



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

FIRST SECTION

CASE OF V.C. v. ITALY

(Application no. 54227/14)

JUDGMENT

STRASBOURG

1 February 2018

FINAL

01/05/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of V.C. v. Italy,

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

Linos-Alexandre Sicilianos, *President*,

Guido Raimondi,

Aleš Pejchal,

Krzysztof Wojtyczek,

Ksenija Turković,

Pauliine Koskelo,

Tim Eicke, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 54227/14) 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 an Italian national, Ms V.C. (“the applicant”), on 23 July 2014. The President of the Section acceded to the applicant’s request not to have her identity disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms S. Menichetti and Ms C. Carrano, lawyers practising in Rome. The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora, and by their co-Agent, Ms M.L. Aversano.

3. On 24 August 2016 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1997.

5. Following the death of her grandmother in 2010 the applicant, who was a minor at the time, began to show signs of distress. Her parents sought the opinion of a psychiatrist, who emphasised that their daughter was suffering from emotional instability, alternating between periods of anger and periods of agitation.

6. On 19 April 2013 the applicant went to a party where there were drugs and alcohol. The police arrived, seized the drugs and alcohol and checked the identity of the minors who were present.

A. The proceedings before the Youth Court and the minor's placement

7. On 23 April 2013 the prefect of Rome informed the public prosecutor at the Rome Youth Court ("the Youth Court") of the police operation carried out on 19 April 2013 and of the presence of V.C., a minor, at the scene. A criminal investigation was opened and the public prosecutor at the Youth Court was informed.

8. On 31 May 2013 the public prosecutor heard evidence from V.C.'s parents. They stated that their daughter had been having difficulties and that they were worried about her, saying that she was taking drugs and stealing money at home. They also told the prosecutor that, according to the psychiatrist who was treating the applicant, she suffered from a bipolar disorder and an attention deficit disorder caused by drug use and also showed signs of a borderline and anti-social personality.

9. Subsequently, in June 2013, V.C.'s parents informed the prosecutor that they had discovered through their daughter's Facebook page that she had been approached by a photographer to pose for pornographic photographs. The Government maintained that the parents had told the prosecutor on that occasion that their daughter did not want to be placed in a specialist institution.

10. On 5 June 2013 the public prosecutor heard evidence from the applicant, who stated that she had started to take drugs when she was twelve but had since stopped. The applicant stated that she did not wish to be placed in a specialist institution or in a foster family.

11. On 25 June 2013 the applicant's mother informed the public prosecutor by telephone that the situation had not improved and that the applicant had been approached to pose for pornographic photographs.

12. On 2 July 2013 the public prosecutor informed the Youth Court that it was clear from the statements made by the parents and the applicant, who had admitted stopping school and using drugs, and from the psychiatrist's diagnosis, that V.C. was in danger as she was no longer attending school and there was a risk that she might be caught up in a child prostitution ring, given that she had been approached to pose for photographs. The public prosecutor therefore requested the Youth Court to institute urgent proceedings under Article 25 of Royal Decree no. 1404 of 1934 and to have the minor placed in a specialist institution and in the care of the social services.

13. On 24 July 2013 the Youth Court appointed a judge (*giudice onorario*) to hear evidence from the applicant, her parents and the social

services, in order to learn more about her environment and take the appropriate measures to protect her.

14. On 14 October 2013, that is, almost three months later, the Youth Court gave the social services notice to appear before it. However, they did not appear.

15. The Youth Court gave notice to the applicant's parents to appear before it on 21 October 2013. The parents gave evidence without the social services being present and stated that their daughter did not want to give evidence.

16. On 24 October 2013 the public prosecutor requested the judge to place the child in the care of the social services and in a specialist institution.

17. On 9 December 2013 the Youth Court, after hearing evidence from the parents and adding to the file the conversations which the applicant, who had refused to give evidence, had had on Facebook, and taking into account the fact that the social services had not attended the hearing, decided that it was necessary to place the child in the care of the social services. The court ordered her placement in a specialist institution for an initial twelve-month period so that she could follow a specific programme designed to help her to amend her behaviour, which the court described as erratic, and thus to resume a normal life.

