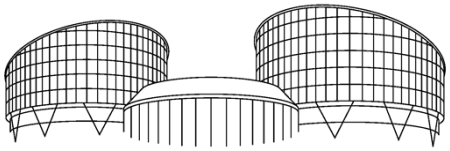

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 21660/18
S.S. and Others
against Italy

The European Court of Human Rights (First Section), sitting on 20 May 2025 as a Chamber composed of:

Ivana Jelić, *President*,
Erik Wennerström,
Alena Poláčková,
Georgios A. Serghides,
Raffaele Sabato,
Alain Chablais,
Artūrs Kučs, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to the above application lodged on 3 May 2018,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Council of Europe Commissioner for Human Rights ("the Commissioner for Human Rights"), who exercised her right to intervene in the proceedings,

Having regard to the written comments received from 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 (IHRLC) of the University of Turin, and Defence for Children The Netherlands (DCN), who were given leave to intervene as third parties by the President of the Section,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. They were represented by Ms L. Cecchini and Ms L. Leo, lawyers practising in Rome, Ms V. Moreno Lax, a law graduate of Queen Mary University of London and Mr Itamar Mann, a law graduate of the University of Haifa.

2. The Government were represented by their Agent, Mr L. D'Ascia, *Avvocato dello Stato*.

The circumstances of the case

3. The facts of the case, as submitted by the applicants, may be summarised as follows.

4. The seventeen applicants are Nigerian and Ghanaian nationals who were 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.

5. At 6.15 a.m. on the morning of 6 November 2017 the Maritime Rescue Coordination Centre (MRCC) in Rome 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.

6. According to the Government, as the intervention zone was within the maritime search and rescue region ("SAR region") under the jurisdiction of Libya – as established by a unilateral declaration of July 2017 (see paragraph 25 below) – the MRCC also asked the Tripoli Joint Rescue Coordination Centre (JRCC) to take charge of coordinating the rescue operations.

7. The Dutch rescue vessel *Sea-Watch 3* ("*SW3*"), which was in the vicinity of the shipwreck at the time, contacted the Rome MRCC and offered to act as "on-scene commander" ("OSC").

8. At the same time, the Tripoli JRCC informed the Rome MRCC that it had instructed the Libyan ship *Ras Jadir* to direct the rescue operations as OSC.

9. The *Ras Jadir* was first to reach the dinghy, at approximately 7.30 a.m. Upon arriving at the scene, the *SW3* made several unsuccessful attempts to contact the Libyan ship in order to coordinate the rescue operations. The *Ras Jadir* contacted the *SW3* at around 9 a.m. and instructed it to steer clear of the rescue zone, informing it that it had been designated as the coordinator of operations by the Tripoli coordination centre.

10. Meanwhile, having received an alert, the French military vessel *Premier-Maître l'Her*, along with an Italian navy helicopter and a EUNAVFOR Med aircraft, had also arrived at the scene, without taking part in the rescue operations, however.

11. 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. The applicants submitted that the crew of the *Ras Jadir* had failed to provide the shipwrecked individuals with life-jackets and had struck those in the water with ropes, also threatening them with weapons.

12. The various naval and airborne units in the shipwreck zone, including the Italian navy helicopter, unsuccessfully asked the crew of the *Ras Jadir* to shut down the ship's engines so as to reduce swells and preserve the safety of the survivors.

13. The *SW3* dispatched two lifeboats to rescue the individuals who had fallen overboard and pulled dozens of migrants aboard, including nine of the seventeen applicants. The crew of the *SW3* also recovered the bodies of the deceased, including those of two children, the sons of the applicants S.S. and R.J. respectively.

14. The eight remaining applicants were first taken under the responsibility of the crew of the *Ras Jadir* on board that ship, following which six of them, namely E.K., A.A, I.A., M.O., J.O. and R.J., escaped with others and subsequently reached the *SW3*. They claimed to have been injured by members of the Libyan crew, who had attempted to retain them on board the *Ras Jadir*.

15. The applicants R.J. and E.R.O., who had remained on board the *Ras Jadir* with about forty-five other survivors, alleged that the Libyan crew had bound them with ropes and had beaten and threatened them; they had been taken to a detention camp in Tajura, Libya, where they had been 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 (IOM).

16. The fifteen applicants who had boarded the *SW3* were taken to Italy with others, where they were living when the application was lodged. The two applicants who remained on board the *Ras Jadir*, namely R. J. and E.R.O., are in Nigeria.

17. In a letter of 25 August 2021 the applicants' representatives informed the Court that they had lost contact with the applicants I.A., E.E.A., E.K., V.M. and J.O, (nos. 2, 4, 12, 13 and 14 on the list of applicants in the Appendix) but that all the other applicants could be reached by telephone and/or post.

RELEVANT LEGAL FRAMEWORK

A. Domestic legal framework

Bilateral agreements between Italy and Libya

18. In 2007 Italy and Libya signed agreements to combat clandestine immigration (for further details, see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, ECHR 2012). According to a statement of 26 February 2011 by the Italian Minister of Defence, these agreements were suspended following the events of 2011 in Libya.

19. On 3 April 2012 the Italian Minister of the Interior went to Libya to resume cooperation between the two countries on immigration. According to his reply to parliamentary question no. 4-06711, the two States had signed an agreement at that time "providing for cooperation initiatives in the area of security and, in particular, to combat criminal organisations involved in migrant trafficking, to train police forces, monitor the coast and enhance surveillance of the Libyan border, in order to encourage the voluntary return of migrants". The text of that agreement has not been made public.

20. On 2 February 2017 the Italian Government and the Libyan Government of National Accord, established under the auspices of the United Nations (UN) in 2016, signed a Memorandum of Understanding on cooperation in the areas of development, enhancing border security between Libya and Italy and combating illegal immigration, human trafficking and smuggling. The relevant parts of that Memorandum of Understanding read as follows (translation by the Registry):

Article 1

"The Parties undertake to:

(a) launch cooperation initiatives, in keeping with the programmes and activities of the Presidential Council and the Government of National Accord of the State of Libya, to support security and military institutions in order to stem the flow of irregular migrants and deal with the consequences thereof, in accordance with the Treaty of Friendship, Partnership and Cooperation signed between the two countries and the agreements and memoranda of understanding signed by the Parties;

(b) Italy undertakes to provide funding and support for development programmes in the regions affected by illegal immigration, in sectors as diverse as renewable energy, infrastructure, health, transport, human resources development, teaching, personnel training and scientific research.

(c) Italy undertakes to provide technical and technological support to the Libyan authorities responsible for combating illegal immigration, in particular the border police and coastguard of the Ministry of Defence, and the relevant bodies and departments [of] the Ministry of Home Affairs."

Article 2

"The Parties further undertake to take action in the following areas:

(1) The completion of the land border control system in southern Libya, as provided for in Article 19 of the aforementioned Treaty.

(2) The adaptation and financing of the ... reception centres already in operation, in compliance with the relevant regulations, making use of available Italian and European Union funds. Italy undertakes to contribute, through the supply of medicines and medical equipment to the medical reception centres, to meet the medical needs of unlawful migrants, for the treatment of serious communicable [or] chronic diseases.

(3) The training of Libyan personnel in the aforementioned reception centres to deal with the conditions of unlawful migrants, by supporting the Libyan research centres working in this area, so that they can contribute to identifying the most appropriate methods for dealing with illegal immigration and human trafficking.

(4) The Parties undertake to work together to propose, within three months of the signing of the present memorandum, a broader and more comprehensive vision of Euro-African cooperation aimed at eliminating the causes of illegal immigration, ... supporting the countries in which such immigration originates in the implementation of strategic development projects, raising the level of service industries to improve living standards and health conditions, and contributing to reducing poverty and unemployment.

(5) Support for the international organisations present and operating in Libya in the field of migration to enable them to continue their efforts to facilitate the return migrants to their countries of origin, including by means of voluntary return.

(6) Launching development programmes, through appropriate job creation initiatives, in the Libyan regions affected by illegal immigration, human trafficking and smuggling, as a form of 'replacement income'."

Under Article 4 of the Memorandum of Understanding, Italy undertakes to finance the initiatives set out in the agreement, in addition to those proposed by a joint Italian-Libyan committee established thereunder.

21. The agreement, which was renewed for the first time in 2020, was renewed for an additional five-year period in 2022.

B. Relevant international material

1. United Nations (UN)

(a) The 1982 United Nations Convention on the Law of the Sea ("the Montego Bay Convention")

22. The UN Convention on the Law of the Sea was adopted in 1982. It was signed and ratified by Italy, whereas Libya has signed but not ratified it. Article 98 of the Montego Bay Convention reads as follows:

Duty to render assistance

"1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose."

(b) The 1974 International Convention for the Safety of Life At Sea ("the SOLAS Convention")

23. The States parties – including Italy and Libya – to the SOLAS Convention, which was adopted in 1974 within the framework of the International Maritime Organization (IMO), are requested "to ensure that necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around [their] coasts. These arrangements shall include the establishment, operation and maintenances of such search and rescue facilities as are deemed practicable and necessary" (Chapter V, Regulation 7).

In addition, "the master of a ship at sea which is in a position to be able to provide assistance on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service..." (Chapter V, Regulation 33).

(c) The 1979 International Convention on Maritime Search and Rescue, as amended in 2004 ("the SAR Convention")

24. Both Italy and Libya are parties to the SAR Convention, which was also prepared by the IMO. The relevant parts of the Annex to the SAR Convention, as amended in 2004, provide:

"2.1.4 Each search and rescue region shall be established by agreement among Parties concerned. The Secretary-General shall be notified of such agreements.

...

2.1.6 Agreement on the regions or arrangements referred to in paragraphs 2.1.4 and 2.1.5 shall be recorded by the Parties concerned, or in written plans accepted by the Parties.

2.1.7 The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States.

...

3.1.6. Each Party should authorize its rescue co-ordination centres [RCCs]:

1. to request from other rescue co-ordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;

2. to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory;

3. to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry; and

4. to make the necessary arrangements in co-operation with other RCCs to identify the most appropriate place(s) for disembarking persons found in distress at sea.

...

3.1.9 Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from these obligations does not further endanger the safety of life at sea. The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and cooperation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the [International Maritime] Organization. In these cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.

...

4.7.1 The activities of search and rescue units and other facilities engaged in search and rescue operations shall be co-ordinated on-scene to ensure the most effective results.

4.7.2 When multiple facilities are about to engage in search and rescue operations, and the rescue co-ordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene co-ordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene co-ordinator taking into account the apparent capabilities of the on-scene co-ordinator and operational requirements.

