



6.9.2011

NOTICE TO MEMBERS

Subject: Petition 0870/2009 by Christina Corbani (Italian) concerning migration flows in Libya in the context of bilateral agreements between Italy and Libya

1. Summary of petition

The petitioner maintains that the Libyan police is using force to halt immigrants bound for Europe and criticises Italy's role in this connection, maintaining that it has, since 2004, been providing financial and technical aid to Libya in order to control the flow of illegal immigrants. She calls for an investigation by an independent international committee into the treatment of immigrants in Libya in the context of bilateral agreements. She indicates that the direct and indirect responsibility of Italy should also be investigated with a view to a possible ban on the extension of these bilateral agreements, and that cooperation with Libya should be placed in a European and international context. The petitioner also calls for an international humanitarian mission to be sent to Libya in order to investigate at first hand conditions in prisons and in immigrant detention camps.

2. Admissibility

Declared admissible on 16 October 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 6 September 2011

The following observations of the Commission refer only to the situation which existed in Libya, and the relations and cooperation developed between this country and the international community, in the year 2009, at the time of the presentation of the petition, and which continued, though with several evolutions, until the first half of February 2011.

They therefore do not take into account the completely different situation which has been

developing in the country as of the second half of February 2011, and which is continuously evolving.

Commission's observations

Libya, already a very important destination country for thousands of migrants from North Africa and Sub-Saharan Africa countries, has over the course of the last ten years increasingly become a key transit country for migrants wanting to cross the Mediterranean and irregularly enter the territories of Italy and Malta.

The Libyan authorities initially reacted to this phenomenon in a passive manner, and even contributed to it by allowing it to grow dangerously. This phenomenon reached a peak in 2008, when within a single year around 40,000 irregular migrants were apprehended by the Italian and Maltese authorities either in their territorial waters or on the shores of their countries, with many others managing to avoid interception or drowning at sea.

In 2009, this phenomenon suddenly decreased to almost zero, following the entry into force in May that year of an Italian-Libyan bilateral agreement. On the basis of that agreement, the Libyan authorities, with Italian support, started to effectively and systematically patrol their coasts and territorial waters, with the aim of preventing attempts by migrants to irregularly leave the country and head towards the European Union. In addition, many smugglers and facilitators were arrested in Libya.

Although successful in stopping irregular departures and arrivals, the Italian-Libyan bilateral cooperation did not foresee nor adequately address another, inter-related issue of great importance and at the centre of the petitioner's interest, namely the question of the treatment of irregular migrants in Libya.

On the basis of reports from several national and international organisations and individuals that are operating in Libya or have collected information on the situation in the country, and through direct visits and contacts by the European Commission (*for instance on 4 October 2010 Commissioners Malmström and Füle, during their first visit to Libya, were also allowed to visit the detention centre for irregular migrants located in the city of Al-Koufra*) it appeared that the migrants arrested by the Libyan authorities for their illegal crossing of the borders or because of their lack of a regular residence in the country, were treated by the Libyan police in a manner incompatible with international standards.

In general, this seemed to be rather linked to structural defaults, such as the fact that Libya had not yet developed specific human rights-based legislation on aliens and on detention, that staff dealing with migrants and detainees were not trained and motivated to operate in accordance with international standards, that the reception facilities where migrants were detained were in very poor condition and received very limited funding, that the overall living conditions in the provinces, where most of the apprehensions and detentions took place, (because they were located in desert and under-developed areas) were poor and harsh.

Over the past years, the European Commission has been trying to persuade Libya to cooperate in the prevention of irregular migration, and at the same time, also to accept making progress in the treatment of irregular migrants intercepted by its law enforcement agencies.

In 2009 and 2010, the Commission has made serious efforts on the latter point at several levels:

First of all, the Commission has funded projects, implemented in Libya by the Italian Ministry

of Interior and by international organisations such as the United Nations High Commissioner for Refugees, the International Organisation for Migration, the Italian Council for Refugees, the international organisation "Peace, Care and Relief", and the International Centre for Migration Policy Development. These projects –in which Libyan authorities were not directly involved, but which they rather accepted to tolerate– have contributed to enhancing the Libyan authorities' awareness of the need and the modalities to treat migrants in accordance with higher standards and to respect their fundamental rights, to provide legal and material support at least to migrants in need of international protection or belonging to vulnerable categories or being ready to cooperate and to return back home voluntarily, as well as to improve the reception conditions in at least some detention centres.

Secondly, on 4 October 2010 Commissioners Malmström and Füle signed a Cooperation Agenda with the Libyan Ministers of External and Internal Affairs, Mr Moussa Koussa and Mr Yunis Al-Obeidi. The Cooperation Agenda listed a series of issues and initiatives on which the two sides expressed readiness to discuss and possibly to cooperate. The document also foresaw the idea that the two sides may directly and formally cooperate in "*providing decent treatment, reception and assistance - in line with international standards - to irregular migrants intercepted or readmitted or to be returned by Libyan authorities, or stranded in Libya, with focus on migrants belonging to vulnerable categories (like unaccompanied minors, victims of trafficking, pregnant women, and families with small children)*", in "*offering assisted voluntary return home to irregular migrants intercepted or readmitted or to be returned by Libyan authorities, or stranded in Libya or in the countries of origin, as well as offer support for their social and professional reintegration*", and in carrying out "*search and rescue operations aimed at saving lives of migrants in the desert or on high seas*". The European Commission and the European External Action Service have taken initiatives to persuade the Libyan authorities to start implementing these provisions of the Cooperation Agenda.

Thirdly, the European Commission, on behalf of the European Union, has negotiated with Libyan authorities a Framework Agreement which, if and once approved, should also include clear provisions engaging the Libyan side to respect the principle of non-refoulement, to adopt and implement legislation on asylum in line with international standards, and to respect the human rights of migrants.

Conclusion

Based on the available information, the European Commission believes that in 2009 and 2010 Libya was not treating migrants in line with international standards and was very concerned by this situation.

The Commission started concrete initiatives to address this issue and openly proposed to the Libyan authorities to develop cooperation and to provide them with technical support for their overall migration management system, as well as to provide humanitarian assistance for the migrants and refugees.

The Commission believed that in this manner and in the medium term, some progress could be achieved, on the condition however that the Libyan authorities would accept to deepen their dialogue and cooperation with the EU.

All relations and cooperation with Libyan authorities have however ceased in February 2011.

Since the entry into force of the Italian-Libyan agreement in May 2009, reportedly the Libyan authorities ceased to tolerate the irregular departures of migrants from their coast and started to apprehend and detain those attempting to do so.

On the other hand, based on the available information about the contents of the Italian-Libyan bilateral agreement, there is no proof that the agreement has directly produced a worsening of the modalities on the basis of which the Libyan authorities used to treat the irregular migrants they apprehended on their territory.