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Meeting: 1419<sup>th</sup> meeting (December 2021) (DH)

Communication from NGOs (Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Coalizione Italiana Libertà e Diritti Civili (CILD)) (12/10/2021) in the case of KHLAIFIA AND OTHERS v. Italy (Application No. 16483/12).

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

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Réunion : 1419<sup>e</sup> réunion (décembre 2021) (DH)

Communication d'ONG (Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Coalizione Italiana Libertà e Diritti Civili (CILD)) (12//10/2021) relative à l'affaire KHLAIFIA ET AUTRES c. Italie (requête n° 16483/12) **[anglais uniquement]**.

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

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

## 1. Introduction

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

The objective of this submission is to briefly reiterate the reality of the continuation of illegal and informal detention *sine titulo* of foreign nationals in the absence of validation of these instances of detention by judicial authorities, constituting a confirmation of what was advised in the prior communication sent by [ASGI and A Buon Diritto Onlus](#) and [CILD](#) on January 27, 2021 and to set out what measures still need to be taken

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

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

Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of 43 civil society organisations. It defends and promotes the civil liberties and rights guaranteed to all by the Italian



Constitution and by international law; fighting against abuses and violations of these rights through a combination of advocacy, public education and legal action.

## 2. Case summary

In 2016, the ECtHR had condemned the arbitrary detention of foreign nationals in the Contrada Imbriacola Rescue and First Reception Centre (Cspa) in Lampedusa and onboard the *Vincent* and *Audacia* vessels, as well as the absence of effective remedies against such detention and conditions therein.

In the context of its March 2021 meeting, the Committee of Ministers of the Council of Europe [decided](#) not to end the supervision procedure and instead requested that the Italian Government provide, **by no later than September 15, 2021**, comments and responses regarding the remedies invoked by foreign nationals in detention in reception centres - one of the violations of the Convention as noted by the ECtHR in 2016. Specifically, the Committee very firmly asked the Italian Government to demonstrate the effectiveness of the remedies described in the Italian Government's response, inviting them to verify whether recent jurisprudential developments had ensured that this serious gap in the domestic legal system had been filled and, if not, inviting them to rapidly adopt measures to remedy this deficiency. **The Government, however, has so far failed to respond.**

In relation to the absence of a legal basis for detention, the failure to comply with the obligation to provide all useful and necessary information to those being held (to assist in their decision-making), and the absence of judicial review with regard to the detention of foreign citizens in first reception centres, substantial critical issues remain. In this regard, the Committee reserved the right to analyse the current legislative framework outlined in the [Government's submissions](#).

With reference to the latter, it is useful to underline that the Government did not take a position and respond to the specific critical remarks highlighted by the associations in the two communications of January 27th.

In its communication of February 15, the Government limited itself to listing the contents of decree-law no. 130/2020 on Security and Immigration, even though this regulatory reform does not contain any relevant aspects as far as the implementation of the *Khlaifia* judgment is concerned<sup>1</sup>.

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<sup>1</sup> See paragraphs 3.1.2 and 3.1.2 of the communication from ASGI e A Buon Diritto dated 27 January 2021, [https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22DH-DD\(2021\)136E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22DH-DD(2021)136E%22%5D%7D)].



### 3. General measures

#### 3.1. *De facto* detention in hotspot

ASGI, A Buon Diritto Onlus and CILD confirm what was noted in [our communication to the Committee on January 27](#) - foreign citizens arriving in Italy are still arbitrarily detained in hotspot centres. Similarly, it is confirmed that these instances of detention continue to be implemented without legal basis, without the appropriate formal measures and judicial review, without adequate guarantees in place, in the absence of a maximum duration established by law in clear and serious violation of the legal and jurisdictional reservations contained in article 13 of the Italian Constitution [Personal Freedom] and in stark contradiction of art. 5 of the European Convention on Human Rights (ECHR).

The results of the active monitoring of Lampedusa's hotspot during the summer of 2021 confirm the systematic nature of the critical issues detected repeatedly in the past and the introduction of new devices that are further detrimental to the rights of the foreign citizens detained there. [From July to September, 14,422 people landed in Lampedusa](#), the majority of which were transferred to the local hotspot and subjected to detention. From a factual point of view, in fact, the gates there continue to be constantly closed and manned by military and security personnel and the facility still lacks consistent regulation on the entry and exit of people who stay there.

According to the testimonies collected in the framework of the [In Limine project](#) by several migrants present in the centre, with the latest renovations and closure of the holes in the perimeter's fence, even the informal (but by no means protective) method of exit and entry through these fences via those holes, which until recently was at times discreetly tolerated by authorities, has been disabled.

All foreign citizens arriving on the island are therefore detained in the centre and subject to control and limitation regimes that would appear particularly rigid - imposing a physical closure of the persons concerned within via ramping up surveillance and inspection activities, including military garrisons in the hills that flank the hotspot and patrols by the Carabinieri.

