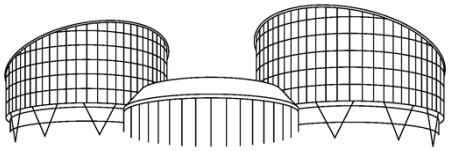

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OCHIGAVA v. GEORGIA

(Application no. 14142/15)

JUDGMENT

Art 3 (substantive and procedural) • Torture • Inhuman or degrading treatment • Applicant's repeated ill-treatment by prison officers as part of systematic and systemic abuse of inmates • Lack of compensation for injuries sustained from ill-treatment • Ineffective investigation • Despite conviction of certain officers, outcome of procedurally flawed criminal proceedings not constituting sufficient redress

STRASBOURG

16 February 2023

FINAL

16/05/2023

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

In the case of Ochigava v. Georgia,

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

Georges Ravarani*, President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 14142/15) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Akaki Ochigava ("the applicant"), on 11 March 2015;

the decision to give notice to the Georgian Government ("the Government") of the complaints under Article 3 of the Convention;

the parties' observations;

Having deliberated in private on 24 January 2023,

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

INTRODUCTION

1. The case concerns Article 3 of the Convention and the applicant's alleged ill-treatment, which was arguably of a systematic nature, in Tbilisi Prison no. 8 ("Gldani Prison"), and the competent domestic authorities' failure to conduct an effective investigation into his allegations.

THE FACTS

2. The applicant, Mr Akaki Ochigava, is a Georgian national who was born in 1966 and lives in Tbilisi. He was represented before the Court by eight lawyers: Ms N. Jomarjidze, Ms T. Abazadze, Ms K. Shubashvili and Ms T. Dekanosidze, lawyers of the Georgian Young Lawyers' Association in Tbilisi, and also by Ms K. Levin, Ms J. Evans, Ms J. Gavron and Mr Ph. Leach, lawyers at the European Human Rights Advocacy Centre in London.

3. The Government were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. THE BACKGROUND

5. On 2 June 2011 the applicant was arrested on suspicion of having committed a robbery, an offence of which he was subsequently convicted.

6. On 3 June 2011, as part of his admission procedure to Gldani Prison, a doctor examined the applicant and noted in his medical file that he had no injuries at the time of his admission and was in a good state of health, not suffering from any medical condition.

7. In September 2012 footage of repeated acts of ill-treatment of inmates at different prison establishments, including and in particular Gldani Prison, was disseminated in the Georgian media ("the prison scandal").

8. On 5 November 2012 the Office of the Public Defender of Georgia ("the PDO"), having met the applicant in prison, filed a criminal complaint with the Chief Public Prosecutor's Office on his behalf and requested that an investigation be launched into the acts of ill-treatment to which the applicant had allegedly been subjected in Gldani Prison. The PDO's referral letter was accompanied by a written statement from the applicant dated 29 October 2012 which described the alleged acts and listed the names of eleven alleged perpetrators (see paragraphs 10-17 below). On 5 December 2012 the applicant sent an identically worded statement of complaint to the President of Georgia, and the letter was subsequently passed on to the Chief Public Prosecutor of Georgia.

9. On 17 January 2014 the applicant was released from prison.

II. ALLEGATIONS OF ILL-TREATMENT IN PRISON

10. According to his statements of complaint dated 29 October and 5 December 2012, between June 2011 and August 2012 the applicant was subjected to repeated acts of ill-treatment in Gldani Prison by eleven identifiable prison officers (see paragraph 8 above), some of whom held senior positions. The applicant described the following situations in detail.

11. The prison staff would arbitrarily impose various excessive restrictions and seek every possible pretext to beat the prisoners in order to assert their power and instil fear in the prisoners. For example, the prisoners were not allowed to speak at a normal volume amongst themselves and could only whisper; during the day they were forbidden to lie down on their beds and could only sit on them. In addition to the physical abuse, the prison staff would also subject the prisoners to constant verbal insults and arbitrarily prevent them from having access to the prison shop, where they would normally buy certain basic items. They would also systematically deny them the right to have family visits.

12. The beating of newly arrived prisoners was routine practice in Gldani Prison – the so-called "quarantine procedure" – and the applicant was no exception. Thus, on the day of his arrival at Gldani Prison he was beaten so

severely by several prison officers and a high-ranking prison officer, O.P., that in addition to sustaining multiple bruises, several of his front teeth were broken.

