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DI TRIESTE

Pena di morte ed ergastolo. Sovraffollamento carcerario

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Pena di morte

LA PENA DI MORTE NELLA CEDU

Art. 2 – Diritto alla vita

1. Il diritto alla vita di ogni persona è protetto dalla legge.

Nessuno può essere intenzionalmente privato della vita, salvo che in esecuzione di una sentenza capitale pronunciata da un tribunale, nel caso in cui il reato sia punito dalla legge con tale pena.

LA PENA DI MORTE NELLA CEDU

Art. 3 – Proibizione della tortura

Nessuno può essere sottoposto a tortura né a pene o trattamenti inumani o degradanti.

LA PENA DI MORTE NELLA CEDU

Protocollo n. 6 alla CEDU relativo all'abolizione della pena di morte (1983)
(ratificato da tutti gli Stati eccetto la Russia)

Art. 1 – Abolizione della pena di morte

La pena di morte è abolita. Nessuno può essere condannato a tale pena né giustiziato.

Art. 2 – Pena di morte in tempo di guerra

Uno Stato può prevedere nella propria legislazione la pena di morte per atti commessi in tempo di guerra o in caso di pericolo imminente di guerra; tale pena sarà applicata solo nei casi previsti da tale legislazione e conformemente alle sue disposizioni. Lo Stato comunicherà al Segretario generale del Consiglio d'Europa le disposizioni rilevanti della legislazione in questione.

LA PENA DI MORTE NELLA CEDU

Protocollo n. 6 alla CEDU relativo all'abolizione della pena di morte (1983)
(ratificato da tutti gli Stati eccetto la Russia)

Art. 3 – Divieto di deroghe

Non è autorizzata alcuna deroga alle disposizioni del presente Protocollo ai sensi dell'articolo 15 della Convenzione.

Art. 4 – Divieto di riserve

Non è ammessa alcuna riserva alle disposizioni del presente Protocollo ai sensi dell'articolo 57 della Convenzione.

LA PENA DI MORTE NELLA CEDU

Protocollo n. 13 alla CEDU relativo all'abolizione della pena di morte in tutte le circostanze (2002)
(ratificato da tutti gli Stati eccetto Armenia, Azerbaijan, e Russia)

Art. 1 – Abolizione della pena di morte

La pena di morte è abolita. Nessuno può essere condannato a tale pena, né può essere giustiziato.

Art. 2 – Divieto di deroga

Non è ammessa alcuna deroga alle disposizioni del presente Protocollo in virtù dell'articolo 15 della Convenzione.

Art. 3 – Divieto di riserva

Non è ammessa alcuna riserva alle disposizioni del presente Protocollo in virtù dell'articolo 57 della Convenzione.

LA PENA DI MORTE NELLA CEDU

Caso, Al-Saadoon and Mufdhi v. the United Kingdom, 2 marzo 2010

All but two of the member States have now signed Protocol No. 13 and all but three of the States which have signed it have ratified it. These figures, together with consistent State practice in observing the moratorium on capital punishment, are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances. Against this background, the Court does not consider that the wording of the second sentence of Article 2 § 1 continues to act as a bar to its interpreting the words “inhuman or degrading treatment or punishment” in Article 3 as including the death penalty.

LA PENA DI MORTE NELLA CEDU

Caso, Al-Saadoon and Mufdhi v. the United Kingdom, 2 marzo 2010

The Court further reiterates that expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case Article 3 implies an obligation not to deport the person in question to that country (see Saadi, cited above, § 125). Similarly, Article 2 of the Convention and Article 1 of Protocol No. 13 prohibit the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there.

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Ergastolo

L’ERGASTOLO NELLA GIURISPRUDENZA DELLA CEDU

Art. 3 – Proibizione della tortura

Nessuno può essere sottoposto a tortura né a pene o trattamenti inumani o degradanti.

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

1. La «netta sproporzione»

102. Secondo la sentenza della camera, qualsiasi pena nettamente sproporzionata è contraria all'articolo 3 della Convenzione. Questo è anche il parere espresso dalle parti nelle loro osservazioni presentate dinanzi alla camera e alla Grande Camera. Da parte sua, quest'ultima approva e fa sua la conclusione della camera. Essa ritiene anche, insieme a quest'ultima, che solo in casi rari ed eccezionali sarà soddisfatto il criterio della netta sproporzione. (paragrafo 83 supra e paragrafi 88 e 89 della sentenza della camera).

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

106. Per gli stessi motivi, gli Stati contraenti devono rimanere liberi anche di infliggere pene perpetue agli adulti autori di reati particolarmente gravi come l'omicidio: farlo non è di per sé vietato dall'articolo 3 né da altre disposizioni della Convenzione e non è incompatibile con quest'ultima (Kafkaris, sopra citata, § 97). Ciò è ancora più vero nel caso di una pena non obbligatoria ma pronunciata da un giudice indipendente che abbia valutato globalmente le circostanze attenuanti e aggravanti del caso di specie.

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

107. Tuttavia, come la Corte ha affermato anche nella sentenza Kafkaris, infliggere a un adulto una pena perpetua non riducibile può sollevare una questione dal punto di vista dell'articolo 3 (ibidem). Da questo principio derivano due punti particolari, ma connessi, che la Corte ritiene necessario sottolineare e riaffermare.

108. In primo luogo, il semplice fatto che una pena della reclusione a vita possa in pratica essere scontata integralmente non la rende una pena non riducibile. Una pena riducibile de jure e de facto non solleva alcuna questione dal punto di vista dell'articolo 3 (Kafkaris, sopra citata, § 98).

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

109. In secondo luogo, per decidere se, in un determinato caso, la pena perpetua possa risultare non riducibile, la Corte cerca di stabilire se si possa affermare che un detenuto condannato all'ergastolo abbia delle possibilità di essere liberato. Laddove il diritto nazionale offre la possibilità di rivedere la pena perpetua al fine di commutarla, sospenderla, porvi fine o liberare il detenuto con la condizionale, le esigenze dell'articolo 3 sono soddisfatte (Kafkaris, sopra citata, § 98).

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

112. Inoltre, una persona condannata all'ergastolo senza alcuna prospettiva di liberazione né possibilità di far riesaminare la sua pena perpetua rischia di non potersi mai riscattare: qualsiasi cosa faccia in carcere, per quanto eccezionali possano essere i suoi progressi per correggersi, la sua pena rimane immutabile e non soggetta a controllo. La punizione, del resto, rischia di appesantirsi ancora di più con il passare del tempo: quanto più vive il detenuto, tanto più lunga sarà la sua pena. In tal modo, anche quando l'ergastolo è una punizione meritata alla data in cui viene inflitta, col passare del tempo esso non garantisce più una sanzione giusta e proporzionata, per riprendere i termini utilizzati dal Lord Justice Laws nella sentenza Wellington (paragrafo 54 supra).

