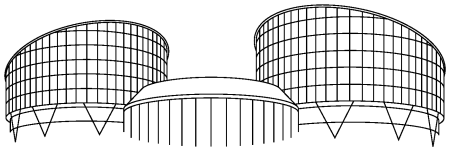

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASES OF MILIĆ AND NIKEZIĆ v. MONTENEGRO

(Applications nos. 54999/10 and 10609/11)

JUDGMENT

STRASBOURG

28 April 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the cases of Milić and Nikezić v. Montenegro,

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

Işıl Karakaş, *President,*
András Sajó,
Nebojša Vučinić,
Helen Keller,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 31 March 2015,

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

PROCEDURE

1. The case originated in two applications (nos. 54999/10 and 10609/11) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Montenegrin nationals, Mr Igor Milić ("the first applicant") and Mr Dalibor Nikezić ("the second applicant"), on 7 September 2010 and 4 February 2011 respectively.

2. The applicants were represented by Ms A. Jasavić, a lawyer practising in Podgorica. The Montenegrin Government ("the Government") were represented by their Agent, Mr Z. Pažin.

3. The applicants alleged, in particular, that they had been tortured and ill-treated by prison guards on 27 October 2009, and complained that there had been no effective official investigation in this regard.

4. On 6 July 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1974 and 1981 respectively and live in Podgorica.

6. At the relevant time they were in detention (*u pritvoru*) at the Institution for the Execution of Criminal Sanctions (*Zavod za izvršenje*

krivičnih sankcija, hereinafter "IECS"), where they shared a cell with five other detainees.

A. The events of 27 October 2009 and subsequent events

7. On 27 October 2009 the first applicant was to be transferred to a disciplinary unit (*disciplinsko odjeljenje*) and the cell in which he was detained was to be searched. The submissions of the applicants and the Government as to what exactly happened on that occasion differ.

8. The first applicant submitted that after having entered his cell, several guards had grabbed him and thrown him on to the concrete floor of the corridor outside the cell. They had handcuffed him, beaten him using batons and their fists, and sworn at him. In addition, two rows of guards positioned along the corridor had beaten him as he was being taken away.

9. The second applicant submitted that he had protested against this abuse. In response, four guards had started to kick him and had beaten him with their fists and batons. After that he had been taken into the corridor outside the cell, where eight other guards had continued to beat him. The beating had continued after he had returned to the cell.

10. The Government, for their part, submitted that the applicants had resisted the actions of the prison guards and had tried to prevent them from performing their duties, which had triggered the guards' intervention. In particular, when they had entered the cell the second applicant had attacked one of the guards without any reason and had injured him.

11. The first applicant had refused to be examined by a prison doctor as he doubted his impartiality. On the same day, however, he had talked to the doctor and, in answer to the doctor's question whether he was feeling well and whether he had any injuries, he had apparently said "No, doctor, I am healthy and both physically and psychologically stable, and I do not consent to an examination; there is no need for it as I have not been ill-treated either physically or psychologically by the security forces".

12. The second applicant had been examined by the prison doctor after the Deputy Ombudsman had made a request to that effect. It would appear that the doctor made two reports in this regard. The Ombudsman, who obtained the reports from the IECS, described them as barely legible and apparently referring to the same subject matter in two different ways.

13. On 30 October 2009 the first applicant's representative in the domestic criminal proceedings reported the incident to the prison governor and requested that the appropriate responsible bodies be informed, that his client be provided with medical assistance, and that no further punitive measures be taken against him.

14. On an unspecified date before 4 November 2009 the State prosecutor (*Osnovno državno tužilaštvo*) asked the Court of First Instance (*Osnovni sud*) in Danilovgrad to establish the elements of criminal offences of torture

and ill-treatment (*predlog radi utvrđivanja elemenata bića krivičnog djela mučenje i zlostavljanje*). Acting upon this an investigating judge (*istražni sudija*) from the Court of First Instance requested, *inter alia*, the medical examination of both applicants by an external forensic doctor, and ordered evidence to be heard from a number of individuals, including the prison guards, and the second applicant.

15. On 4 November 2009 an external forensic doctor examined the second applicant. He confirmed in his report that the second applicant had light body injuries, namely a 10-day old haematoma (*krvni podliv*) measuring 8 x 15 cm on the back of his left thigh and a haematoma on the lower lid of each eye. The doctor added that there was an undated medical report in the second applicant's file confirming the presence of bruises around his eyes. He emphasised that the medical documentation provided by the IECS was "largely illegible". The first applicant refused an examination by the external forensic doctor, as the examination had apparently been ordered when his bruises were already fading.

16. On 5 November 2009, the first applicant's mother – during a visit – observed bruises on his face and haematomas on visible parts of his body. She reported this immediately to the prison administration (*Upravi zavoda*). On 9 November 2009 she lodged a criminal complaint (*krivična prijava*) with the competent State prosecutor against persons unknown, stating that the first applicant had two bruises, one on his left temple – which was already fading – and another on one of his legs, and that he had also complained that he was having difficulty sitting.

17. On an unspecified date the second applicant's mother – who had been informed by one of the detainees about what had happened – reported the incident to the Ombudsman and visited her son. She observed that his eyes were closed and his face and visible parts of his body were covered in bruises. She reported this to the prison administration and asked that it be investigated. On 6 November 2009 she lodged a criminal complaint with the police (*Upravi policije*) against persons unknown.

