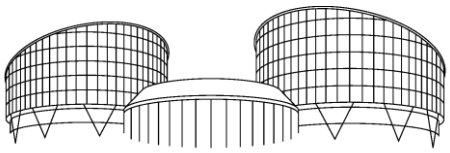

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PLACÌ v. ITALY

(Application no. 48754/11)

JUDGMENT

STRASBOURG

21 January 2014

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

In the case of Placì v. Italy,

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

Işıl Karakaş, *President,*
Guido Raimondi,
Peer Lorenzen,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Egidijus Kūris, *judges,*

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 17 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 48754/11) 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 Luigi Placì ("the applicant"), on 3 August 2011.

2. The applicant was represented by Mr B. De Francesco and Ms I. De Francesco, lawyers practising in Corsano (Lecce). The Italian Government ("the Government") were represented by their Agent Ms E. Spatafora and their co-Agent, Ms P. Accardo.

3. The applicant alleged a breach of Article 3 of the Convention, in so far as there had been a lack of a proper assessment of his fitness for service before conscription and because by being subjected to compulsory military service with the resulting training he had had to undergo and punishments that had been inflicted on him he had been subjected to treatment contrary to Article 3. He further complained under Article 6 of the unfairness of the proceedings.

4. On 28 August 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Specchia (Lecce).

A. Background to the case

6. In 1993 the applicant, aged eighteen at the time, was called up to undertake compulsory military service. For the purposes of his conscription he had a combined psychological evaluation and physical examination on 3 December 1993, as a result of which he was found to be fit for military service. The detailed report, which was not disclosed to the applicant (until 21 September 2010 in the course of pension proceedings), considered that the applicant was slow in understanding and executing a task but logical in its exercise, although prone to giving up. In an evaluation covering language and cultural skills, motivation, mental performance and behaviour, he obtained a grade of 4 out of 10 in each area.

7. Upon his conscription, the applicant underwent another medical examination on 14 June 1994, as a result of which he was again found to be fit for military service on the basis that he was not suffering from any illness. He was assigned to Battalion no. 123 in Chieti, where he was subject to intensive physical and mental training, including in the use of firearms.

8. On 9 July 1994 the applicant was transferred to the provincial command unit in Aquila, where he remained until 30 December 1994. During this time, from 1 September to 2 November 1994 he temporarily formed part of its logistical battalion. While in Aquila the applicant was subjected to multiple punishments. According to the documentation presented, he was subjected to eight punishments between July and December, amounting to twenty-four days of confinement, including periods of solitary confinement, for reasons ranging from negligent care of his camp-bed area to failure to report to his supervisor, or informal behaviour towards his superior. During the time he spent with the logistical battalion he was hospitalised at least four times for medical care unrelated to his mental problems (see below).

9. On 30 December 1994 the applicant was transferred to Lecce, where a commander noted that the applicant suffered from nervous tics and twitches, difficulty in socialising and learning, and absent-minded behaviour. The commander ordered the applicant to undergo a specialised medical assessment to test his fitness to perform military service.

10. On 24 January 1995 he was admitted to hospital, where he was diagnosed with anxiety disorder and considered to be in a fragile state of mind.

A medical report by the NHS of Tricase of 6 February 1995 considered that in his youth the applicant had suffered from affection-relational problems and learning difficulties. He was physically weak and insecure, had a low aptitude for learning and was prone to isolation, was dysfunctional and incapable of taking up responsibilities. Tests revealed that he was unable to perform assigned tasks, had difficulty orienting himself and impaired cognitive functions (a deficit in logic and memory). He was considered to have a slight intellectual deficit (an IQ of 67) and to be incapable of creating positive relationships with people. This inadequacy caused him to live military life with anxiety and fear of his fellow soldiers, who he considered were aggressive towards him, even if they had only been joking. The report considered that the longer he remained in military service, the more severe his anxiety would become, and his defensive attitude arising from his fears would intensify.

11. The applicant remained on medical leave for recovery purposes until April 1995, when, following a specialised assessment to determine his suitability for military service, on 8 April 1995 the applicant was found to suffer from "dysphoria and borderline personality [disorder]" and was discharged due to unfitness.

12. Following his discharge, the applicant underwent further medical examinations. A report by the NHS of Tricase of 20 October 1995 considered that the applicant no longer had a defensive attitude, nor was he suffering from dysphoria and nervous tics. He was still, however, insecure, prone to isolation, unstable and unwilling to take up responsibilities. Following the tests performed, the report concluded that the stressful situation, namely his military service, having ended, the applicant had slightly improved. However, he still displayed signs of intellectual deficit.

13. At the time a report by the applicant's doctor (Dr Russo) considered that the applicant had fallen sick because of military service or that there was at least a causal link between the two. In consequence, on 13 January 1996 the applicant asked the Defence Ministry to pay damages under Law no. 416 of 1926 and presidential decree no. 686 of 1957.

14. In the course of the examination of his request for damages, on 30 September 1999 the Medical Commission of the Bari Military Hospital diagnosed the applicant with "obsessive-compulsive disorder" ("OCD"), which it considered was not a result of his military service. It opined that the mental infirmity at issue was a pre-existing condition. It did not appear that during his military service the applicant had been involved in any events or had to carry out any duties which, given their importance, duration and nature, could have seriously influenced the onset or progression of this mental health problem. It further considered the request to have been made out of time.

