MAYBE, THERE IS A JUDGE IN STRASBOURG? THE EUROPEAN COURT OF HUMAN RIGHTS AND TORTURE IN ITALY

Viviana Zanetti*

I. The Genoa G8 Summit and its Aftermath in the Courts

"The most serious suspension of democratic rights in a Western Country since the Second World War" is how Amnesty International referred to the unprecedented violence that occurred in Italy during the Genoa G8 Summit in 2001.[1]

From 20-22 July 2001, over 200,000 people participated in anti-globalisation demonstrations on the streets of Genoa and, although the vast majority protested peacefully, some demonstrations degenerated into violence with significant injuries to people and widespread damage to property. The Italian police reacted with unprecedented violence with reports of human rights violations committed by law enforcement officers, prison officers and medical personnel against Italian citizens and foreign nationals. By the end of the Summit, one protester, Carlo Giuliani, had been shot dead, hundreds of people had been injured and more than 280 people had been detained.

A number of criminal investigations into both the abuses by police and the conduct of protesters were opened by the Genoa Public Prosecutor. Apart from the investigation into the fatal shooting of Carlo Giuliani,[2] the two main trials concerned the episodes of violence at the Bolzaneto temporary detention facility (the Bolzaneto Barracks) and the brutal raid on the Genoa Social Forum premises (the Diaz-Pertini School).

In the early hours of 22 July, a police raid, justified at the time on the basis of the alleged – but, as subsequently proved, specious – presence inside of "Black Blocs," was carried out on the Diaz-Pertini School legally occupied by the Genoa Social Forum. Law enforcement officers subjected the protestors, many of them asleep when the raid started, to deliberate and gratuitous

* PhD, University of Ferrara, Italy.

1 Amnesty International *Italy: G8 Genoa policing operation of July 2001: A Summary of Concerns* AI Index EUR 30/012/2001 (November 2001).

2 The Italian court for preliminary investigations dismissed the case against the police officer, Mario Placanica, stating that he had acted in legitimate self-defence. In just two sentences, the European Court of Human Rights also ruled that excessive force had not been used and that the Italian authorities had not failed to comply with their obligations to protect Carlo Giuliani's life. However, Italy was required to pay non-pecuniary damages of €40,000 to the three applicants because Italy did not comply with the procedural obligations imposed by art 2 ECHR that require State parties to investigate in an independent, prompt and expeditious way. *Giuliani and Gaggio v Italy*, Application No 23458/02; Fourth Section ECtHR, 25 August 2009; *Giuliani and Gaggio v Italy*, Application No 23458/02, Grand Chamber ECtHR, 24 March 2011.

beatings. The officers were charged with various offences, including assault and battery, falsifying and planting evidence, and abusing their powers as officers of the state. The judicial proceedings established that the protestors at the school were repeatedly beaten with batons, kicked, injured with pieces of furniture, even when they were lying on the ground with arms raised to indicate that they had no intention of resisting.

Of the 93 people arrested during the raid, 62 were injured and required urgent hospitalisation or surgical operations, while the others were taken into custody and transferred to the Bolzaneto Barracks, temporarily transformed into a detention facility. During the Summit, over 200 detainees were held at the Bolzaneto Barracks and faced beatings and other cruel, inhuman and degrading treatment by law enforcement and prison officers on duty. For example, they were made to line up with their legs apart and faces against the wall and forced to remain in this painful position for hours; they were slapped, kicked, punched and spat on; subjected to threats, including of rape, and to verbal abuse, including of an obscene sexual nature; subjected to body searches carried out in a degrading manner; and deprived of food, water and sleep for lengthy periods. Many of them were denied adequate medical care and prompt access to lawyers and, in the case of foreigners, consular officials.

