



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

FIFTH SECTION

CASE OF A.T. AND OTHERS v. ITALY

(Application no. 47287/17)

JUDGMENT

STRASBOURG

23 November 2023

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

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

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Lado Chanturia,

Mattias Guyomar, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 47287/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 5 July 2017 by thirteen applicants, whose nationalities are indicated in the appended table, and were represented by Mr D. Belluccio, a lawyer practising in Bari;

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

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

the comments submitted by Defence for Children International, the International Commission of Jurists (ICJ), the AIRE Centre, the European Council on Refugees and Exiles (ECRE) and the Dutch Council for Refugees, all of which had been granted leave to intervene by the President of the Section;

Having deliberated in private on 19 October 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants’ detention in the Taranto hotspot and the poor conditions of accommodation there. The Taranto Early Reception and Aid Centre (*Centro di Soccorso e Prima Accoglienza – CSPA*) was designated as an Italian hotspot pursuant to section 17 of Decree-Law no. 13 of 17 February 2017.

2. The applicants reached the Italian coast aboard a makeshift vessel on 22 May 2017. They alleged that they had declared that they were minors. The applicants were then transferred to the Taranto hotspot. Their photographs and fingerprints were taken and, on 23 May 2017, they requested international protection.

3. On 13 July 2017, after the applicants had submitted a request to the Court under Rule 39 of the Rules of Court, applicants Mr I.C., Mr M.J. and Mr K.I.S. were transferred to facilities for unaccompanied minors. Mr A.T. was transferred to a facility for minors on 15 July 2017.

4. It appears from the information provided by the Government, which had been transmitted to them by the Taranto Juvenile Court, that on 28 July 2017 the Juvenile Court decided that Mr I.C., Mr M.J. and Mr K.I.S. should

be taken into the care of the social services of the municipality of Taranto and that a legal guardian should be appointed for them.

5. No information was provided by the Juvenile Court as to Mr A.T. It appears that the public prosecutor did not submit any request in respect of him, as he had been transferred to a region which was not under the jurisdiction of the Taranto Juvenile Court.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

6. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016; *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 124, 21 October 2014; *mutatis mutandis, Ali v. Switzerland*, 5 August 1998, § 32, *Reports of Judgments and Decisions* 1998-V; and *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 73, 13 February 2020).

7. In the present case, following a request by the Court to be informed whether the applicants' representative was still in contact with his clients, the representative replied that he had kept contact with Mr A.T., Mr I.C., Mr M. J. and Mr K.I.S. but that he had lost contact with all the other applicants between March and April 2020.

8. With regard to Mr A.T., Mr M.J. and Mr K.I.S., the representative sent declarations signed by the applicants in which they reiterated their interest in pursuing the present application. As for Mr I.C., the representative sent a copy of a screenshot of a WhatsApp conversation.

9. In the light of the foregoing and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention and the Protocols thereto, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue the examination of the application with regard to the applicants with which the representative has lost contact, namely those listed under nos. 2, 3, 5, 6, 7, 9, 10, 11 and 13 in the appended table, and decides accordingly to strike this part of the application out of its list of cases.

10. The Court also notes that the applicants' complaint under Article 5 § 3 of the Convention has not been duly substantiated and must therefore be dismissed as manifestly ill-founded.

11. As for the remainder of the application lodged by Mr A.T., Mr I.C., Mr M.J. and Mr K.I.S., the Court notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. Relying on Articles 3 and 8 of the Convention, the applicants complained that the reception conditions in the Taranto hotspot had been poor. They alleged that the centre, which was only intended for adults, had been overcrowded and that the conditions of accommodation had been unhealthy. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaint from the standpoint of Article 3 alone.

13. The applicants submitted photographs showing that the centre had been overcrowded and that its conditions of hygiene had been inadequate. They also referred to a report of the Vice-President of the Extraordinary Commission for Human Rights of the Senate of the Italian Republic updated in January 2017, the relevant parts of which read as follows:

“The centre has a capacity of 400 people. On 3 November 2016, 267 migrants were present. About fifty unaccompanied minors were present on the day of the visit. They were housed in numerous small tents, without a proper, dedicated structure, and separated from the other dormitories.

