

Restraint of psychiatric patient for eight days violated Convention

The case of [Lavorgna v. Italy](#) (application no. 8436/21) concerned the treatment given to Mr Lavorgna while in confinement in a psychiatric ward. He had been strapped down and given sedatives owing to reported aggressive actions.

In today's **Chamber judgment**¹ the European Court of Human Rights held, unanimous, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as regards both the treatment of the applicant and the ensuing investigation.

The Court found in particular that the Government had failed to demonstrate why such a long period of restraining Mr Lavorgna had been necessary and had not addressed his arguments that the restraint had been "precautionary" rather than a "last resort".

Principal facts

The applicant, Matteo Lavorgna, is an Italian national who was born in 1995 and lives in Segrate (Milan, Italy). He was diagnosed as suffering from a psychotic disorder not otherwise specified (*psicosi non altrimenti specificata*).

On 7 October 2014 a compulsory-treatment order was issued in respect of Mr Lavorgna, who had been receiving psychiatric treatment. He was treated in Santa Maria delle Stelle Hospital in Melzo. The reasons given were his state of psychomotor agitation, aggressiveness towards others, and his overall diagnosis. That order was renewed.

On 14 October 2014 two psychiatrists lodged an urgent notification of social danger (*segnalazione urgente di pericolosità sociale*) in respect of Mr Lavorgna. They stated that he had attacked his parents and a doctor, but had a lack of awareness of his actions, and highlighted that he had had to be constantly restrained. They called for urgent measures from the authorities.

Mr Lavorgna was kept under pharmacological sedation until his transfer to another hospital on 27 October 2014.

In November 2015 the applicant lodged a criminal complaint against two doctors of the Melzo hospital, alleging ill-treatment, false imprisonment and criminal coercion on account of, among other things, the alleged lack of justification for and long period – almost eight days – of his being strapped down, and that the treatment had been administered in an inhuman and degrading manner, causing him intense physical and psychological suffering. The treatment, he argued, had been disproportionate to his situation. He emphasised the fact that two doctors had admitted not being competent or structurally equipped to look after him during his compulsory hospitalisation. He argued that his being strapped down in the expectation of "repentance" for his actions amounted to "pedagogical" use of restraint, a use condemned by the Committee for the Prevention of Torture.

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.

In February 2016 an investigation was opened. The public prosecutor at the Milan District Court appointed a medical expert to assess the situation. The ensuing report noted that the restraint measures had been carried out following a specific act of violence, but noted that the use of restraints had been unusually prolonged. In February 2019 the prosecutor applied to have the proceedings discontinued.

In July 2020, the Milan District Court preliminary investigations judge (*giudice per le indagini preliminari*) discontinued the proceedings. The judge cited “the doctors not [having] commit[ed] any errors of therapeutic practice, [and] having complied with the guidelines and protocols applicable to the specific case” and that Mr Lavorgna had been “carefully assessed daily by the medical staff, so there had been no negligence or superficiality”.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment), Mr Lavorgna complained of his psychiatric treatment. He also complained of an inadequate investigation in that connection.

The application was lodged with the European Court of Human Rights on 29 January 2021.

Garante nazionale dei diritti delle persone detenute o private della libertà personale, L'altro Diritto ODV, La Società della ragione ONLUS, and the Fondazione Franca e Franco Basaglia were given leave to intervene as third parties.

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

Ivana **Jelić** (Montenegro), *President*,
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Alain **Chablais** (Liechtenstein),

and also Ilse **Freiwirth**, *Section Registrar*.

Decision of the Court

Article 3

There was no dispute between the parties that Mr Lavorgna had been deprived of his liberty and had therefore been under the control and responsibility of the State during his committal to a psychiatric hospital. He had been strapped down in his bed with wrist and ankle straps for a total of almost eight days.

The Court was satisfied that the initial ordering of the restraint measure had been necessary to prevent Mr Lavorgna from harming himself or others. However, it reiterated that was for the State to show that the restraint was strictly necessary and to demonstrate convincingly that such a condition had been met. A “potential” danger would not suffice. It noted that the Italian Court of Cassation had banned the practice of “precautionary” restraint measures.

It also cited the Committee for the Prevention of Torture’s conclusion that any restraint of more than a few hours should be reviewed by a doctor at regular intervals. In this case, there had been significant periods with no reassessment according to Mr Lavorgna’s patient records.

As regards the investigation into Mr Lavorgna’s allegations, it had failed to address the issues around the prolongation for such a long period of the initial restraint measure, or to address his arguments

that his being strapped down had not been a “last resort”, especially given that the hospital protocols set out that other measures should be used first.

On the final day of Mr Lavorgna’s being strapped down, two doctors of the psychiatric service had requested the continuation of his care “in a more appropriate context” owing to what they had seen as a “social danger” that they had not been equipped to deal with. They stated that Mr Lavorgna’s continued restraint had been both problematic to manage and “ethically questionable”. The Court highlighted this as very concerning.

The long period of the restraint measure had not been shown to have been strictly necessary. It had exposed Mr Lavorgna to pain and suffering in violation of Article 3. The Court found, therefore, a **violation of Article 3 as regards his treatment** in hospital.

The Court decided that there was no need to examine Mr Lavorgna’s complaint concerning his pharmacological treatment, as it had already dealt with the main legal question raised by the case.

Regarding the investigation, the Court reiterated that the obligation to carry out an effective investigation into allegations of treatment infringing Article 3 suffered at the hands of State agents was well established in the Court’s case-law.

In this case, the Court noted that three years and four months had elapsed from the criminal complaint to the discontinuance application; that there was no evidence that either witness statements had been taken or other investigative steps carried out; there had been significant periods between the medical assessment and the discontinuance request; and the general timeframe had been overly long, which for the Court did not appear to be justified.

Furthermore, there had been an obligation on the investigating authorities to engage with Mr Lavorgna’s submissions, which they had failed to do.

The Court therefore found a **violation of Article 3 as regards the effectiveness of investigation** into the applicant’s allegations of ill-treatment.

Just satisfaction (Article 41)

The Court held that Italy was to pay Mr Lavorgna 41,600 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 in respect of costs and expenses.

The judgment is available only in English.

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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.