of crimes covered by section 4 *bis* to crimes of sexual violence (see paragraph 102 above). In the light of the conclusions reached by the above-mentioned Constitutional Court judgment no. 32 of 2020 with regard to Law no. 3 of 9 January 2019 (see paragraph 115 above) – the Court of Cassation held that including a crime in the list set out in section 4 *bis* results in a *worsening* of the sentence. This change has a concrete impact on the convicted person's personal liberty and was not foreseeable at the time the offences were committed; it must therefore be regarded as a substantive criminal measure and is accordingly subject to the constitutional principle of the non-retroactivity of criminal law laid down in Article 25 § 2 of the Constitution (similarly, see also judgments nos. 12845 of 20 March 2020, 37053 of 1 December 2020, 36706 of 15 June 2021).

120. However, in line with Constitutional Court judgment no. 32 of 2020, the Court of Cassation limited the application of the principle of non-retroactivity to situations where a prisoner's application for conditional release was at stake, excluding it in cases concerning applications for prison leave (judgment no. 23861 of 17 June 2021).

D. Case-law of the Court of Cassation following the enactment of Decree-Law no. 162 of 2022

1. *On the retrospective application of the amendments to section 4* bis

121. Following the enactment of Decree-Law no. 162 of 2022 (see paragraphs 92-95 before), the Court of Cassation recently returned to the issue concerning the retrospective application of the amendments to section 4 *bis*. While its previous judgments on the issue concerned the inclusion of new crimes in the list set out by section 4 *bis* of the Prison Administration Act (see paragraphs 102 and 119 above), the Court of Cassation recently addressed the issue of the application over time of the different versions of the provision to prisoners who had been convicted for "mafia-related" crimes.

122. In its judgment no. 30702 of 16 April 2024, the Court of Cassation reviewed an application for the imposition of a semi-custodial regime, submitted by a person convicted for crimes committed under Decree-Law no. 152 of 1991. The decree had inserted section 4 *bis* into the Prison Administration Act, introducing the first restriction to eligibility for conditional release and sentence adjustments (see paragraphs 83-86 above). The Court of Cassation held that the subsequent legislative changes were not applicable to the case. These changes included both the 1992 amendments - which amended section 4 *bis* and introduced a ban on eligibility for conditional release in the absence of cooperation with the judicial authorities (see paragraph 87 above) – and the reform introduced by Decree-Law no. 162 of 2022. The Court deemed both changes inapplicable, as they were detrimental to the individual's situation. A similar conclusion was reached in judgment no. 3240 of 31 October 2024.

123. By contrast, by judgment no. 31753 of 1 July 2024, the Court of Cassation ruled on an alternative application for the imposition of a semi-custodial regime and for conditional release. In that regard, the prisoner had also asked the domestic courts to find that the ban introduced by Decree-Law no. 306 of 1992 had been retrospectively applied to him in breach of Article 25 § 2 of the Constitution. The Court of Cassation stated that the provisions introduced by Decree-Law no. 152 of 1991 had to be regarded as substantive in nature and therefore could not be applied retrospectively; conversely, it held that the provisions introduced by Decree-Law no. 306 of 1992 were not of the same nature, as they merely affected the manner in which an already existing regime operated. A similar conclusion was reached in judgment no. 31277 of 19 September 2025.

2. On the assessment to be carried out under section 4 bis*, as amended by Decree-Law no. 162 of 2022*

124. Subsequent to the entry into force of Decree-Law no. 162 of 2022, different approaches have been developed in the case-law of the Court of Cassation as to the assessment to be carried out by the judge or the court responsible for supervising the execution of sentences (*magistratura di sorveglianza*), pursuant to the amended version of section 4 *bis*.

125. On the one hand, several judgments confirming the lower courts' rejection of prisoners' applications for sentence adjustments were essentially based on the fact that the criminal organisations they had belonged to were still active (see judgments no. 11103 of l9 January 2024 and no. 16329 of 26 January 2024), and on the risk that the links with those organisations could be possibly restored in the future (judgment no. 1235 of 17 October 2023).

126. On the other hand, other judgments – relying on the principles set out in the Court's case-law, as well on Constitutional Court judgment no. 253 of 2019 (paragraphs 113-114 above) – clarified that the assessment required by the amended version of section 4 *bis* should be focused on the individual

rehabilitation process (see in particular judgments no. 23556 of 30 March 2023, no. 38278 of 20 April 2023, and no. 19980 of 20 February 2024 – which also reiterated judgment no. 33743 of 14 July 2021 – no. 3240 of 31 October 2024 and no. 35835 of 3 November 2025). Those judgments reiterated that applications for sentence adjustments under section 4 *bis* should not be rejected merely for a lack of specific evidence suggesting the existence of the requirements under which they could be granted. It was indeed sufficient for prisoners to provide factual elements that – even from a purely logical point of view – were enough to reverse the presumption that they continued to pose a potential danger to society. While in some of those judgments the Court of Cassation emphasised the matter of whether the prisoners in question had shown signs of "repentance" (see, in particular, judgments no. 19980 of 2024, and no. 3240 of 2024); in others it clarified that it was not necessary to provide evidence that "an intimate, personal, and human transformation in the convicts' criminal experience" had taken place, but what mattered was verifying whether there was an inclination – emerging from a comprehensive examination of their conduct – to sever ties with a mafia organisation and not to restore them in the future (see judgments nos. 23556 of 2023 and no. 35835 of 2025). In any event, they clarified that the judge or court responsible for supervising the execution of sentences should balance (i) the elements characterising the criminal nature of the committed acts against (ii) the rehabilitation process undergone by the prisoners. In judgment no. 23556 of 2023, the Court of Cassation held in particular,

> "[T]he judge or the court responsible for supervising the execution of sentences are specifically called upon to make such a comparison. Otherwise, their function would be reduced to merely observing the objective gravity of the crimes committed by the convicted person. Such an approach would thus nullify any aspiration for personal recovery recognisable in the prisoner, where such an aspiration is not accompanied by cooperation with the institutions.
>
> ... If this were the purpose of the provision, it would be impossible to ensure an effective rehabilitation process through the adoption of prison benefits: the seriousness of the crimes committed would, in fact, inhibit from the outset the practicability of a favourable balance between the ... opposing needs of social defence and rehabilitation."

E. Case-law on the possibility to separate cumulative sentences

127. In respect of cases involving several prison sentences imposed on the same individual in respect of different judgments concerning different offences (all committed before the start of the individual's detention) pursuant to Article 663 of the Code of Criminal Procedure, the competent public prosecutor's office shall issue a decision unifying the sentences (*provvedimento di esecuzione di pene concorrenti*), which are therefore considered to constitute a sole sentence. The starting point for the calculation of such a cumulative sentence is the moment at which the person in question

was deprived of his liberty for the first time – including (under Article 657 of the Code of Criminal Procedure) in respect of pre-trial detention – for any of the offences included in the cumulative sentence (see, *ex multis*, Court of Cassation judgment no. 36894 of 3 October 2024).

128. The Public Prosecutor shall set the sentence to be imposed, in line with the relevant provisions concerning concurrent offences (*concorso di reati*) – namely, Articles 71-84 of the Criminal Code. In particular, under Article 72 of the Criminal Code, if a person has committed several crimes each of which are punishable by life imprisonment, that sentence shall be served during the day in isolation for an initial period of between six months and three years; in the event of concurrence of a crime punishable by life imprisonment with one or more crimes punishable by custodial sentences whose total duration exceeds five years, the penalty of life imprisonment shall be applied with the first two to 18 months to be served in daytime isolation.

1. Constitutional case-law

129. With regard to multiple prison sentences arising from different judgments (some of which found the applicant guilty of offences listed in section 4 *bis*), Constitutional Court judgment no. 361 of 19 July 1994 clarified that this provision must be interpreted as permitting the separation of the sentences. This allows a convicted person who has already served the sentence relating to the offence barring access to sentence adjustments and alternatives to detention to be considered eligible for such measures for the remaining portion of his detention. In particular, the Constitutional Court referred to the well-established case-law of the Court of Cassation on this point, which is rooted in the principle that the rules concerning cumulative sentences should never result in disadvantage to the convicted person. The Constitutional Court noted that a different approach had been developed – since 1992 – in a few decisions delivered the Court of Cassation. According to those decisions, in the event of enforcement of an overall prison sentence, a portion of which concerns also crimes falling within the scope of section 4 *bis*, it is not possible – unlike what happens for the application of amnesty or pardon – to separate the sentences for the purpose of granting sentence adjustments, nor can the sentence imposed for the crimes preventing access to those measure be considered served first (see in particular Court of Cassation judgment no. 2903 of 18 June 1993). However, according to the Constitutional Court, those decisions were not followed in subsequent case-law.

2. Case-law of the Court of Cassation

130. Some years later, the Court of Cassation acknowledged that two conflicting approaches had developed in its case-law in respect of the possibility of sentence adjustments being granted to prisoners convicted for

crimes listed in section 4 *bis*, once the portion of the sentence relating to those crimes had been served.

131. In its judgment no. 14 of 5 October 1999, the Combined Divisions of the Court of Cassation confirmed the approach adopted by the Constitutional Court. In particular, the High Court, reaffirming its earlier case-law on the possibility of separating sentences in order to ensure access to certain benefits such as amnesty or pardon, held that an inability to separate the sentences would lead to an inconsistent result: the portion of the sentence linked to an offence covered by section 4 *bis* would effectively have a permanent effect, continuously preventing access to sentence adjustments (see, among many others, judgments nos. 613 of 22 March 1999, 14563 of 12 April 2006, 2090 of 19 December 2007, 15954 of 18 March 2009, 6817 of 28 October 2015, 28141 of 18 June 2021).