4.7.3. If there is no responsible rescue co-ordination centre or, for any reason, the responsible rescue co-ordination centre is unable to co-ordinate the search and rescue mission, the facilities involved should designate an on-scene co-ordinator by mutual agreement.

...

4.8.5. The rescue co-ordination centre or rescue sub-centre concerned shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea. It shall inform the ship or ships and other relevant parties concerned."

25. On 7 July 2017 Libya submitted an initial unilateral declaration to the IMO concerning the country's SAR region.

On 14 December 2017 it submitted a second declaration, with partly amended geographical coordinates.

The Libyan SAR region was recorded in the IMO database on 26 June 2018, after agreement by the neighbouring countries in accordance with Article 2.1.6. of the SAR Convention.

(d) IMO Resolution MSC.167(78) (adopted jointly with the SAR and SOLAS amendments by the Maritime Safety Committee in May 2004).

26. Resolution MSC.167(78) adopted by the IMO's Maritime Safety Committee (MSC) contains recommendations to governments and ship masters on their obligations under humanitarian and international law in respect of persons rescued at sea. The resolution contains the following passages:

"6.4 Normally, any SAR co-ordination that takes place between an assisting ship and any coastal State(s) should be handled via the responsible RCC. States may delegate to their respective RCCs the authority to handle such co-ordination on a 24-hour basis, or may task other national authorities to promptly assist the RCC with these duties. RCCs should be prepared to act quickly on their own, or have processes in place, as necessary, to involve other authorities, so that timely decisions can be reached with regard to handling survivors.

...

6.7 When appropriate, the first RCC contacted should immediately begin efforts to transfer the case to the RCC responsible for the region in which the assistance is being rendered. When the RCC responsible for the SAR region in which assistance is needed is informed about the situation, that RCC should immediately accept responsibility for co-ordinating the rescue efforts, since related responsibilities, including arrangements for a place of safety for survivors, fall primarily on the Government responsible for that region. The first RCC, however, is responsible for co-ordinating the case until the responsible RCC or other competent authority assumes responsibility.

6.8 Governments and the responsible RCC should make every effort to minimize the time survivors remain aboard the assisting ship.

6.9 Responsible State authorities should make every effort to expedite arrangements to disembark survivors from the ship; however, the master should understand that in some cases necessary co-ordination may result in unavoidable delays.

...

6.12 A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) is a location where rescue operations are considered to terminate. It is also a place where the survivors' safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors' next or final destination.

...

6.16 Governments should co-operate with each other with regard to providing suitable places of safety for survivors after considering relevant factors and risks.

6.17 The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea.

6.18 Often the assisting ship or another ship may be able to transport the survivors to a place of safety. However, if performing this function would be a hardship for the ship, RCCs should attempt to arrange use of other reasonable alternatives for this purpose."

(e) Italy's report to the International Maritime Organization

27. On 15 December 2017 Italy submitted a report to the IMO on the results of cooperation between Italy and Libya under the "Libyan Maritime Rescue Coordination Centre Project" financed by the European Commission. In so far as relevant, the report's findings were as follows:

> "12. The Italian Coast Guard is playing a key role in strengthening the capacity of the relevant Libyan authorities in the area of Search and Rescue at sea. In particular, the assistance provided to the Libyan Authorities in setting up the MRCC and facilitating SAR agreements with Libya's neighbouring countries could, in the medium-long term, enhance the operational capacity of the competent Libyan authorities in carrying out maritime surveillance and tackling irregular border crossings..."

(f) The Position on Returns to Libya of the Office of the United Nations High Commissioner for Refugees (UNHCR)

28. In September 2018 the UNHCR published the second update on its Position on Returns to Libya. In this document, it described the situation of migrants in Libya as follows (footnotes omitted):

> "17. Asylum-seekers, refugees and migrants transiting through or remaining in Libya are reportedly particularly vulnerable in the context of the volatile security situation and deteriorating socio-economic conditions. The majority of asylum-seekers, refugees and migrants do not have access to residence permits, putting them at acute risk of arrest and detention for irregular stay. As a result of their irregular status and lack of legal documents, as well as widespread discriminatory practices (particularly, but not exclusively, against persons from sub-Saharan countries), they are reportedly often excluded from social security mechanisms and denied access to basic services, including emergency health care, resulting in poor living conditions. Many are therefore compelled to resort to negative coping strategies. According to a December 2017 study, no significant differences were found in terms of access to resources and services between refugees and migrants who were long-term residents compared to those who had arrived in the country more recently.
>
> ...
>
> 19. Following interception or rescue of individuals at sea, the Libyan Coast Guard (LCG) hands the persons over to the authorities of the Directorate to Combat Illegal Migration (DCIM), which transfers them directly to government-run detention centres where they are held for indefinite periods. Presently, there is no possibility of release, except in the context of repatriation, evacuation or resettlement to third countries. At the time of writing, UNHCR estimates that over 8,000 persons, including more than 4,500 persons of the nine nationalities that UNHCR is able to register in Libya, are held in detention centres run by the DCIM after having been rescued or intercepted at sea, or after having been arrested on land during house raids or identity checks including near land borders. There are no available figures for those held by various armed factions or criminal networks in unofficial detention centres, including in warehouses and farms. In all facilities, detention conditions reportedly fail to meet international standards and have been described as '*appalling'*, '*nightmarish'*, '*cruel, inhuman and degrading*.' Both male and female asylum-seekers, refugees, and migrants, including children, are reportedly systematically subjected to or are at very high risk of torture and other forms of ill-treatment, including rape and other forms of sexual violence, forced labour as well as extortion, both in official and unofficial detention facilities.

Racial and religious discrimination in detention is also reported. Those detained have no possibility to challenge the legality of their detention or treatment. Third-country nationals in detention are also impacted by the general security situation in the country as demonstrated during the late August 2018 escalation in fighting between rival armed groups in Tripoli."

29. In September 2020 a document setting out the "UNCHR position on the designations of Libya as a safe third country and as a place of safety for the purpose of disembarkation following rescue at sea" was published. The relevant parts of that document read as follows (footnotes omitted):

"14. Since 2017, Italy and the EU provide assistance to the Libyan Coast Guard (LCG) to increase its capacity to carry out search and rescue operations and prevent irregular departures on the Central Mediterranean route. As a result of increased LCG operations, the number of people successfully crossing from Libya to Europe, particularly to Italy, has reduced significantly since 2017. However, in May 2020 UNHCR observed a renewed increase in departures from Libya as a result of increased fighting and deteriorating living conditions and loss of livelihoods due to COVID-19. Out of the total number of people who do attempt the crossing, the proportion of persons intercepted or rescued at sea by the LCG has increased. The increase in interception and rescue operations conducted by the LCG resulted in greater numbers of persons disembarked in Libya. The LCG have reportedly been involved in human rights violations against asylum-seekers, refugees and migrants, including the use of firearms. The LCG have also been accused of colluding with smuggling networks. Against this background, in April 2020 a European Parliament majority demanded that cooperation with the LCG be stopped.

15. In parallel, the activities of non-governmental organization (NGO) rescue boats have been increasingly restricted, including by criminal proceedings and the seizure of vessels, leading some to suspend rescue operations. Additionally, some states began closing ports during the COVID-19 crisis, declaring them unsafe, and thereby preventing NGO search and rescue boats from docking. These developments, among others, have led to an estimated higher percentage of people dying at sea than ever before.

16. In June 2018, Libya formally declared a Search-and-Rescue Region ..., indicating that it assumed primary responsibility for search and rescue coordination in an area extending to around 100 miles from some of the primary embarkation sites. Libya established a Joint Rescue Coordination Centre (JRCC), reportedly supported by Italy. In a number of instances, NGOs reported difficulties to contact the JRCC.

...

Designation of Libya as a Place of Safety for the Purpose of Disembarkation following Rescue at Sea

33. In the context of rescue at sea and in line with international maritime law, disembarkation is to occur in a predictable manner in a place of safety and in conditions that uphold respect for the human rights of those who are rescued, including adherence to the principle of non-refoulement. When persons are rescued at sea, including by military and commercial vessels, '*the need to avoid disembarkation in territories where* [their] *lives and freedoms ... would be threatened*' is relevant in determining what constitutes a place of safety. In light of the volatile security situation in general and the particular protection risks for foreign nationals (including arbitrary and unlawful detention in substandard conditions in State-run detention centres, and reports of serious

violations and abuses against asylum-seekers, refugees and migrants by, among others, militias, traffickers and smugglers), UNHCR does not consider that Libya meets the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea.

34. UNHCR therefore calls on States to refrain from returning to Libya any persons rescued at sea and to ensure their timely disembarkation in a place of safety. UNHCR recalls that the principle of non-refoulement applies wherever a state exercises jurisdiction, including where it exercises effective control in the context of search and rescue operations outside its territory. Where a State's coordination or involvement in a SAR operation, in view of all the relevant facts, is likely to determine the course of events, UNHCR's view is that the concerned State's negative and positive obligations under applicable international refugee and human rights law, including non-refoulement, are likely to be engaged."

(g) The International Law Commission's draft Articles on Responsibility of States for Internationally Wrongful Acts

30. Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries were adopted by the International Law Commission (ILC) at its fifty-third session, in 2001, and submitted to the General Assembly of the United Nations as a part of the ILC's report covering the work of that session (A/56/10). The report appeared in the Yearbook of the International Law Commission, 2001, vol. II, Part Two. The relevant parts of that report read as follows:

Article 2

Elements of an internationally wrongful act of a State

"There is an internationally wrongful act of a State when conduct consisting of an action or omission:

(a) is attributable to the State under international law; and

(b) constitutes a breach of an international obligation of the State."

Article 16

Aid or assistance in the commission of an internationally wrongful act

"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) the act would be internationally wrongful if committed by that State."

The commentary on Article 16 includes the following:

"(3) Article 16 limits the scope of responsibility for aid or assistance in three ways. First, the relevant State organ or agency providing aid or assistance must be aware of the circumstances making the conduct of the assisted State internationally wrongful; secondly, the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so; and thirdly, the completed act must be such that it would have been wrongful had it been committed by the assisting State itself."

(h) The 1951 Geneva Convention relating to the Status of Refugees ("the Refugee Convention")

31. The Refugee Convention defines which persons may be considered "refugees" and establishes the rights to be afforded to them. Articles 1 and 33 § 1 of that convention provide:

Article 1

"... For the purposes of the present Convention, the term 'refugee' shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

..."

