



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

1. Introduction

This submission is provided 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 refugees¹. Paragraph 8(a) of its Statute and the Preamble of the 1951 Convention relating to the Status of Refugees (“the 1951 Convention”)² 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 confirms its appreciation for the efforts reported by the Italian authorities to implement the judgment of the European Court of Human Rights in the case of *Sharifi and Others v. Italy and Greece*, in relation to access to the territory and to the international protection procedure for asylum-seekers arriving in an irregular manner at the Border Crossing Points (BCPs) on the Adriatic Coast.

UNHCR wishes to further clarify some of the elements already mentioned in its previous submission dated January 2019³, and to reiterate its concerns with regard to the effectiveness of the services provided by NGOs at BCPs⁴. This additional submission is mainly motivated by the continuing lack of conclusive evidence on the fact that all individuals, who wish to

¹ 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>.

² 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>.

³ January 2019 UNHCR Submission, available at: <https://www.refworld.org/docid/5c61614f4.html>.

⁴ According to Italian legislation, information and assistance services at BCPs are managed by NGOs funded by the Ministry of Interior and selected through a public tender procedure.

express their intention to apply for international protection, have effectively had the opportunity to do so.

UNHCR further wishes to clarify that it does not have staff permanently deployed at official BCPs in Venice, Ancona, Brindisi and Bari⁵. Information on the situation at BCPs is, therefore, collected through *ad hoc* missions, as well as informal reports received directly from asylum-seekers, refugees and civil society organizations (CSOs).

2. NGOs' access to potential asylum-seekers

In UNHCR's view, the current operational framework, including the fact that NGOs do not have effective access to all persons arriving irregularly, and that, in the CBPs concerned, they do not have visibility or dedicated offices in transit areas, may prevent new arrivals from receiving adequate information. This may in turn hinder the effective opportunity for potential asylum-seekers to express their willingness to seek asylum in Italy.

In compliance with the current EU and domestic legal framework, further corroborated by the findings of the European Court of Human Rights and Italian jurisprudence⁶, a Member State should ensure that potential asylum-seekers are provided with information on the possibility to apply for international protection⁷. Moreover, according to the Ministerial Decree that describes the working modalities of reception and information services at BCPs, envisages that NGOs' assistance shall be available to foreign citizens willing to apply for international protection, those who enter the Italian territory for reasons other than tourism and those who are in need of assistance pending definition of assessment related to their arrival to Italy. Such services are, therefore, not limited to those already registered by the Police authority as asylum-seekers⁸.

In 2001⁹, the Italian Ministry of Interior identified 15 BCPs - Ancona, Bari, Brindisi, Bologna, Bolzano, Como, Florence, Gorizia, Imperia, Rome, Turin, Trieste, Trapani, Varese and Venice – as areas where reception and information services could have been established. According to the information available to the office, reception and information services were then established in Ancona, Bari, Bologna, Rome, Varese and Venice¹⁰.

UNHCR observes that NGO staff working at BCPs is composed mainly of cultural mediators and interpreters, who often lack specialized legal expertise¹¹. Moreover, NGO staff working at BCPs have no direct access to new arrivals, including potential asylum-seekers, but only to persons who have been referred by the Police because they had already expressed their intention to apply for asylum upon arrival. As a result, third country nationals arriving in an irregular manner to the Italian territory, cannot approach NGOs' offices directly at the border, but only

⁵ UNHCR has no presence at BCPs where services are functioning (including Bari, Ancona, Venezia). With regard to Trieste the reception and information service has not been implemented, nor does any NGO provide the above mentioned activities, following the Sharifi judgment.

⁶ ECtHR- M.S.S. v Belgium and Greece [GC], Application No. [30696/09](#), §304, 21 January 2011; ECtHR- Hirsi Jamaa and others v Italy [GC], Application No. [27765/09](#), §204, 23 February 2012; Italy - Court of Cassation, No. [5926](#), 25 March 2015, §3.2.

⁷ Art.8, EU Directive 32/2013.

⁸ Art.2, Ministry of Interior's decree issued on 22/12/2000.

⁹ Ministry of Interior Decree issued on 30/04/2001.

¹⁰ <http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/ufficio-iii-asilo-portezioni-speciali-e-sussidiarie-unita-dublino>, accessed on 27 January 2020. According to UNHCR knowledge, info service in Brindisi is currently not operational.