III. PROCEEDINGS BEFORE THE COUNCIL OF EUROPE'S COMMITTEE OF MINISTERS

132. The Committee of Ministers of the Council of Europe examined the state of execution of the Court's judgment in the *Marcello Viola* case, cited above, on several occasions after the delivery of the Court's judgment.

133. At its 1406th meeting, which took place from 7 to 9 June 2021, the Committee of Ministers adopted a first decision (CM/Del/Dec(2021)1406/H46-16), in which it requested the domestic authorities to provide information on the progress achieved in the adoption of the general measures indicated by the Court under Article 46 of the Convention (ibid., § 143).

134. On 20 January 2023 the Italian Government submitted an Action Report to the Committee of Ministers outlining the reform introduced by Decree-Law no. 162 of 31 October 2022.

135. Taking into account that reform, at its 1459th meeting, held from 7 to 9 March 2023, the Committee of Ministers, adopted the following decision, in so far as relevant (CM/Del/Dec(2023)1459/H46-13):

> "4. underlined the importance of ensuring that the established system is practical and effective, as required by the Convention under Article 46, and provides a genuine evaluation of the prisoners' progress towards rehabilitation, and reasonable prospects to meet the stringent conditions required;
>
> 5. noting that the recent entry into force of the reform does not yet allow an assessment of these central aspects, invited the authorities to provide information on the concrete functioning of the review mechanism and examples of relevant judicial decisions, addressing also the concerns raised by civil society;
>
> 6. expressed their confidence that the domestic courts will be guided in their interpretation and application of the new legislative provisions by the requirements of the Convention and the European Court's case-law in this area; reiterated in this connection that the possibility of review implies the possibility to apply for release on

parole, but not necessarily to be released if the competent judicial authorities conclude that the prisoner still poses a danger to society;

7. requested the authorities to submit information on the above questions".

136. On 13 October 2025 the Government submitted a further Action Report, subsequently integrated on 5 June 2026, explaining how the legislative reform introduced in 2022 had been implemented by the domestic courts and providing examples of relevant judicial decisions.

THE LAW

I. JOINDER OF THE APPLICATIONS

137. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

138. The applicants complained that their life sentences were irreducible; thus, they had no prospect of conditional release – in breach of the requirements of Article 3, which reads as follows:

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

A. Admissibility

139. The Government submitted that both the complaint lodged under Article 3 and that lodged under Article 7 were inadmissible for the applicants' failure to comply with the six-month time-limit. They maintained that the starting point for the running of the six-month period should be considered to be the date of the first domestic decision rejecting, in respect of each applicant, an application for sentence adjustments owing to the prohibitions on alternative to detention and sentence adjustments provided in section 4 *bis*.

140. The applicants contested the Government's objection, submitting that it had not taken into account the Court's findings in *Marcello Viola v. Italy (no. 2)* (no. 77633/16, §§ 17-28, 13 June 2019), and that, in any event, they had complained of an ongoing situation.

141. With regard to the complaint lodged under Article 3, the Court notes that the Government's submission does not take into account the very nature of the alleged ongoing violation, which had arisen at the moment of the imposition of the whole-life sentence and continued throughout the detention. It has been already clarified that the six-month time-limit does not apply to ongoing situations, where the time-limit in effect starts afresh each day and it is only once the situation ceases that the final period of six months will run

to its end (see *Sándor Varga and Others v. Hungary*, nos. 39734/15 and 2 others, § 37, 17 June 2021).

142. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

143. The applicants submitted that their situation had not been different from that examined by the Court in *Marcello Viola* (cited above).

144. As to the application of the regime known as *ergastolo ostativo* to their case, they stated that the prohibition on seeking alternatives to detention and sentence adjustments under section 4 *bis* had been applied to them as a consequence of the domestic case-law allowing the judges and courts responsible for supervising the execution of sentences to assess whether it was clear from the judgments convicting the applicants that the murders in relation to which life imprisonment had been imposed on them had been committed using the so-called "mafia method" (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 106-112 above).

145. As a result of the application of section 4 *bis*, the applicants argued that not only had they been denied access to the sentence adjustments that they had sought over time, but all the restrictions set out by section 4 *bis* had automatically been applied to them – meaning that the prison sentence imposed on them was *de facto* an irreducible life imprisonment (*ergastolo ostativo*).

146. With regard to applications nos. 23834/18, 37683/19 and 17937/20, the applicants further maintained in their observations that even after the legislative reform enacted by Decree-Law no. 162 of 2022 (see paragraphs 92-95 above), the relevant legal framework had not met the requirements of the Court's case-law on the matter. They argued, *inter alia*, that the new system had merely apparently replaced the irrebuttable presumption of dangerousness to society with a relative presumption. The overly rigid requirements regarding the burden of proof imposed on prisoners in order to reverse the presumption of an ongoing dangerousness – together with the use of extremely vague terminology – meant that, *de facto*, it was impossible for the applicants to be considered eligible for sentence adjustments.

147. The applicants also submitted that the relevant Court case-law provided that a prisoner serving a life sentence should have a realistic opportunity of release after serving no more than 25 years' imprisonment, while under the mechanism introduced by Decree-Law no. 162 of 2022, the minimum period of detention was 30 years.

148. The Government did not deny that the applicants were detained under the regime known as *ergastolo ostativo*, merely pointing out that Decree-Law no. 162 of 2022 had transposed the principles set in *Marcello Viola* (cited above) and had introduced the possibility that their life sentences might be reviewed.

2. The Court's assessment

(a) Applicable principles

149. It is well established in the Court's case-law that a life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review – both of which must exist from the imposition of the sentence (see *Vinter and Others v. the United Kingdom* [GC] (nos. 66069/09 and 2 others, §§ 103-22, ECHR 2013; see also *Murray v. the Netherlands* [GC], no. 10511/10, §§ 99-100, 26 April 2016; *Hutchinson v. the United Kingdom* [GC], no. 57592/08, §§ 42-45, 17 January 2017; *Medvid v. Ukraine*, no. 7453/23, §§ 46-50, 10 October 2024; and, as far as the Italian regime known as *ergastolo ostativo* is concerned, *Marcello Viola*, (cited above §§ 93-132).

150. A prisoner cannot be detained unless there are legitimate penological grounds for incarceration; such grounds include punishment, deterrence, public protection and rehabilitation. While many of these grounds will be present at the time that a life sentence is imposed, the balance between these justifications for detention is not necessarily static and might shift in the course of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence that these factors or shifts can be properly evaluated (see the above-cited cases of *Vinter and Others*, § 111 and *Murray*, § 100).

151. As to the scope of the review required, the Court has specified that it should allow the domestic authorities to consider whether, during the serving of a life sentence, any changes in the prisoner in question and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds (see the above-cited cases of *Vinter and Others*; § 111; *Murray*, § 100; and, recently, *Medvid*, § 47).

152. This assessment must be based on rules that have a sufficient degree of clarity (see *Murray*, cited above, § 100, with further references). Indeed, as clarified by the Court in *Vinter and Others* (cited above), although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. A whole-life prisoner is entitled to know, at the outset of his sentence, what he must do in order to be

considered for release and under what conditions - including when a review of his sentence will take place or may be sought (ibid., § 122). Moreover, the conditions laid down in domestic legislation must reflect the conditions set out in the Court's case-law. In particular, the Court has clarified that the assessment must be based on objective, pre-established criteria. The prisoner's right to a review entails an actual assessment of the relevant information, and the review must also be surrounded by sufficient procedural guarantees. To the extent that is necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review. Lastly, in assessing whether the life sentence is reducible *de facto*, it may be of relevance to take account of statistical information on the prior use of the review mechanism in question (see *Murray*, cited above, § 100, with further references).

153. As regards the appropriate point in a life sentence when a review of the justification for continued detention should be carried out, *Vinter and Others* (cited above, § 120), the Court has noted clear support in the relevant comparative and international material for a review taking place no later than 25 years after the imposition of a life sentence, with periodic reviews thereafter.

154. In the light of these principles, in *Marcello Viola* (cited above §§ 98-132) the Court found that the regime resulting from the combined application of Article 22 of the Criminal Code and sections 4 *bis* and 58 *ter* of the Prison Administration Act (as those provisions were in force at the time in question) did not meet the requirements imposed by Article 3 of the Convention. The Court observed that section 4 *bis*, as amended by Decree-Law no. 306 of 1992, regarded "cooperation with the judicial authorities" as the only possible demonstration of the convicted prisoner's "dissociation" and rehabilitation, and that it failed to take account other indicators that could be used to assess a prisoner's progress (*Marcello Viola*, cited above § 121). Consequently, the failure of a particular prisoner to "cooperate with the judicial authorities" would give rise to an irrebuttable presumption of dangerousness to society which effectively deprived him or her under section 4 *bis* of any realistic prospect of release (*ibid*., § 127). By continuing to equate the absence of cooperation with the irrebuttable presumption of dangerousness to society, the rules in force at the time effectively assessed a person's dangerousness by reference to the moment at which the offence in question was committed, instead of taking account of the rehabilitation process and any progress the prisoner may have made since being convicted (ibid., § 128).

