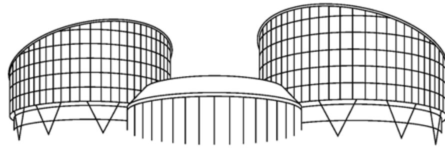

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LAVORGNA v. ITALY

(Application no. 8436/21)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment • Mechanical restraint of the applicant to his bed for almost eight days during his compulsory confinement in a psychiatric hospital ward • Initial imposition of restraint measure strictly necessary to prevent him from harming himself or others • Continuation of measure, for an extraordinarily long period, not strictly necessary and not respectful of the applicant's human dignity • Not proven that measure did not expose applicant to pain and suffering • Ineffective investigation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 November 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Lavorgna v. Italy,

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

Ivana Jelić*, President*,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 8436/21) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Matteo Lavorgna ("the applicant"), on 29 January 2021;

the decision to give notice to the Italian Government ("the Government") of the complaints concerning Article 3;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the *Garante nazionale dei diritti delle persone detenute o private della libertà personale* ("*Garante*") and jointly by *L'altro Diritto ODV*, *La Società della ragione ONLUS*, and the *Fondazione Franca e Franco Basaglia*, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 8 October 2024,

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

INTRODUCTION

1. The case concerns the applicant's complaints, under Article 3 of the Convention, about his alleged ill-treatment during his confinement in a hospital psychiatric ward (*Servizio psichiatrico di diagnosi e cura* – "SPDC"), and the criminal investigation which ensued.

THE FACTS

2. The applicant was born in 1995 and lives in Segrate. He was represented by Ms A. Mascia and Ms A. Calcaterra, lawyers practising in Verona.

3. The Government were represented by their Agent, Mr L. D'Ascia, and by Mr T. Marsh and Mr M. Di Benedetto, *Avvocati dello Stato*.

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

I. BACKGROUND TO THE CASE

5. The applicant suffered from a psychotic disorder not otherwise specified (*psicosi non altrimenti specificata* – “PNAS”).

6. The applicant’s medical history, as it appears from the documents submitted by the parties, included three hospitalisations in 2013 with diagnoses of, *inter alia*, substance-induced psychosis and substance abuse. He was also hospitalised between 11 and 16 July 2014, having threatened his mother with a knife, with a diagnosis of PNAS.

II. CIRCUMSTANCES OF THE APPLICANT’S HOSPITALISATION IN THE MELZO HOSPITAL PSYCHIATRIC WARD

7. On 30 September 2014 the applicant was admitted to the SPDC of the Santa Maria delle Stelle Hospital in Melzo as a voluntary patient (*ricovero volontario*) on the advice of his psychiatrist, who considered that the applicant was in a situation of acute crisis which could not be managed on an out-patient basis. He had thus recommended the applicant’s hospitalisation in order to carry out a therapeutic re-evaluation in a protected environment.

8. On 7 October 2014 the applicant received a visit from his parents and requested that he be discharged from hospital. The hospital psychiatrists replied that he would need to remain hospitalised for an additional period of four days as the set of symptoms he had displayed upon admission had not been resolved and the re-evaluation of his psychopharmacological therapy had not yet been completed. As can be seen from the daily medical register, the applicant reacted with physical aggression towards his father, and subsequently towards his mother and the chief physician. In that context the medical staff decided to apply mechanical restraints (see relevant extracts from the medical register in paragraph 17 below).

9. On the same day a compulsory treatment order (*trattamento sanitario obbligatorio*) was requested with a view to prolonging the applicant’s hospitalisation, which he no longer voluntarily accepted. The request indicated that the applicant was in a state of psychomotor agitation, had displayed aggressiveness towards others, and had been diagnosed with PNAS.

10. On 13 October 2014 the compulsory treatment order was renewed.

11. On 14 October 2014 two psychiatrists lodged an urgent notification of social danger (*segnalazione urgente di pericolosità sociale*) with the directorate of the Melzo local health authority (*direzione sanitaria*), the Milan prosecutor’s office, and the *carabinieri*. They stated that on 7 October 2014 the applicant had attacked his parents and one of the doctors at the hospital, and that he had done so in an uncontrolled, impulsive manner. They highlighted, amongst other things, that the applicant’s clinical picture disclosed a failure on his part to critically analyse his own actions as well as

a lack of awareness of the seriousness of the violent incident. They concluded the notification report as follows:

> "The overriding need to ensure the physical safety of other patients and staff requires [that the applicant be] physically restrained, which is problematic to manage in the long term as well as ethically questionable.
>
> There is currently an issue of custody and of containment of a social danger that goes beyond clinical intervention in the strict sense and for which we are neither competent nor structurally equipped.
>
> We therefore call for urgent measures, within your competence, to allow for suitable clinical observation to continue in a more appropriate context."

12. On 15 October 2014 the use of mechanical restraints was discontinued.

13. On 19 October 2014 the compulsory treatment order was lifted.

14. On 20 October 2014 one of the psychiatrists made a record to the effect that the applicant was being kept under pharmacological sedation.

15. On 23 October 2014 the doctors started to gradually decrease the sedation.

16. On 27 October 2014 the applicant was discharged from the hospital and admitted to another hospital; the admission report described him as appearing sedated.

III. EXTRACTS FROM THE DAILY MEDICAL REGISTER

17. The relevant parts of the daily medical register (*diario clinico*) pertaining to the month of October 2014, in so far as legible, indicate as follows:

7 October (Day 1)

> "10.00: Isolated, remains in bed.
>
> 15.00: During the visit of his parents he reactivates and attacks his father again. An intervention with a view to restraint is necessary, with the calling in of reinforcement staff and the involvement of an anaesthetist. During the altercation he assaults his mother (who is taken to the emergency room) and medical staff (the chief physician).
>
> 16.45: [separate entry by the anaesthetist called to intervene] Pantoclastic crisis ongoing. ... repeated attempts at polypharmacological sedation ...
>
> 17.15: [We] Manage[d] to restrain him and transfer him to the bed. Compulsory hospitalisation order requested."

8 October (Day 2)

> "01.00: The patient woke up; appears completely uncritical towards the serious aggressive behaviour [he displayed yesterday] afternoon (he assaulted his mother, causing an injury to her ear drum, and then the chief physician, fracturing his nose), [and] would like to be unrestrained. Does not seem at all 'repentant'; ...the restraints are

maintained given the above-mentioned context that protracts a situation of active and current danger.

09.40: Awake again. Asks for the restraints to be removed in aggressive and threatening manner. Already took the morning treatment.

12.00: Attempted to re-examine the incident of the previous day with the aim of reviewing what led to the patient's aggressive reaction; the situation became complicated when the patient realised that his mother was also hesitant about his request to be taken home, mainly for fear of aggressive reactions [towards] the family.

13.00: Treatment reviewed.

14.30: The patient appears lucid, not sedated. Afternoon treatment administered. [He is] angry, does not understand why he is restrained, and reports that what had happened the previous day had the objective of going home to his family. When questioned about the personal injuries inflicted on both his mother and the chief physician, he does not appear to understand the seriousness of the incident. His upper limbs are intermittently released from the restraints. He eats and receives assistance with hygiene and changing his shirt. High risk of violence towards others persists in light of, among other things, his uncritical attitude (*acriticità*). Restraint of four limbs remains in place. Vital signs normal.

18.00: Patient refuses to eat with the assistance of nursing staff and only asks to smoke; Completely uncritical and at the same time lucid with regard to his violence against others ... [and] adamant as to his request to be discharged."

9 October (Day 3)

"09.30: Patient restrained to the bed, lucid, coherent. Voluntarily takes therapy. He remains uncritical of the seriousness of his actions, which he interprets from a persecutory perspective 'I have been attacked', 'it is you who did not let me go home', 'mum is an accomplice because she does not want me anymore'. Asks to speak to his mother on the phone and asks to be taken home. He underwent, with the assistance of nursing staff, physiotherapy for his lower limbs. ... It is decided to maintain restraint on all four limbs in view of his persistent uncritical attitude and the risk of further aggressive behaviour if his request to go home is not complied with. A wrist X-ray, which will be done at the bed, has been requested as he complains of pain.

10.30: Sedative therapy is modified.

16.00: Contacted a colleague specialised in internal medicine to whom the situation requiring restraint was explained. Advises treatment ..."

10 October (Day 4)

"08.15: Remained restrained during the night. Good vital signs. Sleep monitored.

09.00: Awake, had breakfast. Not sedated during the consultation; he asks to be unrestrained and ... when he will be discharged. Critical assessment of what happened remains very partial, continues to feel as though he was the victim of aggression ..."

11 October (Day 5)

"11.15: patient [is] calm, formally cooperative, reports "repentance" regarding the other day's actions. However, this statement appears to be rather superficial as he somehow justifies his behaviour as a reaction to a provocation by others. At my insistence on the subject, he asks me if I consider him bad and what his future would be (in terms of the consequences of his actions). Mostly discussed the [not legible] of his impulses and what strategies to adopt. Remains restrained at four limbs."

12 October (Day 6)

"09.00: Calm but not sedated. He asks to be released from the restraint but [continues to minimise] the incident; when the subject is insisted upon he justifies [his] aggressive behaviour ... He does not want to talk about what happened in order 'not to ... be constantly reminded of it'. Attempts made at telling the patient that, after what happened, he cannot be discharged until [it can be verified that he has become] better at managing feelings of tension and anger, especially towards his parents. Hinted that, in the light of [his] aggressive behaviour there may be consequences as regards his future placement. Medication is increased due to failed [sedation] and in view of partial removal of restraints.

13.00: One limb unrestrained[; the patient] smoked and ate. Monitoring of vital signs continues.

1.30 [p.m.]: telephone update with [his] mother

14.30: Clinical situation assessed and it is decided to begin by removing the restraint on one limb in alternation, given that the nursing staff on duty is the same as was on duty on the date of the incident ...

17.00: The restraint is maintained on three limbs with one arm being left free. ... Not sedated but calm; he asks to be allowed to get up to wash himself and walk around in the next few days. He declares that he is 'repentant'."

13 October (Day 7)

"08.30: Last night after dinner he fell asleep and rested all night. He was not woken up for the pharmacological treatment [scheduled at] 21.00. This morning he woke up for breakfast. Sedation modified.

11.00: The compulsory hospitalisation order is renewed.

15.00: Agreed with the patient that the restraints would be removed temporarily for a few hours.

16.30: Restraints were removed and he took care of his personal hygiene, changed his clothes, and smoked. He agreed to be restrained again with one arm left free. During the consultation he oscillates between inquiries on the condition of the people he attacked, requests to meet his mother, and repetitions of 'he was [attacked] too' and that he was 'only talking to his mother'. No sedation ..."

