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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communications Nos. 3328/2019 to 3579/2019*, **, ***

<i>Communications submitted by:</i>	Antonio Albanese and 251 other authors (for the complete list of authors, see annex I); the authors are represented by counsel, Andrea Saccucci
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Italy
<i>Date of communications:</i>	21 March 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 2 April 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2024
<i>Subject matter:</i>	Access to parole measures for life prisoners is conditional upon cooperation
<i>Procedural issues:</i>	Abuse of rights; exhaustion of domestic remedies
<i>Substantive issues:</i>	Cruel, inhuman and degrading treatment; essential aims of the penitentiary system
<i>Articles of the Covenant:</i>	7 and 10 (1) and (3)
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1.1 The authors are 252 male life prisoners¹ of Italian nationality. Their names and dates of birth are provided in annex I. They claim that the State party violated their rights under articles 7 and 10 (1) and (3) of the Covenant in view of the prison regime they are subjected to in accordance with article 4-bis (1) of Law no. 354/1975, which rules out access to parole measures for all those convicted and sentenced for serious criminal offences concerning the

* Adopted by the Committee at its 142nd session (14 October–7 November 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** Individual opinions by Committee members Carlos Gómez Martínez and Hélène Tigroudja (partly dissenting) are annexed to the present Views.

¹ According to the counsel, the 252 authors represent roughly one-fourth of all life prisoners in Italy (1174 as of 12 October 2015).



mafia and/or terrorism unless they cooperate with the authorities in securing prosecutions of other alleged members of criminal organizations. The Optional Protocol entered into force for the State party on 15 December 1978. All authors are represented by the same counsel.

1.2 On 24 October 2024, pursuant to rule 97 (3) of the Committee’s rules of procedure, the Committee decided to join the present communications for a joint decision, in view of substantial factual and legal similarity.

Facts as submitted by the authors

2.1 The authors have all been convicted and sentenced to life imprisonment for mafia-related offences between 1977 and 2014.² Given the seriousness of their offences, the sentences of life imprisonment they are serving fall under a restrictive regime,³ which was introduced in the wake of the mafia bombings and killings of 1992. The specific conditions of this harsh penitentiary regime are set forth in article 4-bis (1) of Law no. 354/1975 (the Penitentiary Act). After mentioning a series of crimes ranging from aiding the mafia to illegal immigration and drug trafficking, that provision establishes that those sentenced to imprisonment for one of these crimes are not eligible for parole or any other probation measure⁴ – excluding early release – unless they cooperate with the investigative or judicial authorities pursuant to article 58-ter of the Penitentiary Act.

2.2 The only way to challenge the operation of the absolute and non-rebuttable presumption contained in article 4-bis would be to file a request for probation measures and ask the judge to refer to the Constitutional Court a question concerning the constitutionality of that article. However, the European Court of Human Rights has already ruled that such an application cannot be a remedy that would need to be exhausted as required under the European Convention for Human Rights.⁵ With several judgments issued between 1993 and 2014, the Constitutional Court has consistently ruled that the restrictive penitentiary regime applied to the authors does not infringe the Italian Constitution. Notably, in reaching this conclusion, the Constitutional Court indicated that: “the prohibition [to access parole measures] provided for by article 4-bis does not stem directly from the law, but is the consequence of the prisoner’s choice not to cooperate, while having the chance to do so: thus, the law does not exclude the granting of parole measures in absolute terms, because the detainee has the possibility to change his mind [and cooperate]”.⁶

2.3 As a consequence of this well-established constitutional case-law, neither lower courts nor the Court of Cassation refer questions of constitutionality of article 4-bis to the Constitutional Court anymore. They rather declare them manifestly ill-founded without exception. As such, these decisions confirm the “futile” nature of any further legal action that may be taken by the authors to seek redress at domestic level.

2.4 This is also the outcome of all the applications filed by some of the authors in order to access probation measures and challenge the operation of the absolute presumption in article 4-bis.⁷ All these requests have been rejected and/or declared inadmissible. For this reason, as in the case of *G. v. Australia*,⁸ the authors consider that the Committee should relieve them from the obligation to exhaust domestic remedies that are “futile” or otherwise “ineffective”.

² They provide certificates of detention which mention the date of the arrest and the penalty imposed (i.e., life imprisonment) for one or more of the following offences: mafia association, conspiracy aimed at drug trafficking, kidnapping, first degree murder and extortion.

³ Life imprisonment without parole. The specific conditions of life imprisonment are set out in article 22 of the Criminal Code, with article 4-bis of the Penitentiary Act establishing a special regime of life imprisonment without parole.

⁴ Assignment to work outside, bonus permits and alternative measures to detention.

⁵ European Court of Human Rights, *Parrillo v. Italy* [GC], no. 46470/11, 27 August 2015, para. 101.

⁶ Constitutional Court, Judgment No. 135 of 24 April 2003, para. 4.

⁷ 159 among the 241 authors stated that they had requested a special leave. All the requests have been rejected. The reason given to 53 of them referred exactly to the prohibition contained in article 4-bis.

⁸ CCPR/C/119/D/2172/2012, para. 6.9 with reference to paras. 2.9-2.14.

2.5 For example, when one of the authors – Claudio Conte (3393/2019) – appealed the decision rejecting his request for special leave, the Tribunal of Catanzaro acknowledged that Mr. Conte had served 27 years of continuing detention, that there was evidence that he had ceased his bonds with organised crime and that “he had undertaken a pluriannual path of critical revision of his criminal past.” But although considering that Mr. Conte was certainly “a new man,” the Tribunal ruled that his request “must” be rejected and prompted the legislature to “loosen the unbearable grip of article 4-bis.” Multiple requests for special leave introduced by 159 authors such as Giousé Chindamo (3388/2019), Salvatore Biondo (3353/2019) and Antonino Alcamo (3330/2019) were also rejected solely on the basis of their lack of cooperation.

2.6 The authors are involved in rehabilitation programmes and 109 of them have already completed such programmes. Some have also obtained satisfactory results. Should the authors not be submitted to the restrictive penitentiary regime, they would technically qualify for release on parole under article 176 of the Criminal Code, having been detained for 26 continuing years or more. In abstracto, the authors have also been granted between 5 and 8 years of early release under article 54 of the Penitentiary Act.⁹ However, none of them will ever enjoy a prospect of release unless they cooperate with the authorities.

2.7 The authors indicate that many of them also suffer from serious health conditions related to heart, blood circulation, eyes, hearing disorders, diabetes, hernia, prostates, gastritis, and arthritis. For example, Carmine Gerace (3450/2019) lives in a wheelchair since his arrest in 1971 and the full-time assistance he needs is provided by his inmates. Gaetano Sades (3543/2019) suffers from hepatitis C and epilepsy, and has been recognised as “civil invalid person”.

Complaint

3.1 The authors consider that the main question in their cases is whether cooperation with authorities is tantamount to a “fair prospect of release,” which makes life imprisonment compliant with international human rights instruments. They explain that when coupled with life imprisonment, article 4-bis (1) of the Penitentiary Act breaches their right to rehabilitation in making access to parole measures conditional upon cooperation, rather than upon penological grounds.¹⁰ The Act sets an absolute and non-rebuttable presumption of equivalence between repentance and cooperation.¹¹ This prison regime goes against human dignity. The authors’ certificates of detention prove that each of them is personally and individually affected by the application of the legislative provision complained of and, consequently, that the rights of each of them under articles 7 and 10 of the Covenant have been violated.

3.2 When applied to life prisoners, the presumption contained in article 4-bis makes cooperation the only possible exemption from serving a whole-life sentence. But, however labelled, cooperation cannot be deemed tantamount to that “fair prospect of release” which, alone, makes life imprisonment compliant with international human rights instruments. To the contrary, the alternative between cooperation and continuing detention constitutes a subtle form of psychological torture, inhuman and degrading treatment.

3.3 The authors recall that the Committee has already held that “no penitentiary system should be only retributory,” but should, rather, “essentially seek the reformation and social rehabilitation of the prisoner.”¹² They consider that States have a positive obligation to avail prisoners of a whole host of measures with a view to their rehabilitation, including “teaching, education and re-education, vocational guidance and training” in addition to “work

⁹ Out of 196 authors who provided information in this sense, 53 declared that they were granted 5 years of early release, 27 were granted 6 years, 4 were granted 7, and 4 were granted 8.

