



Italian authorities breached rights of asylum-seeker to be presumed and treated as a minor until his age had been properly assessed

In June 2016, the applicants in the case of [Darboe and Camara v. Italy](#) (application no. 5797/17) arrived in Italy on makeshift vessels, and claimed asylum as alleged unaccompanied minors. The case concerned their placement in an adult migrant centre and the age-assessment procedure that ensued. In today's **Chamber judgment**¹ in the case, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights owing to shortcomings in procedural guarantees afforded to Mr Darboe as a minor migrant. As a result, he had not been able to file an asylum request and had been placed in an overcrowded adult reception centre for more than four months;

a violation of Article 3 (prohibition of inhuman or degrading treatment) with regard to the length and conditions of Mr Darboe's stay in the adult reception centre; and

a violation of Article 13 (right to an effective remedy) taken in conjunction with Articles 3 and 8 in respect of Mr Darboe.

The Court pointed out in particular its well-established case-law that the difficulties deriving from the increased inflow of migrants and asylum-seekers, in particular for States which form the external borders of the European Union, did not exonerate member States of the Council of Europe from their obligations under Article 3.

As the whereabouts of the other applicant – Mr Camara – in the case are no longer known, the Court struck out this part of the application.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, Ousainou Darboe, a Gambian national, and Moussa Camara, a Guinean national, were allegedly born in 1999. Mr Darboe lives in Padua (Italy). As the whereabouts of Moussa Camara are no longer known, the Court struck out this part of the application.

Mr Darboe arrived in Sicily on 29 June 2016 aboard a makeshift vessel. He was initially housed in a centre for unaccompanied foreign minors.

Three months later he was transferred to an adult reception centre in Cona and was given a healthcare card, which showed his date of birth as 22 February 1999. A month later, at the request of the prefecture, a local doctor carried out a medical examination to determine his age. The resulting report stated that his bone age, as evaluated by X-ray examinations of the left wrist and hand on the basis of the Greulich and Pyle method², corresponded to that of an eighteen-year-old

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.

² "Greulich and Pyle" is a wrist and hand bone markers method. According to the "Medical Age Assessment of Juvenile Migrants" report (JRC - Science for policy report, European Commission, 2018), wrist and hand bone markers "consist of the evaluation of the form and size

male. No margin of error was indicated. The applicant alleged that his consent for this examination had not been sought and that he had not been given a copy of the medical report. He was not notified of any administrative or judicial decision regarding his age assessment.

Once in the adult reception centre in Cona, the applicant was assisted by lawyers who, in January 2017, applied to the Venice District Court to obtain a legal guardian for him. They submitted that domestic law provided that unaccompanied minors should not be housed in structures dedicated to adults and should only be held in governmental reception facilities for as long as was strictly necessary for their identification, their possible age assessment and to receive all relevant information about their rights, in an age-appropriate manner, including the right to apply for international protection. Moreover, Mr Darboe should have been interviewed to assess his personal situation, and the police should have immediately informed the Juvenile Court and its prosecutor for guardianship proceedings to be initiated. The guardianship judge wrote a note on the first page of the application: "To be sent to the Venice police headquarters for the necessary checks". No information concerning the outcome of the application was ever provided.

Mr Darboe described the Cona adult reception centre as overcrowded, and complained that there was no proper healthcare, no psychological help, and no access to legal information and assistance. According to independent reports, migrants were crammed into small brick buildings and large tents without proper heating. Bunkbeds were placed so close together that there was no space to pass between them. Despite its 542-person capacity, around 1,400 people were housed in the centre. Proper heating and hot water in the bathrooms were not provided, the number of bathrooms and canteen benches was insufficient, educational and recreational activities were poor, and staffing was inadequate. Furthermore, knives, alcohol and drugs were rife in the centre and there were episodes of violence and prostitution. Only one doctor was present during the day, while one nurse was there at night and during the holidays.

On 21 January 2017, Mr Darboe lodged a Rule 39 request³ to the Court asking to be transferred to a facility for unaccompanied minors. On 14 February 2017 the Court applied Rule 39 and indicated to the Government to transfer the applicant to such a facility. At the same time, a statement issued by a doctor the previous day expressed the view that the Greulich and Pyle method alone was not sufficient to determine an individual's age with certainty and was only indicative, subject to biological variability. The degree of biological maturity, particularly during puberty, varied widely. Applying the TW3 method⁴, the statement concluded that the applicant's date of birth was compatible with the one he had given. On 18 February 2017, after more than four months in the Cona reception centre, Mr Darboe was transferred to the "Villa Sarina-Aria" centre for minors in Vedrana di Budrio (Bologna).

On 2 and 9 March 2017 a representative of the 2014-2020 Asylum, Migration and Integration Fund (FAMI - *Fondo Asilo, Migrazione e Integrazione 2014-2020*), a project organised by the Ministry of the Interior and co-financed by the European Union, met the applicant and drew up a report on his personal and family situation in his country of origin and the different steps of his journey to Europe. Mr Darboe confirmed the circumstances and information described in the facts of the case presented to the Court and stated that his date of birth was 22 May 1999.

of bone elements as well as the degree of epiphyseal ossification. Evaluation is done by either comparing against a radiographic atlas (most prominently the one of Greulich and Pyle from 1959) or at individual bone level according to the Tanner-Whitehouse approach. The Greulich and Pyle atlas distinguishes 31 images of males and 27 images of females. Each image is considered as an individual phase. For each of these phases, a number of studies have investigated the corresponding age distribution".

