



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

FIFTH SECTION

CASE OF A.B. v. ITALY

(Application no. 13755/18)

JUDGMENT

STRASBOURG

19 October 2023

This judgment is final but it may be subject to editorial revision.

In the case of A.B. v. Italy,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Lado Chanturia,

Mattias Guyomar, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 13755/18) 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”) on 21 March 2018 by a Tunisian national, A.B. (“the applicant”), who was born in 1994 and lives in Tunisia, and was represented by Ms L. Gennari, a lawyer practising in Rome;

the decision to give notice of the complaints concerning Article 3, Article 5 §§ 1, 2 and 4 and Article 13 of the Convention and Articles 2 and 4 of Protocol No. 4 to the Convention to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia, and to declare the remainder of the application inadmissible;

the decision not to disclose the applicant’s name;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by *Avocats sans frontières* and *L’altro diritto*, which had been granted leave to intervene by the President of the Section;

Having deliberated in private on 28 September 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant’s detention in the hotspot at Contrada Imbriacola on the island of Lampedusa, the poor conditions of his stay there and his forced removal to Tunisia. The Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza – CSPA*) on Lampedusa was designated as an Italian hotspot pursuant to section 17 of Decree-Law no. 13 of 17 February 2017.

I. THE APPLICANT’S STAY IN THE LAMPEDUSA HOTSPOT

2. The applicant reached the Italian coast on 30 October 2017 aboard a makeshift vessel and was then transferred to the hotspot on Lampedusa. He was subjected to identity checks, allegedly without receiving any information as to the possibility of requesting international protection.

3. On an unspecified date the applicant signed an information sheet (*foglio notizie*) which recorded his identity and the information that he had come to Italy to find work. The possible reasons for a migrant’s journey to Italy were

indicated on the information sheet in the form of a list with the following items to be ticked: “Work”, “Family reunification”, “Escape from poverty”, “Asylum” and “Other”.

II. THE APPLICANT’S REMOVAL TO TUNISIA, THE REFUSAL-OF-ENTRY ORDER AND THE APPLICANT’S ESCAPE

4. On 21 November 2017 the applicant and other migrants were searched and asked to sign a document whose content they allegedly did not understand and of which they did not receive a copy; it later transpired that the document was a refusal-of-entry order issued by the Agrigento police headquarters (*questura*) on 20 November 2017. The applicant was then transferred by aeroplane to Palermo Airport. His wrists were bound with Velcro straps during the journey.

5. Once he had arrived at Palermo Airport, the applicant met a representative from the Tunisian Consulate, who recorded his identity. Shortly thereafter, as he was walking to the aeroplane, the applicant attempted to escape from the two police officers who were holding him. He submitted that he had then been beaten by four police officers. On the same day, 21 November 2017, the applicant was forcibly removed to Tunisia by aeroplane.

6. A few months later, on 10 March 2018, the applicant again reached the coast of Lampedusa aboard a makeshift vessel. He was again transferred to the Lampedusa hotspot, where, on the following day, he expressed his intention to apply for international protection. However, the applicant stated that it had not been possible to fill in an official application form.

7. On 18 March 2018 he submitted a request to the Agrigento police headquarters, asking to be granted asylum and to be transferred to another reception facility. His request and several similar requests by other migrants remained unanswered until 24 March 2018, when the applicant was transferred to the Villa Sikania migrant centre in Siculiana (Agrigento) and then to another unspecified reception facility.

8. The Government stated that the Agrigento Prefecture had then urged the director of the reception facility to contact the immigration office to set a first appointment with the applicant to allow him to submit an asylum request. However, on 27 March 2018 the applicant fled from the centre, thereby making himself unavailable. The applicant, for his part, did not contest this version of the facts.

9. In the course of his two stays, the applicant remained in the Lampedusa hotspot for twenty-two days and seventeen days, during which it was allegedly impossible to interact with any authority. During those periods he slept outside the centre’s premises on account of a lack of space and beds indoors. He stated that he had been unable to leave the centre during those

periods. The applicant described the material conditions of the centre as inhuman and degrading.

10. It appears from the information provided by the applicant's representative on 16 June 2021 that the applicant, on that date, was living in Sfax (Tunisia).

