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الأورو-متوسطية للحقوق

## *Return Mania. Mapping policies and practices in the EuroMed Region*



### Chapter 4

## The Policy of Forced Returns Between Italy and Tunisia

*April 2021*

Rue des Comédiens 22, 1000 Bruxelles, Belgium, T +32 2 513 37 97

Email [information@euromedrights.net](mailto:information@euromedrights.net) – Website: [www.euromedrights.org](http://www.euromedrights.org)

## Acknowledgment

This chapter is part of a wider research work, coordinated by EuroMed Rights, which aims at providing an overview of the current return policies and practices in the Euro-Mediterranean region by sharing testimonies and examples of these policies. It highlights the similar trends adopted across the region and sheds light on the violations of human rights entailed by this “return obsession” and which is shared across Member States, EU institutions and third countries alike.

EuroMed Rights wish to thank all the people - experts, stakeholders, interviewees - who contributed to the finalisation of this report. A special thanks goes to the researchers for their extensive and detailed analyses and their unwavering commitment in seeking evidence and justice for human rights violations.

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## Executive Summary

Cooperation in migration matters between Tunisia and Europe is dominated by (bilateral) agreements with EU member states. Regarding returns, and particularly forced returns, Italy is first with six readmission agreements. The most recent has reportedly been concluded in August 2020. But Italian migration diplomacy does not stop at the level of agreements, concluded or to be concluded. It also extends to the exercise of pressure leading Tunisia to review its migration policies. The main Tunisian instrument in the fight against illegal emigration is the result of this pressure. Indeed, the Organic Law No 2004-6 of February 3, 2004, was seemingly adopted at the insistence of Italy in exchange for economic support for Tunisia. This law mainly aims to criminalize departures from Tunisia. What followed was Tunisian case law that has not been harmonised. Overall, this case law weighs heavily in favour of its more oppressive characteristics.

For its part, Italy has put in place forced return procedures that violate the human rights of migrants, based on a system of weekly quotas for Tunisian citizens to be expelled. These practices, which seriously compromise the protections provided for the exercise of the right to asylum, seem to show an underlying desire to leave Tunisian migrants in a total information vacuum aimed at preventing them from leaving, and from taking any steps to assert their rights - such as access to international protection or to a lawyer - or to oppose or delay the immediate return process desired by the Italian authorities. And even if an appeal is brought against these decrees, it has no suspensive effect on the execution of the return.

Once in the country and upon their arrival at the airport, the “returnees” face a total lack of support from the Tunisian authorities, which likely reinforces their physical, psychological, economic and social vulnerability.

## I- The bilateral readmission agreements between Italy and Tunisia

In migration matters Tunisia is under double pressure: from the EU and from its member states.

At the European level, Tunisia concluded a political agreement on the partnership for mobility in March 2014, which should lead to the conclusion of two agreements: **the first on readmission** and a second on **the facilitation of visa formalities**. However, negotiations on these two agreements currently appear to be at a standstill. Civil society has expressed its opposition to any attempt to make the freedom of movement of individuals conditional on the signing of readmission agreements<sup>1</sup>.

The situation is markedly different between Tunisia and the EU Member States. A number of countries have repeatedly concluded readmission agreements. Italy leads with six readmission agreements, most recently the one signed in August 2020.

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<sup>1</sup> EuroMed Rights, State of Human Rights in Tunisia (2017). <https://www.euromedrights.org/wp-content/uploads/2017/01/2017-01-16-EuroMed-Droits-Note-finale-en-vue-du-SCDH-2017.pdf> (FR)

The first immigration cooperation agreements between Italy and Tunisia date from the 1990s and have evolved haphazardly according to political contingencies. Most of these agreements, worked out at the level of memoranda of understanding and operating protocols, retain an informal character, far from transparent and often private<sup>2</sup>. From a legal point of view, this situation is problematic. In addition, the vast majority of these agreements were stipulated in a simplified form although they are international treaties that are political in nature, which extracts them from parliamentary control and are therefore carried out in violation of the domestic law of the two countries.<sup>[i]</sup>

The first readmission agreement between Tunisia and Italy dates back to August 6, 1998. This agreement, which entered into force on September 23, 1999, was called "*Exchange of notes between Italy and Tunisia concerning the entry and readmission of persons in an irregular situation*". It provided for technical and financial assistance from Italy aimed at supporting Tunisian efforts in the fight against "irregular" immigration, as well as funding for the creation, on Tunisian territory, of detention centres in exchange for annual quotas for regular entry into Italy of Tunisian workers.<sup>[ii]</sup> In a tense international climate marked by the terrorist attacks of 2001, the Italian Minister of the Interior Giuseppe Pisanu and his Tunisian counterpart Hedi M'Henni on December 13, 2003 signed an agreement on police cooperation providing technical assistance from Italy to maritime border control training of Tunisian police forces. In exchange, a few days later, Italy pledged to increase entry quotas for Tunisians to Italy, increasing from 600 to 3.000 people per year.<sup>[iii]</sup>

