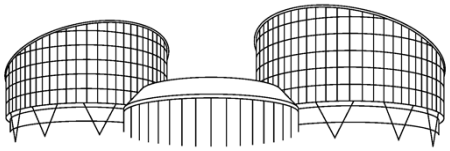

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF J.A. AND OTHERS v. ITALY

(Application no. 21329/18)

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Tunisian sea-migrants detained in hotspot centre for ten days in poor material conditions
Art 5 §§ 1 (f) , 2 and 4 • Arbitrary deprivation of liberty to prevent unauthorised entry into country • Detention without clear and accessible legal basis and in absence of reasoned decision • Applicants not informed of legal reasons of detention • Inability to challenge lawfulness of *de facto* detention owing to lack of sufficient information
Art 4 P4 • Prohibition of collective expulsion of aliens • Removal to Tunisia without proper regard to applicants' individual situations when issuing refusal-of-entry and removal orders

STRASBOURG

30 March 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of J.A. and Others v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Ivana Jelić,
Gilberto Felici,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 21329/18) 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") by four Tunisian nationals ("the applicants") on 26 April 2018;

the decision to give notice to the Italian Government ("the Government") 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, and to declare inadmissible the remainder of the application;

the decision not to disclose the applicants' names;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by L'altro diritto, the World Organisation Against Torture and the Tunisian Forum for Economic and Social Rights (FTDES), organisations which were granted leave to intervene by the President of the Section;

Having deliberated in private on 7 March 2023,

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

INTRODUCTION

1. The case concerns the applicants' detention in the hotspot on the island of Lampedusa at Contrada Imbriacola, their poor conditions of stay and their forced removal to Tunisia. The Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza*) on Lampedusa was designated as one of the Italian hotspots pursuant to Article 17 of Decree-Law no. 13 of 17 February 2017.

THE FACTS

2. The applicants were born on the dates indicated in the appended table and live in Tunisia. They were represented by Ms L. Leo and Ms L. Gennari, lawyers practising in Rome.

3. The Government were represented by their Agent, Mr L. D'Ascia.
4. The facts of the case may be summarised as follows.

I. THE APPLICANTS' STAY IN THE LAMPEDUSA HOTSPOT

5. The applicants left the Tunisian coast on 15 October 2017 aboard makeshift vessels in order to reach a larger boat carrying about a hundred people. After a few hours of sailing, following an emergency at sea, they were rescued by an Italian ship which took them to Lampedusa on 16 October 2017. They submitted that they underwent a medical check-up. Some of them received a flyer containing general information regarding unaccompanied minors and asylum procedures. The applicants stated that they had been unable to fully understand the content of the said documents. They then underwent identification procedures.

6. The applicants remained in the Lampedusa hotspot for ten days, during which it was allegedly impossible for them to interact with the authorities. They stated that they had been unable to leave the centre lawfully during that period and that they had done so a few times by going through an opening in the fence which surrounded the centre. The applicants described the material conditions at the centre as inhuman and degrading.

II. THE APPLICANTS' REMOVAL TO TUNISIA

7. In the early morning of 26 October 2017 the applicants and some forty other individuals were woken up by the Italian authorities. They were told to undress, were searched and were then transferred by bus to Lampedusa Airport.

8. There, the applicants were asked to sign some documents of which they allegedly did not understand the content or receive a copy, and which they subsequently found out were refusal-of-entry orders issued by the Agrigento police headquarters (*questura*). The applicants' representatives submitted a request to the police headquarters to obtain a copy of those documents. Only the copies concerning the first two applicants were provided to them; the requests submitted with regard to the third and fourth applicants on 15 February 2018 and 26 March 2018 went unanswered. The refusal-of-entry orders issued in respect of the first two applicants were dated 26 October 2017.

9. The Government stated that the refusal-of-entry orders had been duly served on the applicants, who had signed a receipt and been provided with a copy of it. The Government also pointed out that the refusal-of-entry orders included the information that it was possible to challenge the decisions in question before the Agrigento District Court within thirty days of them being notified of them.

10. The applicants were then searched again, their wrists were secured with Velcro straps, and their mobile phones were taken away from them. They were transferred to Palermo by airplane, and the straps were removed during that flight and put back on again at Palermo Airport.

11. Once there, the applicants met a representative from the Tunisian consulate who recorded their identities and, on the same day, 26 October 2017, they were forcibly removed to Tunisia by airplane.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

12. Article 13 of the Italian Constitution reads as follows:

> "1. Personal liberty is inviolable.
>
> 2. No one may be detained, inspected, or searched, or otherwise subjected to any restriction of personal liberty, except by a reasoned order of a judicial authority and only in such cases and in such manner as provided by law.
>
> 3. In exceptional circumstances and under such conditions of necessity and urgency as shall be precisely defined by law, the police may take provisional measures that shall be referred within forty-eight hours to a judicial authority and which, if not validated by the latter in the following forty-eight hours, shall be deemed withdrawn and ineffective.
>
> 4. Any act of physical or mental violence against persons subjected to a restriction of personal liberty shall be punished.
>
> 5. The law shall establish the maximum duration of any preventive measure of detention (*carcerazione preventiva*)."

B. Decree-Law no. 416 of 30 December 1989

13. The relevant provision[1] of Decree-Law no. 416, entitled "Urgent measures concerning political asylum and stay of non-EU citizens and regularisation of non-EU citizens and stateless persons present on the national territory", converted with modifications by Law no. 39 of 28 February 1990, reads as follows:

Section 1-*sexies* – Reception and Integration System

> "(1) The administrative local entities which provide reception services for refugees (*titolari di protezione internazionale*) and for non-accompanied foreign minors ... may also receive in their facilities, provided space is available, international-protection seekers ..."

[1] Partially modified by Law no. 189 of 30 July 2002.

C. Legislative Decree no. 286 of 25 July 1998[2]

14. The relevant provisions of the Consolidated text of provisions concerning immigration regulations and rules on the status of aliens, as amended, *inter alia*, by section 17 of Decree-Law no. 13 of 17 February 2017, converted into Law no. 46 of 2017, read as follows:

Article 10 (refusal of entry)

"1. The border police shall refuse entry to aliens who seek to cross the border without meeting the conditions laid down in the present consolidated text governing entry into the territory of the State.

2. Refusal of entry and removal orders shall, moreover, be ordered by the chief of police in respect of aliens:

(a) who have entered the territory of the State by evading border controls, when they are arrested on entry or immediately afterwards;

(b) or who in the circumstances referred to in paragraph 1, have been temporarily allowed to remain for purposes of public assistance.

2-*bis*. The validation procedures and provisions set out in Article 13, paragraphs 5-*bis*, 5-*ter*, 7 and 8 shall apply to the *refoulement* measure referred to in paragraph 2.[3]

4. The provisions of paragraphs 1, 2 and 3 and those of Article 4, paragraphs 3 and 6, do not apply to the situations provided for in the applicable provisions governing political asylum, the grant of refugee status, or the adoption of temporary protection measures on humanitarian grounds."

Article 10-*ter* (provisions concerning the identification of illegal aliens found on the national territory or rescued during rescue operations at sea)

"1. Aliens found illegally crossing the internal or external borders or having entered the national territory following rescue operations at sea shall be directed, for rescue and first-aid needs, to special crisis centres (*punti di crisi*) set up within the facilities referred to in Decree-Law no. 451 of 30 October 1995, converted with modifications into Law no. 563 of 29 December 1995, and to facilities referred to in Article 9 of Legislative Decree no. 142 of 18 August 2015. The taking of identification photographs and fingerprints (*fotosegnalamento*) shall be carried out within the same facilities ... and information shall be provided concerning international-protection procedures, the relocation programme to other EU States and the possibility of voluntary assisted repatriation.

[2] Partially modified by several subsequent legislative acts, *inter alia*, by Decree-law no. 89 of 23 June 2011, converted into Law no. 129 of 2 August 2011, which implemented Directive no. 115 of 2008 (see paragraph 27 below).

[3] Paragraph 2-*bis* was inserted by section 5-*bis*, subsection 1(a), of Decree-Law no. 113 of 4 October 2018, converted with amendments into Law no. 132 of 1 December 2018.

2. The taking of identification photographs and fingerprints shall be carried out, in fulfilment of the obligations referred to in Articles 9 and 14 of Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013, also in respect of aliens found to be on the national territory unlawfully.

3. The repeated refusal of an alien to consent to the examinations referred to in paragraphs 1 and 2 constitutes a risk of absconding which allows the alien to be detained in the centres referred to in Article 14. That detention is ordered on a case-by-case basis, by decision of the chief of police, and is valid up to thirty days from its adoption, unless the need for which it was accorded ceases before that time. The provisions of Article 14, paragraphs 2, 3 and 4, apply. In the event of detention concerning an asylum-seeker ... validation of the relevant order falls under the jurisdiction of the district court where the section specialising in immigration, international protection and free movement of citizens of the European Union is located. ...”