14 October (Day 8)

"08.45: Restraints on three limbs (right arm free). Appears calm, asks for explanations as to how the attack unfolded and who attacked whom. This morning the restraints were removed from his upper limbs to allow [him to move and attend to his] personal hygiene. ...

14.00: The restraints were removed to allow him to use the bathroom. Agrees to be restrained again to receive a visit from his mother and grandfather. In the presence of his mother he reiterates that it was not only he who [was guilty of] assault but that he had [also] been assaulted by four persons. Also, as regards the slap [he gave] to his mother (causing eardrum laceration) [he] repeats that, after all, his mother had also given him a few 'slaps' as a child.

14.30: Despite having taken sedative medication ... [he] does not appear sedated at all. [New treatment ordered.] Internal medicine consultation carried out.

17.00: Meeting with mother and grandfather following an examination of the patient ..."

15 October (Day 9)

"09.00: During the night he rested. Calm on waking up. ... asks that the restraints be removed, which is done in order for him to use the bathroom and take a shower. Partially sedated.

16.00: Calm during his mother and grandfather's visit. Remained unrestrained. ..."

IV. CRIMINAL COMPLAINT AGAINST MEDICAL PERSONNEL AND THE ENSUING INVESTIGATION

A. The applicant's criminal complaint

18. On 25 November 2015 the applicant lodged a criminal complaint against two doctors of the Melzo hospital SPDC alleging ill-treatment (Article 572 of the Italian Criminal Code), false imprisonment (Article 605) and criminal coercion (Article 610) on account, *inter alia*, of the alleged lack of justification for his mechanical restraint.

19. The applicant highlighted the inordinately lengthy period during which he had been forcibly immobilised and submitted that medical personnel had intentionally and arbitrarily subjected him to a highly coercive measure which had been implemented in an inhuman and degrading manner, causing him intense physical and psychological suffering.

20. He also complained about the failure to ensure adequate mobility for his limbs during the period in which he was restrained, and of the additional burden constituted by the prohibition on receiving visits from his parents between 7 and 14 October despite his young age (he had been nineteen years old at the material time).

21. Moreover, the measure had been, in his view, devoid of all proportionality on account of its inordinate duration – that is eight consecutive days of having all four limbs restrained, admittedly with some short and sporadic moments of freedom.

22. As regards the absence of justification for the measure, he emphasised that, from both a legal and an ethical point of view, mechanical restraint may be resorted to only in situations of urgency in which such a measure is strictly necessary for the purpose of averting an imminent and serious danger of self-harm or of harm to others.

23. Moreover, mechanical restraint might only be applied for the time required to deal with the situation leading to its application and so, once the danger has subsided, the measure is no longer justified and must accordingly be disapplied. The applicant's mechanical restraint had not respected the foregoing conditions for a number of reasons. He stated that after the restraint had been applied on 7 October he had been sedated and asleep until 1 a.m. on 8 October 2014, and thus questioned the purported necessity of prolonging his restraint, as opposed to merely having him kept under observation by the nursing staff. He contended that his continued restraint had served a merely precautionary function, namely that of preventing a future potential risk of a repeat of aggressive behaviour and simplifying the management of a difficult patient. That rendered the restraint unjustified. He highlighted the fact that, with the exception of an entry on 8 October 2014 in which it was reported that he had asked to be let out of the restraints in an aggressive and threatening manner – which in any event would not in and of itself serve to justify restraint – there was nothing in the medical register indicating any further episodes of verbal or physical aggressiveness. On the contrary, the entries in the medical register from 9 October 2014 onwards described the applicant as non-confrontational, calm and cooperative. He emphasised the fact that two doctors had admitted to not being competent or structurally equipped to look after him during his compulsory hospitalisation.

24. In the applicant's view, mechanical restraint had to be used in the absence of alternatives, in other words as a matter of last resort. That had not been the case, as his restraint was not a solution that had been reached after having unsuccessfully attempted to manage his aggressiveness by other means. In the days following his initial immobilisation, mechanical restraint, coupled with sedation, had continued to be the only means adopted to manage him. The applicant further contended that the medical staff had made his release from mechanical restraint conditional on his "repentance" for his actions, as his progressive release only began once he had declared his contrition. That, according to the applicant, would amount to a "pedagogical" use of restraint, a use of the measure condemned by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT").

25. The applicant argued that the medical personnel against whom the criminal complaint had been lodged had intentionally and consciously carried out the actions constituting the criminal offences at issue.

B. The criminal investigation

26. On 19 February 2016 an investigation into the applicant's allegations was opened.

1. Medical expert assessment obtained by the prosecutor

27. On 20 June 2016 the public prosecutor at the Milan District Court appointed a medical expert to make the following assessments: whether the guidelines and protocol on physical restraint, as in force at the relevant time, complied with the law; whether they had been respected in the case under scrutiny; whether the pharmacological treatment had complied with the relevant guidelines; and whether restraint had been necessary or only appropriate (*opportuna*).

28. On 20 November 2016 the expert submitted his report.

29. The expert described the events of 7 October 2014. He emphasised the fact that the patient had reacted with a very significant display of aggression to the decision not to discharge him, to the point of causing injuries to both his mother and a doctor. Thus, the measure had been adopted following a concrete act of violence against others. Referring to the applicable restraint guidelines in force at the Melzo SPDC, the expert considered that the mechanical restraint of the patient had met the protocol's requirements.

30. As to the continuation of the measure, the expert described the overall length of the period of mechanical restraint as having been "unusually prolonged", and referred to the relevant guidelines and protocols, which all recommended limiting it as much as possible. He also conceded that the doctors could have tried to reduce its duration and made more attempts to suspend the measure. He considered, however, that they had not been faced with an objective fact on which to base their decision while the applicant had been restrained (since he could not have engaged in aggressive behaviour during that time) but that they had had to deal with a subjectively perceived risk instead. In that connection, he acknowledged that the doctors had checked the applicant daily throughout the application of the measure and had assured themselves that the serious psychopathological condition he had been suffering from was persisting. The persistence of the condition, which was psychotic in nature and accompanied by paranoiac tendencies, could itself be considered as rendering probable the repetition of aggressive conduct.

31. The expert concluded that negligence and imprudence on the doctors' part could be ruled out. He stated that, at most, he could identify an excess of interventionism on their part, but certainly not carelessness or neglect. He considered that one could also hypothesise the existence of an "excess of prudence" justified by a "perhaps excessive and unfounded fear of the possible negative consequences [of a] suspension of restraint".

32. He also concluded that wilful misconduct could be ruled out since the psychiatrists had followed the guidelines and protocols approved by the Lombardy Region and used in the psychiatric ward. Behaviour that could be considered "slight negligence" could be hypothesised, in his view, as arising from the prolongation of the mechanical restraint "for an excessive period of time", with reference to the recommendations of clinical and scientific authorities. However, he highlighted that that type of liability was not relevant in a criminal context.

2. *Prosecutor's request to discontinue proceedings*

33. On 7 February 2019 the public prosecutor filed a request with the Milan District Court preliminary investigations judge that the proceedings be discontinued.

34. The public prosecutor pointed out that coercive treatment and, in particular, the use of physical force, is limited by law to contexts of compulsory hospitalisation, and that restraint measures must be aimed at avoiding an immediate danger of patients harming themselves or others. Such measures may only be applied for the time strictly necessary for that purpose. He cited case-law on psychiatrists' duty of care towards their patients, which included the possibility of taking measures limiting patients' personal liberty in order to protect them or others. In that connection, and turning to the justification of the mechanical restraint measure, he considered, *inter alia*, that the duty incumbent on the medical staff to protect the life and health of patients in their care entailed that, if certain conditions existed, they were under an obligation to use restraint and did not have a choice.

35. He relied on guidelines issued by the Italian Society of Psychiatry on restraint, which pointed to an existing consensus in national and international scientific literature on the subject of mechanical restraint to the effect that it can only be justified in the face of a concrete, imminent risk of violence (whether against others or in the form of self-harm). He noted that the most critical element in such an analysis was the subjective nature of the perception of risk, entailing that its assessment would vary depending on the sensitivity of the doctor faced with such a situation.

36. In the case at issue, in the prosecutor's view all the foregoing conditions had been met: the mechanical restraint measure had been adopted on the basis of an imminent risk of violence stemming from a concrete act of physical aggression by the applicant against his parents and medical staff and not based on a – necessarily subjective – sense of risk perceived by the mental health practitioner involved.

37. As to the manner in which the restraint measure had been implemented, the prosecutor concluded that it could be considered "adequate". He noted that the nursing staff had assisted the applicant and that they had correctly filled in the medical register each day, in compliance with the protocol in force. It emerged from medical documentation and the expert report that the Melzo hospital protocol for physical restraint had been correctly complied with. He noted that the protocol did not indicate a maximum duration for the application of restraint measures, but rather an obligation on medical staff to periodically re-evaluate the need for the measure and its compatibility with the circumstances of individual cases. The medical register showed that daily evaluations of the applicant had taken place, which had revealed the persistence of a serious condition that was psychotic in nature and accompanied by paranoic tendencies. That in turn had allowed medical staff to identify, during the entire period restraint was applied, a risk of a recurrence of the aggression that had warranted the initial application of the restraint measure.

3. The applicant's objection to discontinuance of proceedings

38. On 9 April 2019 the applicant lodged an objection against the prosecutor's request to discontinue the proceedings. He complained that the reasoning for the request was overly laconic and that it consisted mostly of a transposition of the observations of the court-appointed expert, and mentioned that it had been submitted three and a half years after he had first lodged his criminal complaint.

39. He argued that the judgment of the Court of Cassation, Fifth Criminal Section, no. 50497 of 20 June 2018 (referred to hereinafter as "the *Mastrogiovanni* judgment") had not been taken into consideration by the prosecutor. According to the case-law as outlined in that judgment, the application of mechanical restraint on a precautionary basis was not an admissible practice; it could only be applied in the face of a concrete situation involving a clear and present danger of serious harm being caused to the patient, which must be evidenced by objective elements identified in an accurate and detailed manner. Against that background the applicant complained that the public prosecutor had not assessed the case against the criteria indicated by the Court of Cassation as indispensable for the configuration of the defence of necessity under Article 54 of the Criminal Code.

40. In particular, with regard to the clear and present nature (*attualità*) of the danger, he argued that the decision to use mechanical restraint had not been made on the basis of an assessment of the actual danger of serious harm but on a prudential and prognostic basis involving a hypothetical and merely possible resumption of his state of agitation. In his view, the danger of a reiteration of his violent acts had already receded from the moment the pharmacological sedation had been administered by the anaesthetist when the

restraints were applied. In support of that argument, the applicant argued that in the days following his restraint he was described by doctors as calm. It was therefore unclear where the supposed concrete elements indicating possible violent acts had been found. Therefore, in his view the decision to maintain the mechanical restraint had been based only on a future and uncertain risk of a reiteration of his aggressive behaviour and in the total absence of any imminent danger.