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

113. Inoltre, come ha ammesso la Corte costituzionale federale tedesca nella causa relativa all'ergastolo (paragrafo 69 supra), sarebbe incompatibile con le disposizioni della Legge fondamentale che riconosce la dignità umana che, in maniera coercitiva, lo Stato privi una persona della sua libertà senza dargli almeno una possibilità di recuperarla un giorno. Tale constatazione ha portato l'alta giurisdizione a concludere che le autorità carcerarie avevano il dovere di favorire il reinserimento dei condannati all'ergastolo e che questo costituiva un imperativo costituzionale per qualsiasi società che si fonda sulla dignità umana. Del resto, essa ha precisato, successivamente, in una causa relativa a un criminale di guerra, che tale principio si applicava a tutti i condannati all'ergastolo, indipendentemente dalla natura dei reati commessi, e che prevedere la possibilità di una liberazione soltanto per le persone inferme o in punto di morte non era sufficiente (paragrafo 70 supra).
Considerazioni analoghe devono essere applicate nell'ambito del sistema della Convenzione, la cui essenza stessa, come ha spesso affermato la Corte, è il rispetto della dignità umana (si vedano, tra altre, Pretty c. Regno Unito, n. 2346/02, § 65, CEDU 2002-III, e V.C. c. Slovacchia, n. 18968/07, § 105, CEDU 2011).

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

119. Per i motivi sopra esposti, la Corte considera che, per quanto riguarda le pene perpetue, l'articolo 3 debba essere interpretato nel senso che esige che esse siano riducibili, ossia sottoposte a un riesame che permetta alle autorità nazionali di verificare se, durante l'esecuzione della pena, il detenuto abbia fatto dei progressi sulla via del riscatto tali che nessun motivo legittimo relativo alla pena permetta più di giustificare il suo mantenimento in detenzione.

120. La Corte sottolinea tuttavia che, tenuto conto del margine di apprezzamento che deve essere accordato agli Stati contraenti in materia di giustizia penale e di determinazione delle pene (paragrafi 104 e 105 supra), essa non ha il compito di imporre la forma (amministrativa o giudiziaria) che un tale esame deve assumere. Per lo stesso motivo essa non deve stabilire in quale momento si debba procedere a un tale esame. Ciò premesso, la Corte constata anche che, dagli elementi di diritto comparato e di diritto internazionale prodotti dinanzi ad essa, risulta che vi è una netta tendenza in favore della creazione di un meccanismo speciale che garantisca un primo riesame entro un termine massimo di venticinque anni da quando la pena perpetua è stata inflitta, e poi, successivamente, dei riesami periodici.

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

121. Di conseguenza, laddove il diritto nazionale non prevede la possibilità di un tale riesame, una pena dell'ergastolo effettivo contravviene alle esigenze derivanti dall'articolo 3 della Convenzione.

122. nel caso in cui la pena è non riducibile ai sensi della legislazione nazionale alla data in cui è stata pronunciata, non sarebbe logico aspettarsi che il detenuto cooperi per il proprio reinserimento senza sapere se, in una data futura non conosciuta, sarà o meno istituito un meccanismo che permetta di prevedere la sua liberazione in considerazione degli sforzi da lui compiuti per il reinserimento. Un detenuto condannato all'ergastolo effettivo ha il diritto di sapere, sin dall'inizio della sua pena, cosa deve fare perché sia esaminata una sua possibile liberazione e quali siano le condizioni applicabili. Egli ha il diritto, in particolare, di conoscere il momento in cui il riesame della sua pena avrà luogo o potrà essere richiesto.

CEDU, VINTER E AL. C. REGNO UNITO, GC, 9 LUGLIO 2013

OPINIONE CONCORDANTE DEL GIUDICE POWER-FORDE

Ho votato come la maggioranza in questa causa e desidero aggiungere quanto segue.
Comprendo e condivido molti dei punti di vista espressi dal giudice Villiger nella sua opinione parzialmente dissenziente. Tuttavia, ciò che mi ha fatto propendere in favore della maggioranza è la conferma da parte della Corte nella sua sentenza che l'articolo 3 comprende ciò che si potrebbe chiamare «il diritto alla speranza». È questo il punto. La sentenza riconosce, implicitamente, che la speranza è un aspetto importante e costitutivo della persona umana. Gli autori degli atti più odiosi ed estremi che infliggono ad altri sofferenze indescrivibili conservano comunque la loro umanità fondamentale e hanno la capacità intrinseca di cambiare. Per quanto lunghe e meritate siano le pene detentive inflitte loro, essi conservano la speranza che, un giorno, potranno riscattarsi per gli errori commessi. Non dovrebbero essere interamente privati di una tale speranza. Impedire loro di nutrire tale speranza significherebbe negare un aspetto fondamentale della loro umanità e, pertanto, sarebbe degradante.

CEDU, ÖCALAN C. TURCHIA (NO. 2), 18 MARZO 2014

As a result, current legislation in Turkey clearly prohibits the applicant, in his capacity as a person sentenced to aggravated life imprisonment for a crime against the security of the State, from applying, at any time while serving his sentence, for release on legitimate penological grounds.

203. Furthermore, it is true that under Turkish law, in the event of the illness or old age of a life prisoner, the President of the Republic may order his immediate or deferred release. Nevertheless, the Court considers that release on humanitarian grounds does not correspond to the concept of "prospect of release" on legitimate penological grounds.

204. It is also true that the Turkish legislature has, at fairly regular intervals, adopted general or partial amnesty laws (the latter type of law grants release on parole after a minimum term) in order to help resolve major social problems. However, there is no evidence before the Court that such a plan is being prepared by the Government to provide the applicant with a prospect of release. The Court must concern itself with the law as applied in practice to prisoners sentenced to aggravated life imprisonment. That legislation is characterised by a lack of any mechanism for reviewing, after a specified minimum term of incarceration, life sentences imposed for crimes such as those committed by the applicant with a view to verifying the persistence of legitimate reasons for continuing his incarceration.

CEDU, ÖCALAN C. TURCHIA (NO. 2), 18 MARZO 2014

206. In the light of these findings, the Court considers that the life sentence imposed on the applicant cannot be deemed reducible for the purposes of Article 3 of the Convention. It concludes that in this context the requirements of this provision were not fulfilled in respect of the applicant.

207. There has accordingly been a violation of Article 3 of the Convention on this point. Nevertheless, the Court considers that this finding of a violation cannot be understood as giving the applicant the prospect of imminent release. The national authorities must review, under a procedure to be established by adopting legislative instruments and in line with the principles laid down by the Court in paragraphs 111-113 of its Grand Chamber judgment in the case of Vinter and Others (quoted in paragraph 194 of this judgment), whether the applicant's continued incarceration is still justified after a minimum term of detention, either because the requirements of punishment and deterrence have not yet been entirely fulfilled or because the applicant's continued detention is justified by reason of his dangerousness.

CEDU, LÁSZLÓ MAGYAR C. UNGHERIA, 20 MAGGIO 2014

58. Therefore, the Court is not persuaded that the institution of presidential clemency, taken alone (without being complemented by the eligibility for release on parole) and as its regulation presently stands, would allow any prisoner to know what he or she must do to be considered for release and under what conditions. In the Court's view, the regulation does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might be (see paragraphs 50 and 53 above). The Court is therefore not persuaded that, at the present time, the applicant's life sentence can be regarded as reducible for the purposes of Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention.

