



Viewpoint

Sharifi et al. vs. Italy and Greece case: The Strasbourg Court finds Italy guilty. An appeal from below stops refoulements from the Adriatic sea ports

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It amounted to inhuman and degrading treatment, the prohibition of collective refoulements and the right to an effective remedy were violated

Everything began with the death of Zaher Rezai, in via Orlanda in Mestre, on 11 December 2008. [He was] an Afghan child who, after travelling for months and completing a 9,000 kilometre journey on his own, embarked from the port in Patras, hidden beneath a heavy vehicle like thousands of other minors to flee from the violent conditions in Greece: a country that has already been found guilty by the European Court of Human Rights [ECtHR] for inhuman and degrading treatment towards migrants and in which it is impossible to request international protection.

But Zaher was not in a position to reveal his presence even once he had entered Italy, because he knew that in the Venice port, as also happens in those of Ancona, Bari and Brindisi, you are sent back, in iron cabins without food or water, and handed back to the Greek police, from where you are then sent back to Turkey and, from there, once again into the Afghan horror. Thus, Zaher remained hidden until the lorry left the ship, until it started getting further from the port, with his little hands clinging tightly to the lorry's belly: he couldn't hold on any longer, slipped and was run over. There were four small plastic animals in his pocket and some beautiful poems: "gardener, open the gates to your garden, I am not a flower thief".

The Venice associations of the *Tutti i diritti umani per tutti* [All human rights for everybody] network already knew what was happening in the ports from many accounts they had heard. So did the Ancona *Ambasciata dei Diritti* [Embassy of Rights], which joined the complaints which continued to be disregarded by all the institutions.

On 19 December 2008, the Venice associations wrote an open letter to all the bodies that are in charge of running the reception service in the Venice port, asking them to refuse any tasks unless the minimum criteria to guarantee the safeguard of refugees were previously renegotiated. CIR [*Consiglio Italiano per i Rifugiati*, Italian Refugee Council] decided to accept anyways and has managed its presence in the port of Venice for years (but soon afterwards it began to denounce the many shadows it is made to coexist with, sometimes publicly).

However, Zaher's blood on that road in Mestre pushed us to do something new. To leave, go backwards along the tracks of those who were sent back, find them, lend them a voice. Because appeals before the ECtHR work like this: the victim must file an appeal, their signed power of attorney documents are needed.

Thus, a few of us left with the idea of enabling those who were sent back to [file an] appeal before the European Court in Strasbourg. Anna Milani and Basir Ahang, an Afghan political refugee and journalist, were with me. It was 2009, we arrived in Patras after a 37-hour boat journey. With the help of Kinisi, a local activists' association, we immediately met thousands of Afghans who were relegated in an informal camp in the city's outskirts that was set on fire by the police a few months later. There were also some Sudanese and Eritreans who had chosen the eastern route to escape the Lybian torture and the Mediterranean cemetery.

But moving in Patras was difficult, we were closely monitored by the Greek police, stopped for hours on absurd charges of international drug smuggling just because we were talking with the migrants, and then released thanks to the intervention of the network of Greek lawyers who we had contacted in advance to authenticate the signatures that we would have collected. We found refuge in the camp and stayed there for a few days.

We explained what we had come to do there to the refugees, and after a short while they trusted us. It rained for all the time we were there, but outside the hut made of wood and clingfilm that the migrants had built in which they hosted us to collect their accounts and power of attorney documents, hundreds of people were queueing up.

We collected plenty of accounts, but only 35 of them were complete, including all the necessary documentation. We returned to Italy, charged with hope. We

travelled back from Patras to Venice. In the garage, before we disembarked, we saw the drivers looking frantically beneath and inside their vehicles to ensure that they did not have any “*clandestini*” [stowaways, or so-called “illegals”] on board.

At the port, we saw the police leading heavy vehicles into dedicated covered areas to check them, using sophisticated equipment to scan them, disregarding the fact that if there really were any people hidden on board, these systems would seriously harm their health.

