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

THIRD SECTION

DECISION

Application no. 2314/10
Nuur HUSSEIN DIIRSHI against the Netherlands and Italy
and 3 other applications (see list appended)

The European Court of Human Rights (Third Section), sitting on 10 September 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Guido Raimondi,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above applications lodged against both the Netherlands and Italy between 13 January 2010 and 7 September 2010;

Having regard to the interim measures indicated in the present applications to the Netherlands Government under Rule 39 of the Rules of Court, and the fact that these interim measures have been complied with and have subsequently been lifted by the President on 16 January 2012 in applications nos. 2314/10, 18324/10 and 47851/10, and on 21 March 2012 in application no. 51377/10;

Having regard to the factual information submitted by the Netherlands and/or Italian Government and the comments in reply submitted by the applicants;

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. The Government of the Netherlands were represented by their Agent, Mr R.A.A. Böcker, and/or their Deputy Agent, Ms L. Egmond, both of the Ministry of Foreign Affairs.

The Italian Government were represented by their Agent, Ms E. Spatafora, and their Co-Agent, Ms P. Accardo.

A. The circumstances of the cases

2. The facts of the cases, as submitted by the applicants, the Italian Government and the Netherlands Government, may be summarised as follows. Some of the facts are in dispute between the parties.

1. Application no. 2314/10

3. The applicant is a Somali national, who claims that he was born in 1992. At the time of the introduction of the application, he was staying in Baexem, the Netherlands. He was represented before the Court by Ms J. Niemer, a lawyer practising in Amsterdam.

4. The applicant hails from Mogadishu and belongs to either the Abgaal or the Habar Gedir sub-clan of the Hawiye clan. After having travelled from Somalia to Libya, the applicant left Libya by boat in December 2008. A fight broke out on this boat which nearly sank. The applicant was rescued by the Italian coastguard. He entered Italy on 1 January 2009, on the island of Lampedusa. On the same date, his fingerprints and a passport photograph were taken by the Lampedusa local police, who registered him as having illegally entered the territory of the European Union. He was registered as Nuor Hussin Mohamed, a Somali national who was born on 1 January 1994.

5. On 27 January 2009, the applicant applied for international protection at the Bari police (*questura*) immigration department. According to the information set out in the "Standard form C/3 for the recognition of refugee status according to the Geneva Convention of 28 July 1951" (*Modello C/3 per il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra del 28 Luglio 1951*) and obtained from the applicant with the assistance of an interpreter, the applicant's name was Nur Hussen Mohamed, and he was a Somali citizen of Abgaal origin, born in Mogadishu on 1 January 1990 and not in 1994 as recorded in his initial registration. He further stated that he had a sister who was living in the Netherlands and that he had fled Somalia on 29 September 2008 because of the war there. This standard form was signed by the applicant, the interpreter and the official having conducted the interview with the applicant. The applicant's fingerprints were taken again as well as a new passport photograph. According to this form, the applicant was staying at the Bari-Palese reception centre for asylum seekers (*Centro di Accoglienza per Richiendenti Asilo*; "CARA").

6. On 28 January 2009, the applicant was provided with a temporary residence permit as an asylum seeker. This permit had a validity of twenty days.

7. In its decision of 12 March 2009, the Bari Territorial Commission for the Recognition of International Protection (*Commissione Territoriale per il Riconoscimento della Protezione Internationale*) granted the applicant a residence permit for the purpose of subsidiary protection. This decision was served on the applicant in person on 16 March 2009 and the certificate of service was signed by the applicant, the interpreter and the responsible official. At the same time, the applicant was provided with a residence permit for an alien having been granted subsidiary protection which contains the applicant's signature as well as a travel document for aliens (*Titolo di viaggio per stranieri*) which also bears his signature. Both the residence permit and the travel document were valid until 16 March 2012.

8. On an unspecified date, the applicant left the Bari-Palese asylum seekers reception centre of his own volition.

9. On 11 May 2009, the applicant entered the Netherlands where he applied for asylum on 13 May 2009. The examination and comparison of his fingerprints by the Netherlands authorities generated a Eurodac "hit" report, indicating that the applicant had illegally entered Italy on 1 January 2009 and that on 27 January 2009 he had applied for asylum in Italy.

10. In the course of his first interview (*eerste gehoor*) with the Dutch immigration authorities, held on 15 May 2009, the applicant wrote down his personal data, declaring that his name was Nuur Hussein Diirshi, and that he had been born in Mogadishu on 1 July 1992. He confirmed that he was thus seventeen years old. He further stated that he belonged to the Hawiye/Habar Gedir, a majority clan. After an initial denial, he admitted that he had been in Italy and that he had applied for asylum there. He declared that he had done so under his own name and that he had not been given any documents. He also declared that his father had died in 1995, and that his mother, his sister and two half-siblings were living in Mogadishu. He did not mention having a sister living in the Netherlands. He had left Somalia in March 2008 and had travelled via Ethiopia, Sudan and Libya to Italy.

11. In his written comments on the record drawn up of his first interview, the applicant stated that he did not know whether he had applied for asylum in Italy. There had been someone who had interpreted but who had spoken Somali very badly. He had been taken to a place where he had to live but it had been very bad there. He had therefore decided to flee onwards and, for that reason, also did not wish to return to Italy. During the journey from Somalia to the Netherlands he had used the name Abdirahman. He further denied that he had ever held a passport or residence permit issued in his own name or other kind of identity document.

12. In the applicant's further interview with the Dutch immigration authorities, held on 16 May 2009, he stated *inter alia* that he objected to his transfer to Italy where he had not been provided with education or a roof over his head.

13. On 7 July 2009 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of Article 16 § 1 (c) of Council Regulation (EC) no. 343/2003 of 18 February 2003 ("the Dublin Regulation"). As the Italian authorities failed to react to that request within two weeks, they were considered under Article 20 § 1 of the Dublin Regulation as having acceded implicitly to that request.

14. The applicant's asylum request filed in the Netherlands was rejected on 26 August 2009 by the Deputy Minister of Justice (*Staatssecretaris van Justitie*) who found that, pursuant to the Dublin Regulation, Italy was responsible for the processing of the asylum application. As to the applicant's arguments that his transfer to Italy would violate his rights under Articles 3 and 13 of the Convention because the Italian asylum procedure had many flaws, because he was a minor and did not have access to an effective remedy, and because in Italy he would risk homelessness and having to live a wandering existence on the streets, the Minister held that it had not been established that Italy would fall short of its obligations under the Convention or under the 1951 Refugee Convention in respect of the applicant.

15. The applicant's appeal against this decision and the accompanying request for a provisional measure (*voorlopige voorziening*) were rejected on 12 January 2010 by the provisional-measures judge (*voorzieningenrechter*) of the Regional Court (*rechtbank*) of The Hague sitting in Zwolle. The judge considered *inter alia* that in principle the Deputy Minister could rely on the principle of mutual interstate trust (*interstatelijk vertrouwensbeginsel*) unless the applicant could demonstrate, on the basis of concrete facts and circumstances relating to his individual case, that this was different in respect of Italy. The judge found that the applicant had not done so as the mere claim that he, as a minor, had not been given reception and assistance was insufficient to demonstrate the existence of concrete indications that Italy failed to respect its international treaty obligations in respect of the applicant.

16. On 13 January 2010, the applicant filed a further appeal to the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*) as well as a request for a provisional measure, i.e. to stay his transfer to Italy pending the proceedings on his further appeal. On the same day, the President of the Administrative Jurisdiction Division rejected the applicant's request for a provisional measure.

17. On 4 June 2010, the Administrative Jurisdiction Division rejected the applicant's further appeal on summary grounds, holding:

> "What has been raised in the grievances ... does not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to article 91 § 2 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning is called for, since the arguments submitted do not raise questions

> which require determination in the interest of legal uniformity, legal development or legal protection in the general sense."

No further appeal lay against this ruling.

18. The application was introduced to the Court on 13 January 2010. On 13 January 2010, 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 applicant to Italy for the duration of the proceedings before the Court.

19. On 16 January 2012, the President decided to lift the Rule 39 indication given in the case. On the same day, a number of factual questions were put to the Government of Italy (Rule 54 § 2 (a)), which concerned the applicant's situation in Italy before his arrival in the Netherlands. The Italian Government submitted their replies on 5 March 2012 and the applicant's comments in reply were submitted on 2 April 2012.

20. In the meantime, the applicant had been transferred from the Netherlands to Italy on 19 March 2012.

21. On 5 December 2012, the applicant returned to the Netherlands where he filed a fresh asylum request.

22. On 14 January 2013 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of Article 16 of the Dublin Regulation. As the Italian authorities failed to react to that request within two weeks, they were considered under Article 20 § 1 of the Dublin Regulation as having acceded implicitly to that request.

23. On 13 June 2013, the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*) rejected the applicant's new asylum request filed in the Netherlands, holding that, pursuant to the Dublin Regulation, Italy was responsible for the processing of that request. The Deputy Minister did not find it established that Italy fell short of its international treaty obligations in respect of asylum seekers and refugees, and rejected the applicant's argument that he risked treatment in breach of Article 3 of the Convention in Italy or *refoulement*.

24. The applicant's appeal against this decision and his accompanying request for a provisional measure were rejected on 12 July 2013 by the provisional-measures judge of the Regional Court of The Hague sitting in Haarlem, who found that it had not appeared that the applicant, after his removal to Italy in 2012, had made a clear attempt to file a complaint with the Italian authorities about the failure to provide reception, legal aid and other facilities. According to the judge, this finding was not altered by the fact that the applicant had filed an application with the Court as he should first turn to the Italian authorities.

25. The applicant's further appeal is currently pending before the Administrative Jurisdiction Division.

26. On 24 June 2013, the applicant was notified that his transfer to Italy had been scheduled for 22 July 2013. No further information about this transfer has been submitted.

2. Application no. 18324/10

27. The applicant is a citizen of Somalia, who states that he was born in 1993. At the time of the introduction of the application, he was staying in Zuidlaren. He was represented before the Court by Mr P.J. Schüller, a lawyer practising in Amsterdam.

