



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

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1959 · 50 · 2009

GRAND CHAMBER

**CASE OF ENEA v. ITALY**

*(Application no. 74912/01)*

JUDGMENT

STRASBOURG

17 September 2009

*This judgment is final but may be subject to editorial revision.*



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

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,  
Nicolas Bratza,  
Françoise Tulkens,  
Josep Casadevall,  
Nina Vajić,  
Anatoly Kovler,  
Vladimiro Zagrebelsky,  
Alvina Gyulumyan,  
Renate Jaeger,  
Sverre Erik Jebens,  
Danutė Jočienė,  
Ján Šikuta,  
Dragoljub Popović,  
Giorgio Malinverni,  
Ledi Bianku,  
Ann Power,  
Işıl Karakaş, *judges*,

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 5 November 2008 and 24 June 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 74912/01) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr Salvatore Enea (“the applicant”), on 31 August 2000.

2. The applicant alleged, in particular, that his state of health was incompatible with the special prison regime to which he had been subjected, that the regime in question had breached his right to respect for his family life and his correspondence and that his right to a court in order to challenge the extension of that regime had not been secured to him.

3. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 23 September 2004 a Chamber of that Section composed of the following judges: Christos Rozakis, President, Françoise Tulkens, Nina Vajić, Anatoly Kovler, Vladimiro Zagrebelsky, Elisabeth Steiner, Khanlar Hajiyev, judges, and also of Søren Nielsen,

Section Registrar, declared the application partly inadmissible and decided to give notice to the Government of the complaints under Articles 3, 8, 6 § 1 and 9 of the Convention. On 3 May 2005 a Chamber of the Third Section, to which the application had been allocated, gave notice to the Government of the first three complaints raised by the applicant in relation to his assignment to a special unit of the prison. By virtue of Article 29 § 3 of the Convention, it subsequently decided that the admissibility and merits of the case should be considered together. On 1 July 2008 a Chamber of the Second Section, composed of the following judges: Françoise Tulkens, President, Antonella Mularoni, Vladimiro Zagrebelsky, Danutė Jočienė, Dragoljub Popović, András Sajó, Işıl Karakaş, judges, and also of Sally Dollé, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

4. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court. At the final deliberations, Ján Šikuta, substitute judge, replaced Christos Rozakis, who was unable to take part in the further consideration of the case (Rule 24 § 3).

5. The applicant and the Government each filed a memorial on the merits. In addition, third-party comments were received from the Slovakian Government, which had been granted leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 5 November 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr F. CRISAFULLI,  
Mr N. LETTIERI,

*Co-Agent,*  
*Deputy co-Agent;*

(b) *for the applicant*

Mr M. ESPOSITO, lawyer,  
Mr M. VETRANO, lawyer,  
Mrs F. GUARDASCIONE, lawyer,

*Counsel,*  
*Adviser.*

The Court heard addresses by them. Mr Lettieri and Mr Esposito also replied to questions from the Court.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1938 and lives in Italy.

#### **A. The judicial decisions concerning the applicant**

8. The applicant was placed in detention on 23 December 1993.

9. Several sets of criminal proceedings were brought against him, as a result of which he was sentenced to terms of imprisonment for, among other offences, membership of a Mafia-type criminal organisation, drug trafficking and illegal possession of firearms. On 27 December 2001 the public prosecutor at the Milan Court of Appeal ordered that the applicant's sentences be aggregated and fixed the overall term at thirty years.

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

10. The applicant was detained in several Italian prisons (including Palermo, Catania, Pisa and Naples).

11. On 10 August 1994, in view of the danger posed by the applicant, the Minister of Justice issued a decree ordering that he be subject for one year to the special prison regime provided for in the second paragraph of section 41 *bis* of the Prison Administration Act ("Law no. 354 of 1975"). This provision, which was amended by Law no. 279 of 23 December 2002 ("Law no. 279 of 2002"), allows application of the ordinary prison regime to be suspended in whole or in part for reasons of public order and safety.

The 1994 decree imposed the following restrictions:

- restrictions on visits by family members (a maximum of a single one-hour visit per month);
- no meetings with non-family members;
- prohibition on using the telephone;
- no sums of money above a fixed amount to be received or sent out;
- no more than two parcels to be received per month, but permission to receive two parcels per year containing clothing and linen;
- ban on organising cultural, recreational or sports activities;
- no right to vote in elections for prisoners' representatives or to be elected as a representative;
- no craft activities;
- no food requiring cooking to be purchased;
- no more than two hours' outdoor exercise per day.

12. In addition, all the applicant's correspondence was to be monitored, subject to prior authorisation by the judicial authority.

13. The application of the special regime was subsequently extended on nineteen occasions for successive periods of one year or six months.

Each decree covered a limited period, as follows:

- 10 August 1994 – 9 August 1995 (decree no. 1)
- 5 August 1995 – 5 February 1996 (decree no. 2)
- 2 February 1996 – 2 August 1996 (decree no. 3)
- 31 July 1996 – 31 January 1997 (decree no. 4)
- 4 February 1997 – 4 August 1997 (decree no. 5)
- 31 July 1997 – 31 January 1998 (decree no. 6)
- 4 February 1998 – 4 August 1998 (decree no. 7)
- 30 July 1998 – 30 January 1999 (decree no. 8)
- 27 January 1999 – 27 July 1999 (decree no. 9)
- 22 July 1999 – 31 December 1999 (decree no. 10)
- 23 December 1999 – 23 June 2000 (decree no. 11)
- 22 June 2000 – 31 December 2000 (decree no. 12)
- 21 December 2000 – 21 June 2001 (decree no. 13)
- 18 June 2001 – 18 December 2001 (decree no. 14)
- 13 December 2001 – 13 June 2002 (decree no. 15)
- 10 June 2002 – 31 December 2002 (decree no. 16)
- 28 December 2002 – 22 December 2003 (decree no. 17)
- 23 December 2003 – 23 December 2004 (decree no. 18)
- 17 December 2004 – 17 December 2005 (decree no. 19).

14. The applicant appealed against most of these decrees to the Naples court responsible for the execution of sentences. The case file shows that the applicant did not appeal on points of law against the decisions of the latter court. He maintained that the Court of Cassation would in any event have dismissed the appeals on the ground that he no longer had an interest in having them examined since the period of validity of the decrees in question had expired.

– **Decree no. 1**

On an unspecified date the applicant appealed against the decree of 10 August 1994. In a decision of 28 February 1995 the court responsible for the execution of sentences dismissed the appeal, taking the view that the application of the special prison regime was justified. However, the restrictions were eased to allow the applicant one hour-long telephone conversation monthly with members of his family, in the absence of a visit by the latter; the restriction on the time spent in outdoor exercise and the prohibition on purchasing food requiring cooking were also lifted.

– **Decree no. 3**

On 9 February 1996 the applicant appealed against the decree of 2 February 1996. In a decision of 26 March 1996 deposited with its registry on 30 March 1996 and served on the applicant on 30 April 1996, the court

responsible for the execution of sentences declared the appeal inadmissible on the ground that, in accordance with the restrictive case-law followed at the time, the court hearing the case did not have the power to examine the merits of the restrictions imposed.

– **Decree no. 5**

On 6 February 1997 the applicant appealed against the decree of 4 February 1997 (served the following day). In a decision of 6 May 1997 deposited with the registry on 15 May 1997 and served on the applicant on 21 May 1997, the court, while upholding the application of the special regime, relaxed the restriction on visits by family members in order to allow the applicant two hour-long visits per month.

– **Decree no. 6**

On 4 August 1997 the applicant appealed against the decree of 31 July 1997 (served on 2 August 1997). In a decision of 16 October 1997 deposited with the registry on 22 October 1997 and served on the applicant on 24 October 1997, the court responsible for the execution of sentences, while upholding the application of the special regime, lifted the restriction on the number of visits by family members.

– **Decree no. 7**

On 9 February 1998 the applicant appealed against the decree of 4 February 1998. In a decision of 2 July 1998 deposited with the registry on 9 July 1998 and served on the applicant on 12 August 1998, the court responsible for the execution of sentences dismissed the appeal on the ground that the restrictions imposed on the applicant were justified.

– **Decree no. 8**

On 3 August 1998 the applicant appealed against the decree of 30 July 1998 (served the following day). In a decision of 30 November 1998 deposited with the registry on 9 December 1998 and served on the applicant on 23 December 1998, the court responsible for the execution of sentences dismissed the appeal on the ground that the restrictions imposed on the applicant were justified.

– **Decree no. 9**

On 1 February 1999 the applicant appealed against the decree of 27 January 1999. In a decision of 7 October 1999 deposited with the registry on 20 October 1999 and served on the applicant on an unspecified date, the court responsible for the execution of sentences declared the appeal inadmissible. It observed that the period of validity of the decree had expired on 27 July 1999 and that, accordingly, the applicant no longer had an interest in having it examined.

