

# | Suspended **Voices** |

How to improve the procedure for recognition of international protection in Italy:  
analysis and recommendations



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# Research Aims and Methodology

International protection – in its various forms (refugee status, subsidiary protection) including protection for humanitarian reasons – up until recently called “political asylum”, is perhaps still a matter best left to “trained professionals”. In public discourse the distinction between foreigners who are “immigrants” (who have come to work) and “refugees” (who flee from persecution or war in their own countries) persists, with public opinion according the latter greater sympathy. However, both in Italy and in other European countries, little to nothing is known about the two main pathways, and also legal procedures, for the recognition of their status.

This is in part due to the overwhelming media attention given to the phenomenon of boat arrivals (while almost ignoring arrivals by land, which many in this field claim to be much greater), and the shadow cast over them once they “get off the boat”. Magically, with just one word from a journalist or a television commentator, those people each time are transformed into “clandestines”, subject to deportation, or into “refugees” who deserve to be welcomed. All this, sometimes within a few hours of a boat arrival. Something has been said about the delicate moments following arrival, though not too much: often correct information about accessing international protection can make the difference for a foreigner arriving in Italy and their potential integration pathway. Where no information is given or it is incomplete, this may impact the subsequent bureaucratic stages, even to the point of excluding them from ever becoming a regular migrant, or benefiting from the Geneva Convention which many would have the right to do, even where they have been pushed back during border controls.

Mass media give insufficient information about the possibility to access procedures for recognition of international protection by way of an asylum request presented to the Immigration Police (from here on in Questura), as envisaged by law. In the media, foreigners seeking documents are just indistinct queues of “clandestines” wanting to be legalized (despite the law requiring employers to present the request on workers’ behalf), or regular migrants requesting a renewal of their permit of stay, or family reunification etc. It would seem that “refugees” cannot be found making an asylum request from within the country, but only at the border. However, for the Questura, the “internal border” may also represent the moment of first contact between a foreign citizen (where they have not been stopped before) and the Italian state. It is in the Questura’s offices that the intention to request asylum is expressed, someone’s true identity is proved and, in some cases, (for example in Rome, though it is not required by law), an address where the applicant can be found is provided, even if it is “fictitious”. In the Questura offices, a form, called the C3 is completed with an applicant’s personal details, and they must state whether they have passed through any other European states and if they have family members who have been recognized as refugees in Italy or any other countries. At the time of presenting the completed form to law enforcement authorities, an applicant must also have their fingerprints taken. At this point, the first checks are made to verify the application of the Dublin II Regulation regarding which EU Member State is responsible for the asylum request; that is, to see which State the applicant passed through first. Evaluation of the competent Member State is undertaken by the Dublin Unit within the Ministry of the Interior as soon as a request for protection is made; it must be recalled that any Member State can take responsibility for examining the asylum request presented, even if they are not necessarily found competent under the Regulation. In this preliminary stage of the request, waiting times can make asylum seekers feel like they are suspended in time, with great uncertainty as to the

<sup>1</sup> Fulvio Vassallo Paleologo, Procedure di asilo, divieti di espulsione e pratiche arbitrarie di respingimento in frontiera, 2008

<sup>2</sup> Cfr. ASGI et al, Il diritto alla Protezione. La protezione internazionale in Italia. Quale futuro?, 2012, from pg. 78 on.

<sup>3</sup> EC Regulation 18 February 2003 no. 343

<sup>4</sup> Art. 3(2) EC Regulation no.343/2003



outcome. This can have grave consequences for their physical and psychological well being, especially given the inadequate reception options available to them, if they are considered eligible at all.

Le voci sospese

The lack of uniformity in local level practices, means that there are very different procedures for accessing the asylum system in different cities; even the type of document and duration of regular stay conferred on regular asylum seekers may vary. Despite the fundamental importance of this issue, unfortunately there is no space to discuss it here: please see the recent, in depth study published by ASGI and others for a European Refugee Fund project which looks at this and other aspects of the complex protection system in Italy.

The aim of the current research is to study the decisive moment of this procedure, that is, the evaluation of the request for international protection, through a Territorial Commission (TC) hearing – the competent authority decreed by Art.3 (1) of the Legislative Decree No. 25/2008, which adopts the European Asylum Procedures Directive. The Commissions are made up of: a President, a public servant with previous experience in public administration/national security, a law enforcement agent from the State Police, a representative from a local authority and a representative from the United Nations High Commissioner for Refugees (UNHCR). Together, the Commission members decide what kind of protection to grant, if any, according to each individual's story. The members are nominated according to “a proposal by the Ministry of the Interior validated by President of the Council of Ministers' decree”, which in itself is a modality that could have a negative effect on the TC's effective autonomy. Furthermore, contrary to the EC law that speaks of the possibility of a hearing, Italy requires the applicant to attend an obligatory hearing, unless the asylum request is considered “manifestly unfounded”. However, there are no specific, nor precise, criteria regarding the skills and training of the authority responsible for deciding on asylum requests.

Often people arrive in Italy on a semi-trailer, having paid very high prices to smugglers, or travelling hidden on trains or ships, then find themselves abandoned by those smugglers, with no idea as to where they are. Given the lack of clear and codified modalities for making a request for asylum in other territories, and not just once they arrive directly in a European country, this pushes refugees to make these dangerous, “clandestine” voyages, which often end in sorrow. While the possibility of requesting asylum in the European state of arrival must be maintained, we note that only in a few cases a foreigner is informed and assisted on arrival regarding that possibility, for example, when boats land on Lampedusa, where the Praesidium project is active. In some territories and situations, some associations and rights-based organizations have found ways to respond to this need for information and support; for those arriving overland, out of the spotlight, the obstacle course involves either being completely left on their own or receiving indications only from their fellow countrymen met by chance or found in common gathering places. They may also end up in the hands of unscrupulous lawyers or legal workers, who promise them documents in exchange for large sums of money without actually considering their individual cases, thereby sometimes going against their interests. Finally, they may be referred to non-profit legal advice centres or helpdesks that may act for them perhaps for various reasons and under very different conditions. It is worth remembering that once the asylum request has been made, the applicant should receive adequate legal assistance in the centre where, in theory, they should receive accommodation. The first consultation is necessary in order to suggest the best possible legal pathway for their situation. If the case appears to fall within the international protection realm, then they proceed with the request; the person will be interviewed several times to assist them to bring out those aspects of their story that assist

<sup>5</sup> ASGI and others, op.cit.

<sup>6</sup> A possibility that we believe should remain available at any rate.

<sup>7</sup> Fortress Europe is a blog which Gabriele Del Grande updates regularly, counting the number of those who die in their attempt to reach Europe. These numbers are collected from publicly available journalistic sources. The website speaks of some 18673 people from 1988 up until November 2012.

<sup>8</sup> The project has been active since 2006 when it was launched by the Ministry of the Interior, in collaboration with UNHCR, the International Organisation for Migration (IOM), the Italian Red Cross (CRI) and, from 2008, with Save the Children Italy. See [http://www.unhcr.it/cms/view.php?dir\\_pk=168&cms\\_pk=1312](http://www.unhcr.it/cms/view.php?dir_pk=168&cms_pk=1312)

<sup>9</sup> Over the years, there have been many disparities in the legal assistance provided within the SPRAR centres (Protection System for Refugees and Asylum Seekers) and, for example, that provided within the Centres for Asylum Seekers (CARA).

them in proving their need of international protection. The hearing is a conclusive moment which should occur within 30 days of presenting the request, but actually, according to their circumstances and the territory, this may take 12 months or more.

In public and media discourse, it is implicitly assumed that there are “objective” criteria to decide whether a person is worthy of protection or not. Looking more closely and from the “inside”, it becomes blatantly clear that the criteria are anything but objective. The low recognition rates are not the only confirmation of this conclusion, but it is also apparent to those directly assisting people fleeing from their countries of origin for political reasons, due to ethnic or religious discrimination, conflict, or because they are victims of trafficking and unable to request protection from their own authorities, who may even be agents of persecution against their own citizens.

There is also a tendency in public opinion and even amongst relevant professionals to imagine that it is only plausible for people to flee from certain countries, for example from Afghanistan or Syria. On the contrary, Turkey is seen as a democratic country because it has formally adopted certain human rights norms (even though it would appear not to apply them, or act differently in practice); and Nigeria and Bangladesh suffer periods of turbulent political activity but are not generally considered as refugee producing countries. So people coming from “deserving” countries have the right to protection, while others are considered simply economic migrants who take advantage of international protection law for their own gain. This is in contrast with the rationale behind political asylum, which is the consideration of individual claims on a case by case basis (except in circumstances of generalised violence towards entire ethnic, social, religious or gender groups).

Using qualitative research tools, this study seeks to look more closely at some aspects of the procedure for recognition of international protection, comparing asylum seekers’ stories and the decisions adopted in those cases as shown in hearing transcripts, in particular by the Territorial Commission of Rome. In addition, some cases of judicial review resulting in an overturning of the TC’s refusal of asylum at first instance by the competent appeal courts. The overarching point of view of the research is that of an association that has been working for almost 20 years providing legal support to asylum seekers. The deep and sometimes lengthy professional relationships developed over time with those asylum seekers have given the association a special insight and advantage in understanding their situation. We can say that through more attentive listening, together with greater consideration of different cultural and social contexts, and not just personal backgrounds, of asylum seekers – not to mention less diffidence towards them – more would be found deserving of protection, and the various forms of protection would be more appropriately attributed to individual cases (refugee status, subsidiary protection, humanitarian protection).

The study also seeks to understand if, and how, some cultural aspects of applicants’ stories can be misunderstood or misjudged when a decision maker (in our case, a member of the TC) applies their own cultural parameters to them. A further point studied in depth was that of knowledge about countries of origin; during a discussion amongst “experts” years ago regarding a holistic asylum law and a revision of relevant procedures, before the application and adoption of the European Directives that are now part of the current law, one expert had proposed a sort of “pre-exam” of requests for asylum: basically, a component of the border police would have been given the power to accept an asylum request or not, on the basis of the country of origin declared by the applicant (or the country of origin that could be summarily identified as that of the applicant). A “simplified procedure” applied on the basis of applicants’ presumed countries of origin was also discussed. However, even where TC members have access to detailed and up to date country of origin information, would it be correct to use it only to “put an applicant’s story to the test”? One’s memory does not always work in a logical and linear manner, and according to criteria of time and space as dictated by western cultures. This information should actually be used as a knowledge base in order to best interpret what an applicant states at the

<sup>9</sup> Nel corso degli anni sono state riscontrate molte disparità dal punto di vista dell’assistenza legale fornita nei centri inseriti nello SPRAR e, ad esempio, quella fornita nei C.A.R.A.

hearing, and not simply to trick them into contradicting themselves: contradictions that are not necessarily proof that someone is not telling the truth.

When an asylum seeker is able to tell their story in a context where they are being supported both legally and through case management, and not in the somewhat “stressful” context of a hearing, this action is often empowering for the asylum seeker. It encourages them to regain trust in their capacity to remember, helping them overcome traumatic events and times, as well as separation from their loved ones and the distance from their home country. It is hoped that stories gathered and analysed in this way, can also give civil society and the general public a better understanding of who these “refugees” are - on the one hand in order to avoid the use of stereotypical labels, and on the other, to build a body of critical knowledge that addresses the sensitivity of the issues in question, also for our legislators.

Before providing a qualitative analysis of the stories, it is useful to put them into context by first analysing the available quantitative data.

## 1

## Outcomes of asylum requests before Territorial Commissions and the Territorial Commission of Rome

It is not the intention of this Chapter to give a detailed analysis of relevant data, but to concentrate on those limited statistics that can shed light on the research topic, that is, on the results of asylum requests, also comparing data from each Territorial Commission in such a way as to highlight any possible inconsistencies in the decisions they have adopted. There are 10 Territorial Commissions, though when faced by high numbers of requests in some locations, over the years sub-divisions have been created.

The National Commission is responsible for Italy's data on the results of asylum requests, as well as taking on a coordinating role for the Territorial Commissions and responsibility for revocation of decisions on refugee status where the grounds upon which the decision was made are no longer valid.

Actually, little data on the decisions made by each Commission has been released by the administration: there are statistics from 2008 and 2009, as well as a summary for the whole 2005-2010 period (including a separate number from the so-called "Supernumerary" Commission established to "clear up" pending cases as of 21 April 2005, left over by the former Central Commission for the Recognition of Refugee Status, when the new procedure for refugee status recognition came into force – the number is therefore to be interpreted in light of this primary aim).

Taking 2008 as an example (Table 1), we can see how each Territorial Commission's decisions compare to the average: we have calculated the percentages and highlighted the most significant data, for example, the low international protection recognition rates from the TCs of Caserta (1.8%), Gorizia (4.3%) and Siracusa (4.5%), compared to an average of 9.1% of all decisions. Other examples are the high subsidiary protection rates conceded by Trapani (59.7%) and Bari (45.7%), amongst others, and those TCs who have refused refugee status, recommending that the Questura provides humanitarian protection permits of stay (including Rome, with 12.9%). Gorizia is in first place in terms of refusals: 72.9%, compared to an average of 45.8%, followed by Turin with 62.6%, Caserta with 59.1%, and Siracusa with 52.2%.<sup>10</sup>

2008

Tab.1 – RESULTS OF ASYLUM REQUESTS CONSIDERED BY EACH TERRITORIAL COMMISSION RECOGNITION OF INTERNATIONAL PROTECTION IN 2008

	Refugee status		Subsidiary protection status		Humanitarian protection		Refusal		Other result
Milan	202	11,4%	481	27,3%	168	9,5%	876	49,6%	38
Rome	555	17,7%	629	20,1%	404	12,9%	1347	43,0%	196
Siracusa	157	4,5%	1312	37,7%	180	5,2%	1815	52,2%	14
Trapani	117	5,2%	1337	59,7%	260	11,6%	515	23,0%	11
Gorizia	93	4,3%	143	6,6%	212	9,8%	1576	72,9%	138
Foggia	130	6,6%	669	34,2%	280	14,3%	872	44,6%	5
Crotone	436	15,8%	1023	37,1%	426	15,4%	867	31,4%	8
Caserta	12	1,8%	157	23,3%	81	12,0%	399	59,1%	26
Turin	129	13,4%	168	17,5%	52	5,4%	602	62,6%	11
Bari	103	5,1%	924	45,7%	173	8,6%	812	40,2%	9
<b>Total</b>	<b>1934</b>	<b>9,1%</b>	<b>6843</b>	<b>32,4%</b>	<b>2236</b>	<b>10,6%</b>	<b>9681</b>	<b>45,8%</b>	<b>456</b>

Source: elaboration of Ministry of Interior data

<sup>10</sup> Known after the closest cities: Gorizia, Milan, Turin, Rome, Caserta, Foggia, Bari, Crotone, Trapani and Siracusa.



In 2009 (Table 2), the Rome Commission conceded refugee status to 21.2% of asylum seekers, compared to a total average of 9.3%; while subsidiary protection was granted by Crotone in 41.3% of cases, being an above-average number of cases (21.7%), followed by Siracusa (32.8%) and Trapani (31.7%). Humanitarian protection was recommended consistently by the Trapani TC (18.2%) and Milan TC (16.7%), compared to the average of 9%. The statistics on negative decisions for 2009 are divided in Refusals and “Untraceable” cases (together making up 51.8% of all decisions) and Other Outcomes (renounced cases, Dublin decisions, suspended cases, for a total of 8.2%). The division of the statistics into different groupings does not allow for a full comparison between the data available for those two years, except for the total number of negative decisions, being much lower in 2008: 48% compared to 60% in 2009.

2009

Tab.2 – RESULTS OF ASYLUM REQUESTS CONSIDERED BY EACH TERRITORIAL COMMISSION FOR THE RECOGNITION OF INTERNATIONAL PROTECTION IN 2009

	Refugee status		Subsidiary protection status		Humanitarian protection		Refused + untraceable	
Milan	123	6,9%	281	15,9%	296	16,7%	950	53,7%
Rome	1013	21,2%	719	15,1%	216	4,5%	1903	39,9%
Siracusa	129	4,6%	915	32,8%	110	3,9%	1600	57,3%
Trapani	172	7,9%	694	31,7%	398	18,2%	848	38,7%
Gorizia	105	5,0%	183	8,7%	152	7,2%	1437	68,2%
Foggia	88	5,9%	281	18,9%	159	10,7%	940	63,3%
Crotone	156	7,1%	912	41,3%	153	6,9%	969	43,9%
Caserta	146	6,8%	295	13,8%	235	11,0%	1021	47,7%
Turin	181	9,7%	265	14,2%	180	9,7%	1143	61,4%
Bari	117	4,5%	649	24,7%	250	9,5%	1599	60,9%
<b>Total</b>	<b>2230</b>	<b>9,3%</b>	<b>5194</b>	<b>21,7%</b>	<b>2149</b>	<b>9,0%</b>	<b>12410</b>	<b>51,8%</b>

Source: elaboration of Ministry of Interior data

The Ministry has also released a summary of the statistics relating to Territorial Commission asylum request outcomes for the years 2005-2010: while the annual trends have been lost – and would have been very important for understanding both the variations in numbers of requests presented from year to year as well as the different countries of origin present due to war or civil strife, which change the asylum flows quite drastically – it is interesting to note various TC practices, which can be understood from looking at Table 3.

