



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

SECOND SECTION

CASE OF RUMOR v. ITALY

(Application no. 72964/10)

JUDGMENT

STRASBOURG

27 May 2014

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

In the case of Rumor v. Italy,

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

Işıl Karakaş, *President*,

Guido Raimondi,

András Sajó,

Helen Keller,

Paul Lemmens,

Robert Spano,

Jon Fridrik Kjølbro, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 72964/10) 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 Giulia Rumor (“the applicant”), on 8 November 2010.

2. The applicant was represented by Mrs A. Mascia and Mr D. Adami, lawyers practising in Strasbourg and Verona. The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora.

3. The applicant alleged, in particular, that the authorities had failed to protect and support her after the violence she had endured at the hands of her former partner, Mr. J.C.N. (“former partner” or “J.C.N.”), causing her anguish and fear in violation of Article 3 of the Convention. Furthermore, citing Article 14 in conjunction with Article 3 of the Convention, the applicant alleged that she had been discriminated against on the basis of her gender.

4. Following a preliminary examination of the admissibility of the application, the judge appointed as rapporteur under Rule 49 § 2 of the Rules of Court decided that further information was required. On 6 January 2011 the Government were accordingly asked to provide such information under Rule 49 § 3 (a) of the Rules of Court.

5. On 7 June 2011 the application was communicated to the Government and it was granted priority.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968 and lives in Colognola ai Colli, in the province of Verona.

7. The facts of the case, as submitted by the parties, can be summarised as follows.

A. Background to the case

8. The applicant's relationship with J.C.N., a Kenyan national, began in 2003. They had two children, P. and A., who were born in August 2006 and March 2008 respectively.

9. The applicant submitted that her relationship with J.C.N. deteriorated rapidly. In 2008 they undertook relationship therapy, which was interrupted because J.C.N. was suffering from depression. He also took no interest in the business he had set up with the applicant in 2006.

10. According to the domestic court's judgments, on 16 November 2008 J.C.N. hit the applicant several times and threatened her with a knife and a pair of scissors during a violent argument concerning the relationship that she had begun with a common friend. J.C.N. locked the applicant in the flat and took the keys in order to prevent her from leaving. Their children were asleep in the flat and one of them, awakened by the screaming, witnessed part of the aggression.

11. The *carabinieri*, called by the neighbours, intervened at the couple's home. The applicant was taken to hospital in a state of shock. She was diagnosed with, *inter alia*, concussion, injuries to the head and several bruises all over her body.

B. Criminal proceedings against the applicant's former partner

12. J.C.N. was arrested and detained. He was charged with attempted murder, kidnapping, aggravated violence and threatening behaviour. He subsequently asked the authorities in charge of the preliminary investigation to adopt the summary procedure (*giudizio abbreviato*) provided for in Articles 438 to 443 of the Code of Criminal Procedure ("the CCP").

13. On 2 April 2009 J.C.N. was found guilty and sentenced to four years and eight months' detention.

14. The applicant did not join the criminal proceedings as a civil party.

15. On 11 December 2009 the Verona Court of Appeal reduced the sentence to three years and four months' detention.

16. By a decision issued on 7 October 2010 the Court of Cassation dismissed an appeal lodged by J.C.N.

C. Execution of the sentence

17. On 6 October 2009 J.C.N. applied to the Venice Court of Appeal seeking to serve the remainder of his sentence under house arrest at a reception centre located in the municipality where the applicant was living (Colognola ai Colli).

18. On 3 November 2009 the Venice Court of Appeal dismissed J.C.N.'s application, referring, *inter alia*, to the proximity of the facility indicated (2 km) to the applicant's home, the psychological condition of J.C.N. and the risk that he might try to contact the applicant.

19. On 1 June 2010 J.C.N. lodged another application for house arrest, indicating a reception centre ("Don Nicola") located in Soave, a different municipality of the province of Verona, about 15 km from the applicant's home. The centre was managed by a non-profit-making organisation called *Sulle Orme*.

20. The Venice Court of Appeal ordered an inspection of the facility indicated by J.C.N. in order to assess its suitability to host him. The inspection was carried out by the *carabinieri*, who highlighted that the facility in question had already hosted persons whose prison sentence had been replaced by house arrest, without any complications having arisen. They further stressed that they carried out regular surveillance of the persons hosted by the centre. They consequently concluded that the facility was suitable to host the applicant's former partner.

21. On 18 June 2010 the Venice Court of Appeal granted J.C.N.'s request.

22. On 24 September 2010 the Venice Court of Appeal granted J.C.N. permission to work outside the reception centre during the grape-harvest season.

23. On 2 August 2011 J.C.N. finished serving his sentence and was released. He decided to continue residing at the reception centre.