Article 33 § 1

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

In its Note on International Protection of 13 September 2001 (A/AC.96/951, § 16), the UNCHR, which is entrusted with supervising the application of the Refugee Convention by the States Parties, made the following observations concerning the principle of *non-refoulement* laid down in Article 33:

"The obligation of States not to ... *refoule* refugees ... is a cardinal protection principle ..., to which no reservations are permitted. In many ways, the principle is the logical complement to the right to seek asylum recognized in the Universal Declaration of Human Rights. It has come to be considered a rule of customary international law binding on all States. In addition, international human rights law has established *non-refoulement* as a fundamental component of the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. The duty not to *refoule* is also recognized as applying to refugees irrespective of their formal recognition, thus obviously including asylum-seekers whose status has not yet been determined. It encompasses any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect *refoulement*, whether of an individual seeking asylum or in situations of mass influx."

2. Council of Europe

(a) The Parliamentary Assembly

32. On 28 June 2017 the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 2174 (2017) headed "Human rights implications of the European response to transit migration across the Mediterranean", the relevant parts of which read as follows:

"9. The arrival of migrants in Italy is, to a large extent, the result of the inability of the Libyan authorities to control their borders. While the level of search and rescue operations should be maintained, the European Union should increase its efforts to effectively combat networks of smugglers in the Mediterranean and enhance co-operation with the Libyan Coast Guard. Any co-operation with the Libyan authorities must be based on effective respect by both sides for essential provisions of international human rights law, including the right to leave a country, the right to seek and enjoy asylum and the prohibition on *refoulement*.

...

12. The Assembly calls on the European Union:

12.1. with regard to reducing the number of sea crossings and saving lives, to:

12.1.1. maintain at least the present level of search and rescue operations;

12.1.2. enhance the fight against smugglers and traffickers;

12.1.3. step up its co-operation with the Libyan Coast Guard and, in particular, ensure funding for training programmes, assist in establishing a maritime rescue co-ordination centre and support the provision of additional patrolling vessels and ensure their maintenance, on condition that the Libyan Coast Guard can be verified as operating with full respect for the fundamental rights of refugees and migrants, including by not exposing them to situations in which they are at risk of serious ill-treatment;

12.1.4. engage with the Libyan authorities to ensure that the extremely serious and widespread violations of the rights of refugees and migrants are brought to an end and the conditions in centres for migrants are improved, with particular attention given to vulnerable people and minors; step up co-operation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) in this respect; support capacity building in migration management for the Libyan authorities; and launch cooperation programmes with Libyan host authorities;

..."

33. In 2018, PACE adopted Recommendation 2136 (2018) and Resolution 2228 (2018) headed "Human rights impact of the 'external dimension' of European Union asylum and migration policy: out of sight, out of rights?", in which it stated, *inter alia*, as follows:

"3. The declared objectives of the delegation of migration procedures to countries outside the European Union's borders are to ease the migratory pressure on member States at the European Union's borders, thus facilitating migrants' onward resettlement throughout Europe and a more regular influx; to reduce migrants' need to undertake potentially fatal land and sea journeys; and to promote co-operation with Europe's neighbours in migration management. In the recent Resolution 2215 (2018) 'The situation in Libya: prospects and role of the Council of Europe', the Assembly notes that the European Union's Triton and Sophia air and sea operations resulted in a reduction of nearly 32% of arrivals on the Italian coasts between November 2016 and November 2017, that these operations have saved over 200 000 lives since 2014 and that the European Union provides much of the funding for the activities of the United Nations High Commissioner for Refugees and the International Organization for Migration in aid of refugees and migrants.

4. However, the shifting of responsibilities through the enlistment of third countries to reinforce European Union border controls entails serious human rights risks; it increases the risk of migrants being 'stranded' in transit countries through readmission, as well as the increased use of punitive and restrictive measures such as *refoulement*, arbitrary detention and ill-treatment. It is also a way for many European Union member States to distance themselves from the politically divisive issue of assisting and integrating refugees. Keeping migrants at a greater distance may also in fact provide a means of avoiding situations of *refoulement* within Europe. In the above-mentioned Resolution 2215 (2018), the Assembly called on the Council of Europe member States to comply with their obligations under Article 3 of the European Convention on Human Rights (ETS No. 5), which requires them to refrain from sending migrants back to countries where they are exposed to the risk of torture and inhuman or degrading treatment or punishment, and not to co-operate on migration control with third countries if this is likely to result in violations of Article 3.

5. Despite what might be termed as the success of the European Union's externalisation policies in contributing to a reduction in the number of migrants entering Europe, it has become clear that the involvement of third countries in migration management has compromised the rights of asylum seekers on many occasions. The member States should do more to ensure that these rights are defended and maintained, especially where this degradation is a direct consequence of measures decided in Europe. Europe is both morally and politically accountable.

6. The Assembly considers that migrants who have been, or will be, the subjects of asylum processing organised by the European Union outside its borders may find themselves in a 'legal limbo' with regard to the guarantee of the fundamental rights stemming both from the United Nations 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights. That is because the countries concerned may not have equivalent human rights standards or legal instances to uphold them, whereas asylum seekers face difficulties in holding the European Union or individual States responsible for possible human rights violations.

7. This difficulty in upholding rights is all the more serious as the people in question are more exposed to their denial: in extreme situations there is proof that migrants have been subjected to refoulement, torture and inhuman and degrading treatment and even slavery, as revealed in Libya; in others, they are consistently subjected to discrimination, arbitrary detention and lack of social protection and economic opportunities.

8. Externalisation policies have been introduced without due regard to the need to ensure that their implementation does not jeopardise human rights. In addition, there is a growing tendency to make development assistance conditional on countries' taking on migration procedures. For countries which by definition lack sufficient capacity to respond to the needs of their own populations, this amounts to creating more tensions and difficulties.

9. The Parliamentary Assembly therefore urges member States to:

...

9.2. refrain from externalising migration control to countries in which legislation, policies and practice do not meet the standards of the European Convention on Human Rights and the United Nations Convention relating to the Status of Refugees, and where State agencies cannot effectively ensure the protection of these rights. To achieve this, human rights impact assessments at national and regional level should be carried out by States before entering into such co-operation;

9.3. introduce conditions in all agreements and arrangements concerning asylum management providing for human rights protection of migrants and asylum seekers... .

...

11. The Assembly asks the Government of Italy to:

11.1. make any co-operation, both present and future, with the Libyan Coastguard dependent on respect for refugees' and migrants' fundamental rights, particularly by refraining from exposing them to situations in which they risk being subjected to severe ill-treatment, in accordance with its Resolution 2174 (2017) on human rights implications of the European response to transit migration across the Mediterranean;

11.2. in accordance with its Resolution 2215 (2018), delay the setting up of a new Maritime Rescue Co-ordination Centre in Libya until capacity building has ensured improved governance structures, to ensure adequate international human rights law training for the Libyan Coastguard, and to maintain and improve co-operation with non-governmental organisations (NGOs) carrying out search and rescue operations in the Mediterranean in accordance with international rules and agreements concluded by individual countries;

11.3. investigate fully the allegations of experts and international NGOs, such as Amnesty International, of returns to Libya of migrants picked up at sea in the Italian search and rescue zone, and of collusion between the Libyan coastguard and the human smugglers in the Mediterranean."

34. In Resolution 2299 (2019) PACE stated as follows:

"8. In order to avoid responsibility, member States increasingly make attempts to prevent migrants from crossing their border and to keep them out of their jurisdiction. To this end, frontline States in particular conclude agreements with their neighbouring countries, which are requested to prevent migrants from leaving their territory and paid to do so. These actions of neighbouring countries, often referred to as 'pull-backs', may hamper access to protection for asylum seekers stranded in that country if a sufficient protection system is lacking. In cases of a clear connection between such bilateral co-operation, lack of access to asylum and other human rights violations, the member State requesting pull-backs is also responsible for such violations."

(b) The Council of Europe Commissioner for Human Rights

35. In June 2019, the Council of Europe Commissioner for Human Rights published the recommendation headed "Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean". That document contains the following passages in particular:

"Recommendations

31. Member states should urgently review all their co-operation activities and practices with the Libyan Coast Guard and other relevant entities, and identify which of these impact, directly or indirectly, on the return of persons intercepted at sea to Libya or other human rights violations. Such activities should be suspended until clear guarantees of full human rights-compliance are in place, in line with the principles set out in section 4.1. In the interest of transparency and accountability, the results of these reviews should be made public.

32. Similarly, any additional planned support to the Libyan Coast Guard or other entities should only be provided if, following the implementation of the steps set out in

section 4.1. Pending the full publication of the results of these steps, any additional support, in particular the delivery of vessels and other equipment to the Libyan Coast Guard, should be postponed.

33. Member states should continue supporting the efforts of international organisations in securing the release of refugees, asylum seekers and migrants from places of detention in Libya, and urgently pledge a significant number of places for the Libya evacuation scheme set up by UNHCR. They should also urgently facilitate the creation of safe humanitarian corridors for refugees, asylum seekers and migrants to leave conflict-affected areas."

3. European Union

(a) The Charter of Fundamental Rights of the European Union

36. Article 19 of the Charter of Fundamental Rights of the European Union provides as follows:

Protection in the event of removal, expulsion or extradition

"1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

(b) The "Malta Declaration" by the members of the European Council

37. On 3 February 2017, following an informal meeting of EU Heads of State or Government, the members of the European Council issued the "Malta Declaration" on measures to stem migratory flows along the Central Mediterranean route. That declaration contains the following passages:

"3. On the Central Mediterranean route, however, over 181,000 arrivals were detected in 2016, while the number of persons dead or missing at sea has reached a new record every year since 2013. With hundreds having already lost their lives in 2017 and spring approaching, we are determined to take additional action to significantly reduce migratory flows along the Central Mediterranean route and break the business model of smugglers, while remaining vigilant about the Eastern Mediterranean as well as other routes. We will step up our work with Libya as the main country of departure as well as with its North African and sub-Saharan neighbours.

...

5. Efforts to stabilise Libya are now more important than ever, and the EU will do its utmost to contribute to that objective. In Libya, capacity building is key for the authorities to acquire control over the land and sea borders and to combat transit and smuggling activities. The EU remains committed to an inclusive political settlement under the framework of the Libyan Political Agreement and to supporting the Presidency Council and the Government of National Accord backed by the United Nations. Where possible the EU and Member States will also step up cooperation with and assistance to Libyan regional and local communities and with international organisations active in the country.

