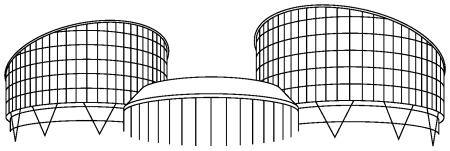

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CESTARO v. ITALY

(Application no. 6884/11)

JUDGMENT

STRASBOURG

7 April 2015

FINAL

07/07/2015

This judgment is final but it may be subject to editorial revision.

In the case of Cestaro v. Italy,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Päivi Hirvelä, *President,*
Guido Raimondi,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 17 March 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 6884/11) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Mr Arnaldo Cestaro ("the applicant"), on 28 January 2011.

2. The applicant was represented by Mr N. Paoletti and Mrs Natalia Paoletti, lawyers practising in Rome, Mr Joachim Lau, a lawyer practising in Florence, and Mr Dario Rossi, a lawyer practising in Genoa.

The Italian Government ("the Government") were represented by their Agent, Mrs Ersiliagrazia Spatafora, and by their Co-Agent, Ms Paola Accardo.

3. The applicant alleged that on the night from 21 to 22 July 2001, at the close of the "G8" Summit in Genoa, he had been in a night accommodation centre, that is to say the Diaz-Pertini School.

Relying on Article 3 of the Convention, the applicant complained of having suffered violence and ill-treatment which he considered tantamount to torture when the security forces stormed the Diaz-Pertini School.

Further, relying on Articles 3, 6 and 13 of the Convention, he submitted that those responsible for those acts had not been appropriately penalised because during the criminal proceedings most of the offences as charged had become statute-barred, some of those convicted had been granted remissions of sentence, and no disciplinary sanctions had been imposed on those persons. He added, in particular, that by refraining from classifying all acts of torture as criminal offences and from laying down adequate penalties for the latter, the State had failed to adopt the requisite measures to prevent

and punish the violence and other types of ill-treatment of which he was complaining.

4. On 18 December 2012 the application was communicated to the Government.

5. The applicants and the Government submitted written observations on the admissibility and the merits of the case.

Joint comments were received from the transnational, cross-party and non-violent Radical Party, the association "Non c'è pace senza giustizia" and a number of Italian Radicals from the former Italian Radical Party whom the Section Vice-President had authorised to intervene in the written proceedings (under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Rome.

A. Context in which the G8 Summit took place in Genoa

7. The twenty-seventh G8 Summit took place in Genoa on 19, 20 and 21 July 2001 under the chairmanship of Italy.

8. In the run-up to the Summit a large number of non-governmental organisations had set up a coordinating group known as the Genoa Social Forum ("GSF") with a view to organising an "anti-globalisation" Summit in Genoa during the same dates (see Final Report of the Parliamentary inquiry into the events during the Genoa G8 Summit (see "Final Rapport of the Parliamentary Inquiry"), pp. 7-18).

9. Since the meeting of the World Trade Organisation in Seattle in November 1999, such demonstrations by the "anti-globalisation" movement have been organised during inter-State summits and meetings of international institutions on different aspects of global governance. They have sometimes been accompanied by acts of vandalism and clashes with the police (ibid.).

10. Law No. 349 of 8 June 2000 ("Law No. 349/2000") had assigned the task of organising the preliminary meetings and the Final Summit of the Heads of State and Government scheduled for July 2001 to a plenipotentiary body set up within the Prime Minister's Office. Several meetings were attended by representatives of the GSF, the Head of the plenipotentiary body, the Prefect of Genoa, the Minister of the Interior, the Minister for

Foreign Affairs and local authority representatives (see Final Report of the Parliamentary Inquiry, pp. 18-21).

11. Substantial security measures were put in place by the Italian authorities (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 12, ECHR 2011). Under section 4(1) of Law no. 149 of 8 June 2000, the prefect of Genoa was authorised to deploy military personnel. In addition, the part of the city where the G8 were meeting (the historic centre) was designated as a "red zone" and cordoned off by means of a metal fence. As a result, only residents and persons working in the area were allowed access. Access to the port was prohibited and the airport was closed to traffic. The red zone was contained within a yellow zone, which in turn was surrounded by a white (normal) zone.

12. According to the information garnered by the Genoa police department up to July 2001 (see Final Report of the Parliamentary Inquiry, p. 23), the various groups expected to take part in the demonstrations were broken down into various blocs depending on the danger they posed: the non-dangerous "Pink Bloc"; the "Yellow Bloc" and the "Blue Bloc", which were deemed to comprise persons likely to vandalise property, set up street and railway blockades and cause confrontations with the police; and lastly, the "Black Bloc", which embraced several anarchist groups and more broadly, demonstrators dressed in black and wearing masks and balaclavas who had systematically wreaked havoc during other summits.

13. On 19 July 2001 two demonstrations took place during the day without incident. Disorder occurred during the evening (see Final Report of the Parliamentary Inquiry, p. 25).

14. On 20 July several demonstrations had been announced for various areas of the city, and rallies were scheduled for specific squares ("*piazze tematiche*") (see Final Report of the Parliamentary Inquiry, pp. 25-27).

15. On the morning of 20 July the Black Bloc sparked numerous incidents and clashes with law-enforcement officers, and ransacked banks and supermarkets (see *Giuliani and Gaggio*, cited above, § 17). Marassi Prison was attacked and a number of police stations were vandalised (see *Giuliani and Gaggio*, cited above, § 134, and Final Report of the Parliamentary Inquiry, p. 26).

16. The Black Bloc sparked similar incidents while the *Tute Bianche*, a group broadly belonging to the "Yellow Bloc", were marching along Via Tolemaide. Tear gas was fired on the *Tute Bianche* demonstrators by *carabinieri*, who charged forward, making use of their truncheons and non-regulation batons. The demonstrators split up, though some of them responded to the attack by throwing hard objects at the law-enforcement officers; armoured vehicles belonging to the *carabinieri* drove up at high speed, knocking down the barriers erected by the demonstrators and forcing the demonstrators to leave. Clashes between demonstrators and law-

enforcement officers continued in the adjacent areas (see *Giuliani and Gaggio*, cited above, §§ 17-20, 126-127 and 136).

17. Similar clashes occurred at around 3 pm in Piazza Manin (see Final Report of the Parliamentary Inquiry, p. 26).

18. At around 3.20 pm, during a clash in Piazza Alimonda, Carlo Giuliani, a young demonstrator, was hit by a shot fired from a jeep of *carabinieri* attempting to escape the demonstrators (see *Giuliani and Gaggio*, cited above, §§ 21-25).

19. On 21 July the final anti-globalisation demonstration took place, attended by some 100,000 persons (see *Giuliani and Gaggio*, cited above, § 114).

20. The looting and unlawful damage began in the morning and continued all day throughout the city. In the early afternoon the march ran into a group of some one hundred individuals facing the security forces. Further clashes ensured, with the security forces firing tear gas and charging the crowd, also involving the orderly demonstrators (see Final Report of the Parliamentary Inquiry, pp. 27-28).

21. During the two days of incidents several hundred demonstrators and members of the security forces were injured or suffered from the effects of tear gas. Whole districts of the city of Genoa were laid waste.

B. Setting up of special police unites to stop the Black Bloc

22. On the morning of 21 July 2001 the Head of Police ordered Prefect A., Deputy Head of Police and Head of the plenipotentiary body, to assign the task of searching the Paul Klee School to Mr M.G., Head of the CID Central Operational Department (the "SCO") (see judgment no. 1530/2010 of the Genoa Court of Appeal of 18 May 2010 (the "appeal judgment"), p. 194). Some twenty individuals were arrested following that operation, but they were immediately released by order of the prosecution or the investigating judge (see appeal judgment, p. 196).

23. It transpires from Prefect A.'s statements to the Genoa Court that the order issued by the Head of Police was explicable by his desire to move on to a more "incisive" phase involving arrests of suspects in order to dispel any impression that the police had remained inert *vis-à-vis* the looting and unlawful damage perpetrated in the city. The Head of Police had wanted to set up large-scale joint patrols directed by officers from the mobile units and the SCO and coordinated by trusted officers, with a view to stopping the Black Bloc (see judgment no. 4252/08 delivered by the Genoa Court on 13 November 2008 and deposited on 11 February 2009 (the "first-instance judgment"), p. 243; see also judgment no. 38085/12 of the Court of Cassation of 5 July 2012, deposited on 2 October 2012 (the "Court of Cassation judgment"), pp. 121-122).

24. At 7.30 pm on 21 July M.G. ordered M.M., Head of the Genoa General Investigations and Special Operations Department (DIGOS) to second officers from his unit in order to from joint patrols with other officers from the Genoa mobile unit and the SCO (see Final Report of the Parliamentary Inquiry, p. 29).

C. Events leading up to the police storming of the Diaz-Pertini and Diaz-Pascoli schools

25. The Genoa Municipal Council had provided the GSF and other bodies with access to the premises of two adjacent schools in Via Cesare Battisti in order to install a multimedia centre. In particular, the Diaz-Pascoli School ("Pascoli") accommodated a press unit and temporary lawyers' offices, while the Diaz-Pertini School housed an Internet access point. Following thunderstorms over the city which had hampered access to some camping sites, the Municipality had authorised the use of the Diaz-Pertini School as a night accommodation centre for demonstrators.

26. On 20 and 21 July, residents in the area reported to the police that young people dressed in black had gone into the Diaz-Pertini School and taken materiel from the site linked to the ongoing works in the school.

27. Early in the evening of 21 July one of the joint patrols proceeded along Via Cesare Battisti, sparking a heated verbal reaction from dozens of persons standing outside the two schools. An empty bottle was thrown at the police vehicles (see first-instance judgment, pp. 244-249, and Court of Cassation judgment, p. 122).

28. On their return to the police station, the police officers who had headed the patrol recounted the events at a meeting called by the most senior police officials (including Prefect A., Prefect L.B., Police Commissioner C. and M.G.).

29. Having contacted the GSF official to whom the Diaz-Pertini School had been assigned, the police decided to conduct a search of the premises in order to secure evidence and possibly arrest the Black Bloc members responsible for the unlawful damage. Having discussed and dismissed the idea of bombarding the school with tear gas, they agreed on the following *modus operandi*: a police unit made up essentially of officers belonging to a division specialising in anti-riot operations who had benefited from *ad hoc* training (the *VII Nucleo antisommossa* operating within the Rome mobile unit) was to "secure" the building; another unit would carry out the search; lastly, a *carabinieri* unit would surround the building to prevent suspects escaping. The Head of Police was also informed about the operation (see first-instance judgment, pp. 226 and 249-252, and Final Report of the Parliamentary Inquiry, pp. 29-31).

30. Late in the evening a large number of police officers from various units and departments left the Genoa police station for Via Cesare Battisti

(see Final Report of the Parliamentary Inquiry, ibid.). According to the Court of Cassation judgment, the total number of officers participating in the operation was "approximately 500 police officers and *carabinieri*, the latter being responsible exclusively for encircling the building". The appeal judgment (p. 204) pointed out that that figure had never been precisely substantiated.

D. The police storming of the Diaz-Pertini School

31. At around twelve midnight the members of the *VII Nucleo antisommossa*, having arrived close to both schools with helmets, shield and *tonfa*-type truncheons, together with other similarly equipped officers, began to run towards the premises. A journalist and a municipal councillor standing outside the schools were kicked and struck with batons (see first-instance judgment, pp. 253-261).

32. Some of the persons occupying the Diaz-Pertini School who had been outside re-entered the building and closed the gates and entrance doors, attempting to block them with school benches and wooden planks. The police officers assembled in front of the gate, which they forced open with an armoured vehicle after unsuccessful attempts to shoulder-charge them. Finally, the aforementioned police unit broke down the entrance doors (ibid.).

33. The officers invested all the floors of the building, many of them in complete darkness. With, in most cases, their faces concealed by scarves, they began to punch, kick and club the occupiers, shouting threats at their victims. Groups of officers even struck seated or prostrate persons. Some of those who had been awakened by the noise were struck while still in their sleeping bags, while others were assaulted while holding their hands up as a sign of capitulation or showing their identity documents. Some of the occupiers attempted to escape and hide in the school toilets or lumber-rooms, but they were caught and beaten up, and some of them were hauled out of their hiding places by the hair (see first-instance judgment, pp. 263-280, and appeal judgment, pp. 205-212).

34. The applicant, who was sixty-two years of age at the material time, was on the ground floor. Having been awakened by the noise, when the police arrived he sat down against the wall beside a group of persons with his arms in the air (see first-instance judgment, pp. 263-265 and 313). He was mainly struck on the head, arms and legs, whereby the blows caused multiples fractures: fractures of the right ulna, the right styloid, the right fibula and several ribs. According to the applicant's statement in the Genoa Court, the healthcare staff who arrived at the school after the violence had subsided attended to him last, despite hiss cries for help.

35. The applicant was operated on at the Galliera hospital in Genoa, where he remained for four days, and then a few years later, at the Careggi

hospital in Florence. He was granted over forty days' unfitness for work. The aforementioned injuries left him with a permanent weakness in his right arm and leg (see first-instance judgment, pp. XVII and 345).

E. The police storming of the Pascoli School

36. Shortly after the storming of the Diaz-Pertini School, a police unit stormed the Pascoli School, where journalists were filming events both outside and inside the Diaz-Pertini School. A radio station was broadcasting the events live.

37. When the police officers arrived the journalists were forced to stop filming and broadcasting. Cassettes containing the reports filmed over the three days of the Summit were seized and the GSF lawyers' hard disks were seriously damaged (see first-instance judgment, pp. 300-310).

F. Events after the storming of the Diaz-Pertini and Pascoli schools

38. After the storming of the Diaz-Pertini School the security forces emptied the occupiers' rucksacks and other luggage without attempting to identify their owners or to explain the nature of the operation under way. They wrapped some of the items collected in a black flag in the school gymnasium. During that operation, some of the occupiers were taken to the gymnasium and forced to sit or lie down (see first-instance judgment, pp. 285-300).

39. The ninety-three persons occupying the school were arrested and charged with conspiracy to commit unlawful damage and destruction.

40. Most of them were taken to hospitals in the city. Some were immediately transferred to the Bolzaneto barracks.

41. During the night from 21 to 22 July the Head of the Italian police press unit, who was interviewed close to the schools, stated that during the search of the premises the police had found black clothing and balaclavas similar to those used by the Black Bloc. He added that the numerous bloodstains in the building had stemmed from injuries sustained by most of those occupying the Diaz-Pertini School during clashes with the police the previous day (see first-instance judgment, pp. 170-172).

42. The next day, at the Genoa police station, the police showed the press the items seized during the search, including two Molotov cocktails. They also showed the uniform of an official who had taken part in the storming of the Diaz-Pertini School, displaying a clean cut which might have been caused by a knife (ibid.).

43. The prosecution against the occupiers on charges of conspiracy to commit unlawful damage and destruction, serious or aggravated résistance to the police and the unlawful carrying of weapons led to the acquittal of all concerned.

