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Chapter 1 : Prohibiting Collective Expulsion of Aliens at the European Court of Human Rights | ASIL

The growing integration of the states of the European Union has created greater mobility for its citizens; and political and economic pressures have given rise to an increasing number of refugees and asylum-seekers from Europe and blog.quintoapp.com is against this backdrop that the position of aliens in relation to the European Convention on Human.

April 17, Introduction Between and , Italy and Libya then under the rule of Colonel Muammar el-Qaddafi concluded several agreements to combat clandestine immigration. Pursuant to these agreements, Italy instated a policy of sending undocumented migrants and asylum seekers who had crossed the Mediterranean Sea from Africa back to Libya. In a number of cases, boats were intercepted on the high seas, and those on board were taken back to Libya without a prior individualized assessment of their situation and protection needs. Italian coast guard and customs vessels intercepted their boats on the high seas, thirty-five nautical miles south of the island of Lampedusa. On board Italian vessels, the men were taken back to Libya, from where they had originally embarked, and handed over to the Libyan authorities. The Principle of Non-refoulement Applies Extraterritorially Under international human rights law, no one may be expelled if substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to torture, inhuman or degrading treatment or comparably serious human rights violations. Supreme Court, which held in the controversial judgment of *Sale vs. United States*. On this basis, the Supreme Court upheld the practice of the U. Coast Guard intercepting Haitians outside U. The Court ruled that Italy had exercised both de jure and de facto control over the applicants from the moment they were taken aboard Italian ships. The Court reasoned that since Italy had effective control, the jurisdiction of the European Convention attached, and Italy was under an obligation to protect the intercepted Somali and Eritrean nationals from torture and inhuman or degrading treatment. Italy violated its obligation by transferring the applicants to Libya, where they were at risk of ill-treatment. Supreme Court in support of its position in *Sale v. United States*. The judgment implies, for instance, that people who stow away on ships must be protected from refoulement by the flag state, at least as soon as they reach the high seas, where the flag state enjoys exclusive jurisdiction and hence de jure control. The prohibition of collective expulsion, Italy advanced, only came into play when individuals already within the territory of a state, or those who had crossed the national border illegally, were expelled. They also noted that Italian law considered ships flying the Italian flag to be Italian territory, which implied that removing the applicants from the Italian coast guard vessels was tantamount to expelling them from Italian territory. After finding that neither the text of Article 4 Protocol No. 4 nor the object and purpose of Article 4 of Protocol No. 4 supported such operations without such individualized assessment are therefore generally illegal, regardless of where the victims are pushed back e. This implication is significant as Italy and other European states are currently negotiating new agreements to combat clandestine migration with the emerging democracies on the southern rim of the Mediterranean Sea. Supreme Court will be willing to revisit its interpretation of the principle of non-refoulement, which is more restrictive than that adopted by the European Court in the *Hirsi* case. The article is submitted in a personal capacity, and, unless specifically indicated, the views expressed do not necessarily reflect those of the High Commissioner or the United Nations. The author thanks Paul Oertly for his comments on the initial draft. United Kingdom, Eur. United States, Case No. Haitian Centers Council, U. Pinto de Albuquerque, J. Educational and news media copying is permitted with due acknowledgement. Caitlin Behles serves as the managing editor. Please click the button below to get started.

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Chapter 2 : Asylum and the European Convention on Human Rights - Council of Europe Publishing

The book's coverage of the standard human rights framework available under the ECHR50, to which aliens are beneficiaries, is thorough and insightful. Lambert outlines the rights in question and subsequently identifies the Convention's effectiveness and applicability where the individual is an alien.