6. Priority will be given to the following elements:

(a) training, equipment and support to the Libyan national coast guard and other relevant agencies. Complementary EU training programmes must be rapidly stepped up, both in intensity and numbers, starting with those already undertaken by Operation SOPHIA and building on its experience. Funding and planning for these activities needs to be made sustainable and predictable, including through the Seahorse Mediterranean Network;

...

(d) seeking to ensure adequate reception capacities and conditions in Libya for migrants, together with the UNHCR and IOM;

...

(i) continuing support to efforts and initiatives from individual Member States directly engaged with Libya; in this respect, the EU welcomes and is ready to support Italy in its implementation of the Memorandum of Understanding signed on 2 February 2017 by the Italian Authorities and Chairman of the Presidential Council al-Serraj;

(j) deepening dialogue and cooperation on migration with all countries neighbouring Libya, including better operational cooperation with Member States and the European Border and Coast Guard on preventing departures and managing returns.

7. These objectives shall be underpinned by the necessary resources. In line with the Valletta Action Plan, the European Union is strengthening the mainstreaming of migration within its Official Development Assistance for Africa, which amounts to €31 billion during this financial period. Some of the actions referred to above can be funded within projects already under way, notably projects funded by the EU Trust Fund for Africa as appropriate, which mobilises €1.8 billion from the EU budget and €152 million from Member States' contributions. To cover the most urgent funding needs now and throughout 2017, we welcome the Commission's decision to mobilise as a first step an additional €200 million for the North Africa window of the Fund and to give priority to migration-related projects concerning Libya."

(c) Communication from the High Representative of the Union for Foreign Affairs and Security Policy (HRU) headed "Migration on the Central Mediterranean route – Managing flows, saving lives"

38. In January 2017 the HRU sent a communication to the European Parliament, the European Council and the Council on the general situation with regard to migratory flows in the Mediterranean and on the EU-funded projects to manage such flows. Referring to the EU's cooperation with both Italy and Libya, the HRU stated as follows (p. 7 – footnotes omitted):

"Building the capacity of the Libyan Coast Guard aims, as a long-term objective, to a situation whereby the Libyan authorities can designate a search and rescue area in full conformity with international obligations. In this perspective, the EU is providing financial support to the Italian Coast Guard to assist the Libyan Coast Guard in establishing a Maritime Rescue Coordination Centre, a prerequisite for efficiently coordinat[ing] search and rescue within [the] Libyan search and rescue zone, in line with international legislation...".

(d) The European Parliament resolution of 19 May 2021 on human rights protection and the EU external migration policy (2020/2116(INI))

39. The relevant parts of the European Parliament resolution of 19 May 2021 (2020/2116(INI)) read as follows:

"*The European Parliament*,

...

E. whereas human rights violations, violations of international humanitarian and/or refugee law, such as non-refoulement, pushbacks and violent attacks against migrants, arbitrary and indefinite detention under inhumane conditions, exploitation, torture and other ill-treatment including rape, disappearance and death, are increasingly being reported globally, including at EU external borders; whereas Member States have an obligation to respect Union, human rights and international law, humanitarian and refugee law; whereas the Commission has to ensure that Member States fulfil their humanitarian and human rights obligations, and has to launch infringement procedures in case the latter are not met; whereas the Commission has yet to act on proven or alleged cases of pushbacks;

F. whereas rescue at sea is a legal obligation under international law, in particular according to Article 98 of the United Nations Convention on the Law of the Sea, which requires that assistance is rendered to any person in distress at sea; whereas the enhancement of border management capacities and fighting smuggling and trafficking should not to be used to criminalise migrants, nor those assisting them; ...

...

1. Highlights that, alongside their Treaty-based obligation to uphold the values of respect for human dignity, the rule of law and respect for human rights and international law in all its external dealings, the EU and its Member States have human rights obligations towards third-country nationals (TCNs) when cooperating on migration with third countries and other non-EU actors;

2. Stresses that these obligations require not only the recognition of the applicability of the relevant standards, but also appropriate operationalisation through detailed and specific instruments that allow for effective protection and safeguards in practice as well as through a human rights-based approach to the entire migration policy cycle, with a particular focus on migrant women and unaccompanied children;

...

7. Reiterates that for the Union's policy on migration to function properly, the EU must increase its external cooperation with countries of origin and work to ensure the sustainable and effective readmission of returnees; calls for the EU to ensure that readmission agreements and agreements for cooperation on border management are only concluded with third countries that explicitly commit to respecting human rights, including the principle of non-refoulement and the rights enshrined in the UN Refugee Convention; calls for the EU to ensure that this cooperation does not lead to violations of those rights, and offers operational means to ensure effective accountability if violations occur;

...

9. Calls on the Commission to ensure transparent risk assessments performed by independent EU-bodies and experts, such as the EU Agency for Fundamental Rights, on the impact of any formal, informal or financial EU cooperation with third countries

on the rights of migrants and refugees, including women, on local human rights defenders and civil society working to defend these rights, and, to the extent possible, on the impact that such cooperation would have on the wider population in the country affected by it in terms of access to rights, contribution to human security and peace, and sustainable development; calls on the Commission to set implementation guidelines for EU agencies and Member States before entering into cooperation with third countries; calls in this respect for particular vigilance in relation to countries which are experiencing ongoing or frozen conflicts and face increased risks of human rights violations; calls on the Commission to ensure that any EU cooperation with third countries is fully formalised in order to ensure agreements with third countries can be effectively monitored;

10. Calls on the Commission to establish an independent, transparent and effective monitoring mechanism on the basis of international law, the Charter and the Sustainable Development Goals, which includes periodic reports on the implementation of formal, informal and financial agreements with third countries that can potentially impact the rights of migrants and refugees and the work of human rights defenders and civil society defending these rights in third countries, such as migration partnerships, readmission agreements, and international cooperation on migration management and governance, including direct targeting of challenges connected to migration and forced displacement; stresses that such a monitoring mechanism has to be participatory and public; insists on the need to ensure the means for civil society and other interested stakeholders to be able to contribute to the work of the mechanism; stresses that such a system should contribute to ensuring accountability for human rights violations, including pushbacks violating the principle of non-refoulement; calls on the Commission to establish a follow-up mechanism which duly incorporates evaluation results and expert recommendations in the relevant agreement, arrangement or action; stresses the need for ensuring parliamentary scrutiny and democratic oversight;

...

28. Recalls the commitment of the EU and its Member States under the Global Compact on Refugees to share responsibility for the effective and comprehensive protection of refugees and to ease the pressure on host countries; stresses in this regard that the EU and its Member States should increase resettlement pledges, ensuring that resettlement is not made conditional upon the cooperation of the transit country on readmission or border control, and step up safe and legal pathways and preventing forced refugee returns from hosting countries; calls on the EU and its Member States to contribute to more structural and substantial funding of the communities and countries hosting most refugees; reiterates the importance of fully implementing the 23 objectives of the Global Compact for Safe, Orderly and Regular Migration; believes that Parliament must exercise proper scrutiny of EU implementation of both compacts;

29. Calls for the EU and its Member States to pursue a migration policy that fully reflects the human rights of migrants and refugees as enshrined in international, regional and national laws; calls on the EEAS [European External Action Service], the Commission and the Member States to engage with third countries on the rights of migrants as an integral dimension of the EU's human rights policy; insists that the nexus between human rights and migration should be adequately covered within the framework of bilateral EU human rights dialogues with the relevant countries; calls on the EU Delegations in these countries to closely monitor the rights of migrants, particularly in countries of transit, as well as the rights of refugees and internally displaced persons; emphasises the urgent need for safe and legal migration and protection routes to be created and strengthened in order to guarantee human rights and avoid loss of life; insists on the need for proactive EU engagement in countries where

human rights defenders and civil society and community-based organisations, including those who are protecting the lives of migrants and asylum seekers who are at risk, are under threat or are being criminalised for their legitimate work;

30. Calls for the EU to carry out a global campaign to support universal ratification of the Geneva Convention relating to the Status of Refugees and its 1967 protocol; urges Member States to lead by example by adhering to the UN Convention on the Rights of Migrant Workers, which is one of the core UN human rights conventions;

31. Believes that the EU must take a leading role in supporting policy and normative developments in relation to the rights of migrants in multilateral fora; highlights the key role that international organisations, regional bodies and NGOs, such as the International Committee of the Red Cross, the UN High Commissioner for Refugees (UNHCR) and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as well the OHCHR and the UN Special Rapporteur on the human rights of migrants; calls on the Commission and the Member States to increase financial and political support to these organisations and entities;

...".

COMPLAINTS

40. Relying on Articles 2 and 3 of the Convention, read in conjunction with Article 1 of the Convention, the applicants complained that, by allowing the Libyan ship *Ras Jadir* to take part in the rescue operations, the Rome MRCC had placed them at risk of ill-treatment and death. They submitted that the Italian authorities had failed to fulfil their positive obligations under Articles 2 et 3 to protect the applicants' life and physical integrity from the actions of the crew of the *Ras Jadir*.

41. The applicants E.K., A.A, I.A., M.O., J.O. and R.J. further alleged that they had been injured and mistreated by the Libyan coastguard during the rescue operations coordinated by the Rome MRCC. The applicants S.S. and R.J. also complained of the death of their respective children when the vessel on which they had been travelling foundered.

42. All the applicants complained, under Articles 3 and 4 of the Convention, that they had been exposed to the risk of being returned to Libya, a country, they emphasised, where irregular migrants were held in inhuman and degrading conditions and could be subjected to slavery. They had also run the risk of arbitrary return to their countries of origin.

43. In addition, under Article 3 of the Convention and Article 4 of Protocol No. 4, read in conjunction with Article 1 of the Convention, the applicants R.J. and E.R.O submitted that they had been "refouled" to Libya, where they had been subjected to torture and inhuman and degrading detention conditions. They further complained of the conditions of their return to Nigeria, which in their view had been decided in the absence of sufficient safeguards.

44. Lastly, relying on Article 13 of the Convention, 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 ill-treatment suffered there and the risk of being returned to their country of origin.

THE LAW

A. Further examination of the application

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

46. The Court would point out that in the *V.M. and Others v. Belgium* ((striking out) [GC], no. 60125/11, § 35, 17 November 2016) case it specified, in the light of Article 37 § 1 (a), that an applicant's representative was not only to supply a power of attorney or written authority, but that it was also important that contact between the applicant and his or her representative be maintained throughout the proceedings, both in order to learn more about the applicant's particular circumstances and to confirm his or her continuing interest in pursuing the examination of his or her application (see also *Sharifi and Others v. Italy and Greece*, no. 16643/09, §§ 124-34, 21 October 2014).

