

PROHIBITION OF COLLECTIVE EXPULSION IN THE LIGHT OF THE  
JUDGEMENT IN THE CASE OF KHLAIFIA AND OTHERS V. ITALY.  
COMMENTARY TO THE RULING OF THE EUROPEAN COURT OF  
HUMAN RIGHTS OF 1 SEPTEMBER 2015<sup>1</sup>

*Anna Magdalena Kosińska\**

ABSTRACT

In the judgement of 1 September in the case of Khlaifia and Others v. the Italian Republic the Court held that there had been a violation of Articles 3, 5 and 13 of the Convention and of Article 4 of the Additional Protocol No. 4. The proceedings concerned the nationals of Tunisia who arrived in Lampedusa in 2011 following the events of the Arab Spring. In the conclusion of the Court, they experienced inhuman treatment during their detention. Apart from that, Italian authorities infringed the provisions of the Convention with regard to using detention and allowed for a collective expulsion of migrants.

The judgement is the first one to directly examine the situation on the Italian island of Lampedusa, which became symbolic of tragic journeys of north African people to Fortress Europe. Both Italy and Greece have been experiencing a large influx of migrants due to their geographical location on the southern borders of the EU recently. The judgement in the case of Khlaifia is in the line with the current case-law with respect to inhuman treatment and degrading conditions of detention of migrants. Additionally, it is interesting that the Court concluded that the applicants belonged to a group requiring special treatment and described them as “vulnerable”, which is usually a term reserved for the under-aged, including

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<sup>1</sup> Judgment of the European Court of Human Rights of 1 September 2015 in the case of Khlaifia and Others v. Italy, application No. 16483/12.

\* Associate Professor, PhD, John Paul II Catholic University of Lublin, Faculty of Law, Canon Law and Administration, Institute of European Studies.

unaccompanied minors, the elderly, pregnant women, single parents, victims of abuse or people with a medical condition. However, the Court decided that taking into account the traumatic experiences of the risky journey across the Mediterranean, the applicants were in need of special treatment after they had arrived to the reception centre. The present verdict underscores the obligation of showing absolute respect for fundamental rights of irregular migrants – also in the face of the present migration crisis. The judgement has not been translated into English so far, but it seems that it is one of the most important rulings with regard to Italian policy in the area of migration.

**Keywords:** irregular migration, Lampedusa, detention of migrants, collective expulsions, Arab Spring

#### INTRODUCTORY REMARKS

In the judgement of 1 September 2015 in the case of *Khlaifia and Others v. the Italian Republic* the Court acknowledged the infringement of Articles 3, 5 and 13 of the Convention and of Article 4 of the Additional Protocol No. 4. The proceedings concerned the nationals of Tunisia who arrived in Lampedusa in 2011 on the wave of the events of the Arab Spring. In the opinion of the Court, the migrants suffered inhuman and degrading treatment during their detention. Apart from that, Italian authorities violated the rules of the Convention with regard to using detention and allowed for the collective expulsion of the migrants. The judgement is the first one directly with regard the situation on the Italian island of Lampedusa, which became symbolic of the tragic journeys of African inhabitants to “Fortress Europe”.

#### THE FACTUAL STATE OF THE CASE

The applicants in the proceedings were three nationals of Tunisia: Saber Ben Mohamed Ben Ali Khlaifia (b. 1983), Fakhreddine Ben Brahim Ben Mustapha Tabal (b. 1987) and Mohamed Ben Habib Ben Jaber Sfar (b. 1988). On 16 and 17 September 2011 the applicants left Tunisia and

via a sea route arrived on the Italian territorial waters. After their boat had been intercepted by Italian coast guards, they were transported to the island of Lampedusa. Once there, they were placed in a reception centre, where they were given first aid. The applicants stayed in the reception centre for adults. From their evidence it transpired that the conditions in the reception centre were very bad – in the toilets and bathrooms there were no doors, meals were served outside the building and water was rationed. Apart from that, due to the overcrowding of the centre, migrants had to sleep on the floor<sup>2</sup>.

On 20 September 2011 unrest broke out in the centre, as a result of which migrants were relocated to a sports centre, where they were to spend the night. However, they managed to escape and in the morning they joined a demonstration of 1800 migrants on the streets of the main city of the island. The protesters were detained by the police and in the morning of 22 September they were transported by plane to Palermo.