11. The applicant complained that he had been housed in poor conditions and deprived of his liberty during his stays in the Lampedusa hotspot. He also alleged that he had been subjected to a collective expulsion and that he had had difficulties in submitting an asylum request. The applicant relied on Article 3, Article 5 §§ 1, 2 and 4 and Article 13 of the Convention, as well as on Articles 2 and 4 of Protocol No. 4 to the Convention.

THE COURT'S ASSESSMENT

I. PRELIMINARY OBJECTIONS

12. The Government submitted that the applicant could not claim to be a victim, as no violation of the provisions of the Convention had occurred in this case. In particular, they observed that the applicant had not been detained in breach of Article 5 of the Convention, as the reception measures to which he had been subjected at the Lampedusa hotspot were regulated by law, namely Articles 8, 9, 10 and 12 of Legislative Decree no. 142 of 2015. Moreover, in the Government's view, the applicant had not been subjected to any treatment contrary to Article 3 of the Convention.

13. The Government also contended that the applicant had failed to exhaust the available domestic remedies. In their view, under Article 10 § 2 of Legislative Decree no. 142 of 2015, the applicant could have applied to the prefect to obtain a temporary permit to leave the centre. In the event that the application was refused, he could have challenged the relevant decision before a civil judge. It had also been open to the applicant to lodge an urgent application under Article 700 of the Code of Civil Procedure. In addition, he could have lodged a complaint with the administrative courts in the event that his application to the prefect went unanswered.

14. The applicant disagreed with the objections raised by the Government. With regard to the objection of non-exhaustion of domestic remedies, the applicant pointed out that he had not had access to legal assistance.

15. The Court considers that the Government's objection as to lack of victim status relates to the substance of the applicant's complaints. It thus decides to join this objection to the merits of the case.

16. With regard to the objection of non-exhaustion of domestic remedies, the Court acknowledges that, although under Article 10 § 2 of Legislative Decree no. 142 of 2015, asylum-seekers could apply to the prefect for a temporary permit with a view to leaving the centre, the Government have not provided any information as to the applicant's practical access to legal

assistance in order to lodge such an application at the time of the events. In these circumstances, the Government's objection must be dismissed.

17. The Court notes that this application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible, without prejudice to the Court's conclusions regarding the applicant's victim status (see paragraphs 28 and 34 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S DIFFICULTIES IN SUBMITTING AN ASYLUM REQUEST

18. The applicant complained that he had had difficulties in submitting an asylum request. He relied on Article 3 of the Convention.

19. The Government observed that the applicant had expressed his intention to apply for asylum during his second stay in the Lampedusa hotspot. However, the scientific police office at the site had not been operational at the time on account of a fire which had broken out on 8 March 2018. In addition, the applicant's transfer to the mainland had had to be postponed several times on account of adverse weather conditions.

20. They further stated that the applicant had eventually been transferred to an inland reception centre; however, it had been impossible to finalise his asylum request, as he had fled from the centre, making himself unavailable. The applicant, for his part, did not contest this version of the facts.

21. In view of the above information, the Court concludes that this part of the applicant's complaint must be dismissed as manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

III. ADMISSIBILITY OF THE REMAINDER OF THE APPLICATION

22. As to the remainder of the application, the Court notes that it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION RELATING TO THE MATERIAL CONDITIONS OF ACCOMMODATION

23. The applicant complained of the poor material conditions of his stay in the Lampedusa hotspot. He relied on Article 3 of the Convention.

24. The parties' observations in respect of this complaint are similar to those presented in *J.A. and Others v. Italy* (no. 21329/18, 30 June 2023).

25. *Avocats sans frontières*, third-party intervener, emphasised the inhuman and degrading conditions of detention in Tunisia for aspiring migrants and returnees.

26. The Court notes that, in the present case, the applicant remained in the Lampedusa hotspot during two periods, one of twenty-two days (from 30 October 2017 to 20 November 2017) and the other of seventeen days (from 10 March 2018 until 27 March 2018). During these periods, the applicant remained in a centre which was inadequate and where the hygiene conditions were poor. Moreover, services and space were lacking, with regard in particular to beds, the applicant had indeed to sleep on mattresses outside the centre.

