

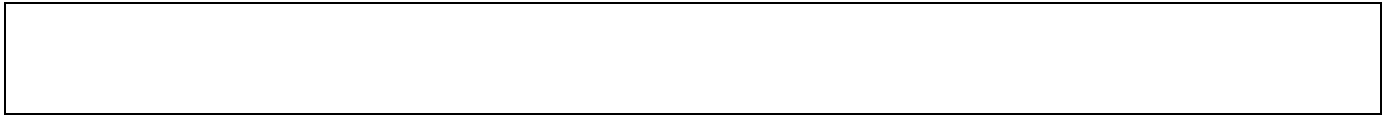
CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Tribunale di Crotona, sezione penale (Criminal Court of Crotona)			
Date of the decision:	(2012/12/12)	Case number: ²	N. 3396/12 R. G. N. R.N. 809/2012 R. G. Trib.
Parties to the case: Italian Government vs. Aarrassi H., Ababsa A., Dhifalli A.			
<u>Decision available on the internet?</u> Yes If yes, please provide the link: http://www.penalecontemporaneo.it/upload/1357548559crotona.pdf (If no, please attach the decision as a Word or PDF file):			
Language(s) in which the decision is written: Italian			
Official court translation available in any other languages? No (If so, which):			
Countr(y)(ies) of origin of the applicant(s)/defendant(s): Morocco, Algeria, Tunisia			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Italy (ICs are not asylum-seekers/refugees)			
Any third country of relevance to the case: ³			
Is the country of asylum or habitual residence party to:			
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
For EU member states: please indicate which EU instruments are referred to in the decision		Relevant articles of the EU instruments referred to in the decision: Directive 2008/115/EC, Articles 8, 14, 15, 16; European Convention on Human Rights, Article 3	

Topics / Key terms: (see attached 'Topics' annex):

Key facts (as reflected in the decision): [No more than 200 words]

From 9 October to 15 October 2012 a group of three migrants, detained in the CIE (Identification and Expulsion Center) of Isola Capo Rizzuto staged a violent demonstration in order to be released. They damaged the building and repeatedly threw objects at the vigilance personnel, endangering their physical integrity and causing the malfunctioning of the center. On the last day of the protest, the detainees were arrested and taken to trial for "destruction" and "resistance to a public officer".



Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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Decision and reasoning – In this case the judge declared that first, the detention of the migrants was illegal, basing its decision in particular on articles 15 and 16 of the EU Directive 2008/115/EC, which authorize the detention of migrants only as a last resort. Indeed, measures alternative to detention were not taken into account and detention was not ordered “with reasons being given in fact and in law”. Secondly, the judge found that detention conditions in the CIE (Identification and Expulsion Center) were unlawful because they were “injurious to human dignity”, under article 3 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, article 2 of the Italian Constitution and article 14.2 of the Italian “decreto legislativo” n. 286/1998, interpreted in accordance to the European Court on Human Rights case law. In addition, in paragraph 7 of the judgment the judge focused on the applicability of legitimate defense as defined in article 52 of the Italian Criminal Code. “In this case it is necessary to verify if the defendants’ behavior can be justified by the injustice of the offense against their fundamental rights, first of all the right to human dignity, prejudiced by indecorous detention conditions; secondly, the right to personal liberty, prejudiced by the heaviest coercive measure against individual freedom (detention), without taking into consideration any other less coercive measure.

In particular, it is necessary to verify if the defendants were compelled by the need to defend their rights (to human dignity and personal liberty) against the present danger of an unjust offense, as long as the defense has been proportionate to the offense (article 52 of the Criminal Code)”.

Further, the judge analyzed the constitutive requirements of legitimate defense, which are “an unjust offense and a legitimate reaction: the former must result in an actual danger deriving from an offense that, if not instantly neutralized, would result in a right violation; the latter must concern the necessity of defense, the unavailability of danger and the proportion between defense and offense. As to the first requirement (injustice of the offense) it has been already upheld that the violation of human dignity and personal liberty of the defendants has been unlawful, i.e. in breach of the European and Italian law concerning the detention of non-citizens in an Identification and Expulsion Center (i.e. the rules that require to evaluate in a specific case the possibility to apply a less coercive measure; and the rules that require full respect of fundamental rights of non-citizens).

In relation to the three parameters to define a reaction as legitimate, according to previous case law, we must observe:

1. In relation to the actuality of the danger, it is beyond doubt that the rights of personal liberty and human dignity were compressed at the moment the conducts were carried out by the defendants (the acts of resistance and destruction being committed right in the Identification and Expulsion Center, during the detention that was constraining their personal liberty and whose conditions violated their human dignity);

2. In relation to the unavailability of the danger, the specific features of this case (where the offender is a State body) requires consideration of the fact that the defendants cannot be regarded as individuals who deal with an expected and accepted danger, because from a State subject to the rule of law it must be expected (not the risk of a violation of rights, but) the respect of the rules, especially individual fundamental rights;

3. As to the proportionality between defense of a right and offense perpetrated, according to the decisions of the courts, in order to establish the existence of proportionality, it is necessary to compare, within an ‘ex ante’ perspective, on one hand the means available to and utilized by the offender, on the other hand the protected interests in conflict”. On this last point the judge concluded that “the comparison between conflicting protected interests must be solved in favor of the interests (human dignity and personal liberty) defended with the conduct, in preference to the offended interests - protected by articles 337 and 635 of the Criminal Code – i.e. the reputation and the efficiency of the

public administration and the public assets”.

In fact the judge emphasized that the risk to migrants' fundamental rights was unavoidable because they were confronted with a situation where they could not expect the rule of law to protect them. The judge also found that “as to the possible conducts alternative to the ones carried out by the defendants, it must be considered that the jurisdictional control over the administrative actions imposing detention could not be considered as effective” because the migrants were not provided with interpreters or lawyers.

Outcome - As the judge stated, “in this case it can be confirmed that all requirements listed in article 52 of the Criminal Code are met, in order to justify the conducts of the defendants”. Hence, the judge acknowledged the existence of legitimate defense and, as a consequence, the defendants were pronounced not guilty.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

This judgment refers to the European Court of Justice decisions C-61/11, 28.04.2011, par. 34; C-286/85, 24.03.1987; C-357/09, 30.11.2009; to the European Court of Human Rights decisions Saadi vs. United Kingdom, 29.01.2008; Tabesh v. Greece, 26.11.2009; M.S.S. v. Greece and Belgium, 22.01.2011

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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