¹⁰ The overwhelming majority of Italian scholars consider article 4-bis unconstitutional – the authors cite several sources in that sense. But the Parliament never went beyond futile attempts of amending that article.

¹¹ The authors claim that there is a strict exception of “impossible cooperation” accepted by the Constitutional Court, but do not give further details.

¹² *Blessington and Elliot v. Australia* (CCPR/C/112/D/1968/2010), para. 7.8.

programmes for prisoners inside the penitentiary establishment as well as outside.”¹³ Therefore, the Committee generally finds a violation of articles 7 and 10 when no recreational or educational programmes and policies are available to life prisoners in and outside the prison.¹⁴

3.4 The authors note that the European Court of Human Rights has also ruled in its landmark case *Vinter v. the United Kingdom* that “in the context of a life sentence, article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life of the prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.”¹⁵ The authors do not have access to such a review. Their recreational and work or study programmes cannot possibly lead to release in the absence of cooperation. In the case of *Fardon v. Australia*, the Committee made a specific reference to article 10 (3) of the Covenant to consider that the State should have demonstrated that the author’s rehabilitation could not have been achieved by means less intrusive than continued imprisonment or even detention.¹⁶

3.5 The authors point to the consequences of the preclusion contained in article 4-bis on their physical and psychological health. Many of them suffer from health conditions which are not compatible with life imprisonment, let alone with a form of life imprisonment that rules out early release and any other form of parole.

3.6 The authors do not have at their disposal any domestic remedy satisfying the conditions of article 2 (3) of the Covenant. The violation of their rights guaranteed by articles 7 and 10 (1) and (3) of the Covenant stems directly from – and is an automatic consequence of – article 4-bis (1) of the Penitentiary Act. This provision deprives the penitentiary regime of any rehabilitative aim by making parole conditional upon cooperation, rather than reformation and social rehabilitation. In this sense, the authors point out to the unsuccessful attempts of some of them to challenge the absolute and non-rebuttable presumption in article 4-bis and to the settled case-law of the Court of Cassation and of the Constitutional Court.

3.7 Against this background, the authors do not claim that they did in fact exhaust domestic remedies or are exempted to exhaust a specific remedy. They rather claim that there is no remedy in the Italian legal system that would allow them to effectively claim their rights before a competent domestic authority as required by article 2 of the Covenant. The information concerning the unsuccessful attempts of some of the authors to challenge the absolute and non-rebuttable presumption contained in article 4-bis (1) of the Penitentiary Act at domestic level is merely intended to reinforce their contention that there are no effective domestic remedies. This conclusion is confirmed by the settled case law of the Court of Cassation and of the Constitutional Court. Domestic courts are bound by the law and enjoy no discretion in the application of article 4-bis. As a consequence, courts are unable to address the violation complained of by the authors. This is the reason why the authors bring this injustice directly before the Committee.

3.8 Regarding the delay in bringing their case before the Committee – given that some of the authors have been aware of the automatic application of article 4-bis as early as 1993 – they submitted that the principle laid down in rule 99 (c) of the Committee’s rules of procedure does not apply to the case at hand because the authors complain of the continuing violation of their rights under articles 7 and 10 (1) and (3) of the Covenant, which is still ongoing and in respect of which the authors have no effective remedy at their disposal. The authors do not challenge their conviction and sentence, but complain about a violation of their rights under the Covenant as a result of the continuing application to them of the special penitentiary regime provided for by article 4-bis (1) of the Penitentiary Act. Thus, the violation of which they complain is a continuing violation stemming from the

¹³ Human Rights Committee, General comment no. 21 on article 10 (1992), para. 11.

¹⁴ For example, *Quliyev v. Azerbaijan* (CCPR/C/112/D/1972/2010), para. 9.2.

¹⁵ European Court of Human Rights, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, 9 July 2013, para. 119.

¹⁶ CCPR/C/98/D/1629/2007, para. 7.4.

application/implementation of a legislation which is incompatible with the State party's international obligations.

3.9 Since article 4-bis is still in force in the Italian legal system, the violation continues unabated to date. It follows that the authors' right to petition the Committee under article 2 of the Optional Protocol is not subjected to any time-limit. In a number of cases, the Committee itself has recognised that the authors complained of a "continuing violation of human rights" and has, consequently, relieved them from the requirements of admissibility *ratione temporis*.¹⁷ The same approach has been followed in the case of *Blessington and Elliot v. Australia*.¹⁸ The authors in that case had been convicted and sentenced to life imprisonment in 1990, but submitted their communication in 2010 to complain of the penitentiary regime imposed on them. Still, the Committee deemed the application admissible and found a violation of articles 7, 10 (3) and 24 of the Covenant.

3.10 The authors argue that a similar conclusion has been reached by the European Court of Human Rights when dealing with applications concerning the lack of "fair prospect of release" in the context of life imprisonment.¹⁹ In none of these cases did the European Court or the Committee declare the case inadmissible *ratione temporis*, notwithstanding the fact that the sentence of life imprisonment was imposed many years before the submission of the complaints. More importantly, in none of these cases did the respondent Government argue that the complaint was inadmissible on grounds of delay in submission.²⁰

State party's observations on admissibility and the merits

4.1 On 1 October 2019, the State party provided its observations on admissibility and the merits. It first clarified some errors as to the spelling of some authors' names, date of birth and the prison where they are currently held. It also noted that: Pellegrino Cataldo (3383/2019) was released from prison; Salvatore De Santo (3410/2019), Stefano Ganci (3445/2019) and Pasquale Mazzocchi (3487/2019) have died; Gaetano Fiandaca (3435/2019) is under work-release regime; and Carmine Gerace (3450/2019), Salvatore Nicastro (3499/2019) and Aurelio Quattroluni (3529/2019) are under home detention.

4.2 The State party submits that any convicted person serving a life imprisonment for the very serious crimes set forth in article 4-bis (1) of the Penitentiary Act (life imprisonment without parole) has the legal means to apply for a conditional release by submitting to the Oversight Judge the results of his or her actual rehabilitation and cooperation with the justice, the latter being deemed by the law as having undeniable value of indicator of full dissociation from the criminal environment to which the convicted used to belong. The State party explains that the Constitutional Court – on many occasions – has found the possible reduction of the life sentence as a concrete prospect for the person with a life sentence, on the one hand by excluding from limitations to penitentiary benefits cases when cooperation was impossible or irrelevant, and on the other one, by dismissing the assumption that the current discipline of the life imprisonment without parole results in an automatic impediment to penitentiary benefits, and rather consider it being a deliberate choice of the convicted.

4.3 On the merits, the State party submits that the mafia association is characterized by the particular strength of the bond among the members and their common aim to guarantee the life of the group and its ever-increasing success. It follows that the main and genuine indicator of an actual dissociation from mafia membership and its underlying criminal values is cooperation with justice. As noted by the Constitutional Court,²¹ it is a deliberate choice of an applicant to demonstrate effective and actual rehabilitation and dissociation from the very criminal context to which he or she belonged. And given the peculiarity and the very seriousness of the crimes at stake, endorsed by affinity with the association through

¹⁷ See *Arab Millis v. Algeria* (CCPR/C/122/D/2398/2014), para. 7.4, and cases therein cited, regarding the continuing nature of the violations entailed by "enforced disappearance".

¹⁸ CCPR/C/112/D/1968/2010.

¹⁹ See, for example, European Court of Human Rights, *Vinter and Others v. the United Kingdom; Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016; and *Petukhov v. Ukraine* (No. 2), no. 41216/13, 12 March 2019.

²⁰ See *Blessington and Elliot*, para. 6.3.

²¹ No reference provided.

subjection, silence and fidelity of its members, the State party considers that its law legitimately – under the Constitution – requires a tangible demonstration of the completion of the alleged rehabilitation course and dissociation from the criminal values at the basis of the offences committed through an effective cooperation aimed at the disintegration of that context and the re-establishment of legality. The legislative choice to consider the cooperation as the main evidence of rehabilitation is strictly connected to the seriousness and the peculiarity of the crimes committed.

4.4 The State party points out that persons sentenced to life imprisonment can still benefit under article 4-bis of the Penitentiary Act from other favourable measures, such as early release and emergency leave permits in case of imminent risk to their relatives' life or in case of very serious and urgent familiar events. Moreover, it is always possible under the law to postpone the execution of a sentence for serious physical infirmity²² or mental illness,²³ which – for the State party – makes the system compliant with the Covenant even when serving a life sentence for crimes in accordance with article 4-bis.

