



Unlawful detention of Tunisian migrants in degrading conditions on the island of Lampedusa in Italy pending collective expulsion

The European Court of Human Rights today delivered a **Chamber judgment**¹ in the case of **Khlaifia and Others v. Italy** (application no. 16483/12).

The case concerned the detention in a reception centre on Lampedusa and subsequently on ships moored in Palermo harbour, as well as the repatriation to Tunisia, of clandestine migrants who had landed on the Italian coast in 2011 during the events linked to the “Arab Spring”.

The Court held unanimously that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights;

a violation of Article 5 § 2 of the Convention (right to be informed promptly of the charge against the applicants);

a violation of Article 5 § 4 (right to a speedy decision by a court on the lawfulness of detention);

no violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the conditions of detention on board the ships.

The Court held by a majority that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the conditions of detention in the Contrada Imbriacola reception centre;

a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens);

a violation of Article 13 (right to an effective remedy) taken in conjunction with Articles 3 and 4 of Protocol No. 4.

The Court held that the applicants' detention had been unlawful. They had not been notified of the reasons for their detention, for which there was no statutory basis, and had been unable to challenge it. Concerning their conditions of detention in the reception centre, the Court took account of the exceptional humanitarian crisis facing Italy on the island of Lampedusa in 2011 in the wake of the Arab Spring (55,298 migrants had landed around the time the applicants had been present there). The Court nonetheless concluded that the applicants' conditions of detention had diminished their human dignity, although that had not been the case on board the ships moored in Palermo harbour.

The Court further considered that the applicants had suffered a collective expulsion, as their *refoulement* decisions did not refer to their personal situation – the Court held in particular that an identification procedure was insufficient to disprove collective expulsion. Furthermore, the Court noted that at the time a large number of Tunisians had been expelled under such simplified procedures. Lastly, the Court considered that the applicants had not benefited from any effective remedy in order to lodge a complaint, because under Article 13, if a remedy was to be deemed effective in the case of a collective expulsion it had to have automatic suspensive effect – which in this case meant that it should have suspended the *refoulement* to Tunisia – and that had not been the case.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicants, Saber Ben Mohamed Ben Ali Khlaifia, Fakhreddine Ben Brahim Ben Mustapha Tabal and Mohamed Ben Habib Ben Jaber Sfar, are Tunisian nationals who were born in 1983, 1987 and 1988 respectively. Mr Khlaifia lives in Om Laarass (Tunisia) and Mr Tabal and Mr Sfar live in El Mahdia (Tunisia).

On 16 and 17 September 2011 they left Tunisia by sea; their boats were subsequently intercepted by the Italian authorities. The applicants were then escorted to the island of Lampedusa, where they were transferred to a "CSPA" (*Centro di Soccorso e Prima Accoglienza*) reception centre in Contrada Imbriacola.

According to the applicants, the conditions of hygiene in the centre were appalling: there were no doors separating the toilets and showers from the other rooms and water supplies were limited. They also submitted that owing to overcrowding the migrants had to sleep on the floor and that, furthermore, they were allowed no contact with the outside.

On 20 September the CSPA suffered fire damage following a riot by the migrants. The applicants were taken to a sports park for the night, where they managed to evade detection by the law enforcement agencies and reach the village of Lampedusa, where they joined in a protest demonstration with almost 1,800 other migrants. Having been arrested by the police, the applicants were finally transferred by aircraft to Palermo and placed on two ships moored in that city's harbour, where they spent four days aboard.

The applicants were finally expelled to Tunisia on 27 and 29 September 2011. Before their departure they were interviewed by the Tunisian Consul, who, according to the applicants, merely recorded their civil status data in accordance with the Italo-Tunisian agreements concluded in April 2011.

Complaints, procedure and composition of the Court

Relying on Article 3, (prohibition of inhuman or degrading treatment), the applicants complained of their conditions of detention in the reception centre and on board the ships. They also alleged that their detention had been contrary to Articles 5 § 1 (right to liberty and security), 5 § 2 (right to be promptly informed of the reasons for deprivation of liberty) and 5 § 4 (right to examination of the lawfulness of detention). Relying on Article 13 (right to an effective remedy), they also submitted that they had had no effective domestic remedy to complain of the violation of their rights. Finally, the applicants submitted that they had been subjected to collective expulsion, which is prohibited under Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens).

The application was lodged with the European Court of Human Rights on 9 March 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

İşıl Karakaş (Turkey), *President*,
 Guido Raimondi (Italy),
 András Sajó (Hungary),
 Nebojša Vučinić (Montenegro),
 Helen Keller (Switzerland),
 Paul Lemmens (Belgium),
 Robert Spano (Iceland),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 5 § 1 (right to liberty and security)

The Court observed that the applicants had been free to leave neither the CSPA nor the ships, the latter, as stated by the Government themselves, being an "extension of the CSPA". They had been kept under constant surveillance by the police and prohibited from communicating with the outside. Given that such

restrictions constituted deprivation of liberty, Article 5 of the Convention was applicable. Although that article allowed States to restrict aliens' freedom for the purposes of immigration controls, any deprivation of liberty had to have a legal basis in domestic law, particularly by virtue of the principle of legal certainty. The Court noted that Italian law did not provide expressly for the detention of migrants placed, like the applicants, in a CSPA². Even supposing that the applicants' detention had been covered by the bilateral agreement with Tunisia, the applicants could not have foreseen the consequences of that agreement, which had not been made public, and had had no safeguard against arbitrary treatment. Their deprivation of liberty had therefore been unlawful, in breach of Article 5 § 1.