In the harbour of Palermo the migrants were placed on board of ships “Vincent” (around 190 people, including the first applicant) and “Audacia” (around 150 people, including the other two applicants). According to the applicants, all migrants were placed in a restaurant room, without access to passenger cabins. They had to sleep on the floor and wait long hours for the possibility to use a toilet. They were allowed to go out to breathe fresh air only two times a day for a few minutes. They felt offended by police officers, who, in their opinion, abused and supervised them all the time<sup>3</sup>. The applicants were detained on board of ships from 27 to 29 September. Next, they were transferred to Palermo airport in order to return them to Tunisia. Before they boarded the plane they were met by a Tunisian consul, who only noted their marital status, in accordance with the agreement between Italy and Tunisia of April 2011<sup>4</sup>. The applicants were returned to Tunisia on the same day.

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<sup>2</sup> Paragraph 7 of the *Khlaifia* judgement.

<sup>3</sup> Paragraph 11 of the *Khlaifia* judgement.

<sup>4</sup> On the details of signing the agreement see the information from the Reuters of 2001: <http://www.reuters.com/article/us-tunisia-italy-migrants-idUSTRE71E2Z720110215> [accessed: 20.12.2015].

- In a complaint lodged on 9 March 2012, the applicants accused the Italian Republic of violating:
- Article 3 of the Convention prohibiting inhuman treatment with regard to the conditions the applicants received during their detention both in the reception centre in Lampedusa and on board the ships in Palermo;<sup>5</sup>
- Article 5 § 1 (the right to liberty and personal security), Article 5 § 2 (the right to be promptly informed of the charges and the reasons for detention), Article 5 § 4 (the right to challenge the legality of detention before a court) of the Convention with regard to the detention the applicants had been subjected to;
- Article 13 of the Convention with regard to the lack of access to national legal means for lodging a complaint about the infringements of their rights they have experienced;
- Article 4 of Protocol No. 4 to the Convention with regard to the prohibition of collective expulsions of aliens.

#### LEGAL ASSESSMENT BY THE COURT

**Before examining any potential infringements of the articles of the Convention, the Court concentrated on the assessment of the situation in Lampedusa at the time when the applicants arrived there.**

Referring to the report prepared by the special subcommittee of the Council of Europe Parliamentary Assembly<sup>6</sup>, the formation of the Court observed that due to its geographical location, Lampedusa had experienced an increased influx of migrants by sea already since 2005. The largest number of migrants arrived in this way on the island in the year

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<sup>5</sup> European Convention for the Protection of the Human Rights and Fundamental Freedoms of 4 November 1950, Journal of Laws of 199,3 No. 61, item 284 as amended).

<sup>6</sup> Report on the Visit to Lampedusa, 23-24 May 2011, PACE Committee on Migration, Refugees and Population. Available on the website: [http://assembly.coe.int/CommitteeDocs/2011/amahlarg03\\_REV2\\_2011.pdf](http://assembly.coe.int/CommitteeDocs/2011/amahlarg03_REV2_2011.pdf) [accessed: 23.12.2015].

2008 – totalling 31 252 third-country nationals<sup>7</sup>. Following the agreement between Italy and Libya, the numbers of migrants arriving in Lampedusa fell sharply – in 2009 totalling 2947 migrants and in 2010 only 459 persons. Despite considerable criticism of the cooperation between the Italian Republic and Gaddafi’s regime, the international organizations active in Lampedusa withdrew their activities and the reception centres were closed. In 2011, as a result of the uprisings in Tunisia and Libya, the number of people escaping North Africa increased significantly. According to the estimates, until 21 September 2011 over 55 000 people arrived in the island of Lampedusa over the course of over 9 months (approximately half of them arrived from Libya, the other half from Tunisia). The authority responsible for managing migrations in Lampedusa is the Prefecture of the province in Agrigento. Apart from that, representatives of the International Organization for Migration, United Nations High Commissioner for Refugees, The Red Cross, Order of Malta and NGO “Save the Children” were present on the island, helping in the centres through translators and cultural mediators. At the time when the applicants arrived on the island, there were two reception centres – the main one in Contrada Imbriacola (where the applicants arrived) and la Base Loran. Following their monitoring of the conditions in the Centre, the non-governmental organizations voiced concerns regarding the sanitary conditions, as well as separating the detained Tunisians from other people, as a result of which they were deprived of, among others, direct access to medical care.

