



*The Permanent Representative of Italy  
to the International Organisations  
Geneva*

N. 835

Geneva, 28 April 2023

Dear Ms. Balbin,

Following UN letter (AL ITA 1/2023), dated February 7, 2023, I have the honour to submit Italy's timely remarks to Joint Communication and following statements on social media by three UN Special Procedures that have requested Italian Authorities to provide them with information about the "ongoing trial of human rights defenders in Trapani and regulation of civilian search and rescue in Italy".

By this exhaustive reply, we take the opportunity to reiterate our firm willingness to continue full, mutual and extensive cooperation with all UN Special Procedures Mandate-Holders in a constructive spirit.

Should additional information be made available, allow me to ensure you that we will promptly share it with you.

Please accept, Ms. Balbin, the assurances of my highest consideration.

Ambassador Vincenzo Grassi



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Ms. Beatriz Balbin  
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***MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION***  
*Inter-ministerial Committee for Human Rights*  
*Comitato Interministeriale per i Diritti Umani*

**ITALY'S REMARKS**  
**FOLLOWING JOINT COMMUNICATION FROM**  
**UN SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN**  
**RIGHTS DEFENDERS, UN SPECIAL RAPPOREUR ON THE**  
**RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF**  
**ASSOCIATION, AND THE SPECIAL RAPPOREUR**  
**ON THE HUMAN RIGHTS OF MIGRANTS**  
**(AL ITA 1/2023)**

*April 2023*

## **ITALY'S REMARKS**

Further to UN Special Rapporteurs' joint communication (AL ITA 1/2023), dated February 7<sup>th</sup>, 2023, the Government of Italy is in a position to provide the following information, according to the UN questions formulated.

### **With regard to the relevant judicial proceedings**

As for the measures put in place to ensure the right to translation of procedural documents and interpreting services for the defendants in the criminal proceedings pending before the Tribunal of Trapani, the following observations have been made on the basis of the extensive information received from the competent judicial offices (Presidency of the Tribunal of Trapani and Office of the Preliminary Hearing Judge of the Tribunal of Trapani).

The penal proceeding to which the UN communication refers (p.p. No. 4060/2016 *R.G.N.R.* - No. 816/2017 *R.G.I.P.*) is pending against 19 defendants, for numerous alleged crimes of aiding and abetting illegal immigration (the charges formulated concern 29 alleged crimes).

At present, the proceeding is at the preliminary hearing stage in which the Judge is called upon to decide whether to grant the request of committal for trial formulated by the Public Prosecutor's Office. The request for the setting of the preliminary hearing was filed by the Public Prosecutor's Office on March 4, 2022; and the Judge set the preliminary hearing for the date of May 21, 2022, by a decree that was translated into English, French, German, and Spanish in relation to the language known by the alloglot defendants.

All hearings were held with the assistance of two German-speaking interpreters (as reflected in the hearing minutes) so that the German-speaking defendants present could participate. It should be noted that the other foreign defendants have remained absent.

Regarding the adjournments of the hearing mentioned in the UN communication, the Preliminary Hearing Judge (in Italian, *GUP*) was called upon to decide on numerous exceptions made by the defendants' defenses. Moreover, several postponements were ordered by the Judge upon joint agreement of all parties concerned (public prosecutor and defendants' counsels) to allow for the unified handling of the positions of all defendants (some of which had been separated due to the need to make new notifications of notices, as deemed previously irregularly made by the Judge).

With regard to the translation of the acts of the proceedings (and, in particular, of the acts contained in the public prosecutor's file concerning the investigations carried out), it is worth noting that already on April 14, 2021 - therefore, about a year before the filing of the request of committal for trial - the Judge for Preliminary Investigations (in Italian, *GIP*) ordered that in the forms of the expert report (*perizia*) the final notice of the Judicial Police dated June 10, 2020 be translated into English and German; and on May 28, 2021, the judicial authority informed the defendants that the translation had been deposited.

It is necessary to point out that the full-bodied final report of the Judicial Police, the translation of which was ordered, is not a summary prepared by the Judicial Police for the purposes of the translation itself: It is the complete and exhaustive exposition of all the evidence acquired in the course of the investigation regarding the alleged crimes and is intended to provide the public prosecutor with the elements to determine whether to prosecute. Consequently, it is an act of the proceedings that allows the defendants to have full knowledge of the charges against them and of all the evidence acquired in connection with the crimes under investigation.

