N.R.G. 56420/2020

ORDINARY COURT of ROME
PERSONAL RIGHTS AND IMMIGRATION SECTION

In monocratic composition, in the person of Judge Silvia Albano, pronounced the following

ORDINANCE

In the interlocutory proceedings under Article 700 of the Code of Civil Procedure, registered as No 56420/2020, concerning

BETWEEN

, born in Pakistan on 4 August 1993, a Pakistani national, represented by CATERINA BOVE, Court of Trieste, and ANNA BRAMBILLA, Court of Milan;

- recurrent -

AND

MINISTRY OF THE INTERIOR, in the person of the pro tempore Minister of the Interior;

- respondent in default of appearance –

Factual and legal reasons for the decision

By means of an appeal pursuant to Article 700 of the Code of Civil Procedure, the applicant requested: "*to determine the applicant's right to submit an application for international protection in Italy and to order the competent authorities to issue all the legal deeds deemed necessary to allow him to enter the territory of the Italian State, in order to have access to the procedure for the examination of the application for international protection, in the direct application of art. 10 paragraph 3 of the Italian Constitution, given the "unlawfulness/illegitimacy" for the reasons set out in the appeal of the material conduct of the Italian authorities consisting in the readmission of the applicant to Slovenia.*".

The applicant stated that, in mid-July 2020, he had reached Italy at the border of Trieste after a very difficult journey along the so-called "Balkan route" suffering violence and inhuman treatment at the Croatian border; that having fled from his country having suffered persecution because of his sexual orientation, as soon as he arrived in Italy he had expressed the desire to apply for international protection; that within a few hours he had been pushed back to Slovenia, without any provision, then to Croatia and subsequently to Bosnia-Herzegovina, where he was still without any kind of reception or support; that during this chain push-back he had been subjected to violence by the Slovenian authorities and torture and inhuman treatment by the Croatian authorities, and that in neither of these two countries was he able to apply for international protection.

The applicant specified that he had arrived in Italy with a group of Pakistanis, all intending to apply for international protection and that, while some volunteers were helping them and treating their wounds, they were approached by some people in plainclothes who identified themselves as policemen who asked them questions regarding their migration route, and all of them responded by giving details about their origin manifesting their desire to apply for asylum; that the applicant and the other Pakistanis were then escorted to a police station, where they were made to sign some documents in Italian, where their cellphones were confiscated, and where they were handcuffed

and loaded into a van journeying to a hilly area (clearly on the Slovenian border), and threatened with sticks and ordered to run straight ahead on the count of five; that after running for approximately one kilometer, they were stopped by the gunshots of the Slovenian police who arrested them and loaded them into a van; that when they arrived at the police station, the applicant repeatedly expressed his wish to seek international protection; that they were locked in a room for the night without food, water, and no access to restrooms; that they were later taken to a police station at the Croatian border where they were instructed to lie on the ground with their hands handcuffed with plastic bands behind their backs and searched, kicked and hit with batons; that they were (…) placed under the authority of the Croatian police, who beat them with batons wrapped in barbed wire and kicked in their backs; that they were then loaded into a van again and that, upon arriving at their destination, they reiterated their wish to seek asylum, but instead they were taken to the Bosnian border, where the policemen started a countdown after which they started hitting the applicant and the other Pakistanis, spraying them with pepper spray, inciting the German shepherd dog with them to chase them and bite them. Once the applicant arrived in Bosnia, he was taken to the Lipa camp where he was told that there was no room for him, and therefore he was taken to the countryside and left there. He reached Sarajevo where he found shelter in an abandoned building, half destroyed by the war.

The applicant submitted photographs of the marks left on his body by the treatment and torture he suffered; photographs of the ruin where he had found shelter; a report by the "Border Violence Monitoring Network" NGO, which had collected the applicant's story and published it on its website, complete with photographs; an interview with the applicant by the Danish journalist Martin Gottske, published in the Danish periodical Information; as well as numerous other documents, including: the reply of the Ministry of the Interior to the parliamentary question, newspaper articles, and domestic and international sources which report on the chain push-back on the so-called Balkan route and the treatment to which migrants are subjected.

The Ministry of the Interior did not enter an appearance.

* * *

The treatment suffered by the applicant can be considered as proven according to the necessarily attenuated standard of proof that is typical of precautionary proceedings. In addition to finding confirmation in the documentation put forward, the applicant's story is confirmed by several authoritative international sources and by the response given by the Ministry of the Interior to the parliamentary question concerning the practices followed in the "implementation" of the bilateral readmission agreement signed with Slovenia in 1996 and never ratified by the Italian Parliament (both in the record).

