

PROC. 7472/15 RNG.I.P. - *GLAUCO II* -

Facts

The suspects were deemed members of a transnational organised criminal group dedicated to the smuggling of migrants. This was the same criminal group at the core of so-called *Glauco I* case (see “*Background*”).

Migrants were firstly collected and assembled in Libya. Suspect 2 (highly ranked within the organised criminal group) and his associates received the migrants. Suspect 3 controlled houses in which he accommodated migrants until the day of departure. Migrants were monitored under the threat of weapons. Migrants following the so-called terrestrial route (from several African countries towards Libya) were submitted to aggravated violence (including kidnapping). They had to pay smugglers for this trip and were sometimes held and forced to work as a form of payment. Migrants then embarked into unseaworthy vessels, usually in direction to Italy. Smugglers abandoned these vessels in international waters, after launching a request for rescue to authorities. This part of the smuggling venture (i.e., by sea) was also subject to payment. Once in Italian soil, migrants were again ‘recruited’ by members of the organized criminal group, with the promise of facilitating their further movements, always upon payment. Where necessary, the organised criminal group assisted escapes from receptions centres and provided the needed logistical support (e.g., accommodation) to travel to the North of Italy. Different methodologies were used to ‘attract clients’: (i) collaboration of migrants living in the reception centres; (ii) contacts through relatives; (iii) direct engagement.

The organized criminal group procured false documents so as to allow migrants to continue their travel abroad, undetected by authorities. It further organized sham marriages as a means of facilitating illegal entry, transit and stay.

The organised criminal group managed tenths of millions of USD just in respect of ‘African smuggling’. To these values were added amounts paid in Europe. Payments were often made in advance (i) directly in cash; (ii) via ‘Hawala’ banking system (iii) through financial services providers such as Western Union, MoneyGram, and, in Italy, Postpay.

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

- International cooperation
- 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 proceedings in *Glauco II* emerged as the follow-up of the work developed and findings reached in the so-called *Glauco I* (*Proc. N. 10341/15 R.N. G.I.P. - SHERLOC Case Law Database ID ITAh013*).

The organised criminal group operated (at least) in Central Africa (Eritrea, Ethiopia, Sudan), North African countries (especially Libya), Italy and the North of Europe (Scandinavian countries, The Netherlands, United Kingdom and Germany). 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).

So-called GLAUCO II targeted 24 suspects (20 Eritrean, one Guinean, one Ghanaian, one Ivorian, and one Ethiopian). Their roles varied from intermediaries to leaders of the organised criminal group (Suspects 1, 2 and 3). Several specific migrant smuggling episodes were individualised, mostly in relation to the disembarkment of hundreds of migrants in 2014 and 2015, in Sicily (Italy). At least 5377 irregular migrants were affected, mostly original from Sudan, Ethiopia, Eritrea, Libya.

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, (v) submission of migrants to inhuman treatment, (vi) transnational character of the organised criminal group, and (vii) the use of weapons in public.

At the time the decision herein under appraisal was issued, the organised criminal group remained operational. Investigations were on-going.

Key issues

- ❖ Jurisdiction at high sea
- ❖ Organised criminal group
- ❖ International cooperation
- ❖ Evidence
- ❖ Public – private cooperation

Investigation

The investigation was much based on phone tapping and surveillance operations. Testimonial evidence by migrants (including in the context of other proceedings) was also very important. Migrants' proceeded to photo-identification of suspects. The Criminal Police carried out verification operations (including searches) in order to confirm information available through various sources.

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 and MoneyGram allowed the gathering of important evidence re payment and cash flow.

International police cooperation between Italy and Sweden took place with the purpose of identifying suspects and gathering respective personal data.

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.

In line with Article 3 (2) United Nations Convention against Transnational Organized Crime (UNTOC), whereas the transnational character of the organised criminal group has been established, the transnational nature of all serious crimes in which the organised criminal group was involved will be recognized

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

As *Glauco I*, this decision confirmed Italian jurisdiction over acts committed on the high seas, thus preventing an impunity gap and giving effect to Article 5 UNTOC.

The case further reveals a proactive and holistic investigative approach. Notably, cooperation with Western Union and MoneyGram 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. By the same token, the use of illegal and/or untraceable financial service providers (e.g. Hawala) may jeopardise investigations. There is a need for developing synergies aimed at preventing criminals from taking advantage of less formalised financial intermediaries.

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 frameworks 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.

Importantly, the investigation unveils the significance of international cooperation. Indeed, it was the effective cooperation between police forces in different countries that allowed, in some instances, the identification of suspects.