



## Indiscriminate collective expulsion by the Italian authorities of Afghan migrants, who were then deprived of access to the asylum procedure in Greece

The European Court of Human Rights delivered today its **Chamber judgment**<sup>1</sup> in the case of **Sharifi and Others v. Italy and Greece** (application no. 16643/09).

The case concerned 32 Afghan nationals, two Sudanese nationals and one Eritrean national, who alleged, in particular that they had entered Italy illegally from Greece and been returned to that country immediately, with the fear of subsequent deportation to their respective countries of origin, where they faced the risk of death, torture or inhuman or degrading treatment.

The Court held, by a majority, **concerning four of the applicants, Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari)**, who had maintained regular contact with their lawyer in the proceedings before this Court, that there had been:

**a violation by Greece of Article 13 (right to an effective remedy) combined with Article 3 (prohibition of inhuman or regarding treatment) of the European Convention on Human Rights on account of the lack of access to the asylum procedure for the above-named applicants and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment;**

**a violation by Italy of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens);**

**a violation by Italy of Article 3, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure; and,**

**a violation by Italy of Article 13 combined with Article 3 of the Convention and Article 4 of Protocol No. 4 on account of the lack of access to the asylum procedure or to any other remedy in the port of Ancona.**

The Court held, in particular, that it shared the concerns of several observers with regard to the automatic return, implemented by the Italian border authorities in the ports of the Adriatic Sea, of persons who, in the majority of cases, were handed over to ferry captains with a view to being removed to Greece, thus depriving them of any procedural and substantive rights.

In addition, it reiterated that the Dublin system – which serves to determine which European Union Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national – must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns could be justified by reference to that system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicants are 32 Afghan nationals, two Sudanese nationals and one Eritrean national, who claimed to have arrived illegally in Italy from Greece. They stated that, on various dates in 2007 and 2008, they entered Greek territory from countries experiencing armed conflicts which affected civilians (specifically Afghanistan, Sudan and Eritrea). After illegally boarding vessels for Italy in Patras (Greece), they arrived between January 2008 and February 2009<sup>2</sup> in the ports of Bari, Ancona and Venice, where the border police intercepted them and immediately deported them back to Greece.

The Italian Government claimed that, of the applicants, only Reza Karimi had reached Italian territory. Hidden with seventeen other illegal migrants in a lorry transporting vegetables, he had been discovered by the police in the port of Ancona on 14 January 2009 and sent back to Greece on the same day. He had arrived in Patras (Greece) the next day. According to the Greek Government, only ten of the applicants had entered Greek territory. Deportation orders had been issued against those ten persons, some of whom were placed in administrative detention – and, for the most part, subsequently released – and they were given 30 days to leave Greece. According to information submitted by the Greek Ministry of the Interior, only one person had applied for asylum (which was refused) and another had had the execution of his deportation order suspended following the indication of interim measures by the European Court of Human Rights (Rule 39 of the Rules of Court), asking the Greek Government to stay the deportation of six of the applicants. One of those six applicants was nonetheless returned to Turkey, and two others were placed in detention facilities in Albania pending deportation. On both of those occasions, the Court reminded the Greek Government of the obligations arising from measures indicated under Rule 39. The applicants' lawyer, Ms Ballerini, informed the Court between July and December 2009 of the situation of some of the applicants. In particular, she stated that the Greek police had evacuated a camp in Patras, destroying the shelters used by asylum seekers and arresting certain of the applicants; however, she claimed that she was not in a position to provide their names, on account of the confusing situation which prevailed. Some of the applicants were living on the streets – in Athens or Patras –, while others were in different countries (Sweden, Switzerland, Norway...).

On 15 June 2010 Ms Ballerini sent the Court a document stating that in May 2010 one of the applicants, Najeeb Heideri, had run away from Patras and succeeded in entering Italy, where, at the Parma police headquarters, he had presented a claim for international protection. In October 2010 the lawyer was also in contact with Mozamil Azimi and Reza Karimi, who were living in a reception centre in Norway. She subsequently informed the Court that Reza Karimi had been returned to Afghanistan and provided the Court with information about his situation. On several occasions in the course of 2011 and 2012 Ms Ballerini also submitted information on the situation of several applicants, including Yasir Zaidi, who had been in Germany and then in Sweden, and had asked her about the progress of his application to the European Court of Human Rights. In April 2013 the lawyer also informed the Court that Najeeb Heideri had been granted refugee status in Italy. He claimed to have attempted to enter Italy from Greece on two occasions and to have been subjected to an informal return in the port of Ancona, with no prior identification. The Italian Government emphasised that his name had never been entered in the "Eurodac<sup>3</sup>" database as being an asylum seeker in Greece.