The response of the Ministry specifies that "*... informal readmission procedures to Slovenia are applied to migrants found close to the Italian-Slovenian border, when it appears clear that they came from the Slovenian territory, **even if there is an intention to apply for international protection*** ..." (emphasis added), with the only exceptions being vulnerable persons or persons for whom the EURODAC system indicates that they have already applied to an EU Member State or who have already been granted refugee status. The Ministry goes on to state that "*The implementation of this type of readmission does not involve the drafting of a formal provision, applying as a matter of well-established practice the expeditious procedures provided for by the readmission agreement signed between Italy and Slovenia on 3 September 1996*"… "*If the conditions for the readmission request are met and the same is accepted by the Slovenian authorities, **there is no invitation to the Police Headquarters for the formalization of the application for protection***". (emphasis added).

The practice adopted by the Ministry of the Interior for the implementation of the bilateral agreement with Slovenia and also to the detriment of the present applicant is unlawful in a number of respects.

1. The bilateral agreement between the Government of the Republic of Italy and the Government of the Republic of Slovenia on the readmission of persons at the border, signed in Rome on 3 September 1996, has never been ratified by the Italian Parliament; this entails that **it cannot provide for amendments or waive the laws in force in Italy, or the regulations of the European Union or those deriving from sources of international law** (see Article 80 of the Italian Constitution).

However, the Italian authorities violate numerous provisions of the law by the practice of the so-called "informal return to Slovenia".

1.1. First, the readmission took place without any administrative provision being taken.

There is no doubt that the forced readmission to Slovenia affects the legal sphere of the persons concerned, with the consequence that, in accordance with Law no. 241/90, articles 2 and 3, readmission must be ordered by means of a well-supported administrative provision, notified to the person concerned and appealable before the judicial authority. The readmission agreement may, therefore, imply that the operations are carried out in a simplified manner, but it cannot imply derogations from the laws in force, with the consequence that an administrative provision must, in any case, be adopted.

In addition, since it consists in a return or a readmission to the border, it is a measure restricting personal freedom and therefore the prior validation of the judicial authority is necessary, in implementation of Article 13 of the Constitution, as already provided for, in general terms, for foreigners by Articles 10 paragraph 2 bis and 13 paragraph 5 bis of the Legislative Decree no. 286/1998. The Constitutional Court, in its sentence no. 105/2001, intervening on the control that the judge must carry out in order to validate the detention of the foreigner, states: "*this Court, since the sentence no. 2 of 1956, has affirmed that the translation of the person being repatriated with a deportation order is a measure affecting personal freedom ... Lastly, in a case very close to the present one, in judgment no. 62 of 1994, expulsion with accompaniment to the border by means of the police force of a foreigner subjected to precautionary detention or serving a custodial sentence, even if residual, not exceeding three years, was considered a measure affecting personal freedom, on the premise, which was not made explicit, but no less clear, that the transition from detention to another coercive measure determined a difference in degree and not in quality, the nature of the constitutional good remaining identical in both cases. ... it is, however, the force of the constitutional precept of Article 13 to impose a full meaning of the control of the validation that is responsibility of the judge: a control that cannot stop at the margins of the expulsion procedure, but must investigate the reasons that have led the acting administration to adopt that peculiar executive modality for the expulsion - the accompaniment to the border - which is the immediate cause of the limitation of the personal freedom of the foreigner and, at the same time, the basis of the subsequent measure of detention*".

In the absence of an appealable provision, the foreigner is substantially denied the right to exercise his/her rights and the right to an effective remedy, which is in violation of Article 24 of the Italian Constitution, Article 13 of the European Convention on Human Rights, and Article 47 of the Charter of Fundamental Rights of the European Union (on this point, the supranational courts have had the opportunity to pronounce themselves on several occasions – see European Court of Human Rights, Abdolkhani Karmimnia v. Turkey, case no. 30471/08, judgment of 22 September 2009,

which found the unlawfulness of a deportation without the notification of a well-supported provision).