18. On 5 November and 10 November 2009 the State prosecutor asked the Court of First Instance in Danilovgrad to investigate the complaints lodged on behalf of the second and first applicants respectively (*predlog za preduzimanje istražnih radnji*). Acting upon this the investigating judge requested, *inter alia*, a video-recording from the prison, the identification of all the guards who had been involved in the cell search, and that the evidence be heard from a number of individuals, including the prison guards, other detainees in the cell, the first applicant, and the first applicant's representative in the domestic criminal proceedings.

19. The requested questioning (see paragraphs 14 *in fine* and 18 *in fine* above) took place between 4 November and 9 December 2009. Two of the detainees stated that they had seen the first applicant being beaten. Some of the guards stated that the first applicant had resisted being handcuffed by

"attempting to get out of [their] hands, cursing and swearing" and, when on the floor, by kicking out ("*gicao se i mlatio nogama i rukama*"). One of the guards admitted "hitting [the first applicant] once with a baton, as he continued to resist and kick". Another guard, who had seen the first applicant several days after the incident, had observed a cut below his left eye as well as a visible injury to one of his legs.

20. When visiting his client several days after the incident, the first applicant's representative in the domestic criminal proceedings had observed a bruise under one of his eyes, and a bruise on the calf of his left leg with a diameter of about 20 cm. He described him as frightened and "mentally broken".

21. One of the guards stated that the second applicant had grabbed the collar of one of his colleagues from behind, following which the guard in question had fallen over a bench. The guard had pushed him away and the second applicant had hit the wall and sunk to the floor (*pao je na zid i spustio se dolje na sjedalo*). The guard stated that his colleague had not hit the second applicant. Three other guards confirmed this. The prison doctor stated that he had noticed a haematoma under the second applicant's eye. Three detainees confirmed that the second applicant had been beaten by several guards both in the cell and in the corridor. The applicants, for their part, repeated their allegations.

22. On 12 February 2010 the State prosecutor rejected (*odbacio*) the criminal complaints against two guards, I.M. and R.T., on the ground that even though they had used force by hitting the first applicant three times and the second applicant once with a baton, they had done so in order to overcome the applicants' resistance and thus acted within their powers (*u granicama službenog ovlašćenja*). While the first applicant had not been examined by a doctor, the medical documentation of the second applicant confirmed that he had sustained light injuries. That being so, the prosecutor concluded that the force used had not infringed human dignity and that there were no elements of any criminal offence entailing prosecution *ex proprio motu*. The prosecutor's decision also identified other guards who had participated in the cell search. At the same time, the applicants were informed that they could pursue a subsidiary prosecution by lodging an indictment (*optužni predlog*) with the Court of First Instance.

23. On 23 February 2010 the lawyer retained by the applicants in respect of the complaints of alleged ill-treatment lodged an indictment for torture and ill-treatment which had resulted in severe bodily injuries (*teške tjelesne povrede*) against 16 prison guards named in the previous decision, including I.M. and R.T.

24. On 16 March 2010 the lawyer was informed by the first applicant that the video-recording obtained from the IECS by the Court of First Instance did not show the entire incident, namely it omitted his being beaten by two rows of guards in the corridor. He claimed, however, that another

camera in the corridor must have recorded the beating and that the recording should be obtained from the prison authorities.

25. On 30 March 2010 the lawyer asked the court to obtain a recording from another camera, but apparently without success.

26. On 22 April 2010 the Court of First Instance decided that the applicants' indictment was to be treated as a criminal complaint and, as such, was to be lodged with the State prosecutor.

27. On 10 May 2010 the applicants appealed against the above decision. At the same time they also lodged a criminal complaint with the State prosecutor.

28. On 13 September 2010 the High Court rejected the applicants' appeal on the ground that the State prosecutor had delivered a decision only in respect of I.M. and R.T. and not the other guards.

29. On 19 October 2010 the State prosecutor rejected the applicants' criminal complaint on the ground that there were no elements of any criminal offence entailing prosecution *ex proprio motu*. At the same time the applicants were notified that they could pursue a subsidiary criminal prosecution by lodging a request for an investigation (*zahtjev za sprovođenje istrage*) with the Court of First Instance.

30. On 12 November 2010 the applicants lodged a request for an investigation with the Court of First Instance.

31. On 10 February 2011 the Constitutional Court rejected (*odbacuje se*) a constitutional appeal by the applicants against the above decisions of the Court of First Instance and the High Court on procedural grounds. In particular, it considered that the applicants' complaints were in substance about the criminal prosecution of other individuals and that – pursuant to the Court's case-law – such complaints were incompatible *ratione materiae* with the Convention. It was also concluded that the decision of the Court of First Instance did not represent an "individual decision" in respect of which the Constitutional Court would be competent, but rather a procedural decision establishing whether the conditions were met for conducting an investigation in response to a direct indictment lodged by the applicants. In the impugned proceedings the courts had not decided on the merits of the request itself, but rather had ruled that the request should be treated as a criminal complaint.

32. On 18 March 2011 the Court of First Instance dismissed the applicants' request for an investigation on the grounds of lack of reasonable suspicion (*osnovana sumnja*) that the guards had tortured and ill-treated the applicants and that the force they had used had been necessary to overcome the applicants' resistance. On 13 June 2011 the High Court upheld this decision.

B. Ombudsman's involvement

33. On 30 October and 12 November 2009 the Deputy Ombudsman visited the applicants. She also spoke with other detainees from the same cell, who confirmed the first applicant's allegations. She noted that the second applicant, who had "visible injuries on his head, especially around the eyes" as well as on his legs, had asked that he be allowed to lodge a criminal complaint and to be examined by the prison doctor.

