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

Press Release
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Sending Afghan family of asylum seekers back to Italy under the "Dublin" Regulation without individual guarantees concerning their care would be in violation of the Convention

In today's **Grand Chamber** judgment[1] in the case of Tarakhel v. Switzerland (application no. 29217/12) the European Court of Human Rights held, by a majority, that there would be:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation[2] without 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.

The case concerned the refusal of the Swiss authorities to examine the asylum application of an Afghan couple and their six children and the decision to send them back to Italy.

The Court found in particular that, in view of the current situation regarding the reception system in Italy, and in the absence of detailed and reliable information concerning the specific facility of destination, 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.

Principal facts

The applicants, Golajan Tarakhel, born in 1971, his wife Maryam Habibi, born in 1981, and their six minor children, born between 1999 and 2012, are Afghan nationals who live in Lausanne (Switzerland).

Mr Tarakhel left Afghanistan for Pakistan, where he met and married Mrs Habibi. The couple subsequently moved to Iran, where they lived for 15 years. They and their children later left Iran for Turkey and from there took a boat to Italy. 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 they were placed in a reception facility, where they remained until 26 July 2011, whenthey were transferred to the Reception Centre for Asylum Seekers ("CARA") in Bari, once their true identity had been established.

On 28 July 2011 the applicants left the CARA in Bari without permission and travelled to Austria, where on 30 July 2011 they were again registered in the EURODAC system. They lodged an application for asylum 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.

The applicants later travelled to Switzerland and on 3 November 2011 lodged an asylum application. On 15 November 2011 Mr Tarakhel and his wife were interviewed by the Federal Migration Office

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2. The Dublin system is designed to determine the Member State responsible for examining an asylum application lodged in one of the European Union Member States by a third-country national. See the *"Dublin" cases* factsheet.

("the FMO"), which requested the Italian authorities to take charge of the applicants. The Italian authorities tacitly accepted the request.

On 24 January 2012 the FMO decided not to examine the applicants' asylum application on the grounds that, in accordance with the European Union's Dublin Regulation, by which Switzerland was bound under the terms of an association agreement with the European Union, Italy was the State responsible for examining the application. The FMO therefore issued an order for the applicants' removal to Italy. On 2 February 2012 the applicants appealed to the Federal Administrative Court, which dismissed the appeal in a judgment of 9 February 2012.

The applicants requested the FMO to have the proceedings reopened and to grant them asylum in Switzerland. The request was forwarded to the Federal Administrative Court, which reclassified it as a "request for revision" of the judgment of 9 February 2012 and rejected it on 21 March 2012, on the ground that the applicants had not submitted any new arguments.

The applicants applied to the European Court of Human Rights and requested an interim measure suspending the enforcement of their deportation to Italy. The request was granted and on 18 May 2012 the Registry informed the Swiss Government's Agent that the President of the Section to which the case had been assigned had decided to indicate to the Swiss authorities that the applicants should not be deported to Italy for the duration of the proceedings before the Court.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants alleged 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.

Under Article 8 (right to respect for private and family life), they argued 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.

Under Article 13 (right to an effective remedy) taken in conjunction with Article 3, they 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.

The application was lodged with the European Court of Human Rights on 10 May 2012. On 24 September 2013 the Chamber relinquished jurisdiction in favour of the Grand Chamber. The Italian, Dutch, Swedish, Norwegian and United Kingdom Governments and the organisations 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, were given leave to intervene in the proceedings as third parties.

A hearing was held on 12 February 2014.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Işıl **Karakaş** (Turkey),

Nebojša **Vučinić** (Montenegro),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Helen **Keller** (Switzerland),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Paul **Mahoney** (the United Kingdom),

and also Lawrence **Early**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 3

The Court considered it appropriate to examine the complaint concerning the applicants' reception conditions in Italy solely from the standpoint of Article 3.

Concerning the overall situation of the reception arrangements for asylum seekers in Italy, the Court had previously observed[3] that the Recommendations of the Office of the United Nations High Commissioner for Refugees ("UNHCR") and the report of the Commissioner for Human Rights of the Council of Europe, both published in 2012, referred to a number of failings. Without entering into the debate as to the exact number of asylum seekers without accommodation in Italy, the Court noted the glaring discrepancy between the number of asylum applications made in 2013 (over 14,000) and the number of places available in the facilities belonging to the SPRAR network [*Sistema di protezione per richiedenti asilo e rifugiati*] (9,630 places).

With regard to living conditions in the available facilities, the Court noted that in its Recommendations for 2013 UNHCR had described a number of problems. However, UNHCR had not reported situations of widespread violence or insalubrious conditions, and had stressed the efforts undertaken by the Italian authorities to improve reception conditions for asylum seekers. The Human Rights Commissioner, in his 2012 report, had noted the existence of some problems 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.

The Court reiterated that, as a "particularly underprivileged and vulnerable" population group, asylum seekers required "special protection" under Article 3 of the European Convention on Human Rights. This requirement of "special protection" of asylum seekers was particularly important when the persons concerned were children, even when they were accompanied by their parents

In view of the current situation of the reception system in Italy, the possibility that a significant number of asylum seekers removed to that country might be left without accommodation or might be accommodated in overcrowded facilities, in insalubrious and violent conditions, was not unfounded. The Swiss authorities were obliged 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.

The Court noted that, 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. However, the Italian Government had not provided any further details on the specific conditions in which the authorities would take charge of the applicants.

[3] Decision in *Mohammed Hussein and Others v. the Netherlands and Italy*, 2 April 2013, no. 27725/10

Without detailed and reliable information about the specific reception facility to which the applicants would be sent, the physical conditions of their accommodation, and the question of whether the family would be kept together, the Court considered that the Swiss authorities did not have sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children.

Were the Swiss authorities to send the applicants back to Italy without having first obtained individual guarantees from the Italian authorities that they 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 accordingly be a violation of Article 3 of the Convention.

Article 13 in conjunction with Article 3

The Court considered that the applicants had had available to them an effective remedy in respect of their complaint under Article 3. Accordingly, their complaint under Article 13 taken in conjunction with Article 3 had to be rejected as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicants 7,000 euros (EUR) in respect of costs and expenses.

Separate opinion

Judges Casadevall, Berro-Lefèvre and Jäderblom expressed a separate opinion which is annexed to the judgment.

The judgment is available in English and French.

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