



## IS MUTUAL TRUST ENOUGH?

The situation of persons with special reception needs upon return to Italy

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## **Information about the organisations**

### **Danish Refugee Council**

The Danish Refugee Council (DRC), founded in 1956, is a humanitarian, non-governmental, non-profit organisation that works with refugees and internally displaced persons in more than 30 countries throughout the world. DRC also works with counselling of asylum seekers and integration of refugees in Denmark.

### **Swiss Refugee Council**

The Swiss Refugee Council (OSAR) is a politically and religiously independent non-profit organisation and the umbrella association of the Swiss refugee relief organisations Caritas Switzerland, the Swiss Interchurch Aid (HEKS), the Swiss Labour Assistance (SAH), the social arm of the Swiss Federation of Jewish Communities (VSJF), the Salvation Army Foundation Switzerland and the Swiss section of Amnesty International. Since being founded in 1936, OSAR has represented the interests of asylum seekers and refugees vis-à-vis the authorities, policy makers and civil society.

Both DRC and OSAR are members of the European Council on Refugees and Exiles (ECRE).

# 1 Introduction

## 1.1 Background and objectives

This report assembles case studies of persons with special reception needs<sup>1</sup> within in the meaning of Article 22 of the Reception Conditions Directive (RCD)<sup>2</sup>. It aims at providing insights on reception conditions and access to the asylum procedure for these persons<sup>4</sup>. For this purpose, it looks at families<sup>3</sup> and vulnerable persons who have been transferred to Italy under the Dublin III Regulation after the European Court of Human Rights' (ECtHR) judgment *Tarakhel v. Switzerland*<sup>5</sup>.

Denmark has been a party to the Dublin system since 1st April 2006. Since December 2008, Switzerland also applies the Dublin Regulation as an associated country without being a member of the European Union. Many asylum seekers enter Europe through Italy before travelling to other Member States<sup>6</sup>. Hence Italy is an important partner for both Denmark and Switzerland within the Dublin system.

Since 1<sup>st</sup> January 2014, DRC has provided free legal assistance for asylum seekers in the Danish Dublin procedure. As an umbrella organisation OSAR is involved in Dublin cases both in practice as well as in the political process.

DRC published a profile of the Italian asylum system in 2013. Since 2010, OSAR has undertaken three fact-finding missions to Italy and published reports<sup>9</sup> describing the Italian asylum system and the reception conditions for Dublin returnees and persons with a protection status in Italy.

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<sup>1</sup> Article 2k of the Reception Conditions Directive contains the following definition: „applicant with special reception needs’ means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.“

<sup>2</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), commonly referred to as „Reception Conditions Directive“ (RCD).

<sup>3</sup> Families are provided with a right to preserving family unity in Article 12 of the RCD.

<sup>4</sup> Article 21 of the RCD provides for a non-exhaustive definition of vulnerable persons: „vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.“

<sup>5</sup> ECtHR judgment of 4th November 2014, *Tarakhel v. Switzerland*, No. 29217/12.

<sup>6</sup> According to statistics by Eurostat regarding “Incoming ‘Dublin’ requests by submitting country (PARTNER), type of request and legal provision [migr\_dubri]”, updated on 16th December 2016, Italy in 2015 received 24,990 Dublin requests from other Member States out of a total of 74,907 requests in the EU.

<sup>7</sup> In 2015, Denmark in total sent 565 requests to Italy of which 453 was accepted by the Italian authorities and 112 were not accepted, source: *The Danish Immigration Service, Tal og fakta på udlændingområdet 2015, spring 2016*, p. 14. <http://uim.dk/publikationer/tal-og-fakta-pa-udlaendingeområdet-2015>; the statistics from 2016 are not available yet.

<sup>8</sup> According to the data provided by the State Secretariat for Migration, 7’092 Dublin-Out Procedures (from a total of 15’203) requests were sent to Italy from Switzerland in 2016. Italy agreed to take charge (actively or by default) in 5’660 cases, 1’523 transfers to Italy took place. Source:

[www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2016/12/7-50-Bew-Dublin-J-d-2016-12.xlsx](http://www.sem.admin.ch/dam/data/sem/publiservice/statistik/asylstatistik/2016/12/7-50-Bew-Dublin-J-d-2016-12.xlsx)

<sup>9</sup> Swiss Refugee Council, Italy: Reception conditions – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, Berne, August 2016: [www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf](http://www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf)

In its *Tarakhel v. Switzerland* judgment, the ECtHR stated that Dublin returns of families to Italy may constitute a violation of Article 3 of the ECHR “if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together”. The court specifically referred to the special needs of minor children.

In the EU context, Article 4 of the Charter of Fundamental Rights of the European Union (EU Charter) provides for the same protection as Article 3 of the ECHR. Looking at the context of the Common European Asylum System (CEAS) it is clear that the special reception needs of all vulnerable persons need to be met.<sup>10</sup>

During the latest OSAR fact-finding mission to Italy in 2016, OSAR found that the Italian asylum system still showed various ambiguities regarding the actual asylum procedure and access to accommodation for Dublin returnees.<sup>11</sup> The mission also found that families and vulnerable persons could still be at particular risk of violation of their rights under Article 3 of the ECHR and Article 4 of the EU Charter if they were transferred to Italy. Additionally, OSAR was informed of several families transferred to Italy under the Dublin III Regulation who were not received by the Italian authorities according to the standards set out in *Tarakhel v. Switzerland*.

In view of this, DRC and OSAR found it necessary to collect more information about the actual situation of families and vulnerable persons transferred to Italy and launched a joint Dublin Returnee Monitoring Project (DRMP) in 2016.

## 1.2 Outline of the Dublin Returnee Monitoring Project (DRMP)

The DRMP focuses on reception conditions and access to the asylum procedure for families with minor children or other persons with special reception needs, who are transferred to Italy under the Dublin III Regulation.

In order to identify cases matching the scope of the project, DRC and OSAR informed partner organisations all over Europe about the DRMP. Some cases were identified before the transfer to Italy, while others were identified after their arrival in Italy.

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*Swiss Refugee Council, Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, Berne, October 2013: [www.refugeecouncil.ch/assets/news/english-website/131213-osar-report-italy-english.pdf](http://www.refugeecouncil.ch/assets/news/english-website/131213-osar-report-italy-english.pdf)*

*The Law Students' Legal Aid Office, Juss-Buss, Norway and Swiss Refugee Council, Italy: Asylum procedure and reception conditions in Italy - Report on the situation of asylum seekers, refugees, and persons under subsidiary or humanitarian protection, with focus on Dublin returnees, Berne and Oslo, May 2011: [www.fluechtlingshilfe.ch/assets/asylrecht/rechtsgrundlagen/asylum-procedure-and-reception-conditions-in-italy.pdf](http://www.fluechtlingshilfe.ch/assets/asylrecht/rechtsgrundlagen/asylum-procedure-and-reception-conditions-in-italy.pdf)*

<sup>10</sup> Article 22 of the RCD and the Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions Policy Plan on Asylum an Integrated Approach to Protection across the EU*, 17th June 2008, para 2 and 3.1.

