



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

**CASE OF LABITA v. ITALY**

*(Application no. 26772/95)*

JUDGMENT

STRASBOURG

6 April 2000

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

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

Mr L. WILDHABER, *President*,  
Mrs E. PALM,  
Mr A. PASTOR RIDRUEJO,  
Mr L. FERRARI BRAVO,  
Mr G. BONELLO,  
Mr J. MAKARCZYK,  
Mr P. KÜRIS,  
Mr J.-P. COSTA,  
Mrs F. TULKENS,  
Mrs V. STRÁŽNICKÁ,  
Mr V. BUTKEVYCH,  
Mr J. CASADEVALL,  
Mr B. ZUPANČIČ,  
Mrs H.S. GREVE,  
Mr A.B. BAKA,  
Mr R. MARUSTE,  
Mrs S. BOTOCHAROVA,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 29 September 1999 and 1 March 2000,  
Delivers the following judgment, which was adopted on the  
last-mentioned date:

**PROCEDURE**

1. The case was referred to the Court in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”)<sup>1</sup> by the European Commission of Human Rights (“the Commission”) on 8 March 1999 and by the Italian Government (“the Government”) on 31 March 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 26772/95) against the Italian Republic lodged with the Commission under former Article 25 of the Convention by an Italian national, Mr Benedetto Labita (“the applicant”), on 10 April 1994. The applicant alleged violations of Articles 3, 5, 6 and 8 of the Convention, of Article 2 of Protocol No. 4 to the Convention and Article 3 of Protocol No. 1.

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1. *Note by the Registry.* Protocol No. 11 came into force on 1 November 1998.

3. The Commission declared the application partly admissible on 20 October 1997. In its report of 29 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Articles 3, 5 § 3, 5 § 1 and 8 of the Convention that no separate issue arose under Article 6 § 3 of the Convention, and that there had been a violation of Article 2 of Protocol No. 4 (by twenty-one votes to seven) and Article 3 of Protocol No. 1 (by twenty-three votes to five)<sup>1</sup>.

4. On 31 March 1999 a panel of the Grand Chamber determined that the case should be decided by the Grand Chamber (Rule 100 § 1 of the Rules of Court). Mr B. Conforti, the judge elected in respect of Italy, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Mr L. Ferrari Bravo, the judge elected in respect of the Republic of San Marino, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicant and the Government each filed a memorial.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 September 1999.

There appeared before the Court:

(a) *for the Government*

Mr V. ESPOSITO, *magistrato*, on secondment  
to the Diplomatic Legal Service,  
Ministry of Foreign Affairs, *Co-Agent*;

(b) *for the applicant*

Mr V. DI GRAZIANO, of the Trapani Bar, *Counsel*.

7. The President of the Court authorised the applicant's lawyer to use the Italian language (Rule 34 § 3).

8. The Court heard addresses by Mr Di Graziano and Mr Esposito.

9. The applicant and the Government produced various documents of their own initiative.

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1. *Note by the Registry.* The full text of the Commission's opinion and of the separate opinion contained in the report will be reproduced as an annex to the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but in the meantime a copy of the Commission's report is obtainable from the Registry.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. The applicant's detention and the proceedings against him

10. The applicant was arrested on 21 April 1992 in connection with an investigation involving forty-six people under a warrant issued by the Trapani District Court on 18 April 1992. He was suspected of being a member of a mafia-type organisation in Alcamo and of running a financial company on behalf of his brother-in-law, who was believed to be the leader of the main mafia gang in the area (Article 416 *bis* of the Criminal Code makes it an offence to be a member of a mafia-type organisation).

The accusations against the applicant were based in particular on statements made by one B.F., who also stood accused of being a member of a mafia-type organisation but had become a *pentito* (a former mafioso who has decided to cooperate with the authorities). B.F.'s information about the applicant had been obtained from one G.D., who had been killed by the Mafia on 25 October 1989, and had, in turn, received the information from another deceased victim of the Mafia, F.M.

11. The applicant was initially detained at Palermo Prison, where he spent thirty-five days in isolation.

12. His first application for bail was dismissed by the Trapani District Court on 6 May 1992.

The District Court found in particular that although the statements made by B.F. regarding the applicant's involvement in the Mafia had provided no information or objective evidence about the applicant's actual role and activity, they could nonetheless constitute sufficient grounds to justify his detention, having regard to the credibility and reliability of the various statements B.F. had made concerning other people or events connected with the Mafia (it applied the “global credibility” criterion – *attendibilità complessiva*).

It added that B.F. had identified the applicant from a photograph and provided information concerning his exact role in the mafia-type organisation. He had indicated that the applicant, who was the brother-in-law of the head of one of the Alcamo mafia clans, ran a financial company and, along with another person whom B.F. had previously identified as being a member of the Mafia, was a co-owner of a management company that ran a discotheque.

The Trapani District Court also found that the applicant's detention was warranted by the need to protect witnesses, since most of the evidence took

the form of oral testimony and there was therefore a risk of its being lost through pressure being brought to bear on the witnesses.

13. On 20 July 1992 the applicant was transferred with fifty-four other alleged mafiosi to the prison on the island of Pianosa.

14. On an unspecified date, he appealed to the Court of Cassation against the decision of 6 May 1992. He argued in particular that he had been detained solely on the basis of B.F.'s statements, which were unsupported by any factual evidence. In addition, he said that the District Court had refused to accept that he was not the manager of a financial company and had taken that allegation as evidence that he was an executive in local finance and as supporting the accusation that he was a branch treasurer for the Mafia. In fact, he was merely an employee of the company and had even been the subject of disciplinary proceedings. However, the Court of Cassation dismissed his appeal on 2 October 1992.

15. The applicant made a further application for bail to the investigating judge (*giudice per le indagini preliminari*), contending that there were not sufficient grounds for keeping him in detention, but it was dismissed on 29 December 1992.

16. The applicant's appeal to the Trapani District Court was dismissed on 8 February 1993 on the ground that Article 275 § 3 of the Code of Criminal Procedure created a presumption that the continued detention of suspects charged with belonging to a mafia-type organisation was necessary and that it was therefore for the person seeking bail to produce specific, concrete evidence to rebut that presumption. The District Court considered that the applicant's arguments – such as that related to the length of his detention – were of a general nature and had been rejected in earlier cases.

17. On application by the prosecution, the investigating judge at the Trapani District Court made an order on 8 April 1993 pursuant to Article 305 § 2 of the Code of Criminal Procedure extending the maximum permitted period of detention pending trial.

18. Meanwhile, other *pentiti* had stated during the course of the investigation that they did not know the applicant.

19. The applicant appealed to the District Court against the order of 8 April 1993, contending that the impugned order was null and void as the application for an extension had not been served beforehand on his lawyer and the court had given only general, not specific, reasons.

20. The Trapani District Court dismissed the applicant's appeal on 22 June 1993. It held that all the law required was that the parties should be heard at an adversarial hearing and that had been done in the instant case. There was no requirement that the application should be formally served beforehand.

As to whether the impugned measure was necessary, the District Court found that although the reasoning in the order was somewhat succinct, it had pointed to the risk of evidence being tampered with, particularly in view

of the special nature of the offence (membership of a mafia-type organisation), and the danger presented by all the accused, who were suspected of belonging to a criminal organisation that engaged in serious crime such as homicide. Furthermore, the prosecution had given a full explanation as to why it had been necessary for the purposes of the investigation to make the application: namely because of the need to carry out complex banking and fiscal inquiries to clarify the extent to which the accused controlled the area. The District Court also noted that the nature of the crime concerned meant that the investigation had to cover the mafia-type organisation as a whole, and, therefore, necessarily, all of the accused.

21. On 28 June 1993 the applicant appealed to the Court of Cassation contending that the rights of the defence had been infringed. However, his appeal was dismissed on 18 October 1993.

22. On 2 October 1993 the applicant was committed for trial on a charge of being a member of a mafia-type organisation. The public prosecutor's office sought a three-year prison sentence.

23. In a judgment of 12 November 1994, which was lodged with the registry on 9 February 1995, the Trapani District Court acquitted the applicant and ordered his release unless there were other reasons why he should remain in custody.

It observed that the case against the applicant had been founded solely on statements made by B.F. on the basis of information B.F. had learnt from G.D., who had in turn obtained that information from F.M. Both sources were now dead, thus rendering any independent corroboration of B.F.'s statements impossible. The only affirmation that had been proved was that the applicant had worked at the finance company concerned, but there was no evidence that he had acted as its manager or treasurer. Indeed, that allegation had been contradicted by other witnesses and factual evidence. The District Court concluded that the applicant's guilt had not been established.

24. The judgment was delivered towards 10 p.m. The applicant, who had been in the Trapani District Court for the verdict, was brought back to Termini Imerese Prison, still in handcuffs, at 12.25 a.m.

He was not released until 8.30 a.m. because the registration officer, whose presence was necessary on the release of prisoners subject to a special prison regime, was unavailable.

25. The public prosecutor's office appealed against his acquittal.

26. In a judgment of 14 December 1995, which became final as regards the applicant on 25 June 1996, the Palermo Court of Appeal upheld his acquittal on the ground that B.F.'s statements were unsupported by other concrete evidence and had been refuted by evidence obtained during the investigation.

## **B. The ill-treatment to which the applicant alleges he was subjected in Pianosa Prison**

### *1. The impugned treatment*

27. The applicant was held at Termini Imerese Prison until 20 July 1992, when he was transferred to Pianosa Prison under urgent measures taken by the Italian Government against the Mafia following the killing by that organisation of two senior judges. Pianosa Prison had previously held approximately 100 prisoners who enjoyed a less strict regime, which included the right to work on the island outside the prison. The high-security prisoners were held together in the “Agridipia” wing. A large number of prison warders from other penal institutions were also transferred to Pianosa Prison.

The applicant was held at Pianosa without interruption until 29 January 1993. Subsequently, he was regularly transferred for short periods to enable him to be present at the various stages of the proceedings against him.

28. The medical register kept by Pianosa Prison shows that the applicant was in good health on arrival.

29. He alleged that he was ill-treated in a number of ways, detailed below, mainly between July and September 1992 (the situation subsequently improved).

(i) He was regularly slapped and had sustained an injury to his right thumb. His testicles had been squeezed, a practice which the applicant said was systematically inflicted on all prisoners.

