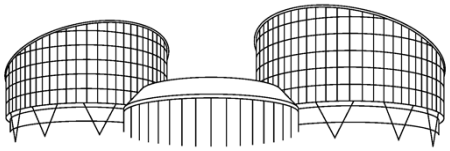

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF TARAKHEL v. SWITZERLAND

(Application no. 29217/12)

JUDGMENT

STRASBOURG

4 November 2014

This judgment is final but may be subject to editorial revision.

In the case of Tarakhel v. Switzerland,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Guido Raimondi,
Mark Villiger,
Isabelle Berro-Lefèvre,
András Sajó,
Ledi Bianku,
Nona Tsotsoria,
Işıl Karakaş,
Nebojša Vučinić,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Helen Keller,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Paul Mahoney, *judges,*

and Lawrence Early, *Jurisconsult,*

Having deliberated in private on 12 February and 10 September 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29217/12) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Afghan nationals (collectively, "the applicants"), Mr Golajan Tarakhel ("the first applicant"), born in 1971, his wife Mrs Maryam Habibi ("the second applicant"), born in 1981, and their six minor children, Arezoo, born in 1999, Mohammad, born in 2001, Nazanin, born in 2003, Shiba, born in 2005, Zeynab, born in 2008, and Amir Hassan, born in 2012, all living in Lausanne, on 10 May 2012.

2. The applicants were represented by Ms Chloé Bregnard Ecoffey, acting on behalf of the Legal Aid Service for Exiles (*Service d'Aide Juridique aux Exilés* – SAJE). The Swiss Government ("the Government") were represented by their Agent, Mr Frank Schürmann, Head of the international human rights protection section of the Federal Office of Justice.

3. Relying on Articles 3 and 8 of the Convention, the applicants alleged mainly that if they were returned to Italy they would be exposed to inhuman and degrading treatment on account of the risk of being left without accommodation or being accommodated in inhuman and degrading conditions. The risk stemmed, in their submission, from the absence of individual guarantees as to how they would be taken charge of, in view of the systemic deficiencies in the reception arrangements for asylum seekers in Italy.

Under Articles 13 and 3 of the Convention, the applicants further submitted that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family.

4. On 25 June 2012 the Government were given notice of the application.

5. On 24 September 2013 the Chamber to which the application had been assigned, composed of Guido Raimondi, Danutė Jočienė, Peer Lorenzen, András Sajó, Işıl Karakaş, Nebojša Vučinić and Helen Keller, judges, and Stanley Naismith, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment after being consulted for that purpose (Article 30 of the Convention and Rule 72 of the Rules of Court). The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. At the final deliberations Paul Lemmens and Nona Tsotsoria, substitute judges, replaced Ineta Ziemele and Peer Lorenzen, who were unable to take part in the further consideration of the case (Rule 24 § 3).

6. The applicants and the Government each filed written observations on the admissibility and merits of the application (Rule 59 § 1). Observations were also submitted by the Italian, Dutch, Swedish, Norwegian and United Kingdom Governments and by the organisation Defence for Children, the Centre for Advice on Individual Rights in Europe ("the AIRE Centre"), the European Council on Refugees and Exiles ("ECRE") and Amnesty International, which had been given leave by the President of the Court to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3). The Italian Government were also invited to participate in the oral procedure.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 12 February 2014 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr F. SCHÜRMANN, Head of the international human rights protection section, Federal Office of Justice, Federal Police and Justice

Department, *Agent*,
Mr B. DUBEY, Deputy Head, European law and Schengen/Dublin coordination section, Federal Office of Justice, Federal Police and Justice Department, *Counsel*,
Ms D. STEIGER LEUBA, Technical adviser, international human rights protection section, Federal Office of Justice, Federal Police and Justice Department, *Counsel*,
Mr J. HORNI, Deputy Head of Division, Dublin Division, Federal Migration Office, Federal Police and Justice Department, *Counsel,*
Ms V. HOFER, "Dublin" liaison officer with the Italian Ministry of the Interior, Federal Migration Office, Federal Police and Justice Department, *Counsel;*

(b) *for the applicants*
Ms C. BREGNARD ECOFFEY, Head of SAJE, *Counsel*,
Ms K. POVLAKIC, *Adviser*;

(c) *for the Italian Government (third party)*
Ms P. ACCARDO, *Co-Agent*,
Mr G. MAURO PELLEGRINI, *Co-Agent*.

The Court heard addresses by Mr Schürmann, Mr Horni, Ms Bregnard Ecoffey, Ms Povlakic and Ms Accardo, and also their replies to questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The facts of the case may be summarised as follows.

9. On an unspecified date the first applicant left Afghanistan for Pakistan, where he met and married the second applicant. The couple subsequently moved to Iran, where they lived for fifteen years.

10. On an unspecified date the couple and their children left Iran for Turkey and from there took a boat to Italy. According to the findings of the Italian police and the identification forms annexed to the observations of the Italian Government, the applicants (the couple and their five oldest children) landed on the coast of Calabria on 16 July 2011 and were immediately subjected to the EURODAC identification procedure (taking of photographs and fingerprints) after supplying a false identity. The same day the couple and the five children were placed in a reception facility provided by the municipal authorities of Stignano (Reggio Calabria province), where they

remained until 26 July 2011. On that date they were transferred to the Reception Centre for Asylum Seekers (*Centro di Acoglienza per Richiedenti Asilo*, "CARA") in Bari, in the Puglia region, once their true identity had been established.

11. According to the applicants, living conditions in the centre were poor, particularly on account of the lack of appropriate sanitation facilities, the lack of privacy and the climate of violence among the occupants.

12. On 28 July 2011 the applicants left the CARA in Bari without permission. They subsequently travelled to Austria, where on 30 July 2011 they were again registered in the EURODAC system. They lodged an application for asylum in Austria which was rejected. On 1 August 2011 Austria submitted a request to take charge of the applicants to the Italian authorities, which on 17 August 2011 formally accepted the request. On an unspecified date the applicants travelled to Switzerland. On 14 November 2011 the Austrian authorities informed their Italian counterparts that the transfer had been cancelled because the applicants had gone missing.

13. On 3 November 2011 the applicants applied for asylum in Switzerland.

14. On 15 November 2011 the first and second applicants were interviewed by the Federal Migration Office ("the FMO") and stated that living conditions in Italy were difficult and that it would be impossible for the first applicant to find work there.

15. On 22 November 2011 the FMO requested the Italian authorities to take charge of the applicants. In their respective observations the Swiss and Italian Governments agreed that the request had been tacitly accepted by Italy.

16. In a decision of 24 January 2012 the FMO rejected the applicants' asylum application and made an order for their removal to Italy. The administrative authority considered that "the difficult living conditions in Italy [did] not render the removal order unenforceable", that "it [was] therefore for the Italian authorities to provide support to the applicants" and that "the Swiss authorities [did] not have competence to take the place of the Italian authorities." On the basis of these considerations it concluded that "the file [did] not contain any specific element disclosing a risk to the applicants' lives in the event of their return to Italy."

17. On 2 February 2012 the applicants appealed to the Federal Administrative Court. In support of their appeal they submitted that the reception conditions for asylum seekers in Italy were in breach of Article 3 of the Convention and that the federal authorities had not given sufficient consideration to their complaint in that regard.

18. In a judgment of 9 February 2012 the Federal Administrative Court dismissed the appeal, upholding the FMO's decision in its entirety. The court considered that "while there [were] shortcomings in the reception and

social welfare arrangements, and asylum seekers [could] not always be taken care of by the authorities or private charities", there was no evidence in the file capable of "rebutting the presumption that Italy complie[d] with its obligations under public international law." With more particular reference to the applicants' conduct it held that "in deciding to travel to Switzerland, they [had] not given the Italian authorities the opportunity to assume their obligations with regard to [the applicants'] situation."

19. On 13 March 2012 the applicants requested the FMO to have the proceedings reopened and to grant them asylum in Switzerland. They submitted that their individual situation had not been examined in detail. The FMO forwarded the request to the Federal Administrative Court, which reclassified it as a "request for revision" of the judgment of 9 February 2012 and rejected it in a judgment dated 21 March 2012, on the ground that the applicants had not submitted any new grounds which they could not have relied on during the ordinary proceedings. The applicants had based their request mainly on a more detailed account of their stay in Italy and the fact that their children were now attending school in Switzerland.

20. In a letter of 10 May 2012 which reached the Registry on 15 May, the applicants applied to this Court and sought an interim measure requesting the Swiss Government not to deport them to Italy for the duration of the proceedings.

21. In a fax dated 18 May 2012 the Registry informed the Swiss Government's Agent that the acting President of the Section to which the case had been assigned had decided to indicate to the Swiss Government under Rule 39 of the Rules of Court that the applicants should not be deported to Italy for the duration of the proceedings before the Court.

II. RELEVANT DOMESTIC LAW

A. Federal Asylum Act of 26 June 1998, as in force at the relevant time

22. The relevant provisions of the Federal Asylum Act of 26 June 1998 read as follows:

Section 29 Interview on grounds for seeking asylum

"1. The Office shall interview asylum seekers on their grounds for seeking asylum

a. in the registration centre; or

b. within twenty days of the decision to allocate the application to a canton.

1*bis*. If necessary, an interpreter shall be called.

2. The asylum seekers may be accompanied by a representative and an interpreter of his or her choice who are not themselves asylum seekers.

3. A record of the interview shall be drawn up. It shall be signed by those present at the interview, with the exception of the representative of the charitable organisations.

4. The Office may entrust the conduct of the interview to the cantonal authorities themselves if this enables the procedure to be speeded up significantly. Paragraphs 1 to 3 shall apply."

Section 34 Decision not to examine in the absence of a risk of persecution in the other country

"1. If the asylum seeker has arrived from a country where he or she does not risk persecution within the meaning of section 6a(2)(a), the Office shall not examine the application unless there are indications of persecution.

2. As a general rule, the Office shall not examine an asylum application where the asylum seeker

a. can return to a safe third country within the meaning of section 6a(2)(b) where he or she has resided previously;

b. can return to a third country where he or she has resided previously and which, in the case in issue, respects the principle of *non-refoulement* referred to in section 5(1);

c. can continue his or her journey to a third country for which he or she already has a visa and where he or she can claim protection;

d. can travel to a third country which has competence under an international agreement to carry out the asylum and removal procedure;

e. can continue his or her journey to a third country where he or she has close relatives or other persons with whom he or she has close ties.

3. Sub-section 2(a), (b), (c) and (e) shall not apply where

a. close relatives of the asylum seeker or other persons with whom he or she has close ties are living in Switzerland;

b. the asylum seeker manifestly has refugee status within the meaning of section 3;

c. the Office possesses information indicating that the third country does not offer effective protection as regards the principle of *non-refoulement* referred to in section 5(1)."

Section 42 Residence during the asylum proceedings

"Any person who lodges an application for asylum in Switzerland may remain in the country until the proceedings have been concluded."

Section 105 Appeals against decisions of the Office

"Appeals against decisions of the Office shall be governed by the Federal Administrative Court Act of 17 June 2005."

Section 107a Dublin procedure

"Appeals against decisions not to examine asylum applications lodged by asylum seekers who can travel to a country with competence under an international treaty to carry out the asylum and removal procedure shall not have suspensive effect. The asylum seeker concerned may request that suspensive effect be granted while the appeal is pending. The Federal Administrative Court shall give a ruling within five

days from the lodging of the request. Where suspensive effect has not been granted within that period, the removal order may be enforced."

B. Asylum Ordinance 1 of 11 August 1999 concerning procedure (Asylum Ordinance 1, OA 1), as in force at the relevant time

23. The relevant Article of Asylum Ordinance 1 of 11 August 1999 concerning procedure provided:

Article 29a Assessment of competence under Dublin Regulation (Section 34(2)(d), Asylum Act)

"[1] The FMO shall assess competence to deal with an asylum application in accordance with the criteria laid down in Regulation (EC) No 343/2003.

[2] If this assessment shows that another State is responsible for dealing with the asylum application, the FMO shall issue a decision declining to examine the application once the requested State has agreed to take charge of or take back the asylum seeker.

[3] The FMO may also, on humanitarian grounds, deal with the application even where the assessment shows that another State is competent.

[4] The procedure for taking charge of or taking back the asylum seeker by the competent State shall be carried out in accordance with Regulation (EC) No 1560/2003."

C. Federal Court Act of 17 June 2005

24. The relevant provision of the Federal Court Act of 17 June 2005 reads as follows:

Section 123 Other grounds

"...

[2] A request for revision may also be made

...

a. in civil and public-law cases, if the applicant later discovers relevant facts or conclusive evidence that he or she was unable to rely on in the previous proceedings, with the exception of facts or evidence subsequent to the judgment; ..."

D. Federal Administrative Court Act of 17 June 2005

25. The relevant section of the Federal Administrative Court Act of 17 June 2005 reads as follows:

Section 45 Principle

"Sections 121 to 128 of the Federal Court Act of 17 June 2005 shall apply by analogy to the revision of judgments of the Federal Administrative Court."

E. Relevant case-law of the Federal Administrative Court

26. The Federal Administrative Court, which rules at final instance on asylum matters, has set aside deportation orders or subjected them to conditions because the persons concerned fell into the category of "vulnerable persons". It has done so in particular in the following situations:

(i) a person deemed vulnerable by virtue of being an unaccompanied young woman (D-4267/2007 of 30 August 2007);

(ii) an elderly man with serious and debilitating health problems (E-6557/2009 of 23 October 2009);

(iii) a young man with no social or family network in Somaliland (E-2157/2011 of 18 November 2011);

(iv) a person deemed to be vulnerable because of her particular medical and social needs, in view of her psychological state and the fact that she had a small dependent child (E-188/2012 of 31 January 2012);

(v) women, and in particular single women and widows, from certain regions or certain countries (E-3568/2012 of 1 May 2013).