34. In its response to an inquiry from the Ombudsman, the IECS stated that the second applicant had unjustifiably resisted and physically attacked guards who, in response, had used force and a baton to the extent necessary to overcome his resistance. The IECS also provided the doctor's reports in respect of the second applicant, which were described by the Ombudsman as barely legible and from which it could be concluded that they dealt with the same subject matter, but had a different content.

35. In an opinion of 29 March 2010, the Ombudsman found that the applicants' rights had been violated on 27 October 2009. The opinion stated that they had offered no resistance and that there had been no justification for the use of force (*sredstva prinude*), especially not to the extent and in the manner alleged. At the same time the Ombudsman recommended that the IECS institute disciplinary proceedings against the guards responsible and report to the Ombudsman within 20 days on the measures taken.

36. On 1 April 2010 disciplinary proceedings were instituted against three prison guards, I.M., I.B. and R.T. On 31 May 2010 they were found responsible and fined 20% of their salaries in October 2009 for abusing their position or exceeding their authority (*zloupotreba položaja ili prekoračenje ovlašćenja*) as they had used excessive force disproportionate to the resistance offered by the applicants on 27 October 2009. In particular, I.M. had hit both applicants once with a rubber baton, I.B. had kicked the first applicant, and R.T. had hit the second applicant on the lower part of the body with the baton. The applicants' families and the Ombudsman were informed about the outcome of the disciplinary proceedings and the applicants' lawyer attended the hearing before the disciplinary commission.

37. Four other staff members who had participated in the cell search on the stated date, in relation to whom it was not proved that force had been used against the applicants, had apparently been transferred to other posts in other IECS units.

38. On 5 May 2010, during the parliamentary hearing of the prison governor (see paragraph 47 below), the Ombudsman confirmed that the IECS administration had duly acted upon his recommendations within the set time-limit.

C. Civil proceedings

39. On 15 March 2011 the applicants lodged a compensation claim against the IECS relying, *inter alia*, on Article 3 of the Convention, and seeking 15,000 euros (EUR) each for non-pecuniary damage caused by torture on 27 October 2009.

40. On 7 November 2013, after a remittal, the Court of First Instance in Podgorica ruled partly in favour of the applicants by awarding EUR 1,050 each for non-pecuniary damage on account of violations of their rights and EUR 397 for the costs of the proceedings. The court based its decision on section 166 of the Obligations Act (see paragraph 62 below). In its reasoning the court took into account the statements of the applicants and the prison guards, medical findings, the video-recording, the fact that the three prison guards had been found responsible in disciplinary proceedings for the disproportionate use of force and had been fined, and the fact that the applicants had offered resistance, thus contributing to the non-pecuniary damage. The court found that the guards had exceeded their powers but also explicitly held that such actions could not be qualified as torture or inhuman or degrading treatment.

41. On 29 May 2014 the High Court upheld this judgment. In so doing it did not disagree with the conclusion of the first-instance court as to the qualification of the impugned incident.

42. On 23 October 2014 the Supreme Court partly overturned the previous decisions by awarding the applicants 1,500 EUR each for non-pecuniary damage, together with the statutory interest. In so doing the Supreme Court held, *inter alia*, that the use of force by prison guards could not be justified by the applicants' resistance and held that such action was in breach of fundamental values of every democratic society and degraded human dignity, but that it did not constitute torture or inhuman treatment. The applicants received this decision on 25 November 2014.

D. Other relevant information

43. The applicants also maintain that they were threatened or abused between 23 December 2009 and 15 January 2010, in which regard their mothers lodged criminal complaints on 18 January 2010. On 22 June 2011 the State prosecutor (*Osnovni državni tužilac*) rejected the criminal complaint as regards the threat against the first applicant on the ground that no such incident had taken place. The criminal complaint in respect of the abuse alleged by the second applicant would appear to be still pending.

44. Between 27 April and 5 May 2010 the first applicant went on hunger strike, the reason being that disciplinary proceedings, with regard to the events of 27 October 2009, had been instituted against only three guards,

who – according to him – were those least responsible for what had happened to him.

45. On an unspecified date in early May 2010 the first applicant had a meeting with the prison governor. On that occasion he apparently suggested to show the prison governor the camera which had recorded the entire incident of 27 October 2009. The governor allegedly suggested that the first applicant draw a sketch instead.

46. On at least two occasions the applicants complained to their lawyer that their ill-treatment had been continuous, and on at least one occasion they threatened to commit suicide if the pressure on them did not ease. The lawyer informed the High Court, the Minister of Justice, and the prison governor, requesting that disciplinary proceedings be instituted against those responsible.

47. On 5 May 2010 and 14 June 2011 the prison governor was questioned by the parliamentary Human Rights Committee.

48. On 25 June 2011 the parliamentary Human Rights Committee submitted its report to Parliament, one of its conclusions being that "there had been no torture or systemic violations of human rights in the IECS and that all the reported cases of the use of force and exceeding of powers had been sanctioned".

49. The applicants also submitted that they had been deprived of an effective domestic remedy because one of the deputy State prosecutors at the time was the prison governor's daughter and the Deputy Supreme State Prosecutor was his wife.

