



Analysis

ECtHR finds Italy guilty of degrading treatment without adequate judicial remedy in mass prison beatings case

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On 1 July 2014, the 2nd section of the European Court of Human Rights' (ECtHR) ruling in the *Saba vs. Italy* case (no. 36629/2010) found Italy guilty of contravening both the substantial and procedural aspects of Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture, inhuman and degrading treatment. The case concerned an operation undertaken on 3 April 2000 in Sassari prison in Sardinia, where the applicant was a prisoner, involving violence, blows resulting in injuries and humiliating treatment of prisoners. It resulted in 90 people being placed under investigation, ranging from prison officers and officials to prison police officers.

In his application, Valentino Saba alleged that he was subjected to treatment that contravenes Article 3 of the ECHR without having any effective remedy available to defend his rights. Saba also argued that:

- the failure to protect him from violence by officers amounted to a violation of Article 5 of the ECHR (the right to liberty and security);
- his right to private life (Article 8) was breached by the violence to which he was subjected and the destruction of his personal possessions while his cell was searched;
- his right to effective judicial redress (Article 13) was breached in connection with the treatment he was subjected to in breach of Article 3; and
- the right to have his case heard by a court within a reasonable time (Article 6.1) was breached.

Submissions were also filed by the Italian Radicals party, the 'Nonviolent Radical Party, transnational and transparty', and by the association "*Non c'è pace senza giustizia*" [No Justice, No Peace], all of which raised the issue of the absence of a criminal offence of torture in Italy in relation to the events in San Sebastiano prison in April 2000. They argued that the classification of the offences that were under

investigation as minor resulted in the expiry of the statute of limitations allowing a majority of the accused to escape significant punishment or convictions.

Timeline

3 April 2000: Operation involving humiliating treatment and beatings meted out to prisoners in Sassari's *San Sebastiano* prison.

2 May 2000: The Sassari court's *giudice per le indagini preliminari* (*gip*, judge for preliminary inquiries) ordered precautionary measures against 82 of the accused - 22 were placed in preventive custody and 60 under house arrest.

21 February 2003: The *giudice dell'udienza preliminare* (*gup*, judge for the preliminary hearing) ordered nine people to face a full trial; issued a ruling on the 61 defendants who chose to undergo fast-track proceedings (12 convictions for charges including aggravated private violence, blows, injuries and abuse of their official functions, 49 acquittals); and ended proceedings against 20 others, finding that there was no case to answer.

7 November 2005: Of the 12 people convicted in 2003, one failed to file an appeal (making his conviction definitive) and the appeal court upheld six convictions and quashed five. The appeal court also convicted four defendants who had previously been acquitted.

7 June 2007: The Court of Cassation ruling on appeals filed by 10 convicted defendants confirms nine convictions, quashing one.

29 September 2009: The full trial of nine defendants in Sassari ends with two acquittals; proceedings against seven of the accused were discontinued as a result of the statute of limitations' expiry.

29 June 2010: Mr Valentino Saba lodges his application before the European Court of Human Rights.

1 July 2014: Sentence of the 2nd section of the European Court of Human Rights condemns Italy for breaching the substantive and procedural aspects of Article 3 of the European Convention on Human Rights in the *Saba vs. Italy* case (no. 36629/2010).

Background: The operation leading to the events in question followed a revolt in the prison in Sassari, with prison police officers responsible for the maintenance of order in prisons and detainee transfers drafted in from prisons around Sardinia to carry it out. Humiliating treatment was meted out to the prison population as a whole, with violent beatings reserved for around 30 prisoners who were identified in advance as ringleaders of the protest. In the trial, the public prosecutor and victims' testimonies identified prison director (Maria Cristina Di Marzio), the regional superintendent of prisons (Giuseppe della Vecchia) and the new Sassari prison police commander of the unit (Ettore Tomassi) as playing a key role in planning and running the operation.