In the final ruling on the *Diaz-Pertini* case,[3] the Italian Court of Cassation, emphasising the "seriousness" of police brutality, noted that "the operation was characterised by the systematic and unjustified use of force," a "punitive violence, vindictive and intended to cause humiliation and physical and mental suffering of the victims. It was a simple exercise of violence."[4] But the Court affirmed that, although it could not ignore the fact that such behaviour might fall within the definition of torture or other inhuman or degrading treatment[5] as defined in both the Convention Against Torture (CAT)[6] and the European Convention on Human Rights and Fundamental Freedoms (ECHR),[7] the lack of a relevant criminal provision in domestic law prevented the Court from applying penalties commensurate with the gravity of the crimes. So, while confirming the convictions of the Appeal Court and the sentence of four years and prohibition on public office of five years,

3 *Diaz-Pertini*, Court of Cassation, Fifth Penal Section, Judgment No 38085, 5 July 2012. Regarding the *Diaz-Pertini* case, see also Genoa First Instance Court, First Section, Judgment No 4252/08, 13 November 2008 and Genoa Appeal Court, Third Section, Judgment No 1530, 18 May 2010. Regarding the *Bolzaneto* case, see Genoa First Instance Court, Third Section, Judgment No D3119/08, 14 July 2008 and Genoa Appeal Court, Second Section, Judgment No 678, 5 March 2010.

4 *Diaz-Pertini*, Court of Cassation, above n 3, at 126.

5 At 118.

6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (opened for signature 10 December 1984, entered into force 26 June 1987) was ratified in 1988 by Italy with Law No 489, but it has never been implemented in the domestic legal system.

7 European Convention on Human Rights and Fundamental Freedoms (4 November 1950) [ECHR]. See art 3 of the Convention as interpreted by the case law of the European Court.

the Court also accepted that many of the charges were legitimately dropped because of the statute of limitations (art 157 Penal Code). In addition, it is worth mentioning that, although more than 300 police officers participated in the assault on the Diaz School, only 25 were identified and convicted in the courts.

In the *Bolzaneto* case, the first instance, appeal and final judgments all recognised that inhuman and degrading treatment had occurred in the Bolzaneto Barracks, which both violated the Constitution and weakened the confidence of the Italian people in law enforcement. However, since torture is not a criminal offence in the Italian Penal Code, the accused could only be sentenced on lesser charges such as "abuse of [public] office" (art 323), "private violence" (art 610) and "abuse of authority against detainees" (art 608). The Italian Courts were also obliged to find that the statute of limitations prevented charges for most of the crimes. The time limit for laying charges under the statute of limitations is six years, and although charges had been brought immediately, the length of the investigation and the protracted court proceedings meant that the time limit had expired.[8] However, all 44 of the accused were ordered to pay civil damages to the victims. The Court also imposed prison sentences of up to three years and two months on eight of the accused, although none of these sentences will ultimately be served by virtue of a general law of pardon approved in 2006 by the Italian Parliament to relieve the problem of overcrowding in Italian prisons. As in the *Diaz-Pertini* case, only 44 police officers of the total on duty at the Bolzaneto Barracks were identified and processed by Italian Courts.[9]

Finally, for the demonstrators accused of the offence of "destruction and looting," the trial ended on 5 July 2012 with five final convictions with between 8 and 15 years imprisonment.[10] Unlike the police officers, due to the longer timeframe for statutory limitations for these offences, and to the non-applicability of the law of pardon, the protesters will serve their sentences in prison.

The different outcomes of the three domestic criminal trials appear, if not totally unfair, at least highly anomalous. The absence of a specific, separately defined offence of torture obliged the Italian Courts to resort to lighter crimes and more lenient penalties for the serious abuses by police on demonstrators, while property offences by demonstrators were sentenced far more severely.

8 The peculiarity of the statute of limitations in the Italian criminal field is that it continues to run during the trials.

9 As stated by the in the *Bolzaneto* case, Genoa First Instance Court, Third Section, Judgment no. D3119/08, 14 July 2008 "despite the long, laborious and meticulous investigation by the prosecutor, the majority of the perpetrators of harassment, the existence of which was demonstrated during the debate, could not be identified due to the objective difficulties, including the lack of cooperation by the police, that would have resulted from a misinterpretation of the *spirit de corps*."

10 *Diaz-Pertini*, Court of Cassation, above n 3.