G. Criminal proceedings against members of the security forces for storming the Diaz-Pertini and Pascoli schools

44. The Genoa public prosecutor's office initiated an investigation to ascertain the facts underlying the decision to storm the Diaz-Pertini School and to shed light on the methodology of the operation, the alleged knife attack on one of the officers and the discovery of the Molotov cocktails, as well as the events that had occurred in the Pascoli School.

45. In December 2004, after some three years of investigations, twenty-eight police officers and officials were committed for trial. Two further sets of proceedings concerning three other officers were subsequently joined to the initial proceedings.

46. The applicant had claimed damages at the preliminary hearing on 3 July 2004. A total number of 119 parties claiming damages, including dozens of Italians and foreigners who had occupied both schools, as well as trade unions and other non-governmental associations, came to a.

47. Those proceedings concerned the events in the Diaz-Pertini School, where the applicant had been accommodated (see paragraphs 31-34 above), and the events in the Pascoli School (see paragraphs 36 and 37 above). They involved hearing more than 300 individuals, both defendants and witnesses (including many foreigners), two expert opinions and the viewing of a great deal of audio-visual materiel.

1. Events in the Diaz-Pertini School

48. The charges relating to the events in the Diaz-Pertini School were as follows: giving false information for inclusion in a document, simple and aggravated slander, misfeasance in public office (particularly on account of the unlawful arrest of the persons occupying the buildings), simple and aggravated bodily harm and unlawful carrying of weapons of war.

a) Trial at first instance

49. By judgment no. 4252/08 of 13 November 2008, deposited on 11 February 2009, the Genoa Court found twelve of the accused guilty of providing false information (one accused), simple slander (two accused) and aggravated slander (one accused), simple and aggravated bodily harm (ten accused) and the unlawful carrying of weapons of war (two accused). The court sentenced them to between two and four imprisonment, a prohibition of holding public office for the period of the main sentence and, jointly and severally with the Ministry of the Interior, payment of costs and expenses and of damages to the parties claiming the latter, to whom the court awarded advances of between 2,500 and 50,000 euros (EUR).

The applicant, in particular, was awarded an advance of EUR 35,000, which was paid in July 2009 following an attachment.

50. In determining the main sentences the court had regard to the mitigating circumstances that the perpetrators of the offences had no criminal records and that they had acted in a state of stress and fatigue. One of the convicted persons was granted a conditional suspension of sentence, whereby the court ordered that the conviction should not appear on his criminal record. Furthermore, pursuant to Law No. 241 of 29 July 2006 laying down the conditions for remission of sentence (*indulto*), ten of the convicted persons were granted total remission of the main sentences, and one of them, who had been given a four-year prison sentence, was granted a three-year remission.

51. In the reasons for the judgment (373 pages of a total of 527), the court first of all rejected the argument that the operation had been planned from the outset as a punitive expedition against the demonstrators. It accepted that the security forces might reasonably have thought, in the light of the events preceding the storming of the buildings (particularly the information provided by local residents and the attack on the patrol during the afternoon of 21 July – see paragraphs 26-27 above), that there were also members of the Black Bloc in the Diaz-Pertini School. It held, however, that the events at issue constituted a clear violation of the law, "of human dignity and of respect for the individual" (*di ogni principio di umanità e di rispetto delle persone*). The court considered that even in confronting members of the Black Bloc, the security forces were allowed to force inasmuch as the latter was necessary in order to overcome violent resistance from the persons occupying the buildings, subject to proportionality between the resistance encountered and the means used. According to the court neither the applicant nor, for instance, a slightly built young woman who had also been present could have put up such resistance as to justify the blows which they had received, causing bruising and fractures.

52. The court also emphasised that the prosecution had not requested the committal for trial of the actual perpetrators of the violence on account of the difficulty of identifying them, and that the police had not cooperated effectively. It noted in that connection that the prosecution had been provided with old photographs of the officers accused and that it had taken seven years to identify one particularly violent officer – filmed during the storming of the buildings – even though he had been easily recognisable by his hairstyle.

53. In its assessment of the individual responsibility of the accused, the court held that having regard to the circumstances of the case, the perpetrators had acted in the conviction that their superiors tolerated their acts. The fact that some officers and officials who had been *in situ* right from the beginning of the operation had not stepped in immediately to halt the violence had encouraged the officers of the *VII Nucleo antisommossa* and the other members of the security forces in their actions. The Court

therefore took the view that only those senior officials could be considered guilty of aiding and abetting the offence of causing bodily harm.

54. The court then considered the prosecution argument that the security forces had produced false evidence and recounted fictitious events with a view to justifying, *a posteriori*, both the search of the premises and the acts of violence.

55. As regards the behaviour of the persons occupying the buildings before the police stormed them, the court observed that the video recordings added to the case file had not shown them throwing any large objects from the building, but that it might be considered, according to the statements of a witness and the attitude of the police officers, who had been filmed with their shields raised above their heads, that a number of small objects (coins, bolts, etc.) had probably been thrown at the officers while they had been attempting to break down the entrance door to the school.

56. As regards the alleged knife attack on an officer, the court, drawing on the results of the expert opinion prepared on that officer's behaviour and the evidence at its disposal, observed that it could neither find that that attack had actually taken place nor preclude the possibility that it had in fact occurred.

57. Moreover, the court noted that the two Molotov cocktails shown to the press on 22 July had been found by the police in the city during the afternoon of 21 July and subsequently brought, at the behest of the Deputy Police Commissioner of Genoa, to the schoolyard towards the end of the search of the premises, and that they had ended up, under obscure circumstances, mingled with the items that had been gathered together in the gymnasium.

58. Finally, the court considered that the police report on the operation contained a misleading description of the facts, because it stated that all those occupying the school had resisted violently and glossed over the fact that most of them had been injured by the security forces.

b) The appeal judgment

59. The accused, the prosecutor's office with the Genoa Court, the Principal State Prosecutor, the Ministry of the Interior (which was civilly liable) and most of the victims, including the applicant, all appealed to the Genoa Court of Appeal against the first-instance judgment. By judgment no. 1530/10 of 18 May 2010, filed on 31 July 2010, the court of appeal altered the challenged judgment.

60. The Court of Appeal found the accused guilty of the following offences: providing false information (seventeen accused), aggravated bodily harm (nine accused) and the unlawful carrying of weapons of war (one accused). It imposed prison sentences on them of between three years and eight months and five years and prohibited them from holding public

office for five years. Pursuant to Law No. 241 of 29 July 2006, all those convicted were given the benefit of a three-year remission of sentence.

61. Since the limitation period for offences of aggravated slander (in the case of fourteen accused), abuse of public authority on account of the unlawful arrest of the persons occupying the Diaz-Pertini School (twelve accused) and simple bodily harm (nine accused) had elapsed, the Court of Appeal discontinued proceedings against them. The proceedings against the Head of the *VII Nucleo antisommossa*, who had been convicted at first instance for causing aggravated bodily harm, were also discontinued on account of mitigating circumstances. Finally, the Court of Appeal acquitted a person accused of simple slander and unlawful carrying of a weapon of war and another person accused of simple slander.

62. Most of the sentences involving payment of damages and costs and expenses as passed at first instance were upheld in substance, and, at the appeal level, the accused persons who had been convicted for the first time were also held civilly liable.

63. In the reasons for the judgment (120 pages of a total of 313), the Court of Appeal firstly pointed out that even if the suspicions concerning weapons used by the Black Bloc members during their looting could, in principle, have justified searching the schools, there was nevertheless scant evidence that all the persons occupying the two schools were armed and could be considered as belonging to the Black Bloc.

64. The Court of Appeal further stated that several factors demonstrated that the operation had in no way been geared to identifying the members of the Black Bloc and had been quite different in nature.

65. First of all, right from the planning stages of the "search" the senior police officials had allegedly specified that the *VII Nucleo antisommossa* and other heavily armed officers would be in the front line of the security forces; those units had not been given any precise instructions concerning the use of force against those occupying the school, their sole task being to "secure" (*mettere in sicurezza*) the building.

66. Secondly, even those individuals who had been outside the Diaz-Pertini School and had not put up the least resistance had been immediately attacked by the security forces.

67. Thirdly, the security forces had launched their assault by breaking down the doors without attempting to negotiate with the occupiers, explaining that a "non-violent search" was to be carried out, or to induce them voluntarily to open the door, which, according to the Court of Appeal, they had justifiably closed. On entry into the building the officers had systematically beaten those inside in a cruel and sadistic manner, *inter alia* using non-regulation batons. According to the Court of Appeal, the traces of blood to be seen on the photographs taken during the inspection of the premises had been fresh and could only have stemmed from the above-mentioned violence, contrary to the "shameful contention" (*vergognosa*

tesi) that they had been the result of injuries sustained during the clashes which had occurred over the previous days.

68. In the light of those factors the Court of Appeal concluded that the aim of the whole operation had been to carry out a large number of arrests, even in the absence of any judicial purpose, the main thing being to remedy a media image of a powerless police force. The most senior officials of the security forces had therefore surrounded the *VII Nucleo antisommossa* with a heavily armed unit equipped with *tonfa*-type truncheons capable of dealing lethal blows, and that unit have been exclusively instructed to neutralise the persons occupying the Diaz-Pertini School, stigmatising them as dangerous troublemakers who had caused all the unlawful damage of the previous few days. The violent and coordinated action of all the officers who had participated in the operation had been the logical consequence of the instructions given.

69. Therefore, according to the Court of Appeal, all the most senior officials of the *VII Nucleo antisommossa*, as a minimum, had been guilty of causing the injuries inflicted on the persons occupying the buildings. As regards the higher-ranking police officers, the Court of Appeal pointed out that the decision not to request their committal for trial had impeded proper assessment of their criminal responsibility.

70. Furthermore, the Court of Appeal held that once the decision to storm the building and make the arrests had been taken, the security forces had attempted to justify their action *a posteriori*.

71. In that connection the Court of Appeal noted that during the investigation the persons occupying the school had been attributed responsibility for offences which they had not committed: the investigation had in no way shown that the occupiers had resisted the security forces or that they had thrown objects at them while standing in the schoolyard, whereby some of the officers had probably raised their shields merely as a precaution; and above all, having regard to all the circumstances of the case, the alleged knife attack on an officer during the storming of the building had proven to be a "bare-faced lie".

72. The Court of Appeal further noted that the most senior officials in the security forces who were present *in situ*, had decided to place both the Molotov cocktails that had been found elsewhere during the afternoon among the items collected during the search, with a view to justifying the decision to conduct the search and to arrest the persons occupying the school. The Court of Appel took the view that since the arrests had been devoid of any factual or legal basis, they had been unlawful.

73. In determining the appropriate sentences, the Court of Appeal found that apart from the Head of the *VII Nucleo antisommossa*, who had attempted to limit the violence and had finally admitted the offences during the proceedings, no mitigating circumstances could be acknowledged in respect of the other accused. Having regard to the applicant's statements,

the Court of Appeal pointed out that the members of the security forces had turned into "violent thugs" indifferent to any physical vulnerability bound up with sex and age and to any sign of capitulation, even on the part of persons who had just been abruptly awakened by the noise of the attack. Moreover, the officers had compounded the violence with threats and insults. In doing so they had discredited Italy in the eyes of the international community. Moreover, once the violence had been perpetrated, the security forces advanced a whole series of fabricated "facts" implicating the occupiers.

In the Court of Appeal's opinion, the systematic and coordinated nature of the act of violence committed by the police officers and the aforementioned attempts to justify them *a posteriori* constituted a deliberate, concerted effort rather than a state of stress and fatigue.

74. Nevertheless, having regard to the fact the whole impugned operation had originated in the instruction from the Head of Police to carry out arrests and that the accused had therefore clearly acted under the psychological pressure of that instruction, the Court of Appeal determined the sentences on the basis of the minimum penalty laid down in criminal law for each of the offences in question.

c) Court of Cassation Judgment

75**.** The accused, the State Prosecutor with the Genoa Court of Appeal, the Ministry of the Interior (which was civilly liable) and some of the victims, appealed on points of law against the appeal judgment; the applicant and other victims claimed civil damages in those proceedings.

76. By judgment no. 38085/12 of 5 July 2012, deposited on 2 October 2012, the Court of Cassation essentially upheld the impugned judgment, although it declared the offence of aggravated bodily harm for which ten of the accused had been convicted at first instance and nine at second instance (see paragraphs 49 and 60 above).

77. In its grounds of judgment (71 pages of a total of 186), the Court of Cassation first of all examined the objection as to the constitutionality of Article 157 of the Criminal Code on statute-barring of criminal offences as submitted by the State Prosecutor under Article 3 of the Convention and, secondarily, under Article 117 § 1 of the Constitution. It observed that – as the first- and second-instance decisions had noted, in a finding which had never in fact been contested – "the violence perpetrated by the police during their storming of the Diaz-Pertini school [had been] egregious". The "utmost gravity" of the police conduct stemmed from the fact that the widespread violent acts committed throughout the school premises had been unleashed against individuals who were obviously unarmed, sleeping or sitting with their hands up; it was therefore a case of "unjustified violence [which], as rightly pointed out by the State Prosecutor, [was carried out] for punitive purposes, for retribution, geared to causing humiliation and

physical and mental suffering on the part of the victims". According to the Court of Cassation, the violence might have qualified as "torture" under the terms of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment or else as "inhuman or degrading treatment" under Article 3 of the Convention.

78. The Court of Cassation noted that in the absence of an explicit criminal offence within the Italian legal system, the impugned violent acts had been prosecuted on the basis of simple or aggravated bodily harm, which offences, pursuant to Article 157 of the Criminal Code, had been the subject of a discontinuance decision on the ground that the limitation period had expired during the proceedings. It noted that that had been why the State Prosecutor had complained of the contradiction between the regulations on the statute-barring of the criminal offences laid down in Article 157 of the Criminal Code – inasmuch as that provision did not include ill-treatment within the meaning of Article 3 of the Convention among the offences not subject to limitation – and in Article 3 of the Convention, which, in accordance with the Court's well-established case-law, required the imposition of appropriate penalties on ill-treatment and therefore impeded the limitation of offences or criminal proceedings in cases of ill-treatment.

Nevertheless, the Court of Cassation considered that a change in the rules on limitation as envisaged by the State Prosecutor lay outside the jurisdiction of the Constitutional Court because, under Article 25 of the Italian Constitution, only the law could establish offence and criminal penalties.

79. As regards the convictions for offence of bodily harm, the Court of Cassation, having reiterated the events preceding the impugned police storming of the school (see paragraphs 25-30 above), considered logical the Court of Appeal's finding that the instruction from the Head of Police to carry out arrests had, right from the outset, "militarised" the search operation which the police was to conduct in the school. The Court of Cassation held that the very large number of officers and the lack of instructions regarding alternatives to a tear-gas assault on the school (see paragraph 29 above) and regarding the use of force against the occupiers, among other factors, showed that that operation had not been designed as a peaceful search of the premises. The operational methods used had caused virtually all the persons occupying the school to be beaten up, which explained the Court of Cassation's upholding of the responsibility, *inter alia*, of the officials heading the *VII Nucleo antisommossa*. First of all, the latter had given no instructions on how the building was to be "secured" and had at no stage informed the officers of the possible presence of harmless individuals; secondly, they had not prevented the attacks on persons standing outside the building, the violent storming of the school and the assault on the persons occupying the premises. In conclusion, as the Court

of Appeal had rightly found, those officials had been aware that violence was inherent in that type of operation.