According to the PACE report, since the beginning of the Arab Spring, Italian authorities treated Tunisian migrants in a different way. Ever since the first Tunisians arrived in Lampedusa in February 2011, they have been primarily viewed as economic migrants. Because of that Italian authorities decided to grant them a temporary residence permit for the period of 6 months pursuant to the Decree-Law of 5 April 2011<sup>8</sup>. However, due to political tensions between Italy and France, where migrants wanted to go, Italy have signed an agreement with Tunisia, which facilitated simplified expulsions of its nationals from the territory of Italy. The

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<sup>7</sup> Paragraph 24 of the *Khlaifia* judgement, subsection 9 of the cited report.

<sup>8</sup> 25 000 Tunisians had arrived to Italy until April 2001. In the end, only 12 000 such permissions were granted. Paragraph 52 of the cited report.

number of removals completed per day has never been publicized, however, it is estimated that there were around 30-60 people returned daily.

In the report the authors have emphasized the negative consequences of the influx of irregular migrants for the inhabitants of Lampedusa. In 2010 the tourist sector experienced an increase of visitors by 25%, whereas in 2011 tourists cancelled all reservations. The local community also paid the costs of utilizing the wreckages of boats, whose presence on the waters could influence the quality of the water (at the time of the commission's visit there were 270 wreckages there).

The situation in Lampedusa at the time of the applicants' detention there attracted the attention of Amnesty International which resulted in the report "Amnesty International findings and recommendations to the Italian authorities following the research visit to Lampedusa and Mineo."<sup>9</sup> In the report the organization accused Italian authorities responsible for managing migrations of passivity in exercising the obligation to inform migrants about the possibility of using the asylum procedure. Moreover, the authors paid attention to the substandard conditions in the reception centre Contrado Imbriacola (also because of its overcrowding, by over two times), which should be of only transit character and migrants should leave it immediately after identification.

Referring directly to the allegations of the applicants, the Court first examined the allegation of the infringement of Article 5 of the Convention in its paragraphs 1, 2 and 4.

Finding an infringement of Article 5 § 1 of the Convention, the Court stressed that it constitutes a fundamental law protecting an individual from arbitrary activities of the state and providing freedom and security. Yet the applicants did not have a possibility to leave the reception centre or the ships in Palermo. Despite the fact that the law allows for implementing national measures limiting the freedom of foreign nationals in order to control immigration, each decision on deprivation of freedom should be grounded in the national law in such a way, so as to be in line with the fun-

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<sup>9</sup> Amnesty International Briefing Paper. Italy: Amnesty International findings and recommendations to the Italian authorities following the research visit to Lampedusa and Mineo, 21 April 2011. Available on the website: <http://www.amnestyusa.org/sites/default/files/eur300072011en.pdf> [accessed: 23.12.2015].

damental principle of legal certainty. **The Court rejected the argument of the Italian government that depriving the applicants of freedom had legal grounds in the bilateral agreement between Italy and Tunisia as its content had never been published and had been in no way available to the applicants**<sup>10</sup>. Thus, the deprivation of liberty experienced by the applicants was in breach of Article 5 § 1 of the Convention.

As far as the infringement of Article 5 § 2 of the Convention is concerned, i.e. the right to be informed of the reasons for detention, the Court pointed out that the reasons for the applicants' detention had not been listed in any document presented to the applicants. The only decisions which were presented to the applicants, the so-called *decreti di respingimento* (return decisions) included limited perfunctory information and were presented to the applicants as late as 27 and 29 September, whereas the applicants had been detained on 17 and 18 September 2011 respectively. Thus, the formation of the Court concluded unanimously that there had been a violation of Article 5 § 2 of the Convention.

Due to the fact that the applicants had not been appropriately informed of the reasons for their detention, the Court decided that they did not have any possibility of challenging the decision of their detention and applying for a judicial review of the legality of their detention. Thus, the formation of the Court concluded unanimously that there had been a violation of Article 5 § 4 of the Convention.

The applicants also alleged the infringement of Article 3 of the Convention, regarding inhuman treatment they experienced during their detention both in the reception centre and on board the ships in Palermo.