15. In the meantime the applicant had repeatedly asked the relevant authorities to provide him with a copy of the pertinent documents regarding the period in which he had served in the military to enable him to substantiate his claims. On 24 November 1999 he further asked the Lecce Military District to provide him with the administrative and health documents related to his case together with the minutes of the Medical Commission's meeting in his respect. This request was repeated four times in the year 2000 and remained unanswered.

16. On 19 June 2000 the second instance Medical Commission of Bari confirmed the findings of the Medical Commission dated 30 September 1999.

17. On 11 July 2000 the Ministry of Defence rejected the applicant's request for damages, noting that the Medical Commission (second instance) of the Command of the Naples Health Service had, on 19 June 2000, determined that the OCD from which the applicant suffered had not been caused by his military service.

18. According to a medical certificate submitted by the applicant to this Court, issued by the Maglie Local Health Centre (mental health department) on 29 July 1999, the applicant, who had been treated by the department since 1977 for a fragile state of mind, a low IQ, and OCD which had become chronic, had developed behavioural problems to the extent of violent outbursts towards his family following his military service.

B. Domestic proceedings

1. Proceedings before the Regional Administrative Tribunal

19. On 21 July 2000 the applicant instituted proceedings before the Lecce Regional Administrative Tribunal ("TAR") for the recognition of the causal link between his mental health problems and his compulsory military service, and in the event that the court considered his condition to be pre-existing he asked it to ascertain the military's liability for recruiting him and in consequence to make an award of damages in his favour.

20. On 4 August 2000 the applicant lodged an urgent request with the relevant authorities to access medical documents relating to the fitness-for-service examination prior to conscription, details about his time in the military – training, work, and so on, his disciplinary record, i.e. of the punishments endured, and a record of his hospital stays, an assessment by his commander of his personality and professionalism and all other relevant material held by the Military Administration. On 22 September 2000 he was informed that the unit in Aquila had been disbanded. He was further informed that he had spent twenty-three days in "*consegna semplice*" (a punishment prohibiting an individual from leaving the base) and one day of "*consegna di rigore*" (a punishment confining the individual to a specified

area on the base) and that any further information had to be requested from the Lecce Recruiting Office. The applicant lodged a request with the Lecce Recruiting Office on 28 September 2000 and on 16 October 2000 the office replied, sending the applicant an excerpt containing his disciplinary record and noting that he had spent twenty-eight, rather than twenty-three, days in "*consegna semplice*". No other documentation was sent to the applicant. Following further requests on 19 October 2000, the Lecce Recruiting Office sent the applicant the psycho-physical training file.

21. On 28 December 2002 the TAR appointed Dr S. as a court expert to ascertain the nature of the applicant's infirmity and submit a report within sixty days.

22. Following an examination of the applicant, Dr S. failed to deliver the requisite report. Thus, on 30 January 2007, the applicant asked the TAR to replace the expert.

23. By a judgment filed in the relevant registry on 20 July 2007 the TAR, considering the applicant's interlocutory request as an application for renewal ("*rinnovo*"), rejected the request, noting that for seven years the applicant had failed to solicit any action whatsoever. Considering that no more evidence was necessary, it proceeded to give judgment. It held that the two Medical Commissions had agreed about the source of the applicant's infirmity and that it had resulted from a pre-existing condition. Indeed the first-instance Medical Commission had referred to a diagnosis of the applicant made in 1997 (when he had been admitted to hospital) which evidenced a fragile and vulnerable mental state. The court went on to note that it transpired that the medical examination of June 1994 to determine the applicant's fitness for service had not been accurate, since it should already have transpired that the applicant was not entirely fit to take up military service.

2. Proceedings before the Supreme Administrative Court

24. On 9 July 2008 the applicant appealed to the Supreme Administrative Court ("CS"). He complained, *inter alia*, that: the outcome of the case had been illogical – even though the TAR had considered that his fitness-for-service examination had not been accurate it had failed to pronounce itself on any liability and to award damages; the TAR had considered the applicant's interlocutory request for the replacement of the expert as an application for renewal, even though replacement of the expert was clearly due given the delay in performing his functions, leading to the court taking a decision to dismiss the action without the relevant information.

25. By a partial judgment of 19 January 2010, the CS considered that a specialised medical examination was indeed necessary to determine the connection, if any, between the applicant's infirmity and his military service. It ordered that such an examination be carried out by the Defence

Ministry's Medical Board (*Collegio Medico Legale della Difesa* – the "Medical Board"), by means of a medical assessment in the presence of the applicant's general practitioner, and that a report be submitted within thirty days. It appears from the documents that the Medical Board appointed for the applicant's case was made up of four full members, three from the military and one from the State Police, and an external expert in neurology.

26. In June 2010 the Medical Board's report was filed. Its findings took into consideration a report produced that year by an expert engaged by the applicant which he had been allowed to submit to the Board (before being submitted to the CS). The Medical Board's report noted that when the applicant was discharged he had been suffering from dysphoria, anxiety disorder and borderline personality disorder and had been considered to suffer from slight intellectual disability. It confirmed the reports submitted by the Bari Medical Commissions and highlighted the relevance of the pre-existing nature of the applicant's condition, also noting that upon examination by the Bari Military Hospital's Medical Panel on 30 September 1999 and at the date of the report in 2010 the applicant had been suffering from "chronic OCD, a slight degree of intellectual disability, displayed personality changes and was prone to have marginal traits". It concluded that at the date of review, according to the information available, the infirmity could not be considered to have been the direct result of or aggravated by ordinary military service.

