



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

FIRST SECTION

CASE OF CIRINO AND RENNE v. ITALY

(Applications nos. 2539/13 and 4705/13)

JUDGMENT

STRASBOURG

26 October 2017

FINAL

26/01/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cirino and Renne v. Italy,

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

Linos-Alexandre Sicilianos, *President*,

Kristina Pardalos,

Guido Raimondi,

Krzysztof Wojtyczek,

Ksenija Turković,

Armen Harutyunyan,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 3 October 2017,

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

PROCEDURE

1. The case originated in two applications (nos. 2539/13 and 4705/13) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Italian nationals, Mr Andrea Cirino (“the first applicant”) and Mr Claudio Renne (“the second applicant”), on 14 and 21 December 2012 respectively. The second applicant died on 10 January 2017. On 13 June 2017 the second applicant’s daughter, Ms Gretel Renne, expressed the wish to pursue the proceedings before the Court.

2. The first applicant was represented by Mr A. Ginesi and Mrs S. Filippi, lawyers practising in Turin and Rome respectively. The second applicant was represented by Mr M. Caliendo and Mr A. Marchesi, lawyers practising in Asti and Rome respectively. The second applicant’s daughter was represented by Mr M. Caliendo. The Italian Government (“the Government”) were represented by their Agent, Mrs E. Spatafora.

3. Joint written observations were received from the Nonviolent Radical Party, Transnational and Transparty, the association “*Non c’è pace senza giustizia*” and the Italian Radicals (former Italian Radical Party), whom the Section President had authorised to intervene in the written proceedings (under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

4. Relying on Article 3 of the Convention, the applicants complained of having suffered violence and ill-treatment which they considered tantamount to torture during their detention. They further submitted that those responsible for the impugned conduct had not been appropriately punished because in the course of the criminal proceedings the offences as charged had become statute-barred. They added, in particular, that by

refraining from classifying acts of torture as a criminal offence and laying down adequate penalties for the latter, the State had failed to adopt the requisite measures to prevent and punish the violence and other types of ill-treatment of which they were complaining.

5. On 3 September 2015 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1978 and lives in Turin. The second applicant was born in 1975 and was detained in Turin up to the time of his death on 10 January 2017.

A. The events of December 2004

7. In 2004 the applicants were detained in the Asti Correctional Facility.

8. On 10 December 2004 the second applicant intervened in a fight that had broken out between the first applicant and a prison officer.

9. The manner in which the impugned events occurred, as submitted by the applicants and as it emerges from their witness statements during the domestic proceedings, may be summarised as follows.

1. The first applicant's account

10. On 10 December 2004, following an altercation with the prison officer, the first applicant was summoned to a meeting with the correctional unit commander (*comandante di reparto della polizia penitenziaria*). Before he reached the commander's office, he was stopped by a group of prison officers, who took turns beating him. Following the meeting, he was stripped of his clothes and led to a cell in the solitary confinement wing.

11. The only item of furniture in the cell was a bed with no mattress, bed linen or covers. As to sanitary facilities, the cell had a squat toilet without running water and was not equipped with a sink. The cell window had no window panes and the only source of heating was a small, malfunctioning radiator, which provided little protection against the December weather. For a number of days, although it is unclear for how many exactly, he was left naked.

12. During the first week of his detention in solitary confinement no food was provided and he was given only scant amounts of water. He was subsequently given rationed quantities of food.

13. He was beaten on a daily basis, several times per day. He was repeatedly punched, kicked and hit in the head by prison officers, who assaulted him in groups of varying sizes.

14. He was also subjected to sleep deprivation, as the beatings often took place at night and the prison officers verbally abused him in order to keep him awake.

15. During the detention in solitary confinement the applicant did not receive visits from his lawyer or his family.

2. The second applicant's account

16. On 10 December 2004, following the same altercation with the prison officer, the second applicant was stripped of his clothes and led to a cell in the solitary confinement wing of the correctional facility. The bed in the cell had no mattress, sheets or covers, and the cell had no sink. Initially there were no panes in the windows, which were covered with some plastic sheeting after an unspecified number of days. For a number of days, although it is unclear for how many exactly, he was left naked. He was subsequently given some light clothing.

17. The applicant's food was rationed, and at certain times he was given only bread and water. On some days he received no food at all.

