

# Italian Jurisprudence on Illegal Immigrant Smuggling

*Asserting Jurisdiction on the High Sea*

## ANALYSIS



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## Table of Contents

1. Purpose and methodology .....	2
2. Background .....	2
3. Challenges in Prosecuting Illegal Immigrant Smuggling .....	3
3.1. Modus Operandi .....	3
3.2. Jurisdiction and coercive powers .....	4
3.3. Gathering of information and collection of evidence .....	5
4. The Legal Framework .....	6
4.1. Jurisdiction on the high sea .....	7
4.2. Coercive powers on the high seas .....	7
4.3. Rescue obligation at sea .....	8
5. Assertion of the Italian Jurisdiction .....	8
6. DNA Operational Guidelines .....	10

## 1. Purpose and methodology

This legal analysis provides an overview of relevant Italian case-law on illegal immigrant smuggling through the sea, highlighting the main obstacles faced by Italian prosecutors in dealing with such cases and solutions emerging therefrom. It further highlights the operational guidelines developed by the *Direzione Nazionale Anti-Mafia* (DNA) to coordinate the action of all authorities involved and optimise their efforts (hereinafter *Operational Guidelines*). The *Operational Guidelines* are briefly presented in *Annex I* to this document.

This product is based on the examination of a representative sample of 10 court cases amongst those made available to Eurojust by both Italian Prosecutor's General Office on the occasion of the 8<sup>th</sup> meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the EU and the Italian National Member at Eurojust. These cases relate mostly to the challenge of **asserting Italian jurisdiction on the high seas**. They reflect a shift in the Italian jurisprudence that allowed prosecutions to move forward, thus filling in what would otherwise give rise to an impunity gap. *Annex II* provides a summary of the most emblematic court decisions assessed.<sup>1</sup>

The focus of the analysis is case-law. However, occasionally few references are made to information gathered from other sources<sup>2</sup> with the purpose of further contextualising the Italian efforts in countering the crime type.

Finally, it should be noted that this work is part of a **broader project** conducted under the auspices of the Thematic Group on Illegal Immigrant Smuggling and intended to analyse the obstacles and solutions in investigations and prosecutions stemming from the case law of other Member States most engaged in administering justice in relation to illegal immigrant smuggling.

The final aim and envisaged product of this project is to reach – on the basis of an integrated analysis of all the domestic legal and judicial approaches assessed - a **holistic overview of the key challenges and best practices in prosecuting this crime across the EU**.

## 2. Background

The southern borders of Italy have recurrently been used as the entry point in the EU of continuous waves of irregular immigration. Given the short distance between Lampedusa and the North of Africa, small boats, in extremely poor condition, are used to reach the Italian territory. Once on land, migrants are often collected by associates of the smuggling network who then make sure migrants will be directed to different locations, within Italy and abroad.

These ventures often culminated in tragedy. Only to mention some of the most dramatic:

- On 3 October 2013, 366 migrants lost their lives in a shipwreck few hundred meters away from Lampedusa beaches;
- On 11 October 2013, 260 illegal immigrants, mostly children, drowned in the Search and Rescue (SAR) zone of Malta.

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<sup>1</sup> It should be noted that this compilation does not aim at being exhaustive, rather constituting living documents.

<sup>2</sup> E.g., Meeting of the Consultative Forum of 10 December 2015 and Eurojust's Tactical Meeting on Illegal Immigrant Smuggling (4-5 February 2016).

As a consequence, there was then a shift in Italy's policies on irregular immigration, aimed at surveying the borders and striving for rescuing migrants in danger even beyond the Italian Search and Rescue (SAR) zone.

The contours of the new legal and strategic landscape were much influenced by the 2012 [Hirsi judgment \(Annex III\)](#), whereby the ECtHR concluded that *"the Italian border control operation of 'push back' on the high seas, coupled with the absence of an individual, fair and effective procedure to screen asylum seekers, constitutes a serious breach of the prohibition of collective expulsion of aliens and consequently of the principle of non-refoulement"*.

### 3. Challenges in Prosecuting Illegal Immigrant Smuggling

#### 3.1. Modus Operandi

The new geo-political context in Africa and the Middle East – propelled, to a significant extent, by the Arab Spring and subsequent co-related events – led to a change in the *modus operandi* of organised criminal groups (OCGs) and the profile of immigrants. In effect, migrants from Syria and Egypt are often wealthier and in the position to pay for better travel conditions. This, coupled with the remoteness of the departure points, led smugglers to develop a new route, starting from Egypt, Turkey, Cyprus and other countries in the Eastern Mediterranean Sea. This required OCGs to resort to ships apt to travel on the high seas.

Investigations carried out by Italian authorities unveiled that in most cases OCGs used a (i) **main, robust, vessel operated by an experienced crew** (so-called 'mother-vessel'), and (ii) **small unfit boat**, where illegal immigrants were transferred to, far from Italian territorial waters. Smugglers also furnished a satellite phone to migrants so that they could plead for aid. Smugglers would then go back to their country of origin in order to retrieve a new 'load'. This new method implied a far greater risk for immigrants in the last part of the journey but it was profitable for the smugglers. On the one hand, smugglers could take advantage of Italian authorities' obligation to provide aid to anyone in danger at sea and, on the other, avoid the reach of Italian jurisdiction since they never entered Italy's territorial waters. In other words, **OCGs** handling the illegal immigrant smuggling **deliberately enhanced the danger** migrants were submitted to so as to **trigger the intervention** of Italian authorities as close to the African coast as possible. In this manner, OCGs managed to decrease costs and exposure of their assets and members.

Smuggling networks present a **multinational character**, operating in different countries and often **specialised by territory and activity** (i.e. transportation, accommodation, false documents, and introduction of migrants into circuits of trafficking in human beings upon arrival to the EU). Smugglers often have **cultural or ethnical links** with migrants, which facilitate the criminal activity. There have also been noted links with other criminal activities such **trafficking of drugs and weapons**.

A **particular challenge** in addressing smuggling at sea is **linking a vessel with smuggling-related crimes**. Instances of illegal immigrant smuggling at sea are often treated as irregular immigration, with little or no consideration for the **OCG** involved. The result is that the *modus operandi* of smugglers is supported rather than curtailed as investigative opportunities are lost.

In the effort of countering this tendency, Italian authorities have focused their **efforts** directly on the **OCG** and how to **bring them to justice**.