4.5 The State party notes that in accordance with the legislation in force, penitentiary benefits could be granted even when the cooperation with judiciary is impossible or irrelevant – “impossible” because facts and relating responsibility have already been clarified or “irrelevant” because the marginal position of the convicted within the association does not allow him or her to know facts and participants at a superior position in the criminal organisation. The State party refers to several domestic decisions – where the possibility or the usefulness of cooperation was examined – to explain that the concrete application of article 4-bis is based on in-depth judicial assessment, on a case-by-case basis and unrelated to any automatism, with regard to the existence of the conditions for granting penitentiary benefits, even in the absence of collaboration, to a person convicted of one of the crimes strictly indicated by the law.

4.6 *In concreto*, the Italian courts have deemed that cooperation was not useful when the convicted played a marginal role within the mafia association²⁴ or when the mafia association had disintegrated.²⁵ Also significant is a decision of the Court of Naples, which has assessed as objectively impossible the collaboration of an affiliate who, despite his important role in the association, had played his role exclusively outside of Italy and would have knowledge only of activities abroad.²⁶ Also, courts have found useless the cooperation of a person with a life sentence condemned for mafia crimes as associated of the mafia organization called Stidda, established in the 1980's thanks to the fragmentation of the major mafia group called Cosa Nostra, due to the fact that after a long time, the former Stidda had been completely replaced by different members and former associates had been all detained or had collaborated with the justice system.²⁷ In addition, cooperation was not required from a mafia associate given the long time spent in detention, the full ascertainment of the facts during the trial and the lack of connections with the clan.²⁸ Finally, the Supervisory Court of Aquila granted penitentiary benefits to persons with a life sentence sentenced for mafia crimes when there were alternative options aside from cooperation in place.²⁹

4.7 The State party then refers to a decision of the Court of Cassation where it pointed out the burden on the applicant to provide the elements that would establish the fact that his cooperation with the authorities is either impossible or irrelevant and where it indicated the judge's responsibility to consider all the elements in order to ascertain, in practice, whether

²² Article 147 of the Criminal Code.

²³ Article 148 of the Criminal Code.

²⁴ Order No. 771/17, Tribunale di Sorveglianza di Catanzaro, 25 July 2017 (Liuzzo); and Order No. 1316/16, Tribunale di Sorveglianza di Catanzaro, 17 November 2016.

²⁵ Order No. 3241/15, Tribunal Court of Naples, 9 November 2016 (Di Giacomo); and Order No. 3064/17, Tribunale di Sorveglianza di Milano, 7 February 2018 (Puzzangaro).

²⁶ He activated in Colombia, so there was no proof that he knew the associative dynamics besides those related to his activity in South America – see Naples Court order of 20 June 2002.

²⁷ Order No. 15/237, Tribunale di Napoli, 23 January 2015; and Order No. 16/4590, Tribunale di Napoli, 9 November 2016.

²⁸ Order No. 6772/15, Tribunale di Napoli, 20 December 2017 (Galatolo).

²⁹ Order No. 913/2017, Tribunale di Sorveglianza l'Aquila, 7 May 2017; and Order No. 1145/2015, Tribunale di Sorveglianza l'Aquila, 9 July 2015 (Minardi).

the obligation of cooperation exists or not.³⁰ The judge therefore has an obligation to examine the original facts retained in the judgment in the case and the elements produced by an applicant in order to determine whether his cooperation with the justice would be useful or rather impossible or irrelevant because the facts and his relating responsibility had already been clarified or because he only held a marginal position within the criminal association.

4.8 As to the prospect of a person with a life sentence under the regime of article 4-bis of the Penitentiary Act to engage in rehabilitation activities with a view to a possible early release, the State party considers that the system is certainly complying with the Covenant. The peculiar seriousness of crimes for which a life sentence may be imposed justifies the granting of penitentiary benefits, such as conditional release, only in favour of those who have irrefutably demonstrated to have ceased any relation with their criminal past.

4.9 The State party makes a reference to a recent ruling by the European Court of Human rights “on the matter under reference”³¹ and points out that in its judgment, the Court has stressed that “article 3 [of the European Convention on Human Rights] required a prospect of release but not a right to be released if the prisoner was deemed at the close of the review to still be a danger to society”.³²

Authors’ comments on the State party’s observations

5.1 In their comments of 17 December 2019, the authors contest the State party’s observations. As regards the State party’s argument that some of the authors may have access to probation measures following an assessment of the “impossible” and/or “irrelevant” nature of their cooperation, the authors claimed that such an allegation needs to be assessed in light of the relevant information the collection of which is particularly laborious, hence they reserved the right to respond in full to the State party’s remarks in this respect as soon as such information would be available.

5.2 On the merits, the authors note that the State party’s observations are rather generalizations instead of specific responses to their claims under articles 7 and 10 (1) and (3) of the Covenant. They recall that following a judgment by the Constitutional Court on 21 September 1983,³³ life prisoners benefit from the “indirect effect” of early release. This means that, under article 54 of the Penitentiary Act, a life prisoner “who has given proof of participating in the [rehabilitation] programmes” can gain a reduction of the period of time of 26 years which is established as the minimum time to be served by a life prisoner before qualifying for conditional release under article 176 of the Criminal Code. However, under article 4-bis of the Penitentiary Act, for the authors and all prisoners serving under the regime of life imprisonment without parole, conditional release under article 176 of the Criminal Code is subject to cooperation with the authorities under article 58-ter of the Penitentiary Act – irrespective of the minimum period of time served as well as of their participation in the rehabilitation programmes. Against this background, it cannot be concluded that the authors’ access to early release – or to leave permits under article 30 of the Penitentiary Act – bear any relevance in the present case.

5.3 As to the domestic case law referred to by the State party to illustrate cases in which cooperation was deemed to be impossible or irrelevant, the authors consider that it actually shows that for all the other prisoners whose cooperation is not legally impossible or irrelevant – but merely costly for personal, family or other reasons, such as in the authors’ case – access to parole measures in the absence of cooperation remains an illusion. In that connection, the authors refer to the case of *Marcello Viola v. Italy*, where the European Court of Human Rights dismissed the Italian Government’s argument that article 4-bis does not rule out a prospect of release, since the choice to cooperate rests with the prisoner. Quite the contrary, the European Court doubted the freedom of this choice and the appropriateness of establishing an equivalence between the failure to cooperate and the social dangerousness of the offender, and concluded that failure to cooperate cannot always be linked to a free and

³⁰ Cass. section I, No. 29217, 6 June 2013.

³¹ *Marcello Viola v. Italy* (no. 2), no. 77633/16, 13 June 2019.

³² The State party claims that this quote is from the “European Court’s Press Unit Factsheet on Life Imprisonment, dated July 2019”.

³³ Constitutional Court, Judgment No. 274 of 21 September 1983.

voluntary choice, nor can it be solely justified by persistent adherence to “criminal values” and the maintenance of links with the group to which one belongs.³⁴

5.4 Against this background, the European Court concluded that the absolute and non-rebuttable presumption contained in article 4-bis of the Penitentiary Act prevents *de facto* the competent court from examining the application for conditional release and determining whether, during the course of his sentence, the applicant has developed and made progress towards reform to such an extent that continued detention is no longer justified on penological grounds.³⁵ The same can be said of a very recent judgment in which the Italian Constitutional Court³⁶ found that article 4-bis of the Penitentiary Act contravenes the principle that penalties must tend to the rehabilitation of the prisoners (codified in article 27 (3) of the Constitution) in that it rules out the possibility to access special leaves under article 30 of the Penitentiary Act in the absence of the cooperation required by article 58-ter of the Penitentiary Act.