D. Proceedings before the Venice Juvenile Court

24. On 24 April 2009 the applicant lodged an application with the Venice Juvenile Court seeking sole custody of her children and the forfeiture of her former partner's parental rights.

25. On 15 May 2009 the applicant was granted sole custody of her children. In February 2010, after having heard both the applicant and her former partner, the Venice Juvenile Court ordered the forfeiture of J.C.N.'s parental rights and prohibited any form of contact between him and the children. The court stressed that J.C.N. could apply for the restoration of his

parental rights once he had served his sentence and followed a path aimed at acquiring the parental skills he had been shown to be lacking.

26. In January 2012 J.C.N. applied to the Venice Juvenile Court seeking the restoration of his parental rights and the suspension of his financial obligation towards his children. No information was submitted to the Court about the outcome of the application.

E. Situation of the applicant following the assault

27. The applicant claimed that following the violence suffered at the hands of her former partner, she lived in a state of constant anguish and fear of a recurrence of the violence against her and her children. She underwent psychological support therapy, as did her son P., who had witnessed the violence.

28. On an unspecified date the applicant turned for help to an association (*Associazione scaligera vittime di reato – ASAV*) that specialised in providing material, psychological and legal assistance to victims of crime.

29. The applicant visited her former partner five times during his imprisonment, which lasted from 18 November 2008 to 18 June 2010.

30. From the material submitted by the applicant, it appears that after J.C.N. was released he and the applicant resumed contact in the form of an exchange of emails.

II. RELEVANT INTERNATIONAL MATERIAL

31. A summary of the relevant international material concerning protection from domestic violence and discrimination against women has been made in the case of *Opuz v. Turkey* (no. 33401/02, §§ 72-86, ECHR 2009).

32. In its Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women, and prevention.

33. The Committee of Ministers recommended, in particular, that member States should penalise serious violence against women, such as sexual violence and rape, abuse of the vulnerability of pregnant, defenceless, ill, disabled or dependent victims, as well as penalising abuse of position by the perpetrator. The Recommendation also stated that member States should ensure that all victims of violence were able to institute proceedings, make provisions to ensure that criminal proceedings

could be instituted by the public prosecutor, and encourage prosecutors to regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest. Member States should also ensure, where necessary, that measures were taken to protect victims effectively against threats and possible acts of revenge, and take specific measures to ensure that children's rights were protected during proceedings.

34. With regard to domestic violence, the Committee of Ministers recommended that member States should classify all forms of violence within the family as criminal offences and envisage the possibility of taking measures in order, *inter alia*, to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas. They should also penalise all breaches of the measures imposed on the perpetrator and establish a compulsory protocol so that the police, medical and social services followed the same procedure.

35. In its General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/2010/47/GC.2), the Committee on the Elimination of Discrimination against Women found that "States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

36. Citing Article 3 of the Convention alone and in conjunction with Article 14 of the Convention, the applicant complained of the inaction of the Italian authorities, which had failed to protect and support her after the violence she had suffered. She claimed that those omissions and the inadequacy of the domestic legislative framework in combating domestic violence proved that she had been discriminated against on the basis of her gender.

37. The Articles referred to provide as follows:

Article 3

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

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

38. 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 must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) **The applicant**

39. The applicant submitted that after the serious incident of violence in November 2008, the authorities had failed to assist and support her and to protect her from any repetition of such violence.

40. The applicant argued that the violence she had suffered at the hands of her former partner had had a traumatic effect on her, causing her strong psychological distress from which she had not yet recovered. She had been unable to continue living in the same flat where the violence had occurred and had moved to a different floor of the same building. She had experienced difficulty sleeping and she and her son P. had undergone psychological support therapy.

41. The applicant further contended that the authorities had not informed her about the status of the criminal proceedings against J.C.N. In particular, she had not been informed when he had been granted house arrest. She claimed to have become aware of that when her former partner called her using the phone of a common friend. The applicant also criticised the conduct of the *carabinieri* who, when asked for explanations about the house arrest granted to J.C.N., had limited themselves to reassuring her about the suitability and safety of the chosen facility.

42. Furthermore, the applicant submitted that at the beginning of his detention J.C.N. had sent several letters to her which she had perceived as threatening. Such conduct had ceased once his lawyer had been informed.

43. The applicant also claimed that while serving his sentence, her former partner had not followed any psychological recovery programme and that he continued to constitute a threat to her life and the lives of her children.

44. The applicant also argued that the proximity to her home of the facility hosting J.C.N. while he was under house arrest had contributed to an increase in her anguish and her fear that he might attack her again. She pointed out that his previous application for house arrest had been dismissed on the grounds, *inter alia*, of the proximity of the facility indicated to her home.