Furthermore, authorities are required to keep abreast with the very **dynamic and versatile nature** of criminal networks, who rapidly adapt vis-à-vis advances made by authorities in order to counter this criminal phenomenon. Smugglers are attentive in following policies adopted by authorities, namely via the internet. Illustratively, smugglers now often send migrants towards the Italian coast via boats which they can **remotely control**. In this manner it is not possible to identify and **monitor the phone contacts** that were usually made between smugglers (on the boat and inland) once the rescue had been effectuated or the landing occurred for the simple fact that, as per this new *modus operandi*, such phone communications are no longer necessary. By the same token, this procedure also raised challenges in **proving the involvement of an organised criminal group**.

In addition, it is worth noting that smugglers have showed no constraints in adopting **more violent means** to achieve their aims. Indeed, in February 2015, for instance, smugglers shot fire weapons in order to recover the ships used by migrants. The risk for human lives does not thus appear to be facing a downward curve.

### 3.2. Jurisdiction and coercive powers

From the Italian experience emerges that the major (inter-connected) challenges faced by prosecuting authorities are related to:

#### *i) Asserting jurisdiction*

As afore-mentioned, smugglers often make sure that their ships never enter the Italian SAR and territorial waters. Furthermore, it is to be recalled that migrants enter Italian territory by the hands of the rescuers rather than the smugglers.

#### *ii) Lawful exercise of national authority at sea*

Navigation in international waters is underpinned by the principle of exclusive jurisdiction of the flag State, with some rare exceptions.

Thus, the exercise of authority at sea in the context of illegal immigrant smuggling must be conceived in view of different *modus operandi* employed by the smugglers:

- a) Mother-vessel accompanied by a smaller boat where migrants are transferred to and that is abandoned close to the territorial waters of Italy;
- b) Small boat (particularly where departure is from Libya) in substandard conditions carrying out a number of occupants that far exceeds its capacity.

In both situations, migrants are deliberately endangered to trigger rescue obligations from Italy. Generally, Italian jurisprudence maintains that national law, read in accordance with relevant international conventions, allows - under certain conditions - the seizure of ships, capture of the crew and punishment of members of the OCG, even if the ship remains far from the border and

out of the 24-miles zone<sup>3</sup>. Given the relevance of this matter in the prosecution of illegal immigrant smuggling, it will be comprehensively addressed *infra* under point 5.

### 3.3. Gathering of information and collection of evidence

Collecting information from migrants as soon as they are under national jurisdiction (i.e. in a rescuing vessel or in an Italian harbour) in a form that can be used as evidence in court is fundamental to ensure individual criminal responsibility. The same applies regarding the collection of other types of evidence, e.g. communications between vessels, or documentation of the transfer of migrants. Specific guidelines have been issued by the National Anti-Mafia Prosecutor on the conduct of investigations related to illegal immigrant smuggling (see *Annex*).

As noted *supra*, the focus of this analysis is on the assertion of jurisdiction on the high seas. However, few challenges regarding the gathering of information and the collection of evidence shall be mentioned:

- The **hearing of migrants** has been subject to different approaches. Sometimes migrants have been heard with the procedural safeguards applicable to **suspects and accused** (notably the assistance of a lawyer) while other times they were heard as **possible witnesses** and thus without legal counsel. The admissibility as evidence of such statements may be problematic if the person is or has been somehow involved in the crime at stake or a related one. This was the view recently adopted by the Supreme Court.<sup>4</sup> However, it is also possible to argue differently as did the Public Prosecutor of Salerno.<sup>5</sup> Indeed, Article 10*bis* Decree-Law 286/98 punishes as a crime the conduct of the foreigner that enters or stays in Italian territory without meeting the legal requirements to the effect. However, this offence is a “**reato contravvenzionale**” that is **consummated with the envisaged result** (that is, entry or illegal stay). The attempt is not punishable. Accordingly, while under this perspective migrants could be heard on the high sea without a lawyer, the approach to follow *in casu* shall be assessed in view of **the specific circumstances** of the case (e.g. availability of indicia already at the time of the hearing that the person is or may be connected with the smuggling activity). The lack of **reliable interpreters** of rare languages (often at stake in illegal immigrant cases) is a further heavy obstacle faced by law-enforcement and judicial authorities.
- Information gathered by **EUNAVFOR MED** may give rise to difficulties in court proceedings. As per IT law, **evidence** will only be **admitted in court** if *inter alia* collected by a competent Italian *Ufficiale di Polizia Giudiziaria* (as per Articles 55 *et seq.* Code Criminal Procedure). If the evidence has been gathered by a foreigner official, it is necessary that such individual is brought to the presence of the judge so as to enable the contradictory principle, which might considerably delay and complicate the procedure. For this reason, arrangements have been taken to allow for the presence of an Italian Liaison Officer in EUNAVFOR MED vessels. Otherwise, it might not be possible to fully use information gathered on the vessels in

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<sup>3</sup> See *Annex I*, in particular *Al Bahlawan Ibrahim Ibrahim*, Tribunale di Catania, *in sede di riesame*, 7 October 2013, Tribunale di Catania, *Appeal of Appo Mahamed Arafa Ragar* of 20 February 2014, *Hamada Ayoudi* against order 1551/2013 of 17 September 2013, Supreme Court of Cassation, 11 March 2014, *Case H.H. against order 1642/2013* of 10 October 2013, the Tribunale of Freedom of Catania, 23 May 2014.

<sup>4</sup> See *Annex I*, *Appeal of the Public Prosecutor of Salerno in respect of the cases against Alwate Anis, Hasharif Nader and Alshayeb Aeman*, Supreme Court, 19 March 2013.

<sup>5</sup> *Appeal of the Public Prosecutor of Salerno in respect of the cases against Alwate Anis, Hasharif Nader and Alshayeb Aeman*, Supreme Court, 19 March 2013.

investigation procedures. This notwithstanding, Spain and Germany do not agree with the presence of an Italian Liaison Officer in the EUNAVFOR MED vessels they are directing. While EUNAVFOR MED vessels led by these countries have been collecting information and sharing it with Italian authorities, so far the cases relying on information/evidence collected in such circumstances have not yet reached the stage of proceedings where the **admissibility of evidence** may be challenged. In its 2015 revision of the *Operative Guidelines* (see *infra*), the DNA invited EUNAVFOR MED to **thoroughly document** all potential evidentiary elements and actions taken in relation thereto.

