

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

GRAND CHAMBER

CASE OF MANSOURI v. ITALY

(Application no. 63386/16)

DECISION

STRASBOURG

29 April 2025

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Table of Contents

PROCEDURE....3

THE FACTS....4

The circumstances of the case 4

A. Conditions on board the ship as alleged by the applicant 5

B. Information provided by the shipping company 6

C. Steps taken by the applicant 7

RELEVANT LEGAL FRAMEWORK AND PRACTICE 8

I. DOMESTIC LEGAL FRAMEWORK 8

A. Relevant domestic law 8

1. The Constitution 8

2. The Code of Civil Procedure 9

3. The Civil Code 9

4. The Navigation Code 9

5. Legislative Decree no. 286 of 1998 10

B. Domestic practice 11

1. Court of Cassation case-law on the status of ship's captain 11

2. Report of the National Guarantor of rights for persons in custody or deprived of personal liberty 12

II. RELEVANT INTERNATIONAL MATERIAL 13

A. United Nations 13

1. Draft Articles on Responsibility of States for Internationally Wrongful Acts 13

2. The United Nations Convention on the Law of the Sea 14

3. The International Maritime Organization Convention on Facilitation of International Maritime Traffic 15

4. The Convention on International Civil Aviation 15

B. European Union (EU) 16

1. The Charter of Fundamental Rights of the European Union 16

2. The Convention implementing the Schengen Agreement of 14 June 1985 16

3. Regulation (EC) 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders ("the Schengen Borders Code"), replaced by Regulation (EU) 2016/399

of the European Parliament and of the Council of 9 March 2016 (codification) 17
4. European Parliament Resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI))....21

COMPLAINTS....22

THE LAW....23

I. PRELIMINARY ISSUES 23

A. Jurisdiction....23

1. The parties' submissions....23

2. The Court's assessment....23

B. Incompatibility *ratione personae*....26

1. The parties' submissions....26

2. The Court's assessment....27

II. ALLEGED VIOLATIONS OF ARTICLE 5 28

A. Article 5 of the Convention....29

The Government's preliminary objections....29

(a) Whether Article 5 is applicable....29

(i) The parties' submissions....29

(ii) The Court's assessment....30

(b) Exhaustion of domestic remedies....30

(i) The Government's submissions....30

(ii) The applicant's submissions....31

(iii) The Court's assessment....33

(α) General principles....33

(β) Application of the above principles to the present case....35

– Nature of the remedies that should have been available to the applicant in the present case....36

– The remedies proposed by the Government....37

B. Article 5 § 4 of the Convention....42

C. Article 5 § 5 of the Convention....42

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION 43

A. The parties' submissions....43

B. The Court's assessment....44

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Marko Bošnjak, President,
Arnfinn Bårdsen,
Mattias Guyomar,
Ivana Jelić,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Krzysztof Wojtyczek,
Alena Poláčková,
Tim Eicke,
Péter Paczolay,
Darian Pavli,
Raffaele Sabato,
Peeter Roosma,
Ana Maria Guerra Martins,
Andreas Zünd,
Diana Sârcu,
Sebastian Răduleţu, *judges*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 28 October 2016,

Having deliberated on 18 September 2024 and 5 March 2025, decides as follows:

PROCEDURE

1. The case originated in an application (no. 63368/16) 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 a Tunisian national, Mr Habib Mansouri ("the applicant"), on 28 October 2016.

2. The applicant was represented by Mr M. Cipolla, a lawyer practising in Ferrara, and by Mr L. Masera, a lawyer practising in Brescia. The Italian Government ("the Government") were represented by their Agent, Mr L. D'Ascia.

3. The applicant alleged that during his removal to Tunisia by ship following the issuance of an order refusing him entry to Italy he had been unlawfully deprived of his liberty in a cabin, under constant supervision by security officers. He complained of violations of Article 5 §§ 1, 2, 4 and 5, and of Articles 3 and 13 of the Convention.

4. On 20 November 2018 the Government were given notice of the application.

5. On 20 February 2024 the Chamber decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention).

6. The composition of the Grand Chamber was determined in accordance with to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicant and the respondent Government each filed observations on the admissibility and merits of the case.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 18 September 2024.

There appeared before the Court:

– *for the Government:*

MR L. D'ASCIA, *Agent*,
MR D. G. PINTUS,
MR M. DI BENEDETTO,
MS A. BERTI SUMAN, *Advisers*,

– *for the applicant:*

MR M. CIPOLLA,
MR L. MASERA, *Counsel*,
MS A. ANNONI,
MS F. DE VITTOR,
MS I. CARNAT, *Advisers*.

The Court heard addresses by Mr D'Ascia, Mr Cipolla and Mr Masera and their replies to questions from the Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant, Mr Habib Mansouri, is a Tunisian national who was born in 1976 and currently lives in Tunis.

10. From 2014 to 2016 he lawfully resided in Italy on the basis of a temporary residence permit with authorisation to work, which was valid until 3 April 2016. On 20 January 2016 he travelled to Tunisia.

11. On 1 May 2016 the applicant was subjected to an identity check at the Palermo maritime border while on board the Italian cruiseferry *Splendid*, owned by the Italian company Grandi Navi Veloci ("GNV"), which had arrived from Tunis. He was in possession of his passport, his expired residence permit and a copy of an application for a long-term residence permit dated 16 October 2015.

12. During the identity check, the border police noted that the application for a residence permit dated 16 October 2015 had been rejected on 24 March 2016 by decision of the Ferrara Chief of Police (*questore*) and that the applicant did not have an entry visa. They informed the applicant of the Chief of Police's decision and issued him with a refusal-of-entry order

(*respingimento alla frontiera*), pursuant to Article 10 § 1 of Legislative Decree no. 286 of 1998.

It was specified in the order that an appeal could be lodged with the Administrative Court of competent jurisdiction *ratione loci* within a period of sixty days.

13. Accordingly, the applicant was not allowed to leave the ship and the border police instructed the captain of the *Splendid* to assume responsibility for him and return him to Tunis in accordance with Article 10 § 3 of Legislative Decree no. 286 of 1998. The "Request to immediately take charge of a foreign national refused entry to Italy and to convey him or her to another State" (*Richiesta di immediata assunzione in carico e di riconduzione in altro Stato di straniero non ammesso in territorio nazionale*) read as follows (translation by the Registry):

> "In accordance with Article 10 § 3 of Legislative Decree no. 286 of 1998, the captain is requested to cover all expenses incurred during the time spent in Italy by the third-country national, pending the return of the latter to Tunis by the same means of transport. In view of the above, the person concerned may not disembark from the ship in the enforcement of his return and is therefore placed under [the captain's] responsibility, it being specified that, should the person concerned manage to escape the captain's control owing to any negligence of the latter in the implementation of the requisite measures, [the captain would be] brought before the judicial authorities to answer for a violation of Article 12 § 1 of the above-mentioned Legislative Decree (an offence punishable by a maximum of 3 years' imprisonment and a fine of up to 15,000 euros)."

14. The *Splendid* arrived in Tunisia on 7 May, after serving the Italian ports of Civitavecchia and Termini Imerese in accordance with its sailing schedule.

A. Conditions on board the ship as alleged by the applicant

15. The applicant described the conditions of his stay on board the *Splendid* as follows:

> "For seven days, until the ship returned to Tunis, Mr Mansouri was confined to a cabin manifestly designed as a holding cell, located in a part of the ship that was off-limits to passengers. Prior to his confinement, his luggage was searched by a person who, judging from his clothes and the insignia on the shoulder of his jacket, must have been a ship's officer. Neither at the time he entered the cabin, nor at any subsequent time did anyone ask Mr Mansouri whether he had any food allergies, whether he suffered from any illnesses, what his state of health was, or whether he required medication. Access to Mr Mansouri's cabin was gained via a long corridor. The cabin door consisted of a gate with vertical metal bars. It was thus possible, through the gap between the bars, for those passing in the corridor to have a full and complete view of the cabin's interior. The bathroom, which measured approximately one metre thirty centimetres by one metre twenty centimetres, was accessed by a sliding door. The cabin's metal door was locked from the outside and it was therefore impossible for Mr Mansouri to exit. The cabin also had a porthole, but it was smaller than those of the ordinary cabins. Inside the cabin, the detainee had no mechanism by which to call for help and no one had

informed him of any other means of obtaining help in case of need or of how to evacuate in the event that the ship had an accident. While at sea, he asked to be allowed to leave the cramped space to which he was confined, but his requests were always refused. Not once throughout the entire trip was Mr Mansouri allowed to leave the cabin. During his stay, he kept his cell tidy, even though he was not provided with the necessary equipment to clean it. The towels were changed twice. The sheets were also changed twice. In the second case, one person came into the cell while another locked the door from the outside and waited until the person responsible for changing the sheets had finished the task. Mr Mansouri used his own hygiene products because he had them in his suitcase. His meals were delivered three times a day and consisted of a breakfast, a lunch and a dinner. The tableware was entirely made of plastic. Mr Mansouri was free to use his own mobile phone which, provided he could get a signal, was his only means of communication. His phone credit was regularly topped up by his family."

B. Information provided by the shipping company

16. In their observations before the Chamber, the Government produced a note from GNV dated 11 July 2019. That note reads as follows:

"... passengers who are refused entry at the border, once such refusal has been formalised by the border police, are entrusted to the ship's captain in accordance with a refusal-of-entry record.

In accordance with the relevant provisions pertaining to passengers refused entry, the ship's captain is ordered to assume immediate responsibility for the individual concerned on board the ship until disembarkation, and is advised that, throughout the entire period of confinement to the ship, he or she is to ensure custody (*custodia*) of that individual by means of constant and careful supervision.