Once we were back, we got the right people involved: Prof. Fulvio Vassallo Paleologo and lawyer Alessandra Ballerini from Genoa. Alongside them and lawyer Luca Mandro from Venice, and the association *Tutti i diritti umani per tutti*, we put together the appeal and then sent it to Strasbourg. That is when the waiting began. Waiting that has lasted for years, during which lawyer Ballerini’s obstinacy proved epic.

In the meantime, *Presa Diretta* [a Rai 3 television current affairs programme by Riccardo Iacona] decided to dedicate an episode to these returns and Gian Antonio Stella wrote a front-page editorial in the *Corriere della Sera* [newspaper].

However, while the media finally listened to us, the government authorities remained deaf.

In Venice, we asked to meet the port authority, the *prefettura* [office of the government envoy responsible for security, the *prefetto*] and the border police, but none of them admitted the unlawfulness of the return practices. In spite of UNHCR recommending for years that migrants should not be sent back to Greece, and in spite of members of the Venice town council like Gianfranco Bettin and Sandro Simionato, municipal councillors like Beppe Caccia, and the then city mayor Massimo Cacciari also publicly supporting us.

Those who managed the returns, who were under the orders of the interior minister at the time, the Lega Nord’s Roberto Maroni, who had already been the authority responsible for the returns to Lybia which were also deemed unlawful by the ECtHR, continued to say that everything happened in compliance with the rules: in fact, a protocol between Italy and Greece which dates back to 1999 provides for returns with the returnees’ care entrusted to the captain. Yet, as we have always argued, that protocol, in view of its overt violation of a large part of the EU and international normative framework concerning human rights and borders, cannot be applied and is entirely illegal.

Then, in April 2009, the first reply arrived: although the Italian and Greek governments had asked the Strasbourg Court to deem the appeal

inadmissible due to doubts over the appellants' identities, the ECtHR admitted it.

This was a first, extraordinary result for an intervention that was entirely put together at grassroots level, without large bodies or associations backing us. Powered by a wish to believe that you cannot stay still in front of a violence that was perpetrated for such a long time and that you must be bold, even against the strongest powers, against a conspiracy of silence, against those who deny the evidence.

And today, we have won. The European Court of Human Rights in Strasbourg has found Italy and Greece guilty of violating some fundamental human rights of four of the 35 appellants whose accounts and power of attorney documents we collected several years ago in Patras. During these years, the others have been sent back to places where it is unlikely that they have survived, although the Court had demanded that Greece suspend any expulsions under art. 39 of the European Convention on Human Rights [ECHR].

Therefore, the sentence of 21 October finds Greece guilty of violating art. 13 of the ECHR (the right to an effective remedy) in combination with article 3 (prohibition of inhuman and degrading treatment) and it condemns Italy for violating art. 4 of the 4th Protocol (prohibition of collective refoulements) as well as for violating art. 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". Italy was also found to be in violation of art. 13 in combination with art. 3 and art. 4 of the 4th Protocol on account of the lack of access to the asylum procedure or to any other remedy in its ports on the Adriatic Sea [which runs down the eastern flank of Italy].

In its press release issued immediately after the sentence, the Court "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".

As of tomorrow, these returns must be suspended, because after years of complaints, after all our journeys to Greece, after demonstrations and commemorations, what we have always condemned as violations of fundamental rights have obtained an official acknowledgement that no Italian authority will be able to disregard any longer.

Finally, all our battles make sense. The *Campagna Welcome. Indietro non si torna* [Welcome Campaign. There's no going back], which called an international demonstration between the Italian and Greek ports against these returns on 20 June 2010, makes sense. All the complaints filed in these years,

some of them very recent, make sense, as have the dossiers and books published, the public meetings with hundreds of people, the incursions by several activists in the ports, greeted by the border police with charges, violence and allegations against them.

The establishment of an Observatory against racial discrimination in Venice, founded by the *Associazione SOS Diritti* alongside UNAR and the city council, which requested and obtained the data concerning return in the port, make sense.

What does not make sense, not in this case, are the very many deaths of all those migrants who were exercising a right and have been killed by the Italian and the Adriatic frontier, like Zaher.

This little enormous victory is for them all.

[translation by Statewatch]

The original article (in Italian)

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Background

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