In response to this steady increase of the flow of Tunisian migrants arriving in Italy, a third agreement was signed in 2009 by the interior ministers of the two countries. This provided for an accelerated readmission procedure for Tunisian migrants without a residence permit, bringing the readmission of readmitted Tunisians from 4 or 5 per month to around 200.<sup>[iv]</sup> It should be noted that, within the framework of this agreement, Tunisia undertook to take back its own citizens as well as third-country nationals who had entered illegally into Italian territory from the Tunisian coast. For its part, Italy agreed to finance the creation of detention centres in Tunisia.<sup>[v]</sup>

Following the fall of the Ben Ali regime, around 22.000 Tunisians landed on the island of Lampedusa during the first months of 2011. This situation led the then Italian Prime Minister to declare a state of humanitarian emergency and to urge his Tunisian counterpart to strengthen maritime border controls against departures, but also to agree to increased expulsions from Italy.<sup>[vi]</sup> This is the meaning of the agreement signed on April 5, 2011.<sup>[vii]</sup>

According to the European Court of Human Rights (ECHR), a press release published by the Italian Ministry of the Interior on April 6, 2011 specified that "Tunisia has undertaken strengthening the control of its borders with the aim of avoiding new departures of illegal immigrants, using the logistical means made available by the Italian authorities. In addition, Tunisia undertook to accept the immediate return of Tunisians who arrived irregularly in Italy after the date of conclusion of the agreement. Tunisian nationals could be repatriated through simplified procedures, providing for the simple identification of the person concerned by the Tunisian consular authorities".<sup>[viii]</sup>

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<sup>2</sup> For a brief explanation of the process of ratification of international treaties in Italy and Tunisia, see the statements of Antonio Manganella, Mediterranean Regional Director of Avocats sans Frontières, in an article by Arianna Poletti, *Tra le righe dell'accordo tra Roma e Tunisi*, October 1, 2020, Tunisia in Red, <http://www.tunisiainred.org/tir/?p=8166>

In return, the Italian authorities granted "temporary humanitarian staying permits" to all Tunisian migrants who arrived irregularly in Italy between the beginning of January 2011 and April 5 of the same year.<sup>[ix]</sup> This 2011 agreement has been repeatedly identified by Italy as the legal basis of mass expulsions taking place today. It therefore seems likely that the figures for forced returns, which Italy claims to have agreed with Tunisia, stem from successive informal agreements that are inaccessible to the public and are constantly evolving.

During the visit of the Tunisian head of state to Italy at the beginning of 2017, a roadmap on the issue of migration was defined. This new agreement was also accompanied by a joint declaration signed by the foreign ministers of the two countries aiming at establishing, among other things, a concerted management of the migration phenomenon with the aim of strengthening the fight against irregular immigration through more effective controls of maritime borders. In any case, in February 2017, the media indicated that 1.500 Tunisian nationals in an irregular situation in Italy had been returned to their country.<sup>3</sup>

The renewed increase of sea crossings, especially during the health crisis linked to the Covid-19 pandemic, prompted Italy and the EU to put pressure on Tunisia in order both to strengthen the mechanisms for controlling departures and agreeing to double the number of forced returns. In fact, since spring 2020, Tunisia has recorded an exceptionally high number of departures of its nationals to the Sicilian coasts of Italy as well as to the island of Lampedusa. The vast majority are young men between the ages of 20 and 25.<sup>[x]</sup> According to official data from the Italian government, more than 12.430 Tunisian migrants arrived irregularly in Italy between January and November 2020.<sup>[xi]</sup> To this figure can be added 11.900 migrants intercepted at sea during the 999 patrol operations along the coasts and immediately brought back to Tunisia.<sup>[xii]</sup> The reasons for this increase in departures are manifold, but above all relate to the underlying political, social and economic crisis in Tunisia, which has deteriorated substantially due to the health crisis linked to the Covid-19 pandemic.