1.2. In **particular, the right to an effective remedy and the necessity of an individual examination of individual positions** in compliance with **Article 19 of the Charter of Fundamental Rights of the European Union**, which prohibits collective expulsions, functional to the effective compliance with **Article 3 of the ECHR and Article 4 of the CFR**, to the absolute nature of the prohibition of inhuman and degrading treatment and the obligation of non-refoulement in case the foreigner may risk to suffer such treatment (see Edu Court Grand Chamber, Hirsi Jarnaa and others v. Italy, 23 February 2012). In view of the irreversibility of the resulting damage, the ECHR has repeatedly held that the possibility of a suspensive effect of the procedure should be provided for. The rule in Article 3 of the ECHR is in fact the only one of the Convention which does not provide for exceptions or derogations, and the prohibition is not lifted even in serious circumstances such as the fight against terrorism or organized crime (see ECHR, Chahal v. United Kingdom, 7 July 1996) and there is liability even if the Member State is aware (or can reasonably be thought to be aware) that the place of destination of the expelled person is not the first country (intermediate stop), but a subsequent one (final place), and that, there, there is a real and present risk of treatment detrimental to the integrity and dignity of the person (see Abdolkhani and Karimnia v. Turkey, cited above, ECHR M.S.S. v. Belgium and Greece, Grand Chamber, 21 January 2011).

The absolute nature of the rule can be inferred from the Convention itself, where in Art. 15 it is expressly prohibited to not comply with it, even in the event of a war or public danger affecting the nation.

On this point, also with regard to the prohibition of chain push-back, the jurisprudence of supranational courts abounds and the Court of Justice of the European Union has also pronounced itself on the subject of transfers under the Dublin Regulation (EDU Court Ilias and Ahmed v. Hungary of 14 March 2017, EDU Court case Sharifi and Others v. Italy AND Greece of 21 October 2014, EDU Court of 4 November 2014 Tarkel v. Switzerland, EDU Court M.S S. v. Belgium and Greece cit, Court of Justice (Grand Chamber) 19 March 2019 in case C 163/17 CJEU 16 February 2017 Case C 578/16 PPU C .K, H.F., A.S.v. Slovenia, etc.).

It is precisely this abundancy in case law, that has led the European Union legislators to introduce in the new text of the Dublin Regulation (EU Reg. no. 604/2013, cd. Dublin Regulation III) article 3 which states inter alia: "*Where it is impossible to transfer an applicant to the Member State initially designated as responsible because there are substantial grounds for believing that there are systemic deficiencies in the asylum procedure and in the reception conditions of applicants in that Member State which entail a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the Member State which began the procedure for determining the Member State responsible shall continue the examination of the criteria set out in Chapter III with a view to ascertaining whether another Member State may be designated as responsible*."

The same principles have also been reiterated by the Italian Court of Cassation (SSUU civilian 8044/2018) that, in the matter of transfers under the regulation of Dublin states: "*any transfer decision requires the administrative authority to assess both whether the asylum procedures and reception conditions in the State designated as responsible do not suffer from "systemic deficiencies" (Art. 3(2) Dublin Regulation III) and, regardless of the existence of such general deficiencies, whether such a transfer does not entail a real risk that the applicant will be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental*

Rights of the European Union; the existence of such a situation allows to move beyond the (relative) presumption of security and equal respect for fundamental rights in the Member States";
and are enshrined in Article 19, paragraphs 1 and 1.1. of Legislative Decree no. 286/1998, which explicitly prohibits the transfer to a state where the foreigner risks to be sent to another state where he could suffer persecution, torture or inhuman and degrading treatment.
The Italian State should not have proceeded with informal returns in the absence of guarantees that the foreigners would be treated in Slovenia in accordance with their fundamental rights, first and foremost the right not to be subjected to inhuman and degrading treatment and the right to apply for international protection.
As it will be analyzed in detail later on, the Ministry was aware, in view of the reports and inquiries of the most important international newspapers, the reports of the most accredited NGOs in the country, the resolutions of the UNHCR (see the documents in the file) and, most recently, the letter of 7 December 2020 from the Commissioner for Human Rights of the Council of Europe on the situation of migrants in Bosnia, that readmission to Slovenia would lead to informal readmission to Croatia and refoulement to Bosnia, and that the migrants would be subjected to inhuman treatment and torture by the Croatian police.
Consequently, the Italian Government must be held responsible for the violation of Articles 3 and 13, Article 4, Protocol 4 of the ECHR and Articles 4 and 19 of the Charter of Fundamental Rights of the European Union.
In the case of Sharifi and Others v. Italy and Greece cited above, Italy was condemned by the European Court of Human Rights for the unregistered and indiscriminate readmission of foreigners to Greece on the basis of the bilateral readmission agreement concluded in 1999, a situation which is entirely comparable to the present case.
2. The Agreement with Slovenia, as mentioned above, must necessarily be read in light of the European Union law as it has developed since it was drafted, especially in view of the entry into force of the Charter of Rights of the European Union with the Treaty of Lisbon of 1 December 2009, which prohibits collective expulsions in Article 19.
Although Art. 6, par. 3 of the Directive 2008/115/EC on returns allows each State not to adopt a specific return decision against a person who has entered the territory illegally, but to readmit the foreigner to the neighboring State from which he/she comes if there are bilateral agreements between the States concerned (which are no longer allowed after the entry into force of the directive), provided that they are already in force at the date of entry into force of the directive itself, the Italian State, in the execution of the agreement, is still bound by the internal and constitutional law (Art. 13 of the Constitution). In general terms, in compliance with the superordinate supranational norms, it has the duty to take into account and verify the concrete situation in which the foreigner is living, not being able to ignore that, as in the present case, this will cause a chain push-back outside the borders of Europe in violation of the fundamental rights of the foreigner. Above all, **informal readmission can never be applied to an ASYLUM APPLICANT, without even arranging for his/her application to be collected, relying on a practice that violates the relevant domestic and supranational legislation.**
In fact, although the obligation of non-refoulement under Article 3 ECHR applies to all foreigners and must be applied also to informal readmissions, the asylum seeker additionally enjoys a status to which specific rights are attached.
However, the Italian State states that readmissions take place without the distinction between asylum seekers and non-asylum seekers, with the result that neither in Italy nor in Slovenia does