The Court of Cassation noted, however, that even the offences of aggravated bodily harm had become statute-barred on 3 August 2010 by dint of scheduling, the calculation criteria and the interruptions of proceedings provided for in Articles 157 et seq. of the Criminal Code as amended by Law No. 251 of 5 December 2005.

80. The Court of Cassation also upheld the findings of the appeal judgment as regards the offences of providing false information, slander and unlawful carrying of weapons of war perpetrated in the framework of a "disgraceful whitewashing operation" in order to justify *a posteriori* the violence perpetrated in the school and the arrest of those occupying it. The Court of Cassation noted that the persons occupying the school had not put up any résistance either before the entrance door had been broken down or inside the premises, and also that the occupiers had not been in possession of Molotov cocktails, which had been brought into the school from the outside by the police. Therefore, the Court of Cassation declared mendacious the police reports to the contrary and slanderous the conspiracy charges levelled against the occupiers. As regards the conclusions of the appeal judgment concerning the alleged knife attack on an officer, the Court of Cassation merely specified the sentence passed on two officers convicted of providing this false information (three years and five months, as indicated in the reasons given for the appeal judgment, rather than three years and eight months as indicated in the operative part). Finally, it passed a sentence of three years and three months on one of the convicted officers for providing false information, on account of the limitation on the offence of aggravated bodily harm and the resultant inapplicability of the calculation criterion laid down in Article 81 of the Criminal Code because of the continuous nature of the offences.

2. Events in the Pascoli School

81. The charges levelled against officers for the events in the Pascoli School concerned arbitrary search and damage to property.

82. By judgment no. 4252/08 (see paragraph 49 above), the Genoa Court held that the storming by the police officers of the Pascoli School had been the result of a mistake in identifying the building to be searched. It also found that no clear evidence had been provided to conclude that the accused had actually caused the damage complained of in the Pascoli School.

83. On the other hand, by judgment no. 1530/10 (see paragraph 59 above), the Genoa Court of Appeal found that there had been no mistake or misunderstanding behind the police storming of the Pascoli School. According to the Court of Appeal, the security forces had tried to destroy all film evidence of the storming of the neighbouring Diaz-Pertini School and had deliberately damaged the lawyers' computers. It nevertheless decided to

discontinue proceedings against the police officer charged because the impugned offences had become statute-barred.

84. By judgment no. 38085/12 (see paragraph 76 above) the Court of Cassation upheld that decision. It emphasised that the Court of Appeal had fully justified its conclusions by noting that the police had carried out an arbitrary search of the Pascoli School geared to seeking out and destroying audio-visual material and all other documentation concerning the events in the Diaz-Pertini School.

H. Parliamentary Inquiry

85. On 2 August 2001 the Presidents of the Chamber of Deputies and the Senate decided to order an inquiry (*indagine conoscitiva*) into the events during the Genoa G8 Summit by the Constitutional Affairs Committees of both chambers of Parliament. For that purpose it set up a commission comprising eighteen Deputes and eighteen Senators.

86. On 20 September 2001 the commission submitted a report setting out the conclusions of the majority of its members, entitled "Final Report of the Parliamentary Inquiry into the events during the Genoa G8 Summit". According to the Report the search of the Diaz-Pertini School "could probably be seen as the most significant example of the organisational shortcomings and operational dysfunctions".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant criminal provisions

87. Article 39 of the Criminal Code (CP) breaks down criminal offences into two categories: serious offences (*delitti*) and minor offences (*contravvenzioni*).

1. Charges relating to the events in the Diaz-Pertini School and the relevant provisions for sentencing

88. According to Article 323 of the CP, a public official or person responsible for a public department who, in the course of his duties or service, intentionally and in breach of legal or statutory provisions, procures for himself or others an unfair pecuniary benefit or causes an unfair disadvantage to others (offence of abuse of public authority) is subject to a prison sentence of between six months and three years.

89. According to Article 368 §§ 1 and 2 of the CP, anyone who, by dint of a complaint addressed to a judicial authority or to any other body having the duty to refer such complaint to a judicial authority, accuses an individual

of having committed an offence in the knowledge that the latter is innocent, or who fabricates evidence against the latter is subject to a prison sentence of between two and six years. The sentence is increased where the offence mentioned in the false accusation is punishable by a minimum of six years imprisonment.

90. Under the terms of Article 479 of the CP, a public official or person responsible for a public service who, when receiving or presenting a document in the course of his duties, wrongly certifies the material existence of the facts set out in the document as having been carried out by himself or as having occurred in his presence, or who otherwise alters the presentation of the facts which the document is intended to prove (forgery) is subject to a prison sentence of between one and six years or, if the document has been considered authoritative until proven otherwise, between three and ten years.

91. Article 582 of the Criminal Code (CP) lays down that anyone who causes an injury to another person resulting in physical or mental disability is subject to a prison sentence of between three months and ten years.

Under Article 583 CP, the injury is considered "serious" and is subject to a prison sentence of between three and seven years if it causes a disability or temporary incapacity for more than forty days.

Article 585 CP increases those sentences, in particular, by up to a third where there are aggravating circumstances within the meaning of Article 577 CP (for example where the offence is premeditated or in one of the aggravating circumstances set out in Article 61 §§ 1 and 4 [see paragraph 93 below]).

92. According to section 2 of Law no. 895 of 2 October 1967 unlawful possession of arms or explosives is subject to a prison sentence of between one and eight year(s) and a fine.

Section 4 of that Law penalises the carrying of arms or explosives in public places or premises open to the public with a prison sentence of between two and eight years and a fine; those penalties are increased where, *inter alia*, the offence is committed by two or more persons or is perpetrated under cover of night in an inhabited place.

93. the CP states that the common aggravating circumstances include commission of the offence for futile or abject reasons (Article 61 § 1), commission of the offence in order to conceal another offence (Article 61 § 2), infliction of abuse or cruel acts on a person (Article 61 § 4) and lastly, commission of the offence of abuse of authority inherent in the exercise of public office or violation of the duties inherent in the exercise of public office.

Article 62 lists the common mitigating circumstances. Under Article 62-*bis* CP, in the context of sentencing the judge may take into consideration any circumstance not expressly covered by Article 62 which may justify sentence reduction.

94. In the event of a conviction for several offences within the same decision, the prison sentences run concurrently, and the fines laid down for the various offences are also concurrent (Articles 71, 73 and 74 CP). However, a prison sentence calculated in that way may not exceed, overall, five times the length of the heaviest sentence available for one of the offences, and may in no case exceed thirty years (Article 78 § 1 CP).

95. Where several offences are committed by dint of several acts or omissions under the same criminal undertaking, the judge must impose the penalty provided for the most serious offence, which may be increased threefold, in all cases remaining within upper limits set out in Article 78 (Article 81 CP).

2. Statute barring of the criminal offences

96. Statute limitation is one of the grounds of extinction of criminal offences (CP Book I, Title VI, Chapter I). The regulations on statute limitation were amended under Law No. 251 of 5 December 2005 and Legislative Decree No. 92 of 23 May 2008.

97. Under Article 157 § 1 CP, a criminal offence becomes time-barred after a lapse of time equivalent to the duration of the maximum penalty prescribed by law, provided that that lapse of time is not less than six years in the case of major offences, and four years in the case of minor offences.

98. The second, third and fourth paragraphs of Article 157 lay down the criteria for calculating time limits; the fifth paragraph lays down a three-year limitation period for criminal offences not subject to imprisonment or a fine. The sixth paragraph doubles those time-limits as compared with the previous paragraphs for specific offences (including mafia-type criminal organisations, trafficking in human beings, abduction and drug- trafficking). The eighth paragraph of the same Article provides that offences subject to a life sentence are imprescriptible.

99. Accused persons can in all cases expressly waive statute-barring (Article 157 § 7 CP).

100. Article 158 § 1 CP provides that the limitation period begins on the date of commission of the criminal offence.

101. Under Article 160 CP, the limitation period is extended in the event of procedural interruptions, including the condemnatory judgment. Pursuant to the second paragraph of Article 161, with the exception of specific offences which are not relevant to the present case, those interruptions cannot extend the limitation period, which is calculated in accordance with Article 157, by more than a quarter, and, in some cases, by more than half (in specified cases of reoffending), by more than two-thirds (in cases of repeated reoffending) or by more than double (if the perpetrator of the offence is an habitual offender).

B. Law No. 241 of 29 July 2006 (remission of sentence)

102. Law No. 241 of 29 July 2006 lays down the conditions for remission of sentence (*indulto*). It has only one Article, the relevant section of which provides:

> "1. As regards all offences committed before 3 May 2006, remission of sentence of a maximum three years shall be granted on prison terms and a maximum 10,000 euros on fines imposed on their own or in conjunction with a prison sentence ..."

C. Civil proceedings linked to a criminal offence

103. Under Articles 75 and 76 of the Code of Criminal Procedure, anyone who has suffered damage as a result of a criminal offence may bring civil proceedings in the civil or criminal courts.

104. Civil proceedings may be brought in criminal courts by lodging a claim for civil damages in the criminal proceedings.

D. 2013 Report on the Administration of Justice

105. The relevant section of the 2013 Report on the Administration of Justice by the First President of the Court of Cassation, presented on 24 January 2014 at the opening of the judicial year, reads as follows (page 29):

> "Since 1989 ... Italy has ratified the United Nations Convention against Torture, [thus] undertaking to introduce this very serious criminal offence into our legal system and establishing its imprescriptibility and the inapplicability of measures such as amnesty and pardon. Twenty-five years on, nothing has been done, which means that acts of torture committed in Italy invariably become statute-barred in the absence of a law punishing torture as such by imposing appropriate penalties proportionate to the seriousness of the acts in question."

E. Bill introducing the offence of torture into the Italian legal system

106. On 5 March 2014 the Italian Senate approved a bill (no. S-849, merging bills nos. S-10, S-362, S-388, S-395, S-849 and S-874) introducing the offence of torture into the Italian legal system. That bill was subsequently transmitted to the Chamber of Deputies for approval.

III. RELEVANT INTERNATIONAL LAW

A. Universal Declaration of Human Rights

107. Article 5 of the Universal Declaration of Human Rights of 10 December 1948 provides:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

B. International Covenant on Civil and Political Rights

108. Article 7 of the International Covenant on Civil and Political Rights of 16 December 1966, which came into force on 23 March 1976 and was ratified by Italy on 15 September 1978, provides:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

C. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

109. The relevant articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which came into force on 26 June 1987 and was ratified by Italy on 12 January 1989, read as follows:

Article 1

"1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

Article 2

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

Article 4

"1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

Article 5

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

Article 10

"1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person."

Article 11

"Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

Article 12

"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."

Article 13

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Article 14

"1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation,

including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

Article 16

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion."

D. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

110. The relevant articles of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 9 December 1975, provide as follows:

Article 4

"Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction."

Article 7

"Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture."

Article 10

"If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings."

Article 11

"Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law."

E. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

111. The principles were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The relevant ones read as follows:

"...

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

...

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

...

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use."

F. Observations of the United Nations Human Rights Committee

112. The relevant parts of the Final Observations of the United Nations Human Rights Committee regarding Italy published on 18 August 1998 (UN Doc. CCPR/C/79/Add.94) read as follows:

"13. The Committee remains concerned at the inadequacy of sanctions against police and prison officers who abuse their powers. It recommends that due vigilance

be maintained over the outcome of complaints made against members of the carabinieri and against prison officers.

...

19. It is noted that delays continue to occur with respect to passing legislation concerning the following: the introduction into the Criminal Code of the offence of torture as defined in international law (Art. 7) [of the International Covenant on Civil and Political Rights) ..."

G. Documents of the United Nations Committee against Torture

113. Where Italy is concerned, the concluding observations of the United Nations Committee against Torture ("CAT") published on 1 January 1995 (UN Doc. A/50/44(SUPP)) read as follows:

"157. The Committee suggests that the State party should:

...

(d) Make sure that complaints of ill treatment and torture are promptly and effectively investigated and, where appropriate, impose an appropriate and effective penalty on the persons responsible..."

114. Where Italy is concerned, the concluding observations of CAT published on 1 January 1999 (A/54/44(SUPP)) read as follows:

"165. The Committee welcomes:

a) The introduction in Parliament of a bill aiming at adding the crime of torture as an autonomous crime and the setting-up of a special fund for the victims of acts of torture ...

...

169. The Committee recommends that:

a) The legislative authorities in the State Party proceed to incorporate into domestic law the crime of torture as defined in Article 1 of the Convention and make provision for an appropriate system of compensation for torture victims ..."

115. The Conclusions and Recommendations of CAT concerning Italy published on 16 July 2007 (UN Doc. CAT/C/ITA/CO/4) reads as follows:

"5. Notwithstanding the State party's assertion that, under the Italian Criminal Code all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable and while noting the draft law (Senate Act No. 1216) which has been approved by the Chamber of Deputies and is currently awaiting consideration in the Senate, the Committee remains concerned that the State party has still not incorporated into domestic law the crime of torture as defined in article 1 of the Convention. (arts. 1 and 4) ...

The Committee reiterates its previous recommendation (A/54/44, para. 169(a)) that the State party proceed to incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that these offences are punished by

appropriate penalties which take into account their grave nature, as set out in article 4, para. 2 of the Convention."

H. Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment, and replies by the Italian Government

116. The relevant section of the CPT's report to the Italian Government on the visit which it conducted in Italy from 21 November to 3 December 2004 (CPT/Inf (2006) 16, 27 April 2006) reads as follows:

"11. For many years now the CPT has been following the progress through Parliament of the bill introducing the offence of torture into the Criminal Code. The efforts to achieve this end climaxed on 22 April 2004 in the plenary debate on a new Article 613 bis. However, this bill was the subject of a last-minute amendment (addition of the concept of 'repeated' acts of violence or threats), which unduly restricted the 'torture' concept as originally envisaged. A new text excluding the latter restriction was agreed on by the Italian Parliament's Commission on Justice on 9 March 2005. The legislative process has been in deadlock ever since.

The CPT sincerely hopes that the Italian authorities will continue their efforts to introduce the offence of torture into the Criminal Code.

...

14. In 2001 the CPT initiated dialogue with the Italian authorities concerning the events in Naples on 17 March 2001 and in Genoa from 20 to 22 July 2001. The Italian authorities have continued to inform the Committee of the action taken on the allegations of ill-treatment levelled against the law enforcement agencies. During the visit the authorities provided a list of ongoing judicial and disciplinary proceedings.

The CPT would like to be kept regularly informed of developments in the aforementioned judicial and disciplinary proceedings. Furthermore, it would appreciate detailed information on the action taken by the Italian authorities to prevent the reoccurrence of similar episodes in the future (for example in terms of management of large-scale policing operations, training of support and operational staff and supervision and inspection systems)."