155. Lastly, when called upon to examine the enactment of legislative reforms introducing new mechanisms of review of whole-life sentences, the Court has made reference to the requirements concerning both the criteria and conditions for review provided for by the newly introduced legislation (see

the above-cited cases of *Hutchinson*, §§ 58-65, and the case-law cited therein, and *Medvid*, §§ 55-57) and the time frame (see *T.P. and A.T. v. Hungary*, nos. 37871/14 and 73986/14, § 48, 4 October 2016, and *Medvid*, cited above, § 59), in order to verify whether life sentences could be considered not only *de iure* but also *de facto* reducible under the reformed system. In this regard – and particularly with regard to how the criteria and the conditions for review should be interpreted and applied by the domestic courts – the Court took into account the importance of judicial interpretation in clarifying domestic legislation, and emphasised how its own case-law should serve as a guideline for the domestic courts, so that the requirements set out therein would be reflected in the application of the domestic rules (see *Hutchinson*, cited above, § 63).

(b) Application of those principles to the present case

(i) Preliminary observations

156. The Court observes at the outset that in the present case section 4 *bis* was applied to all the applicants' life sentences.

157. In particular, the Court observes, on the basis of the documents submitted by the parties, that the applicants' life sentences initially appeared to be considered reducible by the domestic courts. At that stage, section 4 *bis* was applied only to mafia crimes that were punishable by a limited term of imprisonment (see, respectively, paragraphs 16, 32, 47-53 and 68-69 above). However, once the applicants had served the portion of their sentences falling under section 4 *bis*, the judges and courts responsible for supervising the execution of the sentences relied on the convictions themselves, concluding that the life sentences were also subject to the same prohibition on conditional release and sentence adjustments under section 4 *bis*, since the murders for which their life sentences had been imposed had been committed using the "mafia method" (see, respectively, paragraphs 18-27, 34-36, 54-56 and 70-73).

158. The Court observes that, as a result of the contradictory approach reflected in the above-mentioned domestic decisions, the applicants were not – in breach of the principles outlined by the Court in *Vinter and Others* (cited above, § 122) – put in a position in which they could establish whether or not their life sentence was reducible.

159. The Court further notes that it appears to be undisputed by the parties that – as a consequence of the assessment conducted by the courts responsible for supervising the execution of sentences in respect of the judgments convicting them – the applicants were placed under the regime known as *ergastolo ostativo*.

160. With regard to applications nos. 23169/16 and 23834/18 (see paragraphs 23-27 and 39 above, respectively), this is also confirmed by the fact that the applicants' subsequent applications for conditional release were

deemed inadmissible owing to their failure to cooperate with the judicial authorities. With regard to applications nos. 37683/19 and 17937/20, the Court notes that, in any event, it appears from the documents submitted to it that all the applicants were considered to have played a relevant role within the criminal organisations they had belonged to (see, respectively, paragraphs 24, 41, 54, 65). Accordingly, they could not have applied for conditional release without having cooperated with the judicial authorities, and nor could their cooperation with the judicial authorities be characterised as "impossible" or "unenforceable" for the purposes of the legislation in force at the time and the Court of Cassation's case-law (see, *Marcello Viola*, cited above, § 98).

161. Moreover, the Court has already stated (see *Marcello Viola*, cited above, §§ 93-132) that the so-called *ergastolo ostativo* did not meet the requirements imposed by Article 3 of the Convention. In the light of the circumstances noted above, the Court sees no reason to depart from that finding in respect of the present case. However, given the fact that following the *Marcello Viola* judgment, the domestic legal system underwent a process of reform (at the urging of the Constitutional Court – see paragraphs 113-118 above) that was set in train by Decree-Law no. 162 of 2022 (see paragraphs 92-95 above), it remains to be ascertained whether the above-mentioned constitutional judgments and the subsequent legislative reform rendered the applicants' life sentences *de jure* and *de facto* reducible.

(ii) The evolution of the case-law of the Constitutional Court

162. The Court notes that the principles set out in *Marcello Viola* were first transposed by the Constitutional Court by virtue of its judgments no. 253 of 2019 (see paragraphs 113-114 above) and no. 32 of 2020 (see paragraphs 115 116). In particular, judgment no. 253 of 2019 addressed the issue of whether prisoners who had been convicted for mafia-related crimes could be eligible – under section 4 *bis* – for prison leave in the absence of cooperation with the judicial authorities. The judgment applied the conclusions reached by the Court in *Marcello Viola* (cited above) concerning the inconsistency with the principle of rehabilitation of the irrebuttable presumption of dangerousness to society provided for in section 4 *bis*. Within the limited context of access to prison leave, the Constitutional Court replaced this absolute presumption of dangerousness with a relative one, and it provided guidelines as to the elements to be considered by the judges and courts responsible for supervising the execution of sentences in order to reverse such presumption (see paragraph 114 above). Judgment no. 32 of 2020 assessed the domestic legislation that had added crimes against the public administration to the list of offences covered by section 4 *bis*. In the light of the principles established by the Court in the above-mentioned case, the judgment recognised that new provisions preventing access to conditional

release defined the scope of the penalty and were therefore comparable to substantive criminal law (see paragraphs 115-118).

163. The Court further observes that, although the above-mentioned judgments did not directly address the so-called *ergastolo ostativo*, they paved the way for a comprehensive reconsideration of the domestic rules on the issue. Moreover, they gave an impetus to the domestic courts, which in certain cases – following the examples provided by those judgments and in the absence of a legislative initiative – aligned their decisions to the requirements stemming from the Convention and the Court's case-law. Within this framework, in particular, the Court of Cassation held that the inclusion of new crimes in the list contained in section 4 *bis* determined a transformation *in peius* of the sentences related to these crimes, subject to the principle of non-retroactivity of criminal law (see judgment of the Court of Cassation no. 17203 of 28 February 2020, referred to in paragraph 119 above).

(iii) Decree-Law no. 162 of 2022

164. The Court further notes that Decree-Law no. 162 of 2022 (see paragraphs 92-95 above) reintroduced the possibility for life prisoners detained under section 4 *bis* to be granted, under certain conditions, conditional release, alternatives to detention and sentence adjustments, even in the absence of cooperation with the judicial authorities. The requirements to be met by prisoners under the 4 *bis* regime in order for them to be eligible for conditional release (or for any other sentence adjustment) and the procedure for the assessment of their rehabilitation are set forth in subsections 1 *bis* and 2 of the "new" section 4 *bis* (see paragraph 93-94 above).

165. In the light of the foregoing, the Court will examine the scope of the review mechanism, the criteria and conditions laid down and the time frame foreseen by the new provisions (*de iure* reducibility) before analysing their application in the instant cases (*de facto* reducibility) (see paragraph 154 above).

(α) Scope of review

166. As regards the scope of the newly introduced review mechanism, the Court must assess whether the reformed legal framework enables the domestic authorities to evaluate whether, during the course of serving his or her sentence, any changes in a life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds (see the above-cited cases of *Vinter and Others*, § 111; *Murray*, § 100; and, recently, *Medvid,* § 47).

167. The Court observes at the outset that, under section 4 *bis*, eligibility for conditional release and other sentence adjustments mainly depends on

prisoners' ability to provide adequate proof that they no longer have links with organised crime and that there is no risk that such links will be restored in the future (even indirectly or via third persons). Section 4 *bis* expressly specifies that, in this regard, prisoners must demonstrate through specific elements that they have severed ties to the criminal organisation in question. However, those elements should be different and additional to "regular" prison conduct, their participation in the rehabilitation process, and a mere declaration that they severed ties to the criminal organisation in question (see paragraph 93 above).

168. The Court takes into account the specific nature of mafia-type criminal organisations, the pact binding their members (which is of a particularly solid and lasting nature), and that such links do not cease solely as a result of the incarceration of that member (see on this point, *Marcello Viola*, cited above, §§ 104-106). In view of these specific features, there may be a need (which is indeed reflected in the newly introduced provisions) to (i) enable the domestic courts to assess not only the progress by life prisoners subject to the section 4 *bis* regime towards rehabilitation, but also their residual dangerousness, and (ii) require them to demonstrate that they have definitively severed all links with the criminal organisation and will not restore them if their prison regime is softened.

169. The Court finds that such a combined scope of the review mechanism is not *per se* in breach of the requirement of Article 3 of the Convention. Indeed, the Court has already found that a review mechanism that is based on an assessment of both the level of danger posed by the prisoners and any changes in their personality that has taken place during the serving of their sentences can be in line with the requirements laid down by Article 3 of the Convention (see *Bodein v. France*, no. 40014/10, § 60, 13 November 2014).

(β) Criteria and conditions for review

170. As to the criteria and conditions for review, the Court cannot but note that the legislature made use of certain broad terms – for example, referring to "the context in which the crime has been committed", or to "individual and environmental circumstances" (see paragraph 93 above). The Court further notes that the amended provisions clearly specify which elements are not *per se* sufficient to satisfy the required burden of proof placed on the prisoner – namely: merely "regular" prison conduct on the part of the prisoner in question; the fact that the prisoner participates in the rehabilitation process; and the fact that the prisoner has declared that he or she has severed ties to the criminal organisation in question. However, those provisions did not provide indications or examples as to the assertions that life prisoners should make in support of their applications. This gave rise to different approaches in the case-law of the Court of Cassation (paragraphs 124-126 above).