Many of the migrants, including some minors, had arrived in Taranto on 25 October 2016; their stay, therefore, had exceeded two weeks and had gone well beyond the maximum period foreseen for this type of centre, [which was] designed for early reception and very short stays. Accordingly, the services offered therein cannot cover the needs of a prolonged stay: the kits of clothing and products delivered on arrival, for example, are insufficient for [stays of] longer periods. ... There are no common areas or activities planned for the hosted migrants. Adults are allowed to leave the facility during the day, whereas minors, by a decision of the managing body, cannot do so. This situation creates some tension and it can happen that, in order to be able to leave the centre for a few hours, some minors decide to modify the information given on arrival and declare themselves of age.

From what it was possible to assess during the inspection, the conditions of hygiene in the centre are decent. However, it follows from testimonies collected during interviews with the migrants that some issues need to be raised with the managing body: insufficient heating in the tents, especially at night, and a shortage of hygiene products and clothes. It was also observed that most of the guests wore flip-flops and only a few of them had proper shoes.

Concerning [the migrants’] health, the doctor present explained that the most common interventions concern scabies, flu and colds. Many of the migrants bore clear signs of physical torture and ill-treatment related to their time in Libya. Many women declared that they had been subjected to sexual violence, including that committed by a group. There were also highly vulnerable people showing serious mental disorders who were

in need of specialist intervention. In addition, since March there have been three instances in which compulsory medical treatment had to be carried out in the centre.”

14. The applicants pointed out that, at the time of that report, the centre had been hosting 267 migrants who had remained in the centre for around ten days, whereas, during their stay, the centre had hosted over 1,419 people, some of whom had remained in the centre for almost two months. Thus, the conditions which the applicants had experienced had been even harsher than those described in the report.

15. The Government observed that on 22 and 26 May 2017 two large groups of migrants had reached the Italian coast, among which 202 had been minors. This massive number of arrivals had been particularly difficult to manage. However, the national authorities had eventually been able to transfer the applicants to facilities for minors, put them into the care of the social services and appoint them a legal guardian.

16. Defence for Children International, third-party intervener, emphasised the difficult living conditions of minors in hotspot centres. It also referred to, *inter alia*, the relevant provisions of the United Nations Convention on the Rights of the Child concerning the applicability of the Convention without discrimination, the principle of the best interests of the child, the right to life and the right of the child to express his or her views (Articles 2, 3, 6 and 12 of the UN Convention).

17. The general principles concerning the conditions of accommodation in hotspots have been summarised in *J.A. and Others v. Italy* (no. 21329/18, §§ 58 and 65, 30 June 2023). As to conditions of accommodation in respect of minors, the Court refers to the general principles reiterated in *Darboe and Camara v. Italy* (no. 5797/17, §§ 167-73, 21 July 2022).

18. The Court acknowledges that the Government did not dispute the information submitted by the applicants with regard to the shortcomings of the material conditions in the Taranto hotspot at the time of the applicants’ stay (that is, the poor conditions of hygiene and the lack of space, as supported by photographs – see paragraph 13 above).

19. The Court notes that in the present case, the applicants remained in the Taranto hotspot for approximately one month and twenty days.

20. In the light of the above considerations, the Court concludes that the applicants were subjected to inhuman and degrading treatment during their stay in the Taranto hotspot, in violation of Article 3 of the Convention.

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

21. The applicants complained that they had been deprived of their liberty during their stay in the Taranto hotspot, in the absence of any clear and accessible legal basis, and that it had been impossible to challenge the lawfulness of their deprivation of liberty.

22. The Government observed that the applicants had not been detained in the Taranto hotspot and that they could have left the centre at any time.