Another clearly problematic element relates to the **length of stay in the centres** that formally should host people for a few days for registration and identification purposes, but instead, **in the summer, at times hosts people for (in some cases) up to thirty days, according to the testimonies collected**. Additionally, the informal and prolonged detention also applies to asylum seekers, as well as the most vulnerable foreign citizens, including unaccompanied minors, **families with children and people with serious medical conditions**, who are forced in some cases to remain for weeks in these structures, in



conditions detrimental to their wellbeing and certainly without access to necessary care<sup>2</sup>. This is even more worrying in view of the serious structural issues present and reported<sup>3</sup> within which do not allow for a dignified stay, including severe overcrowding (at times more than 1000 people occupy a space where stated capacity is for 250 persons).<sup>4</sup>

In this regard, the **ECJ** has recently addressed the issue of deprivation of liberty of asylum seekers and the guarantees that EU countries are consistently required to ensure, in order not to engage in arbitrary and unlawful detention. In its judgment of **Joined Cases C-924/19 PPU and C-925/19 PPU (14 May 2020)**, which related to the permanence of a number of Afghan and Iranian citizens in a transit zone on the border between Hungary and Serbia, the Court stated that the confinement of asylum seekers in a place with a circumscribed and closed perimeter, within which movements are always monitored and from which there is no possibility of legal exit except on the initiative of the authorities, constitutes a real detention.

Indeed, the Court established that the detention of an applicant for international protection within the meaning of Article 2(h) of Directive 2013/33 constitutes "*a coercive measure which deprives the applicant of freedom of movement and isolates them from the rest of the population, since it obliges him to remain within a restricted and closed perimeter*". Finally, the Court stated that the notion thus reconstructed must be considered valid also for the purposes of the Return Directive (2008/115/EC). Therefore, such limitation of personal freedom must always be in line with the provisions of Directives 2013/32, 2013/33 and 2008/115. Here, the ECJ criticised i) the absence of an order from the administrative authority ordering and justifying the detention; ii) the lack of proportionality between the detention measure and the personal conditions of the asylum seeker, which should always be assessed on a case-by-case basis and not as a general measure; iii) the absence of a concrete, effective and freely accessible judicial remedy<sup>5</sup>.

This pronouncement of the ECJ is of particular interest, as it was decided based on a situation similar to that of the foreign citizens detained at the Lampedusa hotspot. The practices adopted by the Italian authorities, still in place today, are therefore in clear contrast with what the Court itself indicated.

<sup>2</sup> See

<https://www.medicisenzafrotiere.it/news-e-storie/news/lampedusa-approccio-emergenziale-poco-efficiente/?fbclid=IwAR3zWuHYm992YwXl-ktzcvx08oJZ8-7uHoLErht8FyxqINxvCCfs6E7cchg>.

<sup>3</sup> See paragraph 3.2. of the communication from ASGI e A Buon Diritto dated 27 January 2021,

[https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22DH-DD\(2021\)136E%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2021)136E%22]}).

<sup>4</sup> See

<https://inlimine.asgi.it/hotspot-di-lampedusa-sempre-piu-un-luogo-di-confinamento-chiuso-anche-il-buco-nella-re-cinzione/>. Regarding the conditions of detention, see also the photo-based testimonies accumulated via ASGI's In Limine project, of those detained at the Lampedusa hotspot in August 2021.

<sup>5</sup> <https://curia.europa.eu/juris/liste.jsf?language=it&td=ALL&num=C-924/19%20PPU>



### 3.2. Absence of remedies

As already clarified by CILD in its [communication of January 27](#), decree 130/2020 on Security and Immigration, on which the Government's response is based, the state still does not provide for the possibility of effective recourse via a judicial authority, to challenge conditions of detention and the possible failure to respect the rights related to deprivation of liberty. At the same time, Decree 130/2020 provides for the possibility for migrants detained in Centers of Permanence for Return (CPRs) to send communications to the Guarantor for the rights of persons deprived of their liberty. **This option, however, is not granted also to foreign citizens detained in hotspots.**

### 4. Conclusions and recommendations

The ongoing non-implementation of this case involves the violation of the right to personal freedom of foreign citizens arriving on Italian territory, a condition of unlawful isolation to the detriment also of the enjoyment of other fundamental rights, and in the absence of the necessary guarantees and remedies. For all these reasons, ASGI, A Buon Diritto Onlus and CILD insist that the Committee of Ministers does not end the procedure of supervision of the state of implementation of the Khlaifia judgment, as the Italian State, from 2016 to date, has continued to implement illegitimate detention practices and has not introduce appropriate and sufficient legislative provisions aimed at filling the legislative gaps clearly highlighted by the Court first and then by the Committee in this procedure.

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

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