

**JOINT PRESS RELEASE**

*by de: border // migration justice collective and  
the Association for Juridical Studies on Immigration (ASGI)*

**ECtHR judgement on Italy-Libya 'pullback' policy—S.S. and Others v. Italy**

Seven years after receiving the complaint, the European Court of Human Rights has delivered its [judgment](#) on the case of *S.S. and Others v Italy* (App. No. 21660/18). This is the first ECtHR judgment concerning the Italian 'pullback' policy, implemented through cooperation with Libyan authorities, in the context of the externalisation policy carried out under the umbrella of its [Memorandum of Understanding \(MoU\) with Libya](#).

The 'pullback' policy in the Central Mediterranean has been a tactic deployed to achieve *indirectly* what Italy had been forbidden from doing directly after the condemnation of its 'pushback' practices in [Hirsi Jamaa and Ors v Italy](#). To do so, the Italian authorities have trained, equipped, and financed the Libyan coastguard—including through the European Union's [Trust Fund for Africa](#)—and provided it with technical, operational and political support without which it would not have been able to exist, let alone to function.

The present case concerns the violent 'pullback' on 6 November 2017 of a group of approximately 130 migrants from a sinking dinghy by the Libyan Coastguard, acting as a proxy of the Italian authorities and interfering with the rescue efforts of the NGO vessel Sea-Watch 3. While Sea Watch was eventually able to rescue and bring to safety in Italy 59 passengers, at least 20 people died before or during these events and 47 passengers were ultimately pulled back to Libya. The applicants in *S.S. and Others* include twelve survivors of the fatal incident, amongst whom are the surviving parents of two children who drowned. While ten of the applicants were rescued by Sea Watch and taken to Italy, two of them were forcibly returned to Libya by the Libyan Coastguard, where they endured detention in inhumane conditions, beatings, extortion, starvation, sexual abuse, and torture.

**The Court's ruling**

The Court unanimously ruled the application inadmissible, on the basis that the criteria for concluding that Italy had exercised extraterritorial jurisdiction for the purposes of Article 1 of the Convention had not been met in the circumstances of the case.

To reach this conclusion, the Court set aside our argument that the ECHR applies in extraterritorial situations involving search and rescue (or interdiction) at sea through collaborative arrangements, rejecting the possibility of a '[functional](#)' interpretation of the jurisdiction clause in this case. It did so

by stating that the financial and technical support provided by Italy to the Libyan Government of National Accord under bilateral agreements was not such as to lead the Court to presume that the Libyan authorities were dependent to such a degree that the international maritime area off the Libyan coast was under the effective control and decisive influence of Italy—contrary to findings from the Italian judiciary that Libyan Coastguard interventions in the Central Mediterranean happen [‘under the aegis of the Italian navy’](#).

At a time where the Italy-Libya model is being [replicated elsewhere](#) (in Tunisia, Egypt, Senegal, and Mauritania, among others) and [becoming normalised](#), the Court’s pronouncement could have set a significant precedent clarifying that State’s human rights protection cannot be [circumvented through externalisation](#). The Court’s highly restrictive approach misses a critical opportunity to redress a glaring protection gap, permitting European actors to contain migration without accountability under the Convention for the harms and violence such actions inflict. In so doing, the Court diverges from the jurisprudence of the UN Human Rights Committee ([General Comment No. 36](#) and [A.S. and Others v. Italy](#)), which found that jurisdiction can be established where decisions taken by a State authority impact on a person’s right to life in a direct and reasonably foreseeable manner—even when the person is located outside any territory effectively controlled by the State, including on the high seas.

As interpreted by the Court, this generates a discrepancy between the International Covenant on Civil and Political Rights and the ECHR regimes, which could be problematic for State Parties to both instruments (including Italy and all of the EU Member States). The Court’s ruling seemingly allows for the continuation of practices that [enable the commission of human rights violations by proxy](#). Paradoxically, the Court notes that Libya is [‘unsafe’](#), as highlighted by UNHCR and the international community as a whole, and observes the multiple calls by the Council of Europe Commissioner for Human Rights and others to [stop collaboration with Libya](#), but then considers itself incompetent to adjudicate on the related violations of fundamental human rights.

### **Quotes from the legal team**

According to de:border’s co-founder Professor Violeta Moreno-Lax (ICREA-University of Barcelona and Queen Mary University of London), currently Visiting Professor at the Hertie School:

*“It is unfortunate that the Court does not pronounce ‘pullbacks’ as an exercise of extraterritorial jurisdiction by Italy. Italy’s ‘pullback’ policy constitutes an attempt to ‘outsource’ human rights violations to Libya. It is an artifice specifically designed as a mechanism to evade human rights responsibility, while still maintaining a form of ‘[contactless control](#)’ over migrants and refugees attempting to reach safety by sea. It constitutes a form of ‘refoulement by proxy’ that contravenes the most essential foundations of the Convention system and that this judgment will apparently allow to continue”.*

Avv Loredana Leo, from ASGI, considers that:

*“The Court is saying that there is a legal gap regarding the application of the Convention, which does not allow it to intervene despite the clear violation of other applicable international rules, which it cannot fail to acknowledge in its conclusions. This is paradoxical. No reading of the Convention can allow new policies of the States Parties to circumvent its constraints. Otherwise, the Convention risks becoming an instrument which, through the actions of States, could see its power to protect the fundamental rights of individuals undermined.”*

## Press inquiries

Please, direct questions and queries on the case to:

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and/or **Silvia Cancini** (ASGI) at <[info@asgi.it](mailto:info@asgi.it)>

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## Application

The application was filed by members of de:border // migration justice collective ([de:border](#)) and the Association for Juridical Studies on Immigration ([ASGI](#)), with support from [ARCI](#), Yale Law School’s [Lowenstein International Human Rights Clinic](#), and the University of Louvain’s [Rosa Parks Human Rights Clinic](#) of the University of Louvain.

The submission made use of evidence compiled by the Search and Rescue Observatory for the Mediterranean ([SAROBMED](#)) project (2017-19), based at Queen Mary University of London, and by [Forensic Oceanography](#), part of the [Forensic Architecture](#) agency based at Goldsmiths University of London, who produced a detailed [reconstruction of the incident](#) and the [policies that contributed to it](#).

The Court further received submissions from the following third parties, authorised to intervene in the case:

- [Commissioner of Human Rights for the Council of Europe](#)
  - [UN High Commissioner for Refugees](#)
  - [Amnesty International & Human Rights Watch](#)
  - [International Commission of Jurists, The Aire Centre, European Council on Refugees and Exiles & Dutch Refugee Council](#)
  - [Roma Tre University’s Human Rights Clinic](#)
  - Oxfam Italy
  - International Human Rights Le Clinic at University of Turin
  - Defence for Children International
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