23. The International Commission of Jurists (ICJ), the AIRE Centre, the European Council on Refugees and Exiles (ECRE) and the Dutch Council for Refugees, third-party interveners, observed that migrant children were in a situation of vulnerability and that their deprivation of liberty in the absence of a legal basis and procedural guarantees ran counter to Article 5 of the Convention.

24. The general principles concerning the deprivation of liberty in hotspots have been summarised in *J.A. and Others* (cited above, §§ 79-84).

25. The Court underlines from the outset that the impossibility for the applicants, minor migrants, to leave the Taranto hotspot facility emerges, among others, from the report of the Vice-President of the Extraordinary Commission for Human Rights of the Senate of the Italian Republic updated in January 2017 (see paragraph 13 above), also recalled in the applicants' observations.

26. Bearing in mind that the applicants were placed in the Taranto hotspot by the Italian authorities and remained there for approximately one month and twenty days without a clear and accessible legal basis and in the absence of a reasoned measure ordering their retention, 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.

27. In view of the above finding in respect of the absence of a clear and accessible legal basis for detention, the Court 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 to enable them to challenge the grounds for their *de facto* detention before a court (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 117 and 132 et seq., 15 December 2016).

28. The Court therefore 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 13 OF THE CONVENTION

29. Relying on Article 13 of the Convention in conjunction with Articles 3 and 5, the applicants complained that, on account of the lack of an appointment of a legal guardian in their case, it had been impossible for them to challenge the violations of the Convention before the Court.

30. The Government did not submit any observations in that connection.

31. The general principles concerning the right to an effective remedy are set out in *Darboe and Camara* (cited above, § 128).

32. The Court has already assessed the ability of the applicants to challenge the grounds for their *de facto* detention before a court. There is

accordingly no need to examine this part of the applicants' complaint. As for the remainder of the complaint, the Court considers, firstly, that the applicants clearly had an arguable complaint under Article 3 of the Convention. Article 13 is therefore applicable in the present case.

33. The Court also observes that the Government have failed to indicate any specific remedy by which the applicants could have lodged a complaint relating to their reception conditions in the Taranto hotspot.

34. It follows that there has been a violation of Article 13 taken in conjunction with Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. The applicants claimed 200,000 euros (EUR) each in respect of non-pecuniary damage and EUR 72,240.10 in respect of costs and expenses incurred before the Court.

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

37. The Court awards Mr A.T., Mr I.C., Mr M.J. and Mr K.I.S. EUR 6,500 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

38. Having regard to the documents in its possession, the Court considers it reasonable to award the applicants jointly EUR 4,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application introduced by the applicants listed under nos. 2, 3, 5, 6, 7, 9, 10, 11 and 13 in the appended table out of its list of cases;
2. *Declares* the application, as lodged by Mr A.T., Mr I.C., Mr M.J. and Mr K.I.S. in connection with Article 3, Article 5 §§ 1, 2 and 4 and Article 13 of the Convention taken in conjunction with Article 3 admissible and the remainder of the application inadmissible;
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 13 in conjunction with Article 3 of the Convention;

6. *Holds* that there is no need to examine the complaint under Article 13 in conjunction with Article 5 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay Mr A.T., Mr I.C., Mr M.J. and Mr K. I.S., within three months, the following amounts:
 - (i) EUR 6,500 (six thousand five hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros) jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Place of residence	Nationality
1.	A.T.	2000	Policoro (Matera)	Gambian
2.	M.S.B.	1999	Unknown	Guinean
3.	I.S.C.	1999	Unknown	Guinean
4.	I.C.	2000	Unknown	Gambian
5.	I.D.	1999	Unknown	Senegalese
6.	O.D.	2000	Unknown	Gambian
7.	H.G.	2000	Unknown	Malian
8.	M.J.	2000	Lecce	Gambian
9.	M.K.	2000	Unknown	Malian
10.	I.K.	2000	Unknown	Ivoirian
11.	A.M.	2001	Unknown	Bangladeshi
12.	K.I.S.	2000	Roma	Ghanian
13.	M.S.	2000	Unknown	Senegalese