50. The first applicant is currently serving four prison sentences. He had been convicted eight times prior to this for various criminal offences. During his detention he had been subject to disciplinary sanctions four times, and twice more while serving his prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code 2003 (Krivični zakonik, published in the Official Gazette of the Republic of Montenegro - OG RM - nos. 70/03, 13/04 and 47/06, as well as in the Official Gazette of Montenegro - OGM - nos. 40/08 and 25/10)

51. Article 166a provides that anyone who ill-treats another person or treats a person in a humiliating and degrading manner will be punished with imprisonment of up to one year. If this offence is committed by an official acting in an official capacity, the official will be punished with imprisonment of between three months and three years.

52. Article 167 provides that anyone who causes severe pain or suffering to another for purposes such as intimidating or unlawfully punishing someone or exerting pressure on him will be punished with imprisonment of

between six months and five years. If this offence is committed by an official acting in an official capacity, or with the explicit or tacit consent of an official, or if an official incites another person to commit such an offence, the official will be punished with imprisonment of between one and eight years.

53. Article 183 provides for the official prosecution of the above offences.

B. The Code of Criminal Procedure 2003 (Zakonik o krivičnom postupku; published in OG RM nos. 71/03, 07/04 and 47/06)

54. Articles 19, 20 and 44 provide, *inter alia*, that formal criminal proceedings can be instituted at the request of an authorised prosecutor. In respect of crimes subject to prosecution *ex proprio motu*, such as the offences at issue, the authorised prosecutor is the State prosecutor. His authority to decide whether or not to press charges is bound by the principle of legality, which requires that he must act whenever there is a reasonable suspicion that a crime liable to official prosecution has been committed.

55. Articles 19 and 59 provide, *inter alia*, that should the state prosecutor decide that there is no basis on which to prosecute, he or she must inform the victim of this decision, and the victim then has the right to take over the prosecution of the case on his or her own behalf – in the capacity of a "subsidiary prosecutor" – within eight days of the date of notification of that decision. When notifying the victim of the decision not to prosecute, the State prosecutor must inform the victim what actions he or she may undertake in the capacity of subsidiary prosecutor.

56. Article 229 provides that if a criminal complaint has been submitted to a court, police department or State prosecutor without the requisite jurisdiction (*nenadležnom državnom tužiocu*), the complaint must be forwarded to the State prosecutor who has such jurisdiction.

C. The Criminal Sanctions Enforcement Act (Zakon o izvršenju krivičnih sankcija; published in OG RM nos. 25/94, 29/94, 69/03 and 65/04)

57. Section 14b forbids all acts whereby a convicted person is subjected to torture or ill-treatment. This concerns primarily acts that are disproportionate to the maintenance of order and discipline within the institution or unit. A prisoner subjected to such actions is entitled to compensation.

58. Section 61 provides that force can be used against prisoners only if necessary to prevent resistance to an official executing a lawful order; force includes both physical force and the use of batons.

59. Section 181 provides that section 61 also applies in respect of detainees.

D. The Obligations Act (Zakon o obligacionim odnosima; published in the OGM nos. 47/08 and 04/11)

60. Sections 148 and 149 set out different grounds for claiming civil compensation, for both pecuniary and non-pecuniary damage.

61. Section 151 provides, *inter alia*, that everybody has the right to ask the court or another competent body to order the cessation of any action which violates human integrity, personal and family life and other personal rights.

62. Section 166 § 1 provides that any legal entity – which includes the State – is liable for any damage caused by one of "its bodies".

63. Sections 206 and 207 provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of the violation of his or her personal rights is entitled, depending on the duration and intensity thereof, to sue for damages in the civil courts and, in addition, to request other forms of redress "which might be capable" of affording adequate non-pecuniary satisfaction.

E. Relevant domestic case-law

64. The Government submitted that in 2010 three constitutional appeals had been adopted by the Constitutional Court, 184 were rejected on the merits (*odbio*) and 144 were rejected on procedural grounds (*odbacio*). During the same period, proceedings concerning one constitutional appeal were discontinued (*obustavio*).

65. Between 1 January 2011 and 19 January 2012 a further 247 constitutional appeals were rejected on the merits, 234 were rejected on procedural grounds, three proceedings were discontinued and nineteen constitutional appeals were accepted.

66. No information was provided as to whether any of these decisions was delivered in the context of a subsidiary prosecution by the injured parties.

THE LAW

I. JOINDER OF THE APPLICATIONS

67. The Court notes that the applications under examination concern the same issue. It is therefore appropriate to join them, in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicants complained under Article 3 of the Convention that they had been tortured and ill-treated by prison guards on 27 October 2009 and about the lack of an effective investigation in that regard.

69. The relevant Article reads as follows:

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

A. The substantive aspect

1. Admissibility

70. The Government submitted that the applicants had failed to exhaust all effective domestic remedies. In particular, the civil proceedings they had initiated and through which they could obtain compensation for non-pecuniary damage for a possible violation of their rights (*eventualne povrede prava ličnosti*) were still pending. In this respect they referred to the relevant sections of the Obligations Act (see paragraphs 60-63 above).

71. The applicants maintained that the civil claim was not an effective domestic remedy. On 1 December 2014 they notified the Court that the civil proceedings had been concluded on 23 October 2014, and submitted the relevant decision of the Supreme Court (see paragraph 42 above).

72. The Court points out that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are exempted from answering for their acts before an international body until they have had an opportunity to put matters right through their own legal system. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC],

no. 25803/94, §§ 74-75, ECHR 1999-V; and *Vučković and Others v. Serbia* [GC], no. 17153/11, §§ 69-77, 25 March 2014).

73. The Court also recalls that an applicant's status as a "victim" depends on whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate and sufficient redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004, and *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V).