<sup>2</sup> With the exception of Rahim Rahimi, who claims to have arrived in Italy in October 2004, and of Moqaddas Raheimi and Hasan Najibi, for whom no dates were specified.

<sup>3</sup> System for comparing the fingerprints of asylum seekers and of several categories of illegal immigrants, intended to facilitate the application of the Dublin Regulation II, making it possible to determine the Member State of the European Union responsible for examining an asylum application.

## Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the applicants complained of having been immediately deported to Greece by the Italian authorities, and alleged that they faced a risk of death or of being subjected to torture or ill-treatment in the event of their removal to their respective countries. Under Article 13 (right to an effective remedy), they further complained of having had no access to the domestic courts in order to assert their grievances. In addition, they alleged under Article 3 that they had been subjected to ill-treatment by the Italian and Greek police and by the crews of the vessels on which they were sent back to Greece. With regard to Greece, they complained of having been placed in administrative detention in poor conditions. Under Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens), they alleged, with regard to Italy, that they had been subjected to indiscriminate collective expulsion. Lastly, relying on Article 34 (right of individual petition), they contended that they were denied the right to bring their case before the Court owing to the impossibility of contacting an interpreter and a lawyer.

The application was lodged with the European Court of Human Rights on 25 March 2009.

On 23 June 2009 it was decided to give the application priority (Rule 41 of the Rules of Court) and to invite the Greek Government, in application of Rule 39, to suspend any deportation of six of the applicants.

The Office of the United Nations High Commissioner for Refugees (HCR), the Centre for Advice on Individual Rights in Europe (the AIRE Centre) and Amnesty International, acting jointly, were authorised to submit written comments as third parties (Article 36 § 2 of the Convention).

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

Işıl Karakaş (Turkey), *President*,  
Guido Raimondi (Italy),  
András Sajó (Hungary),  
Linos-Alexandre Sicilianos (Greece),  
Helen Keller (Switzerland),  
Paul Lemmens (Belgium),  
Robert Spano (Iceland),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Preliminary questions

#### *Admissibility*

The Italian and Greek Governments invited the Court to declare the application inadmissible, expressing doubts as to the identity of the applicants. The Court held that, in the light of the documents in the case file, there was no reason to doubt the authenticity of the letters of authority signed by the applicants in lodging their application before the Court, their identity, or their allegations.

#### *Exhaustion of domestic remedies*

The Greek Government argued that the applicants had failed to apply to the domestic courts to seek acknowledgment of and compensation for the alleged violations of the Convention. Given that the applicants complained precisely about that point, alleging that no remedy had been available to them in Greece which would have corresponded to the requirements of Article 13 of the

Convention, the Court considered it necessary to examine this question at the same time as the merits of the case.

#### *Further examination of the application*

The Court reiterated that the representative of an applicant must maintain contact with him or her throughout the proceedings. In the present case, the Court identified four groups of applicants in this regard, of which only the fourth group was made up of persons who had maintained regular contact with their representative, at least indirectly. In respect of these latter applicants (Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari)), it considered that it was appropriate to continue the examination of the application; in respect of the others, it held that the application was to be struck out of the list of cases and, in consequence, that the application of Rule 39 (interim measures) in their regard should be terminated.

#### Articles 2, 3 and 13 concerning Greece

The Court decided to examine under Article 13 (right to an effective remedy), taken together with Article 3 (prohibition of inhuman or degrading treatment), the applicants' complaints concerning their possible return to Afghanistan and the lack of access, in practice, to the asylum procedure.

#### *Access to the asylum procedure*

The Court considered that the applicants had had "arguable" complaints under Article 3 concerning the risks related to their possible removal, which would have justified an in-depth examination on the merits before a Greek court. Indeed, the Greek Government's policy at the relevant time had been not to send asylum seekers back to Afghanistan by force precisely because of the high-risk situation there.

