

# 1998 Italy - Tunisia Note Verbale

## *"Note Verbale"*

### **Background**

Italy and Tunisia enjoy a long lasting diplomatic relationship. The first Economic and Technical Cooperation agreement was signed in 1961, and it was followed by many other agreements covering many areas of cooperation, i.e. culture, scientific partnership, tourism. In 1991 the Convention on military cooperation was signed between the parties, and then ratified only in 1998, in conjunction with the adoption of an Executive Protocol on military operations. The relevance of the latter is found in its detailed nature, as the objectives laid down go beyond the general terms provided by the military Convention of 1991. Of particular interest is the cooperation of military operation and rescue at sea (the so-called tactical SAR). After the adoption of the Note Verbale (1998), two other migration-related agreements were concluded with Tunisia.

First of all, the 2001 Protocol of Technical Cooperation lays down the areas of intervention which the parties agree to cooperate upon, such as industry, agriculture, infrastructure, research, culture and tourism, by relying on experts, supplying equipment and establishing research centres. Among the long list of cooperative objectives, it is possible to identify the management of migration flows. The ratio of this Protocol is setting the legal basis for the adoption of further technical and in-depth agreements between the parties in all the above-mentioned areas. The second migration-related Treaty enacted between the parties is the Cooperation agreement on the Fight Against Criminality of 2003, which hasn't been ratified to this date. Art. 9 of the Agreement concerns cooperation to fight against irregular migration.

The issue of repatriation, already covered by the Note Verbale (1998), seems to be governed by updated agreements: there are indeed traces of a technical agreement for repatriation signed on 5th April 2011, and another one in February 2017. The strengthening of the bilateral relations between Italy and Tunisia on this specific issue might be explained by the policy pursued at European level. In 2014, the European Union signed the Mobility Partnership with Tunisia, whereby it encourages the development of bilateral agreements with Member States for the management of migration flows.

### **Procedure**

Exchange of notes, simplified procedure

### **Parties**

Italian Ministry of Foreign Affairs and the Government of Tunisia

### **Signature**

The Note Verbale has been signed in Rome on the 8th August 1998

### **Legal Basis**

The Note does not refer to any specific Framework Agreement governing the matter between the Parties. Despite the existence of previous Treaties tackling the issue of migration in general terms, none of these Agreement was ratified prior the adoption of the Note Verbale, nor it was expressly stating the desire of concluding further Agreement on the matter.

### **Aims**

The Note Verbale aims to prevent and to fight irregular migration. In order to achieve this objective, it finances (£500 mln) the construction of permanent centres for irregular migrants readmitted in Tunisia, by means of the procedure listed in the Note.

### **Content**

The core elements of the Note Verbale are set by two articles.

**Art. II** > The parties accept to re-admit their citizens illegally entered in the territory of the other party, and to organise the readmission with the support of Consular Authorities. In the event that the irregular person has not in her/his possession a valid document, it will be duty of the Consular Authority to provide her/him with a pass permit cf. laissez-passer. In order to conduct the identification process of a person without documents, the Authority of the *requiring party* will promptly disclose to the *identifying party* the full set of finger-prints and the pictures taken (3) of the irregular person. The identifying party will have to answer - with motivations supporting this specific outcome - within 15 days. Whenever such identification is proved to be wrong after the readmission process, the person will be accepted back by the Authority of the requiring party.

**Art. III** > The parties accept to re-admit third country citizens who, after transiting / residing in the Country of one the Parties, irregularly enter the territory of the other Party in the agreement. The readmission request shall receive an answer (cf. readmission decision) within 7 days from the formalisation of the request. The readmission authorisation has a validity of three months.

### **Final Disposition** -

After the Government of Tunisia accepts the provisions of the "Note Verbale" with another Note, the exchange of those Notes will represent the conclusion of the Agreement. The entry into force of the Agreement will be reached after the exchange of both notifications, on the exhaustion of internal constitutional procedures.

### **Cases and secondary legislation (cf. Application)**

Repatriation procedures towards Tunisia were subject of ECtHR review in *Khlaifia v. Italy* (no. 16483/12, GC).

Tunisia has been listed by Ministerial Decree of 4.10.19 as a "safe country".

### **Critical Issues**

The Note Verbale seems to have been adopted within the framework of a solid and rich relationship between the Parties. Although the two countries share a notably rich legal background, the Note Verbale is lacking a specific Framework Agreement covering it, as can be inferred by the fact that the migration-focused treaties have been adopted subsequently by the Note Verbale itself. The lack of a specific and comprehensive legal basis poses issues of legitimacy of the Treaty, as such a sensitive issue would better be covered by a treaty concluded in accordance with the provision of art. 80 Constitution.

Despite, and probably in light, of the rich tradition of agreements between Italy and Tunisia, some of the most crucial agreements regarding the repatriation of migrants have not been concluded through bilateral hard law treaties, but by technical understanding not disclosed to the public. Hence, the repatriation procedures have been following specific rules, facilitated by a faster identification process. Worryingly, the enlisting of Tunisia as a safe country has favoured the adoption of even faster procedures, with the aim of reducing from 2 years to 4 months the time required for assessing the asylum applications.

Tunisia acceded to the Convention on the status of refugees (1951). Nevertheless, the listing of Tunisia as a safe country is conflicting with the absence of a formal national asylum system, which is to a great extent based on the contributions provided by NGOs, UNHRC, and several donor countries.