18. The applicant was beaten by prison officers, often more than once per day. He was subjected to various forms of physical violence, including being repeatedly punched, kicked and slapped, at one point with his head being pinned to the ground by one of the prison officers' boots. The beatings occurred both during the day and at night. The applicant was beaten by four or five officers at a time. One prison officer ripped out a chunk of his hair.

19. On 16 December 2004 he was admitted to the hospital.

20. During the period he spent in solitary confinement he was only allowed outside the cell twice, once to shower and once for some outdoor time.

B. Criminal proceedings against the prison officers

21. A criminal investigation into the impugned treatment was launched in 2005. It was initiated when it emerged, in the context of covert surveillance in an operation to investigate drug smuggling in the Asti correctional facility, that a number of the prison officers had discussed the ill-treatment inflicted on the applicants.

22. On 7 July 2011 five prison officers, C.B., D.B., M.S., A.D., and G.S., were committed for trial. They were charged with ill-treatment of the applicants under Article 572 of the Italian Criminal Code ("the Criminal Code"), in conjunction with Article 61 § 9 of the Criminal Code, a provision

which considers the commission of an offence by a civil servant abusing his or her position to be an aggravating circumstance.

23. On the same date the applicants joined the proceedings as civil parties.

1. Proceedings before the Asti District Court

24. The Asti District Court's judgment was delivered on 30 January 2012. Its findings may be summarised as follows.

25. As to the establishment of the facts concerning the ill-treatment, the court found that the evidence gathered during the investigation and produced at the trial showed that the events had occurred in the manner described by the victims in their submissions during the trial. The Court relied on statements to the effect that the applicants had been subjected to physical and verbal abuse, coupled with the deprivation of food, water, sleep, and clothing, and had been detained in cells without adequate access to sanitation, heating, and bedding.

26. The court further found it to be established beyond reasonable doubt that the applicants had been subjected not merely to isolated acts of harassment and abuse, but to repeated ill-treatment which had been put into practice in a systematic manner.

27. More specifically, the court found it established beyond reasonable doubt that the first and second applicants had been subjected to repeated physical violence from 10 to 29 December 2004 and from 10 to 16 December 2004 respectively. The court found that the beatings occurred regularly at all times of the day, and particularly at night.

28. The court noted that the second applicant had been admitted to the emergency room of the Asti Civil Hospital on 16 December 2004 with traumatic injuries. With regard to the first applicant, the court acknowledged his hospitalisation following the events without citing a date or specific medical documentation to this effect.

29. Moreover, the court found it to be established beyond reasonable doubt that in 2004 and 2005 in the Asti Correctional Facility there had existed what it defined as a "generalised practice of ill-treatment" that had been systematically inflicted on prisoners considered to be problematic. Measures which the court defines as exceeding the bounds of permitted disciplinary or security measures were routinely taken to punish and intimidate problematic detainees and to deter other disorderly behaviour. As part of this practice, a detainee would generally be taken to a cell in the solitary confinement unit where he would be subjected to repeated harassment and abuse by prison officers. The abuse would primarily take the form of physical violence, as detainees would be beaten by groups of prison officers, often during the night. In addition, detainees would be routinely subjected to sleep, food and water deprivation, and would also be denied access to sanitary facilities.

30. The court further found ample evidence that the prison officers operated in a climate of impunity. This was due, in the court's view, to the acquiescence of high-level prison administrators and the complicity that existed among prison officers.

31. It emerges that the court ordered an inspection of the correctional facility, including the solitary confinement wing, during the course of the trial. The court found that several cells in the solitary confinement wing of the Asti Correctional Facility were unfit for holding detainees. Some did not have bed linen, mattresses, sanitary facilities or heating. Although the windows in some cells had no panes and others had windows covered by metal plates with small perforations, the cells were nonetheless used during the winter months. Some cells were equipped with a bed and a squat toilet but no other furniture or sanitary facilities.

32. Following the establishment of the facts, the court went on to assess responsibility for the established conduct. In this regard, G.S. was acquitted as to his involvement in the ill-treatment, and A.D. and D.B. were acquitted of the charge of ill-treatment under Article 572 of the Criminal Code. The court nonetheless held that the conduct of A.D. and D.B. amounted to infliction of bodily harm contrary to Article 582 of the Criminal Code. However, it ordered that the proceedings against them be discontinued due to the expiry of the applicable time-limit as laid down in the statute of limitations.