<sup>11</sup> *Swiss Refugee Council, Italy: Reception conditions – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, Berne, August 2016: [www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf](http://www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf)*

After a case had been identified, DRC and OSAR asked the applicants whether they wanted to participate in the DRMP. Before accepting to participate in the project, DRC and OSAR informed the potential returnees about the purpose, possibilities and constraints of the project in order to avoid false expectations in relation to the scope and type of assistance DRC and OSAR could provide through the project. In 2017, the identified potential returnees also received a written description of the DRMP in one of the available languages (English [see Annex I], German and Italian).

DRC and OSAR have established a network of interviewers in Italy, who have monitored the identified cases on behalf of DRC and OSAR. The interviewers have documented the experiences of the applicants by filling out a questionnaire (see Annex II) on reception conditions and access to the asylum procedure in Italy.

In order to confirm the information gathered in the questionnaires as well as to meet the applicants and interviewers involved in the DRMP, DRC and OSAR conducted a fact-finding mission to Italy in January 2017. During the mission, DRC and OSAR interviewed the returnees involved in the project and held meetings with interviewers as well as various organisations involved in the Italian asylum procedure.

This report presents findings on the first six cases of the DRMP. The documentation comprises applicants who were transferred to Italy under Articles 12(2), 12(4) or 18(1)(b) of the Dublin III Regulation in the period from April 2016 to January 2017.

This report only contains cases from Denmark and Switzerland, but other Member States have also transferred (and continue to transfer) families and vulnerable persons to Italy under the Dublin III Regulation. The DRMP will continue throughout 2017 with the purpose of identifying and monitoring additional cases as well as following up on the cases presented in this report.

## 2 The Italian system

The Italian reception system essentially consists of first-line and second-line reception. In the case of direct arrivals, especially by sea, people are first given food and accommodation in a Centro di primo soccorso e accoglienza (Centre for First Aid and Reception – CPSA). First-line reception centres include Centro di accoglienza (Accommodation Centres – CDA) and Centri governativi di prima accoglienza. They are supplemented by Centri di accoglienza straordinaria (Emergency Reception Centres – CAS), which make up the greater part of the reception system and are intended to cover the lack of capacity in other centres. They can also be assigned as first-line reception centres. Sistema di protezione per richiedenti asilo e rifugiati (Protection System for Asylum Seekers and Refugees – SPRAR)<sup>12</sup> is the second-line reception system.<sup>13</sup>

Applicants should temporarily be placed in first-line reception centres until they get a place in a second-line reception centre (SPRAR). As the Italian accommodation system has considerably fewer places in second-line than in first-line reception, bottlenecks occur where the system is unable to meet

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<sup>12</sup> A list of the active projects by regions is available here: [www.sprar.it/i-numeri-dello-sprar](http://www.sprar.it/i-numeri-dello-sprar)

<sup>13</sup> Swiss Refugee Council, Italy: Reception conditions – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, Berne, August 2016, p. 9 f.: [www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf](http://www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf)

requirements, especially when the number of arrivals and / or applications is high<sup>14</sup>. As a consequence, many applicants either stay in first-line reception centres during the whole asylum process or end up homeless.

In *Tarakhel v. Switzerland*, the Italian government stated that the most appropriate accommodation for families and other vulnerable persons in Italy would be a SPRAR, because it “guarantees them accommodation, food, health care, Italian classes, referral to social services, legal advice, vocational training, apprenticeships and help in finding their own accommodation”<sup>15</sup>.

Current information about the reception system in Italy illustrates that SPRAR would still be the most suitable type of accommodation for families and other vulnerable persons. Nevertheless, the quality of the SPRAR depends on the organisation running it. It should also be noted that the average quality of the SPRARs seems to have declined in recent years due to the rapid and significant increase in the number of places.<sup>16</sup>

### 3 Jurisprudence and legal bases

#### 3.1 *Tarakhel v. Switzerland*

According to the case law of the ECtHR, asylum seekers are “a particularly underprivileged and vulnerable population group in need of special protection”<sup>17</sup>. The ECtHR has also found that poor reception conditions for asylum seekers and lack of effective access to the asylum procedure can constitute a violation of Article 3 of the European Convention on Human Rights (ECHR).<sup>18</sup>

The court’s judgement thus means that when deciding which Member State should be responsible for processing an applicant’s asylum claim, it is therefore important that the transferring Member State examines the factual situation regarding reception conditions in the receiving Member State in order to avoid violations of Article 3 of the ECHR and Article 4 of the EU Charter.<sup>19</sup>

On 4<sup>th</sup> November 2014, the ECtHR held in *Tarakhel v. Switzerland*<sup>20</sup> that it would be a violation of Article 3 of the ECHR if Switzerland returned the *Tarakhel* family to Italy without “having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together”.<sup>21</sup>

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<sup>14</sup> *Swiss Refugee Council, Italy: Reception conditions – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, Berne, August 2016, p. 74: [www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf](http://www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf)

<sup>15</sup> *Tarakhel v. Switzerland*, para 121.

<sup>16</sup> *Swiss Refugee Council, Italy: Reception conditions – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, Berne, August 2016, p. 9 f.: [www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf](http://www.refugeecouncil.ch/assets/news/2016/161031-final-englisch-sfh-bericht-italien-aufnahmebedingungen.pdf)

<sup>17</sup> ECtHR judgment of 21st January 2011, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, para 251.

<sup>18</sup> *M.S.S. v. Belgium and Greece*, reasons.

<sup>19</sup> Cf. Recital 19 and (with a special focus on “systemic flaws”) Article 3(2) of the Dublin III Regulation.

<sup>20</sup> ECtHR judgment of 4th November 2014, *Tarakhel v. Switzerland*, No. 29217/12.

<sup>21</sup> *Tarakhel v. Switzerland*, para 122 and para 2 of the reasons.

In that case, the ECtHR stated that the “requirement of ‘special protection’ of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents”.<sup>22</sup>

The ECtHR also stated that there is no obligation under the Dublin III Regulation for a Member State to transfer an applicant if the Member State considers that the receiving Member State is not fulfilling its obligations under the ECHR.<sup>23</sup> It concluded that the transferring state (in this case Switzerland) has to “bear responsibility under Article 3 of the Convention” for the Dublin transfer.<sup>24</sup> Furthermore, the ECtHR stated that the data and information about the capacity of the Italian reception system accessible to the ECtHR at the time indicated “the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded.”<sup>25</sup>

According to Danish and Swiss case law after *Tarakhel v. Switzerland* and *N.A. v. Denmark*<sup>26</sup>, it is a precondition for Dublin decisions regarding transfers of families to Italy that the authorities of the transferring Member State ensure that a family will be transferred together and that the Italian authorities will be informed about the special needs of the applicants, e.g. relevant health information.<sup>27</sup>

Additionally, Article 31 and 32 of the Dublin III Regulation provide for an obligation of the transferring Member States to provide the receiving Member State with concrete information on the medical condition and other relevant information such as special needs of returnees.

### 3.1.1 Italian guarantees

In order to meet the requirements of the *Tarakhel v. Switzerland* judgment, the Italian Ministry of the Interior in 2015 and 2016 held meetings with the other Member States and provided information about improvements to the Italian reception system:

On 27th March 2015, the Italian Ministry of the Interior provided a general guarantee regarding the reception conditions for families who were transferred from other Member States to Italy due to the Dublin III Regulation. The Italian authorities promised that the families would be kept together and accommodated in facilities appropriate to the needs of families with children.<sup>28</sup>

On 8th June 2015, the Italian Ministry of Interior sent a circular letter to all national Dublin Units with a list of 161 places<sup>29</sup> in SPRAR facilities for families returned under the Dublin regulation.<sup>30</sup>

On 24th June 2015, at a meeting in the Dublin Contact Committee in Brussels, the Italian authorities

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<sup>22</sup> *Tarakhel v. Switzerland*, para 119.