5.5 According to the authors, the Constitutional Court criticized the mechanism introduced by article 4-bis because it represented a “trade between information that are useful to the investigative authorities and the possibility, for the prisoner, to access the ordinary path toward rehabilitation.”³⁷ It thus found article 4-bis of the Penitentiary Act to be: (i) unreasonable, to the extent that it makes a sentence of imprisonment more or less serious based on the prisoners’ willingness to cooperate; (ii) disproportionate, as it disconnects the actual duration of a prison sentence from the seriousness of the charge on which the prisoner has been found guilty; and (iii) contrary to the principle of rehabilitation, since it infringes upon the right to remain silent.³⁸ Hence it concluded that, as a result of the automatic character of article 4-bis, the Surveillance Judges and the Surveillance Tribunals are precluded from making an individual assessment on whether, in a given case, continuing detention of a prisoner is called on legitimate penological grounds.³⁹

5.6 However, the authors specify that the none of them will directly benefit from the Constitutional Court judgment because that case did not concern the life imprisonment without parole, but merely the provision of article 4-bis – as applied to any prisoner, and not only to life prisoners – and its compatibility with article 27 (3) of the Constitution as far as a request of special leave under article 30 of the Penitentiary Act was at stake. In the words of the Constitutional Court, “[t]he questions of constitutionality raised do not concern [...] the so-called *ergastolo ostativo* [life imprisonment without parole], whose compatibility with the European Convention on Human Rights has recently been assessed by the European Court of Human Rights in the case [...] of *Viola v. Italy*”.⁴⁰

State party’s additional observations

6. On 19 June 2020, the State party provided further updates as to the place where some of the authors were detained. It also informed that: Giuseppe Barbagallo (3347/2019), Gianfranco Bruni (3363/2019) and Pellegrino Cataldo (3383/2019) were released; Gaetano Fiandaca (3435/2019), who was under work-release regime, “has been at home;”⁴¹ Carmine Gerace (3450/2019) and Aurelio Quattroluni (3529/2019) have been under home detention, but eventually re-entered the prison; and Nicola Solazzo (3555/2019), who was under home detention, has died. On 5 November 2024, the State party informed the Committee that Giuseppe Garofalo (3447/2019) was released; and Amedeo Genovese (3448/2019), Filippo Gerace (3449/2019) and Mario Serpa (3552/2019) have died.

³⁴ *Marcello Viola v. Italy* (no. 2), paras. 116 and 118.

³⁵ *Ibid.*, para. 129.

³⁶ Judgment No. 253 of 4 December 2019.

³⁷ *Ibid.*, para. 8.1.

³⁸ *Idem.*

³⁹ *Ibid.*, para. 8.2.

⁴⁰ *Ibid.*, para. 5.2.

⁴¹ No further details.

Authors' additional observations

7. On 29 April 2023, the authors informed about the wish of Aurelio Cavallo (3384/2019) and Claudio Conte (3393/2019) to withdraw their communications.⁴² On 2 October 2024, the authors informed that Giuseppe Di Benedetto (3413/2019) and Francesco Di Dio (3415/2019) have passed away. They also mentioned that Francesco Borrata (3358/2019) was not sentenced to life imprisonment.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the information provided by the State party that: Salvatore De Santo (3410/2019), Stefano Ganci (3445/2019), Amedeo Genovese (3448/2019), Filippo Gerace (3449/2019), Pasquale Mazzocchi (3487/2019), Mario Serpa (3552/2019) and Nicola Sollazzo (3555/2019) have died; authors Giuseppe Barbagallo (3347/2019), Gianfranco Bruni (3363/2019), Pellegrino Cataldo (3383/2019) and Giuseppe Garofalo (3447/2019) have been released; and Gaetano Fiandaca (3435/2019), Carmine Gerace (3450/2019), Salvatore Nicastro (3499/2019) and Aurelio Quattroluni (3529/2019) have benefited from alternative measures to detention such as work-release regime and home detention (although Carmine Gerace (3450/2019) and Aurelio Quattroluni (3529/2019) have eventually re-entered the prison). The authors have not commented on these allegations. The Committee also notes that according to the information provided by the authors, Giuseppe Di Benedetto (3413/2019) and Francesco Di Dio (3415/2019) have passed away. Therefore, the Committee considers that the communications relating to Giuseppe Barbagallo (3347/2019), Gianfranco Bruni (3363/2019), Pellegrino Cataldo (3383/2019), Salvatore De Santo (3410/2019), Giuseppe Di Benedetto (3413/2019), Francesco Di Dio (3415/2019), Gaetano Fiandaca (3435/2019), Stefano Ganci (3445/2019), Giuseppe Garofalo (3447/2019), Amedeo Genovese (3448/2019), Filippo Gerace (3449/2019), Carmine Gerace (3450/2019), Pasquale Mazzocchi (3487/2019), Salvatore Nicastro (3499/2019), Aurelio Quattroluni (3529/2019) and Nicola Solazzo (3555/2019) have become moot and that their consideration should be discontinued. The Committee also discontinues the communications relating to Aurelio Cavallo (3384/2019) and Claudio Conte (3393/2019), who manifested their wish to withdraw their communications.

8.4 The Committee notes the authors' declaration regarding the delay in bringing their case before the Committee. While they were given life sentences between 1977 and 2014 and some of them were aware of the automatic application of article 4-bis as early as 1993, they consider that the principle laid down in rule 99 (c) of the Committee's rules of procedure which states that a communication may constitute an abuse of the right of submission, when it is submitted after five years from the exhaustion of domestic remedies does not apply to them because they do not challenge their conviction, but complain of the continuing violation of their rights under the Covenant, which is still ongoing and in respect of which they have no effective remedy at their disposal. The authors explain that since 1993, the Constitutional Court has consistently ruled that the penitentiary regime raised by the authors does not infringe the Italian Constitution. They also argue that there is no remedy in the Italian legal system that would allow them to effectively claim their rights before a competent domestic authority as required by article 2 of the Covenant.

8.5 The Committee considers that the five-year delay provided by rule 99 (c) should be calculated from the moment when the authors became aware of the fact that they did not have at their disposal a remedy to complain about the effects of the regime implemented by article

⁴² No further details.

4-bis (1) of the Penitentiary Act in 1975. The Committee considers that the authors did not provide a convincing explanation about the important delay in submitting their complaints to the Committee since they should have been aware of their prospect of release or lack thereof since the moment they received their final judgment. Therefore, the Committee considers that the communications fall under the provisions of rule 99 (c) of its rules of procedure. The Committee thus declares the communication inadmissible under article 3 of the Optional Protocol and under rule 99 (c) of the Committee's rules of procedure in respect of the 204 authors who received a final judgment by 21 March 2013.

8.6 In this connection, the Committee notes that Giuseppe Garofalo (3447/2019), Leonardo Greco (3456/2019), Luigi Maesano (3475/2019) and Sergio Palumbo (3507/2019) have not provided the date of the final judgment that sentenced them to life imprisonment. It also notes that Francesco Borrata (3358/2019) was not sentenced to life imprisonment and failed to explain how the regime implemented by article 4-bis (1) of the Penitentiary Act affected him. The Committee therefore finds that these authors have failed to substantiate their claims for the purpose of admissibility and consequently declares their communications inadmissible, pursuant to article 2 of the Optional Protocol.

8.7 The Committee notes the authors' allegation under article 7 of the Covenant that cooperation remains the only alternative to serving a whole-life sentence, which constitutes a form of psychological torture, inhuman and degrading treatment. The Committee notes, on the one hand, that the authors do not explain – with express reference to article 7 – how the substantive aspect of that article was violated in their case. On the other hand, as far as the procedural aspect of article 7 is concerned, the Committee notes the State party's explanation – supported by several examples of domestic jurisprudence – that any person serving a life imprisonment for the very serious crimes set forth in article 4-bis (1) of the Penitentiary Act can apply for conditional release to the Oversight Judge and argue about impossibility or irrelevance of cooperation with the justice.⁴³ The Committee therefore notes that the authors still have avenues to request conditional release. It thus considers that the authors have also failed to substantiate the procedural aspect of their claim under article 7 of an alleged absolute and permanent prohibition of access to parole or other probation measures (see para. 5.1). Consequently, the Committee considers that the claims under article 7 of the Covenant have not been sufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

8.8 The Committee also notes that the option invoked by the State party as a way to overcome the restrictive effects of article 4-bis remains directly linked to an individual's decision to cooperate with the authorities rather than on reformation and social rehabilitation of the prisoner, as provided by article 10 (3) of the Covenant. In that sense, the Committee notes that, in 2019, the Italian Constitutional Court has concluded that, as a result of the automatic character of article 4-bis, the Surveillance Judges and the Surveillance Tribunals are precluded from making an individual assessment on whether, in a given case, continuing detention of a prisoner is called on legitimate penological grounds (para. 5.5). Therefore, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the claim under article 10 (1) and (3) of the Covenant.