On examining the potential infringement, the Court took into account the specific migration situation in Italy in 2011. In the wake of the Arab Spring, over 55 000 people arrived in Lampedusa by sea<sup>11</sup>. This exceptional situation posed significant problems to the authorities of the region in managing the immigration influx from the organizational and logistical perspective. However, even such an unprecedented situation, in the opinion of the Court, does not release the national authorities from the duty of providing every detained person with conditions which ensure

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<sup>10</sup> Paragraph 71 of the *Khlaifia* judgement.

<sup>11</sup> Paragraph 124 of the *Khlaifia* judgement.

respect for the inherent dignity of the person<sup>12</sup>. The Court held that the sanitary conditions, overcrowding of the centre and no possibility of contacting the outside world during the applicants' detention in the reception centre had been a violation of Article 3 of the Convention. Moreover, a significant factor in determining that an infringement had taken place was the fact that the migrants had completed a difficult sea journey and they should have been treated as "vulnerable persons."<sup>13</sup> However, in the judgement the Court held that there had been no violation of Article 3 of the Convention in respect of the conditions of detention on board the ships "Vincent" and "Audacia"s moored in Palermo harbour<sup>14</sup>.

Additionally, the applicants raised the issue that they had been subject to a collective expulsion, which had been an infringement of Article 4 of Additional Protocol No. 4. The Court observed that despite the fact that the applicants had received their *refoulement* decisions (decreti di respingimento), none of them referred to their personal situation and they had been worded in the identical way<sup>15</sup>. The Court stressed that there is no possibility of claiming a collective expulsion had occurred in a situation when numerous migrants had received similar *refoulement* decisions, but when each of them had been personally notified of the reasons for their removal. Apart from that, referring to the ruling in the case of *Hirsi Jamaa*, the formation of the Court reminded that it cannot be claimed that Article 4 was violated in a situation when the lack of a personalized *refoulement* decision was a consequence of an inappropriate behaviour of the applicant himself<sup>16</sup>.

In the opinion of the Court, although the applicants had undergone an identification procedure upon arriving in Lampedusa (unlike the migrants in the case of *Hirsi Jamaa*), the latter was insufficient to preclude the existence of collective expulsion<sup>17</sup>. Most importantly, the *refoulement* decisions did not contain any reference to the personal situation of the

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<sup>12</sup> Paragraph 128 of the *Khlaifia* judgement.

<sup>13</sup> Paragraph 135 of the *Khlaifia* judgement.

<sup>14</sup> Paragraph 144 of the *Khlaifia* judgement.

<sup>15</sup> Paragraph 153 of the *Khlaifia* judgement.

<sup>16</sup> See paragraph 184 of the *Hirsi Jamaa* judgement. Judgement of the European Court of Human Rights in the case of *Hirsi Jamaa and Others v. Italy*, application No. 27765/09.

<sup>17</sup> Paragraph 156 of the *Khlaifia* judgement.



applicants. Neither did the government present documents to prove that the applicants' personal situation had been examined nor had they been interviewed individually before the issuing of the removal decision. Apart from that, the bilateral agreement between Italy and Tunisia was never published – however, it provided for the repatriation of clandestine Tunisian migrants under simplified procedures based on the straightforward identification by the Tunisian consular authorities of the persons concerned<sup>18</sup>. On the basis of the above circumstances, the Court concluded that the removal procedure precluded the existence of sufficient guarantees of personalized treatment of Tunisian nationals. **By a majority of votes, the Court decided that the applicants had been victims of collective expulsion and concluded that there had been a violation of Article 4 of Protocol No. 4**<sup>19</sup>.

In the judgement the Court held that the applicants had been victims of a violation of Article 13 of the Convention, as they had not benefited from a remedy to complain about the conditions of their detention in the reception centre – the national measures provided only for challenging the legality of their repatriation to Tunisia. Moreover, the abovementioned legal measure did not have a suspensive effect and thus could not prevent the applicants from their removal to Tunisia.

#### THE SIGNIFICANCE OF THE DISCUSSED JUDGEMENT

The present ruling is of significant importance in the area of protecting the rights of irregular migrants from both social and legal perspectives.

#### MORAL AND SOCIAL SIGNIFICANCE OF THE RULING

Due to its geographical location (Italy's farthest-flung territory and only 113 km away from the coasts of Tunisia) and the sheer number of

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<sup>18</sup> Ibidem, the last sentence.