<sup>23</sup> *Tarakhel v. Switzerland*, para 90.

<sup>24</sup> *Tarakhel v. Switzerland*, para 91.

<sup>25</sup> *Tarakhel v. Switzerland*, para 115.

<sup>26</sup> ECtHR judgment of 21st July 2016 *N.A. v. Denmark*, Application no 15636/16; the judgment is discussed in chapter 2.2.

<sup>27</sup> The Swiss Federal Administrative Court clarified that the guarantees are a precondition for the compatibility of the transfer decision with international law, and not just a transfer modality (BVGE 2015/4, E. 4.3).

<sup>28</sup> *N.A. v. Denmark*, para 8.

<sup>29</sup> i.e. Places for 161 people.

<sup>30</sup> *N.A. v. Denmark*, para 11.



informed the other Member States that they no longer found it necessary to provide individual guarantees for families with minors returned to Italy under the Dublin III Regulation, because the SPRAR centres that had been identified in the circular letter satisfied the requirements set out in *Tarakhel v. Switzerland*.<sup>31</sup>

On 15<sup>th</sup> February 2016, the Italian authorities provided all national Dublin Units with an updated list of SPRAR facilities for families with minor children. The number had been reduced to 85 places.<sup>32</sup>

Based on these guarantees – and the mutual trust between the Member States – countries such as Denmark and Switzerland decided to transfer families and vulnerable persons to Italy under the Dublin III Regulation.

### 3.2 N.A. v. Denmark

In *N.A. v. Denmark* of 21<sup>st</sup> July 2016, a single mother with two minor children complained that a transfer to Italy under the Dublin III Regulation would subject her and her children to circumstances constituting a violation of Article 3.

The ECtHR stated that it was “a prerequisite for the applicants’ removal to Italy that they would be accommodated in one of the said reception facilities earmarked for families with minor children, that those facilities satisfied the requirements of suitable accommodation which could be inferred from *Tarakhel* and, in addition, that the Italian Government would be notified of the applicants’ particular needs before the removal.”<sup>33</sup>

Furthermore, the ECtHR found the complaint inadmissible because:

“The Court has noted the applicants’ concern that the number of places earmarked will be insufficient but, in the absence of any concrete indication in the case file, does not find it demonstrated that the applicant and her children will be unable to obtain such a place when they arrive in Italy. Furthermore, the Court considers that the applicant has not demonstrated that her future prospects, if returned to Italy with her children, whether looked at from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship that is severe enough to fall within the scope of Article 3.”<sup>34</sup>

### 3.3 Rights of the child

According to Article 3 of the Convention on the Rights of the Child (CRC), the best interests of a child should always be the primary consideration in all actions concerning children. Article 3 especially refers to actions of “courts of law“ and of “administrative authorities“.

The Dublin III Regulation also refers to the CRC and states that “the best interests of the child should be a primary consideration of Member States when applying this Regulation” and that the best interests of the child together with the principle of family unity should be a “binding responsibility criterion”.<sup>35</sup>

Article 6(1) of the Dublin III Regulation constitutes an obligation of the Member States to make the

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<sup>31</sup> *N.A. v. Denmark*, para 12.

<sup>32</sup> *N.A. v. Denmark*, para 19.

<sup>33</sup> *N.A. v. Denmark*, para 30.

<sup>34</sup> *N.A. v. Denmark*, para 32.

best interests of the child a primary consideration with respect to all procedures provided for in the Dublin III Regulation, e.g. the Dublin decision and the Dublin transfer.<sup>36</sup>

Article 3 of the CRC obliges the Member States to act for in the best interests of the child and not merely to refrain from violations of Article 3 ECHR and of Article 4 of the Charter. According to the Committee on the Rights of the Child, the assessment of the best interests of the child is a positive obligation as it “is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention.”<sup>37</sup>

In *Tarakhel vs. Switzerland*, the ECtHR stated explicitly that reception conditions for children must be adapted to their age, to ensure that those conditions do not “create [...] for them a situation of stress and anxiety, with particularly traumatic consequences”.<sup>38</sup>

## 4 Case studies

The following case studies are based on the accounts of the applicants.

### 4.1 Pregnant woman transferred to Lombardy

This case concerns a pregnant woman, who was returned to Italy although her husband – and the father of her unborn child – has refugee status in Switzerland.

The couple had to flee their country of origin at separate times, so that the applicant’s husband was the first to enter Europe and apply for asylum in Switzerland. The woman entered Italy in May 2016 and applied for asylum, and on 26<sup>th</sup> July 2016 she entered Switzerland and applied for asylum there as well.

The Swiss State Secretariat for Migration did not recognize the marriage between the woman and her husband. It sent a request to Italy based on Article 18(1)(b) of the Dublin III Regulation which the Italian authorities accepted by default<sup>39</sup>. On 10<sup>th</sup> August 2016 the State Secretariat decided that the woman should be sent back to Italy because she had applied for asylum there. The case is still pending before the Federal Administrative court, but the woman was not given permission to stay in Switzerland during the appeal process.

On 13<sup>th</sup> October 2016, she was transferred to the Lombardy region in Italy.

#### Reception in Italy

Upon arrival at Malpensa airport, the police told the woman that they could not provide her with accommodation and that she had to find a place to stay on her own.

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<sup>35</sup> *Preamble of the Dublin III Regulation, para 13, 16 and Article 6(1).*

<sup>36</sup> *Preamble of the Dublin III Regulation, para 24 and Article 6(3).*

<sup>37</sup> *See Committee on the Rights of the Children, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), available at: [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)*

<sup>38</sup> *Tarakhel v. Switzerland, para 119.*

<sup>39</sup> *According to Article 25(2) of the Dublin III Regulation a Member State accepts a request by default if it does not reply to the request of the transferring Member State within the set deadlines.*

### **Accommodation**

The woman had to sleep on the street for about a week. She stayed together with another asylum seeker, who also helped her by e.g. buying food. After some days, they found a civil society organisation that provided them with food for two days, as well as an interpreter, who enabled the woman to communicate her needs for accommodation and medical attention.

The organisation ensured that the woman was transferred to a first-line reception centre. The centre was designed to host about 120-130 persons, but due to lack of accommodation in the area it hosted about 200 persons.

On 1<sup>st</sup> November 2016, the woman was transferred into a newly opened first-line reception centre where she stayed in a room with three other women and a baby. The centre was constructed within a military facility and hosted about 300 asylum seekers. The centre was guarded by armed soldiers, but the woman could leave and enter as she wished.

### **Family unity and best interests of the child**

Since the woman's husband, who is also the father of her unborn child, had to remain in Switzerland, the family was split due to the Dublin transfer. The woman has felt very stressed and depressed about her situation and the stress has affected the woman's health in general and thus also the health of the child she is carrying.

### **Health care**

The woman was pregnant upon arrival in Italy, but the Italian authorities were not aware of this and did not ask her about any special needs. The police at the airport only spoke to the woman in English, which she did not understand. She therefore had to rely on the translation of another asylum seeker, whom she did not know. The woman also had difficulties communicating with the staff of the reception centre, and she did not have access to a doctor until almost four weeks after her transfer to Italy.