18. On 11 December 2013 the social services received a copy of the Youth Court's decision.

19. On 17 December 2013 a first meeting was held between the social services and the applicant's parents. During the meeting the parents told the social services that there was a risk that their daughter might be caught up in a prostitution ring. They informed the social services that a criminal investigation was in progress.

20. On 18 December 2013 the social services contacted the psychiatrist who was treating the applicant and later met the applicant.

21. On 19 December 2013 the public prosecutor at the District Court informed the public prosecutor at the Youth Court that a criminal investigation was in progress concerning two individuals for exploitation of the applicant for prostitution. The applicant had given evidence on 4 and 9 December 2013 (see paragraph 48 below).

The public prosecutor stressed that the arrest of the two suspects was imminent, and requested the prosecutor at the Youth Court to inform him of the measures taken to implement the Youth Court's decision of 9 December 2013 (see paragraph 17 above), given that the applicant was due to give evidence at the *ad hoc* hearing (*incidente probatorio*) (see paragraph 51 below).

22. On 20 December 2013 the applicant reiterated that she did not wish to be placed in a specialist institution.

23. However, in January 2014 she consented to such placement.

24. On 30 January 2014 the social services contacted the regional drug addiction agency for advice on how to help the applicant withdraw from drugs.

25. During the night of 30 January 2014 V.C. was the victim of a rape (*violenza sessuale*) committed by two individuals (see paragraph 54 below). On 31 January the applicant went to hospital with a police officer and her mother in order to be examined.

26. On 6 February 2014 the social services told the Youth Court that they had had several meetings with V.C.'s parents and with the psychologist and psychiatrist whom she was seeing. They also informed the court that the girl had agreed to be placed in a specialist facility with a view to drug rehabilitation treatment.

27. On 7 February 2014 the social services were informed of the assault on the applicant.

28. On 19 February 2014 the President of the Youth Court made an urgent request to the social services to inform her of the measures taken to assist the applicant. She stressed that, in view of the applicant's age, it was still possible for her to change her behaviour and that a programme should be put in place to protect her from the risks she was facing.

29. On 25 February 2014, having received no information on the applicant's situation, the Youth Court requested the competent social services departments to draw up a report on the measures taken to assist her.

30. On 13 March 2014 the youth mental health department informed the Youth Court that the applicant had been diagnosed as being anti-social and drug-dependent and that she had agreed to being placed in a treatment centre (*comunità terapeutica*). The department had therefore requested the V.L. centre to admit her.

31. On 17 March 2014 the department dealing with drug dependency issues informed the Youth Court that the applicant had not consented to her placement and that, in any event, a psychiatric expert opinion was required prior to placement.

32. On 27 March 2014 the social services requested that the applicant be placed in a care facility as a temporary measure. On 31 March 2014 the care facility that been chosen stated that it did not have any places available.

33. In a report of 3 April 2014 the department dealing with drug dependency issues informed the court that it had chosen a treatment centre where the applicant could undergo rehabilitation.

34. On 3 April 2014 V.C.'s parents requested the Youth Court to enforce the decision of 9 December 2013 ordering their daughter's placement in a specialist institution in order to help her. They also requested that a curator be appointed and that the court take urgent steps to protect their daughter.

35. On 4 April 2014 the Youth Court ordered the child's immediate placement in the Karisma treatment centre. The measure took effect on 14 April 2014.

36. On 2 July 2014 the staff of the Karisma centre observed that the applicant's behaviour was challenging owing to her drug and alcohol dependency.

37. On 19 December 2014 the Karisma treatment centre informed the social services that the applicant's problems persisted and that it did not have the necessary infrastructure to deal with them in view of the applicant's drug addiction. They requested her transfer to a facility specialising in the treatment of minors with drug dependency problems.

38. The social services did not respond to this request.

39. On 7 September 2015 V.C. left the Karisma centre and returned to live with her parents.

40. On 22 October 2015 the social services sent a report to the Youth Court stressing that two meetings had been held with the applicant's parents and that a psychiatric expert assessment had been carried out. According to the expert, the applicant had problems with numeracy and was advised to follow a course of pharmacological treatment.

41. On 19 May 2016 the Youth Court held a hearing that was not attended by the social services. The applicant gave evidence. She stated that she had gone back to school and was continuing to be monitored by the social services. She said that she had made new friends and had had a positive experience in the treatment centre.

