REPOLITY
REFORMING POLICE ACCOUNTABILITY IN ITALY

Italiadomani
PIANO NAZIONALE DI RIPRESA E RESILIENZA

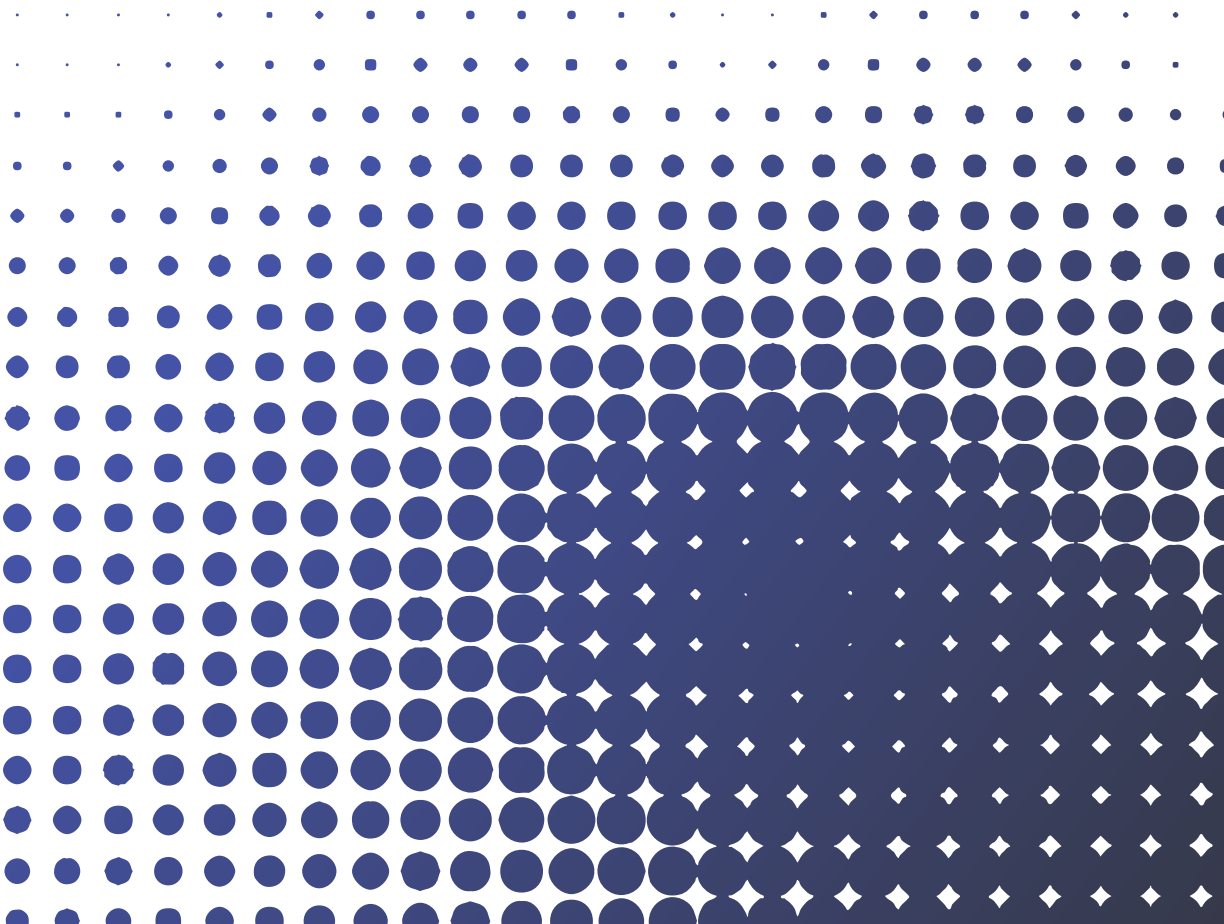
Ministero dell'Università e della Ricerca

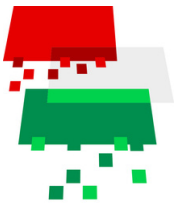
Finanziato dall'Unione europea NextGenerationEU

Police Accountability in Italy: Legal and Systemic Profiles. REPOLITY Research Report no. 3.

Febbraio 2026

edited by
Lucia Re e Ilaria Boiano





Università degli Studi di Bari
Bari 2026
ISBN: 978-88-88793-80-1

Progetto finanziato all'interno del Bando PRIN 2022 PNRR di cui al Decreto Direttoriale n. 1409 del 14/9/2022 "REPOLITY - Reforming Police Accountability in Italy" nell'ambito del Piano Nazionale di Ripresa e Resilienza, Missione 4 - Componente 2: Dalla Ricerca all'Impresa - Investimento 1.1, fondo per il Programma Nazionale della Ricerca (PNR) e Progetti di Ricerca di Rilevante Interesse Nazionale (PRIN), finanziato dall'Unione europea - NextGenerationEU. CUP: IB53D23032450001 Codice progetto: P20223XF78

Table of contents

Introduction, by Lucia Re and Ilaria Boiano

This report presents the results of the second phase of the PRIN PNRR 2022 research project *REPOLITY – Reforming Police Accountability in Italy*, which aims to collect and analyse key data on police accountability in Italy.

As highlighted in our Report 2 on Police Accountability in Italy (https://www.adir.unifi.it/repolity/), the accountability of police officers is primarily structured through mechanisms of individual responsibility, operating mainly via traditional judicial and disciplinary channels. As public officials, all members of the police forces are subject to civil and criminal liability pursuant to article 28 of the Constitution. Crimes committed by police officers may be reported by anyone, and some must be prosecuted *ex officio*. Superiors are required to report any criminal offences committed by their subordinates to the judicial authorities (article 331 of the Code of Criminal Procedure). However, for certain offences—such as bodily injury—a private complaint is required, which may limit access to justice and contribute to discrimination.

Police officers are also subject to disciplinary oversight. Sanctions range from reputational measures to suspension, demotion, or dismissal. For military personnel, disciplinary sanctions may even include deprivation of personal liberty. These mechanisms are entirely internal to the police forces, exclude the participation of victims, and are not accessible to the public.

The only external oversight mechanism in Italy is the judicial system. However, access to this system remains difficult for victims of police misconduct due to economic, social, and psychological barriers, as well as challenges in gathering evidence and establishing credibility.

This difficulty is compounded by the institutional epistemic advantage enjoyed by law enforcement officers in reconstructing events arising from police operations and are often documented by the officers themselves immediately after the fact.

As a result, judicial responses are selective and often delayed, frequently arriving after offences have become time-barred and thus providing only limited deterrence. Nevertheless, the judicial system remains the most comprehensive form of accountability currently available. At the same time, a significant lack of transparency persists: proceedings involving law enforcement officers are rarely identifiable as such and are instead embedded within broader datasets on judicial activity, making them difficult to access and analyse.

The aim of this research was therefore to collect, organise, and analyse available quantitative data on judicial and disciplinary proceedings concerning serious misconduct by members of the police forces, to offer an overall assessment of how current accountability mechanisms operate. Due to the limited accessibility of disciplinary data, the research focused on nationally collected statistical data. However, significant shortcomings in data collection emerged, including in relation to judicial responses, where reliable and transparent data remain lacking even at a basic quantitative level.

For this reason, and considering the structure of accountability in Italy, the research ultimately concentrated on analysing judicial responses. Here too, the absence of reliable and transparent data collection mechanisms—even at a purely quantitative level—became evident. Accordingly, the quantitative analysis was complemented by a qualitative examination of selected cases drawn from primary sources, with particular attention to the case law of the Court of Cassation and the European Court of Human Rights. These sources allow for the identification of the legal standards governing law enforcement conduct.

The Report is structured into three chapters.

The first chapter examines measures adopted by judicial authorities over the past thirty years in response to unlawful conduct connected to crime prevention, surveillance, and enforcement activities carried out by law enforcement agencies, with particular attention to cases adjudicated by the Court of Cassation. The analysis covers the three main public security forces—the State Police, the Carabinieri, and the Guardia di Finanza—and focuses primarily on criminal offences typically associated with the exercise of public authority, as well as, to a lesser extent, ordinary offences committed in the course of duty. Particular attention is devoted to two key legal issues: first, the limits and conditions governing the justification of the lawful use of weapons under article 53 of the Italian Criminal Code, as interpreted by both trial courts and the Court of Cassation; and second, the offence of collusion by members of the Guardia di Finanza under article 3 of Law No. 1383 of 1941. Beyond the legal qualification of conduct, the analysis reconstructs the factual circumstances of the cases, with the aim of assessing the actual capacity of the criminal justice system to respond effectively, both normatively and in practice.

The second chapter focuses on the case law of the European Court of Human Rights, with an in-depth analysis of judgments against Italy. Domestic proceedings and repeated condemnations by the Court reveal persistent structural shortcomings, including impunity, delays, ineffective investigations, and the absence of mandatory operational protocols. Italy continues to rely on an approach that is fragmented and self-referential, grounded in internal circulars and a presumption of the lawfulness of police conduct. The Court's judgments—from *Cestaro v. Italy* (2015) to *Bartesaghi Gallo v. Italy* (2017), and most recently *Cioffi v. Italy* (2025) and *Magherini v. Italy* (2026)—demonstrate the systemic nature of these issues.

The third chapter analyses the quantitative data collected from the various sources examined, highlighting a serious deficit in the institutional collection and organisation of data. This deficit constitutes a structural blind spot in accountability, placing Italy in an anomalous position compared to other liberal-democratic systems.

The guiding research question of this study is: what traces of accountability emerge at the institutional level? For the purposes of this research, "trace" refers to any documentary evidence produced by accountability processes, including the initiation and outcomes of disciplinary proceedings; criminal proceedings (such as registrations under article 335 of the Code of Criminal Procedure, indictments, judgments, orders, and decrees); civil outcomes (including damages and settlements); and remedial

measures adopted by administrations, such as formal apologies, mandatory training, or changes in operational protocols.

A second question follows: where can these traces be found? To answer this, the research adopted a hierarchical approach, examining first primary institutional sources and then secondary ones.

Comparative analysis with the United Kingdom, France, Germany, Canada, and the United States, conducted in Report 1, together with field research in Northern Ireland—where a robust system of external police accountability has been developed—provided a benchmark for defining minimum standards of public accountability, including complaint registries, use-of-force datasets, independent reporting, and regularly published disciplinary outcomes.

At the national level, the research focused on the following institutions: ISTAT; the Ministry of the Interior (Department of Public Security); the Ministry of Justice (including annual reports, statistical offices, and data portals); and judicial offices, through publicly accessible databases of judgments and orders.

Case law analysis was conducted alongside quantitative data collection. An initial survey of institutional websites—including "Transparent Administration" portals—proved insufficient, as these platforms lack dedicated sections on accountability mechanisms and their outcomes. Consequently, the research relied on formal access-to-information procedures. Requests for simple civic access (article 5(1), Legislative Decree No. 33/2013) were submitted to obtain documents subject to mandatory publication. Where responses were absent or inadequate, requests for general civic access (FOIA) under article 5(2) were filed, with further specification of the requested information.

The selection of requested data was guided by three methodological criteria: legal and social relevance, legal accessibility, and geographical and temporal coverage. Priority was given to criminal and disciplinary proceedings concerning conduct capable of undermining the proper exercise of public functions, with particular focus on offences such as torture, homicide, bodily injury, abuse of office, unlawful arrest, coercion, threats, falsification of public documents, and omission of official duties.

The data collection process involved central administrations and local judicial offices across the national territory, covering the period 2014–2024 to capture medium- to long-term trends.

The analysis reveals a marked lack of transparency in the accountability of law enforcement agencies. This does not appear to stem from deliberate concealment, but rather from insufficient institutional awareness of the role of accountability in a liberal-democratic state. Compared to other jurisdictions, this condition appears partly linked to the historical development of policing in Italy and to the relative weakness of public demand for transparency in this area. Addressing this gap is essential to ensure compliance with international standards.

The research activities were organised, coordinated, and supervised by Lucia Re. Chapter 1 was authored by Giancarlo Leineri. Chapters 2 and 3 were authored by Ilaria Boiano. Giancarlo Leineri contributed to the collection of the quantitative data analysed in Chapter 3. The Report was edited by Lucia Re and Ilaria Boiano.

Chapter 1 – Police Accountability in Italian Court of Cassation Case Law over the Last Thirty Years

by Giancarlo Leineri

1.1. Introduction

As is well established, in Italy the system of accountability of police forces operate through a multi-layered framework of instruments and procedures designed to ensure compliance with the principles of legality, transparency, and the protection of fundamental rights. Key components of this framework include internal control mechanisms within each police force, the oversight exercised by independent authorities (such as the Data Protection Authority), and internal training systems incorporating both ethical and legal dimensions. Alongside these mechanisms, the criminal justice system plays a central role, providing a specific normative apparatus aimed at sanctioning unlawful or abusive conduct committed by members of law enforcement authorities.

This contribution examines the response developed by judicial authorities over the past thirty years in relation to unlawful conduct arising in the exercise of policing functions — namely crime prevention, control, and enforcement — with particular reference to cases adjudicated by the Italian Court of Cassation. The analysis focuses on the three principal public security bodies — the State Police, the Carabinieri, and the Guardia di Finanza—and is structured around a core set of offences typically connected to the exercise of public coercive powers, as well as, secondarily, ordinary offences committed in the course of official duties.

Particular attention is devoted to two key legal issues: on the one hand, the scope of application of the justification of the legitimate use of weapons under Article 53 of the Italian Criminal Code, as interpreted in both trial and appellate case law; on the other hand, the offence of collusion involving members of the Guardia di Finanza under article 3 of Law No. 1383 of 1941.

Alongside the analysis of the legal reasoning employed by courts in establishing or excluding criminal liability, this study focuses on reconstructing the factual context underlying the cases examined, in order to assess critically the effectiveness of the criminal justice response, both in law and in practice.

In this context, the first part of the analysis addresses the offences against personal liberty most frequently attributed to members of law enforcement authorities: unlawful arrest (article 606 of the Italian Criminal Code), unlawful restriction of personal liberty (article 607), abuse of authority against arrested or detained persons (Article 608), and arbitrary personal searches and inspections (Article 609). Given their close conceptual

connection, reference will also be made to the offences of abuse of disciplinary measures (Article 571) and ill-treatment (Article 572).

1.2. Unlawful Arrest (article 606 of the Italian Criminal Code)

Article 606 of the Italian Criminal Code criminalises the conduct of a public official who carries out an arrest by abusing the powers inherent in their functions. This provision has been applied inconsistently in case law, which has primarily focused on three core elements: the unlawfulness of the arrest, the criminal significance of the abuse, and the mental element, particularly with a view to distinguishing unlawful arrest from the more serious offence of kidnapping under article 605 of the Italian Criminal Code.

The two offences share a common factual element — namely, the deprivation of personal liberty—but differ significantly in terms of the nature and manner of the abuse. In cases of kidnapping committed by a public official, the abuse is generic and incidental, aimed at keeping the victim under the agent's control. By contrast, in unlawful arrest the abuse specifically concerns the exercise of a coercive power that is formally regulated and typified by law, namely the power of arrest.

The key criterion for distinguishing between the two offences lies in the subjective element. Unlawful arrest presupposes the intention to carry out an arrest as defined by law —that is, to place the individual deprived of liberty at the disposal of the judicial authority— even where the legal conditions are not met.

Where this purpose is lacking, and the deprivation of liberty is an end in itself or otherwise outside any legal framework, the conduct instead constitutes kidnapping.

Recent case law has clarified that the objective and subjective criteria are not alternative but complementary. Article 606 thus constitutes a special offence in relation to article 605, requiring both that the abuse concern a legally defined coercive power and that the agent act with the intention of exercising that power in the form of an arrest, albeit unlawfully.

1.3. Unlawful Restriction of Personal Liberty (article 607 of the Italian Criminal Code)

Article 607 of the Italian Criminal Code criminalises the conduct of a public official who, being in charge of or assigned to a judicial prison or a facility intended for the execution of a sentence or a security measure, admits a person without an order from the competent authority, fails to comply with an order of release issued by such authority, or unlawfully prolongs the execution of a sentence or a security measure.

This offence shares several structural features with those set out in articles 606, 608, and 609 of the Italian Criminal Code. All these provisions criminalise unlawful restrictions of personal liberty carried out through the abuse or violation of powers and duties connected to public office.

From an objective perspective, the offence may be committed through three distinct forms of conduct:

- admitting a person into a detention facility without an order from the competent authority;

- failing to comply with an order of release issued by the competent authority; unlawfully prolonging the execution of a sentence or a security measure.

Despite its legal relevance, this offence has received little attention in case law, with no significant or consolidated case law developments.

1.4. Abuse of Authority against Arrested or Detained Persons (article 608 of the Italian Criminal Code)

Article 608 of the Italian Criminal Code criminalises the conduct of a public official who subjects a person who has been lawfully arrested or detained, and who is entrusted to their custody—even temporarily—to forms of treatment not permitted by law. The provision also applies to any public official who, for reasons connected to their office, exercises authority over a person deprived of liberty.

This offence targets abuses of authority affecting individuals who are already lawfully deprived of their personal liberty and thus differs from unlawful arrest under article 606, which concerns an initially unlawful deprivation of liberty. Its constitutional foundation lies in articles 27(3) and 13(3) of the Italian Constitution, which prohibit treatment contrary to human dignity and any form of physical or moral violence against persons deprived of liberty.

The provision encompasses all measures that unduly aggravate the condition of the detained person, rendering the manner of custody more burdensome than those provided by law. The notion of "measures of severity" includes both actions not authorised by penitentiary regulations and conduct that infringes the inviolability of the person, even where such conduct may also constitute independent criminal offences[1].

In practice, the autonomous scope of article 608 is relatively limited. Courts frequently recognise its formal concurrence with the offence of ill-treatment under article 572 of the Italian Criminal Code or consider it within a relationship of speciality with the offence of abuse of disciplinary measures under article 571. Nonetheless, the provision retains independent relevance where the conduct, although occurring within a context of lawful deprivation of liberty, results in the imposition of additional coercive measures that are not legally justified and that infringe the dignity or remaining freedom of the concerned person[2].

A significant early example is provided by Court of Cassation, 25 March 2004 (Di Fant), concerning Carabinieri officers who, after arresting a minor, subjected him to humiliating and violent practices in a garage within the barracks, including forcing him to remain seated with raised legs, striking his ankles, and engaging in degrading "games". The Court clarified that such conduct constituted a new and autonomous form of coercion, exceeding the lawful constraints inherent in arrest and affecting the

[1]Monaco, L. (2008), sub art. 608 c.p., in *Commentario breve al codice penale*, V ed., Padova, p. 1676; Fiandaca, G. – Musco, E. (2007), *Diritto penale, parte speciale*, vol. II, I. Bologna.

[2] Cass., sec. VI, 27 July 2012 n. 30780, with a critical note by Leineri, G. (2014). *Quale inquadramento giuridico per la tortura subita in carcere? Maltrattamenti in famiglia o abuso di autorità contro arrestati o detenuti?*, in *Foro italiano*, II, p. 262.

residual personal liberty of the arrested individual, thereby falling within the scope of article 608.
A similar approach was adopted in Court of Cassation, 16 April 2012, no. 29004, concerning officers of the Guardia di Finanza who, during an arrest and subsequent search, handcuffed the arrested person to a railing for a disproportionate period and pointed a (unloaded) firearm at his head. The Court held that the duration and manner of the conduct, due to their intimidating and oppressive nature, constituted unlawful measures of severity exceeding the functional requirements of the police operation.
In Court of Cassation, Section V, 19 January 2017, no. 22203, the Court further clarified the scope of the offence in relation to prison officers who forced a detainee to kneel, crawl, and simulate aggressive behaviour in order to coerce him into signing a transfer request. The conduct was classified exclusively under article 608, with emphasis on its coercive and degrading nature.
More recently, Court of Cassation, Section V, 8 January 2025 (judgment deposited 26 February 2025), no. 7815 held that the practice of blindfolding a detained person during questioning constitutes an unlawful measure of severity. The Court rejected the defence argument that such practice was intended to reassure the detainee or ensure his safety, as well as references to alleged foreign practices, affirming that such conduct violates the principles of human dignity and the prohibition of inhuman or degrading treatment under article 3 of the European Convention on Human Rights, even in the absence of physical injury, where it is capable of humiliating, degrading, or instilling fear.
Overall, case law confirms that article 608 occupies a specific legal space: it addresses those measures of severity which, although arising within a context of lawful custody, exceed the functional limits of public authority and amount into oppressive, intimidating, or degrading practices that are not justified by operational needs.

1.5. Article 608 in the Context of the Bolzaneto and Diaz Cases and the Cucchi Case

The offence of abuse of authority against arrested or detained persons, under article 608 of the Italian Criminal Code, has been central to two of the most emblematic episodes in recent Italian judicial history: the events that occurred during the 2001 G8 Summit in Genoa—particularly in relation to the Bolzaneto detention facility and the Diaz school—and the death of Stefano Cucchi. In both contexts, the Court of Cassation was called upon to address complex issues concerning the legal classification of conduct carried out by public officials against individuals deprived of their personal liberty, in situations marked by serious violations of fundamental rights.
With regard to the Bolzaneto events[3], between 20 and 22 July 2001 numerous individuals arrested or detained during the demonstrations were transferred to the Nino Bixio barracks, temporarily used as a detention facility. According to the findings of the trial courts, detainees were subjected to physical violence, humiliation, prolonged

[3] App. Genova, 5.3.2010; Trib. Genova, Sec. III, 14 July 2008, dep. 27 November 2008.

forced stress positions, deprivation of essential needs, and degrading treatment, including during medical examinations.

One of the central legal issues addressed at the Court of Cassation level[4] concerned the relationship between article 608 and 323 (abuse of office) of the Italian Criminal Code. The defendants argued that the latter should be absorbed by the former pursuant to the principle of speciality under article 15. The Court of Cassation rejected this argument, holding that the two provisions protect distinct legal interests and have different structural features.

Article 608 aims to safeguard the remaining sphere of liberty that the legal system continues to recognise even for individuals lawfully deprived of liberty, and it constitutes an offence of mere conduct. By contrast, article 323 requires the occurrence of a harmful event, such as an unjust advantage or damage (including non-pecuniary damage), and protects a broader range of interests, including the violation of individual dignity. The Court thus identified a relationship of reciprocal speciality, allowing for the formal concurrence of the two offences.

However, the overall judicial outcome of the Bolzaneto proceedings was largely shaped by the statute of limitations, which led to the extinction of many offences despite findings of responsibility on the merits. This outcome exposed a structural limitation of the Italian criminal justice system at the time, characterised by the absence of a specific offence of torture and by sanctioning and limitation regimes inadequate to the gravity of the conduct.

The Cucchi case, concerning the death of Stefano Cucchi while in pre-trial detention in October 2009, raised similar issues relating to the protection of physical integrity and human dignity of persons deprived of liberty. In this case as well, the proceedings before the Court of Cassation contributed to clarifying the responsibilities of law enforcement officers and reinforcing the State's obligations to protect life and the prevention of inhuman or degrading treatment.

On 17 January 2017, following preliminary investigations, the Public Prosecutor requested the indictment of three Carabinieri officers for manslaughter and abuse of authority under article 608. They were accused of having assaulted Stefano Cucchi with slaps, punches, and kicks, causing him to fall and sustain injuries that later proved fatal, also considering subsequent omissions by medical personnel. The officers were also accused of having subjected the arrested individual to unlawful restrictive measures.

Two of the officers were additionally charged with falsification of official documents for omitting the names of other officers involved, and with calumny for having falsely attributed responsibility for the assault to prison officers in earlier proceedings.

On 10 July 2017, the preliminary hearing judge ordered the defendants to stand trial but declared that the offence under article 608 was time-barred. One of the defendants challenged this decision, arguing that the court should have issued an acquittal under article 129(2) of the Code of Criminal Procedure, on the ground that the alleged conduct did not meet the requirements of "measures of severity" under article 608.

[4] Cass. 14 June 2013, n. 37088.

The Court of Cassation rejected this argument, recalling that an acquittal in the presence of a cause of extinction of the offence is possible only where the absence of the offence is immediately evident from the case file[5]. In the present case, such clarity was lacking. The Court reaffirmed that article 608 is satisfied where public officials subject a detained person to unlawful coercive measures that impose an additional restriction beyond that inherent in detention. While not every act of violence against a detained person automatically falls within this provision, physical violence may contribute to its configuration when it results in a further restriction of personal liberty. In the case at hand, the serious injuries sustained by Cucchi—including fractures affecting his mobility—could not be unequivocally characterised as violence for its own sake. Rather, they could be interpreted as the result of unlawful conduct aimed at restraining the detainee through particularly severe and brutal means.

In the absence of the conditions required for an immediate acquittal, the Court confirmed the declaration that the offence was time-barred.

Both the Bolzaneto and Cucchi cases demonstrate how article 608, in its traditional formulation, has proven to be a partial and structurally inadequate tool for addressing particularly serious forms of abuse occurring within custodial contexts, thereby raising broader systemic concerns regarding the adequacy of criminal law categories to ensure effective protection of fundamental rights[6].

1.6. Torture (article 613-bis of the Italian Criminal Code)

Closely connected to the offence under article 608 is the offence of torture, introduced by Law No. 110 of 14 July 2017, which inserted articles 613-bis and 613-ter into the Italian Criminal Code, respectively concerning torture and the instigation of a public official to commit torture[7].

Despite clear international obligations, for more than thirty years following the ratification of the 1984 UN Convention against Torture (CAT), the Italian legislature failed to introduce a specific offence of torture, relying instead on existing offences such as abuse of authority, assault, or bodily harm. This approach proved inadequate, as highlighted by the landmark judgment Cestaro v. Italy, in which the European Court of

---

[5] Cass. 19 April 2018, 26022, Tedesco, n. 260222

[6] Colella, A. (2009), *C'è un giudice a Strasburgo*, in *Rivista italiana di diritto e procedura penale*, pp. 1801–1843; Viganò, F. (2015). *La difficile battaglia contro l'impunità dei responsabili di tortura: la sentenza della Corte di Strasburgo sui fatti della scuola Diaz e i tormenti del legislatore italiano – ECtHR, IV sec., 7 April 2015, Cestaro v. Italy, ric. n. 6884/11*, in *Diritto penale contemporaneo*, 9 April.

[7] Pugiotto, A. (2014), *Repressione penale della tortura e Costituzione: anatomia di un reato che non c'è*, in *Diritto penale contemporaneo – Rivista trimestrale*, n. 2, p. 130 ff.; Viganò, F. (2007), *Diritto penale sostanziale e Convenzione europea dei diritti dell'uomo*, in *Rivista italiana di diritto e procedura penale*, pp. 60–70; Colella, A. (2014), *La repressione penale della tortura: riflessioni de iure condendo*, in *Diritto penale contemporaneo*, 22 July; Colella, A. (2019), *La risposta dell'ordinamento interno agli obblighi sovranazionali di criminalizzazione della tortura*, in *Rivista italiana di diritto e procedura penale*, 2, pp. 811–858; Colella, A. (2022), *Pronunciandosi per la prima volta sull'art. 613-bis c.p., la Cassazione aderisce alla tesi della c.d. tortura di Stato come fattispecie autonoma di reato*, in *Sistema penale*, 14 April; Botto, F. (2022), *Il reato di tortura*, in Cadoppi, A. – Manna, A. – Canestrari, S. – Papa, M. (eds.), *Trattato di diritto penale*, vol. III, p. 6585 ff.

Human Rights found a violation of article 3 ECHR, emphasising that the absence of a specific criminalisation of torture and the leniency of applicable sanctions had resulted in the time-barring of offences related to the Genoa G8 events before final judgment.
The Diaz and Bolzaneto proceedings, together with the Cucchi case, reignited both public and legal debate, particularly considering repeated condemnations of Italy by the Strasbourg Court. International pressure and growing public awareness ultimately led to the introduction of article 613-bis, albeit with significant delay and in a form that continues to raise interpretative issues.
One major point of criticism concerns the legislative choice to place torture among offences against moral freedom, despite its clearly multi-offensive nature, directly affecting physical and psychological integrity—core constitutional values that cannot be reduced to moral freedom alone.
The provision criminalises any person who, through serious violence or threats, or by acting with cruelty, inflicts acute physical suffering or a verifiable psychological trauma upon a person deprived of personal liberty or entrusted to their custody, authority, control, care, or assistance, or in a condition of vulnerability, where the conduct consists of multiple acts or results in inhuman or degrading treatment. The offence is thus an event-based crime, requiring a causal link between the conduct and the suffering or trauma inflicted.
Unlike article 1 of the 1984 Convention, which does not specify the forms of conduct in detail, article 613-bis explicitly requires violence, serious threats, or cruelty, or alternatively inhuman or degrading treatment. Particularly controversial is the requirement of multiple acts, which risks excluding situations involving a single act of violence unless it independently qualifies as inhuman or degrading treatment. This has been widely debated in legal scholarship as potentially narrowing the scope of protection compared to international standards.
The second paragraph introduces an aggravated form of the offence when committed by a public official or a person entrusted with a public service through abuse of powers or violation of official duties, thus defining what is commonly referred to as State torture. This provision directly reflects article 13(4) of the Italian Constitution, which mandates punishment for all forms of violence against persons deprived of liberty.
While the introduction of article 613-bis has filled a longstanding legislative gap, its formulation continues to raise concerns regarding its full compliance with international obligations and its effectiveness in addressing conduct that profoundly violates human dignity and personal integrity.

1.7. The Emerging Case Law on Torture: Structural Features and Interpretative Challenges

Although no final convictions have yet been recorded for acts of torture committed by members of law enforcement authorities under article 613-bis of the Italian Criminal Code, the Court of Cassation has begun to delineate the key material elements of the offence, offering significant interpretative guidance, including in relation to what is commonly referred to as State torture.

A particularly relevant judgment is Court of Cassation, Criminal Section III, no. 32380/2021, delivered in a case concerning torture between private individuals. In an obiter dictum, the Court affirmed that the second paragraph of article 613-bis does not merely introduce an aggravating circumstance but rather establishes an autonomous offence. The provision was thus described as a "geometrically variable offence" (reato a geometria variabile), capable of encompassing both private (horizontal) torture, governed by the first paragraph, and public (vertical) torture, provided for in the second paragraph.

According to this interpretation, the aggravated form of torture committed by a public official constitutes a distinct offence, characterised by a higher degree of unlawfulness due to the involvement of public power. The axis of harm shifts significantly: while private torture centres on the violent conduct and the victim's condition of vulnerability, public torture fundamentally concerns the distortion and abuse of public authority, thereby directly affecting the principle of legality and the very foundations of the rule of law.

From this perspective, treating the second paragraph merely as an aggravating circumstance would risk undermining the specific international obligation to criminalise torture committed by public officials. The Court's interpretation therefore reflects an attempt to align domestic law with the requirements arising from international human rights law, particularly under the Convention against Torture.

A further important decision, although rendered at the precautionary stage, is Court of Cassation, Criminal Section V, no. 42647/2024. This case concerned prison officers accused of engaging in conduct amounting to torture against detainees within a correctional facility. The reviewing court upheld the existence of the essential elements of the offence, emphasising the plurality of violent acts, the severity of the conduct, the victims' condition of subjection, and the production of acute physical suffering and verifiable psychological trauma, as evidenced by medical documentation and the persistent fear reported by the detainees.

Of relevance is the Court's interpretation of the requirement of "multiple acts" (*più condotte*). The Court clarified that this requirement should not be understood exclusively as a temporal repetition of distinct episodes but may also encompass a plurality of violent behaviours occurring within a single time and place context. In support of this interpretation, the Court referred to Cestaro v. Italy, where the conduct, although temporally concentrated, consisted of a sequence of coercive and violent acts capable of satisfying the requirement of multiplicity.

The decision also addressed the issue of liability by omission. In relation to a defendant who had not directly participated in the acts of violence, the Court recognised the possibility of criminal liability under article 40 of the Italian Criminal Code, on the basis of a legal duty to prevent the event, arising from the individual's institutional role and from specific provisions governing custodial responsibilities. This approach reinforces the positive obligations incumbent upon public officials in custodial settings, particularly in preventing ill-treatment by others.

Although these decisions have not yet resulted in definitive convictions for torture in its "public" form, they represent a crucial step in the gradual judicial construction of the offence and in defining its operational boundaries within the Italian legal system.

1.8. The Concept of "Deprivation of Liberty" and the Risk of Protection Gaps

A further critical issue concerns the interpretation of the expression "person deprived of personal liberty" contained in article 613-bis, paragraph 1.

According to part of the legal scholarship, a constitutionally oriented interpretation of this expression would allow for a substantive rather than merely formal understanding of deprivation of liberty, encompassing all situations in which an individual is effectively subjected to the control of State authorities in the execution of a judicial measure in a broad terms. Under this approach, the notion would include not only the execution of sentences, but also precautionary and pre-trial measures, as well as security measures, whenever the individual is factually subjected to a coercive power recognised by the legal system.

However, the textual reference to deprivation of liberty raises significant interpretative difficulties in cases where the victim, although not formally detained, is subjected to violence prior to arrest or outside any legally authorised framework. This includes situations in which law enforcement authorities exercise de facto control over an individual in the absence of a valid legal basis, resulting in a substantial restriction of personal liberty without legal basis.

In such contexts, a strictly formal interpretation of the requirement of deprivation of liberty risks excluding precisely those situations in which individuals are most vulnerable to abuse, thereby creating gaps in protection. For this reason, it has been argued that the expression should be interpreted in a substantive and functional sense, focusing on the actual condition of subjection and the effective limitation of the individual's capacity for self-determination, regardless of the formal legality of the underlying restraint.

Nevertheless, the legislative wording does not explicitly exclude a restrictive interpretation. The very need to resort to a constitutionally oriented or expansive reading reveals a degree of ambiguity in the provision. Should a strictly literal interpretation prevail, there is a real risk that certain forms of conduct—particularly those occurring outside formally recognised custodial contexts—may fall outside the scope of the offence of torture, thereby undermining compliance with both constitutional guarantees and international obligations requiring the effective criminalisation of torture in all its forms.

1.9. Arbitrary Personal Searches and Inspections (article 609 of the Italian Criminal Code)

The offence provided for under article 609 of the Italian Criminal Code presents clear structural affinities with those set out in articles 606, 607, and 608, in that it protects not only the legality of administrative action but also the individual's moral and personal autonomy, understood as freedom from undue coercion. The provision criminalises the

conduct of a public official who, by abusing powers inherent in their functions, carries out an arbitrary personal search or inspection, typically within the context of policing activities.

A noteworthy feature of the provision lies in the discrepancy between its heading, which refers to "arbitrariness", and its operative text, which instead refers to "abuse". In this context, abuse consists in the violation of the legal rules governing the prerequisites, limits, and modalities of the act. It may arise either from absolute lack of competence, where the official is entirely devoid of the relevant power, or from relative lack of competence, where the power exists but is exercised in breach of procedural safeguards—such as those provided under article 352 of the Code of Criminal Procedure or article 249(2), which requires that searches be conducted with due respect for the dignity and, as far as possible, the modesty of the person concerned.

A personal search involves investigative activity directed at the body of the individual or at items closely connected to their person (such as clothing), with the aim of locating the corpus delicti or items relevant to the offence. A personal inspection, by contrast, is aimed at identifying traces or material effects of a crime on the person and may not be carried out by judicial police, being reserved to judicial authorities[8].

Although case law in this area is not extensive, it offers important interpretative guidance. In Court of Cassation, Section V, no. 14513/2006, the Court clarified that the offence does not require a thorough or complete search; even a cursory activity may suffice, provided it constitutes a minimum form of investigative conduct directed at locating evidence. The provision was applied, for instance, to members of the Guardia di Finanza who carried out arbitrary searches during inspections of nightclubs.

Similarly, case law has recognised the offence in situations involving the abuse of institutional appearance and authority. This includes a case in which a non-commissioned officer of the Guardia di Finanza conducted arbitrary searches in a private residence by displaying a badge and documents bearing the letterhead of the Public Prosecutor's Office, ultimately leading to a confirmed conviction (also referenced in TAR Lazio, Section II-ter, 6 February 2007, no. 915).