As for the translation of the documents attached to the Judicial Police report, by an order dated October 3, 2022, the Preliminary Hearing Judge (*GUP*) examined the exception raised by the defense concerning the failure to translate the above-mentioned documents (an exception previously raised also before the Preliminary Investigation Judge (*GIP*)). The Judge found this exception to be unfounded.

In particular, the Judge pointed out that Article 143 of the Code of Penal Proceedings (right to an interpreter and translation of fundamental acts) prescribes in Paragraph 2 the (mandatory) translation of a number of acts of the proceedings (including the notice of conclusion of the preliminary investigation, the decree of setting the preliminary hearing). Paragraph 3 of the same article provides that the judge, also at the request of a party, may order, by a reasoned act being appealable together with the judgment, the translation of additional acts (or parts thereof) as deemed essential to enable the defendant to know the charges against him/her.

In the case at hand, the Judge ordered the translation of the final Judicial Police report as an essential act to enable the defendants to know fully the charges against them as well as the grounds for those charges.

By the order dated October 3, 2022, the Judge also pointed out that the provision of Article 143 of the Code of Penal Proceedings is fully consistent with the content of Article 3 of Directive 2010/64/EU on the translation of essential documents - and this is also in light of the provisions of Article 6 ECHR, Article 11 of the Universal Declaration of Human Rights, and Article 14 of the International Covenant on Civil and Political Rights. Indeed, Article 3(1) of the above-mentioned Directive provides that "*Member States shall ensure that suspected persons or defendants who do not understand the language of the criminal proceedings receive, within a reasonable time, a written translation of all documents which are essential to ensure that they are able to exercise their right of defense and to safeguard the fairness of the proceedings.*" Article 3 of the above EU Directive also does not require the translation of all documents in criminal proceedings, but only those that are essential to enable the defendant to exercise his or her right of defense.

By the order dated October 3, 2022, the Judge gave ample reasons about the extent of the translation of the final information notice without the translation of the annexes (the most significant excerpts of which, however, are included in the same information notice): This document sets out in an ample and exhaustive manner the charges made against the defendants and the evidence on which they are based, so as to enable them to exercise their right of defense.

It is to be added that, with regard to the questionings of one of the German-speaking suspects before the Judicial Police and the public prosecutor (held on Oct. 29, November 12, and Dec. 2.2022) during which the suspect was assisted by a German-speaking interpreter, the defense objected before the Preliminary Hearing Judge (*GUP*) to the alleged inadequate competence of the interpreter (and the consequent invalidity of the questioning and subsequent acts).

The Preliminary Hearing Judge (*GUP*), notwithstanding the fact that the interpreters appointed by the public prosecutor had adequate qualifications and certificates of proficiency in German, also ordered the full transcription of the questionings (audio-recorded) with the help of two German-speaking translators and an English-speaking translator, in order to ascertain the quality of the translation provided by the interpreters appointed by the public prosecutor to perform the questionings; and also proceeded, once the transcription of the questionings was finished, to hear one of the translators.

By order dated February 10, 2023, the Judge with ample reasoning rejected the exception, pointing out that, based on the transcript of the questionings and the hearing of the expert, it had emerged that during the questionings the interpreters had ensured adequate interpretation services to the suspect.

The in-depth study carried out by the Judge, by a specific expert report (*perizia*), shows the great care of the Italian judicial authority for the safeguards aimed at ensuring the participation of the alloglot suspect/defendant in all stages of the criminal proceedings.

Against this background, penal proceedings are pending before the Tribunal of Trapani against, among others, K.S., D.B, S.G., and U.T..

According to the accusatory hypothesis, supported by extensive investigative activity and relevant evidentiary material, the above individuals have allegedly violated, in complicity with each other and with other persons, the provisions provided for in Article 12, paragraph 3, letters a) and d), and paragraph 3-*bis*, of Legislative Decree No. 286/1998. Administrative liability dependent on crime, in accordance with Articles 5(1) and 24-*bis* of Legislative Decree No. 231 of 2001, is also configured against some NGOs and a shipping company.

