

CM-Public

MINISTERS' DEPUTIES

Decisions

CM/Del/Dec(2023)1483/H46-18

7 December 2023

1483rd meeting, 5-7 December 2023 (DH)**H46-18 Cestaro group v. Italy (Application No. 6884/11)**

Supervision of the execution of the European Court's judgments

Reference document

CM/Notes/1483/H46-18

Decisions

The Deputies

1. recalled that these cases concern the applicants' torture and other forms of ill-treatment by law enforcement agents and the ineffectiveness of the investigations and court proceedings carried out into these events, due mainly to the absence of criminal provisions imposing appropriate penalties on those responsible for such acts, and also to the time barring of the offences, the failure to identify the perpetrators and the lack of cooperation from the police;

As regards individual measures

2. noting with regret that the authorities have not addressed the issues outlined in the Committee's last decision of December 2019 concerning the possibility to carry out new criminal investigations in several cases and the conduct of disciplinary proceedings; urged them to rapidly provide the requested information;

3. invited the authorities to complete the payment of the just satisfaction in *Azzolina*; noting that the question of individual measures has been resolved in *Bartesaghi and Gallo and Others*, decided to close their supervision of the execution of this case and adopted Final Resolution CM/ResDH(2023)484;

As regards general measures

4. noted with concern the legislative initiatives aimed at repealing the provisions of the Criminal Code on the crime of torture introduced in 2017 in execution of the *Cestaro* judgment; recalled that the obligation to abide by the judgments under Article 46 in the present cases entails Italy to put in place legal mechanisms capable of imposing appropriate penalties on perpetrators of acts of torture and noted that the current legislative initiatives appear to raise doubts over the possibility for the respondent State to meet this obligation, as well as its undertaking in the friendly settlements in this group to provide for criminal provisions punishing ill-treatment and acts of torture;

5. noted with interest in this connection the position expressed by the Italian Government clarifying to have no intention to repeal the current free-standing offence of torture in the Criminal Code and strongly invited the authorities to ensure that any possible amendment of the relevant provisions will be compliant with the relevant Convention requirements and case-law of the Court;

6. noting that the information provided does not allow a comprehensive assessment of the application of the relevant provisions on torture by domestic courts, and noting also the reforms of the statute of limitation which entered into force since the Committee's last examination, invited the authorities to provide the relevant assessments, information and statistics, as outlined in the Secretariat's analysis;

7. noted with interest the information provided by the authorities on the draft legislation under consideration in Parliament aimed at securing the identification of law enforcement agents through alphanumeric codes; strongly called on them to rapidly finalise this legislative process;

8. reiterated their previous call for a clear message at high political level to be sent to law enforcement agencies as to the policy of zero tolerance of ill-treatment underlining that the rights of persons in custody must be respected and that agents involved in ill-treatment will be prosecuted and sanctioned adequately;

9. called on the authorities to ensure that law enforcement agents who have been charged with crimes involving ill-treatment are suspended from duty during the investigation or trial and dismissed if they are convicted, in conformity with the established case-law of the Court on this issue and to provide the Committee with information on this issue;

10. requested the authorities to provide information on the individual measures by 30 March 2024 and on all the remaining questions identified above no later than 30 June 2024; decided to resume the examination of this group of cases at one of the DH meetings in the second half of 2024.

MINISTERS' DEPUTIES

Resolutions

CM/ResDH(2023)...

... 2023

Draft Resolution CM/ResDH(2023)...**Execution of the judgment of the European Court of Human Rights****Bartesaghi Gallo and Others against Italy**

(Adopted by the Committee of Ministers on ... 2023
at the ...th meeting of the Ministers' Deputies)

Application No.	Case	Judgment of	Final on
12131/13+	BARTESAGHI GALLO AND OTHERS	22/06/2017	22/09/2017

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter "the Convention" and "the Court",

Having regard to the final judgment transmitted by the Court to the Committee in this case and to the violations of Article 3 of the Convention under its substantive and procedural limbs established on account of the ill-treatment suffered by the applicants at the hands of State agents and the lack of effective investigations and court proceedings into these events, which occurred at the G8 summit held in Genoa in July 2001;

Recalling the respondent State's obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with the above-mentioned obligation;

Having noted the information provided regarding the payment of the just satisfaction awarded by the Court;

Considering that the question of individual measures was resolved, given that regrettably in this case the statute of limitation precludes opening any new investigation into the acts of torture suffered by the applicants;

Recalling that the question of general measures required in response to the shortcomings found by the Court in the present judgment continues to be examined within the framework of the group of cases *Cestaro v. Italy* (Application No. 6884/11) also in the light of the Court's findings in this case, and that the closure of this case therefore in no way prejudices the Committee's evaluation of the general measures required to prevent similar violations;

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case;

CONCLUDES that no further individual measures could be taken in this case because of the applicable prescription period;

DECIDES to continue to supervise the adoption of the necessary general measures concerning the prevention of episodes of ill-treatment by State agents and the effectiveness of investigations and court proceedings into these events in the group of cases *Cestaro v. Italy*;

DECIDES to close the examination of this case.

Related documents

1483rd (Human Rights) meeting of the Ministers' Deputies (5-... 11/09/2023
www.coe.int/.../1483rd-human-rights-meeting-of-the-ministers-deputi...

1483rd (Human Rights) meeting of the Ministers' Deputies (5-... 11/09/2023
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