27. In three judgments (E-5194/2012 of 15 February 2013, E-1341/2012 of 2 May 2012 and D-1689/2012 of 24 April 2012), the Federal Administrative Court recognised that the conditions of detention in Malta, a State belonging to the "Dublin" system, could raise issues, in particular for individuals accompanied by a child. In another case (E-1574/2011 of 18 October 2013), concerning the removal to Italy of a Somalian family with three young children, it held that Switzerland should apply the "sovereignty clause" (see paragraph 32 below) provided for by the Dublin Regulation (see paragraph 29 below), which allows States to suspend deportation on humanitarian grounds, on account of the conditions in which the applicants would be taken charge of in Italy, which were judged to be inadequate, and the parents' state of health.

III. RELEVANT EUROPEAN UNION LAW

28. The relevant provisions of the Charter of Fundamental Rights of the European Union provide:

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 18

Right to asylum

"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to

the status of refugees and in accordance with the Treaty establishing the European Community."

Article 19
Protection in the event of removal, expulsion or extradition

"1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Article 24
The rights of the child

"1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

29. The relevant instruments of European Union secondary legislation were set forth in the Court's judgment in the case of *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, §§ 57-86, ECHR 2011), which refers in particular to:

– Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States ("the Reception Directive");

– 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 ("the Dublin Regulation");

– Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ("the Qualification Directive");

– Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status in the Member States (the "Procedures Directive").

30. Under the Dublin Regulation the Member States must determine, based on a hierarchy of objective criteria (Articles 5 to 14), which Member State bears responsibility for examining an asylum application lodged on their territory. The system is aimed at avoiding multiple applications and provides for each asylum seeker's case to be dealt with by a single Member

State (Article 3(1)). Hence, where it is established that an asylum seeker has irregularly crossed the border into a Member State having come from a third country, the Member State thus entered is responsible for examining the application for asylum (Article 10(1)).

31. Where the criteria in the Regulation indicate that another Member State is responsible, that State is requested to take charge of the asylum seeker and examine the application for asylum (Article 17).

32. By way of derogation from the principle articulated in Article 3(1), a "sovereignty clause" contained in Article 3(2) allows any Member State to examine an application for asylum even if such examination is not its responsibility under the criteria laid down in the Regulation. Furthermore, the "humanitarian clause" contained in Article 15 allows any Member State, even where it is not responsible according to the same criteria, to examine an asylum application on humanitarian grounds based in particular on family or cultural considerations.

33. In its judgment of 21 December 2011 in the cases *N. S. v. Secretary of State for the Home Department* and *M. E., A. S. M., M. T., K. P., E. H. v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* (CJEU C-411/10 and C-493/10), the Grand Chamber of the Court of Justice of the European Union ("the CJEU") held, on the subject of transfers under the Dublin Regulation, that although the Common European Asylum System was based on mutual confidence and a presumption of compliance by other Member States with European Union law and, in particular, with fundamental rights, that presumption was nonetheless rebuttable. The judgment stated, *inter alia*:

> "78. Consideration of the texts which constitute the Common European Asylum System shows that it was conceived in a context making it possible to assume that all the participating States, whether Member States or third States, observe fundamental rights, including the rights based on the Geneva Convention and the 1967 Protocol, and on the ECHR, and that the Member States can have confidence in each other in that regard.
>
> ...
>
> 80. In those circumstances, it must be assumed that the treatment of asylum seekers in all Member States complies with the requirements of the Charter [of Fundamental Rights of the European Union], the Geneva Convention and the ECHR.
>
> 81. It is not however inconceivable that that system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights.
>
> 82. Nevertheless, it cannot be concluded from the above that any infringement of a fundamental right by the Member State responsible will affect the obligations of the other Member States to comply with the provisions of Regulation No 343/2003.
>
> 83. At issue here is the raison d'être of the European Union and the creation of an area of freedom, security and justice and, in particular, the Common European

Asylum System, based on mutual confidence and a presumption of compliance, by other Member States, with European Union law and, in particular, fundamental rights.

84. In addition, it would be not be compatible with the aims of Regulation No 343/2003 were the slightest infringement of Directives 2003/9, 2004/83 or 2005/85 to be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible. Regulation No 343/2003 aims – on the assumption that the fundamental rights of the asylum seeker are observed in the Member State primarily responsible for examining the application – to establish ... a clear and effective method for dealing with an asylum application. In order to achieve that objective, Regulation No 343/2003 provides that responsibility for examining an asylum application lodged in a European Union country rests with a single Member State, which is determined on the basis of objective criteria.

85. If the mandatory consequence of any infringement of the individual provisions of Directives 2003/9, 2004/83 or 2005/85 by the Member State responsible were that the Member State in which the asylum application was lodged is precluded from transferring the applicant to the first mentioned State, that would add to the criteria for determining the Member State responsible set out in Chapter III of Regulation No 343/2003 another exclusionary criterion according to which minor infringements of the abovementioned directives committed in a certain Member State may exempt that Member State from the obligations provided for under Regulation No 343/2003. Such a result would deprive those obligations of their substance and endanger the realisation of the objective of quickly designating the Member State responsible for examining an asylum claim lodged in the European Union.

86. By contrast, if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter, of asylum seekers transferred to the territory of that Member State, the transfer would be incompatible with that provision.

...

104. ... the presumption underlying the relevant legislation, stated in paragraph 80 above, that asylum seekers will be treated in a way which complies with fundamental rights, must be regarded as rebuttable.

105. In the light of those factors, .. European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union.

106. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision."

34. The Dublin Regulation is applicable to Switzerland under the terms of the association agreement of 26 October 2004 between the Swiss Confederation and the European Community regarding criteria and mechanisms for establishing the State responsible for examining a request

for asylum lodged in a Member State or in Switzerland (OJ L 53 of 27 February 2008). However, Switzerland is not formally bound by the three Directives referred to at paragraph 29 above.

35. The Dublin II Regulation was recently replaced by Regulation no. 604/2013 of the European Parliament and of the Council of 26 June 2013 ("the Dublin III Regulation"), which is designed to make the "Dublin" system more effective and to strengthen the legal safeguards for persons subjected to the "Dublin" procedure. One of its aims is to ensure that families are kept together, and it pays particular attention to the needs of unaccompanied minors and other persons requiring special protection. In particular, Articles 6, 31, 32 and 33 of the Dublin III Regulation read as follows:

Article 6

Guarantees for minors

"1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

...

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor, in accordance with his or her age and maturity."

Article 31

Exchange of relevant information before a transfer is carried out

"1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

(b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

(c) in the case of minors, information on their education;

(d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 35 of this Regulation using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

5. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article."

Article 32

Exchange of health data before a transfer is carried out

"1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

6. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article."

Article 33

A mechanism for early warning, preparedness and crisis management

"1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.

A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.

2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.

The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.

3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum acquis of the

Union, in particular with the fundamental rights of applicants for international protection.

Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.

The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.

The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.

4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate."

36. The Dublin III Regulation entered into force on 1 January 2014 and was passed into law by the Swiss Federal Council on 7 March 2014.

IV. THE ITALIAN CONTEXT

A. Asylum procedure

37. Any individual wishing to claim asylum in Italy must apply for that purpose to the border police or, if he or she is already in Italy, to the immigration department of the police headquarters (*questura*). Once the asylum application has been lodged, the person concerned has the right to enter the country and has access to the asylum procedure, and is given leave to remain pending a decision by the territorial commission for the recognition of international protection ("the territorial commission") on his or her asylum application.

38. Where the asylum seeker does not have a valid entry visa, the police carry out an identification procedure (*fotosegnalamento*), if need be with the assistance of an interpreter. This procedure involves taking passport photographs and fingerprints. The latter are compared with the fingerprints in the EURODAC system and the national AFIS database (Automated Fingerprint Identification System). Following this procedure, the asylum seeker is issued with a document (*cedolino*) confirming the initial registration of the application and containing details of his or her subsequent appointments, in particular the appointment for formal registration of the application.

39. The formal application for asylum must be presented in writing. On the basis of an interview with the asylum seeker conducted in a language which he or she understands, the police fill out the "standard form C/3 for recognition of refugee status within the meaning of the Geneva Convention" (*Modello C/3 per il riconoscimento dello status di rifugiato ai sensi della Convenzione di Ginevra*), which includes questions concerning the asylum seeker's personal details (first name and surname, date of birth, nationality, first names and surnames of parents/spouse/children and their whereabouts), the person's journey to Italy and the reasons why he or she has fled his or her country of origin and is applying for asylum in Italy. The asylum seeker may provide a document written in his or her own language – to be appended to the form – containing an account of the background to the asylum application. The police keep the original form and provide the asylum seeker with a stamped copy.

40. The asylum seeker is then invited, by means of written notification from the police, to attend an interview with the competent territorial commission, made up of two representatives of the Ministry of the Interior, one representative of the municipality, province (*provincia*) or region concerned and one representative of the Office of the United Nations High Commissioner for Refugees ("UNHCR"). The asylum seeker is assisted by an interpreter during the interview. The territorial commission may

(i) allow the asylum application by granting the asylum seeker refugee status within the meaning of the 1951 Geneva Convention relating to the Status of Refugees ("the 1951 Refugee Convention");

(ii) not grant the asylum seeker refugee status within the meaning of the 1951 Refugee Convention, but grant him or her subsidiary protection under Article 15(c) of the Qualification Directive (see paragraph 29 above), as implemented by Legislative Decree (*decreto legislativo*) no. 251/2007;

(iii) not grant asylum or subsidiary protection but grant a residence permit on compelling humanitarian grounds under the terms of Law Decrees (*decreti-legge*) nos. 286/1998 and 25/2008; or

(iv) not grant the asylum seeker any form of protection. In this case he or she will be issued with an order to leave Italy (*foglio di via*) within fifteen days.

41. A person recognised as a refugee under the 1951 Refugee Convention will be issued with a renewable five-year residence permit. He or she is further entitled, *inter alia*, to a travel document for aliens (*titolo di viaggio per stranieri*), to work, to family reunification and to benefit under the general schemes for social assistance, health care, social housing and education provided for by Italian domestic law.

42. A person granted subsidiary protection will be issued with a residence permit valid for three years which may be renewed by the territorial commission that granted it. This permit may also be converted into a residence permit allowing the holder to work in Italy, provided this is

requested before the expiry of the original residence permit and provided the person concerned holds an identity document. A residence permit granted for subsidiary protection entitles the person concerned, *inter alia*, to a travel document for aliens, to work, to family reunification and to benefit under the general schemes for social assistance, health care, social housing and education provided for by Italian domestic law.

43. A person granted a residence permit on compelling humanitarian grounds will be issued with a one-year permit which can be converted into a residence permit allowing the holder to work in Italy, provided he or she has a passport. A residence permit granted on humanitarian grounds entitles the person concerned to work, to health care and, if he or she has no passport, to a travel document for aliens.

44. An appeal against a refusal by the territorial commission to grant international protection may be lodged with the District Court (Civil Division) (*sezione civile del Tribunale*) and further appeals may be lodged with the Court of Appeal (*Corte di appello*) and, at last instance, with the Court of Cassation (*Corte di cassazione*). Such appeals must be submitted by a lawyer and the asylum seeker concerned may apply for legal aid for this purpose.

45. An asylum seeker may withdraw his or her asylum application at any stage of the procedure for examination of the application by completing a form to that effect. This form can be obtained from the police immigration department. The formal withdrawal of an asylum application entails the end of the procedure without the application being examined by the territorial commission. However, there is no automatic assumption that the asylum application has been withdrawn where the person concerned moves out of the asylum seekers' reception centre, departs for an unknown destination or leaves the country. Where an asylum seeker fails to appear before the territorial commission, the latter will officially report his or her absence and determine the application on the basis of the information in the file. In most cases it will reject the asylum application for "untraceability" (*diniego per irreperibilità*). The person concerned may then request a fresh interview and the procedure is reactivated once he or she has been notified of the date of the interview.

B. Legal framework and organisation of the reception system for asylum seekers

46. A detailed description of the legal framework and organisation of the reception system for asylum seekers in Italy, provided by the Italian Government, is set out in the Court's decision in *Mohammed Hussein and Others v. the Netherlands and Italy* ((dec.), no. 27725/10, § 45, 2 April 2013). In their third-party observations in the present case, the Italian Government added the following information:

"...

The protection system had 3,000 places available per year. However, the extraordinary influx of asylum seekers in 2013 led to an assessment concerning reinforcement of the SPRAR [*Sistema di protezione per richiedenti asilo e rifugiati*].

The resources allocated by the OPCM (Order of the President of the Council of Ministers) of 21 September 2011 (€9 million) made it possible to increase, from 2012, for one year, the reception capacity of the system to 700 units. Subsequently, 800 additional places were achieved with further resources (€5,000,000 allocated with the OCPC of 23 November 2012 n. 26).

Subsequent further increases of 3,900 places have led, to date, to a total capacity of the SPRAR of 8,400 reception places.

Last, in September 2013, because the landings continued, a new request for 8,000 additional places – compared to the mere 1,230 places hitherto available – was submitted to the SPRAR network.

It therefore follows that, within the framework of the SPRAR system, the reception capacity that can be guaranteed at present is 9,630 third-country nationals in all.

The consolidation of the SPRAR, owing to the expansion of its capacity and the allocation of permanent resources, represents a fundamental step in reinforcing and ensuring a firm basis for the reception system, with a view to proceeding from an emergency situation to a situation of normal management.

The objective for the next three years, 2014 to 2016, is to further reinforce the SPRAR network by providing an effective capacity of 16,000 places...

To that end, the Notice to local authorities concerning the selection of projects to be funded aimed at the reception of applicants for, and beneficiaries, of international and humanitarian protection for the period 2014 to 2016 was published in the Official Gazette of 4 September 2013, no. 207.

At present, the 510 proposed activity projects are being evaluated."

C. Recommendations of the Office of the United Nations High Commissioner for Refugees on important aspects of refugee protection in Italy (July 2013)

47. The relevant passages of the UNHCR Recommendations on important aspects of refugee protection in Italy (July 2013) read as follows[1]:

"1. General background

... An estimated 4-5 million third-country nationals, including 64,000 refugees live in Italy ...