33. With respect to C.B. and M.S., the court held that there existed sufficient evidence to conclude that they had been responsible for most, if not all, of the acts of physical, psychological, and "material" abuse at issue. The court then considered that the acts at issue could be classified as torture pursuant to the definition provided by the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It went on to observe that Italy had failed to incorporate the offence of torture into national legislation, in breach of its international obligations. It was therefore obliged to conclude that, under Italian law, there existed no legal provision that would allow it to classify the impugned conduct as acts of torture.

34. Having taken note of the above-mentioned considerations, the court proceeded to assess which existing offence was more suitable in respect of the legal classification of C.B. and M.S.'s conduct. When conducting its assessment, the court relied on the conclusion that the primary purpose of the impugned treatment was to punish the applicants, to "maintain order" in the correctional facility, and to convey a clear message to the other detainees.

35. The court considered that the conduct of the two prison officers thus fell most appropriately within the scope of Article 608 of the Criminal Code, which deals with abuse of authority against arrested or detained persons. However, the statutory limitation period for the offence in question

had elapsed, as the court had found no procedural action which would have the effect of interrupting it.

The court stated that C.B. and M.S. were also responsible for the infliction of bodily harm, but that, as the statute of limitations was applicable to that offence as well, such a finding did not alter the substance of the decision. The court therefore ordered that the proceedings against C.B. and M.S. be discontinued because the applicable time-limit as laid down in the statute of limitations had expired.

2. Proceedings before the Court of Cassation

36. On 22 February 2012 the public prosecutor lodged an appeal with the Court of Cassation, arguing that the Asti District Court had erred in the legal classification of the offence with respect to C.B. and M.S. The prosecutor contended that the most appropriate offence for the purposes of classification of the conduct in question would have been aggravated ill-treatment under Article 572 of the Italian Criminal Code – as initially identified in the bill of indictment – in conjunction with Article 608 of the Criminal Code.

37. By a judgment issued on 21 May 2012, and filed with the court Registry on 27 July 2012, the Court of Cassation declared the public prosecutor's application inadmissible. The court expressed its agreement with the prosecutor's contention as a matter of principle but, as the statute of limitations had been likewise applicable to the offence of aggravated ill-treatment, a decision in favour of the prosecution would have been devoid of any practical effect.

3. Subsequent proceedings

38. On 26 July 2012 C.B. lodged an objection to execution (*incidente d'esecuzione*) with the Asti District Court, arguing that its decision of 30 January 2012 (see paragraph 24 above) could not be considered as final and binding insofar as he was concerned, as the decision had not been properly served on him.

39. In a decision issued on 31 October the Asti District Court dismissed C.B.'s objection on the grounds that C.B. must have had cognisance of the decision at the moment the public prosecutor lodged an appeal with the Court of Cassation (see paragraph 36 above) or, at the latest, when his representative filed a defence brief at a hearing before the Court of Cassation in May 2012.

40. On 26 July 2012 C.B. appealed against the decision before the Court of Cassation.

41. In a judgment delivered on 11 July 2013, and filed with the Registry on 1 August 2013, the Court of Cassation granted the appeal. It found that the failure to serve the decision on C.B. could not be remedied by C.B.'s

potential knowledge of the decision at a later stage, as argued by the District Court. The Asti District Court judgment of 30 January 2012 could not, accordingly, be considered final and binding insofar as C.B. was concerned.

42. Based on the latter decision, on 10 October 2013 C.B. lodged an appeal against the Asti District Court judgment of 30 January 2012 with the Turin Court of Appeal, seeking an acquittal.

43. No further information has been provided by the parties as to the outcome of the proceedings.

C. Disciplinary proceedings against the prison officers

44. In their observations of 31 March 2016, the Government indicated that four prison officers had undergone disciplinary proceedings in connection with the impugned events and by different decisions issued on 29 January 2013 the following disciplinary sanctions had been imposed:

– C.B. was dismissed from his functions (*destituito dal servizio*). He was, however, reinstated on 26 November 2013, following the Court of Cassation judgment of 11 July 2013 which suspended the binding nature of the Asti District Court’s judgment (see paragraph 41 above);

– M.S. was dismissed from his functions;

– A.D. was suspended from duty for a period of 4 months;

– D.B. was suspended from duty for a period of 6 months.

45. According to a document issued by the Staff Director of the Prison Administration Department of the Ministry of Justice on 12 October 2015, and furnished by the Government, the four prison officers were not suspended from duty (*sospensione precauzionale dal servizio*) during the course of the investigation or the trial.