Article 14 (execution of removal measures)

“1. Where ... it is not possible to ensure the prompt execution of the deportation measure, by escorting the person to the border, or of the refusal-of-entry measure, the chief of police shall order that the alien be held for as long as is strictly necessary at the nearest Identification and Removal Centre, among those designated or created by order of the Minister of the Interior in collaboration (*di concerto*) with the Minister for Economics and Finance. To this end the chief of police applies for the relocation of the aliens to the Central Direction of Immigration and of the Border Police of the Public Security Department of the Ministry of the Interior. Among the reasons justifying detention, in addition to [the risk of absconding], there is also the need to provide assistance to the alien, to conduct additional checks of his or her identity or nationality, to obtain travel documents, or on account of the lack of availability of a carrier.

...

2. The alien shall be detained in the facility, in which adequate hygienic and living standards are guaranteed, with procedures in place to ensure the provision of necessary information concerning his or her status, assistance and the full respect of his or her dignity ...

2-*bis*. The detained alien can address requests or complaints ... to the National Guarantor or to the regional or local Guarantors of the right of people deprived of personal liberty.

3. The chief of police of the place where the centre is located shall transfer a copy of the documents to the competent justice of the peace for validation without delay and, in any event, no later than forty-eight hours after the adoption of the decision.

4. The validation hearing takes place before the judge sitting in private with the compulsory participation of a lawyer informed in a timely fashion. The person concerned will also be informed in a timely fashion and brought to where the judge is holding the hearing. ... The judge shall validate the decision within forty-eight hours in a reasoned decision ...

7. The chief of police shall take effective supervisory measures, through the use of law-enforcement agencies, to ensure that the alien does not unlawfully leave the centre and, in the event the measure is violated, shall reinstate detention by adopting a new detention order. ...”

D. Legislative Decree no. 142 of 18 August 2015

15. This Decree implemented Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (the "Asylum Procedures Directive") and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (the "Reception Conditions Directive") (see paragraphs 30-31 below). The relevant Articles state as follows:

Article 1 – Objective and applicability

"1. The present decree regulates the reception of non-EU countries' citizens and of stateless persons asking for international protection within the national territory, including border and transit zones, as well as in international waters. [These measures also apply to] their family members, included in their international protection request.

2. The reception measures regulated by the present decree apply as from the moment [the alien] demonstrates the intention to ask for international protection.

..."

Article 6 – Detention (*trattenimento*)

"1. An asylum-seeker can only be detained for the purpose of examining his or her request.

2. The asylum-seeker shall be detained, where possible, in dedicated spaces, in the centres regulated by Article 14 of Legislative Decree no. 286 of 25 July 1998, on the basis of a case-by-case evaluation ..."

Article 8 – Reception system

"1. The reception system of international-protection seekers is based on the cooperation of the government entities concerned ...

2. Early aid functions are carried out in the centres referred to in Article 9 ... below, while rescue and identification procedures of aliens illegally entering the national territory are governed by Article 10-*ter* of Legislative Decree no. 286 of 25 July 1998.

3. International-protection seekers are received, provided space is available, in the Reception and Integration System facilities provided for in section 1-*sexies* of Decree-Law no. 416 of 30 December 1989, converted with modifications by Law no. 39 of 28 February 1990."

Article 9 – First reception measures

"1. In order to satisfy first reception needs and to ensure the first steps to determine an alien's legal position, the alien shall stay in governmental first reception centres established by decree of the Minister of the Interior ...

4. Upon being informed by the mayor of the municipality where the reception centre is located and upon consultation with the Department for Civil Liberties and Immigration of the Ministry of the Interior, the Prefect will send the [asylum] seeker

(*richiedente*) to the facilities referred to in paragraph 1. The [asylum] seeker will stay there throughout the time necessary for his or her identification ... the drafting and the early examination of the asylum request ...

4-*bis*. Once the procedures regulated in paragraph 4 have been carried out, the [asylum] seeker is transferred to the facilities provided for in section 1-*sexies* of Decree-Law no. 416 of 30 December 1989, converted with modifications by Law no. 39 of 28 February 1990, provided space is available ..."

Article 10 § 2 – Reception procedures

"Migrants are allowed to leave the centre during the daytime ... but must return to the centre at night. An [asylum] seeker can ask the Prefect for a temporary leave of absence from the centre for a period differing from or longer than [the above-mentioned] period, for relevant personal reasons or for reasons related to the examination of his or her [asylum] request. A decision to reject the requested authorisation shall be reasoned and notified to the person concerned ..."

Article 11 – Extraordinary reception measures

"1. In the event of there being no space available in the centres referred to in Article 9, owing to numerous and frequent arrivals of asylum-seekers, reception can be organised by decision of the Prefect, upon consultation with the Department for Civil Liberties and Immigration of the Ministry of the Interior, in temporary, specially set up, facilities, subject to evaluation of the health situation of the person concerned, also with the aim of assessing special reception needs.

...

3. Reception in facilities referred to in paragraph 1 is limited to the time strictly necessary to transfer the asylum-seeker to the Reception and Integration System facilities referred to in section 1-*sexies* of Decree-Law no. 416 of 30 December 1989, converted with modifications by Law no. 39 of 28 February 1990 ..."

Article 12 § 1 – Material reception conditions

"The tender scheme for providing goods and services pertaining to the functioning of the facilities regulated by Article 6 and Article 8, paragraphs 2, 9 and 11, shall be adopted by decree of the Ministry of the Interior and organised in such a way to guarantee uniform levels of reception within the national territory, depending on the specificities of each centre."

E. Roadmap of the Ministry of the Interior of 28 September 2015

16. The relevant passage of this report, adopted in response to the European Agenda on Migration, reads as follows:

"As from September 2015, four seaport areas have been identified as hotspots (Pozzallo, Porto Empedocle, Trapani and Lampedusa). Each hotspot is equipped with first reception facilities with an overall capacity of 1,500 places and it is aimed to carry out pre-identification, registration, taking of identification photographs and fingerprinting there. The setting-up of two more hotspots is planned before the end of 2015 in Augusta and Taranto with the aim of creating 2,500 hotspot places ...

After health checks, pre-identification, intelligence and investigative activities and depending on the relevant results, migrants requesting international protection are to be transferred to the relevant regional hubs set up on the national territory. Migrants who should be relocated are also transferred to relevant national hubs and irregular migrants who do not request international protection are to be transferred to Identification and Expulsion Centres (*centri di identificazione ed espulsione*)."

F. National Guarantor of the rights of people detained or deprived of their liberty

1. *"Report on the visits to the Italian Identification and Expulsion Centres and hotspots (2016-17: first year of activity)"*

17. The relevant parts of this report read as follows:

"... The visits to the hotspot [of Lampedusa] were carried out on ... 3 October 2016 and 14 January 2017 ...

Structure: The Lampedusa hotspot is in the premises of the former Identification and Expulsion Centre (CIE) ... Therefore, it maintains all the characteristics of a CIE, with bars, gates and metal fences. The general conditions are shabby and run down. The only common areas are concrete shelters with concrete benches where newly arrived migrants wait to be identified and photographed ...

Dormitories consist of rooms equipped with twelve beds, some of them bunk beds, and further mattresses on the floor, some rooms thus containing up to thirty-six beds. The sleeping areas are large rooms where the beds are set out side by side, without any furniture in which to stock personal belongings ... The foam mattresses often lack bedding (sheets are made of paper and are distributed periodically so, if they break, people are left with none) ...

Migrants are not allowed to leave the hotspot even after they have been identified and identification photographs and fingerprints have been taken, contrary to what happens, for example, in the Taranto hotspot where, after [those identification measures have been taken], migrants receive a badge which enables them to leave the centre ... When asked why guests were not allowed to leave the Lampedusa centre, the Prefect explained that the island relied on revenue from tourism and that their presence could create problems. However, he added, if they wanted, they could leave through an opening in the fence ...

The Guarantor delegation were present at a disembarkation [which took place in January 2017] ... The first step [is] pre-identification which consists in the collection of the aliens' personal details.

First, the aliens were interviewed by cultural mediators, who cooperate with the police and provide migrants with useful information for filling out the information sheet (*foglio notizie*) ... The mediators wrote down the answers on small, pre-printed sheets of paper [a sort of label] where the information to be collected (personal data and nationality) was set out – the reason for the [aliens] fleeing [their country] was not listed on the pre-printed form, however the mediators nevertheless noted it as a [supplementary] note on the side of the sheet. This label was filled in for each foreigner with an indication of the general data relating to each person interviewed.

Then, the foreigners were brought one at a time before two police officers who, with the help of a cultural mediator, proceeded to complete the collection of information relating to pre-identification and inserted the data in an electronic database. At the end of this further interview, a blank information sheet (*foglio notizie*) where the upper part was overlapped by the small [sort of label] mentioned above was submitted by the mediator to the foreigners for signature. The police officers then proceeded to the actual filling in of the *foglio notizie* which had already been signed by the migrant.

