



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

FIFTH SECTION

CASE OF DIAKITÈ v. ITALY

(Application no. 44646/17)

JUDGMENT

STRASBOURG

14 September 2023

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

In the case of Diakité v. Italy,

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

Stéphanie Mourou-Vikström, *President*,

Lado Chanturia,

Mattias Guyomar, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 44646/17) 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”) on 23 June 2017 by an Ivorian national, Mr Salimou Diakité, born in 1999 and living in Rome. (“the applicant”) who was represented by Mr Salvatore Fachile, a lawyer practising in Rome;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their Agent, Mr Lorenzo D’Ascia;

the parties’ observations;

Having deliberated in private on 12 July 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the material conditions of stay of the applicant, a minor migrant, in the Red Cross adults’ reception centre in Rome, Via Ramazzini, as well as the lack of application in his case of the procedural guarantees set up for minor migrants.

I. THE APPLICANT’S ARRIVAL IN ITALY AND HIS AGE ASSESSMENT

2. On 29 January 2017 the applicant reached Italy aboard a makeshift vessel. He was then transferred to the hotspot at Trapani. Since his arrival, he declared to the authorities that he was a minor and submitted a birth certificate showing his birthdate as being 19 December 1999. A healthcare card was attributed to him, stating his minor age.

3. On 2 February 2017 the applicant underwent a medical examination to determine his age. The corresponding medical report stated that his bone age, as evaluated by X-ray examinations of his left wrist and hand, was compatible with that of a person aged at least eighteen. Therefore, on 7 February 2017 the applicant was transferred to the Red Cross adults’ reception centre in Rome, Via Ramazzini.

4. It appears from the case file that, during his stay in the said centre, the applicant formed close ties with the educators of the association

Laboratorio 53 as well as with his teachers in the framework of the Italian language classes that he attended.

5. The applicant's teachers, having realised that he was a minor after he had shown them his birth certificate, encouraged him to talk about his minor status and put him in contact with the lawyer who subsequently filed the present application with the Court.

6. On 19 June 2017 the applicant's representative sent a request to different institutions, including the Public Prosecutor of the Juvenile Court, the Directorate General of Immigration and the Director of the Red Cross Centre where the applicant was hosted, asking that the applicant be transferred to a reception centre dedicated to minors.

7. On the following day the applicant was transferred to the minor reception centre "Villa Spada", in Rome. On 30 June 2017 he underwent a medical visit which showed that his age was between seventeen and eighteen years old. Considering the margin of error, the applicant was then deemed to be a minor.

8. On 1 July 2017 the applicant was transferred to a minor First Aid Centre in Pomezia and on 13 August 2017 to another minor centre in Rome.

9. On 17 July 2017 a guardian was appointed. In the meantime, the procedure for the applicant's asylum request was initiated and the applicant was eventually granted asylum.

II. THE MATERIAL CONDITIONS OF STAY IN THE RED CROSS ADULTS' RECEPTION CENTRE IN ROME, VIA RAMAZZINI

10. The Red Cross adults' reception centre in Rome, Via Ramazzini, opened in June 2016 as an emergency provisional reception centre meant to face the massive arrival of migrants in Italy during that period. The aim of the centre was to host migrants for a short period of time, waiting for them to be dispatched to other facilities. The centre consisted of two blocks of tents hosting men and one fixed structure dedicated to women and their children. The centre had a capacity of 400 people; it was eventually closed in September 2017.

11. A report by the association "*Osservatorio Accoglienza Casa dei Venti*" of 9 February 2017, provided by the applicant, related that the asylum seekers interviewed for the purpose of the report declared that the tents were cold during winter. The sanitary facilities consisted of 13 toilets and 15 showers for 380 individuals at the time. The guests indicated that the services were often broken, or that they were so dirty they were unusable. Warm water supplies were not sufficient to cover everyone's needs.

12. Although the "hub" was not intended for unaccompanied minors, the persons interviewed reported that numerous such minors had been hosted in the centre, some of them for a month and, in certain cases, for three to four months. The manager of the structure indicated that the prefecture sometimes

wrongly sent unaccompanied minors to that facility and that they were quickly transferred to dedicated centres within a few days. The migrants also stated that the food was of poor quality and often cold. The report indicated that access to legal information in the centre, in particular regarding asylum requests, was insufficient.

13. In addition to this report, a press article of 10 February 2017 provided by the applicant quoted the director of the Red Cross who expressed hope that the Centre of Via Ramazzini would close soon, as it was not providing decent reception conditions for migrants. The centre was supposed to close in December 2016 and the director expressed his fear that the centre would remain open regardless.

14. A second article provided by the applicant, dated 14 February 2017, stated that a violent fight between migrants for unspecified reasons of cohabitation took place in the centre and required the intervention of several police patrols. The article indicated also that this was one of numerous fights which took place in the centre during that period.

15. Moreover, during an interview with the educators on 21 June 2017, namely the day after the applicant's transfer from Via Ramazzini, the applicant indicated that the conditions of stay in the Red Cross centre were particularly harsh, due to the poor quality of food, the absence of personal space and the cohabitation with the numerous guests. He declared that, in order to avoid conflict with the centre's operators, he refused several times to take part in the protests concerning the centre's conditions organised by groups of adult migrants.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. Relying on Article 8 of the Convention, the applicant complained of a breach of his right to respect for his private life on the grounds of the competent authorities' failure to recognise his status of unaccompanied minor and their lack of a prompt appointment of a legal guardian.