2005-2010

Tab.3 – RESULTS OF ASYLUM REQUESTS CONSIDERED BY EACH TERRITORIAL COMMISSION FOR THE RECOGNITION OF INTERNATIONAL PROTECTION IN 2005-2010

	Refugee status		Subsidiary protection status		Humanitarian protection	
Milan	873	10,1%	896	10,4%	2024	23,4%
Rome	3214	20,6%	1613	10,3%	3046	19,5%
Siracusa	358	5,1%	2422	34,5%	375	5,3%
Trapani	548	6,7%	2218	27,1%	2906	35,6%
Gorizia	790	10,1%	464	5,9%	1211	15,5%
Foggia	489	4,2%	1033	8,8%	4662	39,7%
Crotone	1369	11,9%	2264	19,6%	3183	27,6%
Caserta	235	5,1%	514	11,2%	1098	24,0%
Turin	456	10,5%	540	12,5%	464	10,7%
Bari	656	10,1%	1951	30,1%	620	9,6%
<b>Subtotal TC</b>	<b>8988</b>	<b>10,5%</b>	<b>13915</b>	<b>16,2%</b>	<b>19589</b>	<b>22,8%</b>
Supernum. Comm.	1314	5,1%	163	0,6%	9636	37,1%
<b>Total</b>	<b>10302</b>	<b>9,2%</b>	<b>14078</b>	<b>12,6%</b>	<b>29225</b>	<b>26,1%</b>

Source: elaboration of Ministry of Interior data

total	<b>53605</b>	47,9%
Rome	<b>7873</b>	50,4%

<sup>11</sup> So-called “untraceable” cases are of those asylum seekers who could not be found for their hearing.

It would be extremely interesting to see the yearly data broken down by Territorial Commission, given that some Commissions were established to address issues arising from a high number of requests made in a particular area, in some cases by many persons of the same nationality. The detailed statistics concerning those asylum outcomes could reflect this kind of situation.

Considering the Territorial Commission of Rome, the subject of this research, looking only at quantitative data (Table 4) there appears to be an above average tendency to grant refugee status compared to the total number of decisions: considering the time period from 2005 to 2010, positive opinions are almost double the average for all positive TC decisions (excluding the Supernumerary Commission - “stralcio”): 20.6% compared to the total average of 10.5%; subsidiary protection, however, appears to be less relied on compared to the total average (10.3% compared to 16.2%), as is humanitarian protection (19.5% compared to 22.8%). Refusals over the 2005-2010 time period were 40.6% compared to a total average of 45.4%, while there are an above average number of “other” results, being 8.9% compared to a national average of 5.2%.

Roma

Tab. 4 – Results of requests for international protection before the TC of Rome in 2008, 2009, and summ

Rome	Refugee status		Subsidiary protection status		Humanitarian protection		Refusals		Other result
2008	555	17,7%	629	20,1%	404	12,9%	1347	43,0%	196
2009	1013	21,2%	719	15,1%	216	4,5%	1903	39,9%	920
2005-2010	3214	20,6%	1613	10,3%	3046	19,5%	6339	40,6%	1395
Subtot. TC	8988	10,5%	13915	16,2%	19589	22,8%	38998	45,4%	4446

\* for 2008, it is not clear if the data includes *untraceable* cases; for 2009 and the averages for 2005-2010 refusals and untraceable results have been combined

Source: elaboration of Ministry of Interior data

It would be risky, however, to consider only quantitative data, given the various factors, such as actual details of the cases examined, that can explain the different decisions made by Territorial Commissions. For example, how many persons in the same situation and/or sharing the same nationality were afforded the same type of protection, in one particular area of Italy. Beyond a mere numerical analysis, it is only by way of qualitative analysis, as chosen by the researchers, that these critical factors come to light. At this point, it is important to summarise some vital points of the international protection recognition procedure in order to illustrate how a different approach to hearing an asylum seeker’s story can bring out and allow for a more in depth and correct interpretation of the situation that caused them to flee and would hinder the safe return to their country of origin.

## 2

## Summary of the International Protection Recognition Procedure: hearing/interview

As previously stated, the decision on the concession of some form of protection is adopted by Territorial Commissions for the Recognition of International Protection, coordinated by the National Commission. In practice, Commissions analyse each case by meeting asylum seekers and inviting them to tell their stories and answer direct questions from the Commission itself, supported by an interpreter. The personal interview or hearing of the asylum seeker by the competent Territorial Commission is an asylum seeker's right, and comes with the corresponding duty to appear in person at the hearing, if summoned.<sup>12</sup> If a correctly summoned asylum seeker does not attend the hearing and has not requested a postponement, the Territorial Commission decides on the basis of the available documentation;<sup>13</sup> the asylum seeker may be further summoned if they can be reached again at a later date. The hearing is closed to the public, and family members are excluded except where the Commission does not find it necessary for an adequate examination of the request. For particularly vulnerable groups of asylum seekers, such as victims of torture or violence, "*necessary assistance from support persons*"<sup>14</sup> present at the hearing is envisaged. Any asylum seeker's trusted lawyer would also be "*permitted to attend the hearing*".<sup>15</sup>

The law also requires that a hearing transcript be produced<sup>16</sup> and signed by the person concerned who receives a copy. Given the obligation to provide factual and legal reasoning behind a negative decision, by law the hearing transcript must be complete, with summaries and paraphrasing not permitted.

Asylum seekers have the right to a personal hearing before a validly formed Commission (at least 3 members); upon submitting a justified request,<sup>17</sup> they may ask to be heard by only one member, for example for reasons of sensitivity they may wish to discuss certain violent episodes with just one person of the same sex. In practice, hearings tend to be before just one member of the Commission, though they will discuss the case and make the final decision together with other members.

The repetition of this procedure has caused a standardisation of such hearings, whereby only part of asylum seekers' real situation and past comes out; hearing transcripts show how questions often concentrate on details of the journey, smuggling networks, the financial situation of the international protection applicant, and only in a small part on the history of persecution, often probing more on what would appear to be European-style political activity, despite the fact that for reasons of one's cultural context and social background, there is a wide range of circumstances that could lead to persecution.

Sometimes during the Commission hearing a common language is used instead of ensuring the applicant is able to be heard in their mother tongue, and the interview may last less than 30 minutes. The number of Commission members may be inadequate, which often means the Commission gives too little attention to each individual case. This is particularly concerning given the gravity of the personal stories told and relived by the asylum seekers, for whom the interview may involve explaining their persecution and torture in detail and remembering places, facts and dates in just a few minutes and in a language that is not their own, making it a very painful and complex process. The transcript - that should be fully read back to the applicant once the hearing is over - is often only roughly summarised by the interpreter.

<sup>12</sup> Art. 11(1) and art. 12(1) Legislative Decree 25/08

<sup>13</sup> Art. 12 (4) Legislative Decree 25/08

<sup>14</sup> Art. 13(2) Legislative Decree 25/08

<sup>15</sup> Art. 13(4) Legislative Decree 25/08

<sup>16</sup> Art. 14(1) Legislative Decree 25/08

<sup>17</sup> Art. 12(1) Legislative Decree 25/08

The decision adopted may be positive or negative, and more precisely, the Commission may:

- 1) grant refugee status or subsidiary protection, as per Legislative Decree 251/07;
- 2) refuse the request where the grounds for recognition of international protection determined within Legislative Decree 251/07 are lacking. In cases where the Commission does not accept the international protection request but finds that an applicant would at any rate be at risk for serious humanitarian reasons, the file is transferred to the Head of the Questura to grant a permit of stay for humanitarian protection.<sup>18</sup>

For each asylum request, the decision must be made on a **case by case** basis and in an **objective and impartial** manner,<sup>19</sup> and based on a reasonable examination of the case as required by Legislative Decree 251/07.

<sup>18</sup> Art. 5(6) Legislative Decree 286/98

<sup>19</sup> Art. 8(2) Legislative Decree 25/08



## 3

## Quality of the Procedure drawn from Analyses of Transcripts and Appeals, compared with asylum seekers' stories: qualitative study

As mentioned earlier, there are rights bodies and support groups that are there to listen to asylum seekers and provide them with legal and social advice and assistance, reception/accommodation and various other care provisions. In particular, legal support provided by legal workers skilled in International Protection proves to be crucial in order to guarantee applicants full access to the asylum procedure; unfortunately this support is not commonly available, being instead a good practice found here and there on the territory, thus not something that the applicant is guaranteed.

In a best case scenario, this support may include: on the basis of an initial story provided by the applicant, initial orientation about the opportunity to apply for international protection or follow other procedures; to accompany the applicant to the Questura; to provide interpreting services if necessary; eventually to prove alleged violence and torture; to provide a temporary address and to refer and accompany the applicant to local public services for reception, vocational training, acquiring the required linguistic skills in order to fulfil legal procedures and to foster the social integration of the applicant. A very important component of this process of first assistance are the various interviews that are conducted in order to collect asylum seekers' stories, which is also necessary to prepare them for the Commission hearing. Those interviews take place in a setting that should be as undisturbed as possible, in order to let the applicant unravel the threads of their memory, even where this may result in their reliving trauma and pain. The very condition of being before operators who are there to support and assist, rather than having a decision-making position within the procedure for the recognition of International Protection, facilitates this process of "opening up", that in many cases makes it possible to collect detailed, clear and truthful stories.

The kind of interview-conversation which takes place with many of these support services may be defined as an "in-depth interview", and is characterised by the use of cognitive or fact-finding questions and by the flexibility in the way the interview is conducted. It cannot be properly defined as a "life-story" even if it does seek to draw out biographical aspects, because it focuses on particular aspects of the interviewee's biography, such as affinity to a specific ethnic-national group, political activism in the country of origin, and reasons for leaving the country; on the contrary, paying attention to biographical details that at first sight could seem irrelevant to this focus, indeed contribute to better framing the story of persecution, giving a detailed account and solidity. These elements are hardly to be found in the hearing transcripts, though any sociologist or anthropologist could easily identify them as a truly essential part of the interview. On the one hand, to proceed with a survey outline (or a list of thematic areas) would make it possible to cover those points considered more relevant with respect to cognitive needs; flexibility in conducting an interview, on the other hand, allows the interviewee to feel free to focus on some points that would otherwise probably have not been raised during a structured interview, which usually consists of standardized questions and is less careful to details that are unknown to the interviewer, because they are far from his/her own cultural background. As a matter of fact, it is crucial in using this kind of research tool, to "collect the flow of information from every interviewee and, furthermore, to catch points which were not necessarily planned in advance (importance of serendipity) and that still emerge as meaningful in the frame of the cognitive purposes of the research".<sup>20</sup>

<sup>20</sup> Giovanna Gianturco, *Intervista in profondità*, in Renato Cavallaro, *Lexikòn. Lessico per l'analisi qualitativa nella ricerca sociale*, CieRre, Roma, 2006. Further reading: Franco Ferrarotti, *Storia e storie di vita*, Laterza, Roma-Bari, 1997, very important for a qualitative methodological approach; and the more recent work by Massimo Pistacchi (ed.) *Vive voci. L'intervista come fonte di documentazione*, Donzelli, Roma, 2010, with contributions by Maria I. Maciotti, F. Ferrarotti, Alessandro Portelli.

These could be also defined as “focused interviews”: they allow the interviewer to collect information that highlights certain aspects of the situation being examined. The person conducting the interview, in this case a legal operator with specific expertise in the procedure for granting International Protection and experienced in face-to-face interviews, “after preparing an interview plan, will direct and adapt the questions on the pre-determined topics, thus stimulating the interviewee to express themselves freely during every moment of the interview, particularly for open-ended questions”.<sup>21</sup>

It is not always possible to gather the interviewee’s story before the hearing: sometimes the applicants come to the association’s help-desk only after having been refused by the Territorial Commission, looking to appoint a lawyer in order to lodge a court appeal: in these circumstances the hearing transcript is examined and only later the applicant’s story is looked into further.

Later, the research team carried out *content analysis*<sup>22</sup> of the data, comparing the transcripts of the hearings before the Territorial Commissions to the firsthand accounts of the same asylum seekers, and to any appeals against the negative decisions drafted and lodged by lawyers,<sup>23</sup> then clarifying the most recurring and significant issues regarding the definition of International Protection, as well as and on the basis of previous experience in collecting asylum seekers’ stories. A list of keywords was drafted, in order to organize the oral accounts – later transcribed – by the prevailing reason underlying the application. The list is as follows:

- **POLITICS** (arrest warrants, threats, general danger due to a lack of democracy in the country of origin)
- **RELIGION**
- **HUMAN TRAFFICKING**
- **TORTURE**
- **ETHNICITY**
- **HEALTH** (pregnancy, disabilities, etc.)
- **MILITARY SERVICE** (failure to report for military service, deserter, mistreatment and threats during military service etc.)
- **SEXUAL ORIENTATION** (forced marriages, mutilations, gender-based violence, etc.)

As discussed in the previous chapter, the asylum seeker’s Commission hearing transcript provides (or should provide) the questions that Members ask the applicant through the interpreter in detail, and the answers that he/she conveys. Summaries should not be permitted, as they do not allow for the full exercise of the right to appeal against a negative decision. However, it was possible to observe that this still occurs. It happens in some cases that the asylum seekers express the desire to share the content of the transcript after the hearing with the association staff that had previously supported him/her, adding details and commenting on what happened during the hearing: this has made it possible to observe serious discrepancies between what was said before the Commission and what was written in the transcript.

Once the waiting period between the Commission’s adoption of a decision and the moment in which this decision is officially communicated to the applicant has passed, the latter often comes back to the association’s helpdesk, either, for the purpose of lodging an appeal in Court in case of a negative decision, and in case of a positive decision, to give their comments and

<sup>21</sup> Laura Nardi, Intervista focalizzata, in Renato Cavallaro, cit.

<sup>22</sup> Giovanna Gianturco, L’intervista qualitativa. Dal discorso al testo scritto, Guerini, Milano, 2005, pp. 127-129.

<sup>23</sup> In addition to the cases reported to Associazione Senzaconfine, other organisations that provide asylum seekers with orientation and support were questioned, as well as law firms known for their wealth of experience on the subject. As for the cases examined in this work, the research team focused on the most recent years, those between 2008 and 2012; the procedure in force during this period had been adopted in Italy following some major changes in the legislation of the European Union.

inform the staff about it.

This has allowed for the analysis and comparison between asylum seekers' firsthand accounts and what arises from the transcripts and appeals, which constitutes the "field material" for this research. The interviews, which are necessarily presented here in textual form, were unravelled and itemized in relation to the concept of International Protection, without dismissing - on the other hand - the different levels of meaning present in the narratives.

The case studies examined here are but a sample, an interesting sample in our opinion, of how interviews with one Territorial Commission take place (or to a certain extent what is possible to infer through a proper analysis of the transcripts). It would be useful to broaden this kind of in-depth qualitative research to other Territorial Commissions besides Rome, in order to understand the different ways they may act in practice in light of the lack of general guidelines to create uniformity of procedures, and as revealed by the poor data on the outcomes of asylum applications analysed in the second chapter of this report.

To build a comprehensive framework, the case studies were divided in macro-themes distinguished by keywords; it is often difficult, however, to clearly distinguish one prevailing theme in a story, given that the actual situation of the asylum seeker and of his/her country may result in a combination of elements to be considered. In that case several keywords were applied, in decreasing order of importance according to the criteria for analysis agreed upon by the research team.

The case studies were listed according to the following macro-areas: politics; ethnicity; religion; war; human trafficking. The issues of torture, gender, health and military service were present in many of the cases reported, and are to be considered together with the prevalent thematic area chosen by the research team. The themes correspond to the reasons that would allow an applicant to be granted some kind of protection.

## Politics

**R.G.**, Kurdish (Turkey), 26 years, male\* (all sensitive information about asylum seekers has been changed or omitted to protect their privacy)

The hearing took place during 2011 at the TC of Rome; the request was refused and the applicant appealed to the court and obtained political asylum.

■ **Keywords:** politics; military service (failure to report)

The applicant presented the following documentation:

- conviction for failure to report for military service;
- refusal of leave during military service;
- arrest warrant;
- medical certificate attesting to the torture suffered, produced by a voluntary association in Rome.

### **Narrative by the asylum seeker:**

“I was expelled from school by the Principal [in 2004, so at 18 years old], for having participated in some rallies...when the letter to report for military service came, I tried to flee to Smirne because I did not want to do it, but I got caught at a road checkpoint. They took me into custody.

Some months later I went to do military service (it was in 2006).

When I took animals to pasture, I would bring them up into the plateau, and on the way out of the village there were “village guardians” and soldiers who, seeing me carrying bread and food, would say: “You help the guerillas”, and they would take the bread and throw it to the ground and mistreat me continuously by repeatedly hitting me.