In Court of Cassation, Section V, no. 37343/2008, the offence was found in relation to a prison officer who carried out a personal search in the absence of legal grounds, with full awareness of acting contra ius. Likewise, in Court of Cassation, Section VI, no. 14058/2015, the Court upheld the conviction of a Carabinieri officer who had

[8] See l. 7 January 1929, n. 4, art. 3, which rules the searching activities of the fiscal police; art. 41 t.u.l.p.s. (law on public security), with regard to searches aimed at locating weapons, ammunition, or explosive materials.; art. 4, l. 22 May 1975, n. 152, relating to the "on-the-spot search", a concept widely debated in legal doctrine: see, on this point, Fortuna, E. (1975), *Un istituto del tutto nuovo nella nostra legislazione: la perquisizione sul posto,* in *Giur. Merito*, IV, p. 199 ff.; Cerqua, L. (1985), *La perquisizione sul posto prevista dall'art. 4 l. 22 maggio 1975 n. 152*, in *Giurisprudenza di merito*, IV, p. 306 ff.; article 27, law 19 May 1990, n. 55, which concerns searches, checks, and inspections ordered for the prevention and suppression of offences under articles 416-bis, 648-bis, and 648-ter of the Italian Criminal Code, as well as those relating to drug trafficking. For an effective overview of the aforementioned provisions, see Pioletti, U. (2002), *Sub* art. 609 c.p. in Marini-La Monica – Mazza (eds.), *Commentario al Codice penale*, pp. 2947 ff.

orchestrated a pretextual search by planting counterfeit banknotes in the victim's vehicle.
The Court has, however, emphasised that not every procedural irregularity amounts to a criminal offence. A qualitative threshold must be met: the conduct must reflect a deliberate misuse of public power for purposes extraneous to those for which it is conferred. On this basis, Court of Cassation, Section V, no. 8031/2017 excluded the offence where a search ordered by the public prosecutor lacked formal motivation but was nonetheless substantively justified.
Particularly significant is Court of Cassation, Section V, no. 13827/2020, which stressed that the assessment of abuse must be conducted in functional terms, with particular regard to respect for human dignity. The Court annulled the decision and remitted the case where the lower court had failed to properly assess the humiliating nature of the search.
The offence has also been recognised in Court of Cassation, Section VI, no. 24707/2021, where a police officer conducted a search of a woman's handbag outside the scope of his official duties and for personal reasons, with the Court affirming that a handbag constitutes an extension of the person.
In cases involving minors, the Court of Appeal of Rome (Section III, 23 June 2017, no. 5091) found the offence where individuals were forced to undress completely during inspections carried out without procedural safeguards and in humiliating conditions.
More recently, in Court of Cassation, Section V, no. 10130/2024, the Court addressed a case involving arbitrary searches accompanied by violence, threats, and unlawful deprivation of liberty. However, the Court annulled the convictions for the offences under articles 609 and 479 due to the statute of limitations.
Overall, case law confirms that article 609 does not merely sanction formal procedural violations but requires a substantive distortion of public power, resulting in an undue interference with the individual's dignity and personal freedom.

1.10. The Justification of the Legitimate Use of Weapons (article 53 of the Italian Criminal Code)

Article 53 of the Italian Criminal Code represents one of the most significant expressions of the State's monopoly on the use of force[9]. It recognises that public authorities may, in certain circumstances, resort to coercive physical means in order to

[9] It has been noted by Martiello, G. (2019), *I limiti penali dell'uso della forza pubblica: una indagine di parte generale*, Pisa, p. 243, that many commentators have repeatedly identified in this provision a clear example of the authoritarian matrix of our Criminal Code, as well as the most evident confirmation of the ideological imbalance in favour of public officials in the relationship between Authority and Liberty—far removed from the model underlying the Zanardelli Code and later the Constitution. At first glance—continues the cited Author—one would be faced with a sort of "regime justification" (*scriminante di regime*), which, under the pretext of "eliminating the controversies arising in determining the precise legal justification applicable to the use of weapons, carried out or ordered by a public official in order to fulfil a duty of their office". See the Report on Book I, in *Ministero della Giustizia e degli Affari di Culto* (1929.), *Lavori preparatori del codice penale e del codice di procedura penale*, Vol. V, Part I, Roma, p. 96 ff., would instead have introduced a privilege in favour of the public force.

ensure the effectiveness of legal order. However, such use of force is subject to strict limitations, designed to protect fundamental rights, particularly the right to life and personal integrity, which enjoy both constitutional and convention-based protection.
The provision establishes a specific ground of justification, applicable exclusively to public officials belonging to law enforcement authorities, and not to public service providers more generally. Introduced with the 1930 Criminal Code, it operates as a subsidiary justification, applicable only where the conditions for lawful self-defence (article 52) or the performance of a duty (article 51) are not met.
The structure of article 53 encompasses three distinct situations:

- the necessity to repel violence or overcome resistance to authority;
- the prevention of particularly serious crimes (introduced through subsequent legislative reforms);
- cases in which other legal provisions explicitly authorise the use of force.

In all cases, the use of weapons must be strictly connected to the performance of an official duty and cannot be justified by personal motives or discretionary objectives.
From a subjective standpoint, the justification applies only to individuals institutionally vested with coercive powers. From an objective standpoint, it requires that the official be placed in a situation of necessity, in which the use of force constitutes the only means of fulfilling their duty. The use of weapons must therefore represent an extrema ratio.
This principle has been consistently reaffirmed by the Court of Cassation. In Court of Cassation, Section IV, no. 35962/2020, the Court excluded the applicability of article 53 in a case involving a carabinieri officer who fired at a fleeing vehicle, resulting in a fatality. The Court stressed that the use of weapons must be the last available means and that, among possible coercive measures, the least harmful must be selected, in accordance with the principle of proportionality.
Similarly, in Court of Cassation, Section V, no. 41038/2014, the Court annulled an acquittal due to insufficient reasoning on the proportionality of the use of force. Already previously, with *Cass. pen.*, sez. IV, no. 854/2008, the Court had affirmed that the lawful use of weapons presupposes the absence of effective and less risky alternatives, the choice of the least harmful means, and a strict proportionality between the means employed and the aim pursued. The decision further clarified that, once these criteria are complied with, the more serious outcome resulting from the inherent risk of using a weapon cannot be attributed to the agent, unless negligence or lack of skill is present. Similar conclusions had been reached in *Cass. pen.*, sez. IV, *Brancatelli*, 2000, and *Cass. pen.*, sez. IV, *Fusi*, 2003[10], both emphasising the criterion of proportionality also in the concrete gradation of the use of weapons.
Conversely, the justification has been upheld in exceptional circumstances, such as Court of Cassation, Section IV, no. 6719/2014, involving an armed confrontation with fleeing robbers, where the use of firearms was deemed proportionate to the need to protect hostages and third parties from an immediate and serious threat.

[10] Published in *Foro it.*, 2004, p. 50, with a note by Roiati, A. (2004), *Caratteristiche dei requisiti della violenza o della resistenza per legittimare l'uso delle armi*, in *Rivista penale*, pp. 53–55.

Although article 53 does not explicitly refer to proportionality, case law consistently interprets it as an implicit and fundamental criterion. The use of weapons is never legitimate per se, but only insofar as it is strictly necessary, irreplaceable by less harmful means, and proportionate to the threat faced.
It is precisely in the concrete assessment of these conditions—necessity, subsidiarity, and proportionality—that the most significant interpretative uncertainties arise, requiring particularly rigorous judicial scrutiny in cases where the exercise of public coercive power irreversibly affects fundamental rights.

1.11. The Notion of "Violence" under article 53 of the Italian Criminal Code

For the purposes of the application of the justification of the legitimate use of weapons, "violence" must be understood as the exertion of physical force directed against a public official in the performance of their duties, capable of concretely restricting their freedom of action or endangering their own safety or that of third parties.
The Court of Cassation has adopted a broad definition, describing violence as the "deployment of any form of physical energy resulting in personal coercion" (Court of Cassation, Section I, no. 40346/2013). Within this framework, the use of firearms may be considered proportionate where it responds to conduct that, by its nature and modalities, can produce serious harm to life or physical integrity.
However, case law has not been entirely consistent. In certain decisions, the Court has required that violence be characterised by seriousness and immediacy. For instance, in Court of Cassation, Section IV, no. 854/2008, the justification was excluded in a case where an officer immediately fired at an individual who had pointed a weapon at him, on the grounds that the conditions for lawful use of weapons were not satisfied in the manner required by the provision.
Such interpretations have raised critical concerns, since pointing a firearm at a public official may itself constitute an immediate and concrete threat to fundamental rights such as life and bodily integrity. In such cases, the decisive factor becomes the proportionality assessment, which must evaluate whether the use of lethal force constituted the only effective means of neutralising an imminent danger.
Lower courts have at times adopted a more context-sensitive approach. In the decision of the Tribunal of Pinerolo, 20 September 2004, no. 474, the use of firearms was deemed justified where a suspect attempted to run over a Carabinieri officer with a vehicle. In that case, the use of force was considered both necessary and proportionate considering the immediate risk to life.
The concept of "violence" should be evaluated based on the specific circumstances and real risk involved, not just as a formal category. The evaluation of violence is intrinsically linked to the broader assessment of necessity and proportionality, making it one of the most sensitive and contested elements in the application of article 53.

1.12. Resistance to Authority: Active and Passive Resistance

More complex than the notion of violence is the concept of "resistance" that article 53 allows public officials to overcome by weapons. The provision does not explicitly

distinguish between active and passive resistance; this distinction has instead been developed through case law and plays a crucial role in delimiting the scope of the justification.

The underlying concern is to prevent the extension of the justification to situations where the conduct does not pose a real threat to the safety of the public official or others. According to a traditional line of interpretation, only active resistance—that is, conduct involving aggression or threats capable of significantly obstructing the performance of official duties—may justify the use of weapons. By contrast, passive resistance, such as non-compliance, inertia, or mere evasion, is generally considered insufficient.

This position is reflected in a consistent body of case law. In Court of Cassation, Section IV, no. 2148/1995, the Court excluded the applicability of article 53 in a case where an officer fired at a vehicle that failed to stop at a checkpoint, holding that non-compliance with an order to stop constitutes passive resistance. Similar conclusions were reached in earlier decisions, including Cassation, Rizzo (1991), Di Pino (1989), and Curreri (1983)[11].

The same restrictive approach is evident in Court of Cassation, Section V, no. 46787/2013, concerning the use of tear gas during an eviction operation, where the Court found the use of force unlawful in the absence of clear evidence of non-compliance. Likewise, in Court of Cassation, Section IV, no. 7649/2005, the Court recognised negligent excess where an officer used disproportionate force (a violent punch) to overcome resistance consisting merely of pushing and struggling.

More recently, in Court of Cassation, Section IV, no. 372/2024, the Court excluded the applicability of the justification of the putative lawful use of weapons due to the absence of objective circumstances capable of supporting a reasonable perception of danger.

However, the rigid distinction between active and passive resistance has been subject to criticism. Legal scholarship has pointed out that article 53 does not explicitly codify such a distinction, and that even passive forms of resistance may significantly hinder the performance of official duties. Under this view, the decisive criterion should not be the formal classification of resistance, but rather the proportionality of the response.

Case law reflects this more flexible approach in certain contexts. In Court of Cassation, Section V, no. 38229/2008, the Court upheld the use of physical force to escort an individual who refused to provide identification, recognising that even passive resistance may justify coercive measures, provided they remain proportionate. This principle was reaffirmed in Court of Cassation, Section VI, no. 22529/2015.

Conversely, where resistance is active and poses a concrete danger, courts are more inclined to recognise the applicability of the justification. For example, in Court of Cassation, Section VI, no. 7337/2004, the use of a firearm for warning purposes was deemed lawful in order to interrupt a violent confrontation.

Ultimately, while the distinction between active and passive resistance remains a useful interpretative tool, it is subordinated to the overarching principles of necessity and

[11] Ramajoli, R. (1983), *Riflessioni sulla disciplina dell'uso delle armi da parte dei componenti delle forze dell'ordine*, in *Massimario penale*, p. 658.

proportionality. Only resistance that generates a real and immediate threat to fundamental interests may justify the use of weapons as a last resort.

1.13. Passive Resistance and Flight: From Abstract Categorisation to Risk-Based Assessment

The issue of passive resistance and of "flight," understood as its typical form, was long treated as an area essentially external to article 53 of the Criminal Code. The traditional approach, shared for years by both legal scholarship and case law, was based on the idea that the use of weapons may be justified only in order to confront "qualified" resistance, namely active resistance that is concretely antagonistic, whereas the inertia or withdrawal of the suspect would not, in themselves, amount to that physical coercion or attack on primary legal interests that would render recourse to a potentially lethal means "necessary" and "proportionate." Hence the repeatedly affirmed proposition, in several decisions, that neither the private citizen's power to make an arrest in flagrante delicto nor the duty of the judicial police to make an arrest automatically legitimises the use of weapons against a person who evades capture by fleeing. This line is reflected, for example, in *Cass.* 22 April 1999, *Traverso*, and in the case law that classifies the flight of an unarmed person as merely passive resistance, insufficient to ground the justification (*Cass.* 28 January 1991, *Caporaso*; *Cass.* 14 March 1989, *Di Pino*; as well as earlier authorities admitting exceptions only where specific sectoral provisions apply, as in *Cass.*4 February 1982, *Catania*). Consistent with this framework is also the argument, often advanced in pursuit cases, that the mere impossibility of excluding that the fugitive may be armed cannot become the "key" to rendering the use of a weapon lawful: otherwise, the justification would end up expanding indiscriminately, since that margin of uncertainty is structurally present in many operational situations.

From the early 2000s onwards, however, the interpretative axis gradually shifted from the abstract classification of flight as "passive" toward a substantive assessment of the concrete modalities of the conduct, read in terms of present dangerousness and risk to third parties. In this transition, the principle of proportionality becomes central, understood as a criterion immanent to the justification: what matters is not flight as such, but whether flight, in the way it is carried out, creates a serious and present danger to primary interests (the life and safety of passers-by, road users, hostages, or persons present). From this perspective, the assessment cannot be anchored to the "seriousness of the predicate offence," but rather to the form of resistance that subsequently manifests itself, and above all to the quality of the risk it generates in the immediate circumstances: the use of force must be calibrated to the dynamics of the escape, and not "dragged along" by the label of the offence that originally prompted the intervention.

It is at this point that case law began to admit that flight may cease to be "mere passive resistance" when it leads to a conduct that is overall violent or otherwise capable of endangering the safety of others, as in cases of reckless driving, attempted ramming, driving the wrong way, or extremely high speeds in risky contexts. The example most often invoked is *Cass.*, Section V, 11 June 1999, no. 7570, in which the Court recognised

that, where the escape is carried out in such a way as to endanger third parties, the use of weapons may become a "means to overcome resistance," provided that it remains an *extrema ratio* and is aimed at stopping the vehicle (typically by targeting the tyres), rather than at injuring the person[12].

Along the same lines are the decisions that emphasise the balancing of competing interests and the idea that, once the lawfulness of the use of the weapon has been established in compliance with proportionality, the more serious unintended event is not automatically attributable to the agent if it falls within the intrinsic risk of the means employed, as discussed in *Cass.*, Section IV, 22 September 2000, no. 9961. The path is not, however, univocal, and the same living law continues to guard the hard core of the *extrema ratio* principle, excluding article 53 where the lethal outcome is the product of conduct that is not controlled and not susceptible to gradation. In this regard, frequent reference is made to *Cass.*, Section IV, 11 July 2017, no. 48082, which excluded the justification in a case involving a shot fired accidentally during a struggle following a pursuit, precisely because the use of the weapon did not appear referable to a choice consistent with necessity and gradation.

Within this evolution there emerges the more recent and more "flexible" tendency to relativise the active/passive dichotomy: not because the distinction becomes irrelevant, but because it is absorbed into a denser control over necessity, graduality, and proportionality. The consequence is significant: passive resistance, and "simple" flight, are not sufficient to ground the use of a weapon; but they may justify the use of different and less invasive means of coercion, and, in some contexts, even a persuasive or intimidating display of the weapon that does not lead to lethal use, always insofar as the intervention is strictly commensurate with the degree of resistance and the actual risk involved.

The contemporary debate on flight has become particularly sensitive when it arises in connection with high-density urban pursuit cases, where the decisive issue "is not the flight" but its operational management and the production of risk for third parties. In this sense, the case of the death of Ramy Elgaml in Milan, which occurred on 24 November 2024 at the end of a pursuit, is significant from the point of view of public and judicial context: in 2026 the Milan Public Prosecutor's Office—which the previous year had originally closed the investigations for vehicular homicide, both against the driver of the scooter and against the officer driving the last pursuing patrol car—served a new notice concluding the investigations for vehicular homicide, but with "negligent excess in the performance of duty"; in substance, it is acknowledged that, in the course

[12] On the lawful use of weapons, the doctrinal literature is vast. Reference may first be made to: Martiello, G. (2019), *I limiti penali dell'uso della forza pubblica: una indagine di parte generale*, Pisa; Alibrandi, G. (1979), *L'uso legittimo delle armi*, Milano; Ardizzone, S. (1992), *Uso legittimo delle armi*, entry in *Enciclopedia del diritto*, XLV, Milano p. 979; Delogu, F. (1972), *L'uso legittimo delle armi o di altro mezzo di coazione fisica*, in *Archivio penale*, I, p. 166 ff.; Marini, G. (1975), *Uso legittimo delle armi (diritto penale*), entry in *Novissimo digesto italiano*, vol. XX, Torino, p. 258 ff.; Mezzetti, E. (1999), *Uso legittimo delle armi*,entry in *Digesto penale*, vol. XV, Torino, p. 124 ff.; Pisa, P. (1971), *Osservazioni sull'uso legittimo delle armi*, in *Annali giuridici di Genova*, p. 145 ff.; Pulitanò, D. (1994), *Uso legittimo delle armi*, entry in *Enciclopedia giuridica Treccani*, vol. XXXII, Roma, pp. 1 ff.

of the long pursuit through the streets of Milan, the officer was acting in the fulfilment of a duty, given that the driver of the scooter had already been convicted of resisting a public official precisely on account of that flight. The carabiniere would, however, have maintained an excessively short distance in relation to the speed involved. Hence the negligent conduct: the "negligent excess" in his conduct lies in the fact that, given the speed at which the car and the scooter were travelling, the officer should have kept a greater distance in order to avoid the impact and the resulting crash in the final phase.
At the same time, a second investigation was closed for alleged tampering with evidence and, in relation to some suspects, also aiding and abetting, in connection with the deletion of videos recorded by witnesses: press reconstructions indicate that four carabinieri received notices concluding the investigations, with differentiated charges ranging from tampering with evidence to aiding and abetting. Leaving aside the outcomes, which remain subject to subsequent judicial scrutiny, cases of this kind show very concretely why flight cannot be treated as a monolithic category: the legal issue is not whether "flight" does or does not legitimise the use of weapons, but whether, in that specific flight, the risk created was such as to render the use of a potentially lethal means unavoidable and proportionate, after excluding equally effective but less harmful alternatives, and after verifying the graduality of the intervention.

1.14. The justification of the putative lawful use of weapons

The justification of the putative lawful use of weapons operates as a "fallback" where the objective requirements of article 53 of the Criminal Code are lacking, but the public official acted in the mistaken belief that they existed. In such a case, the conduct is not justified in reality but may fall within the discipline of the justification under article 59(4) of the Criminal Code, which presupposes an error of fact and not an error of law.
A justification exists, in fact, where the dangerous situation does not objectively exist, but is assumed by the agent due to an erroneous appraisal of the concrete circumstances. The error, however, cannot be reduced to a merely subjective perception, nor inferred solely from the officer's state of mind, fear, or anxiety at the time. In order to have exculpatory effect, it must be anchored in real factual elements: circumstances which, though poorly represented or misunderstood, are capable of making reasonable the agent's belief that they were in the "absolute necessity" of making use of the weapon or other means of coercion. In other words, the putative representation must be verifiable considering the objective context in which the action took place.
This criterion is clearly expressed in *Cass.*, Section I, 27 May 2010, no. 27542, *Galluccio*, which excludes the possibility of grounding the justification on an exclusively internal standard and requires that the conviction of absolute necessity be justified by concrete factual data, even if misinterpreted. Consistently, case law distinguishes an error concerning the factual prerequisites of the justification from an error concerning the scope of the rule: in order to exclude intent by virtue of an erroneous supposition of the justification, the error must concern the facts that make up the justification, that is, concretely, the existence and limits of a lawful order, the necessity to repel violence or

overcome resistance, and the relationship of proportionality between the sacrifice imposed and the public interest protected. This principle is stated in *Cass.*, Section IV, 5 June 1991, no. 12137, *Rizzo*, emphasising the idea that the excusing error must concern factual reality and not the legal rule.

This also gives rise to a recurring typology of error: it may be an initial perceptual error, that is, a mistaken reading of an external fact (for example, mistaking a gesture for the drawing of a weapon), or a subsequent evaluative error relating to the choice and gradation of the means of reaction, where the agent, while correctly perceiving the situation, overestimates its danger and considers a level of force necessary that in reality is not. In both cases, what matters is that the agent's belief be "objectively justifiable" in the light of external elements, and not merely psychological.

The justification cannot, however, be invoked where the error concerns not the facts, but the effectiveness or scope of article 53 of the Criminal Code: in that case, one is not dealing with a false perception of reality, but with an error of law arising from ignorance or misinterpretation of the criminal law, which is not excusable. The Court of Cassation has formulated this distinction in particularly clear terms, affirming that the justification of the putative lawful use of weapons can be recognised only where the agent, by an error of fact, believed that they were in a situation which, if it had really existed, would have required the use of the weapon. It cannot be recognised, by contrast, where the agent believes that the rule authorises the use of the weapon in a certain context, despite the absence of the required factual conditions, because in that case the error coincides with ignorance of the criminal law. This is also the logic underlying the reference to *Cass.*, Section I, 30 September 1982, in which a police officer had shot at a fleeing person essentially believing that Article 53 authorised him to do so "also" in that type of situation: the error concerned not reality, but the law.

The more recent line confirms and strengthens the requirement of an objective foundation for the putative error. *Cass.*, Section IV, 11 January 2024, no. 3727, excluded the possibility of a justification in relation to injuries caused with a baton and kicks by police officers to a journalist during street clashes, noting the absence of concrete elements capable of making reasonable the supposition of being in a situation of present danger such as to require the use of force: the victim was inert, then fell to the ground, and had positioned himself to observe the arrest of a protester—circumstances incompatible with a "justified conviction" of absolute necessity.

In sum, the putative lawful use of weapons presupposes an error concerning the factual prerequisites of article 53 of the Criminal Code, not an error concerning the rule itself. The agent's belief must be rationally sustainable in the light of objective circumstances, albeit misunderstood, and only within this perimeter can article 59(4) of the Criminal Code operate as a criterion excluding intent or, where the error is negligent, as a rule of imputation on the basis of negligence.

1.15. Negligent excess in the lawful use of weapons

Negligent excess in the lawful use of weapons, governed by article 55 of the Criminal Code, occurs when the public official, although being in a situation in which the

justification under article 53 of the Criminal Code is actually operative, negligently exceeds the limits established by law, by the order of authority, or by necessity. In such a case, if the act is provided for as a negligent offence, the relevant provisions apply.
The logical prerequisite of negligent excess is therefore the concrete existence of all the elements of the justification. Unlike the justification of the putative lawful use of weapon, in which the justifying situation exists only in the representation of the agent and not in reality, in negligent excess the justification objectively exists, but the agent exceeds, by blameworthy error, the permitted limits. It concerns a negligent exceeding of the limits of necessity or proportionality, rather than an original absence of the legal prerequisites.
The case law of the Court of Cassation has clarified this distinction in unequivocal terms. In a decision still frequently cited today, the Court affirmed that negligent excess in the lawful use of weapons presupposes the existence of all the elements of the justification, whether real or putative, and consists in exceeding by error the limits imposed by necessity, taking the form of an excess in the use of the means (*Cass. pen.*, Section I, 30 September 1982). From this perspective, the error does not concern the *an* of the justification, but the *quomodo* of the reaction: the means chosen, the manner of its use, or its intensity are disproportionate to the concrete situation.
An emblematic case is that decided by *Cass. pen.*, Section IV, no. 45015/2008: a carabiniere officer, intervening in a critical situation, had used his service pistol "as a club" to smash the window of a car in which a person had barricaded himself; in performing this action, while holding the weapon with his finger on the trigger, he accidentally discharged a shot that fatally struck the man. The Court observed that the officer's conduct had been correct up to the moment of breaking the window, but that precisely in the decisive phase he had failed to consider the risk associated with the way he was holding the weapon. The judgment was quashed with remand so that the trial court could verify the existence of negligent excess, namely whether the exceeding of the limits of the justification had been due to negligence, imprudence, or lack of skill.
The decision is also significant because the Court stated that, for the purpose of recognising the justification of the lawful use of weapons, it is irrelevant that the weapon is used improperly rather than according to its natural mode of use, provided the other requirements of article 53 of the Criminal Code are met; however, it is precisely the improper mode of use that may become the ground on which negligent excess arises, where it generates a risk that is not controlled or not adequately assessed.
Ultimately, negligent excess in the lawful use of weapons represents a borderline figure between lawfulness and liability, in which the initial situation legitimises coercive intervention, but the concrete management of force exceeds, through negligence, the limit of necessity or proportionality. The assessment therefore focuses not on the existence of the justification, but on the technical and prudential correctness of the action in its execution, in light of the criteria of necessity, graduality, and proportionality that govern the whole system of article 53 of the Criminal Code and which Article 55 safeguards in case of negligence.

A further decisive clarification on negligent excess in the lawful use of weapons is provided by a fundamental judgment of the Court of Cassation, which precisely delineates the area of liability under article 55 of the Criminal Code in relation to the component of risk intrinsic to the use of a firearm.
The Court held that, once the lawfulness of the use of weapons under article 53 of the Criminal Code has been established—and therefore once compliance with the requirement of necessity and, above all, proportionality has been verified—the occurrence of a more serious and unintended event cannot automatically be attributed to the public official. In other words, if the assessment is positive as to the lawfulness of the use of the weapon, the risk inherent in the use of an intrinsically dangerous instrument cannot, in itself, be transformed into criminally relevant negligence.
The Court of Cassation clarified that the blameworthy evaluative error relevant under article 55 of the Criminal Code may concern the limit imposed by necessity, that is, the assessment of whether it was lawful to resort to the use of weapons in that particular situation. If, by contrast, the judge holds that the use of the weapon was lawful, the error cannot be identified in the mere foreseeability of an event different from and more serious than the one intended, since the use of a firearm always entails an unavoidable component of risk.
This is the principle expressed by *Cass. pen.*, Section IV, no. 9961/2000, according to which the foreseeability of the more serious event is itself inherent in the use of the weapon and could only be eliminated by refraining altogether from using it. But such a conclusion would lead to a paradoxical outcome: the public official would be formally authorised to use the weapon, but would do so "at his own risk," even when he had acted with the utmost diligence and skill.
The decision therefore marks a fixed point: negligent excess cannot be based solely on the occurrence of an event more serious than the one intended, nor on the abstract foreseeability of such an event, if the use of the weapon has been deemed lawful and proportionate. The area of article 55 of the Criminal Code remains confined to errors regarding necessity or proportionality, not to the mere materialisation of the risk intrinsic to the use of a means that the legal order allows under certain conditions.
In this sense, the ruling reiterates a delicate but essential balance: on the one hand, the use of public force is rigorously bound by the requirements of necessity and proportionality; on the other hand, where those requirements are met, the legal order cannot demand the elimination of the risk that is structurally inherent in the use of firearms.

1.16. The lawful use of weapons in the Aldrovandi case

On the night of 25 September 2005, Federico Aldrovandi, a twenty-year-old, was walking home after spending the evening with friends. Two calls to the emergency number 113 reported the presence of an agitated young man shouting in the street. Two State Police patrols intervened. According to the officers, the young man attacked the first officers on the scene; according to the later reconstructions, the confrontation quickly degenerated into an extremely violent struggle, during which batons were used—two

of which broke—and Aldrovandi was immobilised in a prone position, handcuffed with his hands behind his back, while pressure was applied to his back and chest.
Medical personnel, who arrived on the scene a few minutes after the request for assistance, found the young man unconscious and in cardio-respiratory arrest. The medico-legal expert reports, while differing in part as to the modalities, converged in excluding that the substances taken (alcohol, ketamine, morphine) were in themselves sufficient to cause death. The cause was traced to an asphyxial mechanism, with respiratory compromise connected to restraint in the prone position and the pressure applied to the torso.

The trial on the merits

By judgment of 6 July 2009, the Ferrara Court convicted the four officers of negligent homicide, recognising negligent excess in the lawful use of weapons under articles 51, 55, 113, and 589 of the Criminal Code. The trial judge held that the intervention had degenerated as a result of an improper and disproportionate use of force: the use of batons offensively, the choice to engage immediately in a struggle, and immobilisation in the prone position with compression of the chest constituted an exceeding of the limits allowed by the performance of duty. The Bologna Court of Appeal, on 10 June 2011, fully upheld the decision.

The Court of Cassation and the link with article 2 ECHR

By judgment of 21 June 2012, no. 36280, the Fourth Criminal Section of the Court of Cassation made the conviction final, qualifying the conduct as negligent homicide with negligent excess in the lawful use of weapons. The Court clarified that what was not in question was the abstract lawfulness of the police intervention, but rather the concrete assessment of the necessity and proportionality of the means employed. The officers' error did not relate to the existence of a duty to intervene, but rather to a negligent excess in the exercise of the defence of necessity, in breach of the overriding obligation to protect the individual's right to life and bodily integrity.
The decision is particularly significant because of its explicit reference to article 2 ECHR[13]. The Court held that the use of force by law enforcement officers must be strictly functional and "absolutely necessary" to achieve the legitimate aims provided by the legal order, according to a restrictive interpretation of justifications. The necessity required by article 2 ECHR demands a rigorous verification of the proportionality between the means employed and the protected interest, and an intervention that exposes the person stopped to risks incompatible with the safeguarding of life cannot be regarded as lawful.
The Court of Cassation identified a set of operational precautionary rules: physical restraint must constitute an *extrema ratio*; optional arrest does not automatically justify the use of coercion; the intervention must be of minimal duration and cannot degenerate into an uncontrolled struggle; the baton cannot be used to bring the person

[13] On this point, see Zincani, M. (2014), *La cooperazione nel delitto colposo. La portata incriminatrice dell'art. 113 c.p. nei reati a forma libera*, in *Cassazione penale*, no. 1, p. 169 ff.

down; pressure on the back and torso that may reduce ventilation is prohibited; and a handcuffed person must immediately be placed in a position that does not compromise breathing. The Court also emphasised the duty to refrain in the absence of actual necessity, referring to the notion of so-called "assumption negligence," that is, the assumption of an avoidable risk in the absence of adequate skills or real urgency.
The decision highlighted that, in the concrete case, the struggle could have been avoided through a dialogic, patient approach and through the prompt intervention of medical personnel. The offensive use of the baton and the improper restraint had triggered the causal mechanism that led to positional asphyxia.

Procedural aspects and Convention obligations

The Aldrovandi case also became significant for the subsequent proceedings relating to cover-ups during the investigation, in which omissions and obstructions in the initial investigative phases were established. This connects to the procedural limb of article 2 ECHR, which requires States to have an effective system for establishing responsibility in cases of death resulting from the use of force by public agents.
The case law referred to in the judgment reiterates that an interference with the right to life may be considered lawful only where it is strictly functional to interests of equal rank and under conditions of absolute necessity. In the Aldrovandi case, the person stopped did not represent a present threat to the life or safety of third parties such as to justify coercive measures so invasive in nature.
The judgment constitutes a landmark in the relationship between article 53 of the Criminal Code and article 2 ECHR, because it clarifies that the use of public force must be proceduralised, guided by precise operational rules, and constantly oriented toward the primary protection of life and physical integrity. The absence, in the Italian legal system, of an organic and detailed discipline governing the use of force makes judicial elaboration central in defining the limits of lawfulness.
The Aldrovandi case thus marks a decisive step: negligent excess in a ground of justification (lawful use of weapons) is not a residual figure, but a guarantee instrument ensuring the primacy of the right to life in light of European Convention standards.

1.17. Lawful use of weapons and the Taser[14]

The introduction of the Taser into the Italian legal system has opened a delicate issue in the relationship between the lawful use of weapons and the protection of fundamental rights[15]. Presented as a "non-lethal" instrument and conceived to temporarily neutralise the subject's motor functions by means of an electric discharge,

[14] Di Muzio, F. – Del Ponte, M. (2022), *Taser e uso legittimo delle armi*, in *Guida al diritto – Norme e Tributi Plus*, 4 May; Continiello, A. (2018), *L'uso del taser da parte delle Forze dell'Ordine. Problematiche applicative e conseguenze giuridiche*, in *Giurisprudenza penale web*, pp. 7–8.
[15] Within the framework of the so-called *milleproroghe* decree (Decree-Law no. 202/24), converted into Law no. 15/2025, the trial use of conducted electrical weapons by municipal police forces was extended also to municipalities with fewer than 20,000 inhabitants. For the legislative development concerning the introduction and trial use of the Taser in Italy, see Ruggiero, R.A. (2020), *Lo sbarco del taser in Italia*, in *Diritto penale contemporaneo – Rivista trimestrale*, 1, pp. 226–238.

the conducted energy device directly affects personal liberty and health, as it may cause the person to fall, suffer trauma, and, in certain circumstances, sustain very serious consequences. For precisely this reason, its use cannot be regarded as neutral from the criminal-law point of view, but must be fully brought within the framework of the justifications provided by article 53 of the Criminal Code and their corresponding limits. The case law of the Court of Cassation has classified the Taser as a common firearm[16], emphasising its offensive capacity and its typical functioning, which involves the firing of darts and the transmission of electrical energy into the body of the person struck. Such was the view, among others, in *Cass.*, Section II, 25 October 2016, no. 49325, and *Cass.*, Section I, 2 March 2023, no. 8991. The Constitutional Court, in judgment of 24 May 2022, no. 126, also clarified that the regulation of conducted energy devices falls within the State's exclusive legislative competence both in the field of weapons and in that of public order and security, confirming that the definition of usage limits and operational conditions concerns the protection of fundamental interests such as the physical and psychological integrity of persons.

Operationally, ministerial protocols outline a gradual and de-escalation-oriented procedure, which provides for the prior display of the weapon, a verbal warning, the use of dissuasive signals, and only as a last resort the activation of the discharge. This sequence has not merely organisational value but takes on legal significance in verifying the requirements of necessity and proportionality required by article 53 of the Criminal Code. The use of the Taser is permitted exclusively in the cases already provided by law for the use of weapons and must constitute an *extrema ratio* in comparison with less invasive alternatives.

Where injury or death occurs because of Taser use, the liability of the public official must be assessed in light of the causation under articles 40 and 41 of the Criminal Code and the possible applicability of negligent excess under article 55 of the Criminal Code. Where the justifying situation objectively exists but the agent negligently exceeds the limits imposed by necessity and proportionality, an excessive use of coercive means may be found. This may occur, for example, where the intervention is not truly unavoidable, where obvious conditions of vulnerability of the subject are ignored, or where the precautionary rules laid down in the operational protocols are not respected, including those concerning the immediate request for medical assistance and subsequent monitoring.

[16] Even before being formally included among the weapons available to the police, the Taser had been classified by the Court of Cassation as a common firearm: see, inter alia, *Cass.*, Section I, 2 March 2023, no. 8991, in *Foro it.*, Rep. 2023, entry *Armi e materie esplodenti*, no. 7; *Cass.*, Section II, 25 October 2016, *Calabrice*, no. 49325, in *Foro it.*, Rep. 2016, entry *Armi e materie esplodenti*, no. 7, and *Ced Cass. pen.* rv. 268364 (in that case, the electric weapon had been used to commit a robbery). According to the Court of Cassation, this classification is justified by the fact that the Taser has the typical functioning of common firearms and is capable of causing harm to the person, by firing small darts which, upon contact with the victim, discharge electrical energy. On this point, see also Constitutional Court, 24 May 2022, no. 126, in *ForoNews*, 25 May 2022, with a note by Aprile, E. (2022), *Per la Corte costituzionale i "dissuasori di stordimento a contatto" rientrano nella categoria delle armi e la relativa competenza legislativa spetta in via esclusiva allo Stato*, in *ForoNews*, 25 May.