Following the influx of Tunisian migrants arriving on its coasts, Italy has stepped up diplomatic exchanges with Tunisia. In the space of two months, on July 27 and August 17, 2020, two ministerial visits were led by the Italian Minister of the Interior Luciana Lamorgese who was accompanied by the Minister of Foreign Affairs Luigi di Maio as well as by Oliver Varhelyi, European Commissioner for Neighborhood Policy and Enlargement, and by Ylva Johansson, European Commissioner for Home Affairs.<sup>[xiii]</sup> According to the press, the agreement reached during one of these meetings provides for Italian financial support of 11 million euros for the strengthening of border control systems and the training of security forces. The objective being both to prevent the departure of migrants and to reinforce the interception of vessels in Tunisian territorial waters.<sup>[xiv]</sup>

The resumption of forced return flights from Italy to Tunisia (interrupted at the height of the health crisis) was also on the table. These resumed in July 2020 at the pace agreed to before the Covid-19 crisis, namely 80 Tunisian nationals repatriated per week by two chartered flights.<sup>[xv]</sup> From November 2020, this rate has increased to 3 chartered flights per week.<sup>[xvi]</sup>

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<sup>3</sup>CTR - [Support the economic and social reintegration of returning Tunisian migrants, so as to guarantee the dignity of people and the sustainability of their reintegration projects.](#)

The Italian government publicly congratulated itself on the success of the forced return programme, affirming that, since the start of 2020, 1.564 Tunisian nationals have been repatriated, including 1.200 as a direct result of the agreement reached with Tunisia during the visits organised in the summer of 2020<sup>4</sup>.<sup>[xvii]</sup>

Regarding the agreement reached this summer, it seems that it is more of a verbal agreement concluded with the Tunisian president in the form of a *gentlemen's agreement* than of a legal text. Faced with this lack of transparency, Tunisian and Italian civil society organisations have filed requests for access to relevant dossiers with the respective competent authorities.<sup>[xviii]</sup> The responses so far have been very vague and at times contradictory. Hence, the Italian government has declared that during the meeting held in Tunis on August 17, 2020: "no bilateral agreement has been signed" and that "the necessary evaluations are still underway concerning possible initiatives to be financed", while the Tunisian authorities shared the sums relating to the purchase of equipment for the control of maritime borders without specifying the origin of this funding or the reference year.<sup>[xix]</sup> The recourse to "transgovernmental" and/or unwritten agreements allows the authorities of the two countries to escape the political control of their parliaments but also constitutional control of such arrangements. The need for transparency and clarity therefore remains essential.

## II- The criminalisation of departures in Tunisia<sup>5</sup>

As is the case with the conclusion of readmission agreements, the criminalisation of migration has also been influenced by a stick and carrot approach, for example from the side of the EU and/or its Member States. The strictest law in the entire normative body of migration remains Organic Law No. 2004-6 of February 3, 2004, amending and supplementing law No. 75-40 of May 14, 1975, relating to passports and travel documents<sup>6</sup>. It responds to international pressure following the terrorist attacks of September 11, 2001, in particular to pressure from Italy, which, since the 2003 agreement, has 'bought' Tunisia's cooperation, particularly the adoption of the 2004 Organic Law. The changes made by this law were supposed to remedy trafficking organised by smugglers. It provides for heavy penalties with doubling of penalties for repeat offenders, without forgetting the reference to other penalties provided for by other texts, such as the Penal Code or the law on the fight against terrorism. It also broadens its field of operation by means of vague formulations, confusing such categories as migrants and terrorists, migrants and smugglers, and smugglers and terrorists. Any form of aid, provided against payment, on a humanitarian basis or following an act of good faith has now been criminalised.

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<sup>4</sup> For an overview of the number of Tunisian citizens repatriated in the period between 1 August and 30 November 2020, with specific reference to the methods of return (charter flight or scheduled commercial flight, escorted or unescorted), see: ASGI (2021), *Molti rimpatri, poche garanzie: un'analisi dei dati sui rimpatri dei cittadini tunisini degli ultimi mesi*. Available at: <https://inlimine.asgi.it/molti-rimpatri-poche-garanzie-unanalisi-dei-dati-sui-rimpatri-dei-cittadini-tunisini-degli-ultimi-mesi/?fbclid=IwAR0fa4QfDhMAHkydT-GfDekG1wres5I7WDP5oTed9sMj7otBmfNt03AUEuU>.

<sup>5</sup> For all the texts on migration in Tunisia, see: <http://bit.ly/2LoBbPE> (French & Arabic)

<sup>6</sup> Official Gazette of the Republic of Tunisia (Journal Officiel de la République Tunisienne - JORT), n° 11 of February 6, 2004, p.252. (French and Arabic)



On the other hand, the 2004 law broadens the scope of liability by establishing a **duty to report**; a fight against irregular migration through informing.<sup>[xx]</sup> Ascendants, descendants, brothers and sisters and the spouse are exempted, but not persons bound by professional secrecy such as lawyers, nursing staff and doctors.

According to a decision by the Tunisian Constitutional Court of February 16, 2007, the fact that a candidate for irregular immigration gives a sum of money to smugglers falls under the law of February 3, 2004. Two months later, the same Court opted for an opposite interpretation, more in line with the letter and the spirit of the law of February 3, 2004: it considered that the fact that migrants pay money to smugglers or supplying them with gasoline to cross the Sicily Canal did not constitute participation in an organisation of smugglers liable to the penalties provided for in Articles 38, 40 and 41 of the 2004 Law.