13. Another form of ill-treatment alleged by the applicant in his complaints of 29 October and 5 December 2012 was his regular and arbitrary placement in either a place of solitary confinement (*karzer*) or a small detention cell (*fuks*) for several days in retaliation for voicing even minor protests against the prison staff's abuse. The *karzer* was a cell measuring ten square metres and containing no furniture apart from a folding metal bed. During the day the applicant had to sit on the cement floor, as the bed was folded and attached to the wall with a lock. The prison officers would only unlock the bed and let the applicant use it between 10 p.m. and 8 a.m. As for the *fuks*, this was an even smaller cell measuring four square metres and containing no furniture. The applicant had to sit and sleep on the tiled floor. Sometimes, he would be placed in the *fuks* with several other inmates and they all had to stand all the time, as there was insufficient space for them to sit on the floor. At other times, the prison officers would deny him food or the use of a toilet, the toilet being located outside the cell. There were also a few occasions during the applicant's confinement in the *fuks* when the prison officers put a special helmet on his head which placed a ball in his mouth and thus prevented him from speaking, all the while continuing to verbally insult him for several hours at a stretch.

14. Apart from being subjected to "routine" violence and verbal insults like any other prisoner in Gldani Prison, the applicant was apparently singled out and specifically targeted because he would not abide by the arbitrary restrictions imposed by the prison staff and would always try to voice his objections to their abusive conduct. Owing to the continuous nature of his ill-treatment in Gldani Prison (for example, being beaten at least several times a week), the applicant was unable to specify the exact dates of every such occasion in his complaints of 29 October and 5 December 2012, except for the two major ill-treatment incidents in November 2011 ("the November 2011 incidents").

15. As regards the two November 2011 incidents, after attempting to send a complaint of the abusive practices at the prison to the President of Georgia in October 2011, the applicant received a particularly severe beating from the prison officers at the very beginning of November 2011 and consequently his spine was so badly injured that he lost the ability to walk. Given the severity of the incident, the applicant was placed in the medical wing of the prison and the head of the prison was obliged to report the applicant's injuries to his superiors. As a result, on 5 November 2011 an internal inquiry was opened by the Investigation Department of the Ministry of Prisons ("the Department"). However, an investigator from the Department who came to Gldani Prison on 15 November 2011 to obtain a statement from the applicant allegedly advised him to say that he had fallen out of bed. As the applicant

initially refused to sign such a statement, the investigator called prison officers to the interview room. The officers took the applicant to a different room and broke most of his fingers by hitting both of his hands with a baseball bat. The applicant then gave in to the investigator's demands and signed the statement, dated 15 November 2011, confirming that his spinal trauma was due to his falling out of bed and that he had had no complaints against the prison staff. After that interview, the applicant was returned directly to his cell without being provided with any medical treatment for his broken fingers, and it was only his cellmates who helped him to bandage his hands.

16. On 5 December 2011 the Department issued a decision refusing to institute a criminal investigation, in the light of the applicant's statement of 15 November 2011.

17. The applicant also described two episodes of ill-treatment which had occurred in the shower room of Gldani Prison, but without providing information as to when exactly those incidents had happened. On one such occasion the prison officers stripped him naked in the shower room, splashed him with cold water and beat him severely with truncheons. After yet another incident of ill-treatment in the shower room, which ended with the applicant fainting as a result of a severe beating, the applicant regained consciousness and found himself being handcuffed to a pipe in the prison morgue among dead bodies.

III. THE APPLICANT'S MEDICAL FILE

18. According to the medical file available to the Court, in January 2012 the prison authority assigned the applicant a wheelchair.

19. On 1 November 2012 the applicant was transferred from Gldani Prison to the prison hospital. After an initial medical examination at the hospital he was then transferred to civilian hospitals for additional medical check-ups. As a result of all those examinations, the applicant was diagnosed with severe trauma to the spine which prevented him from walking, and he was prescribed an immediate operation. Shortly afterwards, an operation on his spine was performed in a civilian hospital, as a result of which his condition improved and he was able to walk with the help of crutches.