In accordance with long-standing practice, the passenger refused entry is taken to a cabin specially arranged to accommodate him or her appropriately. In particular, the cabin entrance is equipped with a door to allow the staff responsible for his or her supervision to keep watch over him or her during calls at ports and at sea, in compliance with security standards, and to ensure his or her safety. We confirm that passengers who have been refused entry are monitored during meals and are regularly accompanied to the deck to go for walks or to smoke. In addition, the cabins reserved for such passengers are equipped with doors fitted with locks that can be opened from the inside and the passengers refused entry who occupy them, although subject to round-the-clock supervision by security staff, may freely go out to smoke or to go for a stroll."

17. Before the Grand Chamber, the Government produced an additional note from the shipowner, dated 2 May 2024, which reads as follows:

"On 30 April 2016 the ship *Splendid*, owned by the Grandi Navi Veloci SPA company, transported the passenger Habib Mansouri from the port of La Goulette (Tunisia) to the port of Palermo. Upon disembarkation, the border police at the Palermo passenger port refused entry to Mr Mansouri and, by a refusal-of-entry order, entrusted him to the captain of the *Splendid* for his return. Every decision as to Mr Mansouri's custody was taken by the captain in the exercise of his general powers under Article 186 of the Navigation Code, since the border police had not given any guidance or orders in that regard.

At that time, the *Splendid* ensured a regular service on an international route connecting La Goulette and Palermo-Civitavecchia from Saturday to Sunday/Monday and Civitavecchia and Termini Imerese from Monday to Friday.

Accordingly, Mr Mansouri remained on board the *Splendid* from Sunday 1 May 2016 until Saturday 7 May 2016, the date of the ship's arrival at the port of La Goulette.

On board the ship Mr Mansouri was accommodated in cabin no. 8430, which is equipped with a bathroom, current photos of which are attached, it being specified that conditions have not changed since the relevant time. The cabin was furnished taking the necessary precautions to avoid any risk of self-harm (for example, all electric cables, knives, shower tubes were removed; the bathroom mirror was protected). The cabin door was never locked from the outside.

Mr Mansouri could freely choose either to remain in the cabin or to frequent the ship's public spaces whenever he wished, and even for the entire duration of the crossing.

During his time on board Mr Mansouri was constantly in the custody and under the protection of the ship's captain and security staff to prevent acts of self-harm, both in his cabin and during visits to various places on the ship (self-service restaurant, public areas, outer decks), [which] Mr Mansouri visited freely and regularly, several times a day, accompanied only at a distance by security staff.

Furthermore, Mr Mansouri enjoyed free and full access to the phone and internet networks for the purpose of personal communication."

C. Steps taken by the applicant

18. On 2 May 2016 the applicant contacted his lawyer by mobile phone. The following day, his lawyer sent the border police a request for internal reconsideration (*autotutela*), seeking to have the refusal-of-entry order that had been issued in respect of the applicant revoked.

The lawyer explained, in particular, that the applicant was confined to a cabin that was locked from the outside. The relevant part of that request reads as follows:

"As a subsidiary consideration, your office is asked to consider whether it would not be appropriate to verify that the police officers had the right to take the decision to refuse entry to Mr Mansouri, having regard to the fact that such a decision would result, in particular, in his confinement to a cabin locked from the outside by the ship's crew."

19. The border police rejected the request for internal reconsideration. They considered that the refusal-of-entry measure had been lawfully ordered pursuant to Article 10 of Legislative Decree no. 286 of 1998 since the applicant had not been in possession of a valid residence permit or an entry visa when he had arrived at the border. As to the applicant's having been kept on board the *Splendid*, they further clarified as follows:

"In accordance with the aforementioned Article 10, a carrier that has brought to the border an alien who is not in possession of valid travel documents or is refused entry for any other reason is obliged immediately to assume responsibility for him or her again and to return him or her to the country from which he or she was transported."

20. On 18 May 2016 the applicant's lawyer wrote to the Minister of the Interior. He pointed out that his client submitted that he had been confined to a cabin that was locked from the outside throughout the entire trip, without being allowed to leave, and asked the Minister to comment on the truth of

those submissions and on whether the circumstances under which the return had been effected were compatible with the principles of domestic law.

21. In a note of 20 September 2016 the Minister of the Interior replied to the lawyer as follows:

> "I refer to your letter of 18 May 2016 concerning the refusal-of-entry order issued by the Palermo border police in respect of Mr Mansouri on 1 May 2016. In this connection, I would call your attention to the applicable provisions of European Union law and national law, in particular those of Article 10 § 3 of Legislative Decree no. 286/98, pursuant to which the carrier is under the obligation to transport (*ricondurre*) foreign nationals who have been refused entry to the national territory back to their place of departure, and I note that the border police acted appropriately in entrusting Mr Mansouri to the captain of the ship *Splendid*, owned by the Grimaldi – Grandi Navi Veloci shipping company, with a view to his return (*rimpatrio*) to Tunis.
>
> In this context, in accordance with the ship's sailing schedule, before returning to Tunisia, it sailed onward to the port of Civitavecchia, and from there to Termini Imerese.
>
> It should further be noted that, during his stay on board, the foreign national was accommodated in a private cabin that was equipped with a bathroom, suitably furnished and devoid of any object posing a threat to his or others' safety.
>
> Lastly, Mr Mansouri's supervision was ensured by staff specialised in security on board the ship."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. Relevant domestic law

1. The Constitution

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

> "Personal liberty is inviolable.
>
> 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.
>
> In exceptional circumstances and under such conditions of necessity and urgency as shall be precisely defined by law, the law-enforcement authorities may take provisional measures that shall be referred within 48 hours to a judicial authority and which, if not validated by the latter in the following 48 hours, shall be deemed withdrawn and ineffective.
>
> Any act of physical or mental violence against persons subjected to a restriction of personal liberty shall be punished.
>
> The law shall establish the maximum duration of any provisional measure of detention."

2. The Code of Civil Procedure

23. Article 700 of the Code of Civil Procedure provides that anyone who has cause to fear imminent and irreparable damage to a given right during the time necessary to assert that right in ordinary proceedings may ask the court of competent jurisdiction to order such urgent measures as are deemed, in the light of the circumstances, most appropriate to preserve, on an interim basis, the possibility of enforcing the decision on the merits.

Under Article 669 *sexies*, the court dealing with an application for interim relief may decide to give its ruling without hearing the parties beforehand so as not to jeopardise the measure's enforcement.

3. The Civil Code

24. Article 2043 of the Civil Code provides:

> "Any unlawful act which causes damage to another shall oblige the person having committed it to make good such damage."

4. The Navigation Code

25. The relevant provisions of the Navigation Code of 30 March 1942, as amended in 2020, read as follows:

Article 4

> "Italian ships on the high seas and aircraft in airspace not subject to the sovereignty of a State are considered to be Italian territory."

Article 5

> "Acts and events occurring on board a ship or aircraft during navigation in waters or airspace subject to the sovereignty of a foreign State shall be governed by the national law of that ship or aircraft in all cases where, under the provisions governing the application of laws in general, the applicable laws should be those of the place where the act or event occurred."

Article 8

> "The powers, duties and remit of the captain of the ship or aircraft shall be governed by the national law of the ship or aircraft."

Article 186

> "Everyone on board the ship shall be subject to the authority of the ship's captain."

Article 1154

> "Where a ship's captain or officer or the captain of an aircraft has subjected an employee, a passenger, or an individual under arrest or in detention who has been placed under his or her responsibility for custody or transport, or an individual placed under his or her responsibility in execution of a measure taken by an authority of competent jurisdiction, to coercive measures that are prohibited by law, he or she shall be punished

by up to thirty months' imprisonment, provided his or her actions do not constitute a more serious offence. The same punishment shall apply to anyone to whom the individual in question has been or handed over or under whose responsibility he or she has been placed."

Article 1249

"During maritime or coastal navigation, disciplinary power shall be exercised as follows: (1) by the ship's captain over the crew members and passengers, even if the persons concerned are not Italian citizens ..."

Article 1256

"In addition to the cases provided for by special laws or regulations the following shall constitute disciplinary offences when committed by passengers:

(1) disrespect towards the captain or officers of the ship or aircraft;

(2) causing a nuisance to other passengers or to the crew;

(3) causing disorder of any kind on the ship or aircraft;

(4) failure to comply with the regulations of the ship or aircraft."

Article 1257

"The disciplinary penalties for passengers shall be as follows: (1) ordinary warning; (2) public warning; (3) exclusion from the dining hall for one to five days; (4) for passengers on a ship, prohibition to remain on deck for more than two hours a day for a maximum period of five days; (5) in the case of coastal navigation, disembarkation at the next port of call on national soil. These penalties shall be enforced by the captain of the ship or aircraft."

5. Legislative Decree no. 286 of 1998

26. Legislative Decree (*decreto legislativo*) no. 286 of 1998 ("Consolidated text of provisions concerning immigration regulations and rules on the status of aliens") was issued on 25 July 1998 and subsequently amended on a number of occasions, in particular by Legislative Decrees nos. 150 of 2011 and 13 of 2017. The relevant provisions thereof, as in force at the material time, read as follows:

Article 10
Refusal of entry (*respingimento*)

"1. The border police shall refuse entry to the national territory (*respinge*) 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 combined with removal shall, moreover, be ordered by the Chief of Police (*questore*) 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) who ... have been temporarily allowed to remain for purposes of public assistance.

3. A carrier which has brought to the border an alien who is not in possession of valid travel documents or who is refused entry for any other reason pursuant to the present Article shall be obliged immediately to assume responsibility for him or her again and to return him or her to the country from which he or she was transported or in which his or her travel document was issued ...

4. The provisions of paragraphs 1, 2 and 3 ... do not apply to the cases 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 14
Execution of removal measures

"1. Where ... it is impossible to ensure the prompt execution of the deportation measure (*espulsione*) by escorting the person to the border or of the refusal-of-entry measure (*respingimento*), the Chief of Police shall order that the alien be held for such time 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 the Economy and Finance. To this end, he or she shall request that a place be assigned by the Central Directorate for Immigration and Border Police of the Public Safety Department at the Ministry of the Interior. In addition to [the risk of fleeing], the grounds justifying such placement include the need to provide the alien with assistance, perform additional identity or nationality checks, or obtain travel documents, and the unavailability of a carrier.

