BEFORE THE GRAND CHAMBER

EUROPEAN COURT ON HUMAN RIGHTS

Khlaifia and Others v. Italy

Application No 16483/12

WRITTEN SUBMISSIONS ON BEHALF OF THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE) AND THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)

INTERVENORS

pursuant to the Deputy Grand Chamber Registrar's notification dated 3 May 2016 that the President of the Court had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights

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17 May 2016

Section I: Article 4 Protocol 4 ECHR and Individual Assessment

1. The prohibition of collective expulsion is a matter of both substantive and procedural principles that applies to all those who do not have a right to enter and reside in a state by virtue of their citizenship of that state. Paragraph 34 of the *Travaux Préparatoires*[1] **(Annex 1)** to Article 4 Protocol 4 ECHR states in connection with the prohibition:
"*the term aliens shall here be taken to mean all those who have no actual right to nationality in a state, whether they are merely passing through a country, or reside or are domiciled in it, whether they are refugees or entered the country of their own initiative or whether they are stateless or possess another nationality* (…)" (emphasis added).

2. In addition, the International Law Commission's draft articles on the expulsion of aliens[2] **(Annex 2)** clarify that the prohibition of collective expulsion applies to aliens who are *unlawfully* present in the territory as well as those who are lawfully present: *"the draft articles apply in general to the expulsion of all aliens present in the territory of the expelling State, with* ***no distinction*** *between the various categories of persons involved, for example, aliens lawfully present in the territory of the expelling State, aliens unlawfully present, displaced persons, asylum seekers, persons granted asylum and stateless persons"* (emphasis added).

3. Article 9 (3) of the draft articles (prohibition of collective expulsion) provides: *"A State may expel concomitantly the members of a group of aliens,* ***provided that the expulsion takes place after and on the basis of an assessment of the particular case of each individual member of the group in accordance with the present draft articles."*** (emphasis added).

   The Court will be aware that the prohibition of collective expulsion also features in other international instruments and for the sake of brevity the intervenors have annexed to these submissions an extract from the Migration and International Human Rights Law Practitioners' Guide of the ICJ **(Annex 3)** which covers this matter comprehensively.

4. We also draw the Courts attention to **The International Covenant on Civil and Political Rights (ICCPR) (Annex 4)** to which all Member States of the Council of Europe are parties and which is thus relevant to the application of Article 53 ECHR. Article 13 of the ICCPR does not expressly prohibit collective expulsion. However, the UNHRC in its General Comment No. 15,[3] states:
"*Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out 'in pursuance of a decision reached in accordance with law', its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when 'compelling reasons of national security' so require. Discrimination may not be made between different categories of aliens in the application of article 13*."

5. The prohibition is thus not predicated on a *personal* risk of exposure to prohibited ill treatment which may be a consequence of the expulsion for a particular individual or group of individuals, or on the risk of *personal* violations of other Convention rights (such as Article 8 ECHR) specific to any of the individuals or groups of individuals concerned. It is predicated on the principle that if the authorities fail to offer and give individualised consideration to each alien being expelled (or rejected) there is a grave risk that the expulsions may, in themselves, blindly exclude people who have a valid and legal claim to enter or remain, or to be protected from return, and that they will not

[1] Travaux préparatoires to the Convention, pp. 534-541.
[2] Draft articles on the expulsion of aliens, with commentaries, 2014, Commentary on Article 1 para. 1 – Adopted by the International Law Commission at its sixty-sixth session, in 2014, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/69/10).
[3] ICCPR General Comment No. 15: The Position of Aliens under the Covenant – Adopted at the Twenty-seventh session of the Human Rights Committee, on 11 April 1986, para. 10. **(Annex 5)**

receive the protection they may be entitled to. The wrong that the provision expressly prohibits is the *collectivity* of the measures adopted and the lack of individualised consideration of their personal situation, and not the consequences for any other rights which are thereby infringed or violated. The prohibition also reduces the risk of discriminatory treatment contrary to Article 14 ECHR when exclusion is directed at a particular group. In the *East African Asians* case,[4] the Commission was required to consider the UK legislation which prohibited the access to the UK of East African British passport holders on the simple basis of their ethnic/ national origin. It found that this discrimination amounted to a violation of Article 3 ECHR.[5] Only by individualised consideration of each person's situation can rights and needs be established. The question under Article 4 Protocol 4 is not therefore what the *consequences* of the expulsion are for any given individual or groups of individuals, but whether the necessary laws and procedures were in place - and observed - to ensure that their individual rights and needs were taken into account. Collective expulsion also normally deny the victims access to individualised remedies as provided for in Article 13 ECHR,[6] both in relation to Article 4 Protocol 4 itself and in relation to other Convention rights. Individual access to such remedies might result in a decision which would negate the validity of their individual expulsion.[7]

6. Protection from collective expulsion is thus *quite distinct* from (a) the general procedural rights of individual aliens who are lawfully resident, which are derived from their lawful residence, (Article 1 Protocol 7 ECHR) or (b) the procedural and substantive rights of those whose expulsion or rejection would amount to *refoulement* which are derived from the risks to which they would be subjected without the necessary "anxious scrutiny" being applied to their claims for protection, (Articles 2 or 3 ECHR), or (c) the procedural and substantive rights of those whose exclusion or return would engage Article 4 ECHR or (d) the procedural and substantive rights of those whose expulsion or exclusion from the territory would violate Article 8 ECHR. That said these risks to the other Convention protected rights are also clearly relevant to the rationale underlying Article 4 Protocol 4.

7. The intervenors are fully aware of the logistical difficulties that Contracting Parties to the ECHR face in the context of the current migration crisis, and the logistical and financial problems that significant mixed migration flows can pose, particularly for the States on the outer edges of Europe. However, they invite the Court to recall some of its earlier clear pronouncements in that context.

