



Court declares inadmissible applicants' complaint alleging "*refoulement* by proxy" and extraterritorial jurisdiction of Italy over rescue operation in international waters of central Mediterranean

In its decision in the case of [S.S. and Others v. Italy](#) (application no. 21660/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a maritime operation to rescue a rubber dinghy transporting some 150 people which had left Libya in the night of 5-6 November 2017 with a view to reaching European shores. The applicants complained that the Rome Maritime Rescue Coordination Centre (MRCC) had placed them at risk of ill-treatment and death by allowing a Libyan ship to take control of the rescue operations.

The applicants argued that the facts fell within Italy's jurisdiction within the meaning of Article 1 of the Convention, both *ratione loci* and *ratione personae*. They further alleged that Italy had, with the consent of the European Union, established a practice of "*refoulement* by proxy", thereby placing thousands of migrants at risk of inhuman and degrading treatment while simultaneously circumventing its international and Convention obligations.

The Court found that the criteria for concluding that a State Party had exercised extraterritorial jurisdiction for the purposes of Article 1 of the Convention had not been met in the circumstances of the case.

As to jurisdiction *ratione loci*, the Court found that the area in which the applicants had been intercepted – and the international waters of the Central Mediterranean Sea more generally – had not *de facto* been under the effective control of Italy. Furthermore, the Court did not accept the applicants' argument to the effect that the financial and logistical support provided by Italy to Libya in managing immigration amounted to the exercise of extraterritorial jurisdiction by the respondent State.

As to jurisdiction *ratione personae*, the Court observed that the captain and crew of the Libyan vessel had acted autonomously and that there was nothing to suggest that the officers of the Rome MRCC had had control over the crew of that ship or had been in a position to influence their conduct in any way. Moreover, the mere fact that the search and rescue procedure had been initiated by the Rome MRCC could not, in the Court's view, trigger an extraterritorial jurisdictional link between the applicants and the Italian State.

The Court emphasised that, although the conditions for concluding that a State party had exercised extraterritorial jurisdiction under Article 1 of the Convention were not met, the situation here was nonetheless governed by other rules of international law, in particular those regarding the rescue of persons at sea, the protection of refugees and State responsibility.

The Court reiterated, however, that the scope of its authority was limited to ensuring compliance with the Convention alone. It therefore did not have the authority to ensure compliance with other international treaties or with obligations deriving from sources other than the Convention.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The seventeen applicants (S.S., I.A., A.A., E.E.A., B.C., E.E., S.S.E., A.M.G., D.A.I., J.R., R.J., E.K., V.M., J.O., M.O., E.R.O., S.O.), who were born between 1980 and 1997, respectively, are Nigerian and

Ghanaian nationals. They are part of a group of some one hundred and fifty people who left Libya in a rubber dinghy on the night of 5-6 November 2017 with a view to reaching European shores.

At 6.15 a.m. on the morning of 6 November 2017 the Rome Maritime Rescue Coordination Centre (MRCC) received a distress signal from the dinghy, which was located thirty-three nautical miles north of Tripoli. The MRCC immediately issued a message requesting all nearby vessels to intervene and give assistance to the sinking dinghy.

As the intervention zone was, according to the Government, within the maritime search and rescue (SAR) region under the jurisdiction of Libya, the MCRR also asked the Tripoli Joint Rescue Coordination Centre (JRCC) to take charge of coordinating the rescue operations.

The Dutch ship *Sea Watch 3* (SW3), which was in the vicinity at the time, contacted the Rome MRCC and offered to act as “on-scene commander”. At the same time, the Tripoli JRCC informed the Rome MRCC that it had instructed the Libyan ship *Ras Jadir* to direct operations as “on-scene commander”.

The *Ras Jadir* was the first to reach the dinghy, at approximately 7.30 a.m.

According to the applicants, the manoeuvres carried out by the Libyan vessel produced water movement which caused the death of several people on board the dinghy, who were abruptly flung into the water. They alleged that the crew of the *Ras Jadir* had failed to supply the shipwrecked individuals with life-jackets and had struck and threatened those in the water.

The SW3 dispatched two lifeboats to rescue the individuals who had fallen into the sea, pulling dozens of people aboard, including nine of the seventeen applicants.