42. On 1 June 2016 the public prosecutor's office approved the continuation of the programme that had been put in place. The applicant stated that no such programme had actually been in place.

43. On 22 December 2016 the Youth Court gave notice to two representatives of the social services to appear before it in order to provide an update on the applicant's situation. According to the social services, the applicant's situation had improved and their involvement was thus no longer necessary.

44. On 10 January 2017 the public prosecutor issued an opinion in favour of discontinuing the proceedings instituted on the basis of Article 25 of Royal Decree no. 1404 of 1934.

45. In a decision of 17 January 2017 the Youth Court discontinued the proceedings.

B. The criminal proceedings concerning the prostitution ring

46. An investigation into the prostitution ring was opened in April 2013 and was concluded in December of that year.

47. On 25 September 2013 the public prosecutor at the Youth Court reported on the applicant's situation to his counterpart at the Rome District Court.

48. The applicant gave evidence in the criminal investigation on 4 and 9 December 2013. She said that she had worked as a prostitute for two individuals.

49. On 16 January and 6 February 2014 two suspects were arrested.

50. On 21 January 2014 the prosecuting authorities again heard evidence from the applicant.

51. On 26 March 2014, at the *ad hoc* hearing (*incidente probatorio*), the applicant reiterated that she had worked as a prostitute for the two suspects between August and December 2013.

52. On 17 November 2014 the Rome District Court sentenced the two defendants to prison terms of five years and four years respectively for living on the earnings of prostitution. It also ordered them to pay damages to the applicant, who had applied to join the proceedings as a civil party. The court found that the two defendants had put pressure on the applicant to engage in prostitution, had benefited from the applicant's prostitution and had shared the proceeds. In its decision the court stated that the applicant had been the victim of sexual exploitation from August to December 2013 and that the defendants had been aware of her age.

On 4 February 2016 the Court of Appeal upheld the conviction.

53. The applicant stated that she had not received the amount awarded by the courts in respect of damages.

C. The criminal proceedings concerning the rape of the applicant

54. An investigation into the gang rape (*violenza sessuale di gruppo*) of the applicant on the night of 30 January 2014 was opened concerning two suspects. The case was set down for preliminary hearing on 6 November 2015 before the Rome District Court. It appears from the file that a further hearing was held on 16 February 2016 and that the proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

55. Royal Decree no. 1404 of 20 July 1934, which later became Law no. 835 of 1935, set up the youth courts. The Law has since undergone various amendments.

56. Article 25 of the 1934 Royal Decree laid down the following provisions regarding cases of erratic behaviour (*irregolare condotta*) on the part of a minor:

“Where a minor displays erratic behaviour or personality traits the public prosecutor, the head of the social services, the parents, the guardian or the child education, protection and support authorities may inform the Youth Court, which may carry out a detailed investigation into the minor’s personality and may order, by means of a reasoned decision, that the minor be placed in the care of the social services and in an institution.”

Article 25 *bis* of the Royal Decree read as follows:

“Any public official who is alerted to the fact that a minor is engaged in prostitution or is a victim of sexual abuse shall inform the public prosecutor at the Youth Court, who shall set the child protection procedures in motion and may propose that the court appoint a curator. The Youth Court shall take the necessary measures to provide the minor with psychological support and rehabilitation. In urgent cases the court may act of its own motion.”

Article 27 read as follows:

“Where the court has ordered the measure provided for under Article 25, a report shall be drawn up, which must contain the guidelines to be followed by the minor The report may order the minor’s removal from the family home and must indicate the place where [he or she] is to live. ...

A member of the social services must monitor the minor’s conduct and help [him or her] overcome his or her problems, working together with the family ... He or she must also report regularly to the Youth Court, providing it with detailed updates on the minor’s conduct and the persons who have taken care of him or her ...”

THE LAW

I. ADMISSIBILITY

57. The Government argued that the applicant no longer had victim status. The authorities had taken all the necessary measures to protect the applicant by placing her in a specialist institution, where she had remained for one year. The criminal proceedings against her assailants had been concluded and her parents had been joined to the proceedings as civil parties.