Therefore, migrants were signing a completely blank sheet without having previously filled it in and having no guarantee that what was declared was actually understood and reported in the documents as they intended it to be. It should also be noted that, at least in the cases observed by the delegation, the annotation of the reason for the aliens having fled [their country] added to the side of the small pre-printed [label], which was stuck on the information sheet, was provided in Italian.

The National Guarantor immediately expressed his strongly negative opinion to the police authorities concerning this way of proceeding and indicated that such a procedure was unacceptable in view of its clear implications on migrants' future and that it could not be justified by any need for speed and simplification. The National Guarantor therefore recommends interrupting the practice consisting in the migrants signing the *foglio notizie* and that any document requiring a signature, including the content of any data entered by the cultural mediator, should in all circumstances be written in a language that the alien understands. ...

The migrants' deprivation of liberty is considered to be unjustified and illegitimate. While reiterating the need to establish a clear regulatory framework of the legal nature of hotspots, the National Guarantor recommends ceasing the practice of depriving the foreigners staying in the Lampedusa hotspot who have had identification photographs and fingerprints taken of their personal liberty and allowing them to leave the centre.

Even at the end of the formalities related to the identification process, migrants staying in the Lampedusa hotspot are not allowed to leave the centre. This entails a deprivation of personal liberty not governed by a primary source of law, nor subjected to the scrutiny of a judicial authority, thus entailing that the hotspot constitutes a sort of limbo of legal protection, in which people are *de facto* detained without any judicial assessment and without the possibility of appealing to a judicial authority ...

The meals are prepared and packed to be distributed in the kitchen of the centre, which appeared to the delegation to be clean and tidy, however, inside the centre there is no canteen, nor tables and chairs to be used during the meal ...

The absence of common rooms, clearly stemming from the hotspot's purpose as a first reception facility in which to offer refreshment to people who have just landed in a very limited period of time, reveals the material inadequacy of the centre in view of the actual length of people's stay. According to the delegation, the aim is to reduce the time spent at the hotspot to a maximum of two to three days, however, this is made difficult owing to the variability of weather conditions that affect the practicality of sea transport. Based on the data provided to the National Guarantor ... it appears that both adults and minors remain in the Lampedusa hotspot for an average of fifteen days. ..."

2. Report to the Italian Parliament 2018

18. The relevant passages of this report read as follows:

"Despite their specific provision in a legal text (Article 10-*ter* of Legislative Decree no. 286 of 25 July 1998), the legal nature of hotspots is still uncertain ... If on the one hand they appear to be humanitarian first aid centres where assistance, information and first reception activities are provided to asylum-seekers, on the other hand pre-identification and police procedures consisting in taking identification photographs and fingerprints are carried out on the premises and forced repatriation operations start there. Such procedures imply that migrants are forbidden to leave the centre until their conclusion and that the deferred refusals of entry (*respingimenti differiti*) are forcibly enforced. ...

The Guarantor [would underline] the principle that when possible limitations of personal liberty are at stake – as in fact happens in these facilities – it is necessary, under Article 13 of the Constitution as well as Article 5 of the European Convention on Human Rights, that the relevant rules, which should be clear and predictable, are defined by the legislature ... in such a way either to justify the deprivation of liberty or to prevent the *de facto* detention of people in the hotspots. ...

Migrants subjected to specific readmission agreements are often returned to their countries by charter flights following deferred refusals of entry (*respingimenti differiti*) pursuant to Article 10, paragraph 2, of the Consolidated Act on provisions concerning rules on immigration and on aliens' conditions no. 286/1998. This concerns migrants rescued at sea who, not having expressed the will to request international protection ... after being identified and photographed in the hotspots, are considered to be irregular migrants and therefore removed. ...

Some people are then ... directly forcibly expelled based on a decision of the public security authority without any intervention of a judicial authority. ... Doubts have been raised in the doctrine as to the constitutionality of the failure [of the legal system] to provide judicial control despite the fact that deferred refusals of entry are commonly enforced through the use of force and the question has recently been subjected to the examination of the Constitutional Court in judgment no. 275 of 8 November 2017. ..."

G. Senate of the Republic – Extraordinary Commission for the protection and promotion of human rights

Report on Identification and Expulsion Centres in Italy (updated January 2017)

19. In addition to the situation of the Italian CIEs, this report refers to the Lampedusa hotspot, although it specifies that it does not belong to the category of CIEs. The relevant passages of the report read as follows:

"Lampedusa hotspot

The centre was conceived as a first reception centre for very short stays of maximum forty-eight hours. Following the introduction of the new procedures envisaged by the European Agenda on Migration, in many cases stays are longer than that, thus giving rise to a series of critical issues, denounced in an open letter to the Minister of the Interior by Mayor Giusi Nicolini: 'Both the structural characteristics of the hotspot and the funds available to it ... are unsuitable and insufficient to guarantee decent reception

conditions for people who have been detained for over thirty days and who could even be held indefinitely ...' ...

Pre-identification: The way pre-identification is carried out is of particular concern. ... The interview takes place in an open space, under a shelter with tables and benches. The alien is given the so called 'information sheet' (*foglio notizie*) which must be filled in with personal information (name, surname, date of birth, residence, paternity, nationality, place of departure). ...

This fundamental and necessary step for 'a first differentiation between, on the one hand, asylum-seekers and, on the other hand, persons to be relocated and irregular migrants' – as set out in the Roadmap of the Ministry of the Interior – takes place when aliens, who have been rescued at sea and have just disembarked, are often clearly still in shock after a long and risky journey. This cannot be qualified as a proper interview but as a simple questionnaire formulated in an extremely concise way and in any event difficult to understand. ...

Identification and registration: ... Under the provisions of the Ministry of the Interior, aliens are not allowed to leave the hotspot until their identification procedure is complete, nor can they apply for asylum in Italy or access the European relocation programme without having completed this procedure. A lacuna thus exists in the current practice with respect to the national law provision pursuant to which, beyond forty-eight hours, a detention must be validated by a judicial authority and the relevant decision must be served on the person concerned. Prolonged stays and the impossibility to leave the facility are indeed not regulated in Lampedusa, owing to its very nature as a first aid and reception centre. ... The facility, then, is completely inadequate in terms of space and services offered to accommodate people for long periods, especially in the case of minors. ..."

H. Constitutional Court case-law

1. Judgment no. 105 of 22 March 2001

20. In this judgment, the Constitutional Court examined the compatibility of Articles 13 and 14 of Legislative Decree no. 286 of 25 July 1998 with Article 13 of the Constitution.

21. It recognised that measures providing for retention of foreign nationals in first reception and assistance centres, even if they could be viewed as a mere restriction of freedom of movement and not a full detention, have an impact on the individual's personal liberty and, therefore, cannot be taken outside the guarantees provided for by Article 13 of the Constitution. Even if the order of retention is issued by the authorities, judicial review must be available and take account of the reasons that led the authorities to order enforcement of expulsion not by mere intimation, but by forced removal to the border, this being the motive of the limitation of the alien's personal liberty and at the same time the foundation of the subsequent measure of retention.

2. Judgment no. 275 of 8 November 2017

22. In this judgment, the Constitutional Court examined the compatibility of Article 10, paragraph 2, of Legislative Decree no. 286 of 25 July 1998 with, among others, Article 13 of the Constitution. The Constitutional Court noted that there were two types of so-called "deferred refusals of entry", as defined in (a) and (b) of that paragraph (see paragraph 14 above).

23. It further found that situations like the one under its examination, where an order to leave the country (*ordine di respingimento*) was not followed by a forced removal (*rimpatrio forzato*), were not incompatible with Article 13 of the Constitution.

24. However, the Constitutional Court noted that deferred refusals of entry executed through the use of force called for a legislative intervention since that measure had an impact on the individual's personal liberty under Article 13 of the Constitution; therefore, it had to be regulated pursuant to paragraph 3 of that provision.

I. Circular no. 14106 of 6 October 2015 of the Ministry of the Interior

25. The relevant part of this circular states as follows:

> "In the Roadmap ... the following hotspots were identified: Lampedusa, Pozzallo, Porto Empedocle and Trapani ...
>
> Under the current procedure, it is envisaged that all migrants will land in one of the hotspots so that a health check and the procedures consisting in pre-identification ..., registration and the taking of identification photographs and fingerprints can be carried out within twenty-four to forty-eight hours ..."

J. The 2016 Standard Operating Procedure applicable to Italian hotpots

26. The relevant part of this document reads as follows:

> "... From the time of [the migrants'] entry [into the Italian territory], the period of stay in the facility should be as short as possible, in accordance with the national legal framework ..."

II. INTERNATIONAL LAW AND PRACTICE

A. European Union

1. *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*[4]

27. The relevant parts of this Directive read as follows:

Article 15 – Detention

"1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

..."

Article 18 – Emergency situations

"1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the third subparagraph of Article 15(2) and to take

[4] Implemented by Law decree no. 89 of 2011, which modified the consolidated Act no. 267 of 1998.

urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2).