### **Access to the asylum procedure**

Upon arrival in Italy, the woman was received by the airport police. The police registered her with fingerprints and photographs and she had to fill out a request for international protection (initial registration<sup>40</sup>). The document was in English and Italian, which the woman did not understand.

When the woman had to officially file her application for asylum with the regional Immigration Office of the police (Questura<sup>41</sup>), the first-line reception centre did not provide her with any legal support, later on, she was provided with legal support.

## **4.2 Family with baby transferred to Emilia-Romagna**

The family consists of a couple with a six-month old child (the child was four months at the time of their transfer to Italy).

In April 2016, the couple fled to Denmark, where they applied for asylum. On 9<sup>th</sup> May 2016, the Danish Immigration Service requested the Italian authorities to take charge of the family under Article 12(4) of the Dublin III Regulation, because they had visas for Italy. The Italian authorities accepted

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<sup>40</sup> *The process of initial registration for Dublin returnees is usually done at by the airport police, but it does not equal actual registration of the asylum application as this is done by the regional Immigration Office (Questura).*

<sup>41</sup> *The Questura is responsible for the official registering of asylum applications.*

the request on 11<sup>th</sup> July 2016, and on 7<sup>th</sup> October 2016, the Danish Refugee Appeals Board upheld the decision of the Danish Immigration Service.

In advance of the transfer, the Danish police informed the couple that they would be well received in Italy and that the Italian authorities would take care of their needs as well as of the needs of their child. The Danish police had explained to the couple that upon arrival in Italy they would be accommodated in a SPRAR centre, where they would move into an apartment and receive adequate support. On 23<sup>rd</sup> November 2016, the family was transferred to the Emilia-Romagna region in Italy.

### **Reception in Italy**

Upon arrival at Bologna Guglielmo Marconi airport, the Italian police received the family and brought them to a police office, where they were initially registered. There was no interpreter present, and the couple was not able to communicate with the police in Italian.

The family was then accompanied to a first-line reception centre by a legal advisor from a civil society organisation. With the assistance of an interpreter, the legal advisor told the couple that they had to stay at the centre for three days, until they could be transferred to a SPRAR centre.

### **Accommodation**

At the first-line reception centre, the family was accommodated in a small room. The room was dirty, but the couple had no means to clean it. The room had two single beds but they were not given blankets and due to the cold, they had to sleep fully dressed.

The centre provided the couple with an old stroller for the baby, but no diapers were available. The couple did not have any soap and could therefore not wash the clothes of the baby.

The couple tried many times to ask a person who worked at the centre and spoke their language for soap, clean clothes and blankets, but they did not receive any of the items requested. Instead, the person informed them that they had to keep calm and wait for the transfer to the SPRAR centre.

The couple was supposed to use the common bathroom, but since the stalls were not clean and all open they did not find it sufficiently private. Instead, they felt forced to use a cardboard box as a toilet in their room.

The centre was very noisy due to the other residents and the couple felt afraid, because they could not lock their door.

The couple felt that they were detained at the centre, because they were not allowed to leave without approval of the centre personnel. The first-line reception centre also functioned as an identification and registration facility and they were informed by personnel at the centre that they still needed to be registered. The couple asked once whether they could leave the centre, but since the personnel rejected their request, they did not ask again.

The family only received food from the centre and it came in very small amounts, so they were often hungry.

On 24<sup>th</sup> November 2016, the couple called DRC and asked for assistance, because they felt desperate due to the lack of support by the Italian authorities for them and their child.

On 28<sup>th</sup> November 2016, an interviewer involved in the DRMP visited the family. She had to formally request the local representation of the government (Prefecture) for authorisation to visit the family. The interviewer talked to the personnel at the centre about the needs of the family, and afterwards the family were provided with some of the items they had requested. However, the family did not receive blankets, because the personnel did not believe that they had not received blankets upon arrival at the centre.

On 29<sup>th</sup> November 2016, six days after their transfer to Italy, the couple was again registered with fingerprints by the police at the centre. Hereafter the family was transferred to a SPRAR centre.

The family was received well at the SPRAR centre and got their own newly refurbished apartment. After a month, they were moved into a larger apartment that was also newly refurbished. At the SPRAR centre, the family has a contact person who speaks their language, they receive money to buy food and have access to Italian classes and legal counselling.

### **Family unity and best interests of the child**

Upon arrival at the first-line reception centre, personnel of the centre wanted to split the family, because the centre accommodated women and men in separate sections and did not have rooms for families. The couple later told the interviewing team of the DRMP that they got very scared by the thought of being split up and they refused. Later in the day, they were allowed to stay together in a room of their own.

The couple's child was only four months old upon arrival in Italy and they did not feel that the centre provided them with sufficient support to properly take care of their child.

### **Health care**

On 28<sup>th</sup> November 2016, the family went through a medical screening. The information from the screening was forwarded by the first-line reception centre to the SPRAR centre.

### **Access to the asylum procedure**

Upon arrival in Italy, the couple filled out an informal request for international protection together with the legal advisor of the first-line reception centre. When the couple reviewed the document together with the interviewer involved in the DRMP, they realised that it contained many mistakes. When the couple came to the SPRAR centre, they spoke to their new legal advisor, who assisted them in filling out an official request for asylum. The couple is awaiting the formal registration of their asylum application at the Questura.

## **4.3 Family with children transferred to Campania**

The family consists of a couple with two children; aged six and 15 years.

The family asked for asylum in Switzerland on 26<sup>th</sup> October 2015. On 10<sup>th</sup> November 2015, the Swiss authorities requested the Italian authorities to take charge of the family under Article 12(2) of the Dublin III Regulation, because they had visas for Italy.

Italy accepted retrospectively on 13<sup>th</sup> January 2016; due to this, the Swiss State Secretariat for Migration rejected the asylum application on 23<sup>rd</sup> January 2016. The appeal against this decision was rejected<sup>42</sup> by the Federal Administrative Court on 30<sup>th</sup> May 2016.

On 30<sup>th</sup> June 2016, the family was transferred to the airport of Naples in the region of Campania. On the day of the transfer, the Swiss police came to the asylum centre where the family was staying to ensure that the family would travel to Italy. The police arrived unannounced early in the morning. The police grabbed the father and held his arms, while they ordered the mother and the children to pack up all their belongings within 15 minutes. The family told the interviewer that this experience was very frightening for them, especially because the father had been a victim of torture in the country of origin.

### **Reception in Italy**

When the family arrived in Campania, they were transferred to a first-line reception facility.

### **Accommodation**

Upon arrival, the family was accommodated in a centre together with other asylum seekers for 14 days. The family had problems with another family at the facility, who stole their food. The family complained several times to the civil society organisation running the centre, because the children went to bed hungry due to their food being stolen. Hereafter, the family was moved to another apartment with other families. They stayed there a few days.

On 14<sup>th</sup> July 2016, the family was transferred to an apartment within a SPRAR. The apartment was placed in a small town and there were no other asylum seekers, so the family felt very isolated. The apartment was in a bad condition and some of the scarce furniture was broken. The family received 25 Euro per person per week from the SPRAR, which was just barely enough to buy food, thus they did not have any means to repair neither the furniture nor the apartment.

