



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 149

February 2012

Hirsi Jamaa and Others v. Italy [GC] - 27765/09

Judgment 23.2.2012 [GC]

Article 3

Expulsion

Return of migrants intercepted on the high seas to country of departure: *violation*

Article 13

Lack of remedies available for migrants intercepted on the high seas and returned to country of departure: *violation*

Article 4 of Protocol No. 4

Prohibition of collective expulsion of aliens

Return of migrants intercepted on the high seas to country of departure: *Article 4 of Protocol No. 4 applicable; violation*

Facts – The applicants, eleven Somali nationals and thirteen Eritrean nationals, 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 (*Guardia di finanza*) 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, following a ten-hour voyage, the migrants were handed over to the Libyan authorities. According to the applicants' version of events, 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 events in question. Fourteen of the applicants were granted refugee status by the Office of the High Commissioner for Refugees (UNHCR) in Tripoli between June and October 2009. Following the revolution which broke out in Libya in February 2011 the quality of contact between the applicants and their representatives deteriorated. The lawyers are currently in contact with six of the applicants, four of whom reside in Benin, Malta or Switzerland, where some are awaiting a response to their request for international protection. One of the applicants is in a refugee camp in Tunisia and plans to return to Italy. In June 2011 one of the applicants was awarded refugee status in Italy, which he had entered unlawfully.

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Law

Article 1: Italy acknowledged that the ships onto which the applicants had been embarked were fully within Italian jurisdiction. The Court pointed out the principle of international law enshrined in the Italian Navigation Code, according to which a vessel sailing on the high seas was subject to the exclusive jurisdiction of the State of the flag it was flying. The Court did not accept the Government's description of the events as "rescue operations on the high seas", or the allegedly minimal level of control exercised over the applicants. The events had taken place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel. In the period between boarding those ships and being handed over to the Libyan authorities, the applicants had been under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities. Accordingly, the events giving rise to the alleged violations fell within Italy's jurisdiction within the meaning of Article 1 of the Convention.

Conclusion: within the jurisdiction (unanimously).

Article 3

(a) *Risk of ill-treatment in Libya* – While conscious of the pressure put on States by the ever increasing influx of migrants, a particularly complex situation in the maritime environment, the Court nevertheless pointed out that that situation did not absolve them from their obligation not to remove an individual at risk of being subjected to treatment in breach of Article 3 in the receiving country. Noting the deteriorating situation in Libya after April 2010, the Court, for the purposes of examining the case, referred only to the situation prevailing in Libya at the material time. In that regard, it noted that the disturbing conclusions of numerous organisations regarding the treatment of clandestine immigrants were corroborated by the [report of the CPT*](#) published in 2010. 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 and, if they managed to regain their freedom, were subjected to precarious living conditions and racism. In response to the Italian Government's argument that Libya was a safe destination for migrants and that that country would comply with its international commitments as regards asylum and the protection of refugees, 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. The Office of the UNHCR in Tripoli had never been recognised by the Libyan government. Since that 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", also enshrined in the [Charter of Fundamental Rights](#) of the European Union. The Court, considering furthermore that the shared situation of the applicants and many other clandestine migrants in Libya did not make the alleged risk any less individual, 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.

Conclusion: violation (unanimously).

(b) *Risk of ill-treatment in the applicants' countries of origin* – The indirect removal of an alien left the responsibility of the Contracting State intact, and that State was required to ensure that the intermediary country offered sufficient guarantees against arbitrary repatriation, particularly if that State was not a party to the Convention. All the information in the Court's possession clearly showed that the situation in Somalia and Eritrea was one of widespread insecurity – there was a risk of torture and detention in inhuman conditions merely for having left the country irregularly. The applicants could therefore arguably claim that their repatriation would breach Article 3. The Court then ascertained whether the Italian authorities could reasonably have expected Libya to offer sufficient guarantees against arbitrary repatriation. Observing that that State had not ratified the [Geneva Convention on Refugee Status](#) and noting the absence of any form of asylum and protection procedure for refugees in Libya, the Court did not subscribe to the argument that the activities of the UNHCR in Tripoli represented a guarantee against arbitrary repatriation. [Human Rights Watch](#) and the [UNHCR](#) had denounced several forced returns of asylum seekers and refugees to high-risk countries. Thus, the fact that some of the applicants had obtained refugee status in Libya, far from being reassuring, constituted additional evidence of the vulnerability of the parties concerned. The Court 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.

Conclusion: violation (unanimously).

Article 4 of Protocol No. 4

a) *Admissibility* – The Court was called upon for the first time to examine 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 having taken to the sea, often risking their lives, and not having managed to reach the borders of a State, of an examination of their personal circumstances before being expelled, unlike those travelling by land. 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. Article 4 of Protocol No. 4 was therefore applicable in the instant case.

Conclusion: admissible (unanimously).

(b) *Merits* – 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.

Conclusion: violation (unanimously).

Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4: The Italian Government acknowledged that no provision had been made for assessment of the personal circumstances of the applicants on board the military vessels on which they were embarked. There had been no interpreters or legal advisers among the personnel on board. The applicants alleged that they had been given no information by the Italian military personnel, who had led them to believe that they were being taken to Italy and had not informed them as to the procedure to be followed to avoid being returned to Libya. That version of events, though disputed by the Government, was corroborated by a very large number of witness statements gathered by the UNHCR, the CPT and Human Rights Watch, and the Court attached particular weight to it. 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.

Conclusion: violation (unanimously).

Article 46: The Italian Government had to take all possible steps to obtain assurances from the Libyan authorities that the applicants would not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated.

Article 41: EUR 15,000 each in respect of non-pecuniary damage.

* European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

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