



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

FIRST SECTION

CASE OF M.A. v. ITALY

(Application no. 70583/17)

JUDGMENT

Art 3 (substantive) • Inhuman treatment • Placement of unaccompanied minor asylum-seeker, allegedly a victim of sexual abuse, for almost eight months, in adult reception centre not equipped to provide her with appropriate psychological assistance • National authorities' prolonged inaction regarding her situation and needs as a particularly vulnerable minor

STRASBOURG

31 August 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.A. v. Italy,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Lətif Hüseyinov,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 70583/17) 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”) by a Ghanaian national, Ms M.A. (“the applicant”), on 28 September 2017;

the decision to give notice to the Italian Government (“the Government”) of the complaints concerning Articles 3, 8 and 13 of the Convention;

the decision not to have the applicant’s name disclosed;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the organisation Defence for Children, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 4 July 2023,

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

INTRODUCTION

1. The case concerns the accommodation of the applicant, an unaccompanied minor migrant who alleged that she had been the victim of sexual abuse, in the Osvaldo Cappelletti adult reception centre in Como for almost eight months, and the alleged failure to implement the procedural guarantees set up for minor migrants in her case. The applicant relied on Articles 3, 8 and 13 of the Convention.

THE FACTS

2. The applicant was born on 16 November 1999 and lives in Serramazzoni (Modena). She was represented by Ms A. Brambilla, a lawyer practising in Milan. The Government were represented by their Agent, Mr Lorenzo D’Ascia.

3. The facts of the case may be summarised as follows.

I. THE APPLICANT'S ARRIVAL IN ITALY AND HER STAY IN CERTAIN RECEPTION CENTRES

4. The applicant, a Ghanaian national, reached Reggio Calabria by boat on 22 October 2016.

5. On arrival, she underwent a medical examination and was transferred to the former Port Authority building ("*ex Capitaneria di Porto*") in Reggio Calabria under the supervision of an official from the social services. The police notified the Juvenile Court and the guardianship judge (*giudice tutelare*) of her arrival.

6. Contrary to what was stated by the applicant in her initial version of the facts, namely that she had remained in the former Port Authority building for about three months, the Government explained in their submissions that on 27 October 2016 the Reggio Calabria local authority had decided to transfer the applicant to the Cereso Institute Santa Maria degli Angeli in Bagnara Calabria, a facility set up to accommodate minors.

7. In her submissions, the applicant's representative confirmed that the information provided by the Government was correct and explained that the information provided in the application form was the result of a communication problem between herself and her client.

8. The applicant was at that time being looked after under the supervision of a representative of one of the associations working on a minors' reception project at the Cereso Institute. The decision concerning her transfer was, however, not communicated to the public prosecutor's office of the Reggio Calabria Juvenile Court.

9. On 31 January 2017 the Juvenile Court opened proceedings to assess eligibility for adoption and instructed the social services to ensure that the applicant received assistance and psychological follow-up. It also appointed a provisional guardian, who was a lawyer specialised in children's rights.

10. On 6 February 2017 the applicant fled the Cereso Institute and reached the north of Italy.

11. On 10 February 2017 she arrived in Como, where she was accommodated in the Osvaldo Cappelletti adult reception centre ("the Centre").

12. The applicant expressed her wish to apply for international protection. An appointment set up at the police headquarters in order for her to file her application was, however, postponed several times because the manager of the Centre, who had in the meantime been appointed as the applicant's guardian, failed to attend the hearings to take his oath.

13. On 13 February 2017 the applicant was interviewed by a mediator from the Centre to provide information for her asylum request. A form provided by the police headquarters was filled in. The applicant handwrote her personal history, which included some passages in which she explained that, while still in Ghana, she had been forced to live with a man who had

sexually abused her. She reported that she had eventually managed to escape to Libya, where a man who had initially offered her a job had also forced her to have sex with him. She eventually decided to leave Libya by boat, as the risk of death that she would face during the trip was a less painful prospect than that of continuing to be abused.

14. On 31 May 2017 the applicant underwent a psychological examination by a psychologist working for Médecins Sans Frontières, who attested that she had been exposed to multiple traumatic experiences in the course of her life such as abuse, sexual harassment and sexual violence and that staying in the Centre, where unaccompanied minors were accommodated together with adults and where there were no services tailored to the needs of victims of sexual violence, risked exacerbating her fragile psychological condition. Psychological follow-up was arranged and the applicant underwent psychological examinations on 27 July 2017 and 6 and 13 September 2017.

15. On 29 June 2017 the applicant registered her asylum application at the police headquarters and handwrote a shorter version of her story than the one she had written on 13 February 2017 (see paragraph 13 above). She explained that she had left her country because of a forced marriage and the sexual abuse resulting from it.

