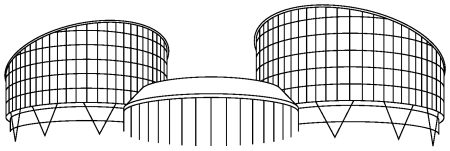

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 21459/14
J.A. and Others
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 3 November 2015 as a Chamber composed of:

Luis López Guerra, *President,*
George Nicolaou,
Helen Keller,
Helena Jäderblom,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 March 2014,

Having regard to the interim measure indicated in the present application to the Netherlands Government under Rule 39 of the Rules of Court, and the fact that this interim measure has been complied with,

Having regard to the factual information submitted by the respondent Government and the written comments in reply submitted by the applicants,

Having regard to the decision of 24 March 2015 to lift the interim measure under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are a mother, Ms J.A., born in 1963, and her two daughters R. and P., who were born in 1996 and 1999, respectively. All three applicants are Iranian nationals and are currently in the Netherlands. The President of the Section decided that the applicants' identity should not be disclosed to the public (Rule 47 § 4 of the Rules of Court). The

applicants were represented before the Court by Ms I. Schalken, a lawyer practising in Apeldoorn.

2. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and Deputy Agent, Ms L. Egmond, both of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 25 November 2013, the applicants applied for asylum in the Netherlands. The examination and comparison of the applicants' fingerprints and the verification of their identity in the European Union Visa Information System by the Netherlands authorities disclosed that on 24 July 2013 the Italian mission in Teheran had issued them with a visa for Italy. On 29 November 2013, the Deputy Minister for Security and Justice (*Staatssecretaris van Veiligheid en Justitie*) rejected the applicants' asylum requests, finding that, pursuant to Council Regulation (EC) no. 343/2003 of 18 February 2003 ("the Dublin Regulation"), Italy was responsible for the determination of the applicants' asylum request. The Minister rejected the applicants' argument that they risked treatment in breach of Article 3 of the Convention in Italy. The Minister also rejected as unsubstantiated the first applicant's claim that she was dependent on the care of her sister who was living in the Netherlands since 1994.

5. The applicants' appeal against the decision of 29 November 2013 and the accompanying request for a provisional measure were rejected on 23 January 2014 by the provisional measures judge (*voorzieningenrechter*) of the Regional Court of The Hague sitting in Zwolle, who upheld the Deputy Minister's decision and reasoning. The provisional measures judge also rejected the first applicant's argument that her medical situation did not allow her transfer to Italy, finding that the copy of her medical file submitted offered no concrete indication that in her case adequate treatment could not take place in Italy.

6. The applicants' further appeal to the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State was rejected on 28 February 2014. The Division found that the appeal did not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to section 91 § 2 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning was called for as the arguments submitted did not raise any questions requiring a determination in the interest of legal unity, legal development or legal protection in the general sense. No further appeal lay against this decision.

B. Events after the introduction of the application

7. The application was introduced to the Court on 17 March 2014 and, on the same day, the applicants requested the issue of an interim measure within the meaning of Rule 39 of the Rules of Court.

8. On 2 April 2014, the President of the Section decided to adjourn the determination of the Rule 39 request pending the submission of factual information by the Government under Rule 54 § 2 (a) of the Rules of Court concerning certain practical aspects of the applicants' transfer to Italy.

9. The Government submitted their answers on 15 April 2014. A copy was transmitted for information to the applicants.

10. On 16 April 2014, the applicants were notified by the Departure and Repatriation Service (*Dienst Terugkeer en Vertrek*) of the Ministry of Security and Justice that their transfer to Italy had been scheduled for 22 April 2014.

11. On 17 April 2014, the President of the Section decided, under Rule 39 of the Rules of the Court, to indicate to the Netherlands Government that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to remove the applicants to Italy until further notice. The President also decided under Rule 54 § 2 (a) to put additional factual questions to the Government about practical aspects of the applicants' removal to Italy.

12. The Government submitted their answers on 9 May 2014 and the applicant's written comments in reply were submitted on 10 June 2014.

13. On 3 December 2014, additional factual questions were put to the Government concerning the practical effects given to the Court's judgment of 4 November 2014 in the case of *Tarakhel v. Switzerland* ([GC], no. 29217/12, ECHR 2014 (extracts)).