the asylum seeker enjoy this status to which a series of rights for the applicant are connected as well as obligations for the EU Member States, all of which are provided for by law.

2.1. The readmission procedure **violated the fundamental right of the applicant to access the procedure for the recognition of international protection.** The Ministry of Interior, answering to the parliamentary question on this subject, stated that "*If the conditions for the readmission request are met and the same is accepted by the Slovenian Authorities, there is no invitation to the Police Headquarters for the formalization of the protection request*."

This practice infringes the very content of the bilateral agreement with Slovenia, since article 2 provides that each contracting party, when requested by the other party, undertakes to readmit to its territory any third-country national who does not fulfill, or no longer fulfills the conditions in force for entry to, or residence on, the territory of the requesting contracting party, provided it is proven that such nationals entered the territory of that party after having stayed on, or transited through, the territory of the requested contracting party.

In fact, the asylum seeker, whose application for international protection can be expressed orally (art. 3, paragraph 1 of Presidential Decree no. 21 of 12 January 2015), can never be considered to be irregular on the territory, therefore he/she cannot be considered to be a person who does not meet the conditions for staying on Italian territory.

The law provides for strict deadlines within which the application must be registered (Art. 3 and 26 of Legislative Decree no. 25/2008) by the Police or Police Headquarters from the moment of the foreigner's expression of willingness, in implementation of Art. 6 of Directive 2013/3 ULM (the Procedures Directive), which obliges Member States to ensure effective access to the procedure for examination and recognition of international protection ("*Member States shall ensure that any person who has submitted an application for international protection has an effective possibility to submit it as soon as possible*").

The Court of Justice of the EU has repeatedly clarified that Member States must ensure that an applicant has an effective opportunity to lodge an application as soon as possible and that national procedural rules must not make it impossible or excessively difficult to exercise rights conferred by EU law, nor must they impose rules that undermine the effectiveness of the Directive (CJEU, C-104/10, Patrick Kelly v. Wanda State University (University College, Dublin), 21 July 2011).

Furthermore, Recital 27 of the Asylum Procedures Directive states "*... third country nationals and stateless persons who have expressed an intention to seek international protection are applicants for international protection, they should comply with the obligations and enjoy the rights in accordance with this Directive and Directive 2013133EU of the European Parliament and of the Council of .26 June 2013 laying down standards for the reception of applicants for international protection. To that end, Member States should register such persons as applicants for international protection.*"

In fact, Part 1 paragraph 2 of Legislative Decree no. 142/2015 (which is an implementation of the Reception Directive 2013/33/LTE) provides that reception measures apply from the moment of the manifestation of willingness to apply for international protection.

Moreover, from the moment of the manifestation of his/her will, the asylum seeker is entitled to the issuance of a provisional residence permit for an asylum application (Art. 4 of Legislative Decree 14212015), with the consequence that he/she cannot be considered to be irregularly staying on the territory as a person "*who does not meet or no longer meets the conditions for entry or stay*" (Art. 2 of the readmission agreement).

