



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

FIRST SECTION

CASE OF A.Z. v. ITALY

(Application no. 29926/20)

JUDGMENT

STRASBOURG

4 July 2024

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

In the case of A.Z. v. Italy,

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

Lətif Hüseyinov, *President*,

Ivana Jelić,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 29926/20) 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 21 July 2020 by an Italian national, A.Z. (“the applicant”), who was born in 1982, lives in Bari and was represented by Ms M.S. Mori, a lawyer practising in Milan, Mr M. Passione, a lawyer practising in Florence, and Mr E.C. Solazzo, a lawyer practising in Acquaviva Delle Fonti;

the decision to give notice of the complaints raised under Articles 2, 3 and 5 § 1 and Article 34 of the Convention to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and to declare the remainder of the application inadmissible;

the decision not to have the applicant’s name disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 11 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s continued detention in prison notwithstanding his psychiatric disorder and repeated suicide attempts.

2. Between May and June 2019, the applicant attempted to commit suicide and was hospitalised. On that occasion, he was diagnosed with severe depression and a personality disorder.

3. Since in the meantime he had been convicted for several crimes, on 18 June 2019 he was transferred to the prison ward of the Bari Hospital. On 4 July 2019 he was transferred to the Bari Prison and placed under high surveillance.

4. According to the available medical reports concerning the period spent in the Bari Prison (from 4 July 2019 until 18 June 2020 and again from 29 July 2020 until 3 September 2020):

- at the initial psychiatric assessments, conducted on 5, 9 and 18 July 2019, the prison doctors confirmed the diagnosis and the pharmacological treatment prescribed in the hospital;

- a report dated 6 May 2020 noted that the pharmacological treatment seemed ineffective and mentioned follow-up visits carried out in the previous months, without additional details;

- a report dated 22 August 2020 stated that the applicant's mood was stable, the pharmacological treatment was ineffective, and in August he had been seen seven times by a psychiatrist and eight times by a psychologist.

5. While detained in the Bari Prison, the applicant attempted suicide four times.

6. In the meantime, on 2 July 2019, the applicant's lawyers asked the Bari Judge for the execution of sentences ("the Bari Judge") to defer the applicant's detention or replace it with house arrest. They relied on an *ex parte* psychiatric report stating that he suffered from a severe depressive disorder with suicidal thoughts and that his mental health was incompatible with detention.

7. On 18 September 2019 the Bari Judge ordered that the applicant be subject to a period of psychiatric observation.

8. This order remained unexecuted for several months, initially due to the unavailability of places in mental health protection units (*Articolazioni per la tutela della salute mentale* – "ATSM"); when a place became available in the ATSM of the Spoleto Prison, the psychiatrists at that prison advised against the psychiatric observation, which resulted in additional delays. The applicant was temporarily transferred to the Spoleto Prison on 18 June 2020, in order for him to undergo the period of psychiatric observation ordered by the Bari Judge.

9. On 6 April 2020, the applicant's lawyers filed a new request for the detention to be replaced with house arrest.

10. The final report of the psychiatric observation, which ended on 16 July 2020, confirmed the diagnosis of severe depression and personality disorder, pointed out the high risk of suicide and the limited effectiveness of the pharmacological treatment, as well as the absence of a previous psychotherapeutic and psychiatric treatment. It concluded that:

"the patient is scarcely compatible with the prison regime and needs to be placed in a suitable therapeutic facility in the area of origin (contact with the family being necessary), where he can undertake medium to long-term psychotherapeutic treatment".

11. On 21 July 2020 the applicant filed the present application to the Court, asking for interim measures under Rule 39 of the Rules of Court.

12. Since the observation period had come to an end, on 29 July the applicant returned to the Bari Prison, where he was placed under high surveillance.

13. On 11 August 2020 the Bari Judge rejected the applicant's urgent request for release. While acknowledging the conclusions of the Spoleto report, he considered that there was no information on available therapeutic facilities where the applicant could be placed and, in such circumstances, the decision should be referred for consideration to the Bari Court. Nevertheless,

he ordered the applicant's transfer to a prison specifically equipped to treat psychiatric disorders.

14. On 25 August 2020, the prison administration ordered the applicant's transfer to the Santa Maria Capua Vetere Prison.

15. On 31 August 2020, the Court (the duty judge) requested that the Government, under Rule 39 of the Rules of Court, "provide the applicant, until a decision on the merits is issued by the Supervising Tribunal, with the necessary surveillance and psychiatric treatment, as ordered by the decision of the Supervising Judge of 11 August 2020".