171. In this regard, the Court reiterates the need for a degree of specificity or precision as to the criteria and conditions attaching to sentence review (see

Murray, cited above, § 100, with further references). At the same time, the Court also takes note of the domestic courts' efforts to both clarify the meaning of the terms used in the reformed version of section 4 *bis* and to provide guidance as to the interpretation and application of the criteria and conditions for release (see, in particular, the Court of Cassation's judgments cited in paragraphs 125-126 above).

172. As to the procedure for review, the Court further notes that the domestic courts are required to obtain detailed information and opinions by different States bodies and agencies in order to verify the validity of the elements adduced by the applicant. If these investigations reveal indications of continuing or renewed links with organised crime, it is up to the prisoner to provide adequate evidence to the contrary (see section 4 *bis*, subsection 2, mentioned at paragraph 93 above). In this regard, the Court observes that the applicant's burden of proof (see paragraph 146 above) is counterbalanced by the domestic authorities' responsibility to provide detailed, concrete and updated information and the domestic courts' duty to base their assessment on all the adduced circumstances.

173. Within this framework, the requirement that the judges and courts responsible for supervising the execution of sentences specifically indicate the reasons for the acceptance or rejection of the applications for sentence adjustments (provided for in section 4 *bis*, subsection 2) is of particular significance to enable prisoners to know (i) what they must do to be considered for release, and (ii) the conditions of that release.

174. The Court further considers that in the exercise of their power of assessment under the newly introduced provisions, domestic courts will be guided by its case-law. In this regard, by setting out its relevant case-law in the preceding paragraphs (see paragraph 152 above), the Court's purpose was precisely to aid the domestic courts to fulfil their statutory duty to act compatibly with the Convention in this area (see, similarly, *Hutchinson*, cited above, § 63).

175. In this connection, the Court observes that, although the first decisions of the Court of Cassation regarding the reformed system revealed the existence of different approaches (see paragraphs 124-126 above), those divergencies in the case-law do not appear to amount to a profound and persistent conflict. In addition, the Court notes that the Court of Cassation derived guiding principles from both the Court's relevant case-law and the already mentioned Constitutional Court judgments, and that a significant part of the case-law placed specific emphasis on the fact that, although other elements could be taken into account, the assessment required by section 4 *bis* should be mainly focused on the individual rehabilitation process (see the Court of Cassation judgments already cited in paragraph 126 above – in particular, judgments no. 23556 of 2023, no. 38278 of 2023, and no. 19980 of 2024). In this regard (as emphasised by the above-mentioned judgments of the Court of Cassation), the domestic courts are required to take into account

elements from which it could be inferred – not an intimate and personal amendment of the prisoner's previous criminal experience, which could result in a perpetuation of the requirement for cooperation with the judicial authorities, but rather – the prisoner's progress towards rehabilitation as determined by a comprehensive examination of their conduct (see judgment no. 23556 of 2023).

176. The domestic case-law is still consolidating, and the Court reiterates in this regard that – in view of the nature of the phenomenon of organised crime, particularly of the mafia type – the domestic courts may be required to assess not only life prisoners' progress towards rehabilitation but also their residual dangerousness (see paragraphs 168-169 above). It therefore considers that any such assessment must ensure a proper balance between on the one hand the elements indicating the prisoner's dangerousness, and on the other hand the rehabilitation process undertaken. Provided that the domestic courts apply the newly introduced mechanism in a manner consistent with this requirement (see, *mutatis mutandis, Hutchinson*, cited above, § 64), the Court finds that the criteria and conditions for review as further developed by the above-noted judgments of the Court of Cassation satisfy the criteria set out in the Court's case-law.

(γ) Time frame for review

177. With regard to the time frame for the review, the Court notes that the latest version of section 4 *bis* sets at 30 years the minimum period of imprisonment to be served in order for a prisoner to be eligible for conditional release; for life prisoners not held under section 4 *bis*, the standard minimum term is 26 years under Article 176 of the Criminal Code.

178. The Court has already found in the case of *Bodein* (cited above, § 60) that a system which provided for the possibility of a review of life sentences after 30 years of imprisonment – but which at the same time enabled the domestic courts to include the period spent in pre-trial detention in the calculation of a whole-life term – could be in line with the criteria established in *Vinter and Others* (cited above). In so finding, the Court gave particular weight to the fact that – taking into account the period of time spent in pre-trial detention – in that specific case the applicant had been able to apply for parole 26 years after the imposition of his life sentence (see *Bodein*, cited above, § 61).

179. In this regard, the Court observes that – although, similarly to the French system considered in *Bodein*, cited above – the starting point for the calculation of the whole-life term under Italian law may also take into account periods spent in pre-trial detention, as well as other periods of detention imposed in respect of separate offences (see paragraph 127 above) and any period of early release eventually granted to life prisoners; depending on the specific situation of each life prisoner, the 30-year threshold introduced by the new provision may give rise to situations that are incompatible with the

requirements of Article 3 of the Convention (see *Bancsók and László Magyar v. Hungary (no. 2)*, nos. 52374/15 and 53364/15, § 45, 28 October 2021). It will be therefore necessary to assess on case-by-case basis whether, notwithstanding such a requirement, life prisoners become eligible for conditional release within 25 years of the imposition of their life sentence, in accordance with the criteria established in *Vinter and Others* (cited above).

180. In the light of the above-noted considerations, the Court will now assess the applicants' specific situations.

(iv) As regard application no. 23834/18

181. With regard to application no. 23834/18, the Court observes that, on 10 May 2022, the L'Aquila court responsible for supervising the execution of sentences ruled admissible the applicant's most recent application for conditional release (see paragraph 41 above), noting that the murder for which he had been sentenced to life imprisonment had occurred before section 4 *bis* had entered into force.

182. Applying the conclusions reached by Constitutional Court judgment no. 32 of 2020 (see paragraphs 115-116 above), the court ruled that this provision could not be applied retroactively. It also found that the applicant had already served the sentence relating to membership of a mafia-type criminal organisation — the only offence falling under section 4 *bis*. As a result of the domestic court's conclusion in respect of the non-retroactivity of the provisions in issue, the applicant's application for conditional release was deemed to be admissible. As to the merits of the application, the court made an assessment of the applicant's progress towards rehabilitation in line with the guidelines provided by Constitutional Court judgment no. 253 of 2019 (see paragraphs 113-114 above) and dismissed the applicant's application on the merits, finding that his limited participation in the rehabilitation programme designed for him, although partly attributable to his age, prevented the assessment of a "positive" change in his personality.

183. In the light of the above, the Court finds that the domestic court's conclusions with regard to the fact that section 4 *bis* could not be applied retrospectively to the applicant's life sentence afforded to the applicant a prospect of release, thus marking the end of the continuing violation of Article 3 of the Convention in respect of his case. Indeed, as a consequence of the L'Aquila court's decision, the applicable regime can no longer be considered to constitute the irreducible *ergastolo ostativo*, but rather that of an ordinary life sentence under Article 22 of the Criminal Code, which affords the possibility of a prisoner – once he or she has served 26 years in prison – being eligible to apply for conditional release under Article 176 of the Criminal Code (see paragraph 82 above).

184. The Court further observes that the fact that the applicant's application for conditional release was dismissed on the merits does not *per se* have an impact on the *de facto* reducibility of his life sentence. The Court

has indeed reiterated that a life sentence does not become irreducible by the mere fact that in practice it may be served in full (see *Murray*, cited above, § 99, with further references). Neither are these findings impacted by the most recent decision of 18 November 2022 (see paragraph 43 above), by which the L'Aquila court reached different conclusions with regard to the applicant's subsequent application for prison leave and stated that the conviction for murder had to be considered as falling within the scope of section 4 *bis*. In this regard, the Court notes that the domestic court based its decision on the circumstance that Constitutional Court judgment no. 32 of 2020 had distinguished between conditional release, on one hand, and other sentence adjustments, on the other, with regard to the applicability of the principle of non-retroactivity of criminal law (see paragraph 116 above). The Court does not see the necessity to enter into the assessment of such distinction, in the light of the fact that it neither had an impact on the applicant's eligibility for conditional release, nor prevented an assessment on the merits of his application for prison leave, which in any case was considered admissible and dismissed, in accordance with the principles outlined in Constitutional Court judgment no. 253 of 2019.

185. The Court finds in conclusion that during the period from 2 May 2016 to 10 May 2022, namely between the application of section 4 *bis* to the applicant's life sentences (see paragraph 34 above) and the above-mentioned decision on his eligibility for conditional release (see paragraph 181 above), the applicant found himself in a situation of uncertainty, during which time there was a lack of any clear and realistic prospect of release in violation of Article 3 of the Convention (see the above-cited cases of *Marcello Viola*, cited above, § 127, and *Medvid*, § 60).

186. The Court further finds that following the L'Aquila court's decision of 10 May 2022, the ordinary life-sentence regime under Article 22 of the Criminal Code – (which affords the possibility of being granted conditional release under Article 176 of the Criminal Code) – was applied to the applicant. Accordingly, there was no violation of Article 3 of the Convention after that moment.

(v) As to the other applications

187. With regard to applications no. 23169/16, 37683/19 and 17937/20, the Court considers that it was only with the legislative reform enacted by Decree-Law no. 162 of 2022 (see paragraphs 92-95 above) that the applicants were afforded the possibility to apply for conditional release even without their having cooperated with the judicial authorities.

