



Prison officers responsible for torture of detainees unpunished due to lack of adequate legislation

The case of [Cirino and Renne v. Italy](#) (application nos. 2539/13 and 4705/13) concerned the complaint by two detainees that in December 2004 they were ill-treated by prison officers of the Asti Correctional Facility, and that those responsible were not appropriately punished.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, both as regards the treatment sustained by the applicants (substantive aspect) and as regards the response by the domestic authorities (procedural aspect).

The Court held that the ill-treatment inflicted on the applicants – which had been deliberate and carried out in a premeditated and organised manner while they were in the custody of prison officers – had amounted to torture.

In the Court's view, the domestic courts had made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants. However, those courts had concluded that, under Italian law in force at the time, there was no legal provision allowing them to classify the treatment in question as torture. They had had to turn to other provisions of the Criminal Code, which were subject to statutory limitation periods. As a result of this lacuna in the legal system, the domestic courts had been ill-equipped to ensure that treatment contrary to Article 3 perpetrated by State officials did not go unpunished.

Principal facts

The applicants in this case were Andrea Cirino and Claudio Renne, Italian nationals born in 1978 and 1975 respectively. Mr Cirino lives in Turin; Mr Renne was detained in Turin until he died in January 2017. Following his death, the proceedings have been continued by his daughter. At the time of the events at issue, both applicants were detained in the Asti Correctional Facility.

Following an altercation between Mr Cirino and a prison officer on 10 December 2004, in which Mr Renne intervened, the applicants were separately placed in solitary confinement. According to their submissions, which were later confirmed by the findings of the domestic courts, they were stripped of their clothes and remained naked for several days in cells in which the bed had no mattress, sheets or covers, where there was no sink and the window had no window panes. They were also subjected to the rationing of food and water. Both applicants were beaten by groups of prison officers on a daily basis, during the day and at night. On 16 December 2004 Mr Renne was admitted to hospital, where an examination revealed a fractured rib and widespread bruising.

In 2011 five officers were charged with ill-treatment with the aggravating circumstance of having abused their position as civil servants. The applicants joined the proceedings as civil parties.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In its judgment of January 2012, the Asti District Court found that the evidence showed that the events had occurred in the manner described by the applicants. The court considered it established that Mr Cirino had been subjected to repeated physical violence from 10 to 29 December 2004 and Mr Renne from 10 to 16 December 2004. It also found that at the time there had been a “generalised practice of ill-treatment” in the Asti Correctional Facility, inflicted on prisoners considered problematic. This had happened, according to the court, in a climate of impunity, due to the acquiescence of high-level prison administrators.

The District Court held that the conduct of four of the prison officers amounted to infliction of bodily harm. However, since the statutory limitation period for this offence had expired, it ordered that the proceedings against them be discontinued. With respect to two of these officers, who had been responsible for most or all of the acts of abuse at issue, the court considered that those acts could be classified as torture pursuant to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, since Italy had failed to incorporate the offence of torture into national legislation, the court had to conclude that there was no provision under Italian law that would allow the conduct in question to be classified as torture. It thus had to turn to other existing offences, namely the provisions of the Criminal Code relating to abuse of authority against detained persons. However, the statutory limitation period for that offence had also elapsed.

The four prison officers underwent disciplinary proceedings in relation to the conduct in question. One of them was dismissed from his functions; the other three officers were either dismissed and later reinstated or suspended for a temporary period.

Complaints, procedure and composition of the Court

The applicants complained that the acts of violence and ill-treatment which they had suffered in the correctional facility amounted to torture, in violation of Article 3 (prohibition of torture and of inhuman or degrading treatment). They also relied on Article 3 complaining that the penalty for those responsible for the acts of ill-treatment had been inadequate, emphasising that by failing to incorporate the offence of torture into national law, the State had failed to take the necessary steps to prevent the ill-treatment which they had suffered.

The applications were lodged with the European Court of Human Rights on 14 and 21 December 2012 respectively.

