



## The applicant's irreducible life sentence breached the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [Marcello Viola v. Italy \(no. 2\)](#) (application no. 77633/16) the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.**

The case concerned an irreducible sentence of life imprisonment.

The Court reiterated that human dignity lay at the very essence of the Convention system. It was impermissible to deprive persons of their freedom without striving towards their rehabilitation and providing them with the chance to regain that freedom at some future date. Thus, the Court considered that the sentence of life imprisonment imposed on Mr Viola under section 4 *bis* of the Prison Administration Act (*ergastolo ostativo*) restricted his prospects for release and the possibility of review of his sentence to an excessive degree. Accordingly, his sentence could not be regarded as reducible for the purposes of Article 3 of the Convention.

Nevertheless, the Contracting States enjoyed a wide margin of appreciation in deciding on the appropriate length of prison sentences, and the fact that a life sentence might in practice be served in full did not mean that it was irreducible. Consequently, the possibility of review of life sentences entailed the possibility for the convicted person to apply for release but not necessarily to be released if he or she continued to pose a danger to society.

### Principal facts

The applicant, Mr Marcello Viola, is an Italian national who was born in 1959 and is currently detained in Sulmona Prison (Italy). He was involved in a series of incidents between two rival Mafia clans from the mid-1980s until 1996.

On 16 October 1995 the Palmi Assize Court sentenced Mr Viola to 15 years' imprisonment for membership of a Mafia-type criminal organisation in connection with events occurring between 1990 and 1992. The Assize Court of Appeal upheld his conviction but reduced the sentence to 12 years' imprisonment. The applicant did not appeal on points of law. In September 1999 the Palmi Assize Court sentenced Mr Viola to life imprisonment for separate offences linked to Mafia-type criminal activities, and also found him guilty of murder, abduction, false imprisonment resulting in the victim's death and unlawful possession of firearms. An appeal on points of law by the applicant was dismissed. On 12 December 2008 the Assize Court of Appeal reassessed the overall sentence as one of life imprisonment with daytime isolation for two years and two months.

Between 2000 and 2006 the applicant was placed under a special prison regime (section 41 *bis* (2) of Law no. 354 of 26 July 1975). In December 2005 the Ministry of Justice issued a decree ordering the extension of the regime for a further year. In an order of 14 March 2006 the sentence supervision court allowed an appeal by the applicant and discontinued the special regime.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The applicant subsequently applied for prison leave on two occasions. His first application was rejected in July 2011 by the post-sentencing judge, who pointed out that the applicant remained ineligible for prison leave as he was serving a sentence for membership of a Mafia-type criminal organisation and had not cooperated with the judicial authorities. On 29 November 2011 the sentence supervision court dismissed an appeal by the applicant, holding that it had not been established that he had broken off contact with the criminal organisation and that it did not appear from observation of his everyday behaviour that he had engaged in critical reflection on his criminal past. The second application for prison leave was rejected on the same grounds. In March 2015 Mr Viola applied to the sentence supervision court for release on licence. In a decision of 26 May 2015 the court held that his application could not be granted, since release on licence was conditional on cooperation with the judicial authorities and the permanent severing of ties between the convicted person and Mafia circles. In a judgment of 22 March 2016 the Court of Cassation dismissed an appeal on points of law by the applicant.

## Complaints, procedure and composition of the Court

Relying on Article 3 of the Convention (prohibition of inhuman or degrading treatment), the applicant complained that his life sentence was irreducible and afforded him no prospect of release on licence. Relying on Articles 3 and 8 (right to respect for private and family life), he also complained that the prison regime was incompatible with the aim of prisoners' rehabilitation and social reintegration.

The application was lodged with the European Court of Human Rights on 12 December 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Ksenija **Turković** (Croatia),  
Guido **Raimondi** (Italy),  
Krzysztof **Wojtyczek** (Poland),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),  
Gilberto **Felici** (San Marino),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### Article 3

The Court observed that the regime applicable to life imprisonment resulted from the combined application of Article 22 of the Criminal Code and sections 4 *bis* and 58 *ter* of the Prison Administration Act. Those provisions provided for differentiated treatment of prisoners, the effect of which was to preclude release on licence and access to other reductions of sentence and alternatives to custody for prisoners who did not satisfy the requirement to cooperate with the judicial authorities. The forms which such cooperation could take were laid down in section 58 *ter* of the Prison Administration Act: the convicted prisoner had to provide the authorities with decisive information enabling them to prevent the consequences of the offence and assisting them in establishing the facts and identifying the perpetrators of criminal offences. Convicted prisoners were exempted from this requirement if cooperation could be considered impossible or unenforceable and if they could prove that they had severed all links with the Mafia-type group.