CEDU, HARAKCHIEV E TOLUMOV C. BULGARIA, 8 LUGLIO 2014

264. While the Convention does not guarantee, as such, a right to rehabilitation, and while Article 3 cannot be construed as imposing on the authorities an absolute duty to provide prisoners with rehabilitation or reintegration programmes and activities, such as courses or counselling, it does require the authorities to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine and tangible, the authorities must also give life prisoners a proper opportunity to rehabilitate themselves. Indeed, the Court has already had occasion to note that in recent years there has been a trend towards placing more emphasis on rehabilitation, which constitutes the idea of re-socialisation through the fostering of personal responsibility…

CEDU, HARAKCHIEV E TOLUMOV C. BULGARIA, 8 LUGLIO 2014

265. That is, of course, an area in which the Contracting States enjoy a wide margin of appreciation. However, the regime and conditions of a life prisoner's incarceration cannot be regarded as a matter of indifference in that context. Those conditions and regime need to be such as to make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence.

CEDU, HARAKCHIEV E TOLUMOV C. BULGARIA, 8 LUGLIO 2014

In the Court's view, the deleterious effects of that impoverished regime, coupled with the unsatisfactory material conditions in which Mr Harakchiev was kept, must have seriously weakened the possibility of his reforming himself and thus entertaining a real hope that he might one day achieve and demonstrate his progress and obtain a reduction of his sentence. To that should be added the lack of consistent periodical assessment of his progress towards rehabilitation. It is true that Mr Harakchiev was the subject of annual psychological assessments (see paragraph 48 above). However, it is noteworthy that the National standards for the treatment of life prisoners, issued in 2007, appear to be geared towards helping life prisoners adapt to their sentence rather than work towards their rehabilitation (see paragraph 135 above). Nor do those standards make it clear whether any positive changes in life prisoners should be the result of their own efforts or of a proactive approach on the part of the prison authorities, as recommended by the CPT (see paragraph 165 above).

CEDU, MURRAY C. PAESI BASSI, GC, 26 APRILE 2016

Paragrafi 99 s.: perfetta ricapitolazione di tutta la giurisprudenza CEDU

Paragrafi 101 ss.: funzione rieducativa della pena

103. Notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court's case-law thus presupposes that convicted persons, including life prisoners, should be allowed to rehabilitate themselves.

104. The obligation to offer a possibility of rehabilitation is to be seen as an obligation of means, not one of result. However, it entails a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation and enable such prisoners to make progress towards their rehabilitation.

CEDU, T.P. E A.T. C. UNGHERIA, 4 OTTOBRE 2016

40. As a way of complying with the Court's findings in the above case, the respondent State enacted new legislation, which introduced the mechanism of an automatic review of whole life sentences. Under the new legislation, this mandatory pardon procedure is to be initiated only after a convict has served forty years of his or her sentence.

CEDU, T.P. E A.T. C. UNGHERIA, 4 OTTOBRE 2016

43. Turning to the present case, the Government argued that the forty-year period set out in the new legislation corresponded to the retribution phase of a whole life sentence and was proportionate to the circumstances of the offence. In any event, it fell within the margin of appreciation enjoyed by the States in this matter. The Government also seemed to suggest that the far shorter time-period mentioned in Vinter and Others was only a general indication rather than a clear standard set in all Council of Europe member states (see § 31 above).

44. For its part, the Court would agree with the Government that States indeed enjoy a margin of appreciation in the area of criminal justice and sentencing (see Vinter and Others, cited above, § 120; Bodein v. France, cited above, § 61). However, it is axiomatic that the said margin of appreciation cannot be unlimited (see, mutatis mutandis, Hirst v. the United Kingdom (no. 2) [GC], no. 74025/01, § 82, ECHR 2005-IX; A, B and C v. Ireland [GC], no. 25579/05, § 238, ECHR 2010; Parrillo v. Italy [GC], no. 46470/11, § 183, ECHR 2015).

CEDU, T.P. E A.T. C. UNGHERIA, 4 OTTOBRE 2016

45. In that connection, the Court notes that forty years during which a prisoner must wait before he can for the first time expect to be considered for clemency is a period significantly longer than the maximum recommended time frame after which the review of a life sentence should be guaranteed, established on the basis of a consensus in comparative and international law (see Vinter, cited above, § 120). It is also hardly comparable with the twenty-six-year period that the applicant in Bodein had to wait before being eligible to apply for parole (see § 42 above and Bodein, cited above, § 61). Moreover, unlike in Bodein, the Government did not seek to argue that any period of the applicants' pre-trial detention would be calculated towards the forty-year time-limit necessary in order to commence the mandatory pardon proceedings. The Court cannot but conclude that such a protracted waiting period thus falls outside any acceptable margin of appreciation enjoyed by the State, however wide that margin might be.

CEDU, HUTCHINSON C. REGNO UNITO, GC, 17 GENNAIO 2017

39. In the McLoughlin decision the Court of Appeal responded explicitly to the Vinter critique. It affirmed the statutory duty of the Secretary of State to exercise the power of release compatibly with Article 3 of the Convention. As for the published policy, which it too regarded as highly restrictive (at paragraphs 11 and 32 of McLoughlin, see paragraph 19 above), the Court of Appeal clarified that the Lifer Manual cannot restrict the duty of the Secretary of State to consider all circumstances relevant to release under section 30. Nor can the published policy fetter the Secretary of State's discretion by taking account only of the matters stipulated in the Lifer Manual. The failure to revise official policy so as to align it with the relevant statutory provisions and case law is, the Court of Appeal explained, of no consequence as a matter of domestic law.

CEDU, HUTCHINSON C. REGNO UNITO, GC, 17 GENNAIO 2017

40. The Court considers that the Court of Appeal has brought clarity as to the content of the relevant domestic law, resolving the discrepancy identified in the Vinter judgment. Although Vinter contemplated that the policy might be replaced or quashed in the course of judicial review proceedings (Vinter and Others, cited above, § 129), the Court notes the Government's submission that the Lifer Manual retains its validity in relation to release on compassionate (in the narrow sense of humanitarian) grounds. What is important is that, as confirmed in McLoughlin, this is just one of the circumstances in which the release of a prisoner may, or indeed must, be ordered (see paragraphs 32-33 of McLoughlin at paragraph 19 above).

CEDU, HUTCHINSON C. REGNO UNITO, GC, 17 GENNAIO 2017

50. It is therefore clear from the case-law that the executive nature of a review is not in itself contrary to the requirements of Article 3. The Court sees no reason to depart from this.

51. As for the applicant's criticisms of the domestic system, the Court considers that these are countered by the effect of the Human Rights Act. As recalled in McLoughlin (see paragraph 29 of that decision, set out at paragraph 19 above), the Secretary of State is bound by section 6 of that Act to exercise the power of release in a manner compatible with Convention rights. He or she is required to have regard to the relevant case-law of this Court and to provide reasons for each decision.

52. Furthermore, the Secretary of State's decisions on possible release are subject to review by the domestic courts, themselves bound by the same duty to act compatibly with Convention rights.

CEDU, KHAMTOKHU E AKSENCHIK C. RUSSIA, GC, 24 GENNAIO 2017

69. The present case concerns a sentencing policy which exempted female offenders, juvenile offenders and offenders aged 65 or over from life imprisonment. It cannot be disputed that this exemption amounted to a difference in treatment on grounds of sex and age. It falls next to the Court to examine whether this difference of treatment pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In doing so it must also have regard to the margin of appreciation the respondent State enjoys in this context.