The jurisprudence of the Tunisian courts represents an additional problem, compounded by vaguely worded legislation. Case law is still interpreting and applying the texts differently to the point of contradiction within the same jurisdiction, in this case the Supreme Court.

Lawyer Rabeh Khraifi<sup>[xxi]</sup> notes that from it a rigid tendency has emerged on the part of Tunisian judges that goes in the same direction and confuses the categories of the organic law of 2014. The author also notes the absence, in Tunisian case law, of any reference to international human rights texts, particularly concerning migrants and refugees. According to him, this results in a manifest violation of the rights of migrants<sup>[xxii]</sup>. Finally, he notes that the recent trend (judgments dating from 2017 and 2018) of the Court of Cassation is to refuse to examine the provisions invoked by the defence on the pretext that the allegations relate to factual elements, which do not fall within its competence as a judge of the law. This has been confirmed, particularly in cases where the law on the fight against terrorism is invoked.<sup>[xxiii]</sup>

In short, the law of 2004 “in fact establishes specific penal legislation regarding aiding irregular migration”<sup>[xxiv]</sup>. Tunisian case law, for its part, tends not to take into account a long-cherished principle, namely that of the strict interpretation of criminal law.

Alongside the criminalisation by the texts and a harsh case law against people who have attempted an irregular departure, illegal practices that infringe on the freedom of movement and the freedom to leave the territory have proliferated. Amnesty International notes that “as part of their 'National Strategy to Combat Extremism and Terrorism', the authorities have been applying border control measures which have restricted the right to free movement of thousands of people since 2013”. In many cases, this constitutes a travel ban. Research carried out by Amnesty International shows that the authorities applied these measures in a discriminatory manner, based on the appearance of the targeted persons, their religious practices or their criminal record, without providing any justification and without a court ruling. These measures adversely affected the livelihoods of these people and led to arbitrary arrests and brief detentions.<sup>[xxv]</sup>

However, it appears from the judgments available to certain lawyers (the judgments are not published) that the ruled cases did not concern returning irregular migrants. It seems that only those involved and arrested before or during departure were tried on the basis of the 2004 Organic Law. The investigation conducted by Foued Ghorbali confirms that the returnees are released after an interrogation that focuses mainly on security issues, namely a criminal record in Tunisia or information on the networks organising the departures.<sup>[xxvi]</sup>



### III- The procedure of forced returns of Tunisian nationals in Italy

In order to explain the operation of this "return machine" implemented by the Italian authorities from October 2020, this section describes the different stages taken by Tunisian migrants who arrived in Italy by detailing the problematic instances.

Boats usually disembark independently on the island of Lampedusa. Once the migrants have been arrested by the authorities, they undergo the first health checks before being taken to the "hotspot"<sup>7</sup> of Contrada Imbriacola. The latter, officially considered a "government reception centre", is in reality a detention centre whose legal basis is very uncertain.<sup>[xxvii]</sup> Migrants are detained, in very precarious conditions,<sup>[xxviii]</sup> between 2 and 10 days depending on the number of places available in the structure or in other structures (or ships) intended to accommodate them during the quarantine period that awaits them after.

According to the testimony of the legal advisers of the *In Limine* project of the Association for Legal Studies on Immigration (ASGI), upon arrival in the hotspot and before proceeding with the taking of photos and digital fingerprints; a procedure for the pre-identification of the foreign national is carried out by police authorities, assisted by cultural mediators from the police. During this procedure, the migrant must complete an information sheet which has the value of a legal notice, on which is indicated the personal data declared by the foreign national, his country of origin, the reasons of his entry into Italian territory as well as whether he wishes to apply for some form of international protection. As the Italian deputy Erasmo Palazzotto reminds us, "the pre-identification interview for migrants takes place immediately after disembarkation, at a time of great vulnerability for the migrant, almost always in the absence of fundamental guarantees, despite the enormous importance that it has on the life of the migrant since it determines his legal status and his access –or refusal of access– to the request for international protection".<sup>[xxix]</sup>

On this subject, as relayed in a report presented in 2017 by the Senate Extraordinary Commission for the Protection and Promotion of Human Rights,<sup>[xxx]</sup> the Italian authorities delegate, out of habit, their obligation to provide information on international protection<sup>xxxii</sup>, to the High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the non-governmental organisation Save the Children. These organisations are the only ones with systematic access to hotspots. However, this information transmission activity is not planned before the pre-identification procedure, where only a UNHCR information booklet in different languages is distributed to migrants, but after. The Extraordinary Commission therefore concludes that "the pre-identification procedure, as it is currently carried out, turns out to be a summary and superficial examination which does not involve humanitarian operators and which does not fully protect the right to request protection on the part of the refugees".<sup>[xxxii]</sup>

Indeed, according to testimonies gathered by ASGI's legal advisers, during or after the pre-identification procedure, the public security authorities as well as certain cultural mediators apply an almost "automatic" selection based on the individual's country of origin.