National judicial proceedings

Following preliminary inquiries, on 2 May 2000 the Sassari court's *giudice per le indagini preliminari* [*gip*, judge for preliminary inquiries] ordered that precautionary measures against the accused be taken. 22 defendants were placed in preventive custody and a further 60 under house arrest, as the prosecution considered charging them with private violence, blows and injuries and abuse of power in exercising their functions.

On 21 February 2003, the *giudice dell'udienza preliminare* [*gup*, judge for the preliminary hearing] decided that nine people would face a full trial, issued a ruling on the 61 defendants who chose to undergo fast-track proceedings and ended proceedings against 20 others, finding that there was no case to answer. The *gup* convicted 12 of the 61 on various charges including aggravated private violence, blows, injuries and abuse of their official functions, who received suspended prison sentences of between four and

twenty months and were ordered to pay damages and court costs. They included prison officers, the regional superintendent of the prison administration, the director of Sassari prison and the head of the Sassari department of the prison police. Yet, the part of damage payments awarded to detainees that would be immediately payable was limited to victims who had proved they were subjected to physical violence, excluding Valentino Saba, who was not beaten. The remaining 49 defendants were acquitted.

The case was taken to the appeal court, except for one prison officer who was fined 100 euros for failing to report a criminal offence and thus accepted his conviction. On 7 November 2005 the court confirmed six convictions, acquitted five defendants and convicted four others who had been acquitted in the first trial. It framed the decisions within the scope of article 608 of the penal code, concerning the use of unauthorised “rigorous” measures against detainees or arrestees by public officers. The 10 people who were convicted filed appeals before the Court of Cassation [Italy’s highest appeal court], whose ruling on 5 June 2007 confirmed the previous sentences with regards to all but one of the appellants, a doctor accused of failing to act in accordance with his duties and falsehood in public acts.

Seven of the nine people who were convicted received disciplinary sanctions: the regional superintendent of the prison administration (who received a suspended sentence of one year four months and two days) was suspended with his pay entirely withheld for a month; the female director of Sassari prison (ten months and twenty days) was suspended with half her pay withheld for a month; the commander of the Sassari prison police department (one year and eight months) was suspended with half his salary withheld for six months; three prison officers (four months and twenty days) had a thirtieth of their wage withheld, the prison officer ordered to pay a 100-euro fine received a warning that prevented them receiving a pay rise for a year.

The defendants in the Sassari trial faced charges connected to violent beatings, humiliating treatment and abuse of power against 118 detainees. Valentino Saba was not among those who were beaten, but he was forced by prison officers to strip naked, to stay in front of his cell with his head against the wall and to pass between two lines of officers with his head bowed as he was insulted and threatened, and searched without justification. Cells were devastated and detainees’ personal belongings were destroyed. The court viewed the events as falling within the offences of personal (private) violence and abuse of power (arts. 610 and 323 of the penal code). 103 victims, witnesses and defendants were heard during the trial’s 44 hearings, ending with a sentence on 29 September 2009 whereby proceedings against seven of the accused were discontinued as a result of the expiry of the statute of limitations, and the two remaining defendants were acquitted.

Yet, the Sassari court found that the events could be typified as “inhuman violence” as what should have been a simple search and transfer of prisoners, alongside the presentation of a new commander, ended up with prisoners moved from where they were staying and subjected to “gratuitous violence”, being made to strip naked, being handcuffed, insulted, beaten and humiliated. It spoke of a “tunnel of horrors” being enacted, unleashing acts of resentment and revenge that are incompatible with the rule of law. However, the offences that were prosecuted were subject to the statute of limitations which expired on 3 October 2007 for the offences falling under article

608 of the penal code (abuse of authority against prisoners), incurring a maximum sentence of 30 months, whereas the statute of limitations for aggravated blows and injuries expired on 3 January 2009.

The ECtHR's analysis notes that the relevant national legal provisions in this case fall under articles 610.1, 323.1 and 608.1 of the penal code, as well as article 13.4 of the Constitution which envisages punishment for any physical or moral violence against people who are denied their freedom.