20. Additional medical examinations conducted in November 2012 further confirmed that the applicant had been infected with viral hepatitis C (HCV) and had cirrhosis of the liver, and that most of his fingers were deformed as a result of multiple fractures which had been left untreated.

21. Between 25 March and 25 September 2013 the applicant was in the prison hospital once again, where he received treatment for his HCV, cirrhosis of the liver and an emotionally unstable personality disorder.

22. On 28 March 2014 the applicant was classed as having a permanent disability.

23. After his release from prison (see paragraph 9 above), the applicant continued to receive medical treatment for his various conditions. In 2014 he underwent another operation on his spine.

IV. CRIMINAL INVESTIGATION INTO THE ALLEGATONS OF ILL-TREATMENT

A. The situation prior to notice of the case being given on 28 September 2015

24. On 13 November 2012 the Chief Public Prosecutor's Office opened a criminal investigation into the applicant's allegations of ill-treatment, on the basis of his complaints of 29 October and 5 December 2012 (see paragraph 8 above).

25. During interviews with a public prosecutor assigned to his case which took place on 23 January, 1 February and 22 August 2013, the applicant orally reiterated all of the statements that he had previously submitted in writing (see paragraph 10-17 below) and repeated the full names of the eleven prison officers, including senior officers, who had allegedly participated in his ill-treatment (see paragraph 8 above). He also told the prosecutor that he felt safe enough to complain of his ill-treatment in Gldani Prison after the prison scandal and the changes in government of October 2012.

26. In April, June, July, October and November 2013, as well as in February, August, October and November 2014, the applicant's lawyers (who made most of the enquiries) and the PDO acting on behalf of the applicant repeatedly made enquiries with the public prosecutor in charge of his case about the progress of the investigation and requested that the applicant be granted victim status. Such status would allow the applicant to be involved in and receive information about the ongoing investigation. The names of the alleged perpetrators were also consistently brought to the attention of the prosecutor in those enquiries. Numerous other similarly worded hierarchical complaints were also addressed to the Chief Public Prosecutor of Georgia throughout 2013 and 2014, in which the applicant's lawyers also raised complaints about the lower prosecutor's inaction and the failure to grant the applicant victim status. Those repeated enquiries were either left unanswered, or the prosecution authorities would advise the applicant in reply about the need to wait for a number of investigative measures to be completed.

27. In October 2014 the prosecutor commissioned an expert medical report on the applicant's state of health, but the requested report was never completed.

28. In November 2014 four former inmates from Gldani Prison who had shared a cell with the applicant at different times during the relevant period of his detention there were examined as witnesses. Those witnesses corroborated most of the applicant's allegations of ill-treatment, including

those relating to the systematic ill-treatment of prisoners in Gldani Prison, his contention that he had been a particular target for the prison officers' abuse, and his account of the circumstances surrounding the incidents in November and December 2011 (see paragraphs 10-17 above).

29. In his most recent letter dated 30 December 2014 which was addressed to the applicant prior to the present application being lodged with the Court, the public prosecutor informed the applicant that the investigation was still ongoing. The prosecutor also advised that since the applicant did not have victim status, he was not entitled to receive information about the ongoing investigation.

B. Circumstances revealed after notice of the case being given

30. On 29 April and 31 August 2015 the applicant enquired again about the progress of the investigation. The public prosecutor in charge of his case replied on 22 May and 12 October 2015, repeating the same statements made in his letter of 30 December 2014 (see paragraph 29 above).

31. On 23 August 2016 the Chief Public Prosecutor's Office joined the applicant's criminal case to a newly opened large-scale criminal investigation into the systematic ill-treatment of inmates at all prisons which had allegedly taken place in the country between 2010 and 2012 (hereinafter "the general prisons ill-treatment case").

32. On 24 April 2017 allegations of ill-treatment of prisoners in Gldani Prison between 2010 and 2012, which included the applicant's case, were separated from the large-scale ill-treatment case to form yet another new criminal investigation (hereinafter "the Gldani Prison ill-treatment case").

33. On 2 May 2017 the Chief Public Prosecutor's Office finally granted the applicant victim status within the framework of the Gldani Prison ill-treatment case.

