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European Court ruling condemns automatic and indiscriminate returns from Italy to Greece

On 21 October 2014, the European Court of Human Rights released its Chamber judgment in the case of *Sharifi and Others v. Italy and Greece* (application no. 16643/09). The ruling emphasizes that European Union (EU) member states cannot ignore or circumvent their obligations under the European Convention on Human Rights when implementing EU law or bilateral agreements aimed at returning asylum-seekers to another EU country.

Although the case dates from 2009, it concerns a problem that is regrettably still ongoing in the Mediterranean between Greece and Italy (see relevant reports listed below): push-backs, which are unlawful operations that push back people who are attempting to cross a border or soon afterwards, without any procedural safeguards and without any opportunity to claim asylum. In *Sharifi*, 32 Afghan nationals, two Sudanese and one Eritrean asserted that they had arrived in Italy irregularly from Greece. Without any of the procedures required by EU law being followed, they had immediately been returned to that country, where the legally required reception conditions and asylum procedures were absent, where recourse to arbitrary detention was commonplace and from where they feared subsequent deportation and exposure to a risk of death, torture or other ill-treatment in their countries of origin. They all alleged several violations of their rights under the European Convention on Human Rights.

The Court dismissed 28 applicants from the case for lack of information because their representatives had not been able to maintain the regular contact with them, as required by the Court. But it did find that, with respect to four of the Afghani applicants, there had been a violation by Greece of Article 13 (right to an effective remedy) taken together with Article 3 (prohibition of inhuman and degrading treatment) on account of the lack of access to the asylum procedure in Greece and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment.

The Court also found that the automatic return of persons from Italy to Greece by the Italian authorities amounted to collective and indiscriminate expulsion in violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion). In line with its *M.S.S. v. Belgium and Greece* (2011) ruling, the Court further stressed the EU member states' obligation to assess the risk of Convention violations when implementing the Dublin Regulation (which determines which EU member state is responsible for examining an asylum application) or bilateral agreements between EU member states. It therefore held that Italy also violated Article 3, when returning the applicants to Greece, and Article 13

taken together with both provisions, when depriving them of access to the asylum procedure or to any other remedy on Italian territory.

Amnesty International and the AIRE Centre intervened jointly in *Sharifi* (on questions of law, not on the particular facts at issue in the case). The organizations highlighted serious defects in the Greek and Italian asylum systems, such as lack of access to asylum determination procedures, inappropriate and often unlawful recourse to detention, inadequate reception conditions and the failure to take into account the particular needs of vulnerable groups such as unaccompanied children. Amnesty International and the AIRE Centre argued that these failures have resulted in collective expulsions by the Italian authorities and in the refoulement of asylum-seekers from Italy and Greece, exposing them to a real risk of torture, ill-treatment and other serious violations of Convention rights. The organizations emphasized the importance of adhering to the procedural safeguards of the EU Dublin system. None of the Dublin system procedures or safeguards had been applied in this case.

Importantly, the Court reiterated that the Dublin system within Europe must be implemented in accordance with the law and does not provide a justification for collective and indiscriminate returns. The state carrying out a return is obliged to follow the prescribed procedures and to ensure that the destination country offers adequate guarantees in respect of the law, individuals' dignity and their rights protected under EU law and the Convention. This includes preventing individuals from being subsequently removed without an assessment of the risks faced in their country of origin.

Relevant reports since *Sharifi* was heard in 2009:

- Integration Catholic Migration Commission, May Day! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe, September 2011
- Pro Asyl – Greek Council for Refugees, Human Cargo. Arbitrary readmissions from the Italian sea ports to Greece, July 2012
- United Nations High Commissioner for Refugees, Recommendations on Important Aspects of Refugee Protection in Italy, July 2012
- Council of Europe, Commissioner for Human Rights, Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Italy from 3 to 6 July 2012, 18 September 2012
- Council of Europe, Commissioner for Human Rights, Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Greece from 28 January to 1 February 2013, 16 April 2013
- Council of Europe, Committee of Ministers, Decision CM/Del/Dec(2011)1120/2, 14 September 2011
- Council of Europe, Committee of Ministers, Decision CM/Del/Dec(2012)1144/5, 6 June 2012

- Council of Europe, Committee of Ministers, Decision CM/Del/Dec(2013)1164/5, 5 March 2013
- European Network for Technical Cooperation on the Application of Dublin II Regulation, Dublin II Regulation National Report. Italy, 19 December 2012
- Human Rights Watch, Turned Away. Summary Returns of Unaccompanied Migrant Children and Adult Asylum Seekers from Italy to Greece, January 2013
- United Nations Human Rights Council, Report by the Special Rapporteur on the human rights of migrants, François Crépeau. Mission to Italy (29 September – 8 October 2012), 30 April 2013.