2. When resorting to such exceptional measures, the Member State concerned shall inform the Commission. It shall also inform the Commission as soon as the reasons for applying these exceptional measures have ceased to exist."

2. *Judgment of the Court of Justice of the European Union of 6 October 2022* Politsei- ja Piirivalveamet *(placement in detention – risk of committing a criminal offence)*, ECLI:EU:C:2022:753

28. The relevant parts of this judgment, delivered pursuant to a request for a preliminary ruling from the *Riigikohus* (the Supreme Court of Estonia) lodged on 14 April 2021 concerning the interpretation of Article 15 § 1 of Directive 2008/115/EC, read as follows:

"35. Article 15(1) of Directive 2008/115 explicitly provides for two grounds for detention based, on the one hand, on the presence of a risk of absconding as defined in Article 3(7) thereof and, on the other hand, on the fact that the person concerned avoids or hinders the preparation of the return or removal procedure.

36. It is true, as the Advocate General pointed out in points 30 to 34 of his Opinion, that it follows from the first sentence of Article 15(1) of Directive 2008/115, and specifically from the words 'in particular', that those two grounds are not exhaustive. Therefore, Member States may provide for other specific grounds for detention, in addition to the two grounds explicitly set out in that provision.

37. That being so, it must be stated that the possibility conferred on the Member States of adopting additional grounds for refusal is strictly limited both by the requirements deriving from Directive 2008/115 itself and by those arising from the protection of fundamental rights, and in particular the fundamental right to freedom enshrined in Article 6 of the Charter of Fundamental Rights of the European Union ('the Charter')

...

40. Second, the use of detention for the purpose of removal should be limited and subject to the principle of proportionality, as provided for in recital 16 of Directive 2008/115.

41. It must be recalled that Directive 2008/115 seeks to establish an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned ...

48. As regards the requirements that the legal basis for a limitation on the right to liberty must meet, the Court noted, in the light of the judgment of the European Court of Human Rights of 21 October 2013, *Del Río Prada v. Spain*, that a national law authorising a deprivation of liberty must, in order to meet the requirements of Article 52(1) of the Charter, be sufficiently accessible, precise and foreseeable in its application so as to avoid any danger of arbitrariness ...

49. In that connection, the Court has also held that the objective of the safeguards relating to liberty, such as those enshrined in both Article 6 of the Charter and Article 5 ECHR, consists, in particular, in the protection of the individual against arbitrariness. Thus, if the execution of a measure depriving a person of liberty is to be consistent with the objective of protecting the individual from arbitrariness, that means, in particular,

that there can be no element of bad faith or deception on the part of the authorities (judgments of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 39, and of 12 February 2019, *TC*, C-492/18 PPU, EU:C:2019:108, paragraph 59).

50. It follows from the foregoing that the detention of a third-country national who is subject to a removal procedure, constituting a serious interference with his or her right to liberty, is subject to compliance with strict safeguards, namely the presence of a legal basis, clarity, predictability, accessibility and protection against arbitrariness (judgment of 15 March 2017, *Al Chodor*, C-528/15, EU:C:2017:213, paragraph 40).

...

55. In light of the foregoing considerations, the answer to the question referred is that Article 15(1) of Directive 2008/115 must be interpreted as not permitting a Member State to order the detention of an illegally staying third-country national solely on the basis of a general criterion based on the risk that the effective enforcement of the removal would be compromised, without satisfying one of the specific grounds for detention provided for and clearly defined by the legislation implementing that provision in national law."

3. *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*

29. The relevant parts of this Directive read as follows:

Article 8 – Information and counselling in detention facilities and at border crossing points

"1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible."

Article 23 § 2 – Scope of legal assistance and representation

"Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU."

Article 26 – Detention

"1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU."

4. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)

30. The relevant parts of this Directive read as follows:

Article 8 – Detention

"1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

...

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

...

The grounds for detention shall be laid down in national law."

Article 9 – Guarantees for detained applicants

"1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted: (a) only to those who lack sufficient resources; and/or (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also: (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation; (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law."

5. Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

31. The relevant Article of this Regulation reads as follows:

Article 28 – Detention

"1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply."

6. European Agenda on Migration

32. The relevant part of this "Communication of 13 May 2015 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions" COM(2015)240 reads as follows:

"Using the EU's tools to help frontline Member States

More will be done to help deal with the immediate challenge faced by Member States in the frontline of migrant arrivals.

First, the Commission will set up a new 'Hotspot' approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channelled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible. For those not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host Member State with investigations to dismantle the smuggling and trafficking networks.

..."

7. *Communication of 23 September 2015 from the Commission to the European Parliament, the European Council and the Council: Managing the refugees crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration COM(2015)490*

33. The relevant part of this communication reads as follows:

> "... For these crisis situations, the Commission developed the approach of Migration Management Support Teams in 'hotspots' ... A 'hotspot' is an area at the external border that is confronted with disproportionate migratory pressure. Examples are Sicily and Lampedusa in Italy or Lesbos and Kos in Greece. It is in these 'hotspots' where most migrants enter the Union. It is here where the EU needs to provide operational support to ensure that arriving migrants are registered, and to avoid that they move on to other Member States in an uncontrolled way ... The approach is an operational concept to maximise the added value of this support through Migration Management Support Teams. ... [E]xpert teams ... support the debriefing of migrants to understand their routes to Europe and to gather information on the modus operandi of migrant smugglers. Where needed, experts from Frontex also provide pre-return assistance and coordinate return flights. The experts of the European Asylum Support Office support the host Member States with the registration of asylum seekers and the preparation of the case file. And Europol and Eurojust send teams of investigators to support the collection of information to dismantle migrant smuggling networks.
>
> ...
>
> The approach will also facilitate the implementation of the Decisions to relocate persons in clear need of international protection from Italy and Greece. The identification, registration and fingerprinting of migrants upon arrival is a precondition for relocation to work, and the approach provides the necessary support for this. However, the approach functions independently from relocation, and the Commission is ready to apply it in additional Member States that face disproportionate migratory pressure at its borders.
>
> The Support Team does not operate reception centres. For the approach to be successful, the host Member State has to provide well-functioning reception facilities in which the expert teams deployed by the EU Agencies can operate. This includes first reception and pre-removal centres. The existence of sufficient reception facilities is also a necessary precondition for relocation, and the EU provides substantial financial support to Member States to build this infrastructure."

8. *Regulation (EU) 2016/1624 of the European parliament and of the Council of 14 September 2016 on the European Border and Coast Guard*

34. The relevant part of this Regulation, which has been replaced since 1 January 2021 by Regulation (EU) No. 2019/1896 of the European Parliament and of the Council of 13 November 2019, reads as follows:

> "... 'hotspot area' means an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders;"

9. Regulation (EU) No. 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations EU Nos. 1052/2013 and 2016/1624

35. The relevant parts of this Regulation read as follows:

Article 2 § 23

"'hotspot area' means an area created at the request of the host Member State in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders;"

Article 40 – Migration management support teams

"1. Where a Member State faces disproportionate migratory challenges at particular hotspot areas of its external borders characterised by large inward mixed migratory flows, that Member State may request technical and operational reinforcement by migration management support teams composed of experts from relevant Union bodies, offices and agencies that shall operate in accordance with their mandates.

That Member State shall submit a request for reinforcement and an assessment of its needs to the Commission. On the basis of that assessment of needs, the Commission shall transmit the request, as appropriate, to the Agency, to EASO, to Europol and to other relevant Union bodies, offices and agencies.

...

3. The Commission, in cooperation with the host Member State and the relevant Union bodies, offices and agencies in accordance with their respective mandates, shall establish the terms of cooperation at the hotspot area and shall be responsible for the coordination of the activities of the migration management support teams.

4. The technical and operational reinforcement provided, with full respect for fundamental rights, by the standing corps in the framework of migration management support teams may include the provision of:

(a) assistance, with full respect for fundamental rights, in the screening of third-country nationals arriving at the external borders, including the identification, registration, and debriefing of those third-country nationals and, where requested by the Member State, the fingerprinting of third-country nationals and providing information regarding the purpose of these procedures;

(b) initial information to persons who wish to apply for international protection and the referral of those persons to the competent national authorities of the Member State concerned or to the experts deployed by EASO;

(c) technical and operational assistance in the field of return in accordance with Article 48, including the preparation and organisation of return operations;

..."

Article 42 – Situation at the external borders requiring urgent action

"1. Where external border control is rendered ineffective to such an extent that it risks jeopardising the functioning of the Schengen area because:

...

(b) a Member State facing specific and disproportionate challenges at the external borders has either not requested sufficient support from the Agency under Article 37, 39 or 40 or is not taking the necessary steps to implement actions under those Articles or under Article 41;

the Council, on the basis of a proposal from the Commission, may adopt without delay a decision by means of an implementing act to identify measures to mitigate those risks to be implemented by the Agency and requiring the Member State concerned to cooperate with the Agency in the implementation of those measures. The Commission shall consult the Agency before making its proposal.