28. On 9 October 2008, the applicant was registered in Lampedusa and Linosa as having illegally entered the territory of the European Union. He stated that he was Liban Ali Omer, a national of Somalia, and that he had been born on 1 January 1991. He was registered accordingly and his fingerprints were taken.

29. On 24 November 2008, at the Agrigento police immigration department, his fingerprints were taken once more and he was registered as an unaccompanied minor having applied for international protection. He then stated that his name was Lubaan Cumar Cali and that he was born on 1 January 1991. Being an unaccompanied minor, the applicant was placed in the *Comunità per minori "Alice"*, a reception and care centre for disadvantaged and foreign minors in Palma di Montechiaro, Agrigento province.

30. On the same day, the Agrigento police immigration department notified the Palermo Juvenile Court (*Tribunale per i minorenni*), the office of the guardianship judge at the Agrigento Tribunal (*Tribunale Ufficio del Giudice Tutelare*), the communal social services department (*Ufficio Servizi Sociali*) in Palma di Montechiaro, and the Rome Central Service for the System of Protection of Asylum Seekers and Refugees (*Servizio del Sistema di Protezione per richiedenti asilo e rifugiati*) of the presence of the applicant and four other unaccompanied minor asylum seekers in the "Alice" centre for minors pending the determination of their asylum request and other procedures, including the appointment of a legal guardian. No further information about the latter procedure has been submitted.

31. On 12 March 2009 the applicant left the "Alice" centre without authorisation for an unknown destination. He was subsequently registered by the Agrigento police department as a missing minor in the "*SDI*" police investigation database system.

32. The applicant having failed to appear at the hearing before it, the Trapani Territorial Commission rejected the applicant's asylum request on 5 August 2009, finding that no assessment of the alleged risk of persecution could be made.

33. In the meantime, the applicant had travelled to the Netherland where he arrived on 5 April 2009 and applied for asylum, stating that he was Abdale Ali Omar, a Somali national born on 5 December 1993. The

examination and comparison of his fingerprints by the Netherlands authorities generated a Eurodac "hit" report, indicating that the applicant had been registered in Lampedua e Linosa on 9 October 2008 and in Agrigento on 24 November 2008.

34. In the applicant's first interview with the Dutch immigration authorities, held on 8 April 2009, he stated *inter alia* that he was an illiterate orphan, that he hailed from Mogadishu and that he had been told by his uncle and grandmother that he would turn 16 in 25 days. He held no identity documents. He had travelled by air from Mogadishu to Hargeisa (Somaliland) on 15 January 2008. He had then travelled over land, via Ethiopia and Sudan, to Libya where he had been detained for about five months. After having managed to abscond, he had travelled by boat to Italy. The applicant further stated that his real name was Libaan Ali Omar. Although his "travel agent" had told him never to reveal his true identity, he had done so in Italy due to the stress he had then been under. As he had stated in Italy that he was 17, he had been assigned a guardian and he had been placed in an Italian foster family with two other children. A man had come with papers to sign, but the applicant had not known that this was an asylum request. He had left this family because he had not been allowed to go to school or to do anything. He had had to go to sleep at 10 p.m. and even at 1 p.m. he had been told to sleep. In the company of a man known to the applicant's uncle, the applicant had travelled by train to the Netherlands.

35. On 10 April 2009, a subsequent Dublin Claim interview (*gehoor Dublinclaim*) was held with the applicant. He stated during this interview *inter alia* that he had been taken from Lampedusa to a home where several other young asylum seekers had been staying. He had not been allowed to go to school and he had been beaten when he did not go to bed on time. The rules had been very strict in the home. He had called his uncle who knew someone in Italy who had succeeded in getting him out of that home. This man had also brought the applicant to the Netherlands where he wanted to build up a future and get schooling.

36. On 11 April 2009, the Deputy Minister of Justice informed the applicant of her intention (*voornemen*) to reject his asylum request. The applicant filed his written comments (*zienswijze*) on this intention on 13 July 2009 and 31 August 2009 in which he submitted, *inter alia*, that he had been detained in Libya for five months and that he had been ill-treated during his detention there, which traumatic experience had caused him to develop psychological problems.

37. On 15 June 2009 the Netherlands authorities asked the Italian authorities to take back the applicant in accordance with Article 16 of the Dublin Regulation. On 30 June 2009, the Italian authorities accepted this request.

38. The applicant's asylum request filed in the Netherlands was rejected on 1 September 2009 by the Deputy Minister. Noting that the applicant had

applied for asylum in Italy on 24 November 2008 and that Italy had accepted to take back the applicant, the Deputy Minister held that, in accordance with the Dublin Regulation, Italy was responsible for the processing of the applicant's asylum request. The Deputy Minister rejected as unfounded the applicant's arguments to the effect that Italy failed to respect its international treaty obligations in respect of asylum seekers and refugees. The Deputy Minister further rejected the applicant's argument that he would risk treatment in breach of Article 3 of the Convention in Italy.

39. On 4 September 2009, the applicant filed an appeal against this decision with the Regional Court of The Hague.

40. On 3 November 2009, the applicant was notified that his removal to Italy had been scheduled for 27 November 2009.

41. On 14 November 2009, the applicant requested the Regional Court of The Hague to issue a provisional measure prohibiting his removal pending the outcome of the appeal proceedings. On 24 November 2009, the provisional-measures judge of the Regional Court of The Hague sitting in Zwolle granted this request.

42. In its judgment of 22 February 2010, the Regional Court of The Hague sitting in Zwolle rejected the applicant's appeal. It held that in principle the Deputy Minister could rely on the principle of mutual interstate trust unless the applicant could demonstrate, on the basis of concrete facts and circumstances relating to his individual case, that this was different in respect of Italy. The Regional Court found that the applicant had not done so as his mere claim that he, as a minor, would end up in an inhumane situation if transferred to Italy or that he was not able to take independent action against the Italian State whose treatment of refugees was deficient were both insufficient for finding it established that Italy would fail to respect its international treaty obligations in respect of the applicant. The Regional Court further did not find it established that the applicant, if transferred to Italy, would have no access to adequate medical care or that such a transfer should be regarded as entailing undue hardship (*onevenredige hardheid*).

43. On 8 March 2010, Ms S., a guardian of the "Nidos" foundation (juvenile protection agency for unaccompanied minor asylum seekers), who – on an unspecified date – had apparently been entrusted with the applicant's guardianship (*voogdij*), was notified that the applicant's transfer to Italy had been scheduled for 22 August 2010 at the latest.

44. Between 4 and 22 March 2010, the applicant's guardian Ms S. sent messages to *inter alia* the Central Service of the SPRAR (*Sistema di Protezione per Richiendenti Asilo e Rifugiati*; "Protection System for Asylum Seekers and Refugees"), the Department responsible for Dublin requests at the Italian Ministry of the Interior (*Ministero dell'Interno*) and to the Italian Council for Refugees (*Consiglio Italiano per i Rifugiati*), requesting information about the applicant's situation after his transfer to

Italy (accommodation, guardianship, schooling). On 22 March 2010, Ms S. sent a letter by fax to the Netherlands immigration authorities, informing them that Nidos held the applicant's guardianship and that Nidos had contacted the Italian authorities on 15 March 2010 for information about the applicant's reception conditions in Italy in order to assess whether it could accept his transfer to Italy. Since no information about this had been received yet, Nidos disagreed with the applicant's removal from the Netherlands until clarity was obtained on how he would be received and accommodated in Italy.

45. On 22 March 2010, the applicant filed a further appeal with the Administrative Jurisdiction Division against the Regional Court's judgment of 22 February 2010.

46. On 23 March 2010, the Nidos foundation was notified that the applicant would be handed over to the (Italian) authorities on 8 April 2010. The foundation was further informed that the applicant would be escorted on his journey to Italy and that, after his arrival there, he would be handed over to the Italian authorities.

47. On 26 March 2010, the applicant requested the Administrative Jurisdiction Division to issue a provisional measure, staying his removal to Italy pending the determination of his further appeal. This request was rejected on 1 April 2010 by the President of the Administrative Jurisdiction Division.

48. On 14 July 2011, following hearings held on 19 October 2010 and 21 April 2011, the Administrative Jurisdiction Division rejected the applicant's further appeal of 22 March 2010. No further appeal lay against this ruling.

49. The application was introduced to the Court on 1 April 2010. On the same day, after the rejection of the applicant's request for a provisional measure by the President of the Administrative Jurisdiction Division, 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 applicant to Italy for the duration of the proceedings before the Court.

50. On 16 January 2012, the President decided to lift the Rule 39 indication given in the case. On the same day, a number of factual questions were put to the Government of Italy (Rule 54 § 2 (a)), which concerned the applicant's situation in Italy before his arrival in the Netherlands. The Italian Government submitted their replies on 5 March 2012 and comments in reply were submitted by the applicant's representative on 25 April 2012.

51. In the meantime, on 22 February 2012, the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*) had rejected the applicant's fresh asylum request, finding that it was not based on any newly emerged facts and circumstances – within the

meaning of section 4:6 of the General Administrative Law Act (*Algemene wet bestuursrecht*) – warranting a revision of the initial negative decision. On the same day, the applicant filed an appeal with the Regional Court of The Hague.

52. Also on 22 February 2012, the applicant filed an objection (*bezwaar*) against an act aimed at his effective removal (*daadwerkelijke uitzettingshandeling*) within the meaning of section 72 § 3 of the Aliens Act 2000 in respect of his imminent transfer to Italy. The applicant further filed two requests with the Regional Court of The Hague to issue a provisional measure to the effect that his removal to Italy would be stayed pending the proceedings on his appeal and objection.

53. On the same day, the provisional-measures judge of the Regional Court of The Hague sitting in Almelo rejected the applicant's requests for a provisional measure. The judge found there were no reasons to allow the applicant to await the outcome of his fresh asylum request or of his application to the Court in the Netherlands. No further information about the proceedings on the applicant's appeal and objection has been submitted.

54. On 23 February 2012, the applicant was transferred to Milan (Italy). According to the applicant's representative, the applicant has been left to his own devices in Italy and nobody has explained to him what he should do or where he should go to get advice or legal aid in order to apply for asylum again.