– **Decree no. 10**

On 27 July 1999 the applicant appealed against the decree of 22 July 1999 (served on 24 July 1999). The Court has not been informed of the outcome of this appeal.

– **Decree no. 11**

On 28 December 1999 the applicant appealed against the decree of 23 December 1999. In a decision of 11 May 2000 deposited with the registry on 23 May 2000 and served on the applicant on 21 July 2000, the court responsible for the execution of sentences declared the appeal inadmissible as the applicant had declared his intention not to pursue it.

– **Decree no. 12**

On 26 June 2000 the applicant appealed against the decree of 22 June 2000 (served on 23 June 2000). In a decision of 6 November 2001 the court responsible for the execution of sentences dismissed the appeal on the ground that the validity of the impugned decree had expired.

– **Decree no. 13**

On an unspecified date the applicant appealed against the decree of 21 December 2000. In a decision of 23 April 2001 deposited with the registry on 3 May 2001, the court responsible for the execution of sentences dismissed the appeal as unsubstantiated.

– **Decree no. 14**

On 21 June 2001 the applicant appealed against the decree of 18 June 2001 (served on 20 June 2001). In a decision of 14 November 2001 the court responsible for the execution of sentences dismissed the appeal on the ground that application of the special prison regime was justified in view of the danger posed by the applicant and his links with criminal circles.

– **Decree no. 15**

On 17 December 2001 the applicant appealed against the decree of 13 December 2001 (served on 14 December 2001). In a decision of 11 April 2002 the court responsible for the execution of sentences dismissed the appeal as unsubstantiated.

– **Decree no. 17**

On an unspecified date the applicant appealed against the decree of 28 December 2002. He requested the court responsible for the execution of sentences to seek a review by the Constitutional Court of the compatibility of paragraph 2 *bis* of section 41 *bis* (as amended by Law no. 279 of 2002) with several articles of the Constitution.

In a decision of 3 March 2003 served on the applicant on 8 April 2003, the court responsible for the execution of sentences ordered that the file be transmitted to the Constitutional Court. The decision was taken on the grounds that, in so far as Law no. 279 of 2002 did not require the Minister of Justice to give reasons for the decrees, an issue of constitutionality could arise. The court observed in particular that in the instant case the applicant had been subject to the special prison regime since 1994 and that the reasons given for the decrees extending application of the regime related to ongoing links between the applicant and the criminal organisation to which he belonged, notwithstanding the fact that he was subject to the special regime.

By decision no. 417 of 13 December 2004, deposited with the registry on 23 December 2004, the Constitutional Court dismissed the objection as to

constitutionality raised by the court responsible for the execution of sentences, finding that it was manifestly ill-founded.

– **Decree no. 18**

On an unspecified date the applicant appealed against the decree of 23 December 2003. He argued that the special regime was hindering his rehabilitation, in breach of Article 27 of the Constitution, and that it failed to respect the needs of his personality, contrary to section 13 of Law no. 354 of 1975.

In a decision of 19 November 2004 deposited with the registry on 15 December 2004, the court responsible for the execution of sentences dismissed the appeal on the basis of the police investigations, on the ground that application of the special regime was justified on account of the applicant's links to organised crime.

– **Decree no. 19**

On 23 December 2004 the applicant appealed against the decree of 17 December 2004. In a decision of 11 February 2005 deposited with the registry on 28 February 2005, the court responsible for the execution of sentences allowed the applicant's appeal. It took the view that the security considerations which had been the reason for applying the special prison regime were no longer valid; it therefore ordered the measure in question to be rescinded.

**C. The applicant's placement in a high-supervision (*Elevato Indice di Vigilanza* – E.I.V.) prison unit**

15. On 1 March 2005 the prison authorities placed the applicant in a high-supervision (“E.I.V.”) unit.

16. On 24 April 2008 the Naples judge responsible for the execution of sentences, on a provisional basis and pending the decision of the court responsible for the execution of sentences, ordered a stay of execution of the applicant's sentence and his release in order to undergo urgent surgery. This decision was upheld on 2 October 2008 by the Naples court responsible for the execution of sentences.

**D. The applicant's health**

17. The applicant suffers from a number of disorders which oblige him to use a wheelchair. From June 2000 to February 2005 he served his sentence in the part of the hospital wing of Naples Prison (Secondigliano) reserved for prisoners detained under the section 41 *bis* regime.

18. On an unspecified date the applicant applied to the Naples court responsible for the execution of sentences for a stay of execution of his sentence on health grounds, under Articles 146 and 147 of the Criminal Code. In a decision of 18 January 2001 the court responsible for the

execution of sentences, basing its decision on a report drawn up by the prison medical team, rejected the application on the ground that the applicant was being held in the prison's hospital wing and was receiving treatment appropriate to his state of health.

19. On an unspecified date the applicant made a fresh application to the judge responsible for the execution of sentences for a stay of execution of his sentence on health grounds. In a decision of 22 March 2002 the judge rejected the application on the ground that the applicant's state of health was not incompatible with detention in the prison hospital wing. On 2 July 2002 the Naples court responsible for the execution of sentences upheld that decision.

20. In February 2007, after authorisation had been obtained from the court responsible for the execution of sentences, the applicant was taken to a Naples civil hospital for an operation to remove a kidney.

21. On 24 April 2008 the Naples judge responsible for the execution of sentences provisionally stayed execution of the applicant's sentence and ordered his release in order to undergo urgent surgery (see paragraph 16 above).

22. According to the information provided to the Court by the parties, the Naples court responsible for the execution of sentences ordered a stay of execution of the applicant's sentence on 2 October 2008 on account of his state of health. The applicant had had an operation to remove one of the two brain tumours on 3 September 2008 and his state of health was found to be incompatible with detention. The court placed him under house arrest for a period of six months, prohibiting contact with any persons other than family members and medical personnel. The court's decision to place the applicant under house arrest was based on the applicant's criminal personality and the length of his sentence and on a note from the Palermo police authorities dated 16 April 2008.

23. The Court has not been informed of the applicant's current state of health.

#### **E. The monitoring of the applicant's correspondence**

24. On 10 August 1994 the Minister of Justice issued the first decree subjecting the applicant to the special prison regime and ordered the monitoring of all his correspondence, subject to prior authorisation by the judicial authority (see paragraphs 11 and 12 above).

25. The corresponding decisions of the Naples court responsible for the execution of sentences communicated to the Court relate to the period between 2 July 1996 and 7 July 2004. The first decisions imposed the measure in relation to all correspondence for an unspecified period. On 3 August 1999 the judge responsible for the execution of sentences fixed the maximum period at six months and ordered that the applicant's

correspondence with the European Court, in particular, should not be monitored.

26. The applicant furnished a copy of an undated letter and an envelope, both addressed to his lawyer, Mr Vetrano, the latter postmarked 3 March 2000. Both documents had been inspected by the prison authorities, but the corresponding stamps were not dated.

#### **F. The applicant's applications for prison leave**

27. On 16 October 1999 the applicant applied to the Milan District Court for prison leave in order to attend his brother's funeral. On 18 October 1999 the court allowed the application but made the leave subject to whatever detailed arrangements might be laid down by the courts responsible for the execution of sentences. It also ordered that "the other judicial authorities concerned, the public prosecutor's office and the applicant" be informed of its decision.

28. The case file shows that the Milan Court of Appeal rejected the applicant's application on 19 October 1999 on account of the risk that he might abscond. The decision was deposited with the registry on 21 October 1999.

29. The applicant stated that he had also applied for prison leave to attend his partner's funeral.

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

### **A. Section 41 *bis* of Law no. 354 of 1975 and the monitoring of correspondence**

30. The relevant domestic law and practice summarised in the *Ospina Vargas v. Italy* judgment (no. 40750/98, §§ 23-33, 14 October 2004) are set out below.

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

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

Pursuant to Law no. 36 of 1995, and subsequently Law no. 11 of 1998 and Law no. 446 of 1999, application of the section 41 *bis* special regime was extended until 31 December 2000. It was later extended until 31 December 2002 pursuant to Law no. 4 of 19 January 2001. On the entry into force on 23 December 2002 of Law no. 279, partly amending the Prison Administration Act, the special prison regime ceased to be temporary in nature.

On the basis of legislative decree no. 773/2009, the special regime is now applied for an initial period of four years (compared with one year previously); this can subsequently be extended by two years (compared with one year previously).

32. Before Law no. 279 of 2002 came into force, the choice of measures resulting from the application of section 41 *bis* was left to the discretion of the Minister of Justice. However, the measures imposed were generally the following:

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

33. Section 14 *ter* of the Prison Administration Act provides for the possibility of an appeal (*reclamo*) to the court responsible for the execution of sentences against a decree imposing the special prison regime within ten days from the date on which the person concerned receives a copy of the decree. Such an appeal does not have suspensive effect. The court must give a ruling within ten days. An appeal to the Court of Cassation lies against the decision of the court responsible for the execution of sentences; again, such an appeal must be lodged within ten days of the date on which the refusal by the court has been served.

