



European Civil Liberties Network

Essays for civil liberties and democracy in Europe

Lampedusa - a test case for the subcontracting of EU border controls

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The culture of human rights probably represents the only authentic European wealth: unfortunately, the current situation places its effective implementation in danger, and the risk of a considerable number of people not having access to fundamental rights is growing.

From this perspective, the situation of migrants and even more so asylum seekers gives rise to serious concern in Europe, and future prospects are even more worrying. The issue of “security” and the fight against terrorism, are relentlessly lowering the minimum threshold of guarantees concerning fundamental freedoms, building up an ever-higher barrier between Europe and a mass of desperate people who, for numerous reasons such as terrible conflicts, unbearable conditions of poverty or the destruction of the most elementary human rights, look to the European continent in the hope of finding better conditions for their existence. The dramatic images of the “assault” at the fences of Ceuta and Melilla in the last few days are incredibly symbolic of the intolerable closure of Europe and cannot fail to make the blood of any democratic soul boil up in disdain.

It is inconceivable that the only answer that Europe and the European states are capable of mustering is merely in terms of repression and a further tightening of measures for removal.

And, particularly with regards to asylum seekers, we are witnessing an incredible paradox: on the one hand we have a series of fundamental conventions on human rights which reaffirm undeniable principles of care and assistance; while on the other, the procedural systems adopted by states appear to have been drawn up precisely to nullify their effectiveness, as if the culture of human rights

were an annoying burden and, thus, would best be confined to a purely theoretical sphere.

At the present time, the situation in Italy is worse than ever. The changes that have been introduced into the basic law on migration by the so-called Bossi-Fini law (L. 189/2002), which was relentlessly pursued by the xenophobic Lega Nord party as well as by the right-wing government, have treated expulsion as the only means of governing the phenomenon of immigration. Thus, the law envisages several forms of immediate expulsion from the territory (i.e. loss of employment gives rise to the failure to renew a residence permit, apart from a brief six-month period, after which the foreigner is immediately expelled from the territory), detention centres (so-called CPTs) for individuals who are awaiting the execution of their expulsion, and new criminal offences that are subject to extremely heavy punishment for people who, having received the order to abandon the territory of the state within five days, do not comply with the order, and so on.

The dramatic attacks in London have immediately led to the introduction in Italian legislation of a new form of expulsion, envisaged in the so-called Pisanu decree, named after the current interior minister. This norm allows (and, in fact, it has already been used) the immediate expulsion by the minister or prefetto (local police chief) of a person who “may, in any way, assist terrorist organisations or activities”. Against this measure, only an appeal before the Tribunale Amministrativo Regionale (Regional Administrative Court) is allowed, limited to considerations about the legal procedure, and any possibility of the expulsion being suspended is explicitly

excluded. It is obvious that in this way measures adopted by the police are withheld from any form of judicial oversight. Likewise, the new law in the field of asylum envisages fast-track procedures and the detention of the asylum seeker, almost in the totality of cases, in “identification centres” set up specifically for this purpose, which lack any form of judicial control.

In reality, the central problem continues to be that of effective access to the proceedings. In fact, that is a moment when the asylum seeker is especially alone, without knowing his or her rights, while the discretionary powers of the border police to either consider them an illegal migrant or an asylum seeker and, consequently, to allow them to undergo proceedings, essentially, are not subject to any controls.

The situation is dramatic for those people who disembark on the Italian coasts, and particularly in the Sea of Sicily: from this perspective, the case of the island of Lampedusa takes on an increasingly symbolic character.

Lampedusa is a small island that lies far to the south of Sicily, a real paradise for tourists which, however, is becoming hell-like for thousands of desperate people who try to reach European territory.

Particularly in recent times, as a result of the dramatic conditions in which countries in the sub-Saharan band lie, and of conflict in the Horn of Africa, masses of boat-people who have experienced incredible vexation attempt the crossing of the Mediterranean. The shipwrecks are extremely numerous and that part of the sea has, by now, turned into an enormous cemetery, in the midst of a far from blameless silence of the civilised European community.