74. Turning to the present case, the Court notes that the applicants did lodge a compensation claim, and that the proceedings were concluded in October 2014. While the requirement for the applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (*Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)), the Court also accepts that the last stage of such remedies may be also reached after the lodging of the application but before the Court determines the issue of admissibility (*Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts)). Even assuming that a compensation claim in civil proceedings may be regarded as an effective domestic remedy for complaints under the substantive aspect of Article 3 of the Convention, the Court notes that the applicants in the present case have exhausted that remedy proposed by the Government, whose objection in that regard must therefore be dismissed.

75. However, this calls for an examination of whether the applicants may still claim to be victims of the alleged violation. The Court notes in this respect that the domestic courts ruled partly in favour of the applicants, awarding them damages. It further observes that while the Supreme Court referred to the impugned actions of the guards as degrading human dignity, it did not acknowledge a violation of the applicants' rights as clearly as it would have been necessary in this type of cases, in particular in view of the explicit position of the lower courts in this respect (see paragraphs 40-42 above). In any event, and quite apart from the issue as to whether the domestic courts' findings were sufficient in terms of acknowledgement of a violation, the Court is of the opinion that the compensation of EUR 1,500 awarded to each applicant in respect of non-pecuniary damage, in the present case, cannot be considered an appropriate redress for the violation complained of (see, *mutatis mutandis*, *Cocchiarella v. Italy* [GC], cited above, § 107).

76. In view of the above, the Court considers that the applicants' status as "victims" within the meaning of Article 34 of the Convention is unaffected.

77. The Court also 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.

2. Merits

78. The applicants reaffirmed their complaints.

79. The Government did not contest that the prison guards had used excessive force, which was not proportionate to the measures that had to be implemented. They maintained, however, that the use of force was justified as its aim was to overcome the applicants' resistance and therefore it could not constitute torture or inhuman or degrading treatment. They further submitted that the applicants had never been denied medical assistance, the first applicant himself having refused medical help. They concluded that there was no violation in this regard.

80. The Court has already held that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being. While it accepts that the use of force may be necessary on occasion to ensure prison security, to maintain order or prevent crime in such facilities, such force may be used only if it is indispensable and it must not be excessive. Any recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of Article 3 of the Convention (see *Kopylov v. Russia*, no. 3933/04, § 157, 29 July 2010, and the authorities cited therein).

81. The Court has further held that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Vladimir Romanov v. Russia*, no. 41461/02, § 58, 24 July 2008).

82. Turning to the present case, the Court notes that the domestic bodies established that the prison guards had hit the applicants with a rubber baton (see paragraphs 22, 35 and 36 above). While the first applicant had refused to be examined by a doctor, the external forensic doctor confirmed that the second applicant had sustained injuries (see paragraph 15 above). Furthermore, the domestic courts accepted that the use of force had been excessive, as acknowledged by the Government as well (see paragraphs 40-42 and 79 above). While the Government do not consider that the impugned actions of the prison guards constituted ill-treatment, the Court does not take the same view. Taking into account the specific acts described and established in the domestic proceedings, as well as the injuries noted in the medical reports, the Court finds that the threshold of Article 3 was reached

and considers that there has been a violation of the substantive limb of Article 3 of the Convention in respect of both applicants.

B. The procedural aspect

1. Admissibility

83. The Government submitted that the applicants had not exhausted all effective domestic remedies available to them. In particular, they had failed to lodge a constitutional appeal against the decisions of the Court of First Instance and the High Court delivered on 18 March and 13 June 2011 respectively. In this regard the Government referred to the Constitutional Court's case-law (see paragraphs 64-66 above).

84. The applicants submitted that a constitutional appeal was not an effective domestic remedy.

85. The Court recalls that where alleged ill-treatment is perpetrated by a State official, Article 3 requires that an official investigation be carried out. The applicant is not obliged personally to start a subsidiary prosecution, having already brought a criminal complaint and thus afforded the State an opportunity to put matters right (see *Stojnšek v. Slovenia*, no. 1926/03, § 79, 23 June 2009 and the authorities cited therein).

86. Turning to the present case, the Court notes that the alleged ill-treatment had been perpetrated by prison guards, that is to say by State officials. The applicants, for their part, had brought criminal complaints with regard to the events complained of, and had thus afforded the State an opportunity to put matters right. They were therefore not obliged to initiate – in addition – the subsidiary prosecution resulting in the decisions of the Court of First Instance and the High Court of 18 March and 13 June 2011, respectively, and hence had no obligation to lodge a constitutional appeal thereafter either. The Government's objection in this regard must therefore be dismissed.

87. 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.

2. Merits

a. The parties' submissions

88. The applicants complained that there had been no effective official investigation into the impugned incident. In particular, the State prosecutor had not obtained all the relevant video-recordings of the prison corridor where the torture had taken place, obtaining them from only one camera. The disciplinary proceedings that were conducted were ineffective as they

were conducted against only three prison guards and seven months after the impugned event.

89. The applicants further submitted that they had indeed lodged an indictment after their criminal complaint against persons unknown had been rejected. However, this was done in response to the instruction of the State prosecutor to that effect, and not as a result of their "wrongful assessment", as submitted by the Government (see paragraphs 22 *in fine* and 26 above).

90. The Government submitted that the respondent State had undertaken a prompt, thorough and effective investigation into the applicants' allegations of ill-treatment. They did not contest that the prison guards had used excessive force, but considered it justified. Following the Ombudsman's recommendation to that effect, disciplinary proceedings had been instituted against three prison guards who had ultimately been fined for the use of excessive force. The applicants' families, the Ombudsman and the NGOs with an interest in this case were duly informed about the outcome of the disciplinary proceedings.