(ii) On one occasion the applicant was beaten and his jumper was torn. He protested. Two hours later a warder ordered him to shut up, insulted and then struck him, damaging the applicant's glasses and a false tooth.

(iii) He was manhandled on other occasions. Prisoners were allowed to put cleaning products in the corridors. Sometimes the prison warders caused the products to spill on the floor and mixed them with water, thus making the floor slippery. Prisoners were then forced to run along the corridors between two rows of warders. Those who fell were hit by warders and beaten with batons.

(iv) He was often subjected to body searches when showering.

(v) He had to wait very lengthy periods to see a doctor and remained handcuffed during medical examinations.

(vi) The warders warned prisoners that they would be subjected to reprisals if they told their lawyers or other prisoners about the treatment they were receiving.

(vii) In the presence of warders prisoners were required to bow their heads, keep their eyes to the ground, show respect, remain silent and stand to attention.

30. Lastly, the applicant said that transfers of prisoners from the prison to the courts for hearings took place in inhuman conditions: in the hold of the vessel, without air, light or food and with very poor hygiene.

### 2. *The medical certificates*

31. The Pianosa Prison medical register shows that on 9 September 1992 the applicant complained of a problem with a false tooth and the prison doctor therefore referred him for examination by a dentist. In April 1993 a further request was made for an appointment with a dentist to have a loose false tooth cemented.

32. On 10 August 1993 the Pianosa Prison medical service requested x-rays and an appointment with an orthopaedist following a complaint by the applicant of pain in his knees. On 22 September 1993, following tests, an orthopaedist noted problems – the medical record does not reveal their exact nature – in the applicant's knees.

33. On 17 March 1994 the dentist noted that the false tooth had completely broken and needed repair.

34. A medical report of 24 March 1995 notes calcification in the knee joint. The applicant had a scan on 3 April 1996 that revealed two small wounds resulting from traumatic injury in the upper, outer part of the knee.

35. A medical certificate dated 20 March 1996 refers to psychological disorders (asthenia, state of confusion, depression) that had started three years earlier.

### 3. *Proceedings instituted by the applicant*

36. On 2 October 1993, at a preliminary hearing before the Trapani investigating judge, the applicant and another prisoner alleged that they had suffered forms of ill-treatment such as “torture, humiliation and cruelty” in Pianosa Prison until October 1992. The applicant said in particular that he had suffered a broken finger and broken teeth. Even though the position had improved after October 1992, he complained that the overall treatment to which he had been subjected and which had been imposed on the basis of, *inter alia*, section 41 *bis* of Law no. 354 of 1975, was inhuman and emotionally draining.

37. The investigating judge informed the Livorno public prosecutor's office of the above; the public prosecutor's office opened an official inquiry (no. 629/93) and on 12 November 1993 instructed the Portoferraio *carabinieri* to question the applicant about the nature and duration of the ill-treatment he had allegedly suffered and to obtain from him any information he had that would help to identify those responsible. It also requested the applicant's medical records.

38. The applicant was interviewed on 5 January 1994 by the Portoferraio *carabinieri*. He said that from the moment he arrived at Pianosa he had been



subjected to “hidings, torture, acts of cruelty and psychological torture” by the warders. In particular, they would hit him in the back with their hands. When he left his cell for the exercise yard he was made to run along a corridor that had been made slippery. The warders formed a line the length of the corridor and delivered kicks, punches and baton blows. On one occasion he had protested that the warders had torn his jumper as they struck him. One of them had told him to shut up, insulted him and then hit him, damaging his glasses and a false tooth. Prisoners were violently beaten every time they left their cells. He added, however, that he was unable to recognise the warders responsible because the prisoners were obliged to keep their heads bowed in their presence. He stated lastly that the beatings had ceased in October 1992.

39. On 7 January 1994 the *carabinieri* sent the interview record and the applicant's medical file to the Livorno public prosecutor's office. They said that they would forward a list of the warders who had worked at Pianosa Prison at the material time later.

40. On 9 March 1995 the applicant was interviewed by the Trapani *carabinieri* on the instructions of the Livorno public prosecutor's office. He was shown photocopies of photographs of 262 prison warders who had worked at Pianosa Prison. The applicant said that he was unable to identify the person who had ill-treated him, but commented that the photographs had been taken before the relevant period and were only photocopies. He added that he would have had no difficulty in identifying the warder concerned had he been able to see him in person.

41. On 18 March 1995 the Livorno public prosecutor's office applied to have the complaint filed away without further action on the ground that the offenders could not be identified (*perché ignoti gli autori del reato*). The Livorno investigating judge made an order to that effect on 1 April 1995.

*4. The report of the Livorno judge responsible for the execution of sentences on conditions at Pianosa Prison*

42. On 5 September 1992 the Livorno judge responsible for the execution of sentences had sent a report to the Minister of Justice and other relevant prison and administrative authorities on prison conditions in Pianosa.

43. The report followed an initial inspection of the prison in August 1992 in which it was noted in particular that there had been repeated violations of prisoners' rights and a number of incidents of ill-treatment, both in the special “Agrippa” wing and in the ordinary wings. By way of example, it was noted in the report that:

- (i) hygiene was appalling;
- (ii) prisoners' correspondence, though permitted subject to censorship, was totally blocked and telegrams were delivered to prisoners only after substantial delays;

(iii) prisoners were forced to run to the exercise yard, and probably beaten with batons on the legs;

(iv) prisoners were sometimes beaten with batons and subjected to other forms of ill-treatment (for example, one prisoner was allegedly forced to undress completely and to do floor exercises (*flessioni*) before being subjected to a rectal search, which, according to the judge responsible for the execution of sentences, had been wholly unnecessary as the prisoner had just finished doing work in the presence of other warders; the prisoner concerned, who was slapped while getting dressed, had then consulted the prison doctor; that night, three warders had subjected him to a beating in his cell);

(v) apparently, other similar incidents had taken place subsequently, although the situation appeared to have improved more recently, probably as a result of action taken against prison warders.

44. After information and press reports began to circulate that prisoners in Pianosa Prison were being subjected to violence, the Livorno public prosecutor spent a day on the island and informed the press that he had found nothing to support the allegations.

45. Further, on 30 July 1992 inspectors for the Tuscany prison services had informed the Prison Administration Department at the Ministry of Justice that, according to information from reliable sources, there had been serious incidents of ill-treatment of prisoners at Pianosa Prison. In particular, the report referred to one incident in which a handicapped prisoner had been brought into the prison in a wheelbarrow to the jeers of the warders and another in which a prisoner had been forced to kneel before a candle.

46. In a note to the Minister's principal private secretary dated 12 October 1992, the Director-General of the Prison Administration Department at the Ministry of Justice explained that the conditions referred to by the Livorno judge responsible for the execution of sentences were due essentially to the fact that fifty-five prisoners had been transferred to Pianosa as a matter of urgency in the night of 19 to 20 July 1992. That had caused practical problems which could to a large extent explain the inconvenience that had been noted. In addition, additional problems had been caused by building works in the prison.

47. On 28 October 1992 the Director-General forwarded the conclusions of a group of experts appointed by the department to the principal private secretary to the Minister and to the public prosecutor's office. On the basis of the information supplied by prisoners questioned in the prison, the experts had found that the allegations of ill-treatment were wholly unfounded apart from the incident concerning the moving of a handicapped prisoner in a wheelbarrow, which, however, had resulted from a lack of wheelchairs in the prison.

48. Following the report by the judge responsible for the execution of sentences, an inquiry was nonetheless started and the information obtained was sent to the Livorno public prosecutor's office. Only two warders had been identified; they were suspected of offences of causing bodily harm (Article 582 of the Criminal Code) and of abuse of authority over persons who had been arrested or detained (Article 608 of the Criminal Code).

49. The public prosecutor's office sought an order for both charges to be dropped, the former because no complaint had been lodged and the latter because it was time-barred. The application was allowed with regard to the offence of causing bodily harm, but dismissed with regard to the other charge and on 20 December 1996 the investigating judge sought additional information. That inquiry is believed still to be under way.

50. In a note of 12 December 1996 – which was appended to the Government's observations in the proceedings before the Commission – the President of the court responsible for the execution of sentences in Florence said that the incidents that had taken place in Pianosa Prison had been ordered or tolerated by the government of the day. He also considered that the applicant's allegations concerning the conditions during transfers were entirely credible and that transfers of prisoners to Pianosa Prison were carried out using questionable and unjustified methods, the real purpose of which was to intimidate prisoners. He further noted that the high-security wing of Pianosa Prison had been staffed by warders from other prisons who had not been subjected to any selection process and had been given “*carte blanche*”. The result, according to the President of the court, was that management of that wing of the prison had initially been characterised by abuse and irregularities.

### **C. Censorship of the applicant's correspondence**

#### *1. Application of section 41 bis of the Prison Administration Act*

51. On 20 July 1992 the Minister of Justice issued an order subjecting the applicant to the special prison regime laid down in section 41 *bis* of Law no. 354 of 1975 until 20 July 1993. The Minister considered that the measure was necessary in particular because of serious public-order and safety considerations following an escalation of an aggressive and ruthless campaign by the Mafia, which had been responsible for the recent assassinations of three judges and eight policemen and for car-bomb attacks in large Italian cities. That situation made it necessary to sever connections between certain prisoners and their milieu. The applicant was subject to the measure concerned because he was of bad character and dangerous; those factors suggested that he had maintained contact with the criminal milieu which he would be able to use to issue instructions or establish links with the outside world that could in turn lead to a breakdown of public order or

jeopardise security in prison institutions. In addition, it was a reasonable assumption that prisoners such as the applicant would recruit other prisoners or dominate and humiliate them in prison, just as they did in criminal organisations.

52. The order represented a derogation from the Prison Administration Act and imposed the following restrictions:

- (i) a ban on the use of the telephone;
- (ii) a ban on all association or correspondence with other prisoners;
- (iii) censorship of all inward and outward correspondence;
- (iv) a ban on meetings with third parties;
- (v) restrictions on visits from members of the family (to one hour monthly);
- (vi) a ban on receiving or sending sums of money over a set amount;
- (vii) a ban on receiving parcels (other than those containing linen) from the outside;
- (viii) a ban on organising cultural, recreational or sporting activities;
- (ix) a ban on voting or standing in elections for prisoner representatives;
- (x) a ban on taking part in arts-and-crafts activities;
- (xi) a ban on buying food that needed cooking;
- (xii) a ban on spending more than two hours outdoors.