¹¹ Please refer to the January 2019 UNHCR submission. Funds allocated by the Ministry of Interior have significantly decreased overtime, which has had an impact on the quantity and quality of information and assistance services available at BCPs.

after having gone through border controls. This, *de facto*, limits the effectiveness of the NGOs' services and undermines the scope of the above-mentioned legal provisions.

3. Information material on how to apply for international protection

At the time of drafting, standardized and updated information material for asylum-seekers is, contrary to the EU, directive not available at official BCPs¹². Only persons who spontaneously express to the Police their intention to apply for asylum are informed orally on the international protection procedure in Italy. As a consequence, information on the right and possibility to apply for international protection, aiming at facilitating and guaranteeing their access to the asylum procedure at BCPs (as foreseen by *consideranda* 28, EU Directive 32/2013), is not available to all third country nationals arriving irregularly, including potential asylum-seekers.

4. Lack of standardized approach

UNHCR continued to observe a lack of standardized approach with regard to NGOs' access to arrivals and performance of tasks, namely provision of information on immigration legislation and international protection procedures, interpretation and first/material assistance. Although the Hotspot SOPs did not explicitly rule out the possibility to be applied at the BCPs on the Adriatic Ports, they were *de facto* not implemented there, in particular regarding core safeguards such as provision of information on the possibility to apply for international protection on behalf of all new arrivals, including potential asylum-seekers. Moreover, the support provided to authorities in discharging such responsibility at the above-mentioned BCPs is assigned, by law, pursuant to Art. 11 para 6 of the Immigration Consolidated Act, to the assistance and information services run by NGOs.

UNHCR, therefore, recommends the establishment of specific SOPs, in order to clearly define the workflow at CBPs, including NGOs' access to all arrivals through qualified and trained personnel, as well as appropriate NGO visibility and dedicated office at the transit areas.

5. Conclusions

In conclusion, concerns on the availability and quality of reception and information services at BCPs remain. Although foreseen by the Italian legal framework, NGO's services are not sufficiently implemented at the moment¹³.

The aforementioned gaps may have significant implications in terms of access to the asylum procedure and compliance with procedural standard safeguards, considering that the lack of information material as well as the lack of adequately equipped and trained staff can prevent or hinder access to international protection.

The inadequate identification of protection needs may result in asylum-seekers being unable to lodge an application and to avail themselves of a full and fair examination of their claims.

¹² In order to facilitate access to the examination procedure at BCPs and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements (*consideranda* 28, EU Directive 32/2013).

¹³ Conversely, UNHCR's presence to identify persons with specific needs has been mentioned by the Italian authority, (Communication 26/06/2019, §2.2 F).

The current operational framework may therefore prevent new arrivals from receiving adequate information and deny potential asylum-seekers an effective opportunity to express their 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, for instance in cases of unaccompanied asylum-seeking children with family links.

6. Recommendations that would ensure execution of the judgement

In order to ensure that asylum-seekers, and/or potential ones, fully enjoy their right to access to the territory and to the asylum procedure and in order to strengthen the effective role of NGOs providing services at the BCPs on the Adriatic Coast, UNHCR recommends:

- Full availability and visibility of multi-lingual information materials (e.g. posters, videos, etc.) on the right to apply for international protection for the benefit of persons who go through the border area, in accordance with EU framework;
- NGOs, that according to Italian law provide reception and information services, should have effective access to potential asylum applicants in border and transit areas and to carry out their activities in dedicated offices within the border area;
- Resources allocated by Italian authorities should be sufficient to guarantee that adequate legal assistance be provided;
- All persons who are served with a non-admission decree or with a readmission decision should benefit of assistance by NGOs providing services at border areas, aiming at being adequately informed about their right to seek asylum in Italy and about the possibility to lodge an asylum application;
- Tender procedures in relation to the provision of information services should be standardized and consistent, and they should be designed at central level;
- NGOs running information and reception services should have staff with the necessary legal expertise to effectively carry out services at the border;
- Standard Operating Procedures or *ad hoc* guidelines should be drafted to ensure that practices are coherent and that potential asylum-seekers' right to information is guaranteed to everyone and consistently across the different locations; and
- Capacity of the border police should be further supported, through adequate interpretation services, updated written information material, and regular training on early identification of persons with specific needs, including UASC, and the Dublin Regulation.

UNHCR
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