2. The alien shall be placed in an establishment that guarantees appropriate living and sanitary conditions and has procedures in place to ensure that he or she is able to receive the necessary information about his or her status, the assistance he or she requires and full respect for his or her dignity. ...

3. The Chief of Police for the place where the centre is located shall, without delay and, in any event, no later than forty-eight hours after taking the decision, forward a copy of the documents to the competent Justice of the Peace for validation.

4. The validation hearing shall take place before the Justice of the Peace, sitting *in camera*, with the mandatory assistance of a lawyer, who shall be informed of the hearing in a timely manner. The alien must also be informed thereof without delay and brought to the place where the hearing is held. ... The Justice of the Peace shall rule on the validity of the detention measure within forty-eight hours, in a reasoned decision, once he or she is satisfied that the time-limits have been complied with, that the conditions laid down in Article 13 and in the present Article have been met ... and after hearing the person concerned, if he or she has appeared at the hearing. The measure shall cease to have effect if the decision is not delivered within the allotted time. ..."

B. Domestic practice

1. Court of Cassation case-law on the status of ship's captain

27. The Italian Court of Cassation has repeatedly emphasised that, along with obligations of a private nature, the Navigation Code confers duties on the ship's captain that are performed in the public interest. Sometimes, therefore, he or she will perform duties specific to public officials (*pubblici*

ufficiali) and, at others, tasks of an exclusively private nature (see, for example, judgment no. 2881 of 19 December 1966).

The Court of Cassation has thus held that a ship's captain is a private individual, and that he or she is vested with public functions and acts as a public official whenever he or she exercises the public-authority powers (*potestà pubblicistiche*) conferred on him or her by law, in particular those of law enforcement under Article 1235 of the Navigation Code, those inherent in the role of commander of persons on board a ship under Articles 296 and 888 of the Navigation Code and those of a disciplinary nature referred to in Article 1249 of that same Code (see judgment no. 179 of 21 January 1963).

In general, the captain of a private ship must be recognised as acting as a public official where he or she exercises the public-authority powers directly conferred on him or her by law for the purpose of ensuring the proper and lawful conduct of navigation (see judgment no. 2881 of 19 December 1966; see also judgment no. 4557 of 12 October 2023 concerning the rescue of migrants in international waters).

2. Report of the National Guarantor of rights for persons in custody or deprived of personal liberty

28. In June 2019 the National Guarantor of rights for persons in custody or deprived of personal liberty (*Garante Nazionale dei diritti delle persone detenute o private della libertà personale*) submitted a report to the Italian Parliament on the activities of police forces at certain border checkpoints, namely Rome-Fiumicino airport, Milan-Malpensa airport and the port of Civitavecchia. With regard to the port of Civitavecchia in particular, the report read as follows:

> "Based on an examination of the register of persons refused entry, the office of the border police at the Civitavecchia passenger port issued 51 immediate refusal-of-entry orders in 2017, and 18 in 2018. In most cases, those orders were issued in respect of Tunisian citizens who lacked travel documents, were in possession of forged documents, or lacked means of subsistence.
>
> Based on the data received by the National Guarantor, foreign citizens who are not authorised to enter Italian territory following border checks and are refused entry are immediately placed under the responsibility of the shipping company with which they were travelling and remain on board the ship pending departure. ...
>
> **3.1.2. Impact on the right to liberty of foreign nationals refused entry in certain refusal-of-entry scenarios (Article 10 § 1 of the consolidated text on immigration)**
>
> Civitavecchia has two weekly connections with Tunis that are operated by two shipping companies using Italian ships: one docks at Civitavecchia on Mondays and the other on Tuesdays.
>
> Foreign nationals who arrive at Civitavecchia and are refused entry are confined to a cabin and wait on board for the ship to sail back to Tunis. Their stay on board the ship

obviously lasts until docking in Tunis, but in some cases lasts far longer than the length of a direct Civitavecchia-Tunis connection.

In practice, it can thus happen that they are not returned immediately, as the return voyage to Tunis is not direct and comprises several intermediate stops ...

For the entire duration of the return journey, aliens who have been refused entry to Italy remain on the ship, without permission to disembark or any freedom of movement beyond the confines of the ship. According to the information received by the Guarantor from the border police, during calls at foreign ports, the individuals concerned are confined to their cabins, under the supervision of security officers employed by the shipping company, but they allegedly enjoy greater freedom of movement about the ship when at sea.

According to the registers, eleven individuals who were refused entry received such treatment in 2017, and three in 2018.

The case of those confined on board a ship sailing under the Italian flag, within Italian territorial waters, for a prolonged period of time and in a state of complete subordination to the carrier responsible for their return transportation, which should in theory be immediate, would appear to constitute a deprivation of liberty that is *de facto* incompatible with the Constitution and with [the Convention].

..."

II. RELEVANT INTERNATIONAL MATERIAL

A. United Nations

1. *Draft Articles on Responsibility of States for Internationally Wrongful Acts*

29. The draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission provide as follows:

Article 5
Conduct of persons or entities exercising elements of governmental authority

"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

Article 8
Conduct directed or controlled by a State

"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."

2. The United Nations Convention on the Law of the Sea

30. The relevant Articles of the 1982 United Nations Convention on the Law of the Sea ("the Montego Bay Convention") provide:

Article 27
Criminal jurisdiction on board a foreign ship

"1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

(a) if the consequences of the crime extend to the coastal State;

(b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;

(c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or

(d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

..."

Article 28
Civil jurisdiction in relation to foreign ships

"1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

..."

Article 92
Status of ships

"1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. ...

..."

Article 94
Duties of the flag State

"1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

..."

3. The International Maritime Organization Convention on Facilitation of International Maritime Traffic

31. The relevant parts of the Annex to the International Maritime Organization Convention on Facilitation of International Maritime Traffic, which was adopted in London in 1965 and has been amended on several occasions, read as follows at the relevant time:

> "3.14 Standard. Public authorities shall, without unreasonable delay, accept passengers and crew for examination as to their admission into the State when such examination is required.
>
> 3.15 Standard. Public authorities shall not impose any penalty upon shipowners in the event that any control document in possession of a passenger is found by public authorities to be inadequate, or if, for that reason, the passenger is found to be inadmissible to the State.
>
> 3.15.1 Standard. Public authorities should invite shipowners to take all reasonable precautions to the end that passengers hold any control documents required by Contracting Governments."

4. The Convention on International Civil Aviation

32. The relevant parts of Chapter 5 of Annex 9 to the 1944 Convention on International Civil Aviation, ("the Chicago Convention" – fourteenth edition, October 2015), headed "Inadmissible persons and deportees", provide as follows:

> "5.2 Contracting States shall facilitate the transit of persons being removed from another State pursuant to the provisions of this Chapter, and extend necessary cooperation to the aircraft operator(s) and escort(s) carrying out such removal.
>
> 5.2.1 During the period when an inadmissible passenger or a person to be deported is under their custody, the state Officers shall preserve the dignity of such persons and take no action likely to infringe such dignity.
>
> ...
>
> 5.5 Contracting States shall ensure that a removal order is issued to the aircraft operator in respect of a person found inadmissible. The removal order shall include information regarding the inbound (arriving) flight carrying such person and, if known, the name, age, gender and citizenship of the person in question.
>
> ...
>
> 5.8 Contracting States that have reason to believe that an inadmissible person might offer resistance to his removal shall inform the aircraft operator concerned as far in advance as possible of scheduled departure so that the aircraft operator can take precautions to ensure the security of the flight.
>
> 5.9 The aircraft operator shall be responsible for the cost of custody and care of an improperly documented person from the moment that person is found inadmissible and returned to the aircraft operator for removal from the State.
>
> ...
>
> 5.11 The aircraft operator shall remove the inadmissible person to:

(a) the point where he commenced his journey; or

(b) to any place where he is admissible."

B. European Union (EU)

1. The Charter of Fundamental Rights of the European Union

33. Article 6 of the Charter of Fundamental Rights of the European Union ("the Charter") reads as follows:

Right to liberty and security

"Everyone has the right to liberty and security of person."

34. As regards Article 6, the explanations relating to the Charter (C 303/17) read as follows:

"The rights in Article 6 are the rights guaranteed by Article 5 of the [Convention], and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the [Convention], in the wording of Article 5".

2. The Convention implementing the Schengen Agreement of 14 June 1985

35. Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 provides:

"1. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, to incorporate the following rules into their national law:

(a) If aliens are refused entry into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier shall be obliged to return the aliens to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted.

...

2. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a [t]hird State to their territories.

3. Paragraphs 1(b) and 2 shall also apply to international carriers transporting groups overland by coach, with the exception of border traffic."

3. Regulation (EC) 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders ("the Schengen Borders Code"), replaced by Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 (codification)

36. The relevant provisions of the Schengen Borders Code in force at the material time read as follows (footnotes omitted):

"THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union [TFEU], and in particular Article 77(2)(b) and (e) thereof,

...

Whereas:

...

(3) In accordance with Article 67(2) TFEU, the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article 77(1)(b) TFEU, is such a measure.

(4) Common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen acquis incorporated in the Union framework, and in particular the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders and the Common Manual.

...

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

..."

Article 1
Subject matter and principles

"This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union.

It lays down rules governing border control of persons crossing the external borders of the Member States of the Union."

Article 3
Scope

"This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

(a) the rights of persons enjoying the right of free movement under Union law;

(b) the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*."

Article 4
Fundamental rights

"When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter'), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ('the Geneva Convention'), obligations related to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis."

Article 6
Entry conditions for third-country nationals

"1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:

(i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;

(ii) it shall have been issued within the previous 10 years;

(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 (25), except where they hold a valid residence permit or a valid long-stay visa;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

..."