- Difficulties in **cooperation with third countries** (of origin and transit) pose additional difficulties since the success of evidentiary measures often requires the execution of MLA requests. For instance, smugglers often establish contact through satellite communication systems such as the *Thuraya*, whose corporate headquarters are based in Abu Dhabi. The fact that Italy has no cooperation agreement with the UAE makes judicial cooperation aimed at intercepting communications particularly challenging. This notwithstanding, Italy has taken steps forward to enhance bilateral cooperation with some success (e.g. Egypt).

## 4. The Legal Framework

The most pertinent **domestic legal provisions** for the purpose of this work are:

- **Article 6 Criminal Code** determines that for the lawful exercise of the Italian jurisdiction is necessary that the action or omission that constitutes the criminal conduct takes place, **in whole or in part**, in the territory of **Italy**. In case of **multiple perpetrators**, the jurisdiction of Italy will be extended to all of them as long as a part of the criminal conduct takes place in national territory as per the actions of any of the co-perpetrators.
- **Article 416 (6) Criminal Code**, which establishes specific penalties for **membership in a criminal association** aimed at committing certain crimes (including trafficking of human beings and **illegal immigrant smuggling**, as per Articles 600-602).
- **Decree-Law 286/98** (as amended by Law 189/02) - law on illegal immigration – provides in its **Article 12** the **penal sanctions** to be applied to illegal immigrant smuggling. It is **excluded** from the scope of the provision cases of **humanitarian assistance and rescue**. To the contrary, the **intent of achieving financial gain** is explicitly mentioned, without being a condition for the verification of the crime.
- **Article 1158 Italian Navigation Code** –which punishes as a crime the conduct of whomever – being in the position to do so – does not provide rescue at sea. Importantly, the Italian transposing law of the **Hamburg Convention** (see *infra*) - **Law n. 147 of 3 April 1989** - went beyond the obligation established at the international level as it determines the duty of the captain of the ship to lead the person in danger to **a safe location**.

The following subsections recall the applicable **EU and international legal frameworks** in respect of the assertion of jurisdiction over illegal immigrant smuggling through sea.



#### 4.1. Jurisdiction on the high sea

- **United Nations Convention on the Law of the Sea (UNCLOS)**, also known as [Montego Bay Convention](#) - While recognising the exclusive jurisdiction of the flag State, it does not make of the high sea a sort of immunity zone beyond the remit of the law and any regulatory power (Article 92). To the contrary, a ship not carrying a flag or flying a flag it is not authorised to mast is subject to the control and interference (*rectior*, jurisdiction) of any maritime State. Paragraph 2 determines that a “*ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality*”. Article 110 allows military ships to board and control vessels in such conditions.
- **United Nations Convention against Transnational Organised Crime (UNTOC)** – It provides a definition of transnational crime that is in line with Italian law. Article 15(2)(c) recognizes the jurisdiction of the State Party when the offence is one of those established in accordance with Article 5 (1) UNTOC (that is, the participation in an organized criminal group), when “*it is committed outside its territory with a view to the commission of a serious crime within its territory*”. Article 5 (1) specifically provides that “*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity: [...] (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: (a.) Criminal activities of the organized criminal group; (b.) Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim*”.
- **Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC** (also known as [Palermo Protocol](#)) - Article 8(7) determines that “*A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law*”.

#### 4.2. Coercive powers on the high seas

- [Montego Bay Convention](#) – Article 111 Montego Bay Convention allows for the so-called *hot pursuit*; that is, for national authorities to chase a ship even after it left the territorial waters and the contiguous zone. This provision would however not apply to the Italian case-law referred to herein (see *infra*) since the mother-vessels at stake never entered the Italian territorial waters. Limitations to the right of visiting, arresting and seizing are provided for in Articles 97 of the Montego Bay Convention (not applicable to the cases covered in this study) and 19 of the [1958 Geneva Convention on the High Seas](#) (right to seize vessel engaged in piracy or captured by pirates).
- [Palermo Protocol](#) – Article 8(7) determines that where a State has reasons to believe that a ship – with no flag or flying a flag it is not authorised to mast – is involved in smuggling of



migrants, it may board and search it. If the suspicion appears well-grounded, then the State Party shall take appropriate measures. Appropriate measures are to include coercive powers such as seizure of ships, detention of the crew and punishment of members of OCGs, even if the ship remains far from the border and out of the 24-miles zone.

- [EU Regulation 656/2014](#) – It further elaborates on coercive powers of a coastal State on the high seas and in the context of joint operations for the surveillance of EU borders.<sup>6</sup> Article 7 expounds on the right of interception and search on the high seas of a vessel with nationality. The framework established relies significantly on open communication and authorisation by the flag State.

It should be noted that the right of visit is not enough to enforce national jurisdiction if not grounded on specific criteria, lawfully establishing jurisdiction for specific cases. This was clarified by the ECtHR in [Medvedyev and others v. France](#) (see *Annex III*).

#### 4.3. Rescue obligation at sea

- **London Convention on the safety of life at sea (SOLAS)** – Article 15(1) obligates the contracting parties to take the necessary measures to provide for coast watching and for the rescue of persons in distress at sea round its coasts. The arrangements adopted “*should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practicable and necessary having regard to the density of the seagoing traffic and the navigational dangers and should, so far as possible, afford adequate means of locating and rescuing such persons*”.
- **International Convention on Maritime Search and Rescue (Hamburg Convention)** – It aims at coordinating the efforts of the contracting parties throughout the respective SAR areas. Article 2(1) determines that “*necessary arrangements [shall be] made [by the parties] for the provision of adequate search and rescue services for persons in distress at sea round their coasts*”.
- [Montego Bay Convention](#) – Article 98 requires the master of a ship to render assistance to any person in danger at sea. This duty is not triggered only when the ship finds a distressed person, but also when it receives the information that there is the need for assistance. In this case, the master shall proceed with all possible speed towards the person(s) in distress. The duty to render assistance on the ship master exists insofar as he or she can abide by it without serious danger to the ship, crew or passengers.

## 5. Assertion of the Italian Jurisdiction

As noted *supra*, according to Article 6 of the Italian Criminal Code, for the lawful exercise of the Italian jurisdiction is necessary that the action or omission that constitutes the criminal conduct takes place, in whole or in part, in the territory of Italy. Hence, it is enough that the event that is the natural consequence of the action or omission occurs in Italy.