8. In *Georgia v. Russia (No. 1)*, the Grand Chamber noted that *"problems with managing migratory flows cannot justify a State's having recourse to practices which are not compatible with its obligations under the Convention"* (2014, para. 177). It took the same approach in *Hirsi Jamaa v. Italy* (2012, para. 179) and in *Sharifi v. Italy & Greece* (2014, para. 224).

9. The Court has invited the intervenors in its letter of 3 May 2016 to comment on the situation of migrants who did not introduce a request for asylum or for the recognition of refugee status and did not allege before the Court that they were facing an actual risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The intervenors will not address the facts or merits of the individual applicants' claims in the present case. They do however wish to address the point raised *in abstracto* by Judges Sajo and Vucinic on the approach to be taken to the arrival of migrants. The dissenting judges considered that the approach taken by the majority was not consistent with the historical basis of the Article 4 Protocol 4 prohibition. However the Grand Chamber of this Court has previously rejected that argument in the case of *Hirsi* and later again in *Sharifi*. The dissenters also considered (para. 17) that the "fact" that migrants were "not eligible for leave to enter" (*sic)* a country rendered unnecessary any further examination of their situation besides establishing their identity, nationality and "the existence of a safe country of return". The intervenors note with respect that this approach also runs contrary to the Court's established case law and in particular to its pronouncements in *Hirsi* and *Sharifi* cited above.

10. The Court will recall that in the case of *MA v. Cyprus* (2013) – also cited by judges Sajo and Vucicnic – there was no violation of Article 4 Protocol 4 precisely because each of the individuals had been the subject of an asylum procedure

[4] East African Asians v. United Kingdom, (3 E.H.R.R. 76), 15 December 1973
[5] Article 3 of the ECHR: prohibition of torture or inhuman or degrading treatment or punishment. Article 4 Protocol 4 was not at issue in the East African Asians case as it was brought against the UK. The UK, Greece, Switzerland and Turkey are not parties to the Protocol.
[6] Khlaifia and Others v. Italy, (No. 16483/12), Chamber judgment, paras. 166-173.
[7] See, Ahmadou Sadio Diallo (Rep Guinea v DRC) 30 Nov **2010 (Annex 6).**

in the course of which their individual claims had been examined but rejected. **Whether or not a state can generically be considered a safe country is not conclusive of the assumption that it is safe for the return of everyone. This is *inter alia* why an individual assessment must be made *before* return.** The fact that applicants have not subsequently alleged that their return violated Articles 2 or 3 ECHR is immaterial. The intervenors invite the Court to consider (*by analogy*) a situation where a violation of the procedural safeguards of Article 6 ECHR, and in particular of the presumption of innocence (Art. 6(2)) has occurred, or where the procedural safeguards in Article 5 ECHR have not been observed. It is no less a violation irrespective of whether the accused are subsequently found guilty or not guilty.

11. The general situation in relation to all those arriving on Lampedusa who might have wished to claim international protection is clearly set out in the Chamber judgment, at paras. 49 and 50 from which it is clear that UNHCR was of the view that the system did not, *generally*, include even a very minimal interview during which migrants were either invited to or given the opportunity to put forward any reasons why they should not be summarily returned.[8]
*"However, when large numbers of people arrive at the same time (which is increasingly the case) and transfers are carried out very quickly, the new arrivals are sometimes not informed about their right to request asylum. They receive this information at the centre to which they are transferred. This shortcoming in the provision of information about access to international protection may present a problem insofar as **people of some nationalities are liable to be sent straight back to their countries of origin.** As a rule, however, new arrivals are not in a position to be provided immediately with detailed information about access to the asylum procedure. They have other priorities: they are exhausted and disoriented and want to wash, eat and sleep".* (emphasis added).

12. Furthermore, the Court noted, at para. 36 of the *Hirsi* judgment, the CPT's view that:
"*The persons who were pushed back to Libya in the operations carried out from May to July 2009 were denied the right to obtain an individual assessment of their case and effective access to the refugee-protection system. In that connection, the CPT observed that persons surviving a sea voyage were particularly vulnerable and often not in a condition in which they should be expected to declare immediately their wish to apply for asylum."*

12. In the *Hirsi* case the applicants were vulnerable persons belonging to a group, many – but not all – of whom were entitled to international protection. Being returned to a country which would not offer them protection. The dissenting judges in the present case assumed that the migrants had a "safe country of return". **The intervenors submit that such an assumption can only be made after all those liable to be adversely affected by it have had the opportunity to submit reasons why they should not be returned to that country, or elsewhere.**

13. The intervenors note briefly here of the requirement of EU law of the "right to be heard" recently reiterated in the cases of *Mukarubega*[9] **(Annex 7)** and *Boudjilida*[10] **(Annex 8)**, where the CJEU repeated that: *"The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely."*[11] Collective expulsion without an individual assessment of the particular situation of an individual does not provide effectively for the right to be heard required as a matter of EU law.