II. Italy's Approach to the Crime of Torture

The prohibition of torture is imposed in the Italian legal system, first and foremost, by the ECHR. The total ban - inferable from both the textual content of article 3 and from the jurisprudence of the Court – has always been interpreted as self-executing, not requiring the adoption of a specific offence in domestic criminal law. The principle "no one shall be subjected to torture or to inhuman or degrading treatment or punishment" does not, at least in theory, need any implementing national legislation and is immediately enforceable in the States parties legal systems.[11] The ECHR does not impose an obligation to adopt a specific criminal offence for the crime of torture as States are bound only to adopt appropriate legislative measures to ensure that people are not subjected to torture or to inhuman or degrading treatment.

However, for a good faith fulfilment of the obligation arising under article 3 ECHR, the immediate adoption of a specific offence of torture would have been desirable. A domestic provision would have reinforced the absolute prohibition of torture envisaged by the ECHR and would also have served for the necessary implementation of CAT. Since 1988, when Italy ratified CAT, the adoption of a specific, separate offence would have been required by article 4 CAT which requires State parties to "ensure that all acts of torture are offences under [their] criminal law" and "make these offences punishable by appropriate penalties which take into account their grave nature." The penal coverage of existing offences not specifically directed at combating torture was not sufficient for compliance with article 4 CAT. Further, even if the ECHR requires public authorities to have laws in place to adequately protect people from torture and to prosecute all acts of torture, the Convention could not be considered self-executing as it neither strictly defines the illegal behavior nor indicates the penalties. In order to implement these international obligations requiring criminalisation of torture, the Italian Penal Code should be amended to prescribe appropriate offences and stipulate applicable penalties.

Italy ratified CAT in November 1988 with Law No 489 but, after nearly 25 years, it has not yet introduced a specific criminal offence of torture into its legislation.[12] It has been said that "Italy may serve as a case-study of the difficulties faced and the obstacles raised by a number of states in implementing the UN Convention obligation to ensure that all acts amounting to torture are criminal offences."[13] Among other reasons, this long delay has

11 See G Battaglini "Il giudice interno "primo" organo di garanzia della Convenzione europea dei diritti umani" in L Carlassare (ed) *Le garanzie giurisdizionali dei diritti fondamentali* (CEDAM, Padova, 1988) at 204.

12 The Military Penal Code of War 1941, applicable in time of war, provides a specific offence of torture: art 185 of Law No 6 of 31 January 2002 established penalties for "the soldier who, for reasons not associated with the war, commits acts of torture or other inhuman treatment ... to the detriment of prisoners of war or civilians or other protected persons ...".

13 A Marchesi "Implementing the UN Convention: Definition of Torture in National Criminal Law (with Reference to the Special Case of Italy)" (2008) 6(2) Journal of International Criminal Justice at 212.

been caused particularly by the attitude of successive Italian Governments in regarding all acts amounting to torture in terms of article 1 CAT to be already covered by existing national legislation so that there was no need for amendment of the Penal Code in order to implement CAT. For years, Italy has embraced the "minimalist" theory, according to which it is sufficient that the acts falling within the definition of torture are covered by existing offences in domestic law.[14] A number of other European countries take a similar position. For example, Denmark, Poland and Sweden have, like Italy, argued that introducing a specific offence is not a legal requirement under CAT. Others such as France, Germany, Norway, Portugal, Spain and the United Kingdom have incorporated a separate offence in their domestic law although, for some, the definition in the domestic offence is not completely consistent with the definition of torture in article 1 CAT.

Italy continues to maintain its interpretation that amendment of domestic law is not required despite contrary views at international law. States parties are obliged to provide in national law a specific crime of torture in order to "ensure that all acts of torture are an offence under domestic criminal legislation and that appropriate penalties are foreseen."[15] The most recent parliamentary debates for a draft law introducing the offence of torture have highlighted, in fact, the persistent belief according to which "there is no basis to claim that the failure to identify the crime of torture is a gap in [the] Italian legal system" since "the Constitution and the Penal Code in force already define and severely punish the type of offences related to

