Analysis

Italy/ECtHR: 2001 Genoa G8 police beating in the Diaz-Pertini school was "torture"

Italy contravened art. 3 of the ECHR in case involving 62-year-old beaten during police operation

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On 7 April 2015, the fourth section of the European Court of Human Rights in Strasbourg found Italy guilty of contravening art. 3 of the European Convention on Human Rights which forbids torture and inhuman or degrading treatment due to the treatment Arnaldo Cestaro was subjected to and to the criminal offences used to prosecute the case. The court's press release highlights that:

> "*In particular, the Court rules that, considering the totality of the circumstances that have been presented, the ill-treatment suffered by the applicant in the Diaz-Pertini school must be classified as 'torture' in accordance with article 3 of the Convention. The Court notes that the lack of identification of its material authors results in part from the objective difficulty for the court to undertake certain identifications as well as due to shortcomings in cooperation by the police.*
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> *The Court concludes that there has been a violation of article 3 of the Convention, due to the ill-treatment suffered by Mr. Cestaro and to a penal legislation that is inadequate regarding the need to punish acts of torture and does not provide dissuasive effects to effectively prevent them from occurring again.*
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> *After stressing the structural nature of the problem, the Court recalls that insofar as the measures that must be taken to remedy the situation are concerned, states are bound by positive obligations concerning article 3 that may entail the need to establish a compliant judicial framework, particularly by means of effective criminal law provisions.*"

Thus, the ruling highlights that the identified violations concern both the events that took place and structural factors including the absence of a criminal offence of torture that prevent due punishment for their culprits and the dissuasive role that criminal law should play in preventing them from occurring again.

The events under scrutiny

Cestaro was 62 years old at the time of the events, in which a police raid in the aftermath of the last day of the Genoa G8 summit on 21 July 2001 targeted the Diaz-Pertini school, which had been made available as a site for demonstrators to sleep in by the city council. He was on the ground floor and, in spite of raising his hands when the officers appeared, he was violently struck by repeated truncheon blows to his head, arms and legs that resulted in fractures to his right ulna (upper arm), styloid, fibula (leg) and to several ribs.

Section D of the sentence (pp. 6-7, points 31-35) is entitled "The police's sudden entry into the Diaz-Pertini school" and reads as follows:

> *"31. At around midnight, once they were near to the two schools, the members of the 7th anti-riot group, equipped with helmets, shields and 'tonfa' type truncheons, as well as other agents who were equipped in the same way, began to advance at a running pace. A journalist and a municipal councillor who were outside the grounds of the two schools were attacked using kicks and truncheon blows (first instance judgement, pp. 253-261).*
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> *32. Some occupants of the Diaz-Pertini school who were outside re-entered the building, closing its gate and entrance doors, trying to block them with school desks and wooden planks. The police officers massed outside the gate which they forced with an armoured vehicle after having unsuccessfully tried to force it using shoulder charges. In the end, the aforementioned police unit knocked down the entrance doors (ibidem).*
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> *33. The officers scattered in the buildings' floors, which were partly dark. Most of them had their faces covered by a scarf, and they began striking the occupants with punches, kicks and truncheon blows, shouting at and threatening their victims. Groups of officers even attacked occupants who were sitting or lay down on the floor. Some occupants, woken up by the noise of the assault, were struck while they were still in their sleeping bags; others were struck while they held their hands up to signal their capitulation or showed their identity cards. Certain occupants tried to flee and hide in the toilets or in the building's storeroom, but they were caught, beaten, sometimes dragged out of their hiding places by their hair (first instance judgement, pp. 263-280, and appeal ruling pp. 205-212).*
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> *34. The applicant was sixty-two years old at the time of the events, and was on the ground floor. Awoken by the noise when the police arrived, he had sat with his back against the wall next to a group of occupants with his hands in the air (first instance judgement, pp. 263-265 and 313). He was mostly struck on the head, arms and legs, and the blows caused several fractures: fractures of the right ulna, of the right*

styloid, of the right fibula and several fractured ribs. According to the interested party's statements before the Genoa court, medical staff who entered the school after the violence had stopped took care of him at the end, in spite of his cries for help.