My uncle’s son was enrolled in the Kurdish party, DTP (Democratic Society Party), from about 2006; while I was with him, we were taken into custody and held for two days, because he had the party membership card and was distributing its newspaper in the village.

One evening (it was in 2009), as I was coming home with the animals, the gendarmes took me and placed me in custody for two days, accusing me of taking food and shoes to the guerillas, they beat me, they hit me on the back with a baton, I fell and smashed my knees on the floor; even today, you can see the scars on that knee, which I had to bind and take care of for several days.

Another time, in 2010, I participated in a rally, there were some battles with the police, they fired pepper spray, I too threw stones at the police, and in the brawl I fell (also due to the effects of the gas), I was captured and dragged to the police vehicle and taken to a cell. I stayed there 2 days, they interrogated me, they threatened me...they kicked me, and in particular used a baton to hit me on the head, blood came out and my head swelled.

Again in 2010, while I was participating in a protest march, ...the police beat us with batons and kicked us;...I tried to get away I was captured and taken into custody, where I was held for 2 days; they beat me a lot, especially since they found out right away about my “precedents”; and they clearly stated that if they caught me one more time, I would have gone to prison for a long time.

On 25 September 2010, the head of the “village guardians” said that he had noticed that not one of our family members was a “village guardian”, and that therefore I would have to go and enlist in that militia. I refused, because the “village guardians” fight against my people. Upon my refusal, I was given 5 days to decide, so I decided to run away.

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\* Tutti i dati sensibili relativi ai richiedenti asilo sono stati modificati e/o omessi per tutelarne la privacy.



**Conviction for failure to report:**

R.G. was called in for a medical visit for military service, and he did not go, attempting to flee to Smirne. He was stopped and taken to the military barracks where he was threatened and was put under extreme pressure to join the army.

Under threat, he was forced to go the medical check and undertake the entire military service required.

His reluctance to perform the compulsory military service, however, became the subject of a court case in which he was charged under Articles 316 and 318 of the penal code for his initial refusal.

Art. 316 provides for a 6 month to 2 year jail term for those who propagate against this or incite someone not to serve their country.

He received an aggravated pecuniary sentence of 1,155,700,000 Turkish lira<sup>24</sup> (approximately 500,000 euros), which is an excessive sanction for the crime that had been committed.

Turkey does not recognise the right to conscientious objection. In fact in 2006, the ECHR<sup>25</sup> condemned the Turkish government, requiring them to provide compensation for damages against a conscientious objector and obliging the government to adhere to the relevant Council of Europe laws.

**Summary of the content of the arrest warrant:**

Arrest warrant for a suspected person

Crime: support and hospitality given to the PKK<sup>26</sup>, prohibited terrorist organisation working against the integrity of the indivisible Nation.

It is ordered for the abovementioned person to be apprehended.

**Medical certificate attesting to the torture suffered:**

The patient has linear scars close to the hairline...knee scars...these scars correspond ostensibly to the trauma inflicted as related in his story.

**Analysis of the Commission's transcript**

Premise regarding language: the interpreter was able to speak both in the "Kurmanci" Kurdish language, as well as the Turkish language. R.G. is Kurdish and speaks "Zazaki" Kurdish, which is quite different from "Kurmanci" since they are two dialects spoken in different Kurdish regions, but he was also extremely competent in the Turkish language. Due to the enormous misunderstandings that may derive from attempts at communication between a "Kurmanci" speaker and a "Zazaki" speaker, to the question "In which language do you wish to conduct the hearing?", R.G. replied that he preferred Turkish, saying: "In Turkish. I also speak Zazaki Kurdish". However it was decided to conduct the hearing with questions posed both in Turkish and in "the applicant's dialect", even though, at the end of the transcript it was written that Turkish was the language used.

Regarding his arrival in Rome, the dates are incorrect.

This affirmation is attributed to him: "I never participated in any B.T.P. rallies [perhaps a mere typographical error, the acronym is B.D.P., Barış ve Demokrasi Partisi, or Peace and Democracy Party, - Ed.]", which he claims never to have made and to be the opposite of the truth, since he did in fact participate in rallies: during the Commission hearing he declared that he did not participate often due his village's distance from the centre of town, but not that he had never participated. This fact emerged when he reread the transcript together with the person who had taken his story prior to the hearing.

<sup>24</sup> In lieu of this punishment is a short period of incarceration, as per the general provisions in Laws 5329 and 5237 of 10 May 2008.

<sup>25</sup> European Court of Human Rights

<sup>26</sup> Partîya Karkerên Kurdîstan, Kurdistan Worker's Party, established in 1978 by Abdullah Öcalan.

It is written that he affirmed: “at the age of 18 I stopped studying”. He claims to have never said such a phrase: he said: “okuldan atildim”, which in Turkish means: “I was expelled from school”, and he would have explained the circumstances in which this occurred (i.e. for political reasons), had the following question not come so quickly; it is probable that his expulsion from school was interpreted as a voluntary act to leave school, and not a punishment for having participated in political rallies.

Furthermore, the part of the transcript regarding his military service is inconsistent with his actual affirmations during the hearing.

To the question regarding possible consequences for a refusal to collaborate (to become “a village guardian”)<sup>27</sup>, the only answers mentioned in the transcript are “jail” and “threats”, but he claims to have also mentioned “torture”.

Below is more precisely what he recalls saying at this point:

“When I took animals to pasture, I would bring them up into the plateau, and on the way out of the village there were “village guardians” and soldiers who, seeing me carrying bread and food, would say: “You help the guerillas”, and they would take the bread and throw it to the ground and mistreat me continuously by repeatedly hitting me”.

It is possible to note that, besides the lack of certain irrelevant details, such as the distance to the barracks, there are much more relevant details lacking as well, such as the beatings, and above all, the fact that apparently he affirmed never to have been subject to violence from military personnel (only “village guardians”) which he insists he never said.

Above all, he was silent about many circumstances and quite serious facts because he was disorientated. He reported feeling very much under pressure due to the quick firing of questions, and as important details came to mind when he started to answer, the topic would be suddenly changed. He expected further questioning would give him the opportunity to give more relevant information on other aspects that were not touched on, or to give more details on those that had been. His story contains three grave episodes of violence and torture that he suffered while in “custody”, two of which resulted in injuries for which he still had obvious signs (during the Commission hearing he produced a medical certificate to that end).

In summary:

- a relevant part of the Commission transcript does not correspond at all to R.G.’s actual statements;
- a substantial, important part of the events in R.G.’s life was not raised before the Commission;
- closely connected to both these circumstances, the physical scars on his body resulting from injuries inflicted on him were not mentioned.

#### **Analysis of the reasons for refusal:**

“The Turkish military personnel requested that he volunteer to collaborate with them, giving him five days to reply, but the applicant, without waiting for the deadline, left his village 3 days later.”

**Remarks:** It should not seem so strange that the applicant did not wait until the deadline; it is plausible that he did not want to risk being beaten or tortured following his refusal, or to be controlled had he given a positive reply, only to then leave the country and seek protection once the persecutory acts became sufficiently serious in their harm and frequency.

<sup>27</sup> The “village guardian” system (koruculuk in Turkish) was established in 1985; it involves the Gendarmerie recruiting Kurdish people in the villages, training and supplying them with weapons, in order to maintain control and support State activities. Village guardians are paid, but are often forcibly recruited and threatened, being compelled to take on the task; they usually work alongside the Gendarmerie and the armed forces, making their knowledge of the territory and the local language available, to be their guides and facilitate their acquisition of useful information.

“The applicant did not suffer serious enough persecutory acts in his country, neither in their nature or frequency to be considered grave violations of his fundamental human rights. The applicant only mentioned the fear of insults that collaborators with the Turkish military receive, and their request for him to collaborate, without ever suffering physical or psychological violence from them nor from Turkish military officers...therefore the fear is subjective...”

**Remarks:**

The affirmation that he never suffered physical or psychological violence could be due to omissions in the translation of some parts of his replies, but the fact that he was repeatedly mistreated and insulted are in fact evidence of psychological violence.

Being threatened and forced to become a “spy” against his people, the Kurdish people, also amounts to persecution given that he belongs to a specific ethnic group subject to discrimination.

The conviction for failing to report for military service in a country which does not recognise conscientious objection and in which a Kurdish person risks being forced to take arms against his own people, besides amounting to a violation of their freedom of expression and their personal liberty, also constitutes persecution of members of a specific ethnic group.

In this case, the court appeal went in favour of the applicant. Here is why.

**Court decision:**

“the whole story provided appears detailed and credible...not only are there no contradictions in the retelling of events, but the circumstances presented appear supported by the various preliminary disclosures...”

Remarks: the circumstances that induced the appellant to flee actually do, within the socio-political context of origin, constitute a prerequisite for recognition of refugee status.

“It is undeniable that he suffered grave persecution, including numerous violent acts during his arrests, the denial of leave during military service due to his Kurdish ethnicity, a hefty and disproportionate pecuniary punishment for not having come forward for military service (military service that could have resulted in him being forced to go against his own ethnic group in a country where, moreover, there is no right to conscientious objection), the frequent road checkpoints where village guardians accused him of being a guerilla supporter, often leading to arrests for “participation in unauthorized rallies” or for “propaganda for terrorist organizations” (followed by release on bail), and finally, effective imposition of an obligation to become part of the “village guardians”, being people of Kurdish origin who collaborate with the Turkish government and who are responsible, alongside soldiers and the Turkish armed forces, for identifying and turning guerillas over to justice.

The persecution was therefore of an ideological nature and essentially occurred for racial motives (regarding his Kurdish ethnicity), and what is more, right in the B. area, in Turkish Kurdistan, where ethnic conflict appears particularly severe...”

There is no doubt as to the present danger faced by the appellant, and having regard to the ongoing reasons for interethnic conflict and repression in his country of origin (above all in light of the specific arrest warrant issued by the Public Prosecutor from B. against him for the crime of supporting and giving hospitality to PKK members, “terrorist organization working against the integrity of the indivisible Nation”).

**S.B.** (Côte d’Ivoire), 28 years, male

The hearing took place before the TC of Rome who decided to refuse his request, providing a recommendation for a humanitarian permit of stay.

■ **Keywords:** **Politics, war**

### **Narrative by the asylum seeker:**

My name is S.B. and I was born in Abidjan in the Côte d’Ivoire in 1984. I am a Christian. My father was of Baule ethnicity, and so am I; I never knew him because he died in a car accident in [...]. My mother was of Mbato ethnicity.

I was only able to study for 3 years because my mother did not have enough money to pay for my studies, so I began to help her at the market where she sold food items. In 2004 I began an apprenticeship with a mechanic who offered to teach me the trade, upon payment of 150,000 francs. Two years later I was fired and began doing odd jobs for various people. In [...] 2010, a dear friend of mine with whom I had previously worked, offered me a gardener’s job for M.C. When I finished the job, that person praised me highly, so much so that two months later he offered me another job. When I met him again, M.C. explained that he was the Secretary General of the RDR party “Rassemblement des Republicains”, whose leader was Alassane Outtara. They gave us electoral campaign materials that we were to distribute for the sum of 2,000 francs. Shortly thereafter, some friends and I started participating in party meetings and on 15 October 2010 the electoral campaign began.

On 8 December 2010, Alassane Outtara was declared the winner, but Laurent Gbabo, the outgoing President, did not accept the electoral result and ordered the military to suppress all opposition.

On [...] 2010 I went to pick up the money for the work I had done during the electoral campaign; my car had the party flag flying on it. On the way, I became involved in a fight between the military and RDR supporters like myself. That day eight people were killed. As I tried to flee the fighting, some soldiers caught me and beat me up.

I woke up at Ce Cocody hospital where I remained for a week.

In the evening, on [...] 2011, I heard someone breaking down my front door; I was afraid and I fled out the window. When I came back the house was destroyed but nothing had been stolen. So I decided to take refuge at my mother’s house.

On [...] 2011, some men came back to my house and they burnt it down.

On [...] 2011 my mother went out to go market, as she did every morning. That day, she was killed in a shooting near the place where she worked.

At that point I decided to flee; the situation in the Côte d’Ivoire had become too dangerous. I fled in April with some other people; we crossed Abidjan forest where we met some United Nations soldiers, who brought us to a camp that had been set up near the Cocody area. They gave me a travel document and brought me to Abidjan airport. I boarded a plane together with European tourists who had been stuck in the Côte d’Ivoire. On [...] 2012 I arrived in Paris; from there, I went to Rome, thanks to the assistance of a man who I had met in the camp and who had travelled with me.

I arrived in Rome in May and lodged a request for political asylum.

### **Commission Decision**

The applicant was not recognised as worthy of international protection, but the Commission transferred his file to the Head of the Questura to grant him a permit of stay for humanitarian reasons “given the current uncertain situation in the area that the applicant comes from, as well as his psychological vulnerabilities.”

The negative decision was justified on the basis of “some doubts as to credibility and truthfulness, considering the contradictory account of the months prior to applicant leaving the country [...]; other doubts; further, regarding the way he left the country and the period of his actual R.D.R. party membership.”

**Remarks:** The hearing opened with the usual question “What language would you like to use for this interview?”, to which the applicant replied that he wished to do it in the French language,



a common language in his country, but one which he had studied for but three years, therefore it is easy to suppose that the applicant would not be able to give a smooth and consistent version of events in that language.

The second question, also quite common practice now in the Territorial Commission of Rome, is regarding the number of Commission members present at the hearing; an applicant is asked if they accept the hearing being held with just one member present.

The applicant's reply is positive: as in other cases, either the applicant accepts or their long-awaited hearing date will be postponed, right at the moment when they have the possibility to tell their story; though it is envisaged that the decision is adopted jointly by the Commission, the proposed decision is provided by the Commission member who has heard the applicant, simultaneously conducting the interview and transcribing it, in which case there is the risk that the Commission member could lose their concentration or overlook some part of the hearing.

### **From the transcript:**

*Situation in the country of origin.*

I left my house in Abobo, which is a municipality near...in Adjame, Adjana, Cocody which are other municipalities near Abidjan, I was born there and I lived there with my family, being my mother (I never knew my father) and I only lived with her.

Since [...] 2006 I lived alone, we were still in Abobo, but my mother was in the [...] suburb and I, on the other hand, was in [...] which is a suburb.

*Why were you living separately?*

I was big and I couldn't live with her.

*Why not?*

[...]"

At this point the Commission focusses its attention on why the applicant decided to live alone: there are no less than eleven questions about his home and reasons for not living with his mother. Following that he was asked about the itinerary of his journey and how he fled from the Côte d'Ivoire, and only then about the situation in his country.

*So in April-May, what was the atmosphere like in Abobo?*

Heavy.

*Tell me...*

They were killing people.

*Who?*

The FSD soldiers were killing people.

*Yours is a peculiar story, however...I understood that you were violently set upon by your landlord, can you explain what happened?*

### **Comment:**

The applicant talks a lot without answering the question, he is asked to be more clear and to get to the point. The change in topic, from the battle between Ouattara and Gbagbo to the reasons why he was beaten by his landlord, confuses the applicant who in fact is unable to answer the question. Furthermore, the applicant was asked only six questions about the situation in his country at the time he fled; much less than the eleven asked about why he lived alone.

The middle part of the interview is very confused; the questions are in quick succession and the applicant is in obvious difficulty, he is unable to answer and bursts into tears:

*When did you leave your mother's home?*

In May, in April...

*Can you be more specific?*

In April.

*On [...] they set fire to [...]']s house, you go to your mother's place in [...], you stay there a few days in April too and then what do you do?*

There were massacres...

*What did you do when you left your mother's place?*

...I hid...

Where?

At my mother's

When did you leave your mother definitively?

[...]"

In such a situation, the man has great difficulty in calmly explaining that he saw his mother die, due to a bullet that had been shot during a battle between the military and R.D.R. militants.

*And if you go back to your mother, what do you risk now?*

I don't have a mother anymore.

*What do you mean?*

On [...] 2011 she was attacked in the market, my mother was there and she died.

*Did you see your mother's body?*

She had been shot in the chest.

*What did you do?*

I called for help and the ambulance took her to the hospital but it arrived too late and she died while on the way to the hospital [crying].

At the end of the hearing, the Commission asks the direct question.

*I would like you to tell me exactly what political activity you did for R.D.R.?*

In conclusion, comparing the applicant's story and what was declared during the Commission from the transcript, there are some substantial differences.

It is clear that during the hearing the applicant is confused, unable to retell his story smoothly, nor able to focus on its key points. The story that was gathered, however, is smooth, linear and shows all the characteristics of a story to consider for recognition of protection for a political refugee. This situation shows that the attitude of the person conducting the hearing is actually just as important as the kinds of question and the way they are asked; the interview setting is already imbued with power imbalance and asymmetrical power stances, yet the Commission's approach is focused on whether the applicant contradicts themselves or fails to respond to "verifying" questions, all done with an air of annoyance that transpires even in the questions recorded in the transcript, none of which helps the person who is already put through the stress of a hearing to recount their traumatic life events, thus making it all the more difficult for them to appear credible.