55. In a letter of 23 April 2012 (the mention of 2011 seems to be a typing error), the Italian NGO "Save the Children; Italia Onlus" informed the lawyer representing the applicant in the proceedings before the Court, at the latter's request, that their field operators had found and met the applicant. He had been destitute. No assistance or accommodation had been made available by the public authorities after his arrival in Italy, and neither had he been provided with information on how to access services for asylum seekers in the municipality of Rome. Due to the very limited number of places within the asylum seekers reception facilities in that municipality, they had been unable to find shelter for the applicant. However, he had recently found shelter in a dormitory run by a private charity in Latina, about 70 km south of Rome, where volunteers were trying to help him obtain basic social assistance and medical care. However, this facility was due to close on 30 April 2012. In this letter, it was further pointed out that accommodation was a prerequisite for the admissibility of any asylum request and that, therefore, the applicant's request for international protection or for review of the rejection of his initial request would not be taken up for examination by the authorities if he did not have accommodation and an address. The letter further expressed concern that in that case - although removals to Somalia were usually not enforced – the applicant risked being denied access to the Italian international protection

system, detention for removal purposes and possibly the issuance of a removal order against him.

56. In his submissions of 25 April 2012, the applicant's representative informed the Court that, after the applicant's removal to Italy, the lawyer who had assisted the applicant in the domestic proceedings had managed to speak to the applicant twice. The applicant's representative further informed the Court that he had not had the opportunity to discuss with the applicant the replies submitted by the Italian Government on 5 March 2012.

3. Application no. 47851/10

57. The applicant is a citizen of Somalia, who states that he was born in September 1993. At the time of the introduction of the application, he was staying in Oude Pekela. He was represented before the Court by Mr W. Eikelboom, a lawyer practising in Amsterdam.

58. After having left Somalia and after a traumatic journey through Kenya, Uganda, Sudan and Libya, the applicant arrived on the island of Lampedusa in Italy on 1 December 2008. His fingerprints were taken by the Lampedusa local police, who registered him as having illegally entered the territory of the European Union. The applicant indicated that he wished to apply for international protection. Having been advised by others to do so and believing that this this would increase his chances, he gave a false identity to the Lampedusa police. Accordingly, he was registered as Yusuf Mohamed Osman, a Somali national who was born on 5 December 1980.

59. On 4 March 2009, under the identity given by the applicant to the Lampedusa police, the Taranto Territorial Commission granted the applicant a residence permit for the purpose of subsidiary protection, which permit was valid for three years.

60. On 26 April 2009, the applicant left Italy and travelled to the Netherlands where he arrived on 27 April 2009 and applied for asylum.

61. In his first interview with the Netherlands immigration authorities, held on 30 April 2009, the applicant stated that his name was Yusuf Madi Sheekh and that he had been born on 6 September 1994 in Mogadishu. He later corrected this to 6 September 1993. He further stated that he had no identity or other document and that his mother had sent him to Kenya in 2005, where he had lived from 2005 until his departure on 27 April 2009 when he had travelled to the Netherlands by air. When it was put to him that his fingerprints had been taken in Italy in December 2008, he admitted that he had been in that country where he had been provided with a residence permit with a validity of three years as well as with a travel document allowing him to travel in Europe in March 2009. He further stated that he had applied for asylum in Italy under the name Yusuf Mohamed Osman and a date of birth in 1980. He had left Somalia in September 2005 and had travelled, via Kenya, Uganda, Sudan and Libya, to Lampedusa in Italy. He had been taken from Lampedusa to Sicily. After he had lost his papers, he

had travelled to Palermo and then to Turin and subsequently to the Netherlands. As the applicant claimed that he hailed from Mogadishu, a number of questions about this city were put to him.

62. In the written comments on the record drawn up of this interview, the lawyer assisting the applicant in the asylum proceedings explained *inter alia* that the applicant did not know his exact year of birth but only that his mother had told him in a telephone conversation held in October 2008 that he was 16 years old.

63. On 1 May 2009, a Dublin Claim interview was held with the applicant. He stated during this interview *inter alia* that he had stayed in Italy from 1 December 2008 to 25 April 2009 and that he had been provided with an Italian residence permit and a kind of passport which had been stolen from him five days later. Apart from to the office where he had been provided with these documents, he had not reported the theft to any other authority. When he had tried to obtain a new residence permit, he was told that this was not possible. Because he had been unable to find food and a place to sleep, he had decided to leave Italy. When he had gone to the reception centre where he had presented his problem, other asylum seekers had advised him to go to the Netherlands which he had done.

64. On 2 May 2009 the Deputy Minister of Justice gave notice of her intention to reject the applicant's asylum request. Noting that it had appeared from the Eurodac database that the applicant had applied for asylum in Italy on 5 December 2008 and that he had stated that he had been granted international protection until 2012, the Deputy Minister held that Italy was responsible for the applicant under the terms of the Dublin Regulation and that there were no reasons warranting the use of the "sovereignty clause" contained in the Dublin Regulation and consequently determine the asylum application in the Netherlands and refrain from transferring the applicant to Italy. The applicant, represented by a lawyer in the asylum proceedings, was given the opportunity to submit written comments on the notice of intention. He did not avail himself of this opportunity.

65. On 20 May 2009, the Juvenile Court judge (*kinderrechter*) at the civil law section of the Leeuwarden Regional Court, noting the applicant's stated date of birth and with his consent, entrusted the Nidos foundation with the temporary guardianship (*tijdelijke voogdij*) of the applicant.

66. On 23 June 2009 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of Article 16 § 1 (c) of the Dublin Regulation. As the Italian authorities failed to react to that request within two weeks, they were considered under Article 20 § 1 of the Dublin Regulation to have implicitly acceded to that request.

67. The applicant's asylum request filed in the Netherlands was rejected on 29 July 2009 by the Deputy Minister. Noting that the applicant had not

filed any comments on the notice of intention, the Deputy Minister referred to the reasons given in that notice.

68. The applicant's appeal against this decision was rejected on 19 March 2010 by the Regional Court (*rechtbank*) of The Hague sitting in Zwolle. It considered *inter alia* that in principle the Deputy Minister could rely on the principle of mutual interstate trust unless the applicant could demonstrate, on the basis of concrete facts and circumstances relating to his individual case, that this was different in respect of Italy. The court found that, by merely claiming that, while a minor, he had been left to his own devices in Italy where no housing had been allocated to him and no food provided, the applicant had not demonstrated that there were concrete indications that Italy failed to respect its international treaty obligations in respect of the applicant. This finding was further not found to be altered by the applicant's claim that his interests as a child would be harmed if his tie with his guardian was severed, as it had not appeared that there were no guardianship arrangements in Italy for unaccompanied minor asylum seekers. It further did not find it established that there was a risk that Italy would fall short of its obligations under the 1951 Refugee Convention or the Convention.

69. On 12 April 2010, the applicant filed a further appeal to the Administrative Jurisdiction Division.

70. On 2 June 2010, the applicant requested the Minister of Justice for deferment of removal (*uitstel van vertrek*) on medical grounds under section 64 of the Aliens Act 2000.

71. On 13 July 2010, the Medical Assessment Section (*Bureau Medische Advisering*) of the Ministry of Justice drew up an advice based on the findings of an inquiry into the applicant's state of health. According to this advice, the applicant was suffering from a post-traumatic stress disorder (PTSD) entailing sleeping problems, reliving past events, nightmares, headaches and concentration problems. He was receiving temporary treatment in the Netherlands in the form of Eye Movement Desensitisation and Reprocessing (EMDR) and specific forms of cognitive behavioural therapy. Although it was found that the applicant was fit to travel and that a discontinuation of this treatment would not result in a medical emergency situation in the short term, it was advised – as in any event an escort was indicated given his young age – that the applicant be accompanied by a psychiatric nurse.

72. On 27 July 2010, having noted the advice of 13 July 2010, the Minister of Justice rejected the applicant's request for deferment of removal on medical grounds.

73. On 29 July 2010 the Administrative Jurisdiction Division rejected the applicant's further appeal of 12 April 2010 and confirmed the impugned judgment of 19 March 2010. No further appeal lay against this ruling.

74. The application was introduced to the Court on 20 August 2010. On the same day, 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 applicant to Italy for the duration of the proceedings before the Court.

75. On 30 March 2011, the applicant filed a fresh asylum request in the Netherlands, which was rejected by the Minister for Immigration, Integration and Asylum Policy. The applicant filed an appeal with the Regional Court of The Hague.

76. On 16 January 2012, the President decided to lift the Rule 39 indication given in the case. On the same day, a number of factual questions were put to the Government of Italy (Rule 54 § 2 (a)), which concerned the applicant's situation in Italy before his arrival in the Netherlands. The Italian Government submitted their replies on 6 March 2012 and the applicant's comments in reply were submitted on 25 April 2012.

77. After the President's decision of 16 January 2012, the applicant requested the Regional Court of The Hague to issue a provisional measure aimed at staying his transfer to Italy pending the appeal proceedings. On 15 March 2012 a hearing was held before the Regional Court of The Hague. No further information about these proceedings has been submitted.

4. Application no. 51377/10

78. The applicant is a citizen of Somalia, who states that he was born in March 1994. At the time of the introduction of the application, he was staying in Oude Pekela. He was represented before the Court by Ms M. Haanstra, a lawyer practising in Groningen.

79. The applicant hails from Mogadishu and belongs to the minority Sheikal clan. In order to evade pressure to join the al-Shabaab militants he fled Somalia in 2008.

80. After having suffered serious hardships during his flight, he eventually reached – via Libya – the coast of Sicily on 10 October 2008 where the Catania local police took his fingerprints and registered him as having illegally entered the territory of the European Union. The applicant stated that his name was Negib Ise, that he was a Somali citizen and that he had been born on 1 January 1992. He was registered accordingly. Also on 10 October 2008, the Deputy Prosecutor of the Catania Juvenile Court entrusted the temporary care and custody of the applicant and four others, who – like the applicant – had been found to be unaccompanied minor asylum seekers, to the manager of the Caltagirone "First Assistance Service of the SPRAR Service" where these five minors were to be accommodated.

