



Italian authorities should have investigated properly Bulgarian teenager's complaints about repeated beatings and rape in Italy

In today's Chamber judgment in the case of [M. and Others v. Italy and Bulgaria](#) (application no. 40020/03), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as regards the investigation into the alleged ill-treatment of the first applicant by private individuals, and

no violation of Article 3 in respect of the steps taken by the Italian authorities to release the first applicant.

The case concerned alleged human trafficking.

The Court held that there had been no evidence supporting the complaint of human trafficking. However, it found that the Italian authorities had not effectively investigated the applicants' complaints that their daughter, a minor at the time, had been repeatedly beaten and raped in a villa in the province of Vercelli.

Principal facts

The applicants, L.M., S.M., I.I. and K.L. are a Roma family of Bulgarian nationality who were born in 1985, 1959, 1958 and 1977 respectively and live in the village of Novo Selo in the Vidin region (Bulgaria).

According to the applicants, on 12 May 2003 the first three of them, daughter and parents, went to Milan (Italy) following an alleged promise of work in the villa of a Roma man of Serbian origin. L.M.'s parents alleged that six days later, beaten and threatened with death, they were forced to go back to Bulgaria, leaving their daughter – who was a minor at the time – at the villa. She was then allegedly kept under constant surveillance, forced to steal, beaten, threatened to be killed and repeatedly raped.

On 24 May 2003 L.M.'s mother returned to Italy – with the fourth applicant, L.M.'s sister-in-law – and reported that her daughter had been kidnapped. On 11 June 2003 the Italian police raided the villa and rescued L.M.

On 12 June 2003, L.M., I.I. and K.L. chose to return to Bulgaria. They submitted that the events were then investigated by the Italian authorities, but that no criminal proceedings were brought in Italy against L.M.'s kidnappers. After June that year, the applicants apparently sent numerous letters and e-mails, most of which in Bulgarian, to the Italian authorities, asking for more information and for the opening of criminal proceedings against L.M.'s alleged kidnappers. They also asked the Bulgarian authorities to help them obtain

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

information from their Italian counterparts. Apart from copies of their letters sent to the Italian authorities, the applicants only submitted to the Court two medical reports of June 2003 establishing that L.M. suffered from post-traumatic stress disorder and had a bruise on the head, a small wound on the right elbow and a broken rib. The reports further stated that she had lost her virginity and was suffering from a vaginal infection. The medical conclusions were that those injuries could have been inflicted the way L.M. described.

In July 2003, the public prosecutor brought criminal proceedings against L.M. for false accusations in so far as she claimed that three people had abducted her and had kept her by force in their villa. A few days earlier, in June 2003, criminal proceedings on the same grounds were also brought against L.M.'s mother. The proceedings against L.M. were discontinued in January 2005 and her mother was acquitted in February 2006.

According to the Bulgarian Government, L.M., S.M. and I.I. arrived in Italy, into a nomad camp, where they met three individuals, one of whom chose L.M. for a wife. After the marriage was celebrated and the bride's virginity was confirmed, L.M.'s new family-in-law paid several thousand Euros to I.I. and K.L., who then returned to Bulgaria on 18 May 2003. Thirteen days later, they complained to the Bulgarian authorities who immediately requested information from Rome. Further contacts with the Italian authorities lead to a successful raid by the Italian police of the villa where L.M. was kept and to her freeing on 11 June 2003.

Complaints, procedure and composition of the Court

Relying on Article 3, the applicants alleged in particular that the Italian authorities had failed to ensure L.M.'s swift release, which would have prevented her further ill-treatment by the Serbian family in the villa, and that the ensuing investigation both in Italy and Bulgaria into their allegations had been ineffective. They also claimed under Article 4 (prohibition of slavery, servitude or forced labour) that L.M., forced to take part in organised crime, had been a victim of trafficking in human beings for which both Bulgaria and Italy were responsible. Lastly, relying on Article 14 (prohibition of discrimination), they claimed that they had been discriminated in both countries as a result of their Roma origin.

The application was lodged with the European Court of Human Rights on 11 December 2003.

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

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Isabelle **Berro-Lefèvre** (Monaco),
 Zdravka **Kalaydjieva** (Bulgaria),
 András **Sajó** (Hungary),
 Guido **Raimondi** (Italy),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of ill-treatment\)](#)

A. Italian authorities' actions

In respect of L.M.

As regards the steps taken by the Italian authorities, the Court noted that the police had released L.M. from her alleged captivity within two and a half weeks. It had taken them three days to locate the villa and a further two weeks to prepare the raid. Given that the applicants had claimed that the people in the villa were armed, the Court accepted that surveillance prior to the intervention had been necessary. Therefore, the Italian authorities had fulfilled their obligation to protect L.M. and there had been **no violation of Article 3**.

However, in respect of the investigation carried out by the Italian authorities into her complaints that she had been repeatedly beaten and raped, the Court found that there had been **a violation of Article 3**. In particular, the police had made no efforts to question individuals who could have witnessed the events, apart from L.M., her mother and the alleged offenders. Furthermore, on the day when L.M. had been released and her complaints heard, the criminal proceedings against the assailants had been turned into criminal proceedings against her and her mother. Given that it had taken the domestic authorities less than a day to reach their conclusions on L.M.'s complaints, it had been impossible for them to have clearly established the facts.