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**G.M.** (Togo) 42 years, female

The hearing took place at the TC of Rome during 2012; the Commission decided to give a refusal which was appealed and whose decision is pending before the Tribunal of Rome.

**Keywords:** **politics**

**Narrative by the asylum seeker::**

Mrs G.M. tells of leaving her country, Togo, in [...] 2010 due to her husband's death in [...] 2010 and because of political persecution which she herself suffered as a member of the opposition party, OBUTS (Organisation pour Batir l'Union un Togo Solidaire) since [...] (during the hearing she showed her membership card). As for her husband, the appellant declared that he was a soldier who was strongly opposed to government ideas, even to the point that he was a secret OBUTS activist. The appellant was not informed of this directly by her husband, but only after his death did his brother tell her. Four days after his death, the applicant found her husband's body with several head wounds; she tells of being prevented from holding a funeral.

Due to her militancy, after a rally held in [...] 2010, Mrs G.M. and some other women were held in barracks; OBUTS members held meetings or rallies every Wednesday and Saturday. On [...] 2010, during the commemorative mass for the deceased, the police burst in, arrest-

ing participants, amongst them G.M. who told of the terrible conditions in which she and other female detainees were held; furthermore, on the last day of detention, she was moved to another cell and raped. After the violence, she was released and left close to her home, where she was attended to by her family.

After this incident, she tried to return to a normal life, working as a salesperson.

Towards the end of [...] 2010, the applicant heard an advertisement on the radio from a human rights organisation; she decided to call them and tell them what happened to her and her husband. After this interview, she left for France to attend a trade show and then went to Switzerland for work. While in Switzerland, she phoned her family who told her that the police had searched her house and when they did not find her, they arrested her son. Through her husband's friends, the applicant found out that they had helped her son to escape, but they did not tell her where he was.

### **Commission decision**

The Territorial Commission of Rome gave a refusal, claiming in their decision that during the hearing some doubts about the credibility and truthfulness of the applicant's declarations because:

- she did not give sufficient details of her political activity;
- she was not able to specify her husband's military rank;
- she was confused about certain dates and particulars, especially regarding the story of the interview given to the human rights organisation;
- her motivations for going to Switzerland so soon after her husband's death and the sexual violence she recounted were not credible.

From the transcript, there appears to be some language comprehension issues between the interpreter and the applicant; given that the language chosen to conduct the hearing was French, and not the interviewee's mother tongue, this is more than likely.

Furthermore, the Commission did not appear to place the applicant's story in the social context of Togo, showing how the knowledge of asylum seekers' countries of origin is a very important element for the full evaluation of a case. In fact, Togo is known for its political instability and its repressive regime against any opposition.

### **Subsidiary Protection**

From G.M.'s declarations, we find that her condition would fall within the definition of subsidiary protection.

From the applicant's personal history as she narrates it, it seems clear that from those facts given as reasons for her flight, being her husband's killing, her detention and the violence she suffered, her house being searched after the interview, all would fall within the types of persecutory acts defined by Art. 7 of Legislative Decree 251/07.

The Commission justified the refusal due to the non-credibility of and lack of precision in the applicant's story. On that issue, it is worth remembering that even in the courts it has been held that asylum seekers do not have the onus of proof, therefore where an applicant's story is consistent with the political situation in their country, their declarations should be considered credible. This precedent is also confirmed in the UNHCR document aimed at Commissions, "Interviewing Asylum Seekers", describing good practices for conducting interviews, in which it states that omissions and imprecision in asylum seekers' stories cannot constitute the only reason for a refusal, since often an asylum seeker who has fled from their own country may be confused about dates and other events which they have lived through in a situation of physical and psychological stress. Furthermore, Mrs G.M. very accurately described her country's context, replying in an exhaustive manner to questions regarding political parties, in particular the government party and the opposition.

**G.M.** (Togo) 42 years, female

The hearing took place at the TC of Rome during 2012; the Commission decided to give a re-

fusal which was appealed and whose decision is pending before the Tribunal of Rome.

■ **Keywords: politics**

**Narrative by the asylum seeker::**

Mrs G.M. tells of leaving her country, Togo, in [...] 2010 due to her husband's death in [...] 2010 and because of political persecution which she herself suffered as a member of the opposition party, OBUTS (Organisation pour Batir l'Union un Togo Solidaire) since [...] (during the hearing she showed her membership card). As for her husband, the appellant declared that he was a soldier who was strongly opposed to government ideas, even to the point that he was a secret OBUTS activist. The appellant was not informed of this directly by her husband, but only after his death did his brother tell her. Four days after his death, the applicant found her husband's body with several head wounds; she tells of being prevented from holding a funeral.

Due to her militancy, after a rally held in [...] 2010, Mrs G.M. and some other women were held in barracks; OBUTS members held meetings or rallies every Wednesday and Saturday. On [...] 2010, during the commemorative mass for the deceased, the police burst in, arresting participants, amongst them G.M. who told of the terrible conditions in which she and other female detainees were held; furthermore, on the last day of detention, she was moved to another cell and raped. After the violence, she was released and left close to her home, where she was attended to by her family.

After this incident, she tried to return to a normal life, working as a salesperson.

Towards the end of [...] 2010, the applicant heard an advertisement on the radio from a human rights organisation; she decided to call them and tell them what happened to her and her husband. After this interview, she left for France to attend a trade show and then went to Switzerland for work. While in Switzerland, she phoned her family who told her that the police had searched her house and when they did not find her, they arrested her son. Through her husband's friends, the applicant found out that they had helped her son to escape, but they did not tell her where he was.

**Commission decision**

The Territorial Commission of Rome gave a refusal, claiming in their decision that during the hearing some doubts about the credibility and truthfulness of the applicant's declarations because:

- she did not give sufficient details of her political activity;
- she was not able to specify her husband's military rank;
- she was confused about certain dates and particulars, especially regarding the story of the interview given to the human rights organisation;
- her motivations for going to Switzerland so soon after her husband's death and the sexual violence she recounted were not credible.

From the transcript, there appears to be some language comprehension issues between the interpreter and the applicant; given that the language chosen to conduct the hearing was French, and not the interviewee's mother tongue, this is more than likely.

Furthermore, the Commission did not appear to place the applicant's story in the social context of Togo, showing how the knowledge of asylum seekers' countries of origin is a very important element for the full evaluation of a case. In fact, Togo is known for its political instability and its repressive regime against any opposition.

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From the applicant's personal history as she narrates it, it seems clear that from those facts given as reasons for her flight, being her husband's killing, her detention and the violence she suffered, her house being searched after the interview, all would fall within the types of persecutory acts defined by Art. 7 of Legislative Decree 251/07.

The Commission justified the refusal due to the non-credibility of and lack of precision in the applicant's story. On that issue, it is worth remembering that even in the courts it has been held that asylum seekers do not have the onus of proof, therefore where an applicant's story



is consistent with the political situation in their country, their declarations should be considered credible. This precedent is also confirmed in the UNHCR document aimed at Commissions, “Interviewing Asylum Seekers”, describing good practices for conducting interviews, in which it states that omissions and imprecision in asylum seekers’ stories cannot constitute the only reason for a refusal, since often an asylum seeker who has fled from their own country may be confused about dates and other events which they have lived through in a situation of physical and psychological stress. Furthermore, Mrs G.M. very accurately described her country’s context, replying in an exhaustive manner to questions regarding political parties, in particular the government party and the opposition.

## Ethnicity

**A.D.**, Kurdish (Turkey), 20 years, male

The hearing took place before the TC of Rome in 2011, the applicant was assisted by a lawyer. A refusal was given which the applicant appealed. He obtained political asylum.

■ **Keywords:** ethnicity, war, torture

### From the story gathered by the Association:

I come from the K village (approx. 150 families), in the H district, in the S province.

I went to elementary school for three years, but we were beaten if they caught us speaking Kurdish, so I left school when I was about 10 years old.

Then I worked as a herdsman and peasant for about ten years.

My family members sympathized with the Kurdish cause.

We were constantly checked by the gendarmes, both in the village and in the plateau where we would take the herds to pasture.

In the past two years, when I would go the plateau where I took the sheep to pasture, quite often they would ask me to become a collaborator with the gendarmes; “they trust you”, they would say, and several times a month, small groups of gendarmes would come up to me on their jeep, and renew their proposal insistently, never taking me to the barracks but sometimes beating me on the spot when I refused; once I went to hospital but they did not give me stitches because a Turkish hospital can well understand where my wounds came from, and they did not want to antagonise the State.

Here is the list of the violence I suffered that time:

- injuries to left arm and forearm: dragged along the ground
- hand (between wrist and thumb): cigarette burns
- under the little finger: due to being dragged along the ground
- right arm: dragged along the ground
- chest: kick
- left leg: stone thrown
- right knee: dragged along the ground

On [...] 2010 I received a letter of convocation to a medical visit for military service, but I was afraid and did not go.

On [...] 2010 gendarmes came looking for me while I was out to pasture with goats and sheep, they shot at my dog who was barking at them, and killed it.

My family and I talked, and we decided that I had better flee to Italy.

### From the hearing transcript:

*Political leanings*

I was never involved in politics

*Did you leave your country to avoid military service or for other reasons?*

For military service as well as other problems I was having

*Why did you not want to do military service?*



They always send Kurdish people to dangerous areas where the war is going on and so they get killed and the authorities say that they killed themselves or that the war took them.  
*The rule that Kurdish people do military service in dangerous areas is valid for all Kurdish people?*

Yes, they do it on purpose, in my village too, since many people support Öcalan the Turkish authorities specifically send young men to dangerous areas for their military service.

*What you are saying is not consistent with the Commission's understanding, on the contrary, we understand that many Kurdish people conduct military service in places other than those that are dangerous, can you explain this?*

I meant that the majority of those sent to dangerous areas are Kurdish youth.

*Reasons why you left your country*

I was a shepherd in my village and I would take animals into the mountains, Turkish soldiers would stop me, insulting and beating me (this happened many times 20 times but they never took me to the barracks) asking me why I was going to the mountains, and I would answer that I was a shepherd so I had to take the animals into the mountains, once in September 2010 while I was in the mountains Turkish soldiers came and they began beating me, saying that I should collaborate with them, that is, I should become a village spy; since there were many people there who supported Öcalan, I did not agree to collaborate with them and since I had yet to do military service, I talked with my father who said that if I did military service then something would certainly happen to me, so he turned to a smuggler to bring me to Italy.

*Your brother who lived for 7 years in Germany, how long did he lived in your village?*

My brother lived only 2 years in Germany, and was in Turkey for seven years.

*Didn't you tell me that your brother had obtained refugee status and lived for 7 years in Germany?*

Another older brother lives in Italy and he came with me and he has not yet presented an asylum request, he has a permit of stay for three months because he was in Germany for seven years where he made an asylum request, then he went back to Turkey because his daughter fell ill and he left again with me for Italy.

*Your brother presented a request for asylum in Germany?*

Yes, the request was granted and they were about to give him a passport.

*Why is he in Italy if his request was granted?*

He is in Italy because he has friends and acquaintances here.

No the German police told my brother that they were looking into his asylum request but since his daughter was ill, after two years he returned to Turkey.

*This is different to what you told me before, anyway let's continue with the interview. Can you please explain why your brother later decided to leave with you to come to Italy?*

He had friends in Italy who told him that it was good in Italy.

*The question was why your brother decided to leave Turkey again?*

He too had political problems.

*What political problems?*

I don't know because he lived in G. where he was working.

*In the story attached to your asylum request what did you mean when you said that either I had to go into the mountains or I had to escape to Europe?*

I meant that since the Turkish soldiers had threatened me and beat me either I had to go with the guerillas in the mountains or I had to flee to Europe.

*You were never taken to the barracks?*

No.

*In what way did they beat you?*

With kicks, with fists, with a belt they had.

*Did you ever go to hospital?*

No.

*Do you believe that you would have problems if you were repatriated?*

Now they are asking my father where I have gone and asking for information about me, if I return they will arrest me and I do not know how long they will keep me in prison and then they will send me to do military service, I do not think that I will stay alive during military service, also because I fled the country.

**Remarks:** after asking the reasons for his leaving the country there is no follow up to the answer, the question is asked only as part of the process, mandatory, immediately followed by questions about his brother in Germany, interrupting the story perhaps with the intent of

showing that the only reason for his having left Turkey is because he did not wish to do military service; given that his brother was already in Europe, there is the sense that they want to show he is actually an economic migrant.

**Refusal:**

ASCERTAINED that the applicant declared to have left his country in [...] 2010 because, when he was shepherding in mountainous areas he was constantly singled out, mistreated and beaten by Turkish soldiers who asked him why he would go the mountains, and in the end, asked him to be a spy for the Turkish authorities against the Kurdish people;

ASCERTAINED that the applicant declared to have left his country also to avoid military service for fear of being sent to dangerous areas of Turkey where he would therefore risk his life;

CONSIDERING that the applicant, **apart from the incidents when he suffered mistreatment** while shepherding, but without ever being held or accompanied to barracks, supports his fear of returning to his country of origin with the near certainty of being sent to do military service in dangerous areas, a claim that is not evidenced by the research conducted by this Commission which found that recruitment criteria and the destination for Kurdish people are different to what was stated, since it does not appear that all Kurdish people are sent to serve in wartorn areas;

ASCERTAINED that the applicant did not suffer nor will suffer persecution as envisaged in Art....;

FOUND that from the story recounted such circumstances that would put the applicant at risk of serious harm were he to be repatriated do not arise...

CONSIDERING that serious humanitarian reasons do not arise

DECIDES

not to grant international protection.

**Appeal:**

**From the Tribunal of Rome's sentence, handed down in 2012**

He declared to come from Turkey where he was a shepherd and to have left his country in 2010; to have been continually singled out, mistreated and beaten by Turkish soldiers who asked him to be a spy for the Turkish authorities against the Kurdish people and to fear at any rate having to undertake military service in dangerous areas of Turkey.

The findings from these judicial proceedings have resulted in his request being judged as well-founded.

*The term refugee applies to those who, fearing persecution for reasons of race, religion, nationality, belonging to a particular social group or political opinion, find themselves outside their country of citizenship or of habitual residence and can not be afforded protection from their own country for the fears cited above.*

The subject has proven their identity and links to their country of origin...such proof must be evaluated with less rigour, it is found that the subject provided enough probatory elements to base his request on...and since refugee status must be granted to those who have a well-founded fear of persecution in their country of origin with a real danger to their lives, the impact on such subjects should they be returned to their country of origin is foreseeable, given the current socio-political situation, contributing to the requirements for recognition of the right claimed.

From the various informative documents received by this office from the MAE (*Ministry of Foreign Affairs – Ed.*), from humanitarian organization reports, as well as assumptions that can be drawn from websites such as the Ministry of Foreign Affairs' "Viaggiare sicuri" (*Travel Safe – Ed.*) and from the online encyclopedia Wikipedia, which are easy to access and therefore likely to amount to commonly known facts, it is apparent that while the government has adopted a more open approach regarding the Kurdish population's requests, such openings have been made gradually and not necessarily in a linear fashion. In fact, they have met with

strong internal resistance within the nationalist MHP party and the Republican CHP party as well as large parts of the armed forces and the judiciary. Furthermore there has been an alternation between openness and retreat, as much due to the intertwining political and military sectors as the failure to achieve stability in the balance between repression of terrorism and socio-economic enhancement of Kurdish regions. Despite the progress attained, the United Nations Council of Human Rights has reported critical issues that persist, highlighting continuing cases of torture during police detention and severe deficiencies in spreading a culture of human rights in various parts of the judicial system and police forces.

In particular, in the MAE's informative note of April 2012, it can be read:

*“The wide definition given to terrorism by the Turkish judicial system has serious implications for the freedom of expression, as can be deduced from the many Kurdish journalists (and/or extreme-left journalists) who have been charged for terrorist propaganda and from the pressure put on the Kurdish press...The definition of terrorism currently used by Ankara has significant consequences for the freedom to protest...sometimes leading to a disproportionate amount of force used by the police forces against civil society organization members and human rights defenders who take part in protest marches, and for which, in some cases, they are accused of propaganda favouring terrorism. A significant decrease in the number of torture cases has been registered however, ... however concerns regarding an excessive use of force during detention persists ... the lack of adoption of a human rights culture in the various branches of the judicial system and the police force seem to imply that Turkish reform efforts are yet to achieve their purpose. On the contrary, as the European Commission emphasizes, the “plan for democratic opening” has not met the expectations it initially raised. Ankara’s approach towards the Kurdish minority remains quite restrictive, as proven by Turkey’s lack of adherence to the Council of Europe’s Framework Convention for the Protection of National Minorities. Certainly the process of alignment with international standards by Turkish systems can not be effective without an overhaul of the current Turkish laws regarding anti-terrorism, whose wide scope has instigated the reporting of many cases involving police organs and national Turkish courts to the European Commission.”*

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**O.S.**, (Nigeria), 28 years, male

The TC of Rome heard the applicant during 2009, deciding on a refusal with the recommendation to grant a permit of stay for humanitarian reasons.

