

ECtHR - Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09

Country of Applicant:

Eritrea
Somalia

Date of Decision:

23-02-2012

Citation:

27765/09

Court Name:

Grand Chamber of the ECtHR

Keywords:

[Country of origin information](#) [1]
[Indirect refoulement](#) [2]
[Non-refoulement](#) [3]
[Inhuman or degrading treatment or punishment](#) [4]
[Torture](#) [5]

Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [6] > [Art 1](#) [7]
International Law > [1951 Refugee Convention](#) [6] > [Art 33](#) [8] > Art 33.1
International Law > [1951 Refugee Convention](#) [6] > [Art 33](#) [8]
European Union Law
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 1](#) [10]
European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [11]

Headnote:

The case concerned Somali and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya. Returning them to Libya without examining their case exposed them to a risk of ill-treatment and amounted to a collective expulsion.

Facts:

The Applicants were part of a group of about two hundred individuals who left Libya in 2009 aboard three vessels with the aim of reaching the Italian coast. On 6 May 2009, when the vessels were within the Maltese Search and Rescue Region of responsibility, they were intercepted by ships from the Italian Revenue Police and the Coastguard. The occupants of the intercepted vessels were transferred onto Italian military ships and returned to Tripoli. The Applicants stated that during that voyage the Italian authorities did not inform them of their destination and took no steps to identify them. On arrival in the Port of Tripoli the migrants were handed over to the Libyan authorities. According to the Applicants, they objected to being handed over to the Libyan authorities but were forced to leave the Italian ships. At a press conference held on the following day, the Italian Minister of the Interior stated that the operations to intercept vessels on the high seas and to push migrants back to Libya were the consequence of the entry into force, in February 2009, of bilateral agreements concluded with Libya, and represented an important turning point in the fight against clandestine immigration.

Two of the Applicants died in unknown circumstances after the abovementioned events. Fourteen of the Applicants were granted refugee status by the Office of UNHCR in Tripoli between June and October 2009.

Decision & Reasoning:

The Court has found that the Applicants were within the jurisdiction of Italy for the purposes of Article 1 of the Convention. The principle of international law enshrined in the Italian Navigation Code envisages that a vessel sailing on the high seas was subject to the exclusive jurisdiction of the State of the flag it was flying. Accordingly, the events giving rise to the alleged violations fell within Italy's jurisdiction within the meaning of Article 1 of the Convention.

The Court noted the disturbing conclusions of numerous organisations regarding the treatment of clandestine immigrants in Libya. No distinction was made between irregular migrants and asylum-seekers, who were systematically arrested and detained in conditions which observers had described as inhuman, reporting, in particular, cases of torture. Clandestine migrants were at risk of being returned to their countries of origin at any time. The Court observed that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources had reported practices which were contrary to the principles of the Convention. Furthermore, Italy could not evade its own responsibility under the Convention by relying on its subsequent obligations arising out of bilateral agreements with Libya. Since the situation in Libya was well-known and easy to verify at the material time, the Italian authorities had or should have known, when removing the Applicants, that they would be exposed to treatment in breach of the Convention. Moreover, the fact that the Applicants had failed to expressly request asylum did not exempt Italy from fulfilling its obligations. The Court noted the obligations of States arising out of international refugee law, including the 'principle of non-refoulement'. Furthermore, the Court considered that the shared situation of the Applicants and many other clandestine migrants in Libya did not make the alleged risk any less individual and concluded that by transferring the Applicants to Libya, the Italian authorities had, in full knowledge of the facts, exposed them to treatment proscribed by the Convention. The Court also concluded that when the Applicants were transferred to Libya, the Italian authorities had or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their respective countries of origin.

The Court for the first time examined whether Article 4 of Protocol No. 4 applied to a case

involving the removal of aliens to a third State carried out outside national territory. It sought to ascertain whether the transfer of the Applicants to Libya had constituted a 'collective expulsion of aliens' within the meaning of that provision. The Court observed that neither Article 4 of Protocol No. 4 nor the *travaux préparatoires* of the Convention precluded extra-territorial application of that Article. Furthermore, limiting its application to collective expulsions from the national territory of Member States would mean that a significant component of contemporary migratory patterns would not fall within the ambit of that provision and would deprive migrants of an examination of their personal circumstances before being expelled. The notion of 'expulsion' was principally territorial, as was the notion of 'jurisdiction'. Where, however, as in the instant case, the Court had found that a Contracting State had, exceptionally, exercised its jurisdiction outside its national territory, it could accept that the exercise of extraterritorial jurisdiction by that State had taken the form of collective expulsion. Furthermore, the special nature of the maritime environment could not justify an area outside the law where individuals were covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention. The transfer of the Applicants to Libya had been carried out without any examination of each Applicant's individual situation. The Applicants had not been subjected to any identification procedure by the Italian authorities, which had restricted themselves to embarking and disembarking them in Libya. The removal of the Applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4.

The Court reiterated the importance of guaranteeing anyone subject to a removal measure, the consequences of which were potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints. Even if such a remedy were accessible in practice, the requirements of Article 13 of the Convention were clearly not met by criminal proceedings brought against military personnel on board the army's ships in so far as that did not satisfy the criterion of suspensive effect enshrined in Article 13. The Applicants had been deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.