16. On 2 September 2020 the Santa Maria Capua Vetere Prison informed the administration that there was no available place in the ATSM. Nevertheless, on 3 September the applicant was transferred there.

17. In the Santa Maria Capua Vetere Prison the applicant was placed in an ordinary cell and was subject to the regime of "intensive integrated support", which entailed measures such as a regular follow-up from a multidisciplinary team of psychiatrists and psychologists, pharmacological treatment, the assignment of a care-giver within the cell and the removal of all potentially dangerous objects.

18. On 26 September 2020 the applicant attempted suicide again. In response, the administration established that, whenever his care-giver was absent, he should be replaced by another inmate.

19. The subsequent medical reports (dated 29 September, 1 October, 27 October and 4 November 2020) as well as the applicant's medical journal stated that he followed the pharmacological treatment and was seen on a regular basis by psychiatrists and psychologists; though he still showed traits of a personality disorder, at present he did not have any psychopathological acuity and did not need to be placed in an ATSM. A report issued on 30 September by prison educators stated that he regularly met his family.

20. On 12 November 2020, the Bari Court for the execution of sentences ("the Bari Court") rejected the applicant's request for release.

It noted, in particular, that the Spoleto report was inconsistent, did not indicate which treatment was unavailable in prison, and did not take into account the possibility of placing the applicant in an ATSM. It further held that no additional expertise was necessary and, relying on the most recent medical reports, it noted that the applicant's condition was stable, he was followed by a multidisciplinary team, complied with the treatment and had not had any recent psychiatric acuity. As to the risk of suicide, it was sufficiently mitigated by the high surveillance regime. Therefore, the applicant's condition was not so severe as to require his liberation.

21. In the meantime, the applicant filed a new request under Rule 39 of the Rules of Court, which was rejected on 26 November 2020.

22. According to the most recent available reports, issued in September 2021, the applicant showed increased cooperation with treatment and his state of health had improved. Furthermore, the applicant has not

claimed that he has attempted suicide again or has had any other acute psychiatric episode. His medical journal shows that he meets the prison psychiatrists and psychologists on a regular basis.

23. The applicant complained that his rights under Articles 2, 3 and 5 § 1 as well as Article 34 of the Convention had been violated.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant complained of the incompatibility of his state of mental health with detention in prison and of an inadequate assessment of his therapeutic needs by the domestic authorities.

A. Admissibility

25. The Government raised an objection of non-exhaustion, mainly arguing that the applicant should have appealed against the decision of the Bari Court of 12 November 2020 before the Court of Cassation. The applicant argued that the appeal was not sufficiently rapid.

26. The Court has already found that, for a preventive remedy concerning allegedly inhumane conditions of detention to be effective, it must be capable of providing relief in reasonably short time-limits (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 183, 27 January 2015, and *Longin v. Croatia*, no. 49268/10, § 41, 6 November 2012). It has, for example, considered excessive a duration of between four and a half months to two years (*Fenech v. Malta*, no. 19090/20, § 42, 1 March 2022) or of five months (*Yengo v. France*, no. 50494/12, § 61, 21 May 2015).

27. In the present case, the decision of the Bari Court was issued over sixteen months after the applicant's first request (see paragraphs 6 and 20 above). Even assuming that the Court of Cassation dealt with the case speedily, it would have inevitably added to such a long duration.

28. As to the Government's argument that, in the meantime, the applicant could have filed a new request, he had already filed two requests (see paragraphs 6 and 9 above) without obtaining a rapid response from the authorities and could not be required to do so again.

29. Therefore, in the specific circumstances of the case, the Court does not consider that the proceedings, which had already lasted over sixteen months, were effective. It follows that the applicant was not required to pursue them before the Court of Cassation.

30. As to the Government's additional argument that the applicant should have brought an action for damages pursuant to Articles 2043 and 2051 of the Civil Code, the Court notes that these remedies are compensatory in

nature and therefore incapable of putting an end to the alleged violation (see *Shirkhanyan v. Armenia*, no. 54547/16, § 129, 22 February 2022).

31. Therefore, the Court rejects the Government's objection and, noting that the complaint is not inadmissible on any other grounds listed in Article 35 of the Convention, it declares it admissible.

B. Merits

32. The relevant general principles have been summarised in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-48, 31 January 2019).

33. In the present case, it is undisputed that the applicant suffered from a severe psychiatric disorder and had suicidal thoughts.

