

## PROC. 10341/15 RNG.I.P. - *GLAUCO I* -

### Facts

In October 2013, a vessel with migrants in provenance from Libya (directed to Sicily, Italy) capsized in international waters, resulting in the death of at least 366 people.

Migrants often engaged with Suspect 8 so that the latter facilitated their illegal entry by sea into Italy. Other times, migrants from various African countries, were kidnapped by armed men in the Sahara Desert, when heading to Libya. They were taken under the threat of weapons to a house in Sheba (Libya) where they were prevented from leaving. The group of armed men carried out several acts of aggravated violence towards the migrants. It conditioned release to the payment of 3300 USD. Relatives often paid the ransom via Money Transfer through codes supplied by the kidnappers. The migrants were then directed in groups of app. 20-30 people to other locations, often Tripoli (Libya), where they were delivered to Suspect 8, who had organised a “*collection camp*” where up to 600 persons were held and to whom 1600 Euro per person were demanded for the trip to Lampedusa. In the journey from Sheba to Tripoli, several means of transportation were used. After approximately one month, the migrants were transported to a large boat off the coast of Libya, in which they travelled to Lampedusa. It sank on 3 October 2013.

Some of the suspects (together with individuals not identified) *inter alia* organised and or assisted the escape of migrants from the reception centres in Italy, provided logistical support (tickets, clothing, temporary accommodation) and arranged migrants’ travel to the North of Italy and other European countries. Several plane tickets were bought with low-cost companies, such as Ryanair and EasyJet. Other times, the travel would be arranged via private transportation. The organised criminal group also procured and or produced fraudulent passports so as

to allow trips outwith Italy. The migrants were then required to send back the passports. In order to facilitate illegal entry and stay in Italy, under the framework of family reunification, the organised criminal group further engaged in promoting sham marriages. The respective ‘price’ varied between 7500 USD and 10000 USD. The suspects operating in Italy were paid via: (i) Western Union, (ii) direct cash delivery by relatives of migrants, (iii) post payment systems.

The members of the organised criminal group enjoyed of a structured network of communications, resorting e.g. to satellite and mobile phones (generally registered under false names), Skype, Viber, Tango, and Facebook.

The suspects were deemed members of a transnational organised criminal group dedicated to the smuggling of migrants, with the purpose of obtaining a financial or other material benefit.

### Elements of success

- Cooperation with the private sector
- Holistic investigative approach
- Parallel financial investigations
- Robust implementation of UNTOC and Protocol against the Smuggling of Migrants by Land, Sea and Air
- Detention order non-located suspects

### Challenges

- Migrants’ protection and support
- Financial and other material benefit not constituent element of migrant smuggling
- Barriers to cooperation with private partners
- ‘unwillingness or inability’ of States to prosecute SOM

## Background

The organised criminal group operated (at least) in Eritrea, Sudan, North African countries and Italy. The members of the organised criminal group would also be involved in related offences (e.g. inhuman and degrading treatment as per conditions the migrants were submitted to during the crossing of the Channel of Sicily, and crimes against the public order as per production and procurement of false documents).

Migrants were mostly Eritrean. The survivors were sent to the reception centre of Lampedusa. The vessel was overloaded vis-à-vis its conditions of navigability. As per survivors' reports, the vessel transported up to 500 irregular migrants.

The investigation called GLAUCO I targeted nine suspects (eight Eritrean and one Ethiopian). Their roles varied from intermediaries to the leader of the organised criminal group (Suspect 9). Related migrant smuggling ventures (involving at least Suspects 8 and 9) were ascertained dating as early as 2006-2007. Both suspects were in the position of instructing associates.

A number of aggravating circumstances were verified *in casu*: (i) intent of obtaining a financial or other material benefit, (ii) more than five people smuggled, (iii) more than 3 people engaged in the criminal conduct, (iv) danger to the life and safety of migrants, (iv) submission of migrants to inhuman treatment.

On 25 October 2013, a new group of migrants was rescued off the Italian coast and was transported to the reception centre of Lampedusa. Survivors from the earlier vessel (the one sinking on 3 October 2013) recognized one of the new arrivals as the Somali leader of the armed group that had kidnapped several migrants in the journey through the Sahara Desert.