27. In this respect, the Court refers to the 2016-17 report of the National Guarantor of the rights of people detained or deprived of their liberty and the 2017 report on Identification and Expulsion Centres in Italy of the Senate of the Republic, which stated that the general conditions in the Lampedusa hotspot were run down and dirty and pointed out the lack of services and of space, with regard in particular to beds, as well as the general poor hygiene and inadequacy of the centre (see *J.A. and Others* (ibid.) § 62). Moreover, the 2020 report of the Guarantor attested that in 2019 in the Lampedusa hotspot there had only been two bathrooms to be shared by forty people, some migrants had had to sleep on mattresses outside the centre and the rooms had been either too cold or too hot. In his report, the Guarantor had expressed regret that although the individuals staying in the Lampedusa hotspot had been supposed to remain there only for the time it took to identify them, they had usually spent several days or weeks at the centre (see *J.A. and Others* (ibid.) § 53).

28. In the light of the considerations above, as well as its conclusions in *J.A. and Others* (ibid.), the Court dismisses the Government's objection as to the applicant's victim status and concludes that he was subjected to inhuman and degrading treatment during his stay in the hotspot at Lampedusa, in violation of Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 2 AND 4 OF THE CONVENTION

29. The applicant complained that he had been deprived of his liberty during his stay in the Lampedusa hotspot, in the absence of any clear and accessible legal basis, and that it had thus been impossible to challenge the lawfulness of his deprivation of liberty. He relied on Article 5 §§ 1, 2 and 4 of the Convention.

30. The parties' observations in respect of this complaint are similar to those presented in *J.A. and Others* (ibid., §§ 73-76).

31. *L'altro diritto*, third-party intervener, noted that Italian migrant reception centres, in particular the hotspots, were often, in reality, detention facilities devoid of any legal basis.

32. Bearing in mind that the applicant was placed in the Lampedusa hotspot by the Italian authorities and remained there during two periods, one of twenty-two days and the other of seventeen days, without a clear and accessible legal basis and in the absence of a reasoned measure ordering his detention, the Court finds that the applicant was arbitrarily deprived of his liberty, in breach of the first limb of Article 5 § 1 (f) of the Convention.

33. In view of the above finding in respect of the lack of a clear and accessible legal basis for the detention, the Court fails to see how the authorities could have informed the applicant of the legal reasons for his deprivation of liberty or provided him with sufficient information to enable him to challenge the grounds for his *de facto* detention before a court (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 117 and 132 et seq., 15 December 2016).

34. The Court accordingly dismisses the Government's objection as to the applicant's lack of victim status and concludes that Article 5 of the Convention is applicable and that there has been a violation of Article 5 §§ 1, 2 and 4.

VI. OTHER COMPLAINTS

35. The applicant also alleged that he had been subjected to a restriction of his freedom of movement, in breach of Article 2 of Protocol No. 4 to the Convention, and that he had been subjected to a collective expulsion, in breach of Article 4 of Protocol No. 4. He also complained of a violation of Article 13 read in conjunction with Article 3 of the Convention as well as with Articles 2 and 4 of Protocol No. 4.

36. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has examined the main legal questions raised in the present application. It thus considers that there is no need to pursue the examination of the applicant's remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; see also *Khlaifia and Others*, cited above, §§ 248-54).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,432 in respect of costs and expenses incurred before the Court.

38. The Government submitted that the applicant's claim should be rejected. They further submitted that, should the Court make an award in respect of non-pecuniary damage, it should correspond to the sum awarded to each migrant in *Khlaifia and Others* (cited above – approximately EUR 2,500 per applicant).

39. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

40. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 4,000 for the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objections concerning the applicant's lack of victim status as regards his complaints under Article 3 and Article 5 §§ 1, 2 and 4 of the Convention and the applicability of Article 5 and dismisses them;
2. *Declares* the complaints concerning Article 3 and Article 5 §§ 1, 2 and 4 of the Convention and Article 4 of Protocol No. 4 to the Convention admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 §§ 1, 2 and 4 of the Convention;
5. *Holds* that there is no need to examine the complaints under Article 13 of the Convention and Articles 2 and 4 of Protocol No. 4;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

A.B. v. ITALY JUDGMENT

Done in English, and notified in writing on 19 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President