



Associazione  
per gli Studi Giuridici  
sull'Immigrazione

## THE READMISSION OF FOREIGN CITIZENS IN VENTIMIGLIA (June 2015) UNLAWFUL ASPECTS

### I. DESCRIPTION OF THE EVENTS

Since 11 June 2015, the Italian-French border of Ventimiglia has been the scene of a considerable number of readmissions of migrants, citizens of states which do not belong to the EU, who were first blocked in French territory or upon entry into French territory and then readmitted into Italian territory, presumably on the basis of the **Bilateral Agreement** between the Government of the Italian Republic and the Government of the French Republic on cross-border police and customs cooperation signed in Chambéry on 3.10.1997.

On 24/25 June, our organisation carried out a fact-finding visit, observing what follows.

Around 200 people are present in the Ventimiglia **train station**, who sleep in a temporary camp set up by the Red Cross in some unused buildings which are adjacent to the station. Most of them are of Sudanese and Eritrean nationalities, they have already tried to cross the border with France several times and almost all of them have not been identified, neither in Italy nor in France. Hardly any of them have submitted an asylum application in Italy. Around 5% or 10% of them are unaccompanied minors who share the same spaces as adults within the temporary camp. They are blocked by the French police forces on the train after entering France or in Garavan station, or the one in Nice (identified in the waiting rooms or on the tracks of trains which are departing), but there are numerous cases involving people stopped in Paris and taken back to Ventimiglia. In all these cases, the foreign citizens report an absolute impossibility of communicating with the French police and, hence, of expressing a possible wish to request asylum or declare that they are minors. In all the cases, foreign citizens are held on the train in French territory on the basis of controls which do not target all those who are present, but are based on visual evidence of certain physical traits.

There have been **various types of returns**:

1. some foreign citizens are stopped on the train, forced to get off at the next stop, blocked to await the train heading in the opposite direction and simply made to board it without any handover to the Italian police;
2. most people are held for a few hours by the French police, gathered in a group and taken back to the border with Italy in French vehicles and handed over to the Italian police at the internal Italian-French border crossing of Ponte San Luigi, a few kilometres away from Ventimiglia. In such cases, the readmitted foreign nationals are asked their name, surname, nationality and

date of birth, without any further photographic or fingerprinting identification procedures;

3. conversely, some foreign citizens, after they have been intercepted in French territory, are accompanied back into Italian territory by vehicles of the French police and are left on one of the roads which cross the Italian-French border in the hills above Ventimiglia without being handed over to the Italian law enforcement agencies, so the foreign citizens are compelled to walk for a few hours to reach Ventimiglia.

In cases involving handovers, their transit through Italian territory is often assumed on the basis of **a few pieces of evidence**: possession of the train ticket or of sales receipts from Italian shops. Yet, many foreign citizens report that they got rid of their ticket and of any other trace [of their passage through Italy] before they were stopped by the French police.

Some **unaccompanied minors**, including some whose apparent age was around 12 years old, say that they have crossed the border various times and were handed back to the Italian police forces by the French *gendarmerie*: without carrying out any medical checks, they are apparently either treated as adults or handed to an adult's care (or that of a minor who is considered an adult) so that they may not be considered unaccompanied minors.

Moreover, some foreign citizens report that they wished to **ask for international protection in France**, but the French *gendarmerie* did not give them the opportunity to do so. In one case, the person managed to express their wish to submit an asylum application, underwent the full photo-identification procedure (including the recording of all their fingerprints) and was handed a sheet of paper written in French detailing the address of the *France Terre d'asile* association, but was nonetheless readmitted into Italian territory.

The situation at the Italian-French border crossing of **ponte San Ludovico**, one of the two main border crossings using a highway, appeared very similar. It is the place which is most exposed to media coverage, where Italian and French organisations are present. On 24 June there were around 150 migrants in Italian territory (there have been up to 400 at peak times), to whom the Red Cross provides water, food and medical care. There are some chemical lavatories and freshwater showers. The foreign citizens sleep on the rocks or on the pavement opposite them, without beds or camping beds. In the daytime, the foreign citizens stay on the rocks, under the sun, except for some makeshift covers such as beach umbrellas and cloths. The foreign citizens who were present have repeatedly tried to cross the border on foot or in private vehicles, and they have been returned to Italy, with or without a formal handover to the Italian law enforcement agencies, and with or without any evidence documenting that they have crossed Italian territory, thus, following the modalities described above. **At the border**, cars approach the crossing in both directions at a speed of around 15/20 km/h. Heading towards France, there are around ten *gendarmerie* officers on the roadside who observe the cabin of each vehicle, stopping those which host people who

have African physical traits. Moreover, all the lorries and vans which have cabins are stopped and searched.