## Key issues

- ❖ Jurisdiction at high sea
- ❖ Financial or other material benefit

- ❖ Relationship migrant smuggling - trafficking in persons
- ❖ Organised criminal group
- ❖ Evidence
- ❖ Public – private cooperation

## Investigation

Several migrants were heard preliminarily upon arrival to Lampedusa by the state police and, later on, by the Criminal Police and the Public Prosecutor. Migrants were likewise required to proceed to photo identification of the suspects. Phone tapping and surveillance operations further took place.

Communications originating from, or destined to, a foreign phone number were intercepted via the technique of “*istradamento*”, whereby caption is possible whenever communications flow through Italian telecommunication infrastructure. Besides the content of such communications, the regularity and frequency thereof between the suspects and other associates constituted important evidence re level of organization of the criminal group, membership therein, and *modus operandi*.

Cooperation with Western Union allowed the gathering of important evidence re payment and cash flow.

## Reasoning

Italian jurisdiction is established over acts committed on the high seas on grounds of the *autore mediato* doctrine. That is, jurisdiction will be established if the natural result of the criminal conduct occurs in Italian territory. The fact that the transport of migrants directly by the suspects was interrupted in international waters due to a Search and Rescue (SAR) operation does not dictate the contrary. Authorities act under a state of necessity (in order to prevent a greater harm, i.e. the death of migrants). The jurisdiction of the State will extend to all co-perpetrators (even if abroad) as long as any act of participation in the common criminal plan - by any of the associates - occurs in Italy. It is irrelevant that such participative act is not *per se* illicit.

Several factors indicate the existence of an organised criminal group, e.g. (i) a bond between the members of permanent character or, at least, stable and aimed to continue beyond the commission of specific criminal acts/ventures; (ii) undetermined nature of the criminal programme, and; (iii) existence of a certain level of organisation that, even though minimal, is adequate to pursuing the criminal objectives settled. There is no need for formal agreements.

Migrant smuggling and trafficking in persons are different offences although they might often be interlinked.

The “*istradamento*” procedure (see “*Investigation*”) does not contravene the rules on rogatory letters given that all relevant activity of interception, reception and registration takes place in the territory of Italy. Since the interception of communications through and from a certain foreign number will implicate the caption of communications of all other phone numbers with the same three initial digits, a judicial authorisation allowing the interception of a certain phone number covers the unavoidable interception of those incidentally affected communications.

## Verdict/Decision

Order of precautionary detention, deeming that, were the suspects to be released, there would be (i) risk of recidivism, (ii) risk of escape, (iii) risk of tempering with evidence. The order of precautionary detention was issued also against suspects, the whereabouts of whom were not determined. \*

## Opinion

This is a landmark and emblematic case on several aspects. It reflects consolidated jurisprudence that – on the basis of teleological and systemic interpretation of the law – allows extending jurisdiction over acts committed on the high seas. Italian jurisdiction is triggered, preventing an impunity gap and giving *inter alia* effect to Article 5

of the United Nations Convention against Transnational Organized Crime (UNTOC).

The case further reveals a proactive and holistic investigative approach. Notably, cooperation with Western Union allowed the gathering of important evidence. This cooperation amounts to a remarkable example of best practice translated into effective collaboration between private actors and investigative authorities. It is important to consider that migrant smuggling is a crime type perpetrated for profit. Parallel financial investigations and the ‘follow the money’ methodology are likely to lead to successful prosecutions.

There are several challenges as far as access to data from social media tools (e.g. Viber, Skype, Tango, Facebook) is concerned. This is much due to fragmentary legislation on data retention as well as insufficient legal framework regulating cooperation between the private and public sector in this domain. This sheds light on the importance of devising the technical tools, and achieving the necessary private-public consensus and favourable legal landscape so as to facilitate inquiries into criminal conduct developed through social media.

## Notes

\* See also *Glauco II*, Proc. N. 7472/15 R.N. G.I.P. - SHERLOC Case Law Database ID ITAh014.