D. Medical documentation

46. At the Court’s request, the Government submitted extracts from the prison medical record of the second applicant between 26 November 2004 and 5 March 2005 and typed copies of his hospitalisation record of 16 December 2004.

47. The prison medical record indicates that on 13 December 2004 the second applicant was examined visually (whilst still “behind bars”). He complained of pain in the thoracic area and right ear. The reporting physician noted the presence of ecchymoses and haematomas around the patient’s ribcage. He recommended a more thorough medical examination and/or transfer to the infirmary.

48. The record further indicates that another visual examination (also “behind bars”) took place on 15 December 2004. The information in this entry is the same as in the previous entry. Transfer to the infirmary for a medical examination was recommended.

49. On 15 December 2004 the record shows that the applicant underwent a medical examination in the afternoon. The physician reported ecchymoses on the patient's ribcage and in the retroauricular region. Palpation of the patient revealed diffuse pain. The reporting physician recommended that X-rays be performed for a suspected fracture. Painkillers were administered.

50. The entry of 16 December 2004 reports the applicant's transfer to the emergency room of the Asti Civil Hospital as a consequence of traumatic injury.

51. According to the medical record of the Asti Civil Hospital, an X-ray revealed a fractured rib and the medical examination disclosed diffuse bruising in the thoracic and abdominal area and pain on palpation. The record states that the applicant told the doctor his injuries occurred as a consequence of an accidental fall.

52. The prison medical record entry on the applicant's discharge from the hospital on 16 December 2004 shows that he was prescribed painkillers.

53. As to the first applicant, no copy of the prison medical register had been submitted by the Government, notwithstanding the Court's request for such information.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant offences as provided by the Italian Criminal Code

54. Article 572 of the Italian Criminal Code (hereinafter "the Criminal Code") provides that anyone found guilty of ill-treating a member of his or her family, a child under fourteen years of age, or a person under his or her authority or who has been placed in his or her care or custody may be sentenced to a term of imprisonment of up to five years.

55. Article 582 of the Criminal Code provides that anyone who causes bodily harm to another person, resulting in that person's mental or bodily injury, may be sentenced to a term of imprisonment ranging from three months to three years.

56. Article 608 of the Criminal Code provides that a public official who subjects a detainee or a person in his or her custody to punitive measures not provided for by law may be sentenced to a term of imprisonment of up to thirty months.

57. Article 61 of the Criminal Code contains general provisions related to aggravating circumstances. Article 61 § 9 provides that the commission of an offence as the result of abuse of authority or by a public official in the performance of his or her duties constitutes an aggravating circumstance.

B. Time-barring of criminal offences

58. The relevant domestic law provisions are set out in *Cestaro v. Italy*, no. 6884/11, §§ 96-101, 7 April 2015.

C. Introduction of the offence of torture into the Italian criminal law framework

59. On 5 March 2014 the Italian Senate approved a bill introducing the offence of torture into the Italian legal system. The bill was subsequently sent to the Chamber of Deputies for approval. The Chamber of Deputies amended the bill and the text was returned to the Senate for reconsideration on 13 April 2015. On 17 May 2017 the Senate approved the bill, with further amendments, and the text once again returned to the Chamber of Deputies for reconsideration. On 5 July 2017 the Chamber of Deputies approved and adopted the final version of the bill. On 18 July 2017 the bill entered into force as Law No. 110 of 14 July 2017.

THE LAW

I. JOINDER OF THE CASES

60. The Court considers that the applications should be joined, given their related factual and legal background (Rule 42 § 1 of the Rules of Court).

II. PRELIMINARY ISSUE

61. Following the second applicant's death on 10 January 2017, his daughter, Ms Gretel Renne, informed the Court of her wish to pursue the application in her father's stead (see paragraph 1 above).

62. In cases in which an applicant has died after lodging an application, the Court has on previous occasions taken into account statements made by the applicant's heirs or close family members expressing their wish to pursue the proceedings before the Court. For the Court's assessment of the person's standing to maintain the application on behalf of a deceased, what is important is not whether the rights at issue are transferable to the heirs but whether the heirs could in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014). The Court has accepted that a next of kin or an heir may in principle pursue the

application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). In this connection, the Court reiterates that human rights cases before it generally have a moral dimension and persons close to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

63. In view of the above, and taking into account the circumstances of the present case, the Court accepts that the second applicant's daughter has a legitimate interest in pursuing the application. It will therefore – at her request – continue dealing with the case. For convenience, it will, however, continue to refer to Mr Renne as the second applicant in the present judgment.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN ITS SUBSTANTIVE ASPECT

64. The applicants submitted that during their detention in the Asti Correctional facility in December 2004, they had suffered acts of violence and ill-treatment which they considered as amounting to torture. They relied on Article 3 of the Convention, which provides:

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

A. Admissibility

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

66. The applicants complained that they had been subjected to various forms of ill-treatment during their detention in the Asti correctional facility in December 2004.