3. Access to the asylum procedure

Efforts were undertaken by the competent authorities, through a new online system and internal instructions, to expedite the registration procedure of asylum applications, to improve management of individual cases throughout the procedure, and to monitor

[1] The footnotes have been omitted.

and immediately address delays between the time a person expresses the intention to apply for asylum and the formal registration of an application.

Despite these positive developments, there continued to be reports indicating that the registration of asylum applications is, in some cases, scheduled several weeks after the asylum-seeker has expressed the intention to apply. This practice also affects transferees to Italy under the Dublin Regulation, who, having previously transited through Italy without registering an asylum application, had applied for international protection in other European countries. This delay may result in late access to reception conditions, as well as a lengthier timeframe before their cases are determined. Furthermore, there are continuing reports of difficulties encountered in some Provincial Police HQs (*Questure*), where a proof of residence (*domicilio*) is requested for the registration of an asylum application. This may cause, in some cases, further delays in accessing the asylum procedure. It is also reported that information leaflets on the international protection procedure, are not being distributed systematically, as foreseen by law.

Difficulties in accessing the asylum procedure also continue to be reported from Expulsion and Identification Centers (CIEs), due to lack of legal information and assistance as well as administrative obstacles. Moreover, the lack of standard procedures concerning asylum applications by persons detained in CIE have led, in some instances, to delays in the transmission of asylum applications to the competent Immigration Office. These delays may expose asylum-seekers to the risk of repatriation prior to consideration of their asylum applications, which could create the risk of *refoulement*.

Since 2011, there have been instances in which Egyptian and Tunisian nationals, who had arrived in Lampedusa in an irregular manner by sea, often directly from their countries of origin, and who had expressed the wish to apply for asylum, were only admitted to the asylum procedure following interventions by Praesidium partners, NGOs or lawyers. Arrivals of these nationality groups have regularly been transferred to CIEs rather than Reception Centres for Asylum-Seekers (CARA), even in cases where the intention to seek asylum had been expressed prior to the transfer. According to recent observations by *Praesidium* partners, there also seems to be an increasing number of persons (mainly Eritrean, Somali, Afghan and Syrian nationals) who avoid fingerprinting in Italy and try to reach other European countries in order to apply for asylum there, reportedly due to poor reception conditions and integration prospects in Italy.

With regard to the application of the Dublin Regulation, UNHCR notes that the procedures in Italy for the determination of the state responsible under the Regulation are very lengthy and regularly in excess of the timeframes stipulated in the relevant provisions. The procedures may last up to 24 months, seriously affecting the well-being of asylum-seekers, including of persons with special needs and UASC. Reportedly, these long delays are due to limited human resources. As a result, some 1,000 persons hosted within the reception centers in Italy are either waiting for a decision on the determination of the state responsible under the [Dublin] Regulation or pending their transfer to the responsible Dublin State, aggravating the already strained Italian reception capacities. Following the European Court of Human Rights judgment *MSS vs Belgium and Greece*, no returns under the Dublin Regulation to Greece are being implemented in practice. However, asylum-seekers fingerprinted in Greece are still considered as 'Dublin cases' until a decision from the Dublin Unit declares Italy to be competent. Delays are observed to occur also in these cases. Recently, there has been a prioritization of some 'Dublin cases' hosted in Reception

Centers for Asylum-Seekers (CARAs), for whom the determination of the state responsible under the Regulation had been pending for more than six months.

Asylum-seekers returned to Italy under Dublin II are usually transferred to the main airports in Italy (Rome, Milan, with limited numbers also in Bari and in Venice). In principle, NGOs that manage information services are informed in advance about the arrival of 'Dublin cases' to provide information in order to activate the asylum-procedure in Italy. The persons returned under the Dublin Regulation are issued, by the border police at the airport, an invitation letter to apply for asylum in the competent *Questura*, which is identified based on a number of criteria, such as place of previous asylum registration or availability of places in specific reception centres. In Rome, the asylum application is registered directly at the airport premises.

Concerns about the operation of the Dublin system in the Italian context, as well as the application of Eurodac, are expressed also in the report of UN Special Rapporteur on the Human Rights of Migrants, which referred specifically to the impact of Dublin on the EU's external border states.

4. The quality of the international protection determination procedure

In 2012, the number of asylum applications decreased to 17,352, compared to 34,100 applications in 2011. While additional Sections of the Territorial Commissions for the recognition of international protection (hereinafter Territorial Commissions), the bodies competent for the asylum procedure in first instance, were established in order to cope with the increase of applications and the consequent backlog, waiting times for first instance decisions have further grown and vary significantly from one Territorial Commission to another. Delays are greater, where Territorial Commissions are located in large reception centers (Mineo, Crotone), or in large cities (Rome, Milan). Currently, as an average and based on UNHCR observation, an asylum-seeker may wait approximately 4 to 6 months from registration of the asylum application until the decision from a Territorial Commission. In some cases, waiting periods lasting over 12 months have been reported.

UNHCR remains satisfied with the overall protection standards in the context of the asylum procedure and the work of the Territorial Commissions, including in terms of recognition rates for persons in need of international protection. Due consideration is paid to UNHCR positions and guidelines, for example in relation to specific countries of origin or to legal aspects, such as fear of persecution for reasons of membership of a particular social group. However, a mechanism of systematic quality monitoring, aimed at ensuring a harmonized approach in all Territorial Commissions and minimum quality standards, particularly on procedural aspects, still needs to be put in place, including standardized procedures for the identification and referral of asylum-seekers with special needs, including children, victims of torture and victims of trafficking.

As regards the Territorial Commissions, it should be noted that members are not required by law to possess prior experience and expertise in the field of asylum and they sometimes fill other positions during their tenure as members of Territorial Commissions. The specialization of decision-makers and interpreters are not adequately guaranteed through regular induction and compulsory trainings.

Appeals against negative decisions of a Territorial Commission in first instance have to be made within 15 days from the date of communication of the decision, in cases in which the applicant is hosted within a CARA or CIE, and within 30 days in all other cases, to the geographically responsible Civil Court (*Tribunale*). Appeals have automatic suspensive effect except for a number of categories provided by law,

in which the suspension of the legal effects of the negative first instance decision can be requested to the judge by the applicant. While official data is not available, lengthy delays in the judicial procedure from the date of an appeal to a decision by the courts are frequently reported, including in cases pertaining to the Dublin Regulation. Positive decisions by courts are directly enforced by the Police Immigration Office, which issues the permit of stay. UNHCR appreciates the efforts made by the Superior School of Magistrates to promote specialization of judges in the field of asylum.

In 2012, UNHCR received some reports of cases in which asylum-seekers detained in CIEs were expelled to their countries of origin during the period foreseen by law to appeal a negative first instance asylum decision, or while waiting for a decision by the judge on their request for suspension of the legal effects of the negative first instance decision, made in conjunction with the appeal. Such practices could create a risk of *refoulement* for people who are in need of international protection.

Free legal aid, foreseen by law in appeals, is not always guaranteed in practice in some tribunals. In Rome, the Bar Association continues to require that the appellant provides an income certificate, issued by the embassy of the relevant country of origin, despite the risks this could pose to the applicant and his or her family-members in the country of origin, and despite the fact that the law provides for free legal aid based on the applicant's own declaration regarding his or her financial needs.

5. Reception conditions for asylum-seekers

The arrival of some 63,000 persons by sea in 2011 led to a deterioration in reception standards for asylum-seekers, which continued throughout 2012 and in 2013. Among the arrivals some 28,000 persons, particularly third country nationals arriving from Libya, were channeled automatically into the asylum-procedure by the authorities, creating substantial demands on the reception system. Reception capacity had already - prior to 2011 – been considered insufficient to host asylum-seekers, when significant numbers of arrivals took place.

To respond to this sudden increase in arrivals, in the context of the 'North Africa Immigration Emergency', an emergency reception plan was agreed upon by the Government and regional and local administrations, and its implementation entrusted to the Department of Civil Protection. Some 22,000 new arrivals, all third country nationals arriving from Libya and registered as asylum-seekers, were accommodated in hundreds of different reception facilities, most of which were managed by organizations with little or no experience. The emergency reception plan enabled the accommodation of a large number of asylum-seekers who had arrived in a short period of time. Asylum-seekers, however, did not have access to many of the minimum services foreseen by law for their reception. Moreover, the quality of reception measures, which were meant to be provided until the end of the 'state of emergency', did not improve significantly over time. The Monitoring and Assistance Group established by the Department of Civil Protection in July 2011 in order to support the implementation of the emergency reception plan was discontinued in October 2011 prior to its phasing out.

Reception conditions deteriorated also in the government reception centers for asylum-seekers (CARAs), mainly due to overcrowding, as the turn-over from the centers was slowed down by the prolonged reception of groups of third country national asylum-seekers who had arrived from Libya within the context of 'North Africa Immigration Emergency', and by an increased number of asylum applications, resulting in a longer asylum procedures. The reception capacity was thus further strained and the Ministry of Interior has been struggling to identify spaces for the accommodation of newly arrived asylum-seekers ever since. Moreover, reception

standards in government centers (CARAs, CDAs and CIEs) declined also because of serious funding constraints, contributing to a situation in which, since 2011, contracts for the management of these facilities have been awarded exclusively on the basis of the lowest-priced offer for the provision of services, with quality considerations not being taken sufficiently into account.

Although sea arrivals from Libya came close to a complete halt by August 2011, no phasing-out strategy from the emergency reception plan was put in place for over a year. The exit strategy adopted in September 2012 foresaw, *inter alia*, that failed asylum-seekers, regardless of their continued presence in the emergency reception system, be granted a one year residence permit on humanitarian grounds, and based on a file review by the Territorial Commissions.

At the beginning of 2013, the Ministry of Interior took over responsibility for the emergency reception plan from the Department of Civil Protection, and extended reception measures until the end of February 2013. Several thousand third country nationals, whose asylum applications had been rejected but who had received a one year residence permit on humanitarian grounds, left the reception facilities before this date. Those who were still staying in the reception facilities were paid a cash contribution of 500 EUR and their reception measures ended. However, the Ministry of Interior instructed the local Prefectures to extend reception measures for persons with special needs and asylum-seekers whose procedure was still pending.

Official data concerning the socio-economic integration of this specific caseload are not available. Nevertheless, their self-reliance remains a concern after the end of the emergency reception plan. This is mainly because of the poor quality of reception services, the delayed clarification of their legal status, and, more broadly, because of the economic situation in Italy. Moreover, an Assisted Voluntary Return (AVR) programme for some 600 persons was introduced with significant delay and provided limited incentives and support for the return to their countries of origin.

While Italy committed significant efforts and financial resources to respond to the unexpected number of sea arrivals in 2011, the emergency reception plan put in place in response to the 'North Africa Immigration Emergency' highlighted longstanding flaws in the reception system, including the lack of strategic and structural planning and the limits of an emergency approach. In UNHCR's view, it illustrated the need for a consolidated and coordinated national reception system. The gaps which have emerged over time placed additional strain on the reception system as a whole, leaving Italy unprepared to respond adequately to emergency situations when they occur, as was the case in 2011.

To manage the phasing-out of the emergency reception plan, a National Coordination Group was established at the end of 2012. It is chaired by the Ministry of Interior and comprises the Ministry of Labor, the Regions, the Italian National Association of Municipalities (ANCI) and the Italian Union of Provinces (UPI). While not a member, UNHCR has been regularly invited to attend the meetings of the Group since October 2012, as has IOM. The National Coordination Group brings together the most relevant institutional actors and was recently recognized as a permanent body, tasked to plan and coordinate interventions on reception and integration of asylum-seekers and refugees.

Based on the recommendations of the Group, as part of the exit strategy from the emergency reception plan, the Ministry of Interior has pledged to increase the reception capacity of the System of Protection for Asylum-Seekers and Refugees (SPRAR) from 3,000 to 5,000 places, with the possibility to a further extension up to 8,000 in case of significant influxes. UNHCR welcomes the decision of the Ministry

of Interior but underlines the need for a comprehensive reform of the reception system, which should also address post-recognition support to recognized refugees. In fact, although government centres and SPRAR projects (which can host both asylum-seekers and recognized refugees), are able to provide for the reception needs of a significant number of asylum-seekers, support measures for recognized refugees remain vastly insufficient. The necessary reforms, which require strong political commitment and sound governance, should also aim to systematize those improvements to the reception system which have been carried out in recent years mainly through pilot projects and time-limited interventions.

With regard to the reception of asylum-seekers, significant differences continue to exist in different parts of Italy, depending on the reception facilities and, more broadly, local practices. The practice of limiting reception in CARAs to a maximum of six months, which had been applied to asylum-seekers, irrespective of their ability to provide for themselves, and prior to having received a first instance decision on their applications within this period appears to have been discontinued. This being said, this development does not address the possible need for continued accommodation in reception facilities of asylum-seekers who, pending a decision on appeal against a negative decision, and while entitled to work, may be unable to secure an adequate standard of living, including accommodation, outside reception facilities.

Italy has transposed the provision of the EU Reception Directive concerning the right to work of asylum-seekers more favourably than the minimum standards required by the Directive. According to Art. 11 of Legislative Decree No. 140/2005, if the asylum procedure is not completed within six months, the stay permit is renewed for another six months and the asylum-seeker is allowed to work. Pilot initiatives, including basic work-skills assessments, have been carried out in government centers in order to facilitate access to the labor market for asylum-seekers, but they have not been mainstreamed in the context of reception services. Support measures for job-seeking concern mainly asylum-seekers for whom the asylum procedure exceeds six months in duration, such as under the Dublin Regulation procedure or when served with a first instance negative decision. Such support is absent in the CARAs, while it is foreseen in SPRAR projects.