Messenger As the migrant crisis in the Mediterranean continues, the public outcry against deaths at sea has forced the European Union EU into response mode. EU officials and member states have promised to do something about the situation. Alongside discussions about resettlement agreements, there are proposals to destroy the boats used by migrant smugglers before they can leave Libya. But this highly controversial use of force would be problematic and counterproductive on a number of levels. One of its many problems is that the destruction of boats does not help those who are in need of refuge. As a judicial rather than a political body, the court would not, of course, directly comment. Nonetheless, its judgement in the case of *Hirsi Jamaa v. Italy* may shed some light upon its views. The migrants boarded an Italian military ship, apparently after having been told it would take them to Italy. Instead, they were returned to Libya, without having their identity recorded, and without being given the chance to claim asylum. The court found multiple violations of the European Convention on Human Rights. It found a breach of the provision prohibiting the collective expulsion of aliens Article 4, Protocol 4. And despite the fact that no migrant on board the military ships had claimed asylum or requested international protection, the court did not hesitate to rule that Italy had exposed the migrants to the risk of inhuman and degrading treatment by returning them to Libya contrary to Article 3. In the end, the court reproached the Italian authorities for not having offered the migrants a domestic remedy in Italy contrary to Article 13. The most logical way to repair the violations might have been to invite the migrants back in Italy. This would have enabled them to have any claims for asylum, or against expulsion, duly examined. One judge did forcefully put this reasoning forward, but the other 16 judges who decided the *Hirsi Jamaa* case took a different line. The court normally says nothing about how a state should repair denounced violations. In this case, however, the court indicated that the Italian government should take all possible steps to obtain assurances from the Libyan authorities that the applicants in the case would not be subjected to inhuman and degrading treatment in Libya, or arbitrarily repatriated to other countries. The court may have wanted to have an easy solution at hand in case of a surge in applications from migrants intercepted at sea. Another possibility is that the court feared that preventing a state from returning migrants summarily would amount to encouraging an open-border policy and would provoke resistance from European states. This would have led it to end its judgement in a way that mitigated its findings. As its name indicates, the European Court of Human Rights should be about protecting human rights. Moreover, the court asserts that Article 3 of the European Convention on Human Rights "which prohibits inhuman and degrading treatment" suffers no exception, whatever the circumstances. As I discuss elsewhere, the court is far less protective of the rights of migrants and other claimants than the public "especially the UK public" is led to believe. If anything, we need stronger "not weaker" protection of human rights in Europe. The way forward is not to destroy the institutions responsible for upholding human rights, but to reinforce their capability.

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Chapter 3 : Why the European Court of Human Rights is no friend to migrants

Higgins, "The European Convention on Human Rights", in *Human rights in international law (Theodor Meron, ed.,)*, , at THE POSITION OF ALIENS IN RELATION TO THE ECHR.

Lambert recognises that the need to balance the imperative of international and regional security with the maintenance of global human rights is particularly difficult given the traditional tension with obliging sovereign States to protect third State nationals. The economic, social and cultural rights of migrants must continue to fall within the domain of complementary protection and specifically the European Social Charter and ICESCR. The primary objective for Lambert was therefore to determine the extent to which the ECHR50, in affording primacy to civil and political rights, in fact addresses the deficit in migrant protection left by the restrictive CSR. The reader would be justified in approaching any analysis of the ECHR50, due to the generic human rights and specifically civil and political rights focus, with scepticism as to the effectiveness of any contribution made. The preconditions that permit terrorism, internal conflict and other challenges to international and regional security are predominantly economic, cultural and social. This is canvassed by Lambert from two perspectives. Firstly, examining those Articles that permit differentiated treatment identifies the scope of rights and freedoms that specifically affect migrants. Lambert considers the creative application of these provisions is not to the prejudice of alien rights. The restrictions in Articles 16, 5, 2 1 and 4 of Protocol No. Secondly, the general rights protection framework under the ECHR50 is considered in its application to aliens. The argument is convincing. The scope of protection afforded pursuant to the ECHR50 is considered sufficiently flexible to meet the traditional challenges faced by aliens. For example the Article 3 prohibition against torture was cited as inhibiting the power of States to expel aliens, where the risk of torture rather than other forms of ill treatment is identified. The stigma in labelling acts and omissions as torture following criminalisation under the CAT84 influences international forums in distinguishing torture. With some imagination in defining torture, its prevention rather than punishment is promoted, satisfying the human rights mandate of the ECHR. Unfortunately the impetus in a third edition, being the tension in balancing imperatives of human rights with international security, escapes consideration. Lambert clearly identifies the role of the ECHR50 in protecting rights of individuals generally but the inherent inability of a generic human rights treaty to address the specific vulnerabilities of aliens that are exacerbated with the shift of State priorities toward national security, potentially to the detriment of individual rights, is overlooked. This is illustrated in light of the previous example relating to Article 3. Increasing tolerance in justifying State-sanctioned torture to meet the threat of terrorism requires that the threshold for attaching stigma is lowered. Asylum seekers are especially susceptible to abuse given the inability of generic human rights protections to reach beyond national borders in a meaningful manner. The risk must be pre-empted. These rights are broken down into absolute, qualified and limited rights and the progression is logical, accessible and comprehensive. Had the book explored this deficit under the ECHR to a greater extent it would have benefited. The necessity for a third edition is assured; however the reviewer would have preferred this imperative to influence the otherwise articulate, succinct and informative analysis of the position of aliens in relation to the ECHR. Published by Oxford University Press. For Permissions please email:

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Chapter 4 : Italy violated migrants'™ rights, European Court of Human Rights says

The law of the Council of Europe Convention on Human Rights relating to aliens has developed significantly over recent time. In 25 years the number of contracting states has doubled and the scope of rights and freedoms guaranteed under the convention has broadened with the adoption of new protocols.

Article 12 of the European Convention on Human Rights Article 12 provides a right for women and men of marriageable age to marry and establish a family. Despite a number of invitations, the Court has so far refused to apply the protections of this article to same-sex marriage. The Court has defended this on the grounds that the article was intended to apply only to different-sex marriage, and that a wide margin of appreciation must be granted to parties in this area. In *Goodwin v United Kingdom* the Court ruled that a law which still classified post-operative transsexual persons under their pre-operative sex, violated article 12 as it meant that transsexual persons were unable to marry individuals of their post-operative opposite sex. This reversed an earlier ruling in *Rees v United Kingdom*. The European Court of Human Rights ruled in *Schalk and Kopf v Austria* that countries are not required to provide marriage licenses for same-sex couples, however if a country allows same-sex couple marriage it must be done so under the same conditions that opposite-sex couples marriage face: Additionally, the court ruled in the case of *Oliari and Others v Italy* , that states have a positive obligation to ensure there is a specific legal framework for the recognition and protection of same-sex couples.

Article 13 "effective remedy"[edit] Article 13 provides for the right for an effective remedy before national authorities for violations of rights under the Convention. The inability to obtain a remedy before a national court for an infringement of a Convention right is thus a free-standing and separately actionable infringement of the Convention. Article 14 "discrimination"[edit] Article 14 contains a prohibition of discrimination. This prohibition is broad in some ways and narrow in others. It is broad in that it prohibits discrimination under a potentially unlimited number of grounds. Thus, an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention e. It has been said that laws regarding familial sexual relationships or incest are in breach of Article 14 when combined with Article 8.

Article 15 "derogations"[edit] Article 15 allows contracting states to derogate from certain rights guaranteed by the Convention in a time of "war or other public emergency threatening the life of the nation". Permissible derogations under article 15 must meet three substantive conditions: There must be some formal announcement of the derogation and notice of the derogation, any measures adopted under it, and the ending of the derogation must be communicated to the Secretary-General of the Council of Europe [31] As of , eight member states had ever invoked derogations. Operation Demetrius "Internees arrested without trial pursuant to "Operation Demetrius" could not complain to the European Commission of Human Rights about breaches of Article 5 because on 27 June , the UK lodged a notice with the Council of Europe declaring that there was a "public emergency within the meaning of Article 15 1 of the Convention". The Court has ruled that European Union member states cannot consider the nationals of other member states to be aliens. This addresses instances where states seek to restrict a human right in the name of another human right, or where individuals rely on a human right to undermine other human rights for example where an individual issues a death threat.

Article 18 "permitted restrictions"[edit] Main article: Article 18 of the European Convention on Human Rights Article 18 provides that any limitations on the rights provided for in the Convention may be used only for the purpose for which they are provided. For example, Article 5, which guarantees the right to personal freedom, may be explicitly limited in order to bring a suspect before a judge. To use pre-trial detention as a means of intimidation of a person under a false pretext is, therefore, a limitation of right to freedom which does not serve an explicitly provided purpose to be brought before a judge , and is therefore contrary to Article Convention protocols[edit] As of January [update] , fifteen protocols to the Convention have been opened for signature. These can be divided into two main groups: The former require unanimous ratification by member states before coming into force, while the latter require a certain number of states to sign before