67. The first applicant reiterated the assertion that he had been kept in solitary confinement for more than twenty days, had been stripped of his clothes and detained in a cell with no window panes in winter, in Northern

Italy, and that there had been no sink and neither covers nor a mattress on the bed. He further stated that he had been subjected to sleep, food and water deprivation as well as physical violence and verbal abuse.

68. He argued that the intention underlying the treatment was to punish and intimidate him, as the treatment went well beyond security needs. This latter point was reinforced, in the first applicant's view, as the treatment was carried out against a background of systemic ill-treatment existing in the correctional facility, whereby detainees would be subjected to various forms of ill-treatment that prison authorities and staff knew about but about which they remained indifferent.

69. Furthermore, he submitted that even though many years had elapsed since the impugned events, he still suffered from anxiety and depression and had to take medication.

70. The second applicant, drawing on the reconstruction of events set out in the first-instance decision, described the ill-treatment inflicted on him, which consisted of repeated physical violence, including beatings and his hair being ripped out, as well as detention in a solitary confinement cell without clothing for a number of days and with his food being rationed.

71. As to the legal classification of the treatment, both applicants reiterated that they had suffered acts of torture within the meaning of Article 3 of the Convention.

(b) The Government

72. The Government did not submit specific observations on the substantive aspect of the complaint under Article 3.

2. The Court's assessment

(a) General principles

73. The Court refers to the general principles concerning the substantive limb of Article 3 as set out in *Bouyid v. Belgium* [GC], no. 23380/09, § 81-90, ECHR 2015 and, recently, in *Bartesaghi Gallo and Others v. Italy*, nos. 12131/13 and 43390/13, § 111-113, 22 June 2017.

74. The Court reiterates, in particular, that in determining whether a given form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see, amongst many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 90, ECHR 2010). In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture, which in Article 1 defines torture in terms of the intentional infliction of

severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see, amongst many other authorities, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 197, ECHR 2012).

(b) Application of the general principles to the present case

(i) Establishment of the facts

75. The Court observes at the outset that the Asti District Court found that the impugned events occurred in the manner described by the applicants during the course of the domestic proceedings (see paragraphs 25-31 above). The Court sees no cogent reasons to call such findings into question.

76. The Court further observes that the Government did not contest the applicants' factual submissions or deny that the events as described by the applicants had occurred.

77. In view of the foregoing, and in the light of all the documentary material in its possession, the Court finds it established that the applicants were subjected to the treatment complained of.

(ii) Classification of the treatment inflicted on the applicants

78. It remains to be determined whether the impugned treatment can be said to have attained the minimum level of severity to bring it within the scope of Article 3 and, if so, how it is to be classified.

79. The Court will begin by assessing the severity of the treatment to which the applicants were subjected. The Court reiterates that, according to the findings of the domestic court, the first applicant was subjected to repeated physical violence for nineteen days and the second applicant for six days (see paragraph 27 above). With specific regard to the second applicant, his medical records reveal that he sustained injuries and complained about being in pain, and he was ultimately admitted to the hospital with a fractured rib and widespread bruising (see paragraphs 28 and 51 above).

80. In addition to the physical suffering the applicants must have endured as a consequence of the physical abuse, the Court considers that the treatment may be regarded as having caused them considerable fear, anguish and mental suffering. As an overarching consideration, the Court is mindful of the fact that the treatment was inflicted in the context of the applicants being in the custody of prison officers, and thus already in a situation of vulnerability (see *Bouyid*, cited above, § 107). The applicants' state of further isolation due to their placement in the solitary confinement wing must have intensified their fear, anxiety, and feelings of helplessness.

81. The Court once again notes that the applicants were subjected to physical abuse at all hours of the day and night for many consecutive days

(see paragraph 27 above). Moreover, the physical abuse was coupled with extremely serious “material” deprivations, which must have inevitably accentuated their suffering. In this latter respect, the applicants were subjected to deprivations and rationing of food and water, and were detained in cells with limited or no access to sanitary facilities, appropriate bedding, or heating. The applicants were further subjected to additional gratuitous acts, such as depriving them of their clothing, which must have entailed elements of humiliation and debasement (see, *mutatis mutandis*, *Hellig v. Germany*, no. 20999/05, §§ 52-57, 7 July 2011).