Section II: Relevant EU Law

14. In this section the intervenors address the issues which arise under Article 53 ECHR in the context of, the EU Returns Directive, the Schengen Borders Code, and the EU Common European Asylum System (CEAS) seen through the perspective of the EU Charter of Fundamental Rights**.**

15. It should first be noted that in any situation involving the application of EU law, the Charter of Fundamental Rights (CFR) of the EU **(Annex 10)** has equivalent status to the Treaties and thus has a higher normative value than any

[8] See, IM v France, (No. 9152/09), where the minimal duration (30 minutes) of an asylum seeker's interview was found to contravene the Convention
[9] Case C-166/13, Sophie Mukarubega v. Préfet de police and Préfet de la Seine-Saint-Denis [2014] ECLI:EU:C:2014:2336.
[10] Case C-249/13, Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques [2014] ECLI:EU:C:2014:2431.
[11] Case C-277/11, M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General [2012] ECLI:EU:C:2012:744, para 87. **(Annex 9)**

secondary legislation (Article 6 (1) TFEU) **(Annex 11)**. Its provisions must be complied with by States when implementing or carrying out EU law. *The Article 19(1) of the CFR expressly prohibits collective expulsion.*

The EU Returns Directive[12] **(Annex 12)**

16. The Returns Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third country nationals ("TCNs"), insofar as is relevant to the present case, the Directive's preamble (Recital 6) states:
"*Member States should ensure that the ending of illegal stay of third country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case by case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay*".

17. Article 2(2)(a) of the Directive states that Member States "*may decide not to apply the Directive*" to TCNs who are subject to a refusal of entry in accordance with the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land sea or air of the external border of a MS and who have not subsequently obtained an authorisation or a right to stay in the MS.

18. Article 4 of the Directive allows for more, but not for less, favourable provisions set out by bilateral treaties. The Readmission Agreement between Italy and Tunisia must comply with the safeguards set out in EU law. Article 4(4) guarantees minimum safeguards that are also to be applied to persons apprehended or intercepted in connection with their unauthorised entry, including the principle of *non-refoulement*.[13]

19. The Directive was required by EU law to be transposed into national law by 24 December 2010. At the time of the events in the present case (September 2011), Italy had not opted to apply Article 2(2)(a) so as to exclude the application of the Directive to refusal of entry. As a matter of general principles of EU law (and in the interest of legal certainty and clarity), the decision of a Member State to make use of such derogation must be made clear in the national implementing law. Otherwise, it is of no effect and the non-application of the Directive to persons falling under Article 2(2)(a) would have to be considered as an infringement of the Directive. **At the time of the events in question in the present case all migrant returns from Italy falling within the scope of the Directive were thus subject to the Directive's provisions.** Article 6(1) mandates the issue of a return decision. Art 7 (1) provides for period for voluntary departure unless the conditions in Article 7(4) are met. Chapter II provides for procedural safeguards. Article 12 in particular requires that return decisions must be issued and notified in writing and, most importantly Article 13 requires the availability of remedies. Article 13(2) notes that the competent authority shall have the power to "temporarily suspend" the enforcement of the order, but it does not require this (see below "remedies"). Under the Directive, and absent any derogation under Article 2(2)(a) these provisions had full legal effect.

The Schengen Borders Code **(Annex 13)**

20. The Code[14] establishes a common policy and rules on the crossing of external borders, as provided for by Article 26(2) of the TFEU. Refusals of entry are governed by Article 13 of the Code and Annex V – but these provisions seem to apply only to those who have not been able *physically* to enter the territory. There is a right of appeal against refusal (Article 13(3)) which, as with the Returns Directive, does not however mandate suspensive effect.

21. However, this is a matter of the application of EU law, and under the Charter of Fundamental Rights (CFR) the remedy provided must be ECHR compatible. Remedies are dealt with in Article 47 CFR and the relationship between the Charter and the ECHR is spelt out in Article 52[15].

[12] Directive 2008/115/EC on common standards and procedures for returning illegally staying third country nationals. The Directive applies to all EU Member States except the United Kingdom, Ireland and Denmark. It also applied to Switzerland, Norway, Iceland and Lichtenstein.
[13] Respect for *non-refoulement* principle is also stipulated in Article 5 of the Directive.
[14] Regulation (EC) No 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 (Schengen Borders Code), OJ L 105, 13.4.2006. Currently repealed and replaced by 32016R0399
[15] The Explanations to Article 52 of the Charter **(Annex 10)** state: "Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, in so far as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union. The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the

22. As a matter of ECHR law, such a remedy must have **automatic legally binding suspensive effect** in a number of situations, but specifically when returns are alleged to involve collective expulsions. As the Court noted in *De Souza Ribeiro v France GC* (2012) at para. 82:
"*The requirement that a remedy should have automatic suspensive effect has been confirmed for complaints under Article 4 of Protocol 4 (see Čonka, §§ 81-83, and Hirsi Jamaa and Others, § 206)".*

23. When applied in a context where expulsions that are arguably collective are being proposed, the provisions of the Returns Directive and the Schengen Borders Code relating to remedies must have automatic legally binding suspensive effect even though this is not expressly stated in those secondary instruments. This is in order to be compatible with the Charter - and thus valid as EU law.

The Common European Asylum System (CEAS) **(Annex 14)**

24. The CEAS is a package of measures applicable to requests for international protection made in any EU Member State. Of relevance to the present case is the Asylum Procedures Directive (APD) which sets out the procedures to be applied when a TCN has communicated something which "***can be understood as a request for international protection***". The Directive in force at the time of the events in the present case was Directive 2005/85. The recast Directive (2013/32) is more specific (in Article 6) about ensuring that border guards and other officials are better trained so as to avoid the risk of failing to provide individuals with the requisite opportunity if they want or need to make a request for international protection:
Article 6 (1) – Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and ***instructions to inform applicants as to where and how applications for international protection may be lodged.*** (emphasis added).