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<sup>7</sup>The expression "hotspots approach" is introduced by *the European Agenda on migration* proposed on May 15, 2015 by the European Commission to provide the European Union (EU) with the means to manage the "migration crisis".

This treatment seems to have become common practice since Italy classified Tunisia in the list of “safe countries of origin” in October 2019.<sup>[xxxiii]</sup> Indeed, according to the Italian government, nationals of these countries do not have the right to international protection and could be repatriated in an accelerated manner. According to European Directive 2013/32 which introduces the possibility for Member States to adopt a list of “safe countries of origin”,<sup>[xxxiv]</sup> the request submitted by a national of one of these countries may be considered manifestly unfounded if no proof is provided concerning the insecurity of the country of origin or the state of personal danger affecting the individual seeking protection. But, in principle, in all cases, the request must be examined and the possibility of having a personal interview must also be guaranteed. However, in the application of the directive at the national level, it seems that in the absence of evidence provided on the specific situation of danger of the national, a decision is taken on the lack of basis of his request for protection within a very short time, and without granting him an individual interview. This is contrary to European law and is normally a fundamental right regarding protection claims.<sup>[xxxv]</sup>

It is important to remember that, according to refugee law, the possibility of accessing a form of international protection is recognised on the basis of the individual examination of the personal circumstances that led the person's emigration. This possibility in no way judged on the basis of nationality. The denial of the right to access international protection and, consequently, the forced return in a situation of danger for the migrant, can lead, in the cases provided for by law, to the violation of the principle of non-refoulement. (among others) which is one of the foundations of refugee law.<sup>8</sup>

## IV- The use of "quarantine vessels" following the Covid-19 health crisis

Since April 2020, due to the health crisis caused by the Covid-19 pandemic, foreign nationals arriving in Sicily are subjected to an additional step in their journey. They are forcibly placed in quarantine in a dedicated structure or, given the lack of structures, in a “quarantine vessel”. These are boats moored off the Sicilian coast rented by the Italian Ministry of Infrastructure and Transport from private companies to accommodate migrants for compulsory quarantine. Today there are 5 quarantine ships positioned along the Sicilian coast with a total of around 2.730 people on board.<sup>[xxxvi]</sup> This phase, which can have an indefinite duration ranging from a minimum of 14 days to more than a month, is characterised by a legal vacuum and once again by a total absence of information on the duration of the stay or on subsequent stages.

As has been criticised by the National Guarantor of the Rights of Persons Deprived of Liberty, the migrants detained on these ships are completely cut off from the outside and deprived of the possibility of exercising their fundamental rights which are nonetheless guaranteed by the Italian legal system: “they cannot apply for asylum, they are not in fact –at least temporarily– protected as victims of trafficking or as unaccompanied minors, and they also cannot quickly access family reunification procedures under the Dublin Regulation, which have a specific time limit ”.<sup>[xxxvii]</sup>

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<sup>8</sup>1951 Geneva Convention, article 33; see also ECHR article 3.

These conditions are extremely hard for migrants to endure both psychologically and physically. Several desperate acts were noted such as the case of a 22-year-old Tunisian national who drowned after having thrown himself from the quarantine ship Moby Zazà to swim to Italian territory or the hunger strike started by a group of Tunisians following their detention for more than a month on a quarantine vessel, despite two negative PCR tests.<sup>[xxxviii]</sup>

The deprivation of liberty imposed on migrants, both in so-called “hotspot” structures and on quarantine vessels, characterised by a total lack of information towards victims as to its reasons, methods, and duration, poses a certain number of problems from a legal point of view. In fact, according to the Italian Constitution<sup>9</sup> as well as international law,<sup>10</sup> any deprivation of liberty must be subject to judicial control and must ensure fundamental guarantees such as the right of the person to be informed, in a language they understand, of the reasons for this restrictive measure as well as the right to an effective remedy before a judge. Given the lack of respect for these fundamental guarantees by the Italian authorities, both in the hotspots and in the quarantine vessels, one may conclude that these deprivations of liberty are very often carried out illegally and therefore seem arbitrary, as has been confirmed, in a similar case, by the European Court of Human Rights (ECHR).<sup>[xxxix]</sup>