UNHCR has also continued to receive reports of instances in which asylum-seekers do not have immediate access to reception measures when they apply for international protection, but instead receive them only weeks or months later. The delays are the result of structural gaps and lack of capacity in the existing reception system, slow administrative procedures and problems in the registration of the asylum applications. Although local differences exist, alternative measures to provide for the subsistence of asylum-seekers are rarely available in case of delays. Time-limited financial support, foreseen in cases in which accommodation in reception facilities is delayed (Art. 6 Par. 7 of Legislative Decree No. 140/2005) is, to UNHCR's knowledge, not provided. UNHCR is not aware of instances in which asylum-seekers have challenged these delays before a court.

Dublin transferees, registered as asylum-seekers, generally have access to transit accommodation centers upon return to Italy, available in Milan (35 places), Rome (150 places), Venice (40), Bari (20). Beneficiaries of international protection, granted protection in Italy prior to their departure, however, do not have access to those centers, when returned under the Dublin Regulation. While additional transit accommodation places have been made available in Milan (25 places) and Rome (80 for adult men) for asylum-seekers arriving by air, these places are in practice insufficient as Dublin transferees may have to wait for some days at airports, until the

transfer of other asylum-seekers from such transit accommodation centers to SPRAR projects or a CARA is effected. Furthermore, it may also happen that Dublin transferees, upon arrival in Italy, spend several days at airports until placed, even if a space in a reception center had been identified, at the moment Italy had declared its competence under the Dublin Regulation.

Pursuant to Art. 8 of Legislative Decree No. 140/2005 and other relevant provisions, the specific needs of applicants and the members of their family must be taken into account for reception. Moreover, applications of asylum-seekers with special needs are, in principle, prioritized. Due to the lack of available places in dedicated facilities or SPRAR projects, the number of asylum-seekers with special needs who, despite their situation, have to remain in the CARAs during the asylum procedure, without assistance specific to their needs, has increased compared to previous years. This problem continues also after recognition and conferral of some form of protection. Gaps persist in the form of low levels of coordination among stakeholders, inability to provide adequate legal and social support as well as the necessary logistical follow-up, as well as a poor referral. These problems have worsened to a certain extent since 2011, due to the general deterioration in reception conditions and budget cuts in the social welfare system.

Asylum-seekers who have been granted a stay permit have the right and duty to enroll in the National Health System (NHS). This requirement is, in general, complied with by asylum-seekers hosted in SPRAR projects. However, asylum-seekers who stay on in the CARAs upon expiration of the initial period of 20 - 35 day foreseen by law, due to the limited number of available places in SPRAR projects, are not systematically provided with a stay permit, and cannot thus enroll in the NHS. Moreover, during the reception period in the CARAs, the management is required to provide services as per the Decree of the Ministry of Interior of 21 November 2008. The quality of these services, including the necessary support to access health care facilities outside the centre, varies in different parts of Italy and reflects the overall lack of harmonization in reception standards.

Furthermore, some cases have come to UNHCR's attention in which asylum-seekers, including Dublin transferees, are not immediately issued the 3-month residence permit upon expiration of the mandatory period of reception within the CARAs, as foreseen by the law.

In part to respond to longstanding gaps, at the end of 2012, the Ministry of Interior has agreed to set up, in the context of the *Praesidium* project, a pilot monitoring scheme in government centres. In each location where government centers are located, a monitoring Commission has been established, chaired by the local Prefecture and comprised of the Provincial Police HQs and *Praesidium* partner organizations. In UNHCR's view, this is an initial attempt to develop more systematic monitoring and quality control systems, which would require a strong ownership by the Prefectures and willingness of the Ministry of Interior to ensure adequate follow-up.

...

RECOMMENDATIONS

...

Reception conditions for asylum-seekers

23. UNHCR calls on the Italian Government to ensure adequate reception capacity for asylum-seekers throughout the country, including when significant numbers of

arrivals occur, so that all asylum-seekers lacking the means to provide for themselves are able to access adequate reception, in line with provisions of the EU Directive on Reception Conditions. The reception system needs to be more flexible, so as to be able to respond to fluctuations in the numbers of asylum applications and to the actual length of the asylum procedure.

24. Reception conditions and standards in all reception facilities need to be harmonized at an acceptable level of quality. Given the structural differences between the various types of facilities (CARAs, CDAs, SPRAR projects, metropolitan area facilities and facilities established in the context of the emergency reception plan), the current approach could be reviewed in order to ensure adequate standards for all asylum-seekers. Such a review should also examine ways to avoid hosting asylum-seekers in large facilities for long periods of time.

25. Measures are also needed to ensure services provided to asylum-seekers and refugees are tailored to their distinct needs, offering the former the assistance they need pending a decision on their status, whilst providing refugees with the support they require to facilitate their integration in Italian society.

...

27. UNHCR encourages the Italian authorities to establish mechanisms aimed at consulting asylum-seekers hosted in reception facilities and at facilitating their active participation, to introduce complaints mechanisms and to ensure that gender differences, age and individual needs are taken into account.

28. UNHCR calls upon the Italian Government to strengthen its existing monitoring and quality control systems and to consider introducing new, more efficient systems. ..."

48. These recommendations were a follow-up to similar recommendations made by UNHCR in 2012, which the Court took into consideration in its decision in *Mohammed Hussein* (cited above, § 43).

D. Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, published on 18 September 2012, following his visit to Italy from 3 to 6 July 2012 (CommDH(2012)26)

49. This report was examined by the Court in its decision in *Mohammed Hussein* (cited above, § 44). The Court deems it useful to refer here to the relevant passages:

"140. The framework for the reception of migrants remains largely unchanged since the last visit of the Commissioner's predecessor to Italy in May 2011. As noted in the 2011 report, asylum seekers in Italy can be referred to different types of accommodation, including CARAs (*Centri d'accoglienza per richiedenti asilo*, open first-reception centres for asylum seekers), CDAs (*Centri di accoglienza*, reception centres for migrants) and CPSAs (*Centri di primo soccorso ed accoglienza*, first aid and reception centres).

141. Concerns have been raised about the conditions in some of the reception centres. For example, having visited a CARA during its visit in September 2008, the European Committee for the Prevention of Torture (CPT) criticised the fact that this centre was located in prison-like premises. While the Commissioner is aware that the

Italian government defined minimum standards for tenders for the management of these facilities, interlocutors voiced their concern about the high variability in the standards of reception centres in practice, which may manifest itself in, for example: a numerical shortage and a lack of adequate training of staff; overcrowding and limitations in the space available for assistance, legal advice and socialisation; physical inadequacy of the facilities and their remoteness from the community; or difficulties in accessing appropriate information.

142. The inconsistency of the standards in reception centres, as well as the lack of clarity in the regime applicable to the migrants kept in them, became a major concern following the declaration of the 'North African emergency' in 2011. Under the emergency plan, the existing reception capacity was enhanced in co-operation with Italian regions in order to deal with the sharp increase in arrivals from the coasts of North Africa (34,120 asylum applications were submitted in Italy in 2011, a more than threefold increase compared to the 10,050 applications in 2010). The Commissioner acknowledges the strain put on the Italian reception system in 2011 and commends the efforts of the central and regional authorities to provide the additional reception capacity needed to cope with the effects of the significant increase in migratory flows.

143. However, the efficiency and viability of an emergency-based approach to asylum and immigration has been questioned by many interlocutors. The 2011 report had already expressed particular concerns over the provision of legal aid, adequate care and psychosocial assistance in the emergency reception centres, and over difficulties relating to the speedy identification of vulnerable persons and the preservation of family unity during transfers. These concerns are still valid, and human rights NGOs pointed to reports of significant problems at some of these facilities, in particular in Calabria and Lombardy. Delays and a lack of transparency in the monitoring of these centres have also been reported, both by NGOs and UNHCR.

144. As regards the effects of the end of the emergency period foreseen on 31 December 2012, the Commissioner welcomes the information provided by the Minister of the Interior that the examination of the outstanding asylum applications (estimated at around 7-8,000) will be concluded before that date. He was informed that 30% of applicants having arrived during the emergency period were granted protection. The Commissioner also commends the significant efforts of the Italian authorities to improve the examination procedure applied by Territorial Commissions, within which UNHCR is represented, noting however that the lack of expertise of some members of these commissions is perceived to be a problem.

145. However, the Commissioner understands that there will be no further support for recognised beneficiaries of international protection beyond this date, the authorities considering that the vocational training they will have received by then will allow them to integrate if they choose to remain in Italy. The Commissioner is concerned about this eventuality, in the light of the serious shortcomings he identified in the integration of refugees and other beneficiaries of international protection (see below). He received no information about the position of persons whose judicial appeals to a negative asylum decision will still be ongoing by that date.

146. As noted in the 2011 report, an additional feature of the Italian system is the SPRAR (*Sistema di protezione per richiedenti asilo e rifugiati*), a publicly funded network of local authorities and non-profit organisations, which accommodates asylum seekers, refugees or other beneficiaries of international protection. In contrast to CARAs and emergency reception centres, which tend to be big institutions hosting significant numbers of persons at one time, the SPRAR is composed of approximately

150 smaller-scale projects and was seen by the Commissioner's interlocutors to function much better, as it also seeks to provide information, assistance, support and guidance to beneficiaries to facilitate socio-economic inclusion.

147. However, the capacity of this network, which represents a second level of reception after the frontline reception centres, is extremely limited (approximately 3,000 places) in comparison to the numbers of asylum seekers and refugees in Italy. As a result, asylum seekers are often kept in CARAs for extended periods of time, as opposed to being transferred to a SPRAR project after the completion of identification procedures as originally intended. In some cases this could last up to six months, whereas it has been reported to the Commissioner that asylum seekers received under the emergency reception plan have stayed in reception centres even beyond six months.

148. The Commissioner observes that the problem of the living conditions of asylum seekers in Italy has been receiving increasing attention in other EU member states, due to the growing number of legal challenges by asylum seekers to their transfer to Italy under the Dublin Regulation. He notes that a series of judgments by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards. The European Court of Human Rights has also been receiving applications alleging possible violations of Article 3 as a result of Dublin transfers to Italy. ..."

E. Information provided by the International Organization for Migration in a press briefing note of 28 January 2014

50. In a press briefing note dated 28 January 2014 the International Organization for Migration stated, *inter alia*, as follows:

"... Over 45,000 migrants risked their lives in the Mediterranean to reach Italy and Malta in 2013. The arrivals are the highest since 2008, with the exception of 2011 - the year of the Libyan crisis.

More than 42,900 landed in Italy and 2,800 landed in Malta. Of those who arrived in Italy, over 5,400 were women and 8,300 were minors – some 5,200 of them unaccompanied. Most of the landings took place in Lampedusa (14,700) and along the coast around Syracuse in Sicily (14,300).

'This year migration towards Italy's southern shores tells that there has been an increase in the number of people escaping from war and oppressive regimes,' says José Angel Oropeza, Director of IOM's Coordinating Office for the Mediterranean in Rome.

'Most of the migrants came from Syria (11,300), Eritrea (9,800) and Somalia (3,200). All of them were effectively forced to leave their countries and they have the right to receive protection under the Italian law,' he notes.

Landings are continuing in January 2014. On 24 January, 204 migrants were rescued by the Italian navy in the Straits of Sicily and landed in Augusta, close to Syracuse.

'The real emergency in the Mediterranean is represented by those migrants who continue to lose their lives at sea. They disappear and their loss simply remains unknown. The identification of the bodies is still a humanitarian issue to be resolved. Numerous relatives of the victims are still waiting to know if their loved ones are among the bodies collected after October's shipwrecks,' says Oropeza.

Over 20,000 people have died in the past twenty years trying to reach the Italian coast. They include 2,300 in 2011 and around 700 in 2013.

'Migrants and refugees are not pawns on the chessboard of humanity. They are children, women and men who leave or who are forced to leave their homes for various reasons. The reality of migration needs to be approached and managed in a new, equitable and effective manner,' said Pope Francis, in his speech for the World Day of Migrants and Refugees celebrated on January 19th by the Holy See.

'We have become too used to seeing these people who are escaping from war, persecution, poverty and hunger as mere statistics. We urgently need to find ways to stop these people from dying at sea when all they are trying to do is to achieve a better life. We need to find ways to make migration safe and to give these people real choices,' says Oropeza.

IOM works in Lampedusa, Sicily, Calabria and Puglia with UNHCR, Save the Children and the Italian Red Cross, as part of the Italian Ministry of the Interior-financed Praesidium project, which aims to help irregular migrants arriving in Italy by sea."

V. RELEVANT COMPARATIVE LAW

A. Relevant German case-law

51. The Court notes that several German administrative courts, for instance the Stuttgart Administrative Court (on 4 February 2013), the Gelsenkirchen Administrative Court (on 17 May and 11 April 2013) and the Frankfurt am Main Administrative Court (on 9 July 2013) have ruled against the return of asylum seekers to Italy under the Dublin Regulation, irrespective of whether they belonged to categories deemed to be vulnerable. In its judgment of 9 July 2013 (no. 7 K 560/11.F.A) in particular, the Frankfurt Administrative Court held that the shortage of places in Italian reception centres and the living conditions there would be liable to entail a violation of Article 3 of the Convention if a 24-year-old Afghan asylum seeker were sent back from Germany to Italy. In its judgment the Administrative Court held as follows:

(Translation by the Registry)

"25. The court is convinced that systemic deficiencies exist in the reception conditions for asylum seekers in Italy which constitute substantial grounds for believing that the applicant, if he were to be transferred to that country under the Dublin Regulation, would run a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights (see the ECJ judgment of 21 December 2011 – C-411/10, *N. S. v Secretary of State for the Home Department and Others*, EuGRZ 2012 24, § 94).

...

28. The reception and accommodation system in Italy is very confusing and the Italian authorities themselves seem to lack a full overview of its capacity and effectiveness (see the December 2012 expert report by Borderline-europe e.V. to the

Braunschweig Administrative Court, p. 37). The Italian Government have admitted these shortcomings even before the European Court of Human Rights (see *Mohammed Hussein and Others*, cited above, § 45, second sub-paragraph).