14. In their reply of 7 January 2015, the Government indicated that, following the *Tarakhel* judgment and where a case concerned a transfer of a family with minor children to Italy, the Netherlands authorities would only transfer such a family after guarantees had been obtained from the Italian authorities that the family would remain together and that information was available about the specific facility where the family was to be accommodated, in order to guarantee that the conditions there were suited to the age of the children. For this reason, the actual transfer to Italy was announced ten to fifteen days beforehand in order to give the Italian authorities the opportunity to provide information on the specific facility where the family was to be accommodated, to guarantee that the conditions in this facility were suitable and to guarantee that the family would not be split up. If these guarantees were not received within the time-limit for transfers as laid down in the Dublin Regulation, the persons involved would be channelled into the Netherlands asylum procedure. However, as long as a

Rule 39 indication was in place, the Government was not in a position to commence the preparations for the applicants' transfer to Italy.

15. The applicants' comments in reply were submitted on 3 February 2015. They stated that no such guarantees had been obtained yet in respect of their transfer to Italy but that, in their view, such guarantees should be obtained before taking the actual transfer decision and not shortly before a scheduled transfer date.

16. Having noted these submissions, the Chamber decided on 24 March 2015 to lift the Rule 39 indication.

17. By letter of 5 August 2015, the Government submitted a copy of a circular letter dated 8 June 2015 and sent by the Dublin Unit of the Italian Ministry of the Interior (*Ministero dell Interno*) to the Dublin Units of the other member States of the European Union, in which the Italian Dublin Unit set out the new policy of the Italian authorities on transfers to Italy of families with small children. In its relevant part, the Netherlands Government's letter reads as follows:

> "A new policy was considered necessary in view of the fact that reception facilities, specifically reserved for such families, frequently remained unavailed of as a result of families having left for an unknown destination prior to transfer, or having obtained a court order barring their transfer. In order to safeguard appropriate facilities where families may stay together, the Italian authorities earmarked a total of 161 places, distributed over twenty-nine projects under the System for Protection of Asylum Seekers and Refugees (SPRAR). The authorities confirmed that this number will be extended should the need arise. As may be inferred from the letter of 8 June, this comprehensive guarantee is intended to avoid the need for guarantees in specific cases.
>
> The Dutch Dublin-Unit will continue to inform its Italian counterpart at an early stage of an intended transfer of a family with minor children. On 13 July 2015, the Dutch, German and Swiss migration liaison officers to Italy issued a report on SPRAR in general, including on the requirements the accommodations must fulfil, and on two projects they had visited on the invitation of the Italian Government. It is understood that later this year also the European Asylum Support Office (EASO) will report on the matter.
>
> The Government is of the opinion that the new Italian policy will adequately safeguard that families with minor children are kept together in accommodations appropriate to their needs."

18. On 21 August 2015, the applicants informed the Court that they had been notified on 11 August 2015 that they should report to the police for the purpose of their placement in aliens' detention (*vreemdelingenbewaring*) for the purpose of their transfer to Italy. They further requested the issue of an interim measure within the meaning of Rule 39 of the Rules of Court.

19. On 25 August 2015, the President of the Section decided to adjourn the determination of the applicants' fresh Rule 39 request pending the submission of factual information by the Government under Rule 54 § 2 (a) of the Rules of Court concerning certain practical aspects of the applicants' transfer to Italy.

20. The Government submitted their replies on 27 August 2015. They informed the Court that the applicants' removal had been scheduled for 9 September 2015, that the Italian authorities had been informed that the transfer concerned a single mother with one adult and one minor daughter. They further submitted a copy of the standard form – prescribed under Article 31 of Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person – in which the Italian authorities had been notified on 4 August 2015 of the applicants' transfer to Italy. Under the heading "State of health of the person(s) to be transferred" the following is stated:

> "Please note that this concerns a mother with two daughters, of which one is a minor (Tarakhel). The mother did not sign a declaration of consent to give you any information, however due to vital interest I would like to inform you that she has threatened with suicide concerning the transfer. She is not co-operative and will be escorted. She has explained that her daughters do not have any health issues."

21. The applicants' comments on the Government's submissions of 5 and 27 August 2015 were submitted on 31 August 2015. They considered that the new policy set out in the circular letter sent by the Italian authorities on 5 June 2015 only contained guarantees of a general nature and that it was likely that the 161 places referred to in that letter would be far from enough. They submitted that no individual guarantees had been obtained and that it had not been guaranteed that the first applicant would be provided with adequate mental health care. They further informed the Court that the second and third applicants were attending school in the Netherlands and that, in their opinion, a transfer to Italy would not be in their interest.

22. Having noted the parties' submissions, the President of the Section decided on 31 August 2015 to reject the applicants' fresh Rule 39 request.

