



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

FIFTH SECTION

CASE OF A.S. v. ITALY

(Application no. 20860/20)

JUDGMENT

STRASBOURG

19 October 2023

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

In the case of A.S. 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. 20860/20) 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 15 May 2020 by a Tunisian national, Mr A.S., who was born in and lives in Agrigento (“the applicant”) and was represented by Ms A. Brambilla, a lawyer practising in Milan;

the decision to give notice of the application to the Italian Government (“the Government”), represented by their Agent, Mr L. D’Ascia;

the parties’ observations;

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 in Contrada Imbriacola, on the island of Lampedusa, and the poor conditions of his stay. The Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza – CSPA*) on Lampedusa has been identified as one of the Italian hotspots pursuant to section 17 of Decree-Law no. 13 of 17 February 2017.

2. The applicant reached the Italian coast on 7 October 2019 aboard a makeshift vessel. On the following day, he was transferred to the hotspot at Lampedusa and on 19 October 2019 he expressed his wish to file an asylum request.

3. Consequently, on 25 October 2019 the applicant was transferred to a reception centre in Agrigento and on the same date he filed an asylum request.

4. By a decision of 29 October 2019, the Agrigento section of the Palermo Territorial Commission rejected the applicant’s asylum request as manifestly ill-founded.

5. The decision was served on the applicant on 2 November 2019. On the same day, an expulsion order made by the Prefect of Agrigento was served on the applicant together with an order issued by the Agrigento police commissioner for the applicant’s detention at the Caltanissetta Repatriation Detention Centre (CPR) for the time necessary to effect the applicant’s repatriation.

6. On 5 November 2019, the Caltanissetta Justice of the Peace declined to approve the detention order for want of jurisdiction and referred the case to the Caltanissetta ordinary court. The applicant therefore left the CPR.

7. On 21 November 2019 the applicant challenged his expulsion order before the Agrigento Justice of the Peace.

8. By a decision of 6 December 2019 the Agrigento Justice of the Peace revoked the order for the expulsion of the applicant from Italy on procedural grounds.

THE COURT'S ASSESSMENT

I. PRELIMINARY OBJECTIONS

9. 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 his case. In particular, they observed that the applicant had not been detained within the meaning of Article 5 of the Convention as the reception measures he had been subjected to at Lampedusa hotspot were regulated by law, namely by 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.

10. 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.

11. Moreover, under Article 9, paragraph 4, of Legislative Decree no. 142 of 2015, migrants were hosted in the "government initial reception centres" for the time necessary for their identification. In the Government's view, after thirty days, the applicant could have then lodged an application in the administrative courts.

12. The Government also pointed out that it was open to the applicant to lodge an appeal with the Court of Cassation under Article 14 of Legislative Decree no. 286/1998 within sixty days from the approval by the Justice of the Peace of the order for his detention in the identification and removal centre.

13. A general appeal to the civil courts was also open to the applicant for the protection of his fundamental rights.

14. The applicant disagreed with the objections raised by the Government. With regard to the objection of non-exhaustion of domestic remedies, he pointed out that he did not have 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. It should also be noted that Article 9, paragraph 4, of Legislative Decree no. 142 of 2015 (concerning "government initial reception centres" and the procedure under which a prefect can order the placement of migrants in such a centre) and Article 14 of Legislative Decree no. 286/1998 (regarding the placement of migrants in identification and removal centres by order of the Chief of Police – *questore*) do not contain measures clearly applicable to hotspots, which are the institutions about which the applicant has complained.

17. In these circumstances, the Government's objection must be dismissed.

18. 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 23 and 28 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS TO THE MATERIAL CONDITIONS OF THE APPLICANT'S STAY IN THE HOTSPOT

19. The applicant complained under Article 3 of the Convention about the material conditions of his stay in the hotspot at Lampedusa. He pointed out that the centre was overcrowded and he complained about the poor conditions of hygiene and of his limited access to hot water and to drinking water.

20. The applicant relied on, among other things, the 2020 report of the President of the National Guarantor for the rights of persons deprived of personal liberty to the Italian Parliament, referring to the material conditions at the hotspot at Lampedusa in 2019. In that report it was stated that during the Guarantor's visit of 23 November 2019 it had emerged that two bathrooms were available for forty migrants, that migrants had to share rooms that were overcrowded, too hot or too cold and that the hygiene conditions in the centre were not acceptable.

21. The applicant also submitted the 2019 report of the non-governmental organisation "Borderline Europe", the relevant part of which reads as follows:

"The health, organisational and hygienic conditions in the Lampedusa hotspot are catastrophic. Borderline Sicilia repeatedly denounces the inhumane conditions in the

hotspot. When the migrants arrive, no phone cards are distributed to inform the relatives that they have survived. The telephones in the centre are broken, people eat on the floor or on mattresses and they wait for hours for the food to be distributed. The health conditions in the center are inhuman and all this despite the fact that on 06/10/2019 the administration of the center changed once again. The new operator Badia Grande is an organisation that has been present in various centres, from hotspots to CIE and CPR, and has now taken over the organisational management of the hotspot. Borderline Sicilia has found this management to be no better than earlier management by Facility Service and Nuova Generazione. The hotspot is constantly overcrowded and there are little to no relocations or even resettlements of the migrants.”

22. The Court notes that in the present case the applicant remained in the hotspot at Lampedusa for eighteen days, from 8 October 2019 until 25 October 2019.

23. Having regard to the elements listed above, submitted by the applicant, the Court is satisfied that, at the time the applicant was placed there, the Lampedusa hotspot was overcrowded, and its hygienic conditions were poor. In the light of the above, as well as of its conclusions in *J.A. and Others v. Italy* (no. 21329/18, 30 March 2023), the Court dismisses the Government’s objection as to the applicant’s alleged lack of victim status and concludes that the applicant was subjected to inhuman and degrading treatment during his stay in the hotspot at Lampedusa, in violation of Article 3 of the Convention.

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

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

25. The parties’ observations on this complaint are the same as those presented in *J.A. and Others* (cited above, §§ 73-76).

26. Bearing in mind that the applicant was placed at the Lampedusa hotspot by the Italian authorities and remained there for eighteen days without a clear and accessible legal basis for that placement and in the absence of any order giving reasons for 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.

27. In view of the above finding in respect of the lack of a clear and accessible legal basis for the applicant’s detention, the Court cannot see how the authorities could have informed the applicant of the legal reasons for his deprivation of liberty or have provided him with sufficient information or 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).

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

IV. OTHER COMPLAINT

29. The applicant also complained of a violation of Article 13, read in conjunction with Article 3 of the Convention.

30. 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 therefore considers that there is no need to pursue the examination of the applicant's remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; see also *Khlaifia*, cited above, §§ 248-54).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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.

32. The Government contested those claims.

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

34. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 4,000 in respect of costs and expenses for the proceedings before the Court, 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 of the Convention and dismisses them;
2. *Declares* the complaints concerning Article 3 and Article 5 §§ 1, 2 and 4 of 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 read in conjunction with Article 3 of the Convention;
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.

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