25. It is difficult to see how this obligation can be met by prima facie collective expulsion occurring without individual migrants being offered the possibility of applying for protection if they were to need to do so. **The intervenors therefore conclude that collective expulsion of the kind under consideration in the present case not only violates the ECHR but is not in accordance with the applicable EU law and in particular Article 18 CFR which guarantees the right to asylum .**

Draft Council of the EU conclusions of 11 May 2016 **(Annex 15)**

26. In the light of the foregoing, the intervenors are concerned by the recently adopted Draft Council Conclusions on the expulsion of illegally staying TCNs of 11th May 2016 (8828/16) which specifically threaten to reduce the enjoyment (by those whose return is sought by a Member State) of the procedural safeguards which exist in EU law (and under the ECHR). Those safeguards include rights of appeal and in particular (where applicable) their suspensive effect. The Draft Conclusions invite Member States to take the necessary measures to avoid "*the misuse of migrants' rights and of asylum and migration procedures with the purpose of obstructing the process of return (…)*". It is of course clear that the whole purpose of providing appeal rights is to enable the affected individuals to challenge the legality of return decisions which appear to be unlawful. It must inevitably "obstruct" the process of return if the decision is challenged and found to have no basis in law. The Conclusions also exhort Member States to align and simplify the rules so as to "*overcome procedural challenges especially in relation to the application of detention, the suspensive effect of return and asylum decisions (…)*".[16]

Section III: The UN Protocol against Smuggling of Migrants by Land, Sea and Air and relevant EU law developments.

27. This Court has already had occasion to consider the provisions of the 2000 United Nations Protocol against the Smuggling of Migrants by Land Sea and Air ("the Protocol" – **Annex 16**) and likewise Resolution 1821 (2011) of the Parliamentary Assembly of the Council of Europe **(Annex 17)**[17].

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paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR."

[16] Draft Council Conclusions on the expulsion of illegallystaying third-country nationals of 11th May 2016 (8828/16).

[17] See, Hirsi v. Italy (No.27765/09, GC), paras. 26 and 27; UNSC RES 2240 (2015) on smuggling and the waters off Libya, Adopted by the SC at its 7531st Meeting **(Annex 18)**

28. It is uncontentious that those arriving at Europe's external borders and crossing the internal ones are composed of mixed flows of two kinds of migrants – that is some who are in need of, and entitled to, international protection from return and other migrants who have no *prima facie* claim in European law to be admitted. They do not belong to any one specific nationality; indeed both kinds of migrants may have the same nationality. Nor do they wear distinctive clothing so as to make the two groups of migrants readily distinguishable from each other. It is also uncontentious that Europe's external and internal borders are being crossed on a daily basis by those who have the necessary funds to pay the smugglers to facilitate this. All the paying migrants are just clients of their business. While data on profits obtained by smuggling networks globally are not available, isolated cases show that these are substantial. In just one incident involving the cargo vessel Ezadeen intercepted on 1 January 2015 by the Joint Operation Triton with 360 migrants on board, smugglers are believed to have earned EUR 2.5 million[18].

29. In the light of this phenomenon, the rule of law particularly requires that collective expulsions do not occur or continue. Proper procedures must be in place and observed so as to ensure those who cannot be returned are distinguished – *before* exclusion or return – from those who, **after having been given an effective opportunity to do so**, have not asserted any prima facie claim that they should be allowed to enter or remain. Additionally, in an effort to combat smuggling at EU level, Council Directive 2004/81 **(Annex 20),**[19] which refers to the 2000 Protocol in its preamble, provides for circumstances in which residence permits should be issued to third-country nationals who are victims of trafficking in human beings **or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities.** It is difficult to see how effect can be given to this aspect of the Directive if those who are victims of trafficking or subjects of an action to facilitate illegal migration are not given cooperate with the authorities in combatting organised crime.

30. It is equally uncontentious that people across Europe are being subjected to collective pushbacks by fences being built at those same borders, often in the claimed interests of reducing the incidence of smuggling. Borders are being closed and fences built to ensure the collective rejection of these migrants. The issues surrounding the legality of the measures adopted at the increasing number of fences being erected at the external borders of Europe are already put before this Court in the case of *ND and NT v Spain* (No 8675/15 and 8697/15) in which judgment is awaited. The rule of law equally requires that these *indiscriminate* pushbacks /exclusions at internal European borders do not occur.

31. A key feature of reducing the incidence of smuggling is the strengthening of the existing legal pathways and, where necessary and appropriate, creating new ones. The EU Commission emphasised this in its 2015 action plan against migrant smuggling[20].

32. In July and September 2015, the EU announced arrangements whereby 160,000 asylum seekers in Greece and Italy[21] would be relocated to other European countries **(Annex 21**).[22] Almost one year later less than 1000 have been relocated. The Court is invited to recall that in November 1956 over 200,000 refugees from Hungary were received, processed and resettled within a space of just a few weeks. All did not meet the refugee legal definition in the 1951 Geneva Convention. Many of those Hungarians crossed borders with the help of smugglers, and arrived without ID papers, but these migrants were not collectively rejected and the irregularity of their arrival did not impede their acceptance as being in need of protection. Ironically, it is now Hungary[23] which is challenging as unlawful the EU arrangement of July 2015 for responsibility sharing amongst European Member States.

33. The EU Turkey "deal" of March 2016 (**Annex 22)**[24], as has been emphasised 9 May 2016 by the European Parliament, is no more than a press statement and not an EU "legal act", and thus cannot be subject to challenge before the CJEU like the burden sharing decision being challenged by Hungary and Slovakia. The "deal" thus falls wholly outside the legal regime of the EU. The "deal" seeks to return to Turkey all those arriving in Greece after 20 March 2016.