CEDU, KHAMTOKHU E AKSENCHIK C. RUSSIA, GC, 24 GENNAIO 2017

80. Firstly, the Court sees no reason to question the difference in treatment of the group of adult offenders to which the applicants belong, who are not exempted from life imprisonment, as compared to that of juvenile offenders who are so exempted. Indeed, the exemption of juvenile offenders from life imprisonment is consonant with the approach that is common to the legal systems of all the Contracting States, without exception, namely the abolition of life imprisonment for offenders considered juveniles under their respective domestic laws.

By limiting the imposition of life sentences through providing for a maximum age limit, the Russian legislature used one among several methods at its disposal for securing a prospect of release for a reasonable number of prisoners and thus acted within its margin of appreciation in line with Convention standards.

CEDU, KHAMTOKHU E AKSENCHIK C. RUSSIA, GC, 24 GENNAIO 2017

85. The Court considers it quite natural that the national authorities, whose duty it is also to consider, within the limits of their jurisdiction, the interests of society as a whole, should enjoy broad discretion when they are asked to make rulings on sensitive matters such as penal policy. Moreover, the area in question should still be regarded as one of evolving rights, with no established consensus, in which States must also enjoy a margin of appreciation in the timing of the introduction of legislative changes.

86. It therefore appears difficult to criticise the Russian legislature for having established, in a way which reflects the evolution of society in that sphere, the exemption of certain groups of offenders from life imprisonment. Such an exemption represents, all things considered, social progress in penological matters.

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

161. The Court firstly notes that Lithuanian law does not permit life prisoners to be released on parole, a measure that applies only to prisoners serving fixed-term sentences (see paragraph 69 above).

162. The Court has also consistently held that the commutation of life imprisonment because of terminal illness, which only means that a prisoner is allowed to die at home or in a hospice rather than behind prison walls, cannot be considered as a "prospect of release", as the notion is understood by the Court (see *Vinter and Others*, cited above, §127, and *Öcalan v. Turkey (no. 2)* (nos. 24069/03 and 3 others, § 203, 18 March 2014).

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

163. The Court further shares the applicants' and the third-party intervener's view that amnesty may not be regarded as a measure giving life prisoners a prospect of mitigation of their sentence or release. The seven amnesties so far declared by the Seimas did not apply to prisoners convicted of the most serious crimes. Moreover, three of those amnesties explicitly excluded life prisoners from the scope of their application, this fact also having been underlined by the life prisoners (see paragraphs 67 and 93 above). The Government have not provided any information or produced evidence showing that any new draft law on amnesty would be drafted which would include life prisoners and would give them a "prospect of release" (see *Öcalan*, cited above, § 204). The Court reiterates that European penal policy currently places emphasis on the rehabilitative aim of imprisonment, even in the case of life prisoners (see *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 245, ECHR 2014 (extracts)). Amnesty, which is an act of general rather than individual application, does not appear to take into account the rehabilitation aspect of each individual prisoner.

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

168. Since the day of their approval in 1993, the Pardon Commission regulations have retained the same list of criteria to be taken into account when exercising presidential pardon: the nature of the crime committed, the danger of that crime to society, the personality of the life prisoner, his behaviour and attitude towards work, the time already served, the prison authorities' opinion, the opinion of non-governmental organisations and the prisoner's former employer, as well as other circumstances. … That being so, the Court finds that there is nothing ambiguous or misleading in those rules such as to make the applicants' situation uncertain as to the factors that guide the President in the exercise of his or her power of pardon. The above list can be seen as a set of criteria allowing the President to assess whether a life prisoner's continued imprisonment is justified on legitimate penological grounds.

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

169. The Court next turns to the question whether presidential pardon could be regarded as making life sentences reducible *de facto*.

172 … The Court has already held that in assessing whether the life sentence is reducible *de facto* it may be of relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon (see *Murray*, cited above, § 100, with further references). According to the statistical information provided by the Government, only one out of thirty-five life prisoners who have asked for pardon has received a positive response, whereas in general about one out of five of all pardon pleas are granted (see paragraphs 138 and 139 above).

173. In the light of the above, the Court considers that in Lithuania the presidential power of pardon is a modern-day equivalent of the royal prerogative of mercy, based on the principle of humanity (also see *Harakchiev and Tolumov*, cited above, § 76), rather than a mechanism, with adequate procedural safeguards, for review of the prisoners' situation so that the adjustment of their life sentences could be obtained.

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

174. The Court has constantly held that the prisoner's right to a review entails an actual assessment of the relevant information whether his or her continued imprisonment is justified on legitimate penological grounds (see László Magyar, § 57, and Murray, § 100, both cited above), and the review must also be surrounded by sufficient procedural guarantees (see Kafkaris, § 105; Harakchiev and Tolumov, § 262; and Murray § 100, all cited above). To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided (see Murray, cited above, § 100). The Court further observes the CPT's view to the effect that discretionary release from imprisonment, as with its imposition, was a matter for the courts and not the executive, a view which had led to proposed changes in the procedures for reviewing life imprisonment in Denmark, Finland and Sweden (see Murray, cited above, § 61). The Statute of the International Criminal Court also states that that court shall review the life sentence if more than twenty-five years have passed since the life prisoner's conviction (see paragraph 119 above).

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

180. The Court reiterates that the mere fact that a prisoner has already served a long term of imprisonment does not weaken the State's positive obligation to protect the public, and that no Article 3 issue could arise if a life prisoner continues to pose a danger to society. This is particularly so for those convicted of murder or other serious offences against the person (see *Vinter and Others*, § 108; also see *Murray*, § 111, both cited above). However, it equally considers that even those who commit the most abhorrent and egregious of acts, nevertheless retain their essential humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, some day, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading.

CEDU, MATIOŠAITIS AND OTHERS V. LITHUANIA, 23 MAGGIO 2017

181. The Court also acknowledges that having regard to the margin of appreciation which must be accorded to Contracting States in matters of criminal justice and sentencing, it is not its task to prescribe the form (executive or judicial) which that review should take (see *Vinter and Others*, cited above, § 120; also see *Hutchinson*, cited above, §§ 46-50). That being so, the Court nevertheless considers that in order to guarantee proper consideration of the changes and the progress towards rehabilitation made by life prisoner, however significant they might be, the review should entail either the executive giving reasons or judicial review, so that even the appearance of arbitrariness is avoided. The Court has also stated that to the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review (see *Murray*, cited above, § 100). The Court has already established that presidential pardon in Lithuania *de facto* does not allow a life prisoner to know what he or she must do to be considered for release and under what conditions. It has also noted the absence of judicial review which could lead to full or partial commutation of a life sentence. Accordingly, the Court finds that, at the present time, the applicants' life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention (see *László Magyar*, cited above, § 58). Last but not least, it transpires that no reform will take place in Lithuania until the Court has resolved this case (see paragraphs 60 and 98 above).

CEDU, PETUKHOV V. UKRAINE (NO. 2), 12 MARZO 2019

172. The Court notes that the procedure for dealing with requests for clemency is set out in the Clemency Procedure Regulations, approved by a presidential decree to that effect. Among the considerations to be taken into account during the examination of a request for clemency, the regulations refer to “the seriousness of the committed crime, the duration of the sentence already served, the character of the convict, his or her behaviour, the existence of sincere repentance, compensation for or redress of the damage caused, as well as family-related and other circumstances” (see paragraph 86 above).