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coming into force. Protocol 1[edit] This Protocol contains three different rights which the signatories could not agree to place in the Convention itself. It does not however guarantee any particular level of education of any particular quality. Turkey the Court ruled that: Although that Article does not impose a duty on the Contracting States to set up institutions of higher education, any State doing so will be under an obligation to afford an effective right of access to them. In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. United Kingdom 28 EHRR Protocol 4 " civil imprisonment, free movement, expulsion[edit] Article 1 prohibits the imprisonment of people for inability to fulfil a contract. Article 2 provides for a right to freely move within a country once lawfully there and for a right to leave any country. Article 3 prohibits the expulsion of nationals and provides for the right of an individual to enter a country of his or her nationality. Article 4 prohibits the collective expulsion of foreigners. Turkey and the United Kingdom have signed but never ratified Protocol 4. Greece and Switzerland have neither signed nor ratified this protocol. Specifically, several classes of "British national" such as British National Overseas do not have the right of abode in the United Kingdom and are subject to immigration control there. In , the UK government stated that it had no plans to ratify Protocol 4 because of concerns that those articles could be taken as conferring that right. Every Council of Europe member state has signed and ratified Protocol 6, except Russia , which has signed but not ratified. Article 2 provides for the right to appeal in criminal matters. Article 3 provides for compensation for the victims of miscarriages of justice. Article 4 prohibits the re-trial of anyone who has already been finally acquitted or convicted of a particular offence Double jeopardy. Article 5 provides for equality between spouses. Despite having signed the protocol more than thirty years ago Germany and the Netherlands have never ratified it. Turkey, which signed the protocol in , ratified it in , becoming the latest member state to do so. The United Kingdom has neither signed nor ratified the protocol. Protocol 12 to the European Convention on Human Rights Applies the current expansive and indefinite grounds of prohibited discrimination in Article 14 to the exercise of any legal right and to the actions including the obligations of public authorities. The Protocol entered into force on 1 April and has As of March [update] been ratified by 20 member states. They believe that the phrase "rights set forth by law" might include international conventions to which the UK is not a party, and would result in incorporation of these instruments by stealth. The UK government, nevertheless, "agrees in principle that the ECHR should contain a provision against discrimination that is free-standing and not parasitic on the other Convention rights". Bosnia and Herzegovina , was delivered in Protocol 13 " complete abolition of death penalty[edit] Protocol 13 provides for the total abolition of the death penalty. Armenia has signed but not ratified the protocol. Russia and Azerbaijan have not signed it. These amendments have, with the exception of Protocol 2, amended the text of the convention. Protocol 2 did not amend the text of the convention as such but stipulated that it was to be treated as an integral part of the text. All of these protocols have required the unanimous ratification of all the member states of the Council of Europe to enter into force. Protocol 11[edit] Protocols 2, 3, 5, 8, 9 and 10 have now been superseded by Protocol 11 which entered into force on 1 November. Previously states could ratify the Convention without accepting the jurisdiction of the Court of Human Rights. The protocol also abolished the judicial functions of the Committee of Ministers. Protocol 14[edit] Protocol 14 follows on from Protocol 11 in proposing to further improve the efficiency of the Court. It seeks to "filter" out cases that have less chance of succeeding along with those that are broadly similar to cases brought previously against the same member state. Furthermore, a case will not be considered admissible where an applicant has not suffered a "significant disadvantage". This latter ground can only be used when an examination of the application on the merits is not considered necessary and where the subject-matter of the application had already been considered by a national court. A new mechanism was introduced by Protocol 14 to assist enforcement of judgements by the Committee of Ministers. The Committee can ask the Court for an interpretation of a judgement and can even bring a member state before the Court for non-compliance of a previous judgement against that state. Protocol 14 also allows for European Union accession to the

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Convention. It entered into force on 1 June. It allowed single judges to reject manifestly inadmissible applications made against the states that have ratified the protocol. It also extended the competence of three-judge chambers to declare applications made against those states admissible and to decide on their merits where there already is a well-established case law of the Court.

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Chapter 5 : European Convention on Human Rights - Wikipedia

Get this from a library! The position of aliens in relation to the European Convention on Human Rights. [HÃ©Ã©ne Lambert, juriste.]

