

"Ordinary rendition" in Tunisia and relations with Libya: the Italian government heaps shame and ridicule onto itself

1. In the management of daily relations between Italy, Libya and Tunisia in the field of countering irregular immigration, the choices that have ripened over the past years, sometimes even on the basis of "national solidarity" agreements, up until the approval of the Friendship Treaty with Libya, are heaping shame and ridicule upon the Italian government and the military authorities that are enacting its orders. Shame for the extremely serious human rights violations, also at the expense of minors and victims of violence, and ridicule due to the evident lack of proportion between the emphatic announcements and the results that are achieved, particularly when talking of the "blocking" of the route to Lampedusa. And arrivals by boat in Lampedusa have returned, although nobody talks about them. The naval block of Lampedusa has certainly not caused the number of immigrants who enter Italy "without documents" annually to decrease significantly, but it has certainly barred the road for thousands of seekers of asylum or other forms of international protection, most of those who have arrived to date in Lampedusa, fleeing the Libyan hell. But, for [interior minister] Maroni, this is an "historic success", an outcome one should boast about. Even though, during the Berlusconi government's term, the "illegals" in Italy have become over one million.

Not even a complaint from the UN High Commissioner for Refugees who accused the navy of serious abuses against migrants recovered in the Channel of Sicily by military units flying an Italian flag, and hence on national territory, before returning them to the Libyan authorities, was enough to interrupt the returns in international waters. The Italian authorities limited themselves to modifying procedures and sending back shipwreck victims to the Libyan motorboat patrols at the borders of their territorial waters, without taking back migrants to disembark directly in Tripoli harbour any longer, as had happened on the past 7 and 8 May [2009]. A case within the case, upon which the European Court of Human Rights will now have to make a ruling. Even the belated criticism from the current opposition has been ignored. After all, it must not be forgotten, particularly in the light of what the current Italian government is doing, a veritable pre-ordained massacre of human beings, that co-operation with Tunisia and Libya, with the externalisation of border controls and the blocking of migrants' vessels at sea, dates back to 1998 when [President Giorgio] Napolitano was interior minister and the author of the first readmission agreements with Tunisia. Then, from 2003 onwards, under Prodi, first European Commission president and later head of the Italian government in 2006, always with support from Napolitano, who supported agreements with Libya at the time, as documented in an article in the *Corriere della Sera* on 19 September 2004, a few months after the Cap Anamur case, and only a few days after the collective returns from Lampedusa to Libya that were later condemned by the European Parliament. The Prodi government was not even capable of abrogating that vile ministerial decree of 14 July 2003 that, implementing the modifications introduced in 2002 with the Bossi-Fini law, provided for the "return" of vessels laden with migrants "towards the harbours of departure", a legalisation of the collective refoulements that are forbidden by all international conventions, apart from being a blatant violation of

art. 10 of the Italian Constitution. And the Friendship Treaty with Libya was approved in February 2009 with the votes of almost all the current opposition.

2. On the past 6 August, authoritative representatives of the Council of Europe deemed the expulsions ordered by the interior minister affecting Tunisians suspected of membership of terrorist organisations “absolutely inadmissible” and “shameful”, for which the European Court of Human Rights had repeatedly asked for an immediate suspension of the measure, faced with the certainty that these people would be subjected to torture once they were handed over to the Tunisian police by the Italian police. Maroni’s claims, according to which Italy “respects” the Court’s decisions but not the orders for the suspension of expulsions sent in accordance with art. 39 of the Regulation on procedure that, according to the minister are “slips of paper sent by fax” by some “officials”, constitute a very serious affront to the most important procedural instrument available to the Court when it envisages the danger that people expelled or refused entry may be subjected to “inhuman or degrading treatments” forbidden by art. 3 of the Convention.

Without those “slips of paper” sent “by fax” by the European Court, hundreds of people, youths, even women and potential asylum seekers, would be in the hands of their torturers today. Those torturers towards which our government does not hesitate to send back migrants who are potential asylum seekers refused entry in the waters of the Channel of Sicily or at the border posts of the ports on the Adriatic [Sea], like those who are suspected of constituting a social threat, even after they have served their sentences. But for immigrants, art. 27 of the Constitution according to which “sentences cannot consist in treatments that run contrary to the sense of humanity and must strive for the re-education of the sentenced [person]” has been ripped up, in fact it is not even valid for Italians anymore, if one considers the inhuman conditions (also according to a recent European Court decision) and overcrowding that our country’s prisons lie in after the proliferation of the repressive penal system, the only instrument used by the government to tackle social hardship and deviance.

