

Flygtningenævnet bemærker:

Overførsler i medfør af Dublinforordningen til Italien har siden december 2022 været suspenderet på grund af et stort pres på landets grænser samt utilstrækkelige modtagelsesfaciliteter. I april 2023 erklærede de italienske myndigheder undtagelsestilstand på migrationsområdet i seks måneder. Denne undtagelsestilstand er siden blevet forlænget flere gange, senest den 10. oktober 2024, med yderligere seks måneder. Undtagelsestilstanden indebærer blandt andet, at Italien som udgangspunkt ikke modtager de asylansøgere, som landet efter Dublinforordningen er forpligtet til at modtage.

Flygtningenævnets koordinationsudvalg har flere gange drøftet betydningen af denne undtagelsestilstand, herunder forlængelserne, senest i oktober 2024, hvor det var udvalgets vurdering, at de italienske myndigheders forlængelse af undtagelsestilstanden ikke i sig selv kan sidestilles med systemmæssige mangler i asylproceduren og i modtagelsesforholdene, som medfører en risiko for umenneskelig eller nedværdigende behandling som defineret i artikel 4 i EU's Charter om Grundlæggende Rettigheder, jf. Dublinforordningens artikel 3, stk. 2.

Flygtningenævnet er opmærksom på, at der i to sager fra Tyskland (sagerne C-185/2024 og C-458/2024) er stillet en række præjudicielle spørgsmål til EU-Domstolen om betydningen af den italienske beslutning fra december 2022 om at suspendere modtagelsen af Dublinoverførte på ubestemt tid, herunder om det i sig selv kan siges at udgøre systemfejl som defineret i Dublinforordningens artikel 3, stk. 2.

Nævnet finder, at det ikke er nødvendigt at udsætte sagen på, at EU-Domstolen besvarer de stillede spørgsmål, idet sagen kan afgøres på det foreliggende grundlag, uden at der tages stilling hertil. Der er herefter ikke grundlag for at imødekomme klagerens advokats anmodning om præjudicielle forelæggelse for EU-domstolen.

Italien har siden suspenderingen af Dublinoverførsler i december 2022 kun i meget begrænset omfang modtaget Dublinoverførte. De baggrundsoplysninger, der foreligger om forholdene for Dublinoverførte, skal vurderes i lyset heraf, idet baggrundsoplysningerne således ikke nødvendigvis beskriver den aktuelle situation for personer, der overføres til Italien efter Dublinforordningen.

Efter baggrundsoplysningerne må det lægges til grund, at det italienske asylsystem i en årrække har været behæftet med en række alvorlige mangler, der bl.a. knytter sig til muligheden for at få adgang til asylproceduren og til modtage- og indkvarteringsforholdene. Det fremgår videre, at disse problemer også gælder for Dublinoverførte, idet der ikke er reserveret særlige pladser til dem. Der er efter Flygtningenævnets opfattelse ikke grund til at antage, at dette ikke længere er tilfældet.

Af baggrundsoplysningerne fremgår bl.a., at asylansøgere i praksis i en årrække har oplevet vanskeligheder med at få adgang til asylproceduren i Italien og som en konsekvens heraf oplever vanskeligheder med at få adgang til basale fornødenheder som f.eks. indkvartering. Det anføres i den forbindelse, at der er store forskelle på, hvordan man kan blive registeret som asylansøger, og at det kan tage flere måneder, før man får adgang til asylproceduren. Det beskrives også, at antallet

af pladser i modtage- og indkvarteringsystemet generelt er utilstrækkeligt, ligesom indkvarteringsforholdene varierer fra center til center. Det anføres således, at nogle centre generelt ofte er overfyldte.

Der kan i den forbindelse henvises til navnlig AIDA's seneste Country Report om Italien udgivet den 31. juli 2024 (bilagsnummer 207), rapporten "Please, Wait" fra en række italienske NGO'er udgivet den 4. april 2024 (bilagsnummer 198) og rapporten fra Europarådets daværende menneskerettighedskommissær efter hendes besøg i Italien i juni 2023 udgivet den 21. november 2023 (bilagsnummer 191).