45. In this context the applicant claimed that on 25 June 2010 she had been intimidated by the manager of the reception centre, “Don Nicola”, who had made indirect reference to his power to influence the proceedings concerning parental rights in order to prevent her from selling the company she co-owned with her former partner.

46. Moreover, the applicant pointed out that she had been contacted by a worker of the centre to set up a telephone conversation between J.C.N. and his son P. for the birthday of the latter on 2 August 2010. In her view, both of those episodes served to cast doubt on the choice of the reception centre in question. Lastly, she complained that after J.C.N. had finished serving his sentence, he had continued to reside at the same facility and had resumed contact with her in the form of an email exchange, which she perceived as inappropriate.

47. The applicant pointed out that in the light of the above she was in a position of vulnerability and that the authorities had failed to assist and support her, having omitted to put in place adequate measures to protect her from a repeat attack by J.C.N. She highlighted that children and other vulnerable individuals, in particular, were entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity.

48. The applicant maintained that the violence she had suffered and the consequent psychological distress had attained a sufficient level of severity to be considered as ill-treatment within the scope of Article 3 of the Convention.

(b) The Government

49. On the merits of the case the Government submitted that the authorities had taken all reasonable measures to punish the perpetrator of the violence, to protect and support the applicant from the risk of violence and to prevent such violence from recurring.

50. The Government remarked that J.C.N. had been arrested and remanded in custody immediately after the attack on the applicant. The criminal proceedings thereafter had been conducted with due expedition and he had been sentenced to three years and four months’ detention, a sentence proportionate to the crime with which he had been charged. The applicant’s former partner had served the majority of his sentence in a prison facility and only in June 2010 had been granted house arrest at a reception centre managed by an organisation called *Sulle Orme*.

51. The Government pointed out that a person under house arrest was still considered to be in detention; he did not enjoy freedom of movement and any violation of the house arrest conditions (set up by the post-sentencing judge) constituted a further crime. Moreover, J.C.N. had been placed in a facility the suitability of which, in terms of both security and rehabilitation prospects, had been carefully assessed by the authorities involved, in line with the gravity of the crime he had committed.

52. The Government argued that J.C.N. had participated in a programme of psychological support and rehabilitation organised by the Municipality of Soave and that the reports thereon had been positive.

53. In relation to one of the episodes referred to by the applicant to prove the inadequacy of the chosen facility (see paragraph 46 above), the Government, while not contesting its truthfulness, highlighted that the applicant had failed to report it to the authorities, thus denying them the possibility to intervene. The Government did not take a stand on the other episode referred to by the applicant (see paragraph 45 above).

54. As far as the contacts between the applicant and her former partner (following his release) were concerned, the Government submitted that if, as she claimed, the applicant had perceived such contacts as inappropriate or threatening, she had had at her disposal a specific protection against the crime of stalking. She had not availed herself of such a protection.

55. Lastly, the Government stressed that in the Verona province there were several centres specialising in the support and assistance of victims of violent crimes and that the applicant could easily have had access to one of them.

56. The Government concluded that the applicant had not submitted any valid arguments, facts or evidence corroborating the alleged lack of support and protection on the part of the authorities.

2. *The Court's assessment*

(a) **General principles**

57. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C; *Opuz v. Turkey*, no. 33401/02, § 158, 9 June 2009; and *Eremia v. The Republic of Moldova*, no. 3564/11, § 48, 28 May 2013).

58. The Court further reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such

treatment is administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *Opuz*, cited above, § 159; and *Eremia*, cited above, § 48). This obligation should include effective protection of, *inter alios*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII; *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002; and *J.L. v. Latvia*, no. 23893/06, § 64, 17 April 2012). Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see *A. v. the United Kingdom*, cited above, § 22).

59. 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, *mutatis mutandis*, *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 82, 12 June 2008). At the same time, under Article 19 of the Convention and in accordance with 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 *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 61, 20 December 2007).

(b) Application of these general principles in the present case

(i) Whether the applicant was subjected to ill-treatment within the meaning of Article 3 of the Convention

60. The Court considers that the applicant was a "vulnerable individual" having regard to the physical injuries she suffered on 16 November 2008 and her fear of further violence.

61. The Court considers that such violence and the psychological consequences of it were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention.

62. In such circumstances, the Court finds that Article 3 of the Convention was applicable to the present case. It must therefore determine whether the authorities' actions in response to the applicant's complaints complied with the requirements of that provision and whether the national authorities took all reasonable measures to prevent the recurrence of violent attacks against the applicant's physical integrity.