The Court also indicated that the Italian Government must take all possible steps to obtain assurances from the Libyan authorities that the Applicants will not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated.

Outcome:

The Applicants fell within the jurisdiction of Italy for the purposes of Article 1 of the European Convention on Human Rights.

There had been two violations of Article 3 of the Convention because the Applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea.

There had been a violation of Article 4 of Protocol No. 4.

There had been a violation of Article 13 taken in conjunction with Article 3 and with Article 4 of Protocol No.4.

The Court awarded each Applicant fifteen thousand euros in respect of non-pecuniary damage as well as one thousand, five hundred and seventy-five euros and seventy-four cents in total in respect of costs and expenses.

Subsequent Proceedings :

In its decision reporting on the taken execution measures, the CoE Committee of Ministers noted the obstacles encountered by the Italian authorities to obtain from Libya necessary assurances against the applicants' potential ill-treatment or their arbitrary repatriation to Somalia or Eritrea. On the general level, the CM noted the Italian Government's assurances that the guarantees in Italian laws and regulations, in particular those concerning the possibility to access the asylum procedure, would be applied also during military and coast guard operations on the high seas.

Observations/Comments:

Written observations were submitted by the United Nations High Commissioner for Refugees (the 'UNHCR'), Human Rights Watch, the Columbia Law School Human Rights Clinic, the Centre for Advice on Individual Rights in Europe (the 'Aire Centre'), Amnesty International and the International Federation for Human Rights ('FIDH'), acting collectively, which had been given leave to intervene by the President of the Chamber (Article 36 § 2 of the Convention). Observations were also received from the United Nations High Commissioner for Human Rights (the 'UNHCHR'), which had been given leave to intervene by the President of the Court. The UNHCR was also given leave to participate in the oral proceedings.

Case Law Cited:

ECtHR - *Xhavara and Others v. Italy and Albania*, Application No. 39473/98

ECtHR - *Hilal v United Kingdom*, Application no. 45276/99

ECtHR - *Andric v Sweden*, Application No. 45917/99

ECtHR - *Al-Skeini and Others v United Kingdom [GC]*, Application No. 55721/07

ECtHR - *Al-Saadoon and Mufdhi v United Kingdom*, Application No. 61498/08

ECtHR - *Al-Moayad v Germany*, Application No. 35865/03

ECtHR - *Aleksanya v Russia*, Application No. 46468/06

ECtHR - *Al-Adsani v United Kingdom [GC]*, Application No. 35763/97

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ECtHR - *Abdulaziz, Cabales and Balkandali v United Kingdom* (Application no. 9214/80; 9473/81; 9474/81)

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ECtHR - Bankovic and Others v Belgium and 16 other Contracting States [GC], Application No. 52207/99

ECtHR - Jabari v Turkey, 11 July 2000, (Application no. 40035/98)

ECtHR - Loizidou v Turkey (Application no. 40/1993 and 435/514)

ECtHR - Mamatkulov Askarov v Turkey, Applications nos. 46827/99 and 46951/99

ECtHR - Müslim v Turkey (Application no. 53566/99)

ECtHR - Ocalan v Turkey (2005) (Application no. 46221/99)

ECtHR - T.I. v United Kingdom (Application no. 43844/98)

ECtHR - V v United Kingdom (Application no. 24888/94)

[ECtHR - Salah Sheekh v The Netherlands \(Application no. 1948/04\) - resource](#) [12]

[FR - Affaire M.S.S. c. Belgique et Grece \(Requête no. 30696/09\)](#) [13]

[FR - Affaire H.L.R. c. France \(Requête no. 24573/94\)](#) [14]

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [15]

[ECtHR - Saadi v Italy, Application no. 37201/06](#) [16]

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ECtHR - Said v Netherlands, Application No. 2345/02

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ECtHR - Popov v Russia, Application No. 26853/04

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ECtHR - Medvedyev and Others v France, [GC], Application No. 3394/03

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[ECtHR - Sufi and Elmi v United Kingdom \(Application Nos 8319/07 and 11449/07\)](#) [17]

Attachment(s):



[Original judgment - HIRSI JAMAA AND OTHERS v. ITALY.pdf](#)[18]

Other sources cited:

Note on International Protection of 13 September 2001 (A/AC.96/951, § 16), the UNHCR

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1979 International Convention on Maritime Search and Rescue

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) (2000)

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1985 Schengen Agreement

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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)

Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (2010/252/EU)

Report of the Council of Europe's Committee for the Prevention of Torture on Italy as well as various report on the situation in Libya, Somalia and Eritrea

Authentic Language:

English

State Party:

Italy

National / Other Legislative Provisions:

Italy - Navigation Code

Italy - Additional Protocol to the Bilateral Agreement with Libya

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A23
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A39
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A48
- [4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43
- [5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A85
- [6] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
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- [8] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
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- [10] https://www.asylumlawdatabase.eu/node/195#toc_1
- [11] <https://www.asylumlawdatabase.eu/node/453>
- [12] <https://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-resource>
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- [18] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20HIRSI%20JAMAA%20AND%20OTHERS%20v.%20ITALY.pdf>