CEDU, PETUKHOV V. UKRAINE (NO. 2), 12 MARZO 2019

173. In the Court's opinion, the above considerations provide some guidance as to the criteria and conditions for review of a life sentence and could be construed as referring to legitimate penological grounds for the continuing incarceration of prisoners. It is noteworthy, however, that those considerations are applicable in the context of a broader restriction. Namely, the Clemency Procedure Regulations state that "persons convicted for serious or particularly serious crimes, or having two or more criminal records in respect of the commission of premeditated crimes ... may be granted clemency in exceptional cases and subject to extraordinary circumstances" (see paragraph 86 above). All life prisoners clearly fall within this category (see paragraph 76 above). It is not known what is meant by "exceptional cases" and "extraordinary circumstances", and there is nothing to suggest that the penological grounds for keeping someone in prison are of relevance for the interpretation of those notions under the legal frameworks as they presently stand in Ukraine.

174. In other words, prisoners who receive a whole life sentence do not know from the outset what they must do in order to be considered for release and under what conditions.

177. The Court further observes that the procedure in Ukraine requires neither the Clemency Commission nor the President to give reasons in their decisions regarding requests for clemency.

CEDU, PETUKHOV V. UKRAINE (NO. 2), 12 MARZO 2019

179. In the present case the absence of an obligation on the President of Ukraine and his subordinate authorities to give reasons in their decisions on clemency requests is further aggravated by the lack of any judicial review of those decisions. In such circumstances, the exercise by life prisoners of their right to a review of their life sentence by way of presidential clemency cannot be regarded as surrounded by sufficient procedural guarantees (see *Murray*, cited above, § 100).

180. Therefore, in the light of the above considerations, the Court considers that in Ukraine the presidential power of clemency is a modern-day equivalent of the royal prerogative of mercy, based on the principle of humanity, rather than a mechanism, based on penological grounds and with adequate procedural safeguards, for review of a prisoner's situation so that the adjustment of his or her life sentence could be obtained (see and compare with *Matiosaitis and Others*, cited above, § 173).

186. It is known from public sources that only one clemency request from a life prisoner has been granted in Ukraine to date (see paragraph 93 above). From the statistical point of view, this shows that in practice life prisoners have negligible prospects of having their requests for clemency granted.

187. All the foregoing considerations lead the Court to conclude that there has been a violation of Article 3 of the Convention on account of the applicant's irreducible life sentence.

CEDU, PETUKHOV V. UKRAINE (NO. 2), 12 MARZO 2019

194. Nevertheless, the Court observes that the present case, in so far as it concerns the irreducibility of a life sentence, discloses a systemic problem calling for the implementation of measures of a general character. The nature of the violation found under Article 3 of the Convention suggests that for the proper execution of the present judgment the respondent State would be required to put in place a reform of the system of review of whole-life sentences. The mechanism of such a review should guarantee the examination in every particular case of whether continued detention is justified on legitimate penological grounds and should enable whole-life prisoners to foresee, with some degree of precision, what they must do to be considered for release and under what conditions, in accordance with the standards developed in the Court's case-law.

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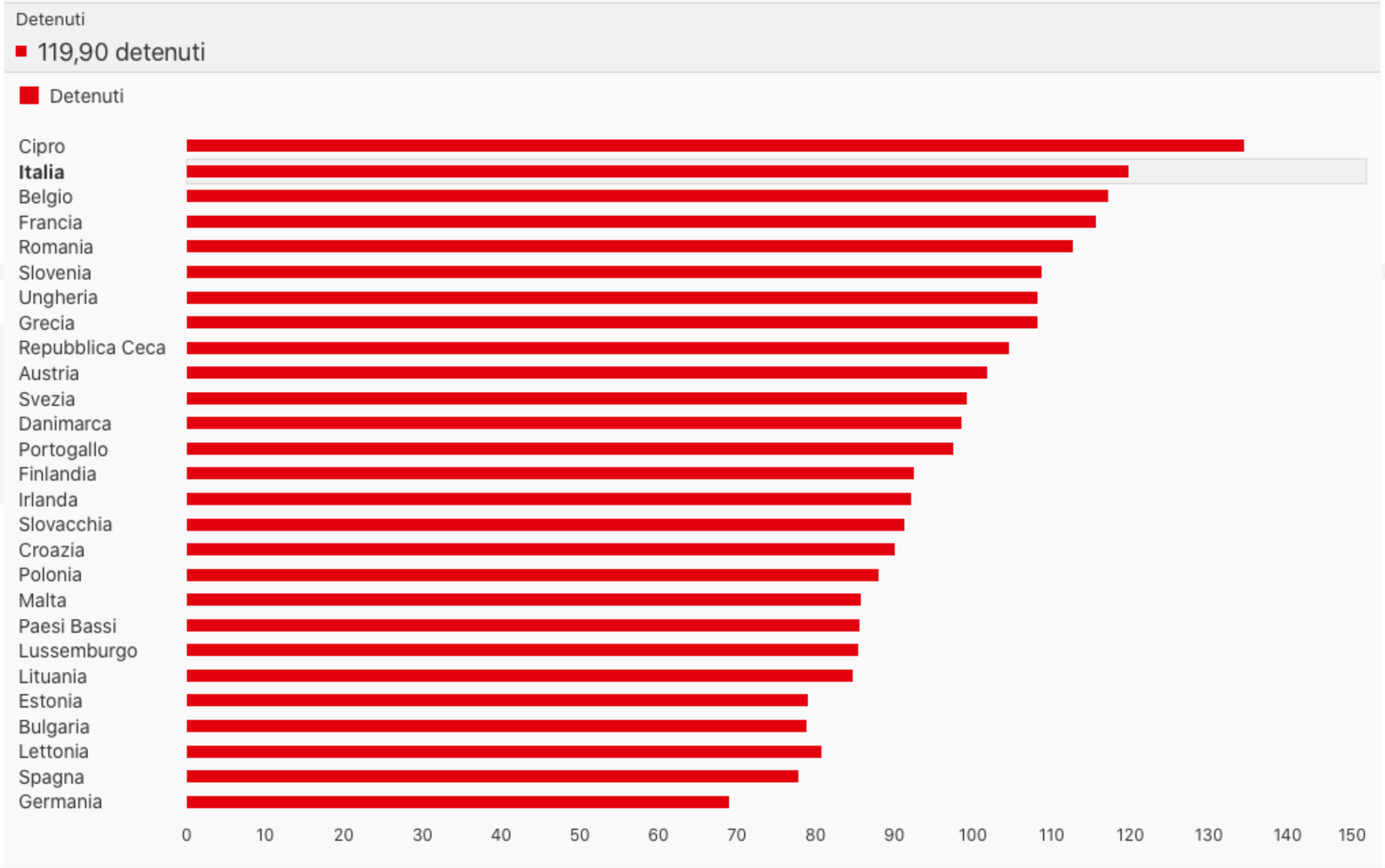
DI TRIESTE