58. The Government further submitted that the applicant had not exhausted domestic remedies, as the domestic proceedings had still been pending when the application was lodged.

59. The applicant contested the Government’s argument. She submitted, in particular, that the authorities’ action had been ineffective and that her complaints did not relate to the criminal proceedings against the individuals prosecuted for rape and living on the earnings of prostitution.

60. The Court considers at the outset, like the applicant, that her complaints do not relate to the criminal proceedings for sexual exploitation and rape. Next, as regards the Government's preliminary objection alleging a lack of victim status, the Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X). That rule applies even if the applicant obtains satisfaction after the proceedings before the Court have commenced, in accordance with the subsidiary nature of the Convention system of safeguards (see, in particular, *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002). The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 181, ECHR 2006-V).

61. Turning to the facts of the present case, the Court considers that there has been neither implicit acknowledgement of the existence of a Convention violation nor any compensation for the period during which the applicant was in a vulnerable situation while she waited for the authorities to take practical steps to protect her.

62. In the light of the foregoing, the Court considers that the applicant may still claim to be the victim of a violation of Articles 3, 8 and 13 of the Convention. It therefore dismisses the Government's preliminary objection in that regard.

63. As to the objection of failure to exhaust domestic remedies, the Court notes at the outset that the applicant lodged her application on 23 July 2014, while she was placed in a specialist institution, that her placement ended in September 2015 and that the proceedings were terminated in January 2017 (see paragraph 44 above). It observes that the proceedings in question, which were provided for by Royal Decree no. 1404 of 20 July 1934, were not capable of affording redress in respect of the applicant's complaints concerning the failure of the social services to act and the delay in implementing protective measures. The Court also notes that the criminal proceedings for sexual exploitation and rape, which ended in 2016 and 2015 respectively, are not the subject of the present application. Accordingly, the Court considers that the application should not be rejected for failure to exhaust domestic remedies, despite the fact that the proceedings provided for by Royal Decree no. 1404 of 20 July 1934 were pending when the application was lodged. It follows that the Government's preliminary objection must be dismissed.

64. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It therefore declares it admissible.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

65. The applicant alleged that, despite the fact that she had been a minor and the victim of a prostitution ring, the Italian authorities had not taken all the necessary measures to protect her. She relied on Articles 3 and 8 of the Convention, which provide:

Article 3

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

Article 8

“1. Everyone has the right to respect for his private and family life ...”

A. The applicant's submissions

66. The applicant argued that, although she had been a vulnerable minor, the State had not taken the necessary measures to protect her. The authorities had not acted with the requisite diligence and had not taken account of the risks that she faced. She had been left in a vulnerable situation, without protection, from 20 April 2013 until her placement in the Karisma treatment centre on 14 April 2014.

67. The applicant submitted that her protection had been of paramount importance and that the Youth Court and the competent social services had left her alone and defenceless for some time. During the period in which she had been in the care of the social services, the latter had not monitored her properly and she had been raped. In her submission, the risk of sexual assault had been foreseeable.

68. The applicant pointed out that her parents had requested that protective measures be taken in July 2013, that the case had been set down for hearing before the Youth Court in October 2013 and that the order for her placement and care had been made in December 2013. In her view, this was a very long period of time.

She added that she had been the victim of sexual exploitation between August and December 2013 and had been raped in January 2014.

69. In the applicant's submission, the authorities had not done all that could reasonably be expected of them to avoid a real and immediate risk to her life of which they had or ought to have had knowledge.

70. In that connection the applicant argued that the authorities had adopted a passive attitude. The Youth Court had ordered her placement ten months after her parents had made a request to that effect and, once the decision had been adopted, the social services had not taken the necessary steps to have her placed promptly in a specialist institution. The judge had had to ask the social services twice to indicate what measures had been taken to protect her (see paragraphs 28 and 29 above).

71. The applicant alleged that the social services had taken no further interest in her case after she had been placed in the specialist institution. Her return to live with her family had thus been decided solely by the staff in the treatment centre; the social services had never expressed a view on the subject and had not followed up on her case after she had returned to the family home.

72. The applicant submitted that the authorities should have taken urgent action in accordance with the positive obligations arising out of Article 8 of the Convention. On the contrary, they had left her in a vulnerable situation despite being aware of the danger she faced. The initial inaction of the authorities and the subsequent inaction of the social services had thus deprived her of the protection she needed.