41. The applicant argued that no one had verified the persistence of the purported danger after the events of 7 October 2014. The medical register merely stated that the patient was calm, if uncritical of his own behaviour. With regard to the duration of the purported danger and the consequent prolongation of the applicant's mechanical restraint, no investigation had been made as to the existence of a danger that could have been qualified as current and therefore as legitimising the continuation of the restraint, and the public prosecutor in turn had limited himself to qualifying the reports on the applicant's uncritical attitude towards what had happened as adequate for the purposes of the applicable protocol.

42. The applicant concluded that the prolongation of the mechanical restraint had lacked adequate justification. To deem legitimate the use of restraint for almost eight consecutive days merely to cope with an isolated episode of aggression would have meant, in his view, legitimising that practice as a routine method for the treatment of psychiatric illness not only when a state of necessity actually existed, but also when there was a fear of possible future agitation.

43. He further argued that the mechanical restraint measure had not been applied after alternative strategies had been attempted without success, but rather had been the first and only method employed from 7 October onwards.

44. In conclusion the applicant requested, *inter alia*, that the prosecutor's request be rejected in order to allow for the examination of his case in the light of the Court of Cassation's case-law and, in particular, the criteria set out in the *Mastrogiovanni* judgment.

4. Decision of preliminary investigations judge to discontinue proceedings

45. By an order of 21 July 2020, the Milan District Court preliminary investigations judge (*giudice per le indagini preliminari*) decided to discontinue the proceedings. The relevant parts of the decision read as follows:

> "There is no criminal liability in the present case on the part of the medical staff with regard to any criminal offence. Indeed, as can be seen from the expert report [ordered by the prosecutor], the doctors did not commit any errors of therapeutic practice, having complied with the guidelines and protocols applicable to the specific case. ...

Although the treatment was prolonged over a significant period of time, that was made necessary by the patient's condition, which had not stabilised [or significantly improved] in the first few days of ... [mechanical] restraint. Restraint which, it should be pointed out, had not been total, as the medical record shows; in fact, the patient's upper limbs were left free, one at a time, and [he] was also allowed to take care of his personal hygiene and to go and smoke a cigarette without restriction.

Moreover, [the patient's] clinical condition was carefully assessed daily by the medical staff, so there was no negligence or superficiality. It must also be considered that before being admitted to the hospital in Melzo, the patient had already been the protagonist of anger episodes that led to acts of violence against his family members, behaviour that was also repeated in the psychiatric department of the hospital in Melzo and required timely intervention.

...

The [doctors] therefore acted correctly, assessing the patient's condition on a daily basis, [and] taking the decision to discharge him only on 27 October 2014 when he demonstrated awareness of his violent actions.

The precariousness of [the patient's] psychological and physical state led the doctors to report that the young patient was dangerous. This exceptional act was made necessary by the aggressiveness that he had shown both towards members of his family and health personnel. That was followed by the application of the security measure of admission to a psychiatric hospital ...

In conclusion, there are no ... elements of the offence of ill-treatment, especially in the case of doctor [P.], who had had the opportunity to interact with the patient only during the violent act against him.

With regard to the other offences alleged, it must be reiterated that the therapeutic choices made by the medical staff did not deviate from the guidelines and protocols applicable in the specific case, and that the patient was in a persistent state of aggression towards others, both before and during hospitalisation.

In conclusion, no conduct of criminal relevance can be found in the actions of the doctors who treated [the applicant]."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Italian Constitution

46. The relevant parts of Article 13 of the Italian Constitution read as follows:

"Personal liberty is inviolable.

No one may be detained, inspected, or searched or otherwise subjected to any restriction of personal liberty, except by a reasoned order of a judicial authority and only in such cases and in such manner as provided by law.

...

Any act of physical or psychological violence against persons subjected to a restriction of personal liberty shall be punished."

B. Criminal Law provisions

1. Criminal Code

47. Article 54 of the Criminal Code (state of necessity) provides that a person cannot be punished if he or she was compelled to commit an act by necessity of saving him- or herself or others from a clear and present (*attuale*) danger of serious personal injury, a danger not voluntarily caused by him or her, nor otherwise avoidable, provided that the act is proportionate to the danger.

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

49. Under Article 610, a person commits the offence of criminal coercion (*violenza privata*) when, by use of violence or threats, he or she compels a person to carry out or to refrain from carrying out an action.

2. Code of Criminal Procedure

50. Article 410 *bis* of the Code of Criminal Procedure ("the CCP"), introduced by section 1(33) of Law no. 103 of 23 June 2017, contains an exhaustive list of grounds of nullity with respect to decisions to discontinue proceedings issued by a preliminary investigations judge, covering both decisions issued *de plano* and those issued following a hearing in camera. Those grounds are procedural in nature. In particular, Article 410 *bis* § 2 provides that a decision to discontinue proceedings issued following an hearing in camera (*ordinanza di archiviazione*) may only be challenged on the grounds of nullity provided for in Article 127 § 5 of the CCP. Those grounds exclusively concern non-compliance with the provisions relating to the holding of hearings in camera and the participation of parties in such hearings, in order to guarantee the observance of procedural formalities and the adversarial nature of proceedings.

51. The relevant provisions concerning the taking over of an investigation by the public prosecutor at the Court of Appeal (*avocazione delle indagini*) have been summarised in *Petrella v. Italy*, no. 24340/07, §§ 14 and 15, 18 March 2021. In particular, the relevant parts of Articles 412 and 413 of the CCP read as follows:

Article 412

> "1. The prosecutor at the Court of Appeal shall, by reasoned order, take over preliminary investigations where the district public prosecutor does not institute criminal proceedings or does not request that the case be discontinued within the time limit set by law or as extended by the judge. ..."

Article 413

"1. The person who is the subject of preliminary investigations or the injured party may ask the public prosecutor at the Court of Appeal to take over the investigation (*avocazione delle indagini*) in accordance with Article 412 § 1 of the Code of Criminal Procedure.

2. Where the objection is declared inadmissible and the accusations are unfounded, the judge shall issue an order discontinuing the proceedings and shall return the file to the public prosecutor's office.

..."

C. Other legislation

52. Article 60 of Royal Decree no. 615 of 16 August 1909 ("Regulation on asylums and mentally ill persons", implementing Law no. 36 of 14 February 1904 "Provisions on asylums and mentally ill persons. Custody and care of the mentally ill.") reads:

"In asylums, [the use of] restraints on the ill shall be eliminated or reduced to absolutely exceptional cases and may not be used except with the written authorization of the director or physician in charge of the institution. Such authorisation must indicate the nature and duration of the ... restraints. ..."

53. Section 11 of Law no. 180 of 13 May 1978, known as the "Basaglia law", is held to have implicitly repealed, on grounds of incompatibility, the above provisions (Court of Cassation, Fifth Criminal Section, judgment no. 50497 of 20 June 2018, *Mastrogiovanni*). The new Law introduced the fresh concepts of compulsory medical hospitalisation and treatment. Section 2 provides, amongst other things, that a request for compulsory treatment (*trattamento sanitario obbligatorio*) may only be made when there are alterations to the patient's mental state such as to require urgent therapeutic interventions, when such interventions are not accepted by the patient and when the circumstances do not make it possible to take timely and appropriate measures outside a hospital setting. In the absence of specific legislative provisions addressing the use of mechanical restraint in a psychiatric context, the Court of Cassation's case-law has set out limits on the use of restraint in terms of whether the conduct of the individuals applying the measure can be justified under the defence of necessity set out in Article 54 of the Criminal Code (see paragraphs 55 -60 below).

54. Section 41 of the Prison Administration Act (Law no. 354 of 26 July 1975) provides, in so far as detained persons are concerned, that:

> "... No measures of physical coercion that are not expressly provided for in the [relevant prison administration regulations] may be employed and, in any case, such measures may not be used for disciplinary purposes, but only in order to prevent harm to persons or property or to ensure the safety of the subject himself. Their use must be limited to the time strictly necessary and must be constantly monitored by medical personnel.
>
> ..."

D. Domestic case-law

1. *Judgment of the Court of Cassation, Fifth Criminal Section, no. 50497 of 20 June 2018 (the "Mastrogiovanni" judgment)*

55. In this judgment the Court of Cassation first clarified that mechanical restraint could not be considered a medical act since it was a measure that restricted personal liberty that had neither a therapeutic purpose nor improved patients' state of health. On the contrary, the court noted that, according to scientific literature, it can actually cause serious bodily injury if not used with due caution. Injury could result not only from the external pressure of the restraining devices (potentially causing abrasions, lacerations or strangulation) but also from the position of forced immobility into which patients were forced. It agreed with the lower court's findings to the effect that the only acceptable function of restraint was to safeguard the physical integrity of patients, or of those who came into contact with them when there was a situation involving concrete danger to their safety.

56. The court reiterated that the "Basaglia Law" (see paragraph 52 above), which regulated compulsory medical treatment, provided for its application only in the event of psychiatric disorders requiring urgent therapeutic interventions, and when it was the only means of providing the medical care necessary to avert a danger of serious damage to the patient's health. It also referred to section 41 of the Prison Administration Act (see paragraph 54 above), which provided that the use of restraint in the context of detention was permitted only in exceptional situations of danger, had to be circumscribed to the time strictly necessary and had to be subjected to constant medical supervision.

57. It then assessed the conditions underlying the defence of necessity as provided for in the Criminal Code (see paragraph 47 above). The court clarified that the use of mechanical restraint could not be considered lawful *tout court* simply because mental health practitioners were under a duty of care in respect of psychiatric patients, which in turn could be considered to trigger the legal obligation to take action to neutralise the danger of acts of self-harm or violence against others by the patient or of serious prejudice to the patient's health. On the contrary, the court underlined that restraint had to

be considered as a measure of last resort (*extrema ratio*). Indeed, in the court's view the use of mechanical restraint could only be ordered by medical practitioners (who were aware – more than most, by virtue of their technical-scientific expertise – of the serious prejudice that the use of restraints could cause to the patient's health) only in extraordinary situations and for the time strictly necessary, and with the closest possible supervision of the patient.

58. It upheld the approach taken by the lower court, which had held that the use of mechanical restraint was lawful if the conditions set out in Article 54 of the Criminal Code were met, and specifically when there was a concrete situation of danger of serious personal injury (to the patient or to those interacting with him during hospitalisation), which could not otherwise be avoided. It had to be a danger "not otherwise avoidable" on the basis of objectively ascertained facts and not only on a presumptive basis.

