



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Communication No. 598/2014

#### Decision adopted by the Committee at its fifty-seventh session (18 April-13 May 2016)

|                                    |  |
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| <i>Submitted by:</i>               | B.R. (represented by counsel, Mara Biaggio)  |
| <i>Alleged victim:</i>             | The complainant  |
| <i>State party:</i>                | Italy  |
| <i>Date of complaint:</i>          | 15 January 2014 (initial submission)   |
| <i>Date of present decision:</i>   | 29 April 2016  |
| <i>Subject matter:</i>             | Conditions of detention; cruel, inhuman or degrading treatment or punishment   |
| <i>Procedural issues:</i>          | Exhaustion of domestic remedies, substantiation of the complaint   |
| <i>Substantive issues:</i>         | Conditions of detention; cruel, inhuman or degrading treatment or punishment; training of law enforcement officials; prevention of torture |
| <i>Articles of the Convention:</i> | 1, 2 (2), 10, 11 and 16  |

1. The complainant is B.R., a national of Tunisia born in 1984. He claims that his detention and the conditions of detention in the Centre for Identification and Expulsion in Lampedusa and on a ship in the harbour of Palermo in September 2011 constitute a violation by Italy of article 1, read in conjunction with articles 2 (2), 10, 11 and 16, of the Convention. The complainant is represented by counsel, Mara Biaggio.

#### Facts as presented by the complainant

2.1 On 13 September 2011, the complainant left the city of Sfax, Tunisia, along with 64 other persons, on a boat bound for Italy. After a 13-hour journey, the boat was intercepted by the Italian coast guard and escorted to the island of Lampedusa. On 15 September 2011, the complainant disembarked in Lampedusa, where he received immediate medical attention, food and water. He was then taken by bus, together with other migrants, to the Centre for Identification and Expulsion in Contrada Imbriacola. Here, migrants were strip-

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searched and had to deposit all their belongings, including their mobile phones. After this, with the help of an interpreter, migrants went through an identification procedure and their fingerprints were taken. The migrants were issued an identification card with their photo and personal details. In the Centre, they received clothing and hygiene kits. People accommodated in the Centre were grouped according to gender and age, and the complainant was placed in a pavilion with citizens of Tunisia and Algeria.

2.2 In the Centre, the complainant shared a room with 40 people. They slept on bare mattresses with no pillows. There was not a sufficient amount of food and beverages, and migrants had to queue for long periods for their meals. They ate on the floor in the absence of tables. Hygiene in the Centre was appalling, with only a few open-space showers for all of the inhabitants.

2.3 According to the complainant, no information was provided to him on his legal status, nor was legal advice offered to him during his reception at and stay in the Centre. Neither was he able to contact an official. The only people with whom he was able to establish contact were local volunteers coming to the gate of the Centre to enquire whether anything was needed.

2.4 On 20 September 2011, inhabitants of the Centre committed arson. After the fire brigades arrived and the gate was opened, approximately 1,100 persons escaped. They gathered at a gas station close to the harbour and spent the night there. The next day, the mayor of Lampedusa encouraged the migrants to gather at the harbour and promised them food, water and a transfer to a different centre. On 22 September 2011, approximately 500 migrants, the complainant among them, were taken back to the same centre and placed in a big tent. No water or food was distributed at that time. Regrouped, they were taken to the airport and, on 23 September 2011, they were transferred to Palermo and placed on ships in the harbour. The complainant was placed on a Moby Lines ship, where he spent two days. On the ship, all migrants were placed in one big room, with no access to fresh air. They had to sleep on the floor in the same room. They could use the lavatories only when escorted. They were provided with food and water.

2.5 On 26 September 2011, the complainant, together with other migrants, was taken to Palermo harbour to meet the consul of Tunisia for identification. Subsequently, the migrants were handcuffed, escorted by two police officers to an aircraft and taken to Tunis, where the complainant was released.

2.6 The complainant claims that he was detained without an administrative order and without the possibility of judicial review of his detention, and that he was deprived of the opportunity to contact the competent authorities and thus to exhaust domestic remedies.

### **The complaint**

3.1 The complainant claims that Italy violated article 1 of the Convention, having infringed his personal freedom by detaining him on an unjustified basis. He claims that his detention was not authorized by any judicial order, that he was never informed in a language that he understood about the detention and the procedural steps he was subjected to afterwards, and that he was not granted professional legal aid or access to a physician. He claims that deprivation of personal freedom should be included in the definition of "torture" under article 1 of the Convention.

3.2 He also alleges a violation by the State party of article 2 (2) of the Convention, on the ground that the state of emergency declared by the authorities in Lampedusa owing to the large influx of migrants in the spring of 2011 could not justify derogation from prohibition of torture, inhuman and degrading treatment.

3.3 The complainant further claims a violation of article 10 of the Convention, on the ground that the public officials in the Centre and on the boat where he was detained lacked training regarding prohibition of torture.

