



Detention of migrants at Lampedusa “hotspot” and removal from Italy violated Convention

In today’s Chamber judgment¹ in the case of [J.A. and Others v. Italy](#) (application no. 21329/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights,

a violation of Article 5 §§ 1, 2 and 4 (right to liberty and security), and

a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the European Convention.

The case concerned the applicants’ presence at the “hotspot” on the Italian island of Lampedusa, where they had been taken having been rescued by an Italian ship in the Mediterranean Sea, and their later removal to Tunisia.

The Court found in particular that the Government had failed to rebut the allegations that the conditions at the hotspot had been inadequate; that their presence there was deemed to be detention which had neither been a result of an official order, nor had it been a limited period to clarify their situation or to send them elsewhere, as required by law; and that their situations had not been individually assessed before their being issued with refusal-of-entry orders, which had effectively amounted to collective expulsion.

A legal summary of this case will be available in the Court’s database HUDOC ([link](#)).

Principal facts

The applicants, J.A., B.B.A., I.B.M., and M.H., are four Tunisian nationals who were born between 1989 and 1993 and live in Tunisia.

In October 2017 the applicants left Tunisia on makeshift vessels. While at sea they ran into trouble and had to be rescued by an Italian ship. They were taken to the Italian island of Lampedusa, a “hotspot” meant for initial identification, registration and interviewing of migrants. They were placed there for ten days, during which they allege they were unable to leave and interact with the authorities. The conditions there were allegedly inhuman and degrading.

Later that month the applicants, along with 40 other individuals, were taken to the island’s airport. They state that they were given documents to sign; that they did not understand them; and that they only found out later that they were refusal-of-entry orders issued by the Agrigento police headquarters (*questura*). The applicants state that they were then flown to Palermo Airport from where they were forcibly removed to Tunisia.

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.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition on inhuman or degrading treatment, 5 §§ 1, 2 and 4 (right to liberty and security), and 13 (right to an effective remedy), and Articles 4 (prohibition of collective expulsion of aliens) and 2 (freedom of movement) of Protocol No. 4, the applicants complained, in particular, about the situation they faced at the “hotspot” in Lampedusa; of allegedly having being deprived of their liberty without a clear decision or without being able to legally challenge that deprivation of liberty; that their deferred refusal of entry (*respingimento differito*) had amounted to a collective expulsion; and of alleged restrictions on their freedom of movement.

The application was lodged with the European Court of Human Rights on 26 April 2018.

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

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court noted that the Government did not dispute the applicants’ submissions concerning the conditions (in particular poor hygiene and lack of space) at the hotspot in Lampedusa, where they had been held for ten days, as corroborated by independent national and international sources.

As the Court has previously stated, difficulties resulting from inflows of migrants and asylum-seekers did not absolve member States of their Article 3 obligations. As the Government had failed to show that conditions had been acceptable, the Court therefore found that there had been a violation.

Article 5 §§ 1, 2 and 4

Although Article 5 did provide a general right to liberty, the Court reiterated that Article 5 § 1 (f) set out an exception in the context of control of immigration.

However, in this case the Government had not shown that entry had been refused, that a repatriation order had been issued, or that action regarding deportation had been initiated, prior to their receiving the refusal-of-entry orders at the airport just before being made to leave. The Article 5 § 1 (f) provision that “the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country” (rather than detention following a formal decision) had applied for their entire time in the Lampedusa hotspot.

The applicants had been kept for processing in the hotspot, which was surrounded by bars, fences and gates, and from which they had not been able to leave lawfully. This had not been a limited period to clarify the situation of the applicants or to send them to other centres, as permitted by law. The Court stated that clarification by the legislature of the nature of the hotspots and the substantive and procedural rights of the individuals staying there would have been beneficial.

There had therefore been no clear and accessible legal basis for the applicants’ ten-day detention, they were not informed of the legal reasons for their deprivation of liberty, they were not provided

with sufficient information, and they were not able to challenge the grounds for their *de facto* detention before a court, in violation of Article 5 §§ 1, 2 and 4 of the Convention.

Article 4 of Protocol No. 4 to the Convention

The Court reiterated that collective expulsion occurred when the particular cases of the individuals concerned were not assessed separately. The Government did not refute the applicants' allegation that no individual interviews had taken place before they had signed the refusal-of-entry orders. Those orders were formulaic and contained no individual information as regards the first two applicants. Regarding the second two, they had been unable to obtain copies of the orders from the Agrigento police headquarters. Given the short period of time following their signing, and the fact that they appeared not to have understood the orders, it was unclear that they had been able to appeal against those decisions.

The Court held that the orders in this case had not accounted for the applicants' individual situations. There had therefore been a collective expulsion in violation of the Convention.

Other articles

Given its findings, the Court held that there was no need to examine the complaints under Article 2 of Protocol No. 4 and Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Articles 2 and 4 of Protocol No. 4.

Just satisfaction (Article 41)

The Court held that Italy was to pay each applicant 8,500 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 jointly in respect of costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Neil Connolly (tel.: + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.