Until Law no. 279 of 2002 came into force, section 14 *ter* also applied to complaints about decrees adopted by the Minister of Justice under section 41 *bis*. Paragraphs 2 *quinquies* and 2 *sexties* of section 41 *bis* have subsequently provided for a special complaints procedure, which is nonetheless modelled on the procedure laid down in section 14 *ter*.

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

However, on the basis of Article 15 of the Constitution, which provides, *inter alia*, that restrictions on correspondence may be imposed only by means of a court decision containing a statement of reasons, the Constitutional Court held that the power to order monitoring of a prisoner's correspondence was vested in the courts alone. As a result, section 41 *bis* could not be construed as empowering the Minister of Justice to take measures relating to prisoners' correspondence. Accordingly, from the end of 1993 the sole basis for monitoring of correspondence was section 18 of Law no. 354 of 1975, as amended by section 1 of Law no. 1 of 1977.

Under that provision, the court before which proceedings are pending (until the delivery of the first-instance judgment) or the court responsible for the execution of sentences (during any subsequent proceedings) may order the monitoring of prisoners' correspondence, stating reasons for its decision; the provision does not, however, specify the cases in which such a decision may be taken. In practice, monitoring means interception of all a prisoner's correspondence, which is then read by the judicial authority which ordered it, by the governor of the prison or by prison staff designated by the governor. The letters are then stamped to show that they have been inspected. The deletion of words or sentences is not permitted, but the judicial authority may order that one or more letters should not be delivered, in which case the prisoner must be informed immediately. Such an order may also be made provisionally by the prison governor, who must inform the judicial authority.

Section 18 of Law no. 354 of 1975 also provides that prisoners are allowed to keep books and magazines and to use other means of communication. This right may be restricted in a decision by the judicial authority, in accordance with the same conditions that apply in the case of correspondence.

Under section 35 of the same law, prisoners may make sealed applications or complaints concerning decisions taken in accordance with section 18 of Law no. 354 of 1975 to, *inter alia*, the prison authorities and the court responsible for the execution of sentences.

35. In judgment no. 351 of 14-18 October 1996 the Constitutional Court held that the power of judicial review by the courts responsible for the

execution of sentences extended to the practical arrangements for implementing a measure, regard being had both to the aim pursued and to the fundamental rights guaranteed by the Constitution.

36. On 7 February 1997, applying the principles laid down by the Constitutional Court in judgment no. 351/1996, the Prison Administration Department of the Ministry of Justice sent a circular to prison governors regarding organisation of the wings where prisoners subject to the special regime were held. The circular contained the following instructions, among others: prisoners would from then on be allowed to use stoves; they would have access to rooms equipped for sporting activities and to a library; visits by family members could be replaced by telephone calls; and the use of glass partitions would continue but, as a result, the searching of visitors need not be so strict.

37. In judgment no. 376 of 26 November to 5 December 1997 the Constitutional Court reaffirmed that section 41 *bis* was compatible with the Constitution, while amending and clarifying the manner in which it was to be interpreted. It considered, in particular, that decrees imposing the special regime had to be based on genuine public-order and security grounds, and that decisions to extend application of the regime also had to be based on sufficient grounds independent of those which had justified its initial imposition. The Constitutional Court emphasised that the special regime should not entail inhuman treatment or hinder the prisoner's rehabilitation, which would be contrary to Article 27 of the Constitution. It nevertheless stated that at no time did section 13 of the Prison Administration Act cease to apply, under which the treatment to which a prisoner was subjected had to respect his personality, and a rehabilitation programme had to be prepared and adapted on the basis of scientific observation of the prisoner's personality and with his or her cooperation.

38. On 20 February 1998, in accordance with the principles laid down by the Constitutional Court in judgment no. 376/1997, the Prison Administration Department of the Ministry of Justice sent a circular to prison governors regarding organisation of the wings where prisoners subject to the special regime were held. The circular contained the following instructions, among others:

- outdoor exercise time was to be increased to four hours per day, but care was to be taken to ensure that this did not become an opportunity for meeting or making contact with other presumed members of the Mafia;
- the outdoor exercise yards in Naples and Pisa Prisons were to be equipped for physical exercise and sport;
- one or more rooms for social, cultural or recreational activities were to be provided in each wing to which prisoners subject to the special regime were permanently assigned or which were occupied by them for medical reasons;

- on the question of work, the circular stated that where it was not possible to equip a prison appropriately prisoners should have access to premises equipped for this purpose in other prisons, with measures in place to exclude any opportunity of meeting or making contact with other presumed members of the Mafia;
- visits by children under 16 years of age could take place without a glass partition; if the visit took place in the presence of other persons, partition-free access was to be authorised for the children only and was not to exceed one-sixth of the total duration of the visit in length;
- prisoners subject to the special regime could receive parcels containing foodstuffs apart from those requiring cooking, because they were not allowed to use stoves except for the purpose of making hot drinks or heating up pre-cooked food.

39. With regard to the monitoring of correspondence, in judgment no. 26 of 8-11 February 1999 the Constitutional Court, ruling in a case concerning the refusal of the prison authorities to allow a prisoner to receive an erotic publication, declared unconstitutional sections 35 (on the remedies available to prisoners) and 69 (on the functions and decisions of the judge responsible for the execution of sentences) of Law no. 354 of 1975 in that they did not provide for any form of judicial review of decisions likely to interfere with prisoners' rights, in particular decisions to monitor correspondence or to restrict the right to receive magazines or other periodicals. Decisions by the authorities to which applications were made under section 35 were adopted without adversarial proceedings and no appeal to the ordinary courts or the Court of Cassation lay against them. The lack of such a remedy had, moreover, already been noted and criticised by the European Court in the *Calogero Diana v. Italy* and *Domenichini v. Italy* judgments (15 November 1996, *Reports of Judgments and Decisions* 1996-V).

40. Following the entry into force of Law no. 95 of 8 April 2004, a new section 18 *ter* concerning the monitoring of correspondence has been added to the Prison Administration Act. It provides that correspondence may be monitored for a maximum period of six months in order to prevent the commission of crimes or to maintain security in prisons and to ensure the confidentiality of investigations. Monitoring is ordered in a decision with a statement of grounds by the judicial authority, at the request of the prosecuting authorities or the prison governor. Paragraph 2 of section 18 *ter* provides that prisoners' correspondence with, *inter alia*, their lawyers and international human-rights bodies cannot be monitored. Lastly, paragraph 6 of section 18 *ter* provides that complaints against decisions to monitor correspondence may be lodged in accordance with the procedure laid down in section 14 *bis* of the Prison Administration Act.

41. As is stated in the official report by the Ministry of Justice submitted to the Court by the Government in May 2004, the following measures may result from the application of section 41 *bis* as amended by Law no. 279 of

2002, with a view to preventing contact with the criminal organisation in question or other prisoners belonging to it:

(a) outdoor exercise time limited to four hours per day in groups of no more than five prisoners (members of each group must be subject to the same type of regime and the groups must be rotated every three months);

(b) stoves made available to prisoners when the cells are opened and taken back for storage elsewhere when the cells are closed;

(c) ban on the use of FM radios, tape recorders and CD players;

(d) a minimum of one visit per month and a maximum of two per month, in rooms equipped in such a way that no objects may be handed over; a ban on visits by persons other than family members, a cohabitant or a lawyer, unless exceptional permission has been granted; after the regime has been in force for six months, one telephone call per month, lasting no more than ten minutes, to family members, who are required to go to the prison nearest their place of residence;

(e) interviews with lawyers, which are unlimited, are subject only to visual surveillance by a warder; telephone calls are subject to the same conditions regarding frequency and practical arrangements as calls to family members;

(f) monitoring of all the prisoner's correspondence except for that with members of Parliament or the appropriate European and national judicial authorities (the contents of the envelope are checked in the prisoner's presence but the correspondence itself is not read);

(g) restrictions on acquiring or receiving from outside prison sums of money and other possessions and items (two parcels per month, weighing a maximum of 10 kg, plus two parcels a year containing only clothing and linen);

(h) ban on being elected as a prisoners' representative;

(i) access by ministers of faiths other than Catholicism may be permitted.

42. Having regard to the reform introduced by Law no. 279 of 23 December 2002 and to the decisions of the Court (see, most recently, the judgment in *Ganci v. Italy*, no. 41576/98, §§ 19-31, ECHR 2003-XI), the Court of Cassation, in a departure from its previous case-law, held that prisoners had an interest in obtaining a decision even if the period of validity of the impugned decree had expired, as the decision had a direct impact on decrees subsequent to the one in question (Court of Cassation, First Division, judgment of 26 January 2004, deposited with the registry on 5 February 2004, no. 4599, *Zara*).