...

3. To mitigate the risk of putting the Schengen area in jeopardy, the Council decision referred to in paragraph 1 shall provide for one or more of the following measures to be taken by the Agency:

(a) organise and coordinate rapid border interventions and deploy the standing corps, including teams from the reserve for rapid reaction;

(b) deploy the standing corps in the framework of the migration management support teams, in particular at hotspot areas;

(c) coordinate activities for one or more Member States and third countries at the external borders, including joint operations with third countries;

(d) deploy technical equipment;

(e) organise return interventions.

..."

10. European Parliament Directorate-General for Internal Policies of the Union: "On the frontline: the hotspot approach to managing migration"

36. The relevant parts of this report of 2016 read as follows (footnotes omitted):

"5.2. Hotspots in Italy

Owing to the migratory patterns described in the introduction and owing also to the existing Italian model of handling migrants arriving on Italian soil, Italy was really the starting point for the hotspot approach. ...

...

5.2.2. The legal and regulatory framework

Unlike in Greece, no specific legislation or legislative amendment has been adopted to regulate the operation of hotspots in Italy. Instead, the Italian Interior Ministry, together with the European Commission, has adopted Standard Operating Procedures for hotspots, which are not yet publicly available, but should be – both in English and

Italian – in the coming weeks. The Italian authorities drew up a roadmap in September 2015, detailing, inter alia, its plans for the hotspots. Italy sent a revised roadmap to the Commission on 31 March 2016, though this is not publicly available.

While no specific legislation has been adopted on hotspots, Italy appears to have heeded the European Commission's call for 'a more solid legal framework to perform hotspot activities and in particular to allow the use of force for fingerprinting' by drawing up a legislative proposal on the use of force to ensure fingerprinting. It is perhaps noteworthy, in this regard, that the many critics of this approach include the Italian police officers' union – *Unione Generale Lavoratori di Polizia* – which sent a letter to the Head of the Italian Police deploring the move."

11. European Parliamentary Research Service (EPRS)

37. The relevant passages of the EPRS Report "Hotspots at EU external borders" of June 2018 read as follows (footnotes omitted):

"The total capacity of the hotspot in Lampedusa was affected by several incidents, including arson, and inspections by several organisations and NGOs underlined the detention conditions. ... The occupancy levels in the Pozzallo, Trapani and Lampedusa hotspots exceed the actual capacity of the establishments, resulting in overcrowding. Concerns have also been raised regarding material capacities in the Italian hotspots, such as the availability of sufficient beds.

Contrary to the situation in Greece, no specific legislation or amendment has been adopted to monitor the functioning of hotspots in Italy. Alternatively, the Italian Interior Ministry, in cooperation with the European Commission, has adopted Standard Operating Procedures for the hotspots. Several NGOs have called upon the Italian government to put an end to abuses, such as administrative detention, use of force and the issuing of orders of expulsion, in the hotspots.

...

The European Parliament has underlined the need to ensure that the hotspot approach does not undermine the fundamental rights of asylum-seekers and refugees crossing the European borders. Parliament has aimed to identify and improve the detention and reception conditions for third country nationals in Europe."

B. Council of Europe

1. Report of the fact-finding mission to Italy by the Special Representative of the Secretary General on Migration and Refugees

38. The Special Representative of the Secretary General on Migration and Refugees carried out a mission to Italy from 16 to 21 October 2016, visiting facilities for migrants, including the Lampedusa hotspot. The relevant parts of this report read as follows (footnotes omitted):

"In principle, no-one should spend more than 72 hours in a hotspot. However, while the initial interview procedure is carried out swiftly, in practice the lack of capacity in the reception system means that many asylum-seekers are stuck in the hotspots awaiting a transfer to first reception facilities. ...

Although both hotspots [Pozzallo and Lampedusa] were formally operating within capacity, some of the men's dormitories I visited in Lampedusa appeared to be overcrowded, with the consequent impact on hygiene. In Lampedusa I also saw blocked toilets, with water leaking into the neighbouring bedroom which accommodated young girls, and the female showers were in a poor condition. ...

In principle, both hotspots are closed facilities. In Lampedusa, even after residents have been fingerprinted, they are not formally permitted to leave the compound. In practice, they are able to sneak out during the day and the authorities appear to be aware of, and tolerate, this. ...

Overall, conditions in the hotspots which I visited could be considered acceptable provided that the issues I have identified above are addressed. ...

The hotspot approach was developed at European Union level but there is no domestic legal framework establishing what a hotspot is and how the procedures carried out there are governed. Standards accordingly vary from one hotspot to another. The authorities informed me that Italy adopts a minimal interpretation of the hotspot concept: they are solely for identification procedures to be carried out. But if people refuse to provide fingerprints, they may spend some time at the hotspot pending the completion of the identification process.

Given the limitations of the hotspots in terms of conditions and services, the 'minimal approach' involving a short stay seems the only logical option. The reasons why the practice does not reflect this intention have been set out above. Independently of whether the capacity problem can be resolved, a proper legal framework is needed, setting out minimum standards. This would significantly contribute to the protection of those in the hotspots. In particular, the *de facto* detention of people in hotspots, either pending the availability of suitable first reception accommodation or because they have refused to provide fingerprints, is currently without any domestic legal basis and for this reason raises issues under Article 5 of the ECHR."

2. *Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

39. From 7 to 13 June 2017 a delegation from the CPT visited Italy to examine the situation of foreign nationals deprived of their liberty in hotspots and immigration detention centres in the context of large-scale arrivals from North Africa. The relevant passages of the report read as follows:

"[In the Lampedusa hotspot] during the 120-day period between 1 February and 1 June 2017, the centre operated at more than double its 250-person capacity (based on the number of beds) during almost half of the time (i.e. 56 days), with a peak in April and early June, when over 1,000 new arrivals stayed for several days in the 'hotspot'. In the case of large-scale arrivals, additional mattresses would be placed on the floors throughout the establishment. These figures suggest that the current bed capacity is structurally too low and should be increased. ... In the light of its assessment of the living conditions, the CPT recommends that further efforts be made, in particular as regards Lampedusa hotspot, to ensure that foreign nationals only remain at the hotspots for the shortest possible period of time.

The CPT notes positively that the provision of health-care services at the three 'hotspots' was very good. Health-care staff were sufficient in number, with additional medical staff being on standby, and a medical and/or nursing presence was guaranteed around the clock seven days a week. Further, the health-care facilities were well equipped.

Noting that several categories of foreign nationals may be prevented from leaving the hotspots, the CPT raises the issue of the legal basis for deprivation of liberty in these centres and related problems regarding the existence and operation of legal safeguards. It formulates several recommendations in this respect, including as regards judicial control over deprivation of liberty, the provision of information about rights and procedures and effective access to a lawyer as well as practical measures to reduce the risk of *refoulement*.

...

As part of the response to assist frontline member States that are facing disproportionate migratory pressures at the European Union's external borders, European Union member states and institutions agreed in 2015 to implement the so-called 'Hotspot' approach to managing migration. The 'Hotspot' approach aims at swiftly identifying, registering and properly processing new arrivals in designated centres at key arrival points and, if possible, swiftly returning irregular migrants who are not allowed to stay in the country concerned. It is currently being implemented in Italy and Greece. At the time of the visit, four 'hotspots' (Lampedusa, Pozzallo, Taranto and Trapani) were in operation, with a total official capacity of approximately 1,600 places. The Italian authorities plan to establish five additional 'hotspots', which should become operational in the near future.

...

At the outset, the CPT notes that 'hotspots', in law, are not conceived as places of deprivation of liberty. Section 17 of Law-Decree No. 13/2017, converted into law by Law No. 46/2017, introduces a new Section 10-ter in Legislative Decree No. 286/1998 (Consolidated Immigration Act or *testo unico dell'immigrazione*, TUI), which provides for designated 'crisis centres' (*punti di crisi*) to be established within first-line reception facilities for rescue and first aid purposes, where those newly arrived undergo pre-identification procedures and where they are provided with assistance and information. However, the new legislation does not provide a legal basis for deprivation of liberty in the 'hotspots'. Nevertheless, the Italian NPM [the National Guarantor of the rights of people detained or deprived of their liberty], in its thematic report of June 2017, observed that foreign nationals are deprived of their liberty in the 'hotspots'; for this reason, it recommended that a legal framework be developed for holding persons there.

...

That said, the occupancy at all three 'hotspots' visited regularly exceeded the official capacity. As a consequence, the 'hotspots' could become severely congested. This was particularly the case at Lampedusa 'hotspot'. During the 120-day period between 1 February and 1 June 2017, the centre operated in excess of its 250-person capacity, which was based on the number of available beds, for more than 75% of the time (i.e. 93 days); during almost half of the time (i.e. 56 days), the occupancy was even more than double the bed capacity, with a peak in April and early June, when over 1,000 new arrivals stayed for several days in the 'hotspot'. In the case of largescale arrivals, additional mattresses would be placed on the floors throughout the establishment. Even if one accepts that overcrowding is hard to avoid in the days immediately following

largescale arrivals, these figures suggest that the current capacity is structurally too low and should be increased. ...