188. The Court notes that the domestic system introduced the possibility of a dedicated judicial review of their life sentences. In the light of the above-mentioned considerations concerning the scope, the criteria and the conditions of the review (see paragraphs 166-167 above), the Court finds that the newly-established mechanism, as further interpreted by the

above-mentioned case-law of the Court of Cassation, offered the applicants a realistic opportunity to have their life sentences reviewed and, accordingly, a prospect of release.

189. The Court also reiterates its conclusions concerning the time frame for review of a life sentence and the term of 30-years' imprisonment - provided by the latest version of section 4 *bis* as the minimum period of imprisonment to be served in order for a prisoner to be eligible for conditional release (see paragraphs 177-179 above). In respect of the instant case, it would be therefore necessary to assess whether the applicants' life sentences can be considered not only *de jure* but also *de facto* reducible in line with the requirements of Article 3 of the Convention.

190. The Court takes into account that some of the applicants argued in their observations that the review mechanism introduced by the reform did not comply with the criteria established in the Court's case-law – in particular, because the period to be served before becoming eligible for conditional release was very long. Nevertheless, those applicants did not apply for conditional release after the reform; nor did they provide sufficient information to allow the Court to assess whether they became eligible for parole under the new provisions (see paragraph 93 above), and whether the recommended maximum period of 25 years for reviewing a life sentence established in the Court's case-law law (see *Bancsók and László Magyar*, cited above, § 45) had been exceeded.

191. In the light of the above-noted considerations, the Court finds in conclusion that during the period between the application of section 4 *bis* to their life sentences (see, respectively, paragraphs 18, 54, and 70 above) and the enactment of Decree-Law no. 162 of 2022 on 31 October 2022, the applicants found themselves in a situation of uncertainty and that there was a lack of any clear and realistic prospect of early release – in violation of Article 3 of the Convention (see the above-cited cases of *Marcello Viola*, cited above, § 127, and *Medvid*, § 60).

192. The Court further considers that, after the enactment of the reform of section 4 *bis*, the amended legal framework offered the applicants a realistic opportunity to have their life sentences reviewed under clear conditions. It further finds that – although the newly defined time frame for the review might give rise to situations that are incompatible with the requirements of Article 3 of the Convention (see paragraphs 177-179 above) – the applicants did not provide the Court with sufficient information to enable it to carry out an assessment of their specific situations in this regard. Thus, the Court finds that there was no violation of Article 3 of the Convention after the enactment of the reform.

III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

193. The applicants complained that, although they had been sentenced to reducible life sentences, the application of section 4 *bis* had transformed them into heavier, irreducible life sentences, in violation of Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

194. With regard to applications nos. 23169/16, 23834/18 and 37683/19, the applicants also complained under the same Article of the retrospective application of section 4 *bis,* as amended by Decree-Law no. 306 of 1992, to crimes committed before its entry into force.

A. Admissibility

1. Applicability of Article 7

(a) The Parties' submissions

195. The Government argued at the outset that Article 7 of the Convention did not apply in the present cases – in particular with regard to the measures in respect of which the applicants had raised a complaint. They maintained that the applicants had merely complained of the rejection of their applications for (i) prison leave and (ii) – in application no. 23834/18 – for the imposition of a different regime concerning visits. The Government argued that those measures had related to the enforcement of the applicants' respective sentences, and reiterated the Constitutional Court's reasoning in its judgment no. 32 of 2020 (see paragraph 116 above). They further submitted that the applicants had not provided any evidence that they had fulfilled legal requirements for them to be considered eligible for those measures.

196. The applicants contested the Government's objection. In applications nos. 23169/16, 37683/19 and 17937/20, they argued that section 4 *bis* "as a whole" had been applied to their life sentences, implying a substantial transformation of the penalty, which is relevant under Article 7 of the Convention. In application no. 23169/16, the applicant further submitted that the Government's objection was contradicted by their further objection concerning the compliance with the time-limit under Article 35 § 1 (see paragraph 226 below), whereby the Government maintained that the starting point of the running of the six-month rule should be considered to

have been the date of the first domestic decision concerning the application of section 4 *bis* to the applicants.

197. The third party (*Associazione Antigone*) submitted information concerning the evolution of the domestic case-law concerning the nature of the prohibitions on conditional release and sentence adjustments under section 4 *bis*; it stated that the latter provision had originally been intended to regulate the enforcement of penalties for mafia-related crimes but had successively been extended to encompass a catalogue of different violations. The third party submitted that applying section 4 *bis* retroactively to offences committed before its enactment had resulted in the unexpected imposition of longer and more severe punishments. In this regard, it reiterated the conclusions reached by the Constitutional Court in its judgment no. 32 of 2020, which declared unconstitutional Law no. 3 of 2019 in so far as it extended the list of offences falling within the scope of section 4 *bis* to corruption and other crimes against the public administration (see paragraph 115 above). On this point, the third party further emphasised that the applicability of Article 7 of the Convention could not be excluded in view of the nature or the seriousness of the crimes committed.

(b) The Court's assessment

(i) General principles

198. The Court reiterates that its established case-law draws a distinction between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty": Article 7 applies only to the former (see *Kafkaris*, cited above, § 142 and *Del Río Prada v. Spain* [GC], no. 42750/09, § 83, ECHR 2013, and the cases cited therein).

199. In particular, in cases concerning remission of sentence or changes in the procedure for conditional release, the Court has constantly held that those measures concerned the enforcement of sentences and thus excluded the application of Article 7 (see *Grava v. Italy*, no. 43522/98, §§ 51-52, 10 July 2003; *Uttley v. United Kingdom* (dec.), no. 36946/03; and *Kafkaris*, cited above, § 142). However, the Court has also acknowledged that in practice, the distinction between a measure that constitutes a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty" may not always be clear cut (see *Del Río Prada*, § 85, cited above; *Kafkaris*, cited above, § 142; and *Kupinskyy v. Ukraine*, no. 5084/18, § 49, 10 November 2022).

200. The concept of "penalty" in Article 7 is – like the notions of "civil rights and obligations" and "criminal charge" in Article 6 § 1 of the Convention – autonomous in scope. The wording of the second sentence of Article 7 § 1 indicates that the starting point in any assessment of the existence of a penalty is whether the measure in question is imposed

following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity (see *Welch v. the United Kingdom*, 9 February 1995, §§ 27-28, Series A no. 307-A, and *Del Río Prada*, cited above, §§ 81-82).

201. In particular, as stated in *Del Rio Prada* (cited above, §§ 89-90):

> "89. In the light of the foregoing, the Court does not rule out the possibility that measures taken by the legislature, the administrative authorities or the courts after the final sentence has been imposed or while the sentence is being served may result in the redefinition or modification of the scope of the "penalty" imposed by the trial court. When that happens, the Court considers that the measures concerned should fall within the scope of the prohibition of the retroactive application of penalties enshrined in Article 7 § 1 *in fine* of the Convention. Otherwise, States would be free – by amending the law or reinterpreting the established regulations, for example – to adopt measures which retroactively redefined the scope of the penalty imposed, to the convicted person's detriment, when the latter could not have imagined such a development at the time when the offence was committed or the sentence was imposed. In such conditions Article 7 § 1 would be deprived of any useful effect for convicted persons, the scope of whose sentences was changed *ex post facto* to their disadvantage. The Court points out that such changes must be distinguished from changes made to the manner of execution of the sentence, which do not fall within the scope of Article 7 § 1 *in fine*.
>
> 90. In order to determine whether a measure taken during the execution of a sentence concerns only the manner of execution of the sentence or, on the contrary, affects its scope, the Court must examine in each case what the "penalty" imposed actually entailed under the domestic law in force at the material time or, in other words, what its intrinsic nature was. In doing so it must have regard to the domestic law as a whole and the way it was applied at the material time (see *Kafkaris*, cited above, § 145)."

(ii) Application of those principles to the present case

(α) Preliminary observations

202. In the light of the Government's objection, the Court will at the outset ascertain what facts constituted the violation of which the applicants complained under Article 7 of the Convention and what legal argument underpinned them in the light of the Court's case-law concerning the assessment of the scope of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 110, 20 March 2018, and *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 137, 1 June 2023).

203. The Court takes into account the Government's argument that the applicants had only lodged their applications with the Court following the rejection of their applications either for prison leave or for the imposition of a different regime concerning prison visits (see paragraph 195 above). However, with regard to the factual allegations – that is, to the effect that the applicants are the "victim" of an act or omission – it notes that the applicants did not limit their complaints to the mere rejection of their specific applications. On the contrary, the applicants complained that those rejections

had been based on the domestic courts' conclusion that the 4 *bis* regime was applicable to their life sentences. Indeed, as already noted under Article 3 (see paragraph 157 above), although the domestic courts initially treated the applicants' life sentences as reducible and applied section 4 *bis* only to mafia offences punishable by fixed-term imprisonment (see paragraphs 16, 32, 47-53 and 68-69), the later decisions held that section 4 *bis* applied to the applicants' entire life sentences (see, respectively, paragraphs 18-27,34-36, 54-56 and 70-73).