91. The Government further maintained that the applicants had also contributed to the length of the pre-trial proceedings (*prethodnog krivičnog postupka*) by wrongfully lodging a constitutional appeal against a procedural decision in addition to the indictment, which the domestic courts duly decided to treat as a criminal complaint (see paragraphs 26 and 31 above). They argued that the proceedings at issue would have been conducted without unnecessary delay had it not been for that contribution.

92. In view of the above, they considered that there had been no violation of Article 3 of the Convention.

b. The Court's conclusion

93. According to the Court's established case-law, when an individual makes a credible assertion that he has suffered treatment at the hands of the police or other similar agents of the State that violates Article 3, it is the duty of the national authorities to carry out an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

94. The Court observes in this connection that the lack of conclusions arising from any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of results, but of means". Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006). Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of

those within their control with virtual impunity (see *Labita* [GC], cited above, § 131).

95. The investigation must be thorough, prompt and independent (see *Mikheyev*, cited above, §§ 108-110, and *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, §§ 56-57, 15 February 2007).

96. Turning to the present case, the Court notes that after the applicants' mothers had lodged criminal complaints with regard to the events of 29 October 2009, the State prosecutor asked the Court of First Instance to investigate the complaints. Immediately thereafter the Court of First Instance, for its part, undertook a number of actions: it requested the identification of the prison guards involved, the medical examination of the applicants, submission of the relevant video-recording, and it heard evidence from a number of individuals, including the applicants, the prison guards concerned and the detainees sharing the cell with the applicants. On the basis of the findings of the investigation the State prosecutor rejected the criminal complaints, concluding that the prison guards had indeed used force but had done so in order to overcome the applicants' resistance, and had thus acted within their powers.

97. In its response to the Ombudsman's request, the IECS confirmed that the guards had used force only to the extent necessary to overcome the applicants' resistance (see paragraph 34 *in limine* above).

98. Even though the applicants were officially notified that they could undertake a subsidiary prosecution, the first time they attempted to do so the Court of First Instance directed them back to lodge a criminal complaint with the State prosecutor, and the second such request was rejected by the same court.

99. As regards the effectiveness of the criminal investigation, the Court recalls that the Government have not disputed the applicants' allegation (see paragraph 88 above) that the State Prosecutor did not obtain all the relevant video-recordings of the prison corridor at the time in question. Moreover, the second dismissal by the State Prosecutor, on 19 October 2010, took place after the Ombudsman had given his opinion on the matter on 29 March 2010 (see paragraph 35 above), finding that excessive force had been used and recommending disciplinary proceedings, and also after the end of the disciplinary proceedings on 31 May 2010 (see paragraph 36 above) where it was considered established that three prison guards, I.M., I.B. and R.T. had abused their position and exceeded their authority by using excessive force disproportionate to the resistance offered by the applicants. Therefore, the Court considers that it has not been convincingly established that the decisions by the State Prosecutor to discontinue the criminal proceedings (see paragraphs 22 and 29 above) were based on an adequate assessment of all the relevant factual elements in the case, as well as taking into account the findings of fact as established by the Ombudsman and in the disciplinary proceedings.

100. In view of the above, the Court considers that there has been a violation of the procedural limb of Article 3 of the Convention in respect of both applicants.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

101. The applicants also complained under Article 13 of the Convention that there had been no effective official investigation into the events of 27 October 2009.

102. Having regard to the finding relating to the applicants' procedural complaint under Article 3 in this regard, the Court considers that it is not necessary to examine the admissibility or the merits of the same complaint under Article 13 (see, *mutatis mutandis*, *Youth Initiative for Human Rights v. Serbia*, no. 48135/06, § 29, 25 June 2013).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. The applicants also complained, under Articles 3 and 13 of the Convention, that they had been threatened and abused between 23 December 2009 and 15 January 2010 (see paragraph 43 above) and that there was no effective official investigation in relation thereto.

104. In view of all the information available in the case-file and the submissions made by the parties the Court considers that there is no evidence that the applicants were indeed threatened or abused as alleged. The applicants' complaints in this regard under Article 3 are therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

105. The Court further recalls that Article 13 has been consistently interpreted as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 31, Series A no. 172). The criteria for considering a claim as "arguable" cannot be construed differently from the criteria applied when declaring claims "manifestly ill-founded" (see *Powell and Rayner*, cited above, § 31, and *Kienast v. Austria*, no. 23379/94, § 54, 23 January 2003).

106. Since the applicants' complaints under Article 3 in respect of the alleged incidents have been declared "manifestly ill-founded", the Court considers that they cannot be regarded as "arguable" for the purposes of Article 13. The applicants' complaint under Article 13 in this regard taken in conjunction with Article 3 is thus likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicants each claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

109. The Government contested this claim.

110. The Court accepts that the applicants have suffered non-pecuniary damage resulting from a violation of Article 3 which cannot be sufficiently compensated by the finding of a violation alone. Making its assessment on an equitable basis, and in view of the partial compensation awarded by the domestic courts (see paragraph 42 above) the Court awards the applicants EUR 4,350 each under this head.

B. Costs and expenses

111. The first applicant claimed EUR 8,562 and the second applicant claimed EUR 3,586 for costs and expenses.

112. The Government contested this claim.

113. 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 and the above criteria, the Court considers it reasonable to award the first applicant the sum of EUR 3,520, and the second applicant the sum of EUR 1,160 covering costs under all heads.