8.9 The Committee therefore finds that the claim based on article 10 (1) and (3) of the Covenant for the remaining authors has been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee declares the claim admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes that the issue in the present case is the compatibility with State party's obligations under article 10 (1) and (3) of the Covenant, of the regime put in place by article 4-bis (1) of the Penitentiary Act to exclude from parole or other probation measures

⁴³ See the jurisprudence of the Court of Cassation, cited by the European Court of Human Rights in *Viola v. Italy* (no. 2), paras. 45 and 46.

the authors, who have been sentenced to life imprisonment for some serious crimes unless they cooperate with the investigative or judicial authorities.

9.3 The Committee recalls its general comment no. 21 (1992) in which it declares that no penitentiary system should be only retributory and that it should essentially seek the reformation and social rehabilitation of the prisoner.⁴⁴ It also recalls that rehabilitation of prisoners must be understood as emphasizing not their exclusion from the community, but their continuing part in it.⁴⁵ Therefore, prisoners sentenced to life imprisonment are entitled to know what steps they can take in order to be considered for rehabilitation and release.⁴⁶

9.4 The Committee considers that the imposition of life sentences on the authors can only be compatible with article 10 (1) and (3) of the Covenant if there is a possibility of review and a prospect of release, notwithstanding the gravity of the crime they committed and the circumstances around it.⁴⁷ As it has already clarified in *Blessington and Elliot v. Australia*, that does not mean that release should necessarily be granted. It rather means that release should not be a mere theoretical possibility and that the review procedure should be a thorough one, allowing the domestic authorities to evaluate the concrete progress made by the authors towards rehabilitation and the justification for continued detention.⁴⁸ The Committee further considers that any decisions taken pursuant to such applications should be reasoned and subject to judicial review.⁴⁹

9.5 The Committee therefore needs to examine whether the authors' access to parole or other probation measures being contingent on their cooperation with the judicial authorities is compatible with the requirement under article 10 (3) that the essential aim of detention is reformation and social rehabilitation. The Committee notes that the ban on access to prison benefits for those who do not collaborate is expressly provided by the Italian law as an exception to the life imprisonment regime in case of a number of serious crimes. While the Committee does not question the State's entitlement to establish policies to cope with the organized crime, it nonetheless needs to examine whether the effective application of such policies does not end up in excessively restricting the prisoner's prospect of release.

9.6 The Committee notes that according to the State party, cooperation amounts to a tangible demonstration of rehabilitation and dissociation from criminal values and the convicted has a choice whether to cooperate. However, the State party does not discuss at all the fact that in the context of mafia-type structures, members are usually bound by a code of silence. In these circumstances, a person may choose not to cooperate for reasons related to risk to life and personal security. While the State party sees cooperation as the ultimate proof of rehabilitation, the Committee considers that cooperation is not necessarily a free personal choice, and that lack of cooperation does not necessarily mean absence of rehabilitation or refusal of dissociation from the criminal values.⁵⁰

9.7 The Committee further notes that domestic courts make a primarily automatic application of the rule contained in article 4-bis (para. 2.5), based on the principle of cooperation, rather than on penological grounds. In the circumstances of such a strict conditionality, it was impossible for the authors to show that there were no longer any legitimate reasons of a penological nature to justify their continued detention and thus to be able to benefit from parole or other probation measures. By establishing by law the equivalence between failure to cooperate and the irrebuttable presumption of dangerousness to society – and thus making access to probation measures contingent upon cooperation – the current regime fails to consider any rehabilitation progress other than cooperation with the authorities.⁵¹

⁴⁴ Para. 10.

⁴⁵ Rule 88 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

⁴⁶ *Alieva v. Ukraine*, para. 7.5.

⁴⁷ *Mutatis mutandis*, *Blessington and Elliot v. Australia*, para. 7.7.

⁴⁸ *Idem*.

⁴⁹ *Alieva v. Ukraine*, para. 7.6.

⁵⁰ *Marcello Viola v. Italy* (no. 2), paras. 116 and 118; and Italian Constitutional Court, Judgment No. 253 of 4 December 2019.

⁵¹ European Court of Human Rights, *Marcello Viola v. Italy* (no. 2), para. 128.

9.8 In the light of the above considerations, the Committee considers that the lack of a possibility of judicial review and of a realistic prospect under the State party's legal framework for the authors to be eligible for parole or other probation measures in absence of cooperation upsets the essential aim of the penitentiary system – which should aim at reformation and social rehabilitation – and is thus contrary to article 10 (1) and (3) of the Covenant.⁵²

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol and having discontinued consideration of the communications of 18 of the authors (see para. 8.3 above and annex I) and having declared the communication inadmissible in respect of the authors who received a final judgment by 21 March 2013 (see para. 8.5 above and annex I) and of those who have not provided the date of the final judgment that sentenced them to life imprisonment or have not been sentenced to life imprisonment (see para. 8.6 above and annex I), is of the view that the State party has violated the rights of the 26 remaining authors under article 10 (1) and (3) of the Covenant.

11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide those authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to provide the authors with an effective remedy. The State party is under an obligation to take steps to prevent similar violations through an appropriate review mechanism in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

⁵² The Committee notes that in March 2023, the Committee of Ministers of the Council of Europe examined the execution of the judgment of the European Court of Human Rights in the case of *Marcello Viola v. Italy* (no. 2) and noted with satisfaction the legislative reform of article 4-bis of the Prison Administration Act, which introduced the possibility for prisoners who fail to cooperate with the justice system to be eligible for release on parole, thus responding to the indications of the European Court and the previous call of the Committee of Ministers (CM/Del/Dec(2023)1459/H46-13).

Annex I

No.	Case number	Name	Date of birth Day/month/year	Date of final judgment	Committee's decision
1	3328/2019	Antonio Albanese	26 May 1965	6 July 2007	Inadmissible
2	3329/2019	Antonio Albanese	3 June 1965	19 June 2009	Inadmissible
3	3330/2019	Antonino Alcamo	8 August 1964	25 May 2006	Inadmissible
4	3331/2019	Giovanni Alfano	4 October 1957	15 May 2003	Inadmissible
5	3332/2019	Fulvio Amante	23 January 1955	19 June 2009	Inadmissible
6	3333/2019	Giacomo Salvatore Amato	7 January 1965	2 February 2004	Inadmissible
7	3334/2019	Vincenzo Amato	30 August 1954	22 June 2000	Inadmissible
8	3335/2019	Franco Ambrosio	13 April 1956	25 October 2000	Inadmissible
9	3336/2019	Giuseppe Amendola	1 January 1963	21 April 1997	Inadmissible
10	3337/2019	Paolo Amico	22 April 1967	5 February 2003	Inadmissible
11	3338/2019	Francesco Annaloro	1 December 1950	10 October 2007	Inadmissible
12	3339/2019	Giancarlo Anselmo	15 September 1958	21 March 2014	Violation
13	3340/2019	Antonio Antonucci	20 November 1975	18 December 2008	Inadmissible
14	3341/2019	Emanuele Antonuccio	22 June 1969	20 November 1998	Inadmissible
15	3342/2019	Costanzo Apice	21 May 1981	29 November 2016	Violation
16	3343/2019	Mario Arena	18 January 1962	29 November 1996	Inadmissible
17	3344/2019	Giovanni Avarello	14 September 1965	25 November 1995	Inadmissible
18	3345/2019	Giovan Battista Badalamenti	10 January 1945	30 June 2009	Inadmissible
19	3346/2019	Vito Baglio	25 April 1968	22 June 1998	Inadmissible
20	3347/2019	Giuseppe Barbagallo	6 June 1958	31 October 2001	Discontinued
21	3348/2019	Francesco Barivelo	6 September 1975	29 April 2005	Inadmissible
22	3349/2019	Santo Battaglia	4 March 1961	20 March 2019	Violation

