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Meeting: 1419th meeting (December 2021) (DH)

Communication from NGOs (Joined submission: Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Coalizione Italiana Libertà e Diritti Civili (CILD)) (16/11/2021) in the case of KHLAIFIA AND OTHERS v. Italy (Application No. 16483/12) and reply from the authorities (26/11/2021) (appendices in Italian are available at the Secretariat upon request).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419^e réunion (décembre 2021) (DH)

Communication d'ONG (Jointed submission: Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Coalizione Italiana Libertà e Diritti Civili (CILD)) (16/11/2021) relative à l'affaire KHLAIFIA ET AUTRES c. Italie (requête n° 16483/12) et réponse des autorités (26/11/2021) (des annexes en italien sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**.

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

16 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

November 16, 2021

Communication from the Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Italian Coalition for Civil Liberties and Rights (CILD) pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of *Khlaifia and others v. Italy* (Application [No 16483/12](#))

1. Introduction

This submission concerns the general measures required for the implementation of the ECtHR judgment in *Khlaifia and others v. Italy* (Application No 16483/12), which concerns the detention of migrants in Italian hotspots.

The objective of this submission is to briefly respond to [the submission sent by the Italian Government to the Committee of Ministers of the Council of Europe on the 29th of October](#), which constituted a confirmation of what was already advised by them.

ASGI is a membership-based organisation made up of lawyers, jurists and civil society representatives that have been working for decades to better understand the juridical questions linked to migratory phenomena, contributing to the advancement of knowledge in these matters at a national and international level.

A Buon Diritto Onlus is an association that specialises in the protection and promotion of human rights. Since 2010, A Buon Diritto Onlus has been active in the fields of migration and asylum, providing information and free legal advice, participating in major advocacy and awareness-raising campaigns and combating growing violations of the rights of foreign nationals in Italy.

Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of 43 civil society organisations. It defends and promotes the civil liberties and rights guaranteed to all by the Italian Constitution and by international law; fighting against abuses and violations of these rights through a combination of advocacy, public education and legal action.

In the previous communications sent by ASGI, A Buon Diritto Onlus and CILD, most recently on October 22, 2021, it was pointed out that the Italian government had not implemented effective measures to rectify the issues sanctioned by the Court, nor provided what the Court had asked for. This conclusion remains correct even after the Italian Government's communication of 29 October.

The main consequence of non-implementation of this judgement is the deprivation of liberty of foreign nationals in hotspots without any legal basis and which is enforced in the absence of the constitutional and conventional guarantees provided in this regard. The undersigned organisations would like to stress that, as the Committee of Ministers will be aware, different cases concerning the informal detention and detention conditions in hotspots in Italy are currently pending before the ECtHR¹.

2. Case summary

The case of *Khlaifa and Others v. Italy* concerns the detention of several irregular migrants who had landed on the Italian coast. They were first detained in a Rescue and First Reception Centre (Cspa, now called "hotspots") on the island of Lampedusa and then onboard the *Vincent* and *Audacia* vessels, two boats docked in Palermo's harbour.

The Grand Chamber of the ECtHR, in its judgment of December 15, 2016, found a violation of paras. 1, 2 and 4 of Art. 5 and of Art. 13 and Art. 3 of the European Convention on Human Rights, given the absence of a clear and accessible legal basis in respect of the applicants' detention in the reception centre, and a lack of available remedies with respect to conditions of detention.

In the context of its March 2021 meeting, the Committee of Ministers of the Council of Europe [decided](#) not to end the supervision procedure and instead requested that the Italian Government provide, **by no later than September 15, 2021**, comments and responses regarding the remedies allegedly invoked by foreign nationals in detention in hotspots - the lack of which was one of the violations of the Convention as noted by the ECtHR in 2016.

Specifically, the Committee very firmly asked the Italian Government to substantiate the

¹ Among others: *A.B.v.Italy* (Application No [13755/18](#)), ; *M.R.Italy* (Application No [13302/18](#)); *S.B.and others v. Italy* (Application No [12344/18](#)); *M.A. v. Italy* (Application No [13110/18](#)); *J.A.and others v.Italy* (Application No [21329/18](#)); *H.A.v. Italy* (Application No [26049/18](#)); *H.B.v. Italy* (Application No [33803/18](#)); Application No [23228/18](#); Application No [60154/19](#); Application No [60161/19](#).

effectiveness of the remedies described in the Italian Government's response, inviting them to verify whether recent jurisprudential developments had ensured that this serious gap in the domestic legal system with respect to hotspots had been filled and, if not, inviting them to rapidly adopt measures to remedy this deficiency.