<sup>19</sup> Paragraph 158 of the *Khlaifia* judgement.

migrants who decided to get to Europe via the island, Lampedusa has become a symbolic gate to Europe for the inhabitants of North Africa. Unfortunately, due to the difficult conditions of sea journeys and their illegal character, numerous migrants drowned at the coast of the island. The first such serious incident took place on 4 November 2012 near the island<sup>20</sup>. At that time the island authorities called for solidarity and help from other Member States<sup>21</sup>, as the region experienced an increased influx of migrants. Another tragedy in the region of Lampedusa occurred on the night of 3 to 4 October 2013 – that was when more than 300 people drowned or otherwise died<sup>22</sup>. In response to the tragedy, Migreurop Network, together with other organizations drafted a joined declaration addressed to the Council of the European Union in which they held that Europe is in the state of war with an invisible enemy – migrants who die on the external borders of the EU. From the data included in the declaration it transpired that since the beginning of the 1990s, 20 000 people died crossing the Mediterranean Sea, trying to get to Europe<sup>23</sup>.

However, it was not until the last accident at the coast of Lampedusa of 19 April 2015, which claimed the lives of more than 700 migrants<sup>24</sup> that forced the EU authorities to implement concrete measures in the form of the so-called “Ten Action Plan,”<sup>25</sup> next, a political document “European Agenda on Migration,”<sup>26</sup> and finally instruments for resettlement and

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<sup>20</sup> Information available on the website: Platform for International Cooperation on Undocumented Migrants: <http://picum.org/en/news/bulletins/37578/> [accessed: 20.12.2015].

<sup>21</sup> L'appello del sindaco di Lampedusa all'Unione Europea, <http://www.radio3.rai.it/dl/radio3/programmi/puntata/ContentItem-cb0328f7-f715-4c84-8822-ca06b5de47d5.html> [accessed: 20.12.2015].

<sup>22</sup> <http://picum.org/en/news/blog/41968/> [accessed: 20.12.2015].

<sup>23</sup> <http://www.statewatch.org/news/2013/oct/eu-migreurop-declaration.pdf> [accessed: 20.12.2015]. Ibidem, p. 3.

<sup>24</sup> <http://www.theguardian.com/world/2015/apr/19/700-migrants-feared-dead-mediterranean-shipwreck-worst-yet> [accessed: 20.12.2015].

<sup>25</sup> [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2015/20150420\\_01\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2015/20150420_01_en.htm) [accessed: 20 Dec. 2015].

<sup>26</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. European Agenda on Migration. Brussels 13.05.2015, COM(2015) 240 final.* Available on the website: <http://ec.europa.eu>

relocation operations. The EU also established the so-called hot spots<sup>27</sup> in Greece and Italy, responsible for the identification of migrants arriving in great numbers at the external borders of the EU.

Despite the fact that the problem of Lampedusa had been known for a long time and that it had been raised both by civic organizations<sup>28</sup> and regional authorities, without doubt the events of April 2015, so tragic in their scale, accelerated the implementation of common mechanism by Member States.

Thus, the significance of the judgment under discussion can hardly be exaggerated. It may be also seen as a kind of evaluation of the events which took place on the island in 2011 and initiated an exodus of third-country nationals to the EU following the Arab Spring. In the light of increasing hostile attitudes towards migrants it is worth remembering that Member States are obliged under all circumstances to respect the provisions of the Convention and they are not relieved of this obligation even in the face of an extreme migration crisis.

#### THE PROBLEM OF DETAINING MIGRANTS

Both Italy and Greece have been experiencing a considerable influx of migrants due to their geographical location on the southern borders of the EU<sup>29</sup>, remaining to a large extent as transit countries for travelling further North. The problem of the conditions in the reception centres for

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*eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\_on\_the\_european\_agenda\_on\_migration\_en.pdf* [accessed: 20.12.2015].

<sup>27</sup> See: European Council Meeting 25 and 26 th July 2015, Conclusions, Brussels 26 June 2015. Available on the website: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/26-euco-conclusions/> [accessed: 20.12.2015]. See also:

<sup>28</sup> <http://www.museodellemigrazioni.com/news.html> [accessed: 20 Dec. 2015].