53. These measures were subsequently extended for successive six-monthly periods until 31 January 1995.

## *2. Censorship of the applicant's correspondence*

54. On 21 April 1992 the Trapani District Court decided, without giving specific reasons, to subject the applicant's correspondence to censorship. However, his correspondence was not monitored while he was in Termini Imerese Prison.

55. An order was also made for censorship of the applicant's correspondence by the Minister of Justice on 20 July 1992 (see paragraph 52 above).

56. The following letters were censored:

- (i) the applicant's letter of 21 October 1992 to his wife (delivery of this letter was delayed by the Pianosa Prison as the prison authorities, considering the content to be suspect, first sent it to the judicial authorities);
- (ii) a letter of 7 May 1993 sent to the applicant by his first lawyer (stamped by the Pianosa Prison censors);
- (iii) a letter of 28 February 1993 sent by the applicant to his family (stamped by the Termini Imerese Prison censors);
- (iv) a letter sent by the applicant to his wife on 2 March 1993 enclosing a certificate (the Termini Imerese Prison authorities had intercepted the letter and sent it to the Prison Administration Department at the Ministry of Justice with a request for permission to remit the letter to the applicant; as no reply was received, the letter was never remitted to him);

(v) a letter from the applicant to his family posted on 7 May 1993 (stamped by the Pianosa Prison censors).

57. On 15 September 1993, as a result of a Constitutional Court decision (no. 349 of 28 July 1993 – see paragraph 102 below), the Minister of Justice rescinded the measure regarding censorship of correspondence that had been issued in orders made under section 41 *bis*.

58. The applicant's correspondence nonetheless continued to be subject to censorship as a result of the Trapani District Court's decision of 21 April 1992.

59. On 21 February 1994 the Trapani District Court ordered rescission of that order, but the applicant's correspondence continued to be censored notwithstanding.

60. On 10 June 1994 the applicant reverted to the ordinary prison regime; the change entailed among other things an end to censorship. However, at least one letter (sent to the applicant by his wife on 28 July 1994) was nonetheless censored by the Pianosa Prison authorities.

61. On 13 August 1994, at the request of the Pianosa Prison authorities, an order was made by the President of the Criminal Division of the Trapani District Court, renewing censorship of the applicant's correspondence. The following letters were censored:

(i) a letter of 24 August 1994 sent to the applicant by his second lawyer (stamped by Pianosa Prison);

(ii) letters sent to the applicant by his wife on 18, 21, 29 and 30 August 1994 containing two photographs of the applicant's children (and each bearing the Pianosa Prison censors' stamp);

(iii) a letter of 31 August 1994 from the applicant to his family (stamped by Pianosa Prison);

(iv) a letter of 1 September 1994 sent to the applicant by his children (stamped by Pianosa Prison);

(v) a letter of 16 October 1994 sent to the applicant by his granddaughter (stamp illegible);

(vi) letters of 18 and 20 October 1994 sent to the applicant by his wife (stamped by Termini Imerese Prison);

(vii) a letter of 20 October 1994 apparently sent to the applicant by members of his family (stamped by Termini Imerese Prison);

(viii) an undated letter sent to the applicant by his granddaughter (stamped by Pianosa Prison).

62. As to the two letters sent to the applicant by his lawyers on 7 May 1993 and 24 August 1994, the Pianosa Prison authorities said that they could not be regarded as being correspondence with defence counsel for the purposes of Article 35 of the transitional provisions of the new Code of Criminal of Procedure (see paragraph 97 below).

#### **D. Preventive measures imposed on the applicant**

63. On an application dated 9 September 1992 by the Trapani public prosecutor's office the Trapani District Court made an order on 10 May 1993 imposing preventive measures on the applicant, who was put under special police supervision and required to live at Alcamo for three years. The District Court found in particular that the applicant had been shown to be dangerous by concrete evidence: he was being investigated in connection with a very serious offence, was in detention pending trial and, along with other suspected mafiosi, held shares in a company that ran a discotheque where members of the Mafia met.

The applicant was required, *inter alia*:

- (i) not to leave his home without informing the authorities responsible for supervising him;
- (ii) to live an honest life and not to arouse suspicion;
- (iii) not to associate with persons who had a criminal record or who were subject to preventive or security measures;
- (iv) not to return home later than 8 p.m. or to leave home before 6 a.m., unless due cause could be shown and in all cases only after informing the authority responsible for supervising him;
- (v) not to keep or carry weapons;
- (vi) not to go to bars or attend public meetings;
- (vii) to have on him at all times the card setting out his precise obligations under the preventive measures and a copy of the court order;
- (viii) to report to the relevant police station on Sundays between 9 a.m. and 12 noon.

64. However, the District Court found that it was not possible to conclude from the evidence on the file that the company referred to had been used to launder money coming from illegal Mafia activities. It consequently made an order for severance of the proceedings relating to the attachment both of the applicant's holding in the company concerned and some of his immovable property.

65. The applicant appealed, but his appeal was dismissed on 7 December 1993.

The court of appeal noted, firstly, that a presumption arose under Law no. 575 of 15 May 1965 that a member of the Mafia was dangerous and that for the purposes of the imposition of preventive measures, such membership could be established on the basis of inferences, full proof being required only to secure a conviction. In the case before it, there was circumstantial evidence against the applicant, such as the decisions to detain him pending trial and to commit him for trial. Furthermore, B.F. had clearly stated that the applicant was both a member and the treasurer of a mafia-type organisation. There were other factors, too, such as the applicant's business relations with other mafiosi. The applicant's contact

with the Mafia was also confirmed by the fact that he had seen fit to marry the sister of a mafia boss and thus to become a member of a mafia clan, which undoubtedly made it likely that he would receive requests for assistance from that criminal organisation.

66. The applicant appealed to the Court of Cassation, but that appeal was also dismissed in a judgment of 3 October 1994 on the ground that the assessment whether a person was dangerous was based on any factor which the court found to be cogent. The Trapani District Court and the Palermo Court of Appeal had established that it was likely that the applicant belonged to the Alcamo mafia clan on the basis of the evidence that had led to the applicant being kept in pre-trial detention. No appeal lay to the Court of Cassation against the verdict of the trial and appellate courts on the facts.

67. Meanwhile, on 22 May 1993 the Trapani Prefect ordered the applicant to surrender his passport. That order could not be executed as the applicant said that it had been lost. The prefect also ordered the applicant to produce his national identity card so that the words “not valid for foreign travel” could be stamped on it.

68. On 1 June 1993 the Trapani Prefect ordered the confiscation of the applicant's driving licence.

69. The preventive measures were suspended until the end of the trial and applied with effect from 19 November 1994 following the applicant's acquittal by the Trapani District Court.

70. On 13 February 1996 the applicant was refused permission to leave Alcamo to accompany his wife and one of their sons to Palermo Hospital – where they were due to undergo medical tests – on the ground that the tests did not relate to a serious illness.

71. Meanwhile, on 8 January 1996 the applicant had applied to the Trapani District Court for an order lifting the preventive measures on the ground that he had now been finally acquitted (by a judgment of 14 December 1995) and that it was impossible for him to find employment.

72. On 11 June 1996 the District Court dismissed that application. In doing so, it firstly reiterated the settled case-law of the Court of Cassation whereby matters established at trial, though insufficient to support a conviction, could, if appropriate when coupled with other evidence, nonetheless amount to serious evidence capable of proving that a person who has been acquitted might be dangerous. That, said the District Court, was the position in the case before it. It considered that the statements made by B.F. showed that the applicant had associated with the Alcamo mafia clan, as proved by the fact that his late brother-in-law had been the head of the main clan. As to his inability to find work, the court considered that it was unrelated to the preventive measures since the applicant could at any stage have sought permission to work and would have been authorised to do so, provided, of course, that the work was compatible with his obligations under the preventive measures.

73. On 7 October 1996 the applicant's identity card was returned marked "not valid for foreign travel".

74. On an unspecified date the applicant made a further request to the Trapani District Court to rescind the preventive measures against him repeating that he had now been finally acquitted and stressing that he had always complied with the preventive measures.

75. On 21 October 1997 the Trapani District Court dismissed that application stating, firstly, that the proceedings concerning the preventive measures were quite separate from the criminal proceedings so that the acquittal had no automatic effect on the preventive measures that had already been ordered. In any event, the applicant had not shown any real change in his life-style or that he was genuinely repentant.

76. The preventive measures against the applicant ceased to apply on 18 November 1997.

#### **E. Disenfranchisement**

77. As a result of the imposition of the special supervision measure on the applicant, the Alcamo Municipal Electoral Committee decided on 10 January 1995 to strike the applicant off the electoral register on the ground that his civil rights had lapsed pursuant to Article 32 of Presidential Decree no. 223 of 20 March 1967.

78. The applicant lodged an appeal with the Ward Electoral Board in which he contended that no reasons had been stated in the decision of 10 January 1995 and that the decision to impose preventive measures had been taken before his acquittal.

In a decision of 27 February 1995, served on the applicant on 7 March 1995, the board dismissed the appeal on the ground that the applicant had been disenfranchised by operation of law (as his civil rights had lapsed following imposition of the special supervision measure), not by a decision of the electoral committee. The applicant did not appeal against that decision.

79. On 19 November 1997, following the expiration of the preventive measures, the applicant applied to be reinstated on the electoral registers.

80. On 28 November 1997 the Ward Electoral Committee informed the mayor of Alcamo that it had authorised the applicant to take part in the imminent administrative elections scheduled to be held on 30 November 1997.

81. On 29 November 1997 the mayor notified the applicant of the electoral committee's decision.

82. On 11 December 1997 the Municipal Electoral Committee reinstated the applicant on the Alcamo electoral register.



## **F. Compensation for “unjust” detention**

83. On 4 February 1997 the applicant applied to the Palermo Court of Appeal for an award of compensation under Articles 314 and 315 of the Code of Criminal Procedure for his detention from 21 April 1992 to 12 November 1994, which the applicant's acquittal on 14 December 1995 showed to have been “unjust”.