27. On an unspecified date the report of 6 May 2010 prepared by the applicant's expert (Dr Russo) was filed with the court. It noted that the applicant, a mentally healthy subject upon undergoing medical assessments prior to being drafted, had never shown any symptoms of mental illness before conscription into the military service and it was only after repeated punishment that such traits had emerged. Therefore, even assuming that he was predisposed to mental health problems, it was evident that it was the treatment he had been subjected to during military service that had caused the emergence of the illness. The implications of military service were generally of great emotional impact and a source of stress, which for a person who was in a fragile state of mental health or predisposed to mental health problems, unlike in the case of a healthy person, could trigger mental illness. The applicant's being away from his family and his inability to relate to colleagues and superiors, in the absence of the necessary psychological support and in view of the repeated punishments imposed on him, had caused him to develop dysphoria which had later evolved into chronic OCD. Thus, in the applicant's case there had been a causal link between his mental health problems and his military service, or the latter had at least contributed to the development of his condition.

28. On 12 November 2010 the applicant filed pleadings contesting the findings of the Medical Board and arguing that its report could not be considered objective and impartial given its nature and composition, as it

was an organ of the opposing party in the proceedings. He argued that there had been a lack of transparency in the production of the report, which was highlighted by the fact that he had recently become aware of other documents related to the case which had never been disclosed to him by the authorities, the substance of which had been reflected in the report. On 14 December the applicant made further oral pleadings.

29. By a judgment filed in the relevant registry on 4 February 2011 the CS rejected the applicant's appeal, holding that the applicant's infirmity was antecedent to his military service and that it had not been detectible during the examination in 1994, as had been established by the Medical Board. As to the failure to disclose documentation, it considered that such documentation did not relate to the period during which the applicant had carried out military service. In any event the crux of the applicant's complaint had concerned the conclusions of the Medical Board's report which did not accord with his claim. However, the CS considered that the report was not contradictory or illogical in itself and it had not ignored relevant facts. It followed that given that the CS (in its limited powers of judicial review of administrative acts) (*in sede di legittimità*) was not allowed to assess the merits of that report, the applicant's challenge could not be upheld. In respect of the original medical examination to determine the applicant's fitness for military service, the CS again adopted the findings of the Medical Board, which had considered that it was possible that the applicant's health problems had not manifested themselves in the absence of particular stimuli.

II. RELEVANT DOMESTIC LAW

30. Under Italian law applicable at the relevant time, namely Article 138 of Presidential Decree no. 237 of 1964, failure to attend a medical assessment concerning one's fitness for military service constituted an offence punishable with imprisonment for a maximum of two years. Failure to undertake military service constituted a crime of desertion under Article 148 of the Peacetime Military Penal Code punishable with imprisonment from six months to two years.

31. Punishments in the military are of different degrees and include a warning (*richiamo*), reprimand (*rimprovero*), "*consegna semplice*" (see paragraph 20 above) and "*consegna di rigore*" (idem.).

32. Article 68 of Legislative Decree no. 29 of 3 February 1993, in relation to the jurisdiction of the Italian courts, reads as follows:

> "(1) The ordinary courts in their function as labour courts, have the competence to hear all disputes related to public-sector employment (*rapporti di lavoro*) as mentioned in Article 1(2), with the exception of those disputes related to employment as mentioned in (...)

(4) Disputes related to employment for the categories mentioned in Article 2(4) remain within the competence of the administrative courts."

Article 2(4) of the same law lists the categories, *inter alia*, as follows:

"Ordinary, fiscal (*contabili*) and administrative magistrates, advocates and prosecutors, military personnel, the police and diplomats (...)"

33. According to Article 11 of Law no. 416 of 11 March 1926, the Defence Ministry's Medical Board, subdivided into six sections, is directly dependent on the Ministry of Defence. It is composed of the following medical personnel:

"(a) a General in the permanent service, who is a doctor, as president;

(b) a General in the permanent service, who is a doctor, preferably pertaining to a corps different from that of the president, as vice president;

(c) two superior officials, army doctors, one as secretary of the board and the other as secretary of a separate section of the Court of Audit (*Corte dei Conti*);

(d) four army doctors at the grade of General or Colonel, one doctor who is either a Rear Admiral or Captain of a naval vessel, a doctor at the grade of General or Colonel of the air force health service, as presidents of the six sections, one of which shall be a separate section at the Court of Audit;

(e) fourteen doctors being superior officials of the army, seven doctors being superior officials of the navy, seven doctors being superior officials of the air force health service, two superior officials being doctors or medical servants of equivalent qualification from the police force, as full (*attuali*) members of the six sections;

(f) fourteen doctors being lower ranking officials of the army, seven doctors being lower ranking officials of the navy, seven doctors being lower ranking officials of the air force health service, two lower ranking officials being doctors or medical servants of equivalent qualification from the police force, as deputy members of the six sections;

(...)

The president of the board can request the involvement, by means of an advisory opinion but without a right to vote, of doctors external to the board, to be chosen amongst civilian specialists who are university professors.

(...)"

According to Article 11 *bis*, every section must be composed of a president and at least four full members.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained, citing Articles 2 and 3 of the Convention, of a lack of proper assessment of his state of health before conscription,

which he considered had been in breach of the State's positive obligations; and about his conscription into military service with the resulting training he had had to undergo and punishments that had been inflicted on him, which he considered had been in breach of the State's negative obligations.