16. In the meantime, between 28 June 2017 and 3 August 2017 the applicant's representative reported the applicant's situation to the Prefecture, the police headquarters and the Red Cross four times by email and letter and asked that her client be transferred to a centre for unaccompanied minors. The authorities considered the possibility to further evaluate the situation and transfer those requests to the Juvenile Court. The requests, however, remained unanswered.

17. On 6 July 2017 the guardianship judge appointed a new guardian.

18. On 10 August 2017 the applicant fled the Centre but she returned the following day.

19. From 22 August 2017 to 5 September 2017 the applicant undertook vocational training as a bartender and waitress.

20. On 11 September 2017, given the applicant's guardian's persistent inaction, the applicant's representative contacted him to report the need to take all necessary steps to protect the applicant's fundamental rights.

21. On 28 September 2017 the applicant lodged a request with the Court under Rule 39 of the Rules of Court, asking to be transferred to facilities where appropriate reception conditions for her as an unaccompanied minor could be ensured.

22. The following day, the Court decided to apply Rule 39, and on 2 October 2017 the Government informed the Court that a decision had been taken to transfer the applicant to a facility suitable for minors.

23. It appears from a report of 4 October 2017 by a psychological assistance organisation working in the Centre that the applicant was affected by depression and appeared to be impaired in expressing her account of the migration process because of its emotional aspects. The report also explained that she was at significant risk of developing post-traumatic stress disorder.

24. On 22 December 2017 the Ministry of the Interior granted the applicant international protection. The relevant decree stated, among other things, that the applicant had stated that she had suffered a forced marriage and abuse in Ghana and that the practice of forced marriage in that country had been confirmed by several international sources.

II. ACCOMMODATION CONDITIONS AT THE OSVALDO CAPPELLETTI CENTRE IN COMO

A. The applicant's version of the facts

25. According to the applicant, around 180 people, including 45 children, were being accommodated in the Centre when she was there. Most of the minors were unaccompanied. The conditions of hygiene at the Centre were poor; often the toilets were not functioning. One doctor was present, from 9 a.m. to 10.30 p.m.

26. Daily episodes of petty crime and prostitution were registered; cold weapons and alcohol circulated in the Centre.

B. The Government's version of the facts

27. The Government submitted the report of a fact-finding mission to Italy by the Special Representative of the Secretary General of the Council of Europe for Migration and Refugees, which had been published on 2 March 2017. The report concerned the Special Representative's visit of 16 to 21 October 2016 to various Italian migrant reception centres, including the Centre in Como. The report noted that the Centre had a capacity of 300 people and accommodated 244 migrants at the time of the visit, including 80 unaccompanied children and 5 families. It also indicated that the migrants' accommodation was of a decent standard and that they were assisted in the process of being transferred from the Centre, an emergency facility, to regular reception centres.

28. The report also explained that the Como Centre had a high proportion of unaccompanied children, who fell outside the Italian asylum system and to whom the European rules on family reunification and relocation were not applied. It also signalled that it was important to take measures to house and feed these individuals and that more sustained engagement was necessary to provide them with additional information about claiming asylum and opportunities for relocation and family reunification.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained under Article 3 of the Convention about the material conditions of her stay in the Como Centre. She further alleged that the lack of privacy and separation from adults, with its ensuing security issues, were not appropriate to her vulnerable situation as an unaccompanied minor who was a victim of sexual violence. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

30. The Court notes at the outset that, in the light of the information provided by the Government and stemming from the report of the fact-finding visit to Italy by the Special Representative of the Secretary General of the Council of Europe for Migration and Refugees, the complaint concerning the material conditions of accommodation in the Osvaldo Cappelletti centre, namely overcrowding, poor hygiene and a lack of services, has not been substantiated. The Court declares that complaint inadmissible as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

31. The Court also notes that the part of the applicant’s complaint relating to her stay in an adult migrant centre while in a vulnerable situation, as an unaccompanied minor and alleged victim of sexual violence, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The applicant reiterated her complaint.

33. The Government pointed out that the applicant’s statement of 31 May 2017 that she had been a victim of sexual violence had been made to a psychologist working within a project run by the organisation Médecins sans Frontières, which was not part of the authorities’ reception plan for the applicant. No certified copy of that statement had been transmitted to the national authorities (the Juvenile Court, the public prosecutor, the applicant’s guardian or the manager of the Centre). Therefore, the Government maintained that they were unaware of that information.

34. The Government also contended that the handwritten text of the applicant’s statement of 13 February 2017 had been submitted to the authorities on that date.