84. The Court of Appeal acceded to his claim in a decision of 20 January 1998, which was lodged with the registry on 23 January 1998. Having regard to the length and particularly harsh conditions of his detention, and to the damage sustained by the applicant (to his reputation) and by his family (who had had to make long journeys for visits), it awarded him 64,000,000 Italian lire.

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

### **A. Provisions relating to the length of detention pending trial**

85. The first paragraph of Article 273 of the Code of Criminal Procedure (“CCP”) provides that “no one shall be detained pending trial unless there is serious evidence of his guilt”.

86. Article 274 CCP goes on to provide that detention pending trial may be ordered: “(a) if detention is demanded by special and unavoidable requirements of the inquiry into the facts under investigation concerning a genuine and present danger for the production or authenticity of evidence ...; (b) if the accused has absconded or there is a real danger of his absconding, provided that the court considers that, if convicted, he will be liable to a prison sentence of more than two years; and (c) where, given the specific nature and circumstances of the offence and having regard to the character of the suspect or the accused as shown by his conduct, acts or criminal record, there is a genuine risk that he will commit a serious offence involving the use of weapons or other violent means against the person or an offence against the constitutional order or an offence relating to organised crime or a further offence of the same kind as that of which he is suspected or accused ...”

87. Under Article 275 § 3 CCP, as amended by Legislative Decree no. 152 of 1991 (which became Law no. 203 of 1991) and Legislative Decree no. 292 of 1991 (which became Law no. 356 of 1991) there is a rebuttable presumption that such a necessity exists where certain offences, such as being a member of a mafia-type organisation, are concerned.

88. Article 303 CCP lays down the maximum permitted periods of detention pending trial which vary according to the stage reached in the

proceedings. For the offence laid down in Article 416 *bis* of the Criminal Code, the periods applicable during the proceedings at first instance are one year from the beginning of the defendant's detention until the order committing him for trial and one year from the beginning of the trial until his conviction at first instance. If no committal order is made or, as the case may be, the defendant is not convicted at first instance within the relevant period, the detention pending trial ceases to be lawful and the defendant must be released.

89. However, paragraph 2 of Article 304 CCP provides that for certain offences, including the one provided for in Article 416 *bis* of the Criminal Code, the periods laid down in Article 303 may be extended during the hearings, the deliberations at first instance or the appeal, if the proceedings prove to be particularly complex. Article 304 provides that the length of detention pending trial must not, under any circumstances, exceed two-thirds of the maximum sentence for the offence with which the defendant is charged or the sentence imposed by the first-instance court.

90. Paragraph 2 of Article 305 CCP provides: "During the preliminary investigation, the public prosecutor may request an extension of a period of detention pending trial that is about to expire where there is a serious need for precautionary measures which, in particularly complex investigations, make it absolutely necessary to extend the period of detention pending trial ..." That provision goes on to provide that such an extension may be renewed only once and that, in any event, the periods provided for in Article 303 CCP cannot be exceeded by more than half.

91. With regard to the procedures on release, on 29 March 1996 the Ministry of Justice informed all penal institutions of the need for administrative services to be provided at night time, too, to ensure not only the release of prisoners but also, among other things, the admission of suspects who had been arrested or had voluntarily surrendered to custody and the availability of emergency hospital treatment for prisoners.

## **B. Reparation for "unjust" detention**

92. Article 314 CCP provides that anyone who has been acquitted in a judgment that has become final – on the grounds that the case against him has not been proved, he has not committed the offence, no criminal offence has been committed or the facts alleged do not amount to an offence at law – is entitled to equitable reparation for any period he has spent in detention pending trial, provided that misrepresentations or fault on his part were not contributory factors in his being detained.

93. An application for reparation must be made within eighteen months after the judgment becomes final. The maximum award is 100,000,000 Italian lire.

### C. Provisions relevant to the censorship of correspondence

94. Section 18 of Law no. 354 of 26 July 1975, as amended by section 2 of Law no. 1 of 12 January 1977, provides that power to order censorship of prisoners' correspondence vests in the judge dealing with the case – whether the investigating judge or the trial judge – until the decision at first instance and thereafter in the judge responsible for the execution of sentences. The judge may order censorship of a prisoner's correspondence in a reasoned decision; this provision does not, however, specify the circumstances in which such orders may be made.

95. In practice, censorship entails all the prisoner's mail being intercepted and read by either the judge that made the order or the prison governor or prison staff designated by him; censored mail is stamped to show that it has been inspected (see also Article 36 of the decree implementing Law no. 354 referred to above – Presidential Decree no. 431 of 29 April 1976). Censorship cannot extend to deleting words or sentences, but the judge may order that one or more letters shall not be delivered; in such cases, the prisoner must be informed immediately. This latter measure can also be ordered temporarily by the prison governor, who must, however, notify the judge.

96. Article 103 CCP forbids the seizure or any form of censorship of correspondence between a prisoner and his lawyer, provided that the correspondence is identifiable as such and unless the judge has well-founded reasons to believe that the correspondence constitutes the substance of the offence.

97. Similarly, by Article 35 of the transitional provisions of the new Code of Criminal Procedure the rules on the censorship of a prisoner's correspondence laid down in Law no. 354 and Presidential Decree no. 431 do not apply to correspondence between a prisoner and his lawyer. However, for such correspondence to escape censorship, the envelope must be marked with the identity of both the accused and his lawyer, the fact that the lawyer is acting in that capacity and the words “correspondence for the purposes of court proceedings” (“*corrispondenza par ragioni di giustizia*”) signed by the sender, who must also specify the proceedings to which the letter relates. If the sender is the lawyer, his signature must be certified by the head of the Bar Association or the latter's delegate.

98. As the censorship of correspondence is an administrative act and does not affect the prisoner's personal liberty, no appeal lies to the Court of Cassation in respect of it (Court of Cassation, judgments nos. 3141 of 14 February 1990 and 4687 of 4 February 1992).

99. Section 35 of the Prison Administration Act (Law no. 354 of 26 July 1975) provides that prisoners may send requests or complaints in a sealed envelope to the following authorities:

- (i) the prison governor, prison inspectors, the director-general of penal institutions and the Minister of Justice;
- (ii) the judge responsible for the execution of sentences;
- (iii) the judicial and health-care authorities who inspect the prison;
- (iv) the president of the regional council;
- (v) the President of the Republic.

#### **D. The effect of section 41 *bis* of Law no. 354 of 1975 on the censorship of correspondence**

100. By section 41 *bis* of the Prison Administration Act, as amended by Law no. 356 of 7 August 1992, the Minister of Justice is empowered to suspend application of the ordinary prison regime – as laid down by Law no. 354 of 1975 – in whole or in part if it fails to meet the standards required to preserve public order and security. He must give reasons for so doing and judicial review will lie. The provision may be applied only where the prisoner has been prosecuted for or convicted of one of the offences set out in section 4 *bis* of the statute. The offences concerned include those linked to mafia activities. By Law no. 446 of 28 November 1999 that provision is to remain in force until 31 December 2000.

101. Section 41 *bis* contains no list of the restrictions that may be imposed. They must be determined by the Minister of Justice. When first implemented, section 41 *bis* was construed as also empowering the Minister of Justice to censor prisoners' correspondence.

102. In its judgments nos. 349 and 410 delivered in 1993, the Italian Constitutional Court, which was examining whether that system was consistent with the principle that the legislator's powers should not be encroached upon, held that section 41 *bis* was compatible with the Constitution. However, it stated that by virtue of Article 15 of the Constitution a reasoned decision of the courts was required for any restriction on correspondence to be imposed. The Minister of Justice was accordingly not empowered to impose measures regarding prisoners' correspondence.

#### **E. Relevant provisions concerning preventive measures in individual cases**

103. The power to impose preventive measures was introduced by Law no. 1423 of 27 December 1956. Such measures are intended to prevent individuals regarded as a “danger to society” from committing offences. The statute currently classifies three groups of people as a danger to society: (a) anyone who on the basis of factual evidence must be regarded as being an habitual offender; (b) anyone who on account of his conduct or life-style must be regarded, on the basis of factual evidence, as habitually deriving his

income from the proceeds of crime; and (c) anyone who on account of his conduct must be regarded on the basis of factual evidence as having committed offences endangering the mental or physical integrity of minors or posing a threat to society, security or public order.

104. Section 3 of Law no. 1423/56 provides that persons who are a danger to society may be placed under special police supervision. That measure may be accompanied, if need be, by a requirement not to stay in one or more named towns or provinces or, if the person concerned is considered to be particularly dangerous, by a compulsory residence order requiring him to live in a named municipality (*obbligo di soggiorno*).

105. Jurisdiction to make such orders is vested exclusively in the court sitting in the provincial capital. The court sits in camera and must give a reasoned decision after hearing the representative of the public prosecutor's office and the person on whom it is proposed to impose the measure, who has the right to lodge memorials and to be represented by a lawyer. Both parties may appeal within ten days. Lodging an appeal has no suspensive effect. A further appeal lies from the court of appeal to the Court of Cassation.

106. When imposing a preventive measure, the court must fix its duration – between one and five years maximum – and specify the conditions with which the person concerned must comply.

107. Under Law no. 575 of 31 May 1965, which was amended in 1982, preventive measures in the form of an order for special supervision, compulsory residence or exclusion may be imposed on persons against whom there is evidence (*indiziati*) that they belong to a mafia-type organisation.

108. Law no. 327 of 3 August 1988 provides that a person can only be ordered to reside in the town where he has his domicile or residence.

109. Lastly, in cases where the trial has started, Law no. 55 of 19 March 1990 empowers the courts to suspend proceedings relating to the application of preventive measures until the conclusion of the trial.

## **F. Provisions on disenfranchisement**

110. Article 2 of Presidential Decree no. 223 of 20 March 1967 provides that, *inter alia*, persons on whom preventive measures have been imposed by a court order or an administrative decision shall be disenfranchised.

111. Article 32 § 1 (3) of that decree provides that in such cases the prefect (*questore*) empowered to enforce such measures shall notify the municipality where the person concerned resides of any decision entailing the loss of civil rights. The municipal electoral committee shall then remove the name of the person concerned from the electoral register, even outside one of the usual periods for updating the lists.

## THE LAW

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

112. The applicant complained that during the first months of his detention in Pianosa Prison he had been subjected 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.”

#### A. Allegation of ill-treatment at Pianosa Prison

113. The Government acknowledged that the situation in Pianosa Prison during the summer and autumn of 1992 was very difficult, in particular because of the extremely tense atmosphere at the time.