81. On 1 December 2008, the Catania local police took the applicant's fingerprints again and registered him as an asylum seeker. He then indicated that his name was Najib Ise Ali and that he had been born on 1 January

1989, and was thus an adult. On 23 December 2008, assisted by an interpreter, the applicant completed his formal asylum request. According to the information set out in the "Standard form C/3 for the recognition of refugee status according to the Geneva Convention of 28 July 1951", as obtained from him with the assistance of this interpreter, the applicant's name was Najib Ise and he was born on 1 January 1989 in Mogadishu.

82. On 13 March 2009, under the identity given by the applicant on 23 December 2008 to the Italian authorities, the Syracuse Territorial Commission granted the applicant a residence permit for the purpose of subsidiary protection. This decision was served on the applicant in person on the same day. He was provided with a residence permit for an alien granted subsidiary protection and a travel document for aliens. Both the residence permit and the travel document were valid until 31 May 2012. The applicant continued to reside, at least until 1 June 2009, in the Casa Serena SPRAR reception centre in Caltagirone.

83. On an unspecified date but on or around 10 June 2009, the applicant left Italy and travelled to the Netherlands where he arrived shortly afterwards and, on 18 June 2009, applied for asylum.

84. In his first interview with the Netherlands immigration authorities, held on 20 June 2009, the applicant stated that his name was Aange Isse Ali and that he had been born on 4 March 1994 in Mogadishu, and that he was thus a minor. He further stated that he had never held a passport or residence document in his own name. He had left Somalia about one year previously. His father had been killed by a stray bullet in August 2008 and his mother, 6 siblings and 5 half-siblings were still living in Mogadishu. He had had the most recent conversation with his mother seven days earlier. He further admitted that he had been in Italy where he had been placed in a refugee camp. He had been sick in Italy and had been admitted to hospital for an operation. He had left before a decision had been taken on his asylum request because his mother had told him to go to a better country. He further stated that his family had told him to leave Italy and go to another country; in that way he could work and attend school in order to be of use to his family later.

85. On 22 June 2009, a further interview was held with the applicant. He stated during this interview *inter alia* that he had come to Europe for a good education, good facilities and good medical care which he had not obtained in Italy. That was why he had left Italy.

86. On 2 May 2009 the Deputy Minister of Justice gave notice of her intention to reject the applicant's asylum request. Noting that it had appeared from the Eurodac database that the applicant had applied for asylum in Italy on 1 December 2008, that he had stated that he had stayed in Italy from 10 October 2008 until 12 June 2009 when he had left Italy for the Netherlands, and that in Italy he had stayed in a reception centre and had stayed in hospital for three days for medical treatment purposes, the Deputy

Minister held that Italy was responsible for the applicant under the terms of the Dublin Regulation and that there were no reasons warranting the use of the "sovereignty clause" contained in the Dublin Regulation and consequently determine the asylum application in the Netherlands and refrain from transferring the applicant to Italy. The applicant, represented by a lawyer in the asylum proceedings, did not submit any written comments on the notice of intention.

87. On 5 August 2009 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of Article 16 § 1 (c) of the Dublin Regulation. As the Italian authorities failed to react to that request within two weeks, they were considered under Article 20 § 1 of the Dublin Regulation to have implicitly acceded to that request.

88. The applicant's asylum request filed in the Netherlands was rejected on 7 September 2009 by the Deputy Minister. Noting that the applicant had not filed any comments on the notice of intention, the Deputy Minister referred to the reasons given in that notice.

89. The applicant's appeal against this decision was rejected on 29 March 2010 by the Regional Court of The Hague sitting in Almelo. It considered *inter alia* that in principle European Union Member States should be considered as respectful of the principle of *non-refoulement* and of their obligations under the Convention and the 1951 Refugee Convention (the principle of mutual interstate trust), unless the alien concerned could demonstrate, on the basis of concrete facts and circumstances relating to his individual case, that this was different in respect of Italy. The court found that the applicant had not demonstrated any concrete indications that Italy failed to respect its international treaty obligations towards him.

90. The applicant's further appeal to the Administrative Jurisdiction Division was rejected on 14 June 2010. It confirmed the impugned judgment. No further appeal lay against this ruling.

91. Shortly before, on 1 June 2010, the applicant had requested the Minister of Justice for deferment of removal on medical grounds under section 64 of the Aliens Act 2000. The Minister requested the Medical Assessment Section to issue an advice.

92. On the same date, the applicant had also filed an objection with the Minister against an act aimed at effective removal within the meaning of section 72 § 3 of the Aliens Act 2000 in respect of his transfer to Italy, which had been scheduled for 9 June 2010. On 7 June 2010, the provisional-measures judge of the Regional Court of The Hague sitting in Almelo accepted the applicant's request for a provisional measure and ordered that his transfer to Italy be stayed until four weeks after the determination of the applicant's objection. On 6 July 2010, the Minister rejected the applicant's objection.

93. On 13 July 2010, the Medical Assessment Section drew up an advice based on the findings of an inquiry into the applicant's state of health.

According to this advice, the applicant was suffering from PTSD entailing sleeping problems, reliving past event, nightmares, headaches and concentration problems. He was receiving temporary treatment in the Netherlands in the form of EMDR and specific forms of cognitive behavioural therapy. Although it was found that the applicant was fit to travel and that a discontinuation of this treatment would not result in a medical emergency situation in the short term, it was advised – as in any event an escort was indicated given his young age – that the applicant be accompanied by a psychiatric nurse.

94. On 4 August 2010, having noted the advice of 13 July 2010, the Minister of Justice rejected the applicant's request for deferment of removal on medical grounds.

95. The application was introduced to the Court on 20 August 2010. On the same day, 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 applicant to Italy for the duration of the proceedings before the Court.

96. On 30 March 2011, the applicant filed a fresh asylum request in the Netherlands, which was rejected by the Minister for Immigration, Integration and Asylum Policy. The applicant filed an appeal with the Regional Court of The Hague.

97. On 16 January 2012, the President decided to lift the Rule 39 indication given in the case. On the same day, a number of factual questions were put to the Government of Italy (Rule 54 § 2 (a)), which concerned the applicant's situation in Italy before his arrival in the Netherlands. The Italian Government submitted their replies on 6 March 2012 and the applicant's comments in reply were submitted on 25 June 2012.

B. Relevant European Union, Italian and Netherlands law and practice

98. 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 exhaustively summarised in *Mohammed Hussein v. the Netherlands and Italy* ((dec.), no. 27725/10, §§ 25-28 and 33-50, 2 April 2013); *Daybetgova and Magomedova v. Austria* ((dec.), no. 6198/12, §§ 25-29 and §§ 32-39, 4 June 2013); *Halimi v. Austria and Italy* ((dec.), no. 53852/11, §§ 21-25 and §§ 29-36, 18 June 2013); and *Abubeker v. Austria and Italy* (dec.), no. 73874/11, §§ 31-34 and §§ 37-41, 18 June 2013). In the following, only information that is particularly relevant for the present case will be repeated or set out.

1. Council Regulation (EC) No. 2003/9 (the Reception Directive)

Article 2 (h) of the Reception Directive defines unaccompanied minors as:

> "persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States."

The category of vulnerable persons referred to in Article 17 of the Reception Directive includes unaccompanied minors and Article 19, which deals specifically with unaccompanied minors, reads in its relevant part:

> "1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.
>
> 2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:
>
> (a) with adult relatives;
>
> (b) with a foster-family;
>
> (c) in accommodation centres with special provisions for minors;
>
> (d) in other accommodation suitable for minors.
>
> Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.... Changes of residence of unaccompanied minors shall be limited to a minimum...."

2. Council Regulation (EC) No. 343/2003 (the Dublin Regulation)

99. Article 6 of the Dublin Regulation reads as follows:

> "Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.
>
> In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum."

100. In its ruling of 6 June 2013 in case C-648/11, *MA, BT and DA v Secretary of State of the Home Department*, the Fourth Chamber of the Court of Justice of the European Union (CJEU) examined transfers of unaccompanied minor asylum seekers under the terms of the Dublin Regulation.

101. The case concerned three unaccompanied minors who had applied for asylum in the United Kingdom after they had filed previous asylum

requests in the Netherlands and Italy. None of these minor asylum seekers had relatives lawfully residing in any of those states. The authorities of the United Kingdom initially decided to transfer them to the Netherlands or Italy, in accordance with the Dublin Regulation. The minors concerned challenged this decision and pursued these appeal proceedings even after the United Kingdom authorities had subsequently withdrawn their initial decision and applied the sovereignty clause in each case. In the context of these appeal proceedings, the Court of Appeal (England and Wales) referred the following question to the CJEU for a preliminary ruling:

> "In [Council Regulation (EC) No 343/2003 of 18 February 2003] establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ [2005 L 50] p. I), where an applicant for asylum who is an unaccompanied minor with no member of his or her family legally present in another Member State has lodged claims for asylum in more than one Member State, which Member State does the second paragraph of Article 6 make responsible for determining the application for asylum?"

102. After having considered the wording as well as the objective of the applicable provisions of the Dublin Regulation, the CJEU held that:

> "55. Since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, unaccompanied minors should not be transferred to another Member State.
>
> 56. The above considerations are supported by the requirements arising from recital 15 in the preamble to Regulation No 343/2003, according to which the regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter.
>
> 57. Those fundamental rights include, in particular, that set out in Article 24(2) of the Charter, whereby in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests are to be a primary consideration.
>
> 58. Thus, the second paragraph of Article 6 of Regulation No 343/2003 cannot be interpreted in such a way that it disregards that fundamental right (see, by analogy, *Detiček*, paragraphs 54 and 55, and Case C−400/10 PPU McB. [2010] ECR I−8965, paragraph 60).
>
> 59. Consequently, although express mention of the best interest of the minor is made only in the first paragraph of Article 6 of Regulation No 343/2003, the effect of Article 24(2) of the Charter, in conjunction with Article 51(1) thereof, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States on the basis of the second paragraph of Article 6 of Regulation No 343/2003.
>
> 60. This taking into account of the child's best interests requires, in principle, that, in circumstances such as those relating to the situation of the appellants in the main proceedings, the second paragraph of Article 6 of Regulation No 343/2003 be interpreted as designating as responsible the Member State in which the minor is present after having lodged an application there.