The ECtHR's findings - admissibility

Mr. Saba argued that the treatment he was subjected to could be typified as torture, adding that the length of the judicial procedure allowed the defendants to benefit from the intervention of the statute of limitations, thus avoiding punishment. The Italian government argued that the case should be dismissed as the applicant had lost his quality as a victim in view of the conviction of ten people including high level officials, which it viewed as a positive outcome for the applicant, all the more so as seven of those convicted were also subjected to disciplinary measures. The internal authorities had therefore acknowledged the violations reported by the applicant and had remedied them. In the government's view, the fact that only ten people were convicted shows that the Italian system rigorously evaluates evidence in relation to each of the accused. The applicant claimed that the sentences (the longest of which was 20 months and all of which were suspended) were insufficient to remedy the violation of Article 3 of the ECHR. The damage payments (of between 4,000 and 6,000 euros) and disciplinary sanctions were "laughable" and not proportionate to the seriousness of the events. Moreover, only ten people were convicted in a criminal trial, whereas 90 officers had taken part in searching and harassing an entire prison's population. Further, Saba argued that the lack of personal injuries does not mean he was not a victim of a violation of Article 3 of the ECHR, but rather that the Italian judicial system is unable to offer redress for the more subtle breaches of its provisions, when moral violence rather than direct physical violence is exercised.

The ECtHR's view was that national authorities are responsible for providing redress for violations of the ECHR, and the issue of victimhood is relevant at every stage of evaluation. A favourable judicial decision does not necessarily suffice to strip someone of their quality as a victim, unless the national authorities recognise a violation, "explicitly or in practice", and provide redress for it. Whether such redress is adequate or sufficient depends on a number of circumstances, including what violation of the ECHR a case concerns.

The applicant and his fellow detainees' legal action resulted in a fast-track procedure that led to nine convictions. Even if the convictions were interpreted as acknowledgement of the violation of art. 3, the applicant was not granted any monetary compensation. Thus, Italy had not adequately redressed the treatment that contravened the ECHR, and Mr. Saba may be considered a victim, although the Court must analyse the government's claim that internal remedies had not been exhausted as Saba had not filed for civil proceedings to receive compensation. As for the applicant's allegations concerning the lack of an effective investigation enabling the culprits to be identified and punished, the Court supported the government's claim regarding Saba's loss of victim status.

The government suggested that internal remedies had not been exhausted by Saba due to his failure to file a civil case to obtain monetary compensation, which was accessible and effective as it enjoyed reasonable chances of success. Having taken part in the penal trial, it was his right as well as his duty to do so. He was not granted immediate redress because he had no evidence of physical or material prejudice that he suffered, and his fear of reprisals was not established, particularly as he had ten years to file his claim as of 17 September 2007 and he was released from prison in 2006. He was only held in Sassari prison from 3 April to 30 June 2000 and from 12 October to 30 December 2002, and signed a declaration on 6 May 2003 stating that he had no reason to fear for his physical wellbeing.

Saba responded by arguing that it is normal in Italy to await the final sentence, which may differ from the previous ones, before filing a civil claim. Moreover, such a claim would have lasted for a long time and resulted in costs that he could not bear, considering the small amounts granted to 14 of the 118 victims (between 4,000 and 6,000 euros). He was in prison during the trial, at least until 2006, and feared reprisals by prison officers if he had acted against them within the justice system. Italy has not introduced provisions in its penal code to punish torture, inhuman and degrading treatment, meaning that such acts fall within articles of the penal code (608, 582 and 583) that envisage low sentences and this would have a bearing on the amount of damages granted through a civil claim. Redress through damages was not provided for him by the trial judge, particularly as he had not suffered any injuries.

Noting that it cannot be called upon in a case unless internal remedies have been exhausted, the ECtHR argued that such remedies must regard violations that are designated as crimes, be available and adequate. A remedy's effectiveness depends on its theoretical and practical availability. The plaintiff must have access to it and must have a reasonable prospect of receiving redress. Thus, the Court must assess whether the applicant may be exempted from his duty to exhaust this remedy. The initial phase of the proceedings, resulting in 61 people undergoing fast-track procedures and seven people being charged, is deemed to have met the requirements of being "prompt and diligent", unlike its following phases which ended over six years and seven months after the committals to trial. In dismissing the government's exception in this case, the Court argued that the excessive length of proceedings may strip remedies of their characteristic of effectiveness, noting that the appellant had been involved in proceedings since November 2001, and that filing a claim prior to the definitive sentence would have been difficult.