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<sup>6</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation.

The legal reasoning leading to the assertion of Italian jurisdiction thus varies in line with the *modus operandi* of OCGs involved. Different scenarios are conceivable as follows.

- **OCG operates partially in Italy or aims at transferring the immigrants within Italy, thus affecting the Italian interests** – Jurisdiction may be asserted on grounds of the definition of organised crime as per Article 416(6) of the Italian Penal Code.
- **A boat (not released by a Mother Vessel) is rescued in international waters, before approaching the Italian contiguous zone** - This situation contemplates cases whereby hundreds of immigrants are boarded on highly unfitted boats (usually inflatables) to cross the Sicily channel. This is done deliberately so as to trigger the Italian Navy rescue obligations, thus reducing costs and exposure for the smugglers.

When the Italian Navy manages to perform the rescue and brings immigrants to land, it seems no action by smugglers (no crime) took place within Italian borders: the suspect cannot be punished on the basis of his/her presence on Italian soil after being detained on the high seas for that presence is not willing and the deprivation of liberty already took place. Furthermore, the crime of illegal immigrant smuggling is framed as a crime punishable "*in advance*", i.e. the conduct aiming at introducing immigrants in Italy is punishable in itself, only being required that a part of such conduct be carried out within Italian borders. In the hypothesis considered, all the preparatory activities took place abroad. Indeed, in virtue of the rescue by Italian authorities, the immigrants are brought into Italy by a State authority. However, if – on the basis of the outcome of investigations and a recurrent investigative methodology – it can be asserted that these circumstances were deliberately created by the smugglers in order to trigger the Italian rescue – as indeed demanded under national and international law – then it can be argued that the rescue by Italy is the consequence of a deliberate plan by the OCG. In other words, while it is the Italian Navy that ultimately brings the migrants into Italy, the will of rescuers is not free as they are under an obligation to act in such a manner so as to avoid a greater harm. Those deliberately causing the dangerous situation (i.e. the OCG) are thus the real responsible. Their responsibility is to be affirmed on grounds of the doctrine of '*autore mediato*' as per Article 54(3) of the Italian Penal Code. The *autore mediato* is the person used to commit a crime and is not guilty of, responsible or punishable for it because it acted under constraint so as to avoid an unlawful result, in this case the death of migrants.

- **The mother vessel releases the migrants into small boats in international waters and no evidence is available supporting the assertion that smugglers operate in the framework of a criminal organisation partially operating in Italy or intending to transfer the immigrants to Italy** - The Italian jurisdiction can be affirmed on the basis of deliberately endangering the people and causing the intervention of Italian authorities in order to achieve the final goal of the criminal project. This solution is grounded on the theory of *autore mediato*.

It is important to note that, as made clear by the Italian jurisprudence, the term 'jurisdiction' is to be understood in this context in the broad sense used in Anglo-Saxon legal terminology, thus also including **executive or enforcement jurisdiction**, that is, the power to deploy coercive measures against the ship and the people on board (i.e. chasing, collision, stop, hijacking, arrest of persons). In the context under consideration, enforcement jurisdiction is a natural derivation of the adjudicative jurisdiction of the State and the international legal framework binding Italy. Furthermore, the exercise of coercive powers in international waters further relies on **Article**

**110 of the Montego Bay Convention** (right of visit) and, especially, **Article 8 (7) of the Palermo Protocol**. One could argue in this respect that the right of visit under Article 110 of the Montego Bay Convention does not include the **powers of seizure and diversion** of the vessel and **arrest of suspects**. Notably, though, this same provision highlights that “*acts of interference* [may] *derive from powers conferred by treaty*”. It is against this background that a combined reading of Article 110 Montego Bay Convention with Article 8 (7) Palermo Protocol enables the executive jurisdiction of Italy in international waters. Furthermore, the argument may be made that a teleological reading of the Article 110 Montego Bay Convention together with the *effet-utile* of the provision supports this approach. In addition, the different sources of domestic and international law must be read in light of the principle of systemic interpretation, so as to safeguard the ultimate *ratio legis* thereof. Indeed, the EU shared legal cultural is one ultimately oriented by the protection of **fundamental rights**, namely the rights to life and physical integrity of migrants. This methodology upholds the authority of Italian authorities in seizing and diverting boats as well as arresting smugglers as a means to neutralise instrumental means to the achievement of the criminal conduct.

## 6. DNA Operational Guidelines

In view of the complexity of possible scenarios underpinning illegal immigrant smuggling, as well as the importance of ensuring that relevant procedures will be duly observed – notably to ensure the prompt collection and admissibility of evidence in court –, the National Anti-Mafia Prosecutor adopted, on 9 January 2014, *Operational Guidelines* addressed to District Anti-Mafia Prosecutors, who disseminate them amongst the authorities concerned, e.g. police and border guards. The *Operational Guidelines* were further complemented on 14 July 2015 and 28 October 2015 in order to, respectively, clarify the competent District Anti-Mafia Prosecutor Office, and contemplate, as appropriate, the operations of EUNAVFOR MED and the gathering of information thereby. A detailed presentation of these guidelines is provided in the *Annex*.

The operational guidelines provide rather detailed instructions for all concerned authorities on how to act, particularly in the initial period following the detection of vessels suspected of being involved in illegal immigrant smuggling, independent of whether the ships were spotted in international waters or in the Italian SAR.

The operational guidelines offer:

- Clear guidelines on the assertion of Italian **jurisdiction** - including enforcement jurisdiction - in various scenarios, namely: i) involving a mother-vessel, a small boat, or both; ii) in international waters or Italian SAR, and; iii) concerning ships with or without a flag (in the sense explained in point 5 *supra*);
- Indicators of **involvement of OCGs** in the smuggling activity;
- Indications of knowledge of, and willingness to take part on, a **criminal plan**;
- Directives on **rescue** obligations;
- A standard of referral of information aimed at ensuring an effective and complete **flow of communication** (nationally and beyond borders) between all the relevant actors,

guaranteeing *inter alia* that: i) judicial authorities are promptly seized and respond as necessary, and; ii) international partners will be in the position to detect links with other criminal activity and or criminal patterns or associations;

- List of non-exhaustive facts that shall be documented for potential **evidentiary purposes**.