■ **Keywords:** ethnicity, politics, torture

#### **Narrative by the asylum seeker:**

His mother was an active member of the PDP (People’s Democratic Party); she was killed by another member of the party who ran against her during the 1998 electoral campaign.

In [...], the applicant, of Igbo ethnicity, became part of the MASSOB (Movement for the Actualization of the Sovereign State of Biafra) and taking part in billposting propagandistic posters.

He participated in a rally on [...] 2006, and on that occasion was arrested and tortured; he was kept in prison for two years without knowing what he was accused of and without ever seeing a lawyer or appearing before a judge.

On [...] 2008 he manages to escape from prison and flees to the north of Nigeria; he finds out that his twin brother had been killed, probably because at home they did not find him. From [...] he moves to Niger, then Libya, eventually to Sicily and then Rome.

#### **Transcript**

The Commission made standard questions about his journey, papers and family. From the transcript, he reveals that his parents were killed during some traditional rituals; after touching upon this subject, the Commission immediately goes on to another question without examining it any further.

ASCERTAINED that the applicant declared to have left his country because he was arrested in [...] along with other members of the political organization named Massob, which he was a part of, for distributing leaflets during a peace march;

CONSIDERING the applicant's marginal role in the organisation which makes his personal story less than plausible;

CONSIDERING that the applicant has physical health problems linked to past mistreatment that make him particularly fragile, as verified by the San Giovanni Hospital.

**Remarks:** in this case the Commission acknowledges the effects of past mistreatment, as emerged from medicolegal examinations; the applicant's story, in which he declares to have suffered this abuse due to his political activity are not enough to find him worthy of protection, but only to recognise the humanitarian reasons for his not being removed from Italy. Furthermore, the consideration of his political activity as "marginal" seems a superficial observation: on the contrary, distributing leaflets during a rally already constitutes the kind of task that can put someone at risk of persecution, exposing such a person to retaliation.

\*\*\*\*\*

**E.S.**, (Afghanistan), male, 30 years

■ **Keywords:** ethnicity, politics

Though claiming to harbour "perplexities regarding the applicant's credibility", the Commission decides to grant the status of subsidiary protection: in some cases, the Commission seems to grant almost "by default" some form of protection merely in recognition of the levels of indiscriminate violence in a country (thus giving little weight to the individual story).

The applicant indirectly, and much to his regret, is involved in his family members' political activism, in support of the Taleban: "my whole family actively supported the Islamic Party, but I supported no one". Despite claiming not to support anyone, he states that his family were active within the Islamic Party, a fact that could put the applicant personally at risk.

The extent of the persecution however, showed that the authorities considered the applicant to be much more directly involved: "The members of the Wahdat (party) thought I had ordered the attack since my father was the most visible of the fifteen people killed"; "the Ministry of the Interior sent an accusatory letter against me to my friend's place, as they believed I was collaborating with the Taleban" (the arrest warrant presented at the hearing, is transcribed with the note that "the interpreter cannot read the date").

It calls into question the ever vague, never clearcut criteria upon which the Commission evaluated the nature of his persecution and the political activity which caused it, and that the applicant was involved in.

The discriminating factors leading to a grant of subsidiary protection (which corresponds with the risk of serious harm) rather than refugee status (where there is a fear of persecution for political reasons, as per the Geneva Convention) seem to therefore be the intention and the level of participation in political activity that lead the applicant to be the subject of persecution, no matter the severity.

The story gathered prior to the hearing appeared consistent, told in an eloquent manner and full of particulars not found in the hearing transcript.



# Religion

**M.G.**, Alevi Kurd (Turkey), 30 years, male

The hearing took place in 2011, the applicant was assisted by a lawyer. The Commission decided for a refusal; the applicant has lodged an appeal.

■ **Keywords:** ethnicity, religion

The asylum seeker provided two medical and psychological certificates by two volunteer organizations from Rome, and a membership card for a *cemevi*.<sup>28</sup>

### From the report about his torture:

“...following the medicolegal examination I have observed:

- scars on the head: three
- scar on an arm (...) that can be attributed to an injury inflicted with a whip while hanging
- reports electrical torture on lower limbs, objective examination does not reveal any signs.”

### From the medical-psychological certificate:

“continual persecution inflicted on the applicant in Turkey due to his belonging to the religious group of Alevis<sup>29</sup> that is subject to heavy discrimination by “orthodox” Sunni Muslim members.”

### Narrative by the asylum seeker:

In Kahramanmaraş,<sup>30</sup> during the massacre of 1978, over six days an angry mob aroused by fascist nationalists and by Sunni radicals killed hundreds of Alevi Kurds to conduct a sort of religious and “ethnic cleansing” of the entire town; three uncles were killed, my family had to flee.

During the first year of middle school I was expelled because of my Alevi religion, and subjected to heavy discrimination by teachers and school authorities.

I started to commit to helping my father in agricultural work.

In 2000 I left to do military service, that lasted 18 months.

In [...] I became a member of the youth section of our *cemevi*.

I was involved in spreading knowledge of our association’s programmes in villages in our region, religious ceremonies and initiatives aiming to obtain respect for our rights before the authorities and other institutions in our country. Furthermore I was involved in cultural activities and folklore related to our faith, e.g. religious singing accompanied by ceremonial music and dancing.

In [...] a protest march to remember the 1978 massacre took place. I was at the front of the rally. I carried a placard in memory of the massacre in my hands. Police attacked us and started to hit everybody with batons, even women and children. I was hit and fell to the ground, then taken and dragged to a vehicle, which **took me to the barracks**. There I was **tortured** all day long. They hit me with batons, they kicked me, they punched me, they slapped me.

The following day I was released for lack of evidence.

In [...] we organized a demonstration to protest against the frequent attacks carried out against our places of worship and gathering places, that is to say against our *cemevis*. During this rally, groups of fascists and police together carried out attacks against us. As Police isolated and hit one of us, they then captured them and brought them to the barracks: that happened to me, too. I was held in custody for two days, during which time I was hit with batons, and I was subjected to the type of torture called “falaka”, which consists in being hit on the soles of the feet with sticks. They insulted me repeatedly.

<sup>28</sup> The *cemevi* is a cultural centre and place of worship Alevi.

<sup>29</sup> Alevism is considered a religious sub-group of Shi’ia Islam.

<sup>30</sup> Alevis have been the object of several massacres in Turkey: in 1938 in Dersim (later renamed Tunceli, “iron fist”)



On the 21<sup>st</sup> of March [...], during the Newroz celebration<sup>31</sup> in P., I worked hard to prepare the place where the celebrations should have taken place (tents, stage, barriers and so on), then later I was involved in the security; then I took part in four exhibitions of Alevi religious ceremonies carried out during Newroz. Then, when the “halay” began (the collective dances in a circle), I made the Kurdish sign or greeting with my fingers opened to form a “V” and raised a poster with the picture of Abdullah Öcalan. At the end of the celebrations, the gendarmes attacked the crowd of gatherers, I ran home. The next day, at around 4 or 5 in the morning, the gendarmes came to my house and brought me to the barracks, where I was held in custody and tortured for three days. They started by hitting me with batons. They insulted me, and asked me which hand I used to do the Kurdish greeting during Newroz; to tell the truth I did it simultaneously with both hands, but I preferred not to answer the question; they took my right hand, held it on the table and asked: “Did you do it with this hand?”, and immediately they hit it hard with an iron device on the right side at the bottom of the middle finger. Then they hung me to the ceiling with my hands tied, and with the same device they hit my right biceps, tearing the muscle apart about two centimetres. While I was hanging they hit me with sticks on every part of my body; after that they laid me down on a table and gave me electric shocks by putting cables on my feet (as a result the nail of my right big toe later became black and fell off, and a new nail grew but in an irregular way, and even now when I walk it hurts me because it rubs against the flesh of my toe). They threatened me and told me that if I kept on glorifying Öcalan I would be killed, then on the third day they released me.

**Further elements of the story gathered after the refusal and highlighted in the appeal:**

On 4 April [...], during a demonstration for Kurdish leader Abdullah Öcalan’s birthday, my brother was beaten by the Police.

On 12 September 2010 all over Turkey a referendum was held on the constitutional reforms brought forward by the Government, and the Kurdish people led a strong campaign to boycott the referendum. I was appointed certain duties by my party, the BDP, that is to visit every home in the villages, distribute leaflets and talk with the people to invite them not to go to the polling stations and discuss the issue with people door to door. While we were on our way back from one of those visits - we were five – the military stopped and searched us; we didn’t have leaflets and posters with us, since we had already distributed them all, so they couldn’t find any evidence against us. They did nothing but threaten us, saying that if they found something against us there would be severe consequences.

On [...] 2011 in P. a demonstration took place to protest the habitual attacks carried out against our meeting and religious places, our *Cemevis*, and to raise attention to the unmotivated detention orders constantly adopted against Alevi Kurds. The demonstration was banned, the military attacked us. I saw some soldiers dragging a woman who had fallen down by her hair, to take her to the barracks; to free her I rushed up to the soldier who was taking her away and kicked him, forcing him to drop her, so she was able to stand up and run away back to the other Alevi demonstrators. I was able to run away too, but fearing that they had taken pictures of me and identified me, I did not go back home. As a matter of fact the day after, early in the morning, the gendarmes came to look for me at home, as I later found out speaking with my mother on the telephone. I realised that if they were to arrest me again I would have suffered severe consequences, so I decided to flee.

**Transcript of the hearing:**

At the beginning of the hearing there are several misunderstandings:

*Do you practice a religion?*

Our religion is called cemevi.

*Did you understand what we have asked to you?*

I am Alevi, sorry I didn’t understand well.

*Where were you born?*

[...]

<sup>31</sup> Newroz is the Kurdish New Year (of Persian origins); celebrations were and still are often banned by Turkish authorities because they are the outward expression of a different culture to the Turkish one, the only permitted in Turkey by Constitution.

*Did you always live there?*

I lived there until the massacre then my family moved to the village of A.

*When did the massacre of K. happen?*

21 December 1978.

*Were you born in 1981?*

I didn't understand the question...

Maybe they arrested me on the grounds of the footage taken by Police when they saw me showing a poster of Öcalan.

*Why do you believe that this is the reason for your arrest?*

... while they were torturing me, my eyes were blindfolded and my hands tied, they had covered me with something and they hit me with a baton, also on my head. During these days they did not give me anything to eat or to drink...they threatened me....

*Were you told the grounds for your detention or did you have the opportunity to appoint a lawyer?*

Since they took me in at 4 in the morning I could not do anything; if they had taken me to Court I would have had the opportunity to speak with a lawyer and to defend myself. Their only intention was to torture and insult me.

*Were you told the reason for their coming for you at home?*

They told me that they had arrested me because I had participated in the demonstration and shown the Öcalan poster.

*Were you ever previously identified by Turkish authorities?*

Yes, I was detained on more than one occasion but just for two-three hours then I was always released.

*How did Police know your identity and where you lived?*

*What is the name of the magazine?*

There you can find written the ways of Alevi ceremonies, Alevi culture is written there.

*After this event...?*

On 4 April 2010 attack by Turks, brother attacked, finger broken.

*Since then, have there been other episodes?*

No

*What is the reason why you left Turkey in 2011?*

As an Alevi I don't have the freedom to practice my religion in our places of worship, I am also a Kurd and I cannot participate in activities in favour of my people and our president Öcalan.

*I would like to ask you why you didn't mention those arrests before since you claim to have suffered from torture?*

I didn't mention them because I thought that the events which I have experienced recently were more important.

### **Refusal:**

ASCERTAINED that the applicant has reported to have arrived in Italy in 2011 because as an Alevi Kurd he did not feel free to practice his religion in the proper places of worship and that he could not live his culture participating in activities on behalf of the Kurdish people, the applicant reported being detained three times by Turkish authorities in [...], [...] and [...], during which time he was apparently tortured;

CONSIDERING that what the applicant claimed about the torture he suffered **is not supported by medical documentation provided;**

CONSIDERING that the **reported events are distant** and that after the last event which occurred in [...] the applicant has not been arrested, subjected to mistreatment nor violence by Turkish authorities;

FOUND that the applicant therefore was not subject to persecution nor could he be in future....;

CONSIDERING that in case of his return to his country the situation narrated by the applicant does not appear to amount to any risk of serious harm;

CONSIDERING that serious humanitarian reasons do not arise

DECIDES

not to grant international protection.

**Appeal:**

*“On the grounds of the events previously reported, it appears that the applicant – contrary to the Commission’s findings – is clearly eligible for the protection stated in the Geneva Convention; and in particular we can observe:*

*flight from his country of origin  
well-founded fear of persecution  
specific reasons for persecution”*

**Remarks:** M.G. left his country due to direct, individual persecution because of his Kurdish ethnicity, Kurds being discriminated and persecuted in Turkey, and because of his Alevi religious beliefs; it was also due to the severe situation of internal conflict existing in the region from which he came, and of the well-founded fear of being subject to persecution due to his political activity carried out for the rights of the Kurdish people and for practicing his religious belief. He was imprisoned, subjected to torture and to inhuman and degrading treatment, victim of *falaqa*<sup>32</sup>, hung by the arms and hit several times just because he had participated in completely peaceful protest demonstrations; and also due to persecution and eventual expulsion from school for being a practising Alevite - an event that has given rise to a violation of his rights to education and religious freedom.

*“A well-founded fear of persecution is evident and is consistent with the general condition of restriction of civil liberties existing in Turkey for Kurds and Alevis, and with the events that he has been involved in.”*

**REASONS for refusal:**

*apparent lack of correspondence between applicant’s alleged tortures and the medical documentation;  
events of persecution distant in time.*

The certificate submitted shows the presence of scars on the head and one on the arm relating to an injury caused by a sharp-pointed object, which is fully consistent with the narrative provided by the appellant when he reported being hit in the arm with an iron device while hanging by the arms.

As for the observation by the Commission that since the last violent episode in [...] the appellant had basically lived a peaceful life, the Commission fails to consider the appellant’s declarations, recorded at page 6 of the transcript:

*On 4 April [...] in order to celebrate the birthday of Ocalan we Alevis and Kurds always gathered together in P. and during the celebration the Turks have attacked us, on this occasion I saw my brother being hit by a group of six or seven people, I rushed to help him and I was able to rescue him and we escaped. ...we did not bring him to any healthcare facility because we were afraid...*

**Remarks:** Although it is not an event in which the appellant was directly involved, as far as being subjected to violence is concerned, still it is evidence that any time someone like him exposes themselves in a public arena to claim rights for their people, they risk persecution. Certainly the psychological stress of the hearing, together with the long delay before he was interviewed, contributed to a less than precise account of his story. His memory flow, which would already have been very hard to maintain given the need to recall dramatic events that he did not yet have the emotional strength to withstand, was likely further affected by the need to answer questions.

*“The statements are a clear illustration of what the European Commission has already revealed regarding minority rights and religious freedom in Turkey in its message to the Parliament on the enlargement strategy for the period 2010-2011.”*

*“Dialogue with Alevis and non-Muslims has continued, however it has not yet brought any result. Members of religious minorities are still subjected to threats from radicals. A legislative framework in compliance with requirements of the ECHR – that allows religious non-Muslim and Alevi communities to perform their activities without improper re-*

<sup>32</sup> Falaqa, known also as “Palestinian torture”, is commonly practised in several Arab and Middle Eastern countries, and consists in violently hitting the soles of the feet repeatedly with a stick.

strictions – has not yet been established, not even on the issue of clergy training. Turkey still has a restrictive approach towards respect and protection of cultural minorities and rights. Respect for and protection of language, culture and fundamental rights, as per European standards, are not yet fully guaranteed. Turkey must engage more to strengthen tolerance and promote the integration of minorities”.

### **Subsidiary Protection**

*Having decided to refuse refugee status, the Commission should have considered the possibility of granting Subsidiary Protection, envisaged*

*“for the foreign citizen who does not fulfill the requirements to be recognized as a refugee but for whom there are well-founded reasons to consider that, in case of repatriation, he/she would run a concrete risk of suffering serious harm...and, due to this risk, he/she cannot or does not wish to avail themselves of their country’s protection”.*

### **SERIOUS HARM**

*torture or any other kind of inhuman or degrading treatment*

*death penalty*

*serious, individual threat to life or to the person...resulting from indiscriminate violence in situations of internal or international armed conflict.*

**Comment:** M.G. could run the risk to be subjected, as already happened, to torture or other inhuman and degrading treatment; in fact, he is wanted by police for his activities in support of the rights of Alevi Kurds.

Further to the lack of respect of European standards on detention, the use of torture and inhuman and degrading treatment in Turkish prisons is a well-known reality which has been verified through independent human rights organization reports.

