

ECtHR - Mubilanzila Mayeka and Kaniki Mitunga v Belgium, Application No. 13178/03

Country of Decision:

Belgium

Country of Applicant:

Congo (DRC)

Date of Decision:

12-10-2006

Citation:

Application No. 13178/03

Court Name:

European Court of Human Rights - First Section

Keywords:

Best interest of the child

Detention

Inhuman or degrading treatment or punishment

Return

Vulnerable person

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 5](#) [3]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [4]

Headnote:

Multiple violations of the Convention by the Belgian Government by detaining an unaccompanied five-year-old child at a transit centre for adult foreigners, removing her and conditions in which she was removed to her home country. Distress and anxiety of the mother as a result of her daughter's detention and deportation resulted in a number of violations of the Convention.

Facts:

The Applicants, Ms Pulchérie Mubilanzila Mayeka and her daughter Tabitha Kaniki Mitunga, are Congolese nationals who were born in 1970 and 1997 respectively. They now live in Montreal (Canada).

Ms Mubilanzila Mayeka arrived in Canada in September 2000, where she was granted refugee status in July 2001 and obtained indefinite leave to remain in March 2003. After being granted asylum, she asked her brother, a Dutch national living in the Netherlands, to collect Tabitha, who was then five years old, from the Democratic Republic of the Congo and to look after her until she was able to join her in Canada.

On 18 August 2002 shortly after arriving at Brussels airport, Tabitha was detained in Transit Centre no. 127 because she did not have the necessary documents to enter Belgium. The uncle who had accompanied her to Belgium returned to the Netherlands. On the same day a lawyer was appointed by the Belgian authorities to assist Tabitha.

On 27 August 2002 an application for asylum that had been lodged on behalf of Tabitha was declared inadmissible by the Belgian Aliens Office. Its decision was upheld by the Commissioner-General for Refugees and Stateless Persons on 25 September 2002.

On 26 September 2002 Tabitha's lawyer asked the Aliens Office to place Tabitha in the care of foster parents, but did not receive a reply.

On 16 October 2002 the Chambre de conseil of the Brussels Court of First Instance held that Tabitha's detention was incompatible with the UN Convention on the Rights of the Child and ordered her immediate release. On the same day the Office of the High Commissioner for Refugees sought permission from the Aliens Office for Tabitha to remain in Belgium while her application for a Canadian visa was being processed and explained that her mother had obtained refugee status in Canada.

The following day, 17 October 2002, Tabitha was removed to the Democratic Republic of Congo. She was accompanied by a social worker from Transit Centre no. 127 who placed her in the care of the police at the airport. On board the aircraft she was looked after by an air hostess who had been specifically assigned to that task by the chief executive of the airline. She travelled with three Congolese adults who were also being deported. No members of her family were waiting for her when she arrived in the Democratic Republic of Congo. On the same day, Ms Mubilanzila Mayekarang Transit Centre no. 127 and asked to speak to her daughter, but was informed that she had been deported.

At the end of October 2002 Tabitha joined her mother in Canada following the intervention of the Belgian and Canadian Prime Ministers.

Decision & Reasoning:

Article 3 ? *The child's detention*: The child, unaccompanied by her parents, had been detained for two months in a centre intended for adults, with no counselling or educational assistance from a qualified person specially mandated for that purpose. The care provided to her had been insufficient to meet her needs. Owing to her very young age, the fact that she was an illegal alien in a foreign land and the fact that she was unaccompanied by her family, the child was in an extremely vulnerable situation. However, no specific legal framework existed governing the situation of unaccompanied alien minors. Although the authorities had been placed in a position to prevent or remedy the situation, they had failed to take adequate measures to discharge their obligation to take care of the child. Her detention demonstrated a lack of humanity and amounted to inhuman treatment.

Article 3 ? *Distress and anxiety of the mother as a result of her daughter's detention*: The only action taken by the Belgian authorities had been to inform the mother that her daughter had been detained and to provide her with a telephone number where she could be reached. The Court unanimously found a violation of Article 3.

