



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

FIRST SECTION

CASE OF LIBRI v. ITALY

(Application no. 45097/20)

JUDGMENT

STRASBOURG

11 January 2024

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

In the case of Libri v. Italy,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Krzysztof Wojtyczek, *President*,

Ivana Jelić,

Erik Wennerström, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 45097/20) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 13 October 2020 by an Italian national, Mr Antonio Libri, who was born in 1960 and living in L’Aquila (“the applicant”), and who was represented by Mr L. Cianferoni, a lawyer practising in Rome;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia;

the parties’ observations;

Having deliberated in private on 28 November 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged incompatibility of the applicant’s state of health with detention in prison and the alleged failure to provide him with adequate medical treatment.

2. The applicant, convicted for a number of serious crimes, including membership of a mafia-type criminal organisation, and sentenced to life imprisonment, is currently detained in Parma Prison.

3. He suffers from several health problems including a severe osteoporosis with multiple vertebral collapses and fibromyalgia. He has been recognised as 100% disabled and has limited mobility in the lower limbs.

4. In early 2017, while he was detained in Rome Rebibbia Prison, the applicant started to complain of mobility impairments and was prescribed use of canes and an orthopaedic back corset, physiotherapy and further examinations. In the same period, he filed a request for the replacement of his detention in prison with house detention, to be carried out in a healthcare facility.

5. The Rome court responsible for the execution of sentences (*tribunale di sorveglianza*) appointed an expert for the assessment of his state of health. By a report dated 3 July 2017 the expert stated that, although he could be treated in prison, the applicant needed physiotherapy and suggested his transfer to Milan Prison for better care.

6. On 14 July 2017, based on the expert's report, the Rome court rejected the applicant's request for house detention and ordered his transfer to Milan Prison, which took place on 26 October 2017.

7. At subsequent examinations, in October and November 2017, the doctors prescribed physiotherapy, use of crutches, a walker and a wheelchair and additional examinations. On 3 January 2018, the orthopaedist noted that neither the examinations nor the physiotherapy had taken place and that the applicant had not received a back corset.

8. On 27 March 2018, the applicant started the first cycle of physiotherapy. According to subsequent reports, he had received a wheelchair and canes, but the crutches were of the wrong size and he had not received either the walker or the corset. The prescribed examinations took place between 7 and 11 May 2018.

9. At an unspecified date, the applicant filed another request for the replacement of his detention in prison with house detention. On 25 June 2018, the Milan judge responsible for the execution of sentences (*magistrato di sorveglianza*) rejected the request, stating that the applicant received adequate treatment in prison.

10. The applicant appealed and, on 23 November 2018, the Milan court responsible for the execution of sentences ordered the prison medical service to conduct additional examinations and provide the applicant with physiotherapy and a back corset.

11. According to the medical reports issued in the following months, the applicant's conditions were stable, he was assisted for his personal hygiene and other daily tasks and he disposed of crutches and a wheelchair; as to the back corset, he had been authorised to buy it at his own expense. The reports also stated that the applicant was on the waiting list for further physiotherapy cycles and suggested his transfer to Parma Prison for better treatment.

12. On 15 January 2019 the Milan court reiterated the order to provide the applicant with a back corset at his own expense and with the necessary physiotherapy.

13. On 16 February 2019 the applicant was transferred to Parma Prison, where he was placed in the intensive assistance section (*sezione di assistenza intensiva* – "SAI"). Initially, he was allocated to a cell which did not allow him to access the shower autonomously and was helped by a nurse; on 9 May 2019, he was transferred to a cell without architectural barriers.

14. The medical reports issued in the course of 2019 stated that the applicant's conditions were stable, that he had been taught exercises that he could do autonomously and in June and July he had undergone two cycles of functional rehabilitation consisting of magnetotherapy. Nevertheless, according to a report of 17 June 2019, he was also in need of intensive rehabilitation treatment which had to be carried out in external facilities.

15. On 13 December 2019, the Milan court appointed an expert to examine the applicant's state of health and determine the best course of treatment. By a report dated 4 March 2020, the expert stated that the applicant's mobility impairment was partially offset by the measures adopted by the prison and that his conditions could not be considered incompatible with detention. Nevertheless, he noted that the applicant needed regular rehabilitation treatment in order to prevent an aggravation of his symptoms and pointed out some delays in providing such treatment, as well as the delay in necessary examinations and orthopaedic devices.

16. At that time, the prison reports pointed out the need for a corset and reinforcement exercises and noted that the applicant had undergone two cycles of magnetotherapy between June and September 2020.