47. In the present case, the applicants I.A., E.A., E.K., V.M. and J.O. did not maintain contact with their representatives and failed to keep them informed of their place of residence. Nor did they provide them with any other means of reaching them. In this connection, the Court notes that the applicants in question were living lawfully in Italy when the application was lodged (see paragraph 16 above).

48. The Court considers that it can conclude on that basis that the above-mentioned applicants have lost interest in the proceedings and no longer intend to pursue the application, within the meaning of Article 37 § 1 (a) of the Convention (see *V.M. and Others v. Belgium*, cited above, § 36, with further references). It further observes that the circumstances alleged by them are essentially identical to those put forward by the other applicants, on which it will express its opinion below. Accordingly, it sees no grounds relating to respect for human rights as defined in the Convention and the Protocols thereto which, in accordance with Article 37 § 1 *in fine*, would require it to continue the examination of the case in respect of the five applicants in question (see, *mutatis mutandis*, *Hirsi Jamaa and Others v. Italie* [GC], no. 27765/09, § 58, ECHR 2012 and *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 78, 17 January 2023).

49. It is therefore appropriate to strike the application out of the Court's list in so far as it concerns I.A., E.E.A., E.K., V.M. and J.O. and to continue the examination of the case in respect of the other applicants.

B. The issue of jurisdiction under Article 1 of the Convention

50. The Government submitted that the facts of the case did not fall within Italy's jurisdiction. They further raised an objection for failure to exhaust domestic remedies, arguing that the applicants had made no attempt to bring their complaints before the domestic courts before applying to the Court.

The Court must first address the questions relating to jurisdiction within the meaning of Article 1 of the Convention (see *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, § 167, 9 April 2024), which provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

1. The parties' submissions

(a) The Government

51. The Government referred to the Court's case-law on the extraterritorial jurisdiction of States and disputed the applicants' interpretation of the Court's case-law on this subject.

52. The Government alleged that the applicants had not explained how the Rome MRCC's intervention at the start of the rescue operations had involved any form of "control", whether *de jure* or *de facto*, over them or shipwreck zone.

53. They argued that the intervention zone was located thirty-three miles north of Tripoli and therefore lay within the SAR region under Libya's jurisdiction, specifying that this SAR region had been established in a declaration of July 2017, well before the events in issue. In the Government's view, the Rome MRCC had complied with the rules of the relevant international maritime law and had done no more than to intercept the applicants' distress signal before transferring responsibility for the rescue operations to the Libyan authorities. In this connection, the Government noted that those authorities had confirmed that they had taken over the operations at 7.26 a.m. on the morning of the incident.

54. The Government further submitted that the *Ras Jadir* had arrived first at the scene of the shipwreck and had promptly been designated as OSC by the Tripoli JRCC. This procedure was fully in line with the rules laid down by the IMO, which required the first ship to arrive on the scene of a rescue to act as OSC until the RCC with jurisdiction over the region took the necessary action. In the Government's view, the *SW3* had, in this context, taken the initiative to participate in the rescue operation with the awareness that the operations were being coordinated by the *Ras Jadir*, but without following the OSC's instructions. The Government submitted that the *SW3*'s intervention had thus caused confusion and that the resulting chaos was what had caused migrants to lose their lives.

55. The Government submitted, moreover, that the present case differed from the *Hirsi Jamaa and Others* (cited above) case in that the events had taken place in the search area under Libya's jurisdiction and the rescue operations had been led by the Libyan authorities. Italy had not had any control over the crew of the *Ras Jadir*, as evidenced by the fact that the Italian navy helicopter at the scene had unsuccessfully attempted to have the Libyan vessel shut down its engines. Lastly, the Government alleged that the Italian authorities had never physically taken charge of the applicants since they had been taken aboard either the *Ras Jadir* or the *SW3*, which had been flying the flag of the Netherlands.

56. As to the applicants' argument that Italy had had overall control and decisive influence over the actions of the Libyan coastguard at the material time, the Government replied that the coastguard in question was an authority of a third State which was recognised by the international community and supported in its stabilisation process. They inferred from this, referring in particular to the *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, § 71, ECHR 2001-XII) decision, that in the circumstances of the case, the Court's case-law held that the "consent, invitation or acquiescence" of the Libyan Government, as the Government responsible for the territory in which the events had taken place, was necessary in order to conclude that Italy had exercised its jurisdiction extraterritorially. In the Government's submission, there was no doubt that no such consent had been given in the present case.

57. The Government also disputed the concept of "*refoulement* by proxy" and submitted that there was no evidence that Italy had decided or ordered the applicants' return to Libya.

(b) The applicants

58. The applicants alleged that Italy had exercised jurisdiction both *ratione loci* and *ratione personae* in the present case.

59. They submitted, firstly, that they had been under the exclusive and continuous control of the Italian authorities from the moment the Rome MRCC had received the distress signal until at least the time when the *Ras Jadir* had intervened and taken control of the operations. In the applicants' view, the Italian rescue centre's coordination of the rescue, even assuming that it had been limited to the start of the operations, amounted to an "institution of ... proceedings" which, in line with the Court's case-law, was sufficient to establish a jurisdictional link to the Italian State. The applicants referred in this connection to the judgment in *Güzelyurtlu and Others v. Cyprus and Turkey* ([GC], no. 36925/07, 29 January 2019).

60. In addition, the applicants argued that the Rome MRCC had contacted the naval and airborne units in the vicinity of the shipwreck zone, providing them with all the information necessary to coordinate the operations, and that Italy had thus assumed responsibility for their rescue. Even though the *SW3*

had immediately offered to coordinate operations at the scene, the MRCC had contacted the Libyan coastguard and had asked them to take command of the rescue. The applicants submitted that, from that time onwards, it had been entirely foreseeable – given that the *Ras Jadir* had not been equipped with life-jackets, life-buoys or lifeboats – that their lives would be placed at risk by the Libyan crew during the rescue manoeuvres and that they would then be at risk of *refoulment* to Libya and of inhuman and degrading treatment. In this regard, the applicants referred to the international reports on the situation of irregular migrants in Libya, concluding that Italy could not have been unaware of the risk faced by the survivors.

61. Furthermore, the applicants submitted that, in addition to the control exercised by the Italian authorities during the events of 6 November 2017, Italy's responsibility was also engaged on account of its support for Libya's migration policy, as formalised in the bilateral agreements of 2009 and 2017. Under those agreements, Italy undertook, *inter alia*, to provide the Libyan authorities with substantial logistical and financial support to enable them to manage, in an autonomous manner, the flow of migrants transiting off the coast of Libya. In the applicants' view, the role and functioning of the Libyan monitoring and coordination centre had thus been made possible by the support provided by Italy under the aforementioned agreements. The applicants submitted that, in this manner, there had been a form of "consent, invitation or acquiescence" by Libya that entailed Italy's extraterritorial jurisdiction, in accordance with the Court's case-law.

62. The applicants alleged, moreover, that the Italian Government had *de facto* been exercising control over search and rescue operations off the Libyan coast for several years, first in the context of Operation Mare Sicuro, which had been approved by the Italian parliament in October 2013, followed in August 2017 by Operation Nauras, and subsequently in the context of EU programmes to combat migrant trafficking in the Mediterranean, in particular the EUNAVFOR Med programme – also known as Operation Sophia. The applicants clarified in this connection that one of the mandates of that programme, which was based in Rome and had been launched by the European Council on 22 June 2015, was to train the Libyan navy and coastguard in the management of migration flows.

63. The applicants explained that, in the various contexts cited above, Italy had contributed several million euros to the supply and maintenance of ships and the training of personnel. They added that several boats thus delivered to Libya by the Italian State, including the *Ras Jadir*, had been used for operations on the high seas in 2017 and submitted that those operations had been carried out using violent methods and without regard to the fundamental rights of migrants. In the applicants' submission, the allegation of the foreseeability of their ill-treatment was also supported by the fact that this had not been an isolated incident.

64. In the applicants' view, Italy had therefore, at the material time, exercised overall control over the Libyan authorities' activities in the area of immigration, in other words over "public powers normally to be exercised by a sovereign government". Referring to the *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, §§ 140 and 150, ECHR 2011) and *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, § 106, ECHR 2012 (extracts)) cases, they submitted that, in such circumstances, it was not necessary to determine in detail whether Italy had had control over each of the Libyans' actions in order to establish a jurisdictional link with the Italian State. Italy's military and naval involvement in Libya was a manifestation of the use of its public powers in that part of the Mediterranean Sea and constituted evidence suggesting that, at the material time, Italy had been exercising "decisive influence" over Libyan migration policy.

65. The applicants further complained of a practice of "*refoulement* by proxy" whereby Italy was not only placing thousands of migrants at risk of inhuman and degrading treatment but was also circumventing its international and Convention obligations, as restated by the Court in the *Hirsi Jamaa and Others* case (cited above).

66. The applicants also disputed the Government's argument that the rescue zone had formed part of the area under the exclusive jurisdiction of Libya. They alleged that, at the material time, the unilateral declaration of July 2017 had neither been accepted by the neighbouring countries nor validated by the IMO and Libya had therefore not yet formally declared its SAR region. Regardless, Libya had not had the capacity to provide adequate search and rescue services at the relevant time and, consequently, such a declaration could not have been accepted in any event. In this connection, the applicants clarified, in particular, that Libya had lacked a Search and Rescue Centre and that, in the declaration of July 2017, the Libyan authorities had referred to financial and logistical difficulties that had temporarily prevented them from covering the entirety of the specified rescue zone.

67. In the light of the foregoing considerations, the applicants concluded that the events in issue had taken place on the high seas and that it had fallen to the Rome MRCC, which had received the distress signal issued by the dinghy transporting them, to assume responsibility for them and transfer them to a place of safety, in accordance with the binding rules of international maritime law.

2. Observations of the third-party interveners

68. The Commissioner for Human Rights submitted that the effective protection and promotion of the rights of refugees, asylum-seekers and migrants required the full implementation of obligations under international maritime law, human rights law and refugee law. Moreover, these legal frameworks had to be read consistently with each other.

In the Commissioner's view, in recent years, changes in member States' migration management practices in the Central Mediterranean had led to the increased return of migrants, asylum seekers and refugees to Libya. Noting that such returns exposed the individuals concerned to torture, inhuman or degrading treatment, as well as other serious human rights violations, the Commissioner took the view that, in view of the extensive information available on the human rights situation in that country, the member States knew, or should have known, about the risk of such serious human rights violations occurring in Libya. The Commissioner further considered that the member States' relevant authorities, when receiving distress calls originating from any search and rescue region, should not transfer, either formally or *de facto*, responsibility for rescue operations to other authorities when they knew or should have known that this action would lead to the exposure of people in distress at sea to serious violations of their rights protected under the Convention.