The requirement of proportionality imposes a balancing between the means employed and the actual degree of the threat or resistance, as well as between the competing interests. It is necessary to assess the nature of the conduct that is to be prevented, the immediacy and inevitability of the danger, the balance of forces, the time and place context, and the subjective conditions of the person involved. The operational protocol expressly calls for consideration of vulnerability factors such as age, pregnancy, cardiac or psychiatric conditions, dependency, as well as the risks connected with falling or use in dangerous environments. The requirement of necessity, in turn, demands that the use of force be in fact the only suitable means of dealing with the situation, so that the operator must first evaluate alternative solutions.

The debate remains open also in the light of the deaths that have occurred in Italy since the experimental introduction of the Taser in 2018. In several incidents, Public Prosecutors' Offices have opened investigations for negligent homicide and ordered medico-legal examinations, demonstrating that the classification of the weapon as "non-lethal" does not eliminate the need for strict judicial scrutiny. The structural problem lies in the impossibility, for the operator, of always knowing in advance the psycho-physical condition of the subject, with the consequence that the use of the device still involves a component of risk.

In light of these considerations, the use of the Taser must be interpreted consistently with the principles developed also at the Convention level concerning the protection of the right to life, which require a restrictive reading of justifications where State intervention involves a risk to physical integrity. The conducted energy weapon, though conceived as an intermediate instrument, cannot be exempted from the full application of the criteria of necessity, proportionality, and adequacy, nor from verification of any negligent excess where the intervention produces consequences more serious than those intended[17].

1.18. Article 326 of the Criminal Code – Disclosure and use of official secrets

Article 326 of the Criminal Code punishes a public official or a person entrusted with a public service who, in breach of the duties inherent in the office or by abusing his or her official position, discloses official information that must remain secret or in any way facilitates its disclosure; paragraph 2 extends criminal liability also to negligent facilitation, while paragraph 3 provides for an aggravated form where the disclosure is

[17] ECtHR, *V. v. Czech Republic*, 7 December 2023, *N-JUS*, 7 December 2023, with a note by Gregorini Mastrangelo, B. (2023), *La Corte EDU sul diritto alla vita e l'intervento delle forze dell'ordine nelle situazioni coinvolgenti persone con disturbi mentali*, in *N-JUS*, 7 December; Scalia, V. (2025), *Taser, un caso di provincialismo letale*, in *Il Manifesto*, 27 August, who observes that "(...) while, on the one hand, the deficit in training is not the responsibility of officers and military personnel, on the other hand they should be aware that they operate within a framework grounded in the rule of law. In particular, the reports of the Ombudsman for the rights of persons deprived of their liberty stress the need not to use the Taser in confined spaces, to avoid crossing the already thin line between restraining intervention and torture. For this reason, they recommend adequate training in the use of the Taser, including post-use debriefing sessions and the drafting of written reports to be submitted to supervisory bodies." For a more in-depth analysis of ECtHR case law on the use of the Taser, see Chapter 2.

aimed at obtaining an undue financial profit or an unjust non-financial profit, or at causing unjust damage.
The protected legal interest is identified as the proper functioning and impartiality of the Public Administration, as expressions of the official's duty of loyalty. Decisions such as *Cass.* no. 11001/2009 and *Cass.* no. 35779/2023 highlight the public interest risk posed when administrative actions lack functional secrecy.
As for the material object, the Court has clarified that "official information which must remain secret" includes not only information always withheld from disclosure and vis-à-vis everyone, but also information whose dissemination is prohibited at a given time or subject to compliance with specific regulatory procedures. In this sense, *Cass.*, Section VI, 1 July 2022, no. 39312, specified that the provision also covers information whose communication is prohibited because it is made without compliance with the rules governing the right of access or to persons not entitled to receive it; in that case, however, the offence was excluded because there had been no verification of the persistence of secrecy and of the actual incorporation of the relevant checks into criminal proceedings.
It is irrelevant that the information was learned outside the specific office to which the official belongs or through colleagues' confidences, provided that it is objectively "official" and covered by a duty of secrecy: see *Cass.*, Section VI, 21 January 2005, no. 1898, *P.G. and Nicolosi*, as well as *Cass.*, Section VI, 19 November 2015, no. 49600. The same line is followed by *Cass.* no. 5141/2008 (*Cincavalli*) and *Cass.* no. 33609/2010 (*Bultrini*).
The Court has also held that it is irrelevant that the information was already known within a restricted circle, where the conduct of the agent results in a wider dissemination: thus *Cass.*, Section VI, 30 August 2004, no. 35647 (*Vietti*), a principle reiterated by *Cass.*, Section VI, 23 June 2015, no. 39337, in a case concerning the delivery of a crime report subsequently published in full by a newspaper.
Regarding police information systems, the Court has held that the offence is made out where there is improper disclosure of data contained in the S.D.I.–C.E.D. database, for which the law provides a prohibition on communication: *Cass.*, Section V, 4 February 2021, no. 8911.
As to the aggravated form under paragraph 3, the specific intent of financial gain was considered established in the case of a carabinieri officer who communicated the names and contact details of persons involved in road accidents to a private individual, obtaining in return the promise of a percentage of professional fees: *Cass.*, Section VI, 27 January 2022, no. 5390. Previously, the Court had already regarded personal motives or ill will as indicators of the purposeful character of the conduct (see *Cass.*, Section VI, 1 February 1996, no. 1169, *Iacolare*).
It is well established that Article 326 of the Criminal Code may concur with other offences where the disclosure forms part of a broader criminal context: for example, with aiding and abetting or corruption, as recognised by *Cass.* no. 11001/2009, *Cass.* no. 29337/2015, *Cass.* no. 49600/2015, and *Cass.* no. 35779/2023.

The most controversial issue concerns the legal nature of the offence: one line of authority, reflected in decisions such as *Cass.* no. 5141/2008, *Cass.* no. 11001/2009, *Cass.* no. 4170/2013, and *Cass.* no. 29337/2015, tends to classify article 326 as an offence of presumed danger or at any rate a formal offence, considering the mere breach of the duty of secrecy imposed by law sufficient, on the ground that the legislature has already made the relevant assessment of danger. A different line, by contrast, requires verification of the concrete suitability of the disclosure to prejudice the proper functioning of the Public Administration or the interests of third parties. This perspective is reflected in decisions that have excluded the offence in the absence of actual harmfulness, such as in the case concerning the communication that there were no entries in the register of crime reports (see Turin Tribunal, 14 December 2005), where the offence was denied for lack of concrete prejudice to the investigations, since no criminal proceedings had ever been initiated.
Cass. no. 39312/2022 also falls within this latter line, which is more attentive to concrete verification of the persistence of secrecy and of the actual harmfulness of the conduct. In sum, the oscillating case law between a formal reading (presumed danger) and a substantive one (concrete danger) reveals a gradual tendency to emphasise the principle of harmfulness, requiring that the disclosure be concretely capable of compromising the public interest in the functional secrecy of administrative action[18].

1.19. Article 615-ter of the Criminal Code – Unauthorised access to an IT or telematic system

Article 615-ter of the Criminal Code punishes anyone who unlawfully gains access to an IT or telematic system protected by security measures or remains therein against the will (express or tacit) of the person entitled to exclude others. The provision provides for increased penalties, inter alia, where the offence is committed by a public official or a person entrusted with a public service through abuse of powers or breach of duties inherent in the office, as well as where the perpetrator abuses the status of system operator or acts with threat/violence or while armed.
The protected legal interest is commonly identified as IT confidentiality and the holder's *ius excludendi*, that is, the ability to control access and guarantee undisturbed enjoyment of the system. Legal scholarship and case law have debated whether protection is primarily afforded to an "electronic domicile" (*Cass.* 4 October 1999, *Piersanti*; *Cass.* 4 October 1999, *De Vecchis*) or, in a more functional perspective, to the undisturbed use of the system and the organisational protection of the database[19].

[18] In this regard, see Seminara, S. (2024), Articolo 326 del codice penale, in Forti, G. – Riondato, S. – Seminara, S. (eds.), *Commentario breve al Codice penale*, Milano, p. 1242.
[19] Galdieri, P. (1997), *Teoria e pratica nell'interpretazione del reato informatico*, Milano, p. 151; Pica, G. (1999), *Diritto penale delle tecnologie informatiche*, Torino; Berghella, F. – Blaiotta, R. (1995), *Diritto penale dell'informatica e dei beni giuridici*, in *Cassazione penale*, p. 2329 ff.; Alma, A. – Perroni, G. (1997), *Riflessioni sull'attuazione delle norme a tutela dei sistemi informatici*, in *Diritto penale e processo*, p. 504 ff.; Borruso, R. (1994), *La tutela del documento e dei dati*, in *Profili penali dell'informatica*, Milano; Cuomo, I. – Izzi, B. (2002), *Misure di sicurezza e accesso abusivo ad un sistema informatico o telematico*, in *Cassazione penale*,

The provision criminalises two forms of conduct: (i) unauthorised access to a protected system; and (ii) remaining within it against the will of the holder. "IT system" means an organised set of equipment and procedures designed for data processing and the performance of useful functions by means of information technology. For the purposes of the offence, it is sufficient that the system be protected even by minimal measures: the case law has clarified that even a simple password constitutes an adequate security measure (*Cass.*, 21 February 2008, *Buraschi*).

The offence is one of mere conduct and is completed upon the violation of the *ius excludendi*, regardless of the actual acquisition or extraction of data: proof of any further result or of the effective consultation of the information is not required (among the authorities cited, also from the perspective of the irrelevance of "knowledge" of the data, Bologna Court of Appeal, 30 January 2008). In this sense, unauthorised access is already complete at the moment the agent enters or remains unlawfully within the system.

In the sector of greatest relevance for this report, the central issue concerns access carried out by public officials or persons entrusted with a public service, who often have a "privileged" relationship with public or investigative databases (e.g. SDI/CED, Ministry of the Interior systems, judicial archives). The rationale of the aggravating circumstance is twofold: on the one hand, to punish intrusion into the "electronic domicile"; on the other, to protect the public interest in the probity, impartiality, and confidentiality of those exercising public functions.

On this point, the case law has revealed a conflict: namely, whether article 615-ter of the Criminal Code is also committed by a person who is formally authorised to access the system but uses those credentials for purposes unrelated to service. One approach, now regarded as minority in some applications, tends to exclude the offence where the operator is authorised to access and does not formally breach technical prescriptions, relegating criminal liability to other offences (e.g. disclosure of secrets, abuse of office, etc.). In this direction stands *Cass.*, Section V, 29 May 2008, *Scimia*, according to which the conduct of a person who, having title to access, uses the system for unlawful purposes does not constitute article 615-ter, without prejudice to liability for any offences committed with the data acquired. A similar approach appears in the *Migliazzo* case (*Cass.*, Section V, 17 January 2008, no. 2534), in which the Court held that what was decisive was to verify the "contrary will" of the holder in relation to the immediate result of access and remaining, and not regarding subsequent conduct of use or disclosure (although foreseen).

Alongside that line, a stricter orientation has consolidated, according to which access by an authorised operator is also abusive when it occurs for reasons ontologically unrelated to those justifying the attribution of the power. From this perspective, the limit is not only "technical-formal," but also functional: the authorisation is granted for specific institutional purposes and, if used for different aims, the access becomes a remaining *invito domino*, at least tacitly. This principle is clearly stated by *Cass.*, Section

p. 1018 ff.; Di Fresco, F.P. (2007), *Art. 615-ter – Accesso abusivo ad un sistema informatico o telematico*, in Manna, A. (ed.), *Reati contro la persona*. Torino, pp. 825 ff.

V, 9 November 2018, no. 8541, which considers the offence made out where the public official, though authorised and without breaching formal barriers, accesses or remains in the system for extraneous reasons. In a recent application, *Cass.*, Section V, 30 January 2023, no. 17551, found the offence made out in respect of a carabinieri marshal who, in the absence of service-related reasons, had performed targeted searches in the inter-force database concerning colleagues and persons known to him, precisely emphasising the extraneousness of the reasons for access in relation to his official function.

The caselaw concerning law enforcement bodies confirms that the courts tend to emphasise the misuse of service credentials. Unauthorised access has been found where the operator enters using service passwords to acquire protected data for private investigation or other non-institutional purposes (*Cass.*, Section V, 30 April 2009, no. 18006, *Russo*; *Cass.*, 10 December 2009, *Matassich*; *Cass.*, 13 February 2009, *Russo*). Similarly, the offence was found in the conduct of a traffic police officer who had queried the CED using his own password and falsely simulating a request from a non-existent police body, an artifice necessary to obtain the information (case law referred to in scholarship and sector-specific decisions).

There remains, however, an area of friction where access is technically "regular" and the subsequent conduct consists in disclosure: in one case, the Court of Cassation excluded article 615-ter in relation to a court clerk who, while lawfully accessing the judicial administration system, had obtained confidential information and then disclosed it to third parties, holding that only article 326 of the Criminal Code was made out (a line consistent with the view that abusiveness must be verified at the moment of entry and not with reference to subsequent purposes). By contrast, in the decisions that emphasise the functional criterion, the use for extraneous purposes "requalifies" the access as abusive already at the stage of remaining, because it is tacitly contrary to the will of the holder of the power to exclude[20].

In sum, the case law shows a progressive consolidation of the idea that, especially for public officials, the "abusiveness" of access does not depend solely on the breach of technical barriers or formal procedures, but also on the deviation from the institutional purpose for which the authorisation was granted. In this perspective, article 615-ter of the Criminal Code becomes an instrument of enhanced protection against the private or exploratory use of public databases, especially where access occurs in the absence of a concrete connection with official activities and without a qualified suspicion legitimising the initiative of the judicial police.

1.20. The offence of collusion to defraud the Treasury (article 3 of Law no. 1383/1941)

[20] Gentiloni Silveri, A. (2008), *L'accesso abusivo a sistema informatico da parte di funzionari pubblici: non c'è reato se i dati non sono riservati?*, in *Diritto dell'informazione e dell'informatica*, p. 369 ff.; Flor, R. (2008), *Art. 615-ter c.p.: natura e funzioni delle misure di sicurezza, consumazione del reato e bene giuridico protetto*, in *Diritto penale e processo*, p. 106 ff.; Sarzana Di Sant'Ippolito, C. (2007), *L'accesso illecito alle banche dati ed ai sistemi informatici pubblici: profili giuridici*, in *Diritto dell'informazione e dell'informatica*, p. 277 ff.

Article 3 of Law no. 1383/1941 criminalises the conduct of a member of the Guardia di Finanza who colludes with outsiders to defraud the Treasury, providing for military penalties (by reference to articles 215 and 219 of the Military Criminal Code of Peace) and the jurisdiction of the military courts. The offence has traditionally been regarded as "ambiguous" because the provision describes the conduct in highly generic terms ("colludes… in order to defraud"), thus leaving it to the courts to define its content and threshold of typicality.

According to the broadly accepted approach, collusion requires that an agreement be reached between the insider (the finance police officer) and the outsider, directed toward fraud. The Court of Cassation has, however, clarified that article 3 of Law no. 1383/1941 constitutes a derogation from the principle laid down in article 115 of the Criminal Code, by attributing criminal relevance to the collusive agreement even where it is aimed at carrying out the fraud through tax-related misconduct that is not in itself criminally relevant, or through conduct capable of eluding or diverting the control and assessment activities (*Cass.*, Section VI, 4 February 1998, no. 1319, *Gilardino*).

This framework makes it possible to understand why collusion is classified as an offence of anticipatory consummation: what matters is not the outcome of the fraud nor the actual fiscal loss, but the harmful potential of the agreement and of the fraudulent devices that form its object. In this sense, the Court of Cassation has reiterated that, for the offence to be made out, it is sufficient that there be an agreement concerning a "fraud against the Treasury," understood as any expedient or fraudulent means with the potential to impair the interest in the collection of tax revenue (*Cass.*, 8 May 2020, no. 14146; *Cass.*, 13 May 2020, no. 14820).

The more recent and consolidated case law tends to exclude the idea that the object of the offence is exhausted by the mere breach of the duty of loyalty. Rather, the protected interest is the enhanced protection of State revenues, entrusted in a qualified manner to the Guardia di Finanza, and the protection of that interest from the risk of collusive agreements with external subjects. Two corollaries follow: (i) agreements that are purely internal among members of the Corps do not fall within the offence, even if directed at fraud; and (ii) agreements aimed at the commission of non-fiscal offences do not fall within it either.

Consistently, the Court of Cassation has affirmed that, for collusion to be made out, it is not necessary that the officer be actually carrying out a specific service duty connected with the fraud at the relevant time: membership in the Guardia di Finanza is sufficient, because the legal interest protected by the rule is grafted precisely onto that status (*Cass.*, 13 May 2020, no. 14820, concerning the fictitious registration of property in the name of a disabled person in order to benefit from reduced VAT).

In an effort to give concreteness to an otherwise overly indeterminate notion of "collusion," the case law tends to emphasise not a mere abstract pact, but the presence of conduct that unambiguously expresses the officer's "alignment" with interests opposed to those of the Treasury: in other words, the collusive agreement manifests itself through a concrete violation of institutional duties carried out with the involvement of the outsider. It follows that collusive conduct may take many different

forms and often intersects with conduct that, abstractly, would also amount to other offences of "institutional infidelity" (omissions, disclosure of secrets, deviant conduct in control activities), but which may merge into the broader offence of collusion according to the concrete reconstruction of the facts.

The Court of Cassation generally maintains a strict approach in delineating the relationship between collusion and other offences. In particular, it has affirmed the possibility of formal concurrence between collusion and corruption where the officer, in addition to agreeing to defraud the Treasury, receives money or other benefits, since collusion is not a complex offence and does not absorb corruption, which protects a different legal interest (the proper functioning and prestige of the Public Administration) (*Cass.*, Section VI, 4 February 1998, no. 1319; and, as regards the interference with res judicata, *Cass.*, Section I, 29 January 2014, no. 12943, excluding the operation of *ne bis in idem* with respect to a different legal classification of the same historical fact).

A similar logic is followed in the relationship with the disclosure of official secrets: formal concurrence has been held possible where the finance police officer communicates confidential information to a private individual concerning an imminent official activity affecting that person, in view of the diversity of the interests protected (the regular collection of revenue and the discipline of the Corps, on the one hand; the prestige and proper functioning of the Public Administration, on the other) (*Cass.*, 6 June 2019, no. 37820).

The notion of fraud is interpreted broadly: it is sufficient that there be the indication or preparation of a fraudulent means capable of affecting (even only potentially) the proper flow of tax revenue. Collusion has been found, for example, in an agreement between a finance police officer and a car dealer for the purchase of new vehicles falsely presented as used through "double registration," with partial VAT evasion (*Cass.*, 8 May 2020, no. 14146). In another case, collusion was found in conduct of "reassurance" and support for the marketing of vehicles by a colonel, despite awareness of the investigative context surrounding the seller, once again emphasising the anticipatory nature of consummation and the harmful potential of the conduct (*Cass.*, 13 May 2020, no. 14820).

As regards the threshold of punishability, case law points to a more restrictive line where the agreement is lacking: it has been held that an unaccepted proposal of under-invoicing does not constitute attempted collusion but may amount only to non-punishable incitement under article 115 of the Criminal Code (*Cass.*, 30 December 2009, no. 49975, *Scaramella*). Conversely, the more recent case law nevertheless tends to reinforce the reading of collusion as an anticipatory offence where the agreement has been reached and is directed at even relatively "minor" fraudulent means (*Cass.*, 15 October 2014, no. 45864; *Cass.*, 13 May 2020, no. 14820).

1.21. Intersections between law enforcement accountability and the "Security Decree" (Decree-Law no. 48/2025 converted into Law no. 80/2025)

Decree-Law no. 48 of 11 April 2025, converted without amendment into Law no. 80 of 9 June 2025, bears the title "Provisions on public security, protection of personnel in service, as well as victims of usury and prison administration," and presents a content that is openly heterogeneous[21]. The coexistence of different subject matters (terrorism and organised crime; urban security; protection of personnel; usury; prison administration) has also been read as problematic from the standpoint of the method of emergency law-making, as a "symptomatic" signal of insufficient demonstration of the prerequisites under article 77 of the Constitution, according to observations also formulated in the report of the Office of the Massimario.

For present purposes, the decree is relevant not because it directly intervenes upon the "classic" devices of accountability (criminal and disciplinary responsibility; external controls; transparency). Rather, it matters as a political-criminal indicator: the text combines the strengthening of certain criminal protections "in favour" of operators, the extension of the repressive apparatus in contexts of social and institutional conflict, and

[21] On this point, see AA.VV., *Il D.l. Sicurezza/1*, in *Guida al diritto*, 2025, no. 16, pp. 10 ff. with contributions by Cisterna, A. (2025), *L'evanescenza delle condotte condiziona le norme sul terrorismo*, pp. 82 ff.; Id. (2025), *Scatta la liquidazione immediata se l'impresa non ha prospettive*, pp. 86 ff.; Id. (2025), *Vittime di mafia, dilatato il novero dei soggetti indennizzabili dallo Stato*, pp. 90 ff.; Amato, G. (2025), *Occupazione abusiva, nuovo reato e previsto reintegro accelerato*; Cisterna, A. (2025), *Potenziate a tutto campo le attività di informazione per la sicurezza*, pp. 98 ff.; Id. (2025), *Agenti Aisi e Aise: stabili le norme per la testimonianza in giudizio*, pp. 106 ff.; AA.VV., *Il D.l. Sicurezza/2*, in *Guida al diritto*, 2025, no. 17, pp. 12 ff. with contributions by Tona, G. (2025), *Nuova aggravante se l'azione è commessa in stazioni e metro*, pp. 19 ff.; Id. (2025), *Violenza stadi: fino a cinque anni di carcere se la condotta è contro le persone*, pp. 22 ff.; Id. (2025), *Blocco stradale e ferroviario: arresto anche dopo un divieto amministrativo*, pp. 25 ff.; Id. (2025), *Accattonaggio: forte rivisitazione di elementi, confini e circostanze*, pp. 29 ff.; Id. (2025), *Un insieme di sanzioni più severe per gli atti illeciti verso la polizia*, pp. 31 ff.; Id. (2025), *Avvocati: con l'Albo esperti antiusura nuovi spazi a una professione sociale*, pp. 36 ff.; Natalini, A. (2025), *Resistenza passiva nei Cpr: norma a rischio di incostituzionalità*, pp. 39 ff.; Id. (2025), *Punibile resistenza o disobbedienza del comandante di nave straniera*, pp. 44 ff.; Fiorentin, F. (2025), *Detenute madri: maglie strette per il differimento della pena*, pp. 48 ff.; Id. (2025), *Reato commesso in detenzione, effetti negativi su tutti i benefici*, pp. 55 ff. See also Brizzi, F. (2025), *Una "bussola" per orientarsi tra le norme del d.l. sicurezza*, in *Il Penalista – Ius*, 24 April; Dolcini, E. (2025), *Un Paese meno sicuro per effetto del decreto-legge sicurezza*, in *Sistema penale*, 15 May; Fiandaca, G. (2025), *Intorno a sicurezza e democrazia in una prospettiva penalistica*, in *Foro italiano*, no. 6, V (forthcoming); Id. (2025), *La bulimia punitiva aumenterà il consenso, ma non serve a niente*, in *Il Foglio*, 21 March (republished in *Sistema penale*, 22 March); Della Ragione, L. (2025), *D.L. Sicurezza: uno sguardo d'insieme alle novità del codice penale*, in *Quotidiano giuridico – Altalex*, 16 April; Manes, V. (2025), *L'ossessione securitaria*, in *Diritto di difesa*, 24 March; Palazzo, F. (2025), *Decreto sicurezza e questione carceraria*, in *Sistema penale*, 1 May; Vigneri, A.F. (2025), *Dal D.d.l. al D.l. "Sicurezza". Prove tecniche di autoritarismo punitivo*, in *Giustizia insieme*, 10 April. On the constitutional, methodological, and substantive aspects of the security decree, see: the statement of the Associazione Italiana dei Professori di Diritto Penale, *Sul "pacchetto sicurezza" varato con decreto-legge*, 9 April 2025; the statement of the Associazione Nazionale Magistrati, *Nel decreto sicurezza possibili profili di illegittimità costituzionale*, 14 April 2025; the appeal by public law scholars, *Appello per una sicurezza democratica*, 28 April 2025; Balduzzi, R. (2025), *Il decreto con forza di legge e la sicurezza pubblica*, *Lettera A.I.C.* no. 4/2025; Morrone, A. (2025), *Rovesciare la Costituzione performativa. "Sicurezza" in cambio della libertà*, in Losappio, G. – Manna, A. (eds.), *Profili di (in)costituzionalità del decreto-sicurezza. Atti del Webinar del 30 maggio 2025*, in *Sistema penale*, p. 6 ff.; Zirulia, S. (2025), *"Il Decreto Sicurezza" 2025 interrompe il processo di adeguamento del Codice Rocco alla Costituzione. Criticità e possibili rimedi*, in *Rivista italiana di diritto e procedura penale*, p. 228 ff.

the introduction of instruments for tracking and rendering visible police action (bodycams). Legal scholarship has proposed a historical reading that identifies in the decree a counterthrust against the—unfinished—process of adapting the "Rocco Code" to the Constitution, with possible frictions with principles of proportionality, reasonableness, and with fundamental rights as limits on punitive power.

The provisions most closely linked to accountability concern: (i) the increase in penalties for violence/threats and resistance against police officers (amendments to Articles 336, 337, and 339 of the Criminal Code); (ii) the extension of article 583-quater of the Criminal Code to injuries caused to judicial police or public security officers in the course of or because of their functions, including minor injuries; (iii) the introduction of the offence of prison riot (article 415-bis of the Criminal Code) and the parallel extension of the same repressive logic to places of administrative detention for migrants; (iv) the rules on licence/possession/carrying of weapons by off-duty officers; and (v) the regulatory framework governing bodycams, linked to privacy profiles and data governance.

Article 19 of the decree introduces special aggravating circumstances for acts of violence or threat committed against judicial police officers or public security officers, both where the violence/threat is aimed at compelling them to perform an act contrary to their duties or omit an act, and where it is aimed at opposing them while they are carrying out an official act or service. The increase "up to one half" places these circumstances within the regime of article 63(3) of the Criminal Code, with significant repercussions on the overall sentencing framework.

The stated rationale is the protection of operational activity and, consequently, the more effective deployment of public order and security services. From a systematic point of view, however, the legislative technique selects, within the broad category of public officials and persons entrusted with a public service, a specific segment (judicial/public security police operators), assigning greater disvalue to the same conduct by reason of the "quality of the victim." Scholarship has raised doubts of reasonableness and proportionality: the differentiation may produce unequal treatment not supported by a genuine increase in harmfulness, with possible tensions with article 3 of the Constitution; similar observations are also referred to in the report of the Massimario, which highlights the risk of a selective criterion not justified by the protected interests and the legislative rationale.

To these amendments is added a further aggravating circumstance (article 339 of the Criminal Code) where violence/threat is committed in order to prevent the construction of infrastructure intended for the provision of energy, transport, telecommunications, or other public services. The provision has been read as an instrument of intensified repression in contexts of political-social conflict linked to public works, with possible tensions with freedom of assembly and expression where the increased penalty is in fact linked to the "political" purpose of the protest.

Article 20 amends article 583-quater of the Criminal Code by expanding its scope beyond the original perimeter (public order in sporting events), to include injuries caused to judicial police or public security officers "in the course of or because of the

performance of their functions." The reform does not limit itself to serious and very serious injuries: it introduces a specific punitive response also for minor or very minor injuries against the "security operator," according to a logic similar to that already provided for health professionals.
The most incisive criticism concerns not only the "victim-based" technique, but also the application context: these offences are destined to operate, in a privileged way, in moments of friction between authority and dissent (demonstrations, public order situations). From this perspective, the increase in criminal penalties risks producing an excess of protection not so much of the legal interest of "physical integrity" as such, but of the function of containing/repressing dissent, with outcomes difficult to reconcile with a liberal criminal law of the act and with a coherent proportionality standard.
article 21 permits the equipping of officers with wearable video surveillance devices for public order services, territory control, surveillance of sensitive sites, railway environments, and on-board trains; and it also authorises both fixed and wearable video surveillance in places where persons deprived of liberty are held. The discipline must be coordinated with Legislative Decree no. 51/2018 (processing for purposes of prevention/investigation of offences) and with the rules on minimisation, access, data security, and traceability.
On this point, the Data Protection Authority had already issued conditional favourable opinions in 2021, imposing operational limits: activation only in the presence of concrete situations of danger or crime, exclusion of continuous recording, and clarification that there are no functions of unique identification/facial recognition. From the perspective of accountability, bodycams may affect the evidentiary plane and the "visibility" of police action, but their effectiveness depends on the quality of the rules of engagement (when they are activated; who decides; what audits exist), on the chain of custody, and on actual accessibility to defence counsel and the judicial authority.
Article 28 authorises public security officers, when off duty, to carry certain types of weapons without a licence (by reference to article 42 of the Consolidated Public Security Act). The explanatory report justifies the measure on operational grounds, namely the need to use a private weapon different from the service weapon, especially when in plain clothes or off duty.
Scholarly criticism focuses on the risk of the "diffusion" of weapons, in both public and domestic spaces, and on the weakness of the rationale in terms of necessity/urgency and political-criminal proportionality. In this perspective, the rule is read as a coherent feature of a securitarian model that tends to shift the axis from institutional prevention and regulation of the use of force toward an increase in individual offensive capacity.
Articles 26–27 introduce the offence of prison riot (article 415-bis of the Criminal Code) and replicate the same logic in CPRs/hotspots. The provision defines "resistance" as also including forms of "passive resistance" which, by reason of the number of persons involved and the context, prevent the performance of acts necessary for the management of order and security. This constitutes a relevant development: a category ("passive resistance") enters the criminal-law vocabulary which is distinct from the traditional "active" resistance of article 337 of the Criminal Code (violence or threat).

The critical issues identified in scholarship concern legality/taxativity (an elastic and undefined concept), harmfulness (danger/harm to order not always clear in the concrete case), and proportionality in relation to the existence of less afflictive instruments for governing forms of internal disobedience. Moreover, the placement of the new offences within the perimeter of barriers to benefits/penitentiary advantages strengthen their deterrent function against any form of protest, with an evident stiffening effect on the system.

1.22. Conclusions

An "individualistic" reading of accountability maintains that only a small proportion of criminally relevant misconduct leads to indictment and conviction, owing to the uncertainty of the boundaries of police action, the high evidentiary standard, and the professional ties between prosecutors/investigators and the police. While sharing the relevance of the first two factors (the boundaries of lawful conduct and the BARD standard), and without denying the weight of institutional interconnections, the case-law analysis referred to in this work suggests that the procedural phenomenon is not at all marginal, at least if one considers a sample of complex cases concluded by final judgments.

At various points in history, the framework of criminal accountability has been shaped by the judiciary's "substitutive" role, which involves addressing gaps in protection or imbalances in sanctions. Prior to the establishment of the offence of torture (article 613-bis of the Criminal Code), there was a tendency to classify severe acts of violence against individuals deprived of liberty under offences that did not align perfectly with typical legal definitions—sometimes through broad interpretations bordering on analogy. While this approach has been viewed as a substantive response to the demand for punishment, it raises significant concerns regarding the relationship between legal provisions and the principles of legality and speciality.

The political-criminal framework confirms, from another angle, that the accountability of officers remains a sensitive terrain. The proposal—later removed from the final text of Decree-Law no. 48/2025—to introduce a "criminal shield" (understood as a filter on automatic registration and the opening of investigations) shows the cyclical pressure toward special regimes for the police. Public debate opposed the argument of functional and financial protection of operators (avoiding useless proceedings; coverage of legal costs) to constitutional objections (equality, mandatory prosecution, risk of loss of impartiality if the preliminary assessment is not independent).

In any event, a preventive filter would hardly be effective in cases that are not manifestly unfounded, that is, in those cases where judicial assessment remains necessary. To improve the quality of accountability, interventions on two complementary levels appear more promising: institutional and technical-operational.

On the institutional plane, the idea of external and independent oversight bodies is central—bodies capable of receiving complaints, monitoring the effectiveness of internal controls, documenting controversial episodes, and facilitating victims' access to justice, without replacing either the judge or the disciplinary process. The added

value of such bodies lies in their function of bringing cases to light, ensuring transparency, collecting data, and independently reconstructing the facts, especially where the injured parties are socially vulnerable or have “weak” credibility within the institutional circuit.
On the technical-operational plane, the common element running through many judicial cases is the absence of certain extra-statutory parameters (beyond general categories such as necessity, proportionality, immediacy) capable of governing the use of force in typical high-risk situations where decisions must be made under severe time pressure. As a result, evaluative error and excessive use of force are often assessed only ex post, without a robust repertoire of shared and verifiable precautionary rules.
Hence the need to define, for typical situations (arrest of an agitated person; pursuit; restraint of resistance in custody; management of group violence; etc.), a set of rules of engagement and best practices that may serve as a parameter for assessing negligence and, symmetrically, as a framework of protection for the officer who complies with standards adequate to the concrete case. While the comparison to healthcare guidelines provides valuable conceptual insights—such as reasoned standardisation, reduced variability, and adequacy criteria—it does not warrant automatic conclusions. Even in the presence of formal protocols, negligence cannot be categorically dismissed or confirmed. It is incumbent upon the judge to assess the relevance of the rules to the specific case, evaluate the justification for any deviations, and determine whether alternative actions were reasonably foreseeable.

Capitolo 2 - ECtHR case law and police accountability, by Ilaria Boiano

2.1. Introduction

International human rights law imposes two main obligations on States, as developed by the European Court of Human Rights (ECtHR) under the European Convention on Human Rights (ECHR). States must avoid actions that infringe individual rights (negative obligations), and take measures to protect fundamental rights, including from private

actors (positive obligations). This requires States to enact effective legislation, conduct independent and effective investigations into violations, activating judicial protection instruments, and putting in place administrative measures to prevent, investigate and remedy violations[22] .

The ECtHR has been called upon to assess the conformity of police actions in cases where the use of force has resulted in violations of the right to life, protection from inhuman or degrading treatment and personal freedom, thus contributing to defining minimum standards for police practices in the Member States of the Council of Europe[23].

The case law of the Strasbourg Court has had a significant impact on the national legal systems of Member States, imposing both negative and positive obligations on States and guiding their legislative, judicial and administrative policies concerning the protection of the rights and freedoms of individuals under their jurisdiction.

In Italy, compliance with Convention obligations is guaranteed by article 117, first paragraph, of the Italian Constitution, which requires the legislator and national courts to respect the international obligations undertaken by the State, including the ECHR, which, according to the Italian Constitutional Court, has the status of an "intermediate source" in the hierarchy of legal sources.

Convention law, although it has supranational relevance and is a parameter of constitutionality, does not, in fact, have direct effect in our legal system such as to allow the ordinary courts to automatically disapply conflicting domestic law with it. It follows that 'convention-oriented' interpretation must not lead to the substitution of legislation, acting as an interpretative criterion but not as a basis for disapplication, unlike what happens with European Union law. This is a crucial distinction, which confirms the role of the ECHR as an intermediate source, while emphasising the centrality of the Constitution in the system of legal sources in Italian law[24] .

Following Recommendation Rec (2001)10 of the Committee of Ministers of the Council of Europe (European Code of Ethics for the Police - CEEP), adopted on 19 September 2001[25], Italy has gradually integrated its principles into training courses and institutional documents.

---

[22] ICJ (International Commission of Jurists), *Police accountability under the Istanbul Convention – Practitioners' Guide No. 14* (2024), https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0.

[23] Murdoch, J., & Roche, R. (2013), *The European Convention on Human Rights and Policing: A Handbook for Police Officers and Other Law Enforcement Officials.* Strasbourg: Council of Europe.

[24] Constitutional Court, judgments nos. 348 and 349 of 2007, no. 293 of 2009, no. 331 of 2009 and no. 93 of 2010. Repetto, G. (ed.) (2013), *The Constitutional Relevance ECHR in Domestic and European Law: An Italian Perspective.* Cambridge.

[25] Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe (European Code of Police Ethics), adopted on 19 September 2000, https://rm.coe.int/16805e297e. Administrative Gazette, https://ww2.gazzettaamministrativa.it/opencms/export/sites/default/_gazzetta_amministrativa/amministrazione_trasparente/_basilicata/_craco/010_dis_gen/020_att_gen/2021/Documenti_1637753392799/1637753394059_allegato_b-codice_etico_europeo_per_la_polizia.pdf.