Article 5 § 2 (right to be informed promptly of the reasons for deprivation of liberty)

The reasons for the applicants' detention were not set out in any document. The Government did present *refoulement* decisions, but the latter provided incomplete and insufficient information and had not been handed over to the applicants until their repatriation to Tunisia. Therefore, as the applicants had not been promptly informed of the reasons for their deprivation of liberty the Court concluded that there had been a violation of Article 5 § 2.

Article 5 § 4 (right to examination of the lawfulness of detention)

The Court observed that since the applicants had at no stage been informed of the reasons for their detention, they had never been able to challenge its lawfulness. The Court consequently concluded that there had been a violation of Article 5 § 4.

Article 3

The Court observed that in the wake of the "Arab Spring" (the uprisings in Tunisia and Libya in 2011), the island of Lampedusa had faced a mass influx of migrants arriving in boats – 55,298 had landed around the time the applicants had been present on the island – which had induced Italy to declare a state of humanitarian emergency. The Court was aware that the uprising of 20 September 2011 had been an aggravating factor and that the local authorities had worked intensively to accommodate the refugees. Although the Court did not underestimate the problems encountered by the States in cases of exceptional waves of immigration, the Court nonetheless reiterated that no derogation was possible to Article 3.

Several reports, including those by the Extraordinary Commission of the Italian Senate and Amnesty International, corroborated the fact that the CSPA in Contrada Imbriacola was encountering serious issues of overcrowding (migrants sleeping in corridors), hygiene (smells, unusable sanitary facilities) and lack of contact with the outside. The Court therefore considered these poor conditions of detention in the centre as proven. Moreover, the applicants had been vulnerable because they had just undergone a perilous sea crossing. Consequently, even though they had only remained in the CSPA for four days, their detention under such conditions had diminished their human dignity; this situation had gone beyond the suffering inherent in detention and had amounted to degrading treatment contrary to Article 3.

On the other hand, the Court could not uphold the applicants' allegations regarding their conditions of detention on the ships because their statements had been contradicted by an Italian Member of Parliament who had visited the vessels. The feelings of anxiety and agitation inspired in the applicants by the lack of explanations for their detention on board the ships had not reached the severity threshold for the applicability of Article 3. The Court therefore concluded that there had been no violation of Article 3 in that regard.

Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens)

The Court observed that although the applicants had indeed been presented with individual *refoulement* decisions, the latter had all been identically worded, with no reference to their personal situations; nor had they been interviewed individually. The Court also noted that although the applicants, unlike the

² This fact was corroborated by the observations of the Extraordinary Commission of the Italian Senate and of the *Ad hoc* Sub-Committee of the Parliamentary Assembly of the Council of Europe (see paragraph 70 of the judgment)

migrants in the case of *Hirsi Jamaa and Others*³, had undergone an identification procedure, the latter was insufficient to preclude the existence of collective expulsion.

The collective nature of the applicants' removal was confirmed by the fact that the bilateral agreements with Tunisia provided for the repatriation of clandestine Tunisian migrants under simplified procedures based on the straightforward identification by the Tunisian consular authorities of the persons concerned.

The Court therefore considered that the applicants had been victims of collective expulsion and concluded that there had been a violation of Article 4 of Protocol No. 4.

Article 13 (right to an effective remedy) taken in conjunction with Articles 3 and 4 of Protocol No. 4

The applicants had not benefited from a remedy to complain of their conditions of detention in the CSPA because an appeal to a magistrate could only concern the lawfulness of their repatriation to Tunisia. There had therefore been a violation of Article 13 taken in conjunction with Article 3 in that regard.

Moreover, the aforementioned appeal to a magistrate had no suspensive effect *vis-à-vis* the measure at issue (namely removal to Tunisia), even though that is one of the requirements of Article 13⁴. The Court therefore concluded that there had been a violation of Article 13 taken in conjunction with Article 4 of Protocol No. 4.

Just satisfaction (Article 41)

The Court held that Italy was to pay each applicant 10,000 euros (EUR) in respect of non-pecuniary damage and the applicants EUR 9,344.51, jointly, in respect of costs and expenses.

Separate opinions

Judge Keller expressed a concurring opinion. Judges Sajó and Vučinić expressed a joint partly dissenting opinion. Judge Lemmens expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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³ See *Hirsi Jamaa and Others v. Italy* (Grand Chamber, 23.02.2012)

⁴ In the *De Souza Ribeiro v. France* judgment (Grand Chamber, 13.12.2012), the Court held that the effectiveness of a remedy for the purposes of Article 13 required a thorough independent assessment and an appeal with automatic suspensive effect in the following cases: a) a complaint that the expulsion of the person would expose him to a genuine risk of undergoing treatment contrary to Article 3 of the Convention and/or infringement of his right to life as protected by Article 2 of the Convention; and b) complaints under Article 4 of Protocol No. 4. The requirement of a remedy with automatic suspensive effect *vis-à-vis* the impugned measure cannot be considered as a subsidiary measure (see *M.S.S. v. Belgium and Greece*, Grand Chamber, 21.01.2011, and *Hirsi Jamaa and Others v. Italy* (Grand Chamber, 23.02.2012).

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.