23	3350/2019	Giuseppe Belcastro	3 July 1956	3 August 2017	Violation
24	3351/2019	Salvatore Belfiore	26 June 1954	14 February 2002	Inadmissible
25	3352/2019	Simone Benenati	21 June 1959	10 November 2005	Inadmissible
26	3353/2019	Salvatore Biondo	5 January 1956	18 January 2003	Inadmissible
27	3354/2019	Bernardo Bommarito	8 January 1937	Before 2004	Inadmissible
28	3355/2019	Concetto Bonaccorsi	26 February 1961	11 June 2001	Inadmissible
29	3356/2019	Ignazio Bonaccorsi	20 September 1957	20 January 2003	Inadmissible
30	3357/2019	Natale Bonafede	4 August 1969	2 February 2004	Inadmissible
31	3358/2019	Francesco Borrata	16 June 1968	Not sentenced to life imprisonment	Inadmissible
32	3359/2019	Antonino Bosco	30 July 1955	1 March 2004	Inadmissible
33	3360/2019	Filippo Botteri	3 June 1963	4 February 2011	Inadmissible
34	3361/2019	Alessandro Bozza	24 November 1961	26 October 2001	Inadmissible
35	3362/2019	Giuseppe Brancato	14 May 1958	11 October 2004	Inadmissible
36	3363/2019	Gianfranco Bruni	13 November 1963	21 March 2014	Discontinued
37	3364/2019	Salvatore Buccarella	4 June 1959	14 July 2005	Inadmissible
38	3365/2019	Mario Buda	27 November 1961	13 December 2004	Inadmissible
39	3366/2019	Ignazio Bufalini	8 October 1961	27 October 2008	Inadmissible
40	3367/2019	Orazio Buonprincipio	29 December 1968	18 July 2014	Violation
41	3368/2019	Salvatore Busco	10 January 1950	14 March 2006	Inadmissible
42	3369/2019	Antonino Cacici	13 April 1970	5 November 1998	Inadmissible
43	3370/2019	Gioacchino Calabro	2 June 1946	20 May 2004	Inadmissible
44	3371/2019	Salvatore Calabro	4 July 1968	28 June 2012	Inadmissible
45	3372/2019	Salvatore Calafato	23 June 1967	5 November 1998	Inadmissible
46	3373/2019	Paolo Campanella	27 August 1951	30 October 2001	Inadmissible

47	3374/2019	Sebastiano Cannizzaro	15 March 1954	9 July 2007	Inadmissible
48	3375/2019	Antonio Capasso	4 December 1967	30 November 2000	Inadmissible
49	3376/2019	Mario Capuano	22 November 1973	19 November 2009	Inadmissible
50	3377/2019	Angelo Caruso	12 July 1970	2 February 2011	Inadmissible
51	3378/2019	Aldo Carvelli	26 January 1965	1 June 2006	Inadmissible
52	3379/2019	Rosario Casciana	20 November 1971	20 November 1998	Inadmissible
53	3380/2019	Carmelo Cascino	3 February 1967	8 February 2005	Inadmissible
54	3381/2019	Giuseppe Casciola	7 January 1967	1 March 2004	Inadmissible
55	3382/2019	Giulio Castiglia	2 March 1953	21 March 2014	Violation
56	3383/2019	Pellegrino Cataldo	4 December 1949	4 July 2000	Discontinued
57	3384/2019	Aurelio Cavallo	23 January 1956	Unknown	Discontinued
58	3385/2019	Domenico Cavo	3 August 1979	7 June 2011	Inadmissible
59	3386/2019	Arturo Censabella	25 October 1957	8 March 2011	Inadmissible
60	3387/2019	Gavino Chessa	21 May 1956	14 February 2002	Inadmissible
61	3388/2019	Giosue Chindamo	21 April 1962	2 October 2006	Inadmissible
62	3389/2019	Cataldo Chiochia	4 December 1958	26 November 2001	Inadmissible
63	3390/2019	Modestino Cirella	3 January 1948	10 April 2005	Inadmissible
64	3391/2019	Pasquale Cirillo	27 September 1971	28 September 2012	Inadmissible
65	3392/2019	Cosimo Commisso	8 March 1954	30 April 2002	Inadmissible
66	3393/2019	Claudio Conte	6 September 1970	Unknown	Discontinued
67	3394/2019	Gianfranco Conti Taguali	29 June 1974	24 April 2012	Inadmissible
68	3395/2019	Giuseppe Coppola	11 June 1980	27 November 2015	Violation
69	3396/2019	Girolamo Costanzo	4 December 1951	26 April 1999	Inadmissible
70	3397/2019	Salvatore Cristaldi	28 May 1957	8 April 2018	Inadmissible

71	3398/2019	Giuseppe Cristofaro	17 March 1949	15 June 2018	Violation
72	3399/2019	Alletto Croce	25 February 1964	26 February 1999	Inadmissible
73	3400/2019	Michele Cuffari	27 July 1959	23 November 2005	Inadmissible
74	3401/2019	Marcello D'Agata	13 November 1948	17 September 2005	Inadmissible
75	3402/2019	Giuseppe D'Agostino	12 September 1967	6 July 2007	Inadmissible
76	3403/2019	Cosimo D'Agostino	3 November 1966	22 January 2002	Inadmissible
77	3404/2019	Francesco D'Amico	18 March 1934	2 February 2004	Inadmissible
78	3405/2019	Giuseppe Antonio Davi	9 December 1943	18 October 2001	Inadmissible
79	3406/2019	Pasquale De Feo	27 January 1961	28 April 1993	Inadmissible
80	3407/2019	Giovanni De Gennaro	16 February 1950	11 July 2000	Inadmissible
81	3408/2019	Bruno De Matteis	18 June 1954	16 November 2000	Inadmissible
82	3409/2019	Tommaso De Pace	3 May 1942	14 February 2002	Inadmissible
83	3410/2019	Salvatore De Santo	27 February 1958	Unknown	Discontinued
84	3411/2019	Oronzo De Trane	1 February 1978	11 November 2014	Violation
85	3412/2019	Adriano Di Bari	12 February 1975	24 June 2009	Inadmissible
86	3413/2019	Giuseppe Di Benedetto	17 October 1955	Unknown	Discontinued
87	3414/2019	Enzo Di Bona	31 May 1966	18 October 2000	Inadmissible
88	3415/2019	Francesco Di Dio	5 July 1972	Unknown	Discontinued
89	3416/2019	Francesco Di Fresco	5 November 1957	15 July 2002	Inadmissible
90	3417/2019	Giovanni Di Gaetano	7 December 1938	23 March 1992	Inadmissible
91	3418/2019	Antonio Di Girgenti	6 October 1965	22 September 2000	Inadmissible
92	3419/2019	Matteo Di Mauro	15 June 1961	25 June 2002	Inadmissible
93	3420/2019	Salvatore Di Mauro	24 October 1957	12 June 2008	Inadmissible
94	3421/2019	Michele Di Mauro	25 August 1948	5 December 2011	Inadmissible

95	3422/2019	Giancarlo Di Sarno	1 March 1964	17 June 2009	Inadmissible
96	3423/2019	Tommaso Di Stefano	5 April 1948	1 March 2004	Inadmissible
97	3424/2019	Raffaele Dragone	23 April 1963	2 May 1997	Inadmissible
98	3425/2019	Giuseppe Durante	12 February 1959	8 November 1988	Inadmissible
99	3426/2019	Giuseppe Eligiato	4 March 1963	29 March 2011	Inadmissible
100	3427/2019	Aldo Ercolano	14 November 1960	17 October 2007	Inadmissible
101	3428/2019	Vincenzo Esposito	6 July 1964	5 April 2005	Inadmissible
102	3429/2019	Pacifico Esposito	29 April 1962	11 February 2016	Violation
103	3430/2019	Salvatore Faia	22 February 1959	15 July 2002	Inadmissible
104	3431/2019	Felice Falanga	24 November 1960	4 December 1998	Inadmissible
105	3432/2019	Antonio Fanelli	22 July 1968	29 April 2005	Inadmissible
106	3433/2019	Giuseppe Farao	23 February 1947	25 June 2009	Inadmissible
107	3434/2019	Salvatore Fiandaca	18 December 1954	7 May 1999	Inadmissible
108	3435/2019	Gaetano Fiandaca	30 May 1967	20 April 2010	Discontinued
109	3436/2019	Paolo Sebastiano Furno	14 November 1954	2 February 2011	Inadmissible
110	3437/2019	Giovanni Gaddone	15 October 1963	4 April 2003	Inadmissible
111	3438/2019	Ottavio Galati	21 January 1968	16 September 2008	Inadmissible
112	3439/2019	Raffaele Galatolo	18 July 1950	20 April 2005	Inadmissible
113	3440/2019	Giuseppe Galeone	30 April 1967	26 October 2001	Inadmissible
114	3441/2019	Antonio Gallace	13 June 1965	14 November 2000	Inadmissible
115	3442/2019	Maurizio Galletta	5 August 1966	6 November 2007	Inadmissible
116	3443/2019	Luigi Galli	5 August 1956	14 April 2005	Inadmissible
117	3444/2019	Giuseppe Gambacorta	22 September 1958	7 May 2010	Inadmissible
118	3445/2019	Stefano Ganci	12 February 1962	Unknown	Discontinued

