



Giorgini v. Italy

Application No. 20034/11

Country: Italy

Region: Europe

Year: 2015

Court: The European Court of Human Rights

Health Topics: Aging, Chronic and noncommunicable diseases, Hospitals, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

Ms. Ebe Gigliola Giorgini, the applicant, is an Italian national who was born in 1933. In 2008, the applicant was convicted by the District Court for a number of different offenses, including criminal association, aggravated fraud, and ill-treatment. In 2010, the applicant underwent a second set of criminal proceedings. On June 9, 2010, the Pistoia preliminary investigations judge ordered that the applicant be placed in pre-trial detention on suspicion that she had committed further offenses including criminal association, unauthorized practice of medicine, and fraud. Based on the strong evidence against her, the seriousness of the suspected offenses, and the significant risk that the applicant might reoffend, she was transferred to the Sollicciano correctional facility for pre-trial detention.

On July 21, 2010, the applicant lodged her first request for modification of the detention order with the Pistoia preliminary investigations judge. The applicant sought a more lenient custodial measure due to her advanced age and allegedly critical state of health. The judge ordered that an independent medical expert examine the applicant. The medical expert stated that the applicant's health was compatible with detention and the judge confirmed that the applicant would remain in custody. The applicant appealed the decision with the Florence District Court. The Florence District Court dismissed the applicant's appeal.

On May 4, 2011, the applicant submitted a second request with the Pistoia District Court seeking the replacement of the applicant's detention with house arrest. After ordering a new medical examination, the court dismissed the request for house arrest but ordered that the applicant be transferred to a correctional hospital in Pisa where her health could be monitored based on the recommendation of the medical expert. The applicant appealed, reiterating that her age and state of health were incompatible with any form of detention, even in a correctional hospital. On June 20, 2011, the Florence District Court placed the applicant under house arrest.

On June 4, 2012, the public prosecutor requested that the house arrest be substituted with detention on remand since the applicant had breached the terms of its condition. The Pistoia District Court found that the applicant had violated the terms of the house arrest, and the situation was conducive to her re-establishing her criminal network. The court, relying on a new medical expert opinion, ordered that the applicant be transferred to a correctional hospital in Pisa. On December 18, 2012, the applicant submitted a request to the Florence Court of appeal, seeking the substitution of the detention on remand with house arrest. The court granted the request and the applicant was placed on house arrest.

The applicant complained that the combination of her advanced age and the state of her health made her detention incompatible with Article 3 of the Convention.

The following are the relevant provisions:

Article 274 of the Italian Code of Criminal Procedure provides that a person may be detained pending trial:

â€œ(a) if detention is demanded by special and unavoidable requirements of the inquiry into the facts under investigation concerning a genuine and present danger for the production or authenticity of evidence and based on matters of fact which must, on pain of nullity, be expressly set out in the decision, which the judicial authority may take of its own motion...;

(b) if the accused has absconded or there is a real danger of his absconding, provided that the court considers that, if convicted, he will be liable to a prison sentence of more than two years;

(c) where, given the specific nature and circumstances of the offence and having regard to the character of the suspect or the accused as shown by his conduct, acts or criminal record, there is a genuine risk that he will commit a serious offence involving the use of weapons or other violent means against the person or an offence against the constitutional order or an offence relating to organized crime or a further offence of the same kind as that of which he is suspected or accused...â€•

Under Article 275 Â§ 4, â€œindividuals over the age of seventy may not be detained pending trial unless exceptional circumstances warrant the imposition of such a measure.â€•

Article 3 of the Convention: â€œNo one shall be subjected to torture or to inhuman or degrading treatment or punishment.â€•

Decision and Reasoning

The Court dismissed the application finding that it is manifestly ill founded. According to the Courtâ€™s well-established case law, ill-treatment must meet a minimum level of severity for it to fall within the scope of Article 3. The assessment of this minimum level of severity depends on all of the circumstances of the case. Circumstances include: duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and state of health of the victim. The Court accepts that â€œthe applicantâ€™s advanced age, coupled with the presence of certain medical conditions, might have made her more vulnerable than the average detainee.â€• However, the Court found that the applicant was not subjected to ill-treatment that attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.

The Court further notes that the applicant did not appear to identify any particular occasions on which she was denied medical treatment that could be said to reach a minimum level of ill-treatment. Instead, the applicant only stated that, overall, detention was incompatible with her advanced age and state of health, and thus amounted to ill-treatment. The Court finds that this does not amount to a minimum level of ill-treatment required by Article 3.

The Court also notes that the district courts adequately assessed all medical evidence submitted by the independent medical experts when making their decisions regarding the detention of the applicant. Appropriate steps were also followed to make sure the applicant received adequate treatment. For example, when the medical expert in 2012 recommended that the applicantâ€™s health be monitored following her remand to the correctional hospital, her health was indeed monitored.

Decision Excerpts

â€œThere is no express prohibition in the Convention against the detention in prison of persons who have attained a certain age. However, the Court has already had the opportunity to note that, under certain circumstances, the detention of an elderly person over a lengthy period might raise an issue under Article 3. Nonetheless, regard is to be had to the particular circumstances of each specific case.â€• (Para 49)

â€œThere are at least three specific elements to be considered in relation to the compatibility of an applicantâ€™s health with his or her stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant.â€• (Para 50)