...

49. The court does not possess any reliable information or reports capable of refuting, or even casting doubt on, the above finding. First of all, according to the case-law of both the European Court of Human Rights and the European Court of Justice, the rules on responsibility under the Dublin Regulation do not cease to apply only if it is established with certainty that the asylum seeker in question will be exposed to inhuman or degrading treatment if he is transferred to Italy. The facts do not support such a conclusion. Italy certainly has a number of acceptable reception facilities for asylum seekers and it can be assumed on the basis of the reports that at least one asylum seeker in two can be accommodated in accordance with the requirements of the Reception Directive. However, in view of the case-law cited above, it is sufficient for the person concerned to run a real risk of being subjected to inhuman or degrading treatment. Given that the chances of receiving accommodation that conforms to the above-mentioned requirements are at best 50%, it must in any event be concluded that such a risk exists. ..."

B. Relevant case-law of the Supreme Court of the United Kingdom

52. In a judgment of 19 February 2014 ([2014] UKSC 12), the Supreme Court of the United Kingdom held that, irrespective of whether "systemic deficiencies" existed in the reception system for asylum seekers in Italy, the Court of Appeal should examine on a case-by-case basis the risk that appellants would be subjected to treatment contrary to the Convention if they were returned to Italy. Lord Kerr, with whom Lord Neuberger (President), Lord Carnwath, Lord Toulson and Lord Hodge agreed, stated as follows:

"...

42. Violation of article 3 does not require (or, at least, does not necessarily require) that the complained of conditions said to constitute inhuman or degrading conditions are the product of systemic shortcomings. It is self-evident that a violation of article 3 rights is not intrinsically dependent on the failure of a system. If this requirement is grafted on to the presumption it will unquestionably make its rebuttal more difficult. And it means that those who would suffer breach of their article 3 rights other than as a result of a systemic deficiency in the procedure and reception conditions provided for the asylum seeker will be unable to avail of those rights in order to prevent their enforced return to a listed country where such violation would occur. That this should be the result of the decision of CJEU in *NS* [*N. S. v Secretary of State for the Home Department* and *M. E., A. S. M., M. T., K. P., E. H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* (CJEU C-411/10 and C-493/10)] would be, as I have said, remarkable.

...

46. In paras 76-80 of its judgment, CJEU sets out the background to the need for mutual confidence among member states about the obligation of those states that participate in the Common European Asylum System to comply with fundamental

rights including those based on the Convention relating to the Status of Refugees (the 1951 Convention) ((1951) Cmd 9171) and its 1967 Protocol ((1967) Cmnd 3906). In these paras the court also dealt with the assumption that needed to be made that the states will be prepared to fully comply. These twin considerations (the importance of the obligations and the assumption that they will be fulfilled) underpin the system – a system designed to 'avoid blockages ... as a result of the obligation on state authorities to examine multiple claims by the same applicant, and ... to increase legal certainty with regard to the determination of the state responsible for examining the asylum claim and thus to avoid forum shopping, it being the principal objective ...to speed up the handling of claims in the interests both of asylum seekers and the participating member states.' – para 79.

...

48. Before examining what CJEU said on this issue, it can be observed that an exclusionary rule based only on systemic failures would be arbitrary both in conception and in practice. There is nothing intrinsically significant about a systemic failure which marks it out as one where the violation of fundamental rights is more grievous or more deserving of protection. And, as a matter of practical experience, gross violations of article 3 rights can occur without there being any systemic failure whatsoever.

49. One must be careful, therefore, to determine whether CJEU referred to systemic failures in order merely to distinguish these from trivial infringements of the various European asylum directives or whether it consciously decided to create a new and difficult-to-fulfil pre-condition for asylum-seekers who seek to have recourse to their article 3 rights to prevent their return to a country where it can be shown that those rights will be violated. For there can be little doubt that such a condition would indeed be difficult to fulfil. Some of the facts in the present cases exemplify the truth of that proposition. ...

...

The correct approach

58. I consider that the Court of Appeal's conclusion that only systemic deficiencies in the listed country's asylum procedures and reception conditions will constitute a basis for resisting transfer to the listed country cannot be upheld. The critical test remains that articulated in *Soering v United Kingdom* (1989) 11 EHRR 439. The removal of a person from a member state of the Council of Europe to another country is forbidden if it is shown that there is a real risk that the person transferred will suffer treatment contrary to article 3 of ECHR.

...

63. Where ... it can be shown that the conditions in which an asylum seeker will be required to live if returned under Dublin II are such that there is a real risk that he will be subjected to inhuman or degrading treatment, his removal to that state is forbidden. When one is in the realm of positive obligations (which is what is involved in the claim that the state has not ensured that satisfactory living conditions are available to the asylum seeker) the evidence is more likely to partake of systemic failings but the search for such failings is by way of a route to establish that there is a real risk of article 3 breach, rather than a hurdle to be surmounted.

64. There is, however, what Sales J described in *R (Elayathamby) v Secretary of State for the Home Department* [2011] EWHC 2182 (Admin), at para 42(i) as 'a significant evidential presumption' that listed states will comply with their

Convention obligations in relation to asylum procedures and reception conditions for asylum seekers within their territory. It is against the backdrop of that presumption that any claim that there is a real risk of breach of article 3 rights falls to be addressed.

The first instance decisions

65. In his first judgment in *EM* [2011] EWHC 3012 Admin, delivered on 18 November 2011, Kenneth Parker J referred approvingly to the statement in *R v Home Secretary Ex p Adan* [1999] 3 WLR 1274 to the effect that a system which will, if it operates as it usually does, provide the required standard protection for the asylum seeker will not be found to be deficient because of aberrations. He then said this at para 12:

'Following *KRS,* the existence of such a system is to be presumed. It is for the claimant to rebut that presumption, by pointing to a reliable body of evidence demonstrating that Italy systematically and on a significant scale fails to comply with its international obligations to asylum seekers on its territory. (original emphasis [KRS judgment])'

66. 'Systematic' is defined as 'arranged or conducted according to a system, plan, or organised method' whereas the definition of the word 'systemic' is 'of or pertaining to a system'. Taken in context, I believe that Kenneth Parker J's statement that it had to be shown that there was a systematic and significant failure to comply with international obligations meant that the omissions were on a widespread and substantial scale. His approach is rather different from that of the Court of Appeal, therefore, in that it does not appear to suggest that it needed to be shown that there were inherent deficiencies in the system, merely that there were substantial operational problems. This approximates (at least) to what I consider is the true import of the decision in *NS*. On one view, therefore, Kenneth Parker J's decision is in keeping with the correct test and his decision should stand.

67. For two reasons, however, I have decided that this would not be the correct disposal. In the first place the Court of Appeal took a different view from that of Kenneth Parker J as to the effect of the evidence. As I pointed out, (in paras 26 and 31 above) the court indicated that, but for the effect of *NS*, it would have been bound to conclude that there was a triable issue in all four cases as to whether return to Italy entailed a real risk to exposing the appellants to inhuman or degrading treatment contrary to article 3 of ECHR. Secondly, there is an issue as to whether Kenneth Parker J's approach accords precisely with that in *Soering*. In that case ECtHR had said that an extraditing contracting state will incur liability under the Convention if it takes action 'which has as a direct consequence the exposure of an individual to proscribed ill-treatment'. In order to rebut the presumption a claimant will have to produce sufficient evidence to show that it would be unsafe for the court to rely on it. On proper analysis, it may well be that Kenneth Parker J was not suggesting that there was a requirement that a person subject to an enforced return must show that his or her risk of suffering ill-treatment contrary to article 3 of EHCR was the result of a significant and systematic omission of the receiving state to comply with its international obligations. It seems to me, however, that, to impose such an obligation in every instance would go beyond the *Soering* requirement. Since there was no reference to *Soering* in Kenneth Parker J's judgment and in light of this court's re-assertion of the test articulated in that case, I consider that it would be sensible to have the matter revisited.

68. ... Although one starts with a significant evidential presumption that listed states will comply with their international obligations, a claim that such a risk is present is not to be halted *in limine* solely because it does not constitute a systemic or systematic

breach of the rights of refugees or asylum seekers. Moreover, practical realities lie at the heart of the inquiry; evidence of what happens on the ground must be capable of rebutting the presumption if it shows sufficiently clearly that there is a real risk of article 3 ill-treatment if there is an enforced return.

Disposal

...

70. That examination can only be conducted properly if there is an assessment of the situation in the receiving country. In appropriate circumstances, this calls for a rigorous assessment – see *Chahal v United Kingdom* (1997) 23 EHRR 413 at para 96 and *Vilvarajah v United Kingdom* (1991) 14 EHRR 248 at para 108. The court must examine the foreseeable consequences of sending a claimant to the receiving country bearing in mind both the general situation there and the claimant's personal circumstances, including his or her previous experience – see *Vilvarajah* at para 108 and *Saadi v Italy* (2009) 49 EHRR 30 at para 130. This approach has been followed by decisions of ECtHR subsequent to *MSS – Hussein v Netherlands* Application no. 27725/10 at paras 69 and 78 and *Daytbegova v Austria* Application no. 6198/12 at paras 61 and 67-69."

THE LAW

53. Relying on Article 3 of the Convention, the applicants submitted that if they were returned to Italy "in the absence of individual guarantees concerning their care", they would be subjected to inhuman and degrading treatment linked to the existence of "systemic deficiencies" in the reception arrangements for asylum seekers in Italy. Article 3 provides:

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

54. Under Article 8 of the Convention the applicants submitted that their return to Italy, where they had no ties and did not speak the language, would be in breach of their right to respect for their family life. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

55. The Court, as master of the characterisation to be given in law to the facts of the case (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012; *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I ; *Halil Yüksel Akıncı v. Turkey*, no. 39125/04, § 54, 11 December 2012), considers it more appropriate to

examine the complaint concerning the applicants' reception conditions in Italy solely from the standpoint of Article 3 of the Convention.

56. Relying on Article 13 of the Convention taken in conjunction with Article 3, the applicants complained that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family in the procedure for their return to Italy, which they considered to be unduly formalistic and automatic, not to say arbitrary. Article 13 of the Convention provides:

> "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."

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The parties' submissions

1. The applicants

57. The applicants maintained that the reception arrangements for asylum seekers in Italy were beset by systemic deficiencies, relating to: difficulties in gaining access to the reception facilities owing to the slowness of the identification procedure; the accommodation capacity of those facilities, which they regarded in any case as insufficient; and the inadequate living conditions in the available facilities. In support of their arguments, the applicants referred to the findings of the following organisations: the Swiss Refugee Council (SFH-OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, Berne, October 2013 ("the SFH-OSAR report"); PRO ASYL, Maria Bethke, Dominik Bender, *Zur Situation von Flüchtlingen in Italien*, 28 February 2011, www.proasyl.de ("the PRO ASYL report"); Jesuit Refugee Service-Europe (JRS), *Dublin II info country sheets. Country: Italy*, November 2011 ("the JRS report"); Office of the United Nations High Commissioner for Refugees, *UNHCR Recommendations on important aspects of refugee protection in Italy*, July 2012 ("the 2012 UNHCR Recommendations"); report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, published on 18 September 2012 following his visit to Italy from 3 to 6 July 2012 ("the Human Rights Commissioner's 2012 report); and the European network for technical cooperation on the application of the Dublin II regulation, *Dublin II Regulation National Report on Italy*, 19 December 2012 ("the Dublin II network 2012 report").

(a) Slowness of the identification procedure

58. The applicants submitted that asylum seekers' entitlement to accommodation in the CARAs or in the facilities belonging to the SPRAR network (*Sistema di protezione per richiedenti asilo e rifugiati*) "[took] effect only after" formal registration by the police of the asylum application (*verbalizzazione*). They contended that, in practice, there was sometimes a time lag of several weeks or even several months between the time when the persons concerned reported to the immigration department of the competent police headquarters and the registration of the application. In the meantime, the persons concerned were homeless. In the applicants' submission, a formal finding to that effect had been made by the Frankfurt Administrative Court in a judgment of 9 July 2013 (see paragraph 51 above), on the basis of information supplied by the SFH-OSAR and by the organisation Borderline-europe. Hence, in their view, there were shortcomings in the implementation of the administrative procedure laid down by law. They acknowledged, however, that the situation was somewhat different with regard to asylum seekers returned to Italy under the Dublin Regulation, who in theory had immediate access not just to the CARAs and the facilities belonging to the SPRAR, but also to the facilities provided by the municipal authorities and those set up under the projects financed by the 2008-2013 European Refugee Fund (ERF).

(b) Capacity of the reception facilities

59. The applicants acknowledged that the facilities financed by the ERF were intended for persons transferred under the Dublin Regulation, but submitted that the number of places available was insufficient in relation to the number of transferees. Citing the SFH-OSAR report, they contended that in 2012 there had been only 220 places available in total for 3,551 transferees, of whom 2,981 had come from Switzerland.

60. As to availability in the CARAs and in the facilities belonging to the SPRAR, the applicants maintained that it was difficult for "Dublin" returnees to gain access to those facilities.

61. With regard to the facilities belonging to the SPRAR network, the applicants – again citing the SFH-OSAR report – maintained that only 5% of the persons housed there in 2012 had been transferred under the Dublin Regulation and that, of those, only 6.5% had come from Switzerland, although transfers from that country accounted for 85% of the total number of "Dublin" transfers to Italy. The applicants inferred from this that large numbers of people returned under the "Dublin" procedure were left without accommodation. They added that, according to the SFH-OSAR, there had been numerous cases in which families transferred to Italy had not been housed together.

62. The applicants also supplied data concerning the accommodation of asylum seekers in general, irrespective of whether or not they were

"Dublin" returnees. In that connection they submitted that 34,115 asylum applications had been made in Italy in 2011 and 15,715 in 2012, with a rise in the figures in 2013. According to the SFH-OSAR report there had been 64,000 refugees living in Italy in 2012. According to the same source, there had been only 8,000 places in the CARAs in 2012, with waiting lists so long that the majority of applicants had no realistic prospect of gaining access.