CHAPTER II
Control of external borders and refusal of entry
Article 7
Conduct of border checks

"1. Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

Article 8
Border checks on persons

"1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the right of free movement under Union law.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the right of free movement under Union law, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the right of free movement under Union law into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

..."

Article 13
Border surveillance

"1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

..."

Article 14
Refusal of entry

"1. A third-country national who does not fulfil all the entry conditions ... shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4. The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons who were refused entry and the type of border (land, air or sea) at which they were refused entry and submit them yearly to the Commission (Eurostat) in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council (29).

6. Detailed rules governing refusal of entry are given in Part A of Annex V."

37. The relevant parts of Annex V to the above-mentioned Schengen Borders Code, concerning "Procedures for refusing entry at the border", read as follows:

"1. When refusing entry, the competent border guard shall:

(a) fill in the standard form for refusing entry, as shown in Part B. The third-country national concerned shall sign the form and shall be given a copy of the signed form. Where the third-country national refuses to sign, the border guard shall indicate this refusal in the form under the section 'comments';

...

(d) record every refusal of entry in a register or on a list stating the identity and nationality of the third-country national concerned, the references of the document authorising the third-country national to cross the border and the reason for, and date of, refusal of entry.

2. If a third-country national who has been refused entry is brought to the border by a carrier, the authority responsible locally shall:

(a) order the carrier to take charge of the third-country national and transport him or her without delay to the third country from which he or she was brought, to the third country which issued the document authorising him or her to cross the border, or to any other third country where he or she is guaranteed admittance, or to find means of onward transportation in accordance with Article 26 of the Schengen Convention and Council Directive 2001/51/EC;

(b) pending onward transportation, take appropriate measures, in compliance with national law and having regard to local circumstances, to prevent third-country nationals who have been refused entry from entering illegally.

3. If there are grounds both for refusing entry to a third-country national and arresting him or her, the border guard shall contact the authorities responsible to decide on the action to be taken in accordance with national law."

38. In Recommendation C(2006)5186 of 6 November 2006, the European Commission established a common "Practical Handbook for Border Guards (Schengen handbook)" to be used by member States' competent authorities when carrying out the border control of persons ("the Schengen handbook"). The relevant parts of that handbook, as partially amended in 2019 by Recommendation C(2019)7131, read as follows:

"8.10. If the refused third-country national has been brought by a carrier by air, sea or land the carrier must be obliged immediately to assume responsibility for him/her again. The carrier must, in particular, be obliged to return the third-country national to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted. When the refused third-country national cannot be taken back immediately, the carrier must be made responsible to bear all necessary costs related to return travel. If the carrier is not able to return the third-country national, it must be obliged to ensure his/her return by any other means (for example, by contacting another carrier).

8.11. Penalties must be imposed on the carrier in accordance with Directive 2001/51/EC and with national law.

8.12. The border guards must take all appropriate measures, based on local circumstances, in order to prevent third-country nationals refused entry from entering illegally (for instance, by ensuring that they remain in the transit area of an airport, or by prohibiting them from going ashore at a seaport)."

4. European Parliament Resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI))

39. The relevant parts of this Resolution provide:

"The European Parliament,

...

73. Recalls that, since the establishment of the Schengen Area, the Union is an area without internal borders, that the Schengen Member States have developed a step-by-

step common policy towards the Schengen external borders, and that the inherent logic of such a system has always been that the abolition of internal border controls has to go hand in hand with compensatory measures strengthening the external borders of the Schengen Area and the sharing of information through the Schengen Information System ('SIS');

74. Acknowledges that the integrity of the Schengen Area and the abolition of internal border controls are dependent on having effective management of external borders, with high common standards applied by all Member States at the external borders and an effective exchange of information between them;

75. Accepts that the Union needs to strengthen its external border protection and further develop the CEAS, and that measures are necessary to enhance the capacity of the Schengen Area to address the new challenges facing Europe and preserve the fundamental principles of security and free movement of persons;

76. Points out that access to the territory of the Schengen Area is generally controlled at the external border under the Schengen Borders Code and that, in addition, citizens of many third countries require a visa to enter the Schengen Area;

77. Reiterates the UNHCR's call that respect for fundamental rights and international obligations can only be ensured if operating procedures and plans reflect those obligations in practical, clear guidance to border personnel, including those at land, sea and air borders; points out to the need to further strengthen the Union Civil Protection Mechanism in order to respond to events with wide-ranging impacts which affect a significant number of Member States;

78. Emphasises again that, as for legislation specifically in the area of asylum and migration, in order for legislation on internal and external borders to be effective, it is essential that measures agreed at Union level are implemented properly by the Member States; underlines that better implementation of measures by Member States at the external borders, following increased pressure, is essential and will go some way towards allaying the security fears of citizens;

..."

COMPLAINTS

40. The applicant complained that he had been unlawfully deprived of his liberty on board the ship *Splendid*, that he had not been informed of the reasons for this measure and that there had been no domestic remedy available to him by which to challenge its lawfulness. He further complained that he had been unable to obtain appropriate redress for the alleged violations. He alleged violations of paragraphs 1, 2, 4 and 5 of Article 5 of the Convention.

41. Relying on Articles 3 and 13 of the Convention, the applicant further complained about the material conditions of his stay on board the ship, which he described as inhuman and degrading, and alleged that no domestic remedies had been available to him in respect of his complaint.

THE LAW

I. PRELIMINARY ISSUES

A. Jurisdiction

1. The parties' submissions

42. The Government submitted before the Grand Chamber that the circumstances of the case did not fall within Italy's jurisdiction within the meaning of Article 1 of the Convention.

43. The Government recognised that the events had taken place on board a ship sailing under the Italian flag. Nevertheless, they argued that the applicant had complained of a continuing situation that had come to an end once the ship had arrived in Tunisia and therefore that the circumstances did not fall within Italy's jurisdiction but rather within the territorial jurisdiction of Tunisia. They relied on Article 27 § 1 (a) of the Montego Bay Convention (see paragraph 30 above) which, they argued, confirmed the legitimacy of that interpretation.

44. The Government further argued that the present case differed from the *Hirsi Jamaa and Others v. Italy* case ([GC], no. 27765/09, ECHR 2012) in that the alleged events had not taken place on the high seas, in other words, in an area outside any jurisdiction, but rather in the territorial waters of another sovereign State, Tunisia. According to them, to maintain that Italy had jurisdiction in the present case would amount to admitting that a State was responsible for events having taken place outside its national territory. A State, they argued, could be held responsible only for acts and events that had taken place on its territory.

45. For his part, the applicant submitted that, from the time he had arrived at the port of Palermo, where his papers had been checked by the border police and he had been entrusted to the captain of the *Splendid*, and for the seven days subsequently spent on board the ship, he had been under the continuous and exclusive control, both *de jure* and *de facto*, of the Italian authorities. He argued that the ship on which the events had taken place had been sailing under the Italian flag and was therefore a place which, for the purposes of international law and according to the Court's established case-law, was subject exclusively to Italian jurisdiction. He alleged, moreover, that the carrier had been exercising public-authority powers.

2. The Court's assessment

46. The general principles of the Court's case-law on jurisdiction have been summarised in the *M.N. and Others v. Belgium* case ((dec.) [GC], no. 3599/18, §§ 96-109) and were recently reiterated in the *Duarte Agostinho*

and Others v. Portugal and 32 Others case ((dec.) [GC], no. 39371/20, §§ 168-76).

The parts of the *M.N. and Others* decision (cited above) which are relevant to the present case read as follows:

> "96. The Court reiterates that Article 1 of the Convention limits its scope to 'persons' within the 'jurisdiction' of the States Parties to the Convention.
>
> 97. The exercise of jurisdiction by a respondent State is a condition *sine qua non* in order for that State to be held responsible for acts or omissions attributable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Al-Skeini and Others* [*v. the United Kingdom* [GC], no. 55721/07, § 130], and *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 178, 29 January 2019). The question of whether that State is effectively liable for the acts or omissions at the origin of the applicants' complaints under the Convention is a separate issue which belongs to the merits phase of the case (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 61 and 64, Series A no. 310, and *Güzelyurtlu and Others*, cited above, § 197).
>
> 98. As to the meaning to be given to the concept of 'jurisdiction' for the purposes of Article 1 of the Convention, the Court has emphasised that, from the standpoint of public international law, a State's jurisdictional competence is primarily territorial (see *Güzelyurtlu and Others*, cited above, § 178; see also *Banković and Others* [*v. Belgium and Others* (dec.) [GC], no. 52207/99, § 59-61, ECHR 2001-XII]). It is presumed to be exercised normally throughout the territory of the State concerned (see *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II).
>
> ...
>
> 101. The Court has recognised that, as an exception to the principle of territoriality, acts of the States Parties performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 of the Convention. This is well-established case-law (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 314, ECHR 2004-VII; *Medvedyev and Others v. France* [GC], no. 3394/03, § 64, ECHR 2010; *Al-Skeini and Others* [*v. the United Kingdom* [GC], no. 55721/07, § 131, ECHR 2011]; and *Güzelyurtlu and Others*, cited above, § 178).
>
> 102. In each case, it was with reference to the specific facts that the Court assessed whether there existed exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially (see *Banković and Others*, cited above, § 61; *Al-Skeini and Others*, cited above, § 132; *Hirsi Jamaa and Others*, cited above, § 172; and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 103, ECHR 2012 (extracts)).
>
> 103. An exception to the principle that jurisdiction under Article 1 is limited to a State Party's own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (for a summary of the case-law on these situations, see *Al-Skeini and Others*, cited above, §§ 138-40 and 142; for more recent applications of this case-law, see *Catan and Others*, cited above, §§ 121-22; *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 186, ECHR 2015; *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 110-11, 23 February 2016; and *Sandu and Others*

v. the Republic of Moldova and Russia, nos. 21034/05 and 7 others, §§ 36-38, 17 July 2018).