However, the future that the “lucky ones” who manage to reach the island face is laden with hardship. The arrivals constantly follow each other, in spite of agreements that have been reached, for this purpose, between Italy and Libya, with the goal of preventing the persistence of this phenomenon.

During the first week of 2004, the Italian authorities directly deported over 1,500 people who had fled their countries and had disembarked in Lampedusa directly to Libya: without even trying to hide the fact from public

opinion, the Berlusconi government organised several flights using special planes to carry the foreigners back to Libyan territory.

The violation of the general principles of the Geneva Convention on refugees and of the Convention on Human Rights is blatant, and this is also the case in relation to the carrying out of collective expulsions: these removals took place without any control by judicial authorities, even though it is required by the basic law on immigration. The individuals who had disembarked have been treated as ordinary irregular migrants, in spite of the fact that many of them came from sub-Saharan areas and from the Horn of Africa.

In spite of the vibrant protests by numerous NGOs, the Italian government relentlessly continued its policy and in March of this year, following another series of large-scale arrivals, after a few days detention in the detention centre in Lampedusa, it organised several more deportation flights to Libya, once again.

The situation reached such dramatic peaks that some NGOs presented a complaint to the European Commission against the Italian government. The Commission said it had no competence to intervene, even though, in the European Parliament, a motion to condemn the actions of the Italian government was agreed. Moreover, in the month of May the European Court of Human Rights in Strasbourg suspended, using an urgent procedure, the expulsion of eleven people who had left their countries and had managed, in spite of thousands of difficulties, to file these appeals.

One of the decisive problems is the extreme difficulty for someone to get in contact with the people inside the centre: the conditions of complete isolation make a real control over the actions of the police forces impossible. And in spite of the parliamentary questions asked from the ranks of the opposition, the government has always answered evasively, denying any responsibility.

Even from a strictly legal perspective, the absence of a means of appeal to suspend the removals renders the effectiveness of the work of the defence absolutely in vain, because it is obvious that once the expulsion has been carried out, the possible forms of appeal remain on a purely theoretical footing.

The seriousness of the situation is all the more dramatic as a result of the fact that the removal has been executed, as mentioned above, with flights to return into Libyan territory. In April of this year, the report of a technical mission carried out by the European Commission in Libya in relation to the phenomenon of illegal immigration was published: even though it was an official mission and therefore, any element of surprise was lacking, some of the points of this document are particularly significant. The mission, which took place over the end of November and the start of December 2004, firstly highlights that Libya has not adhered to the Geneva Convention on refugees nor to the Protocol of 1967, having only ratified the OAS Convention and that, in spite of the fact that the Libyan Constitution envisages a sort of protection for refugees, in reality there is no administrative body that is responsible for this problem, nor does the UNHCR have any powers to enter the detention camps.

The mission has been able to visit the detention centres, but expressly stresses that “no information on specific procedures and criteria for detaining individuals was provided by the Libyan authorities”, and that “many of the illegal immigrants met in the centres appear to have been arrested on a random basis”.

The centres for long-term detention, according to the Commission, “can be assimilated to prisons” and in many cases nourishment for detainees is limited to bread and water.

It is striking to note that none of the detainees who were spoken to had a minimum understanding of how long their detention would last, nor had they ever been given any information on the applicable legal procedures, while on the other hand the report also highlights that the Libyan authorities themselves had been rather evasive about this point.

Due to its position in the Mediterranean, Italy specifically stipulated a bilateral agreement with Libya in 2000 to combat terrorism, organised crime, drug trafficking and illegal immigration: in particular, concerning this last issue, from 2003 a “permanent liaison” has been operative between the two countries. The report confirms that Italy has financed a programme of repatriation flights from Libya to the countries of origin (including, for example,

Eritrea), as well as funding, in 2003, the construction of a detention camp for illegal migrants whose construction had already started in late 2004, and “in the financial exercise 2004-2005 a special allocation is foreseen for the development of two more camps in the south of the Country, in Kufra and Sebha”.