More generally, civil servants, including police officers, are subject to the Code of Conduct for Employees of the Ministry of the Interior, which lays down fundamental ethical principles such as respect for dignity, fairness and transparency[26] .
With regard to training, the Police Training School, which is part of the Ministry of the Interior, runs advanced courses for senior officers of the State Police, the Carabinieri and the Guardia di Finanza, and the programmes include modules on international and European security law, inter-agency cooperation and ECHR[27] .
Finally, certain equipment defined as 'non-lethal' – such as tear gas or graduated physical restraint tools – is currently used in various operational units, as provided for in the general guidelines on European police ethics, although its use remains fragmented and linked to specific operational contexts, raising concerns regarding the lack of clear documentation on its harmful and potentially lethal effects on people when used[28] .
These measures, although significant, remain limited: significant gaps remain in the regulatory framework, particularly with regard to independent oversight of the use of force and the transparency of data concerning police interventions[29] .
What follows is a systematic analysis of ECtHR case law focusing on excessive lethal force under article 2 and degrading treatment or torture in custody under Article 3.
Circumstances giving rise to arbitrary detention (article 5 ECHR), interference with private life, freedom of expression (articles 8 and 11 ECHR) and discrimination in the application of police powers (article 14 ECHR) are also relevant to this study. However,

---

[26] Ministry of the Interior, Code of Conduct for Ministry of the Interior Employees, https://www.interno.gov.it/sites/default/files/modulistica/codice_comportamento_dei_dipendenti_del_ministero_dellinterno.pdf.

[27] Advanced Training School for Police Forces, for programmes see the link https://scuolainterforze.interno.gov.it/alta-formazione/.

[28] For a comprehensive overview of the nature and risks of electric pulse devices, see Amnesty International (2019), *Projectile Electric-Shock Weapons. An Amnesty International Position Paper*. On an empirical and economic level, see B. Ba – J. Grogger (2018), *The Introduction of Tasers and Police Use of Force: Evidence from the Chicago Police Department*, in *AEA Papers and Proceedings,* vol. 109, pp. 1-26; B.C. McCannon (2009), *Do Less-Violent Technologies Result in Less Violence? A Theoretical Investigation Applied to the Use of Tasers by Law Enforcement*, in *Economics Discussion Paper,* no. 36, pp. 1-23. On the US legal front, A. Sussman (2012), *Shocking the Conscience: What Police Tasers and Weapon Technology Reveal About Excessive Force Law*, in *UCLA Law Review,* pp. 1342-1415, while D. Mandel (2013), *Gender Differences in Attitudes Towards Police Use of Tasers Following the Dziekanski Case*, notes gender differences in attitudes towards the use of Tasers. For the Italian legal system, D. Bertaccini (2019), *Dotazione di armi comuni ad impulsi elettrici e interpretazione autentica sulle armi in dotazione alla polizia municipale (artt. 19 e 19-ter, d.l. n. 113 del 2018, conv. con mod. da l. n. 132 del 2018*), in F. Curi (ed.), *Decreto Salvini. Immigrazione e sicurezza. Commento al d.l. 4 ottobre 2018, n. 113, conv. con mod. in legge 1 dicembre 2018, n. 132*, Pisa, pp. 249-260; see also R.A. Ruggiero (2020), *Lo sbarco del taser in Italia: i diritti (non) presi sul serio*, in *Diritto Penale Contemporaneo. Rivista trimestrale*, n. 1, pp. 226-238.

[29] See the research report produced as part of the same *Repolity project* G. Campesi, C. Caprioglio, *La responsabilizzazione della polizia in Italia (Police accountability in Italy),* January 2025, https://www.adir.unifi.it/repolity/research-report-2-it.pdf and the lecture by L. Re, *Repolity: Reforming Police Accountability in Italy,* Belfast, 20 August 2025, https://www.qub.ac.uk/events/whats-on/listing/repolityreformingpoliceaccountabilityinitaly.html.

in the context of this research report, these issues are examined insofar as the Court has found them to constitute violations of articles 2 and 3 ECHR.

2.2. Analysis of the case law of the European Court of Human Rights on the excessive use of force by State agents

> ***Article 2 – Right to life***
> *1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
> *2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:*
> *(a) in defence of any person from unlawful violence;*
> *(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
> *(c) in action lawfully taken for the purpose of quelling a riot or insurrection.*

Although the Court did not have the opportunity to interpret and apply this fundamental article until 1995, it has always been clear that States bear responsibility for the conduct of their agents[30], in light of the strict exceptions set out in Article 2(2).
The cases examined below primarily concern three contexts of law enforcement intervention that raise key questions about the use of force and the protection of human rights under the ECHR: (a) interventions during demonstrations; (b) operations to prevent and suppress other offences; (c) the use of force in emergency situations or isolated clashes.

2.2.1. McCann and Others v. the United Kingdom, 1995: formulation of an initial framework for assessing the substantive and procedural aspects of the violation of article 2

The Court's general approach in this area stems from the leading case of McCann and Others v. the United Kingdom in 1995, referred to the Court on 20 May 1994 by the European Commission of Human Rights[31] .

---

[30] Mowbray, A. (2007), *Cases, Materials, and Commentary on the European Convention on Human Rights,* Oxford, UK: Oxford University Press, p. 83.

[31] A body that previously filtered cases, only a small proportion of which reached the Court. The appeal to the Commission was lodged on 14 August 1991 by Margaret McCann, Daniel Farrell and John Savage, representatives of the victims Daniel McCann, Mairead Farrell and Sean Savage, members of the *Provisional* IRA, who were killed during an anti-terrorism operation by British Special Air Service soldiers on 6 March 1988 in Gibraltar. On the case, see Cumper, P. (1995), *When the State Kills – McCann and Others v. United Kingdom*, in *Nottingham Law Journal,* 4 p. 207; Joseph, S. (1996) *Denouement of the Deaths on the Rock: the Right to Life of Terrorists*, in *Netherlands Quarterly of Human Rights,* vol. 14, pp. 5-22; Martinov, D. (2021) *McCann and Others v. the United Kingdom and positive obligations pertaining to the planning and control of the operations of law enforcement in line with article 2 ECHR*', in *Gak,* 93(3), pp. 665–699; Cooper, J. (2015), *Lethal Force, Policing and the ECHR: McCann and Others v UK* , Twenty Workshop at Doughty Street Chambers, 25th March 2015.

The British authorities received information that an IRA commando was planning a car bomb attack in Gibraltar. To prevent the attack, MI5 agents, local police and SAS special forces were deployed to the scene. On 6 March 1988, three suspects were observed parking a car believed to contain explosives. Shortly afterwards, while walking unarmed in the city centre, they were confronted and shot dead on the spot by the military, who feared they might activate a remote detonator. It later emerged that the car did not contain any bombs and that the three men did not have any detonators. The British Government defended the operation as necessary on grounds of self-defence, while the families alleged excessive use of force, the absence of less lethal alternative strategies and deficient intelligence. The domestic investigation concluded that the killings were lawful, but the families challenged this finding, claiming a violation of article 2 ECHR, arguing that it was an extrajudicial execution or, at the very least, an operation planned in such a way as to make the death of the suspects inevitable. The Commission concluded that there was no evidence of a premeditated order to execute but requested the ECtHR to assess whether the use of lethal force was strictly necessary and proportionate in the circumstances.

i. Article 2 as the 'most fundamental' provision of the ECHR

At the beginning of the judgment, the Court solemnly stated that the wording of article 2 ECHR, together with Article 3 ECHR, 'ranks as one of the most fundamental provisions in the Convention - indeed one which, in peacetime admits of no derogation under article 15 (art. 15). Together with article 3 ECHR, it also enshrines one of the basic values of the democratic societies of the Council of Europe' (§147).
Furthermore, article 2, as clarified by the judges in Strasbourg, does not define the circumstances in which it would be permissible to intentionally kill an individual, but rather describes the situations in which it is permissible to 'use force' that may result, only as an unintended consequence, in the deprivation of life. The use of force, therefore, is only permissible if it is necessary to pursue the following mandatory purposes:
a) to ensure the defence of any person against unlawful violence;
b) to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c) to suppress, in accordance with the law, a riot or insurrection.

ii. Assessment of the factual circumstances and evidence

First, the Court must assess the factual circumstances, applying, in its assessment of the evidence, the standard of proof 'beyond reasonable doubt', which may derive from the coexistence of sufficiently strong, clear and consistent inferences or similar unrebutted presumptions of fact, on the basis of the available evidence submitted by the parties, the documents submitted by the Government concerning the investigations carried out in the case, as well as the parties' written observations (ex multis Ciorcan and Others v. Romania, 2015), while bearing in mind the subsidiary nature of its role and that it must exercise caution in assuming the role of a first-instance court of fact, where this is not made inevitable by the circumstances of a particular case, since, in

domestic proceedings, it is not the Court's role to substitute its own assessment of the facts for that of the domestic courts, and it is for the latter to ascertain the facts on the basis of the evidence gathered, requiring sufficiently convincing evidence to depart from the findings of fact made by the domestic courts. However, the Court is never bound by the findings of the domestic courts and remains free to carry out its own assessment in the light of all the material before the Court if there are compelling reasons to disregard the findings of fact made by the domestic courts (see Aydan v. Turkey, 2013 § 69; Ataykaya v. Turkey, 2014).

iii. Aspects of the violation of article 2

As regards the applicants' complaints, the Court examined the substantive aspects of the violation of article 2, first: it determined whether the use of force was absolutely necessary and proportionate in the specific situation, on the basis of the factual circumstances of the operation carried out by the officers and the strict necessity of their actions, and then verified the domestic legislation and the planning of the operation, while also taking into account the investigation conducted by the domestic authorities, which related to the procedural aspects of the positive obligations arising from article 2.

In McCann v. Others, the Court found that there had been no violation of article 2(1) about the completeness of the domestic legal framework, nor any violation of procedural obligations with regard to domestic legislation, appropriate rules of engagement and a thorough, independent and effective investigation.

According to the ECtHR, the compliance of national law with article 2 ECHR cannot be assessed abstractly by seeking overall linguistic alignment between the domestic provision and the convention standard: in the case of Gibraltar's legislation, 'the difference between the two standards is not sufficiently great that a violation of article 2 para. 1 (art. 2-1) could be found on this ground alone' (§155).

The Court also examined the rules of engagement issued for soldiers and police, identifying a series of national rules governing the use of force that closely reflect the national standard and the substance of ECHR standard. Finally, the Court acknowledged the overall adequacy of the domestic investigation conducted.

iv. Violation of article 2(2) due to lack of control and planning of the operation

The Court's assessment then turned to the relevant circumstances under Article 2(2) to ascertain whether the counter-terrorism operation had been planned and controlled by the authorities in a manner to minimise, as far as possible, the use of lethal force.

The Court accepted that the officers 'honestly believed', in the light of the information provided to them, that it was necessary to shoot the suspects to prevent them from detonating a bomb and causing serious loss of life (see paragraph 195 above). The actions they took, in compliance to superior orders, were therefore perceived by them as absolutely necessary to safeguard innocent lives.

Consequently, the use of force by State agents to pursue one of the aims set out in article 2(2) of the Convention may be considered justified under that provision where it

is based on an “honest belief” which was perceived, for reasonable grounds, as valid at the time, but which subsequently proved to be incorrect.
However, the Court found a violation of article 2(2) in the McCann and Others case due to deficiencies in the control and planning of the overall counter-terrorism operation, which involved the dissemination of information and operational instructions to soldiers that, in fact, rendered the use of lethal force inevitable, without adequately taking into account the right to life of the three suspects: in particular, having regard to the decision not to prevent the suspects from travelling to Gibraltar, the failure of the authorities to take sufficient account of the possibility that their intelligence assessments might, at least in some respects, be incorrect, and the automatic use of lethal force when the soldiers opened fire, the Court was not persuaded that the killing of the three terrorists constituted the use of force that was no more than absolutely necessary to defend persons from unlawful violence within the meaning of article 2, paragraph 2, subparagraph (a) (Art. 2-2-a) of the Convention' (§213).
The ECtHR therefore considers that, in matters of the right to life, the examination must be scrupulous and must cover not only the lethal act but all the surrounding circumstances, including the planning and control of the operation. The use of force by officers must be absolutely necessary for the legitimate purposes referred to in article 2 §2 (§148-150), thus imposing a stricter and more demanding criterion of necessity than that ordinarily applicable to determine whether the State's act is 'necessary in a democratic society' within the meaning of paragraph 2 of articles 8-11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in paragraph 2(a), (b) and (c) (§149).
McCann thus inaugurates the line of case law according to which, in cases of lethal use of force, a genuine test must be carried out to verify the planning and control of police/military operations, scrutinising the operation upstream (briefing, rules of engagement, choice of times/places, coordination between services) as well as downstream (the conduct of officers in the field). The principle was then developed in subsequent case law and in the Court's thematic guides on article 2 ECHR[32] .

[32] ECHR Registry, *Guide to Article 2 of the Convention – Right to Life,* 2025, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng

Criterion	Verification indicators
Absolute necessity of the use of lethal force	Was the use of force justified for one of the mandatory purposes provided for in article 2 §2 (defence against unlawful violence; lawful arrest/prevention of escape; suppression of riot/insurrection)?
Proportionality	Was the use of force strictly proportionated to the actual threat perceived?
Assessment of the specific circumstances	Did the officers act based on reliable, up-to-date and correctly assessed information?
Planning and control of operations	Did the authorities organise and manage the operation in such a way as to minimise, as far as possible, the use of lethal force? Were less lethal alternatives considered?
Positive obligations of the State	Did the State take all reasonable and preventive measures to protect the lives of those involved, including suspects?
Post-event investigation	Was an effective, independent and prompt investigation into the use of lethal force conducted, capable of establishing responsibilities?
Standard of proof and subsidiary role of the Court	The Court assesses the facts 'beyond reasonable doubt' but may depart from national conclusions if compelling evidence to the contrary emerges.

2.2.2. Adequate administrative and legislative framework, training, guidelines and operational coordination: *Makaratzis v. Greece (2004)*

Even when the use of force is legitimate, the authorities must take all possible measures to avoid a lethal outcome. This principle, set out in McCann and Others, was reaffirmed in Makaratzis v. Greece (2004)[33] .

> The applicant complained under articles 2, 3 and 13 ECHR that the police officers who had tried to arrest him had used excessive force against him, endangering his life. He also complained about the lack of an effective investigation into the incident.
> It is undisputed between the applicant and the Government that the applicant was pursued by many police officers who repeatedly used revolvers, pistols and submachine guns.

In the present case, the force used against the applicant was not lethal, but this does not preclude, in the Court's view, an examination of the applicant's complaints under

[33] Statewatch (2004) *Press Release: Makaratzis v. Greece – Grand Chamber Judgment, 20 December 2004,* https://www.statewatch.org/media/documents/news/2004/dec/Makaratzis-v-Greece-prel.pdf; Poetschke, K., Fu, W. and Howard, L.J. (2010), *Of Life and Torture: The European Court of Human Rights' Approach to Articles 2 and 3 ECHR.*, SSRN; Scalia V. (2020). *Una proposta di ricostruzione degli obblighi positivi di tutela penale nella giurisprudenza della Corte europea dei diritti dell'uomo*, in *Arch. pen*., n. 3, p. 1 ff.

article 2, which, read as a whole, shows that it covers not only intentional killing, but also situations in which permitted use of force may result, as an unintended consequence, in the deprivation of life.

i. Assessment of the potentially lethal nature of the force used: absence of adequate legislation, administrative framework and strategy to minimise the lethal outcome of police action

What the Court had to determine in this case is whether the force used against the applicant was potentially lethal and what impact the conduct of the officers concerned had not only on his physical integrity but also on the interest protected by the right to life.

The Court recognised that the use of force by the police to stop the applicant's car and arrest him undoubtedly fell within the situations contemplated by article 2(2) of the Convention, in which the use of lethal force may be justified. However, while accepting that the police did not intend to kill the applicant, it noted that his survival was purely fortuitous (§71-72). Ballistic analysis revealed that numerous shots had been fired at the car, some of which were directed at the driver, causing multiple injuries to the applicant.

The Court therefore found that the authorities had failed to put in place an adequate strategy to minimise the risk of lethal consequences arising from their actions.

While acknowledging that the police officers involved in the incident did not have sufficient time to assess all the parameters of the situation and to organise their operation carefully, the Court considers that the escalation of the situation, which some of the police witnesses themselves described as chaotic, was largely attributable to the fact that, at the material time, neither the individual officers nor the pursuit, viewed as a collective police operation, benefited from the appropriate framework which should have been provided by domestic law and practice. Indeed, the Court emphasises that in 1995, when the events took place, the use of weapons by State agents was still governed by a law commonly recognised as obsolete and incomplete in a modern democratic society. The applicable system did not provide clear guidelines and criteria governing the use of force in peacetime. As a result, the police officers who pursued and ultimately arrested the applicant enjoyed greater operational autonomy and were more likely to take reckless actions than would likely have been the case if they had benefited from adequate training and instructions.

The absence of clear guidelines may also explain why several police officers took part in the operation spontaneously, without reporting back to a central command.

In light of the above, the Court found that Greece failed to fulfil with its positive obligation under article 2(1) to establish an adequate legislative and administrative framework, and thus failed, at the time of the events, to do all that could reasonably have been expected of them to ensure that individuals, and in particular those such as the applicant against whom potentially lethal force was used, were afforded the necessary level of safeguards and to avert the real and immediate risk to life which they knew was liable to arise, even if only exceptionally, in police pursuit operations (§71).

Consequently, the applicant was the victim of a violation of article 2 ECHR and a violation of article 2(2) in terms of the procedural obligations concerning the investigations carried out, an aspect which will be examined in more detail below. This case has become a model for the development of the 'Survival vs. Suffering' approach used in legal scholarship to describe how the ECtHR distinguishes cases falling within the scope of article 2 ECHR from those examined in the light of article 3 ECHR (prohibition of torture and inhuman or degrading treatment)[34] . More specifically, survival cases are those in which the person's life has been effectively placed in concrete and immediate danger. In such cases, the Court applies article 2, considering that the threat was such as to lead to the deprivation of life, and the scrutiny centres on the planning and control of police operations and the proportionality and absolute necessity of the use of force. By contrast, where life was not actually in danger, but the person suffered physical or psychological pain as a result of state conduct (beatings, torture, ill-treatment in custody), the Court applies article 3 ECHR, because the suffering, although severe, never crossed the threshold of a concrete risk of death and can therefore be classified as a suffering case.

2.2.3. Güleç v. Turkey (1998): the right to life cannot be sacrificed in the name of public safety or public order without strict scrutiny

In the case of Güleç v. Turkey (1998), the Court ruled that the use of lethal force to suppress riots must be justified by the existence of an imminent threat and must be proportionate.

> On 4 March 1991, in the town of İdil, Şırnak province, there were clashes and unauthorised demonstrations, with attacks on public buildings and the closure of shops. During these events, two people were killed, including Ahmet Güleç, a 15-year-old high school student and son of the applicant. Twelve other people were injured. According to the Turkish Government, Ahmet Güleç was hit by a bullet fired by armed demonstrators at the gendarmes. However, the boy's father claimed that the security forces had opened fire on the unarmed demonstrators to disperse them, causing his son's death. An examination of the circumstances of the events revealed that, when faced with acts of violence that were undoubtedly serious, the security forces, who were not present in sufficient numbers, called for reinforcements and at least two armoured vehicles were deployed. While one official claimed to have fired into the air, several witnesses, including some of the city's leading citizens, stated that shots were fired into the crowd. Although this claim was categorically denied by the government, it was corroborated, in the Court's view, by the fact that almost all of the injured demonstrators were shot in the legs; this would be entirely consistent with ricochet wounds from bullets with a downward trajectory that could have been fired from the turret of an armoured vehicle.

[34] See Poetschke, K., Fu, W. and Howard, L.J. (2010), Of Life and Torture, cited.

The Court, like the Commission, accepted that the use of force may be justified in this case under article 2(2)(c), 'but it goes without saying that a balance must be struck between the aim pursued and the means employed to achieve it' (§71).
The gendarmes used a very powerful weapon because they apparently did not have batons, riot shields, water cannons, rubber bullets or tear gas.
The lack of such equipment is all the more difficult to justify given that the province of Şırnak, as the Government pointed out, is in a region where a state of emergency had been declared and where disturbances could, at the time of the events, have been anticipated.
The Court therefore concluded that, in the circumstances of the case, the force used to disperse the demonstrators, which resulted in the death of Ahmet Güleç, was not strictly necessary within the meaning of article 2 (§73).
Güleç is an important precedent because it clarifies that the right to life imposes positive obligations: States must equip security forces with adequate non-lethal means of maintaining public order to avoid the use of firearms. The absence of alternative equipment may amount to a violation. Furthermore, the requirements of necessity and proportionality are reaffirmed: even in the presence of violent unrest, the use of lethal force must be a last resort, reserved only for imminent and, in turn, lethal threats. Finally, the ECtHR examines not only the individual conduct of the officer, but also the overall management and planning of public order operations, thereby identifying structural responsibility for the violation of article 2 ECHR.

2.2.4. Ciorcan and Others v. Romania (2015): the use of force is legitimate only in cases of absolute necessity

> On 7 September 2006, after a dispute in a bar between two residents of Apalina (including Augustin Biga) and a police officer, the officer filed a complaint for contempt. In the afternoon, on the orders of the Mureș County Police Chief, an operation was organised to bring the two suspects before the prosecutor. Because of the “sensitive” nature of the area, not only local officers were deployed, but also seven men from the DIAS special forces, in uniform and wearing masks, accompanied by other officers. When the police vehicles arrived in Apalina, the inhabitants – mostly women and children – gathered out of curiosity. To disperse them, the special forces threw tear gas grenades, causing panic and disarray. The officers then fired at the fleeing crowd while retreating in their vehicles. Thirty-seven Roma citizens alleged police violence during the public order operation.

With reference to article 2 § 2 (b) ECHR, the legitimate aim of making a lawful arrest can only justify the risk to human life in circumstances of absolute necessity.
The Court observed that, in principle, there can be no such necessity when it is known that the person to be arrested does not pose a threat to life or physical integrity and is not suspected of having committed a violent offence, as in the present case, even if the failure to use lethal force may result in the loss of the opportunity to arrest the fugitive.

In addition to establishing the circumstances in which deprivation of life may be justified, article 2 implies a primary duty on the part of the State to guarantee the right to life by adopting an appropriate regulatory and administrative framework defining the limited cases in which law enforcement officers may use force and firearms, considering relevant international standards. In line with the principle of strict proportionality inherent in article 2 (see McCann and Others, cited above, § 149), the domestic legal framework governing arrest operations must make the use of firearms subject to a careful assessment of the surrounding circumstances and, in particular, to an assessment of the nature of the offence committed by the fugitive and the threat posed.
Furthermore, national legislation governing police operations must ensure an adequate and effective system of safeguards against arbitrariness and abuse of force, as well as against avoidable accidents.
In particular, law enforcement officers must be trained to assess whether there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also taking due account of the primacy of respect for human life as a fundamental value (see the Court's criticism of the 'shoot to kill' instructions given to soldiers in McCann and Others, cited above, §§ 211-214).
The Court notes with grave concern that the relevant rules on the use of firearms by the military police effectively allowed the use of lethal force to arrest even the most minor offender who did not surrender immediately after a verbal warning and a warning shot in the air, without any clear safeguards to prevent arbitrary deprivation of life.
Such a regulatory framework is. in the Court’s view, fundamentally deficient and does not meet the level of protection of the right to life 'by law' required by the Convention in today's European democratic societies (§100).
The Court therefore concludes that there has been a general failure by the respondent State to fulfil its obligation under article 2 of the Convention to ensure the right to life by adopting an adequate legal and administrative framework on the use of force and firearms. The regulations in force allowed a team of heavily armed officers to be sent to arrest the two men without any prior assessment of the threat, if any, they posed and without clear instructions on the need to minimise the risk to life.
Secondly, article 3 ECHR was violated because the applicants suffered inhuman and degrading treatment as a result of an operation conducted in a terrifying and indiscriminate manner. Finally, the Court found a violation of article 14: the fact that the victims were Roma was not neutral, and the State had a specific duty to investigate rigorously and impartially whether the operation had been discriminatory.
The case is therefore significant in two respects: first, confirmation that the use of lethal (or potentially lethal) force by the police must meet the criteria of absolute necessity and proportionality, together with adequate planning aimed at minimising the risks to civilians; secondly, the reaffirmation that failure to investigate possible discriminatory motives constitutes in itself a violation of the Convention, even regardless of the outcome of domestic criminal proceedings.

Ciorcan and Others therefore builds on precedents such as McCann, Güleç and Makaratzis, while broadening the perspective: here, not only is the disproportionate use of force condemned, but institutional violence is linked to the marginalisation of ethnic minorities and the systematic inadequacy of investigations when the victims belong to stigmatised groups.
The judgment makes clear that the protection of the right to life and physical integrity cannot be separated from the obligation to combat structural discrimination[35] .

2.2.5. Simsek and Others v. Turkey (2005): Article 2(2) does not grant a 'carte blanche'

> The case arises from the tragic events known as the 'Gazi and Ümraniye incidents', which occurred in Istanbul in March 1995, resulting in the deaths of fifteen people and injuries to hundreds of demonstrators. The Gazi neighbourhood, inhabited mainly by members of the Alevi community, was the site of an armed attack on several cafés, resulting in one death and dozens of injuries. The perceived failure of the police to act in the immediate aftermath triggered public outrage and mass protests. The police response was characterised by the intensive use of force: troops with armoured vehicles, the use of batons and, above all, firearms fired without warning at demonstrators. On 13 March 1995, the police fired repeatedly into the crowd in Gazi, killing several demonstrators immediately and chasing others as they tried to flee. There were also reports of rescue workers being prevented from helping the wounded. Two days later, in Ümraniye, during a march to the victims' funerals, the police again opened fire without warning: five people died and more than twenty were injured. The applicants, relatives of the victims, alleged violations of articles 2 (right to life), 6 (fair trial), 14 (non-discrimination) and 17 (prohibition of abuse of rights) ECHR.

In its judgment in Simsek and Others v. Turkey (2005), the Court made clear that article 2 of the Convention 'does not grant carte blanche' (§104), but requires a balance to be struck between the legitimate aim pursued and the means employed by the authorities to achieve it, since 'unregulated and arbitrary conduct by State officials is incompatible with effective respect for human rights' (§104).
This means that, in addition to being authorised under national law, the Court judges consider that police operations, to comply with the obligations arising from the Convention, must be adequately regulated, within a system of adequate and effective safeguards against arbitrariness and abuse of force.
In examining each case, the Court reiterated that it must take into account not only the conducts of the State agents who actually used force, but also all the circumstances of the case, including elements such as the planning and control of the operations in question (see again McCann and Others v. the United Kingdom, 1995, § 150) and police

[35] Várnagy, E.- Ní Chinnéide, H. (2024). *Divorcing the Substantive from the Procedural*, in *Utrecht Law Review*, 20(4), pp. 65–8.

officers should not be left in a vacuum in the performance of their duties, whether in the context of a planned operation or in the spontaneous pursuit of a person regarded as dangerous.
A legal and administrative framework should define the limited circumstances in which law enforcement officials may use force and firearms, in the light of the international standards that have been developed in this regard (see, for example, the United Nations Principles on the Use of Force and Firearms)[36] .
While recognising that the Convention allows, in abstract terms, the use of force to quell riots, the Court found that in this case the police officers had fired directly into the crowd without resorting to any preventive or less lethal measures, such as tear gas, water cannons or rubber bullets. This method of intervention is incompatible not only with the obligations under article 2, but also with Turkish law itself, which limits the use of firearms to exceptional situations and under specific conditions.
The absence of clear and centralised command was also decisive: the lack of coordination and precise operational guidelines exposed the demonstrators to an even greater risk of being directly hit by bullets. Added to this is the State's responsibility for failing to equip the security forces with the necessary tools to manage public order in a non-lethal manner, despite the foreseeable escalation of tension in the two neighbourhoods.
The Court held that this lack of equipment and planning was 'unacceptable', considering the force used to be more than absolutely necessary and therefore in violation of article 2 ECHR.
A general principle emerges from this case: States are obliged to ensure an adequate regulatory framework, clear rules and specific training for law enforcement agencies and the army, so that police operations are conducted in such a way as to minimise, as far as possible, the risk to human life.

2.3. Giuliani and Gaggio v. Italy (2011)

The case arises from the killing of protester Carlo Giuliani by a bullet fired from the service weapon of a carabinieri officer who was inside an armoured vehicle surrounded by protesters during the G8 protests held in Genoa in 2001. The incident had a significant media and political impact, becoming a symbol of tensions surrounding the management of public order in European democracies. The young man's family alleged a violation of article 2 ECHR, arguing that their son's death resulted from excessive use of force, that there were shortcomings in the national legislative framework, that the organisation of operations to maintain and restore public order had been flawed and and that no thorough and effective investigation had been conducted into Carlo Giuliani's death[37].

---

[36] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 7 September 1990, https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement#:~:text=9.,in%20order%20to%20protect%20life..

[37] Alessandrini, A. (2012), *La sentenza Giuliani e Gaggio c. Italia della Grande Camera: limiti e prospettive della giurisprudenza della Corte europea dei diritti dell'uomo sull'uso della forza*, in *Diritto pubblico comparato ed*

The judgment, which was expected to take stock of the widely criticised management of public order during the G7 summit in July 2001, rejected the applicants' requests for Italy to be convicted.

The Court found that there had been no violation of article 2 (right to life) of the Convention with regard to the use of lethal force, considering that the use of force by the carabiniere who fired the shot was absolutely necessary under the Convention: the officer had been confronted by a group of demonstrators who were carrying out an illegal and very violent attack on the vehicle in which he was trapped. According to the Court, the carabiniere had acted in the sincere belief that his life and physical integrity and that of his colleagues were in danger as a result of the attack to which they were subjected.

Furthermore, the evidence available to the Court clearly showed that the carabiniere had given a warning by raising his weapon in a clearly visible manner and that he had fired the shots only when the attack had not ceased. In such circumstances, the use of a potentially lethal means of defence such as firing shots from a pistol is to be considered justified.

The Court also ruled out a violation of article 2 in relation to the national legislative framework governing the use of lethal force or weapons supplied to law enforcement agencies during the G8 summit in Italy.

The Court did not find a violation of article 2 regarding the organisation and planning of police operations at the G8 summit, as the Italian authorities had done everything that could reasonably be expected of them to provide the level of safeguards required during operations that could involve the use of lethal force. Finally, the Court found no violation of article 2 with regard to the alleged failure to carry out an effective investigation.

However, this decision was not unanimous and is therefore accompanied by dissenting opinions, summarised below, in which the judges revisit the principles that guided the finding of a violation of article 2 of the Convention.

i. Dissenting opinion on the substantive aspect of the use of lethal force that was not absolutely necessary and disproportionate

With regard to the substantive aspect of the lethal use of force, the dissenting judges challenge the majority's finding that the use of lethal force by the carabiniere was

---

europeo, 14(1), pp. 129–147; Bartolini, G. (2011), *Giuliani and Gaggio v. Italy: The European Court of Human Rights Grand Chamber Judgment on the G8 Genoa Summit Events*, in *Italian Yearbook of International Law*, 21(1), pp. 237–251; Cahn, N. (2012), *Excessive Use of Force and the Right to Life: The Legacy of Giuliani and Gaggio v. Italy*, in *Human Rights Law Review*, 12(3), pp. 545–562; Gattini, A. (2011), *The Giuliani Case: Shooting the European Human Rights System?*, in *European Journal of International Law*, 22(3), pp. 713–726; Longobardo, M. (2013), *Law Enforcement Operations and the European Convention on Human Rights: Reflections on Giuliani and Gaggio v. Italy*, in *European Public Law*, 19(4), pp. 759–774; O'Boyle, M. (2012), *The European Court of Human Rights and the Regulation of Police Violence*, in *Cambridge Yearbook of European Legal Studies*, 14, pp. 1–22; Venturini, G. (2011), *Il caso Giuliani e l'art. 2 CEDU: assoluta necessità dell'uso della forza e responsabilità dello Stato*, in *Rivista di diritto internazionale*, 94(3), pp. 761–776.

'absolutely necessary', in light of the officer's statements that he did not aim at any individual when he fired and did not have a clearly identifiable target. This undermines the idea that he was defending himself against an immediate threat. The proportionality of the response is also questionable: the officer could have fired into the air to disperse the crowd instead of firing at human height. Finally, the theory that the bullet hit a stone before reaching Giuliani is considered highly unlikely and not adequately proven by the Italian authorities. The Court, therefore, interpreted the notion of 'absolute necessity' (article 2 ECHR) too broadly, justifying the use of a gun in a context that would have required less lethal means[38] , thus creating a dangerous implicit legitimisation of lethal force in public order scenarios.

ii. Operational and strategic shortcomings in the organisation of police operations

The dissenting judges considered that the planning and organisation of policing operations had not been adequately assessed, as there were clear indications of serious operational and strategic inadequacies. In particular, the officer who killed Carlo Giuliani was a young conscript Carabinieri officer with no specific training in public order policing. Despite being under significant stress and in a state of panic, he was left equipped of a lethal weapon without adequate protection or clear guidance. His only means of defence was his firearm, with no alternatives such as rubber bullets or tear gas[39].

iii. Procedural violation of article 2: incomplete and non-transparent investigations

The dissenting judges also found that there were grounds for a procedural violation of article 2, as the investigation into Giuliani's death was incomplete and lacked transparency, with no analysis of the bullet fragment in the victim's head, no public hearing to examine the case, and no disciplinary proceedings against the Carabinieri involved[40] .

iv. Violation of article 13 due to the absence of an effective domestic remedy

Finally, the dissenting judges also found that there had been a violation of article 13 of the Convention, which guarantees the right to an effective remedy, since there was no possibility for the applicants to participate as a civil party in criminal proceedings and

---

[38]See O'Boyle, M. (2012), *The European Court of Human Rights and the Regulation of Police Violence*, cited; Alessandrini, A. (2012), *La sentenza Giuliani e Gaggio c. Italia della Grande Camera: limiti e prospettive della giurisprudenza della Corte europea dei diritti dell'uomo sull'uso della forza,* cited.

[39] See Longobardo, M. (2013), *Law Enforcement Operations and the European Convention on Human Rights: Reflections on Giuliani and Gaggio v. Italy,* cited; Venturini, G. (2011), *Il caso Giuliani e l'art. 2 CEDU: assoluta necessità dell'uso della forza e responsabilità dello Stato*, cited: the Court underestimated the link between poor planning and the risk to the lives of the demonstrators.

[40] See Cahn, N. (2012), *Excessive Use of Force and the Right to Life: The Legacy of Giuliani and Gaggio v. Italy*, cited; Bartolini, G. (2011), *Giuliani and Gaggio v. Italy: The European Court of Human Rights Grand Chamber Judgment on the G8 Genoa Summit Events,* cited.

an independent civil action appeared to be impracticable given the perceived lawfulness of the use of force by the authorities.
According to some authors, the decision of the Grand Chamber in Giuliani and Gaggio v. Italy constitutes a setback in the development of the guarantees of article 2 ECHR, in that it reduces the protective scope of the right to life, legitimising the use of lethal force in public order contexts too broadly[41]. From another perspective, the ruling is interpreted not so much as a regression, but rather as an attempt by the Court to maintain a political and institutional balance, by avoiding the delegitimisation of Member States in a particularly sensitive area such as the management of riots and street protests[42] . However, the political and symbolic dimension of the case remains central: the Giuliani case is not limited to the legal assessment of state conduct but questions the very legitimacy of the use of force against demonstrators. The Court's decision, while formally attentive to conventional principles, ultimately restricts the space for democratic protest, running the risk of normalising state violence under the umbrella of article 2[43] .

2.4. Finogenov and Others v. Russia (2011): necessary guarantee of compliance of police operations with ECHR standards

The case concerns the Russian authorities' handling of the hostage crisis at the Dubrovka Theatre in Moscow between 23 and 26 October 2002, when an armed Chechen rebel commando took hundreds of people hostage during a theatre performance. The applicants alleged that the rescue operation conducted by the authorities, implied the use of an unidentified chemical gas released inside the building, had involved excessive and disproportionate use of force, resulting in the death of more than 120 hostages, including their family members. Some of the applicants, who were surviving hostages, complained of serious harm to their health and psychological trauma because of the intervention. In their view, the authorities had failed to plan and manage the operation in such a way as to minimise the risks to the lives and safety of the hostages, as required by article 2 of the Convention.