[18] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Action Plan against migrant smuggling (2015-2020) **(Annex 19).**
[19] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.
[20] Communication from the Commission to the European Parliament, loc. cit.
[21] Hungary was originally included as a beneficiary of the relocation scheme but did not wish to join.
[22] See, *inter alia* Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece; Proposal for a Council Decision amending Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Brussels, 21 March 2016 COM(2016) 171 final; European Commission - Fact Sheet Refugee Crisis – Q&A on Emergency Relocation – EU Arrangement whereby 120,000 asylum seekers in Greece and Italy moved to other EU countries.
[23] Joined by Slovakia.
[24] European Council, Council of the European Union, EU-Turkey Statement, 18 March 2016.

Although some lip service is being paid to individual assessment, at least 13 returns to Turkey without any such assessment have been reliably reported by UNHCR.[25]

34. The Court is invited to note, in the context of the Vienna Convention on the Law of Treaties **(Annex 24)**, that the UN Protocol referred to above expressly states in Article 2 that: "*The **purpose** of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, **while protecting the rights of smuggled migrants***." (emphasis added).

35. Article 4 provides: "*This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, **as well as to the protection of the rights of persons who have been the object of such offences.***" (emphasis added)

36. Any measures which purportedly are taken under the UN Convention and its Protocol in the context of combatting smuggling must thus ensure that the rights of smuggled migrants, including the international law prohibition of collective expulsion, are properly observed. Any argument that such returns (see e.g. para. 152 of the Chamber judgment in the present case) are carried out in accordance with the Protocol is unsustainable if no individual assessment has taken place as required by the ECHR.

37. A more effective use of the existing legal mechanisms for identifying those in need of protection and separating them from those without a claim would meet the needs of states to deal with the consequences of the thriving trade in people smuggling. But whilst the blunt instrument of unlawful collective expulsion and exclusions continues to be applied, or attempted to be applied, solutions that are compatible with the rule of law cannot be found to deal with the mixed flows that continue to arrive in significant numbers.

38. The recent troubling decision in the case of *Al Ahmad*[26] concerned a young unaccompanied Syrian asylum seeker, a child of 13 alone in Greece. He had an undisputed claim under the EU Dublin Regulation to have his application for asylum examined in Sweden because he was a child and his brother was legally resident there. He was unable to pursue the legal avenue that was open to him to reach Sweden, because he feared – not without reason – that if he applied for asylum in Greece (the trigger to activate the Dublin procedure) it would be years before he could reach his brother in Sweden - and indeed that this might never happen. The Swedish authorities were nevertheless unwilling to offer him accelerated access to the legal pathway that was open to him – and them – under the existing provisions of the Dublin Regulation. As a consequence, smugglers had to be paid to take him from Greece to FYROM to Austria to Germany to Denmark and finally to Sweden where he was reunited with his brother and was able to make his asylum application.

39. Legal migration pathways do exist but are not being appropriately utilised. People in need of protection should not have to put their lives in the hands of people smugglers in order to access the protection to which they are entitled. Legal pathways can be opened. On 21 January 2016, the UK courts held[27] that vulnerable Syrian children in the "jungle" camp in Calais, France with relatives in the UK (and a similar claim to the Al Ahmad boy) under the Dublin Regulation for their asylum claims to be processed in that country should be brought immediately to the UK, as soon as they had deposited their asylum claims in France. The UK Court ordered that they should not did not have to wait for months in the mud in Calais for the wheels of bureaucracy to turn so as to permit them to come to the UK.[28]

Section IV: The right to liberty and security under Article 5 ECHR and international law

40. Deprivation of liberty can take numerous forms and depends on the type, duration, effects and manner of implementation of a measure.[29] This Court has held that a specific context assessment can inform whether there is a

[25] See, PACE, The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016, Doc. 14028, 19 April 2016 **(Annex 23)**.
[26] Al Ahmad v. Greece and Sweden, (No 73398/14)
[27] The Queen on the applicationof ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v. Secretary of State for the Home Department, 2016 **(Annex 25)**
[28] The decision was immediately enforceable so that the children have been brought to the UK , although the SSHD has lodged an appeal on the point of law
[29] ECtHR, Amuur v. France, (No. 19776/920), 25 June 1996, para 42.

deprivation of liberty and whilst individual factors taken in and of themselves may not constitute detention, the converse may be found when conditions are assessed cumulatively.[30] For detention to be lawful under Article 5 ECHR, an individual must not be unlawfully or arbitrarily detained.[31] Whilst Article 5(1)(f) allows the detention of a migrant "to prevent his effecting an unauthorised entry into the country or … with a view to deportation or extradition", such detention must be compatible with the overall purpose of Article 5, namely to safeguard the right to liberty and security and to ensure that "no-one should be dispossessed of his or her liberty in an arbitrary fashion".[32] Detention measures should be imposed with due diligence, allow for release and alternatives to detention.[33]

41. This Court has established specific requirements that detention under Article 5(1)(f) must satisfy in order to comply with the purpose, the spirit and the letter of the ECHR.[34] In particular, detention measures must be prescribed by law[35] and be of a sufficient quality to protect from arbitrariness;[36] must be carried out in good faith; closely connected to the ground of detention relied on to impose them in the case in question; the place, regime and detention conditions should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued.[37]

42. With regard to notification of immigration detention orders, decisions or rulings to migrants, who face an unfamiliar legal system, often in an unfamiliar language, under Article 5(2) the authorities are required to take measures to ensure that information is available to detained persons, in a language they understand, that at a minimum provides information regarding the legal grounds for their detention, the reasons for it, and the process available for reviewing or challenging the decision to detain. For the information to be accessible, it must also be presented in a form that takes account of the individual's level of education, and legal advice may be required for the individual to fully understand his or her circumstances.[38]

Effective judicial review under Article 5 ECHR and international law

43. Moreover, the right to challenge the lawfulness of detention judicially under Article 5(4) is a fundamental and non-derogable protection against arbitrary detention, as well as against torture or ill-treatment in detention. It requires that persons subject to any form of deprivation of liberty have effective access to an independent court or tribunal to challenge the lawfulness of their detention, and that they or their representative have the opportunity to be heard before the court.[39]

44. For a judicial review to accord with international human rights law, it must fulfil a number of requirements: it must be clearly prescribed by law;[40] it must be by an independent and impartial judicial body;[41] it must be prompt, with a

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[30] ECtHR, Guzzardi v. Italy , (No. 7367/76) 6 November 1980 where detention was found in a context of strict supervision, reporting obligations, lack of social contacts and threat of punishment where reporting was not adhered to.