59. The court went on to clarify that the situation of danger must be clear and present (*attuale*). In its view, that entailed that it would be "absolutely inadmissible" to apply restraints in a "precautionary" manner on the basis of the abstract possibility or even mere probability of serious harm. The clear and present nature of the danger must have emerged in concrete terms from the verification of objective elements that the medical practitioner must have indicated in a precise and detailed manner.

60. Lastly, in the court's view, the requirement of proportionality concerned the manner in which restraint was implemented, since it was clear that, because of its extreme invasiveness, it should not only be applied solely when strictly necessary, but also having considered, *inter alia*, whether the immobilisation of some limbs was sufficient or whether the danger of injury was such as to require the immobilisation of both wrists and both ankles. Those assessments also required careful consideration by the medical practitioner who had to explain, if only briefly, the reasons for the choice of restraint and the manner of its implementation, furnishing all the objective elements that made its use unavoidable in practice. Including all this information in the medical register was necessary in order to protect not only the patient, but also the medical practitioner, who could transparently describe the reasons that warranted, in the interests of the patient, the adoption of the mechanical restraint measure.

2. *Judgment of the Court of Cassation, Sixth Criminal Section, no. 16169 of 2 April 2014*

61. The case concerned an application lodged by the injured party (*persona offesa*) under Article 125 § 5 and Article 410 of the CCP seeking the overturning of an order to discontinue proceedings, on the ground that the preliminary investigations judge had failed to hear the applicant during the hearing held in camera following the prosecutor's request to discontinue proceedings. The court reiterated that while, in principle, a failure to hear an injured party at such a hearing when an express request to that effect had been

lodged could have led to nullity of the discontinuance decision, the applicant in the case had failed to raise the issue in a timely manner. For that reason, the application was declared inadmissible.

E. Internal protocol of the Melegnano Hospital Centre on physical restraint of patients in the SPDC

62. The relevant extracts of the protocol, applicable at the Melzo hospital SPDC, read as follows:

> "Mechanical restraint is to be considered an 'exceptional' intervention as it is highly restrictive of individual freedom, [has] dramatic [consequences] for patients and for health practitioners and entails decisive implications for the treatment process, and it should be resorted to [only] when other therapeutic (relational, pharmacological) and well-being remedies are impracticable or ineffective. Since it is an emergency measure, it should only be maintained for as long as is necessary to overcome specific and particularly serious states of crisis.
>
> It can be considered a form of emergency intervention induced 'by the need to save oneself or others from the present danger of serious harm ...'. It is employed by the practitioner because it is made necessary by the existence of a 'present danger, not voluntarily caused by him or her, nor otherwise avoidable', related to a patient's clinical condition such as to constitute an obvious serious danger to him- or herself, to others involved in the care of the patient, to staff or possibly to other persons present in the diagnostic and treatment ward.
>
> ...
>
> **6.1 Persons to whom restraint may be applied**
>
> Restraints may be applied to persons who, having been entrusted to the [psychiatric] service owing to illness, require (at times when their condition is particularly acute, usually exceptional and of short duration) an intervention that removes the possibility of their exposing themselves or others to serious risk of harm through their physical behaviour.
>
> Most often these are agitated or excited patients, persons with transient disturbances in their state of consciousness (intoxication, etc.), or those suffering severe depressive episodes with a risk of self-injurious or suicidal behaviour, in cases where other, less restrictive forms of intervention have been tried and proved ineffective, inappropriate or insufficient.
>
> **6.2 Criteria for the application of restraints**
>
> [The measure] is intended to protect the patient, staff and other surrounding persons by preventing short-term, verifiably documented harm.
>
> It is not used when there has been an aggressive act that was one-off, limited in time or mainly impulsive in nature, or in other situations where it takes on punitive significance.
>
> It has no pedagogical value nor can it be prescribed in advance. Restraints requested by the patient and that are applied for the sole purpose of putting the patient to sleep are discouraged.

6.6. Duties of medical staff

The doctor is present in the ward [and]:

- Proposes, prescribes or authorises measures of restraint;
- Evaluates the patient's clinical condition after restraint has been applied;
- Records in the medical register the intervals at which the patient should be re-evaluated;
- If possible, initiates a relationship with the patient in order to lay a foundation for forming a [therapeutic] alliance with him or her;
- Evaluates the need for pharmacological sedation and prescribes it [as necessary];

...

- Once the stated period has elapsed, re-evaluates the patient's clinical condition and considers whether there is still a need for restraint;
- Periodically repeats that evaluation [at clinically appropriate intervals] which must never exceed eight hours during daytime;

...

F. Other material

1. *The 2014 Code of Medical Ethics* (Codice di deontologia medica)

63. Section 32, which concerns the duties of physicians as regards vulnerable individuals (*soggetti fragili*) states, amongst other things, that medical personnel may prescribe and apply coercive measures, whether of a physical, pharmacological or environmental nature, only in the event of documented clinical needs, and only for the duration of such needs, and while respecting the dignity and safety of the person.

2. *The 2015 Opinion of the Italian National Bioethics Committee titled "Restraint: bioethical problems"*

64. Recourse to mechanical restraint had to be a solution of last resort (*extrema ratio*) and it should be considered that, even in the context of compulsory hospitalisation, it could only be turned to in situations of real necessity and urgency, in a manner proportionate to concrete needs, using the least invasive means possible and only for the time necessary to overcome the conditions that induced recourse to it. In other words, it was not sufficient for the patient to be in a state of mere agitation, but rather, for restraint to be justified, what was necessary was the presence of a serious, present danger that the patient would commit acts of self-harm or cause bodily harm to third parties. As soon as that danger was no longer present, the restraint had to cease.

65. The Committee expressed concern over the existing extensive application of mechanical restraint. It was true that the possibility of using mechanical restraint was never ruled out *tout court*, but its use became routine practice all too often.

II. INTERNATIONAL MATERIAL

A. Council of Europe

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT").

66. The CPT stated the following in its Sixteenth General Report on its activities (CPT/Inf (2006) 35), dated 16 October 2006:

"45. When the emergency situation resulting in the application of restraint ceases to exist, the patient should be released immediately. On occasion, the CPT encounters patients to whom mechanical restraints have been applied for days on end. There can be no justification for such a practice, which in the CPT's view amounts to ill-treatment.

One of the main reasons why such practices linger on is that very few psychiatric establishments have developed clear rules on the duration of periods of restraint. Psychiatric establishments should consider adopting a rule whereby the authorisation of the use of a mechanical restraint lapses after a certain period of time, unless explicitly extended by a doctor. For a doctor, the existence of such a rule will act as a powerful incentive to visit the restrained patient in person and thus verify his/her state of mental and physical well-being."

67. On 21 March 2017 the CPT adopted the following revised standards on the use of means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6). The relevant parts read as follows:

"1. General principles

1.1. The restraint of violent psychiatric patients who represent a danger to themselves or others may exceptionally be necessary.

1.2. Means of restraint should always be applied in accordance with the principles of legality, necessity, proportionality and accountability.

1.3. All types of restraint and the criteria for their use should be regulated by law.

1.4. Patients should only be restrained as a measure of last resort (*ultima ratio*) to prevent imminent harm to themselves or others and restraints should always be used for the shortest possible time. When the emergency situation resulting in the application of restraint ceases to exist, the patient should be released immediately.

1.5. Means of restraint are security measures and have no therapeutic justification.

1.6. Means of restraint should never be used as punishment, for the mere convenience of staff, because of staff shortages or to replace proper care or treatment.

1.7. Every psychiatric establishment should have a comprehensive, carefully developed policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should be aimed at preventing as far as possible the resort to means of restraint and should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; recording; internal and external reporting mechanisms; debriefing; and complaints procedures. Further, patients should be provided with relevant information on the establishment's restraint policy.

...

4. Duration

4.1. The duration of the use of means of mechanical restraint and seclusion should be for the shortest possible time (usually minutes rather than hours), and should always be terminated when the underlying reasons for their use have ceased. Applying mechanical restraint for days on end cannot have any justification and could, in the CPT's view, amount to ill-treatment.

4.2. If, exceptionally, for compelling reasons, recourse is had to mechanical restraint or seclusion of a patient for more than a period of hours, the measure should be reviewed by a doctor at short intervals. Consideration should also be given in such cases and where there is repetitive use of means of restraint to the involvement of a second doctor and the transfer of the patient concerned to a more specialised psychiatric establishment.

...

6. Concurrent use of different types of restraint

Sometimes seclusion, mechanical or physical restraint may be combined with chemical restraint. Such a practice may only be justified if it is likely to reduce the duration of the application of restraint or if it is deemed necessary to prevent serious harm to the patient or others.

7. Supervision

Every patient who is subjected to mechanical restraint or seclusion should be subjected to continuous supervision. In the case of mechanical restraint, a qualified member of staff should be permanently present in the room in order to maintain a therapeutic alliance with the patient and provide him/her with assistance. ..."

68. The delegation of the CPT visited Italy from 28 March to 8 April 2022. In its ensuing report, published on 24 March 2023 (CPT/Inf (2023) 5), and as regards the use of means of restraint in psychiatric institutions, the CPT noted (footnotes omitted):

"211. The findings of the 2022 visit highlight the necessity for a new impetus from the national and regional authorities to maintain their commitment to a consistent gradual reduction, and the eventual eradication, of the resort to the measure of restraint of patients in SPDCs. In this respect, the measures adopted by some regional healthcare authorities such as Lombardy in terms of monitoring, recording, training of staff and the adoption of comprehensive protocols on restraint are to be positively acknowledged. However, there still appeared to be too many prolonged and repeated episodes of restraint of patients at the SPDCs visited.

The Committee expresses its concern with the factual legal vacuum in which such an intrusive measure is applied, which raises concerns as to its compliance with Article 13 of the Constitution ... Further, the Committee is of the opinion that the extensive resort to Article 54 of the [Criminal Code], which is a protective clause for the exemption of the staff's criminal responsibility, is being applied without a stringent assessment of the criteria of imminent danger, proportionality and residuality as set out in the Article 54. In the CPT's view, such criteria can hardly apply to patients who are restrained for days on end and who appear to be stable and co-operative with staff, as shown by the relevant monitoring charts examined by the delegation. ..."

