

SHARIFI AND OTHERS v. Italy

Leading Repetitive | Case | 16643/09 | Pending | Enhanced Procedure | Judgment date: 21/10/2014 | Final judgment date: 21/01/2015

Case Description:

The case concerns the collective expulsion by Italy to Greece of four migrants intercepted as stowaways on ferries arriving in the port of Ancona between January 2008 and February 2009. The applicants were immediately handed over by the border authorities to the ferry captains and had no access to an interpreter, lawyer or officials capable of providing them with the minimum information concerning the right to seek asylum and the relevant procedure. They were given no “official, written and translated” document concerning their return. With regard to Italy, the Court found that there had been violations: of Article 4 of Protocol No. 4, on account of the collective nature of the expulsion; of Article 3 of the Convention, since by sending the applicants back to Greece, the Italian authorities had exposed them to the risks arising from the shortcomings in that country’s asylum procedure; Article 13 combined with Article 3 of the Convention and Article 4 of Protocol No. 4, on account of the lack of access to the asylum procedure or to any other effective remedy in the port of Ancona. With regard to Greece, the Court found that there had been a violation of Article 13 in conjunction with Article 3 of the Convention because of the lack of access to the asylum procedure and the risk of expulsions of the applicants to Afghanistan, where they were likely to be subject to ill-treatment.

Status of Execution:

Developments since the Committee of Ministers’ last examination

On 22 December 2021, the authorities submitted an action report in response to the last decision adopted by the Committee in March 2020. This information is under assessment.

On 7 February 2022, the Committee also received a communication from civil society pursuant to Rule 9.2 of the Rules of the Committee of Ministers.

Last examination by the Committee of Ministers

The Committee of Ministers examined the execution of this judgment most recently at its 1369th meeting (March 2020) (DH).

In view of this examination the Italian authorities provided information on 26 June 2019 (DH-DD(2019)732), 11 October 2019 (DH-DD(2019)1170) and 23 January 2020 (DH-DD(2020)63).¹

The Committee also received a communication from the *Associazione per gli studi giuridici sull’immigrazione* (ASGI) on 21 January 2020 (DH-DD(2020)88), submitted pursuant to Rule 9.2 of the Rules of the Committee of Ministers.²

The available information can be summarised as follows:

Individual measures:

It is recalled that one of the applicants (Mr Najigib Haidari) was granted international protection by the Italian authorities after his second arrival in Italy on 16 February 2010. The whereabouts of the three other applicants (Messrs Karimi, Zaidi and Azimi) are unknown.

At its last examination, the Committee noted the difficulties highlighted by the authorities in locating these three applicants and the safeguards the authorities committed themselves to granting them in

¹ The Italian authorities provided information also on 26 September 2017 ([DH-DD\(2017\)1099](#)), followed by an action report on 23 January 2019 ([DH-DD\(2019\)77](#)).

² The Committee of Ministers received a communication by the United Nations High Commissioner for Refugees (UNHCR) on 18 January 2019 ([DH-DD\(2019\)90](#)). Two communications were also submitted by the *Associazione per gli studi giuridici sull’immigrazione* (ASGI) ([DH-DD\(2019\)176](#)) and The Aire Centre ([DH-DD\(2019\)191](#)) on 11 and 15 February 2019 respectively.

case they appear before them again, but requested information on the concrete steps taken to locate them and to clarify their situation.

In response, the authorities explained that numerous attempts had been made, through research on the relevant national and European databases, to establish their whereabouts. The authorities further entered into the national database available to law enforcement agents an *ad hoc* note indicating the special legal status of these applicants in light of the judgment of the European Court. They consider that this will assist law enforcement agents, including at border crossing points, to easily recognise them and take the necessary measures, should they try to enter the country again.

General measures:³

The migrants' right to effective access to asylum procedures and, to this end, to receive adequate information upon their arrival is well incorporated in Italian legislation as well as in the case law of the Court of Cassation.

With regard to the procedure followed upon arrivals, the authorities indicated that the identification, health check-ups and administrative procedures relating to migrants arriving in the Adriatic ports are ensured through the establishment of an emergency care point within the ports. Once the status of these persons has been ascertained (asylum seekers or persons awaiting expulsion), they are addressed to the competent centres.

The authorities highlighted that the personnel of the Border Police admit onto the national territory those who express their wish, even indirectly, to request international protection and direct them to the authorities designated to formalise, process and examine the asylum applications (*Questura* and Territorial Commissions for the Recognition of International Protection).