17. The Government replied that, at his arrival at the Centre of Via Ramazzini, the applicant's presence was signalled to the police headquarters.

18. They recognised that, as an unaccompanied minor, the applicant should have been transferred to an *ad hoc* centre immediately. However, due to the emergency situation at the time, the policy of the Red Cross was to receive any migrant reaching the centre from the harbours' regions.

19. The Court notes that this complaint 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.

20. The general principles concerning the procedural guarantees applicable to minor migrants have been summarized in the case *Darboe and Camara v. Italy* (no. 5797/17, §§ 128 and 151-157).

21. The Court finds that, at the time of the facts of the case, these safeguards clearly included, under both domestic and EU law, the appointment of a legal representative or guardian, access to a lawyer and informed participation in the age-assessment procedure of the person whose age was in doubt.

22. In the present case, the Court recognises that the applicant was firstly placed in an adult centre on the basis of an X-ray evaluation which showed that he was at least eighteen and that he was transferred to a centre dedicated to minors immediately after his representative's relevant request (see paragraphs 3 and 7 above). Nonetheless, the Court cannot but note that, at his arrival, the applicant submitted to the authorities a birth certificate showing his minor age and he did not benefit from the minimum procedural guarantees. In this context, the Court also highlights that the principle of presumption of minor age is an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor.

23. In these circumstances, the Court concludes that the authorities did not act with reasonable diligence and therefore did not comply with their positive obligation to ensure the applicant's right to respect for his private life in the present case. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

24. Invoking Article 5 § 1 of the Convention, the applicant complained that he was detained without legal basis during his stay in the centre "Villa Spada" waiting for his age assessment to be carried out.

25. The Government replied that the purpose of the applicant's detention in the centre "Villa Spada" during that period was to ensure his security as a minor. They also pointed out that the detention lasted for a short period, with a view to determining the applicant's age and transferring him to a facility for minors.

26. The Court finds that the essence of the applicant's complaint relates to the fact that a guardian had not yet been appointed during his stay in Villa Spada, and his age assessment procedure. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. [37685/10](#) and [22768/12](#), § 114, 20 March 2018), the Court will thus examine the complaint from the standpoint of Article 8 alone. Taking into account its conclusion under the said provision, the Court concludes that there is no need to examine separately this part of the application.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
AND OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION
WITH ARTICLE 3

27. Under Article 3 of the Convention, the applicant also complained of his reception conditions in the Red Cross centre. He alleged that the facility, only intended for adults, had been overcrowded and that the conditions were unhealthy.

28. The applicant explained that migrants were hosted in tents where minors and adults shared the same space. He complained of the lack of basic facilities such as proper heating, a sufficient number of toilets and showers, as well as an adequate place to eat. Moreover, psychological and legal assistance were lacking, and mediators and interpreters were understaffed.

29. The applicant also alleged that he did not receive legal information with regards to international protection and he complained of the lack of staff in order to ensure his personal security and prevent possible sexual abuse or other risks for minors.

30. Under Article 13 of the Convention, he further complained of the lack of internal effective remedies to raise his allegations in this regard.

31. The Government pointed out that the applicant's conditions of stay were acceptable. The staff consisted of two operators for fifty migrants during the day and one operator for thirty migrants during the night. The guests were provided with a telephone card and products for personal hygiene. The Government also contested the content of the report of the association "*Casa dei Venti*" considering that it was of a general nature and that the persons interviewed remained anonymous.

32. With regard to the applicant's complaint under Article 13 of the Convention, the Government replied that the applicant had the possibility of raising his complaints through his guardian, pursuant to Article 19 paragraph 5 of the Law Decree no. 142 of 2015

33. The Court would reiterate that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally 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 *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, 15 December 2016).

34. In the circumstances of the present case, the Court is sensitive to the applicant's arguments, supported by pieces of evidence, that his conditions of stay in the red Cross Centre were far from being ideal. Nonetheless, the Court is of the view that the conditions described by the applicant, who did not claim having been unable to cater for his most basic needs, such as food, hygiene and shelter (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 253, ECHR 2011 and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 283, 28 June 2011) were not of such nature that the level of

severity required for it to fall within Article 3 of the Convention has been reached.

35. In addition, with regards to the applicant's allegation that he did not benefit from psychological assistance, emphasis should be placed on the fact that, during his stay in the Red Cross Centre, the applicant formed close ties with his educators and teachers. Moreover, the applicant's request to be transferred to a reception centre dedicated to minors was dealt with and allowed with no delay.

36. It follows that this part of the application must be rejected as manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

37. Concerning the applicant's allegation that Article 13 of the Convention has been breached, the Court will confine itself to noting that, according to its standing case-law, Article 13 requires a remedy in domestic law to be available in respect only of such grievances as are "arguable" in terms of the Convention (see, among many other authorities, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). In view of its findings above, the Court does not consider that an arguable claim has been established under Article 3 of the Convention.

38. Consequently this complaint too is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL 1 TO THE CONVENTION

39. The applicant complained that he was not schooled during his stay and that he solely participated in Italian classes and extra scholastic activities organised by a private association.

40. The Government replied that the applicant could benefit from an educational programme, attend an Italian language course and extra scholastic activities. In July 2017 he was registered in middle school for the academic year 2017/18.

41. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint is manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

42. It follows that this complaint must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,584.85 in respect of costs and expenses incurred before the Court.

44. The Government opposed these claims.

45. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

46. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 4,000 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 5 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 5,000 (five 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 14 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President