63. As to the facilities belonging to the SPRAR, the SFH-OSAR report stated that the number of places was 4,800 and that 5,000 people were on the waiting list. The same report noted that, according to two other organisations (Caritas and the JRS), only 6% of the persons housed in the SPRAR facilities – where, moreover, the maximum stay was six months – managed to find work and integrate professionally into Italian society.

64. With regard to the accommodation centres run by the municipal authorities, which were open to any person suffering hardship and not just to asylum seekers, the number of places also fell far short of what was needed. According to the SFH-OSAR report there were 1,300 places in Rome, with a waiting list of 1,000 and an average waiting time of three months. In Milan, there were only 400 places and families were systematically split up. The applicants added that, while it was true that some municipal authorities made social housing available to families, the number of places was clearly insufficient and the waiting list was around ten years. The accommodation offered by religious institutions and NGOs was also insufficient to meet demand. Lastly, asylum seekers had no access to private accommodation, as the economic situation in Italy, with rising unemployment, meant that they were unable to find work.

65. In conclusion, the applicants argued that, owing to the shortage of places in the various types of reception facilities, large numbers of asylum seekers, including families with small children, were forced to live in insalubrious squats and other makeshift accommodation, or simply on the streets. By way of example, according to the SFH-OSAR report there were between 1,200 and 1,700 people housed in precarious conditions in Rome, and between 2,300 and 2,800 people sleeping on the streets in Italy as a whole.

(c) Living conditions in the available facilities

66. The applicants contended that conditions in the CARAs in particular were contrary to the provisions of the Reception Directive. They referred to the findings of the organisation Borderline-europe, according to which, in the CARAs in Trapani (Sicily), five or six people shared a space of 15 sq m. and were obliged to sleep on mattresses on the floor. These centres also had inadequate sanitation facilities and lacked privacy. The latter was even a recurring problem in the CARAs and had particularly negative consequences for children, especially when the family unit was broken up as happened systematically in Milan, for instance. In the CARA in Mineo

(Sicily), the occupants reportedly received no spending money, the sanitation facilities were poor, there was inadequate access to health care and criminal activity and prostitution were rife.

67. In their observations the applicants referred in particular to the 2012 UNHCR Recommendations and the Human Rights Commissioner's 2012 report. They also attached considerable importance to the fact that the Frankfurt Administrative Court, in its judgment of 9 July 2013 (see paragraph 51 above), had held that 50% of asylum seekers risked being subjected to ill-treatment if returned to Italy, owing to reception conditions that did not comply with the European directives.

68. Lastly, the applicants submitted that the Swiss Government had not produced any document certifying that attempts had been made to find a specific solution for taking charge of the applicants. According to them, no request for minimum guarantees appeared to have been addressed to the Italian authorities, who had not provided any assurances that the applicants would be housed in decent conditions and not separated. They also submitted that the living conditions in the CARA in Bari, where they had spent two days during their stay in Italy, had been unacceptable, particularly owing to the lack of privacy and the violence this caused.

2. The Government

(a) Slowness of the identification procedure

69. The Government did not comment on the difficulties referred to by the applicants with regard to the slowness of the identification procedure.

(b) Capacity of the reception facilities

70. As to the capacity of the reception facilities, the Government submitted that 235 places were reserved in the ERF-financed facilities for asylum seekers facing return under the Dublin Regulation. The Government further stated that the capacity of the SPRAR network would be increased to 16,000 places over the period 2014-2016. They referred mainly to the 2012 UNHCR Recommendations and the Human Rights Commissioner's 2012 report, and to the Court's findings in *Mohammed Hussein*, cited above, and the follow-up decisions in the same vein (*Daytbegova and Magomedova v. Austria* (dec.), no. 6198/12, 4 June 2013; *Abubeker v. Austria and Italy* (dec.), no. 73874/11, 18 June 2013; *Halimi v. Austria and Italy* (dec.), no. 53852/11, 18 June 2013; *Miruts Hagos v. the Netherlands and Italy* (dec.), no. 9053/10, 27 August 2013; *Mohammed Hassan and Others v. the Netherlands and Italy* (dec.), no. 40524/10, 27 August 2013; and *Hussein Diirshi and Others v. the Netherlands and Italy* (dec.), no. 2314/10, 10 September 2013).

(c) Living conditions in the available facilities

71. With regard to living conditions in the available facilities, the Government referred again to the 2012 UNHCR Recommendations and the Human Rights Commissioner's 2012 report, submitting that there were no grounds for finding that the Reception Directive was being systematically violated in Italy. They added that they were unaware of any "Dublin" States which refused returns to Italy as a general rule and that neither UNHCR nor the Human Rights Commissioner had sought leave to intervene in the present proceedings, unlike in the case of *M.S.S.*

72. With reference to the applicants' specific case the Government stated that on 22 November 2011 the FMO had submitted a request to the Italian authorities to take charge of the applicants in accordance with Article 17 of the Dublin Regulation. No explicit reply had been received within the two months provided for by Article 18(1) of the Regulation; in the Government's submission, this was regarded as implicit acceptance and had been customary at the time between Switzerland and Italy.

73. The practice had since changed and Italy now replied explicitly to requests to take charge emanating from Switzerland.

74. In general, a transfer under the "Dublin" procedure was a measure prepared a long time in advance and not one used to deal with an emergency situation, so that it was possible to take account of the situation of persons requiring special protection, such as families with young children, before their arrival on Italian territory. Cooperation with the Italian authorities in this area worked well, owing in particular to the presence of a Swiss liaison officer in the Dublin department of the Italian Ministry of the Interior. Since the beginning of 2013 the Italian authorities had adopted a new practice consisting of indicating, at the same time as agreeing to take charge of the asylum seeker, the airport and reception facility of destination.

75. In any event, at the hearing of 12 February 2014 the Government stated that they had been informed by the Italian authorities that, if returned to Italy, the applicants would be accommodated in an ERF-financed centre in Bologna. They did not provide any further details concerning the arrangements for transfer and the physical reception conditions envisaged by the Italian authorities.

3. Observations of the Italian, Dutch, Swedish, Norwegian and United Kingdom Governments and of the organisations Defence for Children, the AIRE Centre, ECRE and Amnesty International, third-party interveners

(a) Slowness of the identification procedure

76. According to the observations of the Italian Government, under Article 20 of Legislative Decree no. 25/2008 of 28 January 2008, individuals seeking international protection could be provided with

accommodation in the CARAs for the time necessary for their identification, that is to say, prior to the registration of their asylum application (for a period not exceeding twenty days), and while the territorial commission examined their application (for a period not exceeding thirty-five days). If their application was granted they had access to the SPRAR centres. That being said, Article 6 of Legislative Decree no. 140/2005 of 30 May 2005 provided that, where it had been established that there was a lack of space in the SPRAR centres, asylum seekers who could demonstrate that they lacked any means of subsistence were entitled to remain in the CARAs. The Italian Government did not provide information on any cases where asylum seekers had been forced to wait several weeks or even months before gaining access to a CARA, either before or after they had been identified. They submitted, however, that the average time taken to examine asylum applications had been 72 days in 2012 and 92 days in 2013. The length of time taken was due to the fact that, since each asylum seeker's interview with the territorial commission had to last at least one hour, each of the ten commissions could not, in practice, process more than ten applications a day. A law that had entered into force on 4 September 2013 (no. 97/2013) had enabled some additional sections to be created within the territorial commissions in order to speed up the examination of asylum applications.

77. In common with the Swiss Government, the remaining third-party interveners did not comment on the practical aspects of this matter.

(b) Capacity of the reception facilities

78. In their observations the Italian Government explained that, by a decree of 17 September 2013, the Ministry of the Interior had decided to double the total capacity of the SPRAR network to 16,000 places by the end of the period 2014-2016. The network currently comprised 9,630 places, of which 1,230 had been created since the enactment of the decree. In addition, the prefects of the Sicily region had been requested in a circular of 7 October 2013 to identify additional accommodation facilities for refugees, including in the private sector. To date, approximately forty such facilities had been identified, offering a total of 1,834 places, and a further six were ready to be brought into service in the event of an increase in the influx of refugees. In the first six months of 2013, 14,184 asylum applications had been made (situation at 15 June 2013). Lastly, at the hearing of 12 February 2014, the representative of the Italian Government described the surge in the number of asylum requests registered over the previous two years as "a catastrophic situation".

79. The Dutch, Swedish, Norwegian and United Kingdom Governments endorsed in substance the position of the Swiss Government. Like the latter they observed that, in contrast to the case of Greece, UNHCR had not called for transfers of certain vulnerable groups to Italy to be halted.

80. The Swedish Government observed that Italy and the European Asylum Support Office (EASO) had signed a Special Support Plan on 4 June 2013 aimed at improving reception conditions for asylum seekers. Furthermore, "Dublin" returns to Italy were the subject of a systematic exchange of information between the authorities of the two countries, which was particularly thorough in the case of vulnerable persons and especially unaccompanied children.

81. The United Kingdom Government submitted that the reports to which the applicants referred in their assessment of the situation on the ground, and in particular the PRO ASYL report, often failed to make a distinction between "asylum seekers", "recognised refugees" and "failed asylum seekers". This distinction was critical, however, since the Reception Directive applied only to asylum seekers, whose status was inherently temporary, while the Qualification Directive, which applied to refugees, placed the latter on an equal footing with nationals in terms of access to employment, education and social welfare. The data contained in those reports therefore gave a false picture. By way of example, the United Kingdom Government pointed out that the SFH-OSAR report criticised conditions in the Tor Marancia shelter in Rome, while acknowledging that the shelter accommodated Afghan men with recognised refugee status.

82. The organisation Defence for Children shared the applicants' view that the capacity to accommodate asylum seekers in Italy was clearly insufficient, arguing that this had particularly serious consequences for children, some of whom were forced to live in squats and other insalubrious accommodation. The NGO referred to the information published in the SFH-OSAR report.

(c) Living conditions in the available facilities

83. Like the applicants, the organisation Defence for Children, citing the SFH-OSAR report, contended that several families sent back to Italy under the Dublin Regulation had been separated on their arrival in the reception facilities, particularly in the CARAs. In Milan, this practice was even systematic. In their observations, Defence for Children stressed the concept of the "best interests of the child" as defined by the Convention on the Rights of the Child of 20 November 1989, and submitted that in "Dublin" return cases the social and emotional development of children should be a decisive factor in assessing their "best interests". The NGO referred in particular to Article 6 of the Dublin III Regulation, which came into force on 1 January 2014 (see paragraph 35 above).

84. Defence for Children stressed, in particular, the importance attached by the United Nations Committee on the Rights of the Child to protecting the family environment, and referred to the Court's case-law on the detention of children, particularly migrants, with regard to living conditions. In conclusion, they requested the Court to prohibit the return of children to

Italy on account of the precarious conditions in which asylum seekers were housed there.

85. The AIRE Centre, ECRE and Amnesty International also referred to the concept of the "child's best interests" and submitted that children should only be transferred to other Member States of the European Union if this was in their best interests.

86. The Italian Government confirmed at the hearing of 12 February 2014 that there had been some episodes of violence at the CARA in Bari shortly before the applicants' arrival. However, they denied that families of asylum seekers were systematically split up; this occurred only in a few cases and for very short periods during the first few days when asylum seekers were being taken charge of and identified. In their observations they also stated that asylum seekers belonging to a category considered by the Italian authorities to be vulnerable – which was the case of the applicants, as a family with children – were taken charge of within the SPRAR system, which guaranteed them accommodation, food, health care, Italian classes, referral to social services, legal advice, vocational training, apprenticeships and help in finding their own accommodation.

B. The Court's assessment

87. The Court notes at the outset that, according to the Swiss Government, if they were returned to Italy the applicants would be accommodated in Bologna in a facility belonging to the network financed by the ERF (see paragraph 75 above). Even assuming that this factor raises an issue under Article 37 § 1 (b) or (c) of the Convention, the Court considers that it should be included in its examination of the merits of the application (see paragraph 121 below).

1. Switzerland's responsibility under the Convention

88. The Court notes that, in the present case, Switzerland's responsibility under Article 3 of the Convention is not disputed.

Nevertheless, the Court considers it relevant to observe that, in the case of *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* ([GC], no. 45036/98, § 152, ECHR 2005-VI), it held that the Convention did not prohibit Contracting Parties from transferring sovereign power to an international organisation in order to pursue cooperation in certain fields of activity. The States nevertheless remain responsible under the Convention for all actions and omissions of their bodies under their domestic law or under their international legal obligations (ibid., § 153). State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights in a manner which can be considered at least equivalent to that for which the Convention provides. However, a State will be fully responsible under the Convention

for all acts falling outside its strict international legal obligations, notably where it has exercised State discretion (ibid., §§ 155-57; see also *Michaud v. France*, no.12323/11, §§ 102-04, ECHR 2012).

It is true that, unlike Ireland in the *Bosphorus* case, Switzerland is not a Member State of the European Union. However, under the terms of the association agreement of 26 October 2004 between the Swiss Confederation and the European Community, Switzerland is bound by the Dublin Regulation (see paragraphs 34 to 36 above) and participates in the system established by that instrument.

89. The Court notes that Article 3(2) of the Dublin Regulation provides that, by derogation from the general rule set forth in Article 3(1), each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in the Regulation. This is the so-called "sovereignty" clause (see paragraph 32 above). In such a case the State concerned becomes the Member State responsible for examining the asylum application for the purposes of the Regulation and takes on the obligations associated with that responsibility (see *M.S.S.*, cited above, § 339). By virtue of the association agreement, this mechanism applies also to Switzerland.