35. The plaintiff was operated in the Galliera hospital in Genoa, where he stayed for four days, and then, a few years later, in the Careggi hospital in Florence. He was recognised as being unfit to work for more than forty days. From the injuries described above, his right arm and leg are still permanently weak (first instance judgement, pp. XVII and 345)."

Outcome of the court cases

The sentence's reconstruction of the findings of successive court cases into the police operation (first instance, appeal and Court of Cassation) are worth dwelling on because they highlight a wide range of unlawful and instrumental acts carried out in order to justify events in the school, including:

- the unlawful arrest of 93 people, involving false allegations against them of belonging to a criminal organisation planning destruction and looting;

- the planting of evidence (two molotov cocktails found earlier in the streets of Genoa) and pretence of a knife attack on an officer to justify the operation;

- the premeditated nature of the operation;

- the indiscriminate nature of the violence against the building's occupants, without regard for age or gender;

- the seriousness of the violence enacted and the instrumental nature of claims that the bloodstains found in the building had resulted from prior events;

- the fact that the violence, described variously as "absolute", "unusual", "absolutely serious" and "injustified", was premeditated.

In the words of the Court of Cassation [Italy's highest appeal court], it was "aimed at causing humiliation and physical and moral suffering to the victims" (p. 14) and could fall within the conduct typified as torture under the Convention against Torture and article 3 of the ECHR.

Yet, in spite of the different courts' findings and judgements, charges of bodily harm and grievous bodily harm that were brought did not prosper as the statute of limitations intervened on 3 August 2010. Allegations of membership of a criminal organisation against the occupants were confirmed as slanderous by the Court of Cassation, certifying the falsehood of police reports and leading it to confirm the sentences issued by the appeal court, of three years and five months for two defendants and of three years and three months for a third defendant charged of falsehood in public acts.

The case before the Court

The applicant lodged his application (no. 6884/11) on 28 January 2011. He invoked article 3 of the ECHR as a victim of violence and ill-treatment that may be described as torture following the police's entry in the school. He added that, pursuant to articles 3, 6 (right to a fair trial) and 13 (right to an effective remedy), the culprits were not adequately sanctioned because of the statute of limitations intervening for a majority of charges, because some of those convicted benefited from a suspension of their sentences and because no disciplinary measures were adopted against them. Moreover, by failing to introduce a criminal offence of torture providing adequate punishment for such acts, the State had not adopted the required measures to prevent and punish the violence and other forms of mistreatment he was complaining about. The Italian government was informed of the complaint on 18 December 2012, and third parties (the international non-violent trans-party radicals, the association *Non c'è pace senza giustizia* and the Italian Radicals) were allowed to submit evidence to the court.

Italian law and relevant practices

The charges available in this case against defendants include the misuse of public authority (art. 323 of the penal code), filing knowingly false accusations (art. 368.1 and 368.2), falsehood in public acts (art. 479), causing bodily harm or grievous bodily harm (arts. 582 and 583), cases involving aggravating circumstances such as premeditation (art. 585), the law on the unlawful possession of war weapons or explosives, and general aggravating circumstances envisaged by the penal code, including that an offence was committed for futile reasons, to cover up another offence, the cruelty of acts committed against a person, and abusing one's powers in the exercise of public functions. Law 241 of 29 July 2006 provides for a three-year reduction of prison sentences introduced as a result of overcrowding in the Italian prison system. The sentence notes that the 2013 report on the administration of justice by the president of the Court of Cassation complained about the failure, 25 years after Italy ratified the Convention against Torture, to introduce a criminal offence of torture that defines it as beyond the reach of the statute of limitations and of any pardons or amnesties, imposing sentences that are adequate for the seriousness of such acts. Without such a law "acts of torture committed in Italy inevitably fall within the realm of the statute of limitations". The sentence also notes that a[n umpteenth] bill was submitted to parliament on 5 March 2014.