<sup>29</sup> In this context it is worth analyzing the data published by UNHCR: *Refugees/Migrants Emergency Response – Mediterranean* of December 2015. According to the data, more than 150 000 migrants arrived via a sea route to Italy in 2015. A detailed analysis is available on the website: <http://data.unhcr.org/mediterranean/country.php?id=105> [accessed: 23 Dec. 2015].

foreigners in Italy and Greece has been the subject of ECtHR's rulings, in the cases of *M.S.S.*<sup>30</sup> or *Tarakhel*<sup>31</sup>.

In the ruling under discussion, the Court stressed the conditions in which migrants should stay – especially the problem of overcrowded reception centres. In a similar vein, the ECtHR voiced their concerns in the case of *Dougoz v. Greece* concluding that a violation of Article 3 of the Convention had occurred due to the lack of places to sleep in the quarters assigned by the police to foreigners<sup>32</sup>. Similarly, the Court concluded that there were degrading conditions of detention in the cases of *S.D v. Greece* (the applicant did not have any possibility to contact the outside)<sup>33</sup>, *A.A v. Greece* (degrading conditions in the centre in Samos – overcrowding and lack of place to sleep)<sup>34</sup>, *A.F v. Greece* (overcrowding of the centre in Feres)<sup>35</sup>. Thus, the judgement in the case of *Khlaifia* is consistent with the current line of precedent. **It is however more interesting in as much as the Court decided that the applicants belonged to a group requiring special treatment and described them as “vulnerable.”** It is worth emphasizing that the term “vulnerable person” is usually reserved for the under-aged, including unaccompanied minors, the elderly, pregnant women, single parents, victims of abuse or people with a medical condition<sup>36</sup>. **However, taking into account the traumatic experiences of**

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<sup>30</sup> Judgment of the European Court of Human Rights of 21 January 2011 in the case of *M.S.S. v. Belgium and Greece*, application No. 30696/09.

<sup>31</sup> Judgment of the European Court of Human Rights of 4 November 2014 in the case of *Tarakhel v. Switzerland*, application No. 29217/12.

<sup>32</sup> Judgment of the European Court of Human Rights of 6 June 2001 in the case of *Dougoz v. Greece*, application No. 40907/98.

<sup>33</sup> In a similar way the Court decided in the case of *R.U. v. Greece*. Judgment of the European Court of Human Rights of 7 June 2001 in the case of *R.U. v. Greece*, application No. 2237/08.

<sup>34</sup> Judgment of the European Court of Human Rights of 22 June 2001 in the case of *A.A. v. Greece*, application No. 12186/08.

<sup>35</sup> Judgment of the European Court of Human Rights of 6 June 2001 in the case of *A.F. v. Greece*, application No. 53709/11.

<sup>36</sup> Article 3 § 9 of the Return Directive. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. OJ L 348 of 2008, p. 98.

**the risky crossing of the Mediterranean Sea, the Court concluded that the applicants required special treatment after they found themselves in the reception centre<sup>37</sup>.**

#### THE PROBLEM OF COLLECTIVE EXPULSIONS

In the analysed judgement the Court held that there had been a violation of Article 4 of Protocol No. 4, on the prohibition of collective expulsions of aliens<sup>38</sup>.

It is noteworthy that until the present day the Court has found a violation of the abovementioned article only in four cases, including the discussed judgement. Out of these, three cases were brought against Italy – Hirsi Jamaa<sup>39</sup> with regard to the return to Libya, Sharifi with regard to the indiscriminate expulsion of foreign nationals from Italy to Greece as the country of their first entry to the EU and the discussed verdict<sup>40</sup>. In the discussed ruling the Court specified what a removal decision should look

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<sup>37</sup> It is worth comparing this situation with the judgements concerning the proceedings within the Dublin regulation and transfers of foreigners to Italy as a country responsible for examining asylum applications. The Court stopped a removal only in the case of the Tarakhel family, due to the lack of guarantees on the side of Italy of appropriate treatment for the family with small children. With regard to adult persons the Court believed that there would be no instances of inhuman or degrading treatment. See the judgment of the European Court of Human Rights of 18 April 2013 in the case of Mohammed Hussein v. The Netherlands and the Italian Republic, application No. 27725/10, the judgment of the European Court of Human Rights of 13 January 2015 in the case of A.M.E. v. The Netherlands, application No. 51428/10, the judgment of the European Court of Human Rights of 30 June 2015 in the case of A.S. v. Switzerland, application No. 39350/13.