82. In the light of the foregoing, the Court considers that the treatment sustained by the applicants may be characterised as “inhuman treatment causing very serious and cruel suffering” for the purposes of Article 3 (see *Al Nashiri v. Poland*, no. 28761/11, § 515, 24 July 2014).

83. In the Court’s view, the treatment was deliberate and carried out in a premeditated and organised manner. In this connection, the Court notes that the impugned treatment was not confined to one particular moment, namely immediately following the fight between the applicants and the prison officers. It has been clearly established that the applicants endured repeated and sustained assaults and other forms of abuse and deprivations over a number of days. In this connection, note should also be taken of the conclusions reached by the domestic court, which found that the applicants had been subjected not just to isolated acts of harassment and abuse, but to what it defined as measures which had been put into practice in a systematic manner (see paragraph 26 above).

84. The Court further considers that, for the purposes of its assessment as to the deliberate nature of the treatment, the context in which the treatment was inflicted is worthy of particular scrutiny. The domestic court found evidence of the existence of a broader pattern of abuse in the correctional facility at issue, which it labelled a “generalised practice of ill-treatment” (see paragraph 29 above). It emerges from the domestic court’s findings that “problematic” detainees were routinely exposed to punitive measures that exceeded the bounds of permitted disciplinary or security measures, consisting of placement in solitary confinement cells which in themselves were in a deplorable condition, and where they would be subjected to physical violence and material deprivations. The domestic court highlighted the existence of such a situation in the Asti prison beyond the events concerning the applicants, and provided an account of the practices described above in the text of the judgment (see paragraphs 29 - 31 above).

85. The foregoing considerations also indicate the existence of a purposive element underlying the impugned treatment, namely to punish the detainees, to enforce discipline and to deter future disorderly behaviour in the correctional facility (see paragraphs 29 and 34 above).

(iii) Conclusion

86. In view of the above, the Court is persuaded that the treatment to which the applicants were subjected attained the level of severity required to bring the impugned conduct within the scope of Article 3, and that it amounted to torture.

87. There has accordingly been a violation of Article 3 of the Convention in its substantive aspect.

**IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
IN ITS PROCEDURAL ASPECT**

88. The applicants complained that they had suffered a further violation of Article 3 in that the penalty imposed on those responsible for the acts of which they were complaining had been inadequate owing, in particular, to the time-barring in the course of the criminal proceedings. They emphasised that by failing to introduce the offence of torture into the Italian legal framework and to provide for an appropriate penalty for that offence, the State had failed to take the necessary steps to prevent the ill-treatment which they had suffered.

89. As regards the alleged shortcomings in the investigation deriving, in particular, from the absence of an offence of torture in the Italian legal system, the applicants also relied on Article 13 of the Convention, alone and in conjunction with Article 3. However, the Court considers that it should examine the issue of the lack of an effective investigation into the alleged ill-treatment solely under the procedural limb of Article 3 of the Convention.

A. Admissibility

90. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

91. The applicants submitted that, following the criminal proceedings, the first-instance court had recognised the seriousness of the ill-treatment to which they had been subjected, but that those responsible for that ill-treatment had not been punished. This occurred because the offences

with which the prison officers had been charged pursuant to the Italian Criminal Code had become time-barred during the criminal proceedings.

92. They submitted that the Italian legal framework had proved to be inadequate for the purposes of punishing acts of torture and providing the necessary deterrent effect to prevent similar violations from occurring in the future. They contended that Italy must establish a legal framework capable of protecting the rights enshrined in Article 3 of the Convention, and criticised the Italian State for having failed to classify as offences all forms of ill-treatment which constitute torture or inhuman or degrading treatment. This was, moreover, contrary to Italy's international commitments, in particular those arising from the ratification of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

93. They thus concluded that the State had not taken the necessary steps to prevent the acts of torture which they had suffered and to criminalise them in an appropriate manner.

94. The second applicant observed, in particular, that the impossibility of punishing those responsible for acts of torture as a result of the shortcomings in the Italian system runs the risk of supporting a practices that are widespread and nurturing a system that tolerates impunity.