61. In the interest of unaccompanied minors, it is important, as is evident from paragraph 55 of the present judgment, not to prolong unnecessarily the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have prompt access to the procedures for determining refugee status.

62. That method of determining the Member State responsible for examining an asylum application lodged by an unaccompanied minor having no member of his family present in the territory of a Member State is based on an objective criterion as stated in recital 4 in the preamble to Regulation No 343/2003.

63. Furthermore, such an interpretation of the second paragraph of Article 6 of Regulation No 343/2003, which designates as responsible the Member State in which the minor is present after having lodged an application there, does not, contrary to the Netherlands Government's contention in its written observations, mean that an unaccompanied minor whose application for asylum is substantively rejected in one Member State can subsequently compel another Member State to examine an application for asylum.

64. It is clear from Article 25 of Directive 2005/85 that, in addition to cases in which an application is not examined in accordance with Regulation No 343/2003, Member States are not required to examine whether the applicant is a refugee where an application is considered inadmissible because, inter alia, the asylum applicant has lodged an identical application after a final decision has been taken against him.

65. Moreover, it must be added that since the asylum application is required to be examined only by a single Member State, the Member State which, in circumstances such as those of the main proceedings, is designated as responsible by virtue of the second paragraph of Article 6 of Regulation No 343/2003 is to inform accordingly the Member State with which the first application has been lodged.

66. In the light of all the above considerations, the answer to the question referred is that the second paragraph of Article 6 of Regulation No 343/2003 must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible"

3. Unaccompanied minor asylum seekers in Italy

103. According to "Notes on reception conditions of minor age asylum seekers in Italy", released on 14 December 2009 by the NGO "Save the Children; Italia Onlus":

"2. ... teenagers who land in Italy are often registered by the police as adults, or declare themselves adults. They often do not change their version when duly informed about their rights as migrant children in Italy (our colleagues working in Lampedusa and other disembarkment areas have experienced this). Migrant children have stated to our colleagues that they think that declaring themselves as adults will ensure them a residence permit and freedom to move to other European countries. In our view, this is true to the extent that Italian law obliges public officials to put migrant children to protected centres and to go to school, whilst adults are not guaranteed such protection.

Municipalities must take charge of migrant children, the local Tribunal must appoint a guardian and make a decision on an individual project regarding the place and conditions of the child's upbringing (Articles 343 and following of the Italian Civil

Code). The Juvenile Tribunal examines the case and may judge that the concerned child is abandoned and open an adoption process (Right to a Family Act no. 183/1984). However, sometimes these provisions are taken with a considerable delay, or not at all. Reception centres for minor age migrants (and possible or actual asylum seekers) are in some cases inadequate or unsatisfying for children and they often leave them.

3. Minor age migrants who declared themselves adults in Italy are officially registered as such (i.e. their fingerprints fit with the personal data of an adult) and will be treated as adults, once returned to Italy. Returned minor age migrants may consequently end up in reception centres with adults."

104. In the report "Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study", published in May 2010 by the European Migration Network, which is a EU-funded European network whose aim is to provide up-to-date, objective, reliable and comparable information on migration and asylum to support policymaking in the EU, it is stated:

"When an unaccompanied minor applies for international protection in Italy, the asylum application is brought to the attention of the Juvenile Courts having territorial jurisdiction and the application itself is confirmed by a guardian, who is appointed by the Tutelary Judge and will provide assistance during the whole procedure of application examination. At the same time, the minor is reported to the Committee for Foreign Minors, who would then be responsible in case of a negative decision, and the Police are required to issue a document certifying the asylum applicant status of the minor. With this certificate it is then possible for the minor to receive protection and assistance from the Protection System for Asylum Seekers and Refugees (SPRAR). In the period before issuing such a document, and because the detention of a minor is prohibited, it is the responsibility of the social services of the Municipality where the minor resides to provide protection and assistance and immediately to report the minor to the SPRAR."

105. The report "The reception and care of unaccompanied minors in eight countries of the European Union; comparative study and harmonisation prospects", published in December 2010 is the result of a project, which was co-funded by the EU's Fundamental Rights and Citizenship programme, coordinated by France Terre d'Asile (France) and carried out in partnership with two non-governmental organisations, namely the Institute for Rights, Equality and Diversity (Greece) and the Consiglio Italiano per i Rifugiati (Italy). It contains *inter alia*, the following passages in respect of Italy:

"In Italy, an unaccompanied minor who enters and is found within Italian territory cannot be expelled except for reasons related to public order or State security. In this case, it is up to the youth court to carry out the expulsion measure. The expulsion ban relative to unaccompanied minors therefore implies that they cannot be detained in the centres for immigrants. They can also not be held in the Identification Centres for Asylum Applicants (CARA), the Identification and Expulsion Centres (CIE, ex-CPT), or the Reception Centres (CDA). As such, the law dictates that isolated foreign minors must be placed in accommodations for minors or in centres of the SPRAR - in quarters reserved for minors - in the event that they are applying for asylum. ...

In Italy, the appointment of a guardian is mandatory in order for an asylum application to be examined. The border police office or the questura (central police station) that receives the application immediately suspends the procedure and transfers the application to the specific competent juvenile court in order for it to appoint a guardian. Appointed by the guardianship judge, this guardian will thereafter 'confirm' the asylum application and once again activate the procedure with the competent questura. The minor must then be accompanied by the guardian throughout the procedure, and the latter must be perfectly attentive to the needs of the minor. In particular, the guardian must be on hand for the hearing with the Territorial Commission. He alone will then have sole competence to submit an appeal in case of a negative decision, though he must obtain the authorisation of the guardianship judge in order to initiate such a procedure. ...

In Italy, a precise legal framework has been adopted for processing asylum applications by unaccompanied minors, with the adoption of a directive followed by a circular in 2007 and by two decrees intended to transpose European legislation: the 'qualification' decree on minimum standards relative to the conditions that must be met by third country nationals or stateless persons in order to claim refugee status, or by persons who otherwise need international protection, and the 'procedure' decree relative to minimum standards on the procedure for granting and withdrawing refugee status in the Member States.

Firstly, upon arriving in Italy, the minor must obtain all necessary information regarding his rights and the existing legal possibilities, in particular regarding the asylum application. A minor who has expressed a desire to apply for asylum must be immediately declared to the questura which, in turn, informs the juvenile court and the guardianship judge in order for the legal representation and social protection measures to be undertaken. The latter then declare him to the Protection System for Asylum Applicants, which will undertake the steps needed for his admission to an appropriate centre. According to art. 3 sub-paragraph 1 of the Directive, the social services of the community in which the minor has been placed will help him to submit the asylum application in collaboration with the United Nations High Commissioner for Refugees and with other institutions active in the field of protecting asylum applicants.

The minor is identified by means of photo and fingerprints, that are then entered in the Eurodac file in order to check if the Dublin II regulation may apply. A form is then filled out at the competent questura after the minor's opinion has been heard and taken into account, if he is of an age to present one. The interview is carried out before the Territorial committees for international protection, located in 10 Italian cities. Within two days of the asylum application being submitted, the questore (police chief) sends the application to the Territorial committee which then organises a hearing within 30 days. The 'procedure' decree makes provisions for the minor to be interviewed by the Territorial committee as a priority. The minor applying for asylum is provided with a residence permit for an asylum application, which can be renewed until the procedure is final.

To ensure the minor's peace of mind and tranquillity as needed for this step of the procedure, the hearing takes place in a sympathetic environment relative to the minor, with breaks whenever necessary. In all cases, when making its decision, the Territorial committee considers the minor's age and maturity, family situation, specific forms of persecution with which minors may be faced in the country of origin, the possibility that the minor may be unaware of the situation in his country of origin and, above all, the fact that the minor may express his fears differently than would be the case with an adult. The law provides that the hearing will not take place should the Committee consider that it has acquired sufficient elements for a positive decision. Finally, it is

possible that a minor may be recognised as a refugee without a hearing, in the event that the Committee has already made a favourable decision in his regard, on the basis of proof provided by documents, testimony, etc.

The Territorial committee can then decide to grant refugee status or subsidiary protection, or to refuse this request, but it can also recommend that the applicant should remain in the territory in the event that his repatriation would result in a risk to his safety. In this last case, the refusal measure initiates a legal provision that allows the applicant to obtain a residence permit for humanitarian reasons, valid for one year and renewable.

In the event of a 'clear-cut' refusal decision, the minor, if still a minor, can remain within the territory given that his status prevents any expulsion. He can submit an appeal but, for this purpose, he will require the approval of his guardian, who cannot act in this regard without the authorisation of the guardianship judge. ...

In Italy, unaccompanied asylum-seeking minors are integrated into the protection system for asylum seekers (SPRAR) and are therefore subject to a separate reception from other unaccompanied minors. Taken into care within the ordinary framework for the reception of asylum seekers, they are therefore accommodated in centres that also accommodate adults, while nevertheless receiving specific care. However, the SPRAR centres are not sufficient to handle the number of reception requests by asylum-seeking minors who are consequently received in other centres for unaccompanied minors, where the available services are not always adequate."

106. The report "The living conditions of refugees in Italy" published on 28 February 2011 by the German NGO "Pro Asyl" and which is based on a research trip to Rome and Turin on October 2010, states in respect of unaccompanied minor asylum seekers:

"During our research we encountered a number of people who were obviously minors, living without a responsible adult. In response to our question of why they did not live in one of the reception facilities for unaccompanied minors available throughout Italy, many of them responded that, according to their Italian documents, they were adults.

Some of them had provided their correct age during their asylum application, but were not believed. Others reported their ages had been determined by visual age assessments, described as especially superficial during the winter of 2008, when there were particularly high numbers of arrivals. Some had undergone age assessments based on x-rays of the bones in their wrist, which had estimated an earlier date of birth than was the reality.

A number of these young people also confirmed that they had deliberately provided a higher age to the authorities. Their justification for this was either that they wanted a quick asylum procedure as an adult and to be granted the right to work, or a fear of being separated from their peer group on account of their youth. These justifications were known and confirmed by our interlocutors within the NGOs.