34. The report issued by the Spoleto prison in July 2020 stated that the applicant's health was "scarcely compatible" with the prison regime and he had to be placed in a therapeutic facility in order to undertake the necessary psychotherapeutic treatment (see paragraph 10 above).

35. The Court considers that, while this report did not exclude the applicant's compatibility with detention in absolute terms, it cast significant doubts on the possibility to provide the necessary treatment in prison. In such circumstances, and taking into account the applicant's allegations of the absence of an adequate psychiatric follow-up and of an individual therapeutic project, it was up to the Government to demonstrate that he was adequately treated.

36. In this respect, the Court will distinguish two periods of detention based on the Government's allegations.

37. As to the first, starting from the applicant's imprisonment on 4 July 2019 until 3 September 2020, the Government stated that in the Bari Prison the applicant could benefit from the presence of an intensive assistance section and was followed by multidisciplinary staff; in Spoleto, he had been placed in an ATSM. Nevertheless, aside from the Government's allegations about the availability of psychiatric services in prison, there is very limited evidence of the concrete treatment and support provided to the applicant: the applicant's medical journal has not been provided, the available reports are generic and sporadic and, aside from the month of August 2020, there is no evidence of a psychotherapeutic support (see paragraph 4 above).

38. Taking into account that, in that period, the applicant's state of health appeared to have notably deteriorated, as shown by the repeated suicide attempts (see paragraph 5 above), the Court does not consider that the Government have discharged their burden of proving the adequacy of treatment. In particular, they have not provided a comprehensive record of the applicant's treatment, nor have shown that he was subject to regular and systematic supervision which entailed a comprehensive therapeutic strategy (see *Blokhin v. Russia* [GC], no. 47152/06, § 137, 23 March 2016, and *Roman*, cited above, §§ 146-47).

39. Additionally, during that period, the domestic authorities' examination of the applicant's state of health and therapeutic needs was characterised by significant delays, as it took nine months to begin the applicant's psychiatric observations and sixteen months to obtain a decision on the applicant's request for release (see paragraphs 6, 8 and 20 above). The Government did not invoke any exceptional circumstance justifying this delay (see *Normantowicz v. Poland*, no. 65196/16, § 103, 17 March 2022).

40. However, as concerns the second period, following the applicant's transfer to the Santa Maria Capua Vetere Prison on 3 September 2020, the Court considers that the Government have provided sufficient evidence as to the adequacy of treatment. In particular, he was subject to a regime which entailed routine follow-up from a multi-disciplinary team, and several medical reports as well as the applicant's medical journal show that he met psychiatrists and psychologists on a regular basis. Additionally, after September 2020, it appears that the applicant's health improved and that he no longer had any acute psychiatric episodes, and the prison psychiatrists did not consider it necessary to place him in an ATSM (see paragraphs 17, 19 and 22 above).

41. In light of these considerations, the Court considers that, in respect of the first period of detention (between 4 July 2019 and 3 September 2020), also taking into account the delays in assessing the applicant's state of health, there has been a violation of Article 3 of the Convention. It further finds that, as regards the second period of detention (after 3 September 2020), there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

42. The applicant argued that his detention did not take place in an adequate facility for persons suffering from a psychiatric disease, contrary to Article 5 § 1 (e) of the Convention.

43. The Court has examined this complaint and considers that, in the light of all the material in its possession and in so far as the matter complained of is within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto (see, in particular, *Sy v. Italy*, no. 11791/20, §§ 118-24, 24 January 2022).

44. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

III. OTHER COMPLAINTS

45. The applicant further complained, under Article 2 of the Convention, that his life was endangered in light of his numerous suicide attempts and,

under Article 34 of the Convention, that the domestic authorities did not comply with the measures indicated by the Court pursuant to Rule 39 of the Rules of Court (see paragraph 15 above). Having regard to the facts of the case, the submissions of the parties and its findings under Article 3 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to examine the remaining complaints (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,213.84 for costs and expenses incurred before the Court.

47. The Government objected that the claims were excessive.

48. Taking into account the nature and severity of the violation, the Court considers it appropriate to award the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

49. It also considers it reasonable to award EUR 8,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints raised under Article 3 of the Convention admissible, and the complaint under Article 5 § 1 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention as concerns the period from 4 July 2019 to 3 September 2020;
3. *Holds* that there has been no violation of Article 3 of the Convention as concerns the period after 3 September 2020;
4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

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- (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Lətif Hüseynov
President