In the context of increasing recourse to article 1F by States in the Global North, and anxiety surrounding the perception of asylum seekers and other migrants as potential security threats in Europe and beyond, this topic remains pertinent for analysis and the work is timely in its exploration of this area. These countries provide an interesting point of comparison given that, despite their close geographic proximity and the applicability of similar European asylum and human rights standards, they demonstrate differing approaches to both article 1F exclusion and the fate of those excluded from refugee status pursuant to such a decision. The book is divided into eight chapters plus appendices. The opening chapters introduce the scope, structure, and methodology employed in the research chapter 1, and outline the history, drafting, and interpretation of article 1F of the Refugee Convention, particularly by reference to guidance from the United Nations High Commissioner for Refugees UNHCR chapter 2. Chapters 3 and 4 focus on the European legal context and examine relevant legislation and jurisprudence of the European Union EU and the Council of Europe, respectively. In chapters 5 and 6, the examination hones in on the domestic policy and practice of the Netherlands and the UK in the areas of exclusion and post-exclusion, and, in chapter 7, comparisons between these jurisdictions are drawn in a number of thematic areas. The appendices pp 78 present domestic legislation and policy instructions on exclusion and post-exclusion, though it must be noted this is limited to UK instruments only. A good deal of information on relevant asylum and human rights standards and State practice is presented in this book, and it will prove a valuable resource for practitioners and students alike with an interest in the topic. Particularly useful is the synthesis of European Court of Human Rights ECtHR jurisprudence on excluded asylum seekers included in chapter 4, and the detailed presentation of domestic asylum policies in the UK and the Netherlands contained in chapters 5 and 6. However, navigation of the thematic areas considered is difficult throughout, since in many instances the examination is structured by source, meaning that the narrative can jump back and forth. This separation of instruments from jurisprudence, which appears throughout the book, makes it difficult for the reader to easily form an overall picture of the area under consideration. Similarly, in the assessment of the domestic practice of the UK and the Netherlands, the examination jumps between the exclusion assessment and the post-exclusion phase. Navigability-related issues are compounded by the lack of an index. While the author raises a number of important and interesting legal questions during the course of her examination of the European legal framework, there appears to be a lack of academic legal engagement with some of the very interesting questions raised. Indeed, one can note an over-reliance on UNHCR guidelines throughout the piece, which forestalls more rigorous analysis of the legal points raised. The applicability of article 6 of the European Convention on Human Rights ECHR right to a fair trial to exclusion cases is dealt with rather swiftly in chapter 4 p, where the author notes the established ECtHR position that article 6 does not apply to administrative decisions on expulsion. It would have been interesting to explore whether this reasoning holds for exclusion decisions specifically, given the arguable criminal character of such proceedings. There has been some interesting work by Geoff Gilbert in this area which could have been built on. Nevertheless, chapters 3 and 4 provide a very useful exposition of relevant European asylum norms, human rights standards, and jurisprudence from the ECtHR and the Court of Justice of the European Union, providing the groundwork for further examination of the legal complexities raised by these different sources. While the information provided from the interview with the UK official features in chapter 6, and is used to supplement the limited public information available on article 1F proceedings in the UK, the interviews conducted with officials, asylum seekers, and lawyers in the Netherlands do not appear in chapter 5. It is difficult therefore to assess the contribution of these sources to the exposition provided. Exclusion Clauses of the Refugee Convention serves as a useful reference point for researchers and practitioners with an interest in

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exclusion and the often precarious position of those asylum seekers who have been rejected on this ground. A great deal of information is collated and presented, though it must be noted that further examination of some of the sources referred to is sometimes difficult since citations are on occasion incomplete or missing. Nevertheless, this is a useful collation of the legal and policy standards relevant to this complex and often vexed area of domestic, regional, and international law and policy. Published by Oxford University Press. For Permissions please email:

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Chapter 6 : PACE - Resolution () - Human rights of irregular migrants

The Position of Aliens in Relation to the European Convention on Human Rights Article in International Journal of Refugee Law 20(1) Â· March with 7 Reads DOI: /ijrl/een

