



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Ref: CommHR/INM/sf 0345-2017

Mr Marco MINNITI
Minister of the Interior of Italy

Strasbourg, 28 September 2017

Dear Minister,

I am writing to you regarding your government's response to the crossing by sea of migrants, including asylum seekers, from North Africa, in particular Libya, to Italy. First of all, I wish to express my sincere appreciation over Italy's efforts in saving lives at sea and in receiving migrants arriving at its shores in the last years. In this respect, I also welcome the recent adoption by the Italian government of a national action plan on the integration of beneficiaries of international protection. I am well aware of the challenges Italy is facing and will continue to impress upon other European states the importance of solidarity to ensure that Italy and other states of first arrival are not left to deal with this situation alone.

At the same time, in facing these challenges, it is imperative that states protect and safeguard the human rights of migrants stemming from, among others, the European Convention on Human Rights ("the Convention"). In this respect, my attention has been drawn to a change to Italy's maritime operations in the Central Mediterranean. It is my understanding that the Italian government, at the invitation of the Libyan Government of National Accord, has deployed ships in Libyan territorial waters, with the stated aim to support the Libyan authorities in curbing migrant flows. In this context, I would like to share with you some observations, and request clarification on certain points.

In 2012, the Grand Chamber of the European Court of Human Rights ("the Court") delivered its judgment in the case of *Hirsi Jamaa and others v. Italy* (Application no. 27765/09). This judgment has become the benchmark for the protection of the human rights of migrants intercepted at sea. The Court found, *inter alia*, that difficulties Member states face in coping with the increasing influx of migrants by sea cannot absolve a state from its obligations under Article 3 of the Convention, which prohibits the exposure of persons to torture or inhuman or degrading treatment or punishment. The Court emphasised the absolute nature of this prohibition. It also noted that numerous reports by international bodies and non-governmental organisations "paint[ed] a disturbing picture of the treatment meted out to clandestine migrants in Libya". The Court found Italy in violation of Article 3 when returning intercepted migrants to Libya, whilst it knew or should have known that those persons would be exposed to treatment contrary to Article 3. Following the judgment, I was pleased to note Italy's commitment to stop returning to Libya persons intercepted at sea.

Although the *Hirsi Jamaa* judgment deals with interceptions in international waters, the Court's findings continue, in my view, to be relevant also in the context of the situation which might arise from operations in Libyan territorial waters. In light of recent reports from the United Nations and various non-governmental organisations on the current human rights situation of migrants in Libya, which paint a picture that is, in my view, no less disturbing than in 2012, handing over individuals to the Libyan authorities or other groups in Libya would expose them to a real risk of torture or inhuman or degrading treatment or punishment. The fact that such actions would be carried out in Libyan territorial waters does not absolve Italy from its obligations under the Convention. Indeed,

on several occasions, the Court has found that obligations arising from the Convention may, under certain circumstances, also apply when a state party is acting wholly on the territory of a third country. This may be the case when a state party to the Convention exercises effective control or authority over an individual on the territory or in the territorial waters of another state. Such a situation may, in my view, arise, when Italian vessels intercept or rescue migrants in Libyan territorial waters.

In light of the above considerations, I would be grateful if you could clarify what kind of support operations your government expects to provide to the Libyan authorities in Libyan territorial waters and what safeguards Italy has put in place to ensure that persons, should they be intercepted or rescued by Italian vessels in Libyan territorial waters, are not subsequently exposed to a situation in which they would face a real risk of treatment or punishment contrary to Article 3 of the Convention.

In addition, in the light of the recently adopted Code of Conduct for non-governmental organisations involved in migrants' rescue operations at sea, I would appreciate any information you may provide about measures to ensure that search and rescue operations in the Mediterranean, including those conducted by non-governmental actors, can continue to be carried out effectively and in safety.

I look forward to receiving your reply and continuing a constructive dialogue.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Nils Muižnieks', followed by a long horizontal flourish.

Nils Muižnieks