C. Default interest

114. 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 complaint with regard to the events of 27 October 2009 under Article 3 admissible;

3. *Declares* the complaint with regard to the other alleged incidents inadmissible;

4. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention in respect of the events of 27 October 2009 with regard to both applicants;

5. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of the events of 27 October 2009 with regard to both applicants;

6. *Holds* that there is no need to examine the admissibility and merits of the complaint in respect of the events of 27 October 2009 under Article 13 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 4,350 (four thousand three hundred and fifty euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,520 (three thousand five hundred and twenty euros) to the first applicant plus any tax that may be chargeable to the first applicant, and EUR 1,160 (one thousand one hundred and sixty euros) to the second applicant, plus any tax that may be chargeable to the second applicant, 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;

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

Done in English, and notified in writing on 28 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Karakaş, joined by Judges Sajó and Kūris, is annexed to this judgment.

A.I.K.
S.H.N.

CONCURRING OPINION OF JUDGE KARAKAŞ, JOINED BY JUDGES SAJÓ AND KŪRIS

We agree with the outcome in the present case. We do, however, wish to draw attention to certain decisions and judgments by the Court concerning the issue of compensation as an appropriate remedy in Article 2 and 3 cases, which conflict with the Court's established case-law and which were not considered unacceptable, as a matter of principle, in the present case.

In paragraph 74 of the judgment, it is stated that "[E]ven assuming that a compensation claim in civil proceedings may be regarded as an effective domestic remedy for complaints under the substantive aspect of Article 3 of the Convention, the Court notes that the applicants in the present case have exhausted that remedy proposed by the Government, whose objection in that regard must therefore be dismissed."

In paragraph 75 of the judgment, it is further stated that "In any event, and quite apart from the issue as to whether the domestic courts' findings were sufficient in terms of acknowledgement of a violation, the Court is of the opinion that the compensation of EUR 1,500 awarded to each applicant in respect of non-pecuniary damage, in the present case, cannot be considered an appropriate redress for the violation complained of..."

We find this troubling, as we cannot accept that civil compensation may be regarded as an effective remedy for complaints under the substantive aspect of Article 3 of the Convention.

The Court has held in a number of its judgments that "[I]f the authorities could confine their reaction to incidents of willful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice" (see, *inter alia*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007 and the cases cited therein).

This approach has been confirmed in numerous judgments in which the Court refused to entertain respondent Governments' arguments that civil and administrative remedies could be regarded as sufficient for compliance by a Contracting State with its obligations under Article 3 of the Convention, on the ground that such remedies are aimed at awarding damages rather than identifying and punishing those responsible (see, *inter alia*, *Atalay v. Turkey*, no. 1249/03, § 29, 18 September 2008, and *Saçılık and Others v. Turkey*, nos. 43044/05 and 45001/05, § 68, 5 July 2011; see

also *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 89, 18 December 2012[1]).

Significantly, the same principle was also relied upon by the Grand Chamber when overturning a Chamber's judgment which had held that acknowledging an Article 3 breach and ordering the payment of compensation to the victims of that breach constituted sufficient redress (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 109, 119 and 129, ECHR 2010).

In some decisions, however, perhaps for reasons related to the specific circumstances of those cases, payment of compensation constitutes an adequate remedy for a Contracting Party's substantive obligations under Articles 2 and 3 cases. This consideration finds its roots in the decision of inadmissibility in the case of *Caraher v. the United Kingdom* ((dec.), no. 24520/94, ECHR 2000-I) and was further developed in cases predominantly against the United Kingdom (see, *inter alia*, *Hay v. the United Kingdom* (dec.), 41894/98, 17 October 2000; *McKerr v. the United Kingdom*, no. 28883/95, §§ 116-121, ECHR 2001-III; *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 110-115, 4 May 2001; *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 93-99, 4 May 2001; *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 99-110, 4 May 2001; *McShane v. the United Kingdom*, no. 43290/98, §§ 99-105, 28 May 2002; *Bailey v. the United Kingdom*, (dec.) no. 39953/07, 19 January 2010; and *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 121, ECHR 2013).

In the circumstances of those cases, where the breach of Article 2 or 3 of the Convention has been acknowledged by the national authorities and compensation paid to the victim, or where civil proceedings are pending, the State would be absolved from its substantive obligations and the Court should confine itself to an examination of the procedural aspect of Article 2 or 3 of the Convention only.

The *McKerr* judgment (cited above, § 156) states that although "civil proceedings would provide a judicial fact-finding forum, with the attendant safeguards and the ability to reach findings of unlawfulness, with the possibility of damages. It is, however, a procedure undertaken on the initiative of the applicant, not the authorities, and it does not involve the identification or punishment of any alleged perpetrator. As such, it cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 of the Convention." We agree that,

[1] "As regards a civil action to obtain redress for damage sustained as a result of the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-21, 24 February 2005, and *Estamirov and Others*, cited above, § 77). Accordingly, the Court confirms that the applicants were not obliged to pursue civil remedies."

given the nature of the civil procedure, it "does not involve the identification or punishment of any alleged perpetrator." However, it does not follow from the fact that a civil procedure can, in certain aspects, be equated to a criminal procedure (or perform some function thereof) that the State's substantive obligations State are extinguished on the ground of the applicant's alleged lack of victim status.