The Court found the complaints relevant in the light of article 2 of the Convention and points out first that 'Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and

[41] Gattini, A. (2011), *The Giuliani Case: Shooting the European Human Rights System?*, cited; Bartolini, G. (2011), *Giuliani and Gaggio v. Italy: The European Court of Human Rights Grand Chamber Judgment on the G8 Genoa Summit Events,* cited
[42] Venturini, G. (2011), *Il caso Giuliani e l'art. 2 CEDU: assoluta necessità dell'uso della forza e responsabilità dello Stato,* cited
[43] Alessandrini, A. (2012), *La sentenza Giuliani e Gaggio c. Italia della Grande Camera: limiti e prospettive della giurisprudenza della Corte europea dei diritti dell'uomo sull'uso della forza,* cited

abuse of force (see, mutatis mutandis, Hilda Hafsteinsdóttir v. Iceland, no. 40905/98, § 56, 8 June 2004; see also Human Rights Committee, General Comment no. 6, article 6, 16th Session (1982), § 3), and even against avoidable accident' (§207).
While it is true, the Court emphasises, that when lethal force is used by the authorities in the context of a 'police operation', it is difficult to separate the State's negative obligations under the Convention from its positive obligations, the Court will have to examine whether the police operation was planned and controlled by the authorities in such a way as to minimise, as far as possible, the use of lethal force and human casualties, and whether all possible precautions were taken in the choice of means and methods of a security operation.
Despite the absence of many important factual details, the ECtHR emphasises that its role is not to establish the individual responsibility of those who participated in the planning and coordination of the hostage rescue operation, but is called upon to decide whether the State as a whole has complied with its international obligations under the Convention, in particular the obligation to 'take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, minimising, incidental loss of civilian life' (§265).
The ECtHR addressed the issue from two perspectives: the substantive one, relating to the compatibility of the use of gas with the criteria of 'absolute necessity' and proportionality in article 2 § 2, and the procedural one, relating to the effectiveness of the subsequent investigations. On the substantive level, the Court recognised the exceptional nature of the situation and the high level of threat posed by the hostage-takers, considering that the use of gas was not in itself arbitrary or disproportionate, in light of the immediate aim of saving hundreds of lives. However, it was pointed out that the Russian authorities had not taken adequate measures to mitigate the foreseeable risks: in particular, not sufficiently effective plan for the evacuation and rescue of the hostages had been put in place, nor had clear information about the substance used been provided to medical personnel.
On a procedural level, the Court found a violation of article 2, noting that the criminal investigations into the events had been conducted in a flawed and non-transparent manner, without independent investigations into the nature of the gas used and without the effective involvement of the victims' families. In addition, the applicants encountered considerable difficulties in obtaining an effective remedy through civil proceedings for damages.
The judgment therefore recognised a violation of article 2 both in terms of the planning and management of the operation and the inadequacy of the subsequent investigations.
The Court thus reiterated that, even in contexts of terrorism, States are required to ensure that the measures taken to protect the population comply with the principles of necessity, proportionality and transparency, and are accompanied by an effective system of accountability.
While recognising that 'in such situations some measure of disorder is unavoidable' (§266) and that there is a need to keep certain aspects of security operations secret, in

the circumstances, the rescue operation had not been sufficiently prepared due to inadequate information exchange between the various services, the late start of the evacuation, limited coordination of the various services on the ground, the lack of adequate medical care and equipment on site, and inadequate logistics.
The Court therefore concluded that Russia had violated its positive obligations under article 2 of the Convention.
This decision sparked a wide-ranging debate in legal scholarship, particularly regarding the way in which the ECtHR addressed the issue of the use of lethal force in an anti-terrorism operation[44] . Several authors highlighted the innovative nature of the ruling due to the wide margin of appreciation granted to Russia in an exceptional context such as the hostage-taking in the Dubrovka Theatre in Moscow, but others have criticised the Court's approach, noting that the classification of the intervention – the use of an unidentified chemical gas – as non-arbitrary has led to a lowering of the standards of protection under article 2 ECHR.
In this perspective, Leach (2012) points out that the judgment risks legitimising state practices of using 'unconventional' lethal means in the name of national security, thereby reducing the substantive scope of the right to life. Others, such as O'Boyle (2013), have highlighted the tension between the need to save lives and the procedural guarantees imposed on states: the Court found serious shortcomings in the planning and management of the rescue operation, but did not consider the use of gas to be disproportionate. In this sense, the case represents a key step in the jurisprudence on proportionality in the use of force, showing how article 2 can be interpreted flexibly in the presence of terrorist threats.
Finally, some have highlighted the symbolic value of the judgment, which reflects the Court's attempt not to directly oppose the anti-terrorism strategies of Member States, while reiterating the need for effective and transparent investigations into events[45] .

2.5. Ataykaya v. Turkey (2014) and Elvan v. Turkey (2023): clear rules and training necessary for the protection of life

The case of Ataykaya v. Turkey, 2014 arises from the application to the ECTHR by the father of a young protester who was hit by a tear gas canister fired by the police during a protest in Diyarbakır in 2006. The grenade had been fired at head height, contrary to standards of use which require tear gas to be fired indirectly and from a safe distance.

---

[44] Leach, P. (2012), *The Russian theatre siege case: ECHR jurisprudence on the right to life and the fight against terrorism,* in *Human Rights Law Review*, 12(2), pp. 205–229; O'Boyle, M. (2013), *Article 2 of the European Convention on Human Rights and anti-terror operations: reflections on Finogenov v Russia,* in *European Human Rights Law Review*, 4, pp. 397–410. Cohen-Jonathan, G. (2012), *Les otages de Moscou et la Cour européenne des droits de l'homme,* in *Revue Trimestrielle des Droits de l'Homme*, 91, pp. 715–732; Vashchuk, A. (2014), *Hostage-taking, counter-terrorism and human rights: lessons from Finogenov v Russia,* in *Journal of Conflict & Security Law*, 19(3), pp. 473–496.

[45] Cohen-Jonathan, G. (2012), *Les otages de Moscou et la Cour européenne des droits de l'homme,* cited; Vashchuk, A. (2014), *Hostage-taking, counter-terrorism and human rights: lessons from Finogenov v Russia,* cited.

The Court found that there had been a violation of article 2 of the Convention in substantive terms (right to life) and procedural terms (investigation).
It found that there was no evidence that the use of lethal force against the applicant's son was absolutely necessary and proportionate, or that the police had taken the necessary precautions to ensure that any risk to life was minimised.
The Court also focused on the regulatory framework for the use of non-lethal weapons[46] , such as tear gas grenades, recalling that they had already examined the rules on their use in the case of Abdullah Yaşa and others 2013, which concerned an injury caused by the throwing of a tear gas grenade during the same incidents.
It found that, at the time of the events, Turkish law did not contain any specific provisions regulating the use of such equipment during demonstrations and therefore "the police officers were able to act with considerable autonomy and take ill-considered initiatives, as would probably not have been the case if they had been given appropriate training and instructions. In the Court's view, such a situation is not sufficient to ensure the level of protection "by law" of the right to life that is required in present-day democratic societies in Europe". According to the Court, such a situation is not sufficient to guarantee the level of protection "by law" of the right to life required in today's democratic societies in Europe (§57).
Furthermore, with regard to article 46 (binding force and execution of judgments) of the Convention, the Court reiterated its conclusions in the Abdullah Yaşa and Others and Izci judgments and emphasised the need to strengthen, without further delay, the safeguards surrounding the proper use of tear gas grenades in order to minimise the risks of death and injury resulting from their use. It emphasised that, until the Turkish system complied with the requirements of the European Convention, the inappropriate use of potentially lethal weapons during demonstrations could give rise to violations similar to those in the case in question.
The Ataykaya case marked an important moment in recognising the structural inadequacy of the Turkish regulatory system and the responsibility of the State not only for the direct use of force, but also for the absence of effective rules to prevent abuse, with an extension of the scope of positive obligations under article 2 ECHR to include the need to regulate 'intermediate' instruments such as tear gas, the misuse of which can have lethal effects[47] , as has repeatedly been the case in the management of protests in Turkey, where the police have repeatedly used aggressive methods without effective supervision[48] .
The Court also stated that, to ensure the effective implementation of its judgment, new investigative measures should be taken under the supervision of the Committee of

[46] United Nations (2020), *Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.*
[47] Leach, P. (2014), *The European Court of Human Rights and the Right to Life: Police Use of Force and the Duty to Investigate.* Strasbourg Observers, 20 March.
[48] O'Boyle, M. (2015), *Protests, Policing and the European Convention on Human Rights*, in *European Human Rights Law Review*, 20(3), pp. 245–259.

Ministers of the Council of Europe to identify and, where appropriate, punish those responsible for the death of the applicant's son.
The Elvan case, decided in 2023, falls within the same jurisprudential framework.

> It took place against the backdrop of the protest movement that took place in Istanbul between May and September 2013, known as the 'Gezi Park events', during a series of demonstrations organised to protest an urban development project involving the construction of a shopping centre on the site of Gezi Park. Initially led by environmentalists and residents who opposed the deforestation of the park, the protest was repeatedly the scene of clashes between demonstrators and the police. It gained momentum in June and July and spread to many other cities in Turkey, where it resulted in clashes. The events leading to the death of the applicants' son took place on 16 June 2013. On that day, police intervention was planned in front of the 'Petek' supermarket in Okmeydanı (Istanbul). According to witnesses, two or three police officers were carrying Zet rifles at the time of the events; one of them occasionally put his gas mask on his forehead, uncovering his face. Between 7.15 and 7.20 a.m., when Berkin Elvan, who according to those close to him had gone out to buy bread, was at the intersection of Gaziler Street and Mithatpaşa Avenue, one of the 'Zet' police officers fired in his direction. Hit in the head by the grenade capsule, the young man, just fifteen years old, was immediately rescued by civilians present and taken to hospital. Berkin Elvan fell into a coma and remained there for 269 days before dying on 11 March 2014 as a result of skull fractures that caused a brain haemorrhage.

The Court examined the case of Berkin Elvan's death, identifying procedural violations of article 2 and rejecting the Turkish government's argument that the general context of the protests could justify the use of lethal force, because national investigations had already established that there were no active protests at the time Berkin Elvan was struck.
Police operations must be governed by a clear legal framework so as to prevent abuse and ensure respect for human life, and officers must receive adequate training enabling them to assess whether the use of lethal force is absolutely necessary and proportionate.
The Court also criticised the lack of effective supervision by the Istanbul authorities, in particular the prefect and the director of security: a police operation leading to the death of a person must be planned and supervised with the utmost care to minimise risks.
The Elvan case, which marks an important continuation of the Ataykaya ruling, is also significant for its symbolic nature: Berkin Elvan, who died after months in a coma, has become an icon of the repression in Gezi Park, and the ECtHR, in deciding the appeal, highlighted the systemic dimension of police violence, attributing to the State not only the single episode, but a pattern of structural impunity that has continued over time.

It is worth noting that the first emergency measure adopted under article 39 of the Rules of the Court, in the case of Đorović and Others v. Serbia (no. 8904/25) on 29 April 2025, concerned the public management of street protests, with reference to the use of a sound weapon during a demonstration in Belgrade on 15 March 2025.

> During a silent sit-in in memory of the victims of Novi Sad, high intensity sounds, and sound waves were suddenly emitted. The demonstrators (approximately 4,000 people, including the 47 applicants) reported intense fear, panic, tremors, hearing problems, nausea, tachycardia, vomiting and, in some cases, injuries due to the disorderly and chaotic escape. The applicants asked the ECtHR to order Serbia to ban the use of sound weapons for crowd control, to protect those who publicly discuss the issue, and to open an effective investigation.

The Court partially upheld the request, ordering the Serbian State to prevent any future use of sound devices for crowd control (except for communication purposes), citing the risk of serious damage to health and the absence of a domestic legal basis authorising their use.
This is an urgent and temporary measure, which does not prejudge the merits of the case but prevents an imminent risk of irreparable harm (in this case to the life and physical integrity of the demonstrators) in light of the fact that the use of such devices, which is not provided for by domestic law, cannot fall within a legitimate framework of maintaining public order. This means that Serbia must refrain from using such devices until a different decision is made.

2.6. Adequate, independent and effective investigation mechanisms, disciplinary measures and overcoming impunity

The effectiveness and completeness of investigations into the use of lethal force has been identified by the Court, since the McCann and Others judgment, as a procedural dimension of the positive obligations arising from article 2 of the Convention (McCann and Others, cited above, § 161).
The Court has repeatedly ruled on this issue, confirming the widespread underestimation in national legal systems of accountability mechanisms as essential safeguards of the democratic nature of the police force and a guarantee of the public's ability to prevent, but also to respond through internal mechanisms and remedies, to the unlawful use of lethal force ([49]).
In the case of Güleç v. Turkey (1998), the Court reiterated that the prohibition of arbitrary killings enshrined in article 2 of the Convention would be ineffective if it were not accompanied by an obligation to conduct an official and independent investigation in cases where individuals are killed as a result of the use of force by the State. In this specific case, the investigation conducted by the Turkish authorities proved to be inadequate and biased towards confirming the official version without impartially analysing the available evidence.

[49] UN–OHCHR (2016), *Minnesota Protocol on the Investigation of Potentially Unlawful Death.*

The investigation conducted in the case of Makaratzis v. Greece (2004) also failed to meet the Court's standards: the obligation to protect the right to life under article 2, taken in conjunction with the State's general duty under article 1 of the Convention to secure to all those within its jurisdiction the rights and freedoms defined in the Convention, implicitly requires the existence of some form of effective official investigation when individuals have been killed as a result of the use of force by, among others, State agents.
The State must therefore ensure, the judges say, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework established to protect the right to life is properly implemented and any violation of that right is prosecuted and punished (Giuliani and Gaggio, 2011, § 298).
The State's obligation to conduct an effective investigation has been considered in the Court's case law as an obligation inherent in article 2 and may give rise to a separate and autonomous violation. This conclusion stems from the fact that the Court has consistently examined the issue of procedural obligations separately from the issue of compliance with the substantive obligation (and, where appropriate, found a separate violation of article 2 on this ground), and from the fact that on several occasions a violation of a procedural obligation under article 2 has been found in the absence of any complaint regarding the substantive aspect.
For an investigation into alleged unlawful killings by State agents to be effective, it can generally be considered necessary that the persons responsible for and conducting the investigation be independent of those involved in the events (§232).
This means not only the absence of a hierarchical or institutional link, but also practical independence, since 'what is at stake is nothing less than the public's confidence in the State's monopoly on the use of force' (§232).
To be 'effective', as this expression must be understood in the context of article 2 of the Convention, an investigation must first and foremost be adequate, i.e. capable of ascertaining the facts, determining whether the force used was justified by the circumstances, and identifying and, where appropriate, punishing those responsible.
The authorities must take all reasonable steps to secure evidence relating to the incident, including, inter alia, eyewitness accounts, forensic evidence and, where appropriate, an autopsy providing a complete and accurate record of injuries and an objective analysis of clinical findings, including the cause of death.
Any shortcomings in the investigation that compromise the ability to establish the cause of death or identify the person responsible will risk producing a relevant violation under the ECHR.
The essential purpose of the investigation is to ensure the effective application of national laws protecting the right to life and, in cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.
Since, in practice, the true circumstances of death in such cases are often largely confined to the sphere of knowledge of state officials or authorities, the initiation of appropriate domestic proceedings, such as criminal proceedings, disciplinary proceedings and proceedings for the exercise of remedies available to victims and their

families, will depend strictly on an adequate official investigation, which must be independent and impartial.
In the Court's view, the investigation must be capable, first, of establishing the circumstances in which the accident occurred and, second, of leading to the identification and punishment of those responsible.
This is not an obligation of result, but of means: the authorities must have taken reasonable measures at their disposal to gather evidence relating to the accident, including, inter alia, eyewitness accounts and forensic evidence. Implicit in this context is the requirement of timeliness and reasonable speed. Any shortcoming in the investigation that compromises its ability to ascertain the circumstances of the case or the person responsible is likely to fall short of the standard of effectiveness required under article 2 ECHR.
In Nachova and Others v. Bulgaria (2005), the Court examined the legality of the officers' conduct in the light of the relevant rules, confirming 'the fundamentally flawed nature of those rules and their disregard for the right to life' (§114), as well as omitting 'several indispensable and obvious investigative steps'.
The Court reiterates, in this context, that a prompt and effective response by the authorities in investigating the use of lethal force is essential to maintain public confidence in their adherence to the rule of law and to avoid any appearance of complicity in or tolerance of unlawful acts (§118).
Furthermore, the domestic authorities must have taken "all reasonable measures at their disposal to collect evidence of the incident, including, inter alia, eyewitness testimony and forensic evidence. The conclusions of the investigation must be based on a thorough, objective and impartial analysis of all relevant elements and must apply a criterion comparable to the principle of 'absolute necessity' required by article 2 § 2 of the Convention' (§113).
A violation of the respondent State's obligation under article 2 § 1 of the Convention to conduct an effective investigation into the deprivation of life is therefore recognised, and this occurred on the basis of racially motivated reasons, considering the treatment of the victims, in this case Roma, by the police, in violation of article 14 of the Convention. The Court emphasises that "discrimination consists in treating persons in similar situations differently without objective and reasonable justification. Racial violence is a serious affront to human dignity and, given its dangerous consequences, requires particular vigilance on the part of the authorities and a decisive response. It is for this reason that the authorities must use all means at their disposal to combat racism and racist violence, thereby reinforcing the democratic vision of a society in which diversity is not perceived as a threat but as a source of enrichment" (§145).
The Court ruled out that racist attitudes played a role in the victims' deaths, but found that article 14, in conjunction with article 2, had been violated because the authorities failed in their duty to take all possible measures to investigate whether discrimination may have played a role in the events. It follows that there was a violation of rticle 14 of the Convention in its procedural aspect.

2.7. Procedural violation of article 2 due to inadequate and non-independent investigation

The case Ramsahai v. the Netherlands (2007) concerns the killing of a young man of Surinamese origin by Dutch police on the evening of 19 July 1998, during the 'Kwakoe' festival in Amsterdam:

> After stealing a scooter and threatening the owner with a gun, Ramsahai was intercepted by two patrol officers. At the time of his arrest, the young man pulled the gun from his belt and refused to hand it over despite orders to do so. One of the officers, assessing the danger as imminent, fired a shot that hit him in the neck, killing him instantly.

The Court found that the fatal shot fired by the officer was 'absolutely necessary' as it was fired after Ramsahai had drawn his gun. On the contrary, the Court found a serious breach of investigative obligations. The investigations conducted by the Dutch authorities were found to be deficient, due to the lack of independence of the investigating bodies (as the police themselves carried out investigations into their own colleagues involved), the lack of adequate involvement of the victim's family and the delay in opening a truly independent investigation.

The judgment represents an important step in the jurisprudential development of article 2 ECHR: on the one hand, it consolidates the principle that the lethal use of force can be considered justified only if based on a real and imminent threat; on the other, it reinforces procedural obligations, reaffirming that the mere substantive legitimacy of the action does not exempt the State from ensuring transparent, timely and independent investigations, since part of the investigations in the present case had been entrusted to the same police forces to which the officers belonged (§356).

The case of Ramsahai v. the Netherlands (2007) is part of a line of case law which, while recognising a wide margin of discretion for officers faced with an armed threat, has gradually shifted the focus to the effectiveness of the investigative obligations arising from article 2 ECHR. The decision has been criticised by legal scholars for accepting the officers' version of events without sufficient investigation, thus reducing the scope of the guarantee of 'absolute necessity'[50] . However, the innovative core of the ruling lies in the strengthening of the procedural obligation to conduct independent, effective and transparent investigations, which the Court has placed at the centre of its control over state violence[51] . It is precisely this focus on procedural aspects that has contributed to establishing an embryonic 'right to the truth' for victims[52] , without neglecting the political and institutional dimension of the decision, in which the Court avoided a more

[50] Benoît-Rohmer, F. & Klebes, H. (2005), *Council of Europe Law: Towards a pan-European legal area,* Strasbourg: Council of Europe Publishing; Greer, S. (2010), *The European Convention on Human Rights: Achievements, Problems and Prospects*, Cambridge: Cambridge University Press.

[51] Leach, P. (2011), *Taking a Case to the European Court of Human Rights,* Oxford; Ovey, C. & White, R. (2010), *The European Convention on Human Rights,* Oxford.

[52] Bartolini, G. (2008), *La Corte europea dei diritti dell'uomo e l'obbligo di indagini effettive: il caso Ramsahai*, in *Diritti Umani e Diritto Internazionale*, 2(2), pp. 345–365.

decisive condemnation so as not to delegitimise police action in a context of armed crime[53] .
Overall, Ramsahai represents a crucial step in the process of 'proceduralising' of article 2 ECHR, which redraws the balance between public security requirements and the effective protection of the right to life.
While in Ramsahai the Court highlighted the need for independent and transparent investigations following lethal police action, in the case of Şandru and Others v. Romania, 2009, the violation was found precisely because of the complete lack of an effective investigation into the clashes that took place in 1990 in Târgu Mureș, where the authorities had used lethal force against demonstrators, thus confirming the process of 'proceduralising' of article 2, in which the Court's focus is less on analysing the substantive conduct of the police and more on the State's ability to ascertain the truth and ensure accountability, transforming the investigative obligation into a structural element of the conventional protection of the right to life.

> The case stems from the use of violent means to quell the popular uprising in Timişoara in 1989: this was the first in a series of demonstrations that led to the overthrow of the Romanian communist regime. The first two applicants and the husband of the third applicant, who had taken part in the demonstrations, were seriously injured by gunshots. The brother of the fourth applicant was killed by a gunshot. All complained about the ineffectiveness of the investigations into the violent means used to quell the uprising, which had resulted in numerous casualties, and the length of the criminal proceedings. In particular, they argued that the proceedings had not been conducted properly because, given the positions held by the defendants in the new post-1989 Romanian regime, the authorities had been reluctant to investigate the case.

The cases Şandru and Others v. Romania (2009), Ataykaya v. Turkey (2014) and Elvan v. Turkey (2023) mark important milestones in the consolidation of the ECtHR's case law on procedural obligations under article 2 ECHR. In all three cases, the central issue concerns not only the use of lethal force by state agents, but above all the adequacy of the investigations conducted at the domestic level.
In Şandru, the judges emphasised that the political and social significance of the case cannot justify delays or omissions but rather requires greater timeliness and transparency. In Ataykaya, the Court condemned the deliberate creation of a 'zone of impunity', which made it impossible to identify the perpetrators and their superiors, thereby thwarting the establishment of responsibility. Finally, in Elvan, attention also shifted to the structural level, with a reference to the need for domestic legal systems to have adequate tools to effectively prevent and punish the disproportionate use of force by law enforcement officers.

[53] Venturini, G. (2012), *La giurisprudenza della Corte di Strasburgo sull'uso della forza da parte delle autorità statali*, in *Rivista di diritto internazionale*, 95(1), pp. 35–62.

Legal doctrine has emphasised how this development contributes to strengthening a genuine 'jurisprudence of procedural obligation' (Bartolini, 2015; O'Boyle, 2016), which takes on an autonomous value with respect to the assessment of substantive violations. The result is an interpretation of article 2 that is no longer limited to the prohibition of arbitrary deprivation of life but extended to guaranteeing the accountability and transparency of law enforcement agencies, with a view to democratic protection against state impunity.

The Court reiterates that the obligation to protect the right to life implicitly requires the existence of some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alia, State agents (see McCann and Others, cited above, § 161). The State must therefore ensure, according to the judges, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework established to protect the right to life is properly implemented and any violation of that right is prosecuted and punished (Giuliani and Gaggio, 2011, § 298).

The State's obligation to conduct an effective investigation has been considered in the Court's case law as an obligation inherent in article 2 and may give rise to a separate and independent finding of 'interference'. This conclusion stems from the fact that the Court has consistently examined the issue of procedural obligations separately from the issue of compliance with the substantive obligation (and, where appropriate, found a separate violation of article 2 on that ground) and from the fact that on several occasions a violation of a procedural obligation under article 2 has been found in the absence of any complaint regarding the substantive aspect.

For an investigation into alleged unlawful killings by State agents to be effective, it can generally be considered necessary that the persons responsible for and conducting the investigation be independent of those involved in the events (§232).

This means not only the absence of a hierarchical or institutional link, but also practical independence, since “what is at stake here is nothing less than public confidence in the State’s monopoly on the use of force” (Armani Da Silva v. the United Kingdom, §232, Ramsahai and Others v. the Netherlands, § 325; Giuliani and Gaggio).

The investigation was also deemed ineffective and therefore in violation of article 2 of the Convention in the case of Nika v. Albania, 2023:

> the husband and father of the applicants were shot in the head and killed in 2011 during a demonstration in front of the Albanian Prime Minister's office. The applicants complained that the commander-in-chief of the National Guard, responsible for protecting the Prime Minister's office, had ordered his men to open fire on the demonstrators, thereby using excessive force, without then effectively investigating the killing.

The Court found, overall, that the investigation into the case had not been effective, as it had failed to establish the truth or lead to the identification and punishment of those

responsible, in violation of the procedural part of article 2 (right to life) of the Convention.
The Court identified weaknesses in firearm regulations for crowd control and major flaws in protest management. It noted that a blanket ban on arbitrary state killings is insufficient unless there are procedures to review the use of lethal force by authorities. It noted that the authorities had not demonstrated that the use of lethal force by National Guard officers that led to the death of the applicant's relative was absolutely necessary. Indeed, the Albanian government itself admitted that the use of force had been excessive. The Court therefore found that there had also been a violation of article 2, substantive part, of the Convention. Finally, pursuant to article 46 (binding force and execution) of the Convention, it held that the Albanian authorities should continue to seek to clarify the circumstances of the death of the applicants' relative and to identify and punish those responsible.
The various verification criteria developed by the ECtHR were recently reviewed in the case of Almukhlas and Al-Maliki v. Greece (2025)[54] :

> the applicants, two Iraqi nationals, complained about the death of their minor son on 29 August 2015 near the Greek island of Symi as a result of the unlawful conduct of the Greek authorities. The minor was hit by a bullet fired by a coastguard officer during an operation to intercept a boat carrying irregular migrants. The applicants complained about the inadequate planning of the operation and the ineffectiveness of the subsequent investigations.

The ECtHR found a double violation of article 2 ECHR, both in substantive and procedural terms. On the substantive level, the Strasbourg judges criticised the conduct of the Greek authorities for failing to put in place an adequate operational plan to ensure the protection of the lives of the migrants on board the boat, despite the known presence of vulnerable individuals, including a minor. The violation was not recognised with regard to the use of force per se – the shooting was not considered to have been deliberately aimed at killing – but rather for the lack of adequate planning and overall management of the operation, which created disproportionate and foreseeable risks.
On a procedural level, the Court found that both the administrative and judicial investigations were deficient, as they did not effectively ascertain individual responsibilities and, above all, systemic and command responsibilities.
The principle that emerges is in line with McCann v. the United Kingdom and Nachova v. Bulgaria: police and military operations must be planned with the utmost care to minimise lethal risks. Article 2 requires that the use of lethal force be assessed not in isolation but within the overall planning framework: this implies a positive obligation to prevent, which is particularly important when vulnerable persons, such as migrants and minors, are involved. Furthermore, even in the absence of intent to kill, the State remains responsible if the operation was designed or conducted in such a way as to expose civilians to disproportionate danger.

[54] See also Alkhatib and Others v. Greece, 16 January 2024.

Finally, the Court reiterates the centrality of the procedural obligation to conduct an effective investigation: every death caused by state agents must be the subject of an independent, prompt and thorough investigation, capable of verifying not only the conduct of individual operators, but also any structural flaws and command responsibilities that contributed to the occurrence of the event. In this sense, the decision reinforces the idea that article 2 ECHR does not merely regulate the use of force, but constitutes an integrated system of protection of life, requiring both preventive measures and ex post accountability mechanisms.

2.8. Indicators of compliance with article 2

The case law of the ECtHR on the use of force by the authorities has progressively defined a set of substantive and procedural criteria that States are required to comply with to ensure the effectiveness of article 2 ECHR. As shown by the analysis conducted so far, these criteria revolve around two fundamental core elements: on the one hand, the regulatory and operational regulation of state conduct, aimed at preventing undue risks to life; on the other hand, the duty to investigate quickly, independently and transparently any incident in which the use of force has resulted in death or serious injury.

The table below summarises these standards, translating them into verification indicators that are useful both for legal analysis and as an operational tool for assessing the compliance of national practices with conventional obligations.

Criterion	Verification indicators
Clear legislation on the use of force	Is there a clear legislative and regulatory framework governing the use of force and firearms? Does it comply with international standards (e.g. UN Principles on Force and Firearms)?
Training of officers	Have officers received adequate and ongoing training on the management of public order operations and the proportionate use of force? Are they trained in the correct use of non-lethal means?
Operational coordination and centralised command	Was the operation planned in such a way as to minimise risks to human life? Was there clear, centralised command to avoid arbitrary decisions on the ground?
Availability of non-lethal means	Did officers have alternative tools (safely used tear gas, water cannons, shields, rubber bullets) that could replace firearms? Were these tools actually used before lethal force?
Use of force in contexts of protest or unrest	Was the principle of absolute necessity (Art. 2 § 2 ECHR) respected? Was the use of force strictly proportionate to the immediate and lethal threat?
Absolute necessity of lethal force	Was the force justified for one of the mandatory purposes of Art. 2 § 2 (defence against unlawful violence; lawful arrest/prevention of escape; suppression of riot/insurrection)?
Proportionality	Was the state's response proportionate to the perceived concrete threat? Were there any viable alternatives that were less risky?
Assessment of the specific circumstances	Did the officers act based on reliable, up-to-date and verified information? Was an ex-ante risk analysis carried out?
Planning and control of operations	Did the authorities put in place a clear strategy, with procedures and means to minimise the risk of accidental death? Were alternative scenarios considered?
Positive obligations of the State	Did the State take all reasonable preventive measures (regulations, equipment, training, operational strategies) to protect life, including that of suspects or demonstrators?
Post-event investigation	Has an independent, prompt, thorough and transparent investigation been conducted to determine individual and systemic responsibilities?
Standard of proof and subsidiary role of the Court	Have the domestic courts assessed the facts rigorously? The ECtHR applies the standard of 'beyond reasonable doubt' but may depart from domestic findings if they are not convincing.
Non-discrimination	Was any discriminatory motive (e.g. victims belonging to minorities) verified and investigated? Did the State impartially investigate possible structural discrimination?

2.8. Article 3 – Prohibition of torture and inhuman and degrading treatment

> ***Article 3 – Prohibition of torture***
>
> No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The evolution of case law on procedural obligations does not only concern article 2 ECHR, but also extends to article 3, which establishes the absolute prohibition of torture and inhuman or degrading treatment. Article 3 imposes a negative obligation on States to refrain from inflicting physical or mental suffering on persons within their jurisdiction and, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult circumstances, such as the fight against organised terrorism and crime, the Convention absolutely prohibits torture or inhuman or degrading treatment or punishment.

Unlike most of the substantive provisions of the Convention and Protocols Nos. 1 and 4, article 3 does not provide for any exceptions, and no derogation is permitted under article 15, even in the event of a public emergency threatening the life of the nation (see Ireland v. the United Kingdom, 1978, § 163; Soering v. the United Kingdom, 1989, § 88; Chahal v. the United Kingdom, 1996, § 79).

States must not only refrain from directly inflicting inhuman or degrading treatment, but also have a responsibility to take preventive measures, including a regulatory framework to protect individuals from the risk of such treatment, and an obligation to intervene actively when there are concrete indications of danger to an individual.

Similarly to what was developed for article 2, the Court has also developed a genuine "procedural dimension" for article 3: when there are suspicions of ill-treatment by the authorities or third parties, the State must conduct an independent, thorough investigation capable of identifying and punishing those responsible, to prevent impunity. This investigative obligation is consistent with the case law on article 2, reflecting a common principle: the effective protection of fundamental rights requires not only abstention by the State, but also positive action to investigate and punish conduct contrary to the Convention.

2.9. Ireland v. United Kingdom, 1978: minimum threshold and distinction between torture and inhuman treatment

The case of Ireland v. United Kingdom (1978) is the starting point for the Court's case law on article 3 ECHR, as it established the concept of a 'minimum threshold of severity' of conduct for the application of the absolute prohibition of torture and inhuman or degrading treatment.

> The proceedings concerned the extrajudicial arrest and detention measures implemented in Northern Ireland between 1971 and 1975 as part of the crackdown on the IRA's armed campaign. Numerous detainees reported ill-treatment during custody, documented through medical evidence and

testimonies. In particular, five interrogation techniques systematically applied by the security forces emerged: restraint in painful positions, hooding, exposure to continuous noise, sleep deprivation and deprivation of food and water.
The European Commission of Human Rights classified these practices as torture.

To determine whether the five interrogation techniques should be classified as torture, the Court considered it necessary to clarify the distinction between this concept and that of inhuman or degrading treatment. This distinction, according to Strasbourg, is based primarily on the degree of intensity of the suffering inflicted. On the one hand, there are forms of violence that are morally reprehensible and, in most cases, also punishable under domestic law, but which do not reach the minimum threshold of severity required by article 3. On the other hand, by distinguishing between 'torture' and 'inhuman or degrading treatment', the Convention intended to reserve a particular stigma for the former category, designed to designate intentional treatment causing particularly severe and cruel suffering.
The Court referred to article 1 of Resolution 3452 (XXX) adopted by the United Nations General Assembly on 9 December 1975, which states that Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. In the light of this definition, the Court considered that the use of the five interrogation techniques in the present case constituted inhuman and degrading treatment, in violation of article 3 ECHR (§ 168), but could not be classified as torture (§ 167).
Subsequently, the Court's case law has clarified that the Convention is a living instrument to be interpreted in the light of present-day conditions. In this evolutionary perspective, conduct that was previously classified as "inhuman and degrading treatment" could subsequently be considered torture, as the level of protection of human rights tends to rise progressively. This inevitably leads to greater firmness in judging violations of the fundamental values of democratic societies (Selmouni v. France, 1999, § 101). Following this interpretative progression, the minimum threshold of severity for applying article 3 is understood to be evolving and must be interpreted in the light of the social conditions in which the events took place (Tyrer v. United Kingdom, 1978[55]) and conduct previously classified as inhuman and degrading treatment has subsequently been recognised as acts of torture.
The distinction drawn by the Court between torture and inhuman or degrading treatment has been the subject of extensive doctrinal reflection. Some of the literature has emphasised how the Court initially adopted a restrictive approach, aimed at reserving the classification of torture for acts of extreme severity, as if to preserve a 'hard core' of violations (Greer, 1995). Other authors have spoken of a 'sliding scale' of intensity, in which the minimum threshold of severity is determined not only by the intensity of the pain inflicted but also by the political, historical and social context

[55] A teenager was subjected to corporal punishment (birching), i.e. blows with a whip, as part of a judicial sanction. The Court recognised that, while not reaching the threshold of torture, the treatment had violated the minor's dignity and violated article 3 as degrading treatment.

(Burgorgue-Larsen, 2011). The evolution marked by Selmouni v. France reflects precisely this dynamic: the Court recognised that the international community's growing sensitivity to the prohibition of torture requires a constant raising of the threshold of protection and, therefore, a greater propensity to classify as torture conduct that in the past was classified as inhuman or degrading treatment (Besson, 2014). This 'living' interpretation of the Convention reinforces the absolute nature of the prohibition enshrined in article 3, linking it closely to the founding values of a democratic society.
Legal scholars in Italy have observed that the Court's initial caution in classifying conduct as torture reflected an approach linked to the political context and the difficulties of balancing the protection of rights with security requirements (Bartole, 2012). Zagrebelsky has emphasised that the distinction between torture and inhuman or degrading treatment is not merely terminological but has significant symbolic and legal effects: the attribution of the qualification of torture contributes to a clearer stigmatisation of state action and demands a higher level of international responsibility (Zagrebelsky, 2005). Sicilianos, for his part, has highlighted that the evolving case law of the Court – from Ireland v. United Kingdom to Selmouni v. France – testifies to the dynamic nature of the Convention as a 'living instrument', requiring States not only to refrain from such practices but also to strengthen their regulatory and preventive apparatus over time (Sicilianos, 2010). This perspective has also been welcomed by comparative doctrine, which has recognised in the Strasbourg case law a progressive 'universalisation' of the concept of torture, capable of influencing domestic legislation and reinforcing the absolute nature of the prohibition[56] .