In order to determine whether the life sentence was reducible, that is, whether it offered a prospect of release and a possibility of review, the Court focused its attention on the only option available to

Mr Viola in order to be eligible for and be granted release, namely to cooperate with the judicial authorities' investigative and prosecution activities.

The Court acknowledged that the domestic rules offered convicted prisoners a choice as to whether to cooperate with the judicial authorities. However, it had doubts as to the free nature of that choice and the appropriateness of equating a lack of cooperation with the prisoner's dangerousness to society. Hence, the Court noted that Mr Viola had decided not to cooperate with the judicial authorities. According to one of the third-party interveners in the case, the main reason why prisoners refused to cooperate was the fear of endangering their own lives or those of their families. The Court inferred from this that the lack of cooperation was not always the result of a free and deliberate choice, nor did it necessarily reflect continuing adherence to criminal values or ongoing links with the Mafia-type organisation.

The Court also observed that a situation could reasonably be imagined whereby a convicted prisoner cooperated with the authorities without this signifying any rehabilitation on his or her part or a genuine severing of contact with criminal circles. Regarding cooperation with the authorities as the only possible indication that a prisoner had broken off contact with criminal circles and been rehabilitated failed to take account of other indicators that could be used to assess his or her progress. It could not be ruled out that the severing of ties with Mafia circles might be expressed in ways other than cooperation with the judicial authorities.

The Court pointed out that the Italian prison system offered a range of progressive opportunities for contact with society – such as outside work, release on licence, prison leave and a semi-custodial regime – designed to ease the prisoner's resocialisation. However, Mr Viola had not been granted these opportunities despite the fact that the reports on his conduct in prison submitted in support of his applications for release on licence had reported a positive change in his personality. Moreover, Mr Viola pointed out that he had never had any disciplinary sanctions imposed on him since his conviction and had built up entitlement to be released five years early; however, he had been unable to take advantage of this owing to his refusal to cooperate.

In the Court's view, a convicted prisoner's personality did not remain unchanged from the time of commission of the offence. It could evolve in the course of his or her sentence, as reflected in the resocialisation process, which enabled individuals to review their criminal past critically and rebuild their personality. In order to do that, convicted prisoners had to know what they needed to do in order to be considered for release.

Lastly, the Court considered that the lack of cooperation with the judicial authorities gave rise to an irrebuttable presumption of dangerousness which had deprived Mr Viola of any realistic prospect of release. By continuing to equate a lack of cooperation with an irrebuttable presumption of dangerousness to society, the rules in place effectively assessed the person's dangerousness by reference to the time when the offence had been committed, instead of taking account of the reintegration process and any progress the person had made since being convicted. The presumption of dangerousness also prevented the competent courts from examining applications for release on licence and from ascertaining whether the person concerned had changed and made progress towards rehabilitation, such that his or her detention was no longer justified.

The Court recognised the fact that the offences of which Mr Viola had been convicted concerned a particularly dangerous phenomenon for society. However, efforts to tackle that scourge could not justify derogating from the provisions of Article 3 of the Convention, which prohibited in absolute terms inhuman or degrading treatment. Hence, the nature of the offences of which Mr Viola had been accused was irrelevant for the purposes of examining his application under Article 3. Moreover, the Court had previously found that the ultimate aim of resocialisation was to prevent reoffending and protect society.

The Court stressed that it would be incompatible with human dignity – which lay at the very essence of the Convention system – to deprive persons of their freedom without striving towards their rehabilitation and providing them with the chance to regain that freedom at some future date. Thus, the Court considered that the life sentence imposed on Mr Viola under section 4 *bis* of the Prison Administration Act (*ergastolo ostativo*) restricted his prospects for release and the possibility of review of his sentence to an excessive degree. Accordingly, his sentence could not be regarded as reducible for the purposes of Article 3 of the Convention.

The Court therefore concluded that the requirements of Article 3 had not been satisfied. However, the finding of a violation could not be understood as offering the applicant the prospect of imminent release.

### Article 46

The Contracting States enjoyed a wide margin of appreciation in deciding on the appropriate length of prison sentences, and the mere fact that a life sentence might in practice be served in full did not mean that it was irreducible. Consequently, the possibility of review of life sentences entailed the possibility for the convicted person to apply for release but not necessarily to be released if he or she continued to pose a danger to society.

### Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 6,000 euros (EUR) in respect of costs and expenses.

### Separate opinion

Judge Wojtyczek expressed a separate opinion which is annexed to the judgment.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.