

Ref: CommHR/DM/sf 013-2020

Mr Robert ABELA
Prime Minister of Malta

Strasbourg, 5 May 2020

Dear Prime Minister,

As Council of Europe Commissioner for Human Rights, I monitor member states' observance of their human rights obligations towards migrants, including asylum seekers and refugees, who cross the Mediterranean in an attempt to reach Europe. I am writing to you in relation to various recent reports about Malta's handling of the situation of migrants in distress at sea.

I would like to recall Malta's obligation under international maritime and human rights law to ensure that its authorities respond effectively and urgently to any situation of distress at sea of which they become aware. Obligations to coordinate search and rescue operations may also accrue when the distress situation occurs outside the Maltese Search and Rescue Region (SRR), at the very least until such moment when coordination can be handed over to other states' authorities that are willing and able to assume responsibility in a manner compliant with maritime and human rights law, and have effectively done so. I therefore urge your government to ensure that Malta fully meets its obligations when it is notified of a distress situation or receives requests for assistance, and that all credible allegations of delay or non-response are investigated and addressed.

I would also like to emphasise that prompt disembarkation in a place of safety is an integral part of states' search and rescue obligations. It has been well documented that Libya, both on account of the ongoing conflict and the serious human rights violations that persons disembarked there face, cannot be considered a place of safety. I call on your government to ensure that no action is taken by Malta that would result in the return to and disembarkation in Libya of persons rescued or intercepted at sea. This includes ensuring no one is returned to Libya by Maltese authorities, refraining from issuing instructions to private vessels to disembark rescued persons in Libya, and not handing over responsibility to the Libyan Coast Guard or related entities when the foreseeable consequence of this would be disembarkation in Libya. I also urge your government to ensure full accountability for situations in which action by Maltese authorities has led, directly or indirectly, to returns of persons at sea to Libya.

I am fully aware of the challenges that sea crossings and arrivals have posed for Malta for a considerable time, which have only increased since the recent outbreak of the Covid-19 pandemic. However, such challenges cannot negate clear obligations to save lives at sea and to ensure prompt and safe disembarkation. Let me assure you that I will continue to call for more solidarity from Council of Europe member states with those countries, like Malta, which are on the frontline of migration movements to Europe, and for better co-operation to ensure the effective preservation of life and the protection of other human rights of those at sea, including through responsibility sharing for adequate search and rescue capacity and the timely disembarkation of those rescued. However, in the meantime, I urge you to ensure that the human rights of persons rescued at sea are never put at risk because of current disagreements between member states about disembarkation, and that humanitarian considerations always take priority.

Finally, I want to highlight the need for all Council of Europe member states, including Malta, to seek constructive co-operation with civil society, especially NGOs that engage in search and rescue activities and those that monitor and defend the human rights of migrants at sea. It is crucial that states refrain from criminalising, stigmatising or otherwise harassing human rights defenders, and that they ensure an enabling environment for their work.

With regard to all the points above, as well as many other related matters, I kindly draw your attention to my Recommendation 'Lives saved. Rights protected. Closing the protection gap for refugees and migrants in the Mediterranean', which I published in June 2019. It provides detailed recommendations to member states on how to ensure that their approach to migration at sea is compliant with human rights standards. I encourage you to take advantage of these recommendations in further shaping Malta's response to this issue.

I look forward to continuing our constructive dialogue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a stylized, flowing script.

Dunja Mijatović