The family in general had difficulties communicating with the Italian authorities and the personnel of the SPRAR, because they do not speak Italian. The SPRAR sometimes used interpreters to speak to the applicants, but the first interpreter spoke a different dialect than the family and his successor only spoke the family's language in a very broken manner.

The father received tuition in the Italian language for four weeks. When the class stopped, the personnel of the SPRAR informed the family that they had to learn Italian on their own.

### **Family unity and best interests of the child**

The children started school mid-October 2016, although the school year had already begun in September 2016 and they had stayed at the current apartment and in the SPRAR project since July 2016. The children had not received any support in order to learn the Italian language and they felt neglected by the teachers at the school.

The SPRAR centre has not provided the children with access to activities apart from school and they did not know any other families with children living in the town, hence they felt lonely and excluded.

### **Health care**

The father had been a victim of torture in the country of origin, which has caused him to suffer from a memory disorder, back pains and meniscal problems as well as hematuria. While in Switzerland, he was prescribed with intensive treatment.

The mother also had medical problems, because she has a contracted kidney and high blood pressure and problems with her eyes (accommodation dysfunction and refraction error). Her medical report

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<sup>42</sup> *Swiss Federal Administrative Court, E-1320/2016, 30th May 2016.*

from Switzerland also mentions changes in her personality due to extreme stress, anxiety and depression.

The eldest daughter also had problems with her kidneys as well as diabetes, and the youngest daughter suffered from stress due to the situation of the family, which caused her to stutter. Despite the family's health problems, they did not have access to medical assistance during the first four months of their stay in Italy. They first gained access after the interviewer involved in the DRMP intervened in the case and contacted the responsible SPRAR network in Puglia.

In advance of the Swiss court decision to transfer the family to Italy, the Swiss State Secretariat for Migration had announced that it would inform the Italian authorities about the health conditions and the necessary treatments of the family. Upon arrival in Italy, the family found that neither the Italian authorities nor the SPRAR were informed about their particular needs.

The family had brought most of their medical reports with them from Switzerland, but the Italian doctor who screened them could not read the documents because they were in German. According to the family, the doctor yelled at the children and scared them because they did not understand his instructions.

#### **Access to the asylum procedure**

The returnees have officially registered their asylum application with the Questura and they are now waiting for an appointment with the Territorial Commissions for International Protection (Territorial Commission<sup>43</sup>).

The SPRAR has not yet provided the family with access to legal advice, so they still have not had a chance to prepare for the interview with the Territorial Commission.

### **4.4 Couple with pregnant woman in Puglia**

The family consists of a couple and their six-month old child (the child was born in Italy about three months after their return).

The couple applied for asylum in Italy in 2014 (woman) and 2015 (man), and they met in an asylum centre in Puglia. While in Italy, the woman became pregnant, but she did not feel that she was able to receive sufficient medical support in Italy.

The couple therefore decided to travel to Switzerland where they applied for asylum in February 2016. Later in February 2016, the Swiss State Secretariat for Migration asked Italy in two separate requests to take back the couple pursuant to Article 18(1)(b) of the Dublin III Regulation with the additional information that they were a couple and that the woman was pregnant.

The Italian authorities accepted by default and the Swiss State Secretariat for Migration issued two separate decisions rejecting the applications on 8<sup>th</sup> and 18<sup>th</sup> March 2016.

With regard to the question of individual guarantees set out in *Tarakhel v. Switzerland*, the Swiss State Secretariat for Migration stated that the applicants were not considered a family, because their child was

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<sup>43</sup> *The Territorial Commissions (Commissioni territoriali per il riconoscimento della protezione internazionale) are responsible for making decisions in asylum cases.*

not yet born. In case the woman would give birth in Switzerland, the Swiss State Secretariat for Migration declared that the Swiss authorities retrospectively would request individual guarantees from the Italian authorities.

On 6<sup>th</sup> April 2016, the Federal Administrative Court confirmed the decision of the Swiss State Secretariat for Migration with a single judge decision, as the appeal was considered manifestly ill-founded.<sup>44</sup> The Court stated that the woman's pregnancy did not in itself imply a special vulnerability.

According to the information provided by the couple's lawyer, they were hereafter expelled from the cantonal asylum centre. The cantonal migration office put pressure on the couple to leave the country and told them that they would be forcefully transferred by the police and would be denied re-entry to Switzerland if they did not leave voluntarily by themselves.

### **Reception in Italy**

The couple was afraid to be forcefully transferred by the Swiss police, and they therefore decided to travel to Italy by themselves. The Swiss authorities did not provide the couple with any support for their travel and they did not have any money.

The couple decided to travel with trains from Switzerland to Puglia in Southern Italy, but the journey took them several days and felt very stressful, because they were thrown out of the trains every time the train attendant found out that they could not pay for their ticket.

At Milan Central Station, the couple asked the Italian police for assistance, but the police just turned them away.

### **Accommodation**

The couple arrived in Puglia in the first half of April 2016 and went back to the asylum centre, where they previously had been staying. The centre did not have room for them, so they went to the Questura, where the Italian authorities informed them that they could not assist them, because they did not have an address in Italy.

The couple was therefore forced to live on the street for about a week. After one week, the woman was able to sneak into a centre by climbing over a fence, where a friend of her was staying, so she could sleep inside. The man lived on the street until the end of April 2016.

During this time, the couple tried to receive support from local NGO's but no assistance was available for them; one NGO refused to assist them because they did not have Italian ID for asylum seekers. The couple contacted OSAR, who – after several attempts<sup>45</sup> – was able to identify a local NGO that was willing to assist with the case.

On the 30<sup>th</sup> of April 2016, the NGO found an emergency centre run by the municipality to temporarily host the returnees.

In July 2016, the couple was moved into a centre of a project led and financed by an NGO, but not a SPRAR. The project was supposed to run for six months, but they have continued to stay there after the period had ended. On the 24<sup>th</sup> July 2016, their baby was born.

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<sup>44</sup> Swiss Federal Administrative Court, D-1942/2016, 6th April 2016.



### **Family unity and best interests of the child**

The applicants were separated during their first weeks back in Italy because the woman found unofficial accommodation at a friend's place in an asylum centre, while the man was forced to live on the street.

Upon arrival at the emergency shelter of the municipality, the personnel tried to split the family, because they told the man that he had to find accommodation on his own. The couple refused to be split and after some discussion, the man was allowed to stay together with the woman.

The woman felt very stressed about her life situation and feared that it would influence the health of her unborn child.

### **Health care**

Upon return to Italy, the female applicant, who was pregnant, was very stressed due to the difficult life situation of the family; they had left Italy to get better medical support, but were forced to return without receiving any support to neither travel expenses nor accommodation. The woman was bleeding, but could not get medical assistance from the Italian authorities because she did not have an address.

After the couple got access to accommodation at the emergency shelter of the municipality, the woman was also granted access to medical assistance. At the end of July 2016, the woman's doctor decided that she should have a C-section a month in advance of her due date, because she and the baby were very stressed due to the situation of the family.

### **Access to the asylum procedure**

After their return from Switzerland, the couple requested the Italian authorities to continue their asylum procedure in Italy. The Questura refused to re-register them because they did not have an address in Italy. Additionally, the Questura asked the applicants for a letter from the Swiss authorities on their transfer. According to the couple, the Questura had not been informed about their return by the Swiss authorities. Since they had not received any documents from the Swiss authorities, the couple could not meet this requirement.