Furthermore they confirmed that minors – so long as they are registered as such – are usually accommodated and protected by law from deportation (in contrast to German law). In practice this bar to removal of a minor means the asylum procedure is conducted with insufficient thoroughness. As a result once the individual becomes an adult he or she is suddenly faced with the question of how to secure his or her right to remain.

> Many young people also place such a high value on being able to work (which in reality is often only a theoretical possibility) that they forego accommodation in the youth centres. This is understandable when taking into account those whose journey was paid 'on tick' and who now have to pay back relatives, community members or smugglers as soon as possible. None of the affected people were willing to talk about the consequences if the money was not returned.
>
> In contrast, many young people detailed their fears of being separated from the group with whom they landed in southern Italy or Lampedusa. This was particularly evident in those who, on their journey through the Sahara and Libya, were continually left behind by the smugglers because they were too weak or without means to keep up. Under no circumstances did they want to be separated from the group with whom they had recently made the particularly dramatic part of their journey – the crossing of the Mediterranean.
>
> The rumour in Libya, that it is more difficult to be a refugee as a minor than as an adult, had played a role for all the young people we interviewed who had 'made themselves older'. Many later realised that the opposite was the case and regretted their decision to give a false date of birth, but did not see any way to change it with the authorities."

107. The report "Asylum procedure and reception conditions in Italy" with a special focus on "Dublin returnees", released in May 2011 by Juss-Buss, a joint Norwegian-Swiss NGO and based on a visit to Italy in September 2010, states that unaccompanied minors are not supposed to stay in CARAs for a longer period and that they will be transferred to a special centre for minors, usually within 24 hours: In SPRAR centres, only a total of 134 places are dedicated to unaccompanied minors, so the majorities are cared for by the local social service which provides accommodation in different houses for minors, connected to different local projects, which usually are not specialised in refugees. The report further states:

> "Statistics show that many newly arrived minors landing in the South, especially Afghans, did run away after being registered and assigned to a facility for minors. In Sicily, the organization Save the Children found that around 70 % of unaccompanied minors had left.
>
> In fact, many unaccompanied minors arriving in Italy tend to declare themselves to be of age, because they hope to find work to support their family. They consider regular schooling to be a waste of time. Many of them try their luck in securing irregular work in the big cities in order to earn some money. Some of these may, after a while, approach the social services and ask for protection. But in many cases, it is difficult for social workers to convince them to decide in favour of a regular status. Save the Children estimates there are several thousands of irregular minors on the streets in the big cities, and more than 1000 in Rome alone. Very often, they become victims of all sorts of exploitation, mostly controlled by adults. Another motivation for declaring themselves adults is the fact that some minors are afraid of being separated from their ethnic group. Another reason is the wish to travel further and ask for asylum in other European countries."

108. In the report "Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices" drawn up in

December 2011 for the International Organisation for Migration ("IOM") by B. Hancilova and B. Knauder, it is stated:

> "Accounts from Italy suggest that children often disappear because they are not well informed about the asylum procedure and their rights deriving from the status received. Due to the scarce information from authorities, they gather patchy and often false information mostly through the grapevine. Misinformation and its related insecurity often lead to not always legitimate fears, and young people conclude that it would be better to run away and hide from authorities. In the meantime, they try to raise funds for their onward journey to northern countries, where they believe that better assistance and living conditions and a more promising future await them."

109. In the "UNHCR Recommendations on important aspects of refugee protection in Italy" of July 2012 by the United Nations High Commissioner for Refugees (UNHCR), the following is stated in respect of the protection of unaccompanied or separated children ("UASC"):

> "According to the Ministry of Interior, 827 unaccompanied minors applied for asylum in Italy in 2011, while the Committee for Foreign Minors, the official inter-agency body responsible for the well-being of unaccompanied foreign minors in Italy, had registered in its database a total of 7,750 unaccompanied foreign minors at end-2011, with the second largest number being Afghans. These figures show that, although a significant number of UASC arrived from traditional refugee-producing countries, many did not apply for international protection in Italy. Cases of unaccompanied foreign minors absconding from designated reception facilities occur regularly and have been widely reported. Many of the UASC refrain from registering with the authorities, on the assumption that they would otherwise be unable to move to other European countries. Research carried out by UNHCR in the last months of 2010 revealed that many UASC who lack reliable information on the possibility of being granted protection in Italy decide to move on to other countries and that their decision to leave Italy is, to a great extent, prompted by pressure from traffickers and family members as well as by concerns about integration prospects in Italy once they become adults.
>
> Italian law is particularly attentive to the rights of unaccompanied foreign minors. They may not be expelled and must be issued with a residence permit. Should age determination procedures concerning an individual declaring him or herself a minor be unable to yield a definitive result, the benefit of the doubt must be applied in favour of the individual claiming to be a minor. Though Italian legislation provides a number of additional safeguards for unaccompanied foreign minors, including the rapid appointment of a guardian and fast-track determination of international protection needs for those who apply for it, there is considerable scope for improving the application of these provisions. In some cases, for instance, the appointment of a guardian (generally the local mayor or a municipal officer) may be a mere formality, with duties being delegated to social workers who struggle to provide individualised assistance due to the high numbers of unaccompanied foreign minors assigned to them. Lengthy waiting times for the appointment of guardians also often delay access to international protection procedures and/or the timely identification of the appropriate support required by each of these minors and the drafting of a tailored integration plan.
>
> A correct and reliable age determination is key given that the vast majority of registered unaccompanied foreign minors are between 16 and 17 years of age. Italy still lacks an adequate multidisciplinary age determination procedure, a necessary

precondition to ensure that minors are treated as such and are granted forms of protection tailored to their specific vulnerabilities and needs.

Finally, standards at reception facilities for unaccompanied foreign minors appear to vary significantly across the country, with some reports that facilities exist where assistance might not always be up to standard."

As regards access to asylum proceedings, the report reads:

"According to UNHCR's observations, third-country nationals who are already in the country generally do not experience major difficulties in applying for international protection. However, according to several reports, there have been instances in a number of Provincial Police Directorates (Questure) in which formal registration of asylum applications was difficult without proof of residence; or in other instances some Police Directorates only fixing appointments for the registration of asylum applications several months after the asylum seeker expressed the intention to apply, thereby depriving these persons, for prolonged periods of time, of access to the rights available to formally registered asylum seekers."

110. The "Dublin II Regulation National Report" on Italy, drawn up on 19 December 2012 by the European Network for technical cooperation of the application of the Dublin II Regulation, a European-wide network of non-governmental organisations assisting and counselling asylum seekers subject to a Dublin procedure, states in respect of unaccompanied minor asylum seekers in Italy *inter alia*:

"3.3.3 Unaccompanied minors

... In Italy, however, there is a special issue of minors treated as minors or as adults depending on the statements made by asylum seekers (if they said they were adults to avoid to remain in centres for minors with the intention to go in another country) and on rules of age assessment applied in Italy and those countries that transferred the minors to Italy under the [Dublin II] Regulation without the consensus of the interested persons (considered minors by the sending countries). If a child declares to be adult in Italy and minor in the country he reaches, s/he will be treated as an adult in Italy, if s/he is sent back there on the basis of the Regulation, according to his/her previous declarations, with the risk to live in the street or with their communities in occupied buildings. CIR (Italian Council for Refugees; '*Consiglio Italiano per i Rifugiati*') has several times asked the competent authorities to treat them as minors and, in case of doubt, to submit them to age assessment, but no procedural change has been registered so far. On the contrary, if asylum seekers declare to be minors in Italy, as well as in another country, when they are transferred to Italy under the Regulation they are treated as unaccompanied asylum seekers and are therefore channelled in ad hoc centres for minors. Any time when in doubt on the age of the person, the authorities submit him/her to the age assessment.

3.3.3.i The asylum procedure for unaccompanied minors

... When the asylum request is made by an unaccompanied minor, the competent Police authorities suspend the procedure and immediately inform both the Juvenile Court (*Tribunale per i Minorenni*) territorially competent and the Judge for guardianship (*Giudice tutelare*). The Judge for guardianship is competent to appoint the legal guardian who will be responsible for the minor for all the assistance s/he needs till the age of 18. The judge for guardianship appoints a guardian in the following 48 hours from the communication made by the Police Immigration Office.

The legal guardian takes immediately contact with Police Authorities to confirm and reactivate the asylum procedure and the adoption of those measures related to the accommodation and the care of the minor. The legal guardian has the responsibility to assist the minor during the whole asylum procedure, and even afterwards, in case s/he obtains a negative decision. For this reason the legal guardian accompanies the minor to the Police, where s/he could be fingerprinted if s/he is over 14, and assists the minor to fill the form and formalize the claim. The legal guardian accompanies the unaccompanied minor at the Territorial Commission (hereafter: Commission) where the hearing takes place. The Commission proceeds with the hearing only in the presence of the legal guardian. The minor is informed about the significance and the consequences of the hearing.

The minor seeking asylum shall benefit from the reception services of SPRAR. In case it is not possible to accommodate the minor within SPRAR centres targeted for unaccompanied minors due to unavailability of places, accommodation and assistance are temporarily assured by the Municipalities' authorities where the minor is present. It is important to underline that, according to Article 26 § 6 of the Procedure Decree, 'in no case the unaccompanied minors can be accommodated and/or retained within the facilities described in Articles 20 and 21' [i.e. in the CARAs – Accommodation Centres for Asylum seekers - and in the CIEs - Centres of Identification and Expulsion].

3.3.3.ii The correct identification of minors and the Age assessment of minors

The correct identification of the minors is a pre-requisite to allow them to have access to specific guarantees and measures foreseen by law.

Art. 19 of the Legislative Decree 25/2008 foresees: 'in case of doubts about the age, the unaccompanied minor can – at any stage of the procedure – be subjected, if s/he and his/her guardian agree, to age assessment through non-invasive examinations. If the age assessment carried out does not give a sure result, the guarantees foreseen for minors have to be applied'.

