

Press Conference: Private Companies and Italian Government Sued for Refoulements in Libya

12 February 2021, 12pm

Legal aspects

Effective control by the Italian authorities over the push-back operation and awareness of the situation in Libya

The conducts of the **Italian authorities**, the **shipowner** and the **captain** of the vessel resulted in the violation of a number of international, EU and domestic rules and of the fundamental rights of migrants subject to repatriation.

As a preliminary remark, it is key to note that **the Italian authorities were in charge of coordinating the operation which resulted in the migrants push-back to the port of Tripoli, as emerges from the Asso Ventinove's logbook**. Therefore, the Italian authorities had direct control over the push-back operation. In addition, it should be stressed that the Italian authorities engaged in the abovementioned conduct despite being fully aware of the systematic abuses and human rights violations taking place in the Libyan detention centres (*refoulement* to Libya) and of the further risk of refoulement to the country of origin (*chain refoulement*) to which migrants are exposed in Libya.

For the reasons mentioned above and by virtue of the specific rights and duties violated, the situation is closely comparable to the one of the *Hirsi Jamaa and others v. Italy* case, which resulted in Italy being condemned by the European Court of Human Rights.

The right to admission into the territory as a necessary precondition for the exercise of the right to asylum

First of all, the push-back operation prevented migrants from applying for asylum, in violation of the Geneva Convention and of Article 10 of the Italian Constitution. The lack of access to international protection and asylum is a direct consequence of the practical and legal obstacles and restrictions placed on migrants' freedom of movement. The necessary precondition for exercising the right to asylum is the right to admission into the territory which was blatantly denied to aliens in the case at stake.

The prohibition of collective expulsion

By looking at the factual context of the push-back, it appears that, even though the Italian authorities were responsible for the operation, by any means and at no time, they carried out an assessment of the individual situation of the aliens and of the existence of risks associated with *refoulement*. The absence of such assessment resulted in the violation of the prohibition of collective expulsion, as enshrined in Article 4 Protocol No. 4 of the European Convention on Human Rights and of Article 19 of the Italian Legislative Decree n. 286 on Immigration and Aliens, which prohibits *refoulement* to a country where the person would be at risk of being exposed to torture or persecution. In addition to the risks faced in

Libya, the Italian authorities should also have assessed the risks associated with the possible chain *refoulement* from Libya to Eritrea, the applicants' country of origin. Furthermore, it must be recalled that the collective expulsion to a country such as Libya systematically prevents any access to justice to migrants and therefore the exercise of the right to have one's protection claim effectively examined by an independent body.

The violation of the prohibition of torture and inhuman and degrading treatment

As demonstrated by the facts and circumstances of the applicants' cases, the push-back operation materialized the risk of being exposed to torture and inhuman and degrading treatment, prohibited by Article 3 of the European Convention on Human Rights. At the time when the push-back operation took place, the Italian authorities were fully aware of the risks to which the migrants would have been exposed upon return to Libya. In this regard, in the *Hirsi Jamaa* judgment, the European Court of Human Rights clarified that the prohibition of torture and inhuman and degrading treatment has an absolute nature and in no circumstances can be derogated from: any border control and migration management objective or possible declared state of emergency can, in any way, justify a conduct of a State that exposes migrants to such risks.

The right to be taken to a place of safety (POS)

The international rules of the law of the sea (UNCLOS, SAR Convention, SOLAS Convention) require that the parties involved in a rescue operation at sea – in this case: the Italian State authorities, the shipowner and the captain of the vessel – are released from their rescue obligations only when the rescued persons are brought to a “place of safety”. This rescue obligation is coupled with the corresponding right of the rescued persons to be brought to a place of safety.

The place of safety notion is not limited to the mere physical and material protection of persons, but it has to be interpreted in light of the respect for their fundamental rights, as set out in the Council of Europe Resolution No. 1821 of 2011. The place of safety must be understood as “safe” only in absence of any risk for the person of being subject to torture, inhuman and degrading treatment, and as a place where his life and freedom are not in danger.

In light of this definition, the port of Tripoli can in no way be considered a place of safety for push-backed migrants: the systematic and institutional dynamics of arbitrary detention, torture and extortion are well known.