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NO ONE SHALL BE RETURNED??

By Daphne Buellesbach

The conditions for migrants in North African countries with which the EC is negotiating readmission agreements for irregular migrants are unacceptable and disrespectful of the very standards the EC is claiming to hold up: respect for basic human rights.

“Under a readmission agreement, no-one shall be returned if this would entail the risk that the person concerned would be subject to persecution, torture or inhumane or degrading punishment. Should that happen, this is not a consequence of the readmission agreement, but of an illegal decision taken by the Member State concerned, which should be subject to judicial review by the national courts.” Dear, Ms. Malmstroem, Commissioner for Home Affairs in the EU, these were your words in a recent parliamentary debate (20.09.2010), where has the EC been in recent years when Italy has forcibly returned migrant boats to Libya?

The cooperation with the Libyan regime is one of the most appalling chapters of the EU's refugee policy. For years the EU and its Member States have been courting Muammar al-Gaddafi to block the escape routes to Europe. The EU institutions look away when Italy violates international and EU law thousandfold and returns boat people forcibly to Libya. Human Rights organizations have already called upon the EC under its former Commissioner Jacques Barrot to end these unlawful practices. The EC has done nothing against it and on the contrary is now set to conclude by the end of 2010 a readmission agreement with Libya, a country with a long standing track record of torture. The EC is seriously undermining its credibility on the question of human rights, the more so after it sticks to its readmission plans with Libya even after the latter has closed down the offices of the UN Refugee Agency (UNHCR) in June this year. Italian coast guards have returned more than 2000 boat migrants back to Libya since May 2009 where upon arrival most of them are put into detention camps. According to Pro Asyl, a German Human Rights Organisation, in those camps torture, exploitation and rape are not uncommon incidences.

The Europeanisation of the border regime

We have seen mass deportations of foreigners from Libya already in the 80s when the question of transit migration between Libya and Italy, and less so between Libya and the EU, has not even been on the agenda yet. In fact Europe deemed it to be incorrect to cooperate with Libya, a “rogue nation” and had economic sanctions and an arms embargo in place until 2004. Deportation measures had been taken autonomously by the Libyan regime, without pressure from outside European actors. In the past few years, however, the situation has changed. Deportations from Libya are now assumed on a regular basis: since 2003 Libya expulses around 50.000 people a year from its territory. This can certainly be put in connection with pressures from Europe, which have mainly been exerted by Italy directly but now increasingly so from Brussels as well. The EU invests into border management in Libya, in capacity building of border guards as well as the “voluntary return programmes”. Libya has thereby been included upon EU-Italian pressure into a regional, transcontinental migration regime. The effect of this development is twofold: first a “delocalization” is taking place, meaning a spatial shifting of borders and border control onto the territory of other countries. Secondly, a process of externalization can be observed, a partly hand-over of responsibility for control and “management” of the migration flows to other countries. The EU is investing heavily into a border control system at Libya's Southern border with Chad to enable Libya to intensify its border control capacities and for stopping migration flows further away from Europe.

Morocco, another (previously) traditional transit country has recently been given the promise of the EU of investments of around 60 Mio Euro in return for stepping up Moroccan border police and control mechanisms. The Moroccan Kingdom occupied until now the reputation of the nerd in the EU's migration policy coaching class for North African States. We can observe the same processes as in Libya, a strong capacity building element in the border control cooperation and a further delocalization of EU border controls onto Moroccan territory. As a matter of fact, Morocco has turned into a country of *immigration*: thousands of Sub-Saharan migrants are stranded on its Northern shores with hardly anywhere to turn to. Moroccan police is running a Sisyphus game with them instead: every migrant "illegally" residing in the country and picked up by police is deported into the no-man's land between Morocco and Algeria and everyone of them will walk back after nightfall into the nearest town in Morocco.

The humanitarian situation outside EU walls

Speaking to a MSF representative in Oujda, a town close to the Algerian border in Northern Morocco, the picture that he draws about the humanitarian situation of the migrants thought to be in transit here is devastating. "Women are worst off, in addition to the suffering of disorientation, hopelessness and hunger an extremely high percentage of them are being sexually abused." MSF has conducted a study on violence against sub-Saharan migrant women in Northern Morocco earlier this year: of 63 women questioned, 29% said they were raped in their country of origin, 45% during the journey and 59% in the no man's land between Morocco and Algeria. A third of these women became pregnant as a consequence. In the no man's land the Mafia of human smugglers and drug lords has taken over control. The Moroccan police knows exactly about the situation in this lawless zone, but the area seems to be used as a deterrent against migrants.

Last year MSF has carried out 5231 medical treatments in Oujda and through its close contact to the community has managed to get an overview of destinies and gruesome details. In 25% of the investigations there was no obvious medical issue to be observed but rather patients showed signs of extreme psychological stress. For a psychological treatment, however, MSF lacks the facilities; they have no alternative than to send the patients back.

Delegates of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CTP) visited Libya in July 2009 and confirmed the concerns put forward by human rights organisations about the situation in Libya. In their report published in April 2010 the CPT "urges the Italian authorities to substantially review forthwith the current practice of intercepting migrants at sea, so as to ensure that all persons within Italy's jurisdiction – including those intercepted at sea outside Italian territorial waters by Italian-controlled vessels – receive the necessary humanitarian and medical care that their condition requires and that they have effective access to procedures and safeguards capable of guaranteeing respect for the principle of non-refoulement." It is telling that not a single EU member state leveled overt criticism at Italy.

Is this what we, European citizens, want?

"If we want migration and asylum policy to be credible to European citizens, it must be based on the principle that those who do not have a legal right to remain in the territory are returned. This is where readmission agreements come in. They facilitate the return of persons staying irregularly in the country of origin or transit and they are agreements between administrations stipulating the procedures to be followed." (Cecilia Malmstroem in the same debate, 20.09.2010) Is this what we want? Do European citizens want people to be returned to countries where their rights are violated and where they face unacceptable, inhumane treatment? Could we suggest instead that the EU first fulfills its guarantee of access to procedures and safeguards capable of guaranteeing respect of the principle of non-refoulement? Let us take you by your own words: "The EU's asylum instrument requires that Member States assess each

application for asylum individually, guaranteeing that the applicant remain on the territory until the authorities have taken a decision on the said application, and then they must provide for an effective remedy before a court or a tribunal” (ibid).

Please do the reality check Ms. Malmstroem - on a daily basis the non-refoulement principle is being drowned somewhere into the Mediterranean Sea.