

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

FIRST SECTION

CASE OF LOMBARDI v. ITALY

(Application no. 80288/13)

JUDGMENT

STRASBOURG

3 October 2024

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



In the case of Lombardi v. Italy,

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

Péter Paczolay*, President*,
Gilberto Felici,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 80288/13) 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 2 December 2013 by an Italian national, Mr Carlo Lombardi ("the applicant"), born in 1959 and residing in Imola, who was represented by Mr C.C. Gervasi, a lawyer practising in Galatina;

the decision to give notice of the complaint raised under Article 3 of the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia, and to declare inadmissible the remainder of the application;

the decision to reject the Government's objection to the examination of the application by a Committee;

the parties' observations;

Having deliberated in private on 12 September 2024,

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 and the failure to provide him with adequate medical treatment in prison.

2. The applicant received various criminal convictions for serious crimes and was sentenced to a cumulative penalty of 30 years' imprisonment. From 1987, some periods of detention alternated with periods during which he was released on health grounds.

3. The applicant suffered from orthopaedic and neurological illnesses, consisting mainly of recurrent spinal disc herniation, spinal arthritis and acute lumbar pain, which resulted in impaired mobility. Before the events that led to the present application, the applicant had undergone three surgical interventions and, after the last one in 2006, he had been prescribed physiotherapy.

I. THE FIRST PERIOD OF DETENTION

4. On 29 September 2008 the applicant entered Ferrara Prison. The available medical reports indicate that he received medication and that physiotherapy was suggested.

5. On 29 April 2009 the applicant filed a request for the deferral of his penalty on health grounds to the Bologna Supervisory Court (*tribunale di sorveglianza*).

6. The Supervisory Court appointed an expert who, by a report of 8 June 2010, indicated that the applicant suffered from spinal stenosis and herniations, persistent lumbar pain and arthrosis; although on arrival at the prison he could walk with sufficient autonomy, he now had to use a wheelchair and needed support to stand. The expert therefore suggested a period of intensive physiotherapy and rehabilitation in water, followed by maintenance treatment. The conclusions of the report read as follows:

> "the mere detention, entailing an impossibility to obtain the described conservative treatment in that context, leads to the worsening of the applicant's state of health (...). It is advisable that, at least for an initial period, the applicant be hospitalised in a rehabilitation facility with a pool, where he could benefit from an intensive rehabilitation programme".

7. In the meantime, on 28 June 2010 the applicant had been transferred to Turin Prison in order to have access to better treatment, and some physiotherapy sessions were scheduled. On this basis, on 13 January 2011 the Bologna Court rejected the applicant's request.

8. On 17 January 2011, the applicant filed a new request for house detention to the Turin Supervisory Court. By a decision of 4 May 2011, the Turin Court noted that physiotherapy sessions were insufficient and the applicant's condition had deteriorated. Considering that he needed constant physiotherapy which could not be ensured in prison, the Supervisory Court therefore granted house detention for a period of six months.

II. THE SECOND PERIOD OF DETENTION

9. During the period of house detention, the applicant underwent intensive physiotherapy, which proved beneficial: he recovered the ability to walk with crutches and his overall mobility improved. Medical reports indicated that, in order to maintain these results, he should continue physiotherapy twice a week.

10. Based on these statements, as well as on a private expert report indicating the need for constant physiotherapy, the applicant asked for an extension of house detention. By decision of 27 October 2011, the Bologna Supervisory Court rejected his request, noting that the applicant's condition had improved and that maintenance treatment, unlike intensive treatment, could be provided in prison.

11. On 4 November 2011 the applicant returned to prison, initially in Bologna and soon after in Turin.

12. On 12 March 2012 the applicant filed a new request for house detention. He relied mainly on a new private expert report, according to which he needed almost daily physiotherapy which, despite the efforts of the prison personnel, could not be provided in prison.

13. On 7 June 2012 the Turin Supervisory Court rejected his request. It noted, in particular, that the previous period of house detention had been necessary to interrupt the progressive deterioration of the applicant's health; however, his condition was no longer so severe and he was undergoing physiotherapy sessions in prison.

14. The applicant appealed, arguing that the Turin Court had not relied on any medical evidence, that his condition had worsened and he was again using a wheelchair, and that he had only had ten sessions of physiotherapy since his return to prison. On 2 October 2013 the Court of Cassation, considering that the Turin Court's decision had been duly reasoned, rejected the appeal.

15. In the meantime, the applicant underwent orthopaedic and neurosurgical examinations. A report dated 26 November 2012 noted that the physiotherapy sessions had not led to significant improvement. Subsequent reports of 22 March and 6 November 2013 indicated the need for further physiotherapy.

16. On 15 October 2013 the applicant filed another request for house detention. On 20 November 2013 the Turin Court – relying on the above-mentioned reports of March and November 2013 – noted that the applicant's condition had worsened and that he could not access the necessary treatment. It stated, in particular, that:

> "the applicant's orthopaedic and neurological conditions require treatment that cannot be guaranteed in prison, where he only receives drug therapy for pain management and where living conditions are particularly afflicting due to his impaired mobility."

17. The Turin Court therefore granted the applicant house detention for a period of one year, and he was released on 22 November 2013.