International law

Torture is explicitly forbidden by international instruments, declarations and regulations including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The sentence also cites the UN Human Rights' Committee's final remarks in its report on Italy, dated 18 August 1998, in which it expressed its concern for

the failure to introduce the criminal offence of torture and “the inadequate sanctions adopted against members of the police and prison personnel who abuse their power”. Extracts of observations by the UN’s Committee against Torture that point in the same direction from 1995 and 1999 are cited, followed by extracts from successive reports by the Committee for the Prevention of Torture following visits to Italy, and the replies by Italian governments which justify the failure to introduce the criminal offence of torture on the basis of existing legal safeguards against “illegal arrest, as undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches”.

Admissibility

The government’s response to the allegations argued that Mr. Cestaro had lost his quality as victim as a result of the court proceedings undertaken in Italy which “established the violations of article 3 of the Convention that are alleged by the victim” and recognised his right to the payment of damages, for which he received 35,000 euros in 2009. The applicant replied that adequate redress and the loss of victimhood cannot be guaranteed if the culprits are not identified and punished in accordance with the seriousness of the ill-treatment that has been perpetrated. National authorities have not acknowledged the violation of article 3 and those responsible have substantially enjoyed impunity for reasons including the statute of limitations and the lack of disciplinary measures adopted against them. The court argued that this issue should be assessed through the complaint about violation of the procedural aspects of article 3 and analysis of the government’s argument concerning the failure to exhaust domestic remedies by lodging a further civil lawsuit.

The government complained that Cestari lodged his appeal before the ECtHR prior to the completion of the penal trial (after the appeal court’s sentence, but before the Court of Cassation’s ruling), and without initiating further civil proceedings to determine the overall damage payments that would be due to him. This means he had not exhausted internal remedies, as is required before seizing the ECtHR with a matter. The applicant replied that this requirement only applies if remedies to establish the violation of article 3 of the ECHR and to provide adequate redress to victims exist. The violence and ill-treatment that he suffered were not seriously challenged in the penal proceedings, yet the shortcomings of the Italian justice system did not enable those responsible to be punished adequately. Thus, the further available civil proceedings referred to by the government could not be deemed an effective remedy to redress the violations of article 3 that he suffered. Moreover, the appeal court’s sentence had already recognised the curtailment of proceedings for which the statute of limitations’ limits had expired and the applicability of the sentence reduction in accordance with law no. 241 of 2006. Thus, there was no need to wait for the Court of Cassation’s ruling. The Court dismissed the government’s claims regarding the premature nature of the applicant’s complaint in view of the subsequent completion of proceedings before the Court of Cassation, adding that nearly ten years had passed since the plaintiff had suffered treatment contrary to article 3. Furthermore, the requirement to exhaust domestic remedies applies when these are available and adequate, offering redress for the violations and reasonable prospects of success, while

taking “juridical and political” contextual factors into account. Thus, the Court also rejected the Italian government’s second argument to claim that the appeal was inadmissible.

Arguments presented before the Court

Beyond the description of the violence and injuries suffered by Mr. Cestaro detailed above, the complaint refers to subsequent operations he underwent in connection with his injuries, from whose effects he is still suffering, in 2003 and 2010. His attitude was of submission rather than resistance yet, like the other occupants, he was beaten and he was stunned and experienced panic as a citizen without a criminal record who felt the police was meant to defend citizens rather than act violently against harmless individuals. Beyond the use of gratuitous and indiscriminate violence, the police also unlawfully arrested all the occupants and committed a series of further criminal offences in order to justify their acts. Adding that he was forced to stay in “humiliating” positions, that his access to a lawyer or to a trusted person was denied and that health care was inadequate and belated, with police officers present during his medical examination, Mr. Cestaro concluded that he “was a victim of acts of torture”.

The government denied that it intended to “minimise or underestimate the seriousness of the events”, arguing that Italy had entirely acknowledged that rights violations had been perpetrated, and that the government agreed with the judicial sentences that “stygmatised the behaviour of police officers”. Yet, such conduct did not take place “within the framework of a widespread practice in the Italian police”. Rather, it should be viewed as an “unfortunate, isolated and exceptional” effect of the context of tension surrounding the G8 summit in Genoa, including the need to maintain public order following the arrival of thousands of demonstrators from all over Europe and the disturbances and clashes which had taken place over the previous days. The training of Italian police forces increasingly stresses the importance of respecting human rights.