104. Thus, the Commission and subsequently the Court concluded that a State was exercising its jurisdiction extraterritorially when, in an area outside its national territory, it exercised public powers such as authority and responsibility in respect of the maintenance of security (see *X and Y v. Switzerland*, [nos. 7289/75 and 7349/76, Commission decision of 14 July 1977, D.R. 9]; *Drozd and Janousek v. France and Spain*, 26 June 1992, §§ 91-98, Series A no. 240; *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, nos. 48205/99 and 2 others, § 20, 14 May 2002; *Al-Skeini and Others*, cited above, §§ 143-50; and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, §§ 75-96, ECHR 2011).

105. Further, the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction (for a summary of the case-law in respect of these situations, see *Al-Skeini and Others*, cited above, § 136). The same conclusion has been reached where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV). Equally, extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, exercised power and physical control over those persons (see *Issa and Others v. Turkey*, no. 31821/96, §§ 72-82, 16 November 2004; *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 86-89, 30 June 2009; *Medvedyev and Others*, cited above, §§ 62-67; *Hirsi Jamaa and Others*, cited above, §§ 76-82; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 75-80, ECHR 2014)."

47. In the present case, the Court would first note that the impugned events began in Italian national waters, continued on the high seas, and ceased once the ship arrived in Tunisia. The ship *Splendid* sailed along the Italian coast for six days, with calls at the ports of Palermo, Civitavecchia and Termini Imerese, before making the crossing to Tunis on the last day of the period in question.

48. In determining whether the events fell within the respondent State's jurisdiction in the circumstances of the case, it must in any event be emphasised that the *Splendid* was a ship owned by an Italian shipping company and flying the Italian flag, and that, throughout the period in question, it was under the control of its captain, whose duties were governed by Italian law (see Article 8 of the Navigation Code, cited in paragraph 25 above).

49. The Court has found in a number of cases that activities on board ships flying the flag of a State fall within that State's jurisdiction (see *Hirsi Jamaa and Others*, cited above, § 81, and *Bakanova v. Lithuania*, no. 11167/12, § 63, 31 May 2016). As to ships sailing in international waters more specifically, it has previously held that, by virtue of the relevant provisions of the international law of the sea, a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying. Moreover, it has previously had occasion to note that this principle has been incorporated

into Italian law, namely in Article 4 of the Italian Navigation Code (see *Hirsi Jamaa and Others*, cited above, § 78).

50. The Government's argument to the effect that the events in question did not fall within Italy's jurisdiction since they had come to an end in the territory of another State is irrelevant in the light of the Court's case-law. Nor does Article 27 § 1 of the Montego Bay Convention – which the Government cited in support of that argument – permit any other conclusion. There is nothing to suggest that this provision – which sets out the exceptional circumstances under which the coastal State may exercise its jurisdiction on board a foreign ship in connection with a crime committed on board during its passage through the territorial waters of that State (see paragraph 30 above) – is applicable to the facts of the present case such that Italy's jurisdiction could be excluded.

51. Taken together, the foregoing considerations are sufficient, having regard to the Court's case-law in this area, to find that the present case does in fact constitute an instance of the exercise of Italy's jurisdiction such that the responsibility of that State was engaged for the purposes of the Convention.

B. Incompatibility *ratione personae*

1. The parties' submissions

52. The Government argued before the Grand Chamber that the impugned acts were not committed by agents of the State and therefore were not attributable to Italy *ratione personae*.

53. Whereas they had submitted before the Chamber that the captain of the *Splendid* had, with regard to the applicant, acted as a "private individual who exercised public functions by operation of law", the Government submitted before the Grand Chamber that he should be regarded simply as a private individual who was employed by a private shipping company and whose acts and omissions could not engage Italy's responsibility in any way.

54. The Government argued that the border police had confined themselves to entrusting the applicant to the carrier, in accordance with Article 10 § 3 of Legislative Decree no. 286, and that the carrier, which they claimed had been responsible for the safety and supervision of all those on board the ship, had, on its own initiative, taken the measures it had deemed necessary in the circumstances. They referred in this connection to Articles 1249, 1256 and 1257 of the Italian Navigation Code, from which they concluded that the captain of a ship was responsible for order on board and, as such, had the power to act autonomously in taking a series of disciplinary measures.

The Government submitted that the Italian authorities had neither dictated nor suggested the procedures in accordance with which the applicant's return

was to be effected and, moreover, that they had not had any knowledge of the applicant's travel conditions on board the ship.

55. The Government acknowledged that Italian law conferred both public and private powers on ships' captains and that they could be regarded as public officials when they were called upon to perform tasks involving the exercise of public authority. However, they submitted that in the present case the captain of the *Splendid* had merely been responsible for the applicant's return, since, they argued, the decision to refuse entry to Italian territory had been taken autonomously by the border police. In the Government's view, the captain had "himself carried out an order he had been given by the authorities, in accordance with the law", and therefore had not exercised any public-authority powers in the present case.

56. The applicant argued that the Italian legal system conferred the status of public official on the captain of a private ship when he or she exercised the public-authority powers vested in him or her by law. He submitted that the enforcement of a refusal-of-entry order pursuant to Article 10 of Legislative Decree no. 286 precisely amounted to the provision of a public service, and more specifically to immigration control. He referred in this connection to the Court of Cassation's established case-law in such matters. He concluded from these arguments that the captain of the *Splendid* had been acting in the name and on behalf of the Italian State in enforcing the refusal-of-entry order by returning him to Tunisia.

The applicant submitted that Italy's responsibility had also to be recognised under Articles 5 and 8 of the draft Articles on Responsibility of States for Internationally Wrongful Acts (see paragraph 29 above).

2. The Court's assessment

57. The Court observes at the outset that it has consistently explained that issues of attribution and the responsibility of the respondent State under the Convention for the acts complained of fall to be examined at the merits phase of the proceedings (for a recent example, see *Ukraine v. Russia (Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, § 266, 16 December 2020, with further references). It is important to clarify, however, that this concerns the evidential question whether the act or omission complained of was in fact attributable to a State agent as alleged. It does not preclude an assessment, at the admissibility stage, of whether particular individuals or entities could be considered State agents such that any actions shown at the later merits stage to have been taken by them would be capable of giving rise to the responsibility of the State in question (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 550, 30 November 2022).

58. In the present case, both parties agreed that the captain of a ship had a dual status under Italian law. It can be seen from the domestic case-law that the captain performs tasks of an exclusively private nature as a representative of the shipowner but can also be vested with public authority when

accomplishing certain tasks, in particular when carrying out the public-service assignments entrusted to him or her by law (see paragraph 27 above).

59. The Government did not contest that the captain of the *Splendid* was required to enforce the refusal-of-entry order issued in respect of the applicant pursuant to Article 10 of Legislative Decree no. 286, under which a carrier having brought to the border an alien who was not in possession of valid travel documents – or who for any other reason had to be removed in accordance with that Article – was required to assume responsibility for the alien again immediately and to return him or her to the country from which he or she had been transported or to the country in which his or her travel document had been issued (see paragraph 26 above). Moreover, the carrier's role, duties and obligations in matters of immigration control were also recognised and regulated by the relevant provisions of EU law (see paragraphs 36-38 above) and by other provisions of international law (see paragraph 32 above).

60. In those circumstances, the Court is not persuaded by the Government's argument that, in transporting the applicant, the ship's captain was performing inherently private duties. Furthermore, the Government submitted that those duties fell within the scope of the power to maintain order and discipline on board the ship which they claimed was vested in the captain, citing, in particular, Article 1249 of the Navigation Code in this connection. It must be noted that according to the case-law of the Court of Cassation, the captain's disciplinary duties, in particular, fell within his public-authority powers (see paragraph 27 above). The Court further observes that Article 186 of the Navigation Code lays down the general principle that the captain has authority over everyone on board his or her ship (see paragraph 25 above).

61. In the light of these considerations as a whole, the Court takes the view that public-authority powers were vested in the captain of the *Splendid* when he was entrusted with the task of returning the applicant and remained so throughout the latter's entire stay on board the ship, including when the ship was in Tunisian territorial waters. The events which gave rise to the applicant's complaint are therefore attributable to the respondent State and are such as to engage Italy's responsibility under the Convention.

62. In consequence, the Court dismisses the respondent Government's objection as to the application's incompatibility *ratione personae* with the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5

63. The relevant parts of Article 5 of the Convention 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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Article 5 of the Convention

The Government's preliminary objections

(a) Whether Article 5 is applicable

(i) The parties' submissions

64. The Government argued that the applicant had not been deprived of his personal liberty but had merely been subjected, for a limited time, to a restriction on his freedom of movement. Contrary to what the applicant had alleged, he had by no means been prevented from leaving his cabin and his door had not been locked from the outside. The applicant had been able to go freely to the ship's common areas several times a day, while remaining supervised from afar by the staff responsible for on-board security. In this regard, such supervision had been justified mainly by the need to ensure the applicant's own safety. Moreover, the applicant had retained possession of his personal belongings at all times and had been allowed to communicate with his family with no restrictions of any kind.

In support of their arguments, the Government relied on the reports prepared by the shipping company in 2019 and 2024 (see paragraphs 16-17 above).

65. The applicant alleged that the conditions in which he had been kept on board the *Splendid* had constituted a *de facto* deprivation of liberty which fell within the scope of Article 5. He argued that his cabin had been equipped with a barred metal door that had been locked from the outside and that it had thus been comparable to a detention cell. He submitted that, during the journey, the crew had only opened it three times a day to bring in his meals, and occasionally to change the linen.

The applicant maintained that throughout the entire time he had spent on board he had been under the constant supervision of the ship's security officers and had not been authorised to leave his cabin.

(ii) The Court's assessment

66. The Court notes at the outset that there are very significant discrepancies between the parties' accounts of the conditions to which the applicant was subjected on board the *Splendid*, in particular concerning aspects which are likely to have a bearing on the question whether those conditions constituted, in substance, a "deprivation of liberty" (see paragraphs 64-65 above).