69. Moreover, the Commissioner was of the view that certain types of assistance, such as the delivery of vessels and the provision of communications infrastructure with a view, in particular, to establishing the JRCC, had particularly increased the Libyan coastguard's capacity to intercept persons at sea and therefore increased the risk of returns to Libya. In that connection, the Commissioner called attention to the EU's policy of cooperation with Libya.

70. For its part, the UNHCR pointed out that States participating in search and rescue operations at sea needed to act consistently with their obligations under international law. It emphasised that the principle of *non-refoulement* applied wherever a State exercised jurisdiction, including where it exercised effective control in the context of search and rescue operations outside its territory. In addition, it took the view that, where a State's involvement in such operations, in view of all the relevant facts, was likely to determine the course of events, that State's negative and positive obligations under applicable international refugee and human rights law, including *non-refoulement*, were engaged.

The UNHCR further explained that Libya was not currently or at the material time a place of safety for the disembarkation of persons rescued at sea. In this connection, it described the conditions in which such persons were held and treated in Libyan refugee camps. Any assistance provided to the coastguard authorities or participation in coordination arrangements should be conditioned on effective measures to mitigate any risk of serious human rights violations. Without evidence that such measures were in place, participating in coordination arrangements was not compatible with a good faith implementation of international refugee and human rights law. The UNHCR referred in this connection to the "draft Articles on Responsibility of States for Internationally Wrongful Acts" adopted by the UN's International Law Commission, under which a State could be held to be

responsible, in certain circumstances, for unlawful conduct attributable to another State.

71. In their joint observations, the International Commission of Jurists (ICJ), 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) explained that a State exercised jurisdiction on the high seas when their agents exercised authority in a manner that had proximate and foreseeable effects on Convention rights. In their view, in search and rescue cases on the high seas, the existence of a jurisdictional link for the purposes of Article 1 of the Convention was to be examined, in accordance with Article 53 of the Convention, in the light of international maritime law. Thus, the coordinated action of the shipmaster and the search centre directing the operations entailed, under the relevant provisions of international maritime law, the exercise of effective control over the persons in respect of whom such rescue operations were conducted. Furthermore, the third-party interveners pointed out that, in the light of international law, States had an obligation to ensure that their search and rescue mission coordinator transferred operational management to another State only where such transfer did not expose survivors to the risk of serious human rights violations.

Lastly, they submitted that a State could be contributing to wrongful conduct on the part of another State when it provided that State with funding, training or any other material support. This could occur, in particular, when the purpose was to strengthen the other State's capacity to intercept boats in territorial and international waters and return persons attempting to leave a country, including those in need of international protection. The third-patty interveners emphasised that such situations were particularly grave when the persons in question were being returned to a territory where they risked being subjected to serious human rights violations.

72. In their joint observations, Amnesty International and Human Rights Watch (HRW) referred to the Court's case-law on the extraterritorial exercise of a State's jurisdiction and submitted that a jurisdictional link could be established even in the absence of physical occupation of a territory – in the context of military action for example – provided other forms of influence, dependence and control by that State were in place.

In this connection, they submitted that, in view of the extent and pervasiveness of Italy's role in Libya's migration and SAR system, Libya had acted under its decisive influence since at least 2017, to such an extent that, in their view, Italy should be found to have exercised jurisdiction, at least concurrently with Libya, in migration-related operations conducted by Libyan forces.

In that regard, they referred, in particular, to Italy's support in declaring Libya's SAR region and in establishing an MRCC in Libya; to its donation of vessels and training of the Libyan coastguard; to the actions carried out by Italian agents in Libyan territorial waters in the context of Operation

NAURAS, in particular; and, lastly, to the Italian authorities' participation, in support of the Libyan authorities, in several SAR operations conducted by Libya.

73. Médecins sans frontières (MSF) argued that Italy played a crucial role in coordinating SAR operations in respect of migrants in distress in the Central Mediterranean, including those outside its SAR region. In this connection, the organisation pointed out that all the rescue operations it had conducted in the Mediterranean Sea between 2015 and 2018 had been coordinated by the Italian MRCC and that all those rescued in those operations had been disembarked in Italy.

MSF regretted, however, that Italy's policy had changed in 2017, increasing the role of the Libyan maritime authorities to the detriment of the efficiency and safety of SAR operations. The organisation submitted that, as the Libyan coastguard had received more naval assets, technical support and training, in particular from Italy, they had increasingly engaged in interceptions of migrant boats at sea in international waters. The Italian MRCC had thus begun prioritising intervention by Libyan forces in rescue operations, notwithstanding the presence on the scene of NGO vessels which, according to MSF, had the capacity to respond more effectively and safely. In consequence, the number of incidents at sea had significantly increased in 2017. In support of its claim, the organisation submitted that twenty-eight interactions had taken place between the Libyan coastguard and various NGOs in the period from April 2016 to November 2017, fourteen of which had involved intimidation and the use of force and violence, in addition to causing deaths and endangering lives.

74. The Legal Clinic in International Protection of Human Rights (LCIPHR) provided information on rescue operations in respect of migrants in distress at sea and Libyan coastguard's role in them. It alleged, moreover, that a number of NGOs, the United Nations Support Mission in Libya (UNSMIL) and the United Nations Secretary-General had expressed concerns on a number of occasions over the violence of the rescue operations carried out by the Libyan naval forces, which they alleged were responsible for the sinking of several migrant boats and many deaths.

The third-party intervener also provided information on living conditions in Libyan detention camps, explaining that these camps were run by armed groups and that irregular migrants were regarded as criminals there, and were exposed to torture and slavery.

75. The International Human Rights Legal Clinic (IHRLC) criticised the Italian authorities' massive recourse to bilateral agreements for the purpose of managing the flow of migrants from various countries. In its view, such agreements enabled Italy to circumvent its fundamental rights obligations in respect of migrants, as reiterated by the Court in the *Hirsi Jamaa and Others* (cited above) judgment, by supplying originating countries with technical and financial means to intercept boats before they reached Italian territorial

waters. Moreover, these agreements were entered into using a simplified procedure, thereby disregarding the one laid down by the Italian Constitution, which provided, in particular, that international treaties were to be ratified with the prior authorisation of Parliament and signed by the President of the Republic. In addition, the use of such simplified procedures meant that the texts had never been published.

76. Oxfam Italia ("Oxfam") submitted that the bilateral agreements entered into between Italy and Libya in February 2017 had had a clear impact on the number of migrant arrivals in Italy. In this connection, the organisation explained that such arrivals had dropped drastically in the second half of 2017, while the number of migrants dead at sea had increased exponentially as of that time, such that the Central Mediterranean was now the most dangerous maritime route in the world.

The third-party intervener explained that, alongside the transfer of responsibility for monitoring operations to intercept migrant vessels to the Libyan authorities, the Italian Government had established a code of conduct for NGOs acting to save lives at sea, which severely limited their ability to intercept migrant vessels the Central Mediterranean. As a result, the number of people being returned to Libya had risen sharply. Oxfam added that the persons concerned were being held in inhuman and degrading conditions in that country and submitted that these conditions had been criticised by several international organisations, including the UNSMIL in the reports it had published on the treatment to which irregular migrants were subjected in Libya.

77. Defence for Children The Netherlands (DCN) recommended that the present case be examined from the standpoint of the protection of the rights of child migrants crossing the Mediterranean to reach European shores, pointing out that they often lost their lives at sea. It submitted that the extreme vulnerability of child migrants required States to enhance protection measures, in accordance with the United Nations Convention on the Rights of the Child (CRC). DCN further alleged that, having regard to the best interests of children, the concept of jurisdiction under Article 1 of the Convention should be interpreted in the light of the CRC, and in particular of Articles 2, 3, 6 and 22 thereof, which laid down the general principles of that convention.

In the third-party intervener's view, the extreme vulnerability of migrant children warranted, *inter alia*, an approach to the issue of jurisdiction which was not limited solely to the question of effective control but also encompassed the question whether, in a given case, the relevant State Party was actually capable of providing a child with adequate protection of his or her fundamental rights. Such an approach should be taken, in particular, in situations where children were approaching the member State – by sea, for example – to request international protection. In such cases, there was a clear

connection between the children seeking asylum and the member State in question.

3. The Court's assessment

(a) General principles

78. The general principles of the Court's case-law on jurisdiction were summarised in the *M.N. and Others v. Belgium* case ((dec.) [GC], no. 3599/18, §§ 96-109, 5 May 2020). The relevant part of that decision reads as follows:

> "96. The Court reiterates that Article 1 of the Convention limits its scope to 'persons' within the 'jurisdiction' of the States Parties to the Convention.
>
> 97. The exercise of jurisdiction by a respondent State is a condition *sine qua non* in order for that State to be held responsible for acts or omissions attributable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Al-Skeini and Others*, cited above, § 130, and *Güzelyurtlu and Others*[, cited above, § 178]. The question of whether that State is effectively liable for the acts or omissions at the origin of the applicants' complaints under the Convention is a separate issue which belongs to the merits phase of the case (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 61 and 64, Series A no. 310, and *Güzelyurtlu and Others*, cited above, § 197).
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> 98. As to the meaning to be given to the concept of 'jurisdiction' for the purposes of Article 1 of the Convention, the Court has emphasised that, from the standpoint of public international law, a State's jurisdictional competence is primarily territorial (see *Güzelyurtlu and Others*, cited above, § 178; see also *Banković and Others*, cited above, §§ 59-61). It is presumed to be exercised normally throughout the territory of the State concerned (see *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II).
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> 99. In line with Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969, the Court has interpreted the words 'within their jurisdiction' by ascertaining the ordinary meaning to be given to the phrase in its context and in the light of the object and purpose of the Convention. However, while international law does not exclude a State's extraterritorial exercise of its jurisdiction, the suggested bases of such jurisdiction (including nationality and flag) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (see *Banković and Others*, cited above, §§ 56 and 59).
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> 100. This territorial notion of the States Parties' jurisdiction is supported by the *travaux préparatoires* of the Convention (ibid., §§ 19-21 and 63). The text prepared by the Committee on Legal and Administrative Questions of the Consultative Assembly of the Council of Europe initially provided, in what became Article 1 of the Convention, that the 'member States shall undertake to ensure to all persons residing within their territories the rights ...'. However, the reference to 'all persons residing within their territories' was replaced with a reference to persons 'within their jurisdiction', since the concept of residence was considered too restrictive and open to different interpretations depending on the national legislation concerned.
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> 101. The Court has recognised that, as an exception to the principle of territoriality, acts of the States Parties performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 of the Convention. This is well-established case-law (see, among other authorities, *Ilaşcu and Others*

v. Moldova and Russia [GC], no. 48787/99, § 314, ECHR 2004-VII; *Medvedyev and Others v. France* [GC], no. 3394/03, § 64, ECHR 2010; *Al-Skeini and Others*, cited above, § 131; and *Güzelyurtlu and Others*, cited above, § 178).