Italy will not be able to contravene the European Convention on Human Rights (ECHR) and its procedural instruments that guarantee the effective respect for its precepts for long. Herta Däubler-Gmelin and Christos Pourgourides , respectively the president of the “Legal Affairs and Human Rights Committee” of the Council of Europe’s Parliamentary Assembly and Rapporteur on the implementation of decisions enacted by the European Court of Human Rights (ECtHR), have recalled the consolidated case-law of the ECtHR according to which the risk of torture forces the suspension of forced removal measures even in the case of people who have been found guilty, or are only suspected, of membership of terrorist organisations. These high-level representatives of the Council of Europe have condemned the behaviour of the Italian government that continues to deliberately violate requests for the suspension of expulsions issued by the ECtHR, adding that it is the fourth time that “from 2005, the Italian authorities adopt decisions that flagrantly contravene decisions by the ECtHR (AFP).

But what is most serious, and had never previously occurred, is that, apart from the ECtHR's jurisdiction, the Italian government currently questions the very possibility of effectively filing an individual appeal before the Strasbourg Court. On 18 November 2008, the second section of the ECtHR, in accordance with art. 39 of the ECHR, has recognised the possible violation of art. 34 of the ECHR calling upon the Italian state to suspend the expulsion to Greece of an Afghan citizen until 10 December 2008 (CEDH-LF2.2R, EDA/cbo, Requete no.55240/08, M. vs. Italy). In the reasons for the suspension order, the Court referred back to its previous decision in the *Mamatkulov and Askarov vs. Turkey* case (nos. 46827/99 and 46951/99) paragraphs 128 and 129 and order number 5, in which it punished the failure to respect the right to an individual appeal in accordance with art. 34 of the Regulation on procedure of the Court itself. The same effective right of appeal is denied to migrants blocked in the waters of the Channel of Sicily and handed back to the Libyan motorboat patrols, exactly the same as happens to Afghan and Iraqi migrants turned away "without formalities" from the Adriatic port border points towards Greece.

3. After all, to the shame resulting from the inhumane decisions by the government in the field of immigration and asylum, one must add the ridicule, so it is best to inform Italians about the "black mark" traffic or the astonishing wins in the state lotteries. Or to distract through the mysterious arrests of terrorists or of wretched "illegals", "victims" of the criminal offence of "irregular residence". Yes, because one cannot fail to define the pantomime whipped up by Berlusconi and Frattini to make Italians swallow the bitter pill of the first economic consequences of the "Friendship Treaty" between Italy and Libya, signed only a year ago, as ridiculous. While only a few days after its approval and simultaneous correction (contravening all constitutional rules), the security package is proving impossible to implement and a source of human and economic costs that are impossible to calculate. Security? From the "ronde" (citizen patrols) to the lengthening of administrative detention in CIEs (identification and expulsion centres), the foundations are being laid for violent conflicts without any possibility of mediation and integration. While large companies' contracts in Libya (led by Finmeccanica) are enriching the usual suspects, nobody talks of the imminent fishing crisis in the Channel of Sicily, where the Libyans, strengthened by the six patrol motorboats gifted to them by the Italian government, have taken over control of the band of international waters stretching to 30-40 sea miles south of Lampedusa, precisely the area in the sea where Italian fishing boats operate. In those same waters, the retreat of the positions of the Italian navy, which was previously deployed further south, also for the purpose of rescuing the big boats laden with migrants, and the wider scope for action in international waters afforded to motorboat patrols flying a Libyan flag (but were Italian military personnel not meant to be on board as well?) are curtailing the possibility of fishing, and hence of survival, of the entire fleet of Mazara del Vallo, in which, among others, several Tunisian workers take part. The Libyan military personnel have allowed themselves to enact an ironic action, reminding the last Mazara fishermen who underwent a confiscation and search and who were also blocked during their return journey to Italy, that the vessels that will lead Italian fishing units to Libyan harbours in

the future if they are caught more than 73 [sea] miles to the north of the Libyan border, will be the very motorboats supplied by Italy to combat “illegal” immigration.

4. In the concrete modes of execution of the measures for “readmission” into Libya (and with different modes, into Greece), one can furthermore appreciate a violation of the prohibition of collective expulsions (among which cases of collective refoulement must be included) decreed by art. 4 of Protocol 4 attached to the ECHR. That same prohibition has been reiterated by the European Union’s Charter on fundamental rights. Of course, it is a matter of cases in which it is not easy to provide documented evidence, and this is precisely why the refoulements are carried out “without any formalities” and, in any case, it is not easy to find independent lawyers in transit countries such as Libya or Tunisia, so as to enable the signing of a letter of attorney for a complaint or an appeal. This is why we call upon the responsibility of all the international bodies in charge of preventing, apart from punishing, fundamental human rights violations that operate in transit countries. Governments may still continue to ignore the decisions taken by international organisations, but sooner or later they will be held to account for the political and human consequences of their policies of refusal of entry and war against migrants. It may well be easy for states to make their bodies disappear through summary returns and mass deportations, but if traces of these abuses will remain in the form of complaints and detailed testimonies, sooner or later it will be possible those responsible for national (in)security to be brought to the stand as defendants.

Fulvio Vassallo Paleologo

Palermo University

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