The remaining eight applicants were brought aboard by the crew of the *Ras Jadir*, then six of them escaped with others and reached the SW3.

The two applicants who had remained on board the *Ras Jadir* with about forty-five other survivors were alleged to have been tied up, beaten and threatened. They were purportedly taken to a detention camp in Tajura, Libya, where they were subjected to ill-treatment and abuse. On an unspecified date they were returned to Nigeria as part of the voluntary humanitarian return programme run by the International Organization for Migration.

The fifteen applicants who were taken aboard the SW3 were taken to Italy, where they were living when the application was lodged. The two applicants who remained on board the *Ras Jadir* are in Nigeria.

In a letter of 25 August 2021 the applicants’ representatives informed the Court that they had lost contact with five of the applicants (I.A., E.E.A., E.K., V.M. and J.O.).

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 May 2018.

The applicants argued that the facts fell within Italy’s jurisdiction within the meaning of Article 1 of the Convention, both *ratione loci* and *ratione personae*. They further alleged that Italy had, with the consent of the European Union, established a practice of “*refoulement* by proxy”, thereby placing thousands of migrants at risk of inhuman and degrading treatment while simultaneously circumventing its international and Convention obligations.

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment), read in conjunction with Article 1 (obligation to respect Human Rights), the applicants complained that, by allowing the Libyan ship *Ras Jadir* to take part in the rescue operations, the Rome Maritime Coordination and Rescue Centre (MRCC) had placed them at risk of ill-treatment and death. Six applicants further alleged that they had been injured and mistreated by Libyan coast guards during the rescue operations. Two applicants complained of the death of their children when the vessel sank.

All the applicants complained, under Articles 3 and 4 (prohibition of slavery and forced labour), that they had been exposed to the risk of being returned to Libya, a country where irregular migrants were held in inhuman and degrading conditions and could be subjected to slavery. In addition, under Articles 3 and 4 of Protocol No. 4 (prohibition of collective expulsion of aliens), read in conjunction with Article 1, two applicants submitted that they had been subjected to *refoulement* to Libya and further complained of the conditions of their return to Nigeria, which had been decided in the absence of sufficient safeguards. Lastly, relying on Article 13 (right to an effective remedy), read in conjunction with Articles 2 and 3 of the Convention and Article 4 of Protocol No. 4, the applicants complained that they had been unable to bring claims before the Italian judicial authorities in respect of the ill-treatment inflicted by the crew of the *Ras Jadir*, the *refoulement* of some of them to Libya, the abuse suffered there and the risk of being returned to their country of origin.

The Commissioner for Human Rights, exercising her right to intervene in the proceedings, submitted written observations. The following were granted leave to intervene as third parties by the Section President: the Office of the United Nations High Commissioner for Refugees (UNHCR); Médecins sans frontières (MSF); the International Commission of Jurists (ICJ) jointly with the Centre for Advice on Individual Rights in Europe (AIRE Centre), the Dutch Council for Refugees (DCR) and the European Council on Refugees and Exiles (ECRE); Oxfam Italia; the Legal Clinic in International Protection of Human Rights (LCIPHR) at Roma Tre University; Amnesty International and Human Rights Watch (HRW); the International Human Rights Legal Clinic (IHRCL) of the University of Turin; and Defence for Children The Netherlands (DCN).

The decision was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
 Erik **Wennerström** (Sweden),
 Alena **Poláčková** (Slovakia),
 Georgios A. **Serghides** (Cyprus),
 Raffaele **Sabato** (Italy),
 Alain **Chablais** (Liechtenstein),
 Artūrs **Kučs** (Latvia),

and also Ilse **Freiwirth**, *Section Registrar*.

Decision of the Court

Article 1

The Government submitted that the facts of the case fell outside Italy's jurisdiction; the applicants, like certain third parties, argued that, in the circumstances of the case, the respondent State had exercised extraterritorial jurisdiction.

The Court observed, as a preliminary consideration, that it was not disputed that the events in question had taken place outside the national territory of the respondent State, in international waters, thirty-three miles north of Tripoli. Nor did that location fall within the Italian search and rescue (SAR) region.

The Government had submitted that the events had taken place within the Libyan SAR region, as delimited by the unilateral declaration of 7 July 2017.