14 Italy's initial report to the Committee against Torture included the argument based on the alleged "direct applicability" of treaty norms on torture in Italian law (Committee against Torture (CAT) *Initial reports of States parties due in 1990* CAT/C/9/Add.9 at notes 32 and 33). This argument is not mentioned in any of the later reports where it is affirmed that the Italian legal system provides sanctions for all behaviors that can be considered to fall within the definition of torture, as set forth in Article 1 of the Convention. See CAT *Consideration of Reports submitted by States Parties under Article 19 of the Convention: Second periodic reports of State Parties due in 1994, Addendum: Italy* CAT/C/25/Add.4 (1994), at [5]; CAT *Consideration of Reports submitted by States Parties under Article 19 of the Convention: Third periodic reports of State Parties due in 1998, Addendum: Italy* CAT/C/44/Add.2 (1998) at [8]; CAT *Consideration of Reports submitted by States Parties under Article 19 of the Convention: Fourth periodic reports of State Parties due in 2002, Addendum: Italy* CAT/C/67/Add.3 (2002) at [12]-[18] and CAT *List of issues to be considered during the examination of the fourth periodic report of Italy* CAT/C/ITA/Q/4/Rev.1 (2007) to be considered in relation to CAT *Written replies by the Government of Italy to the list of issues to be taken up in connection with the consideration of the fourth periodic report of Italy* CAT/C/ITA/Q/4/Rev.1/Add.1 (2007).

15 UN General Assembly *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment* [Interim Report] A/65/273 (2010) at [37] in particular where it is affirmed that "Article 4 of the Convention against Torture sets out the obligation of States parties to ensure that all acts of torture are an offence under their criminal legislation and that appropriate penalties are foreseen. Article 4, paragraph 1, must be read in conjunction with Article 1, paragraph 1, of the Convention, since it would be very difficult for a State party to criminalize an offence, establish the corresponding jurisdiction and institute prosecution, without formulating a proper definition of torture."

that crime: kidnapping, injury, abuse of authority."[16] This perspective hides, and none too subtly, the fact that the introduction of the crime of torture is considered by some political parties a "heavy sword of Damocles (...) on police officers' heads" that could affect the management of law and order, the freedom of manoeuvre of law enforcement. Moreover, it is said that the introduction of the crime of torture would affect the enforcement of criminal law because it would ban harsh interrogation techniques. Further, it is said that it would inhibit the fight against illegal immigration, because it would prohibit deportation to countries where there is a real risk of facing inhuman and degrading treatment.[17]

The most critical point is that these opinions have been affirmed by politicians after the final judgment in the *Diaz* case and Appeal sentence in the *Bolzaneto* case. The cases demonstrably show the inadequacy of the existing law. In both cases, the abuses perpetrated by police officers, while unequivocally recognised by the courts as falling within the definition of torture in CAT and the ECHR, remained unpunished precisely because of the lack of a specific offence in the Italian Penal Code. The alternative charges, such as "abuse of office" or "abuse of authority against detainees," resulted in lenient penalties, in no way commensurate with the gravity of the crimes. The two cases demonstrably illustrate the problems of compliance with the obligations in CAT to impose severe penalties for conduct amounting to torture and of potential impunity of the perpetrators of such conduct due to the effect of the statute of limitations.[18]

Although CAT does not explicitly require a specific penalty, leaving it to the discretion of the State party, the Committee against Torture has stated on several occasions that it is necessary that "consideration of the appropriate penalty must take into account not only the gravity of the offence but the severity of penalties established for similar crimes in each State."[19] Further, according to the interpretation of both the Committee against Torture and the European Court of Human Rights (ECtHR), punishment for acts of torture should be commensurate with the gravity of the offence and no statute of limitations should apply.[20] To ensure an effective remedy, in fact, "where a State agent has been charged with crimes involving torture or ill-

16 Compare with Senator Saltamartini, Italian Senate, 800th sitting, 25 September 2012; see, similarly, Senator Mazzatorta, Italian Senate, 800th sitting, 25 September 2012 and Senator Bruno, Italian Senate, 801st sitting, 26 September 2012.

17 Compare with Senator Castelli, Italian Senate, 801st sitting, 26 September 2012; Senator Saltamartini, Senator Giovanardi and Senator Mazzatorta, Italian Senate, 800th sitting, 25 September 2012. See also Senator Serra, Italian Senate, 801st sitting, 26 September 2012 during which he rhetorically asked "how many more years will Police and *Carabinieri* have to pay for the G8 Summit in Genoa?"