In addition, upon her release, L.M. was not medically examined, despite her claims that she had been repeatedly beaten and raped. Even if the authorities considered that she had in fact been married to one of the individuals in the villa, they had been obliged to act in order to protect her from violence by her husband or partner. However, no particular questioning or specific tests had taken place, despite the fact that she had been a minor at the time. The Court emphasised that the applicants' complaints required a thorough investigation and a possible "Roma marriage" could not be used as a reason not to investigate.

In respect of S.M. and I.I.

The Court noted that, even assuming that L.M.'s mother and father had been previously restrained at the villa as they had claimed they had been free as from 18 May 2003. Therefore, unlike their daughter, they could have sought medical help and acquired medical evidence in support of their claims, which they had not done. The Court had not received any evidence indicating that they could have been ill-treated at the villa and it concluded that there is no sufficient, consistent or reliable evidence to establish to the necessary degree of proof that they were subjected to such ill-treatment. In consequence, no fully fledged investigation had been necessary.

Accordingly, the Court **rejected** their complaint as **inadmissible**.

In respect of L.M. and I.I.

Neither L.M. nor her mother had complained to the Italian authorities about being mistreated by the police during their questioning. Neither had they made any such complaint in the context of the proceedings subsequently brought against them. Consequently, they had failed to exhaust domestic remedies in respect of this complaint.

In addition, a lawyer or an interpreter, or both, had accompanied them during the interrogation. The fact that the police officers had warned them of the possibility of being prosecuted and imprisoned if they did not tell the truth had been a normal part of the police duties when questioning people, and not an unlawful threat.

The Court accordingly **rejected** their complaint as **inadmissible**.

B. Bulgarian authorities' actions

The Court **rejected** the applicants' complaints against the Bulgarian authorities as **inadmissible** for the reasons below.

The events in question had occurred in Italy and, therefore, outside of Bulgaria's jurisdiction. In accordance with the Court's case law, Bulgaria was not obliged under the Convention to carry out an investigation into the applicants' complaints. Furthermore, the Convention does not contain a right requiring its member States to exercise diplomatic protection or otherwise internationally intervene to protect individuals' rights. Finally, the Bulgarian authorities repeatedly pressed for action by the Italian authorities, as shown by the documents submitted to the Court.

Article 4 (slavery, servitude, forced or compulsory labour)

A. Complaint against the Italian authorities

The Court examined both versions of the events: as submitted by the applicants, and as presented by the Italian Government. It concluded that whichever version were the true one, the evidence had not shown that the circumstances fell under Article 4. The **applicants' related complaints**, therefore, were **rejected as inadmissible**.

More specifically, the applicants had complained that the events in which they had been involved in Italy had constituted trafficking in human beings. The Court agreed that the circumstances, as alleged by the applicants, could have amounted to human trafficking. However, the evidence submitted had not allowed it to establish whether their allegations were truthful. Consequently, the Court did not accept that the circumstances had amounted to the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Since it had not been established that L.M. had been a victim of trafficking, the Italian authorities had not been obliged to penalise and prosecute trafficking.

As regards the authorities' obligation to remove people from circumstances of risk under Article 4, the Court noted that they had freed L.M. from the situation in which she had been. Given that the Court had already found a violation of Article 3 as a result of the authorities' failure to effectively investigate L.M.'s complaints about ill-treatment, it found that it was not necessary to examine the same complaint under Article 4.

On the other hand, the Italian authorities had concluded that the events had amounted to a typical marriage according to Roma traditions. Again, there had been insufficient evidence that L.M. had been held in slavery or forced labour. Even assuming that L.M.'s father had received some money in the context of the alleged marriage, that was not enough to conclude that it had been a price in exchange of acquiring ownership over L.M. Furthermore, the applicants had themselves stated that they had been employed at the villa to do housework. Finally, there had been no evidence suggesting that the union had been undertaken for any purposes other than those generally associated with a traditional marriage.

B. Complaint against the Bulgarian authorities

The Court observed that if any alleged trafficking had started in Bulgaria, it would have been competent to examine the Bulgarian authorities' related responsibilities. However, it had already established that the circumstances of the case had not amounted to human trafficking. Furthermore, the applicants had only complained that the Bulgarian authorities had not helped them deal with the Italian authorities, and not that they had not investigated any potential trafficking.

The Court found that the Bulgarian authorities had assisted the applicants and had maintained constant contact and cooperation with the Italian authorities. The applicants' related complaint was therefore **rejected as inadmissible**.

Article 14 (prohibition of discrimination)

The Court recalled that when investigating violent incidents, State authorities had the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.

However, even assuming the applicants' version of events was true, the treatment they claimed to have suffered could not be said in any way to have had racist overtones or to have been instigated by ethnic hatred or prejudice because the alleged perpetrators had belonged to the same ethnic group as the applicants. Furthermore, the applicants had not alleged that to the police in their complaints at the time. Consequently, there was no positive obligation on the State to investigate such motives.

While the Court found already that the Italian authorities had failed to adequately investigate the applicants' allegations, from the documents submitted it did not transpire that such failure to act had been a consequence of discriminatory attitudes. Indeed, the applicants had not accused the authorities of displaying anti-Roma sentiment at the relevant time and there appeared to have been no racist verbal abuse by the police, prosecution or court during the investigation further proceedings.

Accordingly, the Court rejected that complaint **as inadmissible**.

Just satisfaction (Article 41)

Although a request for just satisfaction (EUR 200,000) had been made when the applicants brought their application, they did not submit a claim for just satisfaction when requested by the Court. Accordingly, the Court did not award them any sum on that account.

Separate opinion

Judge Kalaydjieva expressed a dissenting opinion, the text of which is annexed to the judgment.

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.