17. On 18 September 2020 the Milan court considered that the applicant's health was not incompatible with detention and rejected his request. However, it noted the absence of regular physiotherapy, which was attributable to the long waiting list of public healthcare facilities, and insisted that the prison administration must ensure regular physiotherapy and the necessary orthopaedic equipment. The applicant's appeal against this decision was rejected by the Court of Cassation on 28 May 2021.

18. In the meantime, on 13 October 2020 the applicant lodged a request for interim measures under Rule 39 of the Rules of Court. On 14 October 2020 the Court (the duty judge) rejected the request.

19. On 5 July 2021 the applicant underwent an orthopaedic examination at Bologna hospital, which indicated the need for daily walks, stretching and an orthopaedic corset. According to prison reports of 18 June and 6 July 2021, he received the necessary treatment in prison, had an orthopaedic mattress and crutches and his conditions were stable, although the waiting list for new cycles of physiotherapy was long. A subsequent report of 30 August stated that the applicant did not need constant physiotherapy.

20. In the meantime, the applicant had filed two additional requests for the replacement of his detention with house arrest, which were rejected by the domestic courts based on the consideration that he received the necessary care in prison and there was no risk of an aggravation of his state of health. The final decision in these proceedings was rendered on 25 October 2022.

21. The applicant complained that his continued detention in prison, in the absence of adequate treatment for his diseases, constituted a breach of Article 3 of the Convention.

THE COURT'S ASSESSMENT

22. The general principles concerning the obligation to preserve the health and well-being of prisoners, in particular by the provision of the required medical care, have been summarised in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 144-48, 31 January 2019). Specifically, the Court will take into account: (a) the prisoner's condition and the effect on the latter of the manner of his or her imprisonment, (b) the quality of care provided, and (c) whether or not the applicant should continue to be detained in view of his or her state of health (see *Potoroc v. Romania*, no. 37772/17, § 63, 2 June 2020, and *Contrada v. Italy (no. 2)*, no. 7509/08, § 78, 11 February 2014).

23. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

24. The applicant argued that he could not be adequately treated in prison and should therefore be transferred to a healthcare facility. He complained, in particular, of the delays in providing physiotherapy, orthopaedic devices and certain examinations, as well as of the placement in an unsuitable cell when he first arrived to Parma Prison.

25. The Government argued that the applicant had been examined by specialists and received the necessary treatment, including several sessions of magnetotherapy; that both in Milan Prison and Parma Prison he was placed in specialised medical services and in suitable cells; and that the domestic decisions were based on medical evidence and expert reports.

26. In respect of the alleged incompatibility of the applicant's state of health with detention, the Court notes that the applicant's conditions were stable and both court-appointed experts confirmed that he could remain in prison where he could obtain adequate treatment, if necessary by means of temporary access to external facilities (see paragraphs 5 and 15 above). Furthermore, the issue of the applicant's fitness to serve the sentence was duly examined by domestic courts, which relied on consistent medical reports and rendered reasoned decisions in that regard (see paragraphs 6, 17 and 20 above).

27. In such circumstances, the Court considers that the applicant's conditions were not so severe as to impose his liberation. Nevertheless, the issue whether the applicant received adequate care remains to be examined (see *Helhal v. France*, no. 10401/12, § 55, 19 February 2015).

28. In respect of the quality of care provided, the Court notes that the prison doctors (see paragraph 7, 8 and 11 above), the court-appointed experts (see paragraphs 5 and 15 above) and the domestic courts (see paragraph 10, 12 and 17) identified several delays and shortcomings in the applicant's treatment.

29. In particular, all medical reports until August 2021 indicated that the applicant needed regular physiotherapy, including both functional rehabilitation to be carried out in prison and intensive rehabilitation treatment to be carried out in external facilities (see paragraphs 4, 5, 7 and 14 above). However, the physiotherapy cycles were sporadic and only took place in March 2018, June and July 2019 and from June to September 2020 (see paragraphs 8, 14 and 16 above). There is also no evidence that the applicant ever had access to intensive rehabilitation treatment.

30. Additionally, though it was indicated since early 2017 and the applicant was willing to cover the cost (see paragraphs 4 and 11 above), there is no evidence that the applicant was provided with the back corset.

31. The Court considers that these considerations suffice to conclude that the applicant did not receive adequate care while in prison (see *Rooman*, cited above, § 147).

32. There has therefore been a breach of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention.

Done in English, and notified in writing on 11 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Krzysztof Wojtyczek
President