114. Initially, the Government had affirmed before the Commission: “These deplorable acts were committed by certain warders on their own initiative; such transgressions cannot be regarded as forming part of a general policy. Such reprehensible conduct, unforeseen and unwanted – just the reverse: it constituted a criminal offence – cannot engage the responsibility of the State, which on the contrary has responded through the judicial authorities in order to re-establish the rule of law that such episodes serve to undermine.”

115. However, at the hearing before the Court, the Government made a preliminary submission that, in the absence of any cogent medical evidence, the level of severity required for a violation of Article 3 of the Convention could not be regarded as having been attained in the instant case.

116. In any event, the Government disagreed with the Commission's conclusion that the Italian State had failed to react to the acts of violence committed by its agents. The Government argued that the fact that the investigation to identify the warders allegedly responsible for the ill-treatment had been unsuccessful did not amount to a violation of Article 3, as the Court's case-law on the subject could not be construed as meaning that a State failed to satisfy its obligations under Article 3 of the Convention unless the investigation led to a conviction. The issue was rather whether the investigation had been conducted diligently or whether the authorities had been guilty of errors or omissions. In the present case, the authorities conducting the investigation had shown resolve and spared no effort to identify those responsible. On the contrary, it was the applicant who had been responsible for the failure of the investigation by not requesting a medical examination immediately after being subjected to the ill-treatment in question. Furthermore, the fact that the applicant, the only

witness able to give direct evidence, had been unable to identify the warders from the photographs he had been shown indicated that any further action by the investigators would have been futile.

117. The applicant said that particularly between July and September 1992 he had been subjected to numerous acts of violence, humiliation, and debasement, threats and other forms of torture, both physical and mental (see paragraph 29 above). He had been slapped and struck on many occasions, and had suffered injuries to his fingers, knees and testicles. He had been subjected to body searches in the shower and had remained handcuffed during medical examinations. His protests had been futile, even dangerous. On one occasion when he had protested after his clothes had been torn by warders, he had been threatened, insulted and struck by one of the warders. As a result, his glasses and a false tooth had been damaged and – as his clinical records showed – he had been refused permission to have them repaired. The psychological disorders which he had suffered since being detained at Pianosa were confirmed by a medical certificate of 20 April 1996.

118. The applicant maintained that the government of the day was undoubtedly aware of the incidents at Pianosa Prison and had tolerated them. He referred on that point to a note drawn up by the Livorno judge responsible for the execution of sentences, in which it was stated that the methods used at Pianosa were intended as an instrument of intimidation of the prisoners. Further, the fact that his criminal complaint had been filed away on the ground that the offenders could not be identified marked approval of an unlawful act and demonstrated that the government of the day had been guilty of causing or encouraging events at Pianosa.

119. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79). The nature of the offence allegedly committed by the applicant was therefore irrelevant for the purposes of Article 3.

120. The Court recalls that 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. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, §§ 52 and 53, and the Assenov and Others judgment cited above, p. 3288, § 94).

Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also “degrading” because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. 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. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account (see, for instance, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and the *Raninen v. Finland* judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, § 55), but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.

121. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, the *Klaas v. Germany* judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). 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 unrebutted presumptions of fact (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161 *in fine*).

122. In the instant case, the ill-treatment complained of by the applicant consisted of, on the one hand, being slapped, blows, squeezing of the testicles and baton blows and, on the other, insults, unnecessary body searches, acts of humiliation (such as being required to remain in handcuffs during medical examinations), intimidation and threats.

123. The Court observes at the outset that at the hearing before it the Government argued that there was no medical evidence to show that the treatment had attained the level of severity required for there to be a violation of the provision relied on. Although that argument was not raised at an earlier stage in the proceedings, the Court must nevertheless examine it in view of the importance and seriousness of a finding of a violation of Article 3 of the Convention.



124. The Court notes that, as the Government said, the applicant has not produced any conclusive evidence in support of his allegations of ill-treatment or supplied a detailed account of the abuse to which the warders at Pianosa Prison allegedly subjected him, particularly between July and September 1992. He confined himself to describing a situation that he said was widespread at Pianosa at the time and to referring to the note of 12 December 1996 of the President of the court responsible for the execution of sentences (see paragraph 50 above). Indeed, the only concrete evidence furnished by the applicant on this issue, namely the Pianosa Prison medical register (see paragraphs 31-33 above), a medical report of 24 March 1995 and the results of a scan of his knees dated 3 April 1996 (see paragraph 34 above), and a certificate regarding his mental health drawn up on 20 March 1996 (see paragraph 35 above), do not suffice to fill that gap. Thus, there is nothing in the prison medical register to show that the problems the applicant had with his false tooth were caused by blows from a warder. Nor is there any evidence that the injuries to his knees were caused by ill-treatment, especially as he did not seek medical attention on that account until 10 August 1993 (while asserting that the ill-treatment had considerably diminished and even ceased by the end of September 1992). Moreover, the certificate indicating that he suffered from psychological disorders was dated about three and a half years after the incidents in issue and does not point to any causal link (it merely states that the disorders had begun three years earlier – in other words, after the incidents complained of had ceased).

125. The Court recognises that it may prove difficult for prisoners to obtain evidence of ill-treatment by their prison warders. In that connection, it notes that the applicant alleged that the warders at Pianosa applied pressure on the prisoners by threatening reprisals if they were denounced. It observes, however, that the applicant has not suggested, for example, that he was ever refused permission to see a doctor. In addition, the applicant made several applications through his lawyers to the judicial authorities, notably for release (see paragraphs 14, 15, 19 and 21 above); those applications were made shortly after September 1992, that is to say not long after the ill-treatment concerned had diminished or even ceased. Yet he did not complain about his treatment until the preliminary hearing on 2 October 1993 (see paragraph 36 above). The applicant has given no explanation for that substantial delay.

126. The Court has examined the note of the President of the court responsible for the execution of sentences dated 12 December 1996; it was the Government which produced it to the Commission (see paragraph 50 above). While not underestimating the seriousness of the matters criticised therein, the Court cannot lose sight of the fact that the note represents no more than a general assessment that was not based on concrete and verifiable facts. It is therefore unable to treat it as decisive evidence.

127. In these circumstances, the Court considers that the material it has before it regarding the applicant's assertion that he was subjected to physical and mental ill-treatment in Pianosa Prison does not constitute sufficient evidence to support that conclusion.

128. Nor is that finding called into question by the general conditions in Pianosa Prison at the material time, as described by the Livorno judge responsible for the execution of sentences in his report of 5 September 1992 (see paragraphs 42-43 above): the report contains no evidence directly relevant to the applicant's position and the severity and extent of the abuse described in it were reduced to less alarming proportions following inquiries made by the prison authorities concerned (see paragraphs 44-46 above).

129. In conclusion, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicant was subjected to treatment that attained a sufficient level of severity to come within the scope of Article 3, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention on account of the alleged ill-treatment.

#### **B. The nature of the investigations carried out**

130. The Court observes that, when taken together, the statements made by the applicant to the Trapani investigating judge at the hearing on 2 October 1993 and to the *carabinieri* on 5 January 1994 gave reasonable cause for suspecting that the applicant had been subjected to improper treatment in Pianosa Prison.

It must not be forgotten either that the conditions of detention at Pianosa had been the centre of media attention during the period concerned (see paragraph 44 above), and that other prisoners had complained of treatment similar to that described by the applicant (see paragraphs 36 and 43 above), thus lending further credibility to his allegations.

131. The Court considers that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible (see, in relation to Article 2 of the Convention, the *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, p. 49, § 161; the *Kaya v. Turkey* judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; and the *Yaşa v. Turkey* judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98). Otherwise, the general legal prohibition of torture and inhuman and

degrading treatment and punishment would, despite its fundamental importance (see paragraph 119 above), be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see the Assenov and Others judgment cited above, p. 3290, § 102).

132. The Court notes that after the investigating judge had informed the relevant public prosecutor's office of the allegations of ill-treatment made by the applicant at the preliminary hearing, the State authorities conducted certain investigations into those allegations (see paragraphs 37-41 above). It is not, however, satisfied that those investigations were sufficiently thorough and effective to satisfy the aforementioned requirements of Article 3.

133. The Court observes at the outset that the investigation by the Livorno public prosecutor's office was very slow: after the applicant was interviewed by the *carabinieri* on 5 January 1994, fourteen months elapsed before he was given a further appointment with a view to identifying those responsible. Yet the file shows that the only action taken during that interval was the obtaining of photocopies (not prints) of photographs of the warders who had worked at Pianosa. It will be recalled that throughout that period the applicant remained a prisoner at Pianosa.

134. The Court finds it particularly striking that although the applicant repeated on 9 March 1995 that he would be able to recognise the warders concerned if he could see them in person, nothing was done to enable him to do so and, just nine days later, the public prosecutor's office sought and was granted an order for the case to be filed away on the ground not that there was no basis to the allegations but that those responsible had not been identified.

135. The inactivity of the Italian authorities is made even more regrettable by the fact that the applicant's complaint was not an isolated one. The existence of controversial practices by warders at Pianosa Prison had been publicly and energetically condemned even by authorities of the State (see paragraphs 42-45 above).

136. In these circumstances, having regard to the lack of a thorough and effective investigation into the credible allegation made by the applicant that he had been ill-treated by warders when detained at Pianosa Prison, the Court holds that there has been a violation of Article 3 of the Convention.

### **C. Allegedly inhuman and degrading nature of transfers from Pianosa**

137. The applicant also alleged that the conditions in which prisoners were transferred from Pianosa to other prisons were inhuman and degrading.

138. The Court observes, however, that the applicant has not supplied detailed information regarding how many times he was transferred from Pianosa or the dates and precise conditions of such transfers. Nor did he complain about the conditions of transfer to the relevant authorities. Like the Commission, the Court consequently considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 on that account.

## II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

139. The applicant complained of the length of his detention pending trial and alleged a violation of Article 5 § 3 of the Convention, which provides:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

140. The Government contested that submission whereas the Commission agreed with it.

### A. Loss of standing as a victim

141. The Government submitted that as the Palermo Court of Appeal had awarded the applicant a sum as compensation for the time he had spent in detention pending trial, the respondent State had acknowledged, at least in substance, and afforded redress for any violation of Article 5 § 3 of the Convention. Accordingly, the applicant could no longer claim to be the victim of such a violation.