35. The Government further submitted that the main evidence that the applicant had not been subjected to ill-treatment consisted in the fact that, in October 2017, she had reportedly told her guardian that she would be unhappy to leave the Osvaldo Cappelletti centre as she had established a relationship with a young man outside the Centre.

36. On this last point, the applicant contended that the Government's allegations amounted to secondary victimisation of her on their part.

37. The principles applicable to minor migrants and their special vulnerability are reiterated in, among other authorities, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (no. 13178/03, § 55, ECHR 2006-XI), *Tarakhel v. Switzerland* ([GC], no. 29217/12, § 99, ECHR 2014 (extracts)) and *Darboe and Camara* (cited above, § 173). The Court also refers to the principles for establishing the minimum level of severity for ill-treatment to fall within the scope of Article 3, namely with reference to the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, *mutatis mutandis*, *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015; *Muršić v. Croatia* [GC], no. 7334/13, § 97, 20 October 2016; *Tarakhel*, cited above, § 119; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160, 15 December 2016).

38. It should also be recalled that the authorities must display particular vigilance when dealing with vulnerable people and must afford them increased protection as their capacity or will to pursue a complaint will often be impaired (see *A.I. v. Italy*, no. 70896/17, § 102, 1 April 2021 with further references).

39. The Court firstly notes that, while it is true that the Italian authorities initially placed the applicant in a temporary reception centre for minors, which she left voluntarily, the subject matter of the case concerns the applicant's stay in the Osvaldo Cappelletti centre.

40. It further considers that it is not clear to what extent the applicant's having developed a relationship during her stay in the said centre would be evidence of her not being a victim of an alleged violation of Article 3, as claimed by the Government.

41. Be that as it may, the Court observes that, shortly after her arrival in the Osvaldo Cappelletti centre, the applicant had disclosed being a victim of sexual abuse, both in Ghana and in Libya (see paragraph 13 above). She then reiterated her claims by her statements of 31 May 2017 to the psychologist and mediator who looked after her. It was thus known to the authorities that she was particularly vulnerable. Besides, the police headquarters had been made acquainted with the applicant's declarations in this respect by 29 June 2017 at the latest, in the framework of the applicant's asylum request.

42. In this context, it is worth noting that between 28 June 2017 and 3 August 2017, the applicant's representative addressed four requests to the Prefecture, the police headquarters and the Red Cross asking that the applicant be transferred to a suitable centre (see paragraphs 16 and 20 above) which could have alleviated her fragile conditions.

43. Moreover, on 11 September 2017, the applicant's representative reiterated her plea to the applicant's guardian, underlying the need to protect her client's fundamental rights.

44. Nonetheless, all these requests went unanswered, and the applicant's situation remained unchanged until the end of September 2017, when the Court decided to apply an interim measure pursuant to Rule 39 of the Rules of Court, indicating to the Government the need to transfer her to facilities where appropriate conditions for her as an unaccompanied minor could be ensured.

45. As a consequence, the applicant remained in an adult centre for a considerable period of time, until October 2017, thus not benefiting from the accommodation and assistance that her vulnerable situation required.

46. The Court would also emphasise that, although two guardians were appointed for the applicant during her stay in the Osvaldo Cappelletti centre (the first shortly after her arrival in the centre in February 2017 and the second on 6 July 2017), both guardians have proven to be unresponsive to the applicant's situation and needs.

47. The Court notes that the psychological implications of the applicant's traumatic experience are clearly stated in the report of 4 October 2017 of the psychological assistance organisation working in the centre where the applicant was accommodated (see paragraph 23 above).

48. In the light of the foregoing, the Court considers that the applicant's treatment attained the minimum level of severity to fall within the scope of Article 3. It then concludes that the applicant's continued stay in the Osvaldo Cappelletti centre, which was apparently not equipped to provide the applicant with appropriate psychological assistance, taken together with the national authorities' prolonged inaction regarding her situation and needs as a particularly vulnerable minor, amounted to a breach of her right not to be subjected to inhuman treatment, as protected by Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. Lastly, the applicant complained under Article 8 of the Convention that, being a minor, her prolonged stay in the Osvaldo Cappelletti adults' reception centre had breached her right to respect for private life. She also alleged a violation of Article 13 of the Convention, claiming that she did not have access to an effective domestic remedy for her complaints under Articles 3 and 8 of the Convention.

50. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

52. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government opposed that claim.

54. The Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

55. The applicant also claimed EUR 12,641.72 in respect of costs and expenses incurred before the Court.

56. The Government opposed that claim.

57. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 for the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the applicant's stay in Osvaldo Cappelletti centre while in a vulnerable situation, admissible and the remainder of the complaint under Article 3 of the Convention inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 8 and Article 13 of the Convention in conjunction with Articles 3 and 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 August 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President