### **B. Placement in an E.I.V. prison unit**

43. Under the terms of sections 13 and 14 of Law no. 354 of 1975, the treatment of each prisoner must be adapted to the particular demands of his

or her personality. The number of inmates in each prison and in each wing of the prison must be limited in order to facilitate individually tailored treatment. The assignment of prisoners to a particular prison or their grouping within a prison wing must be decided with reference to the possibility of rehabilitation and the need to prevent prisoners from exerting a negative influence on one another.

44. On the basis of the principle of individually tailored treatment of prisoners laid down in the above provisions and of the regulation implementing Law no. 354 of 1975, circular no. 3479/5929 of 9 July 1998 issued by the Prison Administration Department provided for three levels of detention corresponding to certain categories of prisoner.

45. "High-security units" are designed for prisoners accused or convicted of membership of a Mafia-type criminal organisation, false imprisonment with a view to extortion, or drug trafficking. In view of the danger posed by these persons and the risk of their seeking to recruit or intimidate others, particularly stringent measures are put in place aimed at separating them from other prisoners and keeping them under supervision. In addition, activities for these prisoners such as outdoor exercise, visits, vocational training and sport take place within a pre-defined area.

46. "Medium-security units" are for prisoners accused or convicted of offences committed with a view to facilitating the activities of Mafia-type criminal organisations, and who therefore present a substantial degree of danger.

47. "E.I.V. units" are for prisoners who present a degree of danger such that their detention in a medium-security unit would be inadequate to ensure public order and safety. The danger posed by these prisoners stems in particular from their involvement in terrorist crime, the nature or number of the crimes committed, their attempts at escape or serious acts of violence perpetrated by them against other prisoners or prison officers. Under the terms of circular no. 3479/5929, in the absence of any specific provisions governing the matter, E.I.V. units are run along the same lines as the high-security units. Contact with prisoners in other units is prohibited and supervision is particularly tight.

### III. RECOMMENDATION REC(2006)2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE EUROPEAN PRISON RULES (ADOPTED ON 11 JANUARY 2006)

48. The Recommendation reads as follows:

"The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Convention on Human Rights and the case law of the European Court of Human Rights;

...

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society;

...

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules;

...”

Appendix to Recommendation Rec(2006)2

*“Basic principles*

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3 Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

...

18.2 In all buildings where prisoners are required to live, work or congregate:

...

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

...

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

...

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

...

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

...

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

...

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

...

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

...

39. Prison authorities shall safeguard the health of all prisoners in their care.

...

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

...

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

#### *Safety*

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

...

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant alleged that his continued detention, particularly in view of his state of health, had amounted to treatment contrary to Article 3 of the Convention, which provides:

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

50. The Government contested that argument.

#### A. Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

#### B. Merits

##### 1. *The parties' submissions*

###### (a) **The applicant**

52. The applicant alleged that his continued detention under the special prison regime provided for by section 41 *bis* of the Prison Administration Act, and his subsequent placement in an E.I.V. unit, amounted to torture “or, in the alternative, to inhuman and degrading treatment”, in view of his state of health. Even the ordinary prison regime had caused his health to deteriorate. The fact that he used a wheelchair and had to live in the hospital wing of the prison had aggravated his suffering. Furthermore, application of

the special regime had been extended on the ground that the applicant had not participated in the programmes of cooperation with the judicial process (he had not agreed to give evidence against his criminal associates). The danger he posed might have justified derogating from the ordinary prison rules for a limited period of a few days or a few months, but no longer.

**(b) The Government**

53. The Government submitted that the restrictions imposed on the applicant under the special prison regime had not attained the minimum level of severity required to fall within the scope of Article 3 of the Convention. They stressed first of all that the restrictions in question had been necessary to prevent the applicant, who posed a danger to society, from maintaining contacts with the criminal organisation to which he belonged. It also had to be pointed out that not even the special regime had sufficed to keep the applicant's criminal behaviour in check as, in spite of the restrictions, he had been the subject of disciplinary action on several occasions on account of his conduct in prison.

54. With regard to the applicant's health the Government observed, firstly, that his medical file showed that his state of health had not been incompatible with detention. Secondly, the applicant had been placed in the prison's hospital wing, where he had received care appropriate to his condition. Where it had proved necessary he had also been admitted to hospital outside prison.

*2. The Court's assessment*

**(a) General principles**

55. In accordance with the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Naumenko v. Ukraine*, no. 42023/98, § 108, 10 February 2004). Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25, and *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

56. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX).

57. With particular reference to persons deprived of their liberty, Article 3 imposes a positive obligation on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Rivière v. France*, no. 33834/03, § 62, 11 July 2006). Hence, a lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill may in principle amount to treatment contrary to Article 3 (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Naumenko*, cited above, § 112).

58. The conditions of detention of a person who is ill must ensure that his or her health is protected, regard being had to the ordinary and reasonable demands of imprisonment. Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees or place them in a civil hospital, even if they are suffering from an illness which is particularly difficult to treat (see *Mouisel*, cited above, § 40), it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court cannot rule out the possibility that in particularly serious cases situations may arise where the proper administration of criminal justice requires remedies to be taken in the form of humanitarian measures (see *Matencio v. France*, no. 58749/00, § 76, 15 January 2004, and *Sakkopoulos v. Greece*, no. 61828/00, § 38, 15 January 2004).

59. In applying these principles, the Court has already held that the detention of an elderly sick person over a lengthy period may fall within the scope of Article 3 (see *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). Furthermore, the Court has held that detaining a person suffering from tetraplegia in conditions inappropriate to her state of health amounted to degrading treatment (see *Price*, cited above, § 30). In these circumstances, the Court must take account of three factors in particular in assessing whether the continued detention of an applicant is compatible with his or her state of health where the latter is giving cause for concern. These are: (a) the prisoner's condition, (b) the quality of care provided and (c) whether or

not the applicant should continue to be detained in view of his or her state of health (see *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004, and *Sakkopoulos*, cited above, § 39).

**(b) Application of these principles to the present case**

60. In the present case the question arises whether the applicant's continued detention was compatible with his state of health and whether that situation attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.

61. The Court observes that the applicant suffered from a number of disorders and was obliged to use a wheelchair. His health deteriorated over time. The medical files submitted by his lawyers show that he underwent a series of medical checks, tests and specific examinations both during his lengthy stay in the hospital wing of Naples (Secondigliano) Prison – between June 2000 and February 2005 – and thereafter. On three occasions, in January 2001 and March and July 2002, the Naples court responsible for the execution of sentences, on the basis of the medical reports drawn up by the prison doctors, refused the applicant's requests for a stay of execution of his sentence, taking the view that the care provided by the prison's in-house medical service was appropriate to his state of health (see paragraphs 18 and 19 above).

In 2007 and 2008 the applicant underwent two major operations to remove first a kidney and then a brain tumour. These were performed in a civil hospital (see paragraphs 20 and 21 above).

62. In the light of the evidence before it, the Court is of the view that the national authorities fulfilled their obligation to protect the applicant's physical well-being by monitoring his state of health carefully, assessing the seriousness of his health problems and providing him with the appropriate medical care. Where the deterioration of the applicant's state of health warranted it, the authorities – on two occasions – ordered his admission to a civil hospital (see paragraphs 20 and 21 above).

In particular, on 2 October 2008, the Naples court responsible for the execution of sentences ordered a stay of execution of the applicant's sentence on the ground that his state of health was incompatible with detention, on account in particular of the removal of a brain tumour on 3 September 2008 (see paragraph 21 above).

63. In so far as the applicant appears to complain of it, the Court must also examine whether the extended application of the special prison regime provided for by section 41 *bis* amounts to a breach of Article 3 of the Convention.

64. The Court accepts that, generally speaking, the extended application of certain restrictions may place a prisoner in a situation that could amount to inhuman or degrading treatment. However, it cannot define a precise length of time beyond which such a situation attains the minimum threshold

of severity required to fall within the scope of Article 3. On the contrary, the length of time must be examined in the light of the circumstances of each case; this entails, *inter alia*, ascertaining whether the renewal or extension of the restrictions in question was justified or not (see *Argenti v. Italy*, no. 56317/00, § 21, 10 November 2005).

65. The Court notes that the restrictions imposed as a result of the special prison regime were necessary to prevent the applicant, who posed a danger to society, from maintaining contacts with the criminal organisation to which he belonged. The applicant did not submit any evidence to the Court which would lead it to conclude that the extension of those restrictions was patently unjustified (see, *mutatis mutandis*, *Argenti*, cited above, §§ 20-23, where the Court found that the application of the special prison regime for over twelve years was not contrary to Article 3 of the Convention).

66. Furthermore, the court responsible for the execution of sentences lifted or eased some of the restrictions (see paragraph 14 above). In addition, the applicant was placed in the prison's hospital wing, where he received treatment appropriate to his state of health (see paragraph 18 above); where it proved necessary, he was also admitted to hospital outside prison (see paragraphs 20 and 21 above).