On the basis of the above-mentioned legislation and in implementation of Article 10, paragraph 3 of the Constitution, once the foreigner has expressed their will to apply for asylum, the entry into

the territory of the State cannot be considered irregular either, even if it happened irregularly. In fact, the constitutional provision has also been interpreted as the right to enter the territory of the State in order to be admitted to the recognition of the international procedure (Cass. sent. n. 25028/2005), since, as stated by the United Sections of the Court of Cassation (sentence 29460/2019), the right to international protection "*is full and perfect*" and "*the procedure does not affect the emergence of the right"* which "*in the forms of the procedure is only ascertained ... the right arises when the situation of vulnerability occurs*".

2.2. As soon as the desire to apply for international protection is expressed, it is necessary to follow the procedure provided for by **Regulation 604/2013 (Dublin III Regulation)** in order to determine the Member State responsible for examining the application for international protection, and any transfer to another EU Member State can only take place after this procedure has been completed. In fact, Article 20 of Reg. 604/2013/EU, listed as "Initiation of the procedure", provides that the procedure for determining the Member State responsible must be initiated as soon as an application for international protection is lodged for the first time in a Member State.

Article 3 of the Regulation also provides that, "*Member States shall examine any application for international protection lodged by a third country national or a stateless person on the territory of any Member State, including at the border and in transit zones*", while Article 4 establishes the right of the applicant for international protection to be informed of the rules laid down in the Regulation. Article 13 provides for the case in which "*Where it is established, on the basis of proof and circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection*". This does not mean that in this case the applicant can be readmitted without formality to the country of first entry, because the Regulation provides that the asylum application must always and in all cases be registered in the country in which the foreigner expresses the will to seek protection, the person is temporarily accepted in the territory while the procedure provided for by the Regulation is initiated to verify which country is responsible for examining the application, a procedure which provides for specific guarantees, also because the rule of the responsibility of the country of first entry provides for various exceptions and is by no means the only one to determine the State responsible for examining the application for international protection. The State responsible must be determined, in fact, on the basis of the various criteria laid down in the Regulation itself:

First of all, as mentioned above, Part 3 of the regulation provides that the applicant may not be transferred to a member state where he/she risks being subjected to inhuman and degrading treatment. In addition, Articles 4 and 5 provide for information and participation guarantees for the applicant aimed at determining whether there are other criteria that would establish the responsibility of another state (for example, the presence of family members in the territory).

Lastly, Article 27 of the Regulation, guarantees the right to an effective remedy against a transfer decision and recital 19 specifies that, in order to guarantee compliance with international law, the effective remedy established by the Regulation against transfer decisions must include, on the one hand, an examination of the compliance with the Regulation mentioned above and, on the other, an examination of the legal and factual situation in the Member State to which the applicant is transferred.

The Court of Justice of the European Union has repeatedly affirmed, also with reference to the previous Regulation no. 343/2003, that EU law precludes the application of an absolute

presumption that the Member State designated as responsible respects the fundamental rights of the European Union, referring in particular to Article 4 of the Charter of Fundamental Rights of the European Union, which must also be interpreted as meaning that even in the absence of serious grounds for believing that there are systemic deficiencies in the Member State responsible for examining the asylum application, the transfer of an asylum seeker under Regulation no. 604/2013 may be carried out only under conditions in which it is excluded that such a transfer would entail a real and ascertained risk that the person concerned would be subjected to inhuman or degrading treatment (CJEU, Grand Chamber, judgment of 21 December 2011, in which the Court of Justice of the European Union ruled (ECJ, Grand Chamber, judgment of 21 December 2011 in Joined Cases C-411/10 and C-493/10; CJEU, Fifth Chamber, judgment of 16 February 2017 in case C-578/16 PPU, which states as a general rule that it is necessary to assess the individual risk even in the absence of systemic deficiencies and reiterates that the principle of mutual trust is not absolute; Court of Justice (Grand Chamber) 19 March 2019 in case C 163/17 Abubacarr Jawo; in the same sense Cass. SSUU civil 8044/2018, cit .).

3. The applicant, who arrived in Italy through the Balkan route, after having crossed Bosnia, Croatia, and Slovenia, immediately expressed the wish to apply for international protection, which was not registered by the Italian authorities (a practice confirmed by the Ministry's reply to the parliamentary question) and it was arranged for his "readmission" to Slovenian territory in the manner described in the appeal - substantially confirmed by the Ministry in its answer to the parliamentary question - which was followed by his refoulment to Croatia, where he was subjected to inhuman treatment and torture by the Croatian police, and subsequently pushed back to Bosnia, outside the territory of the European Union, where he lives in degraded conditions in an abandoned and half-destroyed building, as he could not be placed in any reception camp because the Lipa camp was already overcrowded when he arrived there, he faced the harsh Bosnian winter under these conditions, deprived of means of subsistence. The conditions of migrants in Bosnia, as it will be explained later, are sadly known.