[S]everal categories of foreign nationals may be prevented from leaving the 'hotspots', without a clear legal basis. This situation raises several problems in terms of legal safeguards. According to the Italian NPM, foreign nationals may be deprived of their liberty in the 'hotspots' without judicial control and without possibility of appeal, which creates a legal limbo.

The CPT notes that a stay in the 'hotspots' was not formally regarded as deprivation of liberty by the Italian authorities and, therefore, no detention order was issued. ...

In particular, migrants originating from Tunisia ... who indicated that they did not require international protection, could be swiftly returned to their countries of origin or transferred to a closed CPR [*Centro di permanenza per i rimpatri*] ... It therefore appears that 'hotspots' often hold irregular migrants pending their removal."

3. *Communication of the Italian authorities to the Committee of Ministers of the Council of Europe – 1331st meeting (December 2018)*

40. The relevant part of this communication from the Italian authorities to the Committee of Ministers of the Council of Europe concerning the case in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, 15 December 2016) states as follows (translation by the Registry):

"Since September 2015 the reception system in Italy has evolved to feature redesigned facilities based on a new organisational model called the hotspot approach. Hotspots are arrival areas, located near ports, to which migrants arriving by sea are directed in order to ensure that they receive initial medical and material assistance and information on their own legal status and the rules governing immigration and asylum, and to ensure that they undergo identification and the taking of identity photographs and fingerprints by the police in collaboration with Frontex and Europol. ...

The time spent at a hotspot may vary depending on the activities performed there: first aid and assistance (medical examinations, provision of information on asylum rules, and so on) and/or identification of migrants. These steps are generally completed very promptly, at most forty-eight hours after arrival, provided that a migrant does not object to identification; their purpose is not to confer any definitive legal status and they do not prevent migrants from making a subsequent application for international protection. ..."

C. United Nations

Comments of the Committee established pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

41. The Committee against Torture, the body of independent experts that monitors the implementation of the above-mentioned Convention, stated as follows in its Concluding observations of 18 December 2017 on the combined fifth and sixth periodic reports of Italy:

"Allegations of ill-treatment in 'crisis centres' and other reception facilities

...

While taking note of the information provided by the State party on the implementation of the 'hotspot approach' agreed upon by the European Union in 2015 to achieve swift identification and screening of migrants and asylum seekers at points of arrival, the Committee remains concerned at reports of ill-treatment and excessive use of force by the police when taking the fingerprints of newly arrived asylum seekers and migrants. ... Also of concern are the reportedly substandard living conditions in several reception centres for asylum seekers and irregular migrants, including 'crisis centres' and centres for unaccompanied children ...

The State party should:

(a) Clarify the legal basis for deprivation of liberty and the use of force to obtain fingerprints from uncooperative asylum seekers and migrants;

..."

THE LAW

I. PRELIMINARY OBJECTIONS

42. The Government submitted that the applicants could not claim to be victims as no violation of the Convention's provisions had occurred in this case. In particular, they observed that the applicants had not been detained within the meaning of Article 5 of the Convention as the reception measures they had been subjected to in the 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 applicants had not been subjected to any treatment contrary to Article 3 of the Convention.

43. The Government also noted that the applicants had failed to exhaust the available domestic remedies. In their view, under Article 10, paragraph 2, of Legislative Decree no. 142 of 2015, the applicants could have lodged a request with the Prefect to obtain a temporary permit to leave the centre. In the event of that being refused, they could have challenged the relevant decision before a civil judge. Also, it had been open to the applicants to lodge an urgent application under Article 700 of the Code of Civil Procedure. In addition, they could have lodged a complaint before the administrative courts, in the event their request before the Prefect went unanswered.

44. Finally, the Government considered that the present application had been lodged out of time, namely on 9 May 2018.

45. The applicants disagreed with the objections concerning their lack of victim status and the alleged delay in lodging their application. With regard to the non-exhaustion of domestic remedies, they replied that the internal avenues mentioned by the Government were only open to asylum-seekers, which was not the case of the applicants in the present case.

46. The Court considers that the Government's objection of lack of victim status relates to the substance of the applicants' complaints. It thus decides to join this objection to the merits of the case (see paragraphs 66 and 99 below).

47. With regard to the non-exhaustion of domestic remedies, the Court acknowledges that, pursuant to Article 1 of Legislative Decree no. 142 of 2015 and the relevant European Union instruments, the guarantees and remedies referred to in that Decree (including in its Article 10) are applicable to asylum-seekers. In the present case, the applicants did not seek international protection, thus they are exempted from the need to exhaust the above-mentioned internal remedies. Therefore, the Government's objection must be dismissed.

48. As for the allegedly delayed lodging of the application, the Court observes that, contrary to the Government's statement, the present application was lodged on 26 April 2018, thus within the six-month time-limit starting from the applicants leaving the hotspot and being removed to Tunisia. Therefore, this objection must also be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicants complained about the material conditions of their stay in the Lampedusa hotspot. They relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

50. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

51. The applicants reiterated their complaint and relied on the 2017 annual report of the *Garante nazionale dei diritti delle persone detenute o private della libertà personale* (National Guarantor of the rights of people detained or deprived of their liberty – "the Guarantor").

52. The applicants also submitted a video interview given by the Guarantor's President in January 2018, who had attested to the lack of action on the part of the Italian authorities to improve the poor conditions of stay in the Lampedusa hotspot since the previous year and provided photographs showing the critical conditions of hygiene at the centre as well as the lack of space.

53. The applicants also referred to the 2020 report of the Guarantor 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. They had been deprived of their liberty as it had been impossible for them to leave the centre and they had had no possibility of lodging an appeal before a judicial authority.

2. The Government's submissions

54. The Government observed that the 2016-17 report of the Guarantor showed, rather, that the applicants' conditions of stay had been neither inhuman nor degrading. Meals had been prepared and packed in the centre's kitchen which had reportedly been clean and tidy, and there had been a separate room for the migrants' interviews there. Flyers containing legal information, new-arrival kits and a small amount of money had systematically been distributed to migrants, and the healthcare system had been generally well-organised and efficient.

3. Third-party interveners' submissions

55. The World Organisation Against Torture noted that hotspots were facilities where newly arrived migrants and asylum-seekers were temporarily housed before being transferred to other facilities at the earliest opportunity. Although in December 2017 the United Nations Committee against Torture had recommended to Italy to take the measures necessary to ensure appropriate reception conditions for asylum-seekers and irregular migrants, the situation remained critical concerning immigration detention centres and hotspots.

56. The Lampedusa hotspot had been closed for renovations in March 2018 following complaints of inhuman living conditions. Despite being allowed to reopen, the hotspot had serious structural deficiencies. Moreover, the European Committee for the Prevention of Torture had also recommended to increase its capacity.

57. The Tunisian Forum for Economic and Social Rights (FTDES) highlighted the political and economic challenges faced by Tunisia, the subsequent social protests and the difficult economic and social backgrounds of Tunisian nationals who tried to leave the country and were subsequently sent back to Tunisia.

4. The Court's assessment

58. The general principles applicable to the treatment of people held in immigration detention are set out in detail in *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, §§ 216-22, ECHR 2011), *Tarakhel v. Switzerland* ([GC], no. 29217/12, §§ 93-99, ECHR 2014 (extracts)) and *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016; see also *E.K. v. Greece*, no. 73700/13, §§ 72-84, 14 January 2021).

59. The Court would first note that the applicants provided several pieces of evidence in support of their claims.

60. Although highlighting some positive aspects of the organisation at the facility, within a "hotspot approach" that has been developed starting from 2015 (see paragraphs 32 et seq.), the Government, for their part, did not dispute the abundant information submitted by the applicants with regard to the shortcomings of the material conditions of stay in the Lampedusa hotspot (i.e., the conditions of hygiene, the lack of space, and the features of accommodation – see paragraphs 52 and 53 above).

61. The Court also observes that multiple national and international sources have attested to the critical material conditions in the Lampedusa hotspot during the period of the material facts of the present case.

62. The 2016-17 report of the Guarantor and the 2017 report of the Senate of the Republic (see paragraphs 17 and 19 above) 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.

63. The centre's overcrowding was also referred to *inter alia* by the CPT in its report to the Italian government on its visit to Italy carried out in 2017. In general terms, living conditions in hotspots were also criticised by the UN Committee against Torture in its 2017 reports on Italy (see paragraphs 37-39 and 41 above).