67. The Court does not consider it necessary to determine whether the facts of the present case fall within the scope of application of Article 5 § 1 of the Convention, having regard to the considerations set out below concerning the exhaustion of domestic remedies.

(b) Exhaustion of domestic remedies

(i) The Government's submissions

68. The Government raised the preliminary objection that the applicant had failed to exhaust domestic remedies. They criticised him for inaction and argued that he could have availed himself of a whole series of remedies under Italian law by which to seek redress for the violations alleged before the Court.

69. The Government submitted that the applicant ought to have lodged an urgent application for interim relief with the ordinary court of competent jurisdiction under Article 700 of the Code of Civil Procedure. They argued that this remedy was frequently used in immigration matters and that, in that context, the District Courts of Trieste, Palermo and Rome had previously granted requests for interim relief that had been lodged with them by persons applying for international protection or asylum. The Government argued that if the applicant had lodged an urgent application, this would have enabled him to bring his case before the Italian courts and, if appropriate, to be released from his alleged detention. They also argued that, under Article 669 *sexies* of the Code of Civil Procedure, in certain emergencies the courts could rule without hearing the parties beforehand.

70. The Government submitted that the applicant could additionally have brought an action for damages in the civil courts under Article 2043 of the Civil Code, to seek compensation from the State or the shipowner. They explained that, under this Article, compensation could be obtained for damage resulting from any act that was recognised as unlawful, including in respect of acts of State administration.

71. The Government referred to Resolution CM/ResDH(2021)424, whereby the Council of Europe's Committee of Ministers had closed the execution procedure pertaining to the *Khlaifia and Others* judgment ([GC], no. 16483/12, 15 December 2016). They submitted that the Committee of Ministers, albeit in a somewhat different context, had acknowledged that the preventive civil remedy under Article 700 of the Code of Civil Procedure,

combined with the compensatory civil remedy afforded by Article 2043 of the Civil Code, could offer effective remedies for migrants who were deprived of liberty in Italy.

72. The Government added that the applicant could have filed an administrative complaint with the office of the border police alleging violations of his fundamental rights owing to the conduct of the ship's captain. However, they argued, in his request for reconsideration of 3 May 2016 the applicant had confined himself to challenging the refusal-of-entry order, without explicitly making any such allegation.

73. In their observations before the Grand Chamber, the Government further argued that the applicant could have applied to the competent Administrative Court for judicial review of the refusal-of-entry order. In so doing, he might have succeeded in having the order set aside and, as a consequence, in having his removal to Tunisia halted. In this regard, the Government produced a judgment in which the Milan Court of Appeal had allowed an appeal lodged by a Tunisian national in respect of whom a refusal-of-entry order had been issued and who had been confined to an airport transit zone pending his return. The court had found the impugned order to be unlawful and had awarded the appellant damages for the unlawful deprivation of liberty he had endured in the transit zone.

74. In addition, the Government argued that it was possible under the Italian system to have the ship's captain sanctioned for any abuse of power towards persons under his or her responsibility. They referred to Article 1154 of the Navigation Code and submitted that the applicant, who had been in possession of his telephone and in continuous contact with his lawyer, could have sought the protection afforded by that provision from the port authorities. Lastly, the applicant could have filed a criminal complaint against the ship's captain or any other person who, according to him, had infringed his right to personal liberty.

75. According to the Government, Italy had confined itself to fulfilling its obligations under the Schengen Borders Code and the provisions of EU law on the return of undocumented aliens, such that the present case had to be examined in the light of EU law.

They submitted at the hearing that the obligations imposed on border guards and carriers in the context of refusal-of-entry orders issued in respect of undocumented aliens flowed from the procedure laid down in the Schengen Borders Code and Annex V thereto and that the domestic authorities had no discretion as to the measures to be taken in that regard.

(ii) The applicant's submissions

76. The applicant denied that there were any effective domestic remedies by which he might have challenged the deprivation of liberty to which he claimed to have been subjected. He argued, firstly, that the absence of any decision formally ordering his detention had prevented him from identifying

the judicial authority to which he could have applied. He argued that, unlike individuals taken into custody in the context of criminal proceedings or aliens held in administrative detention centres, he had not had access to the legal remedies provided for by national law in order to obtain a review of the lawfulness of the alleged deprivation of liberty.

He further argued that, under the Italian legal system, there was no generally applicable *habeas corpus* remedy for a deprivation of liberty by a public authority outside the situations provided for by law.

77. The applicant submitted that the urgent interim relief procedure under Article 700 of the Code of Civil Procedure was a remedy of general application which covered a wide range of situations and could not be regarded as a special remedy for deprivation of personal liberty or a remedy which satisfied the requirements laid down in the Court's case-law. Moreover, the Court had recently held, in the *J.A. and Others v. Italy* judgment (no. 21329/18, § 47, 30 March 2023), that this remedy was ineffective.

78. The applicant added that there was no time-limit for dealing with urgent applications lodged under Article 700 of the Code of Civil Procedure and that this remedy therefore fell short of the "speediness" requirement not only under the Court's case-law on judicial review of deprivation-of-liberty measures, but under Italian law as well. In this connection, he pointed out that the Constitution itself, in Article 13, provided that deprivation-of-liberty measures were to be reviewed by a court within a maximum period of forty-eight hours. In practice, however, the time taken by courts to rule on applications under Article 700 of the Code of Civil Procedure could range from a few hours to a few weeks.

79. The applicant further argued that all stakeholders in the Italian legal system implicitly regarded the urgent interim relief procedure as inapplicable in cases involving deprivation of personal liberty. In support of this claim, he alleged that there was no precedent bearing similarities with the situation complained of in the present case, namely, the detention of an alien as a result of the border police's decision to entrust him or her to a private carrier for the purposes of being returned.

He further submitted that, in view of his situation on board the ship, this remedy would not have been accessible to him in any event, since he would not have been able to give his lawyer the written authority that was in his view necessary in order to apply for interim relief.

80. As to the compensatory remedy under Article 2043 of the Civil Code, the applicant inferred from the examples produced by the Government before the Committee of Ministers in the execution procedure pertaining to the *Khlaifia and Others* judgment (cited above; see paragraph 71 above) that compensation, within the meaning of that provision, was possible only in cases where a court of competent jurisdiction had already found the detention to be unlawful.

81. Lastly, the applicant clarified that his request for internal reconsideration of 3 May 2016 had indeed described his living conditions on board the *Splendid*, while submitting that this remedy was purely administrative and could by no means have put an end to the situation of unlawful detention that he alleged. He concluded that, like all the other remedies put forward by the Government before the Grand Chamber, a request for reconsideration could not be regarded as an effective remedy for the purposes of exhaustion.

82. In conclusion, the applicant submitted that the Government had not adequately proven that there had been sufficiently accessible and effective domestic remedies available to him, in both theory and practice, which offered him reasonable prospects of securing review of the lawfulness and validity of the deprivation of liberty and potentially his release.

83. The applicant added that neither the Schengen Borders Code nor any other instrument of European law prescribed that an individual subject to a refusal-of-entry order should be held in detention. While he acknowledged that Annex V to the Schengen Borders Code imposed supervisory obligations on the carrier responsible for the individual's return, in his view this did not necessarily entail an obligation to deprive that individual of his or her liberty. He alleged that alternative measures of coercion, respecting the right to personal liberty, could have been considered and implemented in the context of his return.

The applicant submitted that it could not be said that the national authorities had had no margin of manoeuvre in choosing the measures necessary to enforce the refusal-of-entry order issued in respect of him.

(iii) The Court's assessment

(α) General principles

84. The general principles on exhaustion of domestic remedies were set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and recently quoted in *Duarte Agostinho and Others* (cited above, § 215):

> "69. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection.
>
> 70. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns

complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* [*of Judgments and Decisions*] 1996-IV). It should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 [and 7 others], § 69, ECHR 2010, where the Court in addition quoted the comprehensive statement of principles set out in §§ 66 to 69 of the *Akdivar and Others* judgment, which in so far as relevant are reiterated here below).

71. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, cited above, § 66).

72. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see, for instance, *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010; and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I) and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (*Akdivar and Others*, cited above, § 66). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see, for example, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Thiermann and Others v. Norway* (dec.), no. 18712/03, 8 March 2007).

73. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the 'generally recognised rules of international law' there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see *Akdivar and Others*, cited above, § 67).

74. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71, and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009).

75. In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted (see *Azinas* [*v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III]). It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have

been exhaustion of 'effective remedies'. It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Van Oosterwijck* [*v. Belgium*,] 6 November 1980, Series A no. 40, pp. 16-17, §§ 33-34, and *Azinas*, cited above, § 38).

76. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13, and *Akdivar and Others*, cited above, § 69). It would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV).

77. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others*, cited above, § 69; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010)."

85. The Court reiterates that, for a remedy in respect of the lawfulness of an ongoing deprivation of liberty to be effective, it must offer a prospect of release (see *Mustafa Avci v. Turkey*, no. 39322/12, § 60, 23 May 2017). In other words, a remedy that does not afford a possibility of release cannot be regarded as an effective remedy for the purposes of Article 5 of the Convention while the deprivation of liberty is ongoing. Preventive and compensatory remedies have to be complementary (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 207, 22 December 2020).

86. However, the position may be different where the deprivation of liberty has ended. Where an applicant complains that he or she was detained in breach of domestic law – and therefore in breach of Article 5 § 1 of the Convention – and the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (ibid., § 208). In the relevant cases the Court has carried out a careful examination of whether the unlawfulness or impropriety of a deprivation of liberty had been acknowledged at the domestic level (ibid., § 209, with further references).

(β) Application of the above principles to the present case

87. The Court notes at the outset that, unlike aliens placed in administrative detention pursuant to Article 14 of Legislative Decree no. 286 of 1998, the applicant did not have access to the judicial review procedure

provided for in paragraph 4 of that Article. Under that provision, the Chief of Police's decision to place an undocumented alien in administrative detention must be reviewed by the Justice of the Peace within forty-eight hours at the latest. If the decision is not validated by the judge within that time, the decision ceases to have effect and the person concerned is released (see paragraph 26 above). It is undisputed, however, that this procedure does not apply to returns following a refusal-of-entry order issued in accordance with Article 10 of Legislative Decree no. 286.