142. In the case of *Amuur v. France* (judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36) and in *Dalban v. Romania* ([GC], no. 28114/95, § 44, ECHR 1999-VI), the Court reiterated that “a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a ‘victim’ unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention”.

143. In the instant case, even though the Palermo Court of Appeal, in a decision of 20 January 1998 lodged at the registry on 23 January 1998, acceded to the applicant's claim for compensation for unjust detention, it based its decision on Article 314 § 1 of the Code of Criminal Procedure, which affords a right to reparation to “anyone who has been acquitted in a judgment that has become final” (see paragraph 92 above). The detention is deemed to be “unjust” as a result of the acquittal, and an award under Article 314 § 1 does not amount to a finding that the detention did not

satisfy the requirements of Article 5 of the Convention. While it is true that the length of the applicant's detention pending trial was taken into account in calculating the amount of reparation, there is no acknowledgment in the judgment concerned, either express or implied, that it had been excessive.

144. In conclusion, the Court considers that despite the payment of a sum as reparation for the time he spent in detention pending trial, the applicant can still claim to be a “victim” within the meaning of Article 34 of the Convention of a violation of Article 5 § 3.

## **B. Merits of the complaint**

### *1. Period to be taken into consideration*

145. The parties and the Commission agreed that the period to be taken into consideration began on 21 April 1992, when the applicant was taken into custody.

146. As to when the period ended, the applicant and the Commission took the date of the applicant's release (13 November 1994 – see paragraph 24 above). The Government, on the other hand, contended that the period ended on 12 November 1994, when the judgment of the court of first instance was delivered (see paragraph 23 above).

147. The Court reiterates that the end of the period referred to in Article 5 § 3 is “the day on which the charge is determined, even if only by a court of first instance” (see the *Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9). The applicant's detention pending trial for the purposes of Article 5 § 3 of the Convention therefore ended on 12 November 1994.

148. The period to be taken into consideration therefore lasted almost two years and seven months.

### *2. The reasonableness of the length of detention*

#### **(a) Submissions of those appearing before the Court**

149. The applicant submitted that the length of his detention pending trial could not be regarded as justified for the purposes of Article 5 § 3 of the Convention.

There was no serious evidence of guilt as the accusations were based on the false allegations of a single *pentito* and there was no risk of further offending. He had been unlucky enough to find himself accused of belonging to the Mafia at a time when the Italian authorities wished to demonstrate the efforts they were making to clamp down on that organisation. He had had no prospect, therefore, of being released despite the fact that he had no criminal record.

150. The Government accepted that the applicant's detention pending trial had been lengthy, but contended that it had been justified in the instant case in view of the weighty evidence against him. The Government argued in particular that where, as here, a case concerned Mafia-related offences, the authorities had an obligation to conduct an exceptionally stringent and thorough inquiry through a "maxi-trial", which inevitably entailed very lengthy and complex investigations and hearings.

151. The Commission considered that the longer the investigation went on the more necessary it became for the authorities to have concrete and specific proof of the presumed risks of the applicant's absconding, reoffending or tampering with evidence. The presumption that arose under Article 273 of the Code of Criminal Procedure did not by itself justify the applicant's being held for so long.

Furthermore, the Commission considered that the proceedings in issue were not conducted with the expedition that Article 5 § 3 demanded. Despite the fact that the evidence against the applicant was very weak, the Government had confined themselves to asserting, in general terms, that complex banking and fiscal investigations had to be conducted, without identifying the steps that had to be and were in fact taken.

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

*(i) Principles established under the Court's case-law*

152. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

153. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the

continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see the *Contrada v. Italy* judgment of 24 August 1998, *Reports* 1998-V, p. 2185, § 54, and the *I.A. v. France* judgment of 23 September 1998, *Reports* 1998-VII, pp. 2978-79, § 102).

(ii) *Application of those principles in the instant case*

154. The Court observes that the relevant authorities examined whether the applicant should remain in detention following his applications for release on three occasions: 6 May 1992, 29 December 1992 and 8 February 1993. In addition, on 22 June 1993 they considered whether the maximum permitted period for detention pending trial should be extended (see paragraphs 14-20 above).

In refusing to release the applicant, the authorities relied simultaneously on the existence of serious evidence of his guilt, the danger of pressure being brought to bear on witnesses and the risk of evidence being tampered with. They also relied on the presumption created by Article 275 § 3 of the Code of Criminal Procedure (see paragraph 87 above).

In deciding to prolong the detention pending trial they invoked the risk of evidence being tampered with, the fact that the accused were dangerous, the complexity of the case and the needs of the investigation, including the need to conduct highly complex banking inquiries.

(a) *Whether reasonable grounds for suspecting the applicant remained*

155. As regards “reasonable suspicion”, the Court reiterates that the fact that an applicant has not been charged or brought before a court does not necessarily mean that the purpose of his detention was not in accordance with Article 5 § 1 (c). The existence of such a purpose must be considered independently of its achievement and sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant was in custody (see the *Erdagöz v. Turkey* judgment of 22 October 1997, *Reports* 1997-VI, p. 2314, § 51, and the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 145-B, pp. 29-30, § 53).

However, for there to be reasonable suspicion there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see the *Erdagöz* judgment cited above, p. 2314, § 51 *in fine*, and the *Fox, Campbell and Hartley v. the United Kingdom* judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32).

156. In the instant case, the allegations against the applicant came from a single source, a *pentito* who had stated in 1992 that he had learned indirectly

that the applicant was the treasurer of a mafia-type organisation (see paragraph 10 above). According to the authorities in question, in May 1992 those statements constituted sufficient evidence to justify keeping the applicant in detention, given the general credibility and trustworthiness of the *pentito* concerned (see paragraph 12 above).

157. The Court is conscious of the fact that the cooperation of *pentiti* is a very important weapon in the Italian authorities' fight against the Mafia. However, the use of statements by *pentiti* does give rise to difficult problems as, by their very nature, such statements are open to manipulation and may be made purely in order to obtain the advantages which Italian law affords to *pentiti*, or for personal revenge. The sometimes ambiguous nature of such statements and the risk that a person might be accused and arrested on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated (see *Contrada v. Italy*, application no. 27143/95, Commission decision of 14 January 1997, Decisions and Reports 88-B, p. 112).

158. For these reasons, as the domestic courts recognise, statements of *pentiti* must be corroborated by other evidence. Furthermore, hearsay must be supported by objective evidence.

159. That, in the Court's view, is especially true when a decision is being made whether to prolong detention pending trial. While a suspect may validly be detained at the beginning of proceedings on the basis of statements by *pentiti*, such statements necessarily become less relevant with the passage of time, especially where no further evidence is uncovered during the course of the investigation.

160. In the instant case, the Court notes that, as the Trapani District Court and Palermo Court of Appeal confirmed in their decisions acquitting the applicant, there was no evidence to corroborate the hearsay evidence of B.F. On the contrary, B.F.'s main, if indirect, source of information had died in 1989 and had, in turn, obtained it on hearsay from another person who had also been killed before he could be questioned. Furthermore, B.F.'s statements had already been contradicted during the course of the investigation by other *pentiti* who had said that they did not recognise the applicant (see paragraph 18 above).

161. In these circumstances, very compelling reasons would be required for the applicant's lengthy detention (two years and seven months) to have been justified under Article 5 § 3.

(β) The "other reasons" for the continued detention

162. The national courts referred to the risk of pressure being brought to bear on witnesses and of evidence being tampered with, the fact that the accused were dangerous, the complexity of the case and the requirements of the investigation. They relied on the presumption created by Article 275 § 3 of the Code of Criminal Procedure (see paragraph 87 above).



163. The Court observes that the grounds stated in the relevant decisions were reasonable, at least initially, though very general, too. The judicial authorities referred to the prisoners as a whole and made no more than an abstract mention of the nature of the offence. They did not point to any factor capable of showing that the risks relied on actually existed and failed to establish that the applicant, who had no record and whose role in the mafia-type organisation concerned was said to be minor (the prosecutor called for a three-year sentence in his case), posed a danger. No account was taken of the fact that the accusations against the applicant were based on evidence which, with time, had become weaker rather than stronger.

164. The Court accordingly considers that the grounds stated in the impugned decisions were not sufficient to justify the applicant's being kept in detention for two years and seven months.

165. In short, the detention in issue infringed Article 5 § 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

166. The applicant submitted that he had been held in detention unlawfully for twelve hours after his acquittal.

167. Article 5 § 1 of the Convention provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

168. The applicant maintained that he should have been freed immediately after his acquittal. A check could have been performed before the hearing as to whether other grounds for his detention existed, in case he was acquitted. The remaining administrative formalities could have been carried out after his release.

169. The Government pointed out that although a prisoner is considered “free” once his acquittal has been pronounced at a hearing, he cannot be released until certain administrative formalities have been performed, first and foremost being a check to see whether other reasons for detaining him exist. Since it was for the prison authorities to carry out that check on the instructions of the public prosecutor's office, the prisoner had to be brought back to the prison before he could be released. In the instant case, the applicant had had to be taken from Trapani, where the trial took place, to Termini Imerese – a distance of approximately 120 km.

As regards the delay caused by the absence of the registration officer, the Minister of Justice had acknowledged in a note to the Commission dated 31 January 1997 that it had been unjustified. Furthermore, the Minister had explained that since March 1996 instructions had been given to the governors of penal institutions so that prisoners could be released at any time, including at night.

170. The Court reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see, among other authorities, the Giulia Manzoni v. Italy judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25, and the Quinn v. France judgment of 22 March 1995, Series A no. 311, pp. 17-18, § 42).

171. While it is true that for the purposes of Article 5 § 1 (c) detention ceases to be justified “on the day on which the charge is determined” (see paragraph 147 above) and that, consequently, detention after acquittal is no longer covered by that provision, “some delay in carrying out a decision to release a detainee is often inevitable, although it must be kept to a minimum” (see the Giulia Manzoni judgment cited above, p. 1191, § 25 *in fine*).

172. The Court observes, however, that in the instant case the delay in the applicant's release was only partly attributable to the need for the relevant administrative formalities to be carried out. The additional delay in releasing the applicant between 12.25 a.m. and the morning of 13 November 1993 was caused by the registration officer's absence. It was only on the latter's return that it was possible to verify whether any other reasons existed for keeping the applicant in detention and to put in hand the other administrative formalities required on release (see paragraph 24 above).

