



*Garante Nazionale
dei diritti delle persone private della libertà personale*

Presidente

Call for cooperation to the Npms Of Norway and Malta regarding “Ocean Vicking” case (20 August 2019)

Aage Thor Falkanger
Helga Fastrup Ervik (NPM)
Parliamentary Ombudsman of Norway

Andre Camilleri
Board of Visitors for Detained Persons
Malta

Cc:
Malcolm Evans
Subcommittee on Prevention of Torture
Office of the United Nations High Commissioner for Human Rights (OHCHR)

Dear Chairperson,

Dear colleague,

In the last year of activity, on countless occasions, the National Guarantor for the rights of persons detained or deprived of liberty — the Italian NPM — has undertaken actions to protect migrants who were first rescued, then blocked for days aboard rescue ships. This situation, which is a *de facto* deprivation of liberty, implicitly exposed the stranded migrants to the risk of being pushed back. Furthermore, its standoff being perpetrated — sometimes for weeks — in many occasions has resulted in on board material condition worsening, circumstances that can amount to the "inhuman or degrading treatment", which Article 3 of the European Convention on Human Rights (ECHR) prohibits in absolute terms.

At present, any rescue and rendering assistance to persons found in distress at the Central Mediterranean Sea in international waters, in fact, inevitably ends up in a standoff situation due to the negative conflicts of jurisdiction arising between the States concerned, with respect to which of them shall take charge of the rescued migrants' reception.

On one hand, some States believe they shall neither allow the entry of any foreign rescue boat into their territorial waters nor assign it a POS (Place of safety), in compliance with the international conventions on the law of the sea; these are the countries, which boundaries correspond with the EU's external borders and are actually the direct country destination of the vessels sailing from Libya (i.e. Italy and Malta). On the other hand, some others, namely the flag States, consider themselves not to take responsibility over circumstances occurring many miles



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away from their own border; hence, they keep on acting as an extraneous with respect to any rescuing operation undertaken by a vessel flying their flag.

Clearly, it is not the responsibility of the Guaranteeing Bodies to interfere with the political choices of the concerned Governments but I believe that it is the duty of an NPM to consider the impact that their [the Governments'] actions and especially their omissions determine on the fundamental rights of people who are indeed prevented from exercising their freedom of movement.

This is the reason why, in the past months and in several occasions of this kind, I addressed to the Italian authorities recommendations on the safeguard of the rescued people' rights and warnings on the risk of being condemned at international level for the many aspects of responsibility each different situation were determining.

Moreover, in many and similar circumstances, I am afraid I did not know of any concerned flag States getting out a press statement, nor heard a voice from the interested NPMs, as far as I know, despite the fact that these vessels fall within their jurisdictions, being regarded as their territorial extension.

Acknowledging the complexity of the phenomenon — that undoubtedly cannot and shall not just concern the European countries having a coastline on the Mediterranean Sea —, the persistent and frequent occurring circumstances, the many States involved and their derived shared responsibility for the impact of their policies on the rescued migrants, I judged necessary to promote some coordinated actions between NPMs, whilst raising awareness and enhancing the power of concerned national Authorities with regard to their equally binding international obligations.

In this regard, the Italian NPM has been following, for days and with apprehension, the situation of the vessel *Ocean Viking*, which, according to press sources, is currently in international waters with 356 migrants on board (including many unaccompanied migrant minors), rescued in different operations undertaken starting from 9th August.

Since then, the vessel has been waiting for the assignment of a POS where the saved people can receive the necessary assistance, thus granting the ship to accomplish the rescue operation at sea. To date, neither the Maltese nor the Italian Authorities have assigned the ship a place to dock, as far as I know. Besides, no other State has promoted actions to welcome the migrants.

The ship remained stuck in international waters, thus resulting in a strong impact on the rights of those who actually are not allowed to disembark, hence to move free. This situation, in my opinion, involves with no doubt the direct responsibilities of at least three countries: Italy and Malta, which — despite them being less distant from the vessel — have not granted permission



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to dock, and Norway, which — the vessel flying its flag — is committed to take responsibility on all passengers under its own jurisdiction.

In order to ensure compliance with the international obligations, to which our legal systems are bound, thus preventing situations where people's rights are likely to remain suspended due to the negative conflicts of jurisdiction between the States involved, I call on you to engage in a joint and urgent action (in the form of a letter, a complaint lodged to the concerned judicial authorities or similar other actions) to be addressed to the relevant national authorities.

I would be grateful for your prompt reply and look forward to hearing your opinion on the matter. I remain available to evaluate any further proposals you may consider viable to protect the fundamental rights of the persons involved.

Thank you for your cooperation.

Kind regards,

Mauro Palma