



Multiple violations of the Convention in a case of detention in an ordinary prison of an applicant suffering from psychiatric disorders, despite domestic court decisions ordering his transfer to a residential centre for the enforcement of preventive measures

In today's Chamber judgment¹ in the case of [Sy v. Italy](#) (application no. 11791/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;

no violation of Article 5 § 1 (right to liberty and security) concerning the period of detention from 2 December 2018 to 20 May 2019;

a violation of Article 5 § 1 concerning the period of detention from 21 May 2019 to 10 May 2020;

a violation of Article 5 § 5 (right to compensation);

a violation of Article 6 § 1 (right to a fair trial);

a violation of Article 34 (right of individual petition).

The case concerned the fact that the applicant, who suffered from a personality disorder and bipolar disorder, had remained in detention in an ordinary prison despite domestic court decisions stating that his mental health was incompatible with such detention and ordering his transfer to a Residential Centre for the enforcement of preventive measures (REMS), and later to a prison psychiatric service.

The Court noted that despite the clear, unequivocal statements by the domestic court the applicant's mental state had been incompatible with detention in prison, and that he had remained in an ordinary prison for almost two years. He had not had the benefit of any overall therapeutic strategy for treating his disorder, against a general background of poor conditions of detention.

The Court pointed out that on 21 January 2019 the Rome sentence enforcement judge had ordered the applicant's immediate transfer to a Residential Centre for the enforcement of preventive measures for one year. The Prison Administration Department then sent a large number of requests for admission to REMS's in the Lazio Region and beyond, unsuccessfully. The Court noted that in the light of such refusals, the domestic authorities had neither created new REMS places nor found any alternative solution.

As the Court had emphasised on several occasions in the past, Governments should organise their prison systems in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties. The Court considered therefore that it was incumbent on the Italian Government, in the absence of an REMS place, to find an appropriate alternative solution, as the Court had in fact explicitly stated in its interim measure issued under Rule 39.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, Giacomo Seydou Sy, is an Italian national who was born in 1994 and lives in Mazzano Romano (Italy). He suffers from a personality disorder and a bipolar disorder. He was detained in Rebibbia Nuovo Complesso Prison (Rebibbia NC) in Rome when he lodged the application.

Charged with harassing his former partner, resistance to a public officer and inflicting bodily harm, Mr Sy was placed in house arrest on 15 July 2017 by the investigation judge (GIP) of the Rome District Court, as a preventive measure.

On 4 September 2017, after Mr Sy had left his home on many occasions, the GIP replaced the measure with pre-trial detention and requested that the prison medical department draw up a report on his state of health and its compatibility with detention, in order to assess the capacity of the prison system to provide the applicant with the necessary healthcare. On 18 September 2017 the GIP requested a psychiatric assessment of the applicant. On 3 October 2017, during a hearing before the GIP, the expert submitted his report, which concluded that Mr Sy should be considered as “posing a danger to society”, within the psychiatric meaning of the term, and recommended treatment and therapeutic rehabilitation instead of detention.

On 6 October 2017 the GIP replaced the pre-trial detention with an individual preventive measure of placement in a Residential Centre for the enforcement of preventive measures (REMS) for a year, which measure should be implemented as quickly as possible.

On 22 November 2017, relying on the psychiatric expert assessment requested, the GIP acquitted Mr Sy on the grounds that because of his disorder he was unable to control his acts, and ordered the implementation of the REMS detention measure for a period of six months. He noted that the preventive measure imposed on the applicant on 6 October 2017 had not been enforced for lack of available places in the institutions in question. For his part, Mr Sy affirmed that he had been released, for lack of available REMS places, on 23 December 2017 and had then, on 23 January 2018, spontaneously joined a specialised therapeutic group to receive personalised therapy.

At the request of the public prosecutor’s office, the Rome sentence enforcement judge (SEJ) reassessed Mr Sy’s situation, and by order of 14 May 2018 declared that the applicant still posed a danger to society. He replaced the REMS detention with one year’s release under police supervision, to be enforced in the framework of the specialised therapeutic group. Mr Sy submitted that the following month, while still subject to the release under police supervision order, he had been authorised to leave the therapeutic group temporarily.

On 2 July 2018 Mr Sy was arrested red-handed for aggravated robbery and resistance to a public officer. On the same day the Tivoli District Court ruled the arrest lawful and ordered his placement in pre-trial detention in Rebibbia NC. On admission to prison he was examined by the prison psychiatrist, who recommended placing him in solitary confinement and providing him with appropriate medical treatment.