<sup>38</sup> See commentary to the following article: *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Tom II. Komentarz do artykułów 19-59 oraz Protokołów Dodatkowych* [The European Convention for the Protection of the Human Rights and Fundamental Freedoms. Volume II. Commentary to Articles 19-59 and Additional Protocols], ed. L. Garlicki, Warszawa Beck 2011, p. 608.

<sup>39</sup> Judgement in the case of Hirsi Jamaa. The Court decided that the return of the Somalis and Eritreans to Libya after they had been intercepted on sea constituted an infringement of the Convention.

<sup>40</sup> Judgment of the European Court of Human Rights of 21 October 2014 in the case of Sharifi and Others v. Italy and Greece, application No. 16643/09.

like, stressing primarily the requirement for addressing each particular case individually and reviewing each foreigner's situation from a personal perspective.

At this stage it is worth referring to EU law, whose provisions Italy are obliged to implement and abide by due to their EU membership. The rules for issuing removal decisions are regulated in the Return Directive, i.e. Directive 2008/115 (Articles 12 and 13). The interpretation of the right to a hearing in the removal procedure was done by the Court of Justice in the cases of *Mukarubega* and *Boudjlida*<sup>41</sup>.

At the same time, from the discussed judgement it clearly transpires that the interrelation between legal systems and fundamental rights guaranteed on the one hand by the Convention (and existing case-law) and on the other by the EU Charter of Fundamental Rights is impossible to avoid. By infringing the provisions of the Convention with regard to the removal procedures, Italy has violated, at the same time, EU standards regarding a humanitarian and respectful removal of a foreign national to his country of origin.

In recent years the Italian Republic has experienced unparalleled problems with regard to receiving a large number of foreigners, who choose the Central Mediterranean route as a way to Europe<sup>42</sup>. The specific character of Italian problems and the accompanying infringements of migrants' rights result from the fact that foreigners treat Italy mostly as a transit country. Thus, it is a duty of Italian administration to identify migrants and accommodate them in reception centres, as well as often receive them again within the Dublin Regulation in a situation when they are treated as country responsible for processing refugee applications (the country of first entry). Italy is supported by the instruments of EU migration policy – among others by the presence of the so-called asylum support teams

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<sup>41</sup> Judgement of the CJEU of 5 November 2014 in the case of *Sophie Mukarubega v. Préfet de Police* (Case C-166/13), Judgement of the CJEU of 11 December 2014 in the case of *Khaled Boudjlida v Préfet des Pyrénées-Atlantiques* (C-249/13).

<sup>42</sup> See: The Report by the European Agency for Fundamental Rights – *Fundamental rights at Europe's southern sea borders*, FRA 2013. The Report is available on the website: [www.fra.europa.eu](http://www.fra.europa.eu) [accessed: 20.12.2015].

operating at the European Asylum Support Office<sup>43</sup> or the establishing of hot spots, that is points of identifying foreigners with regard to the migration crisis of 2015<sup>44</sup>.

The analyzed ruling stresses the need for absolute respect for the fundamental rights of irregular migrants – also in the time of a migration crisis. At the same time, the verdict points out to Lampedusa as one of the special places, next to Ceuta, Melilli or Calais on the map of Europe, which has become a destination point for thousands of migrants. It remains a matter of hope that Lampedusa will become a recognizable place in the social consciousness and among the circles of policy makers as a symbol of responsibility for the migrants and providing them with respectful reception, as well as humanitarian return to their country of origin.

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<sup>43</sup> EASO special support plan to Italy, Malta 4<sup>th</sup> June 2013. The document is available on the website: <https://easo.europa.eu/wp-content/uploads/EASO-SPP-Italy-ELECTR-SIGNED.pdf> [accessed: 20.12.2015].

<sup>44</sup> *The Hotspot approach to managing exceptional migratory flows*, Factsheet prepared by Migration and Home Affairs European Commisios, available on the website: [http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/publications/index\\_en.htm#0801262490bfb7f/c\\_](http://ec.europa.eu/dgs/home-affairs/e-library/multimedia/publications/index_en.htm#0801262490bfb7f/c_) [accessed: 20.12.2015].