95. As regards disciplinary proceedings against the prison officers, the applicants acknowledged that disciplinary measures had been taken against them. However, they observed that the evidentiary material submitted by the Government reveals that the officers were not suspended from duty during the investigation and the criminal proceedings.

96. In the light of the foregoing, the applicants alleged that the Italian State had failed to comply with the requirements of Article 3 of the Convention, namely to conduct an effective investigation into the acts of torture to which they had been subjected and to mete out adequate punishment to the perpetrators.

(b) The Government

97. The Government observed that the impugned conduct had been closely examined by the Asti District Court, which had recognised the responsibility of the prison officers.

98. The Government argued that both the judicial and disciplinary proceedings against the officers, which had been aimed at uncovering the full extent of the treatment inflicted on the applicants during their detention, had demonstrated the Italian authorities' willingness to identify and punish the officers responsible for the impugned acts notwithstanding the time-barring of the criminal proceedings.

99. They contested the applicants' contentions regarding disciplinary sanctions. In this respect, the Government stated that the imposition of disciplinary sanctions occurs via proceedings which are subject to

procedural guarantees that are comparable to those applied in criminal proceedings. The Government further observed that in the event of criminal proceedings being conducted in parallel with disciplinary proceedings, any final assessment as to the application of disciplinary sanctions and the choice of the sanction concerned must be postponed until the conclusion of the criminal proceedings. The Government pointed out that, in order to answer for the acts perpetrated against the applicants, the prison officers had been held to account before domestic criminal courts and administrative bodies that are known for their seriousness and impartiality, and their responsibility for the impugned events had been established in both sets of proceedings.

(c) The third-party interveners: the Nonviolent Radical Party, Transnational and Transparty, the association “Non c’è pace senza giustizia”, and the Italian Radicals (the former “Italian Radical Party”)

100. The third parties took the view that Italy had failed to comply with the international obligations arising from the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They invited the Court to take account of the fact that Italy had ratified the latter instrument in 1989, thereby undertaking to introduce the offence of torture into the Italian legal system. Notwithstanding this undertaking, twenty-five years following the ratification, no legislation criminalising torture had been adopted.

101. They also provided a comparative overview of the criminalisation of torture in a number of European systems.

102. The third parties submitted that, in the absence of a specific offence under Italian domestic law, the offences included in the Criminal Code did not enable acts of torture to be adequately criminalised, thereby precluding the imposition of appropriate penalties proportionate to the seriousness of the acts in question.

103. The third parties further underlined that the *Cestaro* judgment (cited above) had urged Italy to adopt general measures to address a structural deficiency. They consequently stressed the need to fill a legislative void insofar as the criminalisation of torture and inhuman or degrading treatment is concerned.

104. Lastly, as regards the disciplinary proceedings, the third parties reiterated, with reference, to the Court’s judgments *Gäfgen v. Germany*, cited above, and *Saba v. Italy*, no. 36629/10, 1 July 2014, that where State agents have been charged with offences involving ill-treatment, they should be suspended from duty while being investigated or tried.

2. *The Court's assessment*

(a) **General principles**

105. Where an individual makes an arguable claim that he has been ill-treated by the State authorities, in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. The general principles which apply in determining whether such an investigation was effective for the purposes of Article 3 were restated by the Court in *Cestaro* (cited above, §§ 205-212).

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

106. The Court notes at the outset that five prison officers were prosecuted and tried in connection with the impugned events, although ultimately no one was convicted on the grounds of the ill-treatment inflicted on the applicants (see paragraphs 24 to 35 above). One officer was acquitted of all charges and the offences for which the remaining officers were prosecuted were all declared statute-barred in the course of the first-instance proceedings (see paragraph 35 above).

107. In the Court's view, and having considered all the material available to it, the latter outcome cannot be attributable to delays or negligence on the part of the domestic judicial authorities. While the Court expresses some concern over the duration of the criminal investigation, it notes that the applicants neither complained about nor provided any evidence indicating unjustified delays on the part of the investigation authorities. In any event, due to its findings set out in paragraph 111 below, the Court does not find it necessary to enquire whether the investigation can be considered as having been conducted with reasonable expedition.

108. As to the conduct of the domestic proceedings, the Court takes the view that the domestic court cannot be criticised for having wrongly assessed the seriousness of the charges against the accused (see, in contrast, *Saba*, cited above, § 80) or for having used the legislative and punitive provisions of domestic law to prevent the conviction of the prosecuted State agents (see, in contrast, *Zeynep Özcan v. Turkey*, no. 45906/99, § 43, 20 February 2007).