At a hearing on 26 September 2018 the court ordered an expert assessment of the applicant’s aptitude to appear in court, his mental state when he had allegedly committed the offences he was charged with and his possible danger to society. In his report the expert confirmed his diagnosis of 3 October 2017. He added that when the applicant had committed the offence, he had been in a pathological state such as to partly rule out his criminal responsibility. He confirmed that the applicant posed a danger to society. He emphasised that the necessity of medical treatment outweighed the detention imperative, stating that the applicant could take part in court proceedings.

On 22 November 2018 the court found Mr Sy guilty of the offences as charged and sentenced him to one year and two months’ imprisonment. In another decision given on the same day the court replaced the pre-trial detention with house arrest, in view of the applicant’s therapeutic needs as

noted by the expert. On 27 November 2018, noting that Mr Sy had failed to comply with the conditions for his house arrest, the court reinstated the pre-trial detention order, and on 2 December 2018 Mr Sy was once again detained in Rebibbia NC. By judgment of 20 May 2019 the Rome Court of Appeal, to which the applicant had appealed, reduced the prison sentence to 11 months, rescinded the pre-trial detention measure and ordered his release. However, he remained in detention in Rebibbia NC.

In the meantime, by order of 21 January 2019, the Rome SEJ replaced the release under police supervision order with immediate REMS detention for one year, on the grounds that that was the only appropriate measure in view of the danger posed by Mr Sy to society. From 5 February 2019 onwards the Prison Administration Department (PAD) requested the applicant's admission to several regional and national REMS, all of which answered in the negative for lack of available places.

On 3 March 2020 Mr. Sy requested that the Court, pursuant to Rule 39 of the Rules of Court, indicate to the Government interim measures such as to terminate his detention in prison.

On 7 April 2020 the Court requested that the Government, in pursuance of Rule 39 of the Rules of Court, ensure M. Sy's transfer to an REMS or other institution capable of providing appropriate medical treatment for the applicant's mental illness. On 27 April 2020 the Government informed the Court that they had notified the Rome SEJ of the interim measure indicated by the Court, explaining that the judicial authority held exclusive competence to modify an REMS placement order by applying another less severe preventive measure. They added that despite repeated requests no REMS places had as yet become available.

On 4 May 2020 the Rome SEJ received the psychiatric assessment requested. It certified that Mr Sy posed a danger to society. The expert confirmed that he required a residential-type therapeutic rehabilitation programme, and pointed out that placement in a specialised community was the optimum solution.

On 11 May 2020 the Rome SEJ declared that Mr Sy had become less dangerous, rescinded the REMS detention order and replaced it with the preventive measure of release under police supervision in the framework of the community in which Mr Sy was to follow a personalised therapeutic programme. On 12 May 2020 the applicant was transferred to the community. He escaped the following day.

On 8 June 2020 the Rome SEJ declared that Mr Sy had become more dangerous, and once again ordered the implementation of the preventive measure of REMS detention for a minimum of one year.

On 1 July 2020 the REMS "Castore" in Subiaco (Rome) informed the authorities that a place had become available for the applicant as of 6 July 2020. Mr Sy was transferred on 27 July 2020.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant submitted that his continued detention in an ordinary prison had prevented him from benefiting from therapeutic provision. Relying on Article 5 § 1 (right to liberty and security), he alleged that his detention had been unlawful. Relying on Article 5 § 5 (right to compensation), he complained that he had had no effective remedy to obtain compensation for the damage he claimed to have sustained. He complained of a violation of Article 6 § 1 (right to a fair trial) on account of the failure to enforce the decision given by the Rome Court of Appeal on 20 May 2019. Relying on Article 13 (right to an effective remedy) read in conjunction with Articles 3 and 5 § 1, he submitted that he had had no effective remedy to complain of the absence of adequate therapeutic care during his detention. Relying on Article 34 (right to individual petition), he submitted that Italy had failed to honour its obligations.

The application was lodged with the European Court of Human Rights on 4 March 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 3

The Court first of all noted that already on 6 October 2017 the GIP of the Rome District Court, drawing on the psychiatric expert's conclusions, had replaced the pre-trial detention order with placement in an REMS.