90. The Court concludes from this that the Swiss authorities could, under the Dublin Regulation, refrain from transferring the applicants to Italy if they considered that the receiving country was not fulfilling its obligations under the Convention. Consequently, it considers that the decision to return the applicants to Italy does not strictly fall within Switzerland's international legal obligations in the context of the system established by the Dublin Regulation. Accordingly, the presumption of equivalent protection does not apply in this case (see, *mutatis mutandis*, *M.S.S.*, cited above, § 340).

91. Switzerland must therefore be considered to bear responsibility under Article 3 of the Convention in the present case.

2. Admissibility

92. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It therefore declares it admissible.

3. Merits

(a) Recapitulation of general principles

93. The Court reiterates that according to its well-established case-law the expulsion of an asylum seeker by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for

believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 152, ECHR 2008; *M.S.S.*, cited above, § 365; *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 103, Series A no. 125; *H.L.R. v. France*, 29 April 1997, § 34, *Reports* 1997-III; *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII; and *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, ECHR 2007-I).

94. The Court has held on numerous occasions that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *M.S.S.*, cited above, § 219).

95. The Court has also ruled that Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (see *Müslim v. Turkey*, no. 53566/99, § 85, 26 April 2005, and *M.S.S.*, cited above, § 249).

96. In the *M.S.S.* judgment (§ 250), the Court nevertheless took the view that what was at issue in that case could not be considered in those terms. Unlike in the *Müslim* case (cited above, §§ 83 and 84), the obligation to provide accommodation and decent material conditions to impoverished asylum seekers had entered into positive law and the Greek authorities were bound to comply with their own legislation transposing European Union law, namely the Reception Directive. What the applicant held against the Greek authorities in that case was that, because of their deliberate actions or omissions, it had been impossible in practice for him to avail himself of those rights and provide for his essential needs.

97. In the same judgment (§ 251), the Court attached considerable importance to the applicant's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. It noted the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the European Union Reception Directive.

98. Still in *M.S.S.* (§§ 252 and 253), having to determine whether a situation of extreme material poverty could raise an issue under Article 3,

the Court reiterated that it had not excluded "the possibility that the responsibility of the State [might] be engaged [under Article 3] in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity" (see *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

99. With more specific reference to minors, the Court has established that it is important to bear in mind that the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 55, ECHR 2006-XI, and *Popov v. France*, nos. 39472/07 and 39474/07, § 91, 19 January 2012). Children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The Court has also observed that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (see to this effect *Popov*, cited above, § 91).

(b) Application of these principles to the present case

100. The applicants argued in substance that if they were returned to Italy "in the absence of individual guarantees concerning their care" they would be subjected to inhuman and degrading treatment linked to the existence of "systemic deficiencies" in the reception arrangements for asylum seekers.

101. In order to examine this complaint the Court considers it necessary to follow an approach similar to that which it adopted in the *M.S.S.* judgment, cited above, in which it examined the applicant's individual situation in the light of the overall situation prevailing in Greece at the relevant time.

102. It first reiterates its well-established case-law according to which the expulsion of an asylum seeker by a Contracting State may give rise to an issue under Article 3 where "substantial grounds have been shown for believing" that the person concerned faces a "real risk" of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country (see paragraph 93 above).

103. It is also clear from the *M.S.S.* judgment that the presumption that a State participating in the "Dublin" system will respect the fundamental rights laid down by the Convention is not irrebuttable. For its part, the Court of Justice of the European Union has ruled that the presumption that a Dublin State complies with its obligations under Article 4 of the Charter of Fundamental Rights of the European Union is rebutted in the event of "systemic flaws in the asylum procedure and reception conditions for

asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter, of asylum seekers transferred to the territory of that Member State" (see paragraph 33 above).

104. In the case of "Dublin" returns, the presumption that a Contracting State which is also the "receiving" country will comply with Article 3 of the Convention can therefore validly be rebutted where "substantial grounds have been shown for believing" that the person whose return is being ordered faces a "real risk" of being subjected to treatment contrary to that provision in the receiving country.

The source of the risk does nothing to alter the level of protection guaranteed by the Convention or the Convention obligations of the State ordering the person's removal. It does not exempt that State from carrying out a thorough and individualised examination of the situation of the person concerned and from suspending enforcement of the removal order should the risk of inhuman or degrading treatment be established.

The Court also notes that this approach was followed by the United Kingdom Supreme Court in its judgment of 19 February 2014 (see paragraph 52 above).

105. In the present case the Court must therefore ascertain whether, in view of the overall situation with regard to the reception arrangements for asylum seekers in Italy and the applicants' specific situation, substantial grounds have been shown for believing that the applicants would be at risk of treatment contrary to Article 3 if they were returned to Italy.

(i) Overall situation with regard to the reception arrangements for asylum seekers in Italy

106. As regards the overall situation, in its decision in *Mohammed Hussein* (cited above, § 78), the Court noted that the UNHCR Recommendations and the Human Rights Commissioner's report, both published in 2012, referred to a number of failings. According to the applicants, these were "systemic" and stemmed from the slowness of the identification procedure, the inadequate capacity of the reception facilities and the living conditions in the available facilities (see paragraphs 56 to 67 above).

(α) Slowness of the identification procedure

107. As regards the problems allegedly linked to the slowness of the identification procedure, the Court notes that the applicants have already been identified and that the Swiss and Italian authorities now have all the relevant information concerning them. It further observes that it took the Italian authorities only ten days to identify the applicants on their arrival in Stignano, despite the fact that they had supplied a false identity to the police (see paragraph 10 above). Accordingly, this aspect of the applicants'

complaint is no longer directly relevant to the examination of the case and the Court sees no need to dwell on it further.

(β) Capacity of the reception facilities

108. With regard to the capacity of the accommodation facilities for asylum seekers, the applicants based their submissions on detailed studies carried out by non-governmental organisations, according to which the number of asylum applications in Italy was 34,115 in 2011 and 15,715 in 2012, with the figures rising in 2013. According to the SFH-OSAR report, there were 64,000 refugees living in Italy in 2012; however, in 2012 there were only 8,000 places in the CARAs, with waiting lists so long that the majority of applicants had no realistic prospect of gaining access. As to the facilities belonging to the SPRAR network, the SFH-OSAR report stated that there were 4,800 places and 5,000 people on the waiting list. The same report observed that, according to two other organisations, Caritas and the JRS, only 6% of the persons housed in the SPRAR facilities – where, moreover, the maximum stay was six months – managed to find work and integrate professionally into Italian society. With regard to the accommodation centres run by the municipal authorities, which were open to any person suffering hardship and not just to asylum seekers, the number of places also fell far short of what was needed. According to the SFH-OSAR report there were 1,300 places in Rome, with a waiting list of 1,000 and an average waiting time of three months. In Milan, there were only 400 places and families were systematically split up.

109. The Court notes that these figures were not disputed by the Swiss Government, which simply emphasised the efforts undertaken by the Italian authorities to cope as best they could with the uninterrupted flow of asylum seekers into the country over the past few years. In their observations, the Italian Government stated that the measures being taken by the Italian authorities were focused on increasing reception capacity for asylum seekers. In particular, it had been decided in September 2013 to increase the overall capacity of the SPRAR system to 16,000 places over the period 2014-2016; 1,230 places had already been created, bringing the total of available places to 9,630 (see paragraph 78 above).

110. The Court notes that the methods used to calculate the number of asylum seekers without accommodation in Italy are disputed. Without entering into the debate as to the accuracy of the available figures, it is sufficient for the Court to note the glaring discrepancy between the number of asylum applications made in 2013, which according to the Italian Government totalled 14,184 by 15 June 2013 (see paragraph 78 above), and the number of places available in the facilities belonging to the SPRAR network (9,630 places), where – again according to the Italian Government – the applicants would be accommodated (see paragraph 76 above). Moreover, given that the figure for the number of applications relates only

to the first six months of 2013, the figure for the year as a whole is likely to be considerably higher, further weakening the reception capacity of the SPRAR system.

The Court further notes that neither the Swiss nor the Italian Government claimed that the combined capacity of the SPRAR system and the CARAs would be capable of absorbing the greater part, still less the entire demand for accommodation.

(γ) Reception conditions in the available facilities

111. As regards living conditions in the available facilities, the studies cited by the applicants referred to certain accommodation centres where lack of privacy, insalubrious conditions and violence were allegedly widespread (see paragraphs 66 to 67 above). The applicants themselves also claimed to have witnessed violent incidents during their short stay in the Bari CARA. They further submitted that, in some centres, families of asylum seekers were systematically split up.

112. The Court notes that in its Recommendations for 2013 UNHCR did indeed describe a number of problems, relating in particular to the varying quality of the services provided, depending on the size of the facilities, and to a lack of coordination at national level. However, while it observed a degree of deterioration in reception conditions, particularly in 2011, and a problem of overcrowding in the CARAs, UNHCR did not refer to situations of widespread violence or insalubrious conditions, and even welcomed the efforts undertaken by the Italian authorities to improve reception conditions for asylum seekers. The Human Rights Commissioner, in his 2012 report (see paragraph 49 above), also noted the existence of problems in "some of the reception facilities", voicing particular concern with regard to legal aid, care and psychological assistance in the emergency reception centres, the time taken to identify vulnerable persons and the preservation of family unity during transfers.

113. Lastly, the Court notes that at the hearing of 12 February 2014 the Italian Government confirmed that violent incidents had occurred in the Bari CARA shortly before the applicants' arrival. They denied, however, that the families of asylum seekers were systematically separated, stating that this occurred only in a few cases and for very short periods, notably during the identification procedures.

114. In view of the foregoing, the current situation in Italy can in no way be compared to the situation in Greece at the time of the *M.S.S.* judgment, cited above, where the Court noted in particular that there were fewer than 1,000 places in reception centres to accommodate tens of thousands of asylum seekers and that the conditions of the most extreme poverty described by the applicant existed on a large scale. Hence, the approach in the present case cannot be the same as in *M.S.S.*

115. While the structure and overall situation of the reception arrangements in Italy cannot therefore in themselves act as a bar to all removals of asylum seekers to that country, the data and information set out above nevertheless raise serious doubts as to the current capacities of the system. Accordingly, in the Court's view, the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded.

ii. The applicants' individual situation

116. As regards the applicants' individual situation, the Court notes that, according to the findings of the Italian police and the identification forms annexed to the observations of the Italian Government, the couple and their five oldest children landed on the coast of Calabria on 16 July 2011 and were immediately subjected to an identification procedure, having supplied a false identity. The same day, the applicants were placed in a reception facility provided by the municipal authorities of Stignano, where they remained until 26 July 2011. On that date, once their true identity had been established, they were transferred to the CARA in Bari. They left that centre without permission on 28 July 2011, bound for an unknown destination.

117. Accordingly, just as the overall situation of asylum seekers in Italy is not comparable to that of asylum seekers in Greece as analysed in the *M.S.S.* judgment (see paragraph 114 above), the specific situation of the applicants in the present case is different from that of the applicant in *M.S.S.* Whereas the applicants in the present case were immediately taken charge of by the Italian authorities, the applicant in *M.S.S.* was first placed in detention and then left to fend for himself, without any means of subsistence.

118. The Court reiterates that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see paragraph 94 above). It further reiterates that, as a "particularly underprivileged and vulnerable" population group, asylum seekers require "special protection" under that provision (see *M.S.S.*, cited above, § 251).

119. This requirement of "special protection" of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents (see *Popov*, cited above, § 91). Accordingly, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not "create ... for them a situation of stress and anxiety, with particularly traumatic consequences" (see, *mutatis*

mutandis, *Popov*, cited above, § 102). Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention.

120. In the present case, as the Court has already observed (see paragraph 115 above), in view of the current situation as regards the reception system in Italy, and although that situation is not comparable to the situation in Greece which the Court examined in *M.S.S.*, the possibility that a significant number of asylum seekers removed to that country may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, is not unfounded. It is therefore incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together.

121. The Court notes that, according to the Italian Government, families with children are regarded as a particularly vulnerable category and are normally taken charge of within the SPRAR network. This system apparently guarantees them accommodation, food, health care, Italian classes, referral to social services, legal advice, vocational training, apprenticeships and help in finding their own accommodation (see paragraph 86 above). However, in their written and oral observations the Italian Government did not provide any further details on the specific conditions in which the authorities would take charge of the applicants.

It is true that at the hearing of 12 February 2014 the Swiss Government stated that the FMO had been informed by the Italian authorities that, if the applicants were returned to Italy, they would be accommodated in Bologna in one of the facilities funded by the ERF (see paragraph 75 above). Nevertheless, in the absence of detailed and reliable information concerning the specific facility, the physical reception conditions and the preservation of the family unit, the Court considers that the Swiss authorities do not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children.

122. It follows that, were the applicants to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, there would be a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3

123. The applicants complained that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family in the procedure for their return to

Italy, which they considered to be unduly formalistic and automatic, not to say arbitrary.

124. The Swiss Government contested that argument. In their view, the risk of treatment contrary to Article 3 had been duly examined by the Swiss authorities before the applicants' removal to Italy had been ordered. At the interview of 15 November 2011, which had been conducted in a language they understood, the applicants had been invited to explain in detail the possible grounds for not returning them to Italy, but had invoked only general economic grounds. Only after their application had been dismissed for the first time by the Federal Administrative Court had they provided further details concerning their reception conditions in Italy. In any event, that new information had not been capable of altering the decision to remove them and had been dismissed by the Federal Administrative Court in its decision of 21 March 2012.

125. At the hearing of 12 February 2014 the Government stated that the Swiss authorities did not hesitate to apply the sovereignty clause provided for by Article 3(2) of the Dublin Regulation where they deemed it necessary. This was borne out by the examples provided by the AIRE Centre, ECRE and Amnesty International, some twenty of which concerned returns to Italy.

126. The Court reiterates that an applicant's complaint alleging that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 of the Convention "must imperatively be subject to close scrutiny by a 'national authority'" (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 198, ECHR 2012). That principle has led the Court to rule that the notion of "effective remedy" within the meaning of Article 13 taken in conjunction with Article 3 requires, firstly, "independent and rigorous scrutiny" of any complaint made by a person in such a situation, where "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and, secondly, "the possibility of suspending the implementation of the measure impugned" (ibid.).