64. In light of all of the above, the Court finds that the Government have failed to produce sufficient elements in support of their view that the individual conditions of stay of the applicants could be deemed to have been acceptable. Indeed, having regard to the elements listed above, submitted by the applicants, and supported by photographs and by several reports, the Court is satisfied that, at the time the applicants were placed there, the Lampedusa hotspot provided poor material conditions.

65. In this context, the Court also reiterates its well-established case-law to the effect that, having regard to the absolute character of Article 3, the difficulties deriving from the increased inflow of migrants and asylum-seekers, in particular for States which form the external borders of the European Union, does not exonerate member States of the Council of Europe from their obligations under this provision (see *M.S.S. v. Belgium and Greece*, cited above, § 223; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09,

§ 122, ECHR 2012; *Khlaifia and Others*, cited above, § 184; and *J.R. and Others v. Greece*, no. 22696/16, § 137, 25 January 2018).

66. The Court notes that, in the present case, the applicants remained in the Lampedusa hotspot for ten days.

67. In the light of the above, the Court dismisses the Government's objection as to the applicants' alleged lack of victim status and concludes that the applicants were subjected to inhuman and degrading treatment during their 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

68. The applicants complained of having been deprived of their liberty during their 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 their deprivation of liberty. They relied on Article 5 §§ 1, 2 and 4 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ..."

A. Admissibility

1. The applicants' submissions

69. The applicants observed that in its "Report on the monitoring activities concerning the forced repatriation of foreigners" (December 2017-June 2018), the Guarantor had pointed out that the general practice in hotspots of not allowing individuals to leave the facilities ran counter to the Consolidated Act on Immigration (see paragraph 14 above), the principle established in Article 13 of the Constitution ("Personal liberty is inviolable") and Article 5 of the Convention. In addition, it emerged from the 2017 report of the Guarantor (see paragraph 49 above) that, answering the question as to why migrants in Lampedusa were not allowed to leave the premises of the centre, the Prefect had replied that Lampedusa was an island dependent on

revenue from tourism and that the presence of migrants might create problems. He had then added that migrants did have in any event the possibility to leave the centre through an opening in the fence. The Guarantor concluded that the Lampedusa hotspot was indeed a closed facility.

2. The Government's submissions

70. The Government stated that the applicants had not been deprived of their liberty but had merely been subjected to a restriction of liberty owing to public interest needs, related to identification procedures and relocation of migrants.

3. The Court's assessment

71. As to the applicability of Article 5 of the Convention in the present case, the Court reiterates that in order to determine whether a person has been deprived of liberty, the starting-point must be his or her concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 217, 21 November 2019, with further references; *Khlaifia and Others*, cited above, § 64; and *J.R. and Others v. Greece*, cited above, §§ 83-84).

72. The Court considers that in the present case the question of the applicability of Article 5 of the Convention is closely linked to the merits of the applicants' complaint under the same provision. Accordingly, the Court will have regard to it in determining whether there has been a violation of that Article (see paragraph 99 below).

B. Merits

1. The applicants' submissions

73. The applicants reiterated their complaints.

2. The Government's submissions

74. The Government pointed out that the reception measures the applicants had been subjected to in the Lampedusa hotspot were regulated by law, namely by Articles 8, 9, 10 and 12 of Legislative Decree no. 142 of 2015.

75. The Government also observed that the present case differed from that in *Khlaifia and Others* (cited above), given that the Italian legal system had radically changed since the Court's judgment in that case (see Article 10 *ter* of Legislative Decree no. 286 of 25 July 1998, paragraph 14 above). In particular, the Government noted that the Lampedusa hotspot was classified as an Identification and Expulsion Centre and, under the applicable legislation, the people staying therein were lawfully detained.

76. They further submitted that, in any event the applicants had been free to leave the centre, during the day, upon authorisation by the Prefect (see paragraph 43 above).

3. Third-party interveners' submissions

77. The World Organisation against Torture noted the submissions made by Italian human rights non-governmental organisations to the United Nations Committee against Torture (Pre-sessional Working group 9 November-4 December 2020) in which they had stated that people staying in the Lampedusa hotspot lived *de facto* in detention.

78. L'altro diritto submitted that Italian migrant reception centres, in particular hotspots, often acted as detention facilities devoid of any legal basis.

4. The Court's assessment

79. The Court observes that, while the general rule set out in Article 5 § 1 is that everyone has the right to liberty, Article 5 § 1 (f) provides an exception to that general rule, permitting States to control the liberty of aliens in an immigration context (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 64, ECHR 2008).

80. Under sub-paragraphs (a) to (f) of Article 5 § 1, any deprivation of liberty must, in addition to falling within one of the exceptions set out therein, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (ibid., § 67).

81. Whereas the general principle that detention should not be arbitrary applies to detention under the first limb of Article 5 § 1 (f) in the same manner as it applies to detention under the second limb (ibid., § 73), the second limb ("action is being taken with a view to deportation or extradition"), unlike Article 5 § 1 (c), does not demand additionally that detention be reasonably considered necessary, for example, to prevent the individual from committing an offence or fleeing (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I).

82. The first limb ("the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country"), which permits the detention of an asylum-seeker or other immigrant prior to the State granting authorisation to enter, implies that "freedom from arbitrariness" means that such detention must be carried out in good faith, that it must be closely connected to the purpose of preventing unauthorised entry of the person into the country and that the place and conditions of detention should be appropriate. It should be recalled that the measure in question is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country, and that the length of the detention should not exceed that reasonably required for the purpose pursued (see *Saadi*, cited above, § 74).

83. The question as to when the first limb of Article 5 § 1 (f) ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law (see *Suso Musa v. Malta*, no. 42337/12, § 97, 23 July 2013); if entry has been refused, any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Khlaifia and Others*, cited above, § 90).

84. In the present case, the domestic authorities did not argue, nor has it been otherwise demonstrated, that entry had been refused, that a repatriation order had been issued, or that action regarding deportation had been initiated prior to 26 October 2017. Therefore, the second limb of Article 5 § 1 (f) having been applicable at the most only for the few hours before the applicants' removal, the Court is bound to consider that, in essence, and as is apparent from the applicants' complaint, only the first limb of Article 5 § 1 (f) of the Convention ("the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country") applies to the facts of the case, which took place from 16 October 2017, namely the day of the applicants' arrival in the Lampedusa hotspot, until the early morning of 26 October 2017, when the applicants were transferred from the hotspot to the airport.

85. It now falls to the Court to determine whether the applicants' restriction of liberty within the meaning of the first limb of Article 5 § 1 (f) complied with the requirement of "lawfulness", and in particular whether it was based on the "substantive and procedural rules of national law" (see paragraph 80 above).

86. In this regard, the Court would first draw attention to the definition of "hotspot", as related in particular to their function.

87. The European Commission's European Agenda on Migration of 13 May 2015 established some guidelines to be applied in EU countries with regard to different aspects of migration and put in place the "hotspot approach". In its Roadmap of 28 September 2015, the Italian Ministry of the Interior thus identified four seaport areas in which hotspots were to be set up, including Lampedusa (Contrada Imbriacola).

88. The Roadmap clarified that the purpose of these hotspots was to carry out the registration and identification of migrants as a preliminary step to subsequently sorting and dispatching them by channelling asylum-seekers and those who needed to be relocated to competent national and regional hubs, or transferring irregular migrants who had not applied for international protection to Identification and Expulsion Centres in order for them to be expelled. Therefore, hotspots, namely existing reception facilities used to implement the "hotspot approach", were not intended, at least at the point in time relevant to the case in question, to serve as detention centres, but rather as identification and dispatching facilities.

89. The national legislation regarding "hotspots" appears to be Article 10-*ter* of Legislative Decree no. 286 of 25 July 1998, as amended by section 17 of Decree-Law no. 13 of 17 February 2017. In accordance with this provision, "crisis centres" or "hotspots" were set up within two facilities: those instituted pursuant to Decree-Law no. 451 of 1995, converted with modifications by Law no. 563 of 29 December 1995 (such as the Lampedusa Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza*)) and those instituted pursuant to Article 9 of Legislative Decree no. 142 of 2015.

90. The Court cannot but note that while Decree-Law no. 13 identified the two types of existing facilities that were apt to serve as hotspots, the Government have not shown that the Italian regulatory framework, including EU rules that may be applicable, provides clear instructions concerning the detention of migrants in these facilities.

91. In this respect the Court has found no reference in the domestic law cited by the Government (see paragraph 74 above) to substantive and procedural aspects of detention or other measures entailing deprivation of liberty that could be implemented in respect of the migrants concerned in hotspots. Nor have the Government submitted any legal source stating that the Lampedusa hotspot was to be classified as a CIE (where migrants, under certain conditions, might be lawfully detained under domestic legislation – see paragraph 75 above).