The Court noted that the information in its possession did not enable it to establish whether Libya's unilateral declaration with regard to its SAR region had already taken effect at the material time and, if so, whether the applicants' rescue had in fact taken place within the region thus delimited. Moreover, it was not for the Court to determine these issues, which fell within the scope of the International Convention on Maritime Search and Rescue ("the SAR Convention").

In order to establish whether there were circumstances warranting the conclusion that a State had exercised jurisdiction extraterritorially, the Court had to determine whether, at the material time, there had been any form of effective control by that State over the area in question and/or whether the authorities of the State in question had exercised power or control over the applicants.

The Court was not persuaded by the parallels the applicants had drawn between the control exercised by a State over a territory as a result of military action and the alleged activities of the Italian authorities in the context of operations to intercept or rescue migrants in the Central Mediterranean Sea.

Furthermore, the Court could not accept the applicants' argument to the effect that the financial and logistical support provided by Italy to Libya in managing immigration amounted to the exercise of extraterritorial jurisdiction by the respondent State, as it did in the case of military, financial and political support.

The financial and technical support provided by Italy to the Libyan State under bilateral agreements was not such as to lead the Court to presume that the Libyan authorities were dependent to such a degree that the international maritime area off the Libyan coast was under the effective control and decisive influence of Italy. Furthermore, unlike the applicants, the Court found no evidence to suggest that, as a result of the bilateral agreements entered into between the two countries, Italy had taken over Libya's public-authority powers in immigration matters.

It could not be concluded that the area in which the applicants had been intercepted – and more generally the international waters of the Central Mediterranean Sea – had been under the effective control of Italy such that its jurisdiction could be established in the present case. It therefore remained to be determined whether there had been "State agent authority and control" over the applicants.

The Court noted that, after receiving the distress signal from the applicants' vessel, the Rome MRCC had informed the Tripoli JRCC thereof and had requested the naval units in the vicinity to intervene to rescue the survivors, in accordance with the procedure laid down in the SAR Convention and other relevant international instruments.

It was not disputed that none of the ships involved in the rescue operation had been flying the Italian flag or had been under the *de facto* control of Italian agents.

The Court observed that the captain and crew of the Libyan vessel had acted autonomously, refusing to respond to the calls sent by the other vessels at the scene and by the Italian Navy helicopter for the purpose of coordinating the rescue manoeuvres. There was nothing to suggest that the MRCC officers in Rome had had control over the crew of the *Ras Jadir* or had been in a position to influence their conduct in any way.

The mere fact that the search and rescue procedure had been initiated by the Rome MRCC could not have resulted in bringing the applicants under Italian jurisdiction. To conclude otherwise could, moreover, amount to dissuading States from acting on the basis of their international obligations in connection with the rescue of persons in distress at sea, since States would then be required, on that basis alone, to secure the Convention rights to such persons, even where the latter had no connection to them and were not under their effective "control". As Italy's extraterritorial jurisdiction was therefore not engaged on this basis either, the applicants could not validly argue that the circumstances of the case were such as to bring them within Italy's jurisdiction.

The Court had previously emphasised, notwithstanding the right of States to establish their own immigration policies, that problems with managing migratory flows could not justify having recourse to practices which were not compatible with the State's obligations under the Convention.

Although the conditions for concluding that a State Party had exercised extraterritorial jurisdiction for the purposes of Article 1 of the Convention were not met in the circumstances of the present case, the situation before the Court was nonetheless governed by other rules of international law, in

particular those regarding the rescue of persons at sea, the protection of refugees and State responsibility.

The Court reiterated, however, that the scope of its authority was limited to ensuring compliance with the Convention alone. It therefore did not have the authority to ensure compliance with other international treaties or with obligations deriving from sources other than the Convention.

The Court concluded that the applicants had not been under the jurisdiction of Italy within the meaning of Article 1 of the Convention in respect of the facts complained of under Articles 2, 3 and 4 of the Convention and Article 4 of Protocol No. 4. Accordingly, the same finding had to be reached with regard to the complaint under Article 13.

The application had to be declared inadmissible. The Court decided unanimously to strike the application out of its list in so far as it concerned the five applicants I.A., E.E.A., E.K., V.M and J.O., and declared the remainder of the application inadmissible.

The decision is available only in French. An English translation will be available shortly.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.