**To conclude**, the foreign citizens have been stopped by French police forces, sometimes very far away from the border (many of them as far as Paris); the way in which the *gendarmerie* returns people to Italy is not unpredictable, in particular, whether it asks the people who are stopped their personal details, whether such personal details are recorded, whether they are asked for formal evidence of their passage through Italian territory (sales receipts, tickets, etc.), and whether returns into Italian territory are carried out with or without the person's handover to the Italian law enforcement agencies. In any case, these people are not identified, not informed of their rights, they do not receive any administrative act from the French or Italian police forces, and their possible condition as applicants for international protection or as unaccompanied minors is ignored.

## **II. DESCRIPTION OF THE VIOLATIONS WHICH MAY BE APPRECIATED**

**1. Violation by Italy and France of article 13 of the European Convention on Human Rights (ECHR)**, which states that "*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*".

The refusals of entry experienced by the applicants are in effect **informal collective refoulements**, enacted on the basis of unwritten decisions by the border authorities, not formally notified in any way, without the returned people being effectively made aware of them and, as such, they cannot be **challenged and appealed** in any way before the jurisdictional authorities which would be hypothetically competent.

Nor have the returned foreign citizens had the chance to understand the operations enacted by the border police, as they have not been provided **any interpretation services** or any guidance as to their rights.

In effect, **no formal administrative procedures** have been initiated concerning the interested parties' personal situation, contrary to what is envisaged by law, and hence they have not had the opportunity of exercising their rights at any stage of their refoulement.

Hence, it is evident that their right to an effective remedy before a national body has been violated.

After all, as has already been clarified by the ECtHR, in order to be effective, the remedy required by article 13 must be **available both in practice and in law**, in particular, in the sense that its exercise must not be obstructed without justification by acts or omissions by the authorities of the State in question (see *Çakıcı vs. Turkey* [GC], no. 23657/94, § 112, ECtHR 1999-IV). On the contrary, the modalities through which the returns were enacted have objectively **made it impossible** for applicants to exercise any kind of right to a

defence. In fact, they have not been placed in a position to effectively expedite any jurisdictional remedy against their refoulement which may have made it possible to impede the enactment of violations of the Convention's norms.

**2. Violation by Italy and France of article 4 of the 4<sup>th</sup> Protocol of the ECHR**, which states that the "*Collective expulsion of aliens is prohibited*".

The documented events unequivocally describe how there has not been, by the Italian and French authorities, any formal examination of the personal situation of each returned foreigner, an examination which considered the individual legal positions or the personal conditions of health and/or vulnerability of the interested persons in a real and differentiated manner. In truth, it should be noted that in many cases the latter were **not even identified**.

**Heterogeneous groups of people were intercepted and collectively refused entry**, that is, coercively deported to Italy. No distinctions were made, regardless of whether the people were minors, asylum seekers or economic migrants. The decision to refuse entry - presumably adopted by virtue of the bilateral Agreement - also concerned the group in its totality. The interested parties are in a condition which is entirely similar to that described in the ECtHR sentence in the *Hirsi Jamaa and others vs. Italy* case – Grand Chamber - sentence dated 23 February 2012 (appeal no. 27765/09) in the part which states: "[...] *It has not been disputed that the applicants were not subjected to any identification procedure by the Italian authorities, which restricted themselves to embarking all the intercepted migrants onto military ships and disembarking them on Libyan soil. Moreover, the Court notes that the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers.*

*That is sufficient for the Court to rule out the existence of sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination.*"

**3. Violation by France of Reg. 562/2006 (Schengen Borders Code), arts. 20-21-22: prohibiting the reintroduction of systematic border controls:**

The Italian-French internal border crossings have not been formally closed, but there has been the application of bilateral agreements on cross-border cooperation on policing and customs which entail an obligation to readmit third-country nationals, among other effects. Systematic border controls at border crossings have not formally been reintroduced, yet it may be stated that these are carried out (in a systematic fashion), not on everyone, but only on people identified on the basis of ethnic profiling. Hence, it may be stated that systematic border controls have been reintroduced (Schengen violation) using a discriminatory method (violation of the Directive against discrimination).