204. As to the legal arguments underpinning the applicants' complaints – namely that the said act or omission entailed a "violation by [a] Contracting Party of the rights set forth in the Convention or the Protocols thereto" – the Court notes that all the applicants complained under Article 7 of the Convention that, as a consequence of the application of section 4 *bis* during the serving of their life sentences, not only had they been denied the specific measures for which they had applied, but all the restrictions related to section 4 *bis* – including access to conditional release – consequently applied to them as an automatic effect of the said provision, thus transforming their reducible life sentences into irreducible ones. According to the applicants, that had resulted in the redefinition of the scope of the penalty imposed on them at the moment of their conviction. With regard to applications nos. 23169/16, 23834/18 and 37683/19, the applicants also complained under the same Article of the retrospective application of section 4 *bis* (as amended by Decree-Law no. 306 of 1992) to crimes committed before its entry into force.

205. In this context, the Court reiterates its case-law according to which a whole-life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he or she can raise a complaint under Article 3 (see *Vinter and Others*, cited above, § 122) and its implications with regard to related complaints raised under Article 7 (see *Kupinskyy*, cited above, § 58). Requiring otherwise would indeed be contrary both to legal certainty and to the general principles on victim status within the meaning of that term within Article 34 of the Convention (*Vinter and Others*, cited above, § 122).

(β) Scope of the penalty imposed

206. As stated in *Del Rio Prada* (cited above, § 90), in order to determine whether the situation complained of by the applicants falls within the scope of Article 7 of the Convention, the Court must examine in each case what the "penalty" imposed actually entailed under the domestic law, as in force at the material time – or, in other words, what its intrinsic nature was.

– *Applications no. 23169/16, 23834/18 and 37683/19*

207. The Court notes at the outset that the applicants in applications nos. 23169/16, 23834/18 and 37683/19 were sentenced to life imprisonment for murders committed before the entry into force of both section 7 and the 1992 reform of section 4 *bis* (see paragraphs 12, 30 and 46 above).

208. In this respect, the Court notes that it was only with Decree-Law no. 306 of 1992 that the legislature introduced a presumption that prisoners convicted of those crimes are dangerous to society which could only be rebutted if the prisoners actually cooperated with the judicial authorities. As a result, the absence of "cooperation with the judicial authorities" gave rise to an irrebuttable presumption of dangerousness: prisoners who did not cooperate with the judicial authorities were automatically barred from being considered for conditional release (see paragraph 87 above).

209. By contrast, the Court finds that, under the initial wording of section 4 *bis* which was applicable to the applicants *ratione temporis* (see paragraph 83 above), prisoners convicted of the crimes listed in that provision would be eligible for conditional release provided that "the current existence of links with organised or subversive crime" could be ruled out. Therefore, a life imprisonment imposed for crimes under section 4 *bis* was, at the time of the commission of the crimes in question, reducible. On the contrary, as already stated in *Marcello Viola* (cited above, § 127), the irrebuttable presumption introduced by the 1992 amendments to the provision deprived life prisoners under section 4 *bis* of any realistic prospect of release.

– *Application no. 17937/20*

210. With regard to application no. 17937/20, the Court notes that the applicant was sentenced to life imprisonment also in respect of a murder committed on 2 July 1992 (see paragraph 64 above) – that is to say shortly after the enactment of Decree-Law no. 306 of 1992.

211. The Court further notes that, although "mafia-type" circumstances under section 7 were included in the charges against the applicant, those circumstances were ruled out by the criminal judge (see paragraph 64 above) because the offence in question was punishable by life imprisonment (see paragraph 86). Only at the stage of enforcing the sentence did the judges in charge of sentence enforcement – contrary to what the criminal trial judge had decided – treat the offence as having been committed using the "mafia method" and held that the prohibition on conditional release and sentence adjustments provided in section 4 *bis* applied (see for the relevant case-law on the issue paragraphs 103-105 above). As a result, the original (reducible) life sentence was substantially replaced with a more severe (irreducible) one (paragraphs 68-73).

(γ) Conclusions on applicability of Article 7

212. In the light of the above-noted considerations, the Court considers that the penalties imposed on the applicants at the time of their respective convictions were reducible life sentences. This is also confirmed by the above-mentioned domestic decisions concerning the applicants' initial applications for sentence adjustments (see, respectively, paragraphs 16-17, 32, 47-53 and 68-69).

213. However, as already found under Article 3 (see paragraphs 156-158 above), by applying to the applicants' life sentences the 4 *bis* regime (as amended by Decree-Law no. 306 of 1992) as a result of the substantial assessment of the "mafia method" during the serving of their sentences, the applicants were deprived of eligibility for parole, rendering their life sentences irreducible.

214. In the case of *Kupinskyy* (cited above, § 51), the Court found that – unlike cases concerning a change in the terms for granting parole (which do not fall within the scope of Article 7 of the Convention) – Article 7 applies to cases where an issue of unavailability of parole arises as a matter of law. The Court has indeed clarified that irreducible and reducible life sentences differ as to their scope, and the difference has been significant enough for the Court to find the former incompatible with the requirements of the Convention (see *Kupinskyy*, cited above, § 52, with further reference).

215. As regards the Government's objection that the applicants had failed to provide evidence that they had met the legal requirements for access to the measures in question (see paragraph 195 above), the Court notes that the applicants had been deprived of access to parole. Under those circumstances, they could not reasonably be required to provide evidence that they had fulfilled additional legal requirements in order to obtain the measures sought or conditional release. The Court therefore dismisses the Government's argument on this point.

216. The Court therefore concludes that by applying the regime provided by section 4 *bis* to the applicants' initially reducible life sentences, the domestic courts in the particular circumstances of the present case rendered the latter irreducible – going beyond mere measures of enforcement and changing the scope of the applicants' penalty. Article 7 is therefore applicable in the present case.

2. Victim status

(a) Applications nos. 23169/16 and 17937/20

217. The Government argued that the applicants in applications nos. 23169/16 and 17937/20 could not be considered to be victims of the violation they complained of, since they had also been convicted for crimes under section 4 *bis* committed after 9 June 1992 (the date of the entry into force of Decree-Law no. 306 of 1992).

218. The applicant in application no. 23169/16 contested the Government's objection, arguing that the offences he had committed after the enactment of the 1992 reform were punished with a limited term of imprisonment (see paragraph 13 above). According to the relevant case-law at the time (see paragraphs 131 above), once the applicant had served the portion of his sentence relating to those crimes, he should have been allowed to obtain its separation from the remaining part of the sentence and then become eligible for sentence adjustments and conditional release.

219. The applicant in application no. 17937/20, submitted that, although one of the murders in relation to which he was sentenced to life imprisonment had occurred after the enactment of the 1992 reform, the judgment convicting him had explicitly excluded the application of the aggravating circumstances of the "mafia method" to that murder (see paragraph 64 above).

220. The Court considers that the objection raised by the Government as regards the victim status of the applicants in applications nos. 23169/16 and 17937/20, is closely linked to the substance of the applicants' complaints and should be joined to the merits of the case.

(b) Application no. 23834/18 and 37683/19

221. While the Government have not raised an objection in respect of the victim status of the applicants in applications nos. 23834/18 and 37683/19, the Court considers that it has to examine this issue of its own motion since it concerns a matter that goes to the Court's jurisdiction (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts), and *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, § 117, 14 December 2017).

222. With regard to application no. 23834/18, the Court notes that, after the Government had been given notice of the application, the L'Aquila court acknowledged that the regime under section 4 *bis* could not be retrospectively applied to the applicant's life sentence (see paragraph 41 above). The Court has already found under Article 3 that the above-noted situation led to the termination of the continuous violation (see paragraphs 181-186 above). It should now assess whether the applicant also lost his victim status in respect of his complaint under Article 7 of the Convention.

223. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged (either expressly or in substance) and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V, and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010).

224. The Court notes that, despite having acknowledged in substance the violation against the second applicant, the domestic courts have not afforded any redress in this regard. Accordingly, in the absence of such redress, the

Court finds that the mere fact of that acknowledgment does not *per se* afford sufficient grounds for concluding that the second applicant lost his victim status.

225. With regard to application no. 37683/19, the Court further notes that, even after the reform of section 4 *bis* implemented in 2022, the Bologna court responsible for the enforcement of sentences failed to acknowledge either expressly or in substance that there has been a violation of the applicant's rights and rejected the applicant's request for prison leave, upholding the lower court's decision of inadmissibility (see paragraph 61 above). In the light of the above, the Court has no doubt that the applicant can still claim to be, under Article 34 of the Convention, the victim of the violations alleged.

3. Compliance with the time-limit under Article 35 § 1 of the Convention

226. The Government submitted that the complaint under Article 7 is inadmissible for failure to comply with the six-month time-limit. They maintained that the starting point for the running of the six-month rule should be considered to be the date of the first domestic decisions rejecting, in respect of each applicant, an application for sentence adjustments owing to the prohibition on conditional release and sentence adjustments provided under section 4 *bis*.

227. The applicants contested the Government's objection. They argued that they had applied to the Court within the six-month time-limit following the first domestic decision rejecting an application for sentence adjustments on the grounds that section 4 *bis* applied to their life sentence – (they further argued that this had been also acknowledged by the Government in its account of the facts).

228. In this regard the Court reiterates, *mutatis mutandis,* its case-law, according to which – where domestic law does not provide for any mechanism or possibility for review of a whole-life sentence – a whole-life prisoner should not be obliged to wait and to serve an indeterminate number of years of his sentence before he can raise a complaint arguing that his life sentence fails to comply with the requirements of Article 3 (see *Vinter and Others*, cited above, § 122). In principle, the above-noted case-law could have implications on the starting-point of the time-limit under Article 35 § 1 of the Convention with regard to complaints under its Article 7 (see *Kupinskyy*, cited above, § 58).