The Italian government also described Saba's claim as "abusive" and misleading, because he failed to provide information to the Court about the fast-track proceedings undertaken in which he participated and in which his right to redress was established with regards to 61 defendants, ten of whom were convicted. The applicant argued that his claim concerned the defendant state's failure to respect its obligation to prevent his subjection to inhuman and degrading treatment. Not mentioning the fast-track procedure was not important as it was not essential to his case, all the more so as the six-month time limit to bring the case before the ECtHR began with the December 2009 sentence and the details of the fast-track procedure

were included in the application forms and were well known by the defendant state. Thus, there was no interest on Saba's part to conceal them.

The Court noted that it must be informed of all relevant facts to assess a complaint, which may be deemed abusive if it is knowingly based on disputed facts or if essential information is silenced with a view to misleading it. It rejected the exception raised by the Italian government because the convictions through the fast-track procedure did not alter his condition as a "victim" and references in the application forms to the fast-track procedure showed that there was no intention to conceal the facts of the case from the Court. After these evaluations, the complaint was deemed admissible.

Arguments of the parties

On the facts of the case, the applicant recalled the submission and the desperation into which the events in question plunged him. Saba argued that he was only able to escape more violent treatment because a hearing of his trial was scheduled for two days later, meaning that a judge could have noticed any injuries he suffered. Nonetheless, he had to pass through two lines of prison officers bearing truncheons, who forced him to look downwards while they threatened and insulted him for the purpose of humiliating him and to reinforce his sense of subordination to police power. He claimed that this caused him psychological suffering and a sense of inferiority connected to his fear of suffering further reprisals in the following days, resulting in a breach of Article 3 of the ECHR. Moreover, the expiry of the statute of limitations resulted from the defendants being charged with "minor" offences, for which short sentences are provided. Had the criminal offence of torture, entailing heavier sentences, existed in Italy, the court may have been able to duly examine the case prior to the expiry of the statute of limitations.

The government replied that it did not underestimate the seriousness of the case, sharing the view of the Sassari court that "severely condemned these events". Yet, they were isolated events that do not reflect the general attitude of the Italian police. The case should focus on the treatment to which the applicant was subjected, and he was one of the people who was less affected. As Saba himself declared in his testimony, he was neither beaten nor injured. Yet, he was made to walk, head down, between two lines of officers who insulted him, and upon his return to his cell, it had been searched and his possessions scattered. While it is undeniable that Saba may have felt fear and anxiety, he has not shown that these feelings were such as to cause "prolonged and intense physical and moral suffering". Hence, the treatment he was subjected to did not meet the minimum threshold of seriousness required to fall within the scope of Article. 3 of the ECHR.

With regards to the submissions by third parties, the government noted that their purpose should be to add to the elements available to the court regarding the case, whereas they limited themselves to proposing legislative reforms and stigmatised Italy's failure to provide a specific criminal offence of torture, thus going beyond their role as *amicus curiae* before the Court. It argued that their observations should not be part of the file and were irrelevant to the application, as the absence of such a criminal offence did not prevent the judicial system from identifying and punishing the culprits. Moreover, the applicant was not subjected to torture but, at most, to

degrading treatment, which Italy is not bound to raise to the status of an autonomous criminal offence, and the issue of prison overcrowding is irrelevant to the case at hand. The government also stressed that in spite of the failure to introduce the criminal offence of torture, some progress has been made, particularly through the submission of eight draft laws submitted to parliament since it was formed in March 2013. Furthermore, provisions already exist to punish violence against detainees under article 608 of the penal code, as well as articles 582 and 583 if there are any injuries. Introducing the criminal offence of torture would be a step forward, but there is no obligation to do so under the 1984 UN Convention against Torture, which only requires that acts of torture be treated as a criminal offence, and they are.

