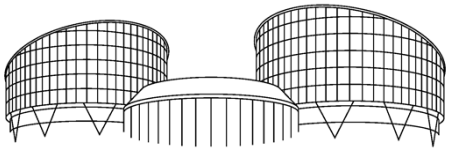

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RIELA v. ITALY

(Application no. 17378/20)

JUDGMENT

STRASBOURG

9 November 2023

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

In the case of Riela v. Italy,

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

Péter Paczolay*, President*,
Ivana Jelić,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 17378/20) 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 28 April 2020 by an Italian national, Mr Francesco Riela ("the applicant"), who was born in 1956 and is detained in Naples, and who was represented by Mr R. Ghini, a lawyer practising in Modena, and Ms P. Di Credico, a lawyer practising in Reggio Emilia;

the decision to give notice of the complaints raised under Articles 2 and 3 of the Convention to the Italian Government ("the Government"), represented by their Agent, Mr L. D'Ascia;

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

the parties' observations;

Having deliberated in private on 17 October 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's continued detention in prison despite his multiple diseases and the risk of contracting COVID-19, as well as the medical care provided to him during detention.

2. The applicant, aged 67, is serving a life sentence in Naples Secondigliano Prison, following his conviction for membership of a Mafia-type criminal organisation, murder and unlawful possession of arms. He has been detained since 26 June 1998.

3. The applicant suffers from several diseases, including a severe obstructive sleep apnoea syndrome, obesity, type 2 diabetes and hypertensive cardiopathy.

4. On 31 December 2018 he asked the Naples Court responsible for the execution of sentences (*tribunale di sorveglianza* – hereinafter "the Naples Court") to either suspend the execution of his prison sentence or replace it with detention under house arrest. He had two expert reports produced on his behalf, which concluded that his state of health was incompatible with detention and reported significant delays in the provision of a CPAP machine (a ventilator used in the treatment of sleep apnoea), as well as in other examinations and treatments.

5. On 10 April 2019 the Naples Court rejected the applicant's request; however, that decision was subsequently quashed by the Court of Cassation and the case was sent back to the lower court.

6. On 17 April 2020 the applicant filed an urgent request with the Naples judge responsible for the execution of sentences (*magistrato di sorveglianza*) on the basis of the risks posed by COVID-19. No information has been provided on the outcome of those proceedings.

7. On 27 April 2020 the applicant requested the Court to indicate interim measures under Rule 39 of the Rules of Court. The Court (the duty judge) asked the Government to provide a report prepared by an independent medical expert.

8. The Government submitted a report drafted by D.F., an expert appointed by the regional healthcare administration. The report, dated 29 June 2020, stated that the applicant's health was compatible with detention, his life was not in danger and his diseases were being adequately treated. Nevertheless, it identified certain shortcomings in his treatment which, though not life-threatening, were cause for concern and discomfort. In particular, the expert noted that since 2018, the applicant had been waiting for a CPAP ventilator, which he needed for his sleep apnoea; furthermore, endoscopic examinations for his polyposis and surgery for a fistula had been sought since June 2019 and had not yet taken place.

9. Meanwhile, prison medical reports stated that the applicant's conditions were stable and that he had access to the necessary treatment, whereas the expert reports produced on the applicant's behalf had emphasised that his state of health was incompatible with detention.

10. On 7 July 2020 the Court (the duty judge) rejected the applicant's request for interim measures.

11. On 22 July 2020, relying on the prison medical reports and on D.F.'s report, the Naples Court found that the applicant's state of health was compatible with detention in prison and rejected his request. Nevertheless, in order to address the shortcomings identified by D.F., it ordered the applicant's temporary hospitalisation. The subsequent appeal before the Court of Cassation was dismissed on 18 October 2021.

12. The applicant remained in the hospital until 3 September 2020, when he was discharged and returned to prison.

13. Following his return to prison, the applicant continued to complain of a lack of follow-up and treatment, with specific regard to the failure to calibrate the CPAP machine and submitted a new request for detention under house arrest with the Naples Court, as well as a new Rule 39 request. The latter was rejected by the Court (the duty judge) on 18 December 2020.

14. On 11 May 2021 the applicant received the first dose of the vaccine against COVID-19.

15. On 16 November 2022 the Naples Court rejected the applicant's new request for detention under house arrest, confirming that he could be

adequately treated in prison. At the same time, it ordered the prison administration to schedule a pneumological examination and ensure the calibration of the CPAP machine.

16. According to a report issued on 9 December 2022 at the time of the pneumological examination, the applicant did not tolerate, and thus had not used, the CPAP machine provided to him in 2021. The hospital asked to be given further information and to undertake further examinations, with a view to resuming the treatment of the applicant's respiratory problems.

17. The applicant complained, under Articles 2 and 3 of the Convention, that he was not receiving adequate treatment for his diseases and had been exposed to a significant risk to his life and health, in particular with regard to COVID-19 and to the delays in carrying out specialist examinations and providing him with a functioning CPAP device. He further complained of the lack of a prompt and independent medical assessment.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

18. The relevant principles concerning the applicability of Article 2 in cases where the applicant is still alive have recently been summarised and applied in a COVID-19 related case in *Fenech v. Malta* (no. 19090/20, §§ 103-07, 1 March 2022).

