

## **What facts did the judgment establish?**

After fleeing Eritrea, on 27 June 2009 the fourteen applicants set off from the Libyan coast to reach Italy, in order to apply for international protection.

On 30 June 2009, near Lampedusa, the boat's engine failed, leaving the group of 89 migrants stranded at sea. The Italian Navy intervened, took the shipwrecks aboard their boat, took pictures of each of them and promised them to take them to Italy. However, the Navy boat started sailing towards Libya, despite the migrant's requests to be taken to Italy and apply for asylum. After putting down the protests with the use of force, the Italian authorities forcibly transferred the migrants onto the Libyan patrol vessel, where Italian *Guardia di Finanza* personnel was present. The migrants were handcuffed and disembarked in Libya, where they were brutally beaten and imprisoned for months.

Some of them, including the 14 applicants, after some time managed to escape Libya. After crossing several countries by land, in 2010 they managed to enter Israel, where they were arrested.

Although they were subsequently released, Israeli authorities never recognized their refugee status or provided them with any guarantee against their refoulement to Eritrea.

On 25 June 2014 the applicants formally requested the Italian government to provide compensation for the damage they suffered as a result of their push-back to Libya and allow them to enter Italy in order to lodge an application for international protection. They never received an answer.

After contacting Amnesty International, the applicants gave a power of attorney to ASGI lawyers to represent them in a lawsuit against Italian government to have their rights recognized.

## **What are the main legal issues at the trial?**

The applicants' identity. One of the contentious issues at the trial was whether or not the applicants were among the 89 migrants that the Italian Navy rescued and pushed back in June 2009. Although the Italian government argued that they were not, the judge ruled that they were, based on a comparison between the individual photographs taken by Italian Navy officers aboard the rescue boat and those recently taken at the Amnesty International's Israel office. It is worth noting that after the push-back into Libya some applicants were in contact with UNHCR, which however refused to provide any information or documents that could be used to identify the applicants.

The legality of the pushback. The applicants argued that their pushback into Libya violated a number of

international provisions (including Art. 33 of the 1951 Geneva Convention, Art. 3 of the ECHR, Art. 3 of the Convention against Torture). These norms forbid to transfer in any way a person to a country where s/he can be subjected to torture or other serious human rights violations, which already in 2009 were commonplace in Libya. The Italian government, on the other hand, maintained that handing over the shipwrecked to Libyan authorities was explicitly foreseen by the “Treaty on Friendship, partnership and cooperation” concluded between Italy and Libya on 30 August 2008, which the Italian Navy simply implemented. The Court established the primacy of the above mentioned human rights provisions over those stemming from the bilateral international treaty. The court also held that such rights are recognized by the Italian Constitution and the EU Human Rights Charter. It is worth recalling that the prohibition of torture and refoulement belong to a core of international customary law rules (“jus cogens”) that States cannot derogate through treaty provisions.

Italy’s obligation to receive the application for international protection. The applicants argued that the push back deprived them of their constitutional right to apply for asylum in Italy. The Italian administration on the other hand argued that the migrants were rescued in international waters and that therefore Italy was not obliged to receive their application for protection. The judgment established that, following the rescue by the Italian Navy, the migrants were made board a ship flying an Italian flag, which is thus to be considered as Italian territory. Consequently, Italy was obliged to entertain their application for international protection.

### **Why is the judgment important and innovative?**

For the first time, the Italian judiciary recognized that a foreigner illegally pushed back by Italian authorities has the right to enter Italy to apply for asylum. To hold otherwise, in the Rome Court’s ruling, would mean that Italian authorities can deprive a foreigner of the right to asylum under Art. 10 of the Italian Constitution by (illegally) preventing his/her access to the territory.

The judgment therefore established that the government must grant the applicants entry into Italy in order to exercise their right to asylum that they were previously deprived of.

The Court also condemned the Italian government to pay to each applicant a sum of 15,000 euros (an amount equal to that established by the ECHR in the Hirsi case) for the damages suffered as a result of the pushback and the subsequent exposure to human rights violations in Libya.

### **How is this judgment related to other judgments regarding the situation in Libya?**

The Court in Rome confirmed that the Italian Government's practice, in place until 2012, to hand over migrants intercepted at sea to Libyan authorities, knowing that in that country they may be subjected to serious human rights violations, is illegal. A number of judicial decisions affirmed this principle, starting from the ECHR judgment *Hirsi and others v. Italy* of 2012, which brought to an end Italian authorities' practice of direct push-backs to Libya. Since then, the Italian government started resorting to indirect push-back policies (or "push-back by proxy"), financing, equipping and otherwise supporting Libyan authorities to intercept migrants at sea and take them back to Libya.

In recent years, especially after the outbreak of the armed conflict in Libya, the migrants' situation in Libya worsened considerably. Italian case law repeatedly confirmed that Libya is not a safe country, both in criminal and civil cases.

In February this year, the Court in Rome upheld a court claim filed by ASGI and ordered the issuance of a humanitarian visa to a minor who was trapped in Libya, in light of the situation of great danger that foreigners face in the country.

### **What happens now?**

The ruling established that the applicants are fully entitled to enter Italy to formalize the request for international protection. This right had been denied to them when, after boarding the Italian Navy ship that had rescued them, they had expressed their intention to seek asylum from the Italian authorities. These then, handing them over to the Libyan authorities, had illegitimately prevented them from exercising this right.

It is up to the Italian public administration to identify the most appropriate forms to allow applicants to enter the national territory.