The third parties in question highlighted that Italy has never introduced the criminal offence of torture and inhuman or degrading treatment into its judicial system, despite ratifying several international legal instruments that head in this direction.

The 'Nonviolent Radical Party, transnational and transparty', noted that an extraordinary commission on human rights of the Senate highlighted the gaps in Italian legislation in this sense in its report on 6 March 2012. The Council of Europe's Committee for the Prevention of Torture and the UN's Human Rights Committee both urged the introduction of a new criminal offence, yet a Radical Party MP's draft law on this issue submitted to the Senate was rejected on 26 November 2008. This draft law stressed, in its preliminary remarks, that acts of torture which do not leave serious injuries are only prosecuted if the victim complains and that acts of subtle psychological torture are not deemed to cause "injuries" and thus remain unpunished. The new criminal offence must be a priority and its absence is worrying, particularly in the context of public order and the prison system, recalling that torture perpetrated at the Genoa G8 summit in 2001 went unpunished due to the expiry of the terms set by the statute of limitations (which should not apply to international crimes) and that prison officers responsible for torturing prisoners in the Asti case¹ were acquitted.

The association *Non c'è pace senza giustizia* recalled ECtHR jurisprudence indicating that violations of Articles 2 and 3 of the ECHR should not be subject to the statute of limitations, and that states should provide a legislative and administrative framework to discourage offences against persons. Without such a framework, Italy can be deemed to be in "systematic violation" of Art. 3, particularly as regards detainees. Moreover, ECtHR jurisprudence concerning prison overcrowding is deemed to provide an explanation for the failure to introduce this criminal offence, namely, that in order to avoid serious punishment for high level officials, Italy prefers to maintain "an appearance of complicity or tolerance with regards to some illegal acts".

The Italian Radicals party also noted the lack of a criminal offence of torture, adding that the ECtHR's sentence in the *Torreggiani et al vs. Italy* case asserted that a state

¹ This reference is to a case of violence inflicted on two detainees in Asti prison in Piedmont in 2010. The sentence, issued on 30 January 2012, noted that the treatment to which the detainees were subjected could "easily be qualified as torture", but were prosecuted as "abuse of authority against arrested and detained people", resulting in the statute of limitations intervening. Thus, torture was ascertained, but it proved impossible to punish it. Radicali Italiani. "L'Italia tortura", 18.2.2012, <http://www.radicali.it/20120218/litalia-tortura>

“must adopt rules to guarantee respect for its commitments under Articles 3 and 8” of the ECHR, which were contravened due to prison overcrowding.

Findings of the Court: violation of Article 3 (substantive and procedural aspects)

The Court noted that violations of Article 3 require a particularly in-depth examination, without delving into the substance of previous trials and judicial decisions, unless it possesses convincing elements to dismiss their findings. There is no conflict between the parties over the treatment which Saba was subjected to. To fall within the scope of Article 3, such treatment must involve “a minimum of seriousness”, which may depend on several circumstances. Other factors concern the purpose for which the treatment was inflicted, the intention or motivation that gave rise to it and contextual factors such as an atmosphere of tension or one that was emotionally very charged.

ECtHR jurisprudence has already found that treatment applied with premeditation for some hours, causing either bodily injuries or physical and mental suffering, can be deemed “inhuman”, whereas “degrading” treatment is liable to result in feelings of fear, anguish and inferiority capable of humiliating, degrading and possibly breaking a person’s moral or physical resistance or of making them act against their will or conscience. To establish if ill-treatment should be treated as “torture”, its difference from “inhuman” or “degrading” treatment must be assessed.

This distinction is meant to mark acts that are deemed “torture” out as especially infamous, involving the deliberate causing of serious and cruel suffering. Beyond its seriousness, such treatment must involve a deliberate will whereby pain or suffering is inflicted on a person for purposes including the collection of information, punishment or intimidation. The applicant was not subjected to physical violence and, although the treatment in question was deliberate, its duration was not such as to enable its classification as psychological torture. Yet, its purpose was to degrade and humiliate in a context of strong emotional tension that may have led detainees to legitimately fear for their fate. The applicant had to prove his feelings of fear, anguish and inferiority, resulting in the Court qualifying the treatment in question as “degrading”, thus finding that there had been a violation of the substantial aspect of Article 3.