*From Amnesty International’s Annual Report 2011:*

*“Reports of torture and other ill-treatment continued, and criminal investigations and prosecutions of law enforcement officials remained ineffective”...“Allegations of torture and other ill-treatment persisted, especially outside places of detention, including during demonstrations, but also in police custody and during transfers to prison”...“Allegations of ill-treatment in prisons persisted, especially of remand prisoners directly following transfer. Denial of effective access to medical treatment and arbitrary limitations on prisoners’ rights to associate with each other continued.”*

*It is also undeniable that in Turkey there is an ongoing conflict in Turkish Kurdistan between security forces and Kurdish guerilla that has intensified in the last year. On this subject, the European Commission reveals (see COM(2010) 660)*

*“Enlargement Strategy and Main Challenges 2010-2011”*

*The ‘democratic opening’ aimed notably at addressing the Kurdish issue has produced only limited results.*

*There was a surge of PKK terrorist attacks since June, which claimed many lives.*

*The condition of internal conflict in the region is undeniable, and a concrete risk for his integrity could arise, bringing forth the possibility to grant subsidiary protection.”*

No specific investigation has been carried out by the Commission about the existence of an internal conflict in the region from which M.G. originates; the applicant was asked no question, or at least it is not possible to gather it from the transcript, to investigate whether there was a conflict in the region. The situation of Turkish Kurdistan is a well-known fact that Commission members – who can rely on detailed and up-to-date country of origin information – surely know.

*Verdict of the European Union Court of Justice 17th February 2009 n. C-465/07*

*“- the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection **is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances**; - the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made,*



*or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.”*

This is indeed the condition of the applicant.

### **Humanitarian Protection**

*“The Commission could have considered the possibility to grant a permit of stay on the grounds of humanitarian reasons.*

*According to the information coming from several international bodies, return in Turkey for many Kurds may still involve serious risks including being subjected to torture.*

*Forced expulsion from Italy, a consequence of the denial of the asylum request, could result in serious and irreparable harm to the appellant, because he could be subjected to persecution - evidence for this is the very story of the appellant, already a victim of torture.*

### **Principle of non refoulement**

*This envisages that a foreign citizen cannot be sent back to a country where he/she is likely to be subject to persecution and torture, or even to a country that violates fundamental human rights.*

*The claimant’s particular vulnerability as a victim of torture must also be considered, given his need for adequate psychological treatment to overcome the traumatic past events, as emerges from the medical documentation attached.*

*Any interruption of this support programme following a deportation order and given his lack of papers, would certainly carry fatal consequences on Mr. M.G.’s fragile psychophysical balance.*

*Furthermore, the Territorial Commission of Rome’s final order not to grant refugee status is defective also due to the complete absence of any reasoning on their lack of grant a permit of stay for humanitarian reasons.*

***The Commission restricts their decision to a denial of Humanitarian Protection just by putting forward the mere formula “severe humanitarian reasons do not arise as envisaged under art. 32(4) Legislative Decree no. 25/2008”***

*It is worth remembering, as an aside, that art. 3 of Law 241/1990 has introduced a general duty to give reasoning in administrative acts and decisions, for them to be considered legitimate. More specifically, it is required that every single administrative act should state the “actual requirements and juridical grounds that have determined the decision adopted by the administrative body, in relation to the results of the preliminary investigation”. Therefore, not carrying out any checks in relation to the existence of a situation that could allow for the grant of a permit of stay on the ground of humanitarian reasons, entails the illegitimacy of the appealed decision for lack of reasoning.*



**K.W.**, (Democratic Republic of Congo), 40 years, male

The hearing took place in 2011, the decision was delayed for further verifications, and finally one month later the Commission decided not to grant international protection, recommending at the same time the issue of a permit of stay for **humanitarian reasons**. An appeal is pending.

■ **Keywords:** Religion, gender

### **Narrative of the applicant:**

K.W. was born in Kinshasa (Democratic Republic of Congo). A Catholic Christian, of Mbala ethnic origins, he never took part in political activity. He studied up until middle school. Later, he was always involved in trading coffee between his home town, where he lived with his mother and sister, and Gemena (in Equateur region), until he moved to this city in 1995. In 1996 he got married and the following year his daughter was born. Due to the outbreak of the Second Congo War, in 1998, he was forced to flee the country together with his family. With the help of some members of one military faction, he first reached the capital of the Central African Republic, Bangui, where he spent three days, then he was transferred to another region of the same country and before finally arriving in the Capital of Chad, N'Djamena, by plane. In this place his family was accommodated for some time together with other Congolese people escaping the conflict in a UNHCR-run refugee camp. Two months later, the whole family was granted refugee status. In Chad, K.W. tried to start a new life: first he worked in a tailor's shop and later he opened his own business; in the meantime two more daughters were born; he also converted to Islām, attracted by the economic advantages that it could bring. Soon he realized to have made a wrong choice, however, because he came under pressure from Islamic circles perform excision<sup>33</sup> on his daughters. The pressure became so constant and intense that his life became unbearable, so in 2005 he was forced to flee once more, via Niger to Libya. In Tripoli K.W. learned upholstery and after some time he opened an atelier of his own with two employees, he enrolled his children in school and his fourth son was born. In May 2011, as war in Libya began, he had to flee once more because of the clashes and the widespread racist attitude amongst the local population. His house was bombed and during their escape, his wife fell down and had a miscarriage. The whole family boarded a ship and, after spending four days afloat without food or water, and with the children starting to show signs of severe illness, they were finally rescued and brought to Italy (Lampedusa island) on another ship, allegedly by the responsible authorities but it was not specified. On [...] 2011 K.W. applied for international protection to the Italian authorities.

### **Commission Decision**

The Commission

ASCERTAINED that the applicant has declared to have left the Democratic Republic of Congo, his country of nationality, in 1999, together with his wife and underage daughter, fearing the consequences of the armed conflict going on in the area of his habitual residence;

ASCERTAINED that the applicant has added that he first moved to the Central African Republic and then Chad, where he was granted refugee status according to the UAO Convention, but later was forced to move again in 2005 to avoid his daughters and even wife being subjected to Female Genital Mutilation, going to Niger and then Libya, where he has lived and worked for about six years until the beginning of the recent conflict, when he was again forced to leave, heading to Italy, where the applicant arrived in May of the present year [2011], together with his whole family;

ASCERTAINED that the applicant has moreover referred that in Libya his wife developed health problems due to the bombings in the proximity of their residence;

ASCERTAINED that the applicant has specified that he does not want to go back to the Democratic Republic of Congo, lacking any logistical, family and social connections in that country, due to the length of time that has passed since he left it;

CONSIDERING the events in Libya, country where the applicant lived and resided before his arrival in Italy, do not constitute adequate elements to justify the granting of some form of in-

<sup>33</sup> One of the different types of Female Genital Mutilation (FGM) practised in some African and Asian countries.

ternational protection, rather that events and circumstances related to his country of nationality are more relevant in that sense;

ASCERTAINED, therefore, that the circumstances represented by the applicant do not fall within the provisions of art. 1 of the Geneva Conventions of 1951 relative to refugee status, given the lack of a current, well-founded fear of individual persecution according to the Convention;

ASCERTAINED further, that no elements have arisen that would constitute a risk of serious harm under art 14 of Law 251/2007; considering, however, the particular personal and family condition of the applicant, who escaped first from a severe armed conflict in his country, then from pressure on his family members in Chad, where however he was granted refugee status, and finally the armed conflict in Libya, where he had lived permanently and worked for about six years, and where his wife was suffering serious health repercussions from the conflict, important humanitarian reasons under art. 32(3) of Legislative Decree 25/2008 have therefore been found in this case;

DECIDES not to grant international protection but to transfer the case to the Head of the Questura in order to grant a permit of stay for humanitarian reasons, under art. 5(6) of Legislative Decree 286/1998.

\*\*\*\*\*

**F.W.**, (Democratic Republic of Congo), 33 years, female

K.W.'s spouse

Applicant's hearing held the same day as her husband, K.W.

■ **Keywords:** Religion, Gender

#### Remarks

F.W. is Mr. K.W.'s wife: the two spouses were heard separately by the Territorial Commission of Rome on the same day. F.W. confirmed her husband's story, adding only a few more details about her personal situation and health problems in Libya. Her hearing was very short (it began at 1.30 p.m. and finished at 2.35 p.m.) compared to that of her husband (that began at 10 a.m. and finished at 1.20 p.m.). Towards the end of the transcript it is possible to read:

*So is there anything else you wish to add?*

I don't know if my husband had told you about the miscarriage I had during the war.

*Please tell us.*

As our house was falling down and we were escaping, I fell going down the building stairs; since I was two months' pregnant I lost my baby. Even now I have to do some tests to check my health".

In the Commission's decision it is possible to read, as a reason for issuing a permit of stay for humanitarian reasons:

ASCERTAINED, therefore, that the circumstances represented by the applicant do not fall within the provisions of art. 1 of the Geneva Conventions of 1951 relative to refugee status, given the lack of a current, well-founded fear of individual persecution according to the Convention;

ASCERTAINED further, that no elements have arisen that would constitute a risk of serious harm under art 14 of Law 251/2007;

CONSIDERING, however, the particular personal and family condition of the applicant, who escaped first from a severe armed conflict in his country, then from pressure on his family members in Chad, where however he was granted refugee status, and finally the armed con-

flict in Libya, where he had lived permanently and worked for about six years, and where his wife was suffering serious health repercussions from the conflict, important humanitarian reasons under art. 32(3) of Legislative Decree 25/2008 have therefore been found in this case;

### Remarks:

The two spouses left their country of origin, the Democratic Republic of Congo, in 1998: at that time indeed the Second Congo War had started, also known as the African World War; it lasted from 1998 to 2003, and it ended with the establishment of the *interim* Government of the Democratic Republic of Congo. It was the largest war in Africa in recent times, involving eight African countries and around 25 armed groups. The Territorial Commission of Rome opted for a refusal without considering the situation of the country of origin: though some years have passed since the conflict, there is still a general situation of tension, as also stated on the Italian Ministry of Foreign Affairs' official website "Viaggiare Sicuri" (*Travel Safe – Ed.*) ("*in the North and South Kivu provinces, in the Eastern provinces (particularly the area located East of Kisangani in Ituri, near the borders with Sudan, Uganda, Rwanda), as well as in the areas located near the border of Rwanda and Burundi, after clashes in recent months between the rebel group, M23, the government forces and MONUSCO, the situation still appears to be unstable*". "*As for security concerns, particular attention must be paid to the whole country, even in the Western provinces and in the capital Kinshasa*") and from UNHCR's website ("*the overall security situation in the Goma area is still difficult, with government troops, fighters of the M23 group and other armed groups still present in areas near the city. Tension is intensifying due to uncertainty about the developments in ongoing peace talks between the Congolese Government and the M23 in the capital of Uganda, Kampala. Over the past five days, in some Northeastern areas of the Democratic Republic of Congo, further clashes have forced around 4,000 people from the village of Agorobo to cross the border into South Sudan*", updated 18/12/2012).

The Commission asked many questions about the situation in their country of origin and appears not to realize the dangers for the family in case of repatriation. The Geneva Convention, that Italy has undersigned, provides protection to anyone who, in their country of origin, is subject to persecution or has a well-founded fear of persecution on the grounds of race, religion, language, affiliation to a particular group, gender or political opinion. This means that refugee status should be granted to a person whose fundamental rights provided by international law were violated, which would clearly arise where there is lack of protection in their country of origin (Court of Rome, 12/10/2001, n.35059). In doing so, the Commission placed much pressure on the applicant which could have compromised the continuation of the hearing. Furthermore it shows a lack of consideration for the psychological condition of the whole family that had to escape the atrocity of war.

*What were the reasons for you leaving your country?*

I left Congo when there was the war between Kabila (father) and Bemba. I come from the region of [...], I am Mumbala and Kabila came from the region of Katanga, while Bemba came from Equateur, so all those who were not from that region were treated badly. Swahili were targeted too, and so were we.

*So you had to escape from that situation like all the civil population of the area?*

We left our homes, our places, and gathered in a camp run by Chadian soldiers, which was practically a camp organized by Kabila's soldiers. We went there in order to protect ourselves.

*How long after the conflict began, more or less, did you escape?*

The war lasted for so long that I don't remember. We were in the centre of the city and so we escaped when the war arrived in the centre, even though it began a long time before.

*Since then, did you ever go back to Congo?*

No.

*Before leaving the country, were you involved in the war personally, did you experience material losses, or did you escape before that?*

I had no problems with anybody.

*I wanted to know if you were injured during the war or if you were suffered personally in some way because of the conflict?*

I do not understand the question. Except from telling you there we were traumatised I wouldn't know how to answer your question

*Were you injured? Had you been injured?*

No, we were not injured, the only thing is that we left everything behind when we went away. I had a nice garden, I had vegetable gardens and more, I had a good job but I lost everything. We took nothing with us.

*Do you think that if you returned to Congo you would experience any problems?*

Given the present situation in Congo, not only where I was born but especially where I used to live (in Gemena, where I have nothing) I wouldn't go back, not just for me but particularly for my children that I would never bring into that country's situation.

*Why you would never bring them to Congo?*

They have already suffered here, where they have learned what life means, in the country where we come from, and I know that there they would surely suffer and I don't want to hurt my children.

*Why would your children suffer in Congo?*

Apart from the general situation, there is also my personal condition: where should I go and from where could I start again? There I have nothing, not even to ensure they will grow up.

*Besides the logistical, economic and social difficulties, would you have any other problems in Congo?*

I would be worried not to be able to move freely and to find myself in a sort of "cold war" with other people, something which I don't like.

*Why do you think you would risk not being able to move around?*

In Chad it was like if I was born a second time and I was feeling already at home. I didn't think about the possibility of going back. Chad is the place that I consider as my home now. I don't think of going back to Congo just because I was born there.

*You have told us about the risk of "a cold war with other people". What did you mean? Why a "cold war" and who are "those people"?*

I don't think that things have changed a lot, because Bemba has armed men here and there and in particular in Gemena. So I don't believe that I can go back there and live easily, because Swahili, Baluba, and we people from Mbandundu are not treated well, since that is a place controlled by Bengala.

*Did you or any member of your family see any war actions in Congo? Or did you manage to escape before that?*

The war started a long time before and it was even in my town. I saw the war but I was lucky enough to escape before they bombed my house in Gemena. And the same occurred in Libya, where I also lost everything, but only after I had left.

### **Excerpts from F.W.'s hearing transcript**

*Do you think that if you were repatriated to Congo you would face any problems?*

There are many problems in Congo, but I cannot say now any problem in particular. I have a family and I have to protect my family and to follow my husband.

*From what must you protect your family?*

I do not understand the question. It is normal for a parent to protect their family.

*Would there be any dangers for you and your family in Congo?*

Who could go back to Congo without finding any problems? I don't know what to tell you. I can only tell you that we escaped because there were problems.

### **Remarks:**

K.W. was resettled in Chad after fleeing his country and was granted refugee status by UNHCR there. Having already been granted refugee status, the Italian authorities' denial of international protection appears contradictory to the Geneva Convention. The Commission seems not to consider the decision adopted in Chad.



*Did you bring any papers, certificates, or other documents of any kind today that could be useful for our evaluation?*

I submitted the document that certifies my refugee status granted in Chad to the Questura.

**Remarks:**

K.W. later had to escape from this country as well, because having converted to Islām, his wife and his daughters were running the significant risk of being subjected to Female Genital Mutilation such as excision, widely diffused in Chad, although as a traditional custom and not due to the Islamic religion *in se*. Excision consists in removing the clitoris, and it is practised for various reasons. The removed body parts cannot be reconstructed. Recently, the General Assembly of the United Nations passed a resolution against Female Genital Mutilation: Member States are encouraged to condemn this custom that has affected between 130 and 140 million young women all over the world, and also to foster specific social and educational campaigns to promote its abolition.

**From F.W.'s hearing transcript:**

*Why did you leave Chad?*

Because of my husband who had converted to Islām, although I had tried to stop him. Being a man, he was able to do as he wanted. For this reason they tried to practise excision on our daughters, there was a woman who takes care of it in that place. They tried also to force me to convert to Islām but I have been a Catholic since I was born and I believe in it, so I did not want to. I couldn't cope with this situation anymore so I turned to the church hierarchy, to the nuns and priests, but nobody helped me. If it weren't for my husband who did not understand me before converting, we could have lived well in Chad.

In the Commission's decision, in addition it is possible to read:

CONSIDERING that in Libya, the country that the applicant passed through and resided before his arrival in Italy, the events which the applicant described do not justify the granting of some form of international protection, but rather that events and circumstances regarding his country of nationality do; (...)

**Remarks:**

The Libyan Civil War is a conflict which occurred in 2011 between loyalist forces of Mu'ammar Gheddafi and rebels reunited under the National Transition Council. After a first stage of people's insurgency defined as "revolution of the 17<sup>th</sup> February" following similar mass uprisings in other Arab countries such as Tunisia and Egypt, after a few weeks it turned into a civil conflict between the supporters of the over 40-year government of Mu'ammar Gheddafi, "guide of Jamāhīriyya", and the militias fighting against him. After almost a month of clashes the United Nations Security Council established a *no-fly zone* to protect the civil population, opening the path towards an armed intervention by several countries on 19 March 2011 with bombings in many parts of the country. Thousands of African and Asian migrants working in Libya were blocked in the country by the fall of the Gheddafi regime. According to the pan-arabic TV channel Al Jazeera, dozens of migrants were killed both by the rebels and by the forces still supporting Gheddafi and his family. The rebels suspected all non-Libyans indiscriminately to be part of infamous mercenary divisions sent against the opposition's demonstrations. Gheddafi's forces, on the other hand, simply opened fire on migrants, or abandoned them in the middle of the desert in the same camps where they had been placed, sometimes for years, due to the block of departures towards Europe.