102. In each case, it was with reference to the specific facts that the Court assessed whether there existed exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially (see *Banković and Others*, cited above, § 61; *Al-Skeini and Others*, cited above, § 132; *Hirsi Jamaa and Others*, cited above, § 172; and *Catan and Others*[, cited above, § 103]).

103. An exception to the principle that jurisdiction under Article 1 is limited to a State Party's own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (for a summary of the case-law on these situations, see *Al-Skeini and Others*, cited above, §§ 138-40 and 142; for more recent applications of this case-law, see *Catan and Others*, cited above, §§ 121-22; *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 186, ECHR 2015; *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 110-11, 23 February 2016; and *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, §§ 36-38, 17 July 2018).

104. Thus, the Commission and subsequently the Court concluded that a State was exercising its jurisdiction extraterritorially when, in an area outside its national territory, it exercised public powers such as authority and responsibility in respect of the maintenance of security (see *X and Y v. Switzerland*, [nos. 7289/75 and 7349/76, Commission decision of 14 July 1977, DR 9]; *Drozd and Janousek v. France and Spain*, 26 June 1992, §§ 91-98, Series A no. 240; *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, nos. 48205/99 and 2 others, § 20, 14 May 2002; *Al-Skeini and Others*, cited above, §§ 143-50; and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, §§ 75-96, ECHR 2011).

105. Further, the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction (for a summary of the case-law in respect of these situations, see *Al-Skeini and Others*, cited above, § 136). The same conclusion has been reached where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV). Equally, extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, exercised power and physical control over those persons (see *Issa and Others v. Turkey*, no. 31821/96, §§ 72-82, 16 November 2004; *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 86-89, 30 June 2009; *Medvedyev and Others*, cited above, §§ 62-67; *Hirsi Jamaa and Others*, cited above, §§ 76-82; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 75-80, ECHR 2014).

106. As the Court reiterated in its judgment in *Al-Skeini and Others* (cited above, § 134), a State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property (see *X v. Germany*, [no. 1611/62, Commission decision of 25 September 1965, Yearbook 8]; X v. the United Kingdom, no. 7547/76, Commission decision of 15 December 1977, DR 12, p. 73; and *S. v. Germany*, no. 10686/83, Commission decision of 5 October 1984,

DR 40, p. 191), or where they exercise physical power and control over certain persons (see *M. v. Denmark*, [no. 17392/90, Commission decision of 14 October 1992, DR 73, p. 193]).

107. Lastly, specific circumstances of a procedural nature have been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory. ..."

79. The Court recently reiterated the general principles cited above in the *Duarte Agostinho and Others* decision (cited above, § 168), where it also summarised its case-law on the criteria for establishing extraterritorial jurisdiction (§§ 169-76).

80. In accordance with this case-law, where an allegation of extraterritorial jurisdiction is made, the Court will assess whether there are exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially by reference to the specific facts of the case. The two main criteria are effective control by the State over an area (spatial concept of jurisdiction, or jurisdiction *ratione loci*) and State agent authority and control over individuals (personal concept of jurisdiction, or jurisdiction *ratione personae*) (see *Georgia v. Russia (II)* [GC], no. 38263/08, § 115, 21 January 2021, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 559, 30 November 2022).

81. Even in cases where it is established that the alleged violations occurred in an area under the respondent State's effective control (and thus within its *ratione loci* jurisdiction), the latter will only be responsible for breaches of the Convention if it also has *ratione personae* jurisdiction. This means that the impugned acts or omissions must have been committed by State authorities or be otherwise attributable to the respondent State (see *Ukraine and the Netherlands v. Russia*, cited above, § 549).

82. The Court has never said that there can only be effective control over an area outside a State's sovereign borders if the area in question falls within the territory of one of the High Contracting Parties (see, among other authorities, *Issa and Others v. Turkey*, no. 31821/96, §§ 74-75, 16 November 2004). However, this would appear to be the rationale behind its conclusion that the controlling State should in principle be held to account for all breaches of negative and positive obligations under the Convention within the controlled territory. After all, as the Court has explained, to hold otherwise would be to deprive the population of that territory of the rights and freedoms previously enjoyed and to which they are entitled, and would result in a vacuum of protection within the legal space of the Convention. It has moreover emphasised that the Convention is a constitutional instrument of European public order: it does not govern the actions of States which are not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States (see *Ukraine and the Netherlands v. Russia*, cited above, § 562, with further references).

83. The Court has previously noted that, to date, it has never found there to be extraterritorial jurisdiction on account of *ratione loci* jurisdiction over an area outside the sovereign territory of the Council of Europe member States (see *Ukraine and the Netherlands v. Russia*, cited above, §§ 563-64). However, it has on numerous occasions found *ratione personae* jurisdiction under Article 1 of the Convention to exist outside the Convention legal space (ibid., § 572).

84. In any event, the obligation which Article 1 imposes on the Contracting States to secure to everyone within their jurisdiction the rights and freedoms guaranteed by the Convention is closely linked to the notion of "control", whether it be "State agent authority and control" over individuals or "effective control" by a State over a territory (see *Georgia v. Russia (II)*, cited above, § 136).

(b) Application of these principles

85. While the Government submitted that the facts of the case fell outside Italy's jurisdiction, the applicants, like certain third-party interveners, argued that, in the circumstances of the case, the respondent State had exercised extraterritorial jurisdiction both *ratione loci* and *ratione personae*.

(i) Preliminary considerations

86. The Court observes, as a preliminary consideration, that it is not disputed that the events in question took place outside the national territory of the respondent State, in international waters, thirty-three miles north of Tripoli. Nor did the zone in question fall within the Italian SAR region. What is contested between the parties, however, is the question whether the applicants' rescue took place within the SAR region under Libya's jurisdiction.

87. The Government submitted that the events had taken place within the Libyan SAR region, as delimited by the unilateral declaration of 7 July 2017. They therefore took the view that the circumstances of the case fell exclusively within Libya's jurisdiction and, accordingly, outside that of Italy. The applicants replied that the Libyan SAR region had only become official once the unilateral declaration had been recorded in the IMO's database, namely on 26 June 2018, several months after the events (see paragraph 25 above).

88. The Court notes, firstly, that the SAR Convention imposes the obligation on its States Parties to establish SAR regions under their responsibility by agreement with the other parties concerned (see paragraph 24 above). By defining its own SAR region, a State undertakes to provide adequate search and rescue services and to coordinate its actions with those of neighbouring States to ensure rapid and effective intervention and the disembarkation of the persons concerned in a place of safety. The system

of co-operation provided for by the SAR Convention is crucial to the protection of persons in distress at sea. However, the delimitation of SAR regions cannot be confused with the national borders of the States in question (see Article 2.1.7 of the SAR Convention).

89. Secondly, the Court notes that the information in its possession does 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 did, in fact, take place within the region thus delimited. Moreover, it is not in any case for it to decide these issues, which fall within the scope of the SAR Convention.

90. In any event, the question whether the events in issue took place within Libya's SAR region is not, in itself, decisive for ascertaining whether Italy's jurisdiction was exercised extraterritorially for the purposes of Article 1 of the Convention. In order to establish whether there are circumstances warranting the conclusion that a State has exercised jurisdiction extraterritorially, the Court must determine whether, at the material time, there was any form of effective control by that State over the area in question and/or whether the authorities of the State in question exercised power or control over the applicants (see paragraph 80 above).

In the present case, it will therefore examine these two criteria in turn in order to establish whether, having regard to the particular facts of the case, Italy exercised its jurisdiction extraterritorially.

(ii) The issue of effective control over the area in question

91. As to the first criterion, the Court observes that the present case is in no way comparable to those in which it has previously acknowledged that a State had exercised extraterritorial jurisdiction *ratione loci*. In those cases, it found that the Contracting States had exercised effective control over an area outside their national territory as a result of military action – whether lawful or unlawful – directly, through the State's armed forces or through a subordinate local administration (see, for example, *Cyprus v. Turkey*, *Ilaşcu and Others*, *Catan and Others*, and *Georgia v. Russia (II)*, all cited above; and *Chiragov and Others*, cited above, and *Ukraine v. Russia (Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020). Since it is a question of fact whether effective control is exercised over an area, the Court has primarily had reference to the strength of the State's military presence in the area in question (see *Loizidou v. Turkey* (merits), 18 December 1996, §§ 16 and 56, *Reports of Judgments and Decisions* 1996-VI, and *Ilaşcu and Others*, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ilaşcu and Others*, cited above, §§ 388-94, and *Al-Skeini and Others*, cited above, § 139).

92. The Court is not persuaded by the parallels drawn by the applicants between the control exercised by a State over an area as a result of military action and the alleged activities of the Italian authorities in the context of operations to intercept and rescue migrants in the Central Mediterranean Sea. There is nothing to suggest that the presence of the Italian naval forces or the scale of their operations at the material time were such that the maritime area in question can be regarded as having *de facto* been under the effective control of the Italian State.

93. Furthermore, the Court cannot accept the applicants' argument 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 would in the case of military, financial and political support for a subordinate local administration.

94. The Court notes that the bilateral agreements entered into between Italy and Libya in 2017 provide that the Italian State must supply technical and logistic support to the Libyan authorities, in particular to the border police and coastguard, with a view to controlling the flow of irregular migrants (see paragraph 20 above). It observes, moreover, that the agreements in question form part of a policy of outsourcing migration procedures which was set up by the EU. The evidence before the Court shows that the cooperation contemplated in those agreements was actually implemented and that Italy made arrangements, at its own expense, to train members of the Libyan coastguard and border police, while supplying both financial aid and vessels used to control the border, the *Ras Jadir* among them.

95. In the *Hirsi Jamaa and Others* (cited above) judgment the Court held, albeit in a different context, that Italy could not evade its own responsibility under the Convention by relying on its obligations arising out of bilateral agreements with Libya. In this regard, it reiterates the principle that the Contracting States' responsibility continues even after their having entered into treaty commitments subsequent to the entry into force of the Convention or its Protocols in respect of these States (§ 129, with further references).