109. The Court considers, rather, that the domestic court took a very firm stance and in no way sought to justify or downplay the impugned conduct. The domestic court made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants. It cannot therefore be denied that the court at issue submitted the case before it to a "scrupulous examination", as required under Article 3 of the Convention (see *Cestaro*, cited above, § 206).

110. However, the domestic court concluded that, under Italian law, at the time of the decision there existed no legal provision that would allow it

to classify the impugned treatment as torture (see paragraph 33 above). The court thus had to turn to other, existing offences, namely the provisions of the Criminal Code relating to abuse of authority against detained persons and the infliction of bodily harm (see paragraph 35 above). The latter offences appear, in the Court's view, incapable of addressing the full range of issues ensuing from the acts of torture which the applicants suffered (see *Myummyun v. Bulgaria*, no. 67258/13, § 77, 3 November 2015). Moreover, they were also subject to statutory limitation periods, a circumstance which in itself sits uneasily with the Court's case-law concerning torture or ill-treatment inflicted by state agents (see *Cestaro*, cited above, § 208 and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004).

111. Based on the foregoing considerations, the Court considers that the core of the problem resides not in the conduct of the domestic judicial authorities but rather in a systemic deficiency which was characteristic of the Italian criminal law framework at the material time, as had already been identified in *Cestaro* (cited above, § 225). In the present case, this lacuna in the legal system, and in particular the absence of provisions penalising the practices referred to in Article 3 and, where appropriate, providing for the imposition of adequate penalties, rendered the domestic courts ill-equipped to perform an essential function, namely that of ensuring that treatment contrary to Article 3 perpetrated by State agents does not go unpunished. This, in turn, may be viewed as having had the broader effect of weakening the deterrent power of the judicial system and the vital role it ought to be able to play in upholding the prohibition of torture.

112. The Court is therefore led to the conclusion that the criminal legislation which was applied in the instant case proved, as it did in *Cestaro* (cited above, § 225), both inadequate in terms of its capacity to punish the acts of torture in issue and devoid of any deterrent effect capable of preventing similar future violations of Article 3.

113. Turning to the issue of disciplinary measures, the Court acknowledges the Government's observations to the effect that disciplinary proceedings were conducted against four prison officers following the conclusion of the criminal proceedings. In this respect, the Court does not question the serious scrutiny to which the prison officers' actions were subjected to by the disciplinary bodies and notes that disciplinary measures were imposed as a consequence (see paragraph 44 above).

114. Whilst acknowledging the importance of disciplinary measures – as it has often recognised in its case-law (see *Gäfgen*, cited above, § 121, and *Saba*, cited above, § 76) – the Court nevertheless considers that the imposition of disciplinary sanctions alone cannot be considered an adequate response by the authorities in cases involving acts in breach of one of the core rights of the Convention as serious as the present ones. In this respect, it reiterates that only a criminal prosecution is capable of providing the

preventive effect and dissuasive force required to fulfil the requirements of Article 3.

115. Moreover, it is apparent from the material in the case file that the officers were not suspended from duty during the investigation or trial (see paragraph 45 above). The Court has frequently held that, in cases where State agents have been charged with offences involving ill-treatment, they should be suspended from duty while being investigated or tried (see *Cestaro*, cited above, § 210). The Court stresses the particular significance of such measures in a correctional context. In this connection, it emphasises the importance of safeguards ensuring that persons who may have been the victims of ill-treatment by State officials in custody – who are already in a state of particular vulnerability – are not discouraged, whether directly or indirectly, from lodging complaints or reporting ill-treatment.

116. Having regard to the foregoing findings, the Court concludes that there has been a violation of Article 3 in its procedural limb.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. In respect of non-pecuniary damage each applicant claimed 100,000 euros (EUR) or any other amount the Court should find appropriate.

119. The Government contested that amount.

120. Having regard to the seriousness of the violations of the Convention of which the applicants were victims, and ruling on an equitable basis, the Court finds it appropriate to award each applicant EUR 80,000 in respect of non-pecuniary damage.

B. Costs and expenses

121. The applicants also claimed EUR 16,000 each for the costs and expenses incurred before the Court.

122. The Government contested that amount.

123. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession, the Court considers it reasonable to award the sum of EUR 8,000 each.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect in that the applicants have been subjected to torture;
4. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;
5. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President