18 More recently, the absence of a specific offence of torture has been alleged in the Asti Tribunal, Judgment No 78 (30 January 2012) concerning conditions in Italian prisons.

19 UN General Assembly, Interim Report, above n 15, at [40].

20 Regarding the interpretation of the Convention against Torture, see [48]. Significant examples of cases of the European Court of Human Rights [ECtHR] are listed below.

treatment, it is of the utmost importance (…) that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible."[21] In other words, "national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished."[22] Further, the agent under investigation or on trial must be suspended from duty and has to be dismissed if ultimately convicted.[23]

In light of international standards and European case law on torture, in September 2010, before the exhaustion of all domestic remedies, the injured parties lodged an application with the ECtHR against the judgments in both the *Diaz* and the *Bolzaneto* cases. According to the applicants, it was not necessary to wait for the final judgment of the Court of Cassation because the absence in the domestic penal system of a proper framework that, on one hand, prescribes appropriate penalties and, on the other hand, excludes the statute of limitations or acts of pardon, means that there is no effective domestic remedy in Italy.

III. Maybe, There is a Judge in Strasbourg?

In October 2010, the Genoa Attorney-General lodged two referrals to the Court of Cassation in which he stated that "the conclusion reached by the Court of Appeal that, recognizing the individual criminal liability, affirmed the extinction of offences (...) as a result of the statute of limitations, does not appear (...) the predictable procedural epilogue (...). A different solution is imposed, indeed, in the light of the values of the democratic order that the abuses [in the Diaz School and Bolzaneto Barracks] are an intolerable denial."[24]

In order to progress this, the Attorney-General, in the two appeals, asked the Court of Cassation to raise the question of constitutionality with the Constitutional Court. According to the Attorney-General, the impact of the domestic provisions on the statute of limitations and the measures of clemency[25] resulted in inconsistency with the Italian Constitution – and indirectly with

21 See *Alikaj and other v Italy*, Application No 47357/08, Second Section ECtHR, 29 March 2011, at[99]; *Pădureț v Moldova*, Application No 33134/03, Fourth Section ECtHR, 5 January 2010, at [73]; *Abdülsamet Yaman v Turkey*, Application No 32446/96, Second Section ECtHR, 2 November 2004, at [55]; *Ali e Ayse Duran v Turkey*, Application No 42942/02, Third Section ECtHR, 8 April 2008, at [69].

22 Compare with *Öneryıldız v Turkey*, Application No 48939/99, Grand Chamber EtCHR, 30 November 2004 at [95]-[96]; *Salman v Turkey*, Application No 21986/93, Grand Chamber ECtHR, 27 June 2000 at [104]-[109]; *Okkalı v Turkey*, Application No 52067/99, Second Section ECtHR, 17 October 2006 at [65]; *Wiktorko v Poland*, Application No 14612/02, Fourth Section ECtHR, 31 March 2009 at [58]; *Baran e Hun v Turkey*, Application No 30685/05, Second Section ECtHR, 20 May 2010 at [57].

23 See also CAT *Conclusions and Recommendations of the United Nations Committee against Torture: Turkey* CAT/C/CR/30/5 (2003).

24 Prosecution appeals in the *Bolzaneto* case, Court of Cassation, 18 May 2011 at 4.

25 Penal Code (concerning statute of limitations), art 157 and Law No 241 of 2006 (granting amnesty and pardon).

the ECHR.[26] This is because, although these domestic provisions were not, on their face, directly applicable to article 3, their impact in practice was to render article 3 effectively inoperable in Italy.[27] The Attorney-General, recalling the recent rulings of the Constitutional Court on article 117 of the Constitution,[28] maintained that, as the ECHR and the case law of its Court are binding on Italy, "the reference [to article 3 of the ECHR as interpreted by the Strasbourg Court] is a necessary parameter for the evaluation of the behaviours" in *Bolzaneto*. So, according to the definition of torture in CAT, but even more so to the concept as outlined by the case law of the ECtHR,[29] "the severity of certain behaviour can rightly fall within the definition of "torture" (...), not being an obstacle the absence of an independent offence in domestic law."[30] Given this, it followed that, to ensure an effective remedy, "where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance (…) that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible."[31]