Many other migrants and asylum seekers who arrived on Italian territory through the Balkan route experience similar treatment, and it is widely documented.

It was noted that the asylum seeker was readmitted to Slovenia not as such, but as an illegal alien found close to the border, and that the case-law of the Court of Justice states that the transfer can be carried out only if the risk of the foreigner being subjected to inhuman and degrading treatment is concretely excluded, even in the absence of systemic deficiencies (CLUE, Fifth Chamber, judgment of 16 February 2017 in case C-578/16 PPU).

The Italian State had all the necessary information from reliable sources, verified and documented, to know that the applicant's readmission to Slovenia would most likely lead to his refoulement to Croatia and then to Bosnia. There was concrete evidence suggesting that the applicant would face the risk of suffering inhuman and degrading treatment.

3.1. At a press conference held on 8 September 2020, the Italian Ministry of the Interior announced that 852 persons had been readmitted to **Slovenia** since the beginning of 2020 (see document on file - notes 11 and 12 of the application). The largest group was of Afghan nationality, followed by Pakistanis, Iraqis, Iranians and Syrians, thus coming, for the most part, from countries where they could not be returned to and were therefore in obvious need of protection (https://data2.unhcr.org/en/situations/southeasterneurope).

In Slovenia, there are several deficiencies that prevent people from submitting and registering an application for international protection (https://www.easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020.pdf; Aida, Country Report Slovenia 2019, 2020.).

The Amnesty International's report of 16 April 2020 states: "*many potential asylum-seekers irregularly entering Slovenia were denied access to asylum, fined and forcibly returned - frequently in groups - to neighbouring Croatia. Such collective expulsions took place without appropriate procedural safeguards against refoulement and despite credible reports of widespread violence and abuse by the Croatian police and the risk of their likely further expulsion to Bosnia and Herzegovina*" (Amnesty International, "Human Rights in Europe - Review of 2019 – Slovenia", 16 April 2020, but also US Department of State, "Annual report on human rights in 2019", 11 March 2020 and RiVolti ai Balcani, "The Balcan route. Migrants without rights in the heart of Europe", June 2020 – the situation regarding those who are transferred under the Dublin Regulation is partly different, for the very reason that they are transferred as asylum seekers and therefore as already having this status).

According to the testimonies collected by NGOs present on the territory (as documented in the case-file), it appears clear that almost all of those readmitted from Italy to Slovenia were forcibly returned to Bosnia through Croatia.

The Slovenian Ministry of the Interior itself reported that in the first six months of 2019, it had transferred 3,549 foreigners to Croatia through "informal" procedures, in the absence of a provision that could be appealable before the judicial authority, and that since the beginning of 2018 around 20,000 people had been returned back to Croatia, which is a huge number for such a small country (INFOICOLPA, Report on illegal practice of collective expulsion on Slovenian-Croatian border, Ljubljana, August 2018, https://www.borderviolence.eu/wp-content/uploads/Report-on-illegal-practice-of-collective-expulsion-on-Slovene1.pdf) .

According to the testimonies collected by the NGOs operating in the area, IPSIA-ACLI, ICS and BVMN, it appears that almost all of the migrants "readmitted" to Slovenia from Italy were pushed back to Bosnia through Croatia (see dossier "The Balkan route — migrants without rights in the heart of Europe" where the main international sources on violence and pushbacks in the Balkans are reported in https://www.asgi.it/wp-content/uploads/2020/06/La-rotta-balcanica-RiVolti_ai_Balcani.pdf and filed).

3.2. Numerous international sources and an overwhelming amount of testimonies collected by NGOs give an account of the terrible violence perpetrated by the **Croatian** police against migrants and the systematic pushbacks to Bosnia.

An extensive amount of documents was produced in the trial by means of the appeal, which also reports on the results of journalistic investigations in major Italian and foreign newspapers.

The 2018 U.S. State Department human rights report states: "International and domestic NGOs have reported police violence against asylum seekers and migrants, particularly at the country's borders with Bosnia and Herzegovina (BiH).