**4. Violation by France of arts. 23-24-27 of Reg. 562/2006 (Schengen Borders Code):** To be accurate, the first point of art. 23 of the Schengen

Borders Code envisages that: “*Where there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days, in accordance with the procedure laid down in Article 24 or, in urgent cases, with that laid down in Article 25.*” It is necessary to consider that the influx of migrants, of a scale of a few hundred people and in an absolutely peaceful and calm manner, cannot in any way be considered a threat for public order or France’s internal security. Thus, to reintroduce systematic border controls at the Italian-French internal border crossing, France would have had to follow the procedure that is explicitly laid down by art. 24 of Reg. 562/2006, insofar as there is no way in which it may have amounted to an urgent action and, in accordance with art. 27 of Reg. 562/2006, it would have had to be communicated to the European Parliament.

**5. Violation of art. 13 of Reg. 562/2006 (Schengen Borders Code):** which dictates that in cases of refusal of entry “*The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned*”. Hence, even in cases in which border authorities deem that the requirements for adopting a refusal of entry measure apply, they will undoubtedly have to submit to the provisions of the mentioned art. 13 of (EC) Regulation no. 562/2006 and the substantiated decision will have to be handed to the third-country national. In fact, while it is true that this norm only applies to refusals of entry at the external borders, it is also true that there has been an effective reintroduction of border controls at the internal border crossings by France. Thus, the same norm on refusals of entry must also be applied to such controls, as is also envisaged by art. 28 of the same Regulation.

**6. Specific violations by France of the EU’s 604/2013 Dublin Regulation for the refusal of entry of unaccompanied foreign minors and asylum seekers:** There have been numerous cases of returns to Italy of unaccompanied minors and foreign citizens who expressed their wish to apply for asylum after arriving in France. The readmissions presumably take place in application of the Chambery agreement of 3 October 1997 which, however, excludes its application to anyone who expresses a request for international protection, in any way. Likewise, in application of Italian and French norms, it is plausible to believe that the governments, themselves, deem the Chambery agreement not to be applicable to unaccompanied minors. Hence, it is plausible to consider that the French *gendarmerie* does not receive international protection requests for the purpose of being able to consider the mentioned agreement to be applicable. For the same reasons, it is plausible to hypothesise that the *gendarmerie* ascribes adult status to many unaccompanied minors, or that it considers them accompanied after extemporaneously entrusting them to an adult or to a minor who is deemed to be an adult. In any case, in these events France has violated the procedures and criteria envisaged to determine the competent State to examine minors’

asylum applications provided by arts. 7, 8, 9, 10 and 11 of (EU) Regulation no. 604/2013.

**7. Unlawfulness of the Italian-French bilateral Agreement because it contravenes the Italian internal constitutional system and for violating internal norms, particularly those concerning administrative procedures**

In any case, the lawfulness within the Italian normative framework of the bilateral Agreement between the Government of the Italian Republic and the Government of the French Republic on cross-border cooperation on policing and customs signed in Chambéry on 3 October 1997 is doubtful, as is that of any other analogous type of intergovernmental agreement, for two kinds of reasons:

- although they have a clear political nature, they have not been ratified using a law to authorise ratification in accordance with art. 80 of the Constitution;
- insofar as they are intergovernmental agreements stipulated in a simplified form, in any case, they cannot provide modifications to the laws which are in force in Italy (another case in which art. 80 of the Constitution envisages a prior law to authorise ratification). Therefore, neither can they derogate from norms which are primary sources for the Italian juridical normative framework and, hence, nor can they set different rules from those laid down by, among other sources, law no. 241/1990 on administrative procedures which, among other effects, provides that each administrative procedure must end with the notification of a decision in writing that may then be challenged before the competent judicial authorities.

**8. Systematic violations of the bilateral Agreement itself**

In any case, the intergovernmental Chambéry agreement appears to be contravened in many instances. In fact, the agreement envisages that France must present a request to Italy which specifies the evidence or grounds on the basis of which it deems that a person has transited through Italian territory. The agreement also provides that the Italian police should assess the validity of such a request and, if applicable, it should authorise the readmission. Moreover, the latter should be enacted by the French police handing over the foreign citizen to the Italian police.