Article 3 ? *The child's deportation*: The authorities had not taken steps to ensure that the child would be properly looked after before and during the flight or on her arrival, or had regard to the real situation she was likely to encounter on her return. Her removal amounted to inhuman treatment; in deporting her, the State had violated its positive obligation to take the requisite measures and precautions. The authorities had not troubled to advise the mother of her daughter's deportation and she had learned of it only after the event. The Court has no doubt that this caused the mother's deep anxiety. The disregard such conduct showed for her feelings and the evidence in the case file lead the Court to find that the requisite threshold of severity has been attained in the present case. The Court unanimously found a violation in respect of both Applicants.

Article 8 ? Both Applicants had been subjected to disproportionate interference with their right to respect for their family life as a result of the child's detention and the circumstances of her deportation. The Court unanimously found a violation in respect of both Applicants.

Article 5(1) ? The child had been detained under a law which contained no provisions specific to minors, in a centre intended for adults and thus unsuited to her extremely vulnerable situation. Her right to liberty had not been adequately protected. The Court found a violation of Article 5(1) in this regard.

Article 5(4) ? The child had been deported without regard to the fact that she had lodged an application for release, which had been granted. The application had therefore been rendered ineffective. This amounted to a violation of Article 5(4).

Outcome:

1. A violation of the child's rights under Article 3 of the Convention as a result of her detention;
2. A violation of the mother's rights under Article 3 of the Convention as a result of her daughter's detention;
3. A violation of the child's rights under Article 3 of the Convention as a result of her deportation;
4. A violation of the mother's rights under Article 3 of the Convention as a result of her child's deportation;
5. A violation of both Applicants' rights under Article 8 of the Convention as a result of the child's detention;

6. A violation of both Applicants' rights under Article 8 of the Convention as a result of the child's deportation;
 7. The mother cannot claim to be a 'victim' for the purposes of Article 34 of the Convention of a violation of Article 5 § 1 of the Convention;
 8. A violation of the child's rights under Article 5 § 1 of the Convention;
 9. The mother cannot claim to be a 'victim' for the purposes of Article 34 of the Convention of a violation of Article 5 § 4 of the Convention;
 10. A violation of the child's rights under Article 5 § 4 of the Convention;
 11. No separate examination of the complaint under Article 13 of the Convention was necessary;
 12. The Respondent State is to pay the Applicants EUR 35,000 in respect of non-pecuniary damage (comprising EUR 10,000 for the mother and EUR 25,000 for the child) and EUR 14,036 for costs and expenses.
 13. The remainder of the Applicants' claim for just satisfaction was dismissed.
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Subsequent Proceedings :

The CoE Committee of Ministers adopted a final resolution wherein it found that adequate execution measures had been taken by Belgium both on the individual and general level.

With regard to the former, the Court noted that the child could reunite with her mother in Canada following interventions by the Belgian and Canadian Prime Ministers.

As to general measures, the CM noted that, according to the new legal framework, detention of unaccompanied foreign minors not meeting the condition for admission to the country, but whose minor status is determined, is prohibited. Their reception has been improved through the setting up of observations and guidance centres and by giving them priority for the provision of appropriate care (law of 12 January 2007). Their deportation is possible only if this is in their higher interest and for the purpose of family reunification; and only after the Aliens Office has verified that the minor will be cared for in the country of return (law of 19 January 2012), and after their guardian has been involved in the process of finding a lasting solution for the minor. Indeed, under a law of 1 May 2004, unaccompanied foreign minors are now granted a guardian as their legal representative from the time of interception. This figure has to provide them with care (under the supervision and coordination of the Guardianship Department), and has the capacity to challenge a deportation order.

Attachment(s):



[CASE OF MUBILANZILA MAYEKA AND KANIKI MITUNGA v. BELGIUM.pdf](#)[5]

Other sources cited:

Concluding observations of the Committee on the Rights of the Child: Belgium of 13 June 2002

National / Other Legislative Provisions:

[UNCRC - Art 3](#) [6]

[UNCRC - Art 10](#) [7]

[UNCRC - Art 22](#) [8]

[UNCRC - Art 37](#) [9]

[Belgium - Vreemdelingenwet/loi sur les étrangers 15/12/1980 \(Aliens Act\)](#) [10]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] https://www.asylumlawdatabase.eu/node/195#toc_12

[3] https://www.asylumlawdatabase.eu/node/195#toc_22

[4] https://www.asylumlawdatabase.eu/node/195#toc_46

[5]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20MUBILANZILA%20MAYEK>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/182>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/674>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7322>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1748>

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4290>