

## The return of vulnerable asylum seekers to Italy: protecting victims of trafficking

Lucia Della Torre, Adriana Romer and Margarite Zoeteweij

**The inadequacy of Italy's reception conditions for vulnerable asylum seekers raises serious questions about the legitimacy of Dublin transfers of those who have been trafficked.**

Through the Dublin III Regulation<sup>1</sup> an EU Member State can be requested by another Member State to take back an asylum seeker who has previously applied for asylum in their first country of asylum. The application of this Regulation places disproportionate pressure on the asylum systems of those countries whose borders also form part of the external borders of the EU, of which Italy is one. The result of this pressure, combined with recent political and legal developments in Italy, means that the specific needs of vulnerable asylum seekers – which includes victims of trafficking – are often inadequately identified and met, casting doubt over the legitimacy of these 'Dublin transfers'.

Early identification of potential victims of trafficking in the asylum procedure is crucial in order to grant them the best possible conditions in which to properly present their asylum claim, and to protect them from further exploitation. The Council of Europe Convention on Action against Trafficking in Human Beings outlines how each Member State must ensure its authorities have staff who are trained and qualified in identifying and assisting survivors.

However, Italy's asylum procedure lacks a general screening for vulnerabilities and it falls short of these obligations. Anti-trafficking NGOs report that it is their own personnel who refer most of their cases, or referrals come from trained social workers employed by reception centres; very few come from the local police (and even then not always from those officers who are involved in registering asylum seekers).

The asylum procedure in Italy begins with the lodging of an asylum application at the local police station. Biometric data are collected – either immediately, if capacity allows, or at a later stage. A written statement

is also recorded, which is taken a few weeks or sometimes a few months after the application is first registered. The invitation to appear before the local Territorial Commission (which is responsible for examining asylum applications) is issued only after the statement is processed and, accordingly, an appearance before the Commission takes place at least a few months into the asylum procedure. For those who have been trafficked, this means that they spend a significant amount of time in the asylum procedure before being properly identified.

In cooperation with UNHCR and the European Asylum Support Office, the Italian Ministry of the Interior has published guidelines<sup>2</sup> for identifying victims of trafficking among applicants for international protection. Designed specifically for Territorial Commissions, they allow for the asylum procedure to be halted for up to four months if the Commission believes an applicant may have been trafficked. During this period, the applicant is referred to a specialised local NGO, as recommended in the guidelines. After interviewing the applicant, the organisation gives the Territorial Commission its assessment of the applicant's claim to have been trafficked and its relevance for the individual's claim for international protection.

In interviews conducted in September 2019 as part of an OSAR report on reception conditions in Italy,<sup>3</sup> employees of these local NGOs and Territorial Commissions reported that the publication of the government guidelines and the training provided to staff have had a positive impact on their collaboration, and that the number of referrals coming from the Territorial Commissions has increased. But although this increase in referrals is good news, the funding and

June 2020

www.fmreview.org/Issue64

resources available to local NGOs have not increased accordingly. As a result, local NGOs lack capacity to adequately assist all those who are referred to them.<sup>4</sup>

### **The Salvini Decree and reception conditions**

With the coming into force of the Salvini Decree in October 2018, which amended several articles of Italian migration law, the situation for victims of trafficking has deteriorated even further. As well as abolishing humanitarian protection status (which had been used to a considerable extent for asylum seekers who did not meet the criteria to receive international protection), vulnerable asylum seekers – including those who have been trafficked – can no longer access reception centres which offer individual reception programmes. These are now reserved for people with international protection status or unaccompanied asylum-seeking children; those who do not fall into these categories are now only entitled to access larger, collective centres.

Concurrently, the financial contribution of the State towards those accommodated in these collective reception centres was reduced from around €35 to just €18 per day. This has led to a fall in the level of qualifications and experience of centre personnel and changed the ratio of asylum seekers to employees from ten-to-one to fifty-to-one. Centres with a capacity of less than 150 are not expected to have staff on duty through the night. Numbers of professional staff such as cultural mediators, social assistants and medical staff have been drastically reduced, and psychological support removed entirely. Qualified personnel are unable to spend more than a few minutes with each asylum seeker per week. The lack of personal contact and time does not allow for the building of a relationship of trust, nor does it give personnel the necessary time to identify residents' vulnerabilities and take appropriate measures. These changes have led to an unwillingness on the part of some charitable organisations to continue administering these centres, as they cannot offer the level of service that

they deem to be the absolute minimum. In many instances, their place is taken by organisations that focus on profit and do not necessarily place human dignity first.

