FIRST SECTION

DECISION

Application no. 17222/20
Salvatore FAIA
against Italy

The European Court of Human Rights (First Section), sitting on 29 August 2023 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. 17222/20) 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 17 April 2020 by an Italian national, Mr Salvatore Faia, who was born in 1959 and is detained in Parma (“the applicant”), and who was represented by Mr V. Vianello Accorretti, a lawyer practising in Rome;

the decision to give notice of the complaints raised under Article 3 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 to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

.  The application concerns the alleged incompatibility of the applicant’s state of health and disability, particularly in light of his complete blindness, with detention in the Parma Prison, as well as the adequacy of the measures adopted to protect him from the risk of contracting COVID-19.

.  The applicant, born in 1959, is currently serving a sentence of life imprisonment for the commission of several offences, and has been detained in Parma Prison since 2010. He suffers from various health problems including ischaemic heart disease; dyslipidaemia; type 2 diabetes; retinopathy, which has led to his complete blindness; anxiety; and depression. He has limited mobility and uses either crutches or a wheelchair.

.  On an unspecified date, the applicant asked that his detention in prison be replaced with detention under house arrest on the grounds of his health.

.  On 27 March 2018 the Bologna Court responsible for the execution of sentences (*tribunale di sorveglianza* – hereinafter “the Bologna Court”), relying on medical reports drafted by the prison medical service, noted that the applicant was undergoing various examinations and forms of treatment, his medical conditions were stable, he was assisted by another inmate, and Parma Prison was equipped for housing detainees who required personal assistance.

.  In a judgment dated 29 January 2019, the Court of Cassation quashed that decision and asked for a more comprehensive assessment of the applicant’s state of health.

.  The Bologna Court re-examined the case mainly on the basis of a medical report issued by the prison health service on 19 September 2019, according to which the applicant’s health was regularly monitored but, as a result of his total blindness, he needed tactile and auditory aids which were unavailable at Parma Prison. On 12 November 2019, in the light of those considerations, the court concluded that Parma Prison was unsuitable for the applicant but held that it could not order his transfer without acquiring further information on his dangerousness, and thus adjourned the examination of the case.

.  On 16 March 2020 the applicant filed an urgent request for detention under house arrest with the Reggio Emilia judge responsible for the execution of sentences (*magistrato di sorveglianza*), arguing that COVID‑19 posed significant risks for a detainee suffering from multiple diseases and that Parma Prison was unsuitable for housing a blind prisoner. By a decision of 16 April 2020, the judge rejected the request and transferred the case to the Bologna Court.

8.  On 24 April 2020 the applicant requested the Court, under Rule 39 of the Rules of Court, to order the domestic authorities to replace his detention in prison with an alternative measure. The interim measure was refused on 25 May 2020.

9.  On 29 May 2020, following a request by the prison administration, Mr G.S., a representative of the Italian Association for the Blind and the Visually Impaired (*Unione italiana dei Ciechi e degli Ipovedenti*) and himself blind, visited Parma Prison. He sent an email that same day stating that the applicant’s cell was small and easy to move around in, barrier-free and equipped with a toilet, thus allowing a blind person to move around autonomously. He further stated that tactile and auditory aids were usually necessary in large open spaces and not for the more confined spaces in a prison, particularly if the detainee moved around with the help of another inmate because of other mobility impairments.

10.  In a decision of 30 July 2020, in the course of the second set of proceedings, the Bologna Court noted that, according to the most recent medical reports, the applicant’s health was stable, and he was adequately monitored. As to his blindness, it took into account Mr G.S.’s statement and concluded that, since the applicant was able to rely on the assistance of an inmate, he could remain in Parma Prison. Finally, as to the risk of contracting COVID-19, the court noted that the applicant had been placed in a single cell, prevention protocols were in place and there were no cases of infection in Parma Prison at that time. It rejected the applicant’s request on those grounds.

11.  On 17 August 2021 the prison health service issued an updated medical report, which made reference to Mr G.S.’s statement with regard to the applicant’s blindness and noted, furthermore, that his various conditions were stable, although he was constantly exposed to a risk of cardiac events. The report also stated that the applicant’s COVID-19 tests had always been negative and that he had received two vaccination doses, on 29 April and 27 May 2021.

12.  On 29 December 2021, after several postponements, a decision was given in the first set of proceedings. The Bologna Court referred to the latest medical report and to Mr G.S.’s statement and, noting that the applicant’s health problems could be adequately treated in Parma Prison, rejected his request to be detained under house arrest. At the same time, the court noted the absence of specific information on the assistance provided to the applicant and ordered the prison to ensure that he was assisted by another inmate for all his daily tasks.

13.  The applicant complained that his detention was in breach of Article 3 of the Convention for two reasons: firstly, the national authorities were not sufficiently protecting him from the risk of contracting COVID-19; and secondly, the facilities in Parma Prison were inadequate for housing a blind detainee.

1. THE COURT’S ASSESSMENT

14.  The Court considers that it is unnecessary to examine the preliminary objections raised by the Government, since the application is in any event inadmissible for the following reasons.

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

.  In particular, the Court has recognised that Article 3 imposes on the State a positive obligation to put in place effective methods for the prevention and detection of contagious diseases in prisons (see *Fenech v. Malta*, no. 19090/20, § 127, 1 March 2022, and *Fűlöp v. Romania*, no. 18999/04, § 38, 24 July 2012).