C. Relevant law and practice

23. The relevant European, Italian and Netherlands law, instruments, principles and practice in respect of asylum proceedings, reception of asylum-seekers and transfers of asylum-seekers under the Dublin Regulation have recently been summarised in *Tarakhel*, cited above, §§ 28-48); *Hussein Diirshi v. the Netherlands and Italy and 3 other applications* ((dec.), nos. 2314/10, 18324/10, 47851/10 & 51377/10, §§ 98-117, 10 September 2013); *Halimi v. Austria and Italy* ((dec.), no. 53852/11, §§ 21-25 and §§ 29-36, 18 June 2013); *Abubeker v. Austria and Italy* (dec.), no. 73874/11, §§ 31-34 and 37-41, 18 June 2013); *Daybetgova and Magomedova v. Austria* ((dec.), no. 6198/12, §§ 25 29 and §§ 32-39, 4 June

2013); and *Mohammed Hussein v. the Netherlands and Italy* ((dec.), no. 27725/10, §§ 25-28 and 33-50, 2 April 2013).

COMPLAINT

24. The applicants complained that their removal to Italy would be contrary to Article 3 of the Convention in that they would risk exposure to very bad living conditions in Italy. They further complained that the Netherlands, in ordering their transfer to Italy, had insufficiently taken into account the mental health condition of the first applicant and the interests of her children which should be a primary consideration in decisions about forced transfers under the Dublin Regulation.

THE LAW

25. The applicants complained that they, if transferred to Italy, would be exposed to a risk of being subjected to treatment proscribed by Article 3 of the Convention due to the difficult living conditions of asylum-seekers in Italy. Article 3 of the Convention reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

26. The Court reiterates the relevant principles under Article 3 of the Convention as set out recently in its judgment in the case of *Tarakhel*, cited above, §§ 93-99 and 101-104, including that to fall within the scope of Article 3 the ill‑treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim. The Court considers that the applicants' situation, namely a single mother with two daughters of, respectively, 16 and 18 years old, is one of the relevant factors in making this assessment.

27. The material date for making this assessment is the actual date of expulsion. However, if an applicant has not yet been removed when the Court examines the case, the relevant time for assessing the existence of the risk of treatment contrary to Article 3 will be that of the proceedings before the Court (see *Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008, and *A.L. v. Austria*, no. 7788/11, § 58, 10 May 2012).

28. The applicants are to be considered as asylum-seekers in Italy as, if transferred to Italy, they will have to file an asylum request there. It thus has to be determined whether the situation in which the applicants are likely

to find themselves in that capacity can be regarded as incompatible with Article 3, taking into account their situation as an asylum-seeking single mother with one adult and one minor daughter and, as such, belonging to a particularly underprivileged and vulnerable population group in need of special protection (see *Tarakhel*, cited above, § 97; and *M.S.S. v. Belgium and Greece*, cited above, § 251).

29. The Court reiterates that the current situation in Italy for asylum-seekers can in no way be compared to the situation in Greece at the time of the *M.S.S. v. Belgium and Greece* judgment, cited above, and that the structure and overall situation of the reception arrangements in Italy cannot in themselves act as a bar to all removals of asylum-seekers to that country (see *Tarakhel*, cited above, §§ 114-115).

30. As to the applicants' personal situation, the Court has noted that the Italian Government have been duly informed by the Netherlands authorities about the applicants' family situation and their scheduled arrival. Further, – taking into account that the first applicant refused to give her consent to the transfer of medical data about her to the Italian authorities – they have been informed that the first applicant will be escorted in order to avert the risk of suicide. The Court understands from the circular letter dated 8 June 2015 (see paragraph 17 above) that the applicants, being a family with a minor child, will be placed in one of the 161 reception facilities in Italy which have been earmarked for families with minor children.

31. The Court has noted the applicants' concern that the 161 places earmarked so far will be insufficient but, in the absence of any concrete indication in the case file, does not find it demonstrated that the applicants will be unable to benefit from such a place when they arrive in Italy.

32. The Court further considers that the applicants have not demonstrated that their future prospects, if returned to Italy as a family, whether taken from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. The Court has found no basis on which it can be assumed that the applicants will not be able to benefit from the available resources in Italy for an asylum-seeking single mother with one or more minor children or that, in case of health-related or other difficulties, the Italian authorities would not respond in an appropriate manner. The first applicant having refused to give consent to communicate her medical data to the Italian authorities, it cannot be said that the latter have not been duly notified of her mental health condition, or that she runs a real risk of not receiving the required medical care in Italy. Moreover, the Netherlands authorities, acting pre-emptively, will provide escort during her transfer to Italy in view of any risk of suicide. In any event, it will remain possible for the applicants to file a fresh application with the Court (including the possibility of requesting an interim measure under Rule 39 of the Rules of Court) should that need arise.

33. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and therefore inadmissible pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 26 November 2015.

Marialena Tsirli	Luis López Guerra
Deputy Registrar	President