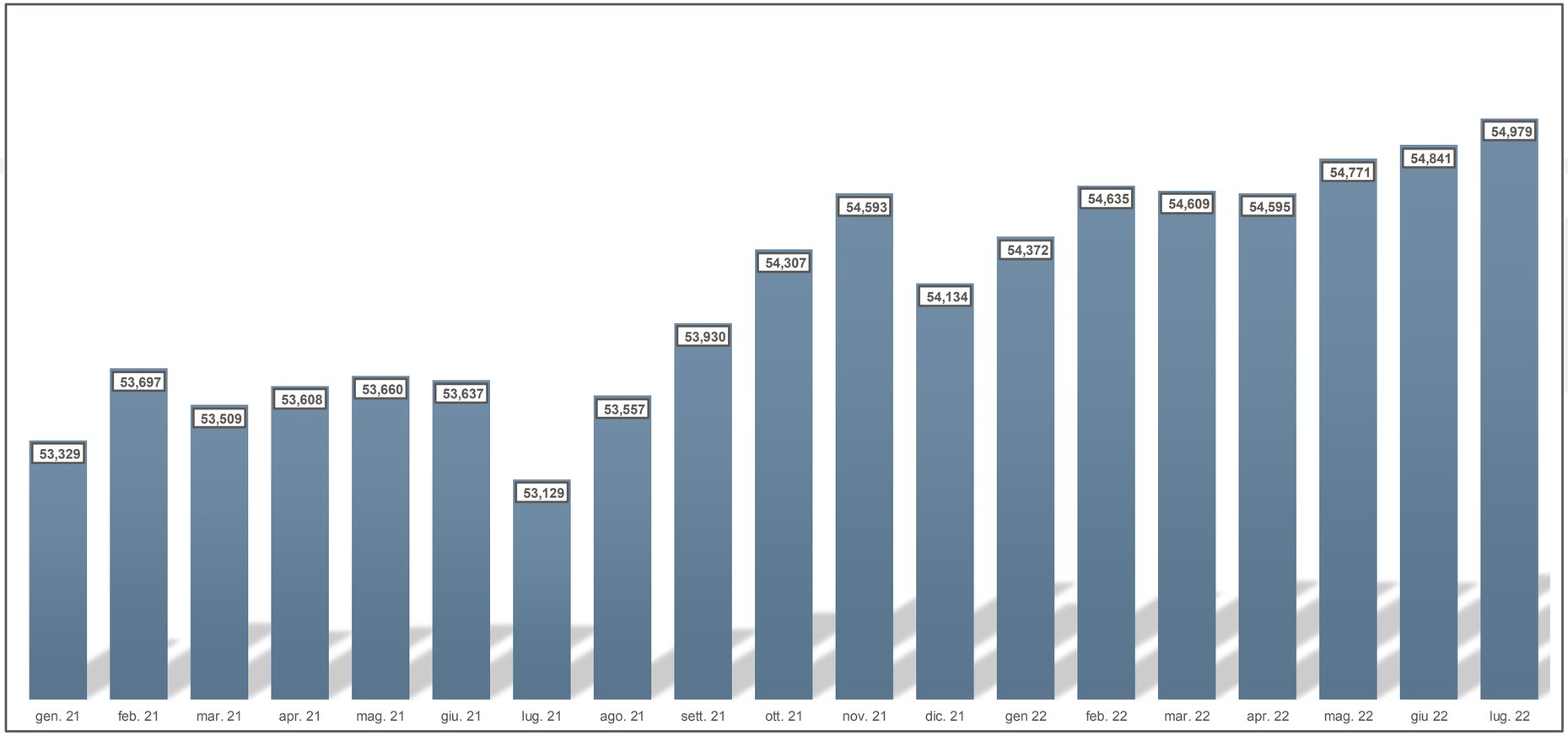
Sovraffollamento carcerario

IL *PRISON OVERCROWDING* TRA PRINCIPIO RIEDUCATIVO E DI UMANITÀ



IL *PRISON OVERCROWDING* TRA PRINCIPIO RIEDUCATIVO E DI UMANITÀ

Numero di persone detenute negli Istituti di Pena in Italia da gennaio 2021 a luglio 2022



CEDU, SULEJMANOVIC C. ITALIA, 16 LUGLIO 2009

Esso impone allo Stato di assicurarsi che le condizioni detentive di ogni detenuto siano compatibili con il rispetto della dignità umana, che le modalità di esecuzione della misura non sottopongano l'interessato ad un disagio o ad una prova d'intensità superiore all'inevitabile livello di sofferenza inerente alla detenzione e che, tenuto conto delle esigenze pratiche della reclusione, la salute e il benessere del detenuto siano adeguatamente assicurate.

CEDU, SULEJMANOVIC C. ITALIA, 16 LUGLIO 2009

La Corte ricorda anche che il CPT ha fissato in 7 m^2 a persona la superficie minima auspicabile per una cella detentiva e che un'eccessiva sovrappopolazione carceraria pone di per sé un problema sotto il profilo dell'articolo 3 della Convenzione. Tuttavia, la Corte non può quantificare, in modo preciso e definitivo, lo spazio personale che deve essere concesso ad ogni detenuto ai sensi della Convenzione. Esso può infatti dipendere da numerosi fattori, quali la durata della privazione della libertà, le possibilità di accesso alla passeggiata all'aria aperta o le condizioni mentali e fisiche del detenuto.

CEDU, SULEJMANOVIC C. ITALIA, 16 LUGLIO 2009

Ciononostante, in alcuni casi, la mancanza di spazio personale per i detenuti era talmente flagrante da giustificare, da sola, la constatazione di violazione dell'articolo 3. In quei casi, in linea di principio, i ricorrenti disponevano individualmente di meno di 3 m^2.

In compenso, in casi in cui la sovrappopolazione non era così eccessiva da sollevare da sola un problema sotto il profilo dell'articolo 3, la Corte ha notato che, nell'esame del rispetto di questa disposizione, andavano presi in considerazione altri aspetti delle condizioni detentive. Tra di essi figurano la possibilità di utilizzare privatamente i servizi igienici, l'aerazione disponibile, l'accesso alla luce e all'aria naturali, la qualità del riscaldamento e il rispetto delle esigenze sanitarie di base. Così, anche in casi in cui ogni detenuto disponeva di uno spazio variabile dai 3 ai 4 m^2, la Corte ha concluso per la violazione dell'articolo 3 dal momento che la mancanza di spazio si accompagnava ad una mancanza di ventilazione e di luce.

CEDU, SULEJMANOVIC C. ITALIA, 16 LUGLIO 2009

La Corte osserva che … ciascun detenuto avrebbe disposto in media solo di 2,70 m^2. Essa ritiene che una tale situazione abbia inevitabilmente causato disagi e inconvenienti quotidiani al ricorrente, costretto a vivere in uno spazio molto esiguo, di gran lunga inferiore alla superficie minima ritenuta auspicabile dal CPT. A giudizio della Corte, la flagrante mancanza di spazio personale di cui il ricorrente ha sofferto è, di per sé, costitutiva di un trattamento inumano o degradante.

Ne consegue che vi è stata violazione dell'articolo 3 della Convenzione a causa delle condizioni in cui il ricorrente è stato detenuto fino all'aprile 2003.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

76. Alla luce di quanto precede, la Corte ritiene che i ricorrenti non abbiano beneficiato di uno spazio vitale conforme ai criteri da essa ritenuti accettabili con la sua giurisprudenza. Essa desidera rammentare ancora una volta in questo contesto che la norma in materia di spazio abitabile nelle celle collettive raccomandata dal CPT è di quattro metri quadrati.