The Court then examined the tangible opportunities available to the applicants to obtain the necessary assistance to gain access to the asylum procedure. It noted, firstly, that the shortcomings in the asylum procedure in Greece, notably in terms of a shortage of interpreters and the absence of legal aid, arose from the difficulties inherent in managing the flow of migrants and asylum seekers to which a State situated on the external borders of the European Union might be subjected – especially Greece, which had been particularly affected by the economic crisis<sup>4</sup> – as was confirmed, indirectly, by the creation of the European Asylum Support Office in 2010, whose activities were primarily targeted at those member States which were under particularly heavy pressure. In the present case, the Court noted, among other things, that the information brochure issued to the "identified" applicants, containing the information that was essential for challenging the deportation decision, had been given to them in Arabic, although they were Afghan nationals and did not necessarily understand that language. Secondly, the Court pointed out that the asylum seekers were living in Greece in a state of precariousness and utter destitution, especially in the Patras camp, which was no more than an overcrowded makeshift camp, lacking any essential services.

As to the question of the applicants' intentions – according to the Government, they had had no intention of applying for asylum, but instead wished to settle in a country other than Greece –, the Court merely noted that there existed a risk of their direct or indirect return to Afghanistan and that accordingly they had a specific interest in being able to avail themselves of a remedy for the purposes of Article 13.

The Court concluded that there had been a violation of Article 13 taken together with Article 3 in respect of Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari).

<sup>4</sup> See the Grand Chamber judgments in [M.S.S. v. Belgium and Greece](#) of 21 January 2011 (§ 223) and [Hirsi Jamaa and Others v. Italy](#) of 23 February 2012 (§ 122).

*Allegations of ill-treatment by the crews of the vessels, police officers and in the administrative detention centres*

The Court noted that the applicants had not substantiated their complaint concerning the ill-treatment to which they had allegedly been subjected by the ferry crews and police officers, as they had provided no details (location and nature of the ill-treatment in question, the perpetrators, after-effects, etc...). In consequence, it dismissed this complaint as manifestly ill-founded.

Furthermore, having no details about the specific administrative detention centres in which the applicants had been held, or on the duration and conditions of their detention, the Court was unable to rule on this point. It therefore dismissed the complaint concerning their conditions of detention as manifestly ill-founded.

[Articles 2, 3, 13, 34 and Article 4 of Protocol No. 4 concerning Italy](#)

*Collective deportation*

With regard to the admissibility of this complaint, the Italian Government argued that Article 4 of Protocol No. 4 was inapplicable in this case. The Court considered that, in view of the fact that even interceptions on the high seas fell within the ambit of Article 4 of Protocol No. 4<sup>5</sup>, it was inevitable that this article was also applicable to refusals to allow entry to the national territory to persons who had arrived illegally in Italy.

The Court took note of the concurring reports submitted by the third parties and other international sources<sup>6</sup>, which set out episodes of indiscriminate return to Greece by the Italian border authorities in the ports of the Adriatic Sea, depriving the persons concerned of any substantive and procedural rights. Thus, it was only through the goodwill of the border police that intercepted persons without papers were put in contact with an interpreter and officials capable of providing them with the minimum information concerning the procedures relating to the right of asylum. More often than not, they were immediately handed over to the captains of ferries for return to Greece.

In order to have their case examined by the Ministry of the Interior, the applicants were required to have expressed, during the identification process, a wish to benefit from asylum or another form of international protection. The participation of an interpreter and officials from the Italian Council for Refugees (CIR) during the identification process was therefore crucial. However, even in the case of Reza Karimi – the only applicant whose name appeared in the register of the Italian immigration authorities – it did not seem that the CIR had been involved. Nor did the case file contain any document indicating that any form of individual examination of his situation had been carried out as part of the procedures provided for in the bilateral agreement of 1999<sup>7</sup>.

