Analysis

Italy/ECtHR: “Pilot” judgement condemns Italy for inhuman and degrading treatment in overcrowded jails

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In its ruling in the Torreggiani and others vs. Italy case issued on 8 January 2013, the second section of the European Court on Human Rights in Strasbourg condemned Italy for violating article 3 of the European Convention on Human Rights (ECHR) due to prison conditions experienced by seven detainees in Busto Arsizio and Piacenza (in Lombardy and Emilia-Romagna) regarding cases 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10. On 5 June 2012, the court informed the parties that it would issue a “pilot” sentence, in view of the structural and systemic problem of overcrowding in the Italian prison system for which a state of emergency was declared in 2010. The “several hundreds” of applications against Italy that it has received “from different Italian prisons” on similar grounds confirm the “chronic disfunction” of the Italian prison system. Official statistics also support this view, indicating a slight decrease in overcrowding from 151% in 2010 (67,961 prisoners when the maximum capacity of the prison system is 45,000) to 148% (66,585) on 13 April 2012, in spite of measures adopted in the context of a “prisons plan” to resolve the emergency. The structural and systemic nature of the problem allowed the court to apply article 46.1 of the ECHR to its ruling due to the “growing number of people who are potentially concerned”, creating an obligation for the state to implement the measures required at a general and/or individual level to safeguard the rights of the applicant and other people in the same situation. A year is allowed to enable the state to implement the necessary measures, during which it will refrain from issuing judgements on cases submitted on similar grounds. It proposed specific measures, actions or policy directions to be adopted by the respondent state to remedy the problem.

The case

The seven applicants, whose complaints were considered jointly in this ruling due to their similarity, claimed that they were subjected to a violation of article 3 of the ECHR that forbids inhuman and degrading treatment while they served their sentences in Busto Arsizio and Piacenza prisons. Torreggiani, Bamba and Biondi, the three prisoners detained in Busto Arsizio, alleged that they were made to share cells measuring nine square metres with two other inmates, leaving them with three square metres of living space each. Moreover, access to the showers was limited due to a lack of warm water. The four applicants who were held in Piacenza, Sela, El Haili, Hajjoubi and Ghisoni, described the same situation, adding that the lack of warm water prevented them from regularly using the showers for several months, and insufficient lighting in cells as a result of metal bars that were attached to their windows. In this case, the Government objected, by claiming that the cells in Piacenza measured 11 square metres, but failed to provide any documentation to confirm the claim. In its ruling, the court referred to a ruling in August 2010 by the Reggio Emilia judge for the execution of sentences that upheld the complaints of unequal treatment filed by Mr. Ghisoni and two other inmates, as they were detained with two other people in cells conceived for one person. Most of the cells in the Piacenza prison were nine square metres, and the prison was overcrowded in 2010, holding between 411 and 415 inmates when its capacity was 178, increased to 376 people through the criteria of "tolerable capacity". The judge ruled that the plaintiffs were subjected to inhuman treatment and had been discriminated in relation to prisoners who were serving their sentences in the same kind of cell with one cellmate. This resulted in Ghisoni's transfer to a cell for two people in February 2011.

The government argued that the applicants' submissions should be rejected because they were moved following their complaints, while the applicants responded that they had been subjected to such conditions for considerable lengths of time. The court accepted the latter claim because its case law had recognised that a favourable measure following violation of the ECHR did not annul their status as "victims". Complaints were filed by the government's representatives that the plaintiffs had not exhausted internal possibilities to appeal against their treatment before the judge for the execution of sentences. The one applicant who had, Mr. Ghisoni, could have resorted to the internal courts for the sentence in his favour to be fully implemented, so his submission should also be rejected. The applicants claimed that the Italian system did not provide possibilities to remedy the overcrowding in Italian prisons and an improvements of detention conditions. They described the possibility of bringing their case before the judge for the execution of sentences as "ineffective", due to the "administrative" rather than "judicial" nature of such an appeal, to the fact that prison directors are not bound by the judge's decisions, and to the experience of many detainees who have tried to use the procedure to improve their detention conditions, to no avail. Mr. Ghisoni noted that the positive decision in his favour issued by the Reggio Emilia judge for the execution of sentences was disregarded for several months. In rejecting the government's argument, the court stressed that remedies must be "effective, sufficient and accessible", they must "have a sufficient degree of certainty, not just in theory, but

also in practice", and the requirement to exhaust internal means of appeal may be disregarded in certain circumstances. These include cases in which "the existence is proved of an administrative practice that consists in the repetition of acts that are forbidden by the Convention and official tolerance [of it] by the State, so that any procedure would be in vain or ineffective" (point 48). Both Mr. Ghisoni's case and the structural problem of overcrowding in the prisons of Busto Arsizio and Piacenza make it "conceivable" that "Italian prison authorities may not be in a position to execute the decisions by judges for the execution of sentences and to guarantee detainees detention conditions that comply with the Convention" (point 54).

The sentence

These are the key passages from the sentence, which confirms the four-square-metre criteria as the minimum acceptable living space that was also used in a previous case (Sulejmanovic vs. Italy) in which Italy was found guilty of contravening article 3 of the ECHR in prisons on 16 July 2009:

"*The Court deems that the applicants have not enjoyed a living space that complies with the criteria that it has considered acceptable through its jurisprudence. In this context, it wishes to recall, once again, that the norm regarding living space in collective cells that has been recommended by the CPT [Committee for the Prevention of Torture] is four square metres*" (point 76).