117. The reply published at the Italian Government's request (CPT/Inf (2006), 27 April 2006) reads as follows :

"With specific regard to the insertion and the formal definition of the crime of torture in the Italian Criminal Code, the absence of such crime in the Criminal Code does not mean in any case that in Italy torture exists. If, on the one hand, torture does not exist because this is a practice far from our mentality, on the other hand some sections of the Criminal Code severely punish such behaviour, even though the term "torture" as such is not included in the Code itself. Moreover, we are considering the possibility, in relation to the adjustment of our legal system to the Statute of the International Criminal Court, to insert the crime of torture in our system, through a wider and more comprehensive definition if compared to the relevant international Conventions. However, the substance will not change; with or without the word "torture" in the Criminal Code. Art.32 of Bill No. 6050 (2005), as introduced at the Senate level, envisages *inter alia* that: "Anybody who harms an individual under

his/her control or custody with serious sufferings, both physical and psychological, is convicted to detention penalty of up to ten years ...

...

As to the so-called "Genoa events", the judicial proceedings refer and concern three different episodes:

...

iii. As to the criminal proceeding following the events occurred at the "Diaz primary school premises", the last hearing took place on 11 January 2006. The outcome of the cited hearing is awaited. The cited indications underline that such conduct does not lack of punishment. In fact, despite the lack of the nomen of torture in the Italian relevant code, several provisions are applied when such conduct is reported.

In light of Article 11 of Presidential Decree No.737/1981, no disciplinary measures have been applied so far to the Police staff who are subject of criminal proceedings in connection with the cited events, due to the fact that, even if sanctions were imposed, these would necessarily have to be suspended. The reasoning behind this provision is self-evident: to avoid any interference with the criminal action for events that are still being evaluated by the Judicial Authority both in terms of the detection and historical reconstruction of facts and of defence safeguards. A disciplinary evaluation of individual behaviour will therefore follow the conclusion of the relevant criminal cases without a possibility to invoke any statute of limitations. It should be noted in particular that, after 2001, thanks to various initiatives taken by the Department of Public Security at the Interior Ministry also in the training field, no remarks have been made with regard to the policing of major events. Moreover, also on the occasion of ordinary events which are important in terms of public order management such as sport events a substantial decrease has been registered in the episodes requesting the use of force or deterrence measures."

118. The relevant part of the CPT's report to the Italian Government on its visit to Italy from 14 to 26 September 2008 (CPT/Inf (2010) 12, 20 April 2010) reads as follows:

"11. Since, 2001, the CPT has been engaged in a dialogue with the Italian authorities in respect of the events which took place in Naples (on 17 March 2001) and Genoa (from 20 to 22 July 2001).

The Committee took note of the information provided by the Italian authorities during the visit on the court proceedings concerning the above-mentioned events; it would like to be informed, in due course, of the outcome of those proceedings.

12. As regards the implementation of the long-standing plan to introduce the crime of torture into the Penal Code, the CPT noted that little progress had been made since the 2004 visit. The Committee encourages the Italian authorities to redouble their efforts to introduce as soon as possible the offence of torture into the Penal Code, in accordance with Italy's international obligations."

119. The reply published at the Italian Government's request (CPT/Inf (2010) 13, 20 April 2010) reads as follows:

"20. As to the criminal code, it is worth recalling Article 606 and other provisions, contained in the same section of the criminal code, safeguard the individual against

illegal arrest, as undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches.

21. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat being not considered as a different crime) and Article 612 (threat) of the criminal code. Even more so, the provisions under Article 575 (homicide) and Article 605 (kidnapping), to which general aggravating circumstances apply, regarding brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service, respectively (Article 61, paragraph 1, number 4 and 9 of the criminal code)."

120. The relevant section of the CPT's report to the Italian Government on its visit to Italy from 13 to 25 May 2012 (CPT/Inf (2013) 32, 19 November 2013) reads as follows:

"Before setting out the delegation's findings, the CPT wishes to express its concern that, despite more than 20 years of discussions before Parliament and the elaboration of nine draft bills, the Italian Penal Code still does not contain a specific provision which penalises the crime of torture.

The Committee urges the Italian authorities to redouble their efforts to introduce as soon as possible the crime of torture into the Penal Code, in accordance with Italy's longstanding international obligations. Further, with a view to reinforcing the dissuasive force of such a specific offence, the necessary steps should be taken to ensure that the crime of torture is never subject to a statute of limitations."

121. The reply published at the Italian Government's request (CPT/Inf (2013) 33, 19 November 2013) reads as follows:

"5. As far as the crime of torture is concerned, besides recalling our previous information, we would like to reiterate as follows: Article 606 and other provisions, contained in the same section of the criminal code, safeguard the individual against illegal arrest, as undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. These safeguards are supplemented by provisions under Article 581 (battery), Article 582 (bodily injury), Article 610 (duress, in cases where violence or threat are not considered as a different crime) and Article 612 (threat) of the criminal code. Even more so, the provision under Article 575 (homicide) and Article 605 (kidnapping), to which general aggravating circumstances apply, regarding brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service, respectively (Article 61, paragraph 1, number 4 and 9 of the criminal code). The code of criminal procedure contains principles aiming at safeguarding the moral liberty of individuals: its Article 64, paragraph 2, and Article 188 set out that, 'during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved' (paragraph 6).

...

13. As regards the advocated introduction into the Italian criminal system of the offence of torture, many have been the legislative proposals already formulated, however not yet approved by Parliament. According to one of such proposals, the offence takes place whenever there is a repetition of the criminal conduct over time (in its judgment no. 30780 of 27 July 2012, the Court of Cassation proposed a broad

interpretation of the ill-treatment offence set forth in Art. 572 of the Criminal Code), so that if the violence has been exhausted in one sole action, the factual situation would not be included in the provision of the new legal instrument."

THE LAW

I. PRELIMINARY OBSERVATIONS

122. The Government objected that the request to intervene from the Non-violent Transnational Cross-party Radical Party, the Association "*Non c'è pace senza giustizia*" and the Italian Radicals (the former "Italian Radical Party") had been submitted out of time on the ground that it had been lodged with the Court on 21 June 2013, that is to say more that twelve weeks after the date on which the request ought to have been brought to its attention, namely 21 December 2012 (see paragraphs 4 and 5 above). They relied on Rule 44 § 3 of the Rules of Court, providing that requests for leave for third-party intervention "must be ... submitted in writing in one of the official languages ... not later than twelve weeks after notice of the application has been given to the respondent Contracting Party".

123. The Government further pointed out that third-party interventions must pursue the goal of enhancing the Court's knowledge by providing fresh information or additional legal arguments relating to the relevant general principles for settling the case. In the present case, however, the third parties had merely proposed legislative reforms in Italy and criticised the fact that torture had not been made a criminal offence, which was not, in their opinion, the role of an *amicus curiae* before the Court.

124. For those reasons the Government submitted that the third-party observations should not be included in the case file or should at the very least be disregarded by the Court. They further submitted that at all events the observations were completely ill-founded because the lack of any crime of torture in Italian law had not prevented the identification and punishment of the police officers involved in the incidents at the Diaz-Pertini school or the payment of damages to the applicant.

125. The applicant made no comments on that matter.

126. As regards the first strand of the Government's preliminary observations, the Court merely reiterates that pursuant to Rule 44 § 3 *in fine* of the Rules of Court, "[a]nother limitation period may be fixed by the President of the Chamber for exceptional reasons", replacing the twelve-week time-limit mentioned in the first part of the same article.

127. For the remainder, the Court will simply take into account those third-party comments which might be relevant to the assessment of the applicant's complaints.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

128. The applicant submitted that during the storming of the Diaz-Pertini School by the security forces, he had suffered acts of violence and ill-treatment which he considered tantamount to torture.

He also complained that the penalty imposed on those responsible for the acts of which he was complaining had been inadequate owing, in particular, to the statute-barring during the criminal proceedings, of most of the offences charged, the reduction of the sentences of some of the convicted persons and the lack of disciplinary sanctions against those persons. He emphasised that by failing to create the offence of torture and to provide for an appropriate penalty for that offence, the State had failed to take the necessary steps to prevent the violence and other ill-treatment which he had suffered.

He relied on Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or inhuman or degrading treatment or punishment."

129. As regards the alleged shortcomings in the investigation deriving, in particular, from the statute-barring of the offences and the absence of an offence of torture from the Italian legal system, the applicant also relied on Article 6 § 1 (reasonable length of proceedings) and Article 13 of the Convention, alone and in conjunction with Article 3.

As regards the complaints put forward by the applicant, the Court considers that it should examine the issue of the lack of an effective investigation into the alleged ill-treatment solely under the procedural head of Article 3 of the Convention (see *Dembele v. Switzerland*, no. 74010/11, § 33, 24 September 2013, and the references therein).

130. The Government contested the applicant's argument.

A. Admissibility

1. The Government's objection as to loss of victim status

a) The parties' submissions

i. The Government

131. The Government submitted that in the light of well-established case-law (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments*

and Decisions 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV; and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 115-116, ECHR 2010) the application should be rejected on the grounds that the applicant had lost his victim status.

The Government took the view that the criminal proceedings against the persons responsible for the events at the Diaz-Pertini school had established, in particular, the violations of Article 3 of the Convention complained of by the applicant. At the end of the proceedings the applicant, who had claimed civil damages in the latter, had secured recognition of his right to compensation for the damage sustained and been paid, in 2009, pursuant to the first-instance judgment, 35,000 EUR as an advance on damages (see paragraph 49 above).

The Government therefore considered that the domestic authorities had fully recognised, explicitly and in substance, the violations complained of by the applicant and had remedied them.

132. Moreover, they held that the statute-barring of some of the offences during the criminal proceedings in question had not deprived the applicant of an opportunity for bringing subsequent civil proceedings in order to obtain the final total payment of compensation for the damage he had sustained.

133. In support of their arguments the Government also referred to the case of *Palazzolo v. Italy* ([dec.], no. 32328/09, §§ 86, 103-104, 24 September 2014) to show that the Court could not adjudicate complaints which had not been raised at the domestic level and that it was not the role of the Court to substitute its views for those of the domestic courts and to assess the merits of the case as a fourth-instance court.

ii. The applicant

134. On the basis, in particular, of the judgments in the cases of *Gäfgen* (cited above, §§ 116 et seq.), *Darraj v. France* (no. 34588/07, §§ 45-48, 4 November 2010) and *Dembele* (cited above, § 62), the applicant submitted that in cases of violation of Article 3 of the Convention it was indispensable, in order to ensure adequate compensation at the domestic level and therefore remove the applicant's victim status, to identify those responsible and to impose on them penalties proportional to the severity of the ill-treatment perpetrated.

135. He claimed that in the present case the domestic authorities had recognised no violation of Article 3, that those responsible for the ill-treatment in issue had, in substance, benefited from impunity owing in particular to the statute-barring of the offences with which they had been charged, and that no disciplinary measures had been taken against them.

The applicant considered that under those conditions the civil damages which he had secured during the criminal proceedings concerning the events

at the Diaz-Pertini school were insufficient to adequately compensate for the violations of Article 3 of which he was claiming to be the victim. He therefore considered that the Government's contention that he had not brought subsequent civil proceedings to secure the final total payment of compensation for the damage he had sustained should be rejected.

b) The Court's assessment

136. The Court notes that the central issue arising in relation to the applicant's loss of victim status is closely linked to the merits of the procedural aspect of the complaint under Article 3 of the Convention. Consequently it decides to join this objection to the merits (see *Vladimir Romanov v. Russia*, no. 41461/02, §§ 71-90, 24 July 2008; *Kopylov v. Russia*, no. 3933/04, § 121, 29 July 2010; and *Darraj*, cited above, § 28).

137. As regards the Government's plea that the applicant failed to bring subsequent civil proceedings for damages and the applicant's reply to that plea, the Court considers that this circumstance should be examined in the framework of the Government's objection concerning non-exhaustion of domestic remedies (see paragraphs 149 et seq. above).

2. The Government's objection of non-exhaustion of domestic remedies

a) The parties' submissions

i. The Government

138. The Government first of all noted that the application had been lodged in January 2011, before the end of the criminal proceedings concerning the events at the Diaz-Pertini school. They explained that the applicant had applied to the Court after the appeal judgment of 18 May 2010, deposited on 31 July 2010 (see paragraph 59 above), but before the Court of Cassation judgment of 5 July 2012, deposited on 2 October 2012 (see paragraph 76 above).

139. The Government then reiterated that having obtained an advance on the damages in 2009, in the framework of the criminal proceedings (see paragraph 49 above), the applicant had failed to bring subsequent civil proceedings for the purposes of the total and final determination of the compensation payable in respect of the damage sustained on account of the impugned ill-treatment.

140. In short, they alleged that when the applicant had lodged his application with the Court, he had not exhausted the criminal and civil remedies available at the domestic level, in breach of Article 35 § 1 of the Convention.

ii. The applicant

141. The applicant submitted that the requirement to exhaust domestic remedies under Article 35 § 1 of the Convention was only applicable inasmuch as remedies were available at the domestic level enabling the relevant breach of the Convention to be established and providing the victim with adequate redress.

142. He alleged that in the instant case the violence and ill-treatment which had been perpetrated by the police when they had stormed the Diaz-Pertini school and of which he had been the victim had never been seriously contested during the criminal proceedings (see, in particular, the Court of Cassation judgment, paragraph 77 above). He considered that it was because of the shortcomings in the Italian legal system that those criminal proceedings, during which he had claimed civil damages, had not led to the imposition of adequate penalties on those responsible for that ill-treatment.

143. Having regard to the foregoing considerations, the applicant submitted that subsequent civil proceedings to obtain the total and final determination of the compensation payable in respect of the damage sustained could not be considered as an effective remedy providing redress for the violations of Article 3 of the Convention which he had suffered.

144. As regards the alleged prematurity of the application due to the fact that it had been lodged before the delivery of the Court of Cassation judgment, the applicant pointed out that the appeal judgment (see paragraph 61 above) had already declared statute-barred most of the offences for which those responsible for the impugned acts had been prosecuted and that, in the case of the offences which had not become time-barred, that judgment had applied to the defendants the reduction of sentence provided for by Law No. 241 of 2006. Accordingly, since the inadequacy of the investigation by the standards of Article 3 of the Convention had already been highlighted by the appeal judgment, the applicant considered that he had not been required to await the judgment of the Court of Cassation before applying to the Court.

b) The Court's assessment

145. As regards the first strand of the Government's objection, the Court has already found, in cases lodged before completion of the criminal proceedings concerning ill-treatment under Article 3, that the respondent Government's objection regarding the prematurity of the application had lost its rationale on completion of the criminal proceedings in question (see *Kopylov*, cited above, § 119, based on *Samoylov v. Russia*, no. 64398/01, § 39, 2 October 2008).