In this context, in the ports of the Adriatic Sea the presence of public officials, NGOs and international organisations ensures that information about the asylum procedure, interpretation and cultural mediation are available to migrants.

The scope of their presence is assessed by the local Prefect taking into account the size of migrant arrivals. Agreements between the Ministry of Interior and the above organisations are therefore concluded for a duration of one year in order to allow the necessary flexibility to adapt them to developments and changes in the arrivals of migrants.

The authorities provided specific information concerning the reception systems in the ports of Ancona, Bari, Venice and Trieste (for more details see DH-DD(2020)63) indicating, *inter alia*, that specialised NGO staff provide services in connection with the arrivals of ferry boats and commercial ships and at the request of Border Police.

With regard to the funds allocated to reception services at border crossing points, the authorities indicated that the budgetary law for the year 2019 made provision for 318,898 EUR, which was in line with the amounts allocated in the previous three years. Information on how these funds are allocated for the period 2016-2018 to reception services in the Adriatic ports have also been provided (for more details see DH-DD(2020)63).

The available statistics show that in the ports of Ancona, Bari, Brindisi and Venice, 65 people applied for asylum in 2017, 94 in 2018 and about 56 in 2019.⁴ Around 1,500 persons arriving on the Adriatic costs were not admitted to the country in 2019⁵ (as opposed to 4,394 in 2017 and 1,034 in 2018).

³ Information submitted by the authorities before March 2019 is available at:

<https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:%22CEC%22,%22EXECtitle%22:%22sharifi%22,%22EXECIdentifier%22:%22004-15559%22}>

⁴ Moreover, as of 6 of May 2019, 288 persons had requested international protection which were registered by the Border police (as opposed to 2,502 in 2017 and 2,104 in 2018).

⁵ With reference to 2019 the authorities indicated that 534 persons were admitted to the national territory until 6 May 2019 and 1 071 from 1 of May until 15 December.

The authorities further indicated that police agents operating at border crossing points and agents responsible for receiving asylum applications receive specific training in the field of human rights and international protection in conformity with EU and national law.⁶

Communication by the *Associazione per gli studi giuridici sull'immigrazione* (ASGI)

In its submission of 21 January 2020, ASGI reported several shortcomings in the implementation of the existing legal framework regulating reception services and asylum procedures.

As regards reception services, ASGI noted that the quality of these services is not homogeneous. In some cases, reception service offices are reportedly not available. In some other cases, as in Bari, these services are provided by a single "operator". Also, in Venice reception services through an NGO were reportedly provided only "on call" and the relevant service providing contract and services ended on 31/12/2019.

As regards access to asylum procedures, ASGI noted that NGOs operating in the Adriatic ports are not granted immediate access to the arriving migrants but intervene only after the border authorities have first intercepted them. Also, in some cases cultural or linguistic mediators there intervened by telephone. Such conditions adversely affect the access of migrants, to asylum procedures.

ASGI further indicated that the practical implementation of the bilateral readmission agreement between Italy and Greece still leads to collective expulsions to Greece without proper assessment of the individual situation of the migrants concerned, including unaccompanied minors. It referred to three cases of Afghan nationals and one case of an Iranian national arriving from Greece in October and December 2019 alleged to have been summarily and immediately returned from Adriatic ports although they had expressed their intention to apply for asylum.⁷

Last Exam of the Committee of Ministers:

Reference Texts:

DH-DD(2020)63, DH-DD(2019)77, CM/Del/Dec(2019)1340/H46-10

Notes/Issues:

1369th meeting (03-05 March 2020) - Notes

Application	Case	Judgment of	Final on	Indicator for classification
16643/09	SHARIFI AND OTHERS	21/10/2014	21/01/2015	Complex problem

As regards individual measures:

The repeated attempts of the Italian authorities to gather information on the current whereabouts of the three applicants who were not granted asylum in Italy have been unsuccessful. This is

⁶ The authorities refer to the European Border and Coast Guard Agency (Frontex) *Common Core Curriculum* for border and coast guard basic training in the EU.

⁷ ASGI further referred to information provided by a team of lawyers and legal professionals, who between 26 and 30 June 2019 went to Patras, Greece, in order to observe the situation concerning readmission by Greece of foreign citizens including asylum seekers from the Italian Adriatic ports based on summary procedures. See *The Game-legal inspection in Patras (Greece) on readmission of migrants and asylum seekers from Italy to Greece based on summary procedures*, 1 October 2019, available at <https://sciabacaoruka.asgi.it/en/the-game-legal-inspection-in-patras-greece-readmissions-of-migrants-from-italy-to-greece/>

understandable given the passage of time (over ten years since the events occurred). The Committee might invite the Italian authorities to undertake that, in case they receive information indicating that the applicants risk treatment contrary to Article 3 of the Convention or unlawful return, they will take all possible measures to secure the applicants' Convention rights.