96. That being said, the Court would point out, first, that the exercise of jurisdiction by a respondent State is a condition *sine qua non* in order for that State to be held responsible for acts or omissions attributable to it and, second, that it is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. Thus, in order to decide whether a State has exercised jurisdiction extraterritorially, the Court must be satisfied beyond reasonable doubt that the areas in question were under the effective control of that State (see *Ukraine and the Netherlands v. Russia*, cited above, § 695).

97. Now, the financial and technical support provided by Italy to the Libyan State under the bilateral agreements entered into between them is not such as to lead the Court to presume that the Libyan authorities were dependent on Italy to such a degree that the international maritime area off

the Libyan coast was under the effective control and decisive influence of Italy (contrast *Ilaşcu and Others*, cited above, § 392, and *Catan and Others*, cited above, § 122). Moreover, unlike the applicants, the Court finds no evidence to suggest that, as a result of the bilateral agreements entered into between the two countries, Italy can be said to have taken over Libya's public powers in immigration matters by virtue of a form of consent, invitation or acquiescence on the part of the Libyan Government (see *Al-Skeini and Others*, cited above, §§ 135, with further references, and 149).

98. In the light of the foregoing considerations, it cannot be concluded that the area in which the applicants were intercepted – and more generally the international waters of the Central Mediterranean Sea – was under the effective control of Italy such that its *ratione loci* jurisdiction is established in the present case.

99. Accordingly, it remains to be determined whether there was "State agent authority and control" over the applicants such that, if so, the respondent State's jurisdiction *ratione personae* would be engaged.

(iii) The question of State agent authority and control

100. The Court notes that, after receiving the distress signal from the applicants' vessel, the Rome MRCC informed the Tripoli JRCC thereof and 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 (see paragraphs 23, 24 and 26 above). The Libyan ship *Ras Jadir* was first to arrive at the scene – followed by the Dutch ship *SW3* – whereupon it immediately took control of the operations. The *SW3* also intervened to assist a number of the shipwrecked individuals. The French vessel *Premier-Maître l'Her* and an Italian navy helicopter, which were also nearby, did not take part in the rescue operations.

101. The Court notes first of all that it is not in dispute that none of the ships involved in the rescue operation was flying the Italian flag or was under the *de facto* control of Italian agents. In this regard, the present case differs from those in which the Court has found that a State's jurisdiction could be engaged in respect of events which took place on the high seas on the grounds that the applicants were under the full and exclusive control, *de jure* or at least *de facto*, of agents of the respondent State (see *Medvedyev and Others v. France*, cited above, §§ 65-67; *Hirsi Jamaa and Others*, cited above, § 8; and *Bakanova v. Lithuania*, no. 11167/12, § 63, 31 May 2016).

102. In this connection, the Court would observe that the captain and crew of the Libyan vessel 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 (see paragraphs 9 and 12 above). Moreover, there is nothing to suggest that the officers of the Rome MRCC had control over the crew of the *Ras Jadir* or were in a position to influence their conduct in any way.

103. The applicants did not contest these facts. In their view, however, the Rome MRCC's actions in its capacity as coordinator of the rescue operations did amount to a form of control or authority over them on the basis of public powers. They thus submitted that they had been under the constant and continuous control of the Italian authorities from the moment the Rome MRCC had received the distress signal from their vessel and initiated the rescue procedure by relaying the alert to the Libyan authorities. In the applicants' submission, the launch of this procedure, on the Italian authorities' initiative, sufficed to establish Italy's jurisdiction in respect of them. In this connection, they referred to the *Güzelyurtlu and Others* case (cited above), in which the institution of criminal proceedings against the applicants had been found to have triggered an extraterritorial jurisdictional link between them and the Turkish State.

104. In the Court's view, contrary to what the applicants suggest, their approach does not find support in its case-law. The procedure for their rescue was initiated in accordance with the provisions of international maritime law relating to the search for and rescue of persons in distress at sea. As the recipient of the distress signal, the Rome MRCC had an obligation to initiate the rescue operations, by raising the alert, and to coordinate them with the RCCs of the other coastal States. The Court has already described the search and rescue system implemented by the SAR Convention, a system based on coordination and shared responsibility between multiple interveners (see paragraphs 88-89 above).

105. Such a procedure cannot be compared to the proceedings which created a jurisdictional link between the applicants and the respondent State in the *Güzelyurtlu and Others* case relied on by the applicants in the present case. The Court observes in this connection that the proceedings in that case were criminal proceedings, initiated by the Turkish authorities (controlling the "Turkish Republic of Northern Cyprus"), and that they concerned Turkey's procedural obligations under Article 2 of the Convention, which were also the subject of the complaint before the Court (see, in this connection, *M.N. and Others v. Belgium*, cited above, § 122). Moreover, the Court has had occasion to clarify that, in order to trigger a jurisdictional link, proceedings must relate to the violation alleged before the Court and have a direct impact on whether the substantive complaints raised before it fall under the respondent State's jurisdiction within the meaning of Article 1 of the Convention (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 195, 14 September 2022).

106. In the light of the above considerations, the mere fact that the search and rescue procedure was initiated by the Rome MRCC cannot have resulted in bringing the applicants under the jurisdiction of the Italian State. To conclude otherwise would moreover amount to dissuading States from acting on the basis of their international obligations with regard to 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 have no connection to them and are not under their effective "control" (see, *mutatis mutandis*, *H.F. and Others v. France*, cited above, § 194).

107. The Court would also point out that acts of the Contracting States performed, or producing effects, outside their territory can only in exceptional circumstances amount to the exercise by them of their jurisdiction within the meaning of Article 1 (see *Banković and Others*, cited above, § 67; *Al-Skeini and Others*, cited above, § 132; *Güzelyurtlu and Others*, cited above, § 178 *in fine*; and *M.N. and Others v. Belgium*, cited above, § 102). It has thus consistently rejected the argument that the mere fact that decisions taken at national level have an impact on the situation of a person abroad is such as to establish the jurisdiction of the State concerned over the person in question. This concerns not only decisions taken by the authorities (see *M.N. and Others v. Belgium*, cited above, § 112) but also the argument that the State is capable of taking a decision or action impacting the applicant's situation abroad (see *H.F. and Others v. France*, cited above, § 202, and *Duarte Agostinho and Others*, cited above, § 184).

108. It follows from all these considerations that Italy's extraterritorial jurisdiction *ratione personae* is not engaged in the present case either. Consequently, the applicants cannot not validly argue that the circumstances of the case were such as to bring them under Italy's jurisdiction.

(iv) Final considerations and general reminders

109. The Court notes that such an interpretation of the notion of "jurisdiction" in Article 1 of the Convention may seem unsatisfactory to the applicants. It does not lose sight of the fact that they were faced with a tragic situation in which a number of people lost their lives, including the children of two among them, and that they also ran the risk of being sent back to Libya, a county they accuse of systematically failing to respect human rights. As to the latter point, the Court can only note that all the reports in its possession from international bodies and NGOs demonstrate that, at the material time, asylum-seekers, refugees and migrants in Libya were at risk of torture, slavery and discrimination, such that the situation in that country was no more favourable than it was found to have been in the *Hirsi Jamaa and Others* case (cited above).

110. Moreover, the Court notes that the applicants' allegations to the effect that the practice of entering into bilateral agreements on migration with third States has the effect of placing extremely vulnerable individuals at serious risk of infringements of their fundamental rights. It observes that the Council of Europe Commissioner for Human Rights, the UNCHR and the other third-party interveners in the present proceedings voiced similar concerns regarding the outsourcing of migration control implemented by some European States and encouraged by the EU. It also takes note of the resolutions of the Parliamentary Assembly of the Council of Europe (see

paragraph 33 above) and of the European Parliament (see paragraph 39 above), which highlight the risks associated with the implementation of this outsourcing policy and call on States to fulfil their obligations under public international law.

111. For its part, the Court has previously emphasised, notwithstanding the right of States to establish their own immigration policies, that problems with managing migratory flows cannot justify having recourse to practices which are incompatible with their obligations under the Convention (see *Hirsi Jamaa and Others*, cited above, § 179). Furthermore, the special nature of the maritime environment cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction (see *Medvedyev and Others*, cited above, § 81). The Court can only reiterate the relevant principles in the present case.

112. The Court further observes that, although the conditions for concluding that a State Party has exercised extraterritorial jurisdiction for the purposes of Article 1 of the Convention are not met in the circumstances of the present case, the situation before the Court is 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.

113. The Court reiterates, however, that the scope of its authority is limited to ensuring compliance with the Convention. This is the instrument which the Court has been entrusted with interpreting and applying. It therefore does not have the authority to ensure compliance with other international treaties or with international obligations deriving from sources other than the Convention. Thus, the Court has acknowledged that while other instruments can offer wider protection than the Convention, it is not bound by interpretations given to similar instruments by other bodies, having regard to possible differences in the content of the provisions of other international instruments and/or possible differences in the role of the Court and the other bodies (see *mutatis mutandis*, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 454, 9 April 2024).

(v) Conclusion

114. The Court concludes that the applicants were not 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. Consequently, the same finding must be reached with regard to the complaint under Article 13.

Accordingly, the application must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in so far as it concerns the applicants I.A., E.E.A., E.K., V.M and J.O.;

Declares the remainder of the application inadmissible.

Done in French and notified in writing on 12 June 2025.

Ilse Freiwirth Registrar	Ivana Jelić President

APPENDIX

List of applicants

No.	First name, last name	Year of birth	Nationality	Place of residence
1.	S. S.	1991	Nigerian	Castel Volturno
2.	I. A.	1995	Nigerian	Unknown
3.	A. A.	1995	Nigerian	Marineo
4.	E. E. A.	1980	Nigerian	Unknown
5.	B. C.	1997	Nigerian	San Giuseppe Jato
6.	E. E.	1986	Nigerian	Borgetto
7.	S. S. E.	1988	Nigerian	Partinico
8.	A. M. G.	1991	Ghanaian	Poppi
9.	D. A. I.	1990	Nigerian	Arezzo
10.	J. R.	1997	Nigerian	San Giuseppe Jato
11.	R. J.	1993	Nigerian	Benin City
12.	E. K.	1996	Nigerian	Unknown
13.	V. M.	1994	Nigerian	Unknown
14.	J. O.	1995	Nigerian	Unknown
15.	M. O.	1991	Nigerian	Torricella in Sabina
16.	E. R. O.	1997	Nigerian	Benin City
17.	S. O.	1995	Nigerian	Villa Castelli