It has been underlined that the refusal by the applicant to undertake the age assessment has no negative consequences on the reception of the asylum request.

In Italy there are no specific provisions on the age assessment procedure, however, from the law on minors it is possible to deduct some principles. These principles are contained in a Protocol on the Age Assessment of the Foreign Unaccompanied Minors. This document has been elaborated by the Italian Authorities with the counselling of many experts but it has never been formally adopted and, therefore, applied. Among the guarantees mentioned in that Protocol there are: the informed consent of the minor, the obligation to issue to the minor a medical certificate translated into a language for him/her understandable, the obligation to notify the decision related to the age determination, the obligation to specify the modalities for the appeal against the age determination, the obligation to indicate the margin of error in the age determination assessment.

In practice, in most cases, the international protection seekers who declare to be minor are subjected to the age assessment procedure without the legal guardian, who is – almost in all cases – nominated afterwards. Very often, furthermore, the medical report does not indicate the margin of error, although the medical literature indicates that it is not possible to determine with certainty the age of the person (margin of error is of at least 2 years). The age assessment is often carried out by unspecialised doctors who often ignore or scarcely know the cultural background of the migrant and the consequences of the results of the examination. Minors are verbally notified the

medical results and it is not possible to appeal directly against the age determination. Generally, the age ascertained is either indicated directly in the expulsion order or – in case of an asylum claim – it may be deduced from the fact itself that the specific guarantees for minors have not been applied, but those for adults.

UNHCR, CIR, Save the Children have requested that the margin of error shall always be indicated in the medical certificate and, in doubtful cases, the benefit of doubt principle should be applied.

NGOs urged that age assessment should not be carried out systematically and exclusively through x-ray method. A copy of the medical certificate should be handed over to all minors and their consent to be exposed to x-ray methods should be asked in each case."

111. On 5 July 2013, AIDA (Asylum Information Database) launched a website containing reports and other information on the position of asylum seekers in various European countries. AIDA is a project of the European Council on Refugees and Exiles (ECRE), in partnership with the French Forum Refugiés-Cosi, the Hungarian Helsinki Committee and the Irish Refugee Council. In respect of reception and accommodation of persons returned to Italy under the Dublin Regulation, it states:

"The Italian legal framework does not foresee any particular reception system for Dublin cases. Two scenarios should be distinguished: the first scenario concerns persons whose application has to be examined by another Member State waiting for their transfer. ...

The second scenario refers to Dublin Returnees - persons who were issued transfer orders from other Member States and, as a consequence, were sent back to Italy. Within this broader category, another distinction is deemed necessary depending on whether the returnee had already enjoyed the reception system while they were in Italy or not. If returnees (asylum seekers, beneficiaries of international protection or of a permit of stay for humanitarian reasons) had not been placed in reception facilities while they were in Italy, they may still enter reception centres. Due to the lack of available places in reception structures and to the fragmentation of the reception system, the length of time necessary to find again availability in the centres is – in most of the cases - too long. Since there is no general practice, it is not possible to evaluate the time necessary to access an accommodation. In the last years, temporary reception systems have been established to house persons transferred to Italy on the basis of the Dublin II Regulation. However, it concerns a form of temporary reception that lasts until their juridical situation is defined or, in case they belong to vulnerable categories, an alternative facility is found.

Such temporary reception has been set up thanks to targeted projects funded by the European Refugee Fund. For instance, in Rome, there are currently projects providing assistance to 200 persons – within this broader category 60 places are for vulnerable categories.

However, it happens that Dublin returnees are not accommodated and find alternative forms of accommodation such as self-organized settlements. If returnees, who have already been granted a form of protection, had already enjoyed the reception system when they were in Italy, they have no more right to be accommodated in CARAs. However, they may be accommodated in these centres in case places are available to allow them to restart the administrative procedure to obtain a permit of stay."

4. Italian criminal law

112. Section 495 of the Italian Criminal Code (*Codice Penale*) makes it an offence – attracting a prison sentence of between one and six years – to declare a false identity to public officials.

113. In a letter dated 19 August 2010 and addressed to a lawyer working for the same law firm as the representatives of the applicants in application nos. 18324/10 and 47851/10, Ms Lara Olivetti, an immigration and asylum law practitioner in Italy and advisor to the National Information Service for Migrant Children's Rights of Save the Children Italy, wrote that for the offence defined in section 495 of the Italian Criminal Code, the Italian Code of Criminal Procedure (*Codice di Procedura Penale*) provides for an optional warrantless arrest (section 381). According to Ms Olivetti, a previous sentence for criminal offences entailing an optional warrantless arrest within the meaning of section 381, including the act of declaring false identity data to a public official, hinders the issue of a permit for long-term residence and it is a ground for revoking one (Article 9, Section 4 of the Italian Immigration Act (*Decreto legislativo no. 286/1998*)) and although in principle a residence permit should be granted, practice shows that it is difficult to obtain one from the immigration police authorities of many provinces and battles in court are needed to achieve it.

5. Transfers from the Netherlands to Italy under the Dublin Regulation

114. The domestic law and practice as regards asylum proceedings and enforcement of removals are set out in *K. v. the Netherlands* ((dec.), no. 33403/11, §§ 16-19 and §§ 25-32, 25 September 2012).

115. As regards transfers to Italy under the Dublin Regulation, the Netherlands authorities decide in consultation with the Italian authorities how and when the transfer of an asylum seeker to the competent Italian authorities will take place. In principle three working days' notice is given, in accordance with article 8 § 2 of Commission Regulation (EC) No 1560/2003. Requests by the Italian authorities for a longer period of notice are respected.

116. If the transfer involves a vulnerable person such as an unaccompanied foreign minor, the Netherlands authorities will explicitly bring this to the attention of the Italian authorities and give the latter fourteen days' notice. The same period of notice is in principle given where a transfer involves exceptional medical circumstances. If a doctor sets conditions for a transfer, such as the presence of a wheelchair, a doctor or an ambulance for the asylum seeker's transport to a hospital or other institution, arrangements are made with the Italian authorities prior to the transfer in order to fulfil this condition. Only after confirmation has been received that the condition will be met, will the transfer be actually carried out.

117. Unlike unaccompanied minor asylum seekers, adults or families are in principle not escorted. They are deemed capable, upon their arrival at the airport, to report to the Italian authorities – who, having received notice, are aware of their impending arrival – at their own initiative. An escort may be provided if necessary. The Netherlands Royal Constabulary (*Koninklijke Marechaussee*), who carry out the actual transfer, are responsible for deciding whether an escort is needed. Whenever a transfer takes place, the person in question is informed that he or she should report to the border police (*polizia di frontiera*) at the airport.

COMPLAINTS

1. Application no. 2314/10

118. The applicant complained under Article 3 of his removal to Italy where he claimed that he would be denied care and reception facilities. Also relying on Article 3, he further complained that his removal to Italy without an examination in the Netherlands of what treatment he risks in Somalia would expose him to a risk of *refoulement* from Italy to Somalia without a proper examination of his asylum and Article 3 claims having taken place in Italy. He further alleged a violation of Article 13 of the Convention and Article 3 of the United Nations Convention on the Rights of the Child.

2. Application no. 18324/10

(a) Against the Netherlands

119. The applicant complained that the Netherlands authorities, by removing him – a young, traumatised Somali from Mogadishu – to Italy violated his rights under Article 3 as the legal system in Italy was unable to give effective legal protection, both on a national and international level, to asylum seekers. As he would not have access to the asylum procedure in Italy he was therefore also at risk of *refoulement* to Somalia.

120. The applicant further complained that, as regards his complaints under Article 3, the asylum proceedings in the Netherlands could not be regarded as an effective remedy within the meaning of Article 13.

(b) Against Italy

121. The applicant complained that he had been subjected to treatment proscribed by Article 3 during his first stay in Italy as he had been placed in a foster home where he had suffered physical abuse whilst his vulnerability was reinforced by the fact that he has a minor at the material time and suffering from serious mental problems caused by the traumatic events that had forced him to flee Somalia. He further complained that he was currently

also being subjected to treatment in breach of Article 3 of the Convention in Italy, where he found himself in a situation of extreme destitution, with no access to basic medical or psychiatric care whereas he continued to suffer from serious mental problems.

122. The applicant further complained that, in respect of his complaints under Article 3, the asylum procedure in Italy could not be regarded as an effective remedy within the meaning of Article 13 of the Convention.

123. Referring to the Court's findings in *Tabesh v. Greece*, (no. 8256/07, 26 November 2009), the applicant lastly complained that his detention after his first arrival in Italy was contrary to his rights under Article 5 §§ 1 and 4 of the Convention.

3. Application no. 47851/10

124. The applicant complained under Article 3 of the Convention that, if removed from the Netherlands to Italy, he would be placed at a real risk of onward *refoulement* to Somalia or Libya where he risked being subjected to treatment in breach of Article 3, either because he would not have access to the asylum procedure at all, because he would be criminally prosecuted for submitting false identity data, and/or because the asylum procedure in Italy was seriously deficient.

125. The applicant further complained under Article 13 that, due to the inadequate asylum system in Italy, he had no effective remedy as guaranteed by this provision in respect of his complaints under Article 3 forming the basis of his asylum claim, and that the manner in which the Netherlands Government sought to apply the Dublin Regulation in his case was contrary to his rights under Article 13.

4. Application no. 51377/10

126. The applicant complained that his removal to Italy, where he would allegedly be denied adequate medical and other care and reception facilities, would violate his rights under Article 3 of the Convention. Also relying on Article 3, he further complained that during his initial stay in Italy the authorities had provided him, a minor at the time, with little or no medical care, that only the church had provided him with accommodation and food, and that he had not been assigned a guardian or offered any schooling. He lastly complained that, as Italy did not comply with applicable EU Directives, his removal to Italy would expose him to a risk of *refoulement* from Italy to Somalia without a proper examination of his asylum and Article 3 claims having taken place in Italy. He further alleged a violation of Article 13 of the Convention.