35. The Court considers that the said complaints do not engage Article 2 and should be examined solely under Article 3 of the Convention, which reads as follows:

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

36. Moreover, in so far as in his observations the applicant made reference to the State's procedural obligations under Article 3 of the Convention, the Court notes that the applicant did not clearly raise the matter in his initial application and gave no details in this regard. In those circumstances the Court cannot consider the complaint in that respect to have been appropriately lodged and will thus only consider the Article 3 complaint under its substantive aspect.

A. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies.

37. The Government submitted that although the Court's case-law had established that an individual was only obliged to exhaust one of alternative effective remedies, such jurisprudence was based on the premise that all the remedies were equally effective. In the present case the Government noted that the applicant had chosen to bring administrative proceedings and could not therefore now complain about those proceedings, when he had had an alternative remedy available to him which he could have chosen to make use of. They further considered that given the nature of the alleged violation it would have been more appropriate for the applicant to undertake civil proceedings, which had been both accessible and effective as shown by Court of Cassation judgments nos. 10739 and 18184 of 2002 and 2007 respectively.

38. The applicant submitted that under Italian law, the court having jurisdiction over a case was established by law. He referred to Article 68 of Legislative Decree no. 29 of 3 February 1993 (see relevant domestic law) which provided that disputes concerning military personnel were subject to the jurisdiction of the administrative courts and not the ordinary courts. The two examples provided by the Government were therefore irrelevant in the face of clear legal provisions. Moreover, in the two cited cases the Government had in fact pleaded the ordinary courts' lack of competence.

39. The Court reiterates that Article 35 § 1 of the Convention requires that the only remedies to be exhausted are those that are available and sufficient to afford redress in respect of the breaches alleged. The purpose

of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, *inter alia, Selmouni v. France* [GC], no. 25803/94 § 74, ECHR 1999-V). In the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance (*Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010). Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot also be required to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

40. The Court firstly notes that the Government have failed to explain why a civil remedy would have been more appropriate in the present case, despite the law providing otherwise. Moreover, in contrast to what they claimed before this Court, from the examples of domestic case-law submitted it is clear that the Government specifically objected to the competence of the ordinary civil courts to assess military issues.

41. The Court further notes that, in accordance with the provisions of domestic law, the applicant made use of the indicated remedy in full compliance with domestic procedures and the formalities laid down in national law. Indeed the administrative courts could have granted the applicant redress, and thus were both accessible and effective. Those courts did not find that they did not have the required competence. On the contrary, they examined and decided the merits of the case without any hesitation. In that light the Court has no doubt that the applicant exhausted domestic remedies.

42. The Government's objection is therefore dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant considered that the State had failed to fulfil its positive obligation to protect him from treatment contrary to the Convention by means of appropriate pre-conscription tests and subsequently by forcing him to undertake military service which he had not been fit for. He attacked the effectiveness of the tests, noting particularly that if there had been doubt as to his fitness, further tests should have been undertaken. Indeed, there had been provision for further tests if called for; however, they had not been

undertaken in his case despite sufficient indications that they were necessary (see paragraph 6 above). Ironically, specific and more rigorous tests had been in place for conscripts for voluntary military service (given the more demanding performance required of them), despite the fact that mandatory conscripts actually had a greater need of such psychological testing, the duty of military service being imposed on them. Moreover, this more specific testing went to show that the tests for mandatory conscripts had been weaker and not sufficiently accurate. He noted that even the TAR in its judgment of 20 July 2007 had found that the pre-conscription examination had been inaccurate and inappropriate (see paragraph 23 above). Indeed if, as had been held by the court-appointed experts, he had had a pre-existing intellectual disability which had caused his eventual mental health problems, then the State had had an obligation to acknowledge his condition and to act accordingly to protect his physical and mental well-being.

45. The applicant further complained that instead of the authorities protecting him, once in service he had been made to suffer sanctions and punishments at a time when he had been in need of psychological support. There had not been a system in place capable of speedily detecting behavioural problems or providing psychological support. Thus, his military superiors had again failed to detect any health problems and had instead opted to impose consecutive and repeated punishments on him, which had irretrievably prejudiced his health and isolated him even more. He had first started suffering from nervous tics, which eventually developed into chronic OCD (which could transform itself into more serious forms of psychosis according to the applicant's expert) as a result of the compulsory military service and the treatment he had endured during that time. In his view there was no doubt that the stresses of military life away from his family, coupled with the punishments endured, could trigger such consequences in a subject who was already in a fragile mental state, or at least predisposed to mental health problems. Even assuming that military life and the treatment he had endured had not been the sole cause of his present condition, it could not be denied that it had been at least a partial cause. The applicant disagreed with the Government that the punishments could not have affected him and referred to the report by the NHS of Tricase of February 1995 (see paragraph 10 above). Moreover, the applicant's expert (report of 6 May 2010 by Dr Russo) had precisely stated that the punishments had been the determinative cause of the applicant's mental health problems. The applicant also challenged the Government's contention that he had been moved to Lecce as some sort of ameliorative measure following the detection of his symptoms. Indeed the said move had only occurred by chance and it was only in Lecce that the military commander had detected the applicant's discomfort (see paragraph 9), at a stage at which his health had already deteriorated to the extent that he had developed nervous tics.