For schematic purposes, it follows a chart mirroring some of the indicators of **involvement of a OCG** and knowledge of, and willingness to take part on, a **criminal plan** (*Chart 1*), which have been reflected in case-law. *Chart 2* refers to **directives on the gathering of information** in view of the possible use as evidence (*Chart 2*). These charts do not dispense consultation of the *Annex*.

### Chart 1

POSSIBLE INDICATORS	
Involvement of OCG	Knowledge of and willingness to take part in a common criminal plan
<ul style="list-style-type: none"> <li>• Systematic character of illegal activities</li> <li>• Operational cells/elements in several countries</li> <li>• Preparation of buses for the collection of the aspiring migrants</li> <li>• Concentration of migrants in fenced-in locations monitored by armed guards in the countries of origin and or transit</li> <li>• Availability of numerous and hulking vessels for the transport by sea</li> <li>• Recruitment of a large group of men with defined roles (e.g. migrant recruiters, bus drivers, armed guards, crew members of a number of vessels)</li> <li>• Standardized codes of conduct</li> <li>• System of transfer of migrants within Italy and or abroad</li> </ul>	<ul style="list-style-type: none"> <li>• Employment of mother-vessel only within extraterritorial waters</li> <li>• Unloading of migrants into highly debilitated ships</li> <li>• Intention to trigger Italian rescue obligations</li> <li>• Financial gain</li> <li>• Contacts with criminal counterparts (before, during and or after the event)</li> <li>• Intimidation of migrants</li> <li>• Disposal of means of evidence</li> <li>• Dissimulation</li> <li>• Logistical support to irregular migrants</li> <li>• Monitoring of the outcome of the criminal endeavour</li> </ul>

**Note:** The indicators listed above are possible *indicia*, alone or in conjugation, of the hypothesis they refer to. They may, of course, be indicators of other hypothesis, particularly as they are

*interrelated to a significant extent. By no means it is intended to suggest that such indicators may preclude the evaluation of the specific circumstances of the case in question.*

## ***Chart 2***

### **Guidelines on gathering of information for evidentiary purposes**

- Document all action of potential relevance for investigations and prosecutions
- Duly identify collector of the information
- Indicate date and geographical position
- Identify, to the extent possible, source of the information
- Detail circumstances as clearly and precisely as possible, including:
  - transfer of migrants to smaller vessel
  - conditions of the small boat
  - danger caused by the transfer
  - members of the crew and respective role.
- Recording communications with the inspected vessels as well as between the vessels and other interlocutors (e.g. the ship-owner or the individuals present on the small vessel).



## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

Reference	Case description	The Court decision/Highlights of the case
<i>Al Bahlawan Ibrahim Ibrahim, Tribunale di Catania, in sede di riesame, 7 October 2013</i>	The appellant contested his pre-trial detention which had been ordered on grounds of strong indicia of <b>membership in a criminal organisation</b> intended at <b>illegal immigrant smuggling</b> and <b>qualified illegal immigrant smuggling</b> (on grounds that the crime had been committed by more than three persons, against more than five migrants, and endangering the life of migrants).	<ul style="list-style-type: none"> <li>For the <b>Italian jurisdiction</b> to be asserted in line with Article 6 Penal Code it <b>is necessary that the action or omission that constitutes the criminal conduct takes place, in whole or in part, in the territory of Italy, meaning that it is enough that the event that is the natural consequence of the action or omission be verified in Italy.</b></li> <li>In the event of <b>several co-perpetrators</b>, for the Italian jurisdiction to extend to the whole of the criminal conduct and the totality of responsible it is sufficient that <b>in Italy be carried out only a fraction of the action and by any of the participants</b>. That fraction is considered as part of a single and indivisible criminal iter. It cannot be sustained – as argued by the defence – that the conduct attributable to the accused was interrupted at the time of the transfer of the migrants from the mother-vessel to the small boat, with the corollary that there would no longer be the personal link required under criminal law between the perpetrator and the crime so as to justify the attribution of guilt. In the case under consideration, in addition to the achievement of the goal of the criminal plan, the realisation in Italy of <b>logistical support</b> to the envisaged disembarkment of migrants was considered enough.</li> <li><b>Enforcement jurisdiction</b> – i.e. coercive powers of the State, both on the persons on the vessels (<b>arrest</b>) and on the ships (<b>seizure</b>) - <b>in international waters</b> was clearly upheld. Article 92 Montego Bay Convention determines that a ship without a flag or flying a flag it is not authorised to mast is subjected to the jurisdiction of any state in international waters. Jurisdiction is understood in its Anglo-Saxon meaning thus also including executive jurisdiction. Italy does hold the right to visit and exercise other coercive powers over the mother-vessel and its crew (Article 110 Montego Bay Convention and Article 8 Palermo Protocol). Importantly, <b>Article 8 is to be interpreted according to the effet-utile of the Palermo Protocol</b>; that is, <b>ensuring fundamental human rights</b>, and very particularly the right to life of migrants.</li> <li>It is unsustainable the argument that the crime of illegal immigrant smuggling does not occur due to <b>non-verification of the requirement of illegality of the migrants' status</b> since – being them of Syrian and Egyptian nationality – they were at <b>risk of</b></li> </ul>





## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

		<p><b>persecution</b> in their countries of origin. In other words, for that reason, migrants allegedly <b>deserved protection under international law and could not be expelled from Italy</b>. Rather the <b>protection</b> referred (refugee status) <b>is not an automatic derivation of originating from a State in turbulence</b> but the possible outcome of an administrative procedure based on a request and followed by an inquiry aimed at establishing the fulfilment of the necessary requirements.</p> <ul style="list-style-type: none"> <li>• There were strong indicia of the occurrence of the crime of: <ul style="list-style-type: none"> <li>- <b>qualified assistance to illegal immigration</b> for: i) the unjustified profit raised from the activity; ii) the number of perpetrators (15) and the number of illegal migrants (199); iii) serious risk the suspected perpetrators exposed the illegal migrants to, especially in view of the precarious conditions of the boat they were made to travel in;</li> <li>- <b>aiding and abetting illegal immigration</b> for: even though the conduct of the appellant in the context of illegal immigrant smuggling refers – as sustained by the relevant evidence – only to a single episode, it can be representative of the existence of a link, an association between the appellant and third parties, including members of the OCG operating in Egypt as organisers and intermediaries with the migrants and others operating in Italy with a view to providing logistical assistance after the landing of the migrants. The evidence further denoted that the different members operated through standard behaviours, autonomous, keeping in permanent contact with and assisting each other with knowledge of engaging in a coordinated cohesed associative criminal project aimed at establishing a financial gain.</li> </ul> </li> <li>• The fact that an integral part of this criminal project is <b>the instrumentalisation of the rescue and security forces</b> that ensure the surveillance of the maritime borders of Italy to ensure that migrants will reach Italian soil. As explained above, the smugglers – aiming at taking advantage of the duty to rescue as provided under national and international law – supply the migrants transferred to the small boat with a satellite phone so that they may solicit help. In this way, they are the agents of the State that, put on a state of necessity – ensure the accomplishment of the final goal of the OCG.</li> <li>• There is a <b>contemporary trend</b> under international law to <b>extend the criminal jurisdiction of States for crimes of concern to the international community</b></li> </ul>
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## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

