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

Press Release
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ECHR 219 (2016)
22.06.2016

Grand Chamber hearing concerning the confinement and return to Tunisia of irregular migrants who arrived in Italy by sea

The European Court of Human Rights is holding a **Grand Chamber**[1] hearing today **Wednesday 22 June 2016 at 9.15 a.m.** in the case of **Khlaifia and Others v. Italy** (application no. 16483/12)

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

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

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

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

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

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

The applicants were finally removed to Tunisia on 27 and 29 September 2011. Before their departure they were interviewed by the Tunisian Consul, who, according to the applicants, merely recorded their identities in accordance with the agreements of April 2011 between Italy and Tunisia.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, the applicants complain of their conditions of detention in the reception centre and on board the ships. They also allege that their detention was contrary to Article 5 § 1 (right to liberty and security), Article 5 § 2 (right to be promptly informed of the reasons for deprivation of liberty) and Article 5 § 4 (right to a decision on the lawfulness of detention). Relying on Article 13 (right to an effective

1 Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

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remedy), they also submit that they had no effective domestic remedy by which to complain of the violation of their rights. Finally, the applicants submit that they were subjected to collective expulsion, which is prohibited under Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens).

Procedure

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

In its Chamber judgment of 1 September 2015, the Court held, unanimously, that there had been a violation of Article 5 §§ 1, 2 and 4 of the Convention, finding that the applicants had been deprived of their liberty without a sufficient legal basis, that they had not been duly informed of the reasons for the measure, and that they had been unable to challenge it.

The Chamber further held, unanimously, that there had been no violation of Article 3 in respect of the conditions of detention on board the ships and, by five votes to two, that there had been a violation of Article 3 in respect of the conditions of detention in the Contrada Imbriacola first reception centre. Concerning the conditions of the applicants' detention in that centre, the Chamber took account of the exceptional humanitarian crisis facing Italy on the island of Lampedusa in 2011 in the wake of the Arab Spring (55,298 migrants had landed around the time the applicants had been present there). The Chamber nonetheless concluded that the conditions in which the applicants were held had diminished their human dignity, although that had not been the case on board the ships moored in Palermo harbour.

The Chamber also held, by five votes to two, that there had been a violation of Article 4 of Protocol No. 4, taking the view that the applicants had been subjected to a collective expulsion, as the refusal-of-entry decisions issued to them had not referred to their individual situations. The Chamber found in particular that an identification procedure was insufficient to rule out the existence of collective expulsion. It also noted that at the relevant time a large number of Tunisians had been removed by means of such fast-track procedures.

Lastly, the Court held, by five votes to two, that there had been a violation of Article 13 taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4, finding, first, that the applicants had not had an effective remedy by which to complain of the conditions of their detention in the Contrada Imbriacola first reception centre, because an application to a Justice of the Peace could concern only the lawfulness of their return to Tunisia and, second, that this form of action would not have the effect of suspending the measure at issue (namely removal to Tunisia), whereas that was one of the requirements of Article 13 of the Convention, taken together with Article 4 of Protocol No. 4.

On 1 February 2016 the case was referred to the Grand Chamber at the request of the Italian Government.

On 28 April 2016 the McGill Centre for Human Rights and Legal Pluralism, the AIRE Centre, the European Council on Refugees and Exiles and four associations belonging to the Coordination Française pour le droit d'asile were granted leave to submit written comments as third parties under Rule 44 § 3 of the Rules of Court.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Luis **López Guerra** (Spain), *President*,
Guido **Raimondi** (Italy),

Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Angelika **Nußberger** (Germany),
Khanlar **Hajiyev** (Azerbaijan),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Krzysztof **Wojtyczek** (Poland),
Dmitry **Dedov** (Russia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus), *judges*,
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),
Ksenija **Turković** (Croatia), *substitute judges*,

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Representatives of the parties

Government

Paola **Accardo**, *Co-Agent*,
Maria Laura **Aversano**, Paola **Giusti**, Raffaella **Renzi** and Roberta **Cipressa**, *Advisers*;

Applicants

Luca **Masera** and Stefano **Zirulia**, *Counsel,*
Francesca **Cancellaro** and Cesare **Pitea**, *Advisers.*

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