146. Furthermore, although, in principle, the applicant was required in all fairness to have recourse to various domestic remedies before applying to the Court and compliance with that requirement had to be assessed on the date the application was lodged (see *Baumann v. France*, no. 33592/96, §

47, ECHR 2001-V), the Court can accept the fact that the last stage of such remedies may be reached shortly after the lodging of the application but before it is called upon to pronounce on its admissibility (see *Ringeisen c. Austria*, 16 July 1971, § 91, Series A no. 13; *E.K. v. Turkey* (dec.), no. 28496/95, 28 November 2000; *Karoussiotis v. Portugal*, no. 23205/08, §§ 57 and 87-92, ECHR 2011; and *Rafaa v. France*, no. 25393/10, § 33, 30 May 2013).

147. In the present case the Court notes that the applicant alleges that he had been violently attacked by the security forces when they stormed the Diaz-Pertini school in July 2001 (see paragraphs 34-35 above).

It also notes that in February 2009 the criminal proceedings brought against the security forces concerning the events at the Diaz-Pertini school, in which the applicant claimed civil damages in July 2004 (see paragraph 46 above), led to the deposition of the first-instance judgment (see paragraph 49 above) and, in July 2010, to the deposition of the appeal judgment (see paragraph 59 above).

148. That being the case, the Court cannot criticise the applicant for having submitted his complaints concerning the violation of Article 3 of the Convention to it in January 2011, almost ten years after the events at the Diaz-Pertini school, without awaiting the judgment of the Court of Cassation, which was deposited on 2 October 2012 (see paragraph 76 above).

Consequently, that part of the Government's objection concerning non-exhaustion of domestic remedies must be rejected.

149. As regards the second strand of the Government's objection regarding the fact that the applicant failed to bring a subsequent civil action for damages, the Court refers, first of all, to the general principles concerning the exhaustion of domestic remedies as recently summarised in *Vučković and Others v. Serbia* ([GC], nos. 17153/11 etc., §§ 69-77, 25 March 2014).

150. The Court reiterates, in particular, that Article 35 § 1 of the Convention only requires the exhaustion of remedies which are relevant to the impugned violations, available and adequate. A remedy is effective when it is available both in theory and in practice at the material time, that is to say is accessible and capable of providing the applicant with redress for his complaints and has reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reposts* 1996-IV, and *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 70, ECHR 2010).

151. The Court also reiterates that its application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. It has therefore recognised that Article 35 § 1 must be

applied with a degree of flexibility and without excessive formalism. It has further agreed that the rule on exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see, among many other authorities, *Akdivar and Others*, cited above, § 69; *Selmouni v. France* [GC], no. 25803/94, § 77, ECHR 1999-V; *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, 19 February 2009; and *Reshetnyak v. Russia*, no. 56027/10, § 58, 8 January 2013).

152. In its assessment of the effectiveness of the remedy indicated by the respondent Government, the Court must therefore take into account the nature of the complaints and the circumstances of the case in order to determine whether that remedy would have provided the applicant with adequate redress of the impugned violation (see *Reshetnyak v. Russia*, cited above, § 71, concerning the inadequacy of a compensatory remedy in cases of continuous violation of Article 3 on account of conditions of detention and, in particular, a deterioration in the prisoner's state of health; cf. also *De Souza Ribeiro v. France* [GC], no. 22689/07, §§ 82-83, ECHR 2012, where the Court reiterated that the requirement of a remedy with automatic suspensive effect against the applicant's expulsion depended on the nature of the violation of the Convention or of its Protocols which would have resulted from that expulsion).

153. In the instant case the Court observes that, as in the section on the loss of victim status (see paragraphs 131-135 above), the parties' submissions diverge radically on the scope of the obligations flowing from Article 3 of the Convention and the necessary and sufficient means of remedying the impugned violations.

As regards its decision to join to the merits the issue of the loss of victim status, the Court considers that the same should apply to the second strand of the objection as to non-exhaustion of domestic remedies.

3. Other grounds of inadmissibility

154. Noting that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground, the Court declares it admissible.

B. Merits

1. The substantive aspect of Article 3 of the Convention

a) The parties' submissions

i. The applicant

155. The applicant alleged that during the police storming of the Diaz-Pertini school he had been insulted and kicked and beaten with truncheons, especially on the head, arms and legs, which had caused injuries requiring a four-day stay in hospital in Genoa and, in particular, an operation on his right ulna.

On discharge from hospital he had been granted over forty days' unfitness for work.

He explained that the attack had left him with a permanent weakness in his right arm and leg. Armed with the supporting documents, he stated that in 2003 he had required a further operation on his right ulna because the fracture had not healed, and that in 2010 he had been advised to have yet another operation for pseudarthrosis in the same bone.

156. The applicant added that when the police had stormed the building he had, like several other persons occupying the premises, put his hands up as a sign of submission, which had not prevented the police officers, armed with truncheons, from striking blows at all the individuals present on the premises.

He mentioned the astonishment and panic which he had felt during those events, because as a citizen with no criminal record he had thought that the police was there to protect citizens from violence committed by others and had not considered them capable of inflicting violence on innocent bystanders.

157. Drawing on the reconstruction of events set out in the first-instance and appeal decisions, he more broadly explained that the police storming of the Diaz-Pertini School had been characterised from the outset by extreme violence which had been unjustified *vis-à-vis* the alleged acts of resistance from the occupiers. He stated that the police officers had first of all attacked clearly harmless people who were standing outside the school, and then all those occupying the building, despite the signs of submission on their part, and that they had even continued battering individuals who had already been injured. Furthermore, instead of normal batons the officers had mainly used *tonfa*-type truncheons, blows from which could easily cause fractures or even death. Moreover, after that outburst of violence, which the applicant described as gratuitous and indiscriminate, the police had unlawfully arrested the persons occupying the Diaz-Pertini school and committed a whole series of offences in an attempt to justify their actions after the event.

158. Furthermore, the applicant alleged that he had been forced to take up and hold humiliating positions. He also complained that he had not been allowed to contact a lawyer or a support person. Finally, he contended that he had had no prompt or appropriate healthcare treatment, and that police officers had been present during his medical examination.

159. Having regard to the foregoing considerations, the applicant considered that he had suffered acts of torture within the meaning of Article 3 of the Convention.

ii. The Government

160. The Government emphasised that they had no wish to "minimise or underestimate the seriousness of the events in the Diaz-Pertini school during the night from 21 to 22 July 2001". They acknowledged that the incidents had been "very serious and deplorable acts committed by police officers and constituting several criminal offences, to which the Italian courts had reacted rapidly in order to restore respect for the rule of law which the events had trodden underfoot".

161. As a token of the "full recognition by Italy of the violations of rights perpetrated", the Government affirmed that they agreed with the "judgment of the national courts, which had very harshly criticised the police officers' conduct" during the storming of the Diaz-Pertini School.

162. They nevertheless submitted that the events in question, including the ill-treatment complained of by the applicant, did not reflect any widespread practice in the Italian police service. The Government took the view that the events constituted an unfortunate, isolated and exceptional episode which should be seen against the extremely tense background of the Genoa G8 Summit and the very particular public order protection requirements deriving from the presence of thousands of demonstrators from all over Europe and in the context of the numerous incidents and clashes which had occurred during the demonstrations.

The Government concluded by pointing out that that for several years the training provided for the Italian security forces had shifted the emphasis on to heightening officers' awareness of respect for human rights, in particular by circulating texts and international guidelines on the subject.

iii. The third parties

163. The third parties reiterated the conclusions of the appeal judgment (see paragraphs 64 and 68 above) to the effect that the storming of the Diaz-Pertini School had been geared not so much to seeking evidence and identifying those who had caused all the unlawful damage on 21 July 2001 as to carrying out a large number of indiscriminate arrests. They also cited the affirmations of the Court of Cassation to the effect that the acts of violence perpetrated by the police in the school in question had been of the utmost gravity because they had been committed generally throughout the

school premises and against persons who had been manifestly unarmed, asleep or sitting with their hands up (see paragraphs 77 and 79 above).

b) The Court's assessment

i. Evidence in support of the allegation of ill-treatment

164. The Court reiterates that, as transpires from its well-established case-law (see, among many other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Gäfgen*, cited above, § 92), in cases of alleged violations of Article 3 of the Convention, it must, in its assessment of the evidence, apply a particularly thorough scrutiny. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them,.

Even though in cases involving Article 3 the Court is prepared to be more critical of the conclusions of the domestic courts (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 155, ECHR 2012), in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see, among many other authorities, *Vladimir Romanov*, cited above, § 59, 24 July 2008; *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010; *Gäfgen*, cited above, § 93; *Darraj*, cited above, § 37; *Alberti v. Italy*, no. 15397/11, § 41, 24 June 2014; *Saba v. Italy*, no. 36629/10, § 69, 1 July 2014; and *Ataykaya v. Turkey*, no. 50275/08, § 47, 22 July 2014).

165. In the present case, the Court notes that the first-instance and appeal judgments (see paragraphs 33 and 73 above), to which the Court of Cassation judgment refers (see paragraph 77 above), state that once the police officers had entered the Diaz-Pertini School, they had assaulted virtually all those present, including people who were sitting or lying on the floor, punching, kicking, clubbing and threatening them.

The first-instance judgment states that when the police arrived the applicant had been sitting against the wall beside a group of persons with his arms in the air; that he was mainly struck on the head, arms and legs, whereby the blows caused multiples fractures to the right ulna, the right fibula and several ribs; that those injuries had led to a four-day stay in hospital, forty days' unfitness for work and a permanent weakness in his right arm and leg (see paragraphs 34 and 35 above).

166. The applicant's allegations regarding the assault which he suffered and its after-effects were thus confirmed by the domestic judicial decisions.

167. Moreover, the Government stated that they broadly agreed with the "judgment of the national courts, which had very harshly criticised the police officers' conduct" during the storming of the Diaz-Pertini School.

168. That being the case, and also in view of the systematic nature of the physical and verbal assault on the persons occupying the Diaz-Pertini

School throughout the school premises (see *Dedovski and Others v. Russia* (no. 7178/03, §§ 77-79, ECHR 2008), the Court considers established both the physical and verbal assault complained of by the applicant and the after-effects of that assault.

169. Under those circumstances, it considers that the complaint of a violation of Article 3 is sufficiently serious and that there is no need to examine the substantiation of the applicant's other allegations (humiliating positions, inability to contact a lawyer and/or a support person, lack of appropriate and prompt treatment, and presence of police officers during the medical examination).

ii. Legal classification of the treatment as established

170. Having regard to the criteria flowing from its well-established case-law (see, among many other authorities, *Selmouni*, cited above, § 104; *Labita*, cited above, § 120; *İlhan v. Turkey* [GC], no. 22277/93, § 84, ECHR 2000-VII; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 118-119, ECHR 2004-IV; *Gäfgen*, cited above, § 88; *El-Masri*, cited above, § 196; *Alberti*, cited above, § 40; and *Saba*, cited above, §§ 71-72), the Court considers that there can be no serious doubt as to the fact that the impugned ill-treatment falls within the ambit of Article 3 of the Convention. Moreover, the Government has not contested that fact. It remains to be seen whether those acts should be classified as torture, as alleged by the applicant.

α) Overview of case-law on "torture"

171. In principle, in determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Batı and Others*, cited above, § 116; *Gäfgen*, cited above, § 90, with the judgments cited therein; and *El-Masri*, cited above, § 197). The severity of the suffering is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see *Selmouni*, cited above, § 100, and *Batı and Others*, cited above, § 120).

In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture, which came into force in respect of Italy on 26 June 1987 (see paragraph 109 above), which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining

information, inflicting punishment or intimidating (see *İlhan*, cited above, § 85; *Gäfgen*, § 90; and *El-Masri*, cited above, § 197).

172. The facts of the case have on occasion led the Court to consider that the impugned ill-treatment should be classified as "torture" after jointly applying the two aforementioned criteria, that is to say severity of the suffering and deliberate intention (see, for example, *Aksoy v. Turkey*, 18 December 1996, §§ 63-64, *Reports* 1996-VI: the applicant had been subjected to a "Palestinian hanging" to extract a confession information; *Batı and Others*, cited above, §§ 110, 122-124: the applicants had been deprived of sleep and subjected to a "Palestinian hanging", spraying with water, beatings and *falaka* (foot whipping) for several days in order to extract a confession that they belonged to a certain political party; *Abdülsamet Yaman v. Turkey*, no. 32446/96, §§ 19-20, 2 November 2004: the applicant had been subjected to a "Palestinian hanging", spraying with water and electric shocks for several days to force him to confess; *Polonskiy v. Russia*, no. 30033/05, § 124, 19 March 2009: the applicant had been repeatedly beaten on different parts of his body and given electric shocks to force him to confess to a criminal offence – it should be noted that the Court made a finding of torture even though there had been no long-term physical after-effects; *Kopylov*, cited above, §§ 125-126: in order to extract a confession the applicant had had his hands behind his back tied and been suspended in the air by means of a rope, bludgeoned, beaten up and subject, for about four months, to several other types of abuse, which had caused serious irreversible after-effects; *El-Masri*, cited above, §§ 205-211: the applicant had been severely beaten, stripped and forcibly given a suppository, and then shackled and hooded before being forcibly marched to an aircraft, where he had been thrown to the floor, chained down and forcibly tranquillised; the Court found that all these acts of abuse perpetrated in the framework of "extraordinary rendering", had been geared to obtaining information from the applicant or punishing or intimidating him).

173. In its reasoning, the Court has, in some cases, based its finding of torture no so much on the intentional nature of the ill-treatment as on the fact that it had "caused 'severe' pain and suffering" and had been "particularly serious and cruel" (see, for example, *Selmouni*, cited above, §§ 101-105, and *Erdal Aslan v. Turkey*, nos. 25060/02 and 1705/03, § 73, 2 December 2008).

174. In other judgments the Court has attached particular importance to the gratuitous nature of the violence committed against a detained applicant, in reaching a finding of torture. for example, in *Vladimir Romanov* (cited above, §§ 66-70) it emphasised that the applicant had been struck with a truncheon after obeying the order to leave his cell, and even after he had fallen on the ground: the violence in question had therefore been intended as a "reprisal". Similarly, in the case of *Dedovski and Others* (cited above), the

Court had regard to the potential for violence existing in penitentiary institutions and the fact that disobedience by detainees could quickly degenerate into a riot which would require the intervention of the security forces (see *Dedovski and Others*, § 81). The Court did not "discern any necessity which might have prompted the use of rubber truncheons against the applicants. On the contrary, the actions by the unit officers [had been] grossly disproportionate to the applicants' imputed transgressions", the latter having refused to leave a cell which was to be searched or to spread [their] arms and legs wide apart for a body search, and the Court also deemed the officers' actions "manifestly inconsistent with the goals they sought to achieve" because "hitting a detainee with a truncheon was not conducive to the desired result, that is, facilitating the search" (ibid., § 83). The Court found that the ill-treatment had clearly been "a form of reprisal or corporal punishment" (ibid., §§ 83 and 85) and that, in the context, the use of force had no basis in law (ibid., § 82).