(b) The Government

46. The Government first contended that the applicant had presented the application in a highly subjective way. They submitted that leaving one's home to be part of another community could not be considered as a form of suffering more intense than that applicable to any individual drafted for military service. In addition, the applicant had not substantiated that he had been subject to a lot of ribbing by colleagues or intolerant or negligent behaviour by superiors. The Government noted that the tasks entrusted to the applicant had been normal, routine tasks in the military (such as guard duty), in respect of which they could not be expected to keep records years later. However, he had not been ordered to perform tasks on discriminatory or punitive grounds. As to his punishments, namely the twenty-eight days of "*consegna semplice*" (a punishment prohibiting an individual from leaving the base) and one day of "*consegna di rigore*" (a punishment confining the individual to a specified area on the base), the Government stressed that contrary to what had been claimed by the applicant in the application, these punishments had not been continuous and uninterrupted. Furthermore, the Government could not see how prohibiting the applicant from leaving the base (the most common punishment he had been subjected to) could have been particularly detrimental to him, given that he had claimed before this Court to be inclined to isolate himself from others. Neither had the applicant given specific details about his one-day confinement to a specified area on the base, which in the Government's view indicated its lack of relevance. It followed that such treatment could not be considered as having reached the Article 3 threshold.

47. As to the applicant's state of health on conscription, the Government noted that the applicant's doctor had admitted that before commencing military service the applicant had not been suffering from a mental illness (see paragraph 27 above). In their report of 4 June 2010 the Medical Board had considered that the fact that no significant psychological problems had been apparent during the pre-conscription medical examination could be explained as follows: the applicant's IQ of 67-71, when minor intellectual disability corresponded to an IQ of 50-69 and a lesser degree of such disability to an IQ of 70-89; the absence of particular stimuli which would have elicited a diagnosis of his borderline personality disorder and his latent psycho-neurotic conflict; and the absence of special tests, which at the time had not been compulsory unless there appeared to be a special need for them. It followed, in the Government's view, that the applicant's health problems had been hidden at the time of conscription, as also shown by the fact that when training in Chieti in the first month of his military service – at which time they considered his stress to have reached its height – the applicant had displayed normal behaviour. It followed that the medical results pre-conscription had been correct and the authorities could not be reproached.

48. Moreover, once the applicant's symptoms had emerged he had immediately and repeatedly been hospitalised and moved to Lecce, closer to his family. He had benefited from recovery periods and had eventually been discharged before the end of his regular service period. This also showed that the State had complied with its positive obligations to respect the applicant's dignity – particularly the preservation of his health and well-being during military service.

3. The Court's assessment

(a) General principles

49. The Court reiterates that States have an obligation to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment. These measures should provide effective protection, in particular, of vulnerable persons, such as military conscripts, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Abdullah Yılmaz v. Turkey*, no. 21899/02, §§ 67-72, 17 June 2008, and, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII).

50. It is generally for a State to determine the standards of health and fitness for potential conscripts, having regard to the fact that the role of the armed forces differs among States. However, conscripts should be physically and mentally equipped for challenges related to the particular characteristics of military life and for the special duties and responsibilities incumbent on members of the army. While completing military service may not in any way be overwhelming for a healthy young person, it could constitute an onerous burden on an individual lacking the requisite stamina and physical strength owing to the poor state of his health. Accordingly, given the practical demands of military service, States must introduce an effective system of medical supervision for potential conscripts to ensure that their health and well-being would not be put in danger and their human dignity would not be undermined during military service. State authorities, in particular drafting military commissions and military medical commissions, must carry out their responsibilities in such a manner that persons who are not eligible for conscript military service on health grounds are not registered and consequently admitted to serve in the army (see *Kayankin v. Russia*, no. 24427/02, § 87, 11 February 2010).

51. The Court further reiterates that the State has a duty to ensure that a person performs military service in conditions which are compatible with respect for his human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are

adequately secured by, among other things, providing him with the medical assistance he requires. The State has a primary duty to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Chember v. Russia*, no. 7188/03, § 50, ECHR 2008).

(b) Application to the present case

52. Turning to the circumstances of the present case, the Court is not convinced that the Italian authorities, in conducting the medical examinations of the applicant finding him fit for military service and eventually drafting him into the army, performed their duties in a negligent manner. Prior to his conscription the applicant went through a medical examination which found him fit for military service, despite the fact that it had detected certain deficiencies (see paragraph 6 above). He then underwent a further examination on being drafted. The applicant did not question the qualifications and experience of the doctors making those assessments. During those examinations the applicant did not make any complaints about the state of his health, neither did he, at the time, look for a second opinion elsewhere.

53. The Court, in addition, notes that the applicant's own expert insisted on a causal link between his military service and his illness, insisting that it was his military service which had caused the outbreak, but does not allude to the fact that any specific indicators had been present at the time of drafting (see paragraphs 13 and 27). Indeed in his 2010 report he specifically stated that the applicant had been "a mentally healthy individual at the time of the medical assessment". Similarly, the certificate issued by the Maglie Local Health Centre's mental health department referred to the applicant's behavioural problems arising after his military service (see paragraph 18 above).

54. While it is true that the first-instance court in the applicant's case considered that the medical examination in June 1994 had been inaccurate, the Court considers that although stricter standards and further feasible precautions would have been entirely appropriate – particularly in circumstances such as those of the present case where certain problems were nevertheless detected – the material in its possession does not allow it to reach the same conclusion. The Court is not therefore able to establish that on the date of the applicant's conscription the Italian authorities had substantial grounds to believe that, if drafted into the army, the applicant,

owing to the state of his health, would face a real risk of treatment proscribed by Article 3 (see also, *Kayankin,* cited above § 91).