173. In these circumstances, the applicant's continued detention after his return to Termini Imerese Prison did not amount to a first step in the

execution of the order for his release and therefore did not come within sub-paragraph 1 (c), or any other sub-paragraph, of Article 5.

174. Accordingly, there has been a violation of Article 5 § 1 on that account.

#### IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

175. The applicant complained that the Pianosa Prison authorities had censored his correspondence with his family and lawyer.

Article 8 of the Convention provides:

“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 national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

176. The Commission unanimously expressed the view that Article 8 of the Convention had been violated in the present case as the interference with the applicant's right to respect for his correspondence was not “in accordance with the law”. It said that the applicable legislation – section 18 of Law no. 354 of 1975, which contains no rules as to the length of time for which prisoners' correspondence may be censored or the grounds on which an order for censorship may be made – did not indicate with sufficient clarity the extent of the relevant authorities' discretion in that sphere or provide guidance on how it was to be exercised. The Commission relied on the judgments of the Court in the Calogero Diana and Domenichini cases, which also concerned censorship of prisoners' correspondence (see the Calogero Diana v. Italy judgment of 15 November 1996, *Reports* 1996-V, pp. 1775-76, §§ 29-33, and the Domenichini v. Italy judgment of 15 November 1996, *Reports* 1996-V, pp. 1799-800, §§ 29-33).

177. In the light of the decision of the Court in its Calogero Diana and Domenichini judgments, the Government did not contest the Commission's conclusion. They explained that the Minister of Justice had introduced a bill in the Senate on 23 July 1999 for the amendment of the relevant statute to bring it into line with the aforementioned judgments of the Court.

178. The Court agrees with the Government and the Commission that there has been an “interference by a public authority” in the exercise of the applicant's right to respect for his correspondence, as guaranteed by paragraph 1 of Article 8.

179. Such an interference will contravene Article 8 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 the following judgments: Silver and

Others v. the United Kingdom, 25 March 1983, Series A no. 61, p. 32, § 84; Campbell v. the United Kingdom, 25 March 1992, Series A no. 233, p. 16, § 34; Calogero Diana cited above, p. 1775, § 28; Domenichini cited above, p. 1799, § 28; and Petra v. Romania, 23 September 1998, *Reports* 1998-VII, p. 2853, § 36).

#### A. “In accordance with the law”

##### 1. *Periods from 21 April 1992 to 20 July 1992, 15 September 1993 to 21 February 1994 and 13 August 1994 to 13 November 1994*

180. The censorship of the applicant's correspondence during the aforementioned periods was ordered by decisions of the Trapani District Court and was based on section 18 of Law no. 354 of 1975 (see paragraphs 54 and 58 above). However, the Court sees no reason to disagree with the Commission's view that, despite being based on that provision, the censorship of the applicant's correspondence did not comply with Article 8 of the Convention.

##### 2. *Period from 20 July 1992 to 15 September 1993*

181. During this period, the censorship was based on an order of the Minister of Justice made pursuant to section 41 *bis* of Law no. 354 of 1975 (see paragraphs 55-56 above).

182. The Court notes that the Italian Constitutional Court, relying on Article 15 of the Constitution, has held that the Minister of Justice had no power to take measures concerning prisoners' correspondence and had therefore acted *ultra vires* under Italian law (see paragraph 102 above). The censorship of the applicant's correspondence during this period was therefore illegal under national law and was not “in accordance with the law” within the meaning of Article 8 of the Convention.

##### 3. *Period from 21 February 1994 to 10 June 1994*

183. There was no legal basis for the censorship of the applicant's correspondence during this period (see paragraph 59 above).

##### 4. *Conclusion*

184. In conclusion, the various measures complained of by the applicant regarding the censorship of his correspondence were at no time “in accordance with the law” within the meaning of Article 8 of the Convention. There has therefore been a violation of that Article.

## B. The purpose and necessity of the interference

185. In the light of the foregoing conclusion, the Court does not consider it necessary in the instant case to examine whether the other requirements of paragraph 2 of Article 8 were satisfied.

## V. ALLEGED VIOLATION OF ARTICLE 6 § 3 OF THE CONVENTION

186. The applicant complained also of a violation of his defence rights in that his correspondence with his lawyer was censored. He relied on Article 6 of the Convention, the relevant part of which provides:

“3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

187. The Court considers that in the light of its conclusion regarding Article 8 of the Convention this complaint is absorbed by the preceding complaint.

188. Furthermore, and in any event, the Court observes that the applicant has not stated in what way his defence was adversely affected by the censorship of his correspondence with his lawyer; moreover, he was finally acquitted at the end of the proceedings in question.

## VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

189. The applicant maintained that the fact that he had been placed under special police supervision despite his acquittal amounted to a breach of Article 2 of Protocol No. 4, which provides:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

190. The Government stressed the importance of preventive measures where suspected Mafia members were concerned. They added that the fact that the applicant had been acquitted did not affect the lawfulness of the preventive measures that had been imposed on him. In the Italian legal order, criminal penalties and preventive measures were quite separate. The former constituted a response to an unlawful act and the attendant consequences; the latter were a means of preventing the occurrence of such acts. In other words, a penalty was imposed when an offence had already been committed, whereas preventive measures were intended to guard against the risk of future offences. Indeed the Court had accepted that in the Raimondo judgment (see the Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 19, § 39).

In the present case, although the applicant had been acquitted (the Government emphasised in that connection that the expression “with the benefit of doubt” had now been abolished), there was serious evidence of his guilt which had justified his committal and that evidence had not been rebutted at trial.

191. The applicant submitted that following his acquittal on the ground that “he had not committed the offence”, he should no longer have been treated as a Mafia criminal, as the “serious evidence” against him had, contrary to the Government's contention, been disproved at trial.

192. The Commission considered that the grounds relied on by the Italian courts, in particular the fact that the applicant had family connections with the Mafia, were insufficient.

193. The Court observes that the applicant was for three years (from 19 November 1994 to 18 November 1997 – see paragraphs 69 and 76 above) subjected to very severe restrictions on his freedom of movement, which undoubtedly amounted to an interference with his rights guaranteed by Article 2 of Protocol No. 4 (see the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 33, § 92, and the Raimondo judgment cited above, p. 19, § 39).

194. Those measures were based on Laws nos. 1423/56, 575/65, 327/88 and 55/90 (see paragraphs 103-09 above), and were therefore “in accordance with law” within the meaning of the third paragraph of Article 2. They clearly pursued legitimate aims: “maintenance of *ordre public*” and the “prevention of crime” (see the Raimondo judgment, *ibid.*).

195. However, the measures also had to be “necessary in a democratic society” for those legitimate aims to be achieved.

In this connection, the Court considers that it is legitimate for preventive measures, including special supervision, to be taken against persons suspected of being members of the Mafia, even prior to conviction, as they

are intended to prevent crimes being committed. Furthermore, an acquittal does not necessarily deprive such measures of all foundation, as concrete evidence gathered at trial, though insufficient to secure a conviction, may nonetheless justify reasonable fears that the person concerned may in the future commit criminal offences.

196. In the instant case, the decision to put the applicant under special supervision was taken on 10 May 1993 at a time when there effectively existed some evidence that he was a member of the Mafia, but the measure was not put into effect until 19 November 1994 after his acquittal by the Trapani District Court (see paragraphs 63 and 69 above).

The Court has examined the grounds relied on by the Italian courts for refusing to rescind the measure after the applicant's acquittal, namely B.F.'s assertion that the applicant had contacts in the Mafia clan as was proved by the fact that his deceased brother-in-law had been the head of the main clan (decision of the Trapani District Court of 11 June 1996 – see paragraph 72 above) and the fact that “the applicant had not shown any real change in his lifestyle or that he was genuinely repentant” (decision of the Trapani District Court of 21 October 1997 – see paragraph 75 above).

The Court fails to see how the mere fact that the applicant's wife was the sister of a Mafia boss, since deceased, could justify such severe measures being taken against him in the absence of any other concrete evidence to show that there was a real risk that he would offend. As regards changing his lifestyle and repenting, the Court is mindful of the fact that the applicant, who has no criminal antecedents, was acquitted of the charge that he was a member of the Mafia on the ground that no concrete evidence in support of that allegation could be found during the preliminary investigation and trial.

197. In conclusion, and without underestimating the threat posed by the Mafia, the Court concludes that the restrictions on the applicant's freedom of movement cannot be regarded as having been “necessary in a democratic society”.

There has therefore been a violation of Article 2 of Protocol No. 4.

## VII. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

198. The applicant considered that the fact that, despite his acquittal, he had been disenfranchised infringed Article 3 of Protocol No. 1, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

199. The Government maintained that the measure was intended to prevent the Mafia exercising any influence over elected bodies. In view of

the real risk that persons suspected of belonging to the Mafia might exercise their right to vote in favour of other members of the Mafia, the temporary disenfranchisement of the applicant was not disproportionate.

200. The Commission, on the other hand, found the measure to have been disproportionate, particularly in view of the fact that the applicant had been acquitted and of the danger that he would subsequently be alienated from society.

201. The Court points out that implicit in Article 3 of Protocol No. 1, which provides for “free” elections at “reasonable intervals” “by secret ballot” and “under conditions which will ensure the free expression of the opinion of the people”, are the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations (see the *Mathieu-Mohin and Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 23, § 52). In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see the *Gitonas and Others v. Greece* judgment of 1 July 1997, *Reports* 1997-IV, pp. 1233-34, § 39, and *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I).

202. The Court observes that persons who are subject to special police supervision are automatically struck off the electoral register as they forfeit their civil rights because they represent “a danger to society” or, as in the instant case, are suspected of belonging to the Mafia (see paragraphs 107 and 110 above). The Government pointed to the risk that persons “suspected of belonging to the Mafia” might exercise their right of vote in favour of other members of the Mafia.