73. Accordingly, the applicant was of the view that the authorities had not complied with their positive obligations under Articles 3 and 8 of the Convention.

B. The Government's submissions

74. The Government stated that they had adopted all the necessary measures in order to find a solution in the present case. Given the complexity of the applicant's situation, linked to a variety of problems including her drug addiction, it had not been easy to find an appropriate specialist institution capable of taking care of her.

75. Once the Youth Court had been alerted by the applicant's parents to the risks which she faced, including the risk of being caught up in a child prostitution ring, a criminal investigation had been opened and the perpetrators had been arrested in 2014.

The authorities had therefore taken all the necessary measures to protect the applicant and prevent ill-treatment.

76. As to the sexual assault on the applicant, the Government submitted that it could not have been foreseen by the authorities, especially since the applicant had not been under the sole supervision of the State at the time of the offence, but had been living with her family.

77. Accordingly, in the Government's submission, the sexual assault on the applicant could not be regarded as a consequence of the delay by the authorities in implementing the Youth Court's decision.

78. In the Government's view, the sexual assault had resulted from unforeseeable conduct. Moreover, the authorities had done everything in their power to identify the perpetrators and bring them to trial.

79. Furthermore, placing a child in the care of the social services was not in itself a protective measure but was to be regarded as assistance to the family, given the need to obtain the minor's consent before placing him or her in an institution and arranging therapeutic support. The Government drew the Court's attention in particular to the dual aim pursued by the measure laid down in Royal Decree no. 1404 of 1934, which later became Law no. 835 of 1935. That measure was designed, firstly, to secure the right to education to children in difficulty and, secondly, to prevent juvenile offending.

80. As to the complaint under Article 8 of the Convention, the Government maintained that the authorities had taken all the necessary measures to protect the applicant as soon as they had become aware of the risks that she faced.

81. The authorities had heard evidence from the applicant and her parents on several occasions in an attempt to find the most appropriate facility to take care of her; several of the facilities that were approached had been unable to admit her.

82. The Government submitted that the authorities had taken all the necessary measures, as they had immediately opened an investigation into sexual exploitation and had convicted the perpetrators of that offence and identified the perpetrators of the sexual assault on the applicant. Referring to the Court's judgment in the case of *O'Keeffe v. Ireland* ([GC], no. 35810/09, §§ 191-92, ECHR 2014 (extracts)), they argued that the complaint under Article 8 of the Convention did not raise a separate issue from that raised under Article 3 of the Convention.

C. The Court's assessment

1. *Applicability of Article 3 of the Convention*

83. In order for ill-treatment to fall within the scope of Article 3 of the Convention it must attain a minimum level of severity. The assessment of this minimum depends on all 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. The absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX). Regard must also be

had to the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (compare, for instance, *Selmouni v. France* [GC], no. 25803/94, § 104, ECHR 1999-V; see also, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010) and whether the victim was in a vulnerable situation (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160, 15 December 2016).

84. In the present case the Court observes that it is not disputed that the applicant was in a vulnerable situation. It therefore considers that the applicant may be regarded as falling into the category of “vulnerable individuals” who are entitled to State protection (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). It takes note in that regard of the abuse to which the applicant was subjected, as the victim of sexual exploitation between late August and December 2013 and of rape in January 2014. It further observes that the abuse to which the applicant was subjected, and which took the form of physical assaults and psychological duress, was sufficiently serious to attain the degree of severity necessary to bring it within the scope of Article 3 of the Convention. Accordingly, that provision is applicable in the present case.

2. *Applicability of Article 8 of the Convention*

85. The Court notes that the applicability of Article 8 of the Convention is not disputed between the parties. It considers it beyond doubt that the abuse to which the applicant was subjected, and which interfered with her right to respect for her physical integrity (see *M.P. and Others v. Bulgaria*, no. 22457/08, § 110, 15 November 2011), caused disruption to her daily life and had an adverse effect on her private life. The Court has previously found that the physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves. There appears, furthermore, to be no reason in principle why the notion of “private life” should be taken to exclude attacks on one’s physical integrity (see *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII).