67. In view of the foregoing, the Court considers that the treatment to which the applicant was subjected did not exceed the unavoidable level of suffering inherent in detention. As the minimum threshold of severity required in order to fall within the scope of Article 3 of the Convention was not attained, that provision has not been breached in the present case.

Accordingly, there has been no violation of Article 3.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

68. The applicant emphasised the substantial restrictions to which he had allegedly been subject since 1994 in the exercise of his right to a court. He alleged a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing ... by [a] ... tribunal ...”

69. The Government contested that argument.

70. The Court deems it necessary to consider this complaint by examining first the period during which the applicant was subject to the special prison regime provided for by section 41 *bis* of the Prison Administration Act (August 1994-February 2005) and then the period during which he was detained in an E.I.V. unit (March 2005-April 2008).

## **A. Restrictions on the right to a court during the period of application of section 41 *bis* of the Prison Administration Act**

### *1. Admissibility*

71. The applicant pointed to systematic delays in the delivery of decisions by the courts responsible for the execution of sentences.

72. The Government contended that the only decision that had been delivered late by the court responsible for the execution of sentences dated back to 20 October 1999. The applicant's complaint was inadmissible on two grounds. Firstly, it was out of time, as the decision in question had become final on 30 October 1999, that is, considerably more than six months before the application was lodged (Article 35 § 1 of the Convention). Secondly, the applicant had omitted to appeal on points of law, meaning that the complaint was also inadmissible for failure to exhaust domestic remedies.

73. The Court reiterates that delays by the national courts in examining appeals against the decrees implementing the special regime may, in some circumstances, raise issues under the Convention.

74. Hence, in the case of *Messina v. Italy* (no. 2) (no. 25498/94, §§ 94-96, ECHR 2000-X) the Court, while acknowledging that the right to an effective remedy was not infringed merely by a failure to comply with a statutory time-limit, concluded that the systematic failure to comply with the ten-day time-limit imposed on the court responsible for the execution of sentences by Law no. 354 of 1975 was liable to considerably reduce, and indeed practically nullify, the impact of judicial review of the decrees issued by the Minister of Justice. The Court arrived at this conclusion by taking account of two factors in particular, namely the limited period of validity of each decree imposing the special regime and the fact that the Minister of Justice could issue a new decree without being bound by any decision the court responsible for the execution of sentences might have taken to rescind all or part of the restrictions imposed by the previous decree. In *Messina*, the Minister of Justice had issued new decrees reintroducing the restrictions struck down by the court responsible for the execution of sentences immediately after the expiry of the period of validity of the impugned decrees.

75. In addition, in *Ganci* (cited above, § 31), the Court found that the lack of any decision on the merits of the appeals against the decrees issued by the Minister of Justice breached the right to a court guaranteed by Article 6 § 1 of the Convention.

76. The Court observes that in the instant case the court responsible for the execution of sentences dismissed two of the applicant's nineteen appeals against extension of the special prison regime on the ground that the applicant no longer had an interest in having them examined. The period of validity of the two decrees had indeed already expired by the time of the

court's decision. The appeals in question related to decrees nos. 9 and 12 of the Minister of Justice (see paragraph 14 above).

77. As regards the decision dismissing the appeal against decree no. 9, the Government correctly observed that it became final on 30 October 1999. As the application was lodged with the Court on 31 August 2000, this part of the complaint under Article 6 § 1 is out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

78. As to the appeal against decree no. 12, the Court considers that this part of the complaint concerning the right to a court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It should therefore be declared admissible.

## 2. *Merits*

### (a) **The parties' submissions**

#### (i) *The applicant*

79. In the applicant's submission, the breach of Article 6 § 1 resulted from the decisions dismissing his appeals on the ground that he no longer had an interest in having them examined since the period of validity of the impugned ministerial decrees had expired.

#### (ii) *The Government*

80. The Government submitted that the fact that the time-limit of ten days laid down by the Prison Administration Act had been exceeded could not be regarded as a breach of the obligation to conduct a judicial review. The court responsible for the execution of sentences had always ruled within a reasonable time given the time needed to investigate cases. In the instant case the delay in responding had not resulted in the applicant's being denied access to a court.

### (b) **The Court's assessment**

81. The Court observes firstly that prisoners have ten days from the date on which the decree is served in which to lodge an appeal, which does not have suspensive effect, with the court responsible for the execution of sentences; the latter in its turn must give a ruling within ten days.

Secondly, it points out that, on 26 June 2000, the applicant lodged an appeal against decree no. 12 of 22 June 2000 (served on 23 June 2000). In a decision of 6 November 2001 the Naples court responsible for the execution of sentences dismissed the appeal on the ground that the validity of the impugned decree had expired.

82. Admittedly, the mere fact of exceeding a statutory time-limit does not amount to an infringement of a guaranteed right. However, the time

taken to hear an appeal may have an impact on its effectiveness. In the instant case the court did not rule on the merits of the applicant's appeal against decree no. 12. Consequently, the Court can only conclude that the lack of any decision on the merits nullified the effect of the courts' review of the decree issued by the Minister of Justice (see *Ganci*, cited above, §§ 29 and 30).

83. Furthermore, the applicable legislation lays down a time-limit of only ten days for adjudication partly because of the seriousness of the special regime's impact on prisoners' rights and partly because the impugned decision remains valid for only a limited time (see, among many other authorities, *Argenti*, cited above, § 45, and *Viola v. Italy*, no. 8316/02, § 55, 29 June 2006).

84. In conclusion, there has been a violation of Article 6 § 1 of the Convention.

## **B. Restrictions on the right to a court during the period of detention in an E.I.V. unit**

### *1. Admissibility*

#### **(a) The parties' submissions**

##### *(i) The applicant*

85. In the applicant's view, the fact that Article 6 of the Convention was applicable and had been breached was beyond dispute. Referring to the case of *Musumeci v. Italy* (no. 33695/96, 11 January 2005), he pointed out that the Court had found that the E.I.V. regime affected the applicant's civil rights. Noting the lack of an appropriate judicial remedy, it had found that Article 6 § 1 of the Convention was applicable and that the Italian authorities had breached the applicant's right to challenge the application of the E.I.V. regime before the courts.

Furthermore, the "legal deficiency" pointed out by the Court persisted to the present day.

##### *(ii) The Government*

86. In the Government's submission, it was quite clear that Article 6 § 1 of the Convention was not applicable under its criminal head as the matter did not concern the determination of a criminal charge. The Court should therefore focus its attention on the civil head of Article 6 § 1, examining firstly whether the choice of institution in which a convicted prisoner served his sentence amounted to a "civil right" and secondly, whether the impact on the subjective situation of the convicted prisoner of being placed in a particular institution concerned such a right.

87. The Government submitted that the Court's case-law had tended to consider the concept of "civil rights" as a whole, without distinguishing between its two constituent components, and had thus given greater weight in its analysis to the "civil" character of the subjective situations under consideration (as opposed to "rights" of a different, "non-civil", character).

88. With the exception of political rights, it would be difficult to identify any individual "rights" within a legal system which were not "civil" in nature. As a result, the reasoning of those judgments which had dealt with the issue had, despite appearances, focused far more on the concept of "rights" than on their "civil" character. This was borne out by the case-law in the sphere of proceedings concerning the public service.

89. Both before and after the reversal of the Court's case-law in *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), and even in *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, ECHR 2007-IV), it was the scope of State authority which, acting as a legitimate brake on the manifestation of individual interests, had been decisive in finding Article 6 § 1 not to be applicable in certain situations.

90. The choice of institution in which a prisoner served his or her sentence fell exclusively within the scope of the administrative authorities' discretionary powers and was based on considerations falling wholly within the sphere of public law. These included order and security and the need to prevent possible acts of violence or escape attempts by prisoners. In the presence of such extensive powers the subjective situation of the prisoner and his or her aspirations and claims were the subject of purely residual protection which could not have the same ranking in the legal system as the protection afforded to "rights".

91. Consequently, the applicant could not claim a "right" and hence could not demand to have access to a "court", for the purposes of the Convention, in order to challenge the decision of the prison authorities to assign him to an E.I.V. unit.

92. The Government further contended that the Court had not indicated, either in its admissibility decision or in the judgment in *Musumeci*, what specific civil rights were affected by the prisoner's assignment to an E.I.V. unit.

In any event, even assuming that some of the applicant's subjective interests could be characterised as "rights" and could have been subject to occasional restrictions on account of his placement in an E.I.V. unit, that was not sufficient to confer the status of a "right" on his interest in not being assigned to that unit and to make Article 6 § 1 applicable to disputes relating to his assignment.

93. Prisoners had the right to appeal in court proceedings against the restriction of one of their rights following their placement in a particular unit of a prison, but had no right whatsoever to appeal before the courts against the decision to place them there.