## V- Issuance of an expulsion or deferred refoulement decree

Following the disembarkation from quarantined vessels, Tunisian migrants must complete a second information sheet. This measure is carried out once again without access to the necessary information as to the possibility and modalities of filing an application for international protection or without receiving an explanation of other situations, which would prevent expulsion (family reunification or other). These people are once more considered as “economic migrants” who do not have the right to stay on Italian territory and, as such, are subject to a deportation order with immediate effect. This measure may take the form of an expulsion decree or a deferred refoulement decree depending on the decision of the competent administrative authority.<sup>11</sup> The two types of decree entail the same consequences for Tunisian migrants, that is to say a ban on readmission to Italy and to the Schengen area, even legally, for a duration of at least five years. When the expulsion/deferred refoulement decree is issued, the administrative authority may decide to enforce the decree by ordering the detention of migrants in permanent removal centres (Permanent Centre for Repatriation - CPR) when it considers that there is a risk of flight, which is the case for the vast majority of Tunisian nationals, in particular since the resumption of forced return flights between the two countries. In the event that places are not available in the CPR centres, the administrative authority issues an expulsion notice, which obliges the migrant to leave Italian territory, by his own means, within 7 days. The Italian Cultural and Recreational Association (ARCI) has documented many cases of notification of expulsion and removal orders immediately after the release from quarantine and detention vessels, which also affected vulnerable people such as unaccompanied minors or people with mental disorders.

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<sup>9</sup>See Art. 13 of the Italian Constitution.

<sup>10</sup>See article 5 of the European Convention on Human Rights (ECHR) and article 9 of the International Covenant on Civil and Political Rights.

<sup>11</sup>The normative reference framework in matters of immigration in Italy is the *Testo Unico sull'Immigrazione*, Decreto legislativo, testo coordinato, 25/07/1998 n° 286, GU 18/08/1998, see in particular articles 10 (2) and 13.

ARCI also reports a positive experience, through their work under a Toll Free Number, for an unaccompanied minor –in possession of identity documents proving their age– who was transferred to the CPR in Ponte Galeria (Rome). Following several reports received by the toll-free number, the operators intervened in support of the minor who, according to Italian law, should not have been detained in the CPR. Thanks to the collaboration of the organisations that operate, albeit in a limited way, within the centre, including “A Buon Diritto”, the minor was subsequently released from the centre and was able to embark on the appropriate procedure.

Italian law provides for the possibility for foreign nationals who are subject of a deferred expulsion/refoulement decree to appeal against this measure before a judge. However, the appeal does not have a suspensive effect on the execution of the return. In practice, once more, migrants are not informed of this possibility, and access to a lawyer, provided for free by law, is made extremely difficult once the migrant is detained in a CPR, which hinders their right to an effective remedy.<sup>12</sup>

The detention in CPR centres, in appalling detention conditions,<sup>[x]</sup> is subject to judicial control and can last up to 90 days. However, in recent months, following the renewal of agreements between the two countries, the procedure has undergone a substantial acceleration, and return can take place in the days following arrival at the centre. Maurizio Veglio, a lawyer from the Turin public prosecutor's office, says he has never seen so many Tunisian citizens repatriated so quickly from the Turin CPR centre: “The process is very fast: they enter the CPR centre, they attend the hearing before the justice of the peace and a few days later they are on the plane which takes them to Palermo for identification and then directly to Tunisia”. The lawyer adds that “sometimes, it is impossible to guarantee the right of defence: to meet clients, due to the restrictions linked to Covid-19, access to the CPR centre is restricted, the cell phones of detainees are seized and Tunisian nationals are often repatriated before having had an adequate legal interview”. According to ARCI, the confiscation of personal property and in particular of cell phones has led to informal communication networks between guardianship bodies and inmates: the direct relationship between inmates and guardianship agencies is mediated by families in the country of origin or by friends or activists in Italy. The last step before the forced return to Tunisia is the passage in front of the Tunisian consular authority at the airport of Palermo, which is responsible for identifying the individual as being a Tunisian national to validate their forced return.

Hence, according to testimonies collected by legal advisers from ASGI, Tunisian migrants very quickly find themselves in detention centres while awaiting repatriation without ever having been effectively informed of the possibility of requesting some form of international protection, of the reasons for their removal and detention, the possibility of having access to a lawyer and the expected date of return. Word of mouth between migrants and the work of lawyers associations (when it is possible to contact them) is their only way of understanding the procedure.

These practices, which seriously compromise the protections provided by the exercise of the right to asylum, seem to show an underlying desire to leave Tunisian migrants in a total information vacuum aimed at preventing them from taking any steps to assert their rights –such as access to international protection or to a lawyer, or to oppose or delay the immediate return process desired by the Italian authorities.

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<sup>12</sup>See articles 5 and 13 of the European Convention on Human Rights (ECHR).