.  Furthermore, the Court has considered that where the authorities decide to place and keep a disabled person in detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his or her disability (see *Helhal v. France*, no. 10401/12, § 50, 19 February 2015, and *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012). As regards the needs of visually impaired persons, the Court has examined the suitability of prison facilities in the light of the detainee’s capacity to move around independently, to take care of himself or herself and to take part in the various social and educational activities on offer, of the characteristics of the premises, and of the provision of adequate assistance and of devices such as a walking stick (see *Laniauskas v. Lithuania*, no. 48309/19, §§ 52-53, 29 March 2022, and *Butrin v. Russia*, no. 16179/14, §§ 60-66, 22 March 2016).

18.  In the present case, the Court notes at the outset that the applicant did not complain either of inadequate medical care for his health problems or of insufficient assistance in his daily needs. The Court will therefore confine its examination to the questions raised by the applicant: firstly, the allegedly insufficient protection from the risks posed by the COVID‑19 pandemic and, secondly, his continued detention in Parma Prison despite his blindness.

.  As to the first point, in *Fenech* (cited above, §§ 129-40) the Court concluded that the authorities had put in place adequate measures to prevent and limit the spread of the virus having regard to: the enactment of a contingency plan in collaboration with the national health authorities; the suspension of visits and the organisation of staff rotation in weekly shifts; the provision of protective equipment and the regular disinfection of spaces; the possibility of physical distancing and of access to open air; the immediate isolation of symptomatic prisoners; a period of quarantine for new arrivals; and the timely vaccination of inmates who so wished.

.  In the present case, the Court observes that the Italian authorities adopted urgent measures for the reduction of the prison population by extending the possibility of applying for detention under house arrest. Although this measure did not apply to the applicant, it must nonetheless be taken into consideration in the assessment of the overall strategy adopted for the protection of detainees against the risk of contracting COVID-19. Furthermore, according to the information provided by the Government, Parma Prison followed a protocol for the prevention of COVID-19 which provided for a quarantine period for new arrivals, the isolation of symptomatic prisoners, the provision of protective equipment to all prison personnel, and the provision of masks and sanitising gel to prisoners. As to the applicant’s specific situation, he was placed in a single cell, his tests have always been negative and he received two vaccination doses on 29 April and 27 May 2021 (see paragraph 11 above).

.  The Court further notes that the applicant has not contested the above circumstances, nor has he explained why those measures are insufficient.

.  Therefore, the Court considers that the national authorities have adopted sufficient measures to protect the applicant from the risks posed by the COVID-19 pandemic.

23.  As regards the second issue raised by the applicant, the Court observes that the report issued by the prison health service on 19 September 2019 and the decision of the Bologna Court of 12 November 2019 state that Parma Prison was unsuitable for a blind detainee, owing to the absence of tactile and auditory aids (see paragraph 6 above). The Court also notes that the national authorities invited Mr G.S. to assess the adequacy of the prison; on that occasion, Mr G.S. stated that the applicant’s cell was appropriate to the needs of a blind person and that, in the light of his specific circumstances and in particular his mobility impairments, tactile and auditory aids were unnecessary (see paragraph 9 above). For those reasons, the national courts dismissed the applicant’s requests (see paragraphs 10 and 12 above).

24.  The Court considers that, as pointed out by the prison health service, the inability of a blind detainee to move around independently because of the characteristics of the prison premises and the absence of the necessary tactile and auditory aids could in principle raise an issue under Article 3 of the Convention (see *Butrin*, cited above, § 61). At the same time, the Court notes that, with the benefit of Mr G.S.’s assessment, the national authorities examined the specific situation of the applicant and concluded that he was able to move around his cell independently and could rely on other inmates’ assistance for out-of-cell activities, thus rendering tactile and auditory aids unnecessary in his case (see paragraphs 9 and 10 above). Although the Bologna Court expressed some doubts as to the assistance provided to the applicant (see paragraph 12 above), the Court observes that the applicant neither complained of a lack of assistance nor provided any information in that respect (see paragraph 18 above).

25.  The Court therefore considers that the national authorities took into consideration the specific needs deriving from the applicant’s blindness (see *Laniauskas*, cited above, § 53).

.  Lastly, the Court is not convinced by the applicant’s objections to the use of Mr G.S.’s statement. As to the allegation that that statement did not concern the applicant but another detainee, the Court notes that the email refers to a blind person with mobility impairments detained in Parma Prison, which corresponds to the applicant’s situation; additionally, Mr G.S.’s statement was mentioned in the applicant’s clinical journal and in the domestic decisions rendered in respect of him. The Court therefore considers that the Government have sufficiently demonstrated that Mr G.S.’s statement relates to the applicant’s situation.

27.  As to the applicant’s arguments concerning the limited value of that statement compared with the medical reports, the Court notes that the issue at stake does not concern the medical treatment of the applicant’s diseases but the practical needs of a blind person, a matter on which Mr G.S. appears to be sufficiently qualified. Furthermore, the applicant did not explain why that statement was incorrect or why his blindness rendered his detention in Parma Prison incompatible with the requirements of Article 3.

28.  It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 21 September 2023.

 Liv Tigerstedt Krzysztof Wojtyczek
 Deputy Registrar President