55. Nevertheless, the Court must also examine the period subsequent to his drafting into the military. It observes that in the approximately six months which the applicant spent in the Aquila provincial command unit, he was subjected to at least eight punishments as a result of breaches of military discipline. While such occurrences may of course be caused by voluntary insubordination, it did not occur to any of his superiors that such repeated unruliness could be the result of psychological issues. Such a possibility was, however, blatantly apparent to the applicant's subsequent supervisor just a few days after his arrival in Lecce. It was only then that his health and well-being were adequately secured by, among other things, providing him with the medical examinations and assistance he required.

56. The Court notes that the Government failed to explain the competencies of the applicant's superiors (particularly in Aquila), including whether there were any trained personnel capable of and responsible for detecting such situations. Nor did the Government point to any practice, rules or procedures in force to ensure early identification of such situations and indicating what steps could be taken in such circumstances. Neither was it argued by the Government that the applicant had access to psychological support or at least to some kind of examination or supervision. It follows that the applicant was left to his own devices for the initial six months (following less than a month of training) after conscription, during which he was subjected to treatment which, although it might not have been overwhelming for a healthy young person, could have constituted, and in the present case appears to have constituted an onerous burden on an individual lacking the requisite mental strength.

57. The Court notes that while it cannot be ruled out that even routine duties may in certain circumstances raise an issue, in the present case the applicant was repeatedly punished, for a total of twenty-nine days, in a span of six months. Again, while the punishments in issue might be of little consequence to healthy individuals, their effects on someone like the applicant might not only be detrimental in the long run – as appears to have been the case for the applicant – but also very disturbing with instantaneous effects on physical or mental health lasting throughout their duration.

58. The Court observes that the NHS Tricase report of February 1995 found that the applicant was suffering from anxiety and the specialised assessment of April 1995 found him to suffer from "dysphoria and borderline personality disorder" and confirmed his discharge as he was unfit for military service. The applicant's expert report obtained in 1995 (see paragraph 13 above) and all the subsequent reports by different bodies reiterated that the applicant was suffering from a mental health condition and none has denied its existence at the time during which he was in Aquila. It is therefore undisputed that the applicant was suffering from that

condition at the time. Moreover, the Court observes that the NHS Tricase reports of February and October 1995 highlighted that the applicant's inadequacy caused him to live military life with anxiety and that military service amounted to a situation of stress, respectively. It follows that, given that he was a vulnerable individual, the suffering to which the applicant was subjected went beyond that of any regular conscript in normal military service.

59. Against that background, and in the absence of any timely detection and reaction by the Military to the applicant's vulnerability, or of any framework capable of preventing any such occurrence, the Court considers that the State failed in its duty to ensure that the applicant performed military service in conditions which were compatible with respect for his rights under Article 3 and finds that in the present case the applicant, in his specific circumstances, was subjected to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline.

60. There has therefore been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

61. The applicant further complained that the medical condition from which he was now suffering as a result of his military service, with the consequence that he was now totally dependent on his family, psychoactive drugs, and treatment in mental health centers, not therefore being able to have a life and family of his own, breached his right under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

62. The Government contested that argument and reiterated their submissions made for the purposes of the other complaints.

63. The Court considers that this complaint may be declared admissible. However, given that it was raised in the context of the above complaints and having regard to the Court's finding under Article 3 (see paragraph 58 above), the Court considers that it is not necessary to examine the matter separately.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

64. The applicant further complained under Articles 6 and 13 of the Convention of the lack of impartiality and independence of the Medical Board, which had provided crucial expert evidence in the proceedings, given that its conclusions had been adopted in their entirety by the domestic court, and about the lack of disclosure of certain documents (for example, the full report of the applicant's fitness-for-service examination; the report by the commander in Lecce requesting a specialised assessment) which had meant that he had not been able to properly participate in the proceedings and had been denied equality of arms during the proceedings. The proceedings had, moreover, been tainted by the fact that he had been unable to contest the findings of the report. Despite the fact that the expert report had only been submitted at the appeal stage, the Supreme Administrative Court ("CS") had considered that, in its limited powers of judicial review of administrative acts, it could not examine the merits of that report. The relevant parts of Article 6 and 13 read as follows:

Article 6

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

65. The Government considered that the complaint was closely linked to the other complaints and reiterated the objection of non-exhaustion that they had previously made.

66. The applicant noted that the remedy he had availed himself of had not been used by choice but rather had been the legal avenue provided for by law, and thus should also have benefited from the Article 6 guarantees.

67. The Court cannot agree with the Government's assertion that the applicant had undertaken administrative proceedings of his own choice and could not therefore now complain about those proceedings. First and foremost, the Court notes that it has already held that the remedy employed by the applicant was perfectly valid in law and appropriate in the circumstances (see paragraph 41 above). The Court further notes that, although the proceedings took place before the administrative courts (the Regional Administrative Tribunal at first instance and the Supreme Administrative Court on appeal), the proceedings instituted by the applicant

concerned a claim for damages and were consequently civil in nature (see *mutatis mutandis*, *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports* 1998-VIII). They were therefore required to comply with the Article 6 § 1 requirements. Lastly, although not relied upon by the Government, the Court observes that, in the present circumstances no issue arises as to the applicability of Article 6 on the basis of the applicant's status as a military conscript, given that he had access to court under national law (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, §§ 62-63, ECHR 2007-II).

