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

Information Note on the Court's case-law 179

November 2014

Tarakhel v. Switzerland [GC] - 29217/12

Judgment 4.11.2014 [GC]

Article 3

Expulsion

Proposed removal of Afghan asylum-seeker family to Italy under Dublin II Regulation: *expulsion would constitute a violation*

Facts – The applicants, a married couple and their six minor children, are Afghan nationals who live in Switzerland. The couple and their five oldest children landed on the Italian coast in July 2011 and were immediately subjected to the EURODAC identification procedure (taking of photographs and fingerprints). The applicants subsequently travelled to Austria and, later, to Switzerland, where they applied for asylum. However, their application was refused on the grounds that, under the European Union Dublin II Regulation, it should be dealt with by the Italian authorities. The Swiss authorities therefore ordered the applicants' removal to Italy. The appeals lodged by the applicants against that measure were dismissed. In their application to the European Court, the applicants contended that their deportation from Switzerland to Italy would be in breach of their rights under Article 3 of the Convention.

Law – Article 3: In the present case the Court had to 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 had been shown for believing that the applicants would be at risk of treatment contrary to Article 3 if they were returned to Italy. The Court considered it necessary to follow an approach similar to that which it had adopted in its judgment in *M.S.S. v. Belgium and Greece*, in which it had examined the applicant's individual situation in the light of the overall situation prevailing in Greece at the relevant time.

(a) *Overall situation with regard to the reception arrangements for asylum seekers in Italy* – In its decision in the case of *Mohammed Hussein and Others v. the Netherlands and Italy,* the Court had observed that the Recommendations of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the report of the Commissioner for Human Rights, both published in 2012, referred to a number of failings relating, in particular, to the slowness of the identification procedure, the inadequate capacity of the reception facilities and the living conditions in the available facilities.

(b) *Capacity of the reception facilities for asylum seekers* – The number of places reportedly fell far short of what was needed. Hence, without entering into the debate as to the accuracy of the available figures, the Court noted the glaring discrepancy between the number of asylum applications made in the first six months of 2013 (14,184) and the number of places available in the refugee reception facilities belonging to the SPRAR network (9,630 places).

(c) *Living conditions in the available facilities* – While it had observed a degree of deterioration in reception conditions, and a problem of overcrowding in the reception centres for asylum seekers (CARAs), UNHCR had not referred to situations of widespread violence or insalubrious conditions, and had even welcomed the efforts undertaken by the Italian authorities to improve reception conditions for asylum seekers. The Human Rights Commissioner, in his 2012 report, had also noted the existence of problems in "some of the reception facilities". Lastly, at the hearing of 12 February 2014 the Italian Government had confirmed that violent incidents had occurred in the CARA shortly before the applicants' arrival but had denied 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.

Hence, the current situation in Italy could in no way be compared to the situation in Greece at the time of the *M.S.S.* judgment, cited above, where the Court had 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.

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

(d) *The applicants' individual situation* – Just as the overall situation of asylum seekers in Italy was not comparable to that of asylum seekers in Greece as analysed in the *M.S.S.* judgment, the specific situation of the applicants in the present case was different from that of the applicant in *M.S.S.* Whereas the former had been taken charge of immediately by the Italian authorities, the latter had first been placed in detention and then left to fend for himself, without any means of subsistence.

In the present case, in view of the current situation regarding the reception system in Italy, the possibility that a significant number of asylum seekers removed to that country might be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, was not unfounded. It was therefore incumbent on the Swiss authorities to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants would be received in facilities and in conditions adapted to the age of the children, and that the family would be kept together.

According to the Italian Government, families with children were regarded as a particularly vulnerable category and were normally taken charge of within the SPRAR network. This system apparently guaranteed them accommodation, food, health care, Italian classes, referral to social services, legal advice, vocational training, apprenticeships and help in finding their own accommodation. However, in their written and oral observations the Italian Government had not provided any further details on the specific conditions in which the authorities would take charge of the applicants.

It was true that at the hearing of 12 February 2014 the Swiss Government had stated that the Federal Migration Office (FMO) had been informed by the Italian authorities that, if the applicants were returned to Italy, they would be accommodated in one of the facilities funded by the European Refugee Fund (ERF). 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 Swiss authorities did 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.

It followed 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.

Conclusion: the applicants' removal would constitute a violation (fourteen votes to three).

Article 41: Finding that the applicants' removal would constitute a violation was sufficient just satisfaction in respect of any non-pecuniary damage.

(See *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, Information Note 137; and *Mohammed Hussein and Others v. the Netherlands and Italy* (dec.), 27725/10, 2 April 2013, Information Note 162; see also the Factsheet on "Dublin" cases)