The following organisations were authorised to intervene as third parties and submitted joint written observations: the Nonviolent Radical Party, Transnational and Transparty, the association “*Non c’è pace senza giustizia*” and the Italian Radicals (former Italian Radical Party).

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy),
Krzysztof **Wojtyczek** (Poland),
Ksenija **Turković** (Croatia),
Armen **Harutyunyan** (Armenia),
Jovan **Ilievski** (“The former Yugoslav Republic of Macedonia”),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 3 (treatment)

As to the facts, the Court observed that the domestic court had found that the events in question had occurred in the manner described by the applicants. The Court saw no valid reason to call those findings in question.

As to the classification of the treatment sustained by the applicants, the Court considered that it could be characterised as inhuman treatment causing very serious and cruel suffering. The Court noted in particular: that the applicants had been subjected to repeated physical violence at all hours of the day and night for many consecutive days; that such treatment, inflicted on the applicants while in the custody of prison officers – thus in a situation of vulnerability – had to have caused them considerable fear, anguish and mental suffering in addition to their physical suffering; and that their placement in solitary confinement had to have intensified their feelings of helplessness. Moreover, the physical abuse had been coupled with extremely serious material deprivations – rationing of food and water, lack of appropriate sanitary facilities, bedding or heating – and the applicants had been additionally humiliated by being forced to remain naked for several days.

That treatment had been deliberate and carried out in a premeditated and organised manner. Furthermore, the domestic courts had established that the treatment had been inflicted in the context of a broader pattern of abuse of “problematic” detainees that could be found in the Asti Correctional Facility at the time. There had thus been a purposive element underlying the ill-treatment, namely to punish the detainees concerned.

Having regard to those considerations, the Court concluded that the treatment inflicted on the applicants had amounted to torture. There had accordingly been a violation of Article 3 in its substantive aspect.

Article 3 (prosecution and punishment of those responsible)

In the Court’s view, the fact that the offences for which four of the prison officers of the Asti Correctional Facility had been prosecuted had all been declared time-barred could not be attributed to delays or negligence on the part of the domestic judicial authorities. Indeed, the domestic court had taken a very firm stance and had not sought to downplay the conduct in question; it had made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants.

However, since the domestic court had concluded that, under Italian law in force at the time, there was no legal provision allowing them to classify the treatment in question as torture, it had had to turn to other provisions of the Criminal Code, in particular relating to abuse of authority against detained persons. In the Court’s view, those provisions were not capable of appropriately addressing the acts of torture suffered by the applicants. The fact itself that the provisions were subject to statutory limitation periods was at odds with the Court’s case-law concerning torture inflicted by State officials.

Accordingly, the core of the problem lay in a systemic deficiency of the Italian criminal law framework at the time, as the Court had already identified in a previous case.² As a result of this lacuna in the legal system, the domestic courts had been ill-equipped to ensure that treatment contrary to Article 3 perpetrated by State officials did not go unpunished. The criminal legislation which they had applied had been both inadequate for punishing the acts of torture inflicted on the applicants and devoid of any deterrent effect.

² *Cestaro v. Italy* (6884/11), Chamber judgment of 7 April 2015

Finally, the Court took note of the disciplinary proceedings against the four prison officers. It considered, however, that the imposition of disciplinary sanctions alone was not an adequate response by the authorities to acts in breach of one of the core rights of the Convention. Only criminal prosecution was capable of providing the necessary preventive effect. Moreover, the officers had not been suspended from duty during the investigation or trial. Such a measure was of particular importance in a correctional context in order to ensure that persons who might have been the victims of ill-treatment by State officials in custody were not discouraged from lodging complaints or reporting such treatment.

The Court concluded that there had been a violation of Article 3 also in its procedural aspect.

Just satisfaction (Article 41)

The Court held that Italy was to pay Mr Cirino and Mr Renne's daughter each 80,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 in respect of costs and expenses.

The judgment is available only in English.

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