2.10. Aksoy v. Turkey, 1996: the Court's first classification of 'torture'

Torture was recognised by the Court for the first time in the case of Aksoy v. Turkey, 1996:

> The appellant reported that he had been stripped naked, tied with his hands behind his back and hung by his arms in a form of torture known as 'Palestinian hanging'. During this practice, he was subjected to electric shocks to his genitals and jets of water, while remaining blindfolded for approximately thirty-five minutes. In the following days, he was repeatedly beaten, with torture continuing for four days, causing him to lose movement in his arms and hands. Upon discharge from hospital, he was diagnosed with bilateral radial paralysis, decisive medical evidence of the severity of the suffering he endured.

The Court, relying on the Commission's findings of fact, emphasises that when an individual is taken into police custody in good health but is found injured upon release, it is for the State to provide a plausible explanation for the cause of the injury, and in

[56] Bartole, S. (2012), *La tutela dei diritti umani nell'ordinamento europeo*, Bologna; Zagrebelsky, V. (2005), *La Convenzione europea dei diritti dell'uomo e la Corte di Strasburgo*, Bologna; Sicilianos, L.-A. (2010), *L'interprétation évolutive de la Convention européenne des droits de l'homme*. Bruxelles.

the absence of such an explanation, a clear issue arises under article 3 of the Convention (art. 3) (see Tomasi v. France, 1992, §§108-111; Ribitsch v. Austria, 1995, §34).

In order to determine whether a particular form of ill-treatment should be classified as torture, the Court must take into account the distinction drawn in article 3 between this concept and that of inhuman or degrading treatment, a distinction included in the Convention, the Court emphasises, to ensure that the special stigma of 'torture' applies only to deliberately inhuman treatment causing very severe and cruel suffering (Ireland v. the United Kingdom, §167).

The Court refers to the Commission's finding that, among other things, the applicant was subjected to 'Palestinian hanging', in other words, that he was stripped naked, with his arms tied together behind his back, and suspended by his arms, a treatment necessarily inflicted deliberately, since “a certain amount of preparation and exertion would have been required to carry it out. It would appear to have been administered with the aim of obtaining admissions or information from the applicant” (§64).

In addition to the severe pain it must have caused at the time, medical evidence shows that it led to paralysis of both arms which lasted for some time (see paragraph 23 above). The Court found that this treatment was so severe and cruel that it can only be described as torture in violation of article 3 of the Convention and reaffirms the absolute nature of the prohibition of torture and inhuman or degrading treatment: the Court reiterates that no exceptional circumstances – not even the fight against terrorism – can justify violations of article 3, in line with its established case law (see Soering v. the United Kingdom, 1989, §88; Chahal v. the United Kingdom, 1996, §79).

Over time, the Court has classified specific forms of violence committed by state agents as torture, characterised by intent, the severity of the suffering inflicted and coercive or punitive purposes:

- sleep deprivation, beatings and other torture to obtain confessions (Batı and Others v. Turkey (2004);
- sexual violence, physical and psychological torture during detention (Aydın v. Turkey, 1997), during interrogation (Maslova and Nalbandov v. Russia, 2008), during the surveillance of an irregular migrant (Zontul v. Greece, 2012);
- forced feeding without medical necessity of a prisoner on hunger strike, who was restrained with handcuffs, a mouth gag and a tube inserted into his oesophagus, causing severe suffering (Nevmerzhitsky v. Ukraine, 2005);
- handcuffing, hooding and stripping of a person deprived of his liberty and forced to take a suppository as part of an extraordinary rendition operation (El-Masri v. North Macedonia (2012);
- lethal beatings by the police (Satybalova and Others v. Russia, 2020);
- lethal physical violence against a protester during the Maidan protests (Lutsenko and Verbytskyy v. Ukraine, 2021).

Starting with Selmouni v. France (1999, §101), the Court then adopted an evolving interpretation, recognising that acts that had previously been classified as 'inhuman and degrading treatment' could in future be considered 'torture', as the level of

protection of fundamental rights in democratic societies is constantly growing and evolving.
The Aksoy case is also significant in terms of the procedural aspects of article 3: the Court condemned Turkey not only for the use of torture, but also for failing to conduct an effective investigation and for the serious threats that culminated in the killing of the applicant during the Strasbourg proceedings. This aspect highlights how article 3 is not limited to a negative prohibition, but imposes on States, as does article 2 ECHR, a positive obligation to prevent, investigate and punish those responsible for prohibited treatment.
An examination of the case law relating to article 3 of the Convention shows that, in general, the burden of proof regarding the facts that could constitute a violation lies with the applicant complaining of the violation. However, in cases of suspected unlawful use of force by state agents against persons in custody or otherwise under the control of the authorities, the Court has affirmed the principle of reversal of the burden of proof. In such circumstances, it is for the State to provide a plausible and convincing explanation for the injuries sustained by the person detained or controlled, demonstrating that they are not attributable to treatment contrary to article 3. This approach was consolidated in Ribitsch v. Austria (1995, §34), where the Court clarified that when an individual enters custody in good health and leaves with injuries, the burden of justifying the causes lies with the State. The principle was reiterated in Selmouni v. France (1999, §87), where the Court emphasised that the State's failure to provide a satisfactory explanation for the injuries is a strong indication of ill-treatment. Similarly, in Tomasi v. France (1992), the Court had already emphasised the need for strict control of the use of force in custody.
This presumption of evidence serves to ensure effective investigation of violations of article 3, since, in the absence of such a criterion, in cases of ill-treatment in custody it would be virtually impossible for the victim to prove directly the responsibility of the agents, with the risk of rendering the prohibition laid down in article 3 ineffective.

2.11. The interpretative evolution of the category of inhuman and degrading treatment

The category of inhuman and degrading treatment has also been broadened since the case Tomasi v. France (1992), in which the Court clarified that the disproportionate use of force by the authorities may constitute inhuman and degrading treatment, recognising the violation of article 3 suffered by a person who was repeatedly beaten while in custody, considering that the suffering inflicted by the police was not justified and exceeded the minimum threshold required.
The enforced disappearance of a family member and the lack of information about their fate may also constitute inhuman and degrading treatment for the surviving family members, who are recognised by the Court as direct recipients of inhuman and degrading treatment due to the uncertainty and pain they experience (Kurt v. Turkey, 1998).

In the case Yankov v. Bulgaria (2003), the Court ruled that treatment consisting of prolonged isolation, inadequate hygiene and no access to fresh air was inhuman and degrading, emphasising the importance of detention conditions that respect human dignity, which was also violated by the disproportionate use of force and deprivation of medical care, as recognised in the case Chember v. Russia (2008), in which the applicant, a soldier suffering from asthma, was forced to perform extreme physical exercises despite his health condition, to the point of losing consciousness. The Court found that this conduct constituted intentional negligence on the part of the military authorities.
Further developments have included:

- the failure to protect vulnerable prisoners from violence by other prisoners, which the Court considered to constitute inhuman and degrading treatment because it violates the State's positive duty to ensure the integrity of persons deprived of their liberty (M.C. v. Bulgaria, 2003; Premininy v. Russia, 2010);
- systemic prison overcrowding, recognised as a violation of article 3 due to the intrinsic degradation it causes (Torreggiani and Others v. Italy, 2013);
- the absence of adequate medical care in prisons or detention centres for migrants, which the Court has classified as inhuman and degrading treatment, even in situations not characterised by punitive intent but by serious state negligence (Kudła v. Poland, 2000; M.S.S. v. Belgium and Greece, 2011).

Over time, therefore, the Court has progressively broadened the scope of article 3 to include not only violent and intentional conduct, but also situations of abandonment, neglect and degrading structural conditions, emphasising human dignity as a central interpretative parameter.

2.12. Disproportionate use of force by the police during demonstrations and protests

Where the use of force is not strictly necessary and violates human dignity, this constitutes a violation of article 3. Excessive use of force in protests may constitute inhuman or degrading treatment, especially when it is used against peaceful demonstrators or when the proportionality of the actions of public officials in relation to the threat to public safety is not respected.
The Court has examined numerous appeals alleging violations of article 3 by public authorities while managing public protests.
A significant example is Oya Ataman v. Turkey (2006), brought by the Istanbul Human Rights Association.

> The applicant organised a peaceful protest in Sultanahmet Square, Istanbul, against 'F-type' prisons with 40-50 participants. Police declared it illegal due to lack of notice and ordered dispersal. Despite no threat to public order, police used pepper spray, causing distress, and arrested the demonstrators.

The Court reiterated that ill-treatment by the authorities must reach a minimum level of severity to fall within the scope of article 3 ECHR, specifying that treatment is

considered 'inhuman' if, among other things, it was premeditated, lasted for hours and caused actual physical injury or intense physical or mental suffering.
Furthermore, in assessing whether treatment is 'degrading' within the meaning of Article 3, the Court will consider whether its purpose was to humiliate and debase the person concerned and whether, in terms of its consequences, it damaged his or her personality in a manner incompatible with article 3 (§23).
The Court then examined the issue of the use of 'pepper spray', noting that this gas, used in some Council of Europe member states to control demonstrations or to disperse them if they get out of hand, is not among the toxic gases listed in the annex to the Chemical Weapons Convention, while not underestimating that the use of this gas can produce side effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis or allergies, consequences which, however, the applicant has not proven.
The ECtHR considered that the use of force by the police in this case was disproportionate and unnecessary to prevent disorder within the meaning of article 11(2) of the Convention (§44).
Regarding article 3, the Court recognised that forced exposure to irritant sprays causing pain, eye irritation and breathing difficulties may amount to inhuman or degrading treatment, especially when inflicted on peaceful and non-violent demonstrators.
The Court noted that the participants in the demonstration were few (40–50 people), peaceful and did not pose any threat to public order. The immediate and massive use of tear gas by the police, without attempting less coercive measures, constituted a disproportionate use of force. It emphasised that even if a demonstration had not been notified in advance, this did not automatically justify repressive intervention: the authorities must show a certain degree of tolerance towards peaceful gatherings (see also Bukta and Others v. Hungary, 2007). In addition to the substantive violation, the Court reiterated that the absence of an effective and independent investigation into the police's actions may constitute a procedural violation of article 3.
The case law established in Oya Ataman v. Turkey was reiterated and reinforced by the Court in Balçik and Others v. Turkey (2007), which also concerned police intervention against peaceful demonstrators:

> A group of demonstrators, including the applicants, gathered in Istanbul’s İstiklal Street to protest F-type prisons without prior notice. Police ordered them to disperse, then used batons and tear gas, arresting 39 people. Medical reports showed some suffered injuries such as bruises, swelling, and head lacerations.

The Court distinguished between the applicants without evidence of ill-treatment and the two applicants (Semiha Kırkoç and Sema Gül) who had medical reports attesting to injuries caused by excessive use of force. While acknowledging that the demonstration had not been announced in advance, the Court noted that the police had intelligence reports and had had time to prepare preventive measures, deploying numerous officers: even if a demonstration has not been announced to the authorities in advance,

this does not automatically authorise the forced dispersal of the gathering, let alone the use of violent coercive measures. On the contrary, the authorities are required to tolerate peaceful gatherings of short duration and to resort to force only as an extreme, proportionate and necessary measure to deal with a real threat to public order. The absence of such a threat and the unjustified use of physical violence led the Court to find a violation of article 3, describing the police intervention as inhuman and degrading treatment. In this sense, Balçik reinforces the principle already established in Ataman: the use of force against peaceful demonstrations, without any actual threat, not only infringes on freedom of assembly (article 11), but also exceeds the minimum threshold of article 3, as it inflicts suffering and humiliation incompatible with respect for human dignity.

In the case Ali Güneş v. Turkey (2012), the European Court of Human Rights took a particularly rigorous approach to the use of tear gas by the police, highlighting the insurmountable limits that article 3 of the Convention imposes on state authorities. The incident took place in the context of demonstrations against the 2004 NATO summit in Istanbul: the applicant, a secondary school teacher, was held by two officers while a third sprayed tear gas in his face at close range. The incident, which was widely documented in the press and in photographs, made it clear that the use of gas was not necessary for operational reasons, as the individual was already under police control.

The Court reiterated that tear gas and pepper spray, although not classified as chemical weapons by the 1993 Convention, have potentially serious effects on health and can cause physical and psychological suffering incompatible with the prohibition of inhuman and degrading treatment. It also endorsed the recommendations of the European Committee for the Prevention of Torture (CPT) that the use of such instruments must be strictly regulated, to avoid their use in enclosed spaces or on persons already deprived of their liberty of movement. The absence of any justification by the Government and the deliberate choice to target a demonstrator who was already immobilised led the Court to conclude that there had been a violation of article 3.

Another key issue concerns the ineffectiveness of the internal investigation: the prosecutor had dismissed the complaint in just 48 hours, without taking any concrete action, and the applicant had been informed of the decision late. In this respect too, the Court found a procedural violation of article 3, emphasising that the duty to conduct serious, prompt and thorough investigations is an integral part of the protection afforded by the Convention.

The same principles were upheld in Abdullah Yaşa and Others v. Turkey (2013), where the Court criticised police for firing tear gas grenades at head height. In this case, the applicant suffered serious facial injuries. Although the demonstration wasn't peaceful, the Court noted the distinction between the use of dispersal methods themselves and how they were implemented, stressing that the absence of internal guidelines and proper officer training created opportunities for arbitrary and potentially deadly actions.

This case law consolidates an essential principle: even in situations of social tension or public disorder, law enforcement agencies remain bound by the absolute prohibition

of inhuman and degrading treatment. The use of chemical irritants can never be arbitrary or disproportionate, and the absence of adequate regulation at national level amplifies the risk of abuse, imposing on States the obligation to adopt clear rules, transparent procedures and effective control over officers.
The common thread that emerges is twofold: on the one hand, the absolute prohibition of inhuman and degrading treatment, which requires the prohibition of any punitive or retaliatory use of gas; on the other hand, the positive obligation for States to establish clear rules, adequate training and effective controls, so as to prevent abuse and ensure that even the management of public order takes place within the boundaries of the rule of law.

2.13. ECtHR Cases against Italy

Italy has been condemned three times for its repressive management of demonstrations and for its structural failure to ensure compliance with article 3 ECHR.
In 2015, the Cestaro judgment was published, in which the Court addressed the case of the raid on the Diaz school during the G8 summit in Genoa, recognising that the ill-treatment suffered by the applicant amounted to torture. The Cestaro judgment was paradigmatic: for the first time, Italy was formally convicted of torture under the ECHR, with a direct reference to the absence of an internal regulatory framework capable of effectively prosecuting such conduct. The qualifying element, highlighted in §190, was the punitive intent of the officers, who had acted not in a context of operational necessity but to inflict gratuitous suffering and humiliation. In this sense, the Court recognised that the highest threshold of violation of article 3 had been exceeded, linking the legal classification not only to the severity of the injuries inflicted, but also to the intentional and punitive nature of the conduct.
The Cestaro judgment was followed by the Bartesaghi Gallo and Others case (2017) concerning events that took place in the same context (the G8 summit in Genoa) at the Bolzaneto barracks, a temporary detention centre where hundreds of demonstrators were subjected to threats, insults, beatings, forced postures, deprivation and physical and psychological harassment. In the Bartesaghi Gallo case, the Court distinguished such conduct from 'torture' in the strict sense, qualifying the conduct suffered by the applicants as inhuman and degrading treatment. Here too, there was an intentional element of humiliation, but the absence of extreme physical violence and the more systematic and 'environmental' nature of the harassment led to a different legal qualification. However, as in Cestaro, the issue of impunity remains central: the Court emphasised the paralysing effect of the statute of limitations, suspended sentences and lack of disciplinary sanctions, which prevented the effective enforcement of the prohibition in article 3 ECHR.
Finally, in 2025, the Cioffi v. Italy case was decided, concerning violence in Naples dating back to March 2001, in which the Court reiterated the principles already established in Cestaro and Bartesaghi Gallo, but shifted its focus to a decisive aspect: the effectiveness of investigations. While finding serious ill-treatment (beatings, humiliating postures, deprivation of contact and indiscriminate roundups), the Court insisted that the

ineffectiveness of the Italian criminal justice system – with its statutes of limitations, pardons and symbolic penalties – renders article 3 ineffective as a preventive and deterrent measure. Hence the confirmation of a double violation, both substantive and procedural: the treatment suffered by the applicants and the State's failure to investigate and punish. The Cioffi judgment, eight years after the last case and twenty-four years after the events, nevertheless shows continuity with the case law ECHR on article 3, with an innovative core concerning the disproportion between the seriousness of the conduct ascertained and the punitive response (with sentences not enforced or extinguished) of the state authority.

This disproportion deprives article 3 of its deterrent force, shifting the focus from the seriousness of the violent conduct perpetrated to the ineffectiveness of the investigations and the inadequacy of the penalties, which must be timely, proportionate and enforced, otherwise they lose their preventive significance.

When considered together, the three cases reveal a common thread: Italy has failed to put in place appropriate regulatory and practical tools to prevent and punish violence committed by law enforcement agencies.

The Court has reconstructed a coherent body of principles: (i) the prohibition in article 3 is absolute and does not allow for any exceptions or operational justifications; (ii) investigations must be effective, timely and aimed at ensuring concrete accountability; (iii) the State has a positive obligation to adopt adequate criminal law and disciplinary practices. Case law has therefore evolved from Cestaro (threshold of torture, context of extreme punitive violence) to Bartesaghi Gallo (systematic humiliation, degrading treatment) to Cioffi (focus on the enforcement of sentences and the deterrent effect)[57].

Legal scholars have interpreted this trajectory as confirmation of a 'structure of impunity' endemic to the Italian system. The Court did not limit itself to sanctioning individual incidents but highlighted the systemic inadequacy of the internal accountability system. Similarly, Gatta emphasised that the crucial issue is not only the absence (until 2017) of an autonomous crime of torture, but the persistence of a general tolerance, including legal tolerance, towards abuses by law enforcement agencies, against which symbolic solutions – pardons, statutes of limitations, belated reforms – are insufficient, as they do not address the structural root of the problem[58] .

---

[57] The same principles were reiterated in Lopez Martinez v. Spain (2021), Shmorgunov and Others v. Ukraine (2021), Mikeladze and Others v. Georgia (2021), a judgment in which violations of article 3 are related to the violation of article 14 (prohibition of discrimination) where the treatment received by the applicants included the use of discriminatory language by the police.

[58] Casale, P.P. (2017), *A proposito dell'introduzione del nuovo delitto di tortura ex art. 613-bis c.p. Il (discutibile) recepimento interno del formante giurisprudenziale europeo e degli accordi internazionali*, in *Archivio penale*, 2, pp. 620 ff. De Salvatore, G. (2017) *L'incidenza degli "atti atipici di tortura" sul ragionamento del giudice penale: riflessioni a margine di una pronuncia della Corte d'Assise di Lecce*, in *Cassazione penale*, pp. 4550 ff. Marchi, I. (2017) *Il delitto di tortura: prime riflessioni a margine del nuovo art. 613-bis c.p.*, in *Rivista italiana di diritto e procedura penale*, 7–8, pp. 155 ff. Negri, S. (2016), *Violazioni strutturali" e ritardo nell'esecuzione delle sentenze CEDU: il caso Cestaro c. Italia e la travagliata introduzione del reato di tortura nel codice penale italiano*, in *Diritto penale e processo*, pp. 1657 ff. Padovani, T. (2015), *Giustizia criminale*, vol. III, *Tortura*. Pisa; Padovani, T. (2017), *Sul reato di tortura si misura la nostra credibilità*, in *La Repubblica*, online, 22 June. Pezzimenti, C. (2015), *Nella scuola Diaz-Pertini fu tortura: la Corte europea dei diritti dell'uomo condanna*

The case law of the European Court of Human Rights on the use of force by the police, particularly in the context of public order and custody, has gradually defined a set of assessment criteria that make it possible to distinguish between legitimate use of force, inhuman and degrading treatment, and actual torture. These criteria do not operate in the abstract but are verified on a case-by-case basis considering the specific circumstances, the severity of the suffering inflicted and the presence or absence of punitive intent.
The Court reiterates that the prohibition laid down in article 3 ECHR is absolute and does not allow for any exceptions, even in situations of emergency or violent unrest. Consequently, the analysis of the proportionality and necessity of the use of force by officers is of central importance, as is the verification of the State's ability to ensure effective investigations and adequate sanctions against those responsible.
To make the logic underlying these rulings transparent, it is possible to systematise the criteria and indicators of verification applied by the ECtHR. These range from the clarity of the legislation on the use of force, to the assessment of the severity of the suffering inflicted, to the monitoring of the effectiveness of internal investigations and the absence of impunity.

l'Italia, in *Giurisprudenza italiana*, p. 1709 ff. Pezzimenti, C. (2018), *Tortura e diritto penale simbolico: un binomio indissolubile?*, in *Diritto penale e processo*, p. 153 ff. Pocar, F. (2017), *Reato di tortura, nonostante la legge l'Italia sarà criticata*, in *Guida al diritto*, 31, p. 6 ff. Pugiotto, A. (2014), *Repressione penale della tortura e Costituzione: anatomia di un reato che non c'è*, in *Diritto penale contemporaneo – Rivista trimestrale*, 2(2), p. 132 ff. Viganò, F. (2014), *Sui progetti di introduzione del delitto di tortura presso la Camera dei Deputati. Parere reso nel corso dell'audizione svoltasi presso la Commissione giustizia della Camera dei Deputati il 24 settembre 2014*, in *Diritto penale contemporaneo*, 25 September. Viganò, F. (2015), *La difficile battaglia contro l'impunità dei responsabili di tortura: la sentenza della Corte di Strasburgo sui fatti della scuola Diaz e i tormenti del legislatore italiano*, in *Diritto penale contemporaneo*, 9 April. Zacché, F. (2015), *Dalla prima condanna della Corte EDU sull'irruzione alla Diaz l'obbligo d'introdurre il delitto di tortura*, in *Quaderni costituzionali*, p. 463 ff. Zucca, E. (2017), *La decisione della Corte EDU su Bolzaneto. Un altro grido nel deserto. L'Italia volta le spalle alla Convenzione, si assolve e guarda alla tortura degli altri*, in *Questione giustizia*, 21 November.

Criterion	Verification indicators
Necessity of intervention	Was the use of force strictly necessary in light of the specific circumstances? Were there real and immediate threats to public safety or to the officers?
Proportionality	Was the police response proportionate to the level of resistance from the demonstrators? Were less invasive means used before resorting to physical violence?
Punitive or deterrent intent	Was force used to contain a real danger or as a form of punishment/humiliation? Were the acts intended to degrade the person?
Context of the protest	Were the protesters peaceful or violent? Was the demonstration authorised? Were officers trained to distinguish between situations of real risk and situations of peaceful dissent?
Severity of the suffering inflicted	Were physical or psychological injuries reported? Did the level of pain or humiliation exceed the 'minimum threshold of severity' required by article 3?
Method of intervention	Was the use of batons, tear gas or other coercive measures in line with international standards (e.g. UN Principles)? Were internal protocols on the use of force respected?
Effectiveness of investigations	Did the authorities conduct prompt, independent and thorough investigations? Were individual responsibilities established? Was there systemic impunity?
Structural responsibilities	Did the state put in place adequate preventive measures (training, provision of non-lethal equipment, operational protocols)? Was any structural basis for impunity verified?
Evidentiary standards	Did the domestic courts assess the facts rigorously? The ECtHR applies the standard of 'beyond reasonable doubt' but may rely on a body of serious, precise and consistent evidence.

2.13.1. The Case of Magherini and Others v. Italy, January 2026

In its judgment in Magherini and Others v. Italy (15 January 2026), the European Court of Human Rights addressed in a paradigmatic manner the issue of the use of force by law-enforcement authorities and the related accountability obligations of the State. In particular, the Court found a violation of article 2 of the Convention in both its substantive and procedural limbs, holding that the death of Riccardo Magherini, which occurred during a police intervention, was also attributable to his prolonged maintenance in a prone position after immobilisation and handcuffing, without any demonstration of the absolute necessity of such a prolonged form of restraint. While acknowledging the initial lawfulness of the police intervention, the Court emphasised that, at the material time, the absence of clear and operational guidelines on the risks associated with the prone position, together with the lack of adequate training of officers in potentially life-threatening immobilisation techniques, amounted to a breach of the State's positive obligations to prevent and protect the right to life. From a

procedural perspective, the Court further identified the ineffectiveness of the internal investigation, marked by a lack of independence in its initial stages, which could undermine public confidence in the control of the lawful use of force.
The Magherini judgment thus fits within a consolidated line of Strasbourg case-law which, in the field of policing, does not confine itself to assessing the individual conduct of the officer involved, but instead calls on States to assume systemic responsibility. This responsibility is grounded in clear regulation, continuous training, and genuinely independent investigative mechanisms as essential preconditions for the democratic accountability of law-enforcement authorities.

2.14. ECtHR case law on the use of tasers

Compared to the United States, European experience with the use of electric weapons by police forces is more recent, but the Strasbourg Court has already had occasion to outline some binding principles, particularly in relation to article 3 ECHR (prohibition of torture and inhuman or degrading treatment).
Two judgments in particular – Georgiev and Others v. Bulgaria (2014) and Kanciał v. Poland (2019) – have marked the boundaries of the legitimate use of tasers.
In Georgiev, the appeal concerned a special police operation in an internet café. The applicants complained that they had been hit by electric shocks when they were already immobilised. The Bulgarian authorities had dismissed the complaint, considering the police's reaction to be legitimate. The ECtHR, on the other hand, found a violation of article 3, highlighting two aspects:
the absence of clear regulations on the use of electric weapons at the time of the events;
the inadequacy of the internal investigations, which had failed to identify the officers responsible or clarify the duration and manner of the use of the taser.
The Court reiterated that even in the absence of specific legislation, States remain obliged to assess the legitimacy of the use of force according to the conventional criteria of necessity and proportionality.
In that case, the police could have achieved their objective with less invasive means.
In Kanciał v. Poland, the Court censured the use of a taser against a prisoner already in custody. Although Poland had domestic legislation authorising their use in certain circumstances (active resistance, danger to public order, risk of escape), the Court found that article 3 had been violated because the injuries sustained by the applicant were unequivocally due to the taser and the authorities had failed to demonstrate that the use of the device was strictly necessary and proportionate[59] .
The most significant development was in V v. Czech Republic (2023), which involved the death of a psychiatric patient after the use of a taser in hospital. In this case, the Court did not limit itself to referring to article 3 but found a violation of article 2 ECHR, both in substantive terms, due to the disproportionate nature of the intervention and the lack of precautions towards a vulnerable person, and in procedural terms, due to the

[59] For a commentary, see R.A. Ruggiero (2020), *Lo sbarco del taser in Italia: i diritti (non) presi sul serio*, in *Diritto Penale Contemporaneo. Rivista trimestrale*, n. 1, pp. 226-238.

ineffectiveness of the internal investigations. With this ruling, the Court acknowledged that the use of a taser, in certain conditions of vulnerability, is not merely a matter of degrading treatment but may entail lethal risks such as to give rise to a violation of the right to life, in light of the real and immediate risk to life.
The Court reiterates the need for investigations into fatal cases to be immediate, interdisciplinary and independent, capable of examining medical, scientific and organisational aspects, and not limited solely to police procedures. The absence of a medical-legal analysis of the interaction between tasers and psychiatric conditions prevented a full assessment of the lethal risk and allowed the authorities to evade responsibility, apparently in good faith.
The Court calls on States to fill this regulatory gap so that tasers do not become an 'informal weapon' with little traceability or control.
Ultimately, the line that emerges is clear: tasers, far from being 'non-lethal weapons', must be assessed in the light of the principles of necessity, proportionality and protection of vulnerable individuals; the absence of specific legislation does not exempt States from responsibility and, indeed, increases the risks of arbitrariness.
The Court reiterated that the mere appearance of a 'non-lethal instrument' does not authorise the use of tasers in the absence of detailed rules and clear protocols, especially in healthcare settings. The lack of coordination between law enforcement and medical personnel and of joint guidelines has highlighted the state's responsibility for omission in the articulation of the regulatory framework.

2.15. The responsibility of law enforcement agencies in cases of gender-based violence against women

After analysing the obligations incumbent on states and law enforcement agencies with regard to the use of force and the prohibition of torture and inhuman or degrading treatment, it is necessary to consider a further area in which state responsibility has been repeatedly established by the European Court of Human Rights: gender-based and domestic violence. In this context, the issue is not so much the direct use of force by officers, but rather their inertia or inadequacy in intervening in cases of violence committed by private individuals.
The case law of the ECtHR has clarified that the positive obligations arising from articles 2 and 3 ECHR require the authorities to prevent, protect and investigate with the utmost diligence, even in the absence of a formal complaint, whenever there is a real and present risk to the life or physical integrity of a woman or her children. In this context, the police force plays a central role: not simply as recorders of complaints, but as primary actors in the protection system, called upon to ensure that violence is neither tolerated nor minimised.
The rulings relating to Italy, Turkey, Moldova and Russia show how the operational inertia of the police can correspond to a form of institutional complicity with violence, generating international responsibility for the state.

The duty of due diligence forms the legal basis for the state's obligation to prevent, protect and prosecute violence against women, even when perpetrated by private individuals.
According to this principle, the state – and the police authorities on its behalf – has a duty not only to refrain from violating fundamental rights, but also to actively intervene to prevent them by taking preventive, protective and investigative measures. This implies that the police cannot remain inactive in the face of signs of risk and must act even in the absence of a formal complaint when objective elements of danger emerge.
Due diligence is therefore a criterion of operational responsibility that is measured by the readiness, timeliness, adequacy and non-discrimination of the actions of the police.
The European Court of Human Rights has clarified that article 2 (right to life) and article 3 (prohibition of inhuman and degrading treatment) require the State, through its authorities, to take effective measures to prevent known or foreseeable violence.
In the presence of a real and present risk to a woman's life or physical and mental integrity, law enforcement agencies have a duty to assess the risk promptly, take concrete operational measures, and coordinate with social and judicial services. Failure to fulfil these duties amounts to a form of institutional tolerance of violence, with consequent responsibility on the part of the State.
The Council of Europe Convention on preventing and combating violence against women and domestic violence (hereinafter the Istanbul Convention), ratified by Italy in 2013, reinforces and details the framework of operational responsibility of the police.
Article 5 requires States to ensure that their public officials – including law enforcement agencies – act in accordance with the obligation of 'due diligence'.
Article 51 requires a systematic and structured risk assessment, identifying situations of acute danger and adopting appropriate protection mechanisms. The police are therefore required to intervene, collect evidence, report the risk and propose precautionary measures.
The ECtHR has repeatedly condemned Italy for the inaction of the police authorities and the insufficient protection offered to women victims of violence.
The case Talpis v. Italy (2017) set an important precedent: the applicant had repeatedly reported her husband for abuse, without receiving protection; the man then killed their son and attempted to kill her. The Court found that the failure of the police to act, despite the obvious risk, constituted a violation of articles 2, 3 and 14 ECHR.
In the case Landi v. Italy (2022), a one-and-a-half-year-old child was killed by his father after repeated episodes of domestic violence. The Court ruled that the Italian authorities, including the police, should have assessed the risk ex officio and taken protective measures without waiting for new complaints. The failure to intervene, in the presence of objective signs, constituted a violation of article 2 ECHR.
In the De Giorgi v. Italy (2022) judgment, the Court found a violation of article 3 ECHR in substantive and procedural terms: the police did not carry out an adequate risk assessment in the context of domestic violence, nor did they take concrete action to stop the cycle of abuse, thus fuelling a climate of impunity.

Similarly, in the case of M.S. v. Italy (2022), the slowness and inertia of the investigative apparatus – starting with the judicial police – led to the expiry of the statute of limitations during the investigation phase, in violation of the procedural obligations under articles 2 and 3 ECHR.
In other European contexts, the ECtHR has also recognised the responsibility of the state for the inertia or inadequacy of the response of law enforcement agencies in cases of domestic or gender-based violence.
In the case of Opuz v. Turkey (2009), the Court ruled that the police's failure to protect the applicant from repeated violence, culminating in the murder of her mother by her husband, constituted a violation of articles 2, 3 and 14 ECHR.
In the case of Eremia v. Moldova (2013), the police authorities were held responsible for failing to take concrete measures following repeated complaints by a woman against her husband, a police officer, showing a tolerant and discriminatory attitude.
The judgment in Tunikova and Others v. Russia (2021) then denounced a systemic framework in which the authorities, including the police, were not required by law to act ex officio, even in situations of danger, constituting a structural violation of the State's positive obligations. In Volodina v. Russia (2019), the Court criticised the absence of effective legal mechanisms to prevent and punish domestic violence, highlighting how the police had ignored requests for protection and underestimated the danger posed by the aggressor.
A recent case is P.P. v. Italy 2025, which shows that the omissions of the police and judicial authorities, in the presence of objective signs of danger, may constitute a violation of the obligations under article 3 ECHR. In this perspective, the State is not only required to refrain from acting in a harmful manner, but also to guarantee active and timely protection, under penalty of international liability.
The latest of the convictions against Italy is the Scuderoni case (September 2025): the Court found that the Italian authorities – the police, the public prosecutor's office and the courts – knew or should have known of the existence of a real and immediate risk to the applicant's safety and, despite this, did not activate any autonomous protection procedure or carry out a structured and integrated risk assessment, in violation of the duty, also reiterated by GREVIO, to carry out a specific risk assessment for domestic violence, which requires timely and coordinated intervention by the police.
All these rulings converge on one fundamental point: the police authorities cannot remain passive or limit themselves to formally recording complaints. They are an integral part of the protection system and must intervene proactively, even in the absence of new reports, when the risk can be inferred from objective evidence. Failure to comply with these duties constitutes an international responsibility of the State for violation of fundamental rights and requires an adequate internal system of investigation and sanction.

Principle	Verification questions
Timely response to reports of violence	Did the police respond promptly to reports of domestic violence or threats? Were the signs of risk (e.g. previous complaints, escalation of violence, death threats) correctly assessed and recorded?
Risk assessment and preventive measures	Did the police carry out a systematic and adequate risk assessment? Were immediate and proportionate measures taken to prevent further episodes of violence (e.g. arrest, protection order, removal)?
Protection of the victim after reporting	Were effective protection measures provided to the victim, such as accompaniment, surveillance, home surveillance or early warning devices?
Recording and reporting of complaints	Did the officers collect, record and transmit the victim's statements in full? Were there any omissions, minimisations or errors that weakened the subsequent judicial protection?
Respectful and non-discriminatory treatment	Was the victim treated with respect, without blame, minimisation or gender stereotypes (e.g. regarding behaviour, clothing, relationship with the perpetrator)?
Effectiveness of police investigations	Was an independent, timely and thorough investigation initiated, even in the absence of a complaint? Were the preliminary investigations carried out with due diligence and with the collection of relevant evidence (e.g. medical reports, witness statements, telephone records)?
Protection of minors present	Was the exposure of minors to domestic violence considered as a form of violence in its own right? Were immediate protective measures taken (e.g. reporting to social services, risk assessment for the children)?

2.16. Conclusions

An analysis of the case law of the European Court of Human Rights shows that the use of force by law enforcement agencies is not merely a matter of public order, but an issue that goes to the heart of the rule of law. At the same time, violations by omission, i.e. failure to fulfil the positive obligations that law enforcement agencies contribute to implementing in the protection of fundamental rights, are also significant in terms of the effectiveness of the guarantees of the rule of law.

The ECtHR and the judgments interpreting it require States not only to regulate clearly and restrictively the circumstances in which force may be used, but also to put in place effective mechanisms for control, training and accountability/responsibility.

For Italy, this means moving beyond a fragmented and often self-referential approach, still anchored to internal circulars and a practice that tends to assume the legitimacy of the actions of officers, rather than subjecting them to external and independent scrutiny.