(ii) *Whether the authorities complied with their positive obligations under Article 3 of the Convention*

63. The States' positive obligations under Article 3 of the Convention include, on the one hand, setting up a legislative framework aimed at preventing and punishing ill-treatment by private individuals and, on the other hand, when aware of an imminent risk of ill-treatment of an identified individual or when ill-treatment has already occurred, applying the relevant laws in practice, thus affording protection to the victims and punishing those responsible for ill-treatment (see *Eremia v. The Republic of Moldova*, cited above, § 56).

64. Turning to its examination of the facts, the Court notes that the authorities, namely the *carabinieri*, the public prosecutors and the domestic courts did not remain passive after the incident on 16 November 2008. The applicant's former partner was immediately arrested and remanded in custody. He was charged with attempted murder, kidnapping, aggravated violence and threatening behaviour. The criminal proceedings were conducted with due expedition and he was sentenced to three years and four months' detention (see paragraphs 12-16 above).

65. The Court considers that in relation to the custody of the couple's children, the response of the authorities was also effective. The applicant was granted sole custody and her former partner's parental rights were forfeited (see paragraphs 24-26 above).

66. As far as the protection afforded to the applicant is concerned, the Court cannot but observe that the knowledge of the presence of her former partner at some 15 kilometers from her residence had a negative impact on the applicant.

67. However, the Court observes that, before granting J.C.N.'s application for house arrest, the post-sentencing judge carefully assessed, with the help of the *carabinieri*, who provided a detailed report, the suitability of the facility chosen, in accordance with the gravity of the crime committed by J.C.N. The decision appears to have been taken after a careful assessment of the situation.

68. The fact that a previous application for house arrest had been turned down on the basis, *inter alia*, of the proximity of the facility to the applicant's home does not *per se* invalidate the authorities' decision in relation to the protection of the applicant. The court finds that in view of the fact that a different facility was indicated and that time had elapsed since the last application, it was not unreasonable for the judge to reach a different conclusion in relation to the danger of a repetition of the crime by J.C.N.

69. The episodes relied on by the applicant to corroborate her claims (see paragraphs 46-47 above), which were not contested by the Government, were not attributable to the location of the chosen facility. Moreover, by not reporting those episodes, the applicant denied the authorities the opportunity to intervene. Specifically, the post-sentencing

judge was in a position to evaluate their compatibility with J.C.N. remaining in the facility and the juvenile court was in a position to assess whether the prohibition on J.C.N. contacting his children had been infringed.

70. In relation to the complaint that the applicant's former partner had not undergone psychological therapy, the Court notes that, contrary to the applicant's claim, the judgments of the domestic courts in the criminal proceedings against him had not ordered that any psychological therapy be followed (unlike in the case of *A. v. Croatia*, no. 55164/08, 14 October 2010).

71. On the other hand, although the Venice Juvenile Court divested J.C.N. of his parental rights, it recommended that he receive psychological support therapy as a precondition to his requesting the restoration of such rights. The Court observes that the Government submitted proof that the applicant's former partner had participated in such a psychological support programme aimed at appreciating and analysing the gravity of his conduct.

72. In relation to the applicant's claim that she had not been kept informed about the criminal proceedings against J.C.N., the Court notes that the Convention may not be interpreted as imposing a general obligation on States to inform the victim of ill-treatment about the criminal proceedings against the perpetrator, including about possible release on parole from prison or transfer to house arrest. Furthermore, the Court notes that under the applicable Italian law, such information has only to be provided to the victim of a crime who intervened as a civil party to the proceedings, and that the applicant chose not to do so.

73. Furthermore, the Court cannot fail to observe that from a reading of the email exchange (submitted by the applicant) between the applicant and her former partner (see paragraph 30 above), the relationship between them appeared to be relatively calm and harmonious. The applicant indicated, *inter alia*, her availability to meet her former partner and provided information on the well-being of their children. Her former partner appeared to accept the applicant's new relationship.

74. The Court also notes that no further threats or episodes of violence occurred either after the applicant's former partner was granted house arrest or after he was released.

75. Lastly, the Court finds that the remainder of the applicant's complaints (see paragraphs 42-43 above) are unsubstantiated and unsupported by the material submitted.

76. In the light of the above considerations, the Court concludes that the authorities had put in place a legislative framework allowing them to take measures against persons accused of domestic violence and that that framework was effective in punishing the perpetrator of the crime of which the applicant was victim and preventing the recurrence of violent attacks against her physical integrity.

77. There has accordingly been no violation of Article 3 of the Convention. In view of that finding, the Court concludes for the same reasons that there has been no breach of Article 3 in conjunction with Article 14 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 3 of the Convention alone and in conjunction with Article 14 of the Convention.

Done in English, and notified in writing on 27 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Deputy Registrar

Işıl Karakaş
President