I AIDA's seneste rapport om Italien udgivet den 31. juli 2024 fremgår således af side 43 ff. om problemerne med at få adgang til asylproceduren i praksis:

*"Reports of denial of access to the asylum procedure recorded by ASGI continued in the last three years. However, from the early months of 2022 and in 2023, the situation reached unprecedented critical levels. Where they prevent access to the procedure, Questure do not issue any document attesting the intention of the persons concerned to seek asylum. This exposes them to risks of arbitrary arrest and deportation. This problem mainly affects people who reach Questure autonomously, after entering in Italy by land or after independent disembarkations or when applying for asylum after staying on the national territory.*

...

*In 2023 as in 2022, there were numerous reports of cases in which access to the asylum procedure was hindered on even on national territory, and practices widely differed among different areas of the territory. Due to the problems of registering the asylum application in Milan, several associations together with ASGI sent a letter to UNHCR.*

*Similarly, the high number affecting the Questura of Turin, including with regard to the impossibility to formalize the asylum applications, lead ASGI to address the Police with a formal letter, which was then followed by a very participated public protest. Several months after the demonstration, no substantive change in the rules for submitting asylum applications has been registered.*

*Between May and June 2023, ASGI carried out monitoring through data collected by its members on 55 of the 107 Italian provinces. The outcome was that in 40 cities, asylum seekers cannot access the asylum procedure without an official address.*

...

*In other Questure, access to asylum was not allowed without a passport (3 cities) or because a limited number of new asylum requests are allowed every day (in 6 cities: they vary from 5 to a maximum of 15 people per day).*

*In 24 Questure, the period between the date of registration of the asylum application and formalisation lasts less than 6 months, in 18 Questure it takes more than 6 months and in 3 Questure more than a year."*

Om Dublinoverførtes problemer med at få adgang til at asylproceduren og indkvartering anføres det bl.a. på side 75 i rapporten:

*"In an answer (February 2024) to the public access request sent by ASGI, the Dublin Unit replied that "in the reception system there are no places reserved for Dublin returnees from other Member States, "as they are accommodated in the available places, in the same way as other asylum seekers".*

*In practice, Dublin returnees face the same problems as other asylum seekers in Italy in accessing the asylum procedure and housing in the reception system."*

Om problemerne med at få adgang til asylproceduren fremgår det videre på side 128 i rapporten:

*"As described in detail in the Procedures chapter, for years, the Italian Police Headquarters (Questura) have put in place various strategies aimed at limiting and delaying access to the asylum procedure for people who spontaneously show up at the offices. These practices, which intensify with increasing numbers of requests for protection (both at the general national level and at the level of the individual Questura), also have direct consequences on another right of applicants, namely the right to reception conditions. While applicants are often forced to wait months to file their asylum applications, the same if not worse applies to making a request for access to reception conditions. Indeed, the path to obtain accommodation is even longer and more tortuous, even though by law asylum seekers are entitled to material reception conditions immediately after manifesting the will to apply for asylum (making phase), access to reception facilities is often postponed at least after the actual registration and lodging of the application by State Police. Only after being registered, migrants can request access to reception facilities; even then, they are frequently required to wait for some additional weeks, sleeping rough or in makeshift lodgings or resorting to members of the same community, if and when they can afford it.*

*The shortage of places in the reception system is a recurring issue in Italy, especially as, due to policies aimed at reducing public spending and a strong lack of medium-long-term planning (see the Management and Coordination paragraph), the total number of places in the system continues to decrease, and emergency situations are registered each Summer. For this reason, the system quickly became saturated, and Prefectures started refusing requests for access to reception, or in some cases ignoring them and leaving them unattended. A recent inquiry by the magazine Altreconomia estimated that, in a situation where thousands of asylum seekers are left without access to reception measures, as the Italian Government has declared on several occasions that "there are no more places available in the system(s)", at least 5,000 places were left unoccupied in 2022 as a reserve for unexpected arrivals through disembarkations."*