B. Other Material

69. In October 2020 the World Psychiatric Association published a document entitled *Position Statement and Call to Action: Implementing Alternatives to Coercion: A Key Component of Improving Mental Health Care*, the relevant parts of which read:

> “ ... The use of coercive practices, such as those listed above [including restraint], carries the risk of harmful consequences, including trauma. People who have experienced coercion first-hand in mental health services, as well as their family members and supporters, and psychiatrists promoting quality care have drawn attention to some of the harms of those practices through testimony and advocacy. Individuals subject to physical coercion are susceptible to harms that include physical pain, injury and death. Individuals who have experienced trauma in the past (such as family violence, sexual assault or other abuse) are especially vulnerable to coercive practices. The use of coercive measures can traumatise or re-traumatise patients, undermine therapeutic relationships, discourage trust in mental health systems, and dissuade service users and family members from seeking help in the future. Coercion may also traumatise other service users, damage morale among or traumatise mental health workers, and contribute to tarnishing the image of psychiatry as a medical discipline.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

70. The applicant complained that the mechanical restraint and pharmacological treatment applied to him during his confinement in a psychiatric hospital ward in the context of an involuntary hospitalisation had constituted ill-treatment in breach of Article 3 of the Convention. The applicant further complained that the domestic authorities had not discharged their duty to carry out an effective investigation of his allegations as required by the procedural limb of Article 3 of the Convention. That Article reads as follows:

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

A. Admissibility

1. *The parties’ submissions*

(a) The Government

71. The Government submitted that the complaint was inadmissible since the applicant had failed to exhaust domestic remedies.

72. First, they contended that the applicant had failed to challenge the compulsory hospitalisation order in the civil courts.

73. Second, they argued, on a more general level, that the applicant ought to have lodged civil proceedings under Article 2043 of the Civil Code. They submitted that the civil courts, if given the opportunity, could have examined the case and ascertained whether there had been a breach of the applicant's rights under the Convention, and, if so, could have awarded him damages.

74. Third, the Government submitted that the applicant, in connection with his allegations concerning an investigative delay and, in particular, inertia on the part of the public prosecutor, could have complained to the public prosecutor's office referencing the time-limits for the completion of investigative acts set out in the CCP. He could have requested, under Articles 412 and 413 of the CCP (see paragraph 51 above), that the public prosecutor at the Court of Appeal take over the investigation (*avocazione delle indagini*).

75. Lastly, the Government argued that the applicant had not exhausted domestic remedies on account of his failure to lodge an appeal under Article 410 *bis* of the CCP against the preliminary investigations judge's decision to discontinue the proceedings. They stressed that he had made no attempt to challenge that decision after it had been handed down. Moreover, and in particular with regard to the complaint that the applicant had not been heard in the context of the investigation, they argued that had he requested to be heard and such a request had not been complied with, that could have given rise to one of the grounds for nullity within the meaning of Article 127 § 5 of the CCP and could have been challenged by lodging an appeal under Article 410 *bis*. They also stressed that the applicant had not asked to be heard in relation to his objection to the prosecutor's discontinuance request.

(b) The applicant

76. The applicant argued that he had initiated the appropriate domestic remedy to obtain redress for the ill-treatment suffered, namely criminal proceedings to determine whether the impugned measure had been contrary to the principles set out in Article 3 of the Convention and, if so, to enable the courts to identify and prosecute those responsible and allow him to seek compensation. He then relied on the well-established case law of the Court to the effect that where one remedy has been used, the use of another whose purpose is virtually the same is not required. Therefore, for the purposes of exhaustion the applicant had not been required to make use of the civil remedy referred to by the Government.

77. The applicant further contended that the decision to discontinue the proceedings taken by the preliminary investigations judge had been final. An appeal against it could only have been lodged under Article 410 *bis* § 2 of the CCP on the grounds of nullity provided for by Article 127 § 5 of the CCP, which in his view did not apply in the instant case.

78. As to the Government's reference, with respect to the delays in the investigation, to Article 412 of the CCP, he noted that the avenue indicated by the Government had only been introduced in 2017, which is to say two years following the lodging of his criminal complaint. He also argued that he could not be reproached for not having attempted to address the investigative delay himself, as the prosecutor had in any event been under an obligation to organise his work in a manner compatible with the procedural requirements of Article 3, irrespective of any other formal requirements. In any event, he argued that the Government had not provided evidence of a positive or decisive outcome in connection with the introduction of that remedy.

2. The Court's assessment

79. The Court refers to the applicable principles on the requirement to exhaust domestic remedies under Article 35 § 1 of the Convention, as set out in particular in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and more recently in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 138-43, 27 November 2023).

80. As regards the Government's submission to the effect that the applicant had failed to challenge the involuntary hospitalisation order in the domestic courts, the Court notes, as was also highlighted by the applicant, that his complaint does not relate to his involuntary hospitalisation as such but, rather, to the ill-treatment he was allegedly subjected to during his involuntary hospitalisation. Accordingly, the applicant cannot be reproached for having failed to challenge that order.

81. With respect to the Government's objection that the applicant ought to have instituted civil proceedings under Article 2043 of the Civil Code, the Court reiterates that where an individual raises an arguable claim of ill-treatment under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V). The same applies to allegations of ill-treatment in the context of psychiatric internment where physical restraint has been used against the applicant (see *M.S. v. Croatia (no. 2)*, no. 75450/12, § 75, 19 February 2015; and *Bureš v. the Czech Republic*, no. 37679/08, §§ 81 and 121, 18 October 2012). Therefore, in the Court's view, an action for damages under Article 2043 of the Civil Code, which is aimed at awarding damages rather than identifying and punishing those responsible, cannot be said to constitute an effective remedy that must be pursued for exhaustion purposes in this case concerning alleged ill-treatment stemming from intentional acts by State agents – and in particular the mechanical restraint the applicant was subjected to – during his involuntary hospitalisation (see *M.S. v. Croatia (no. 2)*, cited above, §§ 75 and 85).

82. As to the legal avenue, referred to by the Government, under Articles 412 and 413 of the CCP (see paragraph 51 above), under which the applicant could have asked the public prosecutor at the Court of Appeal to take over the investigation with a view to expediting it, the Court reiterates its consistent case-law, according to which an appeal to a higher authority which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII, and *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007). The Court observes that it has previously examined a case in which the Government had raised a non-exhaustion objection on the same grounds, which the Court dismissed on the basis that the Government had failed to establish that the complaint procedure at issue conferred on the injured party a genuine personal right to obtain from the State the exercise of its supervisory powers, to participate in the proceedings, to be informed of their outcome and to exercise a right of appeal against a decision to refuse to take over the investigation (see *Petrella v. Italy*, no. 24340/07, § 29, 18 March 2021). As the Government have again merely cited the existence of this avenue and the need for the applicant to exhaust it without providing further details, the Court sees no reason to reach a different conclusion in the present case.

83. To the extent that the Government's final objection is to be understood as an overarching one to the effect that the applicant ought to have lodged an appeal under Article 410 *bis* § 2 of the CCP (see paragraph 50 above) against the preliminary investigations judge's discontinuance order, the Court notes that, under domestic law, the latter decision is not amenable to challenges on questions of fact or on flaws in its reasoning and could only have been appealed against on the grounds of nullity provided for by Article 127 § 5 of the CCP, which are procedural in nature and exclusively concern non-compliance with the provisions on the holding of hearings in camera and the parties' participation in such hearings (see paragraph 50 above). Against this background, which discloses a very limited scope of review, the Government have failed to explain how the appeal avenue provided for by Article 410 *bis* § 2 could be viewed as a general remedy which needed to be exhausted in the present case.

84. In so far as the Government also argued, to a more limited extent, that an appeal under Article 410 *bis* § 2 of the CCP would have addressed the applicant's complaint about his allegedly insufficient participation in the investigation on account of the fact that he had not been heard, the Court notes, as can be seen from the case-law submitted by the Government themselves, that the appeal would only have been of relevance in a specific situation, that is if the applicant had asked to be heard during the in camera hearing held following the prosecutor's discontinuance request (see paragraph 61 above) and such a request had not been complied with.

Therefore, it would not have addressed the applicant's complaint that he had not been heard in the investigation with respect to phases apart from the aforementioned hearing before the preliminary investigations judge. Moreover, and in any event, the Court notes that the Government failed to furnish any evidence of the effectiveness of that remedy in practice, given that in the decision by the Court of Cassation that they referred to in their pleadings the injured party's claim had been declared inadmissible because of a failure to raise the complaint in a timely manner (ibid.).

85. Accordingly, the applicant's complaints cannot be declared inadmissible on the ground that he did not lodge an appeal under Article 410 *bis* § 2 of the CCP against the preliminary investigations judge's discontinuance order.

86. It follows from the above that the Government's objection on non-exhaustion grounds must be dismissed.

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

B. Merits

1. *Substantive aspect of Article 3 of the Convention*

(a) The parties' submissions

(i) The applicant

88. The applicant complained about having been mechanically restrained for almost eight days, coupled with pharmacological restraint for twenty-one days. He considered that these circumstances, which included an inordinately long period of uninterrupted mechanical restraint, were extremely serious and engaged Article 3 of the Convention. The applicant added that his young age and his state of health had rendered him particularly vulnerable.

89. The applicant referred to the principles established by the Court in its judgment in the case of *Aggerholm v. Denmark*, no. 45439/18, 15 September 2020. He contended that the mechanical restraint measure to which he had been subjected had been unnecessary. As regarded the circumstances and manner in which the medical staff had first applied the restraint measure, the applicant argued that his aggressive behaviour on 7 October 2014 had largely been triggered by what he considered to have been inappropriate conduct on the part of the medical staff which, instead of being transparent and welcoming towards him and his family members, had created great emotional stress. Nevertheless, even assuming that the treatment he had been subjected to on 7 October 2014 could have been justified, the fact remained that the uninterrupted mechanical restraint which had followed

for days, coupled with pharmacological restraint, was devoid of any justification.

90. Indeed, the applicant pointed out that it did not appear from the daily medical register that, once he had been sedated on 7 October 2014, he had displayed any further aggressive or violent behaviour. On the contrary, a calm attitude had been recorded. He complained in that connection that the purpose of the measure was not justifiable, and that it had been applied on a precautionary basis.

91. The applicant further underlined that the measure of mechanical restraint to which he had been subjected had lasted for an unprecedented and, in his view, an incomprehensibly long period of time.

92. Moreover, the applicant contended that the measure he had been subjected to had been decided upon in the total absence of any relevant law or rules which might have rendered the practice lawful and that the doctors and healthcare staff had applied the measure of mechanical restraint to him in disregard of the principles established by the Court of Cassation in the *Mastrogiovanni* judgment.

93. He argued that the restraint measure had been applied with the aim of inducing him to "repent" of his aggressive behaviour. In other words, the measure had been applied with a punitive and/or pedagogical aim. Indeed, in the applicant's view it was apparent from the medical register that the personnel in the ward had repeatedly looked for evidence of repentance and had noted whether the patient had been uncritical of the attack on his mother and the chief physician.