175. In some cases concerning police violence during arrests of suspects the Court has also considered whether the impugned ill-treatment constituted "torture" within the meaning of Article 3 of the Convention. However, it did not so decide because the police officers' aim had not been to extract a confession from the applicant and the injuries were caused during a short period of time in a situation of heightened tension (see *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004: applicant struck on the basis of mistaken identity during a police operation to arrest a dangerous offender), and in view of the doubts as to the severity of the suffering caused by the impugned ill-treatment and the absence of long-term after-effects (see *Egmez v. Cyprus*, no. 30873/96, §§ 76 and 78-79, ECHR 2000-XII).

176. Finally, in *Gäfgen* (cited above) the Court considered: (a) the duration of the ill-treatment inflicted on the applicant, namely about ten minutes (see *Gäfgen*, cited above,§ 102); (b) the physical or mental effects of the ill-treatment on the applicant; the Court held that the threats of ill-treatment had caused him considerable fear, anguish and mental suffering, but no long-term adverse consequences (ibid., § 103); (c) whether the ill-treatment had been intentional or not; the Court found that the threats had not been spontaneous but had been premeditated and calculated in a deliberate and intentional manner (ibid., § 104); (d) the purpose of the ill-treatment and the context in which it had been inflicted; the Court pointed out that the police officers had threatened the applicant with ill-treatment in order to extract information from him on the location of a kidnapped child whom they believed to be still alive but in serious danger (ibid., §§ 105-106). Therefore, the Court, while accepting "the motivation for the police officers' conduct and [the fact] that they [had] acted in an attempt to save a child's life" (ibid., § 107), found that the method of interrogation to which he had been subjected in the circumstances of the case had been sufficiently

serious to amount to inhuman treatment prohibited by Article 3, but that it did not reach the level of cruelty required to attain the threshold of torture (ibid., § 108).

ß) Application to the present case

177. In the present case, the Court cannot overlook the fact that according to the Court of Cassation the violence at the Diaz-Pertini School of which the applicant was a victim had been perpetrated "for punitive purposes, for retribution, geared to causing humiliation and physical and mental suffering on the part of the victims", and that it could qualify as "torture" under the terms of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (see paragraph 77 above).

178. Furthermore, it transpires from the case file that the police officers kicked the applicant and struck him with *tonfa*-type truncheons, which the appeal judgment described as potentially lethal (see paragraph 68 above), and that the applicant had been repeatedly hit on different parts of his body.

The blows received by the applicant caused multiple fractures (to the right ulna, the right styloid, the right fibula and several ribs), leading to a four-day stay in hospital, over forty days' unfitness for work, a surgical operation during his stay in hospital and a further operation a few years later, all of which left the applicant with a permanent weakness in his left arm and leg (see paragraphs 34-35 and 155 above). The ill-treatment inflicted on the applicant has therefore had severe physical consequences.

Nor should the applicant's feelings of fear and anguish be underestimated. Having found accommodation in a night shelter, the applicant was awakened by the noise caused by the police storming the building. In addition to the blows which he received, he witnessed several security officers beating other occupiers of the building for no apparent reason.

In that connection, regard should also be had to the conclusions reached by the domestic courts in the framework of the criminal proceedings, with which the Government declared their broad agreement: according to the first-instance judgment, the conduct of the police inside the Diaz-Pertini School constituted a clear violation of the law, "of human dignity and of respect for the individual" (see paragraph 51 above); according to the appeal judgment, the officers systematically beat those inside the building in a cruel and sadistic manner, acting like "violent thugs" (see paragraphs 67 and 73 above); the Court of Cassation mentioned "egregious" violence of the "utmost gravity" (see paragraph 77 above).

In their observations before the Court, the Government themselves described the actions of the police in the Diaz-Pertini School as "very serious and deplorable acts".

179. In sum, it cannot be denied that the ill-treatment inflicted on the applicant "caused severe pain and suffering and was particularly serious and cruel" (*Selmouni*, cited above, § 105, and *Erdal Aslan*, citéd above, § 73).

180. The Court also notes the lack of a causal link between the applicant's conduct and the use of force by the police officers.

Although the first-instance judgment accepted that a number of isolated acts of resistance had probably been committed by those inside the Diaz-Pertini School, it singled out the applicant – who was already advanced in years in July 2001 – to highlight the absolute lack of proportionality between the police violence and the resistance put up by the persons occupying the premises (see paragraph 51 above). Moreover, as transpires from that judgment, the fact that the applicant was sitting against a wall with his arms above his head (see paragraph 34 above) when the police arrived precludes any resistance to the police on his part.

Even more tellingly, the appeal judgment stated that no evidence had been presented regarding the alleged acts of resistance from some of those in the building before or after the police entered (see paragraph 71 above). Moreover, according to that judgment, the police had been indifferent to any physical vulnerability related to sex and age and to any sign of capitulation, even on the part of persons who had just been abruptly awakened by the noise of the attack (see paragraphs 67 and 73 above).

The Court of Cassation judgment confirms that none of those occupying the building put up any résistance (see paragraph 80 above).

181. Consequently, the present case differs from those in which the (disproportionate) use of force by police officers should be considered in relation to acts of physical resistance or attempts to escape (where the arrest of a suspect is concerned, see, for example, *Egmez*, cited above, §§ 13, 76 and 78, and *Rehbock v. Slovenia*, no. 29462/95, §§ 71-78, ECHR 2000-XII; for cases concerning identity checks, see, for example, *Sarigiannis v. Italy*, no. 14569/05, §§ 59-62, 5 April 2011, and *Dembele*, cited above, §§ 43-47; for cases of violence perpetrated during police custody, see *Rivas v. France*, no. 59584/00, §§ 40-41, 1 April 2004, and *Darraj*, cited above, §§ 38-44).

182. The ill-treatment complained of in the instant case was thus inflicted on the applicant entirely gratuitously and, as in the cases of *Vladimir Romanov* (cited above, § 68) and *Dedovski and Others* (cited above, §§ 83-85), cannot be regarded as a means used proportionately by the authorities to achieve the aim pursued.

It should be recalled that original aim of storming the Diaz-Pertini School had been to carry out a search of the premises: the police were to have entered the school, where the applicant and the other persons present had lawfully sought shelter, in order to secure evidence likely to help identify the members of the Black Bloc who had carried out the unlawful damage in the city and to facilitate their possible arrest (see paragraph 29 above).

Above and beyond any circumstantial evidence of the presence of Black Bloc members in the Diaz-Pertini School on the evening of 21 July (see paragraphs 51 and 63 above), the actual *modus operandi* was inconsistent with the authorities' declared aim: the police forced their way into the building by breaking down the gate and the entrance doors of the school, beat up virtually all those inside the building and seized their personal effects without even attempting to identify the owners. Moreover, that is one of the reasons why the Court of Appeal decision as upheld by the Court of Cassation, deemed unlawful the arrests of those occupying the Diaz-Pertini School, which amounted to an offence of abuse of public authority, (see paragraphs 33-34, 38-39 and 72 above).

183. The impugned operation was to have been conducted by a formation made up primarily of officers from a division specialising in "anti-riot" operations (see paragraph 29 above). According to the authorities' explanations, that formation was to "secure" the building, that is to say carry out a task which, according to the Genoa Court of Appeal, was an obligation of outcome rather than one of means (see paragraphs 29, 65 and 79 above). It does not transpire from the domestic decisions that the officers had received any instructions regarding the use of force (see paragraphs 65, 68 and 79 above). The police immediately assaulted clearly harmless people who were standing outside the school (see paragraphs 31 and 66 above). At no stage did they attempt to negotiate with the individuals who had lawfully sought shelter in the school building or to persuade them to open the doors which those persons had lawfully locked, preferring to break them down without further ado (see paragraphs 32 and 67 above). Lastly, they systematically beat up all those present throughout the building (see paragraphs 33 and 67 above).

It is therefore impossible to overlook the intentional and premeditated nature of the ill-treatment suffered, in particular, by the applicant.

184. Nor can the Court, in assessing the context in which the assault on the applicant took place and, in particular, the intentional aspect, disregard the police attempts to cover up the events in question or to justify them on the basis of misleading statements.

On the one hand, as the Court of Appeal and the Court of Cassation emphasised, by forcing their way into the Pascoli School the police hoped to eliminate any film evidence of the ongoing storming of the Diaz-Pertini School (see paragraph 83-84 above). Moreover, regard must be had to the statements of the Head of the Police Press Unit during the night from 21 to 22 July, to the effect that the numerous bloodstains on the floor, walls and radiators in the building had stemmed from the injuries which most of the persons occupying the school had sustained during the day's clashes with the police (see paragraph 41 above, and paragraph 67 above for the Court of Appeal's assessment of that matter).

Furthermore, the appeal judgment mentions that the resistance put up by the persons occupying the school, the knife attack on one officer and the discovery in the Diaz-Pertini School of two Molotov cocktails were pure fabrication, constituting offences of slander and libel aimed at justifying, *ex post facto*, the storming of the building and the violent acts committed (see paragraphs 70-73 above). The Court of Cassation ruled that it had amounted to a "disgraceful whitewashing operation" (see paragraph 80 above).

185. That being the case, the Court cannot accept the Government's implicit argument that the severity of the ill-treatment perpetrated during the police storming of the Diaz-Pertini School should be seen in the context of the high tension surrounding the many clashes which had occurred during the demonstrations and the highly exceptional public-order protection requirements.

186. Clearly, when adjudicating on ill-treatment committed by police officers performing specific duties which are objectively difficult and pose threats to their own safety and that of others, the Court has regard to the tense context and high emotional tension (see, for example, *Egmez*, cited above, §§ 11-13 and 78: arrest *in flagrante delicto* of a drug trafficker who had put up resistance and attempted to escape, in the buffer zone between the Turkish Republic of northern Cyprus and the territory under the authority of the Government of Cyprus; and *Gäfgen*, cited above, §§ 107-108: threats of torture intended to extract information from the applicant on the whereabouts of a kidnapped child who the investigators believed was still alive but in grave danger).

187. In the present case, although the court of first instance acknowledged that the accused had acted "in a state of stress and fatigue" during the storming of the Diaz-Pertini School (see paragraph 50 above), neither the Court of Appeal not the Court of Cassation accepted that mitigating circumstance (see paragraph 73 above).

188. The Court's role is to rule not on criminal guilt or civil liability but on Contracting States' responsibility under the Convention (see *El-Masri*, cited above, § 151). With specific regard to Article 3 of the Convention, the Court has on many occasions held that that provision enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni*, cited above, § 95; *Labita*, cited above, § 119; *Gäfgen*, cited above, § 87; and *El-Masri*, cited above, § 195). The Court has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Labita*, *Gäfgen* and *El-Masri*, cited above, ibid.).

189. Accordingly, and without wishing to understate the difficulty of policing contemporary societies and the unpredictability of human behaviour (see, *mutatis mutandis*, *Tzekov v. Bulgaria*, no. 45500/99, § 61, 23 February 2006), the Court emphasises the following aspects of the present case:

– the police storming of the Diaz-Pertini School took place during the night from 21 to 22 July, whereas the clashes and unlawful damage which had occurred during the G8 Summit were over and no similar incidents had occurred in the school or the surrounding area;

– even supposing that the troublemakers had taken refuge in the school, the case file does not show that, on the arrival of the police, those present in the building had engaged in conduct liable to threaten anyone, especially not the large numbers of well-armed police officers participating in the operation (see paragraph 30 above): it should be remembered that some of the persons present had merely closed the gate and doors to the school, as they were entitled to do, and that there had been no real acts of resistance (see paragraphs 71 and 80 above);

– it transpires from the case file that the authorities had sufficient time to properly organise the "search" operation (see paragraphs 27-30 above); on the other hand, it does not transpire from the case file that the police officers had to react urgently to any unforeseen developments arising during that operation (see, by contrast, *Tzekov*, cited above, §§ 61-62);

– the search of another school and the arrests of some twenty people occupying it, even though they served no useful purpose in judicial terms, took place on the afternoon of 21 July, apparently without any police violence (see paragraph 22 above).

In the light of the foregoing considerations, the tension which the Government claim surrounded the police storming of the Diaz-Pertini School may have been caused not so much by any objective factors as by the decision to carry out arrests in front of the TV cameras and the adoption of operational methods at variance with the requirements of protecting the values flowing from Article 3 of the Convention and the relevant international law (see paragraphs 107-111 above).

190. In conclusion, having regard to all the facts set out above, the Court considers that the ill-treatment suffered by the applicant during the police storming of the Diaz-Pertini School must be classified as "torture" within the meaning of Article 3 of the Convention.

2. The procedural aspect of Article 3 of the Convention

a) The parties' submissions

i. The applicant

191. The applicant submitted that after lengthy criminal proceedings the Italian courts had recognised the gravity of the ill-treatment which he had suffered during the police storming of the Diaz-Pertini School, but that they had not imposed appropriate penalties on those responsible for that ill-treatment. Having reiterated the charges relating to the events in the Diaz-Pertini School, that is to say, in particular, the offences of giving false information for inclusion in a document, slander, abuse of public authority and (simple and aggravated) bodily harm, he pointed out that most of those offences had become time-barred during the criminal proceedings.

192. He added that the penalties imposed for the offences which were not time-barred, and which he considered derisory *vis-à-vis* the seriousness of the acts, had been the subject of remissions of sentence pursuant to Law No. 241 of 29 July 2006.

193. Furthermore, disciplinary measures had been imposed on those responsible for the events in the Diaz-Pertini School, and they had even been promoted.

194. Consequently, drawing in particular on the judgments in the cases of *Tzekov* (cited above, §§ 52-66, 69-73), *Samoylov* (cited above, §§ 31-33) and *Polonskiy* (cited above, §§ 106-117), the applicant complained that the State had failed to honour its obligations under Article 3 of the Convention, that is to say to conduct an effective investigation into the acts of torture which he had suffered, identify the perpetrators of those acts and impose adequate penalties on them.

195. He submitted that the High Contracting Parties had to establish a legal framework capable of protecting the rights granted by the Convention and the Protocols thereto, and criticised the Italian State for having failed to classify as offences all acts of torture or inhuman or degrading treatment, which was, moreover, contrary to the commitments entered into by Italy in 1989 on ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see paragraph 109 above).

He thus alleged that the State had not taken the requisite steps to prevent the acts de torture which he had suffered and to penalise them in an appropriate manner.

Finally, the applicant submitted that that omission had in fact been highlighted by the CPT in its report to the Italian Government on its visit to Italy from 13 to 25 May 2012 (see paragraph 120 above).

ii. The Government

196. The Government submitted that the State had indeed honoured the positive obligation flowing from Article 3 of the Convention to conduct an independent, impartial and thorough investigation. They affirmed that the authorities had adopted all the measures required by the Court's case-law (see *Gäfgen*, cited above, §§ 115-116, and the references therein), to identify those responsible for the impugned ill-treatment and to impose on them penalties proportionate to the offences committed and to provide compensation to the victim.