229. However, in the case of *Kupinskyy* (cited above, §§ 59–60), the Court examined a situation in which a prisoner, after being transferred to another State, saw a life sentence that was originally reducible become irreducible because parole was not available in the receiving State. Even though the application was lodged more than ten years after the transfer, the Court held that it had been lodged within the required time limit. This was because, at the time of the transfer, the applicant had been led to believe that he would eventually be eligible for release.

230. In the present case, the Court notes that some of the applicants had lodged applications for sentence adjustments in the past and those applications had either been (i) rejected because the concerned applicant had not yet served limited terms of imprisonment concerning crimes falling under section 4 *bis* (see in particular, with regard to application no. 23169/16, paragraphs 16-17 above) or (ii) dismissed on the merits (see paragraphs 48 and 68 above with regard to applications nos. 37683/19 and 17937/20, respectively). The Court further notes that the domestic courts subsequently adopted a different approach, ruling the applicants' applications for sentence adjustments inadmissible. In particular, despite the fact that the applicants had already completed the portion of their respective sentences that fell under section 4 *bis*, the domestic courts adopted a different interpretation which extended the prohibition on conditional release and sentence adjustments provided for in section 4 *bis* to the applicants' life sentences (see, respectively, paragraphs 18-27, 34-36, 54-56 and 70-73).

231. The Court therefore considers that the relevant starting point is the final decision on those applications, which was taken less than six months before the applications were submitted to the Court. It was only at that moment (see, respectively, paragraph 20 in respect of the first applicant, 36 in respect of the second applicant, 56 in respect of the third applicant, and 73 in respect of the fourth applicant) that the applicants were able to understand that the restrictions laid down in section 4 *bis* applied to their whole life sentences. As a result, they were also able to realise that any future application for conditional release would have no realistic chance of success unless they cooperated with the judicial authorities.

4. Exhaustion of domestic remedies

232. The Government argued that, following Constitutional Court judgment no. 32 of 2020 and the developments in the domestic case-law, the applicants who complained of the retrospective application of section 4 *bis* to their case could apply for conditional release.

233. The applicants contested the Government's objection, arguing that the Constitutional judgment did not refer to their situation and, in any case, did not introduce an accessible and effective remedy.

234. The Court reiterates that the obligation to exhaust domestic remedies requires that applicants make normal use of remedies that are effective, sufficient and accessible in respect of their Convention grievances. To be effective, a remedy must be capable of providing redress in respect of an applicant's complaints and offer reasonable prospects of success (see, *ex multis*, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 139, 27 November 2023, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 205, 22 December 2020 – both with further references). As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy

advanced by them was an effective one, and was available in theory and in practice at the relevant time (see, among many authorities, *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 143).

235. In the present case, the Court has already taken note of the fact that, following the above-mentioned intervention of the Constitutional Court, the domestic courts in certain cases aligned their decisions to the requirements arising from the Convention and the Court's case-law (see paragraph 162 above).

236. The Court also notes that following the enactment of Decree-Law no. 162 of 2022 (see paragraphs 92-93 above), the applicants are now eligible for conditional release.

237. However, the Court observes that the Government did not cite any case-law to support the conclusion that this development in the domestic legal framework enables the applicants to obtain specific redress for their complaint under Article 7 concerning the application of a heavier penalty as a result of the retrospective or, in any event, unforeseeable application of the 4 *bis* regime.

238. On the contrary, the Court notes that in the recent judgment no. 31753 of 2024 (see paragraph 123 above), the Court of Cassation was confronted with an application for conditional release, within the framework of which the prisoner concerned also complained of the retroactive application of the 1992 reform of Article 4 *bis*. The Court of Cassation held that the latter reform had merely affected the manner of functioning of an already existing regime – substantially confirming its previous case-law according to which the 4 *bis* regime had been considered subject to the principle of *tempus regit actum* (see paragraph 102 above).

239. The Court further notes that, in the specific case of application no. 23834/18, the domestic courts acknowledged that the regime under section 4 *bis* could not be retrospectively applied to the applicant's life sentence (see paragraph 41 above). However, the applicant was not afforded any redress in this regard (see paragraph 224 above).

240. In the light of the above, the Court finds that the abstract possibility to apply for conditional release does not *per se* constitute a sufficient remedy for the applicants' complaints under Article 7.

5. Overall conclusions on admissibility

241. The Court notes that the complaints lodged under Article 7 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

242. The applicants submitted that, although they had been sentenced to reducible life imprisonment, the subsequent – unforeseeable – application of section 4 *bis* by the domestic courts responsible for supervising the execution of sentences had turned their life sentences into irreducible ones, in breach of Article 7 of the Convention. With regard to applications nos. 23169/16, 23834/18 and 37683/19, the applicants also complained that section 4 *bis* (as amended by Decree-Law no. 306 of 1992) had been retrospectively applied to offences committed before its enactment.

243. The Government argued that section 4 *bis* had been applied to the applicants' life sentences by the judges and courts responsible for supervising the execution of sentences on the basis of domestic case-law allowing the latter to assess whether, in the event of a judgment convicting an offender, the offences in question had been committed using the "mafia method", even if "mafia-type" aggravating circumstances (as defined under section 7) had not been formally included in the charges against the applicants or, in any case, had been ruled out by the judgment convicting them (see, in respect of the relevant domestic case-law concerning this issue, paragraphs 103-112).They further maintained that the possibility for the domestic courts to carry out such an assessment during the serving of a penalty was foreseeable, since judges and courts responsible for supervising the execution of sentences have the power to interpret final judgments and clarify their content. In particular, the Government referred to judgments of the Court of Cassation where a similar power of interpretation of final judgments by judges and courts responsible for supervising the execution of sentences had been recognised (judgments no. 36 of 9 January 1996 and no. 4077 of 6 July 1995, cited in paragraph 110 above).

244. The third party, *Associazione Antigone*, submitted information concerning the evolution of the domestic case-law following constitutional judgment no. 32 of 2020. In particular, it made reference to the fact that – in line with the conclusions reached by the Constitutional Court in that judgment – both the Court of Cassation (see paragraph 119 above) and the lower courts acknowledged that the principle of the non-retroactivity of criminal law applied to section 4 *bis*.

2. The Court's assessment

(a) General principles

245. The Court reiterates that the guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is emphasised by the fact that no derogation from it is permissible under Article 15 – even in time of war or in

the event of another public emergency threatening the life of the nation. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Del Río Prada*, cited above, § 77, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 237, 26 September 2023).

246. While the Court accepts that States are free to amend the penalties applicable for criminal offences – notably by increasing them (see *Achour v. France* [GC], no. 67335/01, § 44, ECHR 2006 IV) – they must nonetheless comply with the requirements of Article 7 in doing so (see *Maktouf and Damjanović v. Bosnia Herzegovina* [GC], nos. 2312/08 and 34179/08, § 75, ECHR 2013). On this point, the Court reiterates that Article 7 of the Convention unconditionally prohibits the retrospective application of the criminal law where it is to an accused's disadvantage (see *Del Río Prada*, § 116, and *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, § 80, 29 May 2020). The principle of the non-retroactivity of criminal law applies both to the provisions defining the offence and to those establishing the penalties incurred (ibid., § 80).

247. The Court further found that Article 7 of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). This requirement is satisfied where the individual can know from the wording of the relevant provision – if need be with the assistance of the courts' interpretation of it and after taking appropriate legal advice – what acts and omissions will make him criminally liable and what penalty he faces on that account (see *Cantoni v. France*, 15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V; *Kafkaris*, cited above, § 140; *Del Río Prada*, cited above, § 79; and *G.I.E.M. S.r.l. and Others*, cited above, § 242).

248. In the light of these principles, the Court must therefore verify that, at the time when an accused person performed the act that led to his being prosecuted and convicted, (i) there was in force a legal provision which made that act punishable, and (ii) the punishment imposed did not exceed the limits fixed by that provision (see *Del Río Prada,* cited above, § 80, and the references therein).

(b) Application of those principles to the present case

(i) Applications no. 23169/16, 23834/18 and 37683/19

249. The Court notes at the outset that the applicants had been convicted to life imprisonment in relation to murders committed before the entry into

force of both section 7 and the 1992 reform of section 4 *bis*. It further notes that "mafia-type" aggravating circumstances (as set out under section 7) were not formally included in the charges against the applicants in relation to the murders for which they had been sentenced to life imprisonment.

250. The Court has already found in dealing with the applicability of Article 7 (see paragraphs 208-209 above) that the penalty "that was applicable at the time the criminal offence was committed", within the meaning of Article 7, was a reducible life sentence, but that – by applying section 4 *bis* (as amended by Decree-Law no. 306 of 1992), the domestic authorities transposed the original reducible sentences into *de facto* and *de jure* irreducible life sentences and thus changed the scope of the original punishment to the applicants' detriment by imposing a heavier penalty.

251. With regard to applications no. 23169/16 and 23834/18, the Court takes into account the fact that the applicants had also been convicted for other crimes that were committed after the enactment of the 1992 reform and fell within the scope of section 4 *bis* (see, respectively, paragraphs 12 and 30 above). However, the Court notes that those crimes were punished by the imposition of a limited term of imprisonment. While a different approach has been taken since 1992 in a few decisions (see paragraph 129 above), according to the well-established case-law of the Constitutional Court and the Court of Cassation (see paragraphs 129-131 above), once the applicants had served the portion of their sentence relating to those crimes, they should have been allowed to separate the different sentences and to become eligible for sentence adjustments and conditional release for the remaining part of their conviction.