34. On 6 February 2018 the Tbilisi City Court convicted seven officers from Gldani Prison of the systematic ill-treatment of inmates at the prison, including the applicant, between 2010 and 2012. The seven officers convicted formed part of the group of eleven prison officers who had been named by the applicant in the early stages of the criminal proceedings (see paragraphs 8 and 10 above). The court established, in general, that the seven prison officers in question, led by O.P., a senior prison officer, had, in their official capacity, resorted to systematic abuse of inmates at Gldani Prison between 2010 and 2012, with the aim of instilling fear in prisoners and obtaining their full submission. Thus, the seven perpetrators would regularly, on an almost daily basis, subject the inmates to severe beatings and intentionally deny them the most basic rights as an additional form of punishment (such as the right to have daily walks in the open air, access to hygiene items, visits from doctors or family members, and so on).

35. As regards ill-treatment involving the applicant personally, the Tbilisi City Court established that there had been five such incidents. It found that the applicant had been ill-treated upon his admission to Gldani Prison in June 2011, during the so-called "quarantine procedure", when the seven perpetrators, led by O.P., had beaten him with rubber truncheons and kicked him, which had, among other things, resulted in several of his front teeth and ribs being broken. Then, in mid-November 2011 O.P. and another perpetrator had hit the applicant's hands with a baseball bat, breaking fingers on both of his hands. In early December 2011 the seven perpetrators had again severely beaten the applicant and a few other inmates as retribution for their refusal to sign a document asserting that they had waived their right to outdoor exercise. In August 2011 three of the seven perpetrators had beaten the applicant as retribution for a verbal altercation which he had had with another prison officer. Lastly, it was established that in September 2011, because the applicant had been speaking loudly in his cell, two of the seven perpetrators had punished him by taking him to a shower room, stripping him naked and beating him with truncheons and kicking him.

36. The judgment of 6 February 2018 became final on 12 November 2019, after the Supreme Court had declared appeals on points of law lodged by the convicted prison officers inadmissible. The custodial sentences imposed ranged from three to nine years' imprisonment, depending on the degree and intensity of each convicted person's involvement in the systematic ill-treatment of inmates at Gldani Prison; O.P. received the most severe sentence.

V. CIVIL LAWSUIT AGAINST THE MINISTRY OF PRISONS

37. Alongside the criminal remedy, the applicant also sued the Ministry of Prisons on 18 November 2015, claiming compensation in respect of pecuniary and non-pecuniary damage for the harm caused to his mental and physical health by the actions of the prison officers at Gldani Prison.

38. On 28 May 2015 the Tbilisi City Court rejected the applicant's claim as unsubstantiated. The court ruled that whilst his medical file proved that his health had deteriorated in prison, the applicant had failed to show that that deterioration was the result of any illegal conduct by representatives of the prison authority.

39. The applicant appealed, arguing that the civil court should have established the requisite causal link between the deterioration in his state of health and his detention by reference to the fact that he had been admitted to Gldani Prison in good health and his various health problems – the broken teeth, fractured fingers, spinal trauma, HCV contracted in prison, and so on – had manifested themselves for the first time during his detention (see paragraph 6 and 18-23 above). However, his appeal was dismissed by the

Tbilisi Court of Appeal and the Supreme Court on 1 September 2016 and 28 February 2017 respectively.

RELEVANT INTERNATIONAL AND DOMESTIC MATERIAL

40. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) observed the following on the subject of "the prison scandal" (see paragraph 7 above) in its report (CPT/Inf (2013)) on a visit to Georgia carried out between 19 and 23 November 2012:

> "...
>
> 2. On 18 September 2012, video material containing scenes of apparent ill-treatment (including sexual abuse) of inmates at Prison No. 8 in Tbilisi (Gldani) was placed in the public domain. ...
>
> ...
>
> 10. As already mentioned, one of the main reasons for this *ad hoc* visit – and especially for the high-level talks – was for the CPT to obtain updated information on the investigations into cases involving allegations of ill-treatment of prisoners, which had been initiated following the publication of the videos referred to in paragraph 2 above. This was in particular the subject of the Committee's representatives' meeting with the Chief Prosecutor. ...
>
> ...
>
> 12. Turning more specifically to the investigation into the alleged ill-treatment of prisoners at Gldani Prison, [the Chief Prosecutor] confirmed that it was ongoing and that all twelve persons detained in connection with the investigation (including the former director of Gldani Prison and some other senior officials of the Penitentiary Department) were still remanded in custody. He went on to say that it was established that ill-treatment of prisoners by staff of Gldani Prison had been a 'daily, systematic practice'. All the persons involved – both the staff and the inmates – had already been interviewed and all confirmed that assertion. Reportedly, the purpose of this ill-treatment was to obtain prisoners' obedience to the prison's administration and to secure their co-operation, as well as to destroy any possible influence of informal prisoner power structures. [The Chief Prosecutor] stated that the bulk of the ill-treatment had taken place shortly after arrival to prison (usually on the day when the prisoners were moved from the 'quarantine' cells to normal accommodation) and that prisoners aged below forty had been particularly targeted. ...
>
> ...
>
> 14. The Committee's representatives were also offered the possibility to discuss the progress of the above-mentioned investigation with the senior investigators directly in charge. ... As regards the video footage itself, the investigators pointed out that, in their view, there were three categories of videos. One part of the footage referred to illtreatment that had reportedly taken place in the course of 2011. A second part (dating back to August 2012) allegedly showed the ill-treatment of prisoners in the course of the so-called 'quarantine' procedure, during which senior prison officials were said to have been present. The third part was reportedly 'made up' by the previous authorities after they had learned of the existence of the second footage. According to the investigators, the purpose of this third footage (which also reportedly contained scenes

of authentic ill-treatment of prisoners) was to create the impression that the ill-treatment had been an isolated incident, swiftly identified and suitably dealt with by the previous authorities. ...

...

16. [The investigators directly in charge informed the CPT's representatives that] ... in addition to activities aiming at clarifying the alleged facts of ill-treatment of prisoners at Gldani Prison, the investigative team concentrated its attention on demonstrating the 'systemic' character of the ill-treatment problem in Georgian prisons. ...

...

18. On a more general note, the Committee cannot escape the impression that ... the competent prosecutorial authorities have focussed more on proving the thesis of 'systematic' ill-treatment of prisoners and of the 'manipulation' of video footage (and, consequently, criminal responsibility of former senior officials), rather than first establishing whether and – if so, which – acts of physical ill-treatment had actually taken place at Gldani Prison. ...

...

53. Upon examination of the relevant register at Gldani Prison, the delegation noted that not a single prisoner had been punished with disciplinary isolation ('*kartzer*') after 18 September 2012, which was in striking contrast to the situation prior to that date. The prison's director acknowledged that this sudden and radical change of practice had been caused by an extraordinary atmosphere in the prison following the publication of the videos referred to in paragraph 2 ..."

41. On 28 January 2013 the Monitoring Committee of the Parliamentary Assembly of the Council of Europe issued an information note on a fact-finding visit to Georgia that had taken place between 5 and 7 December 2012. The relevant excerpts from the note which concerned "the prison scandal" read as follows:

"31. The human rights situation with regard to the exceptionally, if not excessively, high prison population came to the forefront with the prisoners' abuse scandal that erupted in September 2012, when videos surfaced that documented the mistreatment and torture of prisoners in a Georgian prison. ...

...

36. The investigations into the prisoners' abuse scandal are still on-going. Several arrests have been made and officials replaced. We urge the authorities to investigate fully all cases of alleged mistreatment and torture, especially amidst reports that these practices may have been more widespread than previously thought."

42. In 2015 the Open Society Georgia Foundation, in cooperation with various Georgian non-governmental organisations and human rights experts, published a report entitled "Crime and Excessive Punishment: The Prevalence and Causes of Human Rights Abuse in Georgian Prisons". The document covers the period from 2003 to 2012 and is primarily based on the interviews of hundreds of individuals who served prison sentences during the relevant period, as well as on monitoring reports by the PDO and Georgian NGOs. The relevant parts of the report read:

> "This overview of the findings of the various reports of bodies from the UN, Council of Europe and international NGOs as well as local bodies reveals that human rights abuses in places of detention have remained a significant problem in Georgia and have continually been flagged by observers. The reports agree that there was a shift from the use of mistreatment and torture in police custody to prisons around 2007-2008 ...
>
> ...
>
> After this point, NGOs and international observers found fragmentary evidence to suggest that ill-treatment had become worse in Georgia's prisons, though its exact extent and form was not clear in large part because information was simply not available. Prisons by 2010 had become virtually closed systems. Prisoners were heavily disincentivized to report rights' abuses and few observers were able to actually investigate prisons thoroughly ...
>
> ...
>
> From prisoners and former prisoners' testimony torture and inhuman treatment was widespread in the prison system. Moreover, the belief among prisoners that it was widespread was itself pervasive ...
>
> ...
>
> Victims remained remarkably quiet about instances of torture both to impersonal and personal (family) contacts. This is partly due to lack of hope to improve the situation, fear of further punishment, and ineffectiveness of protection mechanisms."