In particular, the penal proceedings concern episodes of aiding and abetting illegal immigration and the illegal transportation of migrants in the territory of the State, which were allegedly committed, on different dates in 2016 and 2017, by a plurality of individuals, who held, at the time of the facts, command functions, or other roles of responsibility aboard naval assets belonging to or otherwise in the possession of various NGOs. These organizations would have obtained, for their part, greater public and media visibility, with a consequent increase in the participation, including economic type, of their supporters, while the shipping company, owner of the ships, in dependence of the crimes committed by the masters, would have collected greater income from the chartering of the vessels, in relation to their constant action in the numerous events under reference.

In connection with the aforementioned penal proceedings, the Public Prosecutor's Office at the Tribunal of Trapani filed a request for committal for trial against the defendants; a request that was granted by the Judge for Preliminary Investigations (*GIP*) of the Tribunal of Trapani, with the preliminary hearing being set at the same time.

It is to be noted that the conducts of the defendants has caused damage specifically to the Ministry of the Interior correlated to their incidence, on the one hand, on the activity of countering the phenomenon of irregular immigration - that is, on a qualifying and central point of national policy on public order and security - as well as, on the other hand, on the exercise of further functions and tasks inherent to the management of migratory flows. Consequently, the above-mentioned Ministry of the Interior, upon authorization by the Presidency of the Council of Ministers, pursuant to Article 1, paragraph 4, of Law No. 3/1991, through the State District Attorney's Office in Palermo, submitted an application seeking to join civil action (*dichiarazione di costituzione di parte civile*) to the relevant penal proceedings, pursuant to Articles 76 et ff. c.p.p..

### **With regard to relevant newly introduced legislation**

With specific regard to the provisions introduced by Decree-Law No. 1 of January 2, 2023, converted with amendments by Law No.15 of February 24, 2023, mention has to be made of the following:

Contrary to what is briefly reported in the UN Joint Communication, Decree-Law No. 130 of October 21, 2020, converted with amendments by Law No.173 of December 18, 2020, already contained the provision of the power of the Minister of the Interior, in consultation with the Minister of Defense and the Minister of Infrastructure and Transportation, and after informing the President of the Council of Ministers, to restrict or prohibit the transit and stopover of vessels in the territorial sea, for reasons of public order and safety, except in the case of military vessels or vessels on non-commercial governmental service. This power, both in the original wording of DL. No.130/2020 and in the current wording following the amendments made by DL No.1/2023, is without prejudice to the provisions of Article 83 of the Navigation Code and the 1982 UN Convention on the Law of the Sea of Montego Bay.

Decree-Law No.1/23 continues to provide that the provisions on the power to prohibit transit or stopover in the territorial sea do not apply in the case of rescue operations immediately notified to the competent coordination center for maritime rescue and to the flag State and carried out in compliance with the instructions of the competent Authority for search and rescue at sea, issued on the basis of obligations

arising from international conventions on the law of the sea, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and national, international and European standards on the right of asylum, without prejudice to the provisions of the Additional Protocol to the UN Convention against Transnational Organized Crime to Combat the Smuggling of Migrants by Land, Sea and Air.

The changes introduced by Decree-Law No.1/23 are aimed at balancing the need to ensure the safety of persons recovered at sea in compliance with the relevant international and national law, with that of protecting public order and safety, in accordance with the provisions of the 1982 UN Convention on the Law of the Sea of Montego Bay.

In this perspective, the conditions under which the activities carried out by vessels carrying out interventions to rescue people at sea can be deemed to comply with international conventions (1982 UN Convention on the Law of the Sea, UNCLOS Convention; 1974 Convention for the Safety of Life at Sea, SOLAS Convention; International Convention on Maritime Search and Rescue, adopted in Hamburg in 1979, SAR Convention with its associated "Guidelines on the Treatment of Persons Rescued at Sea" Resolution MSC 167 (78), of 2004) and national rules on the law of the sea.

A new sanction regulation has been then introduced, currently with the provision of penalties of an administrative nature, and no longer of a criminal nature, with the repeal of the former criminal penalties.