252. The Court also takes into account the Government's argument that the 4 *bis* regime had been applied to the applicants' life sentences as a consequence of the domestic case-law allowing judges and courts responsible for supervising the execution of sentences to infer from the reasoning of the final judgment that the offences in question had been committed using the "mafia method" – even when the "mafia-type" aggravating circumstances (as set out under section 7) had not been formally included in the charges, or had been ruled out by the judgment convicting them (see paragraphs 103-112 above). However, the Court notes, on the one hand, that that case-law has only developed since 2001 (see paragraphs 103-112 above); on the other hand, the case-law indicated by the Government which ascribes the power to interpret final judgments to judges and courts responsible for supervising the execution of sentences with regard to other issues began to develop in 1995 (see paragraph 110 above).

253. In the light of the above-noted considerations, the Court considers that by applying section 4 *bis* regime on the basis of the above-mentioned assessment of the convicting judgment, the domestic authorities effectively transformed the applicants' reducible life sentences into irreducible ones –

thus changing the scope of the original punishments to their detriment, by imposing a heavier penalty (see *Kupinskyy*, cited above, § 64)

254. In this regard, the Court reiterates that by judgment no. 32 of 2020, the Constitutional Court recognised that a transformation of the "nature of the penalty" occurs, in particular, when access to conditional release is prevented and a penalty that, at the time of the committed offence, could be served "outside" the prison becomes a penalty that must be served "inside" the prison (see paragraph 115 above). The Court also notes that, as emphasised by the third party (see paragraph 244 above), both the Court of Cassation and the lower courts have subsequently aligned on the issue (see paragraph 119 above).

255. Lastly, the Court welcomes the fact that the reform introduced by Decree-Law no. 162 of 2022 explicitly extended the application of section 4 *bis* to any offence committed using the "mafia method" (see paragraph 95 above), but which clearly excluded the retrospective application of such provision.

256. In the light of these considerations, the Court further finds that the above-mentioned transformation of the applicant's penalty was not foreseeable at the time of the committed offences – thus contravening the principle of legality, of which the requirement that a penalty must be clearly defined in law is an essential part (see paragraph 247 above; see also *Del Río Prada*, cited above, § 79).

257. In the light of the above-noted consideration, the Court dismisses the Government's objection as regards the applicant's victim status under Article 7 in application no. 23169/16 (see paragraph 220 above). Furthermore it refers to its conclusion regarding the victim status of the applicants in applications nos. 23834/18 and 37683/19 (see paragraphs 222-225 above). It concludes that there has been a violation of Article 7 of the Convention in respect of the applicants in these three applications.

(ii) Application no. 17937/20

258. With regard to application no. 17937/20, the Court notes at the outset that the applicant's situation differs to that of the others in so far as he was sentenced to life imprisonment also in respect of a murder committed shortly after the enactment of Decree-Law no. 306 of 1992. It further notes that, despite the fact that "mafia-type" circumstances (as set out under section 7) had been imputed to the applicant, such circumstances were ruled out by the judgment convicting him precisely because the offence in issue was punished with life imprisonment (see paragraph 64 above).

259. In this regard, the Court observes that the wording of section 7 expressly limited the applicability of so-called "mafia-type" aggravating circumstances to "crimes punishable by a penalty other than life imprisonment" (see paragraph 86 above). The Court further notes in this regard that the case-law allowing the circumstances in issue to be applied to

crimes for which the potential penalty could be, in abstract terms, life imprisonment began to developed at the domestic level (see paragraph 104 above) only several years after the offence in question.

260. Moreover (as the Court has already observed with regard to the other applicants – see paragraph 252 above), the domestic case-law that allowed the judges and courts responsible for supervising the execution of sentences to infer the use of "mafia method" from a final judgment – even when "mafia-type" aggravating circumstances (as set out under section 7) were not formally included in the charges or (as in the applicant's case) had been ruled out in that judgment – only developed since 2001 (see paragraphs 106-112 above). Additionally, the Court of Cassation stated that the possibility for courts responsible for supervising the execution of sentences to take into account "mafia-type" circumstances even in the absence of their being included in the charges was to be limited to crimes committed before the entry into force of Decree-Law no. 152 of 1991 (see paragraph 112 above). On the contrary, the Court notes that in the present case the said circumstances were referred to crimes committed after the entry into force of the above-mentioned decree.

261. The foregoing considerations are sufficient to enable the Court to conclude that the applicant could reasonably have expected to be eligible for conditional release, once he had served the fixed-term custodial sentences imposed under section 4 *bis*.

262. The Court thus finds that the application of the 4 *bis* regime to the applicant's life sentences was not foreseeable at the time of the committed offences. The Court notes in this connection that while the domestic courts were certainly the best placed to interpret and apply domestic law, they were at the same time bound by the principle, embodied in Article 7 of the Convention, that only the law can define a crime and prescribe a penalty (see *Del Río Prada*, cited above, § 105, and *Koprivnikar v. Slovenia*, no. 67503/13, § 56, 24 January 2017).

263. In the light of the above, the Court dismisses the Government's objection as regards the applicant's victim status under Article 7 in application no. 17937/20 (see paragraph 220 above) and concludes that there has accordingly been a violation of Article 7 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

264. 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

265. The applicant in application no. 23169/16 claimed 5,000 euros (EUR) in respect of pecuniary damage, which represented the amount of the fine imposed on him with the Court of Cassation's decision of inadmissibility concerning his application for prison leave. He also claimed EUR 15, 000 in respect of non-pecuniary damage.

266. The applicants in applications nos. 23834/18, 37683/19 and 17937/20 requested that the Court make an assessment on an equitable basis in respect of non-pecuniary damage.

267. The Government contested these claims, arguing that they had not been sufficiently proved and that, in any case, they were excessive.

268. As to the claim for pecuniary damage in application no. 23169/16, the Court observes that there is no room for speculation as to what the outcome of the applicant's application would have been had the domestic courts deemed the applicant's application for prison leave admissible. The Court is therefore not satisfied that there is a sufficiently direct causal link between the violations found and the pecuniary damage alleged; it accordingly rejects this claim.

269. As to the applicants' claim for non-pecuniary damage, the Court reiterates that its guiding principle is equity, which involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred (see *Yüksel Yalçınkaya*, cited above, §§ 422-23).

270. In this connection, the Court notes that in cases in which a similar breach of Article 3 of the Convention has been found it has considered that the finding of a violation constituted sufficient just satisfaction (see, among many other authorities, *Marcello Viola*, cited above, § 148). As regards Article 7 of the Convention, the Court acknowledges that the applicants may have suffered some distress and anxiety on account of the violation that has been found. Taking into account that under the amended version of section 4 bis of the Prison Administration Act the applicants have now the possibility to apply for conditional release (see, *mutatis mutandis*, *Yüksel Yalçınkaya*, cited above, § 425) the Court, ruling on an equitable basis, awards each applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

271. The applicants claimed the following sums for the costs and expenses incurred before the Court:

a) the applicant in application no. 23169/16 claimed EUR 3,000;

b) the applicant in application no. 17937/20 claimed EUR 2,800.

272. The Government contested these amounts.

273. The applicant in application no. 23834/18 did not submit any claims. The applicant in application no. 37683/19 did not claim any amount for costs and expenses, other than those incurred in respect of legal aid.

274. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant in application no. 23169/16 the sum of EUR 3,000, and the applicant in application no. 17937/20 the sum of EUR 2,800, for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

275. As regards the applicants in applications nos. 23834/18 and 37683/19, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's preliminary objection with regard to the victim status of the applicants in applications nos. 23169/16 and 17937/20 under Article 7 of the Convention, and *dismisses* it;

3. *Declares* the applications admissible;

4. *Holds* that, with regard to the applicant in application no. 23834/18, there has been a violation of Article 3 of the Convention in respect of the period of the applicant's detention between 2 May 2016 and 10 May 2022;

5. *Holds* that, with regard to the applicant in application no. 23834/18, there has been no violation of Article 3 of the Convention for the period after 10 May 2022;

6. *Holds* that, with regard to the other applicants, there has been a violation of Article 3 of the Convention in respect of the period of the applicants' detention between the application of section 4 *bis* to the applicants' life sentences and 31 October 2022;

7. *Holds* that, with regard to the other applicants, there has been no violation of Article 3 of the Convention for the period after 31 October 2022;

8. *Holds* that there has been a violation of Article 7 of the Convention;

9. *Holds*,

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,400 (two thousand four hundred euros), to each applicant plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, to the applicant in application no. 23169/16 in respect of costs and expenses;

(iii) EUR 2,800 (two thousand eight hundred euros), plus any tax that may be chargeable, to the applicant in application no. 17937/20 in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 September 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	23169/16	Asciutto v. Italy	20/04/2016	**S. ASCIUTTO** 1964 Naples Italian	Matteo ZAMBONI
2.	23834/18	Araniti v. Italy	11/05/2018	**S. ARANITI** 1947 SULMONA (AQ) Italian	Giovanna Beatrice ARANITI
3.	37683/19	Cavallo v. Italy	09/07/2019	**A. CAVALLO** 1956 Parma Italian	Veronica MANCA
4.	17937/20	Conte v. Italy	20/04/2020	**C. CONTE** 1970 Parma Italian	Veronica MANCA