January 04, Over the past few months, the mass movement of Syrian migrants into and across Europe has transfixed the international community. Though international law governs the decisions as to whether these Syrians are eligible for protection against refoulement return to torture or persecution, the texts of the UN Convention Relating to the Status of Refugees and the UN Convention Against Torture have nothing to say about the process through which these protection determinations happen. This is a large gap in international law, and one that has been exploited in the past to return migrants in mass influx situations to countries in which they may well fear persecution or torture. In September, a chamber of the Court decided *Khlaifia v. Italy*, the most recent in a line of cases extending the prohibition on collective expulsion of aliens found in Article 4 of Protocol 4 of the European Convention on Human Rights. Italy, [3] determining for the first time whether Article 4, Protocol 4 applies extraterritorially, and in particular to migrants intercepted at sea. Enacted in , Protocol 4 states simply: The travaux preparatoires do not address the specific question of territoriality, but do not preclude extraterritorial application of Article 4. The applicants, fleeing violence at the hands of skinheads in Slovakia, were summoned along with a number of Slovakian Roma families, to a police station in Ghent allegedly to complete their asylum applications. Upon arrival, all of the members of the group were served with identically-worded court orders authorizing their detention and deportation. Because the applicants were part of a group expulsion procedure conducted by the Belgian authorities before the asylum process had been completed and had little opportunity to contact a lawyer, the ECHR found a violation of Article 4 of Protocol 4. Russia [6] involved a Russian administrative practice of arresting, detaining, and collectively expelling Georgian nationals in the fall of The ECHR held that the prohibition on collective expulsion applied to all individuals, whether or not their residence was lawful. Italy failed to provide these applicants with access to the asylum process or any other immigration remedy at the port of arrival, instead handing them directly to ferry captains who would remove them to Greece. The Court found two violations of Article 4, Protocol 4: The Court rejected that argument, noting that while states have the sovereign right to control immigration and uphold obligations flowing from EU membership, the challenges of addressing mass influxes of migrants do not justify violating the Convention or its Protocols. *Khlaifia*, which addresses the situation of Tunisians fleeing Arab Spring-related violence, was handed down as Europe struggles to respond to more than one million migrants, largely from Syria, Afghanistan, and Iraq, who crossed its borders in The decision has been appealed to the Grand Chamber, which is currently deciding whether to accept it. The *Khlaifia* case was filed by three Tunisians who arrived on the Italian island of Lampedusa in September Located nearer to North Africa than to Italy, this twelve-mile square island has a native population of 5, and a reception center designed to hold migrants. Upon arrival, the *Khlaifia* applicants were immediately detained in the Lampedusa reception center which they described as dirty and overcrowded. Two or three days after their arrival, migrants held in the reception center engaged in violent protests against forced repatriation to Tunisia. The Italian police caught them and sent them to Palermo, where they were held with a larger group of migrants on board boats in the port for several days. The applicants were then brought to the Palermo airport, where the Tunisian consul registered their civil status information in accordance with a bilateral treaty between Italy and Tunisia providing for the expedited return of Tunisian migrants arriving in Italy without authorization. The applicants were not released until they landed at the Tunis airport. Italy argued that the deportation orders were individually issued and translated into Arabic, and that, upon arrival on Lampedusa, the Italian police individually interviewed each migrant through an interpreter and identified them using fingerprints and photographs. The Court focused on issues similar to those raised by the applicants: The dissent depicted the prior case law as establishing two methods of collective expulsion: Russia; and two,

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where a group is identified for expulsion without individualized consideration of their claims, as occurred in the push-back operations at issue in *Hirsi and Sharifi*. These judges also drew on *M. Cyprus* to minimize the importance of the identical wording of the deportation orders. In that case, because Cyprus had adjudicated the asylum applications individually and examined the personal circumstances of the group members before deportation, the ECHR found that the formulaic wording of the detention orders was not by itself sufficient to establish collective expulsion. By delimiting the applicable factors, the *Khlaifia* decision provides guidance that will be helpful both to applicants and to governments seeking to ensure that their deportation processes are in conformity with the European Convention on Human Rights. *Jaya Ramji-Nogales is the I. Haitian Centers Council, U.* An appeal to the Grand Chamber has been filed. Even though an error had been made in issuing a deportation order in the case of the applicant, who had not yet completed the judicial review process, the evidence did not support finding a collective expulsion. The ECHR did find several violations of the Convention, including the prohibitions on inhuman or degrading treatment and unlawful detention. *Russia I , Eur.* The Court also found violations of the rights to liberty and security, to be informed promptly of the charges against one, to a speedy decision by a court on the lawfulness of detention. A majority found a violation of the prohibition on inhuman or degrading treatment and to an effective remedy in conjunction with that right. Educational and news media copying is permitted with due acknowledgement. Caitlin Behles serves as the managing editor. Please click the button below to get started.

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Chapter 7 : Migration - Commissioner for Human Rights

Human Rights in International Law - Collected texts (3rd edition) 49,00 € / \$ The position of aliens in relation to the European Convention on Human Rights.

