

“Africa fund” case F.A.Q.

→ What is the “Africa Fund”?

With Budget Law 232/2016 the Italian Parliament earmarked 200 million Euros to create the so-called “Africa Fund” for the fiscal year 2017.

→ What is the purpose of the “Africa fund”?

The “Africa Fund”'s declared purpose is to finance "extraordinary measures" to “**promote dialogue and cooperation with key African partners on migration**”. One of these partners is Libya, along with Tunisia and Niger.

→ What exactly did ASGI challenge in Court?

ASGI challenged the **lawfulness of the Ministry of Foreign Affairs (MFA) Decree no. 4110 of 2017**, allocating EUR 2,5 out of the 200 MLN to the Italian Ministry of Interior (MOI) provide “*technical support by the Italian Ministry of Interior to the competent Libyan authorities to improve border and migration management, including combating migrants smuggling and search and rescue activities*”

ASGI also challenged the lawfulness of the **memorandum between the Italian MFA and MOI**, pursuant to which the MFA issued Ministerial Decree 4110 of 2017.

It is not disputed that most resources allocated to the “Africa fund” were indeed allocated to humanitarian and development projects.

→ What were the EUR 2,5 MLN allocated by Decree 4110 used for?

The money was entirely spent on supporting the operational capability of the Libyan Coast Guard (LCG), more precisely:

- Restoring four patrol vessels of the LCG;
- Purchasing spare parts for the vessels;
- Towing one of the vessels from Tripoli to the Bizerte port in Tunisia;
- Training 33 members of the LCG crew;
- Insurance and certificates.

→ What are the violations alleged by ASGI in its lawsuits?

1. Misuse of power: this violation occurs when an administrative act intended to pursue a public goal is used for another purpose instead. The consequence is that the act can be declared void and annulled (art. 21-*octies*, law 241 of 1990).

In this case, ASGI claims that “*technical support by the Italian Ministry of Interior to the competent Libyan authorities to improve border and migration management*” through measures clearly aimed at improving the operational capability of the LCG’s to pull migrants back into Libya, is in no way in line with the intended purpose of the “Africa Fund”, i.e. “*promoting dialogue and cooperation with African partners on migration*”.

ASGI argues that dialogue and cooperation can only be promoted in accordance with respect for fundamental human rights. On the contrary, the actions financed by Decree 4110 will

- (a) increase the LCG’s capacity to pull back migrants into Libya where they will be subjected to gross human rights violations in detention centres;
- (b) assist operations of the LCG, which in the past has already used force against migrants and international organizations personnel, such as the 17 august 2016 incident where the LCG opened fire against a MSF vessel;
- (c) exacerbate the hostilities among warring parties, since the patrol vessels can also be employed for military purposes.

2. Violation of the Italian Constitution through violation of Articles 2 and 3 of the ECHR: ASGI also moved the Administrative Court to raise with the Italian Constitutional Court the issue of constitutionality of Decree 4110, because it violates fundamental human rights, and notably Articles 2 and 3 of the ECHR.

By improving the LCG’s operational capacity to pull back fleeing migrants into Libya, the Italian government directly contributes to exposing such persons to the risk of being subjected to gross human rights violations that are widespread practice in Libya.

The unspoken purpose of the law is to contribute to migration control through a system of pull back by proxy into Libyan territory and detention of migrants in camps. *De facto*, this equates direct push back into Libya, already condemned by the ECtHR in the 2012 *Hirsi Jamaa et al.* judgment.

3. Violation of EU Council Regulation 44/2016

EU Council Regulation 44/2016 “*Concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011*” prohibits all Member States

1. “to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression [...] to any person, entity or body in Libya or for use in Libya; and
2. “to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).”

Restoring patrol vessels, which can be also employed for military purposes, contravenes the EU Council ban.

Moreover, since the LCG in the past already resorted to the use of lethal force (at least four episodes were publicly documented by media and are also cited in a UN General Assembly report), the likelihood of actual acts of war occurring is all but theoretical.

→ What arguments did ECRE, ICJ and Amnesty international raise in their third-party interventions?

ECRE and the International Commission of Jurists (ICJ) made a joint third-party intervention on 6 July 2018 in support of ASGI's lawsuit. Their main arguments rely on the alleged responsibility of the Italian Government based on the Draft Articles of the International Law Commission on State responsibility.

More precisely, ECRE and the ICJ argued that Italy is responsible under Draft Article 16 (which enshrines a norm of international customary law according to the International Court of Justice) for knowingly giving a contribution to actions attributable to the Libyan Government violating fundamental human rights of migrants.

Italy is also allegedly responsible under Draft Article 41 for violating the general obligation under international law to refrain from acts contributing to violations of *jus cogens* norms (such as prohibition of torture, enslavement, forced labour) and help prevent their commission.

Amnesty International filed a third-party intervention in support of ASGI's claim on 4 September 2018) stressing the importance, in order to assess the lawfulness of Decree 4110, to analyze it within the broader context of the Italy-Libya relations.

To this end, of particular importance is the 2017 Memorandum of Understanding between Italy and Libya, and other measures such as the donation of 12 vessels to the LCG in June 2018.

The act is clearly aimed at reinforcing capacity of bodies (such as LCG and the General Administration for Coastal Security) that are known for perpetrating human rights violations.

The Italian government willfully contributed to such actions, as also demonstrated by the fact that they did not place any restrictions or require any reassurances that equipment would be used for acts contrary to international law.

The fact that Italy also contributed to relief projects through the "Africa Fund" is irrelevant.