The third parties that intervened stressed that the operation’s aim was to enact numerous indiscriminate arrests rather than to find evidence with a view to identifying the authors of looting in the previous days. They cited the Court of Cassation’s judgement concerning the “absolute seriousness” of the violence perpetrated in the school due to its indiscriminate nature throughout the school building, regardless of the fact that people may have been unarmed, sleeping or sitting with their hands held up.

The Court recalled the need for a detailed examination when assessing allegations of torture. It noted that internal judicial decisions had confirmed Mr. Cestaro’s account of the violence he suffered and its continuing effects. Considering that the government shares the courts’ criticism of the conduct of police officers and that the physical and verbal violence were indiscriminate, the Court argues that they are established and, further, that their relation to the definition of torture in article 3 ECHR may be assessed without exploring the applicant’s other allegations. There is no doubt that they fall within the scope of article 3, yet examination of whether they may be typified as torture is necessary, in view of the distinction between “torture” and “inhuman and degrading treatment”, drawing on past case law.

The former involves “particular infamy”, causing “cruel and serious suffering” and involves scrutiny of the victim’s position (age, state of health, etc.). Torture is also defined as involving a deliberate will to inflict suffering for the purposes of obtaining information, punishing or intimidating its victims. Applying the relevant criteria to this case, the Court cited the Court of Cassation’s view that the violence was inflicted with “a punitive goal, a goal of retaliation which sought to cause its victims humiliation and physical and moral suffering”. The injuries and ongoing physical problems experienced by the applicant suffice to establish that the ill-treatment he suffered was “important”, and the fear and anguish he experienced should be taken into account. Internal jurisdiction already recognised the violation of “human dignity and respect for the person” (Cassation), with officers acting as “cruel truncheon wielders” (appeal court) and violence being “unusually serious” and “absolute” (Cassation), leading the Court to conclude that acute pain and suffering were caused and that the ill-treatment was “particularly serious and cruel”. Moreover, there was no causal link between the applicant’s behaviour and the treatment he was subjected to, as is true of the other occupants.

The incoherence between the supposed aim of the operation (to search the school to find evidence against members of the “black block” responsible for violent acts during the preceding days) and the way in which it was carried out (by beating everyone and ammassing their possessions without seeking to establish ownership) resulted in the Italian courts annulling the arrests carried out in the school as unlawful and a misuse of public powers. This led the Court to confirm the “intentional and premeditated nature of the ill-treatment” suffered by the applicant, especially in view of the police’s attempts to conceal these events or to justify them on the basis of false circumstances. These included the raid on the Diaz-Pascoli school across the road to destroy video evidence, the claim that the bloodstains in the Diaz-Pertini school were from previous clashes, the pretence that an officer had been stabbed and the planting of two molotov cocktails in the school by the police.

The government’s claim that events in the school be viewed within the context of a police operation during which several clashes had taken place, was acknowledged by the Court as “objectively difficult” and involving risks, and recognised by the court of first instance as a mitigating circumstance due to the “stress and fatigue” experienced by officers. Yet, it was rejected by the courts of appeal and Cassation, and the Strasbourg Court noted that it is not concerned with penal culpability, but with the state party’s compliance with its obligations in relation to the ECHR. Its article 3 is “one of the fundamental values of democratic societies”, and it does not admit derogation under any circumstance. In this case, without underestimating the difficulty of the police’s mission, the following elements tipped the balance: a) the forced entrance into the school took place after the disturbances of the previous days at a time when there were no disturbances in or around the school; b) even if some of the troublemakers had found refuge in the school, the behaviour of the occupants had not endangered anyone, particularly the large numbers of well-armed police officers involved; c) there was ample time to organise the operation and the officers did not have to respond to any urgent situation; and d) another school was searched and around twenty occupants were arrested without any use of violence. Thus:

"*Considering all of the above, the tensions which, as the Government claims, were the context for the forced entry by the police into the Diaz-Pertini school cannot be explained by objective reasons as much as by a decision to carry out arrests in front of the media and by the adoption of operational modalities that are not compliant with the requirements of the protection of values that stem from article 3 of the Convention as well as relevant international law*". (p. 46)

The Court found that the treatment suffered by the applicant falls within the definition of torture detailed in article 3 of the ECHR.