After the couple had secured access to the emergency centre from the municipality, they were able to present an address and therefore the Questura allowed them to re-register their applications for asylum. They are awaiting their interviews by the Territorial Commission.

## **4.5 Single parent with children transferred to Lazio**

The family consists of a father, an adult son and two minor children aged 13 and six years. The mother died before the family came to Europe. The family entered Denmark on 23<sup>rd</sup> February 2015 and applied for asylum.

On 20<sup>th</sup> May 2016, the Danish Immigration Service decided that the family should be transferred to Italy pursuant to Article 12(2) of the Dublin III Regulation, because they had visas for Italy. Italy accepted to receive the family on 9<sup>th</sup> April 2015 and 19<sup>th</sup> May 2015. On 17<sup>th</sup> August 2016, the Danish Refugee Appeals Board upheld the decision of the Danish Immigration Service.

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<sup>45</sup> *Some organisations OSAR contacted refused to assist the applicants, because they already were overstrained due to the difficult living conditions for the Italian population in Southern Italy as well as the massive number of asylum seekers and migrants.*

In advance of the departure, the Danish police informed the family that they would be well received in Italy, e.g. that the Italian authorities would be prepared for their arrival and provide them with adequate support such as accommodation in an apartment, pocket money and legal counselling for their asylum application.

On 21<sup>st</sup> September 2016, the family was transferred to Rome Fiumicino airport in the Lazio region of Italy.

### **Reception in Italy**

Upon arrival at Rome Fiumicino airport, the family was received by the Italian police, who brought them to their office and initially registered them. Hereafter, the returnees were picked up by an employee from the responsible civil society organisation at the airport and brought to their office.

The organisation was not able to find any accommodation for the family, so they had to stay at the office in the airport for three days. The family slept on the chairs in the waiting area of the office and only received one meal a day from the organisation. The family found the conditions unacceptable, especially for the younger children, but since they did not have any money, they were not able to find an alternative solution.

The father showed the Danish Dublin decision to the Italian authorities, but it did not make a difference for their situation. While the family was at the airport, they called DRC, and DRC tried to contact the civil society organisation at the airport to ask for assistance. The organisation did not reply to the request by DRC and the family was not moved from the airport until 23<sup>rd</sup> September 2016.

### **Accommodation**

The family was transferred to a first-line reception centre late in the afternoon on a Friday, 23<sup>rd</sup> September 2016. As there was no assistance in the centre over the weekend, the family had to wait until Monday before they were able to receive assistance by the personnel of the centre.

The applicants were accommodated in a room with four beds that had dirty mattresses. The room was also dirty and there were many insects such as cockroaches as well as humidity stains on the walls. The father tried to clean the room, but to no avail as the family still suffered from insect bites on their bodies and had trouble sleeping. Moreover, the entire building was infested with insects, so it was not enough to only clean the room of the family. The family complained to the centre personnel, and after four days they received new mattresses.

The family stayed in the room for about a month, before they were moved to a small two-bedroom apartment. The new room was also dirty and infested by insects. They stayed in the apartment for about two months.

The food at the first-line reception centre was of bad quality hence the family stayed hungry, because they did not have much money to buy food for themselves. The daily pocket money of 2,50 Euro per person, which the applicants received from the centre, was not sufficient to buy proper food and other necessities.

The father's suitcase was lost at the airport, so he had to ask for clothes from the centre. However, they initially provided him with a bag of women's clothes and later with a jacket that was too big for him. On 29<sup>th</sup> December 2016, the family was informed by the centre that they would be transferred to a

SPRAR centre on the following day. On 30<sup>th</sup> December 2016 very late in the evening, personnel from the SPRAR came to pick them up. The younger children were already asleep and had to be woken up. According to the personnel from the SPRAR, the transfer could only take place at that time in the late evening.

The family was accommodated in a two-bedroom apartment. Neither the heating nor the hot water was working, so the apartment was very cold. Two weeks after their arrival in the centre, neither the heating nor the hot water had been fixed although it was wintertime. In order not to freeze, the family had to get an electric heater on their own.

The new apartment does not have internet access, so they feel very isolated, because it is difficult for them to stay in touch with their friends and the news of the world.

Neither the father nor the adult son had been provided with Italian classes or any other type of activity by the centre. While at the first-line reception centre, they had found a private tutor, who taught Italian to the adult son for a month.

### **Family unity and best interests of the child**

The family had been in Denmark for almost 20 months before they were transferred to Italy. During this period, they felt well-adapted to the Danish society; e.g. the children learned to speak Danish, had many friends and were very active scouts.

It was therefore very difficult for the children to leave Denmark and having to start over again in Italy, where the language was different and they did not feel as well received as in Denmark. Additionally, they were disrupted from their social network, which they had to build and re-establish when they came to Denmark.

The family was only allowed to each bring with them 23 kg from Denmark to Italy. They therefore had to leave for example clothes and toys behind, which was especially difficult for the children. Additionally, the suitcase got lost during the travel, thus the applicants lost many personal belongings and memorabilia.

The first-line reception centre that the family stayed in for the first three months did not provide adequate living conditions for children, because it was dirty and full of insects.

The younger children were enrolled in school and kindergarten some weeks after arrival in Italy, but it was difficult for them to get access to other activities, e.g. sports. With the transfer to the SPRAR, they had to change school and kindergarten, but several weeks after the transfer they still had not been enrolled in school or kindergarten or were involved in any other daily activities.

### **Health care**

The father had been a victim of torture and he suffered from post-traumatic stress disorder and feels very depressed. In Denmark, he received treatment, but it did not seem to the father that the Italian authorities had been informed about his particular needs. About a month after the arrival in Italy, the father began to receive psychological treatment.

The children are in general very affected by the living situation of the family, the loss of their mother and the flight from their country of origin: The adult son has reacted strongly to the transfer to Italy,

and he feels very stressed out about his life situation as it was difficult for him to imagine a future in Italy. He reacts to the stress by not being able to feel his legs. In October 2016, he was in hospital for three days, and in January 2017, he was in hospital for five days. He receives a lot of pharmaceuticals from the hospital, but he does not know what they are.

The youngest daughter suffers from asthma. While at the first-line reception centre, she had an asthma attack, but the doctor at the centre could not refer her to a paediatrician outside the centre, because she did not have a health service card yet. Instead he offered to give her cortisone, which the father did not feel comfortable with. About a month after the family's arrival in Italy, they got a health card and could visit a paediatrician, who provided the daughter with an asthma spray.

### **Access to the asylum procedure**

Upon arrival at the airport, the father and the adult son filled out initial applications for asylum in Italian. Italian interpreters were present, who spoke the language of the family, but the translation was only done in English. The family spoke English, but it was not their mother tongue, so they were a bit confused about the way the translation was done.

On 29<sup>th</sup> September 2016, the family officially registered their applications for asylum at the Questura. They were accompanied by the legal advisor of the first-line reception centre, but she did not provide them with any advice about their rights as asylum seekers in Italy or how they should prepare for the interview with the Territorial Commission.