As for Article 3’s procedural aspect, the Court considered that ill-treatment deliberately inflicted by agents of the state contravening Article 3 must be investigated in a detailed and effective manner by the internal authorities to identify and punish those responsible. Key criteria to gauge the effectiveness of the investigation include the speed with which it is initiated and conducted, the criminal charges it gives rise to, including sanctions issued and disciplinary measures that are taken. Such elements are deemed “essential” in order to ensure that the judicial system plays a dissuasive role.

Although the Court is not tasked with establishing the degree of culpability of the people concerned or to determine the sentence they should receive (which are exclusive competencies of the internal courts), the ECHR’s Article 19 establishes that it must ensure that states comply with their duty to protect the rights of people

within their jurisdiction. To ensure that the ECHR guarantees concrete and effective rights rather than theoretical and illusory ones, it must preserve its control and intervention function when there is a manifest lack of proportionality between the seriousness of an act and its punishment. Otherwise, states' duty to conduct an effective investigation would become meaningless, and when state agents are accused of offences involving ill-treatment, their prosecution should not be obstructed by the statute of limitations and the interested parties should be suspended from their functions while the proceedings are underway and dismissed if they are found guilty.

Applying such principles to this case implies acknowledging the important delays that affected the trial in Sassari, resulting in the statute of limitations curtailing proceedings against seven of the accused, which is incompatible with the duty to conduct the investigation speedily. As for the investigation's outcome, while it is true that the fast-track procedure resulted in ten convictions, a prison officer who failed to report offences only received a 100-euro fine, and the eight others who were convicted received suspended sentences (the tenth person originally convicted, a doctor, was ultimately acquitted, as noted above). Thus, the Court was not convinced that the internal jurisdictions gauged the seriousness of the alleged acts committed by state officers appropriately.

Moreover, the government's submissions failed to note whether the people who were charged were suspended while proceedings were underway, as the Court's jurisprudence requires, whereas it notes that seven people faced disciplinary sanctions following their conviction. Such disciplinary sanctions "only" lasted between one and six months for high level officials, for whom they included a suspension from their functions, whereas those issued to prison officers were "very light", a reduction of one thirtieth of their wage and a simple warning. None of the convictions resulted in the officers and officials concerned resigning from their post. Thus, the Court found that the measures taken by the internal authorities did not fully satisfy the requirement of an in-depth and effective investigation, resulting in rejection of the government's preliminary exception that Saba had lost his condition as a victim and a ruling that Italy violated the procedural aspect of Article 3. The Court did not feel it necessary to establish whether the absence of a criminal offence of torture, *per se*, constitutes a violation of this provision.

ECtHR findings concerning the alleged violation of Articles. 5, 6, 8 and 13

Further allegations by Valentino Saba that the ECtHR considered include Italy's violation of Article. 5 due to a failure to protect him from violence by prison guards, disregarding its duty to guarantee his liberty and safety. The government contested this view, as the applicant did not contest the lawfulness of his imprisonment, but the conditions and treatment to which he was subjected in detention, a reasoning shared by the Court in deeming this complaint unfounded and rejecting it. Saba alleged a violation of Article 8, his right to privacy, because prison officers intentionally destroyed some of his belongings. The government claimed that Saba had never spoken of the destruction of his personal objects before the national jurisdictions, but rather, that they had been strewn around his cell. Saba replied that his food was mixed with his washing powder and that his personal effects were damaged, constituting an unlawful interference in his personal life, considering the limited

setting in which he lived at the time. The Court linked this complaint to the treatment already examined in the context of Article 3 and declared it admissible, but dismissed it as unfounded, considering that Saba's allegations were not adequately established to deserve further scrutiny.

