



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

FIFTH SECTION

CASE OF M.A. v. ITALY

(Application no. 13110/18)

JUDGMENT

STRASBOURG

19 October 2023

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

In the case of M.A. 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. 13110/18) 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 16 March 2018 by a Tunisian national, M.A. (“the applicant”), who was born in 1992 and lives in Charleroi (Belgium), and was represented by Ms L. Leo, a lawyer practising in Rome;

the decision to give notice of the complaints concerning the conditions of the applicant’s stay in the Lampedusa hotspot (Article 3 of the Convention), his deprivation of liberty and the restriction on his right to liberty of movement (Article 5 §§ 1, 2 and 4 of the Convention, Article 2 § 1 of Protocol No. 4, and Article 13 of 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 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, and the poor conditions of his stay there. 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.

2. The applicant reached the Italian coast on 15 January 2018 aboard a makeshift vessel. On the same day he was transferred to the hotspot on Lampedusa, where on 30 January 2018 he submitted an asylum request.

3. On 1 February 2018 the applicant was interviewed by the Trapani Commission for Asylum-Seekers and his request was rejected as manifestly ill-founded. He then lodged an appeal with the Palermo District Court, the

outcome of which is unknown. The applicant's asylum request was later rejected by the Trapani Territorial Commission as manifestly ill-founded.

4. In the meantime, on 27 February and 1 March 2018 the applicant applied to the Agrigento Prefecture to be transferred to another facility on account of the poor conditions of accommodation in the Lampedusa hotspot.

5. On 8 March 2018 a fire broke out at the hotspot and the facility was subsequently closed as from 13 March 2018. The applicant stated that he had been unable to leave the centre during his stay and described the conditions in the centre as inhuman and degrading.

6. On 20 March 2018 the applicant was transferred to a reception facility in Turin. He was then transferred back to the Lampedusa hotspot and remained there for more than two months.

7. In the meantime, on 24 February 2018 the Agrigento Prefecture issued a circular, addressed to the director of the Lampedusa hotspot, stating that a request had been sent to the Agrigento Bar Association asking it to draw up a list of lawyers entitled to access the centre. The Prefecture also informed the director that the above-mentioned list would be sent to him and to the migrants concerned as soon as possible.

8. The applicant complained that he had been housed in poor conditions and deprived of his liberty during his stay in the Lampedusa hotspot. He relied on Article 3, Article 5 §§ 1, 2 and 4 and Article 13 of the Convention and on Article 2 of Protocol No. 4 to the Convention.

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 the present 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.

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. The applicant disagreed with the objections raised by the Government. With regard to non-exhaustion of domestic remedies, the applicant pointed out that he had not had access to legal assistance. He referred to the Agrigento Prefecture's circular of 24 February 2018, annexed to the Government's observations, and observed that the list of lawyers of the Agrigento Bar Association had in fact never been sent to the migrants. He also indicated that the only contact with lawyers that he had managed to have had taken place in an unauthorised manner after he had passed through an opening in the fence surrounding the facility. The Government, for their part, did not provide any information on this point.

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

13. 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, nor have they disputed the applicant's assertion that the list of lawyers who could access the centre at the time of his stay in the Lampedusa hotspot had never been sent to the migrants present at the centre. In these circumstances, the Government's objection must be dismissed.

14. 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 19 and 25 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

16. 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).

17. The Court notes that, in the present case, the applicant remained in the Lampedusa hotspot from 30 January until 20 March 2018. Moreover, as from 13 March 2018 the centre was officially closed on account of a fire which had broken out on the premises. The incident rendered the centre unsuitable for living; nonetheless the applicant remained at the centre during that time. The Government did not dispute the applicant's submissions on this matter.

18. In this respect, the Court refers to the 2020 report of the National Guarantor of the rights of people detained or deprived of their liberty attesting 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).

19. 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 Lampedusa hotspot, in violation of Article 3 of the Convention.

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

20. 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.

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

22. *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.

23. Bearing in mind that the applicant was placed in the Lampedusa hotspot by the Italian authorities and remained there for more than two months 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.

24. 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)

25. The Court therefore 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.

IV. OTHER COMPLAINTS

26. 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 alleged a violation of Article 13 of the Convention read in conjunction with Article 3.

27. 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 the applicant's remaining complaints are admissible but that there is no need to give a separate ruling on them (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

28. 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.

29. 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, that award should correspond to the sum awarded to each migrant in *Khlaifia and Others* (cited above – approximately EUR 2,500 per applicant).

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

31. 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 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 Article 2 of Protocol No. 4 to 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