In addition, the Court noted that the Italian Government's assertion that only Reza Karimi had reached Italian territory was contradicted by the observations from the Greek Government, according to which three other applicants had boarded ships for Italy and had been removed by the Italian authorities before returning to Greece. The Italian Government also explained that, under the Dublin system, only Greece had jurisdiction for ruling on possible asylum requests by the applicants. The Court considered that, on the contrary, in order to establish whether Greece did indeed have

<sup>5</sup> Judgment in *Hirsi Jamaa and Others v. Italy*, §§ 166-180

<sup>6</sup> Italian Council for Refugees, Progetto Melting Pot Europa, Integration Catholic Migration Commission, Pro Asyl – Greek Council for Refugees, United Nations Agency for Refugees, Council of Europe Commissioner for Human Rights, European Network for Technical Cooperation on the Application of Dublin II Regulation, Human Rights Watch, United Nations Human Rights Council. See §§ 101-104 of the present judgment.

<sup>7</sup> On 30 March (or 30 April, according to the Italian Government) 1999, Italy and Greece signed a bilateral agreement on the readmission of persons unlawfully present on the territory ("the 1999 bilateral agreement"). Article 5 of that agreement provides that each of the Contracting Parties readmit to its territory, at the request of the other Party and without any formalities, any national of a third country who has entered the territory of the second after having, in the twelve months preceding the request, travelled through or been resident in the territory of the first.

jurisdiction on this point, the Italian authorities ought to have carried out an individualised analysis of the situation of the each applicant, rather than deporting them all. No form of collective and indiscriminate returns could be justified by reference to the Dublin system, which had, in all cases, to be applied in a manner compatible with the Convention.

The Court concluded that there had been a violation of Article 4 of Protocol No. 4, considering that the measures to which Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari) had been subjected in the port of Ancona amounted to collective and indiscriminate expulsions.

#### *Risk of arbitrary repatriation to Afghanistan*

The Court reiterated that it was for the State carrying out the return to ensure, even in the context of the Dublin system, that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced. Thus, the Court had found in this case a violation by Greece of Article 13, taken together with Article 3, on account of the lack of access to the asylum procedure and the risk that the applicants would be deported to Afghanistan, where they were likely to be subjected to inhuman and degrading treatment. As to Italy's responsibility resulting from the applicants' removal to Greece, the Court found no reason to depart from its findings in the judgment in the case of *M.S.S. v. Belgium and Greece*, and held that it had been for the authorities, Italian in this case, to examine the applicants' individual situations and to verify, before returning them, how the Greek authorities applied their legislation on asylum in practice. Consequently, there had been a violation of Article 3 in this regard in respect of Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari). In the light of this conclusion and having regard to the circumstances of the case, the Court considered that it was not necessary to examine the applicants' complaints under Article 2.

#### *Access to the asylum procedure or to any other remedy in the port of Ancona*

The Court held, taking into consideration its previous conclusions in this case, that the applicants' complaints concerning the remedies available in the port of Ancona were "arguable". It considered that there was a clear link between the collective expulsions to which the applicants had been subjected in the port of Ancona and the fact that they had been effectively prevented from applying for asylum or from having access to any other domestic procedure which satisfied the requirements of Article 13. In consequence, the Court concluded that there had been a violation of Article 13, taken together with Article 3 of the Convention and Article 4 of Protocol No. 4. In the light of this conclusion and having regard to the circumstances of the case, the Court considered that it was not necessary to examine the applicants' complaints under Article 13 taken together with Article 2.

#### Other Articles

Under Article 34 (right of individual petition), the applicants complained about the lack of contact with a lawyer and an interpreter during their identification and deportation from Italy, in that they had been deprived of the opportunity to bring their case before the Court. Having regard to its above-mentioned conclusions in respect of Article 13, taken together with Article 3 of the Convention, and of Article 4 of Protocol No. 4, and to the grounds on which they were based, the Court considered that it was not necessary to examine separately the applicants' complaints under Article 34 of the Convention.

The applicants claimed to have been subjected to treatment contrary to Article 3 by the Italian police and the crews of the vessels which transported them back to Greece. The Court noted that this complaint had not been substantiated, as the applicants had not provided any details in this respect. It therefore dismissed this complaint as manifestly ill-founded.

### Just satisfaction (Article 41)

The Court held that Greece was to pay jointly to Reza Karimi, Yasir Zaidi, Mozamil Azimi and Najeeb Heideri (also known as Nagib Haidari) 5,000 euros (EUR) in respect of costs and expenses.

### Separate opinion

Judge Lemmens expressed a concurring opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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