119	3446/2019	Andrea Gancitano	23 November 1955	2 February 2004	Inadmissible
120	3447/2019	Giuseppe Garofalo	3 November 1978	Unknown	Inadmissible
121	3448/2019	Amedeo Genovese	30 March 1955	Unknown	Discontinued
122	3449/2019	Filippo Gerace	23 October 1951	Unknown	Discontinued
123	3450/2019	Carmine Gerace	22 March 1950	1 April 1997	Discontinued
124	3451/2019	Lorenzo Giannetti	26 November 1953	6 October 1987	Inadmissible
125	3452/2019	Silvio Giannetto	15 December 1965	19 June 2009	Inadmissible
126	3453/2019	Cosimo Grassi	11 March 1963	16 November 2000	Inadmissible
127	3454/2019	Luigi Grassi	6 May 1969	19 December 2009	Inadmissible
128	3455/2019	Alessandro Greco	8 August 1973	19 January 2007	Inadmissible
129	3456/2019	Leonardo Greco	6 June 1938	Unknown	Inadmissible
130	3457/2019	Giuseppe Iovinella	19 February 1966	4 November 2011	Inadmissible
131	3458/2019	Emanuele Italiano	26 July 1951	31 March 2016	Violation
132	3459/2019	Francesco Lamberti	30 November 1965	4 February 2009	Inadmissible
133	3460/2019	Serafino Larosa	1 July 1956	25 May 2002	Inadmissible
134	3461/2019	Ruggiero Lattanzio	7 May 1960	4 December 2008	Inadmissible
135	3462/2019	Giuseppe Laudani	19 July 1946	16 November 1995	Inadmissible
136	3463/2019	Mario Laudani	21 September 1954	16 January 1995	Inadmissible
137	3464/2019	Antonino Lauria	2 March 1968	9 July 2007	Inadmissible
138	3465/2019	Maurizio Lavoro	25 August 1969	18 June 2010	Inadmissible
139	3466/2019	Pasquale Leccia	19 February 1957	31 October 1997	Inadmissible
140	3467/2019	Agostino Lentini	17 October 1965	15 December 2005	Inadmissible
141	3468/2019	Antonino Liotta	26 September 1972	16 October 2012	Inadmissible
142	3469/2019	Alfio Rino Lo Castro	7 January 1960	30 May 2009	Inadmissible

143	3470/2019	Cosimo Lo Nigro	8 September 1968	14 June 2022	Violation
144	3471/2019	Giovanni Lombardi	9 August 1965	3 March 2006	Inadmissible
145	3472/2019	Sebastiano Lombardo	9 April 1972	13 December 2004	Inadmissible
146	3473/2019	Salvatore Longo	1 January 1953	25 February 2009	Inadmissible
147	3474/2019	Giuseppe Lucchese	2 September 1958	4 March 2008	Inadmissible
148	3475/2019	Luigi Maesano	27 July 1954	Unknown	Inadmissible
149	3476/2019	Giovanni Mafrica	23 August 1970	18 October 2000	Inadmissible
150	3477/2019	Giuseppe Magri	27 July 1967	9 July 2004	Inadmissible
151	3478/2019	Gaspare Marazzotta	21 April 1939	2005	Inadmissible
152	3479/2019	Giuseppe Marchese	10 February 1970	26 September 2008	Inadmissible
153	3480/2019	Alessandro Marciano	20 September 1951	8 July 2014	Violation
154	3481/2019	Pietro Giovanni Marinaro	22 November 1952	24 January 2006	Inadmissible
155	3482/2019	Carlo Marsala	24 June 1967	19 March 2008	Inadmissible
156	3483/2019	Francesco Martinese	4 February 1956	11 June 2003	Inadmissible
157	3484/2019	Antonio Carmine Massaro	8 January 1962	16 April 2012	Inadmissible
158	3485/2019	Pasquale Matina	28 September 1955	3 July 1995	Inadmissible
159	3486/2019	Vito Mazzara	1 January 1948	8 July 2004	Inadmissible
160	3487/2019	Pasquale Mazzocchi	7 October 1957	Unknown	Discontinued
161	3488/2019	Antonino Melodia	6 June 1959	30 January 2003	Inadmissible
162	3489/2019	Michele Mercadante	13 August 1951	1 March 2004	Inadmissible
163	3490/2019	Donato Mercuri	14 November 1963	30 April 2003	Inadmissible
164	3491/2019	Salvatore Messina	5 November 1969	11 October 2004	Inadmissible
165	3492/2019	Giuseppe Montanti	10 May 1956	26 February 1999	Inadmissible
166	3493/2019	Giovanni Luciano Montefrancesco	30 January 1968	16 November 2000	Inadmissible

167	3494/2019	Domenico Morelli	28 February 1956	8 March 2012	Inadmissible
168	3495/2019	Calogero Musso	9 September 1948	2 February 2004	Inadmissible
169	3496/2019	Sabato Nappa	7 August 1979	9 April 2014	Violation
170	3497/2019	Antonino Nastasi	3 May 1947	2 February 2004	Inadmissible
171	3498/2019	Vincenzo Nicastro	18 March 1949	20 November 1998	Inadmissible
172	3499/2019	Salvatore Nicastro	1 February 1954	Unknown	Discontinued
173	3500/2019	Giuseppe Nicomede	22 June 1968	26 September 2008	Inadmissible
174	3501/2019	Orazio Nicolosi	5 April 1955	7 November 2001	Inadmissible
175	3502/2019	Francesco Ottina	1 May 1960	14 March 2001	Inadmissible
176	3503/2019	Domenico Pace	23 November 1964	22 March 1996	Inadmissible
177	3504/2019	Pompeo Rosario Padovano	23 February 1971	16 February 2016	Violation
178	3505/2019	Emilio Pagano	8 November 1959	25 June 1991	Inadmissible
179	3506/2019	Valerio Paladini	23 November 1978	19 October 2010	Inadmissible
180	3507/2019	Sergio Palumbo	12 January 1960	Unknown	Inadmissible
181	3508/2019	Orazio Paoletto	9 March 1966	26 July 2002	Inadmissible
182	3509/2019	Domenico Papalia	18 April 1945	31 March 1989	Inadmissible
183	3510/2019	Antonio Papalia	26 March 1954	11 December 2000	Inadmissible
184	3511/2019	Calogero Pardo	24 December 1962	5 July 2002	Inadmissible
185	3512/2019	Salvatore Parla	29 May 1948	19 March 2002	Inadmissible
186	3513/2019	Francesco Pascone	15 August 1962	20 February 2006	Inadmissible
187	3514/2019	Cesare Natale Patti	24 December 1958	7 February 2011	Inadmissible
188	3515/2019	Pasquale Pelliccia	17 January 1960	10 June 2004	Inadmissible
189	3516/2019	Orlando Perrone	18 March 1973	11 April 2013	Violation
190	3517/2019	Giuseppe Perrone	16 March 1966	16 November 2000	Inadmissible

191	3518/2019	Rosario Petrolo	26 January 1956	3 July 1995	Inadmissible
192	3519/2019	Salvatore Francesco Pezzino	6 November 1962	9 February 2007	Inadmissible
193	3520/2019	Giovanni Piacente	11 December 1961	10 December 1997	Inadmissible
194	3521/2019	Antonio Piccolo	20 November 1956	22 May 2013	Violation
195	3522/2019	Pino Piscopo	10 January 1961	30 November 2000	Inadmissible
196	3523/2019	Giovanni Prinari	8 April 1963	1 June 2010	Inadmissible
197	3524/2019	Ciro Puccinelli	2 March 1958	21 January 1999	Inadmissible
198	3525/2019	Giovanni Pugliese	1 January 1970	19 November 2009	Inadmissible
199	3526/2019	Pietro Puglisi	31 July 1958	17 October 2007	Inadmissible
200	3527/2019	Camillo Pulvirenti	15 May 1960	24 September 2007	Inadmissible
201	3528/2019	Gaetano Puzzangaro	8 September 1968	10 November 1997	Inadmissible
202	3529/2019	Aurelio Quattroluni	7 February 1960	9 July 2007	Discontinued
203	3530/2019	Albano Racco	17 August 1971	14 December 2004	Inadmissible
204	3531/2019	Emanuele Radosta	13 November 1972	22 December 2004	Inadmissible
205	3532/2019	Raffaele Randone	29 October 1974	2 February 2011	Inadmissible
206	3533/2019	Carmelo Ivano Rapisarda	9 January 1971	13 April 2007	Inadmissible
207	3534/2019	Roberto Reitano	14 October 1966	5 March 2002	Inadmissible
208	3535/2019	Francesco Riela	28 February 1956	9 July 2007	Inadmissible
209	3536/2019	Filippo Rigano	29 January 1957	10 September 2002	Inadmissible
210	3537/2019	Davide Riserbato	6 December 1967	2 February 2004	Inadmissible
211	3538/2019	Tommaso Romeo	1 October 1963	7 June 2004	Inadmissible
212	3539/2019	Demetrio Sesto Rosmini	10 February 1965	4 December 1994	Inadmissible
213	3540/2019	Gianfranco Rua	4 February 1960	21 March 2014	Violation
214	3541/2019	Giuseppe Ruffolo	19 March 1954	21 March 2014	Violation