Domestic court cases and numerous rulings by the European Court of Human Rights show that impunity, the lack of timely and effective investigations, and the absence of binding protocols continue to be systemic problems.
The rulings of the European Court of Human Rights – from Cestaro (2015) to Bartesaghi Gallo (2017) and Cioffi (2025) – tell us that the problems are not episodic but systemic: impunity, ineffective investigations, lack of binding protocols, unenforced or expired sentences.
The recommendations we can draw from this move along several axes and outline a perspective for reform that is articulated on several levels:

- regulatory, with the introduction into ordinary law of the principles of absolute necessity of the use of force, proportionality and accountability;
- operational, through clear protocols, compulsory and certified training, and systematic recording of operations;
- investigative, through specific procedures, independent bodies and fixed timeframes for investigations;
- preventive, with mechanisms for precautionary suspension, protection of whistleblowers and periodic review of practices, but also through adequate and up-to-date training with independent consultants for the definition, verification and adaptation of the programmes provided;
- participatory, with access to data and proceedings for civil society, the press and victims.

A further crucial aspect concerns the territorial jurisdiction of the judicial authority. Italian experience shows that, in cases of violence and abuse committed by members of the police force, the jurisdiction of the Public Prosecutor's Office of the place where the events took place can lead to opacity or, in any case, a lack of 'practical' independence and perception of impartiality.
This is why it is necessary to introduce special rules, providing for jurisdiction other than the ordinary one, based on the model already adopted for criminal proceedings against magistrates. Jurisdiction could be assigned to judicial offices in another district, to ensure distance, neutrality and effectiveness of the investigation.
A reform in this sense would not only be consistent with the positive obligations arising from articles 2 and 3 ECHR, but would also respond to the recommendations of the European Court of Human Rights, which has repeatedly condemned the risk of 'corporate solidarity' in investigations into abuses by law enforcement agencies (see Ramsahai v. Netherlands, 2007; Nachova v. Bulgaria, 2005).
Ultimately, Italy's full compliance with its obligations under the Convention requires a paradigm shift: from guarantees for the security apparatus to guarantees for the fundamental rights of citizens. For Italy, this means overcoming a still fragmented and self-referential approach, based on internal circulars and a presumption of the legitimacy of the actions of officers. Only in this way can the gap between formal principles and concrete practice be bridged, restoring credibility to institutions and strengthening democratic confidence in the legality of the police.

Chapter 3 – Mapping Accountability: Accountability and Access to Police Data, by Ilaria Boiano

3.1. Introduction

This chapter collects and analyses the institutional 'traces' of accountability that have emerged through the examination of primary sources and the use of freedom of information requests. By "trace", as explained in the introduction to this report, we mean any documentary evidence of accountability proceedings — disciplinary, criminal and civil — initiated in response to conduct attributed to members of the police force, excluding the prison police, which fall outside the scope of this research.

The focus has been on aggregated and disaggregated data relating to offences used as indicators of the proper exercise of public office (torture, bodily harm, manslaughter or unintentional homicide, abuse of office, unlawful arrest, assault, threats, making false statements, and failure to perform official duties), tracking for each offence the number of proceedings, their status and outcomes (cases dismissed, indictments, acquittals, convictions), as well as any disciplinary developments and remedial actions.

The 2014–2024 timeframe and national coverage allow for a medium-term analysis of trends in proceedings and the effectiveness of institutional responses.

The data collection involved requests addressed to central government departments (Ministry of the Interior, Ministry of Justice, ISTAT) and local judicial offices (Courts of Appeal, District Courts, Public Prosecutors' Offices), with each request systematically tracked by body, subject matter, timeline and outcome (full acceptance, partial acceptance or rejection).

Requests with incomplete or generic answers were clarified or repeated as needed, ensuring transparency, protecting personal data and security, and distinguishing procedural steps from final outcomes. A further phase was also initiated to acquire the final documents of the mapped proceedings (dismissal orders, judgments of no case to answer, convictions or acquittals), at least in anonymised form or as extracts, indicating the charges and the contested provisions, to validate the collected records and harmonise the classifications across the different levels of jurisdiction. However, this request did not yield a substantial response: only three formal authorisations were received, which were not followed by the transmission of the documents. This gap reveals an ongoing problem with making information about accountability mechanisms accessible and systematic for the public.

3.2. Istat: data available on the website

3.2.1. Permanent Census of Public Institutions – 2023 edition

From 2016, Istat launched the first edition of the Permanent Census of Public Institutions (reference date 31/12/2015), based on the integration of the Basic Register of Public Institutions with information derived from the direct statistical survey.

In 2020, the Permanent Census of Public Institutions extended data collection to include the police forces, armed forces and port authorities, in accordance with specific procedures agreed with the relevant ministries, to provide a comprehensive picture of the structure and characteristics of the entire public administration.

The survey was carried out for the first time with reference to 2015 and a second time with reference to 2017[60] .

In 2020, 'uniformed' personnel (police forces, armed forces and harbour master's offices) numbered 476,742 employees, with a very stable contractual structure: 93.7% on permanent contracts and 6.3% on fixed-term contracts. Women accounted for 8.9% (around 42,000), but with significant differences between the various forces: ranging from around 5% in the Carabinieri to 16.5% in the State Police. Within the police forces, there were 302,283 staff: 109,085 in the Carabinieri, 97,793 in the State Police, 58,409 in the Guardia di Finanza and 36,996 in the Prison Police; followed by the Armed Forces with 164,296 personnel and the Port Authorities with 10,163. In terms of training, 184,155 people had participated in courses (approximately 38.6 participants per 100 personnel), with a focus on technical-specialist, legal-regulatory content and multidisciplinary induction modules. Overall, the sector appears numerically substantial and contractually stable, with a still significant gender gap and a significant commitment to training, though this needs to be consolidated to address internal imbalances and update operational and

Figure1 Istat infographic: 2020 census of public institutions

[60] https://www.istat.it/infografiche/censimento-permanente-delle-istituzioni-pubbliche-forze-di-polizia-forze-armate-e-capitanerie-di-porto-uninfografica/

organisational skills. According to the 2023 Permanent Census of Public Institutions[61] , the number of 'uniformed' staff fell from 476,742 (in 2020) to 474,836 (in 2022) (-1,906; −0.4%).
The number of employees in the Armed Forces fell to 162,074 (-2,222; −1.35%). The Armed Forces are the most 'flexible' sector in terms of the proportion of fixed-term contracts (15.9%). Police force personnel increased slightly to 302,893 (+610; +0.20%): State Police 98,517 (+724), Carabinieri 109,118 (+33), GdF 57,595 (-814), Prison Police 37,663 (+667). Port Authorities saw their staff numbers fall to 9,869 (-294; −2.89%).
In terms of gender, the proportion of women rose overall from 8.88% (in 2020) to 9.99% (in 2022), with significant internal variations: State Police ~16.9%, Prison Police ~14.0%, Carabinieri ~7.0%, GdF ~7.1%, Armed Forces 7.86%; a slight decline in the proportion of women compared to the previous census is recorded for the Coastguard (10.74%). The contractual structure remains very rigid (almost all staff are on permanent contracts) except in the Armed Forces and, to a lesser extent, in the Coastguard.
The geographical distribution highlights a greater concentration of law enforcement agencies in regions with higher population densities and specific public order needs, whilst inland and peripheral areas are covered to a lesser extent.
One figure of particular interest concerns training activities: law enforcement personnel have participated in training courses organised both internally and through external providers, with a gradual increase in distance learning alongside face-to-face sessions. The priority areas covered operational security and emergency management, but also administrative and digital skills, indicating a growing diversification beyond the purely technical and operational dimension.
The Census data show a growing commitment to training between 2020 and 2022. Overall, the Armed Forces, the Police Forces and the Coastguard organised 9,128 training activities in 2022, involving 272,133 staff members, equivalent to approximately 57 participants per 100 staff members, a significant increase compared to 2020 (38 per 100).
Looking at individual forces, the Carabinieri (61,352 participants, +103% compared to 2020) and the State Police (42,817, +99%) stand out, whilst the Prison Service recorded lower participation in training activities compared to 2020 (3,440, –47%). The most popular subject areas were technical and specialist subjects (30.9% of participants) and legal and regulatory matters (26.2%), followed by multidisciplinary courses (18.1%) and IT/telecommunications (9.8%).
'Organisational' and 'managerial' activities remain marginal. As regards delivery methods, classroom-based training clearly predominates (accounting for around 68% of activities and 65% of participants), but there has been a significant increase in e-learning (20% of activities, 24% of participants).

[61] https://www.istat.it/statistiche-per-temi/censimenti/istituzioni-pubbliche/risultati/. Tables 4 relating to law enforcement agencies, the armed forces and the harbour master's office are available at the following link: https://docs.google.com/spreadsheets/d/1X3TtVvzcwxFDaWDTNnVJhO1TETb7F8U6/edit?usp=share_link&ouid=111396274401161313783&rtpof=true&sd=true

The use of webinars, on-the-job workshops and 'other forms' is minimal. In terms of management, the majority of courses are delivered directly by the forces themselves (ranging from 92% of training activities by the State Police to 46% by the Armed Forces), whilst the use of universities, private companies or international organisations remains limited.

In 2023, the focus on training for 'uniformed' staff revealed the following picture: 159 training events were held, with 3,486 participants recorded and a total of 3,492 trainee-days. 1,319 staff members attended at least one course.

Overall, the data show a numerically stable sector, strongly characterised by a rigid contractual structure and a training approach which, whilst remaining focused on operational aspects, is open to innovative and cross-cutting content.

Istat also collects data on the activities and organisation of institutional units through 'Indicators of training, safety, sustainability and transparency' for various public bodies and institutions[62] , but there are no surveys in this context focusing on law enforcement agencies.

One section that appeared relevant at first glance is that relating to the relationship between the public administration and users, but the page is dedicated exclusively to customer satisfaction in relation to public transport.

Through research into criminal justice databases[63] , and by examining the tables on final convictions broken down by offence, it was possible to identify the following data relevant to this study.

In the five-year period 2013–2017, i.e. prior to the introduction of the offence of torture (article 613-bis of the Italian Criminal Code, Law 110/2017), the trend in convictions for offences specific to public officials shows an overall downward trend.

Convictions for ideological falsehood by public officials in public documents (article 479 of the Criminal Code) fell from 1,401 in 2013 to 1,174 in 2017, a reduction of approximately 16%. This is a significant but gradual decline, indicating a steady decrease in the number of people convicted of this offence.

Even more marked is the decrease in convictions for abuse of office (article 323 of the Criminal Code), which fell from 251 in 2013 to 101 in 2017: a reduction of approximately 60% over five years.

Cases most directly linked to the exercise of the State's coercive powers — such as arbitrary searches and personal inspections and unlawful arrest (article 606 of the Criminal Code) — show modest figures in absolute terms but are nonetheless significant.

Convictions for arbitrary searches or inspections rose from 13 to 23 cases per year over the period in question: these are low figures, so even small variations have a significant impact in percentage terms. Illegal arrest fluctuates at even lower levels (from 0 to 7

---

[62] Organisations providing welfare, recreational and cultural services; the Presidency of the Council of Ministers and ministries; constitutional bodies and bodies of constitutional significance; organisations providing economic services and regulating economic activity; research bodies, http://dati.statistiche-pa.it/#.

[63] http://dati.statistiche-pa.it

convictions per year), indicating a sporadic but significant presence of proceedings relating to the unlawful use of personal coercion.
These figures should be viewed alongside those relating to resisting a public official (article 337 of the Criminal Code), which is not an offence specific to public officials but represents an important indicator of situations of conflict between citizens and law enforcement agencies. In this case, the figures are high and stable: between 10,800 and 12,400 convictions per year over the five-year period 2013–2017 (12,401 in 2013; 11,256 in 2014; 10,815 in 2015; 11,453 in 2016; 11,338 in 2017).
This figure indicates the existence of a structural area of friction in the interaction between the authorities and the public. Precisely for this reason, in addition to the repressive approach, there is a need to invest in training on de-escalation, proportionate operational techniques and public order management, with a view to preventing conflicts and reducing the use of force.

3.2.2. Request for data from ISTAT

Considering the partial and insufficient data available in ISTAT's online databases, a request for access to data was submitted on 11 November 2024, with a reminder on 5 February 2025; however, this request was not granted. The data requested concerned:

- Legal proceedings against law enforcement officers for violence, discrimination and corruption;
- Disciplinary proceedings (number, outcomes, duration);
- Reports received from institutional bodies and members of the public;
- Demographic and professional composition of the police force.

Within the scope of ISTAT, the Permanent Census of Public Institutions provides a solid basis for describing the size and composition of the 'uniformed' sector of the public administration; however, for the purposes of this research, such data serve a contextual function and do not allow for the measurement of the functioning of accountability mechanisms: ISTAT, in fact, as confirmed by email on 22 February 2025, does not hold information on criminal or disciplinary proceedings against officers, reports/complaints, outcomes and timelines. It follows that a qualitative analysis of the accountability cycle (offence → report → investigation → outcome) requires information held by the relevant ministries (Interior, Defence, Justice-Prison Department, Ministry for the Economy and Finance for the GdF).
Looking ahead, it would be desirable to establish a technical working group comprising ISTAT, the relevant ministries and the Data Protection Authority to define anonymisation/aggregation standards and to introduce, within the Census/Public Administration Indicators, a thematic module on 'Law enforcement and accountability', with the open-data publication of a minimum set of indicators (reports, disciplinary/criminal proceedings and outcomes, average timescales, incidents of use of force, injuries/deaths in custody, coverage and effectiveness of training).
Only the integration of structural data (ISTAT) with ministerial procedural flows would, in fact, enable effective public scrutiny and evidence-based policies.

3.3. Ministry of Justice

3.3.1. Data available on the Ministry of Justice website

The Ministry of Justice's page on Civil and Criminal Monitoring does not contain specific data on offences committed by law enforcement officers[64] .

Currently, only a procedural performance dashboard is available, which includes indicators such as the clearance rate, changes in pending cases and their stratification over time. These are quantitative data that measure the overall functioning of judicial offices, but do not allow for qualitative or targeted analysis.

The published statistics report civil and criminal proceedings without specifying offender type or institutional affiliation, making it impossible to extract details about cases involving public officials or law enforcement. The statistics page also includes sections on notarial archives, prisons and probation, criminal records and certificates, coronavirus, prisoner costs, penal enforcement, work, prisoner labor, mediation, minors, proceedings and trials, juvenile and prison facilities, and wills.

An analysis of the tables entitled "Prisoners by type of offence" reveals that the data are grouped into broad categories ("Offences against the public administration", "Public trust", etc.) and mix offences "specific" to public officials (e.g. embezzlement under article 314 of the Criminal Code, extortion under article 317 of the Criminal Code, ideological falsehood by a public official under article 479 of the Criminal Code, abuse of office under article 323 of the Criminal Code) with offences against the public administration committed by private individuals (e.g. resisting arrest under article 337 of the Criminal Code), therefore they do not allow for the isolation of specific cases of individual prisoners for "offences specific to law enforcement".

To extract relevant information in light of the 'indicator' offences identified, tables would be required by offence provision (or by Prisons Department code or offence title), not merely by macro-category.

3.3.2. Request to the Department of Justice

By request ref. DAG 232681E of 14 November 2024, access was sought to data on legal proceedings and sanctions against law enforcement officers. The Department of Justice replied with note ref. m_dg.DAG.29/11/2024. 0246009.U[65] , stating that the requested data is not managed by the Department; the only police force under its jurisdiction is that attached to the Prisons Department; and in any case, the criminal records system does not permit the extraction of data in the manner requested.

3.4. Ministry of the Interior

3.4.1. Data available on the Ministry of the Interior's website

The website of the Ministry of the Interior, to which the State Police reports directly and the Carabinieri functionally for matters of public security, whilst maintaining institutional and functional subordination to the Ministry of Defence for military aspects, presents its role on the page dedicated to security 'as the guarantor of the

[64] https://www.giustizia.it/giustizia/page/it/monitoraggi_giustizia_civile_e_penale

[65] https://drive.google.com/file/d/1-aGyKM5MusvWnBtLmQYhAKoN0Sk_Mi3B/view?usp=sharing

development of a modern society, of citizens' safety, and of the protection of personal safety and individual freedoms guaranteed by the Constitution, against common and organised crime'[66] .

The 'Data and Statistics' section[67] compiles data collected by the Central Statistical Office which, together with the prefectural offices, contributes to the National Statistical System - SISTAN - established by Legislative Decree No. 322 of 6 September 1989, issued in implementation of the delegation contained in article 24 of Law No. 400/88, with the task of providing official statistical information to the country and to international bodies, and comprising the regional statistical offices and Istat.

The data and statistics section feature a variety of dashboards and reports designed to monitor key trends in crime and social phenomena across Italy. Among these is the 'landings' dashboard, which provides daily records on the arrival of migrants and their presence within reception facilities. This tool enables the tracking of migration flows and the management of resources dedicated to reception.

Additionally, a dedicated dashboard on 'crime in Italy' presents data concerning gender-based violence and intentional homicides where female victims are identified. The dashboard also contains statistics on the broader categories of intentional homicides and gender-based violence, offering insight into the prevalence and characteristics of these crimes.

Further reports focus on youth crime, including juvenile crime trends, and provide analysis of acts of intimidation against journalists and local administrators. These reports highlight the phenomenon of intimidation targeting those in public roles, documenting both the frequency and nature of such incidents.

Other topics covered include sexual offences against minors, human trafficking, and drug seizures by law enforcement agencies. These criminal analysis reports contribute to a broader understanding of the challenges faced by the justice and law enforcement systems in Italy[68].

This section also contains a report on corruption, which could have covered unlawful conduct by law enforcement agencies; however, the report focuses on monitoring corruption in Italy as a whole, without delving into a sub-category of 'corruption committed by members of law enforcement agencies'[69] .

In conclusion, the Ministry of Justice provides valuable data on the efficiency of the procedural system and on the overall trends in criminal and civil cases but does not produce or manage statistics that would allow for the monitoring of the criminal liability of law enforcement officers.

This information gap exacerbates the difficulty of democratic oversight and necessitates regulatory and organisational intervention to introduce more precise classifications (by offence and perpetrator), to highlight a dimension currently absent from official statistics.

---

[66] https://www.interno.gov.it/it/temi/sicurezza/evidenza

[67] https://www.interno.gov.it/it/stampa-e-comunicazione/dati-e-statistiche

[68] https://www.interno.gov.it/it/altri-report

[69] https://www.interno.gov.it/sites/default/files/2023-04/report_reati_corruttivi_marzo_2023.pdf

3.4.2. Request to the Department of Public Security

To obtain a reliable and transparent overview of the judicial and disciplinary proceedings involving members of the police force from 2014 to 2025, a request for general access to information was submitted to the Ministry of the Interior on 12 February 2025.

The request aimed to obtain aggregated data that would allow for an assessment of the scale and trends of the proceedings, with a focus on the 'indicator' offences listed above, considered of relevance for the protection of fundamental rights and for public trust in institutions. In addition to the criminal aspect, the request also sought to obtain information regarding the disciplinary aspect, both in terms of the types of sanctions imposed and their frequency, to verify the consistency and effectiveness of internal accountability measures.

The overall objective of the request was to enable a comprehensive, comparative and diachronic analysis of the functioning of police accountability mechanisms.

On 28 February 2025, by letter Ref. No. 0005862/2025, the department provided the following aggregated national data relating to criminal and disciplinary proceedings against law enforcement agencies from 1 January 2015[70] :

criminal proceedings

pending under investigation	240
Prosecution	284
concluded	826
Concluded with a conviction	180
Concluded with outcomes other than conviction (dismissal, statute of limitations, acquittal)	646

Disciplinary proceedings pursuant to Presidential Decree No. 737/1981

verbal warnings	13
Written warnings	45
Financial penalty	67
Reprimand	17
suspensions from duty	56
Dismissals	60
Dismissal by operation of law	32

In order to examine the cases in greater detail from a qualitative perspective, on 24 April 2025 we requested access to the documents relating to the cases documented at[71] ; however, on 22 May 2025 we received a reply, ref. no. MIPG – Ref. 0014517/2025,

[70] https://drive.google.com/file/d/1FtfycksVJm666iN9-QU57liKmxeirGci/view?usp=sharing

[71] https://drive.google.com/file/d/15sFEwn5Jlvu3gP1YanWMsTnJSOmeHQ8e/view?usp=sharing

in which the Administration refused to disclose the full text of the criminal and disciplinary measures against members of the police force, on the grounds that the requested documents contain judicial data and particularly sensitive personal data (identity, factual circumstances, any alleged misconduct) which cannot be disclosed in generalised form, even if anonymised, as they are deemed likely to affect the protection of the rights and freedoms of the individuals concerned and the proper conduct of proceedings.

The request was rejected to protect the privacy of police members and third parties, and to avoid affecting ongoing legal or disciplinary cases. Additionally, the applicant does not have a direct or current interest to warrant access to these documents. In conclusion, the data already provided in the previous letter of 28 February 2025 are deemed sufficient to ensure transparency without compromising confidentiality.

The refusal thus issued by the Administration is based on arguments frequently raised in access requests, which revolve around three central points:

a) the protection of 'particularly sensitive' judicial and personal data;

b) the risk of interference with pending criminal or disciplinary proceedings;

c) the alleged lack of a direct, concrete and current interest on the part of the applicant.

This approach, however, raises at least three critical issues:

- the refusal is blanket: the Administration assumes that the requested documents cannot be disclosed 'even with anonymisation', establishing a presumption of absolute unavailability. This conflicts with the principle of proportionality and with practice in other sectors (e.g. civic access to judicial or administrative documents), where the use of redaction and anonymisation techniques is standard practice;
- restriction of the right to public scrutiny: the denial of the existence of a 'direct interest' reduces the scope of generalised public access to a logic of 'legitimate individual interest', which is inconsistent with the rationale of the legislation on transparency (Legislative Decree 33/2013), which is designed to allow widespread scrutiny of the actions of public administrations, particularly in sensitive areas such as disciplinary and criminal matters concerning members of the police force;
- transparency vs. confidentiality: the response does not adequately balance the two values at stake. The provision of national aggregate data alone (as occurred in the note of 28 February 2025) does not allow for an understanding of the specificities of individual cases, nor for an assessment of the effectiveness of disciplinary and criminal measures. In this way, the level of transparency is reduced to a minimal statistical overview, which does not permit qualitative analysis or[72] verification.

[72]Administrative case law has progressively clarified that generalised civic access is the rule, including with regard to administrative and accounting documentation relating to tender procedures and their execution, subject to the limitations set out in article 5-bis and the protection of sensitive interests (Council of State, Section III, No. 3780/2019). This principle gives rise to the obligation for public authorities to prioritise partial access, through anonymisation and selective redaction, as appropriate

It is worth noting in this regard that article 5(2) of Legislative Decree No 33/2013 grants everyone the right of generalised civic access to data and documents held by public administrations, without the need to justify the request. Administrative case law has repeatedly clarified that the limits on transparency (article 5-bis) must be interpreted restrictively and applied through a concrete balancing test, which cannot result in a blanket refusal.
Although formally based on respect for confidentiality and the protection of ongoing proceedings, the refusal confirms a systemic trend: the impossibility for researchers and civil society to access detailed information on the management of disciplinary and criminal liability within the police force. This lack of openness not only limits the qualitative analysis of cases but also risks fuelling a deficit of accountability, obscuring the actual application of sanctions and the proportionality of outcomes. The decision to deem the aggregated data already provided as 'sufficient' reveals a minimalist conception of transparency, which does not fully meet either the objectives of the relevant national legislation or international standards on the democratic oversight of law enforcement agencies.

3.5. Judicial offices

3.5.1. Data available on institutional websites

The institutional websites of the judicial offices of Italian districts do not contain any publications relevant to the purposes of this research.

3.5.2. General public access at judicial offices

Considering the incomplete, partial or merely descriptive responses received from central offices, it became necessary to rethink the data acquisition strategy and proceed with an extensive and decentralised mapping of pending and concluded criminal proceedings before first and second instance judicial offices across the entire national territory. This methodological choice responds to the need to overcome the information limitations that emerged in the preliminary phase and to verify whether, at a regional level, more granular, up-to-date and directly traceable data were available.
To this end, a generalised freedom of information (FOIA) procedure was initiated, targeting all Court of Appeal districts and involving a total of 185 judicial offices – including Courts of Appeal, ordinary courts, Public Prosecutor's Offices and Attorney General's Offices – contacted via certified email (PEC).

---

means of safeguarding confidentiality without infringing the right to transparency. Exceptions to disclosure require a case-by-case balancing of interests and the demonstration of a concrete, direct and highly probable prejudice, not merely abstract (Campania-Naples Tribunale amministrativo regionale (T.A.R.) No. 2153/2024; TAR Lazio No. 11990/2025). Automatic refusal solely on the grounds of the presence of personal or judicial data is excluded, as the feasibility of partial access must be assessed (ANAC; TAR Piemonte No. 350/2025). Finally, the methods of redaction must be proportionate and functional, avoiding rendering the documents incomprehensible or unusable and, where possible, using substitution techniques (initials, pseudonyms) rather than generalised omissions (TAR Lombardia-Brescia No. 303/2018; TAR Lazio-Latina No. 411/2024).

Generalised access to public information, introduced into Italian law by Legislative Decree No. 33 of 14 March 2013 and subsequently strengthened by Legislative Decree No. 97 of 25 May 2016, No. 97, represents the national legal system's adoption of the Freedom of Information Act (FOIA) paradigm, elevating the public's right to know to the status of a fundamental right in line with the 'right to know' model characteristic of Anglo-Saxon systems.

The regulatory framework is based on article 5(2) of Legislative Decree No. 33 of 2013, which grants 'anyone' the right to access data and documents held by public administrations, in addition to those subject to mandatory publication, 'with the aim of fostering widespread forms of scrutiny over the performance of institutional functions and the use of public resources, and of promoting participation in public debate'.

This wording sets out an intrinsically democratic and participatory objective, geared towards administrative transparency as a tool for institutional accountability.

The system of limits on generalised civic access is structured around three levels of protection. Article 5-bis of Legislative Decree No. 33 of 2013 provides for relative limits where access may entail a concrete prejudice to the protection of public interests (paragraph 1) or private interests (paragraph 2), absolute limits where existing legislation makes access subject to compliance with specific conditions, procedures or restrictions (paragraph 3), and grounds for exclusion for certain categories of documents expressly identified by law.

Among the absolute restrictions of particular relevance to the judicial sphere, article 5-bis, paragraph 1, point (f), excludes from general access the 'conduct of investigations into offences and their prosecution', whilst paragraph 3 provides that 'generalised civic access is excluded in cases of state secrecy and in other cases where access or disclosure is prohibited by law, including cases where access is subject, under current legislation, to compliance with specific conditions, procedures or limits, including those referred to in article 24, paragraph 1, of Law No 241 of 7 August 1990'.

Administrative case law has progressively defined the scope of application of this institution, clarifying that generalised civic access relates exclusively to data and documents already held by public administrations and cannot entail an obligation to process or create new documentation in order to balance the right to transparency with the need not to undermine, through the improper exercise of the right of access, the proper functioning of the Administration, placing an excessively heavy burden on the Administration itself that would subject it to activities incompatible with the functioning of its systems and with the cost-effectiveness and timeliness of its actions.

Civic access was used within the Repolity research project not as a generic exploratory tool, but as a targeted data collection mechanism, with a precise and circumscribed definition of the information requirements, calibrated to minimise administrative burdens and maximise the comparability of responses.

In particular, the FOIA requests sought:

- data and/or documents held by the judicial administration, covering the last ten years (2014–2024), relating to the total number of criminal proceedings initiated

against members of the police force for each of the offences identified during the research design phase;

- the total number of complaints lodged against members of the police force, specifying the alleged offences and the outcome of the proceedings (case dismissed, indictment, acquittal, conviction), as well as the number of convictions and acquittals handed down for the same offences;
- the number of documents forwarded to the Public Prosecutor's Offices by other judicial or institutional authorities in relation to alleged unlawful conduct by members of the police force, specifying the type of offence alleged.

The use of the general right of access served a dual purpose:

- on the one hand, instrumental, in that it was aimed at collecting aggregated and anonymised data necessary for conducting the research;
- on the other, analytical, as it allowed for a concrete observation of how the FOIA is applied by judicial offices, highlighting significant differences in terms of organisational capacity, interoperability of information systems and interpretation of access restrictions.

In this sense, the mapping exercise has not only produced a set of data on criminal proceedings but has also served as an indirect source of knowledge regarding the administrative functioning of the criminal justice system and the structural conditions that affect the transparency and accountability of judicial institutions.

3.5.3. Summary and general analysis of the responses received from judicial offices

Of the 185 offices contacted, 103 did not provide any response, whilst 82 offices (44.3%) provided some form of reply. The non-response rate, standing at 55.7%, indicates a primary and significant structural barrier to access to information, which already affects the possibility of acquiring public data at a preliminary stage.

Even among the responding offices, actual access to data is severely limited: only 24 offices (29.3% of respondents and 13.0% of those contacted) provided usable information, whilst 57 offices (69.5% of respondents) refused access.

The reasons given confirm a picture of systemic shortcomings. In 44 cases (53.7% of respondents), the refusal was justified on technical grounds or due to the limitations of management systems, highlighting a structural deficiency in the capacity to extract, aggregate and process data. In 4 cases, the lack of data was cited; in 4 cases, the onerous nature of the search; whilst 2 refusals were without explicit justification.

Table 1 – Overall outcome of requests

Outcome	Number of offices	% of total (185)
No response	103	55.7%
Response (any outcome)	82	44.3%
Total	185	100%

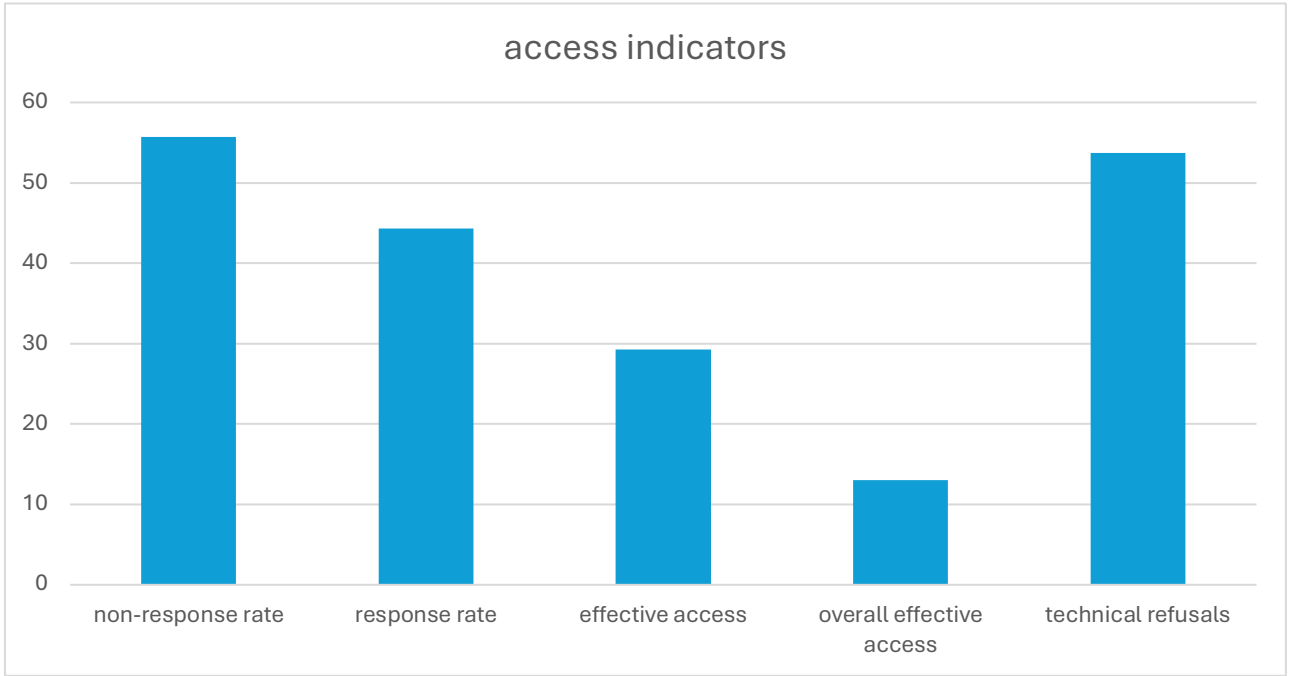
Table 2 – Results of responses received (n = 82)

Results among respondents	Number of offices	% of respondents	% of total
Positive responses (data submitted)	24	29.3%	13.0%
Rejections	57	69.5%	30.8%
Other / unclassified	1	1.2%	0.5%
Total	82	100%	—

Table 3 – Reasons for refusal (n = 82 respondents)

Reason for refusal	Number of offices	% of respondents	% of total
Technical reasons / limitations of management systems	44	53.7%	23.8
Data not held	4	4.9%	2.2%
Cost of research	4	4.9%	2.2%
Rejection without explicit reason	2	2.4%	1.1%
Total rejections	57	69.5%	30.8%

Overall, the actual response rate shows that almost one in two offices does not provide any usable data; amongst the offices that do respond, refusals clearly predominate, often based on arguments relating to technical impossibility, cost or limitations of information systems, rather than on a detailed assessment of the request for public access.



The non-response rate (55.7%) and the incidence of refusals due to technical limitations (53.7%) are the highest figures, highlighting structural barriers already at the preliminary stage and, among respondents, in the technical capacity to extract data. The response rate (44.3%) does not proof proportionate effective access: only 29.3% of respondents provide data and just 13.0% of the total allow effective access.

The gap between 'response' and 'actual access' is visually striking, reinforcing the distinction between formal and substantive transparency.

The overall picture reveals three cross-cutting issues:

- highly varied organisational capacities and expertise across offices, even where functions are the same;
- inconsistent application of civic access criteria, particularly with regard to the exclusion of court documents and the notion of the 'burden' of the search;
- technological limitations of information systems, frequently cited as a reason preventing non-standard data extraction, even in the case of requests limited to aggregated and anonymised data.

The reasons for refusal fall into seven recurring categories:

i. technical impossibility of filtering data in management systems based on membership of the police force;

ii. disproportionate burden of the search and disruption to the smooth running of the administration;

iii. lack of data or lack of functional competence, with referral to other offices (in particular, the requesting parties);

iv. exclusion of judicial documents from the scope of the FOIA;

v. the paper-based nature of the appeal proceedings (e.g. at the Court of Appeal of Florence)

vi. confidentiality considerations;

vii. limitations or unavailability of IT applications (Console, data extractors).

The recurring combination of 'technical impossibility', 'burden' and 'application limitations' creates a de facto barrier to accountability, even in the presence of requests limited to aggregated and anonymised data, which would not entail a disproportionate sacrifice of either confidentiality or the smooth running of the administration.

3.5.4. Analysis of "positive responses"

'Positive responses' (24) refer to those received from offices that actually queried their information systems, transmitting data – even if only partial – or indicating, following consultation of the systems, the absence of data consistent with the requests. These responses account for 29.3% of the total responses received. Given that 82 out of 185 offices contacted responded (44.3%), it follows that only 13% of the total number of offices contacted provided a response based on an actual query of their information systems.