Procedural aspects

The applicant argued that despite recognition by the Italian courts of the seriousness of the offences, those responsible did not incur adequate punishment. The criminal offences committed included falsehood, slander, abuse of public authority, bodily harm and grievous bodily harm, yet most of them were struck down by the statute of limitations. The sentences issued for the remaining offences were derisory in comparison with their seriousness, all the more so considering the sentence reductions imposed by law no. 241 of 2006. Those responsible for the events were not subjected to disciplinary measures, and some were even subsequently promoted. Italy failed to enact its obligations stemming from article 3, namely, that of conducting an effective investigation into the torture the applicant was subjected to, identifying its culprits and punishing them adequately. Nor had it introduced the criminal offence of torture in its penal framework, as it is required to do by its ratification of the Convention against Torture, which dates back to 1989.

The government claims that it has fulfilled its obligations resulting from the Convention against Torture, by undertaking an "independent, impartial and detailed investigation". This led to the first instance court convicting several defendants and ordering the payment of damages to the plaintiffs. The appeal court, in spite of recording the expiry of the terms of the statute of limitations for certain offences, nonetheless convicted some defendants who had originally been acquitted, and increased some of the sentences that were originally issued, reaching a maximum of five years for grievous bodily harm. The Court of Cassation largely confirmed the appeal court's sentence, ordering that the plaintiffs' costs and expenses be refunded. Thus, the intervention of the statute of limitations for certain offences neither impeded the investigation, nor did it prejudice the applicants' right to damage payments if a further civil procedure had been undertaken.

The government argued that the plaintiff was basically complaining about the absence of the criminal offence of torture in the Italian judicial framework. In its view, article 3 does not require the introduction of an *ad hoc* criminal offence, and the authors of such acts are prosecuted under various offences included in the penal code (including grievous bodily harm), and the investigating authorities in this case have been able to assess the ill-treatment that occurred in the Diaz-Pertini school. Moreover, the national jurisdictions had relied on the definition of torture included in the Convention against Torture, and there are several bills under parliamentary scrutiny that propose the introduction of the criminal offence of torture in the Italian legislative framework. They envisage prison sentences of

up to 12 years for public officers or officials involved in ill-treatment, and the possibility of imposing life sentences if such conduct leads to a victim's death.

The third parties' submission noted that the UN Human Rights Committee, Committee against Torture and Committee for the Prevention of Torture have repeatedly criticised Italy's failure to introduce a criminal offence of torture in its legislation for 20 years, calling for sentences that are appropriate for the seriousness of such offences that may be effectively executed. They described the "standard response" by Italian governments as listing several bills that have been presented to introduce this offence (which have never prospered); then, that the penal code already punishes torture and other forms of inhuman and degrading treatment; finally, that this offence already exists as a result of Italy being a signatory of the Convention against Torture. Yet, the penal provisions that are detailed do not appear applicable to cases involving "moral" torture, and they do not enable the "adequate and effective" punishment of acts of torture. The punishment envisaged is light and the trend in the national jurisdiction is viewed as inflicting the minimum sentences provided by the penal code. The statute of limitations is too short in relation to the time required to conduct in-depth investigations, and the penal sanctions' effectiveness is further undermined by the applicability of sentence reductions, pardons and suspended sentences to people responsible for acts of torture. This means that "torturers may feel free to act with the conviction that they enjoy an almost complete impunity".