The conditions under which transit and stopover activities are deemed to comply with national and international law are as follows:

- (a) The ship systematically conducting search and rescue activities at sea operates in accordance with the certificates and documents issued by the competent authorities of the flag State and is maintained in compliance with them for the purposes of safe navigation, prevention of pollution, certification and training of seafarers, and living and working conditions aboard;
- b) Initiatives were taken in a promptly manner to inform persons taken aboard of the possibility of applying for international protection and, in case of interest, to collect relevant data to be made available to the Authorities;
- (c) The assignment of the port of disembarkation has been requested in the immediacy of the event;
- (d) The port of disembarkation assigned by the competent Authorities is reached without any delay for the completion of the rescue operation;
- (e) The Italian Sea Search and Rescue Authorities, or, in the case of the assignment of the port of disembarkation, the Public Safety Authorities, are provided with the information required for the purposes of acquiring elements relating to the detailed reconstruction of the rescue operation put in place;
- (f) The vessel's modality of search and rescue at sea has not contributed to the creation of dangerous situations aboard or has not prevented the timely reaching of the port of disembarkation.

It is worth noting, with specific regard to the conditions under letters (c) and (d) above, that they are aimed at enabling the immediate coordination of rescue operations by the Italian Authorities, for the best success of the operations themselves, as well as to facilitate the identification of the boat drivers (*scafisti*), who are to be prosecuted.

Under the current system, there is no prohibition against multiple rescue operations, should an NGO on its way to its assigned port of disembarkation come across another vessel in distress. Instead, the provision aims to ensure that once the rescue operations at sea have been carried out, NGOs head to the assigned port without any delay for the completion of the rescue operation, so as to conclude the rescue in the shortest possible time, with a view to protecting and safeguarding the rights and safety of the rescued persons, without pausing at sea to wait for other future and only possible rescues.

Against this background, with regard to the issues raised in relation to Decree-Law No. 1/2023, mention has to be made of the following.

This measure has intervened on the activities carried out by private vessels, which carry out activities of recovery (*recupero*) of persons at sea, with the aim of preventing possible abuses of the relevant provisions referring to rescues operated occasionally - and not, instead, to activities of systematic and non-occasional interception and recovery of migrants departing from the African coasts.

In this perspective, the requirements in the presence of which the intervention can be considered in compliance with international standards and national legislation are indicated, thus excluding the adoption of interditory or sanctioning measures. These are functional conducts for the most promptly securing of recovered persons, constituting the protection of human life an absolute priority.

Contrary to the assertions made, the new provisions do not prevent NGOs from carrying out multiple interventions at sea, as evidenced, moreover, by the several recent events in which multiple rescues actions have taken place. Nor, much less, do these provisions oblige NGOs to ignore any further requests in the area if they have already taken people aboard. Such interventions are in fact, legitimate, if carried out in accordance with the rules of conduct enucleated by the legislator and with the indications by the competent maritime rescue coordination center.

As for the concerns regarding the assignment to NGO ships of places of safety other than those in southern Italy, it is to be pointed out, preliminarily, how the choice to diversify the ports of call is based on the inescapable need to operate a more equitable redistribution between the regions, not so much of migrants, usually transferred to reception facilities located throughout the national territory, as of the organizational and logistical burdens related to the management of landings.

The objective pursued is, in other words, to relieve the facilities of very first reception, first of all, the *Lampedusa hotspot*, at which, as is well known, there are frequent situations of serious overcrowding, and the burdens weighing on the mechanisms and Corps in charge of the management of migrant arrivals in the regions of southern Italy and, in particular, in Sicily and Calabria, subjected for months to the growing pressure also of the so-called "autonomous landings".

Moreover, the assertion that NGO ships would be assigned only ports in central and northern Italy does not correspond to the truth, since, on the contrary, the aforementioned ships on the basis of an overall assessment of the circumstances of the case, also result in having been assigned the ports of Salerno, Gioia Tauro, Taranto, Naples, Brindisi, Lampedusa and Bari.

Finally, it should be added that the ships that have so far been assigned a *POS* (place of safety) in more distant locations are large assets and as such being suitable for safe long crossings, and that the assignment of the *POS* always presupposes a preliminary discussion with technical bodies, in order to verify the absence of possible situations of risk to the safety of persons on board.

## **CONCLUSION**

We take this opportunity to reiterate our firm willingness to continue cooperating fully with all UN Special Procedures.