(iii) *The third-party intervener*

94. The Slovakian Government observed that the law in their country provided for the adoption of specific measures with respect to prisoners considered to be particularly dangerous. In order, among other aims, to ensure the effective execution of the sentences being served by such prisoners, secure units had been created in prisons (prisoners detained under this regime were separated from those detained under the “ordinary” regime and the premises set aside for them were under constant CCTV surveillance).

95. Prisoners had the right to bring an administrative action against a decision assigning them to a secure unit where the decision directly interfered with their rights, legally protected interests or obligations. In addition, if placement in the secure unit interfered with their human rights and fundamental freedoms, they could lodge a constitutional complaint under Article 127 of the Constitution.

96. The Slovakian Government submitted that decisions concerning the practical aspects of daily prison life did not, as a general rule, impact on prisoners' civil rights and obligations; hence, Article 6 § 1 of the Convention should not apply automatically.

**(b) The Court's assessment**

97. The Court is of the view that Article 6 § 1 of the Convention is not applicable under its criminal head, as the proceedings concerning the prison system did not relate in principle to determination of a “criminal charge”.

98. On the other hand, the question of access to a court with jurisdiction to rule on placement in an E.I.V. unit and the restrictions liable to accompany it should be examined under the civil head of Article 6 § 1, which secures to everyone the right to have “any claim relating to his civil rights and obligations” brought before a “court or tribunal”.

There are two aspects to the question in issue: whether there was a “dispute” (*contestation*) over a “right” and whether or not the right in question was a “civil” one.

99. As to the first aspect, the Court points out firstly that, according to its consistent case-law, Article 6 § 1 applies only to a genuine and serious “dispute” (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 81, Series A no. 52). The dispute may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (see, *inter alia*, *Zander v. Sweden*, 25 November 1993, § 22, Series A no. 279-B), and the outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, *inter alia*, *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A, and *Fayed v. the United Kingdom*, 21 September 1994, § 56, Series A no. 294-B).

100. Secondly, the Court notes that in February 1999 the Constitutional Court found sections 35 and 69 of the Prison Administration Act to be in breach of the Constitution, as they did not provide for judicial review of decisions liable to infringe prisoners' rights (see paragraph 39 above).

101. The Court notes that most of the restrictions to which the applicant was allegedly subjected relate to a set of prisoners' rights which the Council of Europe has recognised by means of the European Prison Rules, adopted by the Committee of Ministers in 1987 and elaborated on in a Recommendation of 11 January 2006 (Rec(2006)2). Although this recommendation is not legally binding on the member States, the great majority of them recognise that prisoners enjoy most of the rights to which it refers and provide for avenues of appeal against measures restricting those rights.

102. It follows that a “dispute (*contestation*) over a right” for the purposes of Article 6 § 1 can be said to have existed in the instant case.

103. As to the second aspect, the Court reiterates that “Article 6 § 1 extends to '*contestations*' (disputes) over civil 'rights' which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention” (see, *inter alia*, *Editions Périscope v. France*, 26 March 1992, § 35, Series A no. 234-B, and *Zander*, cited above).

The Court notes that some of the restrictions alleged by the applicant – such as those restricting his contact with his family and those affecting his pecuniary rights – clearly fell within the sphere of personal rights and were therefore civil in nature (see *Ganci*, cited above, § 25).

104. Against this background the Court reiterates that in *Golder v. the United Kingdom* (21 February 1975, § 36, Series A no. 18), it held as follows:

“... the right of access [to a court] constitutes an element which is inherent in the right stated by Article 6 § 1. This is not an extensive interpretation forcing new obligations on the Contracting States: it is based on the very terms of the first sentence of Article 6 § 1 read in its context and having regard to the object and purpose of the Convention, a lawmaking treaty (see the *Wemhoff* judgment of 27 June 1968, Series A no. 7, p. 23, § 8), and to general principles of law”.

105. The Court is well aware that it is essential for States to retain a wide discretion with regard to the means of ensuring security and order in the difficult context of prison. However, it reiterates that “justice cannot stop at the prison gate and there is ... no warrant for depriving inmates of the safeguards of Article 6” (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 83, ECHR 2003-X).

106. Any restriction affecting these individual civil rights must be open to challenge in judicial proceedings, on account of the nature of the restrictions (for instance, a prohibition on receiving more than a certain number of visits from family members each month or the ongoing

monitoring of correspondence and telephone calls) and of their possible repercussions (for instance, difficulty in maintaining family ties or relationships with non-family members, exclusion from outdoor exercise). By this means it is possible to achieve the fair balance which must be struck between the constraints facing the State in the prison context on the one hand and the protection of prisoners' rights on the other.

107. In conclusion, the Court considers that the complaint concerning the restrictions to which the applicant was allegedly subjected as a result of his being placed in an E.I.V. unit is compatible *ratione materiae* with the provisions of the Convention since it relates to Article 6 under its civil head. Since this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and no other ground for declaring it inadmissible has been established, the Court declares it admissible.

## 2. Merits

### (a) The parties' submissions

#### (i) The applicant

108. The applicant submitted that Article 6 § 1 of the Convention had been breached as a direct consequence of the lack of a remedy enabling him to challenge the prison authorities' decision to place him in an E.I.V. unit.

#### (ii) The Government

109. The Government considered it necessary to make a distinction between prison regimes such as the one provided for by section 41 *bis* of the Prison Administration Act, and placement in a part of a prison, for instance an E.I.V. unit, where the degree of supervision could vary.

The former concerned the rules governing the treatment of prisoners and could also entail limiting their enjoyment of certain rights. For that reason, the law provided for prisoners to be able to challenge the application of a regime other than the ordinary prison regime by means of a procedure affording all the safeguards of Article 6 § 1.

The assignment of prisoners to a particular part of a prison, on the other hand, was a question of "logistics"; it was purely and simply a matter of assigning them to premises (prisons or prison wings) with specific security features.

110. Hence, application of the regime provided for in section 41 *bis* and placement in an E.I.V. unit were two different things. This was borne out by the fact that the two were sometimes combined: a prisoner subject to the special regime who might join forces with members of other criminal organisations detained under the same regime clearly had to be separated from those other prisoners by being placed in another part of the prison

(such as the E.I.V. unit) where he would serve his sentence in the company of one or more prisoners who were not a source of problems and concerns.

111. The Government further submitted that the placement of prisoners in an E.I.V. unit did not entail any restrictions on the enjoyment of their rights: there was no difference between their treatment and that of ordinary prisoners in terms of the number of visits by relatives, being able to receive mail without it being inspected, managing sums of money, outdoor exercise or recreational and cultural activities.

112. The Government observed that, in order to ascertain whether or not they came within the scope of Article 6 of the Convention, it was first necessary to specify which civil rights were supposedly being restricted. In its only existing ruling on the subject, namely the admissibility decision in *Musumeci* of 17 December 2002, the Court had not indicated which civil rights were restricted as a result of placement in an E.I.V. unit. In concluding that Article 6 was applicable, it had confined itself to citing Constitutional Court judgment no. 26 of 1999. However, that judgment in no way concerned the placement of prisoners in different prisons or on different wings within those prisons; it related in particular to the right of all prisoners to receive magazines of a “certain type” through the post.

113. Furthermore, Mr Enea claimed to have been subject to continuing restrictions on his civil rights even after the lifting of the special prison regime, referring, *inter alia*, to a reduction in the number of visits by relatives (four a month instead of six) and to the monitoring of his correspondence.

114. The Government observed first of all that the applicant had failed to prove his allegations. Secondly, they stressed that the supposed restrictions arose “in any event out of generally applicable laws and were not a direct consequence of assignment to an E.I.V. unit”.

The legislative provision in question was Article 37 (8) of Presidential Decree no. 230 of 30 June 2000, which applied to visiting arrangements in respect of all prisoners convicted of certain serious crimes referred to in section 4 *bis* of the Prison Administration Act. The statutory provision governing the monitoring of correspondence was section 41 *bis* paragraph 2 *quater e* of the same Act.

115. Lastly, the Government pointed out that neither circular no. 3479/5929 issued by the Prison Administration Department on 9 July 1998 nor any law provided for restrictions on the civil rights of prisoners placed in an E.I.V. unit.

**(b) The Court's assessment**

116. The Court observes that, in raising this complaint, the applicant stated first of all that despite the lifting of the special prison regime under section 41 *bis* of the Prison Administration Act on 28 February 2005, he had continued to be subject to the same restrictions of his fundamental rights

until his release in April 2008. At the hearing before the Court on 5 November 2008 his lawyers maintained that all their client's appeals against the monitoring of his correspondence during his detention in the E.I.V. unit had been dismissed. In addition, the applicant had not received any visits. Lastly, the applicant's representatives said that they had been unable to find out precisely what restrictions had been imposed on the applicant, as his placement in the E.I.V. unit was covered by the rules of confidentiality.

117. The Court notes that the voluminous case file contains numerous documents relating to the period during which the applicant was subject to the special prison regime under section 41 *bis*. These include ministerial decrees applying the regime, appeals against those decrees, judicial decisions authorising the monitoring of the applicant's correspondence and medical files.