The Government reiterated that the first-instance judgment had, on the basis of criminal charges, convicted several of the accused, and had further acknowledged the right of the parties claiming civil damages to compensation, ordering the payment of an advance in that regard. They also pointed out that the appeal judgment, which had found that some of the offences were statute-barred, had nonetheless increased the penalties imposed on the accused, convicting a large number of those who had been acquitted at first instance and imposing penalties of up to five years' imprisonment for grievous bodily harm. Lastly, the Government observed that the Court of Cassation had upheld the appeal judgment, including the mandatory payment of compensation to the parties claiming civil damages and reimbursement of the costs and expenses incurred.

They consequently considered that the statute-barring of some offences from which those responsible for the events at the Diaz-Pertini School had benefited had not diminished the effectiveness of the investigation or in any way infringed the applicant's right to the final payment of damages in the framework of subsequent civil proceedings.

197. Moreover, the Government considered that the applicant's complaint primarily concerned the fact that no offence of "torture" existed within the Italian legal system.

In that regard, they stated that Article 3 of the Convention did not require the High Contracting Parties to provide, under their legal system, for an *ad hoc* offence and that they were therefore at liberty to prosecute ill-treatment within the meaning of Article 3 by means of existing legislation, as the nature and extent of the penalties were also not established in any international standards but were left to the sovereign power of assessment of the national authorities.

198. In the present case, the Government took the view that those responsible for the ill-treatment complained of by the applicant had indeed been prosecuted for the various offences enshrined in Italian criminal legislation (particularly the offence of grievous bodily harm) (see paragraphs 48 and 91 above), which had not prevented the domestic courts from assessing the impugned ill-treatment in the framework of the serious incidents at the Diaz-Pertini School.

Furthermore, the domestic courts had also based their findings on the definition of "torture" set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (see paragraphs 77 and 109 above).

199. In any event, the Government informed the Court that several bills intended to introduce the offence of torture into the Italian legal system were before Parliament and that the enactment procedure for those bills was currently at an advanced stage (see paragraph 106 above).

They added that penalties of up to twelve years' imprisonment were envisaged for cases of ill-treatment committed by public officers or officials and that a life sentence could be passed if the ill- treatment at issue led to the victim's death.

iii. Third parties

200. The third parts submitted first of all that for twenty years the UN Human Rights Committee, the CAT and the CPT had been constantly criticising, within their respective spheres of competence, the lack of an offence of torture under the Italian legal system and recommending that the authorities introduce an *ad hoc* criminal provision laying down penalties which not only corresponded to the seriousness of that criminal offence but were also actually enforced (see paragraphs 112-116, 118, 120).

201. They pointed out that the Government's "standard response" to those repeated recommendations, to which it had also resorted in the present case, could be summarised as follows: firstly, the Government highlighted the various bills geared to introducing the offence of torture which had been tabled over the years without ever being enacted; secondly, they claimed that acts of torture, like inhuman and degrading treatment, fell foul of other provisions of the Criminal Code (CP) and that they were therefore already prosecuted and penalised in an appropriate manner under the Italian legal system (see paragraphs 115, 117, 119 and 121 above); lastly, they submitted that in fact the offence of torture already existed in the Italian legal system by virtue of the direct effect of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

202. Beyond the logical contradictions which, in the third parties' view, existed among the three categories of arguments usually put forward by the Government and their doubts as to the applicability to psychological torture of the criminal provisions mentioned, they contested, in particular, the contention that the various offences already included in the CP enabled all acts of torture to be penalised adequately and effectively. They complained that the maximum penalties laid down in the CP for the offences in question were generally light and that, moreover, the criminal courts tended to impose the minimum penalty laid down in law.

The third parties took the view that what they regarded as the fragmentation of the legal classification of acts of torture into one or more

"ordinary-law" offences and the leniency of the penalties provided for each of those offences also led to the adoption of excessively short limitation periods as compared to the time required to conduct thorough investigations and to secure a final conviction after the criminal proceedings. Furthermore, they considered that in the absence of a corresponding offence under domestic law and therefore of any possible conviction on that basis, those responsible for acts classified as "torture" under international law could benefit from a pardon, a remission of sentence, a stay of execution of sentence or various other measures undermining the effectiveness of the criminal penalty.

In short, torturers were liable to feel free to act in the belief that they would enjoy near-absolute impunity.

203. The third parties concluded that under those conditions Italy was in breach of the obligations flowing not only from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but also from Article 3 of the Convention.

In that connection they drew the Court's attention to the principles which it had set out in paragraph 121 of the *Gäfgen* judgment (cited above) concerning the assessment of the "effectiveness" of the investigation to be carried out by authorities in cases of alleged ill-treatment: they emphasised, in particular, the decisive nature of the outcome of the investigation and the resultant criminal proceedings, including the penalty imposed. More broadly, with reference to the *Siliadin v. France* judgment (no. 73316/01, §§ 89 and 112, ECHR 2005-VII), they further submitted that the human rights protection afforded by the Convention could impose the obligation to define as an offence, at the domestic level, the practices covered by Article 3 of the Convention and to appropriately penalise violations of the corresponding rights.

b) The Court's assessment

i. General principles

204. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance (see paragraph 93 above), would be ineffective in practice and it would be possible in some cases for agents of the State to

abuse the rights of those within their control with virtual impunity (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; *Labita*, cited above, § 131; *Kasyanov*, cited above, § 57; *Vladimir Romanov*, cited above, § 81; *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 60, 8 April 2008; *Georgiy Bykov*, cited above, § 60; *El-Masri*, cited above, §§ 182 and 185, and the other references therein; *Dembele*, cited above, § 62; *Alberti*, cited above, § 62; *Saba*, cited above, § 76; and *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 135, 1 July 2014).

205. First of all, if an investigation is to be effective and capable of identifying and prosecuting those responsible it must be instigated promptly and conducted expeditiously (see *Gäfgen*, cited above, § 121, and the references therein).

Furthermore, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as any disciplinary measures taken, have been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Çamdereli v. Turkey*, no. 28433/02, § 38, 17 July 2008; *Gäfgen*, cited above, § 121; and *Saba*, cited above, § 76; under Article 2, see also *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 60 et seq., 20 December 2007)

206. Where the preliminary investigation leads to the opening of proceedings before the domestic courts, the entire proceedings, including the trial stage, must comply with the imperatives of the prohibition set out in Article 3. Therefore, the national courts should not under any circumstances be prepared to allow assaults on individuals' physical and moral integrity to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, under Article 2, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII).

Consequently, the Court's task is to ascertain to what extent the courts, before reaching a conclusion, may be considered to have submitted the case before them to the scrupulous examination required by Article 3, in order to maintain the deterrent power of the judicial system and the important role it plays in upholding the prohibition of torture (see *Okkali v. Turkey*, no. 52067/99, §§ 65-66, 17 October 2006; *Ali and Ayşe Duran*, cited above, §§ 61-62; *Zeynep Özcan v. Turkey*, no. 45906/99, § 42, 20 February 2007; and *Dimitrov and Others*, cited above, §§ 142-143).

207. As regards the criminal penalty to be imposed on those responsible for ill-treatment, the Court reiterates that its task is not to deliver guilty or not-guilty verdicts on the individual in question (see, under Article 2, *Öneryıldız*, cited above, § 116, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII) or to determine the penalty to be imposed, which matters come under the exclusive jurisdiction

of the domestic criminal courts. Nevertheless, under Article 19 of the Convention and in accordance with the principle that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged. It follows that the Court "must retain its supervisory function and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed. Otherwise, the State's duty to carry out an effective investigation would lose much of its meaning" (see, in those exact terms, *Gäfgen*, cited above, § 123; see also *Ali and Ayşe Duran*, cited above, § 66, and *Saba*, cited above, § 77; lastly, see, under Article 2, *Nikolova and Velichkova*, cited above, § 62).

208. Assessment of the adequacy of the punishment will therefore depend on the circumstances of the particular case (see *İlhan*, cited above, § 92).

The Court has also held that in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases. Furthermore, the manner in which the limitation period is applied must be compatible with the requirements of the Convention. It is therefore difficult to accept inflexible limitation periods admitting of no exceptions (see *Mocanu and Others v. Romania [GC]*, nos. 10865/09, 45886/07 and 32431/08, § 326, ECHR 2014 [extracts]) and the cases cited therein.

The same applies to suspended sentences (see *Okkali*, cited above, §§ 74-78; *Gäfgen*, cited above, § 124; and *Zeynep Özcan*, cited above, § 43; see also, *mutatis mutandis*, *Nikolova and Velichkova*, cited above, § 62) and remission of sentence (see *Abdülsamet Yaman*, cited above, § 55, and *Müdet Kömürcü v. Turkey*, no. 40160/05, §§ 29-30).

209. For an investigation to be effective in practice it is a prerequisite that the State has enacted criminal-law provisions penalising practices that are contrary to Article 3 (see *Gäfgen*, cited above, § 117). The absence of criminal legislation capable of preventing and effectively punishing the perpetrators of acts contrary to Article 3 can prevent the authorities from prosecuting violations of that fundamental value of democratic societies, assessing their gravity, imposing adequate penalties and precluding the implementation of any measure likely to weaken the penalty excessively, undermining its preventive and dissuasive effect (see *M.C. v. Bulgaria*, no. 39272/98, §§ 149, 153 and 166, ECHR 2003-XII; *Tzekov*, cited above, § 71; and *Çamdereli*, cited above, § 38; under Article 4, see, *mutatis mutandis*, *Siliadin v. France*, no. 73316/01, §§ 89, 112 and 148, ECHR 2005-VII).

210. As regards disciplinary measures, the Court has on many occasions held that where a State agent has been charged with crimes involving ill-treatment, it is important that he or she be suspended from duty during the

investigation or trial and dismissed if he or she is convicted (see, among many other authorities, the judgments cited above in the cases of *Abdülsamet Yaman*, § 55; *Nikolova and Velichkova*, § 63; *Ali and Ayşe Duran*, § 64; *Erdal Aslan*, §§ 74 and 76; *Çamdereli*, § 38; *Gäfgen*, § 125; and *Saba*, § 78).

211. Furthermore, the victim should be able to participate effectively in the investigation in one form or another (see *Dedovski and Others*, cited above, § 92, and *El-Masri*, cited above, § 185, and the references therein).

212. Finally, in addition to conducting a thorough and effective investigation, it is necessary for the State to have made an award of compensation to the applicant, where appropriate, or at least to have given him or her the possibility of seeking and obtaining compensation for the damage he or she sustained as a result of the ill-treatment (see *Gäfgen*, cited above, § 118, and the references therein).

ii. Application to the present case

213. Having regard to the principles summarised above, particularly the obligation on the State to identify and, if appropriate, adequately penalise the perpetrators of acts contrary to Article 3 of the Convention, the Court considers that the present case raises three types of issues.

α) Failure to identify those responsible for the impugned ill-treatment

214. The police officers who assaulted the applicant in the Diaz-Pertini School and subjected him to acts of torture have never been identified (see paragraph 52 above). Therefore, they have never been investigated and have quite simply remained unpunished.

215. Clearly, the investigation obligation flowing from Article 3 is an obligation not of result, but of means (see *Kopylov*, cited above, § 132; *Samoylov*, cited above, § 31; and *Batı and Others*, cited above, § 134), inasmuch as the investigation may end in failure despite all the means and efforts duly expended by the authorities.

216. In the present case, nevertheless, according to the first-instance judgment, the failure to identify the perpetrators of the impugned ill-treatment derives from the prosecution's objective difficulty in securing definite identifications and the lack of police cooperation during the preliminary investigations (see paragraph 52 above).

The Court regrets that the Italian police were able to refuse, with impunity, to provide the competent authorities with the requisite cooperation to identify the officers likely to have been involved in the acts of torture.

217. Moreover, it transpires from the domestic decisions that no exact figure has ever been put on the police officers who took part in the operation (see paragraph 30 above) and that the officers, the foremost ones at least

wearing protective headgear, stormed the school mostly with their faces concealed by scarves (see paragraphs 29 and 33 above).

The Court considers that those two facts, noted during the planning and implementation stages of the police storming of the Diaz-Pertini School, are in themselves considerable obstacles to any attempt to conduct an effective investigation into the events at issue.

The Court reiterates, in particular, that it has already found, under Article 3 of the Convention, that any inability to determine the identity of members of the security forces, when they are alleged to have committed acts that are incompatible with the Convention, breaches that provision. Similarly, it has already stated that where the competent national authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly display some distinctive insignia – for example a warrant number – thus, while ensuring their anonymity, enabling their identification and questioning in the event of challenges to the manner in which the operation was conducted (see *Ataykaya*, cited above, § 53, with the references therein).

ß) Statute-barring of the offences and partial remission of sentence

218. Several high- and middle-ranking officials and a number of police officers were prosecuted and tried for several offences in connection with the storming of the Diaz-Pertini School, the violent acts committed there and the attempts to conceal or justify them. The same applies to the events which occurred in the Pascoli School (see paragraphs 45 and 47 above).

219. Nevertheless, as regards the events in the Diaz-Pertini School, the offences of slander, abuse of public authority (in particular the unlawful arrests of the persons occupying the premises), simple bodily harm and, in the case of one accused, grievous bodily harm had become statute-barred before the appeal decision (see paragraph 61 above). The offence of grievous bodily harm, for which ten and nine accused had been convicted at first and second instance respectively (see paragraphs 49 and 60 above), was declared statute-barred by the Court of Cassation (see paragraphs 76 and 79 above).

As regards the events which took place at the Pascoli School, the offences committed there for the purpose of destroying evidence of the police storming of the Diaz-Pertini School were also statute-barred before the appeal decision (see paragraph 83 above).

220. Only convictions involving prison sentences of between three years, three months and four years, together with a five-year ban on discharging public duties, were therefore delivered for providing false information (seventeen accused), aggravated bodily harm (nine accused) and the unlawful carrying of weapons of war (one accused) (see paragraph 60 above).

221. In short, after the criminal proceedings no one was convicted on the grounds of the ill-treatment meted out, in particular, on the applicant in the Diaz-Pertini School as the offences of simple and grievous bodily harm had become statute-barred. The convictions upheld by the Court of Cassation are more akin to attempts to justify that ill-treatment in the absence of any factual or legal basis for the arrests of the persons occupying the Diaz-Pertini School (see paragraphs 76, 79 and 80 above).

Furthermore, pursuant to Law No. 241 of 29 July 2006 laying down the conditions for remission of sentence (*indulto*), those sentences were reduced by three years (see paragraphs 50 and 60 above). It follows that those convicted must serve maximum prison sentences of between three months and one year.

222. Having regard to the foregoing considerations, the Court considers that the authorities' response was unsatisfactory in view of the gravity of the facts, and was therefore incompatible with the procedural obligations under Article 3 of the Convention.

223. By contrast to its findings in other previous cases (see, for example, *Batı and Others*, cited above, §§ 142-147; *Erdal Aslan*, cited above, §§ 76-77; *Abdülsamet Yaman*, cited above, §§ 57-59; and *Hüseyin Şimşek*, cited above, §§ 68-70), the Court holds that that outcome cannot be attributed to delays or negligence on the part of the prosecution or the domestic courts.