203. The Court has no doubt that temporarily suspending the voting rights of persons against whom there is evidence of Mafia membership pursues a legitimate aim. It observes, however, that although the special police supervision measure against the applicant was in the instant case imposed during the course of the trial, it was not applied until the trial was over, once the applicant had been acquitted on the ground that “he had not committed the offence”. The Court does not accept the view expressed by the Government that the serious evidence of the applicant's guilt was not rebutted during the trial. That affirmation is in contradiction with the tenor of the judgments of the Trapani District Court (see paragraph 23 above) and



the Palermo Court of Appeal (see paragraph 26 above). When his name was removed from the electoral register, therefore, there was no concrete evidence on which a “suspicion” that the applicant belonged to the Mafia could be based (see, *mutatis mutandis*, paragraph 196 above).

In the circumstances, the Court cannot regard the measure in question as proportionate.

There has therefore been a violation of Article 3 of Protocol No. 1.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

204. 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

205. The applicant claimed 2,000,000,000 Italian lire (ITL) for physical and mental injury. He also claimed ITL 1,000,000,000 for pecuniary damage suffered as a result of the confiscation of some of his immovable property and the closing down of his discotheque during the trial until 1995 and the attachment of his shareholding in a company.

206. The Government contended that there was no causal link between the alleged pecuniary damage and the alleged violations and emphasised that the applicant had not complained before the Convention institutions about the confiscation and attachment. As regards the length of detention, the Government said that the applicant had already obtained sufficient reparation before the domestic courts.

207. As regards the confiscation of the applicant's land and attachment of his company shareholding, the Court accepts the Government's argument that there is no causal link between the sums claimed for pecuniary damage and the violations found in the instant case. It must also take into account the fact that the applicant has obtained reparation from the national courts for any damage that he might have sustained by reason of his detention pending trial.

The Court nevertheless considers that having regard to the seriousness and number of violations found in the instant case the applicant should be awarded compensation for non-pecuniary damage. Ruling on an equitable basis, as provided for in Article 41 of the Convention, the Court decides to award ITL 75,000,000.

## **B. Costs and expenses**

208. Lastly, the applicant sought reimbursement of his costs and fees incurred before the Commission and the Court, but did not quantify the amount.

209. The Government left the issue to the Court's discretion.

210. Having regard to the fact that the applicant, who was legally aided before the Commission, has not quantified his claim for costs and expenses or furnished any fee note, the Court dismisses it (see the Calogero Diana judgment cited above, p. 1778, § 47, and the Papageorgiou v. Greece judgment of 22 October 1997, *Reports* 1997-VI, p. 2293, § 60). However, the applicant must have incurred some costs for the hearing before the Court. The Court considers it reasonable to award him ITL 6,000,000 under this head.

## **C. Default interest**

211. According to the information available to the Court, the statutory rate of interest applicable in Italy at the date of adoption of the present judgment is 2.5% per annum.

## **FOR THESE REASONS, THE COURT**

1. *Holds* by nine votes to eight that there has been no violation of Article 3 of the Convention as regards the applicant's allegations of ill-treatment in Pianosa Prison;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention in that no effective official investigation into those allegations was held;
3. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the conditions of transfer from Pianosa Prison;
4. *Holds* unanimously that the applicant may claim to be a "victim" for the purposes of Article 34 of the Convention as regards the length of his pre-trial detention;
5. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention on account of the length of detention pending trial;

6. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention after 12.25 a.m. on 13 November 1994;
7. *Holds* unanimously that there has been a violation of Article 8 of the Convention on account of the censorship of the applicant's correspondence;
8. *Holds* unanimously that it is unnecessary to examine the issue of censorship of the applicant's correspondence with his lawyers under Article 6 § 3 of the Convention;
9. *Holds* unanimously that there has been a violation of Article 2 of Protocol No. 4 on account of the preventive measures imposed on the applicant;
10. *Holds* unanimously that there has been a violation of Article 3 of Protocol No. 1 on account of the applicant's disenfranchisement;
11. *Holds* unanimously
  - (a) that the respondent State is to pay the applicant, within three months, ITL 75,000,000 (seventy-five million Italian lire) in respect of non-pecuniary damage and ITL 6,000,000 (six million Italian lire) for costs incurred at the hearing before the Court;
  - (b) that simple interest at an annual rate of 2.5% shall be payable from the expiry of the above-mentioned three months until settlement;
12. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 6 April 2000.

Luzius WILDHABER  
President

Paul MAHONEY  
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Mr Pastor Ridruejo, Mr Bonello, Mr Makarczyk, Mrs Tulkens, Mrs Strážnická, Mr Butkevych, Mr Casadevall and Mr Zupančič is annexed to this judgment.

L.W.  
P.J.M.

JOINT PARTLY DISSENTING OPINION  
OF JUDGES PASTOR RIDRUEJO, BONELLO,  
MAKARCZYK, TULKENS, STRÁŽNICKÁ, BUTKEVYCH,  
CASADEVALL AND ZUPANČIČ

*(Translation)*

The majority of the Court have concluded that there has been no violation of Article 3 of the Convention as regards the applicant's allegations of ill-treatment in Pianosa Prison. We regret that we are unable to share that opinion.

1. The majority of the Court considered that the applicant has not proved “beyond all reasonable doubt” that he was subjected to ill-treatment in Pianosa as he alleged. While we agree with the majority that the material produced by the applicant constitutes only *prima facie* evidence, we are nonetheless mindful of the difficulties which a prisoner who has suffered ill-treatment on the part of those responsible for guarding him may experience, and the risks he may run, if he denounces such treatment. Indeed, the applicant stated that the Pianosa warders instructed the prisoners not to talk about the treatment they suffered, whether among themselves or with their lawyers, and threatened them with reprisals if they did so (see paragraph 29 *in fine* of the judgment). The applicant stated that on at least one occasion he was subjected to reprisals (see paragraph 29 of the judgment). In a context such as that described by the Livorno judge responsible for the execution of sentences in his report of 5 September 1992 (see paragraph 42 *in fine* of the judgment), it is understandable that prisoners would not dare to ask to be seen by a doctor immediately after being subjected to ill-treatment, especially as the doctor might have links with the prison authorities.

We are accordingly of the view that the standard used for assessing the evidence in this case is inadequate, possibly illogical and even unworkable since, in the absence of an effective investigation, the applicant was prevented from obtaining evidence and the authorities even failed to identify the warders allegedly responsible for the ill-treatment complained of. If States may henceforth count on the Court's refraining in cases such as the instant one from examining the allegations of ill-treatment for want of sufficient evidence, they will have an interest in not investigating such allegations, thus depriving the applicant of proof “beyond reasonable doubt”. Even though we consider that in some cases a procedural approach may prove both useful and necessary, in the type of situation under consideration it could permit a State to limit its responsibility to a finding of a violation of the procedural obligation only, which is obviously less serious than a violation for ill-treatment. In addition, we consider that the matters that led the Court to hold that there had been a procedural violation of

Article 3 (see paragraphs 130-35 of the judgment) are in themselves sufficiently clear and evident to justify finding a violation of the substantive point.

We consider that where some or all of the events in issue can be known only by the authorities, as when the victim is in prison, serious presumptions arise that the injuries and ill-treatment were inflicted during detention. In such cases, it may even be considered that the burden of proof is on the authorities to provide a satisfactory and convincing explanation. In any event, the standard to which the applicant must prove his case is lower if, despite being asked, the authorities have failed to carry out effective investigations and to make the findings available to the Court.

Lastly, it should be borne in mind that the standard of proof “beyond all reasonable doubt” is, in certain legal systems, used in criminal cases. However, this Court is not called upon to judge an individual's guilt or innocence or to punish those responsible for a violation; its task is to protect victims and provide redress for damage caused by the acts of the State responsible. The test, method and standard of proof in respect of responsibility under the Convention are different from those applicable in the various national systems as regards responsibility of individuals for criminal offences (see the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, Opinion of the Commission, p. 37, § 110).

2. Furthermore, not all of the types of treatment complained of by the applicant before the Court would have left physical or mental scars detectable on medical examination. There would not necessarily have been any signs left by insults, threats or acts of humiliation, by being kept handcuffed during medical examinations, or being required to run along a slippery corridor leading to the exercise yard while warders hurled insults. Such treatment is nonetheless liable to damage an individual's mental integrity and, accordingly, may come within the scope of Article 3 of the Convention.

The applicant's assertions concerning the psychological ill-treatment which he allegedly suffered are corroborated by other evidence as to the general situation obtaining in Pianosa Prison. Thus, the report of the Livorno judge responsible for the execution of sentences (see paragraph 42 of the judgment), drawn up when the applicant was in Pianosa, denounced the practice of “running to the exercise yard” and depicted a climate of violence. The ensuing investigations led to the prosecution of two warders, though there was insufficient evidence on file to secure a conviction (see paragraph 49 of the judgment). Furthermore, in his note of 12 October 1992, the Director-General of the Prison Administration Department (see paragraph 46 of the judgment) did not deny that prisoners had been victims of violent episodes at Pianosa Prison, but attributed the situation to “logistical” problems resulting from the simultaneous and unscheduled transfer of a large number of prisoners and the consequent need for

restructuring. In addition, in his note of 12 December 1996 (see paragraph 50 of the judgment) the President of the court responsible for the execution of sentences explained that the “abuse and irregularities” witnessed at Pianosa resulted from the fact that warders had been recruited from other prisons and given “*carte blanche*”.

3. We also attach particular importance to the fact that, before the Commission, the Government acknowledged that the applicant had been ill-treated and contested none of his allegations concerning the prison warders' conduct. Furthermore, in their observations before the Commission, the Government themselves described that conduct as “appalling”. Indeed, it was largely on the basis of the Government's admission of the facts that the Commission concluded in its report that there had been a violation of Article 3 (see paragraph 120 of the Commission's report). Nor did the Government deny before the Court that the applicant had been subjected to the alleged treatment. They merely contended that the treatment had not attained the level of severity required to constitute a violation of Article 3.

In the light of the foregoing, we consider that there were sufficiently strong, precise and concordant inferences before the Court for it to find that the applicant was subjected to the ill-treatment of which he complained.

We are also satisfied that that treatment, owing to its repugnant nature and duration, was such as to cause the applicant fear, anxiety and feelings of inferiority capable of humiliating and debasing him and that such emotions were not the inevitable consequence of imprisonment.

Consequently, we consider that the treatment complained of caused the applicant humiliation and debasement that attained the level of severity required to come within the concept of “inhuman and degrading treatment” within the meaning of Article 3 and that the respondent State's responsibility is engaged.