"*The Court then observes that the serious lack of space suffered by the seven applicants for periods lasting between 14 and 54 months ..., which represents, per se, a treatment that contravenes the Convention, appears to have been rendered worse by other treatments that the people concerned have alleged. The lack of warm water in both establishments for long periods, which the Government has recognised, as well as insufficient light and ventilation in the cells in Piacenza prison, about which the Government has not expressed its view, have produced additional suffering for the applicants, even though they did not constitute inhuman and degrading treatment per se*" (point 77).

"*Although the Court admits that in the present case nothing indicates that there was an intention to humiliate or belittle the applicants, the absence of such a goal would be insufficient to exclude a statement of the violation of article 3. ... The Court deems that the detention conditions in question, also taking the length of the applicants' imprisonment into account, have subjected those concerned to a test that was so intense as to exceed the inevitable level of suffering that is inherent in detention*" (point 78).

"*Hence, there has been a violation of article 3 of the Convention*" (point 79).

The pilot judgement procedure

Thus, a pilot judgement procedure was proposed and accepted by Italy, which highlighted that a number of measures have been undertaken to remedy the problem of

overcrowding, and all except for one (Mr. Torreggiani) of the applicants. The procedure employed is governed by article 46 of the ECHR and is binding on state parties, requiring them to implement the "necessary general and/or individual measures" to safeguard the rights of applicants and others in similar situations. The court may clearly highlight "the existence of structural problems from which the violations derive and indicate the specific measures or actions that the defendant state must undertake to remedy them" (point 84), overseen by the cabinet. In view of the court's finding that the problem of overcrowding does not exclusively concern the applicants, suitable solutions must be found at a national level. Recalling that its judgements are declaratory and that it is up to the state's cabinet to choose how to fulfil its legal obligations, the court welcomed the adoption of measures by Italy to tackle the problem of overcrowding in prison and encouraged it continue down this path, while it noted the limited effect of such measures, as overcrowding levels remained very high in April 2012. Plans to resolve the emergency include the proposed building of 11 new penitentiary establishments and 20 new annexes to existing prisons, thus increasing capacity by 9,150 places, and recruiting 2,000 new prison officers. Exceptional provisions concerning the execution of sentences included in law no. 199 of 26 November 2010 to enable prisoners to serve sentences of up to 12 months under house arrest or in other alternative establishments, even if they are the remaining period of a longer sentence, except for cases involving very serious offences. 42% of the prisoners are in remand custody awaiting their trial, a fact that "shocked" the court.

Acknowledging the need for continued and coherent efforts, it stressed that article 3 of the ECHR requires it to "organise its prison system in such a way as to respect the dignity of detainees" (point 93). If it cannot guarantee each detention conditions that comply with article 3, "the Court encourages it to act so as to reduce the number of imprisoned people, particularly by using punitive measures that do not deprive people's freedom more often" (point 94) and by reducing the use of remand custody. While it is up to states to organise their penal policy and prison system, the court recalls the recommendations by the Council of Europe's Committee of Ministers that invited states to ask their prosecutors and judges to demand that alternative measures to imprisonment be imposed as widely as possible, and to redirect their penal policies away from imprisonment. National authorities must make both "preventive" and "compensatory" remedies that operate in a "complementary" manner available "without delay". That is, prisoners should have effective means to ensure that they are moved and compensated if they are detained in conditions that violate article 3 of the ECHR, possibilities that are not guaranteed by current internal remedies.

The court also ruled that Italy owes compensation to the applicants, awarding them a total of 99,600 euros in damages for the "certain moral prejudice" that they suffered, taking the periods of detention in poor conditions into account, and 1,500 euros each to four defendants to cover their legal costs.

The Sulejmanovic vs. Italy precedent

"A European Court of Human Rights ruling on 16 July 2009 in the case of Sulejmanovic vs. Italy which was filed in 2003 found that the Bosnian's detention in conditions of overcrowding at Rome's Rebibbia prison contravened article 3 of the European Convention on Human Rights. The detention conditions amounted to "torture and inhumane treatment", and a payment of 1,000 Euros in damages was ordered. The grounds for the decision were the two and a half months (from mid-January to April 2003) in which the prisoner shared a 16.2 square metre cell with five other detainees. Each inmate had only 2.70 square metres at their disposal. Other complaints were rejected. It was noted that following the period in question Sulejmanovic's living space increased, first to 3.20m then to 4.05m and finally to 5.40m, all of which are well below the 7 square metres deemed "desirable" by the Committee for the Prevention of Torture (CPT), but above the 3-metre benchmark that has been used in the past by the court to denote a violation of article 3.

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Extract from: "Italy: Shocking death spotlights prisoner plight", Statewatch, vol. 19 (2009) no. 4: **http://www.statewatch.org/analyses/no-103-italy-prisons.pdf**

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European Court of Human Rights, Second Section, Case Torreggiani and others vs. Italy (Cases no. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10), Sentence, Strasbourg, 8.1.2013 (original, in French):

http://www.statewatch.org/news/2013/feb/italy.pdf

Corte Europea dei Diritti Umani, seconda sezione, Causa Torreggiani e altri c. Italia (Ricorsi nn. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10), Sentenza, Strasburgo, 8.1.2013 (unofficial translation, in Italian):
http://www.statewatch.org/news/2013/feb/italy-translation-case-of-torreggiana-and-others.pdf