86. It follows that this provision is applicable to the circumstances of the present case.

3. *Conclusion*

87. In view of the foregoing considerations and of the nature and substance of the complaints raised by the applicant in the present case, the Court considers that they should be examined from the standpoint of Articles 3 and 8 of the Convention.

4. Violation of Articles 3 and 8 of the Convention

(a) Applicable principles

88. The Court would reiterate at the outset that the prohibition of inhuman or degrading treatment is a fundamental value in democratic societies (see, among many other authorities, *Selmouni*, cited above, § 95; *Gäfgen*, cited above, § 87; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 195, ECHR 2012; and *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 315, ECHR 2014 (extracts)). It is also a value of civilisation closely bound up with respect for human dignity, part of the very essence of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81 and 89-90, ECHR 2015). The prohibition in question is absolute, for no derogation from it is permissible even in the event of a public emergency threatening the life of the nation or in the most difficult circumstances, such as the fight against terrorism and organised crime, irrespective of the conduct of the person concerned (see, among other authorities, *Georgia v. Russia (I)* [GC], no. 13255/07, § 192, ECHR 2014 (extracts); *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014 (extracts); and *Bouyid*, cited above, § 81).

89. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, cited above, § 22; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002; and *M.C. v. Bulgaria*, cited above, § 149). These measures must provide effective protection, in particular of children, who are particularly vulnerable to various forms of violence, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge, as well as effective deterrence protecting minors against such serious breaches of personal integrity (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII; *E. and Others v. the United Kingdom*, cited above, § 88; *Z and Others v. the United Kingdom*, cited above, § 73; and *M.P. and Others*, cited above, § 108). Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (see *C.A.S. and C.S. v. Romania*, no. 26692/05, § 82, 20 March 2012, and *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III).

90. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must

be made in terms of priorities and resources, the scope of this positive obligation must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Article 8 of the Convention (see *Dorđević v. Croatia*, no. 41526/10, §§ 139, ECHR 2012, and the case-law cited therein).

91. Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has previously held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see, among other authorities, *Osman*, cited above, §§ 128-30; *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; *Sandra Janković v. Croatia*, no. 38478/05, § 45, 5 March 2009; *A v. Croatia*, no. 55164/08, § 60, 14 October 2010; and *Dorđević*, cited above, §§141-43).

92. Nevertheless, it is not the Court's role to replace the national authorities and to choose in their stead from among the wide range of possible measures that could be taken to secure compliance with their positive obligations under Article 3 of the Convention (see *Opuz v. Turkey*, no. 33401/02, § 165, ECHR 2009). Moreover, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights, the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged (see *Sandra Janković*, cited above, § 46, and *Hajduová v. Slovakia*, no. 2660/03, § 47, 30 November 2010). The question of the appropriateness of the authorities' response may raise a problem under the Convention (see *Bevacqua and S.*, cited above, § 79).

93. The positive obligation to protect a person's physical integrity extends to matters concerning the effectiveness of a criminal investigation,

which cannot be considered to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, cited above, § 151).

94. This aspect of the positive obligation does not necessarily require a conviction, but effective implementation of the law, particularly criminal, in order to secure the protection of the rights guaranteed by Article 3 of the Convention (see *M.G. v. Turkey*, no. 646/10, § 80, 22 March 2016).

95. A requirement of promptness and reasonable expedition is implicit in the obligation to carry out an investigation. The protection machinery provided for in domestic law must operate in practice within a reasonable time such as to conclude the examination on the merits of specific cases submitted to the authorities (see *Opuz*, cited above, §§ 150-51). The State's obligation under Article 3 of the Convention will not be deemed to be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays.

(b) Application of the above-mentioned principles to the present case

96. In the present case there is no doubt that the abuse to which the applicant was subjected falls within the scope of application of Article 3 of the Convention and constitutes interference with her right to respect for her physical integrity as guaranteed by Article 8 of the Convention.

97. The Court must ascertain whether the legislation and the manner in which it was implemented in the instant case, coupled with the alleged failure of the social services to take action, were defective to the point of constituting a violation of the respondent State's positive obligations under Articles 3 and 8 of the Convention.

98. The main issue which arises in the present case is therefore whether the authorities took all the necessary measures to prevent the abuse to which the applicant was subjected and to protect her physical integrity.