19. As to the potential risk posed, in general, by the applicant's diseases, the Court notes that according to D.F.'s report, they were not life-threatening (see paragraph 8 above). Those conclusions are in line with all prison medical reports and the applicant has not provided any concrete evidence to the contrary.

20. As to the risks related to COVID-19, the Court observes that the Italian authorities adopted urgent measures for the reduction of the prison population and specific preventive measures for prisons, such as a quarantine period for new arrivals, the isolation of symptomatic prisoners, the provision of protective equipment to prison personnel and the provision of masks and sanitising gel to prisoners. As to the applicant's specific situation, the Court takes note of his diseases which, as recognised by the prison administration in its note of 30 April 2020, exposed him to a significant risk of complications in the event of contracting COVID-19. However, it also notes that, due to his vulnerable health situation, the applicant was placed in a single cell and that he has not been infected. Moreover, the COVID-19 vaccination was made available to him on 11 May 2021 (see paragraph 14 above).

21. In view of the above, the Court concludes that the applicant has not provided sufficient evidence that the domestic authorities have failed to protect him from the risk of contracting COVID-19 and that, as a consequence, he was exposed to a serious risk of death.

22. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

23. The Government contested the admissibility of the application on the grounds of non-exhaustion of domestic remedies, pointing out that at the time it had been lodged, domestic proceedings were ongoing. Furthermore, they argued that the applicant should have brought an action for damages, under Articles 2043 and 2051 of the Italian Civil Code.

24. As to the first argument, the Court reiterates that an application cannot be declared inadmissible on the ground of non-exhaustion if the last stage of the domestic remedies is reached before the Court determines the issue of admissibility (see *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018). Given that the domestic proceedings ended following the decision of the Court of Cassation on 18 October 2021 (see paragraph 11 above), the Court dismisses the Government's objection.

25. As regards the remedy provided by Article 2043 of the Italian Civil Code, the Court has already found that it was ineffective, as the Government had failed to prove that it had been used successfully in similar circumstances (see, *mutatis mutandis*, *Sy v. Italy*, no. 11791/20, § 147, 24 January 2022); in the absence of concrete evidence to the contrary, the Court sees no reason to depart from that conclusion. As to Article 2051 of the Italian Civil Code, the Government has not provided any explanation as to why it should have been applicable in the present case.

26. Therefore, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

27. As the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, it must be declared admissible.

B. Merits

28. 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).

29. As to the first aspect, although the applicant suffered from several health issues, other than some generic statements contained in the expert reports produced on the applicant's behalf, there is no evidence that the applicant's diseases have worsened as a result of the conditions of his detention.

30. Furthermore, according to D.F.'s report, the applicant's medical conditions were compatible with his detention in prison (see paragraph 8 above).

31. In this connection, the Court is not convinced by the applicant's arguments as to D.F.'s lack of independence. The mere fact that an expert is employed in a public medical institution does not in itself justify a fear that the expert will be unable to act neutrally and impartially (see, in the context of Article 6 of the Convention, *Hamzagić v. Croatia*, no. 68437/13, § 46, 9 December 2021, and *Letinčić v. Croatia*, no. 7183/11, § 62, 3 May 2016).

32. In the present case, the Court notes that D.F. had no personal or professional link with the prison administration and, contrary to the applicant's allegations, the prison governor had merely requested the health administration to appoint an expert without being involved in his selection. Furthermore, although D.F. is employed by the regional health administration – the same entity in charge of providing medical treatment in the relevant prison – there is no indication that he had any link, professional or otherwise, with the medical personnel operating in Naples Secondigliano Prison.

33. Therefore, in the absence of any concrete evidence to the contrary, the Court sees no reason to call into question D.F.'s conclusions on the compatibility of the applicant's state of health with his continued detention.

34. As to the quality of care provided, the applicant complained of certain delays in providing treatment and performing surgery and, in particular, of the failure to provide him with a CPAP machine in a timely manner and the subsequent failure to ensure its calibration and undertake follow-up examinations.

35. The Court notes that both D.F.'s report and the most recent hospital report indicate that, between 2018 and 2021, there were significant delays in providing the applicant with a CPAP machine and with certain examinations and treatment, in particular endoscopic examinations for his polyposis and surgery on a fistula (see paragraphs 8 and 16 above). Furthermore, the applicant complained of further delays in the calibration of the CPAP machine and follow-up examinations, circumstances which the Government did not specifically contest.

36. Lastly, taking into account the duration of the delays and the fact that they concerned the treatment of diseases which, though not life-threatening, were nonetheless numerous and of a certain severity (see paragraphs 3 and 8

above), the Court does not share the Government's view that they amounted to a mere inconvenience.

37. Therefore, the Court considers that the applicant did not receive timely and adequate medical care whilst in detention. Accordingly, there has been a breach of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and 5,400 euros (EUR) in respect of costs and expenses.

39. The Government argued that the applicant's claims were unsubstantiated and excessive.

40. The Court awards the applicant EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

41. Having regard to the documents in its possession and noting that it has found a violation only in respect of Article 3 of the Convention, the Court considers it reasonable to award EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint raised under Article 3 of the Convention admissible 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, the following amounts:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three 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;

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

Done in English, and notified in writing on 9 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President