77. La Corte osserva poi che la grave mancanza di spazio sperimentata dai sette ricorrenti per periodi variabili dai quattordici ai cinquantaquattro mesi (paragrafi 6 e 7 supra), costitutiva di per sé di un trattamento contrario alla Convenzione, sembra essere stata ulteriormente aggravata da altri trattamenti denunciati dagli interessati. La mancanza di acqua calda nei due istituti per lunghi periodi, ammessa dal Governo, nonché l'illuminazione e la ventilazione insufficienti nelle celle del carcere di Piacenza, sulle quali il Governo non si è espresso, non hanno mancato di causare nei ricorrenti un'ulteriore sofferenza, benché non costituiscano di per sé un trattamento inumano e degradante.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

Ai sensi dell'articolo 46 della Convenzione:
«1. Le Alte Parti contraenti si impegnano a conformarsi alle sentenze definitive della Corte sulle controversie nelle quali sono parti.
2. La sentenza definitiva della Corte è trasmessa al Comitato dei Ministri che ne controlla l'esecuzione.»

La Corte rammenta che, come interpretato alla luce dell'articolo 1 della Convenzione, l'articolo 46 crea per lo Stato convenuto l'obbligo giuridico di porre in atto, sotto il controllo del Comitato dei Ministri, le misure generali e/o individuali che si rendano necessarie per salvaguardare il diritto del ricorrente di cui la Corte ha constatato la violazione. Misure di questo tipo devono essere adottate anche nei confronti di altre persone nella stessa situazione dell'interessato; si presume, infatti, che lo Stato ponga fine ai problemi all'origine delle constatazioni operate dalla Corte.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

Al fine di facilitare l'effettiva attuazione delle sue sentenze secondo il principio di cui sopra, la Corte può adottare una procedura di sentenza pilota che le consenta di mettere in luce chiaramente, nella sua sentenza, l'esistenza di problemi strutturali all'origine delle violazioni e di indicare le misure o azioni particolari che lo Stato convenuto dovrà adottare per porvi rimedio.

Un altro fine importante perseguito dalla procedura della sentenza pilota è quello di indurre lo Stato convenuto a trovare, a livello nazionale, una soluzione alle numerose cause individuali originate dallo stesso problema strutturale, dando così effetto al principio di sussidiarietà che è alla base del sistema della Convenzione.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

La Corte ha appena constatato che il sovraffollamento carcerario in Italia non riguarda esclusivamente i casi dei ricorrenti (paragrafo 54 supra). Essa rileva, in particolare, che il carattere strutturale e sistemico del sovraffollamento carcerario in Italia emerge chiaramente dai dati statistici indicati in precedenza nonché dai termini della dichiarazione dello stato di emergenza nazionale proclamata dal presidente del Consiglio dei ministri italiano nel 2010.

Del resto, il carattere strutturale del problema individuato nelle presenti cause è confermato dal fatto che diverse centinaia di ricorsi proposti contro l'Italia al fine di sollevare un problema di compatibilità con l'articolo 3 della Convenzione delle inadeguate condizioni detentive legate al sovraffollamento carcerario in diversi istituti penitenziari italiani sono attualmente pendenti dinanzi ad essa. Il numero di questo tipo di ricorsi è in continuo aumento.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

In particolare, quando lo Stato non è in grado di garantire a ciascun detenuto condizioni detentive conformi all'articolo 3 della Convenzione, la Corte lo esorta ad agire in modo da ridurre il numero di persone incarcerate, in particolare attraverso una maggiore applicazione di misure punitive non privative della libertà (Norbert Sikorski, sopra citata, § 158) e una riduzione al minimo del ricorso alla custodia cautelare in carcere.

A quest'ultimo riguardo, la Corte è colpita dal fatto che il 40% circa dei detenuti nelle carceri italiane siano persone sottoposte a custodia cautelare in attesa di giudizio.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

Quanto alla o alle vie di ricorso interne da adottare per far fronte al problema sistemico riconosciuto nella presente causa, la Corte rammenta che, in materia di condizioni detentive, i rimedi «preventivi» e quelli di natura «compensativa» devono coesistere in modo complementare. Così, quando un ricorrente sia detenuto in condizioni contrarie all'articolo 3 della Convenzione, la migliore riparazione possibile è la rapida cessazione della violazione del diritto a non subire trattamenti inumani e degradanti. Inoltre, chiunque abbia subito una detenzione lesiva della propria dignità deve potere ottenere una riparazione per la violazione subita.

CEDU, TORREGGIANI E ALTRI C. ITALIA, 8 GENNAIO 2013

La Corte decide che, in attesa dell'adozione da parte delle autorità interne delle misure necessarie sul piano nazionale, l'esame dei ricorsi non comunicati aventi come unico oggetto il sovraffollamento carcerario in Italia sarà rinviato per il periodo di un anno a decorrere dalla data in cui la presente sentenza sarà divenuta definitiva. La Corte si riserva la facoltà, in qualsiasi momento, di dichiarare irricevibile una causa di questo tipo o di cancellarla dal ruolo in seguito ad un accordo amichevole tra le parti o ad una composizione della controversia con altri mezzi, conformemente agli articoli 37 e 39 della Convenzione. Per quanto riguarda invece i ricorsi già comunicati al governo convenuto, la Corte potrà proseguire il loro esame per la via della procedura normale.

CEDU, VASILESCU C. BELGIO, 25 NOVEMBRE 2014

Dans l'arret Torreggiani et autres (précité), la Cour a rappelé les principes qui se dégagent de sa jurisprudence concernant l'évaluation des conditions de détention sous l'angle de l'article 3 de la Convention. Elle s'est exprimée en ces termes:

S'agissant en particulier de l'espace personnel accordé au requérant, la Cour observe que, pendant une partie de sa détention, l'intéressé a subi les effets d'une situation de surpopulation carcérale. Les parties s'accordent à dire que, pendant plusieurs semaines, le requérant disposait d'un espace individuel en-dessous de la norme recommandée par le CPT pour les cellules collectives, c'est-à-dire moins de 4 m^2 (Torreggiani et autres, précité, § 68). Pendant quinze jours, le requérant a même disposé d'un espace individuel de moins de 3 m^2, ce qui constitue, selon la jurisprudence de la Cour, un espace personnel qui, à lui seul, suffit pour conclure à la violation de l'article 3 de la Convention.

CEDU, VASILESCU C. BELGIO, 25 NOVEMBRE 2014

Ce manque d'espace de vie individuel a été aggravé en l'espèce par le fait que, selon le requérant, il dut dormir sur un matelas posé à même le sol pendant plusieurs semaines, ce qui n'est pas conforme à la règle élémentaire établie par le CPT: «un détenu, un lit».

Partant, il y a eu violation de cette disposition.

CEDU, VASILESCU C. BELGIO, 25 NOVEMBRE 2014

La Cour a également constaté que les problèmes découlant de la surpopulation carcérale en Belgique ainsi que les problèmes d'hygiène et de vétusté des établissements revêtent un caractère structurel et ne concernent pas uniquement la situation personnelle du requérant.
Dans ce contexte, la Cour recommande à l'État défendeur d'envisager l'adoption de mesures générales. D'une part, des mesures devraient être prises afin de garantir aux détenus des conditions de détention conformes à l'article 3 de la Convention. D'autre part, un recours devrait être ouvert aux détenus aux fins d'empêcher la continuation d'une violation alléguée ou de permettre à l'intéressé d'obtenir une amélioration de ses conditions de détention (voir, à ce propos, Torreggiani et autres, précité, § 50).