[31] McKay v the United Kingdom, (No. 543/03, GC) para 30; Amuur v France (No. 19776/920), para 50; Chahal v the United Kingdom (No. 22414/93), para 118; Saadi v the United Kingdom, (No. 13229/03, GC), para 66; Al Husin v Bosnia and Herzegovina (No. 3727/08), para 65; Abdi v the United Kingdom (No. 27770/08), para 68; Azimov v Russia (No. 67474/11); Suso Musa v Malta (No. 42337/12), para 93; and Akram Karimov v Russia (No. 62892/12), para 144.

[32] Saadi v the United Kingdom, (No. 13229/03, GC), paras 64-66. Indeed, this Court has held that arbitrary detention renders those subjected to it vulnerable, for instance, to inhuman or degrading treatment or punishment (Article 3).

[33] The Council of Europe's Twenty Guidelines on Forced Return establish a general principle that alternatives to detention of migrants should be considered first, see Guideline 6 **(Annex 26)**; C. versus Australia Communication no 900/1999 (HRC), para 8.2 **(Annex 27**); See also, Baban versus Australia Communication no 1014/2011 (HRC), para 7.2 **(Annex 28**); F.K.A.G. versus Australia Communication no 2094/2011(HRC), para 9.3 **(Annex 29**); Zeyad Khalaf Hamadie Al-Gertanie versus Bosnia and Herzegovina Communication no 1955/2010 (HRC), para 10.4 **(Annex 30)**; Chahal v. the United Kingdom, (No. 22414/93 (GC)), 15 November 1996, para 113; A. and Others v. the United Kingdom, (No. 3455/05, GC), 19 February 2009, para. 164; Article 15 (1) of the EU Returns Directive.

[34] Amuur v France (No. 19776/92), para 50; Chahal v the United Kingdom (No. 22414/93), para 118; Saadi v the United Kingdom, (No. 13229/03, GC), para 74; Al Husin v Bosnia and Herzegovina (No. 3727/08), para 65; Abdi v the United Kingdom (No. 27770/08), para 68; Azimov v Russia (No. 67474/11), para 161; Suso Musa v Malta (No. 42337/12), para 89; Akram Karimov v Russia (62892/12), para 143.

[35] Lokpo and Touré v. Hungary, (No. 10816/10), para. 21

[36] Amuur v. France, (No. 19776/92), para. 50-51 "sufficiently accessible, precise and foreseeable"; Abdolkhani and Karimnia v. Turkey, (No. 30471/08), para. 133.

[37] In Saadi v the United Kingdom, (No. 13229/03, GC), para 74, this Court found that "[t]o avoid being branded as arbitrary, therefore, such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that "the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country" (see Amuur, cited above, para 43); and the length of the detention should not exceed that reasonably required for the purpose pursued). Aden Ahmed v Malta (No. 55352/12), para 141; A v UK (No.3455/05, GC), para 164; Louled Massoud v Malta (No.24340/08), para 70.

[38] Louled Massoud v Malta (No.24340/08), paras. 43 -47, 71

[39] Al-Nashif v. Bulgaria, (No 50963/99), para. 92; De Wilde, Ooms and Versyp v. Belgium, (Nos. 2832/66; 2835/66; 2899/66), para. 73; Winterwerp v. the Netherlands, (No. 6301/73);

[40] Principle 21, Report of the Working Group on Arbitrary Detention, Document A/HRC/30/XX, 4 May 2015 **(Annex 31)**

[41] Vélez Loor v. Panama, IACtH, para. 108 **(Annex 32)**

possibility to initiate proceedings at reasonable intervals where necessary,[42] of sufficient scope to be effective and real and not merely a formal review of the grounds and circumstances of detention; and the judicial authority must have the power to order release.[43] The review must meet standards of due process[44] and legal assistance must be provided to the extent necessary for an effective application for release. This Court has emphasized that, "although the authorities are not obliged to provide free legal aid in the context of detention proceedings …, the lack thereof, particularly where legal representation is required in the domestic context for the purposes of Article 5 (4), may raise an issue as to the accessibility of such a remedy."[45]

45. This is mirrored by Article 9.4 ICCPR. The Human Rights Committee has affirmed that, under article 9.4 the right to *habeas corpus* "applies to all detention by official action or pursuant to official authorization, including detention in … immigration detention….".[46]

The right to liberty and security and immigration detention and relevant safeguards in EU law

46. Pursuant to Article 53, the provisions of the ECHR cannot be applied in a manner that would limit the scope of the protection of human rights and fundamental freedoms ensured under the EU law. The law applicable in the EU[47] to detention includes relevant primary law,[48] e.g. rights and principles of EU law and secondary law as interpreted by the Court of Justice of the EU (CJEU).

Relevant fundamental rights and principles of EU Law

47. *The right to dignity*, enshrined in Article 1 of the Charter of Fundamental Rights[49] of the European Union (CFREU), providing that: "*None of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted*".[50]

Migrants should be treated in a manner which respects human dignity and a principle of non-discrimination both with regards to the procedure of imposition of detention measures and conditions of detention, regardless of the numbers of arrivals or the emergency situations declared by EU Member States.