88. Nevertheless, the Court is not persuaded by the applicant's argument to the effect that he was in a legal vacuum.

– *Nature of the remedies that should have been available to the applicant in the present case*

89. The Court reaffirms its case-law according to which preventive and compensatory remedies have to be complementary in cases of deprivation of liberty.

Thus, for a remedy in respect of the lawfulness of a deprivation of liberty to be effective, it must in principle offer a prospect of immediate release following a finding of unlawfulness (see *Selahattin Demirtaş*, cited above, § 207). However, where an applicant complains before the Court of a deprivation of liberty that came to an end before his or her application was lodged, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (ibid., § 208; see paragraphs 85-86 above).

90. Moreover, in examining whether domestic remedies have been exhausted, the Court cannot fail to note that the present case is marked by significant discrepancies in the parties' respective accounts of the facts. These discrepancies make it difficult for the Court to establish the circumstances of the case such as to have some impact on the question whether the restrictions imposed on the applicant in the course of his return amounted, in substance, to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention (see paragraph 66 above).

91. In this connection, and reiterating that its role is fundamentally subsidiary in nature, the Court considers it appropriate to refer to the following two principles, which have been established in its case-law in the context of exhaustion of domestic remedies, as it has recently done in its *Fu Quan, s.r.o. v. the Czech Republic* judgment ([GC], no. 24827/14, § 170, 1 June 2023).

Firstly, even in those jurisdictions where the domestic courts in civil proceedings are able, or even obliged, to examine the case of their own motion (that is, to apply the principle of *jura novit curia*), applicants are not dispensed from raising before them a complaint which they may intend to subsequently make to the Court, it being understood that for the purposes of

exhaustion of domestic remedies the Court must take into account not only the facts but also the legal arguments presented domestically (ibid., § 171).

Secondly, it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually have complained (expressly or in substance) of such a violation in a manner which leaves no doubt that the complaint subsequently submitted to the Court had indeed been raised at the domestic level (ibid., § 172).

92. As regards the present case, it follows that, assuming an effective remedy by which to challenge the impugned restrictions was available to the applicant under domestic law, he was required to raise, before the courts of competent jurisdiction, both his allegation that those restrictions amounted to a "deprivation of liberty" and his argument as to the lack of a legal basis, as in his application before the Court.

93. Having regard to the case-law principles reiterated above and in the light of the circumstances of the case, the Court's task is to ascertain whether the applicant complied with his obligation to exhaust the domestic remedies available to him under Italian law for the purposes of establishing whether the circumstances surrounding his return constituted a "deprivation of liberty" and, if so, of obtaining a review of the lawfulness of the measure.

– *The remedies proposed by the Government*

94. The Government submitted that the applicant could have pursued a compensatory remedy under Article 2043 of the Civil Code, whether against the State or the shipowner, to allege that he had been unlawfully deprived of his liberty and to seek damages in that regard. In addition, they submitted that it had been open to the applicant to request his immediate release by means of an urgent application for interim relief under Article 700 of the Code of Civil Procedure.

95. Concerning the compensatory remedy, the Government did not provide the Court with any examples from domestic case-law. They did, however, refer to Resolution CM/ResDH(2021)424 of 2 December 2021 in which, they submitted, the Committee of Ministers, in closing the execution procedure pertaining to the *Khlaifia and Others* judgment (cited above), had acknowledged the effectiveness of that compensatory remedy – combined with the preventive remedy provided for in Article 700 of the Code of Civil Procedure – in cases involving the detention of aliens.

96. The Court will therefore examine the examples from the case-law that the Government submitted to the Committee of Ministers as part of the aforementioned execution procedure, namely the Rome Court of Appeal's judgments nos. 7206/2019, 2454/2021 and 2958/2024. In those decisions, the civil courts hearing cases under Article 2043 of the Civil Code, having found that there had been an unlawful deprivation of liberty, ordered the Ministry of the Interior to compensate the respective claimants for the non-pecuniary damage they had sustained.

The Court observes that, contrary to the applicant's submission, in those cases the Rome Court of Appeal did not confine itself to awarding compensation in respect of violations previously found by other courts, but itself acknowledged, after examining the circumstances in question, that the persons concerned had been the victims of infringements of their right to personal liberty. It even referred expressly to Article 5 of the Convention and to the Court's relevant case-law.

97. Like the applicant, the Court notes that the cases examined by the Rome Court of Appeal differed from the present case in that they concerned orders to hold aliens in detention centres which had been issued without regard to the criteria established in Article 14 of Legislative Decree no. 286 of 1998 (judgment no. 7206/2019), or which, having been lawfully issued, had become devoid of legal basis because the underlying removal order had been set aside (judgment no. 2454/2021), or which had entailed a violation on the ground that the right to adversarial proceedings before the Justice of the Peace had not been respected (judgment no. 2958/2024).

98. The Court considers, however, that the above-mentioned domestic decisions, although delivered after the events in the present case, demonstrate with a sufficient degree of certainty that the civil courts ruling on the basis of Article 2043 of the Civil Code are capable of holding the State authorities to account for deprivations of liberty found to have been unlawful in various regards and, where appropriate, may award compensation to make good the damage thereby sustained. In the applicant's particular case, there is nothing to suggest that a compensatory remedy would have offered him no prospect of success if he had complained of a deprivation of liberty resulting from a refusal-of-entry order which had itself been lawful. The Court would observe, moreover, that the applicant could have pursued a compensatory remedy against the shipowner or the captain, as Article 2043 of the Civil Code may be relied on both in claims against State authorities and in those against individuals or private companies (see paragraph 70 above).

99. Unlike the applicant, the Court is not convinced that it can be inferred from the lack of authorities in the specific area of immediate removals of aliens at the border that the remedy in question was not effective. It notes that the absence of a well-established body of domestic case-law predating the application in the present case can be explained by the fact that the remedy referred to by the Government – which was neither new nor special – has never been used in this particular context (see, *mutatis mutandis*, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 100, 9 July 2015). It reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue that avenue of redress (see *Vučković and Others*, cited above, § 74, with further references, and *Duarte Agostinho and Others*, cited above, § 225). Moreover, where legal systems provide constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the

aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see *Vučković and Others*, cited above, § 84).

By applying to the appropriate court on the basis of Article 2043 of the Civil Code, the applicant would have created an opportunity for the development of domestic case-law on this subject, and this would potentially have been beneficial to anyone else in a similar or comparable situation (see *Gherghina*, cited above, § 106).

100. The Court finds that it has been shown to a sufficient extent that the compensatory remedy which the Government accused the applicant of failing to use cannot be disregarded on the grounds that it was unavailable or ineffective. Had it been used by the applicant, that remedy would have made it possible for the domestic courts not only to clarify whether the circumstances of the case amounted to a "deprivation of liberty" but also to scrutinise the lawfulness of the alleged deprivation of liberty and, if appropriate, compensate him in the event of their finding a violation of Article 5 of the Convention.

101. Given that the deprivation of liberty alleged by the applicant had already come to an end when he lodged his application, the characteristics of the compensatory remedy were sufficient to meet the requirements of the Court's case-law for the purposes of Article 35 § 1 of the Convention (see paragraph 89 above).

102. That being said, since the Government submitted that the remedies to which they referred had also been capable of securing a decision ordering the applicant's release, the Court considers it appropriate to examine their effectiveness from that perspective as well.

103. The Government argued that, under Italian law, anyone could apply to the ordinary courts for interim relief under Article 700 of the Code of Civil Procedure. That remedy empowered the courts to order urgent provisional measures for the preservation of a right that was liable to be impaired or to prevent imminent and irreparable damage (see paragraph 23 above). According to the Government, an application lodged on that basis, combined, in particular, with a compensation claim under Article 2043 of the Civil Code, could have secured interim relief entailing the applicant's release.

104. In the three decisions produced by the Government, the District Courts of Trieste, Rome and Palermo each granted urgent applications lodged under Article 700 of the Code of Civil Procedure by persons applying for international protection. They took the view that the administrative authorities had wrongly refused to process the applications for international protection and, in order to avoid any damaging and irreversible effects (*periculum in mora* – "danger in delay") on the individuals concerned (namely, the risk of removal, inability to access forms of assistance or to take up residence in Italy), ordered those authorities to register and process the

relevant international-protection applications promptly, pending the outcome of the main proceedings on the matter of international protection.

105. The Government acknowledged that there was no example to date of a case where a court hearing a case under Article 700 of the Code of Civil Procedure had ordered the claimant's release. The applicant took this to be proof of the ineffectiveness of that remedy.

106. For its part, the Court would refer back to the considerations set out above as to the lack of domestic authorities concerning the use of compensatory remedies in a particular area (see paragraph 99 above). It likewise takes the view that, if the applicant had any doubts as to the possibility of obtaining interim relief entailing his release, it was for him to dispel those doubts by applying to the domestic courts.

107. As to the applicant's argument that the urgent interim relief procedure would not have guaranteed a speedy decision given the lack of predetermined procedural time-limits (see paragraph 78 above), the Court would point out that the question whether the right to a speedy decision has been respected must be determined in the light of the circumstances of each case (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 252, 4 December 2018, with further references).

It considers that its task is not to speculate in the abstract on the question whether, had the applicant applied to the domestic courts for interim relief immediately after being placed under the captain's responsibility on board the *Splendid*, alleging a risk of imminent and irreparable damage, a decision might have been taken within a suitable timeframe to secure the applicant's release.