3.4 In addition, the complainant claims that the State party's failure to review its interrogation rules, instructions, methods and practices, as well as its arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, as provided in article 11 of the Convention, led to torture and inhuman and degrading treatment in his case. He explains that the State party has failed to decriminalize illegal immigration in its penal code and instead has provided for the possibility of detaining migrants for up to 180 days. The country also lacks a unified law on the right to asylum, and its bilateral repatriation agreements with Libya, Tunisia and Egypt lead to violations of the non-refoulement principle.

3.5 Finally, the complainant alleges violation of his rights under article 16 of the Convention, owing to the conditions of detention in the Centre and on the Moby Lines ship.

3.6 The complainant asks the Committee to find a violation by Italy of article 1, read in conjunction with articles 2 (2), 10, 11 and 16, of the Convention, and recommend that the State party set forth orders or decrees aimed at assessing the facts as submitted by him and hold liable the entities and individuals responsible for the claimed breaches and violations; and that it assess adequate compensation, other means of support or damages in the complainant's favour for the suffering caused to him and for the unlawful denial and deprivation of his freedom.

#### **State party's observations**

4.1 On 4 December 2014, the State party informed the Committee that, following a thorough investigation by the Ministry of the Interior and the Ministry of Justice, the complainant's presence in Lampedusa could not be confirmed. The State party explains that, since a massive inflow of migrants in 2011, all migrants housed in Lampedusa are systematically registered and all services, including legal aid, are available to them. All people who landed on Lampedusa during the period concerned were identified by police officers through individual interviews in the presence of an interpreter/cultural mediator. Expulsion measures were issued in accordance with the law, in the form of reasoned decisions, duly translated into Arabic and communicated to the person concerned.

4.2 The State party adds that, at the time referred to by the complainant, the Lampedusa centre was fully functioning, comprising 1 director, 2 vice-directors, 99 social service providers, 3 social assistants, 8 interpreters and cultural mediators, 8 other employees and 3 sectorial managers, who were supervising the facility 24 hours a day. On the three boats made available for migrants in Palermo, there were no unaccompanied minors, asylum seekers or vulnerable persons.

4.3 Finally, the State party submits that all the persons against whom expulsion orders were issued were entitled to lodge a complaint before the Justice of the Peace of Agrigento. As verified with the Justice of the Peace of Agrigento, no appeal has been submitted by the complainant.

4.4 The State party affirms that there was no breach of the provisions of the Convention in the present case.

#### **Complainant's comments on the State party's observations**

5.1 On 15 April 2015, the complainant submitted his comments on the State party's observations, in which he argued that the State party was obliged to provide evidence of the registration of migrants and that it had prevented access to such records. In fact, access by

the media to the Centre was prohibited. The complainant stated that he was not aware of any other identification procedure besides fingerprinting and claimed that the State should grant access to the fingerprints database to ascertain whether he was present on the island.

5.2 The complainant argued that the State party had not provided evidence that migrants had been able to appeal to a justice of the peace and that the Justice of the Peace of Agrigento had informed the Ministry of Justice that no appeal had been submitted by him.

5.3 As for the information on the functioning of the Centre provided by the State party, the complainant replied that his complaint related to the impossibility of a judicial review of detention, lack of information on his fate and his rights, lack of access to legal advice and the poor conditions of detention.

5.4 The complainant also stated that he had not received any decision or court order regarding his detention and expulsion, and that he had not been informed about the possibility of requesting asylum.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes the argument by the State party that the complainant's presence in Lampedusa could not be established through official records despite the fact that all the migrants arriving at the detention facilities on the island had been personally interviewed and registered. In this regard, the Committee observes that, although the complainant alleges having passed through several procedures involving the authorities of the State party, such as identification, transfer from the detention facility in Lampedusa to the airport and then to the boat in Palermo, an identification meeting with the consul of Tunisia, and subsequent deportation to Tunisia by plane, he has not provided any documentary evidence of his travel, his stay at the detention facility in Lampedusa or on a boat in Palermo, or his return to Tunisia, and has not explained the reasons for the absence of any relevant documents. In these circumstances and in the absence of any further information of pertinence on file, the Committee concludes that the complainant has failed to sufficiently substantiate his claims for the purpose of admissibility.

6.3 In addition, the Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party argues that the complainant failed to exhaust available domestic remedies, as he could have complained to the Justice of the Peace of Agrigento. The Committee also notes the claim of the complainant that no remedies have been made available to him because he never received any decision regarding detention or expulsion, never had any contact with the authorities and was not informed about his rights. The Committee observes that the complainant's claim relates to the conditions of his detention, not to his expulsion. In this context, it notes that the complainant has not provided any information on whether he tried to complain about the conditions of his detention to the officials or the heads of the detention centre in Lampedusa or on the boat in Palermo, or whether he tried to seek any advice on this matter from the volunteers who came to the centre. The Committee also notes that the complainant has not complained to the authorities of Italy about his treatment in detention since being deported

to Tunisia and obtaining legal counsel from Italy. In the absence of any further information of pertinence on file, the Committee concludes that the present communication is inadmissible due to the failure by the complainant to exhaust domestic remedies with regard to the issues raised before the Committee.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (2) and (5) (b) of the Convention;
  - (b) That the present decision shall be communicated to the complainant and to the State party.
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