43. The 2012 annual report by the PDO observed the following about inmates from Gldani Prison who had been interviewed prior to October 2012:

> "It was obvious to the representatives of the [PDO] that the inmates [from Gldani Prison] were reluctant to complain of their ill-treatment out loud. ... The inmates with visible traces of ill-treatment would normally say that they were treated well in the prison and were not facing any major problems."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicant complained under Article 3 of the Convention that he had been subjected to systematic acts of ill-treatment in Gldani Prison between June 2011 and August 2012, and that the competent domestic authorities had failed to conduct an effective investigation. That provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' arguments

45. The Government submitted that the applicant had failed to lodge his application with the Court with due expedition as required by Article 35 § 1

of the Convention, because he had lacked diligence in voicing his grievances before the relevant domestic authorities in a timely fashion. Namely, he ought to have realised that no effective investigation would ensue after the investigator of the Ministry of Prisons, on 5 December 2011, had refused to institute criminal proceedings in relation to the early November 2011 incident (see paragraph 15 above).

46. The applicant disagreed, arguing that he had lodged his criminal complaints in a timely fashion, given the particular circumstances of the case: during his detention he had been too insecure to publicly report the abuse within the Gldani system while the relevant ruling forces had been in government, a situation which had changed only in October 2012 (see paragraphs 3-8, 25 and 40-43 above).

2. The Court's assessment

(a) Compatibility *ratione personae*

47. Although the Government did not raise any objection in this regard either, the Court observes, of its own motion, that the particular circumstances of the present case – notably, the fact that several prison officers were eventually convicted of the systematic ill-treatment of inmates at Gldani Prison – may reasonably be deemed to call into question the validity of the applicant's victim status for the purposes of Article 34 of the Convention. In this connection, it should be restated that the question of whether or not an applicant has lost victim status in Convention proceedings is a matter of compatibility *ratione personae*, which forms part of the Court's own jurisdiction and is not contingent upon the existence of an objection from the Government on the matter (compare, for example, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts)).

48. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive that person of his or her status as a "victim", within the meaning of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 180, ECHR 2006-V, with further references). As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

49. In the present case, despite the fact that the seven police officers were convicted in relation to the applicant's ill-treatment, the Court attaches particular significance to the fact that no compensation was awarded by the domestic civil courts (see paragraphs 37-39 above). In this connection, the

Court further notes that the Government did not claim that it would be open to the applicant, following the conviction of the prison officers, to submit a fresh civil action for damages against the State, or, if such a possibility existed, that it would have had any incidence on the applicant's standing under Article 34 of the Convention. In such circumstances, the Court concludes that the applicant has retained his victim status within the meaning of the above-mentioned provision.

(b) The six-month rule

50. As regards the Government's objection regarding the six-month rule, the Court has to ascertain whether the applicant, at the time of lodging his application with the Court, had been aware, or should have been aware, for more than six months, of the lack of any effective criminal investigation. His inactivity before lodging a criminal complaint at the domestic level is not as such relevant for the assessment of the fulfilment of the six-month requirement. However, if the Court were to conclude that before the applicant petitioned the competent domestic authorities he was already aware, or ought to have been aware, of the lack of any effective criminal investigation, it is obvious that his subsequent application with the Court has *a fortiori* been lodged out of time, unless new evidence or information arose in the meantime which would have given rise to a fresh obligation on the authorities to take further investigative measures (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 272, ECHR 2014 (extracts)).