127. In the present case the Court notes that the applicants were interviewed by the FMO on 15 November 2011, in a language they understood, and asked to explain in detail the possible grounds for not returning them to Italy.

128. Following the decision of the FMO of 24 January 2012 to reject their claim for asylum and return them to Italy, on 2 February 2012 the applicants were able to lodge an application with the Federal Administrative Court. They submitted before that court that the reception conditions in Italy were in breach of the Convention. The Federal Administrative Court ruled promptly on the application and dismissed it on 9 February 2012, that is, seven days after it had been lodged.

129. Following that dismissal the applicants decided to file a request with the FMO "to have the asylum proceedings reopened". That request,

based on a reworded account by the applicants of their stay in Italy, was sent to the Federal Administrative Court, which classified it as a "request for revision" of the judgment of 9 February 2012 and declared it inadmissible on the grounds that it was essentially a reclassification of the facts of the case.

130. The Court notes that it is not disputed that at the time of the Federal Administrative Court's judgment of 9 February 2012 the applicants had not produced any evidence before the national authorities to suggest that their safety would be at risk if they were returned to Italy. It also notes that the aforementioned judgment of the Federal Administrative Court dealt unambiguously with the specific situation of the applicants as a family with young children, addressed in detail the complaints raised by the applicants and was fully reasoned. Furthermore, the Court does not discern the slightest arbitrariness in the Federal Administrative Court's decision not to take account of the reworded description by the applicants of their stay in Italy and to declare their request for revision inadmissible. It also notes that this type of application is lodged in extraordinary proceedings and, with regard to factual considerations, cannot be declared admissible unless "the applicant later discovers relevant facts or conclusive evidence that he or she was unable to rely on in the previous proceedings" (section 123 of the Federal Administrative Court Act), which is not the case here.

131. Furthermore, the fact that the Federal Administrative Court has opposed the return of asylum seekers to "Dublin" States in some cases, including that of a family with young children who were to be deported to Italy, or made it subject to conditions (see paragraphs 26 and 27 above), also suggests that that court normally undertakes a thorough examination of each individual situation and, as stressed by the Swiss Government, does not hesitate to invoke the "sovereignty clause" contained in Article 3(2) of the Dublin Regulation.

132. It follows that the applicants had available to them an effective remedy in respect of their Article 3 complaint. Accordingly, their complaint under Article 13 of the Convention taken in conjunction with Article 3 must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

133. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

134. The applicants did not submit any claim for just satisfaction in respect of pecuniary damage. Accordingly, the Court considers that it is unnecessary to make an award under this head.

135. The applicants claimed the sum of 7,500 euros (EUR) in respect of non-pecuniary damage.

136. The Government stressed that the applicants had not been transferred to Italy and submitted that the finding that such a transfer would be in breach of Article 3 of the Convention would constitute sufficient just satisfaction.

137. The Court considers that its finding in paragraph 122 of the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants (see, to this effect, *Beldjoudi v. France*, 26 March 1992, §§ 79 and 86, Series A no. 234-A; *M. and Others v. Bulgaria*, no. 41416/08, §§ 105 and 143, 26 July 2011; and *Nizamov and Others v. Russia*, nos. 22636/13, 24034/13, 24334/13 and 24328/13, § 50, 7 May 2014).

B. Costs and expenses

138. Before the Chamber, the applicants had also claimed EUR 3,585 in respect of the fees paid to their representatives and 262 Swiss francs (CHF) (EUR 215) for interpretation costs in connection with their meetings with their representatives.

139. The Government did not object to this claim.

140. On 3 April 2014 the applicants submitted a further claim for just satisfaction in addition to that submitted before the Chamber. The additional claim concerned the cost of preparing for and being represented at the hearing of 12 February 2014. The additional costs totalled CHF 10,196.

141. The Government contested this additional claim, arguing that it had been submitted out of time.

142. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and to its case-law, the Court considers the sum of EUR 7,000 to be reasonable to cover costs under all heads, and awards it to the applicants.

C. Default interest

143. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints of a violation of Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by fourteen votes to three, that there would be a violation of Article 3 of the Convention if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together;

3. *Holds*, unanimously, that the Court's finding at point 2 above constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants, within three months, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 4 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early	Dean Spielmann
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Casadevall, Berro-Lefèvre and Jäderblom is annexed to this judgment.

D.S.
T.LE.

JOINT PARTLY DISSENTING OPINION OF JUDGES CASADEVALL, BERRO-LEFÈVRE AND JÄDERBLOM

(Translation)

We regret to find ourselves in disagreement with the majority of the judges of the Grand Chamber in their conclusion that Switzerland would be in breach of Article 3 if the applicants were to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.

Starting with the *Soering* case (*Soering v. the United* Kingdom, 7 July 1989, Series A no. 161), the Court has consistently held that it would be a breach of Article 3 to send an individual to another State where substantial grounds have been shown for believing that the individual concerned, if extradited or expelled, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving State. The basis for liability is that the returning State has taken action which has as a direct consequence the exposure of the individual to proscribed ill-treatment. That action represents the facilitation through the expulsion process of the denial of the applicant's rights by the other State.

Normally, as the Court noted in *Soering*, liability arises under the Convention when a violation has in fact occurred; the prospect of a breach is not sufficient. However, the Court made clear that "where an applicant claims that a decision to extradite him would, if implemented, be contrary to Article 3 by reason of its foreseeable consequences in the requesting country, a departure from this principle is necessary, in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by that Article" (see *Soering*, cited above, §§ 90-91). The absolute nature of the rights guaranteed under Article 3 and the irreversibility of the effects of torture and other severe forms of ill-treatment justify holding States responsible for placing individuals at risk of such treatment. The risk must be "real", meaning that the danger must be foreseeable and sufficiently concrete.

The Court held in the case of *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, ECHR 2011), where the applicant's expulsion from Belgium to Greece had already taken place at the time of the complaint to the Court, that the degrading conditions of detention and living conditions in Greece were well known before the transfer of the applicant and were freely ascertainable from a wide number of sources (§ 366).

In *M.S.S.* the Court described the deficiencies of the Greek asylum procedures and the living conditions of asylum seekers during those procedures. The systemic deficiencies and the lack of willingness by the Greek State to deal with them were apparent.

In the present case the description of the system for the reception of asylum seekers in Italy shows that there are many deficiencies, mainly due to the periodic arrival of large numbers of asylum seekers. The Italian Government, as third-party intervener, described how they are trying to deal with the situation. It is obvious that greater resources are needed in order to provide acceptable conditions for all asylum seekers, especially vulnerable groups such as families with children.

As the majority rightly concludes, the situation in Italy is to be distinguished from that in Greece at the time of the *M.S.S.* judgment, and the structure and overall situation of the reception arrangements in Italy cannot themselves act as a bar to all removals to that country (see paragraphs 114 to 115 of the judgment). Our conclusion is the same as that of the majority, namely that the general deficiencies in the Italian system for the reception of asylum seekers are not of a kind or a degree that would justify a blanket ban on the return of families to that country.

We note in that regard that UNHCR has not advised any "Dublin" State to halt returns of asylum seekers to Italy, whereas it made an express recommendation to that effect regarding returns to Greece. The reports drawn up by governmental and non-governmental institutions and organisations concerning the reception arrangements in Italy attest to an admittedly difficult situation. However, they also demonstrate that Italy is not systemically incapable of providing support and facilities for asylum seekers; they depict a detailed structure of services and care designed to provide for the needs of asylum seekers. Some of the reports, compiled by UNHCR and the Commissioner for Human Rights of the Council of Europe, refer to recent improvements aimed at remedying some of the failings. We further note that neither UNHCR nor the Commissioner for Human Rights sought leave to intervene in the present procedure, whereas they felt it necessary to do so in the case of *M.S.S.*

The question is thus whether the applicants' allegations concerning conditions in the Italian reception facilities disclose a concrete risk of treatment contrary to Article 3 in their individual situation.

When making such an assessment it is not enough to demonstrate that a significant number of asylum seekers are left without accommodation or accommodated in facilities without sufficient privacy, or even in insalubrious or violent conditions. It has to be assessed whether the applicants' individual circumstances should have led the Swiss authorities to conclude that there was a real risk of ill-treatment by the Italian authorities if the applicants were sent back to Italy.

In the present case the applicants were taken charge of by the Italian authorities as soon as they arrived in Italy. Despite their lack of cooperation (they initially supplied a false identity), they were identified within ten days and placed in a CARA reception centre in Bari.

We observe too that the applicants complained about the situation in the reception facilities in general and alleged that their living conditions during the two days they spent in the CARA in Bari had been unacceptable owing to the lack of privacy and the violence this caused. However, we note that the applicants did not at any stage claim to have been subjected to ill-treatment or to have been split up.

In that respect, the applicants' situation differs substantially from the state of extreme material poverty observed by the Court in *M.S.S.* In our view, therefore, the living conditions encountered by the Tarakhel family on their arrival in Italy cannot be said to have attained the minimum threshold of severity required to come within the scope of Article 3.

It is interesting to note that, when they were interviewed for the first time by the Federal Migration Office in connection with their application for asylum in Switzerland, the applicants sought to justify their claim by arguing that living conditions in Italy had been difficult and that it would be impossible for the first applicant to find work in that country. The applicants did not invoke any other argument at that time relating to their personal situation or their recent experiences in Italy.

The administrative authority concerned was therefore right, in our view, to consider that "the ... living conditions in Italy [did] not render the removal order unenforceable".

No information was provided concerning the applicants' economic circumstances or the possibilities for them to arrange accommodation of their own. However, we note that they had the resources to travel to Austria and onwards to Switzerland and to support themselves by some means during periods when they were not taken care of by the Italian, Austrian or Swiss authorities. Only if they were unable to arrange private accommodation would they have to rely on the Italian authorities to provide them with a place to live.

In the light of the foregoing we conclude that the risk for the applicants of being subjected to inhuman or degrading treatment is not sufficiently concrete for Switzerland to be held responsible for a violation of Article 3 if it were to enforce the order for the applicants' expulsion to Italy.

In sum, we cannot see how it is possible to depart from the Court's findings in numerous recent cases and to justify a reversal of our case-law within the space of a few months: see *Mohammed Hussein and Others v. the Netherlands and Italy* ((dec.), no. 27725/10, 2 April 2013), in which the Court held unanimously that no systemic failings existed and that there was no reason to believe that an asylum seeker and her two young children would not have received adequate support had they been sent back to Italy from the Netherlands. The same approach was adopted in six other cases concerning returns to Italy (see *Halimi v. Austria and Italy* (dec.), no. 53852/11, 18 June 2013; *Abubeker v. Austria and Italy* (dec.), no. 73874/11, 18 June 2013; *Daytbegova and Magomedova v. Austria*

(dec.), no. 6198/12, 4 June 2013; *Miruts Hagos v. the Netherlands and Italy* (dec.), no. 9053/10, 27 August 2013; *Mohammed Hassan and Others v. the Netherlands and Italy* (dec.), no. 40524/10, 27 August 2013; and *Hussein Diirshi and Others v. the Netherlands and Italy* (dec.), no. 2314/10, 10 September 2013).

The principles established by European Union law cannot be disregarded, and especially those applicable to Switzerland under the terms of the association agreement of 26 October 2004. The CJEU, in its judgment cited in paragraph 33, pointed out that the European asylum system is based on mutual confidence and a presumption of compliance, by other Member States, with European Union law and, in particular, fundamental rights. It is true that this presumption is rebuttable "where [the State] cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision" (see *N. S. v Secretary of State for the Home Department* and *M. E., A. S. M., M. T., K. P., E. H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* (CJUE C-411/10 and C-493/10), § 106).

The majority refers in paragraph 104 to the reasoning of the United Kingdom Supreme Court in its judgment of 19 February 2014, according to which, irrespective of whether systemic deficiencies exist in a State's reception system for asylum seekers, the risk should be examined on a case-by-case basis.

We would repeat that, in the instant case, there is nothing to demonstrate that the applicants' future prospects if they were returned to Italy, whether taken from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. There is nothing to suggest that the Tarakhel family would be left without the support and the facilities provided by Italy under Legislative Decree no. 140/2005 on minimum standards for the reception of asylum seekers. On the contrary, the Italian authorities informed the respondent Government that the applicants would be accommodated in Bologna, in one of the facilities funded by the ERF.

However, the majority did not deem these assurances to be sufficient and requested detailed and reliable (*sic*) information on numerous points: the exact facility of destination, the existence of physical reception conditions adapted to the age of the children, and the preservation of the family unit.

The respondent State observed that cooperation with the Italian authorities on the transfer of persons requiring special protection, such as families with young children, worked well, owing in particular to the presence of a Swiss liaison officer in the Dublin department of the Italian Ministry of the Interior.

Must we nonetheless impose additional requirements in future on Switzerland – and by extension on any other country in the same situation – despite the fact that neither systemic deficiencies nor a real and substantiated risk of ill-treatment have been shown to exist?

Will such assurances be required for all asylum seekers liable to be sent back to Italy – who, according to the *M.S.S.* judgment, are members of a particularly underprivileged and vulnerable population group in need of special protection – or only for families with children?

No doubt it was clearly foreseeable by the Swiss authorities that the applicants' standard of accommodation in Italy might be poor. Even if those conditions were similar to those in the CARA in Bari they would not constitute inhuman or degrading treatment in terms of their type, degree or intensity (see above). The fact that they would also affect children, who are particularly vulnerable, does not lead us to any other conclusion. It is possible that such conditions, if they extend over a lengthy period, may eventually give rise to a violation of Article 3. Were that the case it would be too far-reaching to hold the Swiss authorities responsible for failure to include that possibility in their risk assessment. Instead Italy, as a party to the Convention, would be answerable for an alleged violation of Article 3, and it would still remain open to the applicants to lodge an appeal with the Italian authorities.