## VI- The socio-economic crisis after the return

"Tunisia is a safe country, it is not a country at war", declared the Italian Foreign Minister in August 2020. <sup>[xii]</sup> This declaration was followed by a new wave of expulsions of Tunisians, in agreement with the Tunisian authorities, in particular the President of the Republic Kais Saied.

In a context of political, economic and social crisis coupled with a global health crisis, imposing on Tunisia an agreement on the return of Tunisian migrants only complicates the social and security situation in the country. Young people who brave death every day, either crossing the Mediterranean or disembarking in a country devastated by the Covid-19 pandemic, send a strong signal about the state of despair in which they live. They try not only to flee a country, but above all to build a future for themselves and for their families. Return, whether forced or voluntary, is often interpreted as a personal failure and poses psychological problems for the 'returnee'. The voluntary returnee confronts a reality that is defined by difficult circumstances on all levels. Historically high unemployment continues to rise in recent decades. The social climate is tense and adequate public policies are non-existent. In this context, attempts of leaving are likely to be repeated.

Foreign return assistance programmes and project funding encompass only a tiny part of the "returnees" and precarious micro-projects. The French Office for Immigration and Integration (OFII) has funded 500 projects since 2011 for a total amount of 3.5 million euros <sup>[xiii]</sup>.

In Italy, Assisted Voluntary Return and Reintegration (AVRR) programmes co-funded by the EU and the Italian government, are implemented by the IOM together with local organisations. They provide for pre- and post-return monitoring, which includes financial and logistical support to start an economic activity and promote social reintegration in the country of origin<sup>13</sup>. The Italian law, which regulates this procedure, stipulates that even foreign nationals who are subject of an expulsion decree can benefit from it. In reality, this turns out to be very difficult. It is in fact up to the foreign national to ask the competent authorities, before or at the time of receipt of the expulsion decree, for the granting of voluntary return, which implies the obligation on the part of the Italian authorities to inform migrants, in a language they know, of this possibility.<sup>xliii</sup>

In the case of Tunisian migrants, testimonies indicate that the authorities, contrary to their obligation, do not inform migrants of the possibility of requesting a voluntary return, and the local organisations responsible for AVRR who could do so have no access to migrants before the expulsion decree is issued. In practice, therefore, it is virtually impossible for Tunisian nationals who arrived irregularly in Lampedusa to access AVRR programmes.

The majority of released returnees face two alternatives: a new crossing attempt or marginalisation. The youngest are confronted with the difficulty of mastering the language, integration into school and into society in general.

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<sup>13</sup> IOM, project Re.V.ITA. - Rete Ritorno Volontario Italia (Italy Voluntary Return Network), <https://italy.iom.int/it/aree-di-attivita/C3%A0/ritorni-volontari-e-assistiti/progetto-revita-rete-ritorno-volontario-italia>

## VII- The absence and need for a monitoring system in Tunisia following forced returns

**On the Italian side**, it is interesting to note the role of the National Guarantor of the Rights of Persons Deprived of Liberty, an independent state body, in monitoring forced return flights from Italy. As part of a project co-financed by the EU Asylum, Migration and Integration Fund (AMIF) with the objective of strengthening the protection of the rights of foreign citizens who are the subject of expulsion or refoulement decrees, the Guarantor is responsible for monitoring the implementation of forced returns, from the pre-return phase to the presence in return flights.<sup>[xliv]</sup> Each follow-up mission is duly documented in a public report also containing recommendations to the competent authorities.

**On the Tunisian side**, there is a general lack of information on the practices and measures planned by the Tunisian authorities on the arrival of Tunisians turned back or expelled by Italy. It is only through the testimony of returnees or the lawyers who represent them that it is possible to retrace their journey once they are back in Tunisia. At the institutional level, Tunisian authorities are rather passive and the return assistance and monitoring systems are initiated by international cooperation agencies, in particular the EU and its Member States. These mechanisms are "limited in time and financial scope" and are not known.<sup>xlv</sup> It must be said that this is a dilemma for the Tunisian authorities: how to participate in programmes that affect only a minority of returning migrants, but also don't correspond to the income that the migrant can guarantee for himself and his own family that stayed in Tunisia. It should be noted that migration represents a boon of 5% to Tunisian GDP. The Lemma project, which is implemented by the French Office for Migration and Integration (Office Français de l'Immigration et Intégration – OFII) and financed by the EU and whose objectives include the return and integration of migrants, recognises that the "return and reintegration schemes implemented by the European Member States generally offer limited assistance, both in terms of time and financial scope".<sup>[xlvi]</sup>

In fact, the Tunisian authorities seem to be interested exclusively in the security aspect of returns. In an interview, Romdhane Ben Amor of the Tunisian Forum for Economic and Social Rights (Forum Tunisien pour les Droits Économiques et Sociaux - FTDES) said<sup>14</sup>, based on the 2018 FTDES survey<sup>[xlvii]</sup> that on arrival at Enfidha airport, returnees are subject to an identity check to identify persons wanted by the police or the Tunisian justice system. During these interrogations, he adds, they are subject to police violence before being released after having signed the minutes of the interrogation. In the same survey, returnees specify that police violence is verbal and not physical (Mnawer, 26).