CEDU, NESHKOV E ALTRI C. BULGARIA, 27 GENNAIO 2015

The general principles governing the application of Article 3 of the Convention to conditions of detention were set out in considerable detail in paragraphs 139-59 of the Court's judgment in Ananyev and Others (cited above) and paragraphs 65-69 of the Court's judgment in Torreggiani and Others (cited above).

There are at present almost forty prima facie meritorious applications against Bulgaria awaiting first examination that contain a complaint about conditions of detention. It is true that this figure may seem insignificant in comparison with those in pilot cases such as Ananyev and Others (cited above, § 184) and Torreggiani and Others (cited above, § 89). However, the identification of a systemic problem that justifies the application of the pilot-judgment procedure is not necessarily linked to the number of applications that are already pending; the potential inflow of future cases is also an important consideration. This is confirmed by the wording of Rule 61 § 1 of the Rules of Court, which says that the "structural or systemic problem" justifying a pilot-judgment procedure can be one that "has given" or one that "may give" rise to similar applications.

CEDU, NESHKOV E ALTRI C. BULGARIA, 27 GENNAIO 2015

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CEDU, NESHKOV E ALTRI C. BULGARIA, 27 GENNAIO 2015

Under Rule 61 § 6 of its Rules, the Court can adjourn the examination of all similar applications pending implementation of the measures set out in this pilot judgment by the respondent State. However, adjournment is optional rather than mandatory, as shown by the words “as appropriate” in this Rule and the variety of approaches in the previous pilot cases (see Ananyev and Others, cited above, § 235, with further references). In view of the principles established in Ananyev and Others (cited above, § 236), the Court does not find it appropriate at this juncture to adjourn the examination of similar cases, whether pending or impending.

CEDU, VARGA E ALTRI C. UNGHERIA, 10 MARZO 2015

According to the Court's case management database, there are at present approximately 450 prima facie meritorious applications against Hungary awaiting first examination which feature, as their primary grievance, a complaint about inadequate conditions of detention. The above numbers, taken on their own, are indicative of the existence of a recurrent structural problem.

Taking into account the recurrent and persistent nature of the problem, the large number of people it has affected or is capable of affecting, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considers it appropriate to apply the pilot-judgment procedure in the present case.

The recent example of Italy shows that such measures, implemented in the context of a pilot procedure, can contribute to solving the problem of overcrowding.

CEDU, VARGA E ALTRI C. UNGHERIA, 10 MARZO 2015

111. The Court decided to apply the pilot-judgment procedure in the present case, referring notably to the large number of people affected and the urgent need to grant them speedy and appropriate redress at domestic level. It is therefore convinced that the purpose of the present judgment can only be achieved if the required changes take effect in the Hungarian legal system and practice without undue delay.

112. The Court considers that a reasonable time-limit is warranted for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right which is at stake. Nonetheless, it does not find it appropriate to indicate a specific time frame for the arrangements which could lead to an overall improvement of conditions detention and the reduction of overcrowding, and for the introduction of a combination of preventive and compensatory remedies in respect of alleged violations of Article 3, which may involve the preparation of draft laws, amendments and regulations, then their enactment and implementation, together with the provision of appropriate training for the State officials concerned. The Court is of the opinion that given the nature of the problem the Government should make the appropriate steps as soon as possible.

CEDU, VARGA E ALTRI C. UNGHERIA, 10 MARZO 2015

113. In view of the foregoing, the Court concludes that the Government should produce, under the supervision of the Committee of Ministers, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

The Court will examine the information provided by the Government and decide accordingly whether the continued examination of pending cases, or else their adjournment, is justified.

CEDU, VARGA E ALTRI C. UNGHERIA, 10 MARZO 2015

Having regard to the fundamental nature of the right protected by Article 3 of the Convention and the importance and urgency of complaints about inhuman or degrading treatment, the Court does not consider it appropriate at this stage to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State. Rather, the Court finds that continuing to process all conditions of detention cases in the usual manner will remind the respondent State on a regular basis of its obligation under the Convention and in particular resulting from this judgment.

CEDU, MURŠIĆ V. CROATIA, GC, 20 OTTOBRE 2016

110. The Court sees no grounds for departing from the approach taken in the pilot judgments and leading cases cited above and in the Grand Chamber Idalov case (see paragraph 107 above). It therefore confirms that the requirement of 3 sq. m of floor surface per detainee in multi-occupancy accommodation should be maintained as the relevant minimum standard for its assessment under Article 3 of the Convention (see paragraphs 124-128 below).

114. Lastly, the Court finds it important to clarify the methodology for the calculation of the minimum personal space allocated to a detainee in multi-occupancy accommodation for its assessment under Article 3. The Court considers, drawing from the CPT's methodology on the matter, that the in-cell sanitary facility should not be counted in the overall surface area of the cell (see paragraph 51 above). On the other hand, calculation of the available surface area in the cell should include space occupied by furniture.

CEDU, MURŠIĆ V. CROATIA, GC, 20 OTTOBRE 2016

123. Accordingly, the Court's assessment whether there has been a violation of Article 3 cannot be reduced to a numerical calculation of square metres allocated to a detainee. Such an approach would, moreover, disregard the fact that, in practical terms, only a comprehensive approach to the particular conditions of detention can provide an accurate picture of the reality for detainees (see paragraphs 62-63 above).

124. Nevertheless, having analysed its case-law and in view of the importance attaching to the space factor in the overall assessment of prison conditions, the Court considers that a strong presumption of a violation of Article 3 arises when the personal space available to a detainee falls below 3 sq. m in multi-occupancy accommodation.

125. The "strong presumption" test should operate as a weighty but not irrebuttable presumption of a violation of Article 3. This in particular means that, in the circumstances, the cumulative effects of detention may rebut that presumption. It will, of course, be difficult to rebut it in the context of flagrant or prolonged lack of personal space below 3 sq. m.

CEDU, MURŠIĆ V. CROATIA, GC, 20 OTTOBRE 2016

126. It follows that, when it has been conclusively established that a detainee disposed of less than 3 sq. m of floor surface in multi-occupancy accommodation, the starting point for the Court's assessment is a strong presumption of a violation of Article 3. It then remains for the respondent Government to demonstrate convincingly that there were factors capable of adequately compensating for the scarce allocation of personal space. The cumulative effect of those conditions should inform the Court's decision whether, in the circumstances, the presumption of a violation is rebutted or not.

135. It follows from the above that, when considering whether measures of compensation for the scarce allocation of personal space below 3 sq. m of floor surface in multi-occupancy accommodation are capable of rebutting the strong presumption of a violation of Article 3, the Court will have regard to factors such as: the time and extent of restriction; freedom of movement and adequacy of out-of-cell activities; and general appropriateness of the detention facility.

CEDU, MURŠIĆ V. CROATIA, GC, 20 OTTOBRE 2016

139. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (see paragraph 106 above).

140. The Court also stresses that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above (see paragraphs 48, 53, 55, 59 and 63-64 above) remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (see, for example, Story and Others v. Malta, nos. 56854/13, 57005/13 and 57043/13, §§ 112-113, 29 October 2015).

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