		<p><b>committed on the high seas</b> (e.g., terrorism, organised crime, drug trafficking, trafficking in human beings, illegal immigrant smuggling). Specifically, there is a movement to extend jurisdictional entitlements to any third State acting for the protection of global values thus narrowing the principle of sovereignty understood as exclusive jurisdiction on the State (in whose area of responsibility and control the crime was committed, of the nationality of the alleged perpetrators, or whose interests were affected).</p> <p>This sentence is illustrative of approximately twenty other rulings with the same content.<sup>1</sup></p>
<p><b>Tribunal di Catania, Appeal of Appo Mahamed Arafa Ragar of 20 February 2014</b></p>	<p>Similarly to <i>in Al Bahlawan Ibrahim Ibrahim</i>, this decision regards the appeal to a decision of the investigative judge by which the defendant challenged his pre-trial detention, ordered on the basis of indicia of (i) membership in a criminal organisation aimed at facilitating illegal immigrant smuggling, and; (ii) qualified aiding and abetting of illegal immigrant smuggling.</p>	<ul style="list-style-type: none"> <li>It is unsustainable the argument of <b>non-verification</b> of the offence of <b>membership in a criminal organisation for lack of preconditions of sufficient organisation and stability</b>. The court noted a series of elements that underpinned the alleged <b>well-structured nature of the OCG (as opposed to an improvised and sporadic activity)</b>, namely (i) number (176) of smuggled migrants and their various countries of origin; (ii) profit-purpose of the OCG; (iii) mother-vessel – small boat <i>modus operandi</i> causing rescue by Italian authorities; (iv) elaborated logistical organisation in Italy and countries of origin.</li> <li><b>Membership in a criminal organisation may occur by participation in a single criminal act</b> if the role undertaken and the action fulfilled were significant enough to establish the necessary link; that is, either the said role could not be attributed to any other person and or the individual at stake used the means and resources of the criminal organisation in such a manner as to evidence effective membership rather than sporadic association. The court held that even though the evidence available could only support the participation of the defendant in a single criminal episode, the role it developed as crew member of the mother-vessel and the interaction with the organisers of the criminal plan (and intermediaries with the migrants) in Egypt demonstrated the membership linkage with the criminal organisation. The defendant was furthermore well aware of the criminal purpose of the venture he engaged in with a</li> </ul>

<sup>1</sup> As per *Procura Distrettuale della Repubblica di Catania*, Letter addressed to the Public Prosecutor of Siracusa on the issue of illegal immigration and accompanying a submission with proposals for the resolution of disputes regarding Italian criminal jurisdiction and powers of intervention on the high seas, dated 3 December 2013.



## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

		<p>profitable goal. <b>The different phases are equivalent to pieces of a complex puzzle that may not be read in separate.</b></p> <ul style="list-style-type: none"> <li>• The <b>Italian jurisdiction</b> is triggered by the <b>occurrence in Italy – in whole or in part</b> – of the action or inaction that is penalised; that is, <b>of the planned event that is a consequence of the action or inaction</b>. The fact that the only action actually possible to link to the defendant – i.e., navigating the mother-vessel – terminated on the high seas in view of the planned transfer of the migrants to a smaller and unfit boat, followed by the appeal to the Italian authorities, does not diminish the connection with the Italian territory and thus upholds the State jurisdiction. This notwithstanding, the court notes that the crime of facilitating illegal immigration is a <i>reato di pericolo a consumazione anticipata</i>; that is, it is verified with the activity intended to achieve the result, independent of whether this latter is indeed achieved, i.e. the arrival of the migrants in Italian territory. Otherwise, one would be fractioning a complex but single and united criminal reality.</li> <li>• Executive jurisdiction asserted in line with considerations <i>in Al Bahlawan Ibrahim Ibrahim</i>.</li> <li>• Emphasis on the international trend to extend jurisdictional entitlements as <i>in Al Bahlawan Ibrahim Ibrahim</i>.</li> </ul>
<b><i>Appeal Public Prosecutor of Catania in respect of the case against Haji Hassan, Supreme Court, 28 February 2014</i></b>	The Public Prosecutor of Catania appealed the decision of the Court of Catania dated 12 October 2013 by which the order of pre-trial detention against the accused was annulled, <i>inter alia</i> for the inexistence of sufficient indicia of membership in a OCG.	<ul style="list-style-type: none"> <li>• The fact that an individual, as identified by migrants, has mastered the small boat (previously attached to the mother vessel) is <b>not sufficient indicium of membership in the OCG</b> as indeed he may, for instance, have been coerced to do so.</li> <li>• Jurisdiction asserted on ground of the doctrine of <b><i>autore mediato</i></b> and the institute of <b>state of necessity</b> as explained above and by recalling <i>inter alia</i> Article 110 Montego Bay Convention.</li> <li>• For the exercise of jurisdiction, it is sufficient that the envisaged criminal result occurred in Italian territory, The fact that the direct conduct of smugglers finished in international waters due to rescue operations does not interrupt the <b>causality nexus</b>.</li> </ul>
<b><i>Prosecutor at the Court of Catania v. H.A, Supreme Court, 11 March 2014</i></b>	This case regarded the assertion of jurisdiction of the Italian State on grounds of the theory of <b><i>autore mediato</i></b> in situations where illegal immigrants were deliberately	<ul style="list-style-type: none"> <li>• Every State has the obligation under international law to rescue persons in distress on the high seas.</li> <li>• The <b>disembarkation of migrants in Italian soil by Italian rescuers is the result of a state of necessity</b> which made rescue operations necessary. <b>The disembarkation of migrants must be considered as a result which is achieved by causing and</b></li> </ul>



## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

	endangered.	<p><b>exploiting a state of necessity.</b> The rescue and disembarkation are simply <b>the final step of a well-orchestrated plan</b>, resulting in the achievement of the purpose of the OCG. The action of rescuers can be defined as the action of an <i>autore mediato</i> – i.e. a person that is used to commit a crime and is not guilty of, responsible or punishable for it – forced to intervene in order to avoid a far greater damage (<i>rectior</i>, the death of the illegal immigrants).</p> <ul style="list-style-type: none"> <li>• <b>The chain of causation cannot be considered interrupted in virtue of the intervention of the rescuers</b>, a factor which was taken into account by the smugglers in order to cause it and explore it in their favour.</li> <li>• The smugglers conduct shall not be divided but rather evaluated as a whole.</li> <li>• The Italian jurisdiction is further supported by the UN Convention against Transnational Organised Crime, as per Article 6 Italian Criminal Code.</li> </ul>
<p><b><i>Hamada Ayoudi against order 1551/2013 of 17 September 2013, Supreme Court, 11 March 2014</i></b></p>	<p>The appellant challenged his order of pre-trial detention. He (and one other person), operated a boat carrying over 100 migrants which departed from the Libyan coast. During the journey, due to the excessive weight and instability of the vessel, two passengers fell into sea and drowned. The persons at the helm did not attempt any sort of maneuver to help the victims, rather re-starting the engine. The vessel was rescued by Italian authorities.</p>	<p>The court of review upheld the appeal considering that:</p> <ul style="list-style-type: none"> <li>• Regarding <b>membership in a criminal organization</b> (conspiracy) the circumstance that the appellant (Egyptian) was introduced to the migrants by the Libyan organizers as the operator of the inflatable boat did not indicate <i>affectio societatis</i>, namely since he arrived to the location after the migrants, only then and there having discussed the compensation to be paid by the organisers for his services. In the absence of further elements one could argue that the appellant was recruited only for that specific transport. The fact that, before being rescued, the migrants had been instructed by the appellant to withhold the names of those operating the boat could not lead to a different conclusion. Indeed, this would be an understandable conduct of someone trying to escape incrimination for smuggling of migrants.</li> <li>• In the absence of any connection with the Italian State (such as, for example, telephone conversations with residents in Italy, logistic bases located on State territory) it was not possible to maintain that any elements of conduct establishing the jurisdiction of the Italian judge had taken place on national territory.</li> <li>• Although it acknowledged that the crime of facilitating illegal immigration is a <i>reato a condotta libera</i> (a crime which can be committed in any way or form) and <b><i>reato a consumazione anticipata</i></b> (a crime considered to be perpetrated if acts or facts aimed at reaching the objective have been carried out, even if the objective is not actually reached), and therefore it is not necessary that actual illegal entry be made in order for</li> </ul>



## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

		<p>it to be considered completed - being sufficient that apt planning be carried out through previous agreements made on Italian territory - the court excluded that any of these acts were actually carried out. Consequently, seeing that the <b>conduct</b> of which the suspect is charged was carried out <b>entirely within international waters, lack of jurisdiction</b> was observed also under this profile.</p> <p>The Prosecutor appealed. The <b>Supreme Court of Cassation reversed the decision</b> on the following grounds:</p> <ul style="list-style-type: none"> <li>• The disembarkation of migrants - consequence of the state of necessity which made rescue operations imperative - is simply the <i>ab initio</i> last phase of a planned activity, resulting in the achievement of the OCG objective through the fulfillment – by Italian authorities - of a duty towards the migrants. The last part of the trip is attributable to the rescue operation, cunningly made necessary after putting people in grave danger. <b>The conduct carried out within extraterritorial waters is ideally tied to that which is to be carried out within territorial waters, where the rescue operation, in the final part of the causal concatenation, can be defined as the action of an <i>autore mediato</i></b> (a person who is used in order to commit a crime, and who is not guilty of, responsible or punishable for that crime), forced to intervene in order to avoid greater damage (the death of the illegal immigrants). In this way, the rescuers give effect to the criminal goal (entry of illegal immigrants into Italy). <b>The chain of causation cannot be considered interrupted by the intervention of those who carried out the rescue operation, which was conceived and planned by the OCG rather than an abnormal, unforeseeable or exceptional circumstance.</b></li> <li>• <b>It is not usual, nor does it respond to the logic of criminal organisations, that a delicate role, such as organizing the operation of the boat, is assigned to a person who does not have stable relations with the association.</b> The transportation of migrants on the high seas requires specific skills. The profit-oriented dimension that rules the life of the organization must avoid losing the “freight”, both in terms of loss of profit and the disrepute that would derive from it on the market and which would jeopardize the efficiency of the organization. Symptomatic is also the circumstance that the migrants were informed of the number and the nationality of those who were to operate the inflatable boat.</li> </ul>
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## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