Problemerne med at få adgang til asylproceduren er også beskrevet i rapporten "Please, Wait" fra en række italienske NGO'er udgivet den 4. april 2024. Af rapportens side 14 fremgår bl.a.:

*"Regardless of the annual number of applications for international protection received, the migration management mechanisms devised by Italian authorities have proved unsuitable to ensure that arriving people can access the protection procedure in the manner and under*

*the deadlines set out in law. Managing applications for international protection has not been uniform throughout Italy due to a variety of factors, including variations in approach by police headquarters and the differing number of applications to be registered and formalized in each province. However, despite differences in the manner of access to the procedure for international protection in the principal Italian cities, some critical issues appear systematic in nature across regions. In examining the situation in regional contexts, and taking account of various changes over time, it is evident that local institutions are encountering extreme difficulties in carrying out their legal obligations on international protection. In most cases, the authorities attribute inefficiencies and delays to a lack of staff, but, as this report shows, such inefficiencies and delays also appear related to practices that limit access to the right to seek international protection."*

Videre anføres det på side 15:

*"On a practical level, each police force has the right to independently manage access to the protection procedure, on condition, of course, that the practices comply with Italian, European and international law. However, in many regional contexts, police forces engage in active and/or negligent conduct that prevents or seriously delays the submission of protection applications. Such conduct includes serious delays in processing procedures, which are often blamed on shortcomings in the system, but which are also a consequence of requests for documents not required by law and discriminatory practices."*

Herefter beskrives situation i Milano herunder de fortsatte problemer med at få adgang til asylsystemet efter det blev digitaliseret og konsekvenserne heraf i form af lang ventetid på at blive registreret. Det kan i den forbindelse bemærkes, at en domstol i Milano fandt, at den portal, som ansøgerne skulle bruge for at få adgang til asylsystemet (Prenotafacille) var utilstrækkelig, da den faktisk ikke tillod folk at anmode om en aftale.

Om situationen mere generelt i Italien anføres det på side 31 i rapporten:

*"If Milan represents a particular case given its trial of the online system to access the procedure for international protection, unfortunately, people intending to seek protection in other Italian cities are also forced to face long waits, bureaucratic obstacles, and violations of their rights. ... The timelines faced by aspiring protection applicants and civil society organizations supporting them are extremely long compared with the periods established by law."*

I rapporten gennemgås herefter situationen i Trieste, Torino, Imperia, Bologne, Firenze, Rom og Napoli og det anføres, at situationen synes at være blevet forværret i de seneste måneder og særligt siden slutningen af oktober 2023. Af side 32 fremgår således:

*"The situation seems to have gotten worse in recent months, in particular, since the end of October 2023, and now hundreds of people wait in line, at night-time as well, in front of the police headquarters . Camping outside the police headquarters is also the only 'solution' for hopeful asylum seekers in Florence, where the fear of losing your place in the line to try and access the procedure seems to be greater than the fear of living out in the open day and*

*night . In effect, delays in accessing the right to seek asylum for people in Italy to seek protection, in addition to evading specific legal norms, seriously affect the rights and living conditions of people, who may be vulnerable.*

Af rapporten fra Europarådets daværende menneskerettighedskommissær efter hendes besøg i Italien i juni 2023 udgivet den 21. november 2023 (bilagsnummer 191) fremgår af side 17 bl.a.:

*“Most Questura lack a proper appointment booking system, which generates long queues on the streets. It has reportedly become common practice for migrants to sleep rough for days or even weeks in front of police buildings as they wait to try to secure a first appointment. Questura have also not established a system to prioritise vulnerable applicants. In practice, when and if an appointment to lodge an application is made it is scheduled months later. The Commissioner was also informed that some Questura have started to impose arbitrary requirements for lodging applications.*