THE LAW

127. All applicants complained that their removal from the Netherlands to Italy under the terms of the Dublin Regulation was or would be contrary to their rights under Article 3 of the Convention, which reads as follows:

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

128. The Court understands from his submissions that the applicant's representative in case no. 18324/10, who did not assist the applicant in the domestic proceedings, is apparently unable to establish any direct contact with the applicant (see § 56). This raises the question whether in these circumstances this representative can meaningfully pursue the proceedings before the Court (see, for instance, *A.S. v. the Netherlands* (dec.), no. 16247/11, 4 June 2013; *Betwata Khoushnauw v. the Netherlands* (dec.), nos. 28244/10 and 32224/11, 13 December 2011; and *Ramzy v. the Netherlands* (striking out), no. 25424/05, §§ 64-65, 20 July 2010, with further references).

129. However, the Court does not find it necessary to determine this question as this application is in any event inadmissible for the reasons set out below.

130. The Court notes that, after their first arrival in Italy and on the basis of information they then gave to the Italian authorities, the applicants in cases nos. 2314/10, 47851/10 and 51377/10 were admitted to Italy as adult asylum seekers and were subsequently granted a residence permit for subsidiary protection with a validity of three years.

131. The Court further notes that each of these three applicants subsequently travelled to the Netherlands where they applied for asylum as an unaccompanied minor asylum seeker, giving another date of birth and either another or a slightly different name than they had previously given to the Italian authorities. After these applicants had been identified in the Eurodac database as persons for whose asylum requests Italy was responsible under the terms of the Dublin Regulation, the Netherlands administrative and judicial authorities – having found no reasons warranting the use of the sovereignty clause provided for in the Dublin Regulation – concluded that Italy was responsible for them. Accordingly, the Netherlands authorities requested their Italian counterparts to accept that responsibility, which the latter did implicitly. The Court lastly notes that, in so far as can be established, only the applicant in case no. 2314/10 has been removed to Italy and that, when this happened on 19 March 2012, he was – on the basis of his date of birth as given by him to the Netherlands authorities – nearly twenty years old.

132. The applicant in case no. 18324/10, who stated to be a 17 year-old minor to the Italian authorities at the time of his initial arrival there, was

admitted to Italy in October 2008 as an unaccompanied minor asylum seeker and treated as such in accordance with the applicable rules under Italian domestic law, entailing *inter alia* his placement in a special accommodation and care centre for minors and the setting into motion of the procedure to appoint a legal guardian. Before any decision had been taken in this latter procedure or on his asylum request, the applicant – finding that the rules he was subjected to in the centre for minors where he was staying were too strict – absconded and with the aid of a family friend living in Italy travelled to the Netherlands where he applied for asylum in April 2009 under a different first name and stating that he was about 16 years old.

133. After he had been identified in the Eurodac database as a person for whose asylum request Italy was responsible under the terms of the Dublin Regulation, the Netherlands administrative and judicial authorities – having found no reasons warranting the use of the sovereignty clause provided for in the Dublin Regulation – concluded that Italy was responsible for the applicant. Accordingly, the Netherlands authorities requested their Italian counterparts to accept that responsibility, which the latter did on 30 June 2009. The Court lastly notes that when the applicant was removed to Italy on 23 February 2012, he was – on the basis of his date of birth as given by him to the Netherlands authorities – an adult.

134. The Court reiterates the relevant general principles under Article 3 of the Convention as set out most recently in its decision on admissibility in the cases of *Mohammed Hussein v. the Netherlands and Italy* (cited above, §§ 65-71) and *Daybetgova and Magomedova v. Austria* (cited above, §§ 58-64). It further recalls that, as regards the material date, the existence of the alleged exposure to a risk of treatment contrary to Article 3 must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time 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). A full assessment is called for, as the situation in a country of destination may change over the course of time (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007).

135. As regards the applicants in cases nos. 2314/10, 47851/10 and 51377/10, the Court cannot but take into account that the applicants themselves wilfully told the Italian authorities that they were adults and apparently sought to mislead the authorities in order to benefit from the regime applying to adult asylum seekers which is apparently regarded as giving more freedom. The Court consideres that the authorities processing asylum claims must be entitled to rely on the personal information given by the claimants themselves save where there is a flagrant disparity of some

kind or the authorities have otherwise been put on notice of a special need for protection. However there is nothing in the present cases to suggest that the Italian authorities did not themselves act in good faith in that regard.

136. The Court further finds that all applicants can at present be regarded as asylum seekers as, even if three of them have already been admitted in Italy in the past as aliens requiring subsidiary protection (nos. 2314/10, 47851/10 and 51377/10), none of them holds a valid Italian residence permit at present. Consequently, if returned to Italy they will have to file a (fresh) asylum request there.

137. The Court will first consider the question whether the situation in which the applicants who are currently staying in the Netherlands (nos. 2314/10, 47851/10 and 51377/10) are likely to find themselves, if removed to Italy, can be regarded as incompatible with Article 3, taking into account their situation as asylum seekers and, as such, members of a particularly underprivileged and vulnerable population group in need of special protection (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §251, ECHR 2011 cited above, § 251).

138. Reiterating its findings in the case of *Mohammed Hussein v. the Netherlands and Italy* (cited above, § 78) and having found no reasons in the submissions made in applications nos. 2314/10, 47851/10 and 51377/10 warranting another conclusion, the Court finds that, although the general situation and living conditions in Italy of both minor and adult asylum seekers is certainly far from ideal and may disclose some shortcomings, there is no systemic failure where it concerns providing support or facilities catering for asylum seekers, as was the case in *M.S.S. v. Belgium and Greece* (cited above).

139. The Court further finds, also in view of the manner in which these three applicants were treated by the Italian authorities after their initial arrival in Italy, that none of the three applicants still in the Netherlands have established that their future prospects, if returned to Italy, 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 asylum seekers or that, in case of difficulties, the Italian authorities would not respond in an appropriate manner.

140. As regards the applicant in case no. 18324/10 who currently finds himself in Italy, the Court notes that, after his initial arrival in Italy, the Italian authorities treated the applicant in accordance with the special rules applicable to unaccompanied minor asylum seekers. The applicant voluntarily abandoned this protective scheme for which decision Italy cannot be held accountable. The applicant's claim that he had suffered abuse and that he was denied adequate mental health care in the accommodation and reception centre for minors where he was staying after

his initial arrival in Italy has remained fully unsubstantiated and there is nothing in the case file indicating that he has sought to bring these matters to the attention of the Italian authorities at the material time.

141. The Court has further found no indication in the case file that, after his transfer to Italy on 23 February 2012, the applicant has actually sought to file a fresh formal asylum request in Italy – which is obviously a condition *sine qua non* for eligibility for benefits under the support schemes for asylum seekers there – either on his own upon his arrival in Italy or at a later stage with the assistance of his representative before the Court, volunteers of the Latina private charity where he found shelter and/or the NGO who located him in Italy. The Court therefore does not find it established that the applicant would be unable to benefit from the available resources in Italy for asylum seekers or that, in case of difficulties, the Italian authorities would not respond in an appropriate manner.

142. It follows that this part of the applicants' complaints under Article 3 brought against the Netherlands and Italy is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and therefore inadmissible pursuant to Article 35 § 4.

143. The applicants further complained that, in respect of their complaints under Article 3, they did not have an effective remedy within the meaning of Article 13 in the Netherlands and/or Italy. This provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

144. The Court emphasises that, in so far as the facts of which complaint is made fall within the scope of one or more Convention provision, the word "remedy" within the meaning of Article 13 does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a Convention grievance (see *Ivakhnenko v. Russia* (dec.), no. 12622/04, 21 October 2008; and *Adamczuk v. Poland* (revision), no. 30523/07, § 78, 15 June 2010).

145. The Court notes that none of the applicants has sought to challenge the actions and/or decisions taken by the Italian authorities in the context of their asylum request filed in Italy after their initial arrival there. There is further no concrete element in the applicants' submissions demonstrating that this would be impossible, either at the material time or in case they would file a fresh request for international protection in Italy.

146. As regards the determination of their respective asylum requests filed in the Netherlands, the Court notes that the applicants could and availed themselves of the possibility of challenging the decision taken by the (Deputy) Minister before the Regional Court of The Hague and the Administrative Jurisdiction Division and that these judicial bodies examined

and determined the applicants' arguments based on Article 3 of the Convention in respect of their transfer to Italy.

147. It follows that these complaints are also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

148. The applicant in case no. 18324/10 also complained that his deprivation of liberty in Italy after his first arrival there was contrary to his rights under Article 5 §§ 1 and 4 of the Convention. This Article guarantees the right to liberty and seeks to protect the physical liberty of persons.

149. The Court notes that, after his initial arrival in Italy in October 2008, the applicant – on the basis of his statement that he was a minor – was admitted to Italy as an unaccompanied minor asylum seeker and, for this reason, placed in a reception and care centre for disadvantaged and alien minors. The Court further notes that the applicant absconded from this centre in March 2009, finding that the rules there were too strict.

150. However, in the absence of any indication that the applicant has sought to challenge his placement in this centre before the Italian authorities or that this would be impossible for him, whereas his application was introduced on 1 April 2010, which is more than six months after his placement in the centre concerned, the Court finds that, in respect of this complaint, the requirements of Article 35 § 1 have not been met.

151. Consequently, this complaint must rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

152. Insofar as the applicant in case no. 2314/10 alleged a violation of his rights under Article 3 of the United Nations Convention on the Rights of the Child, the Court recalls that under the terms of Articles 19 and 32 § 1 of the Convention its jurisdiction exclusively extends to all matters concerning the interpretation and application of the European Convention on Human Rights and the Protocols thereto.

153. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 (see, for instance, *El-Habach v. Germany* (dec.), no. 66837/11, 22 January 2013).

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	2314/10	13/01/2010	**Nuur HUSSEIN DIIRSHI** 01/07/1992 Baexem	J. NIEMER
2.	18324/10	01/04/2010	**Abdale ALI OMAR** 05/12/1993 Zuidlaren	P. SCHÜLLER
3.	47851/10	20/08/2010	**Yusuf MADI SHEEKH** 06/09/1993 Oude Pekela	W. EIKELBOOM
4.	51377/10	07/09/2010	**Aange ISSE ALI** 07/03/1994 Oude Pekela	M. HAANSTRA