As regards general measures

1) *Scope of the execution*

The violations of the Convention in this case stem from the collective expulsion, in 2008-2009, of four migrants to Greece, in application of a bilateral readmission agreement, without an assessment of their need for international protection.

This judgment did not call into question the Italian reception system but rather effective access to it. It is only in this perspective that the Committee decided to assess the reception facilities put in place in the ports of the Adriatic.

The crucial issue that remains is to make sure that the situation on the ground in the ports of the Adriatic Sea guarantees that all migrants have systematic access upon arrival to the competent authorities and to essential information on their available options in terms of international protection.

2) *Effective access of migrants, including asylum seekers, to reception services and asylum procedures*

The available information shows that reception services established in the ports of the Adriatic Sea function on the basis of the combined action of the border police supported by NGOs and international organisations, particularly with regard to interpretation and cultural mediation. The presence on the ground of these organisations is assured through *ad hoc* cooperation agreements and is assessed, with a necessary degree of flexibility, by the local competent authorities taking into account the influxes of migrants. In this connection it is worth mentioning that the cooperation agreements submitted to the attention of the Committee of Ministers confirmed that these services should be provided immediately upon the arrival of the migrants. The authorities have also indicated that, where possible, their presence is ensured in the transit zone of the ports where migrants disembark.

The available information indicates that the organisation of the reception services in the Adriatic ports is in principle equipped to provide arriving migrants with the necessary information about their rights including those concerning asylum procedures. Nonetheless, in view of the aforementioned shortcomings in reception services reported by ASGI, the authorities could be invited to provide updated information on the resources currently available, in particular at the port of Bari.

As regards effective access to the asylum procedures, it is noted that the last communication by ASGI casts some doubt on the systematic and timely access of migrants, to adequate information, in a language they understand, concerning their rights in Italy. The cases of collective expulsions in 2019 reported by ASGI also raise concerns and it appears important that the authorities provide their comments on these issues. In this context, it is also important that the authorities clarify how they make sure in cases where reception services are located outside of the ports' transit zones, that these services are made available to migrants upon their arrival and after their first contact with border police.

The authorities could also be invited to provide the firm assurance that migrants, intercepted on ferry boats and commercial ships arriving in the Italian ports will be systematically provided with adequate information on their rights and granted access to the asylum procedures.

The authorities may be invited to submit, by 15 June 2020, a comprehensive, consolidated action plan or report with a view to allowing the Committee to assess the execution of this judgment

Decisions:

The Deputies

1. recalled that this case concerns the collective expulsion by Italy to Greece of four migrants following their interception on ferries in the port of Ancona, which exposed them to risks of ill-treatment and excluded them from access to the asylum procedure or to another effective remedy;

As regards individual measures

2. took note of the efforts of the Italian authorities to gather information on the whereabouts of the three of the four applicants who were not granted international protection in Italy, as well as of the recent information indicating that an *ad hoc* note on the legal status of the applicants has been included in a specific national database available to law enforcement agents;

3. invited the authorities to undertake that, in case they receive information indicating that the applicants risk treatment contrary to Article 3 of the Convention or unlawful return, they will take all possible measures to secure the applicants' Convention rights;

As regards general measures

4. noted the additional information provided by the authorities on the current organisation and functioning of the reception system in the ports of the Adriatic Sea and the procedure followed on the arrival of migrants; noted however that certain shortcomings in reception services appear to persist notably in Bari, and therefore invited the authorities to provide the Committee with updated, comprehensive information on the reception services in the ports of the Adriatic;

5. noting with concern the information provided by an NGO under Rule 9.2 concerning incidents of collective expulsions to Greece from Italian ports in late 2019, invited the authorities to provide their firm assurance that migrants intercepted on ships arriving in the Italian ports are systematically provided with adequate information on their rights and granted access to reception services and the asylum procedures, clarifying also how this is ensured where reception services are located outside the ports' transit zones;

6. with a view to allowing the Committee to assess the execution of this judgment, invited the authorities to provide by 15 June 2020 a comprehensive, consolidated action plan or action report addressing the above outstanding issues.