However, although confirming the sentence issued by the Court of Appeal of Genoa, the Court of Cassation in the *Diaz* case rejected the claim of the Attorney-General on the question of constitutionality.[32] It stated that the request went beyond the powers of the Constitutional Court "as the principle of legal reservation, enshrined in Article 25, paragraph 2, of the Constitution, entrusts to the legislature exclusive power to determine which acts are crimes, the related punishments and the overall treatment of sanctions."[33]

26 The inconsistency arises because of the duty of compliance with international obligations imposed by art 117(1) of the Constitution. See also Prosecution appeals in the *Diaz-Pertini* case, Court of Cassation, 27 October 2010.

27 Prosecution appeals in the *Bolzaneto* case, above n 25, at 5.

28 Italian Constitutional Court, Judgments No 348 and No 349, 24 October 2007.

29 *Ireland v United Kingdom*, Application No 5310/71, Plenary Court ECtHR, 18 January 1978, in which the Court recognised that the form of "interrogation in depth" involving the combined application of five particular techniques (standing against the wall, hooding, subjection to noise, sleep deprivation, deprivation of food and drink) is "torture" and established the parameters for the distinction between *inhuman treatment* and *degrading treatment*. The first consists of "inflicting intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation", while the second is "to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance". Regarding torture, the difference is not ontological but quantitative, since this is "an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

30 Prosecution appeals in the *Bolzaneto* case, above n 25, at 4.

31 See *Alikaj and other v Italy*, above n 23, at [99]; *Pădureț v Moldova*, above n 23, at [73]; *Abdülsamet Yaman v Turkey*, above n 23, at [55]; *Ali e Ayse Duran v Turkey*, above n 23, at [69].

32 The final ruling in the *Bolzaneto* case, Court of Cassation, Judgment No 37088, 14 June 2013 confirmed the criminal liabilities but also the expiration of the offences due to the running of the Statute of Limitations. The written judgment has not yet been published.

33 *Diaz-Pertini* case, Court of Cassation, Judgment No 38085, 5 July 2012 at 120.

To justify its opinion, the Court of Cassation referred to the principle of Parliamentary sovereignty. However, it did not take into account that the issue only appears to involve Parliament's legislative power. International obligations relating to the prohibition of the statute of limitations and measures of clemency for acts of torture are clear, precise and mandatory so that the Italian Parliament would have no margin of appreciation in determining how to implement those international obligations.[34]

In early January 2013, at the end of the preliminary examination of what happened at the Diaz School and the Bolzaneto Barracks during the G8 Summit in 2001, the ECtHR referred the appeals lodged by 20 Italian and European citizens to the Italian Government for response.[35]

The applicants argued that Italy had breached, inter alia, article 3 of the ECHR in both its substantive and procedural terms.[36] They asserted they had been subjected to torture and inhuman and degrading treatment and that, for those abuses, Italy had provided neither an effective investigation nor an effective remedy.[37]

According to the ECtHR's case law, in addition to the negative obligation to refrain from inflicting ill-treatment on individuals within their jurisdiction, article 3 also imposes two separate positive obligations on States parties: to conduct effective investigations capable of leading to the identification and punishment of those responsible for the ill treatment,[38] and to take effective measures to ensure that individuals within their jurisdiction are not subjected to torture by officials or by private parties.[39] A prerequisite for both positive obligations is that "the State has enacted criminal law provisions penalizing practices that are contrary to Article 3."[40] Further, in cases of wilful ill-treatment

34 See F Viganò "L'arbitrio del non punire. Sugli obblighi di tutela penale dei diritti fondamentali" in AAVV *Studi in onore di Mario Romano* (vol IV, Jovene, Naples, 2011); V Zanetti "La tortura dalle parti di Bolzaneto e della Diaz. Il legislatore negligente, gli obblighi internazionali e la Corte costituzionale" (2012) 4 Studium Iuris 430 at 434.