Saba alleged a violation of Article 13 regarding the lack of an effective remedy to enforce his complaint stemming from Article 3 due to the absence of a criminal offence of torture and the prosecution of such acts as minor offences, resulting in short terms prior to the statute of limitations' expiry. The government contested Saba's argument, noting that the applicant failed to exhaust the internal remedies available to him in Italy, that less than 10% of the accused benefited from a dismissal of their case resulting from the statute of limitations and that the treatment for which he complained is covered by a provision (art. 608 of the penal code) in Italian legislation. Saba replied that only 10% of the accused were convicted for the events on 3 April 2000 and it is hard to believe that nine people were responsible for mistreating 118 victims. The Court declared that this complaint was admissible from the angle of its connection with Article 3, but no further examination was required as to whether there was also a violation of Article 13.

Saba also alleged a violation of Article 6.1 due to the length of the penal proceedings against the prisoner officers accused. The government claimed that the Sassari trial proceedings' length resulted from "the complexity of the matter" and, in any case, he could have requested damages for the slowness of the judicial process under internal law. The Court accepted this argument, rejecting the allegation because the internal remedies had not been exhausted.

Ruling – Italy in breach of Article 3

The second section of the European Court on Human Rights unanimously ruled that there had been a violation of both the substantive and procedural aspects of Article 3 of the European Convention on Human Rights after rejecting the government's preliminary exception that Saba had lost his quality as a victim. The Court admitted Saba's complaints concerning Articles 3, 8 and 13, and dismissed his remaining claims. It decided that no further examination of his complaints concerning Article 8 (unanimously) and art. 13 (by six to one) was required, and ordered Italy to pay Saba moral damages (15,000 euros as opposed to the 100,000 he had requested) and refund his court costs (5,000 euros).

Regarding the treatment of Saba's complaint concerning Article 13 in connection with Article 3, Judge Lemmens' opinion was in partial disagreement with the majority ruling. Lemmens considered that it should have been examined separately, and that in cases involving ill-treatment deliberately inflicted by state agents in violation of Article 3, reparation can be deemed adequate if two conditions are met. First, the authorities must conduct an in-depth and effective investigation that may lead to the identification and punishment of those responsible. Secondly, the plaintiff must receive compensation or at least have the possibility of demanding and obtaining payment for the prejudice caused by such ill-treatment. Thus, the requirements of Article 13 go beyond Article 3's requirement that an effective investigation be undertaken.

Lemmens noted that the applicant complained about the authorities' "penal and disciplinary reaction" (see above) and, considering that such issues were examined in reaching a judgement on the violation of Article 3, this would justify his six fellow judges' decision not to examine the matter any further. Yet, the applicant also complained of the Italian judicial system's inadequate provision concerning the possible civil procedure to obtain reparation for the prejudice he suffered, albeit to justify his failure to exhaust internal remedies. However, Lemmens considered his arguments relevant to concerns under Article 13, particularly as regards the minor nature of the criminal offences for which the defendants were charged and the fact that while the *gup* (judge for the preliminary hearing) ruled that the convicted officers were responsible in civil proceedings towards all their victims, the applicant was not granted any immediately effective payment due to not having suffered any physical injuries. Thus, the applicant deemed that any damages he may have received would have been insufficient. Lemmens argued that the issue should have been examined separately, and that its judgement should have recognised Saba's claims, as Article 3 considers the effectiveness of preventive measures whereas Article 13 concerns redress for violations that have occurred.

Reaction and background

Commenting on the ECtHR sentence, *Associazione Antigone*, an observatory that examines penal policy and prison conditions, reflected on the urgency of approving a law against torture. Its president Patrizio Gonnella lamented the fact that 14 years had passed before Saba could obtain redress for the events in Sassari prison and that he had to resort to a supranational jurisdiction in order to do so.