The Court's case-law must avoid creating an impression that even where the perpetrator of an ill-treatment-related offence or an unlawful killing is identified at the end of an effective investigation and sufficient evidence has been collected for that perpetrator to be prosecuted, the authorities are not required to put the perpetrator on trial unless the circumstances of the case compel the contrary, and may allow him or her to go free with impunity and instead pay money to the victim or to the victim's family. Such reasoning would disregard the fact that conducting an effective investigation capable of leading to the identification and prosecution of the perpetrator is required *precisely because* the perpetrator can then be punished. Moreover, it would invite the States to tolerate impunity without the risk of being found in violation of their substantive obligations under Article 2 or 3 of the Convention.

Our case-law has unequivocally recognised that Contracting State's obligations under the substantive aspects of Article 2 and 3 do not come to an end by acknowledging the breach and paying compensation to the victim. The above-mentioned uncertainties in the above-cited decisions cannot undermine the principle that imposition of a deterrent punishment is an important and sometimes *sine qua non* requirement in cases concerning ill-treatment and unlawful killings, especially when they involve State agents. That case-law does not tolerate situations in which criminal proceedings are conducted, the perpetrator is identified and it is established that the perpetrator carried out the act which breached the victim's rights under Article 2 or 3 of the Convention, but he or she is then allowed to escape punishment for various reasons. Thus, in cases where the execution of the perpetrators' prison sentences was suspended (see *Okkalı v. Turkey*, no. 52067/99, § 39, ECHR 2006-XII (extracts); *Fadime and Turan Karabulut v. Turkey*, no. 23872/04, § 30, 27 May 2010; *Nikolova and Velichkova*, cited above, § 24, and *Külah and Koyuncu v. Turkey*, no. 24827/05, § 18, 23 April 2013); where the criminal trial became time-barred on account of the expiry of the statute of limitations after it had been established that the defendants had carried out the acts (*Uğur v. Turkey,* no. 37308/05, § 70, 13 January 2015); or where pronouncement of the judgment was suspended (*Eski v. Turkey*, no. 8354/04, § 18, 5 June 2012 and *Kasap and Others v. Turkey*, no. 8656/10, § 37, 14 January 2014), the Court has found substantive violations of Articles 2 and 3 of the Convention on account of the impunity granted to those perpetrators.

The underlying rationale behind this approach is that, although there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow ill-treatment or life-endangering offences by State agents to go *unpunished* (emphasis added) by using their powers of discretion to lessen the consequences of serious criminal acts rather than to show that such acts can in no way be tolerated. This is essential for maintaining public confidence, ensuring adherence to the rule of law and for preventing any appearance of tolerance or of collusion in unlawful acts (see, *inter alia*, *Okkalı*, cited above, § 65, and *Türkmen v. Turkey*, no. 43124/98, § 51, 19 December 2006). Although the Court should largely defer to the national courts' choice of appropriate sanctions for ill-treatment and homicide by State agents, it must exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Nikolova and Velichkova*, cited above, § 62).

In line with the foregoing principles, in a number of cases in which applicants were awarded substantial sums of compensation by the national authorities but in which the perpetrators of the violations were not punished, the Court has held that the applicants could still claim to be victims within the meaning of Article 34 of the Convention and gone on to find substantive breaches of Articles 2 and 3 of the Convention (see *Saçılık and Others*, cited above, § 69 and 112, where one of the applicants had been awarded EUR 140,000 for the injury sustained during a security operation in a prison; *Leonidis v. Greece*, no. 43326/05, §§ 41 and 46-48, 8 January 2009, where the applicant had been awarded EUR 80,000 for the killing of his son by a police officer).

We do not exclude the possibility that situations might exist where a punishment of a criminal nature is not absolutely necessary and the respondent State's obligations may be satisfactorily fulfilled by identifying and acknowledging the negligent act or the omission which breaches an individual's rights under Article 2 or 3, and then by adequately compensating for it. Such situations arise, for example, in the area of positive obligations under Articles 2 and 3 of the Convention. It is indeed for that reason that the Court expressly specifies in such cases that "if the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case" (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I).

The line of case-law which has its roots in the *Caraher* decision currently consists of only a handful of cases. Unfortunately, the present judgment gives undue prominence to one aspect of the *Caraher* logic, which might well have been applicable in that particular case at that stage of

development of the Court's case-law, but which is not universally applicable.

In our opinion, the time has come for the Grand Chamber of the Court to settle this issue and to reinforce the case-law against unintended erosions. In the light of what we set out above, it is apparent that the established case-law does not allow the dilution of State liability under the pretext of available civil remedies. This risk cannot be mitigated by the addition of sentences such as "even assuming that a compensation claim in civil proceedings may be regarded as an effective domestic remedy for complaints under the substantive aspect of Article 3 of the Convention" (see § 74 of the present judgment). One wonders, for example, what the Court would have decided in this case had each of the applicants been awarded, not EUR 1,500, but EUR 20,000? Would it then have held that that sum was sufficient to amount to adequate redress? In any event, as it is, the present judgment seems to create a third line of case-law, by relying on the insufficiency of the sum awarded in civil proceedings. That clearly conflicts with what was stated in the *Caraher* decision, namely that "[T]he Court is not persuaded that an applicant can still claim to be a victim on the basis that the amount of compensation is inadequate". We are convinced that these applicants can still claim to be victims of a substantive violation of Article 2, not because of the adequacy or inadequacy of the compensation, but in view of the fact that without consistent State responsibility for providing an adequate mechanism for criminal liability there can be no proper protection of the values enshrined in Article 2 or 3 of the Convention.