The UNHCR and several NGOs published report according to which border police subjected migrants to degrading treatment, including verbal abuse and vulgarities, destruction of property and beatings, including vulnerable persons such as asylum seekers, minors, persons with disabilities and pregnant women. The NGOs also reported that several migrants were allegedly beaten by border guards while holding their infants or young children…

The 2019 Human Rights Watch report states, "UNHCR reported allegations that since January around 2,500 asylum seekers and migrants had been pushed back by Croatian police in Bosnia and Herzegovina, hundreds of cases of denied access to asylum procedures, and over 700 allegations of police violence and theft. The same month, a group of members of the European Parliament from 11 EU States jointly requested the European Commission to urgently investigate the allegations, with the Council of Europe human rights commissioner echoing that call in October..."

Moreover, an Amnesty International report of 13 March 2019 (https://www.amnesty.it/rifugiati-migranti-croazia-report) reported on the system of rejections and expulsions implemented by Croatian police against thousands of asylum seekers (see also AIDA - https://asylumineurope.org/reports/country/croatia/)

All sources report the brutal, systematic violence and outright torture which migrants are subjected to by the Croatian police, especially on the border with Bosnia (Amnesty International, Danish Refugee Council, NGO networks, Border Violence Monitoring Network (BVMN), UNHCR, Doctors Without Borders, the Jesuit Refugee Service and official sources such as AIDA, as well as newspapers such as The Guardian, New York Times, Avvenire, L'Espresso, etc., all of which have been filed).

Migrants pushed back to Bosnia present serious traumas as a result of this violence: fractures of limbs and ribs, cuts, bruises, wounds caused by dog bites, sexual violence and electric shocks (https://www.theguardian.com/global-development/2020/oct/21/croatian-police-accused-of-sickening-assaults-on-migrants-on-balkans-trail-bosnia; https://www.borderviolence.eu/violence-reports/december-3-2019-0400-zeljava-air-base-hr/; https://www.meltingpot.org/Respingimenti-illegali-e-violenze-ai-confini-un-rapporto-di.html; https://www.borderviolence.eu/violence-reports/may-27-2020-0200-blata-hr/; https://www.nytimes.com/2020/01/24/world/europe/bosnia-european-migrant-crises.html).

Since December 2019, the DRC has recorded 14,090 Croatian pushbacks with an increase in the most recent months of expulsions carried out with violence, torture, confiscation and destruction of personal property. Out of the 1,659 documented pushbacks in the last month, 84% of the people suffered destruction of personal property, 72% suffered degrading treatment, and 60% experienced physical violence.

The United Nations refugee office, UNHCR, told the Guardian that it was “deeply concerned about the reported violence and mistreatment of migrants and refugees by the Croatian police”. Zoran Stevanović, UNHCR Regional Communications Officer for Central Europe reported “Our organisation has previously received and subsequently shared with the authorities credible reports of persons claiming to have been illegally returned from Croatia to Bosnia-Herzegovina and to Serbia”.

On 19 June 2020, the UN Special Rapporteur Felipe Gonzales Morales presented a strong complaint against Croatia highlighting that, “The violent pushback of migrants without going through any official procedure, individual assessment or other due process safeguards constitutes a violation of the prohibition of collective expulsions and the principle of non-refoulement” and came to very harsh conclusions in view of the documentary evidence, stressing that “Croatia must ensure that all border management measures, including those aimed at addressing irregular migration, are in line with international human rights law and standards, particularly, non-discrimination, the prohibition of torture and ill-treatment, the principle of non-refoulement and the prohibition of arbitrary or collective expulsions” (UNITED NATIONS HUMAN RIGTS - OFFICE OF HIGH COMMISSIONER, Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned - UN Special Rapporteurs, 19 June 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25976&LangID=E).

3.3. The situation of migrants in **Bosnia**, now exposed to the cold winter without access to shelter, is a sad reality and it is widely reported. In a harsh letter dated 7 December 2020, addressed to the President of the Council of Ministers and to the Minister of Security of Bosnia and Herzegovina, the Commissioner for Human Rights of the Council of Europe, Dunja Mijatovia, denounced the humanitarian crisis faced by thousands of migrants and asylum seekers arriving in the country

through the Balkan route and called for an urgent solution to some of the critical aspects of the system concerning reception, access to and duration of the asylum procedure, protection of unaccompanied minors (https://rm.coe.int/commdh-2020-30-letter-to-the-authorities-of-bosnia-and-herzegovina-en/1680a099b6; see also the statements made by the Vice-President of the European Commission Josep Borrel in https://eeas.europa.eu/regions/africa/91182/bosnia-and-herzegovina-migrationcris%20is-far-over_en).