94. The applicant further submitted that the medical staff responsible for the measure had exaggerated his dangerousness. In particular, he hypothesised that the "social danger" invoked by the doctors had been conceived merely to conceal the application of a measure of mechanical restraint that was contrary to Article 3 of the Convention.

(ii) The Government

95. As to the reasons justifying the use of mechanical restraint, the Government argued the following. They relied on the guidelines of the Italian Society of Psychiatry on the subject of physical restraint, which call for limiting its use as much as possible, with a view to its abolition, while recognising that the international and national literature appears to agree that physical restraint can only be justified in the face of a concrete imminent risk of self-harm or violence against others.

96. As noted by the expert consulted by the public prosecutor, the applicant had a history of psychiatric problems, which had begun more than a year before the impugned events and had led to four admissions to hospital. They underlined that his medical records revealed a troubled relationship between the applicant and his parents and that his parents had a fear of violent reactions on his part. Indeed, even during the period of voluntary

hospitalisation that preceded the involuntary one, the medical staff had observed the applicant's strong hostility towards his parents, by whom he felt ill-treated and mocked.

97. Against that background the Government noted that in the meeting with doctors and his parents on 7 October 2014 the applicant had displayed uncontrolled aggressiveness: he had attacked his father, damaged furniture, slapped his mother and punched the chief physician. They emphasised the seriousness of the injuries caused, namely his mother's ruptured eardrum and the chief physician's fractured nose. They added that it had only been possible to immobilise the applicant by calling in more nurses.

98. The Government argued that the applicant's violent behaviour during that meeting had justified the decision to resort to physical and mechanical restraint as well as pharmacological sedation. They pointed out that, against that background, the requirements for the application of restraint set out in the Melzo Hospital protocol, as in force at the time, had been met.

99. They argued that the entries in the daily medical register for the following days revealed that the application of mechanical restraints had been reviewed on a daily basis, had been relaxed by the freeing of one or more limbs, and that its continuation had been justified on the basis of a re-evaluation of the clear and present nature (*attualità*) of the danger involved and of the applicant's capacity for discernment and self-control.

100. The Government also pointed out that, according to the daily medical register, the applicant had initially denied and subsequently minimised his violent behaviour, attempting to justify it, in particular, by stating that he had been the one who had been under attack. The fact that the doctors had diagnosed a paranoid personality syndrome with manifestations of violence towards others made it essential, in the Government's view, for the doctors to assess, through daily interviews, whether the applicant had recovered the ability to exercise self-control. According to reported statements by the applicant, his only interest in the first few days after the attack had been to return home to his parents, although it was towards his parents that he had displayed hostility and violence. The Government contended that it was from those statements that the medical staff had inferred the continuing danger of violent episodes on the part of the applicant if they did not comply with his request to discharge him from the hospital.

101. The Government distinguished the present case from that of *Aggerholm* (cited above) in so far as in the latter case it had not been documented that the applicant had exposed himself or others to an imminent risk of harm to body or health. In contrast, in the present case mechanical restraints had been applied because, after a week of voluntary hospitalisation during which, despite a diagnosis of paranoid syndrome and psychosis, the medical staff had not imposed any restraint, the applicant had reacted with violence to a refusal to discharge him. For that reason, in the Government's view, mechanical restraint had been necessary as long as the applicant was

requesting to be discharged without first having recovered his lucidity and self-control. They highlighted that the doctors had been under an obligation to assess the applicant's state of mind, his perceptions and his capacity for self-control because they had a duty of care (*posizione di garanzia*) towards him in in terms of preventing self-harm and violence towards others who could be affected by his behaviour.

102. The Government called the Court's attention to the conclusions that had been reached during the criminal investigation as to the justification of the measure. They referred in that regard to the findings of the medical expert commissioned by the public prosecutor and emphasised that those findings had been relied on both by the prosecutor in his request for discontinuance and by the preliminary investigations judge when examining the prosecutor's conclusions as to the engagement of criminal responsibility in his discontinuance request. The Government contended that the investigation had shown that the medical staff had been thorough and meticulous, so that no negligence on their part could be proved, and that, according to the medical expert, the most one could accuse them of was that they had perhaps demonstrated an excess of interventionism.

103. They further underlined that there had been no punitive motive underlying the use of restraint in the present case and that, in their view, almost complete sedation would have been more invasive than mechanical restraint.

104. Furthermore, the Government highlighted the difficulties encountered by psychiatric practitioners in finding ways to treat patients who showed a clear tendency to suddenly lose control and engage in violent actions. In their view, leaving such patients totally free would entail endangering everyone who came into contact with them.

105. With regard to the duration and manner of implementation of the mechanical restraint, they highlighted that from the second day of restraint the applicant had been partly released from his restraints for certain periods (that is to say, certain limbs or alternating limbs were released) and fully released to eat and take care of personal hygiene. The severity of the restraint had been further decreased as of 13 October and he had been fully released from his restraints on 15 October 2014. In their view, that had entailed a wide margin of freedom for the applicant. Moreover, the gradual release based on his decreasing dangerousness had ensured compliance with the principle of proportionality.

106. They also submitted that medical staff in the psychiatry department had constantly monitored the applicant's physical and mental health by consulting doctors from other departments as well as by establishing a dialogue aimed at promoting self-awareness and the recovery of a minimum degree of self-control in the applicant's management of his emotions and his interaction with others. The fundamental aim of the interviews had been to bring out the seriousness of the violent acts, which had been denied,

minimised or justified by the applicant, and to bring him back in touch with reality so that he could understand that he was not in danger.

107. Lastly, the Government pointed out that, according to the medical expert assessment obtained during the investigation, the restraint had had no physical repercussions on the applicant.

(b) The third-party interveners

(i) The third-party submissions

108. Both the *Garante* and the joint third-party interveners (*L'altro Diritto ODV*, *La Società della ragione ONLUS*, and the *Fondazione Franca e Franco Basaglia*) provided an overview of the legal boundaries within which mechanical restraint might be employed and noted that there is no legislation specifically regulating its use. The interveners highlighted the fact that under domestic law mechanical restraint could constitute criminal offences such as false imprisonment, criminal coercion and ill-treatment. Article 54 of the Criminal Code provides for the defence of necessity, which can justify the use of mechanical restraint only in exceptional cases in which there is an objective risk of imminent serious harm to the patient or others. In that connection, both interveners placed considerable emphasis on the Court of Cassation's *Mastrogiovanni* judgment and the principles established therein. They emphasised that Court's finding that in order to justify mechanical restraint the situation of danger at issue must be clear and present (*attuale*), ruling out the possibility of an application of restraint in a "precautionary" manner. The *Garante* reviewed further domestic case-law establishing that in order for the defence of necessity under Article 54 of the Criminal Code to apply, there must be imminent danger (*pericolo incombente*). A feared, future danger would not be sufficient for that defence to apply.

109. The *Garante* also emphasised that there was no situation in which mechanical and pharmacological restraint could be used as therapeutic treatment or employed in circumstances outside of an exceptional state of necessity, nor might they be employed as a means to make up for an inadequacy of personnel. *L'altro Diritto ODV*, *La Società della ragione ONLUS*, and the *Fondazione Franca e Franco Basaglia* further emphasised that in no case might restraint be used for punitive or pedagogical purposes. The *Garante* stressed the need to avoid improperly long periods of mechanical restraint.

110. The *Garante* further highlighted, by relying on a study carried out by the president of the Italian National Board of Directors of Mental Health Departments (*Collegio Nazionale dei Dipartimenti di Salute Mentale*), the negative repercussions mechanical restraint can have on the physical and mental health of an immobilised person. In particular, reference had been made to the risk of osteo-muscular harm and thromboembolic complications,

post-traumatic stress, as well as exposure to the risk of being subjected to physical and sexual violence without being able to defend oneself. In addition, the author had reported the findings of studies on the subjective impressions of those who had undergone restraint, where it had emerged that it was unanimously perceived as a degrading and traumatic experience. He had also referred in that connection to the contents of a position statement issued by the World Psychiatric Association (see paragraph 69 above).

111. Lastly, the *Garante* called the Court's attention to the fact that two Italian regions, Friuli Venezia Giulia and Emilia Romagna, had adopted strategies with a view to fully eliminating recourse to mechanical restraint in psychiatric services. In the case of Friuli Venezia Giulia, the region had succeeded in the total elimination of mechanical restraint practices.

(ii) The Government's comments on the third-party submissions

112. The Government submitted that the domestic legal system, via jurisprudential developments, had started to curb the use of mechanical restraints on psychiatric patients. In view of the evolution of the Court of Cassation's case-law from 2008 onwards, and owing to the increasing interest of local authorities (from Regions and Autonomous Provinces to individual psychiatric institutions), it was common ground that its use should be understood as a "last resort", where alternatives were not possible and there was a danger of actual harm to the person. The long-term perspective was the complete elimination of mechanical restraints, but to that end it remained necessary to identify alternative methods of prevention and treatment, which had yet to be defined.

(c) The Court's assessment

(i) General principles

113. In respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 of the Convention (ibid., § 97, and *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01, ECHR 2015).

114. The Court has recognised the special vulnerability of mentally ill persons in its case-law, and the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has to take into consideration this vulnerability in particular (see, *inter alia*, *M.S. v. Croatia (no. 2)*, cited above, § 96, with further references). Furthermore, the Court reiterates that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with (see *Aggerholm*, cited above, § 83).

115. In respect of the use of measures of physical restraint on patients in psychiatric hospitals, the developments in contemporary legal standards on seclusion and other forms of coercive and non-consensual measures against patients with psychological or intellectual disabilities in hospitals and all other places of deprivation of liberty require that such measures be employed as a matter of last resort, when their application is the only means available to prevent immediate or imminent harm to the patient or others (see *Aggerholm*, cited above, § 84). Furthermore, the use of such measures must be commensurate with adequate safeguards against any abuse, provide sufficient procedural protection, and be capable of demonstrating sufficient justification that the requirements of ultimate necessity and proportionality have been complied with and that all other reasonable options have failed to satisfactorily contain the risk of harm to the patient or others. It must also be shown that the coercive measure at issue was not prolonged beyond the period which was strictly necessary for that purpose (ibid.).

116. Lastly, restrained patients must be kept under close supervision, and every use of restraint must be properly recorded (see, among other authorities, *Bureš,* cited above, §§ 101-103).

(ii) Application to the present case

117. The Court notes at the outset that there is no dispute between the parties that, by his compulsory confinement in the psychiatric hospital ward, the applicant was deprived of his liberty and was thus under the control and responsibility of the State (see *Pindo Mulla v. Spain* [GC], no. 15541/20, § 127, 17 September 2024; and *Aggerholm*, cited above, § 83).