Among the positive responses, we distinguish three levels of quality:

A – Complete: variables, time period and open format consistent with the request;

B – Partial: incomplete extracts (reduced time period; subset of variables; lower granularity);
C – Descriptive: numbers or summary information in unstructured form (text/PDF), not immediately integrable into a dataset.
This classification constitutes a necessary methodological step to avoid overestimating the actual level of transparency and accessibility of the data. Without such a distinction, in fact, the mere counting of 'positive responses' would risk flattening profoundly heterogeneous situations, grouping under a single category outcome which, from an epistemological perspective, have radically different informational value.
The classification into levels A, B and C aims to measure the actual capacity of the administrative-judicial system to produce usable, comparable and data that can be integrated into an empirical analysis. The varying degrees of completeness or structure of the responses also reflect different levels of organisation, traceability and accessibility of data within the offices; however, the scoring system acts as a tool for epistemic weighting of the information gathered. Not all positive responses contribute equally to the construction of the dataset, nor do they allow for the same degree of inference.
Analysis of the scoring carried out shows that, among the 24 positive responses, levels B and C are largely predominant, whilst level A represents an exception. In quantitative terms, only 4 offices (16.7%) fall into level A, 15 offices (62.5%) into level B and 5 offices (20.8%) into level C. It follows that 83.3% of positive responses have structural limitations, whilst only a minority allow fully interoperable access to data.
When these figures are compared with the total of 185 offices contacted, the rate of substantial access (level A) stands at just 2.2% (4 offices out of 185).
This indicator immediately highlights the gap between formally recognised civic access and empirically useful access.
The scoring also reveals an implicit mechanism for selecting accessible data. Level A and B responses focus predominantly on cases that are easily traceable within information systems, in particular offences 'specific' to public officials (such as articles 606 and 609 of the Criminal Code), whilst common offences committed by members of the police tend to fall into Level C or result in a refusal. This results in a structural bias, which does not depend on the research question, but on the very architecture of the information systems and the administrative practices for data extraction.
Overall, the positive responses consistently cover the period 2014–2024, with some exceptions due to changes in management systems that narrow the scope of the information (e.g. Milan, Palermo from 2016 onwards).
The quality of the information varies greatly: the best responses distinguish the information by case type, stage and outcome of the proceedings, allowing for internal consistency checks and the traceability of sources (see the Public Prosecutor's Office of Macerata and the Tribunal of Bergamo). In other cases, the authorities provide only aggregate figures, which are useful for demonstrating the existence of the phenomenon but insufficient for more detailed analysis (e.g. the Court of Appeal of Turin or certain offices in the Veneto region).

Traceability is structurally greater for offences 'specific' to public officials—unlawful arrest (Art. 606 of the Italian Criminal Code), arbitrary search and inspection (Art. 609 of the Italian Criminal Code), abuse of office (Art. 323 of the Italian Criminal Code), and ideological falsehood (Art. 479 of the Italian Criminal Code)—as these categories can be filtered even in the absence of a specific 'subjective' input indicating membership of the police force. This introduces, however, a clear selection bias: what is most easily extractable tends to be over-represented, whilst conduct attributable to 'common' offences remains underestimated precisely due to the lack of personal and professional metadata in the registers.

In terms of reliability, only a minority of offices meet a 'high' standard (class A) because they provide verifiable data, with explicit judicial outcomes and a minimum of methodological documentation (e.g. Macerata, Bergamo, some offices in Veneto).

Most positive responses remain "partial" or "descriptive" (classes B and C), confirming a systemic shortcoming: the absence of structured fields on subjective classification in national applications drastically limits the potential of public access for accountability purposes.

Taken together, the findings reveal some 'islands of transparency', where staff motivation and local statistical tools enable the production of useful data, alongside vast areas of territorial inconsistency where offices offer only fragments or refer to the completion of digitisation. The resulting picture reflects not so much the non-existence of the phenomenon as the inadequacy of the information infrastructure: without systematic tracking of law enforcement officer status and minimum exportability standards, the quality of public information depends excessively on the individual commitment of officials and the availability of internal resources, with direct consequences for inter-district comparability and the robustness of the analyses.

3.5.5. Data provided by the offices that responded regarding 'indicator' offences and considerations

Empirically, the offices classified at Level A – Complete are the Public Prosecutor's Office of Macerata, the Tribunal of Bergamo, the Tribunal of Milan, the Court of Appeal of Rome and the Court of Appeal of Trieste. They represent the minority but methodologically most reliable segment of civic access and constitute the only useful basis for comparative analysis, albeit with a clear lack of data for the purposes of robust generalisations.

The most common form of positive response is Level B – Partial, which includes the Tribunal of Ancona, the Public Prosecutor's Office of Brescia, the Tribunal of Cremona (Brescia district), the Tribunal of Arezzo, the Public Prosecutor's Office of Arezzo, the Public Prosecutor's Office of Siena, the Tribunal of Cremona (Milan district), the Tribunal of Sondrio, the Public Prosecutor's Office of Agrigento, the Tribunal of Marsala, the Tribunal of Potenza, the Public Prosecutor's Office of Nocera Inferiore, the Tribunal of Appeal of Turin, the Tribunal of Cuneo and the Tribunal of Udine. In these cases, the querying of the systems is genuine but limited and produces data that can only be used in a restricted manner, with significant interpretative caution.

Finally, at Level C – Descriptive, we find the Court of Appeal of Ancona, the Tribunal of Ferrara, the Public Prosecutor's Office of Lamezia Terme, the Tribunal of Milan and the Public Prosecutor's Office of Santa Maria Capua Vetere. Although formally positive, these responses are provided in narrative or unstructured form and do not allow for direct integration into a dataset, indicating only apparent transparency.

A closer examination of the responses received shows that the main obstacle to accountability is not merely the failure of the offices to respond, but above all the poor quality of the information provided in the responses received, as detailed below for each judicial office surveyed.

Ancona Court of Appeal (21 June 2025): the Presidency clarifies that the records of the Criminal Proceedings Information System (SICP) do not allow for the identification of law enforcement personnel; nevertheless, it provides an overview by offence since 2014: manslaughter – 180 cases concluded and 17 pending; personal injury: 32,330 concluded and 2,113 pending; assault: 584 and 56; aggravated threats: 1,287 and 127; falsification of public documents: 105 and 15. Other offences (including abuse of office, arbitrary search/inspection, unlawful arrest, and failure to perform official duties) are present but in smaller numbers; no proceedings have been recorded for torture.

The outcomes cannot be broken down by the defendant's legal status.

- Tribunal of Ancona (20 May 2025). Here too, the application does not allow for the distinction of proceedings against members of the police force, nor for the systematic extraction of the relevant judgments. Limiting the analysis to offences specific to law enforcement, there are no proceedings for arbitrary search/inspection (article 609 of the Italian Criminal Code); for unlawful arrest (article 606 of the Italian Criminal Code), there is one proceeding involving three defendants, which reached trial and resulted in a partial conviction.
- Public Prosecutor's Office of Macerata (12 May 2025). The office provides data directly relating to law enforcement officers: torture 0; manslaughter/unintentional homicide 0; bodily harm 4; abuse of office 0; unlawful arrest 0; arbitrary search/inspection 0; assault 1; aggravated threat 1; false declaration by a public official 1; failure to perform official duties 0.

There were a total of 7 complaints against law enforcement officers: one resulting in a request for indictment (articles 319, 479, 81 of the Italian Criminal Code), one resulting in a conviction (articles 651, 337, 341-bis, 582 of the Italian Criminal Code), two resulting in acquittal (including one case under articles 610, 612(2), 582 and article 4 of Law 110/1975), and three concluded with no further action required (lack of or withdrawal of complaint, statute of limitations). The summary of outcomes is: 1 conviction, 2 acquittals, 3 cases dismissed.

- Tribunal of Ferrara (20 May 2025). The office identifies one case of torture and bodily harm involving three officers: one convicted with a sentence upheld on appeal, two convicted at first instance with an appeal pending. For the specific offences of unlawful arrest (article 606 of the Italian Criminal Code) and arbitrary search/inspection (article 609 of the Italian Criminal Code), no judgments were recorded during the period under review.

- Tribunal of Brescia. The request is partially rejected on the grounds of excessive workload ('extraordinary effort'); nevertheless, the office provides a limited series of data on the specific offences: unlawful arrest (article 606 of the Italian Criminal Code) appears once in 2021 and 0 times in the other years (2014–2024); arbitrary search/inspection (article 609 of the Italian Criminal Code) records 1 (2014), 2 (2015), 3 (2016), 0 (2017–2018), 1 (2019), 0 (2020–2021), 1 (2022), 3 (2023), 0 (2024). The outcomes are not reported.
- Tribunal of Bergamo (14 April 2025). Proceedings against members of the police force include abuse of office (article 323 of the Italian Criminal Code) with 1 conviction in 2017; ideological falsehood in a public document (article 479 of the Italian Criminal Code) with 2 convictions (2017), 1 acquittal (2017), 1 case time-barred (2017) and further acquittals in 2021, 2023 and 2024. For the remaining cases in the application, no judgments were handed down during the period.
- Cremona Court (2 May 2025). Result: 'zero'; no files attributable to law enforcement agencies for the cases requested during the period.
- Lamezia Terme Public Prosecutor's Office (30 April 2025). Access denied on grounds of the confidentiality of the investigations: it is inferred that there are pending proceedings, which cannot be disclosed at this stage.
- Tribunal of Arezzo (20 May 2025). Regarding offences committed by law enforcement officers, cases were dismissed for unlawful arrest (article 606 of the Italian Criminal Code) in 2019 and 2021, for unlawful search (article 609) in 2016 and 2021, and for torture (article 613-bis of the Italian Criminal Code) in 2019.
- Arezzo Public Prosecutor's Office (19 May 2025). Confirms the prevalence of cases dismissed: torture (article 613-bis of the Italian Criminal Code) in 2018, unlawful arrest (article 606 of the Italian Criminal Code) in 2017 and 2020, and arbitrary search (article 609 of the Italian Criminal Code) in 2015 and 2018; there are no proceedings for manslaughter (article 584 of the Italian Criminal Code), whilst negligent homicide (article 589 of the Italian Criminal Code) cannot be detected using the available tools.
- Siena Public Prosecutor's Office. For unlawful arrest (article 606 of the Italian Criminal Code), there are two proceedings, both dismissed by the investigating judge; for arbitrary search/inspection (article 609 of the Italian Criminal Code), there is one proceeding pending at trial following committal for trial.
- Tribunal of Milan (5 May 2025). The Milan profile serves as a litmus test of what a large office can realistically produce when organising its data extractors: a multi-year series, broken down by offence and procedural stage, with outcome details if available. Whilst specifying that the extracted data relate to the broad category of 'public official' and not a 'law enforcement' filter, the Court provides a very comprehensive and structured breakdown by offence and stage (pre-trial/trial), covering the period from 2016 due to a change in the system and an explicit methodological note. In trials from 2016 to 2024, ideological falsehood (article 479 of the Italian Criminal Code) predominates, with a range of 24 (2016) → 41 (2022) → 21 (2024), totalling ~249; followed by abuse of office (article 323 of the Italian Criminal Code) with ~35 entries; private violence (article 610 of the Italian Criminal Code) and threats (article 612 of the

Italian Criminal Code) appear only in 2024 (one case each); torture, bodily harm and homicides with aggravating circumstance under article 61(9) of the Italian Criminal Code are absent. In concluded cases, article 479 of the Italian Criminal Code accounts for ~248 proceedings with acquittals often ≥ convictions (e.g. 2022: 23 acquittals/14 convictions; 2023: 20/13), whilst for article 323 of the Italian Criminal Code, concluded cases number ~41 with acquittals prevailing; non-prosecution decisions (NDP) and other outcomes are in the minority. In the preliminary investigation phase (2016–2024), there is a high caseload for article 479 of the Italian Criminal Code (around 900 cases) and article 323 (very high until 2019, then declining), with very high numbers of cases dismissed in the 2016–2018 data for both offences; articles 606 and 609 of the Italian Criminal Code stand at around one per year. The Milanese picture, in terms of volume and detail, demonstrates that a large office can produce comprehensive statistics, refuting the idea that data extraction is 'impossible' for technical reasons cited by smaller offices.

- Tribunal of Sondrio. The Deputy President reports that there were no proceedings, in 2014–2024, relating to the offences requested and brought against members of the police force.
- Public Prosecutor's Office of Santa Maria Capua Vetere (7 May 2025). The data extract, which does not allow filtering by law enforcement agencies (except for offences specific to them), reveals a picture dominated by common offences: aggravated threats (article 612 of the Italian Criminal Code) with 9,053 entries and bodily harm (article 582 of the Italian Criminal Code) with 8,044; followed by assault (article 610 of the Italian Criminal Code) with 3,272, making false statements to a public official (article 479 of the Italian Criminal Code) 1,375, abuse of office (article 323 of the Italian Criminal Code) 1,221, and failure to perform official duties (article 328 of the Italian Criminal Code) 736; the lowest figures are for manslaughter/unintentional homicide (articles 589, 584, 571 of the Italian Criminal Code) and torture (article 613-bis of the Italian Criminal Code) 26; among specific offences, arbitrary search/inspection (article 609 of the Italian Criminal Code) 49 and unlawful arrest (article 606 of the Italian Criminal Code) 3 appear. The outcomes are not available because the competent court has not responded.
- Agrigento Public Prosecutor's Office (13 May 2025). The office provides data only for manslaughter (article 589 of the Italian Criminal Code) for the period 2016–2023, totalling 154 cases, and demographic details of those born in Italy (124), abroad (29), and unspecified (1). The Public Prosecutor's Office states in writing that it is impossible to trace the suspect's profession in the Criminal Investigation Information System (SICP) or to automatically filter for membership of the police force; for information purposes, the same note recalls that, pursuant to article 609 of the Italian Criminal Code (arbitrary search/inspection), there was a case against a member of the police force that was dismissed in 2021, whilst the files recorded under articles 606 (illegal arrest) and 613-bis (turture) of the Italian Criminal Code did not involve any law enforcement officers as suspects.
- Tribunal of Marsala (9 May 2025). The Presidency partially grants the application, explaining that the software does not allow targeted searches for law enforcement

officers, except in cases of offences specific to them. For unlawful arrest (article 606 of the Italian Criminal Code), between 2014 and 2024 the GIP/GUP registry recorded two proceedings, both of which were concluded with a dismissal order; for arbitrary search/inspection (article 609 of the Italian Criminal Code), there were no proceedings; at trial, during the same period, there were no pending or concluded cases under articles 606 or 609 of the Italian Criminal Code.

- Tribunal of Potenza (11 April 2025). The President notes that the systems do not allow for the identification of affiliation with law enforcement agencies; limiting the search to specific offences, the 2014–2024 data return zero proceedings for both arbitrary search/inspection (article 609 of the Italian Criminal Code) and unlawful arrest (article 606 of the Italian Criminal Code).
- Court of Appeal of Rome (28 May 2025). The Presidency reiterates that RegeWeb does not allow for the identification of law enforcement personnel and transmits 18 'potentially useful occurrences' relating to offences on the list (typically bodily harm (article 582 of the Italian Criminal Code), threats (article 612 of the Italian Criminal Code), private violence (article 610 of the Italian Criminal Code), ideological falsehood (article 479 of the Italian Criminal Code), omission under article 328 of the Italian Criminal Code, often with the aggravating circumstance under article 61(9) of the Italian Criminal Code (having committed the act through abuse of powers, or in breach of the duties inherent in a public office or a public service). For this subset, the appeal outcomes show acquittals 44.4%, cases time-barred 38.9%, convictions 5.6% (one, upheld but under appeal) and other/under appeal 11.1%; in approximately 89% of cases, the appeal decision overturns the first instance ruling.
- Court of Appeal of Salerno (6 May 2025). The office notes the difficulty in identifying specific offences due to a lack of filters; nevertheless, it reconstructs, for the period 2011–2024, a total of nine proceedings (with 11 overlaps): personal injury (article 582 of the Italian Criminal Code) 5, assault (article 610 of the Italian Criminal Code) 3, making false statements (article 479 of the Italian Criminal Code) 1, threats (article 612 of the Italian Criminal Code) 1, stalking (article 612-bis of the Italian Criminal Code) 1. In the period 2014–2024, there were nine cases concluded: seven acquittals, one conviction (assault in 2021) and one time-barred offence (assault in 2016).
- Court of Appeal of Turin (18 April 2025). At district level, the traceability of specific offences is confirmed: unlawful arrest (article 606 of the Italian Criminal Code) accounts for 6 appeal proceedings, whilst unlawful search (article 609 of the Italian Criminal Code) recorded 33 between 2014 and 2024; the outcomes have not been disclosed.
- Court of Appeal of Trieste (26 May 2025). It is one of the few courts to explicitly filter proceedings against law enforcement officers and provide the outcomes: between 2014 and 2024, there were 8 cases (abuse of office, article 323 of the Italian Criminal Code, 4 cases; unlawful arrest, article 606 of the Italian Criminal Code, 2 cases; search/inspection, article 609 of the Italian Criminal Code, 1 case; omission, article 328 of the Italian Criminal Code, 1 case; torture, article 613-bis of the Italian Criminal Code, no cases), with 4 convictions (2 cases for article 606 of the Italian Criminal Code, 1 case for article 609 of the Italian Criminal Code, 1 case for article 323 of the Italian Criminal

Code) and 4 acquittals (3 cases for article 323 of the Italian Criminal Code, 1 case for article 328 of the Italian Criminal Code).

- Tribunal of Cuneo (10 July 2025). The President reports a single case for the period 2014–2024: proceedings for bodily harm (article 582 of the Italian Criminal Code) and private violence (article 610 of the Italian Criminal Code) between members of the State Police, which concluded with an acquittal (February 2024).
- Belluno Court (7 May 2025). The court registry reports that it is technically impossible to extract the 'police forces' variable; despite this, there is one conviction for abuse of office (article 323 of the Italian Criminal Code) against a member of the police force and no convictions for torture (article 613-bis of the Italian Criminal Code), unlawful arrest (article 606 of the Italian Criminal Code), search/inspection (article 609 of the Italian Criminal Code) or failure to perform official duties (article 328 of the Italian Criminal Code). The Preliminary Investigating Magistrate (GIP) section, on the other hand, provides a breakdown by offence (2014–2024) that cannot be filtered by classification: manslaughter/negligent homicide (articles 589/584 of the Italian Criminal Code) 84, bodily harm (article 582 of the Italian Criminal Code) 906, abuse of office (article 323 of the Italian Criminal Code) 85, assault (article 610 of the Italian Criminal Code) 332, aggravated threats (article 612 of the Italian Criminal Code) 463, false statements to public officials (article 479 of the Italian Criminal Code) 45, failure to act (article 328 of the Italian Criminal Code) 85, whilst torture and unlawful arrest show 0; for illustrative purposes, recent 'notable' cases are cited (including article 612-bis of the Italian Criminal Code with committal for trial on 13 March 2025, article 73 of Presidential Decree 309/90 with a plea bargain, fraud under article 640(2) of the Italian Criminal Code with conviction, articles 610 and 612 of the Italian Criminal Code on 22 February 2024).

The typical pattern observed in the most well-documented districts is a large influx of reports of offences to the investigating judge concerning 'procedural' offences (primarily articles 479 and 323 of the Italian Criminal Code), with a significant reduction through dismissal, and, for cases that proceed to trial, a frequent prevalence of acquittals. The appeal stage reinforces the impression of 'dwindling caseloads': in a sample of 18 cases from the Rome Court of Appeal, acquittals account for 44.4%, cases time-barred for 38.9%, convictions for a residual 5.6%, and the remaining outcomes fall under 'other/appealed'; almost nine out of ten decisions overturn the first instance ruling. In the case of offences committed in the course of official duties, the burden of proof and the flexibility of application lead to significant losses in the number of cases between registration and trial, and again between the first and second instances.

When the focus shifts to offences specific to public officials — unlawful arrest (article 606 of the Italian Criminal Code) and arbitrary personal search/inspection (article 609 of the Italian Criminal Code) — the picture changes: the volumes tend to be small, but the outcomes, when they reach a verdict, appear more definitive.

Trieste, which specifically filters proceedings against members of the police force and also provides the outcomes, is a case in point: for articles 606 and 609 of the Italian

Criminal Code, it records convictions in all cases (alongside abuse of office, which instead sees three acquittals out of four).
However, the same outcome is not seen everywhere because, as soon as we turn to 'official duty' offences (articles 323, 479 and 328 of the Italian Criminal Code), the pattern realigns with that of Milan: many cases dismissed at the preliminary hearing stage, many acquittals on the merits, and statutes of limitations not uncommon on appeal.
Bergamo is an exception in this regard for 2017, when the two convictions under article 479 of the Italian Criminal Code and one under article 323 of the Italian Criminal Code were concentrated, but in recent years (2021, 2023, 2024) acquittals have prevailed for the offence under article 479 of the Italian Criminal Code.
In Salerno, on appeal, out of nine criminal proceedings concluded between 2014 and 2024, there were seven acquittals, one conviction and one case where the statute of limitations had expired.
Where the status of the suspect cannot be traced, the large numbers do not allow for meaningful analysis regarding accountability. The Public Prosecutor's Office of Santa Maria Capua Vetere has brought 9,053 cases for 'threats', 8,044 cases for 'assault' and 3,272 cases for 'domestic violence' during the period, compared with 1,375 cases for making false statements, 1,221 for abuse of office, 736 for omissions, 571 for manslaughter/unintentional homicide and 26 cases for torture; the identifiable offences are 49 searches/inspections and just 3 unlawful arrests.
In Belluno (GIP), the picture is similar: 906 cases of bodily harm, 463 threats, 332 cases of private violence and zero cases of torture, zero cases under articles 606–609 of the Italian Criminal Code.
The district of Ancona, on appeal, confirms the same balance on an even larger scale: 32,330 completed cases of bodily harm and 2,113 pending, compared with much lower figures for service-related offences; no cases of torture.
These figures reflect the 'ordinary' trend in litigation, but, without the 'membership of law enforcement agencies' field, they do not allow us to quantify the proportion attributable to officers.
Complementary patterns emerge among offices of the same level.
Two Courts of Appeal provide useful but differing snapshots: Turin accurately measures the volumes of offences specific to law enforcement (6 proceedings under article 606 of the Italian Criminal Code and 33 under article 609 over the decade), but does not provide the outcomes; Trieste, on the other hand, combines the law enforcement filter with outcomes, albeit with small numbers (eight proceedings in total, four convictions and four acquittals).
The courts of first instance, when they manage to isolate offences under articles 606–609 of the Italian Criminal Code, confirm that these are rare and often come to a halt at the preliminary stage: in Ancona, a single case under article 606 of the Italian Criminal Code involving three defendants and a partial conviction; in Marsala, two cases under article 606 of the Italian Criminal Code were closed with a dismissal; in Potenza, there were zero cases under article 606 and zero under article 609 of the Italian Criminal Code

over the period; in Brescia, article 609 of the Italian Criminal Code alternates between years with zero cases and isolated peaks (2016 and 2023), whilst article 606 of the Italian Criminal Code appears only in 2021; in Belluno, articles 606 and 609 of the Italian Criminal Code are absent from both the preliminary investigation and the trial.
Conversely, Ferrara is a significant exception: a case file for torture and bodily harm against three officers resulted in one conviction upheld on appeal and two first-instance convictions with appeals pending.
Macerata is valuable from a methodological perspective: it provides data that is directly 'police-force-specific' (a total of seven complaints with detailed tracking of outcomes: one conviction, two acquittals, three cases where no further action was taken).
It is worth noting that some offices, such as Agrigento, can easily extract demographic variables (for example, place of birth: 124 suspects born in Italy, 29 abroad and one unspecified under article 589 of the Italian Criminal Code in 2016–2023) but cannot indicate affiliation with the police.
This is the ultimate information paradox: we are able to count what is of little value for accountability, but not what would actually be needed to measure the state's coercive power.

3.5.6. Concluding remarks on the information provided by judicial offices

The data collected through generalised access to public records do not allow for generalisable inferences to be drawn across the entire country regarding the incidence of proceedings against members of the police force, due to the significant inconsistencies between offices in terms of the traceability of the subject's status, data extraction capabilities and the structure of the outputs provided. However, in those districts where it has been possible to reconstruct at least a minimal chain of information (registration/pending → resolution → outcome, and in some cases appeal), a recurring trend emerges that concerns primarily the production of the data, rather than the phenomenon under investigation: effective and comparable access depends excessively on local practices, the availability of data extraction tools and internal expertise, generating significant territorial distortions.
In particular, where data extraction is structured by stage and outcome (e.g. Milan, though not specific to law enforcement agencies; Rome and Trieste in the appeal segment), a typical pattern of 'thinning' of the caseload is observed: a high influx of reports of offences relating to specific offences (particularly articles 479 and 323 of the Italian Criminal Code) followed by a rigorous screening at the preliminary stage and, amongst the proceedings reaching trial, a frequent prevalence of acquittals or settlements not on the merits; on appeal, for the available subset, there is a significant proportion of cases time-barred and a high incidence of reversals. These findings should be interpreted with caution: they largely describe the trend in 'traceable' cases and not necessarily the entire spectrum of conduct under study.
When the analysis focuses on offences committed by public officials (articles 606 and 609 of the Italian Criminal Code), the volume of cases is generally limited and proceedings often end at the preliminary stage (cases being dropped or no proceedings

being brought). In some cases, however, offices that explicitly filter proceedings against law enforcement officers and also disclose the outcomes (e.g. Trieste) show that a comprehensive output is feasible, at least for small numbers, and that the information can be made verifiable and comparable without exposing personal data, through aggregation and anonymisation.
The overall evidence therefore suggests that, with the law remaining unchanged, the main obstacle to accountability lies not so much in the nature of FOIA requests as in the lack of common minimum standards for data tracking and exportability.
A comparison of different practices indicates that standardisation is technically possible along at least two complementary lines:
(1) the adoption by agencies of a minimum template for offence/stage/outcome, accompanied by metadata extraction (period, register, query criteria), suitable for making outputs comparable even when police-forces filter is not available;
(2) the introduction, in national registers and applications, of a structured field relating to subjective classification (or a standardised proxy) that allows proceedings against members of the police force to be identified in a uniform manner.
In the absence of such standards, public awareness of the phenomenon remains dependent on contingent and local factors (resources, expertise, staff motivation), with direct consequences for inter-district comparability and the robustness of empirical analyses.

3.6. Conclusions

The data mapping and collection carried out as part of the REPOLITY project highlights a structural fact: in Italy, there is currently no public information chain capable of making the accountability of law enforcement agencies transparent and verifiable throughout the cycle of 'report → investigation → decision → outcome → redress'.
The information available from the main institutional sources (ISTAT, Ministry of Justice, Ministry of the Interior) is incomplete, inconsistent, non-interoperable and often incomparable; whilst the strategy of generalised public access directed at judicial offices, although methodologically necessary, has yielded a picture marked by non-responses, refusals and technical limitations, which result in transparency that is largely formal.
In particular, the work carried out allows us to draw four main conclusions:
1) The information deficit concerns not only 'the lack of data', but the lack of standards. The institutions consulted rarely have structured fields or extractors that allow the decisive variable for the purposes of this research to be isolated: the subjective status of the perpetrator (membership of the police force). The absence of such metadata produces a knock-on effect: even when offices do respond, the information is often 'unsuitable' for describing the phenomenon (either because it refers to the broad category of 'public official', or because it does not link offence, stage and outcome in a verifiable manner).
2) Transparency is uneven and depends on contingent factors. The FOIA mapping of judicial offices shows that the possibility of obtaining usable data is linked more to

internal resources, expertise, local tools and organisational practices than to uniform regulations. This results in 'islands of transparency' alongside vast areas of opacity, with a direct effect on territorial comparability and the robustness of inferences.
3) Restrictions on access are often applied expansively or in lieu of a proper preliminary investigation. Refusal responses tend to be based on: technical impossibility, excessive burden, general exclusion of judicial documents, confidentiality and prejudice to investigations/proceedings. In many cases, these justifications act as "blanket clauses" that fail to distinguish between access to individualised documents (which should be protected) and access to aggregated and anonymised data (in principle compatible with FOIA), thereby limiting public scrutiny.
4) The current system produces a structural bias regarding what is "accountable". The most easily traceable cases (offences "in the course of duty" or "specific to" public officials) are over-represented compared to common offences committed by members of the police force, because the registers allow searches by offence category but not by the offender's status. This results in an information paradox: the measurability of what is technically extractable increases, not that of what is most relevant to the public assessment of the use of coercive power.
Based on this evidence, these recommendations aim to increase transparency using minimum standards, interoperability, and uniform practices without major legal changes; targeted regulations will be proposed only if needed.

3.7. Recommendations on data collection

The evidence gathered during the research indicates that the accountability deficit is not attributable to a single administration, but to a structural fragmentation of reporting responsibilities and the absence of common standards for data tracking, interoperability and publication. To overcome this fragmentation, differentiated but coordinated recommendations are formulated for the three key institutions involved: ISTAT, the Ministry of the Interior and the Ministry of Justice.

3.7.1. ISTAT – Statistical integration and accountability standards

ISTAT is recommended to assume a coordinating role in the field of law enforcement accountability, consistent with its function within the National Statistical System (SISTAN).
In particular:
Introduction of a permanent thematic module on 'Law enforcement and accountability'
As part of the Permanent Census of Public Institutions or the Public Administration Indicators, a module dedicated to the accountability of law enforcement agencies should be introduced, containing standardised and anonymised minimum indicators relating to:

- reports/complaints;
- disciplinary proceedings (initiated, concluded, type of sanction);
- criminal proceedings (initiated, concluded, aggregate outcomes);

- incidents involving the use of force with harmful outcomes;
- coverage and type of training on rights, de-escalation and use of force.
- Technical liaison function between administrations

In particular, ISTAT should promote a permanent technical working group with the Ministry of the Interior, the Ministry of Justice, the Ministry of Defence and the Data Protection Authority, aimed to:

- define common standards for data aggregation and anonymisation;
- overcome the current dichotomy between 'recorded data' and 'publishable data';
- make information flows comparable without compromising confidentiality and security.
- Publish aggregated indicators as open data

Even in the absence of microdata, the regular publication of national and regional aggregate indicators would enable evidence-based public scrutiny and reduce the sporadic use of the FOIA as a substitute for structured transparency policies.

3.7.2. Ministry of the Interior – Disciplinary transparency and organisational accountability

The Ministry of the Interior, and in particular the Department of Public Security, is recommended to move beyond a purely defensive conception of transparency and to recognise the disciplinary dimension as an integral part of the democratic legitimacy of the police force.

It should provide structured periodic reporting on disciplinary proceedings

The data already provided in aggregated form demonstrate that an information base exists. It is recommended that the Ministry:

- publish a standardised disciplinary report annually under open access;
- distinguish by type of conduct, sanction and procedural stage;
- include information on average resolution times;
- provide access to decisions in anonymised form and by extract;

The blanket refusal to disclose decisions, "not even in anonymised form", appears disproportionate to the rationale behind generalised public access. It is, then, recommended that the Ministry:

- adopt selective redaction practices;
- make accessible extracts of the reasoning without identifying references;
- distinguish between pending and concluded proceedings.
- establish a link between disciplinary proceedings and corrective measures.

Training, changes to protocols and organisational measures should be reported as outcomes of accountability, not as routine activities disconnected from cases. This would help to highlight the preventive and restorative aspects of administrative action.

3.7.3. Ministry of Justice – Traceability and interoperability of judicial data

The Ministry of Justice is recommended to prioritise action on IT infrastructure rather than on the production of new statistics.

In particular, it should adopt minimum national standard for judicial reporting on offence/stage/outcome (open format).
It is recommended that judicial offices adopt a minimum standardised matrix (by year; offence; procedural stage; outcome/disposition), accompanied by extraction metadata (register queried, period covered, query criteria, any discontinuities due to management changes). This measure can be implemented even without immediately introducing the 'police-forces' filter and would at least allow for consistent comparisons between districts.
The Ministry should introduce a structured 'subjective status' field in national registers and applications.
The most significant recommendation, for the purposes of accountability, is the introduction (or standardisation) of a field relating to the status of the suspect/defendant (membership of law enforcement agencies or equivalent category), with uniform rules for completion and consistency checks. Alternatively, in the short term, the adoption of a standardised proxy (e.g. status/affiliation identifiable from service records) is recommended, enabling reliable and comparable queries.
Data extractors and interoperability should be strengthened.
Responses based on 'technical impossibility' indicate an organisational need: investment is required in tools that enable non-manual and non-exceptional data extraction. The following is recommended:
the provision of predefined queries for 'indicator' offences;
the option to export data in an open format (CSV/XLSX), with a variable dictionary;
the establishment of a technical support channel for offices with limited data extraction capacity.
Specific FOIA implementation guidelines for the judicial sector should be adopted.
It is recommended that guidelines be adopted which clearly distinguish between:
access to documents (which may be subject to strict limits);
access to aggregated/anonymised data and statistics (which, in the absence of concrete prejudice, should be the rule). The guidelines should include an operational 'test': when an office refuses a request, it must specify what concrete prejudice would arise and why redaction/aggregation techniques would not be sufficient.
Public tracking of "unavailability" and refusals (transparency accountability) should be implemented.
To avoid invisible territorial distortions, it is recommended that each office (or district) make the following at least traceable: number of FOIA requests received, average response times, refusal rate, standardised reasons, and availability of data extraction tools.
This makes it possible to identify where resources and support should be directed.
Cross-cutting recommendation addressed to ISTAT, Ministry of Interior and Ministry of Justice:
1. Establish a permanent technical working group to:
   - define common standards (metadata, formats, frequency);
   - ensure the interoperability of information systems;

- align transparency, privacy and good governance through concrete balancing tests.

2. Publish a joint annual report on the accountability of law enforcement agencies, with comparable indicators, methodological notes and policy recommendations.

Conclusions, by Lucia Re and Ilaria Boiano

The guiding research question, namely what traces of accountability emerge at the institutional level, has shaped the entire process of surveying, collecting, and analysing case law and data. The three parts of this Report now allow us to provide a comprehensive response.

Within the Italian legal system, traces of accountability can be found in judicial decisions, in the case law of the European Court of Human Rights, in disciplinary proceedings, in ministerial statistics and in the databases consulted. However, these traces are fragmentary, not always accessible and rarely comparable. They are often dispersed and only occasionally organised in a way that makes them publicly accessible or capable of supporting a systemic understanding of the issue.

As the analysis indicates, the accountability of law enforcement bodies cannot be assessed solely by reference to the criminal outcomes of individual cases, nor reduced to a sequence of individual responsibilities. Rather, it emerges as a broader framework that is at once regulatory, institutional, and epistemological, and that either enables or prevents the reconstruction of accountability pathways. These pathways run from the initial event, through its legal classification, to the final decision and any punitive or reparative outcomes.

Chapter 1 shows that judicial traces of accountability do exist, but they are selective. The analysis of case law reveals that criminal proceedings operate within a normative framework characterised by open-ended concepts such as necessity, proportionality and immediacy, combined with a high standard of evidence. Before the introduction of article 613-bis of the Italian Criminal Code, which introduced the offence of torture, case law sometimes played a role of systemic adaptation by subsuming particularly serious conduct under offences that did not fully correspond to their material elements. This dynamic highlights a tension between the need for substantive protection and the principles of legality and specificity, showing that the quality of accountability depends on the coherence and adequacy of the available legal framework. Judicial precedents therefore reveal not only the outcomes of criminal proceedings, but also the structural limitations within which they operate.

Chapter 2 identifies, in the case law of the European Court of Human Rights, a structural benchmark with which the domestic legal system must comply to ensure effective accountability. Accountability in this sense cannot be reduced to the punishment of individual offences. It requires the development of regulatory and preventive mechanisms, as well as investigative processes that are both practically independent and perceived as impartial.

Chapter 3 focuses on the statistical and administrative dimensions of accountability. The findings reveal a significant deficit in the structuring of data. This includes the absence of variables capable of identifying the status of the alleged perpetrator, inconsistencies between data sources, the lack of interoperability among information systems and the extensive reliance by institutions on restrictions to access information. The use of generalised civic access procedures has in fact revealed a model of

transparency that is largely formal and strongly dependent on local administrative practices and on contingent data extraction capacities.
In this context, the blind spot in institutional accountability identified by the research concerns not only the availability of data, but also their systemic organisation.
Overall, the analysis demonstrates that effective accountability depends on the interaction of three key dimensions. The first is the existence of clear substantive standards governing the use of force. The second is the quality and independence of investigative procedures. The third is the availability of a public knowledge infrastructure capable of making accountability pathways traceable and comparable. When even one of these dimensions is inadequate, the entire system tends to become opaque. Vague legal standards make ex post evaluation uncertain. Investigations that lack independence undermine public trust. Fragmented data prevent a reliable understanding of the phenomenon.
The recommendations formulated in this Report, which concern the improved classification of criminal offences, the definition of standardised procedures, the strengthening of guarantees for the independence of investigations into misconduct, the standardisation of data collection and publication, the traceability of judicial proceedings, greater disciplinary transparency and the establishment of uniform training standards, all follow this approach. The aim is to make accountability an ordinary and systematic feature of institutional practice.
In conclusion, the research shows that Italy possesses formal and partial mechanisms for holding law enforcement agencies to account but lacks an integrated and transparent framework. Bridging this gap is not simply a technical or administrative task. It is a necessary condition to ensure that the exercise of coercive power is subject to effective public and judicial scrutiny, in line with the principles of the rule of law.