



The Court calls on Italy to resolve the structural problem of overcrowding in prisons, which is incompatible with the Convention

In today's Chamber judgment in the case of [Torreggiani and Others v. Italy](#) (application no. 43517/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

The Court's judgment is a "pilot judgment" concerning the issue of overcrowding in Italian prisons. This structural problem has now been acknowledged at national level. The Court called on the authorities to put in place, within one year, a remedy or combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison.

The Court decided to apply the pilot-judgment procedure in view of the growing number of persons potentially concerned in Italy and of the judgments finding a violation liable to result from the applications in question.

Principal facts

At the time the applications were lodged, the applicants – Mr Torreggiani, Mr Bamba, Mr Biondi, Mr Sela, Mr El Haili, Mr Hajjoubi and Mr Ghisoni – were serving sentences in Busto Arsizio and Piacenza prisons.

Each of the applicants alleged that he had shared a 9 sq. m cell with two other prisoners, giving them 3 sq. m of personal space each. They complained of a lack of hot water and, in some cases, of inadequate lighting in the cells.

On 10 April 2010 Mr Ghisoni and two other inmates in Piacenza prison applied to the judge responsible for the execution of sentences, complaining that their conditions of detention were poor because of overcrowding in the prison, and alleged a breach of the principle of equal treatment between prisoners. In August 2010 the judge upheld their complaints, observing that three prisoners were sharing cells intended for one person. He noted that virtually all the cells in the prison had a surface area of 9 sq. m and that in 2010 the premises, which had been designed to accommodate 178 prisoners and had a maximum capacity of 376, had held as many as 415 prisoners. The judge responsible for the execution of sentences held that the complainants had been subjected to inhuman and degrading treatment as a result of having to share a cramped cell with two other persons, and that they had been discriminated against compared with prisoners being kept in more favourable conditions.

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

The complaint made by the applicant and his fellow inmates was forwarded to the Ministry of Justice and the prison authorities with a request for urgent action. In February 2011 Mr Ghisoni was moved to a two-person cell.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants alleged that their conditions of detention in Busto Arsizio and Piacenza prisons amounted to inhuman and degrading treatment.

The application was lodged with the European Court of Human Rights on 6 August 2009.

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

Danutė **Jočienė** (Lithuania), *President*,
Guido **Raimondi** (Italy),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 3

The Court reiterated that imprisonment did not entail the loss of the rights guaranteed by the Convention.

It observed that the parties' versions differed with regard to the dimensions of the cells in Piacenza prison and the number of occupants. The applicants said that they had shared 9 sq. m cells with two other prisoners, while the Government maintained that the cells in question measured 11 sq. m and were generally occupied by two persons. Since the Government had not provided it with any information in support of their assertions, the Court examined the issue of the applicants' conditions of detention on the basis of the latter's allegations and in the light of all the information at its disposal.

The fact that the cells had a surface area of 9 sq. m was confirmed by the orders issued by the judge responsible for the execution of sentences. In the absence of any documentary evidence to the contrary, the Court had no reason to doubt the allegations made by the applicants serving their sentences in Piacenza prison, according to which they had each shared a cell with two other prisoners, meaning that they had – like the prisoners in Busto Arsizio – 3 sq. m of living space per person.

The Court found that the applicants' living space had not conformed to the standards deemed to be acceptable under its case-law. It pointed out that the standard recommended by the Committee for the Prevention of Torture² in terms of living space in cells was 4 sq. m per person.

The shortage of space to which the applicants had been subjected had been exacerbated by other conditions such as the lack of hot water over long periods, and inadequate

² See the judgment in *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, §§ 144 and 145.

lighting and ventilation in Piacenza prison. All these shortcomings, although not in themselves inhuman and degrading, amounted to additional suffering.

While there was no indication of any intention to humiliate or debase the applicants, the Court considered that their conditions of detention had subjected them – in view of the length of their imprisonment – to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. There had therefore been a violation of Article 3 of the Convention.

Article 46

The Court reiterated that Article 46³, as interpreted in the light of Article 1 (obligation to respect human rights), imposed on the respondent State a legal obligation to implement appropriate measures to secure the right of the applicant which the Court found to have been violated. Such measures also had to be taken in respect of other persons in the applicant's position, notably by solving the problems that had led to the Court's findings. Hence, in order to facilitate implementation of its judgments, the Court might adopt a pilot-judgment procedure allowing it to clearly identify the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them.

A further aim of the pilot-judgment procedure was to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpinned the Convention system. The pilot-judgment procedure was aimed primarily at ensuring the speedy and effective resolution of a systemic dysfunction and the introduction of effective domestic remedies in respect of the violations in question. It could also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements.

The Court noted that overcrowding in Italian prisons did not affect the applicants alone. It observed that the structural and systemic nature of overcrowding emerged clearly from the terms of the declaration of a national state of emergency issued by the Italian Prime Minister in 2010.

The structural nature of the problem was confirmed by the fact that several hundred applications were currently pending before the Court raising the issue of the compatibility of the conditions of detention in a number of Italian prisons with Article 3 of the Convention.

It was not for the Court to dictate to States their choice of penal policy or how to organise their prison systems; these raised complex legal and practical issues which, in principle, went beyond the Court's judicial remit. Nevertheless, the Court wished to stress in this context the Recommendations of the Committee of Ministers of the Council of Europe inviting States to encourage prosecutors and judges to make use of alternative measures to detention wherever possible, and to devise their penal policies with a view to reducing recourse to imprisonment, in order to tackle the problem of the growth in the prison population ([Rec\(99\)22](#) and [Rec\(2006\)13](#)).

With regard to the domestic remedies needed to address this systemic problem, the Court observed that, where an applicant was being held in conditions contrary to Article 3, the most appropriate form of redress was to bring about a rapid end to the violation of his right not to be subjected to inhuman and degrading treatment. Where the

³ According to Article 46 of the Convention: "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

person concerned had been but was no longer being held in conditions undermining his dignity, he must be afforded the opportunity to claim compensation for the violence to which he had been subjected.

The Court concluded that the Government must put in place, within one year from the date on which the present judgment became final, an effective domestic remedy or a combination of such remedies capable of affording, in accordance with Convention principles, adequate and sufficient redress in cases of overcrowding in prison. It ruled that the examination of applications dealing solely with overcrowding in Italian prisons would be adjourned during that period, pending the adoption by the domestic authorities of measures at national level.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicants a total of 99,600 euros (EUR) in respect of non-pecuniary damage, and EUR 1,500 each to Mr Sela, Mr El Haili, Mr Hajjoubi and Mr Ghisoni in respect of costs and expenses.

The judgment is available only in French.

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