The Italian government responded, and inexplicably beyond the deadline, with an [action report](#) asking for the closure of the Committee of Ministers' supervision procedure, without, however (as will be briefly analysed [in our last submission](#)) actually implementing the Court's judgment or providing the information that the Court had requested.

3. The absence of clear and accessible legal basis in respect of the detention in the reception, and the absence of remedy in respect to the conditions of detention

ASGI, A buon diritto and CILD wish to reiterate that even within the latest communication of the Italian Government, there was no evidence of any useful measures having been implemented in 2021 to avoid detention without legal basis at the hotspots. First of all, with regard to the average time of stay in hotspots, in the months following those analysed by the Government in their communication of 29 October, the detention, even of vulnerable persons, has sometimes lasted up to one month (see next paragraph) and with the presence of inhumane conditions, as can be deduced from the attached photos. Similarly, in the latest communication there is no trace of the case law required and asked for by the Committee of Ministers to demonstrate the existence of domestic remedies. Therefore, violation is confirmed, as the Committee of Ministers, in its decision of March 2021, explicitly stated that in the absence of the Government producing case law relating to the hotspots, the Committee would consider the violation to have been established.

It is then surprising that the Italian Government, in its latest communication, almost exclusively spoke about "SAI" ('system of reception and integration'), which does not concern detention in hotspots but a subsequent reception phase limited to those who have been allowed to formalise their application for international protection. Access to which, as we will see in the next paragraph, sometimes occurs even after one month of detention sine titulo, and even of minors or vulnerable persons.

The Italian Government, therefore continues to provide information irrelevant and not analogous to the present procedure. It is not clear what relevance the production of the case law concerning the internal remedies for those in the CPRs and the SAI system (concerning reception after (lengthy) detention in hotspots) the Government purports exists with regards to the present procedure.

Similarly, it is irrelevant to produce the list of lawyers indicated to the Prefecture of Agrigento by the Bar Association because it has been proven, in this supervision procedure, but also in the proceedings pending before the Edu Court and summarised in footnote 1 of this memorandum, that lawyers are not allowed to enter hotspots. The lack of access of lawyers to the hotspot means that the detainees cannot be assisted by their lawyers to claim their rights. Therefore, besides the non-existence of ad hoc remedies provided for those detained in hotspots, even the general remedies mentioned by the Government [in previous](#)

[communications](#) have never been used because detainees in hotspots do not have access to lawyers and, ultimately, to justice.²

Finally, the presence of UNHCR and other Guarantee Bodies is not relevant since it is deduced by the Government only for the Lampedusa Hotspot (and not also for the other hotspots) and the presence of Guarantee Bodies only concerns the right to information and not the legal basis of the detention or the existence of remedies to challenge the legality and legitimacy of the detention.

4. Focus: informal long-term detention of vulnerable people (monitoring July-August 2021)

According to what was observed within the framework of the legal support activities carried out by ASGI's Inlimine project, specifically with reference only to the period of July-August 2021, the most vulnerable of foreign citizens have also been subject to informal and prolonged detention. There was an absence of structured mechanisms of care, referral and priority transfer for survivors of shipwreck, human trafficking, gender-based violence, torture or those who otherwise presented with specific vulnerabilities. This was also the case for minors, whose transfers were often slowed down by the unavailability of places in centres dedicated to health isolation. Some cases of people subjected to prolonged informal detention at the Lampedusa Hotspot even when they presented health and/or psychological vulnerabilities were also observed.

By way of example, here are 4 cases for which legal support was provided - albeit at a distance - in terms of both the notification of presence of vulnerabilities and incompatibility with the stay in such a structure to the competent authorities, and the request for immediate transfer and insertion in appropriate reception structures, taking into consideration relevant vulnerability or minor age.