In this situation, the family turned to the interviewer linked to the DRMP for assistance. She was able to establish contact with another civil society organisation that helped them prepare their asylum case. The father and eldest son were supposed to have an interview with the Territorial Commission on 23<sup>rd</sup> January 2017, but they felt very stressed about their situation and therefore requested the Territorial Commission for an earlier date. On 27<sup>th</sup> December 2016, the father and the adult son were interviewed by the Territorial Commission and they are awaiting a decision on their case.

## **4.6 Family with children transferred to Sicily**

The family consists of a married couple with three children; twins aged 12 and a one-year-old.

The family asked for asylum in Switzerland on 15<sup>th</sup> July 2014. On 29<sup>th</sup> September 2014, the Swiss authorities requested Italy to take charge of the family under Article 12(4) of the Dublin III Regulation, because the family had visas issued by Italy.

Italy refused the take charge request on 29<sup>th</sup> September 2014. The Swiss State Secretariat for Migration lodged a re-examination-request. Italy accepted its responsibility for the examination of the asylum application only 17 months later on the 9<sup>th</sup> March 2016 and the Swiss State Secretariat for Migration decided the family should be transferred to Italy. The appeal against the decision was rejected by the Federal Administrative Court on 21<sup>st</sup> September 2016.

On 12<sup>th</sup> January 2017, nearly two and a half years after the family had asked for asylum in Switzerland, they were transferred to the airport of Catania in Sicily. The father spent one month in administrative detention before the transfer took place.

## **Reception in Italy**

The Italian police at the airport was informed about the transfer of the family only a few hours in advance of their arrival. Furthermore, the police had been informed that a family with one child would be arriving, while the reality was that the family comprised of three children of which one was a small child with additional special needs.

The family was told by the Swiss authorities that their documents from the country of origin would be handed over to them upon arrival in Italy, but the documents did not arrive and nobody at the airport could provide information on their whereabouts.

A volunteer from an organisation from civil society came to the airport to pick up the family. He came with a car with five seats because the organisation had also been informed about the arrival of a couple with one child. The family and their luggage could not all fit into this car, so they were assisted by the interviewing team from the DRMP, who was at the airport to monitor the reception of the family.

## **Accommodation**

The family was accommodated in a small apartment together with other asylum seeking families, where they were provided with a separate room. The apartment was part of an emergency shelter, which was not part of the official Italian reception system.

The apartment was poorly maintained, especially the kitchen and the bathroom. The family was not allowed to have a key to the apartment, so one of them had to stay at home at all times.

On 20<sup>th</sup> January 2017, the family was transferred to a SPRAR centre in the region of Calabria, where they were accommodated in a flat.

## **Family unity and best interest of the child**

The family had been in Switzerland for more than two and a half years and the children felt very well-adapted into the Swiss society and spoke German. The Dublin decision meant that they have to start all over with learning a new language and adapting into a new society, which they found frustrating.

Furthermore, the children felt very upset and frightened about the fact that their father had been detained for almost a month in advance of the transfer. The children were afraid that their father would be detained again and they several times asked the DRMP interviewing team whether their father or anyone else of the family would be detained in Italy.

The children do not have access to school yet. According to the operators from SPRAR, they will have access within a few weeks.

## **Health care**

The baby suffers from a heart disease (ASD), a recurrent infection of the airways as well as recurrent gastroenteritis. The medical report of the child states that “because of the heart disease it is important, that the baby lives in a clean and not crowded environment to avoid bacterial and viral infection and heart complication”<sup>46</sup>.

The Swiss authorities had not informed the Italian authorities about the special needs of the family, especially the youngest child, and the organisation that picked up the family from the airport only obtained this knowledge due to the presence of the interviewing team.

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<sup>46</sup> *Information and quote from the English version of the medical report their doctor in Switzerland provided to them.*

Upon arrival in Italy, the family could not access health care, because they needed a prior confirmation from the Questura about the registration of their asylum application.

Within the first week of the returnees' stay in Italy, they could not get proper access to medical care although their youngest child had an eye infection and one of the twins had a food allergy and had red marks all over his body. In order to remedy this situation, the family sent pictures of their youngest child's eye to their former doctor in Switzerland, who provided the family with medical advice on a voluntary basis.

### **Access to the asylum procedure**

The family spent about one and a half hours at the airport with the border police. They tried to register as asylum seekers and legalise their stay, but the police at the airport turned them away.

A legal advisor from the civil society organisation was supposed to accompany the family to the Questura on the following day, but the person failed to appear. The family did not have access to legal counselling during their first week in Italy, their appointment with the Questura took place three weeks after their arrival.

## **5 Conclusion**

### **5.1 Experience of the monitored applicants**

None of the applicants monitored by the DRMP had access to SPRAR centres upon arrival in Italy. On the contrary, the applicants experienced that it was very arbitrary how they were received by the Italian authorities. The applicants stayed at facilities which were not earmarked for families with children and in one case did not secure the unity of the family.

The experience of the applicants was that neither the transferring Member States nor the Italian authorities ensured that information about the applicants' particular needs were communicated to the reception facility. Furthermore, the applicants did not feel that neither their nor the needs of their children were taken into consideration when the Italian authorities decided how the applicants should be accommodated.

The principle aim of the DRMP was to monitor reception conditions for families and vulnerable persons upon return to Italy. However, both the interviewers as well as DRC and OSAR had to intervene in the cases to ensure that the correct information on the situation of the applicants was available to the Italian authorities and organisations running the reception facilities. This was necessary to enhance the chances of the applicants to be assisted according to the standards required by the ECtHR and the RCD.

## 5.2 Legal analysis

Tarakhel v. Switzerland clearly stated that Article 3 of the ECHR would be violated if the Tarakhel family was returned to Italy without the Swiss authorities having obtained an individual guarantee regarding reception conditions appropriate to the needs of the children and assurance that the family would not be split.

In N.A. v. Denmark, the ECtHR found that it was a prerequisite for the Dublin transfer decision that the family would be accommodated in reception facilities which fulfilled the requirements set out in Tarakhel v. Switzerland, and that the Italian authorities were informed about the particular needs of the family in advance of the transfer.

The applicants have all been transferred to Italy based on the mutual trust between the Member States and the underlying assumption in the decision N.A. v. Denmark that they would be able to obtain suitable reception conditions for families and vulnerable persons in Italy.

However, their experiences clearly demonstrate that there are substantial difficulties for applicants transferred to Italy, because their treatment and accommodation varies in quality. It seems to be arbitrary or at least unpredictable which kind of assistance applicants transferred under the Dublin III Regulation will receive from the Italian authorities.

Although it was a precondition for the decisions of the transferring Member States that the Italian authorities should be informed about any particular needs of the applicants, this obligation was not fulfilled. The cases show that the relevant regional authorities and/or responsible persons of the reception facility were not always informed in advance of the medical condition and special needs of the applicants as foreseen in Article 31 and 32 of the Dublin III Regulation.

Upon their arrival, none of the families were placed in reception facilities which had been earmarked for families with minor children. The lack of proper communication from the transferring Member States to Italy thus risk violating the best interests of the child.

It thus may be concluded that these transfers neither fulfilled the requirements set out in Tarakhel v. Switzerland nor the underlying general assumption of N.A. v. Denmark as the Italian authorities were not able to provide the applicants with adequate accommodation, assistance and care upon arrival in Italy.

Consequently, it cannot be guaranteed that families and persons with specific reception needs who are being transferred to Italy under the Dublin III Regulation are being received adequately and in respect of their basic human rights. Therefore, these persons are at risk of violation of their rights according to Article 3 of the ECHR and Article 4 of the EU Charter.