However, as regards the period from March 2005 to April 2008, the Court cannot overlook the fact that the file contains no documents corroborating the applicant's allegations, whether in the form of a decision authorising the monitoring of his correspondence, an appeal against such a decision or any evidence of the continued application of the other restrictions linked to the section 41 *bis* regime. On the contrary, the applicant's placement in an E.I.V. unit had the effect, *inter alia*, of enabling him to receive four instead of two family visits per month and to be given an individual cell.

118. The Court also notes that the E.I.V. units were introduced by circular no. 3479/5929 of 9 July 1998 (see paragraph 44 above) and that placement in an E.I.V. unit occurs on the basis of the principle of individually tailored treatment of prisoners under sections 13 and 14 of Law no. 354 of 1975 (see paragraphs 43 and 44 above). The Court stresses that these provisions, taken together, indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in this sphere.

119. The Court observes that, while it is true that a prisoner cannot challenge *per se* the merits of a decision to place him or her in an E.I.V. unit, an appeal lies to the courts responsible for the execution of sentences against any restriction of a "civil" right (affecting, for instance, a prisoner's family visits or correspondence). However, given that in the instant case the applicant's placement in the unit did not entail any restrictions of that kind, even the possible lack of such a remedy could not be said to amount to a denial of access to a court.

120. Consequently, the Court considers that there has been no violation of Article 6 § 1 in the instant case as regards the applicant's right to have a dispute concerning his "civil rights and obligations" determined by a court.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE)

121. The applicant contended that the continued application of the special prison regime had breached his right to respect for his private and family life. He relied on Article 8 of the Convention, which provides:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime...”

122. The Government contested that argument.

#### A. The parties' submissions

##### 1. *The applicant*

123. The applicant submitted that the restrictions imposed on him on account of the extended application of the special prison regime had had a disastrous effect on his private and family life. He stressed in particular the reduction in the number of visits to one hour-long visit per month and the arrangements governing visits, which had been extremely distressing for both him and the members of his family. Visits had taken place in a tiny room and no physical contact of any kind had been possible between the prisoner and his relatives because of a glass partition which divided the room right up to the ceiling and prevented persons from holding hands or speaking to each other except through a grille. Furthermore, the visits had been filmed and recorded in their entirety. His relationship with the members of his family had suffered greatly as a result.

In addition, he stated that visits had also been restricted during his time in the E.I.V. unit – albeit to a different extent, with four visits being allowed instead of six.

Furthermore, the applicant had been confined in an individual cell with a smaller surface area than the cell he had previously shared with other inmates.

Lastly, he had been refused prison leave to attend the funerals of his brother and partner.

##### 2. *The Government*

124. The Government reiterated their arguments concerning the danger presented by the applicant and the need, where prisoners detained under the special regime were concerned, to restrict the number of visits and impose very strict visiting arrangements. As to the period spent in the E.I.V. unit, the Government again stressed that no restrictions had been imposed on the applicant with regard to the number of visits or outdoor exercise time. They

further considered that being placed in a smaller, individual cell could not be regarded as a restriction on the right to respect for one's private and family life.

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

125. The Court has already been called upon to rule on whether the restrictions arising out of the application of section 41 *bis* in the sphere of certain prisoners' private and family life constituted interference which was justified in terms of Article 8 § 2 of the Convention (see *Messina*, cited above, §§ 59-74, and *Indelicato v. Italy* (dec.), no. 31143/96, 6 July 2000).

126. According to the Court's case-law, the regime laid down in section 41 *bis* is designed to cut the links between the prisoners concerned and their original criminal environment, in order to minimise the risk that they will make use of their personal contacts with criminal organisations. Before the introduction of the special regime, many dangerous prisoners were able to maintain their positions within the criminal organisations to which they belonged, to exchange information with other prisoners and with the outside world and to organise and procure the commission of criminal offences. In that context the Court considers that, given the specific nature of the phenomenon of organised crime, particularly of the Mafia type, and the fact that family visits have frequently served as a means of conveying orders and instructions to the outside, the – admittedly substantial – restrictions on visits, and the accompanying controls, could not be said to be disproportionate to the legitimate aims pursued (see *Salvatore v. Italy* (dec.), no. 42285/98, 7 May 2002, and *Bastone v. Italy* (dec.), no. 59638/00, ECHR 2005-II).

127. The Court has also had to consider the question whether extended application of this regime to a prisoner infringed the rights guaranteed by Article 8 of the Convention. In *Gallico v. Italy* (no. 53723/00, § 29, 28 June 2005), it saw fit to specify that it did not consider that there had been a breach of Article 8 simply on account of the passage of time.

128. In the instant case the Court observes that the applicant was subject to the special prison regime from 10 August 1994 until 1 March 2005, and that each time the measure was extended the Minister of Justice took account of recent police reports stating that the applicant was still dangerous. It also stresses that the restrictions imposed on the applicant were eased in February 1995 (one hour-long telephone conversation with family members was permitted in the absence of a family visit), May 1997 (two hour-long visits per month permitted) and October 1997 (lifting of the restriction concerning the number of family visits). Application of the special regime was discontinued on 11 February 2005 by the Naples court responsible for the execution of sentences on the ground that the security

considerations which had justified it were no longer valid (see paragraphs 11-14 above).

129. As to the applicant's detention in an E.I.V. unit, the Court observes that he had the right to four family visits per month and did not claim to have encountered any difficulties in exercising that right which, moreover, represented a considerable increase compared with the previous situation. As regards his placement in a smaller individual cell, the Court notes that the applicant did not substantiate this complaint in any way.

130. Finally, as regards the last complaint, the case file does not contain any request by the applicant for prison leave in order to attend his partner's funeral. This part of the complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As to the remainder, the Court observes that the final domestic decision refusing the applicant prison leave to visit his brother's grave was deposited with the registry of the Milan Court of Appeal on 21 October 1999 (see paragraph 28 above), that is to say, more than six months prior to the lodging of the present application on 31 August 2000.

Consequently, this part of the complaint is out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

131. In the light of the foregoing, the Court considers that the restrictions on the applicant's right to respect for his private and family life did not go beyond what, within the meaning of Article 8 § 2 of the Convention, was necessary in a democratic society in the interests of public safety and for the prevention of disorder and crime.

This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION (RIGHT TO RESPECT FOR CORRESPONDENCE)

132. The applicant contended that the monitoring of his correspondence had been in breach of the right guaranteed by Article 8 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety or ... for the prevention of disorder or crime...”

133. The Government contested that argument.

## A. Admissibility

134. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It should therefore be declared admissible.

## B. Merits

### 1. *The parties' submissions*

#### (a) **The applicant**

135. The applicant alleged that the monitoring of his correspondence, attested to by the corresponding stamp, had been in breach of Article 8 of the Convention. The breach had been continuous from the time of his arrest until his temporary release on 24 April 2008.

#### (b) **The Government**

136. The Government pointed out first of all that Law no. 95 of 8 April 2004 had added a new section 18 *ter* to the Prison Administration Act stating that, in order to prevent the commission of crimes or maintain prison security and the confidentiality of investigations, correspondence could be monitored for a maximum period of six months. Monitoring was authorised on the basis of a reasoned order of the judicial authority at the request of the public prosecutor's office or the governor of the institution where the person concerned was detained. The second paragraph of section 18 *ter* stated that prisoners' correspondence with their lawyers and with international human-rights bodies was not subject to monitoring.

137. However, in the Government's submission, section 18 of the Prison Administration Act had satisfied the requirements of Article 8 of the Convention even before this, as monitoring (1) was ordered by a judge, (2) was designed to sever the links between prisoners and criminal organisations, (3) was limited in duration and (4) was amenable to appeal before the judge responsible for the execution of sentences.

138. Furthermore, in the instant case, the monitoring of the applicant's correspondence had pursued a legitimate aim, namely to protect public order and national security by ensuring that correspondence was not used as a means of conveying prohibited messages.

139. Finally, the Government emphasised that in any event, in the instant case, the statutory provision governing the monitoring of the applicant's correspondence had not been section 18 of the Prison Administration Act but rather section 41 *bis*, paragraph 2 *quater e*, a provision which had never been criticised by the Court and which, moreover, was not open to criticism as it met all the criteria required by the

Court. The two documents submitted by the applicant did not constitute sufficient evidence, as they gave no indication of the sender or addressee or the date of inspection.

## 2. *The Court's assessment*

140. The Court notes that there was “interference by a public authority” with the exercise of the applicant's right to respect for his correspondence under Article 8 § 1. Such interference will contravene Article 8 § 1 unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and, furthermore, is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Calogero Diana v. Italy*, 15 November 1996, § 28, *Reports* 1996-V; *Domenichini v. Italy*, 15 November 1996, § 28, *Reports* 1996-V; and *Labita*, cited above, § 179).

