



## Police violence: Italian criminal law inadequate and not an effective deterrent

In today's **Chamber judgment**<sup>1</sup> in the case of **Cestaro v. Italy** (application no. 6884/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights on account of ill-treatment sustained by the applicant, and**

**a further violation of Article 3 on account of the criminal legislation applied in the present case.**

The case concerned events which occurred at the end of the G8 summit in Genoa in July 2001, in a school made available by the municipal authorities to be used as a night shelter by demonstrators. An anti-riot police unit entered the building around midnight to carry out a search, leading to acts of violence.

The Court found, in particular, that, having regard to all the circumstances presented, the ill-treatment sustained by the applicant when the police stormed the Diaz-Pertini school amounted to "torture" within the meaning of Article 3 of the Convention. It noted that the failure to identify the actual perpetrators of the ill-treatment could partly be explained by the objective difficulty of the public prosecutor's office in establishing definite identifications but also by a lack of police cooperation.

The Court found that there had been a violation of Article 3 of the Convention on account of ill-treatment sustained by Mr Cestaro and of inadequate criminal legislation concerning the punishment of acts of torture which was not an effective deterrent to prevent the repetition of such acts.

After emphasising the structural nature of the problem, the Court pointed out that, as regards the remedial measures to be taken, the State's positive obligations under Article 3 might include the duty to introduce a properly adapted legal framework, including, in particular, effective criminal-law provisions.

### Principal facts

The applicant, Arnaldo Cestaro, is an Italian national who was born in 1939 and lives in Rome.

The 27th G8 summit took place in Genoa from 19 to 21 July 2001. A number of NGOs had set up a group called "Genoa Social Forum" (GSF) with the aim of organising an alternative anti-globalisation summit in Genoa at the same time. The Italian authorities had put in place large-scale security arrangements.

Many incidents, involving clashes with the police, ransacking, violence, vandalism and damage took place in the city during the two days of 20 and 21 July. Several hundred demonstrators and members of the security forces were injured or incapacitated by tear gas. Whole neighbourhoods of the city of Genoa became scenes of havoc.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The Genoa city council had made the Diaz-Pertini school available to the demonstrators as a night shelter. On 20 and 21 July residents of the neighbourhood reported to the police that youths dressed in black had entered the school. On the night of 21 to 22 July a riot squad stormed the building around midnight to carry out a search.

Mr Cestaro, then aged 62, was inside the school at the time. When the police arrived he was sitting with his back to the wall with his arms raised. He was struck several times, causing multiple fractures. He has never fully recovered from his injuries.

After three years of investigations by the Genoa public prosecutor's office, 28 individuals from the security forces, of various ranks, stood trial. On 13 November 2008 the court sentenced, among others, 12 defendants to between two and four years' imprisonment and, jointly with the Ministry of the Interior, to the payment of costs, expenses and damages to the civil parties, to whom the court made a provisional award of between 2,500 and 50,000 euros (EUR). Mr Cestaro received a provisional award of EUR 35,000.

On 31 July 2010 the Court of Appeal partly set aside the judgment of the court below and on 2 October 2012 the Court of Cassation upheld the main part of the judgment.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that he was the victim of violence and ill-treatment, which in his submission amounted to torture, when the police raided the Diaz-Pertini school.

The application was lodged with the European Court of Human Rights on 28 January 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Päivi **Hirvelä** (Finland), *President*,  
Guido **Raimondi** (Italy),  
George **Nicolaou** (Cyprus),  
Ledi **Bianku** (Albania),  
Nona **Tsotsoria** (Georgia),  
Krzysztof **Wojtyczek** (Poland),  
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

### [Article 3 \(prohibition of torture and inhuman or degrading treatment\)](#)

The Court observed that, according to the Court of Cassation, the violent acts in the Diaz-Pertini school had been perpetrated with "a punitive aim, an aim of reprisal, seeking to cause the humiliation and the physical and mental suffering of the victims" and that those acts could be described as "torture" within the meaning of Article 1 of the Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Punishment or Treatment.

It could be seen from the file that Mr Cestaro had been attacked by police officers, who had kicked him and struck him with *tonfa* truncheons, and had hit him several times on various parts of his body, causing multiple fractures and leaving him with permanent weakness in his right arm and right leg. In addition, the feelings of fear and anxiety that he had to have felt at the time were not to be underestimated.

The Court also noted the absence of any causal link between Mr Cestaro's behaviour and the use of force by the police during the intervention. The ill-treatment in question had thus been inflicted totally gratuitously. It could not be regarded as a proportionate means used by the authorities to fulfil the aim in question. The police intervention in the Diaz-Pertini school was supposed to be a search for evidence that might lead to the identification of members of the "black blocks", who had engaged in ransacking in the city, and possibly to their arrest.

The Court was of the view that the tensions which, according to the Government, had prevailed during the police intervention in the Diaz-Pertini school could be explained less by objective and circumstantial reasons than by the decision to carry out well-publicised arrests and by the adoption of operational methods that did not comply with the need to uphold values as required under Article 3 of the Convention or the relevant international law.

Having regard to all the circumstances presented, the Court found that the ill-treatment sustained by the applicant when the police stormed the Diaz-Pertini school amounted to "torture" within the meaning of Article 3 of the Convention.

As regards the investigation, the Court observed that the police officers who had attacked Mr Cestaro in the Diaz-Pertini school had never been identified. They had not been the subject of an investigation and had remained unpunished. The Court noted that the failure to identify the actual perpetrators of the ill-treatment could partly be explained by the objective difficulty of the public prosecutor's office in establishing definite identifications but also by a lack of police cooperation. The Court deplored the fact that the Italian police had refused, with impunity, to provide the competent authorities with the cooperation necessary for the identification of officers that might have been involved in acts of torture.

The Court observed that the offences of calumny, abuse of public authority, and wounding and grievous bodily harm alleged to have been committed during the events at the Diaz-Pertini school had become time-barred before the decision on appeal. Consequently, the criminal proceedings had not led to any convictions for the ill-treatment of Mr Cestaro, in particular, as the physical injury offences were time-barred.

Having regard to the foregoing, the Court found that the authorities had not reacted sufficiently in response to such serious acts. Consequently that reaction had been incompatible with their procedural obligations under Article 3 of the Convention.

The Court was of the view, however, that this result could not be imputed to the shortcomings or negligence of the public prosecutor's office or the domestic courts, but that the Italian criminal legislation applied in the present case had proved both inadequate as regards the need to punish acts of torture and devoid of the necessary deterrent effect to prevent other similar violations of Article 3 in the future.

The Court found that there had been a violation of Article 3 of the Convention on account of ill-treatment sustained by Mr Cestaro and of inadequate criminal legislation concerning the punishment of acts of torture which was not an effective deterrent to prevent the repetition of such acts.

#### [Article 41 \(just satisfaction\) and Article 46 \(binding force and implementation\)](#)

After emphasising the structural nature of the problem, the Court pointed out that, as regards the remedial measures to be taken, the State's positive obligations under Article 3 might include the duty to introduce a properly adapted legal framework, including, in particular, effective criminal-law provisions.

The Court found that the Italian legal system should be endowed with the legal means to ensure the appropriate punishment of perpetrators of acts of torture or other ill-treatment under Article 3 and

to prevent such persons from benefitting from measures that would be at odds with the Court's case-law.

In view of the circumstances of the case and the compensation already obtained by the applicant at domestic level, the Court held that Italy was to pay him 45,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.