215	3542/2019	Massimo Sabatino	6 November 1973	18 December 2014	Violation
216	3543/2019	Gaetano Sades	27 March 1963	2 February 2004	Inadmissible
217	3544/2019	Pietro Salerno	10 November 1958	8 November 2000	Inadmissible
218	3545/2019	Salvatore Sanfilippo	19 July 1963	13 April 2007	Inadmissible
219	3546/2019	Salvatore Santangelo	20 February 1946	28 May 1987	Inadmissible
220	3547/2019	Giuseppe Carmelo Saraceno	29 July 1951	24 February 1993	Inadmissible
221	3548/2019	Giuseppe Scarlino	14 January 1949	25 October 2004	Inadmissible
222	3549/2019	Vincenzo Sciacca	11 May 1976	6 October 2015	Violation
223	3550/2019	Francesco Sergi	6 July 1956	27 October 2006	Inadmissible
224	3551/2019	Francesco Sergi	4 February 1968	24 June 2009	Inadmissible
225	3552/2019	Mario Serpa	30 January 1953	Unknown	Discontinued
226	3553/2019	Filippo Sesta	30 September 1950	2 February 2010	Inadmissible
227	3554/2019	Alfredo Sole	18 November 1967	29 November 1996	Inadmissible
228	3555/2019	Nicola Solazzo	26 February 1965	Unknown	Discontinued
229	3556/2019	Giuseppe Sorrentino	19 March 1963	2 November 2000	Inadmissible
230	3557/2019	Antonio Sorrento	7 April 1965	26 February 2004	Inadmissible
231	3558/2019	Francesco Spadaro	7 December 1958	10 June 1996	Inadmissible
232	3559/2019	Francesco Spampinato	21 August 1950	14 February 1994	Inadmissible
233	3560/2019	Raffaele Sperandeo	28 August 1965	3 July 1999	Inadmissible
234	3561/2019	Pasquale Spierto	30 March 1968	13 January 2012	Inadmissible
235	3562/2019	Giuseppe Squillaci	26 August 1946	9 July 2007	Inadmissible
236	3563/2019	Francesco Stilo	13 July 1969	11 July 2001	Inadmissible
237	3564/2019	Antonino Gianluca Stuppia	17 April 1985	28 May 2016	Violation
238	3565/2019	Luigi Tarantino	28 December 1981	24 February 2016	Violation

239	3566/2019	Dario Tedesco	23 July 1980	18 February 2013	Inadmissible
240	3567/2019	Lorenzo Tinnirello	28 January 1960	21 July 2020	Violation
241	3568/2019	Salvatore Torrasi	25 June 1962	19 June 2009	Inadmissible
242	3569/2019	Giuseppe Trigila	13 January 1974	26 February 2009	Inadmissible
243	3570/2019	Salvatore Tuccio	21 April 1953	20 October 2000	Inadmissible
244	3571/2019	Gennaro Veneruso	8 February 1956	18 December 2014	Violation
245	3572/2019	Emanuele Versienti	16 January 1973	12 July 2007	Inadmissible
246	3573/2019	Giovanni Vitale	28 October 1965	12 June 2001	Inadmissible
247	3574/2019	Giuseppe Zagari	13 February 1963	26 February 2004	Inadmissible
248	3575/2019	Alfio Zappulla	10 May 1951	3 October 2013	Violation
249	3576/2019	Alfredo Zara	24 September 1960	15 January 2010	Inadmissible
250	3577/2019	Francesco Zavota	28 July 1969	27 March 2012	Inadmissible
251	3578/2019	Giovanni Zito	2 December 1969	12 February 2005	Inadmissible
252	3579/2019	Pierdonato Zito	3 May 1959	16 April 2003	Inadmissible

Annex I

[Original : Spanish]

Opinión individual de Carlos Gómez Martínez

1. Estoy de acuerdo con el sentido dictamen, pero disiento parcialmente de las medias adoptadas en su párrafo 11 como consecuencia de la apreciación de una vulneración del artículo 10 del Pacto Internacional de Derechos.
2. En efecto, en cuanto a las medidas a adoptar en caso de apreciación de vulneración de los derechos humanos cabe la posibilidad de entender que el proceso se rige por el principio dispositivo y que, por tanto, el Comité solo puede adoptar una medida de ese tipo en el caso de que esta se hubiese solicitado en la correspondiente comunicación.
3. Si ello es así, en el presente caso resulta que los autores no reclamaron ninguna medida más allá de que se declarase la violación de su derecho. En consecuencia, su pretensión quedaba ya satisfecha con la mera declaración de la violación y, por tanto, resulta improcedente acordar, como lo hace el Comité, una medida de no repetición, cual es la de que se recoge en el párrafo 11 in fine: “El Estado parte tiene también la obligación de tomar pasos para evitar violaciones similares en el futuro”.
4. Si, por el contrario, se considera que, una vez constatada la violación, sí que resulta adecuado adoptar de oficio medidas no solicitadas por los autores, me parece que hubiera sido adecuado añadir una aclaración en términos similares a los que se incluyen en la sentencia del Tribunal Europeo de Derechos Humanos *Marcelo Viola v. Italia* de 13 de junio de 2019 (párrafos 138 y 143) en el sentido de que la medida no implica la inmediata puesta en libertad de los autores y ha de permitir a las autoridades valorar si la persona privada de libertad ha cambiado y progresado en la rehabilitación hasta tal punto que la continuación de su prisión carezca de adecuada justificación.

Annex II

Individual opinion of Hélène Tigroudja

1. I concur with the conclusion reached by the Committee in these cases, i.e. “that the lack of a possibility of judicial review and of a realistic prospect [...] for the authors to be eligible for parole [...] in absence of cooperation [...]” violates article 10 of the Covenant (para. 9.8). This is in line with the European Court of Human Rights’ case-law and especially, with the *Marcello Viola v. Italy (No 2)* judgment¹.

2. However, I do not share the Committee’s decision to declare the claim under article 7 inadmissible (para. 8.7) and I find this conclusion at odds with the same *Marcello Viola* judgment, in which the European Court considered that the Italian domestic system was in violation of article 3 of the European Convention of Human Rights.

3. In the present case, the two provisions are raised jointly by the authors. The lack of a realistic prospect to be eligible for parole is seen *both* as a breach of article 7 and article 10 of the Covenant (para. 3.1 et seq.). In the case-law of the Committee dealing with treatment of prisoners, article 10 is seen as a *lex specialis* and article 7, construed as a *lex generalis*.² However, this does not mean that they exclude each other. On the contrary: it occurs that in complaints dealing with conditions of detention that cause mental and physical suffering, the Committee concludes to the violation of article 10 and, without further explanation, to a violation of article 7.³ Therefore, in this case, the reasoning of the Committee would have been more consistent with its own stance and the European Court’s reasoning by declaring both articles admissible and by concluding that the anguish and mental suffering caused by the lack of realistic prospect to be eligible for parole triggers not only a violation of article 10 but also a violation of article 7 of the Covenant.

¹ Application No. 77633/16.

² *Dafnis v. Greece* (CCPR/C/135/D/3740/2020), para. 8.5.

³ *Idem*. See also *Pichugina v. Belarus* (CCPR/C/132/D/2711/2015), para. 6.3.