118. The parties agreed that the applicant had been mechanically restrained to his bed from 7 October 2014 to 15 October 2014. It is further uncontested that, while the restraints, consisting of wrist and ankle straps, were initially applied to all four limbs, as of the second day certain limbs were temporarily and intermittently unrestrained for the purposes of personal hygiene, eating, or physiotherapy. As of the seventh day the applicant was temporarily released from the restraints for personal hygiene and toilet visits (see paragraph 17 above). Altogether, the measure was applied for almost eight days.

119. Against this background, the Court must assess whether subjecting the applicant to the mechanical restraint measure complied with the requirements of Article 3. The Court will begin by examining the initial imposition of the restraint measure and then turn to assessing its continued application beyond the initial imposition.

(α) The decision to resort to the restraint measure on 7 October 2014

120. As to the decision to restrain the applicant that was taken on the afternoon of 7 October 2014, it is documented in the medical register that he first attacked his father and shortly thereafter physically assaulted his mother and a doctor, causing them bodily injury. The doctors described the applicant as having been in an agitated state and the anaesthetist called in for support reported that upon his arrival the applicant had been experiencing a pantoclastic crisis. Those circumstances, as also argued by the Government, would suggest that the applicant could be viewed as having exposed himself or others to an imminent risk of harm. It is also apparent from the medical documentation that previous, unsuccessful attempts at sedation had been made before the arrival of the anaesthetist (see paragraph 17 above).

121. In that context, the Court is satisfied that it was demonstrated that the applicant's initial mechanical restraint had been strictly necessary to prevent him from harming himself or others.

(β) The continuation of the restraint measure

122. Having established that the initial imposition of the measure may be considered justified, the Court must satisfy itself that the applicant's mechanical restraint was not prolonged beyond the period which was strictly necessary for the purpose of preventing immediate or imminent harm to himself or others. The Court reiterates that it is for the State to demonstrate convincingly that such a condition was met and that a "potential" danger does not suffice to establish that such a danger is immediate or imminent (see *Aggerholm*, cited above, §§ 102 and 111). In the *Aggerholm* case, the Court noted domestic provisions indicating that for a danger to be considered imminent, it must be specific, present and demonstrable, and that a latent danger that may manifest itself under certain conditions or circumstances that may occur later will not suffice. In this connection the Court notes, as highlighted by the applicant and the third-party interveners, that the Italian Court of Cassation ruled out the use of mechanical restraint on a "precautionary" basis, and specified that the clear and present nature (*attualità*) of the danger at issue in a given case must be concretely proved by the verification of objective elements that the medical practitioner must indicate in a precise and detailed manner (see paragraph 59 above).

123. The Court further considers that the requirement for a meaningful assessment of the imminence or immediacy of the danger of harm in order to decide on the prolongation of restraint entails that medical staff make such assessments with sufficient frequency throughout the application of the measure. It points to, in this respect, the CPT's view to the effect that when recourse is had to the mechanical restraint of a patient for more than a period of hours, the measure should be reviewed by a doctor at short intervals

(see the CPT's revised standards on means of restraint in psychiatric establishments for adults, quoted at paragraph 67 above).

124. Against that background, the Court will examine the authorities' justification for the prolongation of the disputed restraint measure. In performing its analysis, the Court will have regard to the relevant entries by medical staff in the daily medical register and the findings of the criminal investigation, which were relied on by the Government as providing evidence of the necessity of the measure's prolongation.

– *The medical register*

125. The Court observes at the outset that, according to the daily medical register, once the applicant was restrained on 7 October 2014 and the anaesthetist had administered sedation, the applicant slept until 1.00 a.m. of the following day (see paragraph 17 above). Following a report in the medical register of the applicant's request to be released from the restraints in what was described as an aggressive and threatening manner on the next day, that is 8 October, no further reports of aggressiveness or even agitation were recorded in the medical register, a fact which was also highlighted by the applicant. On the contrary, in several subsequent entries he was described as "calm" (see paragraph 17 above). The Court also notes, as pointed out by the applicant and not contested by the Government, that the mechanical restraint measure was coupled with pharmacological sedation, albeit not constantly and at varying degrees of intensity, throughout its duration.

126. The Court notes that following the initial application of the mechanical restraint measure, the first entry concerning a decision to prolong it was recorded eight hours later, at 1.00 a.m. on 8 October. The justification for maintaining the restraint given by the reporting physician appears to have been based on what is described as a lack of critical appreciation of the applicant's previous violent behaviour, which in the physician's view protracted that situation of "active and current danger" (see paragraph 17 above).

127. The application of the measure was next reviewed by a doctor approximately thirteen hours later, on the same day, and the decision to keep the restraints in place on four limbs appears to have been supported by an overarching statement to the effect that a high risk of outwardly directed aggression persisted, owing in particular to the applicant's uncritical attitude towards his own behaviour (ibid.). When the measure was next reviewed on the following day, on 9 October at 9.30 (day 3), it emerges from the relevant entry that it was decided to maintain the restraints on four limbs on account of what was described as the applicant's "persistent uncritical attitude" and "the risk of further aggressive behaviour" should his request to be discharged not be complied with. As to these two entries, the Court considers that they appear to rest on a future – albeit plausible – danger, but notes that the two entries do not contain any detail, specification, or indication of concrete

elements showing how that danger could be considered immediate or imminent at the moment the review was carried out.

128. Following those entries, the Court notes that from 9 a.m. on 10 October (day 4) until 11.15 a.m. on 11 October (day 5) there were no entries in the daily medical register, and then again no entries until 9 a.m. on the following day. The Court finds problematic the fact that, in the absence of evidence to the contrary, no medical consultation with a view to assessing the necessity for continuing the applicant's mechanical restraint was carried out during those very long intervals, that is stretches of around twenty-four hours at a time (compare *Aggerholm*, cited above, § 112). Moreover, the Court notes that in the entries concerning the above-mentioned dates the continuation of the restraint was either not addressed specifically (see the entries for 10 October at paragraph 17 above) or was noted as a statement of fact (see the entry for 11 October (day 5), in which it was mentioned that the applicant, who was described as "calm", had "restraints maintained on all four limbs"; ibid.), and thus lacked any explicit indication of why the continued restraint had been considered necessary by the medical staff who prolonged its application. In the Court's view, those entries as they appear in the medical register can hardly shed light on whether the conditions necessitating the restraint measure were still present.

129. As regards subsequent entries, on the afternoon of 12 October (day 6) the decision to prolong the measure was noted without further elaboration ("the restraint is maintained on three limbs with one arm being left free"). On the following day (day 7) it was reported that the restraints had been temporarily removed for reasons of personal hygiene and to allow the applicant to have a smoke, and that he had then accepted that he would be restrained again with one arm free, without any indication being given as to why renewed restraint would have been considered necessary at that point in time. On 14 October (day 8) the first entry, which was recorded approximately sixteen hours after the previous one, stated that the applicant had "restraints on three limbs" and that he appeared calm, but the Court cannot discern any evidence of a reassessment of the necessity for the restraints having been carried out at that stage.

– *The criminal investigation*

130. Turning to the findings of the criminal investigation, the Court notes at the outset that the domestic authorities, in their assessment of the application of the mechanical restraint measure, referred primarily to the initial decision to apply restraints on 7 October 2014 and to the acts of physical aggression carried out by the applicant on that day. As to the assessment of the continued application of the measure beyond those circumstances, the Court notes, firstly, that the rather succinct section of the prosecutor's request concerning the necessity of the measure did not contain a specific assessment as to how the danger posed by the applicant could have

been considered immediate or imminent throughout the duration of the measure's application. Rather, in requesting that the proceedings be discontinued, the public prosecutor concluded, largely by relying on the medical expert's report, that the applicant's serious psychopathological condition, which according to the medical register persisted throughout the period of restraint, allowed for an overarching prediction as to the risk of recurrence of the aggressive behaviour which had initially warranted the application of restraints, and justified their continuing application for the entire period (see paragraph 37 above). The Court cannot fail to note that the same expert, in ruling out possible criminal conduct on the doctors' part, hypothesised that they might have displayed a possible "excess of prudence" stemming from what he described as a "perhaps excessive and unfounded" fear of possible negative consequences should the mechanical restraint measure be lifted (see paragraphs 27-32 above).

131. As regards the decision to discontinue the proceedings against the medical practitioners (see paragraph 45 above), the preliminary investigations judge found that the prolongation of the restraint measure for "a significant period of time" had been necessary owing to the applicant's "condition", which had not stabilised or improved during the first days of the restraint. The decision stressed the precariousness of the applicant's psychophysical situation, which had led to a report being lodged as to his dangerousness. The Court considers that, in the rather succinct discontinuance decision, the preliminary investigations judge did not adequately engage with the arguments raised by the applicant, in his objection to the prosecutor's request, concerning the absence of an assessment by the prosecutor as to whether the purported danger to others posed by the applicant could have been considered clear and present (*attuale*) throughout the duration of the measure's application, which lasted for almost eight days. In particular, the decision does not appear to address the applicant's arguments as to the absence of concrete elements identified by the practitioners indicating the presence of imminent danger, rather than merely a "potential" one, in particular with reference to the criteria developed by the Court of Cassation in the *Mastrogiovanni* judgment (see paragraph 59 above).

132. In view of the foregoing, the Court considers that in the domestic investigation the authorities failed to adequately address issues that were crucial for an assessment of whether or not the prolongation of the mechanical restraint measure over such a long stretch of time, described as "unusually long" by the medical expert commissioned by the prosecutor (see paragraphs 27-32 above), had been strictly necessary to prevent imminent or immediate harm to the applicant or others.

133. In the context of the domestic investigation, the Court further observes that the prosecutor and preliminary investigations judge did not address the arguments raised by the applicant in his criminal complaint (see paragraph 24 above) and in his challenge to the prosecutor's discontinuance

request (see paragraph 43 above) to the effect that his continued mechanical restraint had not been a last resort. The silence on that aspect appears even more striking if one considers that the protocol on restraint in force at the SPDC mentioned that it was to be applied in cases where other less restrictive measures had already been attempted and proven to be ineffective, inappropriate or insufficient (see paragraph 62 above).

134. As a final remark, the Court is also mindful of the fact that, as highlighted by the interveners, there is no specific legislation setting out legal boundaries for the use of mechanical restraint in a psychiatric context, with its limits being instead set out in terms of whether the conduct of the individuals applying the measure can be justified under the defence of necessity set out in Article 54 of the Criminal Code (see paragraph The third-party submissions

108 above). In this connection, the Court cannot fail to note the CPT's findings on its 2022 visit to Italy to the effect that, in the context of mechanical restraint, the defence of necessity was being applied without a stringent assessment of, amongst other things, the criterion of imminent danger set out in the text of Article 54 itself (see paragraph 68 above).