51. In this connection, the Court is not convinced by the Government's suggestion that the applicant should have realised that there was no prospect for an effective criminal investigation after the prosecutorial decision of 5 December 2011 refusing to open a criminal case in relation to the early November 2011 incident, because the subject matter of the present case is not only that isolated incident, but the claim that the applicant was subjected to systematic acts of ill-treatment during his time in Gldani Prison between July 2011 and August 2012. As regards the fact that the applicant first opened up to the competent authorities about the systematic abuse in Gldani Prison in October and December 2012, that is, only after the changes in government had occurred (see paragraph 46 above), the Court reiterates that the psychological effects of ill-treatment inflicted by State agents may undermine a victim's capacity to take the necessary steps to bring proceedings against a perpetrator without delay. Such a barrier may become particularly difficult to overcome when, as in the applicant's case, victims continuously remain under the control of those implicated in the ill-treatment following the incident (see *Mocanu and Others*, cited above, § 274, ECHR 2014 (extracts), and *Mafalani v. Croatia*, no. 32325/13, § 82, 9 July 2015). Moreover, there are findings by domestic and international observers about the fact that prison officers systematically resorted to violent or otherwise unlawful measures to prevent the abuse being reported (see paragraphs 42 and 43 above, and compare

Gablishvili and Others v. Georgia, no. 7088/11, §§ 36 and 37, 21 February 2019). With the above considerations in mind, the Court concludes that, in the particular circumstances of the present case, the applicant, who himself acknowledged before the domestic authorities that he had been too intimidated while he had been in the hands of the officers at Gldani Prison, cannot be reproached for not voicing his grievances before the domestic authorities earlier than he did. Furthermore, his vulnerability in prison amounts to a plausible and acceptable explanation for his inactivity from early June 2011, when he was placed in Gldani Prison, until October 2012, when the changes in the ruling forces occurred (ibid., §§ 44 and 45, see also *Mocanu and Others*, cited above, § 275).

52. As regards the applicant's conduct after October 2012, the Court is satisfied that throughout 2013 and 2014, and until the lodging of the present application in March 2015, the applicant made repeated attempts at regular intervals to enquire about the investigation's progress, in the hope of an effective outcome (see paragraphs 25 and 29 above, and compare *Gablishvili and Others*, cited above, § 50). In the light of the foregoing, the Court does not see any reason to conclude that, at the time of lodging his application with the Court on 11 March 2015, the applicant had been aware, or should have been aware, for more than six months, of the lack of prospects for an effective criminal investigation. The Government's objection must therefore be dismissed.

(c) Conclusion

53. In the light of the foregoing and noting that the application is not inadmissible on any other grounds, the Court holds that it must be declared admissible.

B. Merits

1. The parties' arguments

54. The applicant argued that sufficiently strong, clear and concordant evidence had been submitted to the Court to confirm that he had been subjected to repeated acts of ill-treatment at the hands of the officers at Gldani Prison between June 2011 and August 2012. He further argued that the investigation conducted by the authorities into his allegations of ill-treatment had not been thorough, effective or independent.

55. The Government replied that the applicant had failed to prove the existence of acts of ill-treatment beyond reasonable doubt, and that the domestic investigating authorities had done everything reasonably possible to verify the well-foundedness of his allegations.

2. The Court's assessment

(a) General principles

56. The relevant general principles were summarised by the Court in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88 and 114-23, ECHR 2015).

(b) Application of the above principles to the circumstances of the present case

57. The Court considers it appropriate to start with the applicant's complaint under the procedural limb of Article 3 of the Convention in examining the merits of the application.

(i) Whether the investigation into the applicant's allegations was effective

58. The Court observes that whilst the applicant formally voiced his complaint of ill-treatment as early as October 2012, it took the competent domestic authorities more than five years to identify the perpetrators and secure convictions in relation to some of them. There were periods of unexplained inactivity on the part of the investigating authorities between 2012 and 2016, when they failed to conduct the most basic investigative measures repeatedly requested by the applicant, and, moreover, for a significant period of time during the pre-trial stage the latter was unjustifiably denied the requisite procedural standing of an aggrieved party, standing which would have enabled him to closely follow the investigation, assess its reliability and contribute to its proper conduct (see paragraphs 24-34, and compare *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 108, 1 June 2017). In this regard, the Court reiterates that "justice delayed is often justice denied", as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings may render the investigation ineffective (compare *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 75, 20 May 2010, and *Vazagashvili and Shanava v. Georgia*, no. 50375/07, § 89, 18 July 2019, with further references therein).