48. *The prohibition of torture and inhuman or degrading treatment or punishment (Article 4 CFREU)* and *the right to liberty and security of person* (Article 6 CFREU), mirroring the rights guaranteed by Articles 3 and 5 of the ECHR, and in accordance with Article 52(3) of the Charter, having the same meaning and scope.

49. The CJEU recently reiterated in the cases of *Mukarubega*[51] and *Boudjilida*[52] that: *"The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely."*[53]

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[42] Z.N.S. v. Turkey (No 21896/08), paras. 61-62; Shakurov v. Russia, (No. 55822/10), para. 187; Eminbeyli v. Russia, (No. 42443/02), para. 10.5; Khaydarov v Russia, (No.21055/09), para 138.
[43] Bouamar v. Belgium, (No. 9106/80); A. and Others v. United Kingdom, para. 202; Chahal v. United Kingdom, paras. 127-130; Chahal v. United Kingdom, para.128.
[44] Bouamar v. Belgium, para. 60-63; Vélez Loor v. Panama, IACtHR, paras. 107-109; Winterwerp v. Netherlands, para. 60; Lebedev v. Russia, (No. 4493/04), paras. 84-89; Suso Musa v. Malta, para. 61.
[45] Suso Musa v. Malta, para. 61. Al-Nashif v. Bulgaria, (No. 50963/99), para. 92; De Wilde, Ooms and Versyp v. Belgium, (Nos. 2832/66; 2835/66; 2899/66), para. 73; Winterwerp v. the Netherlands, (No. 6301/73); Vélez Loor v. Panama, IACtH, para. 124.
[46] Report of the Working Group on Arbitrary Detention, Document A/HRC/30/XX, 4 May 2015, Guideline 21
[47] Except the Member States that opted out to various instruments, e.g. Ireland, UK
[48] All EU legislation and implementing legislation needs to comply with the Charter of Fundamental Rights of the European Union and as a consequence national law falling within the scope of EU law must be read in light of the Charter, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1.
[49] EU Fundamental Rights Agency, Handbook on European law relating to asylum, borders and immigration, 2014 **(Annex 32);** Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU, ECRE, 2015 **(Annex 33**).
[50] Case C-377/98, Netherlands v European Parliament and Council [2001] ECR I-7079, 70 — 77 **(Annex 34)**
[51] Case C-166/13 Sophie Mukarubega v. Préfet de police and Préfet de la Seine-Saint-Denis [2014] ECLI:EU:C:2014:2336.
[52] Case C-249/13 Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques [2014] ECLI:EU:C:2014:2431.
[53] Case C-277/11 M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General [2012] ECLI:EU:C:2012:744, para 87.

Secondary law

50. Secondary EU law pertinent to deprivation of liberty pending removal is Directive 2008/115/EC (the Returns Directive). It insists in Recital (16), *"that the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient".* The legality of detention under the Directive stems from the prescription in law of the grounds of detention. [54] Detention may only be used if other sufficient but less coercive measures cannot be applied effectively, it must fulfil the requirements of brevity and be maintained only if the legitimate aim is being pursued diligently and expeditiously.

51. Moreover, the CJEU has recently set out detailed principles in relation to the judicial review of detention under the Return Directive. In *Bashir Ali Mahdi*, the Court ruled that the Directive, read in the light of Articles 6 and 47 CFREU[55], entailed the following obligations: all decisions on detention, including on its extension, must be in the form of a written measure that includes the reasons in fact and in law for that decision; the mandatory judicial review must rule on the detention measure on a case-by-case basis; applying the principle of proportionality; assessing whether detention may be replaced with a less coercive measure or whether the person concerned should be released; the court or judge must have the power to take into account the facts stated and evidence adduced by the administrative authority that has brought the matter before it, as well as any facts, evidence and observations which may be submitted to the judicial authority in the course of the proceedings.[56]

52. Article 47 CFREU and Article 13 (4) of the Returns Directive also require that all individuals have the possibility of being advised, represented and defended in legal matters, and that legal aid be made available to ensure access to justice.

53. The intervenors submit that deprivation of liberty pursuant to Article 5(1)(f) must not be arbitrary, unlawful, imposed for an administrative convenience and without an examination of the particular situation of the individuals concerned. An individualised assessment of all the relevant circumstances of each case must be carried out prior to the imposition of detention measures, which must always be a measure of last resort, to be imposed only when no alternative is available.

54. A deprivation of liberty must comply with the procedural safeguards in Article 5 (2) on the right to be informed of the reasons of detention without delay, and Article 5 (4) of the ECHR on the right to have the detention decision reviewed speedily by judicial bodies that are efficient. These must comply with other human rights guarantees, including respect for human dignity and access to justice *inter alia* through legal representation. Detention which does not comply with these core procedural standards is unlawful regardless of the numbers of arrivals of migrants in EU Member States.

[54] Case C 534/11, Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie, 30 May 2013 **(Annex 35).**
[55] Article 47 CFREU enshrines the right to an effective remedy and to a fair trial and corresponds with Articles 13 and 6 ECHR.
[56] Case C-146/14 PPU, Bashir Mohamed Ali Mahdi, ECLI:EU:C:2014:1320 **(Annex 36)**

Annexes

NB The order of the annexes corresponds with the order of appearance in the text and footnotes of the Intervention.