As regards the detention in Rebibbia NC Prison, the Court noted that in November 2018 the expert appointed by the Tivoli District Court had ruled that the applicant needed overall therapeutic provision, which should take precedence over the detention requirement. Subsequently, on 21 January 2019, the Rome SEJ ordered the applicant's immediate transfer to an REMS. A few days later the prison psychiatrist had certified that the applicant was unsuited to detention in an ordinary prison. On 4 February 2019 the court had ordered his immediate placement in an appropriate institution or in a psychiatric prison.

Consequently, the Court noted that the applicant's mental condition had been incompatible with detention in prison and that despite the clear and unequivocal indications, the applicant had remained in an ordinary prison for almost two years. It transpired from the case file that the applicant had not benefited from any overall medical provision for his illness aimed at remedying his health problems or preventing their aggravation, all in a general context of poor conditions of detention.

There had therefore been a violation of Article 3 of the Convention.

Article 5 § 1

As regards the period of detention from 2 December 2018 to 20 May 2019, the Court considered that it had complied with domestic law. It had been based on the judgment sentencing him to one year and two months' imprisonment delivered by the court on 22 November 2018, and on the 27 November 2018 decision by the same court reinstating the pre-trial detention order.

In the present case the Court observed that the applicant had complained solely about the absence of appropriate therapeutic provision, without contesting the incompatibility of his detention with his mental state on account of any inability to attain the social rehabilitation aim pursued by the prison sentence. The Court therefore considered that while serving the sentence the applicant had been in a position to understand and benefit from the social rehabilitation aim of the prison sentence.

The Court concluded that the impugned period of detention had been in conformity with the requirements of Article 5 § 1 (a) of the Convention. There had therefore been no violation of that provision in respect of the detention from 2 December 2018 to 20 May 2019.

As regards the period of detention from 21 May 2019 to 12 May 2020, the Court pointed out that on 21 January 2019 the Rome SEJ had ordered the applicant's immediate placement in an REMS for one year on the grounds that that measure had been the only appropriate way to deal with the danger which he posed to society.

It transpired from the file in the instant case that as from February 2019 the Prison Administration Department had sent out a large number of requests for a place in an REMS in the Lazio Region and beyond, unsuccessfully. The Court noted that in the light of those refusals, the domestic authorities had neither created new places in the centres nor found any alternative solution. The Court could therefore not consider the lack of available places as valid justification for keeping the applicant in prison.

Consequently, the applicant's detention from 21 May 2019 onwards had not complied with the requirements of Article 5 § 1 (e). There had therefore been a violation of Article 5 § 1 of the Convention.

Article 5 § 5

The Court observed that the civil action for damages laid down in Article 2043 of the Civil Code required the claimant to prove the existence of any unlawful act, malicious intent or negligence on the part of the authorities and the damage sustained. The Court noted that the Government had not given any examples of cases where such an action had been successfully brought in circumstances similar to those of the present case.

The Court therefore considered that the applicant had had no remedy in order to obtain, with an adequate degree of certainty, compensation for the violations of Article 5 § 1 of the Convention, and that there had therefore been a violation of Article 5 § 5 of the Convention.

Article 6 § 1

The Court observed that the 20 May 2019 judgment of the Rome Court of Appeal ordering the applicant's release had not been enforced. In particular, further to the order issued by the SEJ on 21 January 2019, the applicant ought to have been transferred to an REMS, but he had nonetheless remained in prison. The Court concluded that there had been a violation of Article 6 § 1 of the Convention.

Article 13 in conjunction with Articles 3 and 5 § 1

In the light of those conclusions and of its previous findings, the Court did not consider it necessary to examine separately the complaints under Article 13 read in conjunction with Articles 3 and 5 § 1 of the Convention.

Article 34

As the Court had already stressed on several occasions, all governments should organise their prison systems in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties. The Court considered therefore that it was incumbent on the Italian Government, in the absence of a place in an REMS, to find an appropriate alternative, as in fact explicitly stated by the Court [in its interim measure issued under Rule 39]. The Court therefore could not consider the unavailability of REMS as valid justification for the delay in the enforcement of the interim measure which it had indicated.

While the Court considered that some delay in enforcing the interim measure in the present case would have been acceptable in the light of the exceptional lockdown situation in Italy in March 2020, a delay of thirty-five days was nevertheless excessive. It thus found that the Italian authorities had failed to honour their obligations under Article 34.

There had therefore been a violation of Article 34 of the Convention.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 36,400 euros (EUR) in respect of non-pecuniary damage and 10,000 EUR in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.