35 *Azzolina and others v Italy*, Application No 28923/09, Section Twelve ECtHR, 27 May 2009 and *Kutschkau and others v Italy*, Application No 67599/10, Section Twelve ECtHR, 9 March 2010 regarding the abuses committed in the Bolzaneto facility; *Cestaro v Italy*, Application No 6884/11, Section Twelve ECtHR, 28 January 2011 regarding the violent raid at the Diaz school.

36 The applicants also alleged violation of articles 3, 5, 8 and 13 of the ECHR.

37 *Azzolina and others v Italy*, above n 35; *Kutschkau and others v Italy*, above n 35, at [100]-[106]; *Cestaro v Italy*, above n 35, at [97]-[98].

38 See, inter alia, *Krastanov v Bulgaria*, Application No 50222/99, First Section ECtHR, 30 September 2004, at [48]; *Çamdereli v Turkey*, Application No 28433/02, Second Section ECtHR, 17 July 2008, at [28]-[29]; *Vladimir Romanov v Russia*, Application No 41461/02, First Section ECtHR, 24 July 2008, at [79] and [81]; *Assenov and others v Bulgaria*, Application No 24760/94, Court (Chamber) ECtHR, 28 October 1998, at [102] and *Gäfgen v Germany*, Application No 22978/05, Grand Chamber ECtHR, 1 June 2010, at [87]-[93].

39 See *A v the United Kingdom*, Application No 25599/94, Grand Chamber ECtHR, 23 September 1998, at [22].

40 *Gäfgen v Germany*, above n 38, at [117]. Compare, mutatis mutandis, *MC v Bulgaria*, Application No 39272/98, First Section ECtHR, 4 December 2003, at [150], [153] and [166]; *Nikolova and Velichkova v Bulgaria*, Application No 7888/03, Fifth Section ECtHR, 20 December 2007, at [57]; and *Çamdereli v Turkey*, above n 40, at [38].

by State agents in breach of article 3, the Court has repeatedly found that the breach of article 3 cannot be remedied only by an award of compensation to the victim.[41] In order to avoid virtual impunity, the compensation must be accompanied by the effective prosecution and punishing of those responsible for the criminal behavior.[42]

In this context, the applicants allege that most of the perpetrators of abuse have not been identified because of the lack of cooperation by law enforcement officials.[43] Further, they argue that those responsible for torture and ill-treatment were prosecuted for less serious offences, some of which were precluded by the statute of limitations. In addition, those condemned to lenient penalties benefited from the pardon.[44] Additionally, they were not subject to any disciplinary procedures but on the contrary, some of them had been promoted. Finally, the applicants argued that Italy had violated the right to an effective remedy. The award they had obtained was not only completely insufficient but also, more than ten years after the events, had not been paid.[45]

Since the filing of the appeals, the Italian Government had three months to provide detailed information on the incidents, the investigations, the processes and the adequacy of penalties imposed. However, at the time of writing, there is no information as to the response of the Italian Government.

It can only be hoped that, perhaps, in due course, after the resounding failure of the domestic legal system, the European Court of Human Rights will finally ensure that some sort of justice emerges from this painful and controversial piece of Italian history.

41 See *Vladimir Romanov v Russia*, above n 38, at [79], and, mutatis mutandis, *Aksoy v Turkey*, Application No 21987/93, Court (Chamber), 18 December 1996, at [98] and *Abdülsamet Yaman v Turkey*, above n 21, at [53].

42 See, among others, *Krastanov v Bulgaria*, above n 38, at [60]; *Çamdereli v Turkey*, above n 38, at [29]; *Vladimir Romanov v Russia*, above n 38, at [78] and *Assenov and others v Bulgaria*, above n 38, at [102].

43 *Azzolina and others v Italy*, above n 35 and *Kutschkau and others v Italy*, above n 35, at [104]; *Cestaro v Italy*, above n 35, at [98].

44 *Azzolina and others v Italy*, above n 35 and *Kutschkau and others v Italy*, above n 35, at [105]; *Cestaro v Italy*, above n 35, at [97(d)].

45 *Azzolina and others v Italy*, above n 35 and *Kutschkau and others v Italy*, above n 35, at [106].