99. The Court will examine first of all whether the competent authorities were or should have been aware of the vulnerable situation of the applicant.

100. In that connection the Court notes that it is clear from the case file that the authorities were aware as of April 2013 of the erratic behaviour displayed by the applicant, who had been found in possession of alcohol and drugs, since the public prosecutor at the Youth Court had been alerted to the situation.

101. It also notes that in May and June 2013 the minor's parents informed the authorities of the state of distress of their daughter, who had a bipolar disorder and an attention deficit disorder and also showed signs of a borderline and anti-social personality (see paragraph 8 above). They also mentioned the risk, supported by documentary evidence, of her becoming caught up in a prostitution ring.

102. In view of the above considerations, the Court is satisfied that the domestic authorities were aware of the applicant's vulnerable situation and

of the real and immediate risk that she faced. It will therefore examine whether, regard being had to the circumstances of the case, those authorities took all reasonable measures to protect the applicant as soon as they became aware of the risks facing her.

103. The Court notes that the authorities immediately instituted a criminal investigation but that no measures were put in place to protect the applicant, who was aged 15 at the time. Although the public prosecutor requested on 2 July 2013 (see paragraph 12 above) that urgent proceedings be instituted and that the applicant be placed in a specialist institution and in the care of the social services, the Youth Court took more than four months to reach a decision.

104. The Court also notes that it emerged from the criminal proceedings concerning the prostitution ring that the applicant had been the victim of sexual exploitation during the period in question (see paragraph 52 above). The applicant was thus engaged in prostitution and part of her earnings stemmed from the actions of the two members of the prostitution ring.

105. The Court observes that it took the social services more than four months following the Youth Court's decision of December 2013 to implement the order for the applicant's placement, notwithstanding the requests to that effect made by the applicant's parents and two urgent requests for information from the Youth Court (see paragraphs 28 and 29 above).

106. The Court notes that, in the meantime, the applicant was the victim of rape (see paragraph 25 above), that criminal proceedings for gang rape were instituted in that regard, that the alleged perpetrators were identified and that the proceedings are pending before the Rome District Court (see paragraph 54 above).

107. The Court considers that in assessing the State's compliance with its positive obligations under Articles 3 and 8 of the Convention, considerable weight should be attached to the social services' and/or child protection authorities' efforts to protect the minor in question (see, *mutatis mutandis*, *M.P. and Others v. Bulgaria*, cited above, § 114).

108. In the present case the Court observes that it took the Youth Court four months, from the date on which it became aware of the applicant's difficult and dangerous situation (see paragraph 12 above), to adopt the protective measures provided for by law and requested by the public prosecutor, despite the fact that the applicant faced a known risk of sexual exploitation, given that a criminal investigation was under way and her parents had informed the authorities.

109. The Court is not persuaded by the Government's argument that, in the absence of her consent, the applicant's placement in an institution, as ordered by the Youth Court in its decision of 9 December 2013 (see paragraph 17 above), was not possible. Even assuming this to have been the case, the Court notes in that connection that, while the applicant had refused

such a placement in December 2013 (see paragraph 22 above), she gave her consent in January 2014 (see paragraph 23 above), that is, three months before she was admitted to the Karisma centre (see paragraph 35 above). The Court therefore concludes that the fact that at one point in time the applicant did not give her consent did not in itself exempt the State from acting rapidly to take appropriate and sufficient measures to protect a minor in such a way as to ensure compliance with the positive obligations imposed by Articles 3 and 8 of the Convention.

In addition – and despite the urgent nature of the request made by the President of the Youth Court regarding the measures taken to assist the applicant, who was in a difficult situation – the Court finds that the conduct of the social services indicates a lack of real commitment on their part to implementing the Youth Court’s decision, in view of their failure to attend the hearings (see paragraphs 14 and 15 above) and the time they took to select an institution to admit the applicant.

110. In the Court’s view, the national authorities had a duty to take account of the applicant’s particular psychological and physical vulnerability and to assess the situation accordingly by taking immediate and appropriate protective measures. That did not happen in the present case.