The Court noted that any credible allegation of torture by police or other state services requires an effective official investigation that may lead to the culprits' identification and punishment. If this is not the case, the general prohibition of torture, inhuman and degrading treatment is ineffective in practice and certain agents of the state may infer that they enjoy "semi-impunity", affecting the rights of those subjected to their control. The investigation must be prompt and its outcome, prosecutions brought and punisment issued are important in order to preserve the justice system's dissuasive effects. National jurisdictions must not be viewed as being prepared to leave threats to people's moral and physical integrity unpunished, in order to maintain public confidence that the state is not tolerant or collusive with regards to the commission of illegal acts. The Court must thus ascertain whether internal jurisdictions function in such a way as to meet its requirements under article 3 of the ECHR, preserving the legal system's dissuasive role and the importance of its role in enforcing the prohibition of torture. It is not the Court's task to establish the degree of guilt of the defendants or the length of sentences against them. Yet, pursuant to article 19, and to the principle whereby the rights protected by the Convention must be "concrete and effective" rather than "theoretical and illusory", it must ensure that signatory states fulfil their obligation to protect the rights of people within its jurisdiction. The Court thus has a controlling role to play whereby it must intervene when the seriousness of an act and the punishment issued for it are manifestly disproportionate. Moreover, neither the statute of limitations, nor pardons or sentencing discounts should apply in cases involving torture or ill-treatment inflicted by agents of the state or, at least, the statute of limitations' applicability should be compatible with the Convention's requirements. The absence of adequate penal legislation may prevent authorities from prosecuting acts that threaten this fundamental value, from evaluating their seriousness,

from issuing adequate sentences and from excluding the application of measures that excessively weaken the punishment, at the expense of its “preventive and dissuasive effects”. The Court has also repeatedly stressed the importance of suspending agents of the state who are charged of offences involving ill-treatment during the judicial process and of dismissing them if they are convicted.

In relation to the above principles, the Court issued remarks about three key issues.

Firstly, it noted that the police officers who were the material authors of the violence suffered by the applicant were never identified, meaning they were never investigated and enjoyed impunity. The state’s duty to investigate does not require adequate outcomes, which may not result in spite of an adequate deployment of effort and resources. In this case, the first instance court noted the impossibility of identifying the culprits with certainty, as a result of “objective difficulties” and shortcomings in cooperation by the police during the preliminary inquiries. The Court regrets the impunity with which the police was able to refuse cooperation that may have led to the identification of officers who may have been responsible for acts of torture. The exact number of officers involved in the raid has never been established, and many of them either wore helmets or had scarves covering their faces, circumstances that the Court deems obstacles to the conduct of an effective investigation of the events stemming from the operation’s initial planning and execution phases. From the perspective of the Convention’s article 3, the impossibility of identifying members of the law enforcement agencies who are responsible for acts of torture is a violation. The deployment of officers whose faces are covered to maintain public order or carry out arrests would require the wearing of visible distinctive signs, such as a number, which would enable their identification while preserving their anonimity, in case the conduct of the operation should result in judicial pursuits.

Secondly, with regards to the statute of limitations and sentencing discounts, the Court noted that the statute of limitations curtailed proceedings prior to the appeal court’s judgement for the offences of slander, abuse of public authority (including unlawful arrests), simple bodily harm and, in one case, for grievous bodily harm. The remaining charges of grievous bodily harm, for which ten and nine people had been convicted in the first instance and appeal trials respectively, were curtailed by the statute of limitations’ expiry prior to the Court of Cassation issuing its sentence. The crimes committed in the police operation in the Diaz-Pascoli school with the aim of deleting evidence of the forceful entry and violence enacted in the Diaz-Pertini school were also subject to the statute of limitations before the appeal court’s judgement was issued. Thus, the only convictions issued were for “intellectual falsehood”(17 defendants) and for unlawful possession of weapons of war (one defendant), resulting in sentences ranging from three years and three months to four years. Thus, following the penal proceedings, nobody was convicted for the ill-treatment of the occupants of the Diaz-Pertini school. The convictions concerned attempts to justify the ill-treatment and the absence of grounds to justify the occupants’ arrest. Moreover, the application of law no. 241 of 2006 shortened the sentences by three years, resulting in the convicted officers having to serve, “at worst”, between three months and a year in prison. This means that the Court concluded that the authorities’ actions

were not adequate, considering the seriousness of the events, making it incompatible with their obligations arising from article 3 of the ECHR.