*69. The Commissioner notes that the inability of asylum seekers to lodge their asylum application hinders their access to basic services, since no legal status is granted until the application is formalised. In addition, applicants who remain excluded from the reception system are not entitled to any form of accommodation and have no access to legal employment.”*

Med hensyn til modtage- og indkvarteringsforholdene anføres det i AIDA rapportens side 117, at antallet af pladser i modtage- og indkvarteringssystemet er utilstrækkelige sammenholdt med behovet, og at adgangen hertil beskrives som et Utopia. Herudover kan der henvises til det ovenfor anførte om problemerne med at få adgangen til asylsystemet og dermed adgang til indkvartering, herunder side 128-129 i rapporten givet ovenfor.

Det beskrives videre i rapporten på side 151 ff., at forholdene i modtagecentre varierer meget og på side 154 anføres følgende:

*“Generally speaking, all governmental centres are very often overcrowded. Accordingly, the quality of the reception services offered is not equivalent to reception facilities of smaller size. In general, concerns have systematically been raised about the high variability in the standards of reception centres in practice, which may manifest itself in: overcrowding and limitations in the space available for assistance, legal advice and social life; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information. Nevertheless, it must be pointed out that the material conditions also vary from one centre to another depending on the size, the occupancy rate, and the level and quality of the services provided by the body managing each centre.”*

De italienske myndigheder har i forbindelse med, at de har suspenderet modtagelse af personer i henhold til Dublinforordningen også henvist til, at deres modtagesystem er under pres. Der kan i den forbindelse henvises til de italienske myndigheders svar fra august 2023 på den danske høring vedrørende betydningen af den italienske undtagelsestilstand.

Dublinforordningen skal fortolkes og anvendes under iagttagelse af de grundlæggende rettigheder, der er sikrede ved EU's charter om grundlæggende rettigheder, hvor der i artikel 4 er et forbud mod umenneskelig eller nedværdigende behandling. Italien har også tiltrådt Flygtningekonventionen

og Den Europæiske Menneskerettighedskonvention. Dublinforordningen er baseret på princippet om gensidig tillid mellem medlemsstaterne, og der gælder således en formodning for, at behandlingen af ansøgere om en sådan beskyttelse i hver enkelt medlemsstat er i overensstemmelse med kravene i de nævnte internationale konventioner.

Flygtningenævnet finder imidlertid efter beskrivelsen af problemerne med at få adgang til asylsystemet og modtage- og indkvarteringsfaciliteterne, at forholdene i Italien på nuværende tidspunkt har en karakter, der gør, at der ikke kan ske overførsler uden, at der forinden indhentes en garanti fra Italien om, at klageren vil blive modtaget og indkvarteret i overensstemmelse med den nationale lovgivning og Italiens EU-retlige forpligtelser og øvrige internationale forpligtelser, herunder således at han indenfor kort tid vil blive registreret som asylansøger og indkvarteret samt opnå adgang til basale rettigheder.

Flygtningenævnet anser det under de nuværende omstændigheder for usandsynligt, at de italienske myndigheder vil udstede en sådan garanti. Der er herved lagt vægt på, at de italienske myndigheder kun i meget begrænset omfang har modtaget personer i henhold til Dublinforordningen siden december 2022. Der er endvidere lagt vægt på den undtagelsestilstand, som de italienske myndigheder erklærede i april 2023, og som gentagne gange er blevet forlænget med henvisning til det høje indrejsetal. Der er endelig lagt vægt på, at der ikke efter baggrundsoplysningerne er noget, der tyder på, at denne situation vil ændre sig inden for den nærmeste fremtid.

Klageren kan herefter ikke overføres til Italien.

Flygtningenævnet ændrer derfor Udlændingestyrelsens afgørelse, jf. udlændingelovens § 48 a, stk. 1, 1. pkt., jf. § 29 a, således at klagerens ansøgning om asyl skal behandles i Danmark.

Flygtningenævnet, den 22. november 2024.



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