The conditions in the collective reception centres have a negative effect on trafficking survivors. NGOs observe that individuals frequently leave the reception centres at night to engage in prostitution. Due to the lack of supervision, trafficking and re-trafficking may take place, and cases of sexual abuse including rape inside the centres have also been reported.

Asylum seekers also lose their right to accommodation if they are absent from the centre for more than 72 hours – and it is extremely difficult and time-consuming to regain the right to accommodation once revoked by the prefecture. Those who are returned to Italy under the Dublin III Regulation – which includes vulnerable asylum seekers – are likely to have lost the right to all material reception conditions because they were previously accommodated in Italy before moving on to another European country. This is contrary to case law of the Court of Justice of the European Union.<sup>5</sup>

### **Dublin transfers**

Even though the Dublin III Regulation does not explicitly prohibit the transfer of vulnerable asylum seekers, States are bound by human rights law as well as the provisions of the Regulation. Under the terms of the Council of Europe's anti-trafficking Convention, those who have been trafficked should be given a recovery and reflection period of 30 days, during which time they can remain in the territory of the State Party. In light of the provisions of the Dublin III Regulation, this temporary residence might in itself be sufficient grounds for transferring responsibility for assessing these asylum applications to the State that is providing this recovery and reflection period.

After the recovery and reflection period has passed, if the State decides nonetheless that another State is responsible for assessing the claim, it has to inform that State, which must explicitly agree to take responsibility for the individual and also explicitly declare

that they will receive the appropriate care upon being transferred. The State requesting to make a transfer can only do so if neither the transfer itself (because of potential risk of physical or psychological harm) nor the subsequent reception conditions are in contravention of relevant provisions in European law, including – but not limited to – the European Convention on Human Rights and the Council of Europe’s Convention.

Other international treaty bodies have also issued decisions regarding the legality of Dublin transfers to Italy. In 2018, the UN Committee against Torture decided in two cases that the transfer of asylum seekers who had been subjected to torture would infringe their rights under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as the provision of adequate health care could not be guaranteed upon their arrival. The Swiss Federal Administrative Tribunal as well as several German courts have also partially recognised the problematic situation in Italy. For example, in a December 2019 judgement the Swiss tribunal ruled that Italian authorities are required to furnish guarantees on an individual case basis concerning reception conditions.

Pre-existing precarious conditions in the Italian reception system have been exacerbated by recent legislative reforms,

and the timely identification of victims of trafficking and the facilitation of adequate provision are highly questionable. If explicit, individual guarantees with regard to the proper reception of asylum seekers who have been trafficked are not given (or if there are reasons to doubt that in practice these guarantees cannot be fulfilled), States should refrain from instigating Dublin transfers of these asylum seekers to Italy.

Lucia Della Torre [luca.dellatorre@osar.ch](mailto:luca.dellatorre@osar.ch)

Adriana Romer [adriana.romer@osar.ch](mailto:adriana.romer@osar.ch)

Margarite Zoetewij  
[margarite.zoetewij@unifr.ch](mailto:margarite.zoetewij@unifr.ch)

Lawyers, Swiss Refugee Council OSAR  
[www.refugeecouncil.ch](http://www.refugeecouncil.ch)

1. Regulation (EU) No 604/2013 of the European Parliament and of the Council, commonly known as the Dublin Regulation. [bit.ly/DublinRegulation](http://bit.ly/DublinRegulation)
2. UNHCR and Italian Ministry of the Interior (2016) ‘L’identificazione delle vittime di tratta tra I richiedenti protezione internazionale e procedure di *referral*’ [bit.ly/UNHCR-Italy-trafficking-2016](http://bit.ly/UNHCR-Italy-trafficking-2016)
3. Swiss Refugee Council OSAR (2020) ‘Reception conditions in Italy: Updated report on the situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, in Italy’ [bit.ly/OSAR-Italy-2020](http://bit.ly/OSAR-Italy-2020)
4. GRETA (2019) ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy’, p66, §284 <https://rm.coe.int/greta-2018-28-fgr-ita/168091f627>
5. CJEU, Case C-233/18, *Haqbin v Federaal Agentschap voor de opvang van asielzoekers*, 12 November 2019 [bit.ly/CJEU-c233-18](http://bit.ly/CJEU-c233-18)