Annex	Document
1.	Travaux Préparatoires to the Convention, Protocol secures certain rights and freedoms other than those already in the Convention and First Protocol, pp.539-541. http://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-P4-BIL2907919.pdf
2.	Draft Articles on the Expulsion of Aliens, with Commentaries 2014, International Law Commission at its sixty-sixth session, 2014. http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf
3.	Migration and International Human Rights Law, International Commission of Jurists, A Practitioners' Guide, Updated Edition, 2014, pp. 163-174. http://www.icj.org/wp-content/uploads/2014/10/Universal-MigrationHRlaw-PG-no-6-Publications-PractitionersGuide-2014-eng.pdf
4.	International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 19 December 1966. https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf
5.	UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986 http://www.refworld.org/docid/45139acfc.html
6.	ICJ, Case Ahmadou Sadio Diallo (République de Guinée c. République Démocratique du Congo), 30 November 2010 http://www.icj-cij.org/docket/files/103/16244.pdf
7.	CJEU, Case C-166/13, Sophie Mukarubega v. Préfet de police and Préfet de la Seine-Saint-Denis [2014] ECLI:EU:C:2014:2336. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62013CJ0166&from=EN
8.	CJEU, Case C-249/13, Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques [2014] ECLI:EU:C:2014:2431. http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=lst&docid=160563&occ=first&dir=&cid=438823
9.	CJEU, Case C-277/11 M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General [2012] ECLI:EU:C:2012:744 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CJ0277&from=EN
10.	Charter of Fundamental Rights of the European Union (2012/c 326/02) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN Explanations relating to the Charter of Fundamental Rights (2007/C 303/02) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF
11.	Article 6 TFEU (ex Article 6 TEU) http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN
12.	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 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF
13.	Regulation (EC) No 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 (Schengen Borders Code), OJ L 105, 13.4.2006. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006R0562
14.	The Common European Asylum System (CEAS) instruments: Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Recast) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en
15.	Draft Council conclusions on the expulsion of illegally staying third-country nationals of 11th May 2016 (8828/16) http://statewatch.org/news/2016/may/eu-council-draft-conclusions-expulsion-illegal-stay-8828-16.pdf
16.	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-b&chapter=18&lang=en
17.	The interception and rescue at sea of asylum seekers, refugees and irregular migrants, Resolution 1821 (2011), Parliamentary Assembly, (see Doc. 12628, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Díaz Tejera). Text adopted by the Assembly on 21 June 2011 (22nd Sitting). http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18006&lang=en
18.	UN Security Council Resolution 2240 (2015), Adopted at its 7531st meeting, 9 October 2015. Security Council Authorizes Member States to Intercept Vessels off Libyan Coast Suspected of Migrant Smuggling http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2240.pdf
19.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Action Plan against migrant smuggling (2015-2020), COM(2015) 285 final http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf
20.	Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML
21.	Council Decision (EU) 12098/15 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece; European Commission - Fact Sheet Refugee Crisis – Q&A on Emergency Relocation – EU Arrangement whereby 120,000 asylum seekers in Greece and Italy moved to other EU countries http://europa.eu/rapid/press-release_IP-16-829_en.htm
22.	European Council, Council of the European Union, EU-Turkey Statement, 18 March 2016 http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/ Communication from the Commission to the European Parliament, the European Council and the Council First Report on the progress made in the implementation of the EU-Turkey Statement http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-

	implementation-package/docs/20160420/report_implementation_eu-turkey_agreement_nr_01_en.pdf
23.	PACE, The situation of refugees and migrants under the EU-Turkey Agreement of 18 March 2016, Doc. 14028, 19 April 2016. http://www.statewatch.org/news/2016/apr/eu-coe-parl-assembly-refugee-crisis-resolution.pdf
24.	Vienna Convention on the Law of Treaties (with annex), concluded at Vienna on 23 May 1969 https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf
25.	The Queen on the application of ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM v. Secretary of State for the Home Department, 2016 http://www.asylumlawdatabase.eu/en/case-law/united-kingdom-queen-application-zat-iaj-kam-aam-mat-maj-and-lam-v-secretary-state-home
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27.	C. v. Australia, Communication No. 900/1999, U.N. Doc. CCPR/C/76/D/900/1999 (2002). https://www1.umn.edu/humanrts/undocs/900-1999.html
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29.	F.K.A.G. et al. v Australia (UN Doc CCPR/C/108/D/2094/2011) and M.M.M. et al. v Australia (UN Doc CCPR/C/108/D/2136/2012) 20 August 2013 https://www1.umn.edu/humanrts/undocs/2094-2011.html
30.	Zeyad Khalaf Hamadie Al-Gertani v. Bosnia and Herzegovina, Communication No. 1955/2010, U.N. Doc. CCPR/C/109/D/1955/2010 (2013) https://www1.umn.edu/humanrts/undocs/1955-2010.html
31.	Report of the Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, General Assembly, Document A/HRC/30/xx, 4 May 2015 (Unedited Version). Draft version dated June 2015 http://www.ohchr.org/Documents/Issues/Detention/DraftPrinciplesAndGuidelinesRightCourtReview.pdf
32.	Case of Vélez Loor v. Panama, Inter-American Court of Human Rights, Judgment of November 23, 2010 (preliminary objections, merits, reparations and costs) http://www.corteidh.or.cr/docs/casos/articulos/seriec_218_ing.pdf
33.	Handbook on European Law relating to Asylum, Borders and Immigration, European Union Agency for Fundamental Right, 2014, 278 pages. http://fra.europa.eu/sites/default/files/handbook-law-asylum-migration-borders-2nded_en.pdf
34.	Reception and Detention Conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU, ECRE, 2015, 90 pages. http://ecre.org/component/downloads/downloads/993.html.
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37.	Case C-146/14 PPU, Bashir Mohamed Ali Mahdi, Judgment of the court (Third Chamber), 5 June 2014. http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0146&lang1=en&type=TXT&ancre=