They add that the questions were oriented towards the security aspect linked to terrorism (Hichem, 27 years old). For his part, Yassine (25) sums up the situation as follows: *"As expected from the Tunisian Police... bad word, disdain, orders; come here, go there... after half an hour they started asking us: from where and how did you migrate?... how did you get the money...who was the middleman... then we were released and returned home ».* « *We arrived to the airport... we found Tunisian police... they confiscated our mobile phone... they insulted us... they told us that we are not worth Europe... as if we were residing in Italy and illegally immigrated to Tunisia, as if Tunisia was not our country of origin... we left the airport at 9 PM... we were left downstairs... they quickly checked our passport...we crossed the airport and were taken to the police station*

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<sup>14</sup> Interview conducted by the authors on December 02, 2020.

*of Enfidha airport... they left us in a corner... one of the police officers started hitting the wall as a way to threaten us... we were like slaves...we told them we want our mobile phones, they refused... they did not give us the mobile phone that the Italian police gave us.”*

Today the situation does not seem to have changed and, following identification by the police forces, the returnees are directed to buses destined for the south or the north of the country, without any other planned assistance.

In recent years, there have been isolated initiatives by Tunisian civil society, which tries to address this lack of monitoring of forced returns by the authorities. Since 2017, FTDES has been at the forefront of documentation and advocacy on the migratory journeys of Tunisians leaving for Italy and their subsequent repatriation. The organisation Terre pour Tous is also very active on social networks and maintains direct contact with many returnees. They also denounce their treatment during the various stages of their trip to Italy. A new project, started a few months ago by Avocats Sans Frontières (ASF) in Tunisia, in collaboration with a group of Italian lawyers from ASGI, is interested in providing legal follow-up after return. As Antonio Manganella, Regional Director of ASF, explains, the project aims to “defend the rights of Tunisian citizens who are victims of forced return, by improving protection and taking care of Tunisians repatriated from Italy via mechanisms of access to justice at the national and international level”. ASF lawyers intend to provide, through a publicly available hotline, an initial legal consultation to returnees and, following an analysis of the cases if a legal recourse option is available, the organisation will provide support to applicants. If, on the contrary, the legal route seems to have no chance of success, the organisation will redirect applicants to request access to certain State services such as food support.



## VIII- Recommendations

### Recommendations for Italy

- Make public all the agreements concluded with Tunisia and ensure the full participation of the Italian Parliament in any negotiation of future agreements including clauses of forced return of Tunisian nationals;
- Ratify all existing agreements in accordance with article 80 of the Italian Constitution;
- Include clear guarantees of respect for the human rights of migrants and adequate monitoring mechanisms in any future bilateral agreement with Tunisia;
- Guarantee full access to procedures for applying for international protection to Tunisian nationals who have arrived in Italy in accordance with national, European and international law;
- Ensure that the recommendations put forward by the National Guarantor during the monitoring missions to places of confinement and forced return flights are duly taken into account and implemented.

### Recommendations for Tunisia

- Ensure full respect for the human rights of migrants and refugees, in particular through the adoption and effective implementation of legislative texts in full compliance with international conventions. Specifically:
  - Remove the penalties provided for in the event of unauthorized entry, stay or exit, and repeal the law of 3 February 2004;
  - Adopt migration laws in accordance with international treaties ratified by Tunisia and fight against all forms of discrimination, racism and exclusion towards foreign populations in Tunisia;
  - Establish an effective asylum system based on respect for human rights and the application of the principle of effective remedy and non-refoulement.
- Make public the agreements concluded with Italy;
- Refrain from resorting to "transgovernmental" agreements in order to allow parliamentary control and mechanisms for controlling their constitutionality;
- Invite the Immigration Committee in parliament to intervene through questions to the government or hearings so that the Tunisian executive can report on the management of the migration issue;

- Respect the right to free movement and make systematic the recourse to justice before imposing any limitation to this right;
- Put in place an appropriate mechanism to ensure the follow-up of persons returned to Tunisia;
- Make the document on the national migration strategy public so that civil society and experts can contribute to its formulation.

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<sup>xiii</sup> *Testo Unico sull'Immigrazione*, Decreto legislativo, testo coordinato, 25/07/1998 n ° 286, GU 18/08/1998, article 13 (4) and (5). (IT) It should also be noted that the administrative authority may decide to refuse a request for voluntary return if it considers that there is a risk of the foreign national fleeing.

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