III. THE THIRD PERIOD OF DETENTION

18. The applicant's house detention was subsequently extended several times, until 30 November 2018. During the following years, he underwent surgical interventions and his mobility improved. Nevertheless, according to a report dated 2 August 2018, his health problems were progressive and disabling and required periodic physiotherapy.

19. On 20 November 2018 the Bologna Supervisory Court rejected the applicant's request for another extension of house detention. It noted, in particular, that the applicant's condition had improved and he could walk without aid, and that maintenance treatment could be provided in prison. On

30 November 2018 the applicant entered Bologna Prison and, soon after, he was transferred to Ferrara.

20. Although the parties disagree on the exact date, the applicant was released at the end of 2020.

IV. COMPLAINTS

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

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

22. The Court considers that the periods of detention outlined above call for a separate assessment of admissibility.

23. As regards the period from 29 September 2008 to 4 May 2011, the Court considers it necessary to examine, of its own motion, compliance with the six-month rule (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 138, 20 March 2018)[1]. It reiterates, in this regard, that complaints about conditions of detention must be filed within six months of the end of the situation complained of or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Shirkhanyan v. Armenia*, no. 54547/16, § 118, 22 February 2022, and *Ulemek v. Croatia*, no. 21613/16, § 92, 31 October 2019).

24. In the present case, the Court considers that the applicant's release on 4 May 2011 and the subsequent six months that he spent outside prison (see paragraph 8 above) put an end to his continued detention. Insofar as the applicant argued that the six-month time-limit should run from the decision of the Court of Cassation of 2 October 2013, the Court notes that those proceedings did not concern the period of detention in question, but the subsequent request filed on 12 March 2012 (see paragraphs 12-14 above).

25. It follows that, in respect of the period of detention from 29 September 2008 to 4 May 2011, the complaint was introduced out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

26. As regards the period of detention from 4 November 2011 to 22 November 2013, the complaint is not manifestly ill-founded within the

[1] The time-limit set by Article 35 § 1 of the Convention has been reduced to four months as of 1 February 2022 in accordance with Protocol No. 15 to the Convention. Nevertheless, the six-month time-limit remains applicable in the present case.

meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds, and must therefore be declared admissible.

27. Finally, as regards the period of detention from 30 November 2018 until the end of 2020, the Court notes that the applicant complained of it for the first time in his observations of 10 March 2020.

28. In the Court's view, this new complaint does not concern factual developments with respect to a continuing situation and is not an elaboration of the applicant's original complaint (see, for instance, *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 97, 20 September 2018). While there is nothing to prevent an applicant from raising a new complaint in the course of the proceedings before the Court, such a complaint must, like any other, comply with the admissibility requirements (see *Radomilja and Others*, cited above, § 135).

29. The Court notes that the applicant did not inform it of his return to prison in 2018 but incidentally complained that, as of 2020, the lack of adequate treatment persisted and that, in particular, physiotherapy was unavailable in Ferrara Prison. He did not provide any updated description of his health problems or medical needs and did not submit any medical documents concerning that period nor explain his failure to do so. Finally, there is no indication that during that period he asked the prison authorities for additional treatment or that he raised any complaint before the domestic courts. In such circumstances, the Court finds that the complaint concerning the period of detention from 30 November 2018 until 2020 is not sufficiently substantiated and must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

30. The Court will therefore confine its examination on the merits to the period of detention from 4 November 2011 to 22 November 2013.

B. Merits

31. The general principles concerning the obligation to preserve the health and well-being of prisoners, in particular by providing the required medical care, have been summarised in *Rooman v. Belgium* ([GC], no. 18052/11, §§ 144-48, 31 January 2019).

32. The Court notes that, in the present case, it is undisputed that the applicant suffered from orthopaedic and neurological diseases. Additionally, prior medical reports and judicial decisions had indicated the need for regular, if not constant, physiotherapy, to the point that a period of house detention had been considered necessary (see paragraphs 4, 6 and 8 above). The reports issued before the applicant's return to prison in November 2011 specifically indicated that he needed maintenance physiotherapy twice a week (see paragraph 9 above). Also, following his return to prison, medical reports reiterated the need for physiotherapy (see paragraph 15 above) and the domestic courts did not question these statements when examining the

applicant's request for house detention lodged in March 2012, merely considering that the necessary treatment could be provided in prison.

33. Despite these unanimous indications, during the two years in which he remained in prison, it appears that the applicant had access only to ten sessions of physiotherapy (see paragraph 14 above). Such treatment was considered insufficient by the Turin Supervisory Court, following the applicant's second request for house detention in October 2013, which noted that the applicant's condition had deteriorated in the previous years and that the necessary physiotherapy could not be provided in prison (see paragraph 15 above).

34. As to the Government's arguments, they mostly concern events that took place before 2010 or after 2018. In respect of the period of detention from 4 November 2011 to 22 November 2013, the Government did not provide any evidence showing that the applicant had access to regular physiotherapy, as made necessary by his condition.

35. The Court considers that these considerations suffice to conclude that the applicant did not receive adequate care while in prison. There has therefore been a breach of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant claimed an overall amount of 850,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and costs and expenses.

37. The Court notes that the applicant's claims for pecuniary damages and for costs and expenses are not supported by any relevant documents and it therefore rejects his claims in this respect. However, it awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible in respect of the period of detention from 4 November 2011 to 22 November 2013 and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Liv Tigerstedt Deputy Registrar	Péter Paczolay President