In 2003, it was again Italy that provided a long list of materials: and it is incredible to see that the list includes “1,000 sacks for corpses transport”. The cynical awareness of the tragedy leaves one speechless.

It is very difficult to think that what happens in Lampedusa occurs by chance: rather, it appears as though it is a kind of test for a new path in the control of migration flows and policies on asylum. In fact, the European Union has already repeatedly sent out signals looking to strip itself of any responsibility by subcontracting border controls beyond its frontiers. The policy of externalising border controls can be simplified by dividing it into two main trends: on the one hand, the installation on the other side of the European borders of transit camps or screening centres, and on the other hand, the placing of a burden on third countries for part of the European Union’s policy in the field of immigration and asylum, in the framework of cooperation policy, in accordance with the principle of burden sharing and of protection in the areas closest to the regions of origin. It is obvious that with these prospects, if migrants and asylum seekers could be locked up in camps outside Europe and only afterwards, following a sort of screening, some of them were to be able to enter the Union’s territory, this would mean the elimination of the forms of democratic control that still persist, even though, of course, there would be no lack of the usual “assurances” on the maintenance of minimum standards of legal guarantees.

The official funding provided by Italy for the centres in Libya is far more than a simple sign pointing in this direction.

It is worth remembering that an equivalent situation is becoming reality in eastern Europe, where Ukraine has set up detention centres for migrants, in disastrous conditions, undertaking the “dirty work” of stopping the flow of people without the burden of complying with human rights conventions.

It is also necessary to stress that in spite of agreements with the Libyan government, the arrivals in Lampedusa continue as, unfortunately, do the shipwrecks. Also, in September, dozens of migrants arriving from the Horn of Africa have died at sea, joining God knows how many more, whose name and face we don't know and haven't seen...

In the month of September, at the behest, among others, of NGOs, a delegation from the European Parliament visited Lampedusa. In spite of the fact that when it arrived, the delegation only found 11 persons in the detention centre (the maximum capacity is of 190 places, but it has reached peaks of over a thousands detainees), the conclusions in the report have expressed serious concern about the expulsions that were carried out to Libya by the Italian government, stigmatising the inadequacy of the centre and the absence of transparency on the part of administrative authorities in relation to the true legal status of the persons held therein. Finally, a formal report is requested concerning the mission to Libya for the control of the detention camps.

But precisely in these early days of October, a serious scandal is affecting the Lampedusa detention centre: a courageous journalist, pretending to be a refugee, was detained in the centre, and told about the incredible violations that occurred, the frightening conditions, the verbal abuse and racist acts committed by members of the police forces, all of which went on without any control by the judicial authorities.

From this point of view, the very island of Lampedusa already constitutes, through its mere distance, the difficulty of access and oversight and the free rein given to police bodies, a piece of European territory that has been "externalised".

On the other hand, the new proposed European Directive on minimum procedural standards in the field of asylum attempts to codify [in law] a

concept of safe country of origin that is based on general assumptions, proposing the adoption of a common list, with fast-track procedures that effectively exclude the legal possibility of suspending expulsion proceedings. If they are finally approved, such norms would completely undermine the principle of "non-refoulement".

It is certainly difficult to know how to react when faced with the establishment of such a system for the barbarisation of the basic principles of human freedom: maybe the knowledge, information and constant interaction between different forces that complement each other, such as lawyers, political and social subjects, and so-called civil society, can implement the forms of behaviour that are able to avert the danger of the very foundations of democratic society being uprooted, in their respective milieux.

To keep one's bearings, it is worth remembering what Norberto Bobbio, the most distinguished Italian philosopher of law, argued, namely that the true difference between a democratic and a non-democratic regime is, basically, only one: while the latter is an "exclusive" kind of regime, a democratic regime, on the contrary, is of an "inclusive" type, meaning that it leans towards the inclusion of all individuals in the enjoyment of fundamental rights.

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