68. It follows that the Government's objection must be dismissed.

69. The Court notes that the complaint under Article 6 and 13 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. The parties' submissions

70. The applicant complained of a lack of impartiality on the part of the CS in so far as it had based its findings solely on an expert report drafted by an organ which could not be considered impartial and independent of the parties. The expert body appointed by the court, which by law (no. 205 of 21 July 2000) had to be external to the "administration" (in administrative proceedings), had actually been an organ of the Ministry of Defence composed in the majority of military doctors, despite the defendant in the proceedings being, in fact, the military, also falling under the Ministry of Defence. The expert body was directly dependent on the Ministry, and the fact that one of its members had been external to the Ministry had made no difference. The content of the report, downplaying any negative facts and highlighting the value of the military, had only gone to prove its lack of objectivity. Furthermore, the applicant had not been able to challenge its findings, in so far as the CS had rejected his challenge to the report and his *ex parte* expert report on the basis that it was not for that court to assess the merits of expert findings. It ignored the fact that the report had not been presented at first instance – the report which had been commissioned by the first-instance court had never been submitted by the expert, and the applicant's request (after seven years out of the twelve years of first-instance proceedings) to appoint a different expert had been refused by that court. Thus, the CS had decided on the basis of a freshly presented, biased report which the applicant had not been allowed to challenge.

71. The applicant further complained of a lack of disclosure in so far as the authorities had repeatedly failed to provide him with relevant documentation.

72. The Government submitted that the Medical Board was a technical and not a judicial body. It had not played a crucial and active role in the proceedings; its members had not attended the hearings or submitted any questions to the parties. It had been appointed following the applicant's requests (following a period of passivity on his part during the first-instance proceedings) and it had limited its report to the questions set by the court. As to its composition, the Government noted that one of the members had been external (a professor of neurology), and that none of the members had had any connection to the applicant's case. The doctors in question had not been, strictly speaking, part of the department involved in the applicant's case and they had not been subject to hierarchical superiors who had taken a position on the case. Furthermore, in their report they had taken account of all the matters raised by the applicant's expert and had drafted the report following an examination of the applicant, during which his appointed expert had also been present. Additionally, the applicant's expert and his lawyer could have challenged those findings in adversarial proceedings and the CS had been able to base its findings on all the relevant arguments as to facts and law, including those of the applicant, who had made submissions in reply. They further noted that the applicant's request to the first-instance court regarding the originally appointed expert had been rejected by that court (see paragraph 23 above). In addition, as to the substance of the report the Government noted that its findings, namely that it had only been coincidental that the applicant's illness had appeared while undertaking military service, had also been based on a medical report (by the NHS of Tricase of October 1995) which had found that the applicant had not had neuropsychiatric problems before entering the military (see paragraph 12 above).

73. The Government further referred to the fact that the CS had rejected all of the applicant's complaints as presented to the Court and the merits of his claim had been rejected by the CS in the course of a fair trial. It was therefore not for the Court to re-examine the merits of those claims. In particular, the Government noted that in relation to the alleged lack of disclosure the CS had considered that the undisclosed documents had been irrelevant.

2. The Court's assessment

(a) Article 6

74. Article 6 § 1 of the Convention guarantees the right to a fair hearing by an independent and impartial "tribunal" and does not expressly require that an expert heard by that tribunal fulfil the same requirements. However, the opinion of an expert who has been appointed by the competent court to address issues arising in the case is likely to carry significant weight in that court's assessment of those issues. In its case-law the Court has recognised

that a lack of neutrality on the part of a court-appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial. In particular, regard must be had to such factors as the expert's procedural position and role in the relevant proceedings (see, *inter alia*, *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007).

75. The Court observes that as specifically stated in the law (see relevant domestic law, paragraph 33 above) the Medical Board is dependent on the Ministry of Defence, which, amongst other things, appoints its members to their respective positions and pays their salaries. In particular, the Board (hereinafter understood as the five experts drawing up the report in the applicant's case) was made up of at least three military officials, including the President of the Section. In that light, the Court considers that its structure and composition could give rise to certain concerns on the part of the applicant, which could not be dispelled simply because one of the Board's members was a civilian. While such concerns may have a certain importance, they are not decisive: what is decisive is whether the doubts raised by appearances can be held to be objectively justified (see *Brandstetter v. Austria*, 28 August 1991, Series A no. 211, p. 21, § 44).

76. In this connection, the Court observes that the importance of the report in the applicant's case is highlighted by the fact that on appeal the CS considered that it was indeed necessary for the determination of the case (see paragraph 25 above). There is also no doubt as to the reliance of the CS on the Medical Board's report, the findings of which it endorsed without hesitation or further assessment. Indeed, while adopting the report's conclusions, the CS noted that in its limited powers of judicial review of administrative acts (*sede di legittimità*) it could not examine the merits of that report (despite a contrasting report having been produced by the applicant's expert), irrespective of the fact that the report had only been submitted at the appeal stage. The CS thus rejected the challenge raised by the applicant to the report based on the findings of his own expert (see paragraph 29 above). It follows that the relevant aspects of the judgment adopted were entirely based on the Medical Board's findings.