## Dublin Returnee Monitoring Project of the Swiss Refugee Council (SFH/OSAR) in cooperation with the Danish Refugee Council (DRC)

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### Background

OSAR and DRC have identified different problems in the Italian reception and asylum system. These difficulties have already been pointed out in several reports by OSAR regarding the Italian reception system. Asylum authorities and courts in Switzerland as well as other European Member States have not taken these concerns sufficiently into account so far, which causes risk of violations of the rights of Dublin returnees to Italy.

### Objective

The newest report by OSAR of August 2016 stated that many aspects of the Italian procedure do not seem to be standardized. Theory and practice are diverging, different interview partners and organizations provided OSAR with varying information. To provide clarification regarding the access to the asylum procedure and the reception system, OSAR and DRC initiated a Dublin Returnee Monitoring Project (DRMP) with the aim of documenting the reception conditions and access to the asylum procedure for Dublin returnees in Italy under the Dublin III Regulation.

### Means

We offer to include Dublin returnees to Italy in the DRMP. However, we do not want to raise false hopes, therefore the possibilities and limitations of the project and the role of OSAR and the DRC will be explained in the following paragraphs.

### Who is allowed to participate?

Vulnerable persons (families, pregnant or single women, children, persons with physical or psychological problems etc.) who are transferred from a European Member State to Italy under the Dublin III Regulation.

### Process

If possible, Dublin returnees to Italy will be informed about the project already in transferring Member State. They are provided with this information sheet or at least with the contact information of OSAR or DRC. After being transferred to Italy, the Dublin returnees will be interviewed by persons collaborating with OSAR and DRC in Italy in order for OSAR and DRC to document their situation in Italy.

### What is possible?

OSAR and DRC will document the situation and the different steps within the asylum procedure of the Dublin returnees. With the help of this data, we hope to gain a better overview of the procedures in practice in Italy, which would enable us to identify the problematic aspects regarding Dublin returns to Italy for vulnerable persons. In case of severe difficulties, we will try to link the Dublin returnees with local NGOs.

### What is not possible?

Neither OSAR nor DRC will be able to intervene or enter into dialogue with the Italian authorities. Within the project we will not be able to actively support the Dublin returnees. We are only able to provide them with contacts and to monitor as well as to document their situation. We cannot achieve that the Dublin returnees can legally return to the transferring Member State.

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## DRMP Questionnaire

This questionnaire serves as part of the Dublin Returnee Monitoring Project (DRMP) which is a joint project conducted by the Danish Refugee Council (DRC) and the Swiss Refugee Council (OSAR). The purpose of the questionnaire is to obtain information about families and other vulnerable persons transferred from other Member States (MS) to Italy in accordance with the Dublin III Regulation.

The questionnaire should preferably be filled out through short interviews with the applicants during the first six months of the applicants' stay in Italy. The data obtained via the questionnaire will be included in the DRMP. It is thus important that the questionnaire is filled out in a detailed manner and that the interviewers note whether they in any way have intervened in the case of the applicants.

Part A of the questionnaire is filled out by the responsible legal advisor with either DRC or OSAR, while the following parts of the questionnaire are filled out by the interviewers in Italy, who are collaborating with DRC and OSAR.

The interviews should approximately take place with the following rate after the applicants' arrival in Italy: A few days, one week, three weeks, six weeks, three months and six months. The filled-out questionnaires should be send to DRC and OSAR within three days after the interview.

### A. Case description

Name(s) and birth date(s) of the applicant(s)	
ID number(s) in MS and Italy	
Nationality	
Language	
Special health issues or other vulnerabilities	
Case description <ul style="list-style-type: none"> <li>- Flight to Europe</li> <li>- Date of entry to MS</li> <li>- Date of transfer to Italy</li> </ul>	
MS transfer decision <ul style="list-style-type: none"> <li>- Dublin Article</li> <li>- Decision number</li> </ul>	
Responsible legal advisor (DRC/OSAR)	

**B. First interview – a few days after arrival in Italy**

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
What did the authorities of the transferring MS tell the applicant(s) before the transfer to Italy?	
Did the authorities of the transferring MS inform the applicant(s) about how they would be received in Italy?	
When did the applicant(s) arrive in Italy?	
Where in Italy did the applicant(s) arrive?	
How long did the applicant(s) stay at the airport?	
Did the applicant(s) receive assistance from an NGO or social enterprise at the airport?	
Did the applicant(s) receive any other assistance?	
Where is the applicant(s) accommodated?	
How does the applicant(s) describe living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, etc.?	
How long will the applicant(s) stay at this reception facility?	

Had the Italian authorities been informed by the MS about any special needs of the applicant(s)?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Does the applicant(s) have access to health care?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	

**C. Second interview - after about a one week**

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
Where is the applicant(s) accommodated?	
How long can the applicant(s) stay at this reception facility?	
Are the applicants being kept together?	
How does the applicant(s) describe the living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, access to language class and school and kindergarten, etc.?	
Does the applicant(s) have any	

special needs that require assistance?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Has the applicant(s) been in need of medical services?	
If yes, has the applicant(s) been able to access medical care and how?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	

#### D. Third interview - after about three weeks

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
Where is the applicant(s) accommodated?	
How long can the applicant(s) stay at this reception facility?	
Are the applicants being kept together?	
How does the applicant(s) describe the living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, access to language class and school and kindergarten, etc.?	
Does the applicant(s) have any	

special needs that require assistance?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Has the applicant(s) been in need of medical services?	
If yes, has the applicant(s) been able to access medical care and how?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	

#### **E. Fourth interview - after about six weeks**

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
Where is the applicant(s) accommodated?	
How long can the applicant(s) stay at this reception facility?	
Are the applicants being kept together?	
How does the applicant(s) describe the living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, access to language class and school and kindergarten, etc.?	
Does the applicant(s) have any	

special needs that require assistance?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Has the applicant(s) been in need of medical services?	
If yes, has the applicant(s) been able to access medical care and how?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	

#### F. Fifth interview - after about three months

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
Where is the applicant(s) accommodated?	
How long can the applicant(s) stay at this reception facility?	
Are the applicants being kept together?	
How does the applicant(s) describe the living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, access to language class and school and kindergarten, etc.?	
Does the applicant(s) have any	

special needs that require assistance?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Has the applicant(s) been in need of medical services?	
If yes, has the applicant(s) been able to access medical care and how?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	

**G. Sixth interview – after about six months**

Date, place and time of interview:	
Name of interviewer:	
Name of interpreter and how interpretation was done:	
Persons present during the interview:	
Where is the applicant(s) accommodated?	
How long can the applicant(s) stay at this reception facility?	
Are the applicants being kept together?	
How does the applicant(s) describe the living conditions at the reception facility, e.g. the size of room, the state of the facility, access to food, access to language class and school and kindergarten, etc.?	
Does the applicant(s) have any	

special needs that require assistance?	
Did the Italian authorities provide the applicant(s) with appropriate accommodation according to the needs of the applicant(s)?	
Has the applicant(s) been in need of medical services?	
If yes, has the applicant(s) been able to access medical care and how?	
Has the applicant(s) been registered as asylum seeker(s) in Italy?	
Does the applicant(s) receive legal assistance?	
Any other comments	