To contextualise the sentence, *Associazione Antigone* reproduced its historical coverage of the events in San Sebastiano prison in Sassari:

"On 27 March 2000, the detainees in Sassari's San Sebastiano prison began a peaceful protest, making noise by banging on the cells' bars at a quarter to midnight. They struck the grates with their cutlery, set fire to sheets, caused some small gas canisters to explode. Their protest was followed by another one by the directors. As a result of their strike, in fact, the detainees were left without the food from their "sopravvitto" [any foodstuffs beyond the regular fare] and without cigarettes. On 3 April, a general clearing of detainees to be transferred to other facilities on the island was organised. During the transfers, around thirty detainees were brutally beaten. Their relatives protested. The first complaints were filed, and on 18 April 2000 Associazione Antigone met the top echelons of the prison administration. On 20 April, the mothers of the young beaten detainees organised a torch-lit march. On 3 May 2000, the public prosecutor's office issued 82 preventive custody orders, 22 of which were in prison and 60 under house arrest. The regional superintendent of the prison administration, the female director and the commander of the unit were implicated.

"Gavino P., from cell 75, switched places with him. That day, when the foray occurred, he was in the lion's den, a courtyard which you reach by passing through a tunnel. The same route, with your hands behind your back, up to the interview room. 'That day, from when they handcuffed me, it's as if I

switched off. I remember that they stripped me naked, someone told me that I would stop acting like a boss in this way. I even pretended to faint, hoping they would leave me, but they beat even while I was on the floor. In the interview room, I saw one of us who was all dirtied, he had soiled himself'. ... 'The commander had grabbed my ear, he tried to rip my earring off – said another detainee, Massimo D. – A guard intervened to defend me'. 'We'll deal with you later', said the commander. The last testimony in the list is from Costantino C. 'This way you'll stop acting cocky', he was told. One of the most terrible images was that of a fellow detainee with his head submerged in a bucket of water."

These events and others recounted in the *Saba* case resulted in 10 people being found guilty, one of them resulting in a 100-euro fine and the rest receiving suspended prison sentences and other disciplinary sanctions. The officials identified as playing a key role in the operation's planning and execution (prison director Maria Cristina Di Marzio, regional superintendent of prisons Giuseppe Della Vecchia and the new Sassari prison police unit commander Ettore Tomassi), were also transferred out of Sardinia.

Gonnella argued that this shows the Italian justice system is "unable to re-establish situations of justice when violations of Article 3 occur", partly as a result of torture not being treated as a specific criminal offence, resulting in shorter terms for the statute of limitations to expire. It also linked the *Saba* decision to a previous ECtHR ruling issued on 24 June 2014 in *Alberti vs. Italy* (case no. 15397/11), which found Italy guilty of contravening both the substantive and procedural aspects of Article 3 in connection with a beating that Dimitri Alberti suffered at the hands of the *carabinieri* following his arrest in Verona on 11 March 2010. Gonnella stressed that political discussion can no longer be postponed regarding three issues: the introduction of the offence of torture in the penal code; the impunity enjoyed by people who commit acts of torture against people who are in custody; and adequate education and training for personnel from the law enforcement agencies.

Sources

European Court of Human Rights, 2nd section, Affaire Saba c. Italie (Requête no. 36629/10), Arrêt, Strasbourg, 1 July 2014:

<http://www.statewatch.org/news/2014/jul/italy-prison-saba-v-italie.pdf>

Associazione Antigone, "Nuova condanna per l'Italia dalla Corte Europea dei Diritti dell'Uomo":

<http://www.osservatorioantigone.it/new/news/antigone-news/2748-nuova-condanna-per-l-italia-dalla-corte-europea-dei-diritti-dell-uomo>

"Sassari, tutti liberi gli agenti", G.M. Bellu, Repubblica, 13.5.2000.

Previous Statewatch coverage

Crisis in italian prisons, Statewatch news online, June 2000,

<http://www.statewatch.org/news/jun00/07italy.htm>

Italy: A surreal ratification of the ban on torture, Statewatch bulletin vol 14. No. 2, March-April 2004, p. 4, <http://www.statewatch.org/subscriber/protected/sw14n2.pdf>

Italy/ECtHR: "Pilot judgement" condemns Italy for inhuman and degrading treatment in overcrowded jails", <http://www.statewatch.org/analyses/no-211-italy-prisons.pdf>

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