Indeed, although at first sight the applicant would seem attribute the statute-barring of the offences to the excessive length of proceedings, he in no way supports that allegation with even a summary description of the running of the proceedings or of any unjustified delays during the investigation or the judicial hearings. Nor is there any mention of delays in the case file.

Even though a final decision was only given more than ten years after the events at the Diaz-Pertini School, the Court cannot overlook the fact that the prosecution had to cope with a number of major obstacles during the investigation (see paragraphs 44, 45 and 52 above) and that the trial courts had to conduct highly complex criminal proceedings against dozens of accused persons, also involving some one hundred Italian and foreign parties claiming civil damages (see paragraphs 46-47 above), in order to establish, with respect for the safeguards of a fair trial, individual responsibilities for an episode of police violence which the respondent Government themselves described as exceptional.

224. Nor can the Court criticise the domestic courts for having wrongly assessed the gravity of the charges against the accused (see *Saba*, cited above, §§ 79-80; see also, *mutatis mutandis*, *Gäfgen*, cited above, § 124) or, worse still, for having used *de facto* the legislative and punitive provisions of domestic law in order to prevent the effective conviction of the prosecuted police officers (see *Zeynep Özcan*, cited above, § 43).

The appeal and cassation judgments, in particular, took a very firm line and failed to note any justification for the serious incidents at the Diaz-Pertini School.

The reasons why the court of appeal had passed the minimum sentence provided by law for each of the offences in question (those reasons being the fact that the whole operation had originated in the instruction from the Head of Police to carry out arrests and the fact that the accused had therefore acted under the psychological pressure of that instruction – see paragraph 74 above) cannot be compared to those which the Court has criticised in other cases (see, for example, *Ali and Ayşe Duran*, cited above, § 68, where the perpetrators of acts contrary to Article 3 of the Convention had benefited from a reduction of their prison sentences because of their alleged cooperation during the investigation and the criminal proceedings, whereas in fact they had not made any statements other than to persistently deny the allegations against them; see also *Zeynep Özcan*, cited above, § 43, in which the trial courts had recognised mitigating circumstances on the grounds of the conduct of the accused during the proceedings, whereas in fact they had never attended any of the hearings).

225. The Court therefore considers that the Italian criminal legislation applied in the instant case (see paragraphs 88-102 above) proved both inadequate in terms of the requirement to punish the acts of torture in issue and devoid of any deterrent effect capable of preventing similar future violations of Article 3 (see *Çamdereli*, cited above, § 38).

Moreover, in *Alikaj and Others v. Italy* (no. 47357/08, § 108, 29 March 2011), the Court, having affirmed that "the measures adopted by the authorities responsible for the preliminary investigation ... and then by the trial judges during the proceedings were uncontroversial", also held that "time-barring is indubitably one of the 'measures' that are unacceptable under the Court's case-law regarding the procedural aspect of Article 2 of the Convention because it has the effect of blocking conviction".

226. The Court will come back (see paragraphs 244 et seq. below) to those conclusions, which are supported, in particular, by the observations of the First President of the Italian Court of Cassation (see paragraph 105 above) and by those of the third parties (see paragraphs 200-203 above).

γ) Doubts as to the disciplinary measures taken against those responsible for the impugned ill-treatment.

227. It does not transpire from the case file that those responsible for the acts of torture suffered by the applicant and the other related offences were suspended from their duties during the criminal proceedings. Nor does the Court have any information at its disposal on the progress of their careers during the criminal proceedings or any disciplinary action taken after their final conviction, which information is also necessary for the purposes of

assessing compliance with Article 3 of the Convention (see paragraph 210 above).

228. Moreover, the Court notes the Government's silence on that matter, despite the explicit request for information when the case was communicated.

iii. Victim status and exhaustion of domestic remedies (particularly the action for damages)

229. Having regard to the foregoing findings, the Court considers that the measures adopted by the domestic authorities did not fully satisfy the criterion of a thorough and effective investigation as established in its case-law. That fact is decisive for the purposes of the Government's plea that the applicant had lost his victim status owing, specifically, to the fact that the courts had already acknowledged the impugned violation in the framework of the criminal proceedings and that they had awarded the applicant compensation (see paragraph 131 above).

230. As the Grand Chamber reiterated in *Gäfgen* (cited above, § 116), "in cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that", in addition to recognition of the violation, "two measures are necessary to provide sufficient redress" to deprive the applicant of victim status. "Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see, *inter alia*, *Krastanov*, cited above, § 48; *Çamdereli* [cited above] §§ 28-29, 17 July 2008; and *Vladimir Romanov*, cited above, §§ 79 and 81). Secondly, an award of compensation to the applicant is required where appropriate (see *Vladimir Romanov*, cited above, § 79, and, *mutatis mutandis*, *Aksoy*, cited above, § 98, and *Abdülsamet Yaman* [cited above] ... [both in the context of Article 13]) or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment".

231. The Court has repeatedly held that the breach of Article 3 cannot be remedied solely by awarding compensation to the victim. This is so because, if the authorities could confine their response to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see, among many other authorities, *Camdereli*, cited above, § 29; *Vladimir Romanov*, cited above, § 78; and *Gäfgen*, cited above, § 119; see also, *mutatis mutandis*, *Krastanov*, cited above, § 60; under Article 2, see *Nikolova and Velichkova*, cited

above, § 55, with the references therein; finally, see *Petrović v. Serbia*, no. 40485/08, § 80, 15 July 2014).

That is why the applicant's ability to request and obtain compensation for the damage which he sustained as a result of the ill-treatment or, as in the present case, payment by the authorities of a given amount as an advance on the compensation are only part of the overall action required (see *Camdereli*, cited above, § 30; *Vladimir Romanov*, cited above, § 79; and *Nikolova and Velichkova*, cited above, § 56).

232. As regards the second strand of the objection as to non-exhaustion of domestic remedies based on the fact that the applicant had failed to bring a subsequent civil action for damages (see paragraph 139 above), the Court reiterates that it has frequently rejected similar objections, having observed that the action for damages was not intended to punish those responsible for the acts contrary to Articles 2 or 3 of the Convention and reaffirming that for violations of that type the reaction of the authorities must not be confined to compensation for the victim (see, among many other authorities, *Yaşa v. Turkey*, 2 September 1998, §§ 70-74, *Reports* 1998-V; *Oğur v. Turkey* [GC], no. 21594/93, §§ 66-67, ECHR 1999-III; *Issaïeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 146-149, 24 February 2005; *Estamirov and Others v. Russia*, no. 60272/00, §§ 76-77, 12 October 2006; *Beganović v. Croatia*, no. 46423/06, §§ 54-57, 25 June 2009; and *Fadime and Turan Karabulut v. Turkey*, no. 23872/04, §§ 13-15, 27 May 2010).

In other words, in cases of treatment contrary to Article 3 of the Convention, given that the requirement for compensation to remedy a breach of Article 3 at national level is imposed in addition to the requirement of a thorough and effective investigation geared to identifying and punishing those responsible and is not an alternative, purely compensatory remedies cannot be regarded as effective under Article 3 (see *Sapožkovs v. Latvia*, no. 8550/03, §§ 54-55, 11 February 2014).

233. The Court reiterates that where an applicant has pursued a remedy he is not required to pursue another remedy with virtually the same aim (see *Kozacıoğlu*, cited above, §§ 40-43; *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009; and *Jasinskis v. Latvia*, no. 45744/08, §§ 50-55, 21 December 2010).

234. The Court observes that in the present case the applicant did indeed use the civil remedy by claiming damages in the criminal proceedings in July 2004 with a view to obtaining compensation for the damage he had sustained (see paragraph 46 above; see also *Calvelli and Ciglio*, no. 32967/96, § 62, ECHR 2002-I). He therefore took part in the criminal proceedings at all the judicial levels (see paragraphs 59 and 75 above), with the final judgment of the Court of Cassation lodged with the Registry on 2 October 2012.

Under those circumstances, to claim that in order to comply with the rule on exhaustion of domestic remedies the applicant should have brought a subsequent civil action would place an excessive burden on a victim of a violation of Article 3 (see, *mutatis mutandis*, *Saba*, cited above, § 47).

235. With reference to its case-law and the findings in the present case relating to the shortcomings in the investigation into the ill-treatment of which the applicant was a victim, the Court can only reject the respondent Government's two preliminary objections, which it has joined to the merits.

iv. Conclusion

236. The Court finds a violation of Article 3 of the Convention – on the ground of ill-treatment sustained by the applicant, which must be classified as "torture" within the meaning of that provision – under both its substantive and procedural heads. That being the case, it holds that it is necessary to reject both the Government's preliminary objection regarding the loss of victim status (see paragraphs 131 et seq. above) and its preliminary objection concerning the non-exhaustion of domestic remedies (see paragraphs 139-140 above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

237. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

238. The relevant parts of Article 46 of the Convention reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ..."

A. Indication of general measures

1. General principles

239. The Court reiterates that a judgment in which it finds a breach of Article 46 of the Convention imposes on the respondent State a legal obligation under that provision to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the

injured party such satisfaction as appears to it to be appropriate. It follows, *inter alia*, that a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order (see *Del Rio Prada v. Spain* [GC], no. 42750/09, § 137, ECHR 2013; *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I; *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII).

240. The Court further reiterates that its judgments are essentially declaratory in nature and that, broadly speaking, it is primarily for the State in question to choose, under the supervision of the Committee of Ministers, the means to be used in its domestic legal system to give effect to its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, CEDH 2000-VIII; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV). This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

241. In exceptional cases, however, in order to help the respondent State for honour its obligations under Article 46, the Court may attempt to indicate the kinds of measures to be adopted in order to put an end to the structural problem which it has noted. In that context, it can put forward several options to be chosen and implemented at the discretion of the State in question (see, for example, *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V). Sometimes, where the nature of the violation found is such as to leave no real choice as to the measures required to remedy it, the Court may decide to indicate only one such measure (see, for example, *Del Rio Prada*, cited above, § 138; *Assanidze*, cited above, §§ 202 and 203; *Alexanian v. Russia*, no. 46468/06, § 240, 22 December 2008; *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 176 and 177, 22 April 2010; and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 208, 9 January 2013).

2. Application of those principles to the present case

242. In the present case the Court observes that the Italian authorities prosecuted those responsible for the impugned ill-treatment for several offences which are already defined in Italian criminal legislation.

However, in the framework of its analysis concerning the honouring of the procedural obligations under Article 3 of the Convention, the Court held that the authorities' response was unsatisfactory (see paragraphs 219-222 above). Having discounted the possibility of negligence or complaisance on the part of the prosecution or the domestic trial courts, it found that the Italian criminal legislation applied in the instant case had "proved both inadequate in terms of the requirement to punish the acts of torture in issue and devoid of any deterrent effect capable of preventing similar future violations of Article 3" (see paragraphs 223-225 above).

The structural nature of the problem thus appears undeniable. Moreover, having regard to the principles set out in its case-law concerning the procedural head of Article 3 (see paragraphs 204-21 above) and the reasons for its finding, in the present case, that the sanction was disproportionate, the Court considers that the same problem arises in respect of the penalisation not only of acts of torture but also of the other types of ill-treatment prohibited by Article 3: in the absence of appropriate provision for all the types of ill-treatment prohibited by Article 3 under Italian criminal legislation, statute-barring (as provided by the CP, see paragraphs 96-101 above) and remission of sentence (in the case of publication of other laws similar to Law no. 241 of 2006; see paragraph 102 above) can, in practice, prevent the punishment not only of those responsible for acts of "torture" but also of the perpetrators of "inhuman" and "degrading" treatment pursuant to the same provision, despite all the efforts expended by the prosecuting authorities and the trial courts.

243. As regards the requisite measures to remedy that problem, the Court reiterates, first of all, that the State's positive obligations under Article 3 may include a requirement to establish an appropriate legal framework, in particular by introducing efficient criminal-law provisions (see paragraph 209 above).

244. Furthermore, as in *Söderman v. Sweden* [GC], no. 5786/08, § 82, ECHR 2013, the Court observes that that requirement also derives from other international instruments, such as, *inter alia*, Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see paragraph 109 above). As the applicant (see paragraph 195 above) and the third parties (see paragraphs 200 et seq. above) have pointed out, the conclusions and recommendations of the UN Human Rights Committee, the CAT and the CPT also mention it (see paragraphs 112-116, 118 and 120 above).

245. Nevertheless, the Court's jurisdiction is limited to ensuring respect for the obligations deriving from Article 3 of the Convention and, in particular, helping the respondent State to find appropriate solutions to the structural problem identified, that is to say the shortcomings in Italian legislation. It is primarily for the State in question to choose the means to be

used in its domestic legal system to give effect to its obligation under Article 46 of the Convention (see paragraph 240 above).

246. In this context, the Court considers it necessary to introduce into the Italian legal system legal mechanisms capable of imposing appropriate penalties on those responsible for acts of torture and other types of ill-treatment under Article 3 and of preventing the latter from benefiting from measures incompatible with the case-law of the Court.

B. Damage

247. The applicant claimed 180,000 euros (EUR) in respect of the bodily harm which he sustained as a result of the physical assault suffered (fractures of the right ulna, the right styloid, the right fibula and several ribs; various after-effects; permanent weakness in his right arm and leg), which he described as "pecuniary damage".

He also claimed 120,000 EUR in respect of the suffering and fear which he experienced during the assault and in respect of various psychological after-effects, which he described as "non-pecuniary damage".

248. The Government challenged those claims and submitted that they were contrary to the declared aim of the application, namely to complain of shortcomings in Italian criminal legislation in cases of infringement of Article 3 of the Convention.

They added that the applicant had already been awarded EUR 35,000 in compensation at the domestic level and that he should have subsequently pursued the domestic remedies in order to secure the final total payment of that compensation.

249. In the alternative, they submitted that the applicant's claims were disproportionate *vis-à-vis* the criteria applied at the domestic level in assessing the extent of bodily harm and non-pecuniary damage.

250. The Court considers that bodily harm cannot be regarded as pecuniary damage.

251. It holds that the applicant certainly suffered non-pecuniary damage from the violations noted. Having regard to the circumstances of the case and, in particular, to the compensation already obtained by the applicant at the domestic level, the Court, making its assessment on an equitable basis, considers that the applicant should be awarded a total of EUR 45,000 under this head.

C. Costs and expenses

252. Given that the applicant did not lodge a claim for costs and expenses, the Court considers that there is no need to make any award in that regard.

D. Default interest

253 The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection regarding the loss of victim status, and *rejects* it;

2. *Joins* to the merits the Government's preliminary objection concerning non-exhaustion of domestic remedies, inasmuch as it concerns the failure to bring a subsequent civil action in addition to claiming civil damages in the framework of the criminal proceedings, and *rejects* it;

3. *Declares* the application admissible as regards the complaints under Article 3 of the Convention;

4. *Holds* that there was a violation of Article 3 of the Convention under its substantive head;

5. *Holds* that there was a violation of Article 3 of the Convention under its procedural head;

6. *Holds*
   a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 45,000 (forty-five thousand euros), plus any tax that may be chargeable to the applicant on this sum, in respect of non-pecuniary damage;
   b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 7 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President