141. The Court observes that the monitoring of the applicant's correspondence was ordered by the judge responsible for the execution of sentences with explicit reference to section 18(7) of the Prison Administration Act only from 12 August 1997 onwards. Subsequently, in the decision of 3 August 1999 and those which followed it, the judge stipulated a maximum period of six months and ordered that the applicant's correspondence with the Court, *inter alia*, should not be monitored (see paragraph 25 above). Contrary to the Government's assertion, therefore, the competent judicial authority at no point authorised the monitoring of the applicant's correspondence on the basis of section 41 *bis*, paragraph 2 *quater e* of the Act. The latter provision, moreover, is just as imprecise as section 18 of the impugned Act.

142. With regard to the two documents included in the case file which bear a stamp showing that they were inspected (a handwritten letter and an envelope posted on 3 March 2000), the Court considers it likely that they were part of the correspondence sent by the applicant to his lawyer, Mr Vetrano.

143. The Court does not underestimate the actions of the judge responsible for the execution of sentences in limiting the scope and duration of the monitoring arrangements from August 1999 onwards. However, it is of the view that the monitoring of the applicant's correspondence was in breach of Article 8 of the Convention as it was not “in accordance with the law”, given that section 18 of the Prison Administration Act does not regulate either the duration of measures monitoring prisoners' correspondence or the reasons capable of justifying such measures, and does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities in the relevant sphere (see, *inter alia*, *Labita*, cited above, §§ 175-185). It sees no reason to depart in the instant case from its existing case-law, designed to ensure that all prisoners enjoy the minimum degree of protection to which citizens are entitled under the

rule of law in a democratic society (see *Calogero Diana*, cited above, § 33, and *Campisi v. Italy*, no. 24358/02, § 50, 11 July 2006).

144. In the light of the foregoing, the Court finds that the monitoring of the applicant's correspondence from 10 August 1994 to 7 July 2004 was not "in accordance with the law" within the meaning of Article 8 of the Convention, with the result that there has been a violation of that provision. This finding makes it unnecessary to examine whether the other requirements of Article 8 were satisfied.

145. As regards the period after that date and until the stay of execution of the applicant's sentence (on 24 April 2008), the Court simply notes that there are no documents in the case file which support the assertions of the applicant's representatives.

146. Accordingly, it finds that there has been no violation of Article 8 of the Convention as regards the alleged monitoring of the applicant's correspondence after 7 July 2004.

147. The Court also takes note of the entry into force of Law no. 95 of 2004 amending the Prison Administration Act by introducing a new section 18 *ter*. However, the amendments in question do not serve to redress violations which occurred before they entered into force (see *Argenti*, cited above, § 38).

## V. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

148. The applicant also complained of a violation of Article 9 of the Convention, which provides:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

149. The Government contested the applicant's argument.

### A. The parties' submissions

#### 1. The applicant

150. The applicant contended that the application of the special prison regime had prevented him from practising his religion by taking part in liturgical celebrations and performing other acts of worship. In particular, he had been unable to attend the funerals of his brother and partner.

## 2. *The Government*

151. The Government denied that there had been any restrictions on the applicant's right to manifest his religious beliefs. They also observed that religious services were held once a week in Naples Prison and that the applicant had not been prohibited from taking part.

152. The Government further noted that full and reasonable grounds had been given for refusing the applicant's request for prison leave to attend his brother's funeral.

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

153. The Court notes that the applicant did not substantiate the first part of his complaint. The case file does not contain any evidence that the applicant was unable to take part in acts of worship. As to the remainder, the Court points out that it has already rejected (at paragraph 130 above) the second and third parts of the complaint under Article 8 of the Convention.

Consequently, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

154. The applicant complained of the lack of an effective remedy enabling him to challenge the repeated extensions of the special prison regime and his placement in the E.I.V. unit. Article 13 of the Convention provides:

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

155. The Court has reached the conclusion that there has been no violation of Article 6 § 1 of the Convention as regards the applicant's right to a court (see paragraph 120 above). Accordingly, given that the requirements of Article 6 are stricter than, and absorb, those of Article 13 (see *Kudła*, cited above, § 146), it is not necessary to rule on this complaint.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

156. 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**

157. The applicant claimed 100,000 euros (EUR) by way of just satisfaction for the non-pecuniary damage sustained on account of the violation of his fundamental rights. The amount claimed was justified in view of the “persistent multiple violations of the Convention and their exceptionally serious nature”.

158. The Government did not express an opinion on this point.

159. The Court points out that it has found a violation of the Convention only with regard to one aspect of the applicant's complaint concerning his right to a court and the monitoring of his correspondence. In the circumstances of the case, it considers that the finding of a violation is sufficient to compensate for the non-pecuniary damage sustained.

### **B. Costs and expenses**

160. Providing documentary evidence in support of their claims, the applicant's lawyers claimed reimbursement of the costs and expenses incurred before the Court and in the numerous sets of proceedings before the domestic judicial authorities. They claimed the sum of EUR 30,000 plus value-added tax (VAT) and a contribution to the lawyers' insurance fund (CPA) and stressed the large number of memorials submitted during the proceedings and their participation in the Grand Chamber hearing.

161. The Government did not express an opinion on this point.

162. The Court reiterates that only costs found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Roche v. the United Kingdom* [GC], no. 32555/96, § 182, ECHR 2005-X).

163. The present case is of some complexity as it entailed examination by the Chamber and the Grand Chamber and also several sets of observations and a hearing. It also raises important legal issues.

164. Ruling on an equitable basis in the light of its practice in comparable cases, the Court awards the applicant EUR 20,000 in respect of costs and expenses.

### **C. Default interest**

165. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT**

1. *Declares* admissible unanimously the applicant's complaint under Article 3 of the Convention;
2. *Holds* by fifteen votes to two that there has been no violation of Article 3;
3. *Declares* unanimously the applicant's complaint under Article 6 § 1 of the Convention concerning his right to a court during the period of application of the special prison regime admissible as regards decree no. 12 of 22 June 2000 and the remainder of the complaint inadmissible;
4. *Holds* unanimously that there has been a violation of Article 6 § 1 as regards the applicant's right to a court during the period of application of the special prison regime under decree no. 12 of 22 June 2000;
5. *Declares* admissible by sixteen votes to one the applicant's complaint under Article 6 § 1 concerning his right to a court during his detention in an E.I.V. unit;
6. *Holds* unanimously that there has been no violation of Article 6 § 1 as regards the applicant's right to a court during his detention in an E.I.V. unit;
7. *Declares* admissible unanimously the applicant's complaint under Article 8 of the Convention as regards his right to respect for his correspondence and the remainder of the complaint inadmissible;
8. *Holds* unanimously that there has been a violation of Article 8 as regards the applicant's right to respect for his correspondence from 10 August 1994 until 7 July 2004 and no violation thereafter;
9. *Declares* inadmissible unanimously the applicant's complaint under Article 9 of the Convention;
10. *Holds* unanimously that it is not necessary to rule on the complaint under Article 13 of the Convention;
11. *Holds* by fifteen votes to two that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

12. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable to the applicant, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

13. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 September 2009.

Vincent Berger  
Jurisconsult

Jean-Paul Costa  
President

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

J.-P.C.  
V.B.

## PARTLY DISSENTING OPINION OF JUDGES KOVLER AND GYULUMYAN

We do not share the opinion of the majority expressed above that there has not been a violation of Article 3 of the Convention.

We believe that the applicant's allegation that his continued detention under the special prison regime amounted to inhuman and degrading treatment in view of his state of health is well founded. As regards the supposedly similar situations of other Italian prisoners detained under the special regime, cited in the judgment (see paragraphs 64-66), the fact that Mr Enea used a wheelchair and had to remain in the prison hospital between June 2000 and February 2005 leads us to conclude that his situation was not comparable to theirs. We are more inclined to follow the conclusions of the *Mathew* judgment, especially the Court's concern "that, despite a request to that effect from the applicant, no attempt appears to have been made to find a place of detention appropriate to the applicant..." (see *Mathew v. the Netherlands*, no. 24919/03, § 204, ECHR 2005-IX). The prison hospital was not, to our mind, an appropriate place in which to detain Mr Enea for several years, even taking into account the potential danger posed by the applicant as a member of a Mafia-type criminal organisation (compare *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004, and *Sakkopoulos v. Greece*, no. 61828/00, § 38, 15 January 2004).

The Court's conclusion that the national authorities fulfilled their obligation to protect the applicant's physical well-being by monitoring his state of health carefully (see paragraph 62) is not sufficient basis on which to find that there has been no violation of Article 3, because it does not take into account other aspects of the applicant's conditions of detention such as his real, long-term isolation in the prison hospital and the restrictions on his correspondence, all of which, taken together, aggravated the applicant's suffering due to his illness. The assessment of the minimum threshold of severity required in order to fall within the scope of Article 3 of the Convention is a matter of subjective opinion. In our opinion, this threshold was attained.