108. The Court observes, moreover, that the applicant was able to keep in contact with his family and his lawyer throughout the entire journey. That lawyer immediately filed an administrative complaint challenging the validity of the refusal-of-entry order issued in respect of the applicant, who was therefore able to receive effective legal assistance (contrast *Amuur*, cited above, § 45). Furthermore, at no point, whether before the Court or before the national authorities, did the applicant complain that he had encountered difficulties in receiving assistance. In these circumstances, the Court discerns no impediments to the accessibility of the remedies in question (contrast, *Rahimi v. Greece*, no. 8687/08, § 120, 5 April 2011, and *J.B. and Others v. Malta*, no. 1766/23, 22 October 2024). It further observes that under Article 669 *sexies* of the Code of Civil Procedure the relevant court may give its ruling without hearing the parties (see paragraph 23 above).

109. As already stated above, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue that avenue of redress (see *Vučković and Others*, cited above, § 74, with further references, and *Duarte Agostinho and Others*, cited above, § 225).

110. Consequently, the Court is of the opinion that the applicant failed to exhaust available and effective remedies and that he therefore did not take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, that of the Court being subsidiary to theirs (compare *Vučković and Others*, cited above, § 90; see also *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 164, 27 November 2023).

111. It considers that this conclusion applies equally to the complaint under Article 5 § 2, which the domestic courts did not have the opportunity to examine since the applicant never raised it before them.

112. The Court observes that, had the applicant complied with the requirement to exhaust domestic remedies in accordance with the applicable rules and available procedures under domestic law, he would have given the domestic courts the opportunity to settle the question whether the impugned restrictions amounted to a "deprivation of liberty" and, if so, whether they were compatible with the Convention. In addition, assuming that he had subsequently pursued his complaint before the Court, it would have had the benefit of the national courts' factual and legal findings together with their assessment (see, *mutatis mutandis*, *Duarte Agostinho and Others*, cited above, § 226).

113. Nor can the Court overlook the fact that the events in the present case unfolded in the context of border control exercised by Italy, a country which is in a front-line position in handling the flow of migrants from certain regions of Africa and the Middle East. The Court reiterates that, in accordance with an established principle of international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens (see, among other authorities, *Amuur v. France*, 25 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III, and *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 167-68, 13 February 2020). It takes the view that, in this area, it is especially important to give the national courts an opportunity to interpret domestic law and prevent or put right Convention violations through their own legal system.

114. The Court notes, lastly, that the present case is closely connected to issues that fall within the ambit of EU law and that the circumstances alleged by the applicant formed part of the process of refusing admission to national territory governed by the provisions of the Schengen Borders Code and Annex V thereto (see paragraphs 75 and 82 above).

115. In the light of the functioning of the system for policing the external borders of the Schengen Area, the return by the carrier – which is required to take the necessary measures for such return on pain of sanctions – of a third-country national who does not fulfil all the entry conditions forms an integral part of the process of refusing admission to national territory and originates in the refusal-of-entry order (see paragraphs 36-37 above). This being so, the

question arises, in particular, whether the refusal-of-entry order constituted the legal basis for the restrictions to which the applicant claimed to have been subjected while being returned, even assuming that these restrictions amounted in substance to a "deprivation of liberty". However, in the absence of proceedings before them, the Italian courts have not had the opportunity to examine, whether on the basis of arguments put forward by the parties or of the courts' own motion, any issue as to the interpretation of the provisions of the Schengen Borders Code and Annex V thereto or its compatibility with fundamental rights, while seeking, if appropriate, a preliminary ruling from the CJEU.

116. Having regard to the foregoing considerations, even assuming that Article 5 is applicable in the present case, the Government's preliminary objection for failure to exhaust domestic remedies must be upheld by the Court.

117. It follows that the applicant's complaints under Article 5 §§ 1 and 2 are inadmissible for failure to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention and must therefore be dismissed in accordance with Article 35 § 4.

B. Article 5 § 4 of the Convention

118. The applicant alleged that, during his detention, there had been no effective remedy available to him by which to complain about the alleged deprivation of his liberty. He argued that this constituted a violation of Article 5 § 4, which reads as follows:

> "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."

119. The Government disputed the applicant's complaint.

120. The Court is of the view that this complaint is based on the same facts as, and does not raise any separate issue from, those examined under Article 5 § 1 above. It follows that it, too, is inadmissible for failure to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention and must be dismissed in accordance with Article 35 § 4.

C. Article 5 § 5 of the Convention

121. The applicant complained that there was no remedy available to him under Italian law by which to obtain compensation for the alleged violations of Article 5.

He relied on Article 5 § 5 of the Convention, which provides:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

122. The Government did not submit any observations on this point.

123. The Court reiterates that paragraph 5 of Article 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of that Article (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 presupposes, therefore, that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X, and *Balta v. Turkey* (dec.), no. 51359/09, 9 December 2014).

124. As the Grand Chamber has declared inadmissible the complaints under Article 5 §§ 1, 2, and 4 of the Convention (see paragraphs 118 and 120 above), the complaint under Article 5 § 5 is incompatible *ratione materiae* with the provisions of the Convention and must be dismissed pursuant to Article 35 §§ 3 (a) and 4.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

125. Article 3 of the Convention provides:

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

126. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

127. The Government submitted that the applicant had been accommodated in a cabin measuring eleven square metres, equipped with a private bathroom and all the necessary amenities, which he had been entirely free to leave to spend time on deck, albeit under supervision, whether by day or by night. They further argued that the applicant had retained possession of all his personal belongings throughout the journey. Therefore, in their view, the applicant's time on board the *Splendid* had been spent in conditions that were compatible with Article 3 of the Convention.

128. The Government then contended before the Grand Chamber that there had been several remedies available to the applicant which had been apt to afford him appropriate redress for all the violations alleged. Reiterating the arguments they had advanced in support of their objection of failure to exhaust domestic remedies under Article 5, they submitted, in particular, that the applicant could have availed himself of the remedies provided for in

Article 700 of the Code of Civil Procedure and in Article 2043 of the Civil Code.

129. For his part, the applicant complained of the material conditions of his stay on board the *Splendid*, which he described as inhuman and degrading. He submitted that he had been confined for seven days to a cabin with a barred door that was locked from the outside, under the constant supervision of security officers, and that these conditions had not been compatible with respect for human dignity.

130. In addition, he complained under Article 13 of the Convention that there had been no domestic remedy available to him in respect of this situation.

B. The Court's assessment

131. The Court does not consider it necessary to determine whether the applicant exhausted domestic remedies. It finds that, in any event, this part of the application is manifestly ill-founded for the following reasons.

132. According to the Court's established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" and such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; *Gäfgen*, cited above, § 92; and *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015).

133. In the particular context of the detention and living conditions of potential migrants the Court has summarised its case-law and the relevant general principles in the *Khlaifia and Others* judgment (cited above, §§ 158-77). Moreover, it has applied these principles to cases concerning the confinement of aliens falling outside the scope of Article 5 of the Convention (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 188-89 and 249, 21 November 2019). It reiterates that, quite apart from the necessity of having sufficient personal space, other aspects of physical conditions of detention are relevant for the assessment of compliance with Article 3 in such cases. Such relevant aspects include access to an outdoor walking area, access to natural air and light, ventilation and compliance with basic hygiene requirements (see, for example, *Tabesh v. Greece*, no. 8256/07, §§ 38-44, 26 November 2009; *A.A. v. Greece*, no. 12186/08, §§ 57-65, 22 July 2010; *E.A. v. Greece*, no. 74308/10, §§ 50-51, 30 July 2015; *Abdi Mahamud v. Malta*, no. 56796/13, §§ 89-90, 3 May 2016; *Alimov v. Turkey*,

no. 14344/13, §§ 84-85, 6 September 2016; *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, §§ 113-14, 22 November 2016; and *Khlaifia and Others*, cited above, § 167).

134. In the present case, the Court observes, firstly, that the applicant was not particularly vulnerable, whether by reason of anything he might have been through during his journey, or by reason of his age or state of health (contrast *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 232, ECHR 2011). It also notes that it is not disputed that the cabin in which he was confined, which measured eleven square metres, was of acceptable size and cleanliness and was moreover equipped with a porthole allowing it to be aired out and affording access to natural light.

Furthermore, there is nothing to suggest that the applicant suffered from a lack of food or drinking water, or that they were deficient as to their quality.

Lastly, the applicant was not deprived of his personal belongings or his mobile phone, with which he was able to communicate with the outside world and discuss his situation with his lawyer and family without restriction (see *Ilias and Ahmed*, cited above, § 194).

135. As to outdoor access, the Court observes that it has not been proved beyond reasonable doubt that the applicant was refused any opportunity to leave the cabin, as he alleged.

While it is true that the Government did not specify the frequency and length of the periods spent outside the cabin, there are no grounds to conclude decisively that access to the outdoors and natural light were so restricted as to render the applicant's confinement incompatible with Article 3 (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 143-48, 10 January 2012).

136. Be that as it may, the Court observes that the applicant's confinement lasted seven days. The duration of the deprivation of liberty is one of the factors that must be taken into account in deciding whether the detention conditions satisfied the guarantees of Article 3 (see, among other authorities, *Muršić v. Croatia* [GC], no. 7334/13, § 103, 20 October 2016). The Court has thus found violations of Article 3 in spite of the short duration of the deprivation of liberty in cases where the physical conditions of detention were unsatisfactory in several respects, in particular owing to serious overcrowding or to the vulnerability of the detainees (see the case-law cited and described in *Khlaifia and Others*, cited above, § 196).

137. In view of the foregoing considerations and the length of the applicant's confinement, the Court finds that the general accommodation conditions on board the *Splendid*, while they may have caused the applicant to experience frustration, did not attain the minimum level of severity required for the confinement in question to engage Article 3 of the Convention.

138. It follows that the applicant's complaint under Article 3 of the Convention must be regarded as manifestly ill-founded and be dismissed pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

139. Accordingly, in the absence of an arguable complaint under Article 3, the related complaint under Article 13 of the Convention is manifestly ill-founded and must also be dismissed pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 April 2025.

Søren Prebensen	Marko Bošnjak
Deputy to the Registrar	President