77. The Court notes that the Board had to examine whether the applicant's illness had been the result of his military service and, if not, whether his illness had been detectable through the tests performed before he was drafted. Thus, the Court observes that it was not required to give general advice on a particular subject, but rather was called upon to make findings on specific facts and to assess the performance of colleagues in the military with the aim of assisting the CS in determining the question of the military's responsibility, which could have led to the applicant being awarded compensation (see, similarly, *Sara Lind Eggertsdóttir*, cited above, § 51, and *Shulepova v. Russia*, no. 34449/03, § 65, 11 December 2008). Therefore, the issue is not merely a question of experts being employed by

the same administrative authority as that involved in the case (see, for example, *Brandstetter*, cited above, §§ 44-45).

78. The seriousness of such a failure is compounded by the fact that, as clearly transpires from the CS's judgment, the applicant's challenges to the Board's findings were dismissed because that court was not empowered to examine the merits of the technical expert findings made by the Board. This left the Board's findings as the sole uncontested and decisive evidence used to determine the issues in the case, and without a doubt highlights the dominant or even totally overriding role of the Board. In this light, little comfort can be found in the fact that the applicant's expert was present when the Board examined the applicant, or that the Board was aware of the content of the applicant's expert report.

79. In conclusion, the Court considers that the applicant had legitimate reasons to fear that the Medical Board had not acted with the appropriate neutrality in the proceedings before the CS. It further transpires that, as a result of the Board's composition, procedural position and role in the proceedings before the CS the applicant was not on a par with his adversary, the State, as he was required to be in accordance with the principle of equality of arms. That conclusion suffices to find that the applicant was not afforded a fair hearing before an impartial tribunal and at a par with his adversary in the proceedings before the CS, without the need to examine further the applicant's arguments in relation to the apparent late disclosure of documentation.

80. There has therefore been a violation of Article 6 of the Convention.

(b) Article 13

81. The Court reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being subsumed by the more stringent requirements of Article 6 § 1 (see, for example, *Société Anonyme Thaleia Karydi Axte v. Greece*, no. 44769/07, § 29, 5 November 2009; *Dauti v. Albania*, no. 19206/05, § 58; 3 February 2009; *Jafarli and Others v. Azerbaijan*, no. 36079/06, § 55, 29 July 2010; and *Curmi v. Malta*, no. 2243/10, § 58, 22 November 2011).

82. It follows that it is not necessary to examine the complaint under Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed a total of 2,140,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He quantified the claim as follows.

In respect of the violation of Articles 2, 3 and 8 he claimed EUR 980,000 in pecuniary damage and the same amount in non-pecuniary damage. The pecuniary damage consisted of the rounded-up sum of EUR 500,000, which had been arrived at on the basis of calculations made in accordance with domestic law whereby he was considered to have a partial (41–50 %) permanent disability, resulting in him being due a privileged pension. To that he had added EUR 480,000 in loss of earnings, him having been certified 100% disabled and dependent on his parents but receiving only a meagre pension of EUR 300 a month. The calculations were based on a life expectancy of 70 years and a working life of 40 years.

In respect of the violation of Articles 6 and 13 he claimed EUR 90,000 in pecuniary damage, equal to the sum he would have been awarded had the proceedings not been tainted by the relevant violation, and the same amount in non-pecuniary damage.

85. The Government asserted that no just satisfaction was due as the complaints were inadmissible. Nevertheless, they pointed out that the applicant's calculation had not taken into account the fact that a privileged pension would not be paid to a person such as the applicant who was already receiving a disability benefit payment.

86. The Court notes that the applicant's claims for pecuniary damage are based on the premise that the military was responsible for his illness in one way or another. However, the Court has not found it established that the military should have known at the time of his being drafted that the applicant was unfit for service, and it has only found a violation of Article 3 on the basis that the applicant – who, as is uncontested, suffered from anxiety disorder, dysphoria, borderline personality disorder and was in a fragile mental stage (see paragraphs 10 and 11 above) during his military service, and was thus vulnerable – was subjected to treatment contrary to Article 3 in the relevant period. While it is true that such a premise was the applicant's contention before the domestic courts and that the Court has found a violation of Article 6 on account of the fact that the applicant was not afforded a fair hearing before an impartial tribunal before the Supreme

Administrative Court, the Court cannot speculate as to the outcome of the trial had the said violation not occurred. It therefore rejects the applicant's claims under that head (see *Savino and Others v. Italy*, nos. 17214/05, 20329/05 and 42113/04, § 111, 28 April 2009, and *Higgins and Others v. France*, 19 February 1998, § 48, *Reports* 1998-I).

87. It, however, awards the applicant EUR 40,000 in non-pecuniary damage.

B. Costs and expenses

88. The applicant also claimed EUR 34,060 for costs and expenses incurred before the domestic courts and before the Court. Including both court and legal fees, he specified these as EUR 7,800 in respect of the first-instance proceedings, EUR 7,205 in respect of the appeal proceedings and EUR 18,000 for the proceedings before the Court, together with EUR 1,055 in administrative expenses such as postage and travelling costs connected to the proceedings.

89. The Government made no comment in this respect.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 17,000 covering costs under all heads.

C. Default interest

91. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in so far as the State failed in its duty to ensure that the applicant performed military service in conditions which were compatible with his Article 3 rights, as a result of which the applicant was subjected to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline;

3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

6. *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;
(ii) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 17,000 (seventeen 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President