111. The Court notes that, unlike the criminal courts, which acted rapidly, the competent authorities (the Youth Court and the social services) did not actually take any immediate protective measures, despite being aware that the applicant was vulnerable, that proceedings concerning her sexual exploitation were still pending and that an investigation into gang rape was ongoing. Accordingly, the authorities did not carry out any assessment of the risks faced by the applicant.

112. In these circumstances the Court considers that the authorities cannot be said to have acted with the requisite diligence. It therefore finds that they did not take, in a timely manner, all reasonable measures to prevent the abuse of which the applicant was a victim.

113. Accordingly, the Court finds a violation of Articles 3 and 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

114. The applicant alleged that she had not had a remedy in domestic law by which to complain of the violations of her rights. She relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

115. The Government contested that argument.

116. Having regard to its finding of a violation of Articles 3 and 8 of the Convention (see paragraph 113 above), the Court considers that it has examined the main legal question raised in the present case. In view of all the facts of the case and the parties' submissions, it considers that there is no need to examine the same facts under Article 13 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and the case-law cited therein).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

119. The Government contested that claim.

120. The Court considers it appropriate to award the applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

121. Submitting documentary evidence, the applicant also claimed EUR 4,152.10 for the costs and expenses incurred before the domestic courts and EUR 19,153.65 for costs and expenses before the Court.

122. The Government contested the applicant's claims, arguing that she had not demonstrated that she had incurred the costs and expenses claimed.

123. 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 its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 10,000 for the proceedings before the Court.

C. Default interest

124. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Articles 3 and 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 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 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 10,000 (ten 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 French, and notified in writing on 1 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Linos-Alexandre Sicilianos
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Wojtyczek is annexed to this judgment.

L.A.S.
R.D.

CONCURRING OPINION OF JUDGE WOJTYCZEK

1. I agree with my colleagues concerning the operative provisions of the judgment in the present case, but would nevertheless like to add a few qualifications as regards the reasoning.

2. The present case concerns a minor who was aged 17 at the time the application was lodged. The way in which the reasoning is worded may raise doubts as to the admissibility of the application.

Normally speaking, minors are represented by their parents, who take the decisions regarding the use of legal remedies in order to assert their children's rights. In particular, it is for the parents to decide whether to lodge an application with the Court concerning their children's rights. I note in this context that the application lodged in the applicant's name was duly signed by both parents. The application is therefore admissible. I further note that the applicant, after reaching full age, expressed – by various means – her wish to continue the proceedings before the Court.

3. The task of protecting children from abuse linked to drugs and prostitution falls primarily to the parents; the State's role is first and foremost to reinforce parental authority and help the parents to exercise it in an effective manner. The difficulty of the present case is linked to the parents' inability to protect their daughter from drugs and prostitution.

In its reasoning, the Court expresses the view that the Italian authorities did not take all reasonable measures to prevent the abuse of which the applicant was a victim. At the same time, it implies that the applicant's placement in the Karisma centre was the appropriate measure. However, this approach is not unproblematic.

It should be noted at the outset that, whilst the parents requested the authorities to act, they appear to have agreed to their daughter's placement only on 3 April 2014. Furthermore, it must be stressed that the measure that was advocated considerably restricted the applicant's freedom, and that she opposed it until January 2014. The application effectively criticises the Italian authorities for not acting against the applicant's wishes as a minor and not restricting her personal freedom. In other words, the applicant complains of the fact that the authorities failed to protect her not just from other people, but from herself. It is undeniable that the parents and, where applicable, the authorities, can and must protect minors against themselves if the latter's interests so require. Nevertheless, it is difficult if not impossible to treat drug addiction effectively without the cooperation of the patient, even if he or she is an adolescent, and especially without winning his or her trust. Thus, the Italian authorities were faced with a particularly difficult situation.

On the other hand, the authorities undoubtedly failed in their first obligation in this case, which was to conduct the proceedings before the Youth Court with the requisite promptness and to give a decision in that

case. It emerges from the case file that the competent departments did not attempt to lend the parents the appropriate psychological support and the necessary assistance before seeking to restrict their parental authority. Moreover, it has not been established that the various departments undertook the necessary efforts to persuade the applicant of the necessity of seeking treatment for her drug addiction, or to win her trust. These considerations provide sufficient basis for finding a violation of the Convention in the circumstances of the present case.