– *Other considerations*

135. Lastly, the Court cannot fail to note the fact, also highlighted by the applicant, that on 14 October 2014 (day 8) two doctors of the psychiatric service made a request for, amongst other things, the continuation of the applicant's care "in a more appropriate context", as they stated that they were confronted with a "social danger" that they were neither competent nor structurally equipped to deal with (see paragraph 11 above). The doctors stated, in the same document, that the applicant's continued restraint was both problematic to manage in the long term as well as "ethically questionable" (ibid.). Also bearing in mind the CPT's position that means of restraint should never be used as a replacement for proper care or treatment (see the CPT's revised standards on means of restraint in psychiatric establishments for adults, quoted at paragraph 67 above), the Court finds such statements a serious cause for concern. They cannot but raise the question as to whether the prolongation of the applicant's mechanical restraint beyond the circumstances that first warranted it was employed as a means to deal with a patient for which the institution in question was not properly equipped to treat.

– *Conclusions*

136. In view of the above, the Court finds that it has not been sufficiently proven that the continuation of the restraint measure - which moreover was maintained for an extraordinarily long period - was strictly necessary and respected the applicant's human dignity, and did not expose him to pain and suffering in violation of Article 3 of the Convention (compare *Aggerholm*, cited above, § 114). There has, therefore, been a violation of the substantive aspect of that provision.

137. As regards the part of the applicant's complaint concerning the compatibility of the pharmacological sedation administered to him with Article 3 of the Convention, the Court considers that it has dealt with the main legal question raised by the case (see paragraphs 122 to 136 above) and that there is no need to examine the merits of the remaining part of his complaint under the substantive aspect of that provision (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

2. *Procedural aspect of Article 3 of the Convention*

(a) The parties' submissions

(i) The applicant

138. The applicant argued that the investigation had not been sufficiently thorough in that the authorities had not made a serious attempt to find out what had happened and to punish those responsible. He contended that the prosecutor's office had not investigated the manner in which the doctors had decided to adopt the impugned measure or the context of that decision; he supported that argument by stating that the conclusions drawn by the prosecutor's office, and the expert report on which it had relied, had merely concerned the identification of guidelines and protocols without seeking to assess whether the measure – which had been of inordinate duration – could in reality have been considered necessary. He further alleged that his observations had been ignored by the preliminary investigations judge. In particular, he emphasised that in his submissions of 9 April 2019 (see paragraphs 38-44 above)he had expressly pointed to the fact that the public prosecutor's office had drawn its conclusions without taking into account the principles established by the Court of Cassation's *Mastrogiovanni* judgment, which were important for the assessment of the mechanical restraint measure's necessity. Instead, the prosecutor had simply relied on the expert's findings as to the existence of a risk of a return to an agitated state rather than carrying out an assessment of whether there had existed a real danger of serious harm. In that connection, the applicant pointed out that the preliminary investigations judge had made no reference to those case-law principles despite being invited to do so by the applicant, and had also failed to indicate the reasons why such principles had not been taken into account.

139. The applicant further alleged that the investigation had not been conducted with reasonable expedition owing largely to the unjustified inertia of the public prosecutor's office which, faced with a complaint lodged on 25 November 2015, had only appointed a medical expert after the applicant filed an additional submission one year later. Moreover, the public prosecutor's office had submitted the request to discontinue the case three years and four months after the criminal complaint had been lodged and more than two years after the medical expert's report had been delivered. In total, the criminal investigation had lasted approximately four years, eight months and twenty-four days, which was an unreasonable amount of time in the applicant's view. He considered that in the present case there had been no obstacles or particular difficulties preventing the investigation from progressing and that the lack of a prompt response to the allegations of ill-treatment ought to be taken seriously.

140. Lastly, the applicant argued that he had been unable to participate effectively in the domestic investigation. In that connection he pointed out that the prosecutor's medical expert had made his assessment without having heard him, and that he had not been heard by the prosecutor.

(ii) The Government

141. As to the thoroughness of the investigation, the Government argued that the prosecutor's office had carried out several investigative acts and followed different lines of enquiry, as evidenced by the questions it had put to the medical expert. They highlighted that the medical expert commissioned by the prosecutor's office had requested information and documentation on many different aspects of the case, including, amongst other things, the applicant's medical history, the reasons for his admission to hospital and how it had come about; the reasons for the application of mechanical restraint and how they had been applied, and the reasons for the prolongation of the measure; the duration of the measure of mechanical restraint; the applicant's pharmacological sedation during the period of mechanical restraint; and the nature and type of physical and psychological consequences of the restraint suffered by the applicant. Those aspects had therefore been investigated, with the relevant documentation having been obtained and reviewed by the consultant and the public prosecutor.

142. With respect to the preliminary investigations judge's discontinuance decision, the Government submitted that the judge had endorsed the factual reconstruction and legal analysis proposed by the prosecutor. While it was true that the *Mastrogiovanni* judgment had not been expressly addressed by the preliminary investigations judge, the Government contended that the principles established in that judgment had been implicitly taken into account as they were, in any event, present in the overall case-law.

143. As to the length of the investigation, the Government pointed out that the applicant had lodged his complaint with the public prosecutor's office more than a year after the impugned events had taken place. They further submitted that the complaint had not been classified as "urgent" according to the organisational criteria in force and the practices followed by the public prosecutor when it was lodged in December 2015.

144. They also highlighted the fact that on 1 February 2016 the public prosecutor had issued a production order to obtain from the Melzo hospital the applicant's medical records and the protocols in force at the time, and made a general reference to the lengthy procedures for the validation of certified copies of medical records by the hospital administration. They stated that the public prosecutor's office, while waiting for the delivery of the requested documentation, had analysed the documents attached to the complaint, which included documentation from other criminal proceedings involving the applicant.

145. They contended that by 20 June 2016 the public prosecutor's office had gained sufficient knowledge of the case to appoint a medical expert. The expert had been granted an extension of the 90-day time limit for delivering the expert report, which had been submitted on 20 November 2016. The Government stated that following the delivery of the report the public prosecutor had informally communicated to the applicant's defence counsel, with whom he regularly spoke, his decision to lodge a request for discontinuance.

146. Moreover, the public prosecutor's office had focused on different priorities related to other investigations and trials for acts committed against vulnerable persons that were particularly alarming and, as such, required priority and timely handling. On 7 February 2019, after a full re-reading of the expert report, which the Government argued was particularly voluminous, complex, and technical, the public prosecutor lodged a request to dismiss the case.

(b) The Court's assessment

147. The Court reiterates that the obligation to carry out an effective investigation into allegations of treatment infringing Article 3 suffered at the hands of State agents is well established in the Court's case-law (see *Bouyid*, cited above, §§ 114-23). In particular, in order to be "effective", such an investigation must firstly be adequate, which means that it must be capable of leading to the establishment of the facts and to a determination of whether the force used was or was not justified in the circumstances, and of identifying and – if appropriate – punishing those responsible (see *Jeronovičs v. Latvia* ([GC], no. 44898/10, § 103, 5 July 2016). A requirement of promptness and reasonable expedition is implicit in this context. Moreover, the victim should be able to participate effectively in the investigation (see *Bouyid*, cited above, § 122).

148. As to the applicant's submissions regarding investigative delay, while it is true that, as pointed out by the Government, he made his criminal complaint one year after the impugned events, the Court cannot fail to note that three years and four months elapsed from the lodging of the complaint on 25 November 2015 to the prosecutor's discontinuance request of 7 February 2019. There is no indication in the material submitted to the Court that the public prosecutor heard any witness or took other investigative steps to uncover evidence concerning the impugned events beyond the lodging of the request for documents with the hospital and the request for the medical expert assessment. It notes, in particular and as highlighted by the applicant, that over two years elapsed from the delivery of the medical expert assessment in November 2016 to the discontinuance request in February 2019. The Court is not persuaded that such a delay can be justified by the length and complexity of the medical expert's report. It finds that such a delay is even more striking when viewed against the Government's statement to the effect that the prosecutor had, following the submission of the report, already "informally" communicated his intention to discontinue the proceedings to the applicant's lawyer.

149. As the Court has previously emphasised, although there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bouyid*, cited above, § 121). In the present case, the Court was not presented with sufficient evidence that such obstacles or difficulties existed. As regards the Government's arguments concerning organisational aspects related to the public prosecutor's priorities and workload (see paragraphs 143 and 146 above), which were drafted in generic terms, the Court considers that an investigative process, however it may be organised in terms of domestic law or practice, must be in any event be carried out with reasonable expedition.

150. In view of the foregoing, the investigation in the present case cannot be considered to have been carried out within a reasonable timeframe.

151. Turning to the other shortcomings alleged by the applicant, the Court notes that it has already found above that the domestic investigation failed to shed light on issues that were, in its view, crucial for establishing whether the prolongation of the applicant's mechanical restraint for almost eight days could have been considered strictly necessary (see paragraphs 131-133 above). In that context it noted, in particular, the investigating authorities' failure to engage with pertinent arguments put forward by the applicant in that respect. The Court cannot but conclude that the investigation was not thorough (see, *Bouyid*, cited above, § 133). Those findings are sufficient for the Court to conclude that the State authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment with a view to

establishing whether, in the circumstances of the case, the prolongation of mechanical restraint was justified.

152. In the light of the foregoing, the Court finds a violation of the procedural limb of Article 3 of the Convention.

153. Having regard to that finding, the Court does not consider it necessary to address the applicant's other allegations relating to the effectiveness of the investigation.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

154. 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

155. The applicant claimed 250,000 Euros (EUR) in respect of non-pecuniary damage. He pointed out that the court had awarded the applicant in the case of *Aggerholm* (cited above) EUR 10,000 for a period of restraint lasting almost twenty-three hours. He emphasised that in his case the measure at issue had been applied for many days and that he had been a particularly vulnerable young adult, and that those factors should be taken into account by the Court.

156. The Government submitted that the claim was excessive.

157. The Court considers it undeniable that the applicant sustained non-pecuniary damage on account of the violation of Article 3 of the Convention. Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards him EUR 41,600 under this head, plus any tax that may be chargeable.

B. Costs and expenses

158. The applicant also claimed EUR 12,000 in respect of costs and expenses incurred before the Court. His representatives stated that they had advanced those expenses and requested that the sum awarded be paid directly into their bank accounts.

159. The Government considered such claims to be excessive.

160. 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 were 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 sum of EUR 8,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;

4. *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, the following amounts:
      (i) EUR 41,600 (forty-one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the 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;

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

Done in English, and notified in writing on 7 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President