- 1- A family unit, composed of two minors and whose mother presented with serious health problems in light of having cancer (for which pharmacological treatment was required), as per the medical documentation attached and shared by the person concerned. The family was subjected to long-term detention at a hotspot in inadequate conditions and in the absence of access to specialised care, which made it necessary to take legal action for their protection, by reporting their vulnerability to the competent authorities. In fact, the stay lasted approximately **one month from 12 July to 12 August**, when the family was finally transferred to a centre dedicated to fiduciary isolation.
- 2- A foreign citizen, also an asylum seeker, presented with a compromised clinical condition due to pulmonary TB and pericarditis. Due to the existence of a ban on

² The prohibition for lawyers to access hotspots is usually justified by relevant authorities arguing that lawyers lack the express authorisation to enter by the Prefecture and the Ministry of the Interior. However, such an authorisation is not indicated as a necessary requirement of access in Italian law when lawyers need to talk to the individuals they are assisting. Furthermore, the latter must always be guaranteed the rights to speak to a lawyer, in accordance with the right to defence and to legal assistance in the context of asylum procedures. Additional information available at this link: <https://www.facebook.com/progettoinlimine/posts/382570628963454?tn=K-R>.

re-entry due to previous repatriation, he was initially subjected to the precautionary measure of house arrest at the Lampedusa hotspot, which was revoked the following day. **The person entered Italy on 6 July and was transferred only at the end of July to a hospital.** Therefore he was subject to a long detention, due to the difficulties in finding a site for his transfer, and in the meantime he was deprived access to specialist care and continuation of the diagnostic process.

- 3- A foreign citizen who reported having heart and respiratory problems as well as problems inherent to the consequences, also of an infectious nature, of a previous genital operation and failure to continue the pharmacological treatment to which he was subjected. **He arrived in Italy on 3 July 2021 and remained in Lampedusa for more than 20 days. He was transferred around 30 July**, having received no medical assistance. In this case, the person was supported in accessing an application for international protection, in light of the arbitrary selection practices implemented in the hotspot on the basis of his nationality.
- 4- A single-parent family consisting of two minor children, one of whom suffers from a disease that causes motor disabilities, arrived with the father applying for international protection. They entered Italy on 1 July 2021. In light of the condition of vulnerability (see medical documentation issued to the person concerned), a request for transfer was submitted to the Prefecture of Agrigento by electronic proxy to a lawyer on 27 July and a further request for urgent transfer on 2 August 2021. **The family was transferred only on 10 August 2021, after more than a month of detention at the hotspot of Lampedusa** in the absence of adequate care, noting the particular needs of the family and specifically the minor.

5. Conclusions and recommendations

The conclusions set out in the communication of 22 October 2021 should therefore be reiterated. In fact, the ongoing non-implementation of this case involves the violation of the right to personal freedom of foreign citizens arriving on Italian territory in the absence of the necessary guarantees and remedies. For all these reasons, ASGI, A Buon Diritto Onlus and CILD insist that the Committee of Ministers does not end the procedure of supervision of the state of implementation of the Khlaifia judgment, as the Italian State, from 2016 to date, has continued to implement illegitimate detention practices and has not introduced appropriate and sufficient legislative provisions aimed at filling the legislative gaps clearly highlighted by the Court first and then by the Committee in this procedure.

In view of the above, the undersigned NGOs ask the Committee of Ministers to call upon the national authorities to:

- to cease urgently the systematic practices of illegal and informal detention of foreign nationals in the hotspot;
- take the necessary measures to ensure that there is always a judge's decision to validate the detention measure at the hotspot;
- take the necessary measures to ensure that any person deprived of his or her liberty, including in a hotspot, has access to effective remedies to challenge its legality and conditions.

**Attached are documents relating to some of the individual cases referred to in
this submission**

DGI

26 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRÊTS DE LA CEDH



Rappresentanza permanente d'Italia presso il Consiglio d'Europa
Strasbourg

Affaire Khlaifia et autres c. Italie
Requête n°16483/12
Arrêt de Grande Chambre du 15/12/2016

Communication du Gouvernement italien

Faisant suite à la communication des Organisations non gouvernementales, ASGI (*Associazione per gli Studi giuridici sull'immigrazione*) et Cild (*Coalizione italiana libertà e diritti civili*) que le Secrétariat du Service de l'exécution des arrêts de la Cour européenne des Droits de l'Homme nous a transmis le 16 novembre dernier, le Gouvernement italien a l'honneur de confirmer qu'il se reporte entièrement à ce qui a déjà été dit dans les Plans d'action précédemment présentés et en particulièrement dans le dernier Bilan d'action déposé le 15 octobre dernier et dans les Informations complémentaires du 28 octobre en ce qui concerne la possibilité concrète et effective pour les migrants d'accéder aux défenses légales pour présenter un recours afin de se plaindre de leurs conditions dans les *hotspots*.

Strasbourg, 25 novembre 2021