It deemed that this outcome did not result from negligence by the courts in the national jurisdiction, an aspect that the plaintiff did not refer to in his complaint in spite of the expiry of the statute of limitations. The judicial proceedings lasted for ten years before reaching a firm verdict because the case was particularly complex, concerning tens of defendants and hundreds of Italian and foreign plaintiffs, in the context of violence by the police which the government acknowledged as exceptional. The internal court gauged the seriousness of the offences for which the defendants were charged, with the Court of Appeal and Court of Cassation sentences described as exhibiting “exemplary firmness” while “not excusing events in the Diaz-Pertini school in any way”. Instead, the Court found that Italian penal legislation applied in this case proved inadequate in relation to the need to punish acts of torture and lacked the necessary dissuasive effect to prevent similar violations in the future.

Regarding the disciplinary measures applied to those responsible of ill-treatment, the Court notes that there were not any suspensions during the penal proceedings and that it does not possess any further information as to the subsequent progress of their careers, or concerning any disciplinary measures adopted against those who were found guilty. Such information would be necessary, but the Court takes note of the government’s silence on this issue in spite of the Court’s request for information on this matter.

Thirdly, on the issue of the applicant’s loss of victimhood alleged by the government, the Court observes that the measures adopted by the authorities did not fulfil the requirement of a prompt and effective investigation, which would require two conditions. First, it must lead to the identification and punishment of those responsible of acts of torture and ill-treatment; second, the applicant should receive compensation, or at least have the possibility of an indemnity for the harm caused by the ill-treatment. Yet, the granting of an indemnity payment does not suffice to remedy a violation of article 3, considering that a failure to adequately prosecute and punish those responsible may translate into state agents feeling that they enjoy substantial impunity with regards to people who they have under their control, undermining the absolute legal prohibition of torture and inhuman and degrading treatment. The government’s further allegation that the plaintiff had not exhausted domestic remedies before applying to the ECtHR, is deemed by the Court to fall within a category of exceptions that it has repeatedly rejected. Further civil proceedings may have led to further damage payments, but they did not have the punishment of those responsible as its purpose, and damage payments are not deemed just satisfaction in cases involving violations of articles 2 or 3 of the ECHR. Thus, both the government’s arguments as to Mr. Cestaro’s loss of victimhood and his failure to exhaust domestic remedies were rejected.

Conclusion

The Court concluded that Italy violated both the material and procedural aspects of article 3 of the Convention due to the ill-treatment suffered by the applicant which must be classified as “torture” (p. 59), granting Mr. Cestaro 45,000 euros in damage payments.

The Court recalls that States that are found to be in violation of the ECHR are obliged to put an end to the violation and cancel its consequences. If national legislation does not allow or does not adequately allow its effects to be cancelled, the Court may demand that the state grant the applicant a payment to provide just satisfaction and select general or individual measures, under the supervision of the Council of Ministers (the Cabinet), that must be adopted in its judicial system. In exceptional cases, and without influencing the State’s discretion, the Court may suggest measures to put an end to a structural problem that it identifies. Applying these notions to the case, the Court notes that the Italian authorities have prosecuted the people responsible for ill-treatment by using several charges that are part of the Italian penal system. Yet, it deemed the authorities’ actions inadequate. After dismissing any negligence or indulgence in the national courts’ behaviour, it concludes that the Italian penal legislation that was used “was revealed to be both inadequate concerning the need for the punishment of the acts of torture in question and lacking the necessary dissuasive effects to prevent other similar violations of article 3 in the future” (p. 61). Describing the structural nature of the problem as “undeniable”, the Court argues that it does not only apply to torture, but to inhuman and degrading treatment in general. Without an appropriate treatment of these offences, the combination of the statute of limitations and the law no. 241 of 2006’s sentencing discounts can, in practice, prevent any punishment of either of these violations. To remedy this problem, states have a positive obligation stemming from international instruments including the Convention against Torture and the recommendations of international bodies to establish an adequate judicial framework, involving effective penal provisions. While it is the State’s responsibility to choose the measures to adopt to fulfil its human rights obligation, the Court “deems it necessary for the Italian judicial order to equip itself with judicial means that are suitable for punishing people responsible for acts of torture or other forms of ill-treatment falling under article 3 in an adequate manner and to prevent them from benefiting from measures that contradict the Court’s jurisprudence”.

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