The European Commission's Civil Protection Office points out that "according to the International Organisation for Migration (IOM), around 8,000 refugees and migrants are currently stranded in Bosnia and Herzegovina" and a humanitarian crisis has become a reality. "The current weather conditions threaten the lives of more than 1,700 people, who are sleeping outside in dire conditions, including many unaccompanied children and families. …The capacity of existing temporary reception centers is overstretched and more than 1,700 people, including many unaccompanied children and families, are forced to sleep in abandoned buildings or makeshift tents, without access to safe and dignified shelter, water, sanitation, electricity and heating. Their access to food and drinking water is limited. The worrisome sanitary conditions increase the exposure to various diseases and the spread of coronavirus. … the EU-funded temporary reception centers, the further restriction of movement of refugees and migrants imposed by the local authorities and the recent closure of two main temporary reception centers of Bira and Lipa have exacerbated the humanitarian situation with nearly 1,700 refugees and migrants sleeping outside. As an immediate priority, the EU urged the Bosnian authorities to transfer the refugees and migrants living in the Lipa facility, not suitable for winter, to the EU-funded "Bira" reception center in Bihać, which is ready to receive them. The decision of the local authorities not to grant this request has led to a humanitarian disaster. Overcrowded reception centers, harsh sleeping conditions, poor living conditions, a permanent state of insecurity and violence are putting a strain on the mental health of migrants, refugees, and asylum seekers. The outbreak of coronavirus could worsen the already difficult humanitarian situation and have dramatic consequences both inside the overcrowded reception facilities and outside, as migrants and refugees do not have adequate access to water and sanitation. (https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en)

4. It has already been pointed out from the legal perspective that the practice of informal readmissions to Slovenia is unlawful in many respects, especially in the case of asylum seekers.

In light of the many authoritative sources reporting on the fate of the migrants "readmitted" to Slovenia, who were de facto subjected to a chain push-back to Bosnia, such as the present applicant, it must be considered that the Italian government had all the tools to know that "informal readmissions" would have exposed the migrants, including asylum seekers, to inhuman and degrading treatment.

Therefore, the conduct of the Italian authorities is considered to be contrary to the obligations under its own domestic law, including constitutional law, and international law (the latter being superordinate under Article 117 of the Italian Constitution).

In view of the unlawfulness of the conduct, the applicant requested access to the Italian territory in order to apply for international protection, or at least to register such an application.

However, the applicant was unable to register his application for international protection due to the unlawful conduct of the Italian Authority and, therefore, is currently outside of Italian territory for reasons not imputable to him.

It cannot be unprotected the position of those who, having arrived on Italian territory, were unable to register their application for international protection for reasons not imputable to them, as a result of a totally unlawful refoulement (in this sense, also the Court of Roma with decision no.

22917/2019 of 28 November 2019; it should be noted that the application for the injunction of the enforceability of the judgment proposed by the Ministry was rejected by the Court of Appeal of Rome with the provision of 20 July 2020, thus allowing the plaintiffs - Eritrean asylum seekers returned to Libya - to enter Italy to submit their application for international protection, as it has actually happened).

It has been stated above that **Article 10, paragraph 3 of the Italian Constitution** is directly applicable and is interpreted as the possibility to access the territory in order to apply for international protection, especially when the unlawful conduct of the Italian authorities prevented access to this right.

5. Therefore, the conditions of a prima facie case (fumus boni juris) and urgency (periculum in mora) are satisfied in light of the situation of migrants in Bosnia that forced the applicant to live in degrading conditions representing a real risk to his health and physical integrity, with the result that the present action must be upheld.

The decision as to the most suitable procedure to grant entry is left to the competent authority who may identify, in the exercise of his/her discretion, the most appropriate means of protecting the rights of the present applicant (including the granting of a visa pursuant to Article 25 of Regulation (EC) No 810/2009, the so-called Visa Code), provided that he/she must allow **the applicant's immediate entry into Italian territory** as an asylum seeker and register his application for international protection.

6. the defendant is ordered to pay the costs of the proceedings, as set out in the operative part.

THEREFORE

The Court upholds the action and accordingly:

declares the applicant's right to apply for international protection in Italy and orders the competent administrations to issue all the deeds deemed necessary to allow his immediate entry into the territory of the Italian State;

orders the Ministry of the Interior to pay the costs of the proceedings in favour of the applicant, assessed at € 1,800.00 for fees and € 125.00 for disbursements, in addition to a fixed amount for general costs at 15 %, VAT and C.P.A.

Rome, 18/01/2021

the appointed judge
Dr. Silvia Albano