Human rights of irregular migrants Author s: Text adopted by the Assembly on 27 June 18th Sitting. The Parliamentary Assembly is deeply concerned by the ever-growing number of irregular migrants in Europe. It is the right of each Council of Europe member state to regulate the entry of foreign nationals and to return irregular migrants to their country of origin in accordance with international human rights law. A large number of irregular migrants perish when seeking to enter Europe. For those that make it, many live in dangerous and inhumane conditions. A great number are exploited and many live in fear of being arrested and sent back to their country of origin. It must be recognised that there will always be a number of irregular migrants present in Europe, regardless of the policies adopted by governments to prevent their entry or to return them speedily. The Assembly considers that, as a starting point, international human rights instruments are applicable to all persons regardless of their nationality or status. Irregular migrants, as they are often in a vulnerable situation, have a particular need for the protection of their human rights, including basic civil, political, economic and social rights. The Assembly considers that there is an urgent need to provide clarity on the issue of the rights of irregular migrants, notwithstanding that it is both a difficult and sensitive issue for member states of the Council of Europe. It is also the term increasingly favoured by international organisations working on migration issues. There is no single instrument which deals with the rights of irregular migrants. This has, however, only been ratified by three member states of the Council of Europe, namely Azerbaijan, Bosnia and Herzegovina and Turkey. The Assembly notes that there are many other international and European instruments that have provisions which can be used to guarantee the minimum rights of irregular migrants. The Assembly notes, however, that the large number of disparate instruments and the varying number of signatures and ratifications leave a web of uncertainty as to the minimum rights to be applied to irregular migrants. It should be possible to extract a number of minimum civil and political rights, on the one hand, and economic and social rights, on the other, to be applied by Council of Europe member states in favour of irregular migrants. In terms of civil and political rights, the Assembly considers that the European Convention on Human Rights provides a minimum safeguard and notes that the Convention requires that its contracting parties take measures for the effective prevention of human rights violations against vulnerable persons such as irregular migrants. The following minimum rights merit highlighting: Unreasonable force should not be used to prevent the entry of non-nationals into a country. A duty exists on the authorities to endeavour to save those whose life may be in danger in seeking to enter a country; The return process of irregular migrants should be carried out respecting fully the right to dignity of returnees, taking into account, inter alia, their age, sex, state of health and eventual disabilities. Coercive measures during expulsion should be kept to an absolute minimum; Where necessary, irregular migrants should be held in special detention facilities and separately from convicted prisoners. Children should only be detained as a measure of last resort and then for the shortest possible period of time. Detention or holding of other vulnerable persons pregnant women, mothers with young children, the elderly, people with disabilities should be avoided whenever possible. Suitable accommodation should be available to lodge families, but otherwise men and women should be housed separately. Independent judicial scrutiny of the legality and need for continued detention should be available. Those detained should be expressly informed, without delay and in a language they understand, of their rights and the procedures applicable to them. They should be entitled to take proceedings before a court to challenge speedily the lawfulness of their detention; The remedy should have a suspensive effect when the returnee has an arguable claim that, if returned, he or she would be subjected to treatment contrary to his or her human rights. Interpretation and legal aid should be available; For example, information relating to an asylum application should not be made available by the host country to the authorities of the country of origin; They

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should be able to manage or dispose of it, including through banking facilities allowing for the transfer of earnings and savings; In terms of economic and social rights, the Assembly considers that the following minimum rights, inter alia, should apply: Children are in a particularly vulnerable situation and they should be entitled to social protection, which they should enjoy on the same footing as national children; Any employer failing to comply with these terms should be rigorously pursued by the relevant authorities of the member state; Education should reflect their culture and language and they should be entitled to recognition, including through certification, of the standards achieved; On the basis of the principles contained in the international human rights instruments relevant to irregular migrants, the Assembly invites the governments of member states of the Council of Europe to guarantee the minimum civil, political, economic and social rights outlined in this resolution. The Parliamentary Assembly also invites the governments of member states of the Council of Europe to assure that irregular migrants are able to enjoy their minimum rights in practice, including by: The Assembly also invites member states of the Council of Europe to support the United Nations Special Rapporteur on the human rights of migrants in his work. The Assembly furthermore invites the Council of Europe Commissioner for Human Rights to take up the issue of rights of irregular migrants in his contacts with states and with national ombudsmen, and invites him to give priority to the rights of irregular migrants in both his individual country reports and thematic reports.