



**UNDER EMBARGO UNTIL PUBLICATION ON 04 FEBRUARY 2019**

**Submission by the  
Office of the United Nations High Commissioner for Refugees (UNHCR)  
concerning the execution of the judgment by the  
European Court of Human Rights in the case of *Sharifi and Others v. Italy and Greece*  
(application no. 16643/09, judgment of 21 October 2014)**

**1. Introduction**

This submission, addressed to the Italian Government, is submitted in the context of the supervision of the execution of the judgment of the European Court of Human Rights in the case of *Sharifi and Others v. Italy and Greece* (application no. 16643/09, judgment of 21 October 2014) by the Committee of Ministers of the Council of Europe

UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for the problem of refugees.<sup>1</sup> Paragraph 8(a) of its Statute and the Preamble of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”)<sup>2</sup> confer responsibility upon UNHCR to supervise the application of international conventions for the protection of refugees, whereas Article 35(1) of the 1951 Convention obliges States Parties to cooperate with UNHCR in the exercise of its functions, including in particular to facilitate its duty of supervising the application of the provisions of the 1951 Convention.

In accordance with its supervisory responsibility and in light of Italy’s obligations under refugee law, UNHCR also seeks to assist the Council of Europe’s Committee of Ministers in its evaluation of the measures necessary for execution of this judgment.

UNHCR appreciates the efforts by the Italian authorities to implement the judgment in relation to access to the territory and to international protection procedures for asylum-seekers arriving in the ports of the Adriatic Sea.

A number of legal and practical issues relating to refugee protection continue to be of concern to this Office, in particular with regard to the effective presence of NGOs at border crossing points (BCPs), insufficient provision of information, gaps in cultural mediation/interpretation, shortcomings regarding the identification of persons with specific needs, and reception arrangements more broadly. As a consequence of the insufficient monitoring and intervention capacity by NGOs, UNHCR is not in the position to obtain conclusive evidence whether all

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<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1, available at: <http://www.unhcr.org/refworld/docid/3b00f0715c.html>.

<sup>2</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, vol. 189, p.137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

person wishing to seek international protection in Italy have the opportunity to do so, or whether some have been issued with a readmission order to Greece.

## **2. Effective presence of NGOs at BCPs**

The Italian legal framework<sup>3</sup> provides for the assistance and information services for aliens who wish to apply for international protection at BCPs. In 2001, the Ministry of Interior established these services in fifteen BCPs. According to information available to the Office, as of January 2019, six are operational (including those on the Adriatic Sea Ports of Ancona, Bari and Venice).

These services are managed by NGOs which were selected through a public tender procedure. These NGOs are tasked to provide: 1) information on immigration legislation and international protection procedures; 2) interpretation; 3) first/material assistance; and 4) orientation and assistance of Dublin returnees. Whereas the Border Police are tasked to receive applications for international protection and to identify protection needs, NGOs have an important role to play in supporting the authorities in discharging their duties by providing the above-mentioned services to those requesting international protection. In recent years, however, UNHCR has observed a decline in terms of both the availability and quality of the services provided.

### **2.1 Reduction of funds**

Funds allocated by the Ministry of Interior for assistance and information services at BCPs have significantly decreased over time. As a result, services are available only for a few hours per day. Therefore, it is uncertain whether NGOs are available in all the circumstances foreseen by law.

Due to the limited available funding, NGOs are also not always able to ensure that they have the staff with the required competencies, in particular with regard to specialized expertise in identification of persons with specific needs, including UASC or victims of trafficking. In addition, NGOs are not systematically provided with adequate office space, even though this is foreseen by law and is critical for the identification of persons with specific needs, which requires a confidential and safe environment. NGOs are also not properly equipped with relevant multilingual information material.

UNHCR has also observed that in some areas, for instance in Bari, the NGOs providing assistance and information services have been tasked to merely provide material assistance to Dublin returnees at the airport, but are not mandated to provide counselling services for persons arriving at the port.

In addition, in some BCPs, for instance Trieste, where arrivals have recently increased, assistance and information services have not been established. This might be due to the lack of funding and/or to the fact that targeted assessments of arrivals at BCPs, which are instrumental to establish assistance and information services, are not carried out systematically.

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<sup>3</sup> Art. 11, par. 6, Consolidated Act on Immigration; Art. 24, Presidential Decree n.394/1999; Ministry of Interior's decree issued on 22/12/2000; Ministry of Interior's decree issued on 30/04/2001; Ministry of Interior's circular n. 1863/50 issued 02/05/2001.

## **2.2 Calls for tender and contracts**

Calls for tender are based on the lowest financial offer and quality criteria are not fully taken into account. UNHCR is concerned that they do not foresee clear standards and contract specifications. The short duration of the contracts awarded to the NGOs (one year) and the lack of multi-year planning have had a negative impact on the quality of services.

## **2.3 Limited/restricted space of intervention for NGOs**

NGOs only have access to persons already identified as asylum-seekers by the Police. They do not have access to other arrivals, who are held either onboard or in port facilities, and who may have international protection needs and may wish to apply for asylum. Moreover, in Venice NGOs are available only on an on-call basis. This limits *de facto* the effectiveness of the NGOs' services. UNHCR is therefore concerned that not all arrivals are systematically informed about immigration legislation and international protection procedures, nor are they systematically able to avail themselves of interpretation services.

## **3. Information provision, identification of persons with protection needs by border officials, and reception arrangements**

Based on UNHCR's observations, the border police does not have sufficient interpreters and cultural mediators, who are essential in the identification of persons with protection needs. This resource challenge is particularly concerning given the limited capacity and involvement of NGOs, as outlined above. Moreover, the border police does not have sufficiently updated and adequate multilingual information materials on the possibility to apply for asylum. UNHCR sees a further need to strengthen targeted training for border officials, in particular on the identification of persons with protection needs. Improvements have been observed regarding reception arrangements namely in Venice and Ancona, whereas the reception situation remains concerning in other places, like Bari. A particular concern relate to the scarce availability of accommodation for persons with specific needs in a timely manner.

## **4. Conclusions**

The aforementioned concerns may have implications in terms of access to the asylum procedure and of compliance with procedural standards, considering that lack of interpretation services, information material, and adequate equipped and trained staff can prevent or hinder access to international protection.

The current operational framework might prevent new arrivals from receiving adequate information and denying potential asylum-seekers an effective opportunity to express the wish to seek asylum in Italy. This could have negative implications particularly for persons with specific needs, and persons who in accordance with the Dublin Regulation could have legitimate reasons to lodge their claims in Italy, such as UASC and other individuals who have family links in Italy.

## **5. Recommendations**

UNHCR recommends that measures for strengthening effective access to territory and international protection procedures at Adriatic ports be adopted. To this purpose, UNHCR recommends that increased financial resources for assistance and information services be allocated, in order to enhance the role of NGOs through adequate reception, quality information, and legal counselling.

In addition, UNHCR recommends that the capacity of the border police be further supported, through adequate interpretation services, updated written information material, and regular training on international protection, identification of persons with specific needs, and the Dublin regulation.

Furthermore, UNHCR calls on Italian authorities to adopt SOPs to define procedural safeguards and services provided, in particular by the NGOs working at BCPs, including with regard to access of NGOs to persons who may wish to apply for international protection.

Finally, UNHCR recommends that the relevant Italian authorities carry out regular assessments of BCPs where the largest number of arrivals, in terms of both asylum-seekers and arrivals in general, has been registered during the last three years.

**UNHCR  
January 2019**