59. Furthermore, whilst the domestic authorities secured convictions and imposed custodial sentences in relation to some of the prison officers with respect to some of the incidents of ill-treatment, which was indeed a positive development, they clearly did not investigate a number of other serious incidents, namely: the applicant's alleged beating in early November 2011 which resulted in his spinal injury; his beating in the shower room which resulted in his fainting and then regaining consciousness in the prison morgue; and his alleged arbitrary placement in degrading conditions in a *karzer* and a *fuks*, disciplinary cells (see paragraphs 13, 15, 17 and 35 above). The Court also notes that the applicant consistently and convincingly stated before the domestic authorities that not only the seven convicted prison officers but also a number of other senior prison officers had participated in

his ill-treatment in Gldani Prison, but the role of those additional perpetrators was not elucidated. It thus considers that the authorities turned a blind eye to the applicant's credible allegation of complicity between the convicted people and the other senior prison officers. Such an inexplicably selective approach on behalf of the investigative authorities sits ill with the respondent State's procedural obligations under Article 3 of the Convention because, in order for an investigation to be effective, its conclusions must always be based on thorough, objective and impartial analysis of all relevant elements, and this obviously includes conducting an adequate probe into credible allegations of criminal complicity (compare, in the context of similar procedural obligations under Article 2, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, §§ 254 and 266, 26 April 2011). In the light of the foregoing, the Court considers that, despite the conviction of the seven prison officers it has brought along (compare *Vazagashvili and Shanava*, cited above, § 91), the outcome of the procedurally flawed criminal proceedings could not be considered to have constituted sufficient redress for the applicant.

60. Given that effective deterrence against serious acts such as intentional attacks on the physical integrity of a person requires efficient criminal-law response (compare, for instance, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, 5 July 2016; *Mihhailov v. Estonia*, no. 64418/10, § 81, 30 August 2016; and *Pulfer v. Albania*, no. 31959/13, § 71, 20 November 2018), and the findings in the preceding paragraphs pointing to significant deficiencies in the respondent State's response in the present case, the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention.

(ii) Whether the applicant was ill-treated in prison

61. The Court observes that the domestic criminal courts, after acquainting themselves with the evidence and examining the facts of the case, found that seven prison officers who had been acting in an official capacity were guilty of the systematic ill-treatment of inmates at Gldani Prison, including the applicant. They identified five separate instances when the applicant personally had been ill-treated. The courts also found that the aim of the officers' systematic abuse of the prisoners had been to instil fear and thus obtain their complete submission and therefore control (see paragraphs 34 and 35 above). In the eyes of the Court, those findings of the domestic courts, which were not even disputed by the Government, make it clear that the applicant's ill-treatment, the certain acts of which cannot but be qualified as torture, was directly attributable to the respondent State (compare, for instance, *Vazagashvili and Shanava*, cited above, § 97) and committed by representatives of the prison authority as part of both systematic and systemic abuse of inmates of Gldani Prison at the material time.

62. Having regard to the above considerations, as well as to the fact that no damages were awarded to the applicant for the injuries that he sustained

as a result of the ill-treatment, there has been a violation of the substantive limb of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government submitted that the amount claimed was not justified in the circumstances of the case.

66. The Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the relevant circumstances of the case, the principle of *non ultra petita* as well as to various equitable considerations, the Court finds it appropriate to award the applicant EUR 20,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

67. The applicant claimed a total of 1,943.52 pounds sterling (GBP – approximately EUR 2,231) for costs and expenses incurred before the Court by one of his British lawyers (see paragraph 2 above). No copies of legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The amount claimed was based on the number of hours which the lawyer in question had spent on the case (twelve hours) and the lawyer's hourly rate (GBP 150), and included a claim for postal, translation and other administrative expenses incurred by the lawyer.

68. The Government submitted that the claim was unsubstantiated and excessive.

69. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the applicant did not submit documents showing that he had paid or was under a legal obligation to pay the fees charged by his British representative or the expenses incurred by that representative. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred (compare, among many other authorities, and as a recent authority, *Women's Initiatives Supporting*

Group and Others v. Georgia, nos. 73204/13 and 74959/13, § 92, 16 December 2021).

70. It follows that the claim must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of both the substantive and procedural aspects of Article 3 of the Convention on account of the applicant's ill-treatment, the certain acts of which amounted to torture, and the lack of an effective criminal investigation thereof;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Georges Ravarani
Registrar	President