The Commission decided not to grant international protection in this case, like in many similar cases considered part of the so-called "North Africa Emergency", although the situation in Libya was extremely dangerous, especially for people originating from Africa.

**Excerpt from K.W.'s hearing transcript:**

*When and why did you leave Libya?*

We left Libya in May 2011. We lost everything in the bombings, and the atelier was destroyed, glass was broken, everything destroyed. The children stayed at home because they could not go to school. The bombings were very intense. I remember that once a part of the roof fell down and my wife, to avoid being hit, started running and fell to the ground. Even now she is undergoing medical tests to examine her health in depth because of that. We stayed at home, because to get out of the Tajura neighbourhood to go to the city centre to get supplies was im-



possible. The others were already gone, but we tried to wait until everything was over, because we had started a new life there as we had imagined it. When it was clear that nothing was going to change, we went towards Tunisia to leave, but later we came back because everywhere was blocked because there was panic everywhere with news circulating of Gheddafi's son's death. Then we saw a large group of black people who were fleeing in the same direction and we asked them what happened that they were all running together in that way. We understood that they were heading towards the sea to escape, so we went with them too, taking only our blankets with us. But there were Libyans hitting people there. We stayed there in the cold and we saw that ships were coming directly from the boatyard nearby, and we noticed that people climbed on these ships so we did the same. We climbed on without even knowing where the boat would take us, but since they said that Gheddafi's son was dead, we feared they would set everything on fire. We were convinced that they would have taken us to Tunisia, but we spent four days at sea. We had brought nothing to eat and no water. The children started to vomit some yellow substance. Later we saw a big ship that at night came and took us. Who was leading the ship had no idea of where we were heading to. There was no gear for a sea journey on board, not even a compass. It was lucky this ship approached us.

**Further remarks**

Both the hearings were conducted in the Lingala language, as requested by the applicants, but with only one member of the Commission present. According to the law, the applicant has the right to be interviewed by all members of the Territorial Commission, however, when he or she makes a justified request, Italian law permits gender-sensitive interviews and individual interviews with only one member of the Commission (Art.12(1), Legislative Decree n. 25/2008).

In this case, the couple did not apply for that provision, but the decision was apparently taken with their approval; both the transcripts read:

*Do you accept the hearing before only one member of the Commission, due to organisational reasons, given that your case will be examined by all the members of the Commission at any rate?*

Yes.

**Y.K.**, (Republic of Mali-Republic of Côte d'Ivoire), 36 years, male

The hearing took place before the TC of Rome during 2011; the application was refused, and the applicant lodged an appeal, which was still pending at the time this report was published.

■ **Keywords:** war, ethnicity

### **Excerpts from the story:**

Born in Mali, the applicant moved to the Republic of Côte d'Ivoire after his parents had died; he was adopted by his uncle and obtained Ivorian citizenship.

His father was the village chief in Mali and lived comfortably, he married twice because his first wife did not have children soon enough.

The second wife had two sons, older than the applicant and his sisters; he claims that she performed magic rituals because she took care of his father with herbal remedies she prepared herself, and after she began giving those remedies to his father, he fell fatally ill.

After the death of a village chief, 5 years must pass before another one is appointed, and he is the one who makes decisions regarding the former chief's inheritance. The stepmother – knowing that the new chief would report to the first wife and then to her – decided to kill the applicant's mother in the same way she did with her husband.

Just before the new chief was elected, some strange things happened to T.S. - he often had nightmares and hallucinations. After those events, he turned to a maternal uncle that lived in Côte d'Ivoire, who realized that his life was in danger and decided to take T.S. away with him. He left Côte d'Ivoire after avoiding an attempt to be recruited by the militia of former president Gbagbo, during which time two of his cousins were killed and he lost trace of all his other family members, including his wife and children.

He escaped to Ghana, passing through Burkina Faso, Niger and Algeria, and arriving in Libya where he worked and stayed until the outbreak of war, when Libyan military came to his house, arrested him and forced him to work for them, including collecting corpses in the streets.

He managed to escape again with the help of the driver of the van which transported the corpses, who had become attached to him, and he took a ship to Italy where he arrived on [...] 2011.

### **Hearing transcript:**

*Citizenship:* Mali

The applicant declares that the country of which he holds citizenship is Côte d'Ivoire.

*Which language do you want to speak during the interview?*

In Djoula. Regarding the country of which I am a citizen, I wish to specify that my native country is Mali although I grew up in Côte d'Ivoire.

*Of which country do you hold citizenship?*

During the journey here I have lost all my Ivorian papers. Once I arrived here I managed to get Malian papers.

[...]

*Did you officially acquire Ivorian Citizenship or did you always maintain Malian citizenship?*

When I went to Côte d'Ivoire I didn't bring my Malian papers with me and they gave me Ivorian citizenship.

*Did you apply for Ivorian citizenship?*

Yes, my maternal uncle who lived in Côte d'Ivoire had adopted me and so, since he had Ivorian citizenship, I acquired Ivorian citizenship too.

*Did you officially acquire Ivorian citizenship?*

Yes, my maternal uncle's family is part of the Djoula ethnic group from Côte d'Ivoire, *Once you arrived in Italy, why did you declare to be a Malian citizen?*

My father was the village chief in Mali and for this reason I declared to be a Malian citizen. [...]

*Did you keep Malian citizenship, that you know of...*

[...]

I had Malian citizenship but I went to Côte d'Ivoire without bringing proof of my Malian citizenship. I've always lived in Côte d'Ivoire with Ivorian citizenship, because I had actually left Mali for a very specific reason. My father had two wives...

*I'm just going to stop you there a second, sorry, just to clarify this issue about your citizenship, then we can go back to your story. Is that OK?*

I have Ivorian citizenship because I have always considered only this one. But I am originally from Mali.

*Was it possible in your case to keep both citizenships, Malian and Ivorian?*

The problem is that I left Mali when I was 15 and, as you know, a minor in Mali has no other documents except for a birth certificate. That's why I only had a Malian birth certificate.

*Apart from the documents that you have with you, I would like to know if you are citizen of both countries or not.*

What I know is what I am telling you.

**Remarks:** the hearing was conducted in the Djoula dialect of Côte d'Ivoire; the applicant explained how and why he had acquired Ivorian citizenship. The Commission kept repeating the same questions, and the applicant answered at length and to the best of his knowledge.

*Can you tell me about the period starting from when you left your country until your entry in Italy?*

[...]

I left Côte d'Ivoire in November 2010.

*Can you tell me about the period starting from that moment until your entry in Italy? The stages of your journey, where and how you lived?*

[...] there was a war in Côte d'Ivoire, and I left in November because of this. I was involved in trading business between Ghana and Côte d'Ivoire. [...] The Gbagbo clan militia entered neighbourhoods to abduct young people by force. It was not a matter of being a Djoula, they just needed young people. The day they came to my aunt's house [...] it was nighttime and I was out [*gone to Ghana, to collect some goods*]. The neighbourhood we lived in was called Abobo. When they entered our family house, my aunt got her four sons to run away but the militia ran after them as they were escaping, and as a result two were killed and the other two managed to flee to Liberia. I had no idea [...] when I arrived home I found everything destroyed [...]. There was nothing left in my house, not my wife with my three children, nor my aunt. [...]

Whoever I asked about what happened to my beloved ones never told me the truth. The young people had all run away from the neighbourhood....and I have still have absolutely no idea what happened to my wife, my children and my aunt. After looking for them for two days I gave up and I took refuge in Ghana. Once I was there I started going crazy so I left Ghana for Burkina Faso, because I wanted to get as far away as possible from Côte d'Ivoire [...] Niger [...] Algeria [...] Libya. [...]

In 2011 war erupted in Libya, too. I was in a suburb in Misrata [...] it was right in that neighbourhood that 225 people were killed. [...] we locked ourselves in our houses and could not go out. Military patrolled the neighbourhoods, they entered by force, they arrested us and took us away. They did no harm to us [...], but they ordered us to load the corpses onto vehicles to take them away. We were afraid that they would kill us too, the driver [...] he grew attached to me [...] he was in the military [...] he felt sorry for me and told me [...] that sooner or later they would have killed us and he said that he was willing to help me by putting me on a ship for Tunisia.

[...] We left Misrata on [...*ed. Monday*] 2011 [...]. We were so thirsty we drank sea water, [...]. On Saturday [...] we arrived in Italy.

[...]

*How do you know what happened in your family house if you were not there?*

When I came back from my trip, some neighbours told me about the situation.

[...]

*Do you think that if you went back to Côte d'Ivoire you would have any problems?*

I cannot go back to Côte d'Ivoire because there is nobody left where I grew up from my uncle's family (two of my cousins were killed and two have left). I am afraid to go back because I can no longer stay where we used to live. This is the reason why I have come here to ask for protection.

[...]

*Even though you have already mentioned it, I wanted to ask: who entered houses in Côte d'Ivoire to take young people by force?*

It was the FPI [Ivorian Popular Front]. His name was Bleudè from the Gbagbo clan. I was not involved in politics but I know they were from FPI, from the Gbagbo clan.

*Can you write?*

No, I did not go to school.

*Why did they want to take young people by force? To do what?*

They kidnapped them to make them to fight in the war for them. And they killed those who refused or tried to escape. They killed many youth.

*Which is the Gbagbo clan?*

The loyalist forces.

*Who is Gbagbo?*

He is the former President of Côte d'Ivoire.

*Who is the current President?*

I heard that now Alassane Dramane Outtara is the President of Côte d'Ivoire, but where we are there is not even a TV set to watch the news. I feel more Ivorian rather than Malian now; as a matter of fact I do not even speak Malian dialect and instead I only speak Djoula.

[...]

*What ethnic group was your uncle's family in Côte d'Ivoire?*

Djoula.

*Which is Gbagbo's ethnic group?*

Bete.

*And why, in your opinion, did the Bete want to enlist Djoula in their army?*

As I told you I was not involved in politics so I do not know the reason.

*I was asking because it was you who told me that they kidnapped young people to make them fight.*

When war broke out they did not pay so much attention to the ethnic group, Djoula or not; they

only took the young people.

[...]

## Commission decision

The Commission

[...]

ASCERTAINED that the applicant added that he had left Côte d'Ivoire because he was afraid of being conscripted by force into the former President's Militia, fleeing an attempted forced recruitment by **escaping via the rear window of the house where he lived**.<sup>34</sup>

[...]

CONSIDERING that the events in Côte d'Ivoire and Libya, where the applicant spent some time and resided before his entry into Italy, do not justify the granting of some form of international protection, whereas events and circumstances related to the country of whom the applicant is a citizen are more relevant;

CONSIDERING that the applicant's statements about his Ivorian naturalization are not supported by adequate reasoning nor by objective proof, and that it is not clear from his statements the way in which he would actually have lost his Malian citizenship;

<sup>34</sup> This particular detail is not found in the transcript nor the story.



ASCERTAINED that the situation referred by the applicant in relation to his expatriation from Mali does not fall within the provisions of art. 1 of the 1951 Geneva Convention related to refugee status, since no link to the reasons of persecution envisaged in that Convention have come to light;

ASCERTAINED, moreover, that no elements have arisen that could amount in the specific case to a risk of serious harm under art.14 Legislative Decree 251/2007;

ASCERTAINED, finally, that no grave humanitarian reasons have arisen falling within the provisions of art. 32 (3) Legislative Decree 25/2008;

### DECIDES

not to grant international protection.

### Appeal

The Territorial Commission of Rome refused Mr. Y.K.'s application identifying some dubious elements during the hearing that apparently invalidated the applicant's credibility.

*[...] the applicant's statements about his Ivorian naturalization are not supported by adequate reasoning nor by objective proof, and that it is not clear from his statements the way in which he would actually have lost his Malian citizenship;*

This explanation is clearly incongruous and insufficient.

The condition of an asylum seeker, that is to say a person who has been forced to leave unexpectedly and sometimes secretly his/her country to find shelter from a real danger, results in difficulties producing a national passport, because he/she cannot report to their Embassy to request such an identity document. If the Embassy were aware of the applicant's presence on Italian territory, he or she could run serious risks.

Identification should be considered in relation to the soundness of the application. The more well-founded the application, the more that the applicant cannot provide national identity documents. In this sense you could argue that the lack of official national documents and the inability to procure them, is actually evidence of persecution.

Y.K. became perfectly integrated in Côte d'Ivoire to the point that he no longer speaks the Malian dialect, but the Djoula language instead perfectly. He asked to speak in Djoula during the hearing.

Furthermore the Commission did not take into consideration the tragic and dramatic experience of violence and oppression reported by Y.K., and in the decision it is not possible to see the connection between the personal suffering due to violence and the well-known socio-political, cultural and, most importantly, legal situation in the country of origin, devastated and unable to provide any sort of protection. It is impossible not to notice the evident irrationality and negligence arising from the manifest lack of inquiry and knowledge of the socio-political conditions of Côte d'Ivoire and even Mali, neither in general nor in particular regarding the tense situation following the electoral period.

From Amnesty International's 2011 Annual Report:

*The presidential election postponed since 2005 was finally held in November 2010, and led to a political stalemate. Both the outgoing President, Laurent Gbagbo, and his opponent, Alassane Ouattara, declared themselves winners of the election and appointed rival governments.*

*There were serious human rights violations, mostly committed by security forces loyal to the outgoing President, Laurent Gbagbo. **Dozens of people were killed, detained, abducted or disappeared. Several thousand people fled to neighbouring countries or became internally displaced. Throughout the year, the New Forces (Forces Nouvelles) a coalition of armed groups in control of the North of the country since 2002, continued to commit human rights abuses.** Harassment and physical assault remained rampant, notably at roadblocks. Despite several mediation efforts led by the AU and ECOWAS, no political solution was found by the end of the year, against a back-*

ground of deepening shortages and rising prices of basic commodities. Throughout the year the security forces used excessive force in dispersing protests, unlawfully killing a number of people. They were also responsible for widespread abuses committed to extort money at checkpoints and during inspections of identity documents.

**Security forces loyal to Laurent Gbagbo committed extrajudicial executions, arbitrary arrests and enforced disappearances.**

On 16 December, security forces and militiamen loyal to Laurent Gbagbo killed at least 10 unarmed protesters in Abidjan during mass protests over the political deadlock. Salami Ismaël, a car washer, who was nearby and not participating in the march, was shot dead by two hooded men wearing military uniforms.

Fighters and supporters of the New Forces were responsible for human rights abuses, including torture and other ill-treatment, arbitrary detention and widespread extortion. A climate of impunity prevailed due to the absence of a functioning judicial system in the north of the country.

In April, a student, Amani Wenceslas, was killed by a stray bullet during an exchange of fire between two factions of the New Forces in Bouaké. Two armed fighters were also killed during this clash.

After the November election, the New Forces in the border region with Liberia in the west of the country reportedly threatened and harassed people accused of being supporters of Laurent Gbagbo. As a result, thousands of people fled to Liberia.

Y.K. fled in November 2010, just after the elections, when the situation had worsened; his family lived in H., an Abidjan neighbourhood (*de facto* capital of Côte d'Ivoire) where clashes and violence had occurred.

If he were to go back to his country of origin, he would fear for his life not just because of the general violence towards the civil population, but also because he could not expect protection from the local police forces, due to their notorious corruption and practices that do not respect human rights.

The decision therefore constitutes a clear violation of the law due to the events not being taken effectively in their original context, given that “*examining bodies should consider the general situation and legal framework in evaluating an applicant’s credibility*”.

The Commission should cooperate in order to verify conditions that would lead to a grant of international protection, even acquiring *ex officio* the information necessary to understand the legal system and the political situation in countries of origin.

Y.K. has fulfilled his onus of proof, having made every reasonable effort to support his detailed account, having given all the relevant elements he could to his application; his statements are consistent and credible and are not in conflict with the general and specific information about his case.

The way the hearing was conducted however, seems quite superficial and far from creating a cooperative and collaborative atmosphere.

The administrative decision seems lacking in validation, either from a subjective point of view, relating to the precision and detail of the reported events, and from an objective point of view, lacking any reference to the security framework of the country of origin.

The Commission should have taken into account the information collected in the field by human rights organizations, for example, excerpts of articles published on Peacereporter in the period between the escape from Côte d'Ivoire to the time of the hearing.

## Country of origin information

**21/12/2010**

### **Côte d'Ivoire, attack squadrons are back Extrajudicial killings and abductions, Ivorian crisis worsens while Gbagbo accuses United Nations for decision to extend their Mission<sup>35</sup>**

The political crisis in Côte d'Ivoire is getting worse, as the return of the militia gangs on Saturday night proves, showing that president Laurent Gbagbo will truly do anything not to be ousted. [...]

