



Somali asylum seeker failed to prove that removal from the Netherlands to Italy under European Union law (Dublin Regulation) would expose her and her two children to risk of ill-treatment

In its decision in the case of **Mohammed Hussein v. the Netherlands and Italy** (application no. 27725/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a Somali asylum seeker who claimed in particular that she and her two young children would be subjected to ill-treatment if transferred from the Netherlands to Italy under the Dublin Regulation¹. She obtained a suspension of her expulsion pending the Court's decision on the case (under Rule 39 of the Rules of Court – interim measures).

The Court found in particular that, if returned to Italy, the future prospects of Ms Mohammed Hussein and her two children did not disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. Nor did the general situation of asylum seekers in Italy show any systemic failings. Therefore, it decided to lift the suspension of the expulsion.

Principal facts

The applicant, Samsam Mohammed Hussein, is a Somali national who was born in 1987 and is currently staying in the Netherlands. The application is also brought on behalf of her children Nahyaan and Nowal, born in 2009 and 2011, respectively.

After having fled from Somalia, Ms Mohammed Hussein entered Italy in August 2008 where she was registered as an illegal immigrant and transferred to a reception centre. In January 2009, after having applied for international protection, she was granted a residence permit for the purpose of subsidiary protection and a travel document which were both valid for three years.

She then applied for asylum in the Netherlands in May 2009. During interviews with the Netherlands immigration authorities, she alleged that she had not applied for asylum in Italy and that she had not been given any help there. She also claimed that she had been raped, as a result of which she had fallen pregnant. In August 2009, she gave birth to a son named Nahyaan. In March 2010, Ms Mohammed Hussein's asylum request was rejected by the Netherlands authorities, who found that Italy was responsible for its processing. Her appeals were rejected and her transfer to Italy was scheduled for 17 June 2010.

Ms Mohammed Hussein subsequently lodged a complaint before the Court, which, in the interest of the parties and the proper conduct of the proceedings before it, requested the Netherlands Government not to expel Ms Mohammed Hussein and her son to Italy until further notice.

¹ The "Dublin" system (Dublin Convention and Dublin Regulation) serves to determine which Member State is responsible for examining an asylum application lodged by a third-country national on the territory of one of the Member States of the European Union.

In February 2011, Ms Mohammed Hussein gave birth to a second child, a girl named Nowal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 June 2010.

Relying on Article 3 (prohibition of inhuman or degrading treatment) Ms Mohammed Hussein complained that, during her stay in Italy, she had received no support from the Italian authorities and had been forced to live on the streets. She further complained that, if the Netherlands authorities were to transfer her and her children to Italy, they would suffer from the same lack of support and would risk arbitrary expulsion to Somalia where she was at risk of becoming the victim of an honour crime. She also alleged that, in respect of her complaint under Article 3, she had not had an effective remedy within the meaning of Article 13 in the Netherlands and/or in Italy. Under Article 8 (right to respect for family life), Ms Mohammed Hussein finally claimed that, if returned to Italy, she would be unable to raise her children in appropriate conditions.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Guido **Raimondi** (Italy),
Corneliu **Bîrsan** (Romania),
Ján **Šikuta** (Slovakia),
Nona **Tsotsoria** (Georgia),
Johannes **Silvis** (the Netherlands), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 3

At the outset, the Court noted the discrepancies between the first declaration of Ms Mohammed Hussein according to which, among other things, she had been forced to live on the streets in Italy, and her response to the facts submitted by the Italian Government, in which she confirmed she had been provided with reception facilities for asylum seekers.

The Court reiterated that, in the absence of exceptionally compelling humanitarian grounds militating against removal, a reduction in material and social living conditions upon removal from a Contracting State was not sufficient in itself to amount to a breach of Article 3.

In this case, the Court noted that, upon arrival in Italy, Ms Mohammed Hussein had been provided with facilities for asylum seekers in a reception centre. It further noted that, after her request for international protection had been accepted, she had been provided with a residence permit for a three-year period, which entitled her to benefit from the general schemes for social assistance, health care, social housing and education in the same manner as the general population of Italy.

Furthermore, while at the reception centre - where she had received medical care - she had not sought assistance in finding work and/or alternative accommodation so as to avoid the risk of homelessness and destitution. The Court concluded that Ms Mohammed

Hussein's treatment in Italy had not attained the required minimum level of severity to fall within the scope of Article 3.

The Court further noted that the Netherlands authorities would give prior notice of the transfer of the applicant and her children, thus allowing the Italian authorities to prepare for their arrival and that - while remaining eligible for special consideration as a vulnerable person under Italian domestic law, she would be required to start the procedure to renew her residence permit. Having taken into account various reports drawn up by both governmental and non-governmental institutions and organisations on the reception schemes for asylum seekers in Italy, the Court considered that, despite some shortcomings, the general situation of asylum seekers in Italy had not been shown to disclose any systemic failure.

Considering the speed with which her request for protection had been treated and the assistance she had received upon arrival in Italy, it further held that Ms Mohammed Hussein had failed to show that her children and she would not benefit from the same support again. The Court therefore concluded that Ms Mohammed Hussein's complaints under Article 3 brought against Italy and the Netherlands were manifestly ill-founded.

Article 13

The Court noted that Ms Mohammed Hussein had not sought to challenge the actions and/or decision taken by the Italian authorities in the context of the asylum request she had filed there, whereas in the Netherlands she had challenged the decision taken by the Netherlands administrative and judicial authorities, albeit unsuccessfully. Moreover, she had failed to prove that she would be deprived of an effective remedy if she were to file another request for international protection in Italy. It therefore concluded that her complaints under Article 13 were also manifestly ill-founded.

Article 8

The Court found that Ms Mohammed Hussein's allegations under Article 8 were wholly unsubstantiated and had to be rejected as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.