92. In addition, reports of independent observers, most of which based on on-site visits, as well as of national and international organisations, unanimously describe the Lampedusa hotspot as a closed area with bars, gates and metal fences that migrants are not allowed to leave, even once they have been identified, thus subjecting them to a deprivation of liberty which is not regulated by law or subjected to judicial scrutiny. The Court refers in

particular to the 2016-17 report of the Guarantor on its visits to the Identification and Expulsion Centres and hotspots and to its 2018 report to the Italian Parliament (see paragraphs 17-18 above). It also refers to the Senate's report on the Identification and Expulsion Centres in Italy (see paragraph 19 above) and the reports of the European Parliamentary Research Service, the Special Representative of the Secretary General on migration and refugees of the Council of Europe, the CPT, and the UN Committee against Torture (see paragraphs 37-41 above).

93. Under the Convention, the Court can accept that, at the moment of migrants' attempt to be admitted into the territory of a Contracting Party, a limitation of their freedom of movement in a hotspot may be justified – for a strictly necessary, limited period of time – for the purpose of identification, registration and interviewing with a view, once their status has been clarified, to their possible transfer to other facilities. In those circumstances, the detention, for instance, of asylum-seekers waiting for their request to be processed (under the first limb of Article 5 § 1 (f)) or the detention of irregular migrants in view of their removal (under the second limb of the same provision) is regulated by law (see paragraphs 27, 30, 31 and the relevant implementation measures above).

94. However, in the circumstances of the present case, the impossibility for the migrants to lawfully leave the closed area of the Lampedusa hotspot did not fall under any of the situations described above. The limitation on the applicants' freedom of movement clearly amounted to a deprivation of their personal liberty under Article 5 of the Convention, all the more so if one considers that the maximum duration of their stay in the crisis centre was not defined by any law or regulation and that, in addition, the material conditions of their stay have been deemed to be inhuman and degrading (see paragraph 67 above).

95. The Court considers that the nature and function of hotspots under the domestic law and the EU regulatory framework may have changed considerably over time (see, for example, paragraphs 33-35 above, where it appears that the aim of hotspots has become that of managing an existing or potential disproportionate migratory challenge, thus possibly not excluding deprivation of liberty, rather than the original aim of merely swiftly identifying, registering and fingerprinting incoming migrants – see, in particular, paragraph 32 above). Be that as it may, the Court notes that at the time of the facts, that is in 2017, the Italian regulatory framework did not allow for the use of the Lampedusa hotspot as a detention centre for aliens.

96. The organisation of the hotspots would thus have benefited from the intervention of the Italian legislature to clarify their nature as well as the substantive and procedural rights of the individuals staying therein.

97. In the light of the above considerations and bearing in mind that the applicants were placed at the Lampedusa hotspot by the Italian authorities and remained there for ten days without a clear and accessible legal basis and in the absence of a reasoned measure ordering their retention, before being removed to their country of origin, the Court finds that the applicants were arbitrarily deprived of their liberty, in breach of the first limb of Article 5 § 1 (f) of the Convention.

98. In view of the above finding in respect of the lack of a clear and accessible legal basis for detention, it fails to see how the authorities could have informed the applicants of the legal reasons for their deprivation of liberty or have provided them with sufficient information or enabled them to challenge the grounds for their *de facto* detention before a court (see *Khlaifia and Others*, cited above, §§ 117 and 132 et seq.).

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

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

100. The applicants claimed that they had been subjected to a deferred refusal of entry (*respingimento differito*) which amounted to a collective expulsion, without any possibility of challenging the expulsion order or being issued with a copy of it. They relied on Article 4 of Protocol No. 4 to the Convention, which reads as follows:

> "Collective expulsion of aliens is prohibited."

A. Admissibility

101. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

102. The applicants observed that the refusal-of-entry and removal orders had been shown to them very quickly with the sole purpose of obtaining their signatures, shortly before their forced removal. No interview with the authorities had taken place beforehand nor had the applicants been issued with a copy of the orders or of the information sheets (*fogli notizie*).

103. Owing to the short lapse of time between signing the orders and their removal, the applicants had not benefited from any concrete possibility of appealing against the measures. Indeed, their phones had been taken away from them and returned only once in Tunisia, thus making it impossible for them to contact a lawyer.

2. The Government's submissions

104. The Government reiterated that the applicants' refusal-of-entry and removal orders had been duly served on them, and that the applicants had signed a receipt and received a copy of it.

105. The applicants had been informed of the possibility of appealing against the decisions and the orders had been adopted after a careful assessment of the individual situation of the persons concerned.

3. The Court's assessment

106. The Court reiterates that collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken following, and on the basis of, a reasonable and objective examination of the particular case of each individual alien of the group (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, §§ 193-201, 13 February 2020, and the cases cited therein). Moreover, Article 4 of Protocol No. 4 does not guarantee the right to an individual interview in all circumstances and the requirements of this provision may be satisfied where each alien has a genuine and effective possibility of submitting arguments against his or her expulsion and where those arguments are examined in an appropriate manner by the authorities of the respondent State (see *Khlaifia and Others*, cited above, § 248).

107. In the present case, the applicants stated that no interview was held with the authorities before they signed the refusal-of-entry orders, of which they received no copy. The Court notes that the Government did not contest the information submitted by the applicants in this respect.

108. The Court also acknowledges that the text of the orders concerning the first two applicants is standardised and does not disclose any examination of the applicants' personal situations. As for the third and fourth applicants, no copies of the decisions have been submitted to the Court, the relevant requests from the applicants to the Agrigento police headquarters having gone unanswered. The Court also notes that the Government did not submit to the Court a copy of the documents related to the identification procedure in respect of the applicants.

109. The applicants were forcibly removed on the day the refusal-of-entry orders were served on them. Their wrists were bound with Velcro straps during the transfers to the airports and their mobile phones were taken away from them until their arrival in Tunisia.

110. In this context the Court refers to the 2016-17 report of the Guarantor (see paragraph 17 above) in which, following a visit to the Lampedusa hotspot, the Guarantor invited the Italian authorities to suspend the practice of the migrants signing the information sheet during their identification procedures.

111. In its 2018 report to the Italian Parliament (see paragraph 18 above), the Guarantor also observed that migrants were being unlawfully detained in the hotspots during the identification procedures, at the end of which deferred refusals of entry (*respingimenti differiti*) were forcibly enforced based on a decision of the public security authority.

112. In addition, in 2017 the Extraordinary Commission for the protection and promotion of human rights of the Senate of the Republic (see paragraph 19 above) reported that the information sheet used in the Lampedusa hotspot could not be qualified as a proper interview but as a simple questionnaire formulated in an extremely concise way and in any event difficult to understand for the aliens concerned.

113. It should also be noted that, taking into account the short lapse of time between the signature by the applicants of the refusal-of-entry orders and their removal and the facts that they allegedly did not understand the content of the orders and that two of the applicants were not provided with a copy of them, the Government have not sufficiently shown that, in the circumstances of the case, the applicants benefited from the possibility of appealing against those decisions.

114. The Court further notes that, in its judgment no. 275 of 8 November 2017, the Constitutional Court noted that deferred refusals of entry carried out through the use of force called for a legislative intervention since that measure had an impact on the individual's personal liberty within the meaning of Article 13 of the Constitution and was to be regulated pursuant to paragraph 3 of that provision.

115. In these circumstances, the Court finds that the refusal-of-entry and removal orders issued in the applicants' case did not have proper regard to their individual situations (see *Shahzad v. Hungary*, no. 12625/17, §§ 60-68, 8 July 2021; *D.A. and Others v. Poland*, no. 51246/17, §§ 81-84, 8 July 2021; and *A.I. and Others v. Poland*, no. 39028/17, §§ 52-58, 30 June 2022).

116. Those decisions thus constituted a collective expulsion of aliens within the meaning of Article 4 of Protocol No. 4 to the Convention and there has therefore also been a violation of that provision in the present case.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

117. The applicants alleged that they had been subjected to a restriction of their freedom of movement within the meaning of Article 2 of Protocol No. 4 to the Convention. Finally, they complained about a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Articles 2 and 4 of Protocol No. 4 to the Convention.

118. 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 applicants' 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

120. The applicants claimed 20,000 euros (EUR) each in respect of non-pecuniary damage.

121. The Government considered that the applicants' request should be rejected. However, should the Court make an award in respect of non-pecuniary damage, it should correspond to the sum awarded in *Khlaifia and Others* (cited above) to each migrant (approximately EUR 2,500 per applicant).

122. The Court awards to each applicant EUR 8,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

123. The applicants also claimed EUR 6,432 in respect of the costs and expenses incurred before the Court.

124. The Government submitted that the applicants' claim should be rejected.

125. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award jointly the sum of EUR 4,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objections concerning the applicants' lack of victim status as regards their 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 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 has been a violation of Article 4 of Protocol No. 4 to the Convention;

6. *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;

7. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 8,500 (eight thousand five hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand euros) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
      (iii) 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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President

APPENDIX

No.	Applicant's Name	Year of birth	Nationality
1.	J.A.	1990	Tunisian
2.	B.B.A.	1989	Tunisian
3.	I.B.M.	1990	Tunisian
4.	M.H.	1993	Tunisian