<p><b>Supreme Court, Appeal of Farrag Ali' Ali' Mostafa, 23 May 2014</b></p>	<p>This case relates to the first seizure and capture on the high sea of a no-flag ship. The crew was arrested, suspected of being soundly responsible for having embarked 199 Syrian migrants into the mother-vessel. The operation was carried out by the Romanian Navy in cooperation with the Italian Navy and <i>Guardia di Finanzia</i>.</p>	<ul style="list-style-type: none"> <li>• <b>Recognition of the authority to seize a no-flag ship</b>, on the basis of Article 110 of the Montego Bay Convention, supported by the ruling of the ECtHR in <i>Hirsi v. Italy</i>. In this case, the ECtHR noted that not only the afore-mentioned provision allowed boarding vessels that mast no flag but also that its paragraph 1 (b) permits boarding when there is reasonable ground to suspect that the ship is engaged in slave trading, with the precious indication that this ground shall be extended to victims of human trafficking, in view of the analogy between these crime-types.</li> <li>• According to the ECtHR, - as per the Palermo Protocol (Article 8, paras. 2 and 7) - a State that has reasonable ground to suspect that a vessel without nationality or assimilated to a <b>vessel without nationality is engaged in the smuggling of migrants</b> shall take appropriate measures in accordance with relevant national and international law. <b>'Appropriate measures' include the right of visit and inspection, diversion to a harbour of the State and the institution of proceedings in the visited vessel, such as seizure of the ship and arrest of the people found on board.</b></li> <li>• It was earlier affirmed by the Grand Chamber of the ECtHR (case 308-06 of 3 June 2008) that the <b>freedom of navigation can be enjoyed only if a close connection between the ship and the State which grants its nationality to the ship is established</b>; whereas the right is denied when the ship is without a flag and therefore is not possible to attribute a nationality to the ship.</li> <li>• <b>Extradition is not a right of the accused</b> but rather a instate that operates amongst States on the basis of a relation of cooperation that initiates with the request of the State wishing to reach custody of the individual concerned.</li> </ul>
<p><b>Case Hasin Hassan Ali'Shahatan against order 1642/2013 of 10 October 2013, Supreme Court, 23 May 2014</b></p>	<p>The appellant – crew member of a no flag mother-vessel engaged in the smuggling into Italy of 199 Syrian migrants – appealed of his order of pre-trial detention as determined by the investigative judge. The mother-vessel was intercepted on the high sea (when it was navigating in direction of North Africa), after migrants had been transferred to the</p>	<ul style="list-style-type: none"> <li>• The argument of the defense - according to which the transport of citizens of a country at war such as Syria is not illegal considering they are eligible for international protection - was unfounded given that refugee status must be granted by a specific committee and does not arise automatically (as in <i>Al Bahlawan Ibrahim Ibrahim</i>).</li> <li>• The participation of the suspect in the criminal association – managing, on a large scale, operations of illegal transportation of foreigners fleeing to Europe – was verified. He was was part of the tight network between groups which interact amongst each other and are in constant contact. He was <b>fully aware of the fact that that he was working on a criminal project of shared and organic lucrative speculation</b>. Italian investigations demonstrated that every crossing was monitored by the base in Egypt as</li> </ul>





## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

	<p>small boat. Italian investigations - which were underway before the occurrence of these facts - were conducted namely through interception of telephone conversations between individuals in Sicily organisers in Egypt. The investigations further relied on statements from the migrants.</p>	<p>well as by the support unit in Sicily and the crew at sea.</p> <ul style="list-style-type: none"> <li>• The employment of the mother-vessel only within extraterritorial waters to exclude it from the jurisdiction of the country of landing and the unloading of migrants into highly debilitated ships, thus causing the Italian rescue) was further evidence of a common criminal plan.</li> <li>• In addition to the several crimes of illegal immigrant smuggling, the occurrence in Italy of activities regarding the provision of logistic support to the individual disembarkations was considered part of a common plan committed by a plurality of individuals and of a permanent nature due to the organizational structure thereof, thus fulfilling the <i>fattispecie</i> of conspiracy (Article 416 Criminal Code). Consequently, Italian jurisdiction was triggered.</li> <li>• Under international law (Montego Bay Convention, Smuggling Protocol, UNTOC), a boat without a flag is subject to interference, that is, the jurisdiction of any coastal state. Italy was fully legitimized in exercising coercive powers over the mother-vessel (seizure and arrest of crew). The <i>Hirsi</i> judgment of the ECtHR further supports the exercise of executive jurisdiction in situations alike.</li> </ul>
<p><b><i>Appeal of the Public Prosecutor of Catania in respect of the case against Radouan Hai Hammouda, Supreme Court, 10 December 2014</i></b></p>	<p>The Public Prosecutor of Catania appealed the decision of the Court of Catania dated 9 June 2014 by which the order of pre-trial detention against the accused was partially annulled. The case referred to the sinking of a small debilitated boat on the high seas, in which 17 migrants died. The remaining migrants were saved by a rescue operation.</p>	<ul style="list-style-type: none"> <li>• The Italian jurisdiction is asserted on grounds of the <b>doctrine of autore mediato</b> and the institute of <b>state of necessity</b>.</li> <li>• The rescue by Italian authorities does not interrupt the <b>causality nexus</b> as such an intervention is not an unforeseeable act but rather an action envisaged by the smugglers in order to produce the final result of the criminal plan: the entry of irregular migrants in Italy.</li> </ul>



## Annex II

### Italian Jurisprudence on Illegal Immigrant Smuggling

<p><b><i>Appeal of the Public Prosecutor of Salerno in respect of the cases against Alwate Anis, Hasharif Nader and Alshayeb Aeman, Supreme Court, 19 March 2013</i></b></p>	<p>The Public Prosecutor appealed against the decision of the G.I.P. of the Court of Salerno of 22 July 2014, by which the arrest detention of the accused was contested. Amongst the reasons for this decision was the fact that some of the individuals identifying the accused as smugglers were heard without a lawyer despite being investigated for illegal immigration. The accused were investigated for illegal immigrant smuggling which had culminated in the entry into Italy of 2100 irregular migrants after being rescued by Italian authorities.</p>	<ul style="list-style-type: none"> <li>• The judge may not absolve an accused for illegal immigration for the simple fact of retaining that the conditions for acquiring <b>refugee status</b> are met. This is not a decision incumbent upon the court.</li> <li>• Given that in the case in question, the crimes of illegal immigrant smuggling and illegal immigration were connected, the migrants identifying the smugglers should have been heard with the procedural guarantees that apply to suspects and accused, in particular with <b>legal counsel</b>. The information provided in contrast to this procedure was thus <b>inadmissible as evidence</b>.</li> </ul>
<p><b><i>Appeal of Mahammed Ali' Abdallah, Supreme Court, 16 July 2015</i></b></p>	<p>The case concerned an OCG composed of Eritrean citizens aimed to facilitate, for financial gain, the entry of irregular migrants into Italy and subsequent transfer to several other countries. The appellant challenged the order of pre-trial detention applied to him on the basis that he provided logistical support to migrants, by assisting with their transportation to Milan and countries of Central and Northern Europe.</p>	<ul style="list-style-type: none"> <li>• The following elements were pertinent in establishing the <b>membership in a OCG</b> rather than substantiating an isolated act of facilitation of illegal immigrant smuggling: <ul style="list-style-type: none"> <li>- Purpose of obtaining financial gain;</li> <li>- Instructing migrants;</li> <li>- Assembling news on migrants' families</li> <li>- Gathering information on the outcome of the smuggling activity by sea and passing it on to associates</li> <li>- Overall monitoring of the criminal plan..</li> </ul> </li> </ul>



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