Overnight attacks. The return of attack squadrons is the most tangible sign of how close the country is coming to imploding again, as happened between 2002 and 2004. The resulting death toll from the demonstrations in the past few days has risen to around 60, with more than 200 wounded. Even more disturbing is how **abductions have started again: for some days now militiamen in uniform, accompanied by members of security forces, have been raiding the neighbourhood in the capital city where the Ouattara's Party, RDR's headquarters are located: they invade houses at nighttime to kill and kidnap selected targets.** Sources close to the party's leader confirmed this to Peacereporter; and denounced the presence of a mass grave near Abidjan's civil prison. [...]

**30/12/2010**

### **Côte d'Ivoire, tens of thousands escaping to Liberia UNHCR warns of a refugee crisis: "Another 30,000 fleeing from post-electoral violence"<sup>36</sup>**

Thousands of Côte d'Ivoire citizens have left for neighbouring Liberia to escape from the growing violence is ongoing since last month, in the context of presidential elections. This new flow of Ivorian refugees is in addition to the 14,000 that last week crossed the border between Côte d'Ivoire and the western part of Liberia, says UNHCR. [...]

**04/03/2011**

### **Côte d'Ivoire, Abidjan: war zone The head of the UNHCR says that "the situation is rapidly worsening" and that "some parts of Abidjan are war zones, the population fleeing"<sup>37</sup>**

The head of UNHCR, Jaques Franquin, says that the city of Abidjan (*de facto* capital of Côte d'Ivoire) looks more and more like a war zone. After the former President Laurent Gbagbo refused to resign in favour of the winner of the elections Alassane Ouattara, following the result of the elections held last November, tension has never stopped.

In Franquin's opinion, "the situation is rapidly worsening" and UN troops present in the region are not able to ensure security for all civilians [...]

<sup>35</sup> <http://it.peacereporter.net/articolo/25927/Costa+d'Avorio,+il+ritorno+degli+squadroni>

<sup>36</sup> <http://it.peacereporter.net/articolo/26100/Costa+d%27Avorio%2C+decine+di+migliaia+in+fugaverso+la+Liberia>

<sup>37</sup> <http://it.peacereporter.net/articolo/27218/Costa+d%27Avorio%2C++Abidjan%3A+zona+di+guerra>

02/04/2011

**Côte d'Ivoire, bloodbath in the West. In Abidjan rumours of a coup d'état  
From the trading hub of the country, on their knees after three days of war, rumours about a forthcoming coup d'état. International Red Cross: 800 dead in Duékoué<sup>38</sup>**

“There is no more security, it's a total disaster”. This is what the few Ivorian journalists that are successful in sending out their reports are able to write. In Abidjan war is on. Mortars, war helicopters flying in the sky, a frightened population that does not dare to go out while looters and destitute people assault shops after breaking open shutters. The third day of fighting in Côte d'Ivoire's trading hub, started last Thursday with the arrival of Republican Forces (Rfci), the new army created no more than two weeks ago by the legitimate president Alassane Ouattara, in an attempt to overthrow the former head of State, the coup leader Laurent Gbagbo.

Right at this moment rumours are spreading of an army coup. Most of the army was loyal to Gbagbo up til now, but since the beginning of the crisis, which has now turned into out and out armed conflict and civil war, soldiers and officials have continued to desert him. Now, as Abidjan faces collapse, they could arrest Laurent Gbagbo and Charles Ble Goudè, the “black soul” of the regime, the Minister for Youth and founder of the violent militia called Young Patriots. The most shocking news is that General Dogbo Ble Brunot could declare himself President. This is what unconfirmed reports from the capital are saying.

The rest of the country is also facing a catastrophic situation. The International Red Cross (IRC), after a visit to the city of Duékoué, in the west, has spoken of shocking violence. [...]

01/06/2011

**Côte d'Ivoire, difficult peace  
Rumours of a forthcoming return of hostilities, ongoing violence and an Amnesty  
International report that defends no one, not even the new President Ouattara<sup>39</sup>**

[...] dossier entitled “They looked at his identity card and shot him dead”. Six months of post electoral violence in Côte d'Ivoire. A report released by Amnesty International, that in 80 pages completely, and more importantly, objectively retraces six months of ethnic, political and religious violence committed by those strange and obscure armed groups formed by a mix of regular forces, paramilitary, mutineers, mercenaries and rebels that have been confronting each other on behalf of two Presidents: the outgoing Laurent Gbagbo, and Alassane Ouattara, winner of the last presidential elections. Much has been written about the crimes committed in the South of the country against Ouattara's supporters by the troops loyal to Gbagbo. Now Amnesty International examines the other half of the warfield too, with this report that is also an accusation against the President and the Premier Guillaume Soro. At page 37, the strongest political paragraph: by creating the *Forces Republicaines de Côte d'Ivoire*, “President Ouattara is responsible for all the acts committed or tolerated by these armed forces”.

Most of the events correspond with the attack launched by Frci on 28 March, and the offensive that brought them to Abidjan in just a few days after taking control of the devastated West and South-West of the country. On the 29th, the Republican forces entered Duekué and killed many Bètè and Guère civilians, suspected of having voted massively for Ouattara's rival. The report recounts that civilians were forced to lay down, asked about the ethnic group of origin and then killed by cutting their throats; priests were also killed in their churches. Near the bridge over Guèmon, soldiers gathered groups of civilians together. They separated them by gender, forcing them to sing songs for Ouattara.

There, Amnesty International observers found 56 corpses. The attack on the Carrefour neighbourhood left 817 victims behind, writes Amnesty, quoting a witness who was present when corpses were counted. Frci's militia moved forward together with Malinkè militia and Dozos, traditional hunters. They bring death all over: in the villages of Dahoua, Bahè Bè, Pinhou, Dièhiba.

<sup>38</sup> <http://it.peacereporter.net/articolo/27759/Costa+d'Avorio,+bagno+di+sangue+nell'ovest.+Da+Abidjan+voci+di+un+colpo+di+stato>

<sup>39</sup> <http://it.peacereporter.net/articolo/28786/Costa+d'Avorio,+la+pace+difficile>



Those who are able to run away, do so as soon as news about their arrival come. Those who are not able to run away know their fate. In Dèlobly, a survivor tells about her father, too old to run: he had his throat slit by Frci soldiers. The same happened to Dogo Hervé, a seven-year-old boy slaughtered together with his uncle, in the town of Guiglo. In some cases, military use dogs to trace those who had hidden in the forest, follow them and kill them.

**Meanwhile in the South, since December Gbagbo's squads attack Abobo**, a suburban satellite town in the North of Abidjan inhabited mostly by Ivorian Muslims that come from the North (Dioula) or originating from other nearby countries including Burkina Faso, Guinea, Mali and Senegal. They kill imams, assault mosques, open fire on Ouattara supporters, **raid houses, rape women, kill children, kidnap people and steal goods**. They recognize their targets in those with "less Ivorian" surnames, or from their typical clothes like boubou or propitiatory talismans. They do not slit throats, instead they burn their victims alive. In the North the same massacres happen, but in reverse, with Guère and Bété as designated victims. From December until March the Forces Armées des Forces Nouvelles (Fafn), the guerrilla, move first, side by side with Dozos and village militia. Their political contacts are the Prime Minister and Minister of Defence in Ouattara's Cabinet, Guillaume Soro. The situation changes on 8 March, when the President announces the foundation of FRCI, that incorporate the Fafn and are put under his command. The chain of command is more clear but as is evident, the violence does not stop. Ouattara has promised inquiries into the massacres but he will have to look carefully on his own side.

Violence over the last six months have re-opened old wounds and have worsened ethnic violence. Hundreds of thousands of internally displaced people and refugees fled across the border, due to the strong sense of insecurity that is still present. Revenge acts are ongoing. Around 300 corpses were found in the South-West of the country and in Yapugon in the beginning of May. [...] Rumors of a counter-attack by what is left of the forces loyal to Gbagbo are also circulating: they would be gathering at the border with Ghana, preparing for an assault. [...]

### ***Humanitarian Protection***

The Commission did not even recommend a permit of stay on humanitarian grounds, which would have been possible to grant given the applicant's escape from Libya in April 2011.

The Commission did not consider granting any kind of protection in this case, just as it did for many others who were part of the so-called "North Africa Emergency", even if the situation in Libya was extremely dangerous, especially for someone originating from Sub-Saharan Africa.

# Human Trafficking

L.Y., (Sierra Leone), 24 years, female

■ Keywords: **trafficking**

The hearing transcript contains some elements and references that imply that the situation was, in all probability, one of a victim of trafficking in human beings, though the way the interview was conducted appears not to seek to draw out this hypothesis.

“When I was 7 years old, I moved to Guinea, to Conakry, the capital, and in 2004, I don’t remember the month, I went to Mali where I stayed for 7 months without working because I was the guest of lady with whom I had moved from Conakry; after that I went to Burkina Faso with this lady, I was there 6 months in a place whose name I do not recall. Then I went to Niger, where I stayed for 5 months together with the lady I mentioned before. [...]

“In Tripoli, the lady I was travelling with left me alone with two men, one white and one black, who were Catholic priests”.

In answer to the question: “How much did you pay to cross the Mediterranean?”, she said: “I did not pay, maybe the priest paid for me”.

Given to a “lady” in adoption at the age of seven, she moved to Guinea with this woman who “mistreated and beat her”. She claims that some years later she was subject to sexual violence, after which she put her trust in another woman (“a lady to whom I told my story and said that she would take me to a safe place”).

In answer to the question “What was this lady’s job?”, she answers: “She was a missionary and dressed like a nun.”

Straight away during the discussion of her journey, which the applicant explained in a confused manner, the Commission highlighted the chronological inconsistencies:

“From your story, you travelled for about one year and a half to get to Italy; it has been two and a half years since you left Conakry. Can you give more details?”

As many studies have shown, victims of trafficking have great difficulty in recalling dates and being generally aware of time.

An IOM report states “above all on Lampedusa, the number of arrivals of victims of human trafficking is greatly increasing: in 2008 [the year in which the applicant made her asylum request] there were over 1500, that is, more than half (52%) the total number of women arriving on Lampedusa”.

The reasons for refusal were vague and based on the applicant’s inability to provide a coherent version of her journey. The decision states: “...in particular, there are doubts as to her journey for which she does not recall events occurring over approximately two and a half years of her life.”

From the story, it is clear that she no longer has any ties to her country of origin, given that the applicant declared many times to have left her country at just seven years of age. The interviewer, however, insists on understanding the reasons for leaving her country with redundant questions such as “Why did you leave Sierra Leone?” Answer: “My family was poor and my father adopted me out to a lady from Conakry” and immediately after: “For what reasons did you leave your country?” Answer: “I left my country as the lady who adopted me promised my parents that she would let me study, but I went to school for only three years, because she made me work in the house...”.

## 4 Conclusions and recommendation

The qualitative research tools together with particularly favourable conditions arising from the researchers being operators who have close contact with the asylum seekers, having taken down and analysed their stories, and the hearing transcripts and relevant appeals against the Territorial Commission of Rome's negative decisions presented in the previous chapter, have given a strong basis to this study. It has allowed particularly delicate, valuable aspects to emerge regarding the quality of the procedure for recognition of international protection, in particular the gaps and critical issues that may result in a refusal at first instance which at times is later "overturned" by the courts.

In a nutshell, specific difficulties found arising from Territorial Commission hearings are:

- the hearing quality, in particular asylum seekers not being properly listened to or understood;
- the interview in itself by the TC, and consequent stress it brings to applicants;
- the tendency to lower procedural guarantees for applicants in the face of organisational deficiencies (i.e. interviews held with just one TC member; transcripts incomplete and written in short form; no more than a summary re-reading of the hearing transcript at the end of the interview);
- the tendency by the TC to use the interview just to check an applicant's credibility rather than listening to their story with an open mind;
- lack of training for TC members;
- lack of training for interpreters;
- the inadequate TC understanding of certain countries of origin's institutional, juridical, social and cultural features, which influences their judgment of applicants' stories;
- the inappropriate and insufficient use of all available forms of protection under the law<sup>40</sup> (international, subsidiary, humanitarian);
- the lack of pertinent, up-to-date country of origin information;
- the lack of general indications on an appropriate TC approach or behaviour during hearings;
- the lack of a monitoring and evaluation system on the quality of decision-making.

It is possible to adopt certain measures (both regarding procedures under the existing legal framework, and where legislative changes are made) that can influence both directly and indirectly the protection recognition procedure's quality, by encouraging a more appropriate and effective use of interview questions on an applicant's story and cultural context. In particular, the following useful points have arisen.

On TC's composition and training:

- all members of the TCs, and not just UNHCR members, to be chosen on the basis of their experience in international protection, and not merely based on their roles within the State Police and Administration. Qualified, independent experts should be called on to provide in depth knowledge of the cultural context of applicants' countries of origin as an added value to the process, and to ensure independence and decision-making freedom, their position on the TC must be exclusive.
- constant training and refresher courses for TC members, including by way of seminars and targeted studies on interview techniques and applicants' countries of origin;

<sup>40</sup> Which can result in the granting of a lesser form of protection than that which the applicant's history of persecution and risks they face would necessitate.

- creation of an adequate, publicly available information system containing pertinent, trustworthy, accurate, and up-to-date country of origin information complete with sources relied on.

On TC hearing management:

- uniform guidelines on the conduction of international protection hearings on the basis of suggestions given by support groups and UNHCR, to be adopted by the National Commission for International Protection, in order to reduce disparity amongst methods used by individual TC members and between TCs;

- hearings to be conducted as far as possible in a joint manner, as envisaged in the current legislation, increasing the commission member pool and including additional support and preliminary inquiry staff;

- transcripts to be written in a detailed, extended format, and never only as a summary, and be as close as possible to the actual words used during the hearing. At least two commission members should always be present so that one is responsible exclusively for accurately transcribing and re-reading the hearing notes to the applicant.

- detailed reasons to be drafted for decisions;

- interpreters to be adequately trained.

On decision-making:

- monitoring and evaluation of reasons behind decisions and whether and what kind of protection is granted.

While not the main subject of this research, it was also found that access to judicial appeal can lead to certain cases viewed negatively by the Commission being granted some form of protection. Further to that which has already been mentioned regarding transcripts and reasoning behind decisions, on this issue we add:

- specialisation and constant training of magistrates (for the same reasons as those mentioned for the TCs);

- access for refused asylum seekers to free legal aid in order to effectively exercise their right to lodge an appeal;

- more favourable time limits for appeal (currently 15 or 30 days, depending on the case), given communication difficulties faced by refused asylum seekers due to language or cultural barriers as well as a lack of social and family ties in Italy, which often impedes lodgement of an appeal;

- legal reinstatement of the automatic suspension of deportation orders for appellants with a concrete risk of being sent possibly to an unsafe third country



In the European Union's 27 Member States, a total of 365,614<sup>41</sup> asylum requests were presented in 2011; the rate of recognition was approximately 24%, being 25% by administrative bodies and 19% on appeal. It is worth noting that there are huge differences between countries. In 2011 Italy examined 25,626<sup>42</sup> requests for international protection with an overall recognition rate (i.e. including both international protection and humanitarian protection) of 40%. Recognition of refugee status under the 1951 Geneva Convention criteria occurred in 8% of cases, while 10% were granted subsidiary protection; a recommendation to grant a permit of stay for humanitarian reasons was adopted in approximately 22% of decisions. While humanitarian protection comes under national legislation, and is therefore not protection as per international law, the overall situation regarding recognition of protection is comforting. Our hope is that this rate can improve in a qualitative sense, with more appropriate decisions taken according to the different cases presented, by way of a more careful approach – both legislatively and procedurally – to this delicate and important issue.

<sup>41</sup> Data reported by the SPRAR, Ministry of Interior, Fondazione Cittalia, SPRAR Atlas, Years 2011/2012, Annual report of the System of Protection for Asylum Seekers and Refugees (Rapporto annual del sistema di protezione per richiedenti asilo e rifugiati), December 2012, p. 95 and ff.

<sup>42</sup> Ibid p. 49 and ff.

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**Senzaconfine** is an independent, social, cultural, political, non-profit and non-partisan association, based in Rome, Italy. It was founded in 1989 to promote the full integration of immigrants, refugees and asylum seekers into Italian society. It seeks to promote their rights within the ideals of friendship and solidarity between peoples, and a society built without competition, profit, violence or exploitation. Enrolled in the Ministry of Labour and Social Policy's National Register of Organisations that deal with immigration and it is in the Lazio Region's Register of Volunteer Organisations, it offers, by way of an immigration help desk, social and legal advice, assistance and casework for immigrants, refugees, asylum seekers and second generation youth, supported by a team of lawyers and legal officers, providing free integrated services with regional networks throughout the country. In particular, it assists with permits of stay, asylum requests, family reunification, citizenship, close social support and guidance in vulnerable cases and Italian language courses for foreigners within the scuolemigrante (migrant school) network. Senzaconfine is on the National Asylum Roundtable, coordinating body for organizations working to uphold international protection in Italy. It also organizes an annual graduation thesis award in honour of Dino Frisullo, journalist, human rights defender, and the association's secretary, who passed away in 2003.

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