

The Fourth Section of the European Court of Human Rights (ECHR), with a judgement of December 21st 2021, ruled against Romania for a violation of art. 3 of the European Convention on Human Rights (prohibition of torture): four applicants claimed that they had been victims of ill-treatments by the police officers and that the national authorities did not carry out an effective investigation into the incident.

On July 31st 2016, four members of the same family called the police because they feared that one of them might be subjected to violence by her ex-spouse. Nine officers from different Bucharest police stations went to their homes. The applicants claimed that the officers, instead of protecting the woman, had used disproportionate force to immobilize, handcuff them and take them to a police station to verify their identity. The officers wrote in the report that the applicants had refused to reveal their identity and had been verbally and physically aggressive towards the police and the ex-spouse. Two of the applicants were hospitalized the day after their arrest: according to forensic certificates in the internal proceedings file, one of the two women suffered head and abdominal trauma, which required nine days of prognosis, while the other suffered a humerus fracture, which required several surgeries and a total of 110 days of prognosis. The applicants filed a complaint of ill-treatment against the police. The investigation was entrusted to the Bucharest Police Internal Surveillance Bureau, which heard the police officers, the applicants and two witnesses proposed by the police. On March 8th 2017, the prosecutor's office at the Bucharest court dismissed the complaint on the grounds that the police intervention had been legal. The applicants contested that dismissal, arguing that the use of force was neither justified nor proportionate to their behavior. The European Court noted that the applicants' claims regarding the violence suffered on July 31st 2016 are corroborated by the hospital's medical certificates; it was therefore up to the Government to provide relevant evidence showing that the use of force was made strictly necessary by the behavior of the four women. However, the authorities limited themselves to establishing, in line with the documents in the case file, that the immobilization they had undergone was necessary due to their aggressive behavior. It is clear, however, that no effort was made to establish whether the use of force by the agents was proportionate or not. The Strasbourg judges considered that this examination was all the more important in the present case since the intervention of the police officers caused particularly serious injuries to the applicants' body, not compatible with the mere use of immobilization techniques. Furthermore, the documents in the case file did not show that the applicants' behavior constituted a significant danger to the physical integrity of the police officers: they were more numerous and were not injured. Therefore, the inability attributable to the national authorities to demonstrate that the force employed was proportionate to the applicants' behavior led the European Court to find a violation of the substantive limb of art. 3 of the Convention. In addition, shortcomings in the conduct of investigations have emerged: in order for an investigation into acts of ill-treatment committed by state agents to be considered effective, the persons responsible for the investigation and those carrying it out must be independent from those involved in the events. This presupposes not only the absence of any hierarchical or institutional link, but also independence from a practical point of view. In the present case, however, the investigation was conducted by the Bucharest Police Internal Surveillance Bureau, in violation of the principle of the absence of a hierarchical or institutional link between the persons in charge of carrying out the investigations and those implicated in the facts.

The judicial authorities were unable to remedy this situation even at a later stage of the investigation: the prosecutor at the Bucharest court dismissed the ill-treatment complaint and the Court of first instance upheld this decision without hearing the applicants, the police and the witnesses. In consideration of the foregoing, the ECHR held that the national authorities did not conduct an impartial and effective investigation, also violating the procedural limb of art. 3 of the Convention.

Riferimenti Normativi:

- art. 3 Convenzione Europea dei Diritti dell'Uomo