

Ref: CommHR/DM/sf 003-2023

Mr Matteo PIANTEDOSI
Minister of the Interior of Italy

Strasbourg, 26 January 2023

Dear Minister,

As Council of Europe Commissioner for Human Rights, my mandate is to foster the effective observance of human rights in all 46 member states of the Council of Europe. To this end, I engage in dialogue with the governments of member states to assist them in addressing possible shortcomings in their laws and practices. The human rights of refugees, asylum seekers and migrants are a central thematic area of this work. I am therefore writing to you concerning the Decree-Law no. 1/2023, which was issued on 2 January 2023, and whose conversion into law I understand is to be discussed by Parliament soon. The new Decree provides a regulatory framework for NGO vessels carrying out search and rescue operations at sea. I am concerned that the application of some of these rules could hinder the provision of life-saving assistance by NGOs in the Central Mediterranean and, therefore, may be at variance with Italy's obligations under human rights and international law.

Namely, the Decree provides that vessels having carried out a rescue should reach the port assigned for disembarkation without delay. This provision, however, risks being applied in such a way that it could prevent effective search and rescue by NGO vessels. As has already happened in practice, the provision prevents NGOs from carrying out multiple rescues at sea, forcing them to ignore other distress calls in the area if they already have rescued persons on board, even when they still have capacity to carry out another rescue. By complying with this provision, NGOs' shipmasters would in fact fail to fulfil their rescue duties under international law.

I also note with concern that, in practice, NGO vessels have been assigned distant places of safety, such as ports in Central and Northern Italy. This prolongs the suffering of people saved at sea and unduly delays the provision of adequate assistance to meet their basic needs. It unnecessarily exposes the people onboard to the potential dangers of adverse weather conditions. Prolonged stay onboard tends to lead to the rapid deterioration of the health situation of all involved, and risks exacerbating the condition of vulnerable individuals onboard.

It is my understanding that the adoption of this practice stemmed from the intention to ensure a better redistribution of migrants and asylum seekers on the national territory. This objective, however, could be met by swiftly disembarking those rescued, and making sure that alternative practical arrangements to redistribute them to other parts of the country are put in place.

In addition, the vagueness of the notion of 'compliance with technical requirements' included in the text of the Decree could result in lengthy and repeated security inspections of NGOs' vessels, preventing them from resuming their life-saving work. As a member state of the Council of Europe, Italy is expected to create a safe and enabling environment for human rights defenders, including NGOs saving human lives at sea. When any issues about compliance with technical or administrative requirements arise, these should be solved in a co-operative spirit, allowing the vessel to resume its operations as quickly as possible.

Due to the reduction in state-operated search and rescue operations at sea, NGOs have been providing invaluable assistance to member states in preserving human life at sea. The implementation of the Decree, paired with the practice of assigning distant places of safety, will have the foreseeable consequence of depriving the deadliest migration route of the life-saving assistance provided by NGOs. Therefore, I call on your government to consider withdrawing the Decree, or alternatively, to accommodate all the necessary changes in the upcoming parliamentary debate to make sure that the text fully complies with Italy's obligations under human rights and international law.

I would like to draw your attention to my [Recommendation on the Central Mediterranean](#), as well as its [follow-up report](#), where I underlined that states have clear obligations in relation to people found in distress at sea, which may also include intervening in, or coordinating, rescue operations beyond their own search and rescue region, as necessary. I also noted that a rescue operation can be deemed concluded only by ensuring the swift disembarkation in a 'place of safety', and that the 'safety' of the destination should be consistent with international human rights and refugee law.

The Memorandum of Understanding with the Libyan Government of National Accord, which will be automatically renewed on 2 February, plays a central role in facilitating the interceptions of refugees, asylum seekers and migrants at sea, and their subsequent return to Libya. Notwithstanding the considerable evidence documenting grave human rights violations faced by refugees, asylum seekers, and migrants in Libya, no concrete action has so far been taken to address this issue. Therefore, I take the opportunity to [reiterate my call](#) to suspend cooperation with the Libyan Government on interceptions at sea, and to make any future co-operation activity with third countries in the field of migration conditional on comprehensive human rights safeguards as set out in my above-mentioned Recommendation.

Finally, I would appreciate receiving information about the allegations raised in recent media reports regarding the existence of a practice of returning persons from Italy to Greece on private ships, where they are reportedly deprived of their liberty in very worrying conditions, and without having had a chance to submit an asylum claim in Italy. I recall that, in 2014, the European Court of Human Rights, in the case *Sharifi and others v Italy and Greece*, found multiple violations of the European Convention on Human Rights in relation to practices that appear to be very similar to those recently reported. As I explained in my [Recommendation on ending pushbacks in Europe](#), carrying out individual assessments of the circumstances of each person arriving at a border remains a crucial tool for securing effective protection against *refoulement* and preventing collective expulsions.

Last but not least, I commend the extraordinary efforts undertaken by the Italian authorities to save lives at sea. I am also aware of the significant challenges faced by those countries which, like Italy, are at the forefront of migration movements to Europe. Let me assure you that I will continue to call for more solidarity from other Council of Europe member states, including through responsibility sharing for adequate rescue capacity and relocation of those rescued.

I look forward to receiving your response and to engaging in a constructive dialogue aimed at strengthening the enjoyment of human rights in Italy, on these and on other relevant matters, in a spirit of sincere cooperation.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a stylized flourish at the end.

Dunja Mijatović