³ Under Rule 39 of the [Rules of Court](#), the Court may indicate interim measures to any State Party to the European Convention on Human Rights. Measures under Rule 39 are decided in connection with proceedings before the Court, without prejudging any subsequent decisions on the admissibility or merits of the case. The Court grants such requests only on an exceptional basis, when the applicants would otherwise face a real risk of irreversible harm.

⁴ According to the report, TW3 refers to Tanner-Whitehouse, an age-assessment method published in 2001, considered to be more advanced and reliable compared to the Greulich and Pyle method.

The interim measure granted under Rule 39 of the Rules of Court was lifted on 7 November 2018.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention, Mr Darboe complained that the authorities had failed to recognise his rights as an unaccompanied minor asylum-seeker, and that he had been housed in an adult reception centre where he had not benefitted from age-appropriate support and protection measures. He also complained that he had been considered to be an adult on the basis of an age-assessment procedure carried out in violation of national and international law. Lastly, relying on Article 13, he alleged that there had been no effective remedy for his complaints.

The application was lodged with the European Court of Human Rights on 18 January 2017.

Third-party interventions were received from the AIRE Centre (Advice on Individual Rights in Europe), the Dutch Council for Refugees, the European Council on Refugees and Exiles (ECRE) and the *Défenseur des droits* (Defender of Rights).

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

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Raffaele **Sabato** (Italy),
Ioannis **Ktistakis** (Greece),
Davor **Derenčinović** (Croatia),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that, at the time of the events, domestic and EU law already provided a number of guarantees for unaccompanied minor asylum-seekers. It referred to the EU Directives which had been implemented in Italy, as well as to the Resolution of the Council of the European Union of 26 June 1997 and the Council of Europe's Parliamentary Assembly Resolution 1810 (2011). Those texts clearly recognised the primary importance of the best interests of the child and of the principle of presumption of minority in respect of unaccompanied migrant children, who required special protection and should be assigned a guardian and be assisted during the asylum proceedings.

Referring to the domestic and EU provisions, the Court observed that the national authorities had failed to promptly provide Mr Darboe with a legal guardian or representative, which meant that he had been prevented from effectively submitting an asylum request. Once in Cona and assisted by lawyers, he had immediately lodged an application to obtain a guardian and recognition of his rights as an unaccompanied minor asylum-seeker. However, no information had been provided to him concerning the outcome of his application. It was only after his Rule 39 request to the Court that the Government had transferred him to an adequate facility for unaccompanied minors.

The Court observed that owing to the shortcomings in the procedural guarantees after his arrival in Italy, he had not been given the necessary tools to file an asylum request and had been placed in an overcrowded adult reception centre for more than four months. The national authorities had failed to apply the principle of presumption of minority and to provide safeguards. Under both domestic

and EU law, such safeguards included the appointment of a legal representative or guardian, access to a lawyer and informed participation in the age-assessment procedure.

Mr Darboe's placement in an adult reception centre for more than four months had to have affected his right to personal development and to establish and develop relationships with others. This could have been avoided if the applicant had been placed in a specialised centre or with foster parents. Measures had eventually been put into place by the national authorities, but only after a considerable period of time had elapsed, following his Rule 39 application.

The Court concluded that the authorities had not acted with reasonable diligence and that there had been a violation of Article 8 of the Convention.

Article 3

The Court noted that the applicant had provided evidence in support of his claims. These documents confirmed that the adult reception centre had been overcrowded, that it had been understaffed and that it had been difficult to access medical care. In the Court's view, those circumstances had in themselves been problematic with regard to the applicant's vulnerability and dignity.

In its case-law, the Court had already observed that it was important to bear in mind that a child's extreme vulnerability was the decisive factor and took precedence over considerations relating to his or her status as an illegal immigrant. Children had specific needs that were related not only to their age and lack of independence, but also to their asylum-seeker status. Moreover, the Convention on the Rights of the Child encouraged States to take appropriate measures to ensure that a child who was seeking to obtain refugee status enjoyed protection and humanitarian assistance.

The Court reiterated its well-established case-law that the difficulties deriving from the increased inflow of migrants and asylum-seekers, in particular for States which form the external borders of the European Union, did not exonerate member States of the Council of Europe from their obligations under Article 3. Therefore, having regard to the length and conditions of Mr Darboe's stay in the adult reception centre, the Court concluded that he had been subjected to inhuman and degrading treatment and that there had been a breach of Article 3 of the Convention.

Article 13 taken in conjunction with Articles 3 and 8

In response to the applicant's complaint that he had not had an effective remedy under Italian law by which to lodge his complaints under Articles 3 and 8 of the Convention, the Court observed that the Government had failed to indicate any specific remedy by which the applicant could have complained about conditions in the adult reception centre. It noted also that the remedies mentioned by the Government with specific reference to the applicant's age-assessment procedure had turned out to be ineffective. It followed that there had been a violation of Article 13 taken in conjunction with Articles 3 and 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 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.