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

THIRD SECTION

DECISION

Application no. 51428/10
A.M.E.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 13 January 2015 as a Chamber composed of:

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges*,
and Stephen Phillips, *Section Registrar*,

Having regard to the above application lodged on 7 September 2010,

Having regard to the interim measure indicated to the Netherlands Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the factual information submitted by the Italian Government and the comments in reply submitted by the applicant:

Having deliberated, decides as follows:

THE FACTS

1. The applicant claims to be a Somali national, born in 1994. At the time of the introduction of the application, he was in the Netherlands. He is represented before the Court by Ms J. van Veelen-de Hoop, a lawyer practising in Rotterdam.

2. The Government of the Netherlands are represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs. The Italian Government are represented by their Agent, Ms E. Spatafora, and their Co-Agent, Ms P. Accardo.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties and the Italian Government, may be summarised as follows. Some of the facts are disputed.

4. The applicant claims to hail from Mogadishu and that he belongs to the Gaaljecel clan, a Hawiye sub-clan. He further claims that in August 2008 members of al-Shabaab came to his school where they called upon the applicant and his brother I. to join al-Shabaab. The applicant and I. refused. Some days later, on 17 August 2008, the applicant's parental home had been attacked and I. killed. Considering that it had been a targeted attack owing to the refusal to join al-Shabaab, the applicant left Somalia on 20 August 2008 and, via Kenya, Uganda, Sudan and Libya, travelled to Italy.

5. On 11 April 2009 the applicant entered Italy in a group of about 200 persons who had landed in Ibleo Pozzallo (Ragusa province). The next day the local police took his fingerprints and registered him as having illegally entered the territory of the European Union. He stated that his name was M.A., that he was a Somali national and that he was born on 1 January 1985. On 14 April 2009, the applicant was transferred to the Bari-Palese Reception Centre for Asylum Seekers (*Centro di Accoglienza per Richiedenti Asilo*; "CARA"), where he applied for international protection, giving slightly different personal details, namely that his name was A.M.I., that he was a Somali national and that he was born on 1 January 1990.

6. On an unspecified date, the applicant was granted an Italian residence permit for subsidiary protection under Article 15(c) of the European Union 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 ("Qualification Directive"). This residence permit was valid for three years, i.c. until 23 August 2012. On 7 May 2009, the applicant left the Bari-Palese reception centre of his own volition for an unknown destination.

7. On 29 October 2009, the applicant applied for asylum in the Netherlands, stating that his name was A.R.M.E., that he was a Somali national and that he was born in Mogadishu on 28 May 1994. The next day, the Netherlands immigration authorities conducted a first interview (*eerste gehoor*) with the applicant, during which he declared *inter alia* that he had travelled by road from Somalia to Kenya from where he had travelled by air, with a stopover in Egypt, to the Netherlands. He wrote down his name, his date and place of birth and his last address, and signed this document.

8. The examination and comparison of the applicant's fingerprints by the Netherlands authorities generated a Eurodac report on 29 October 2009,

indicating that he had been registered in Pozzallo on 13 April 2009 and in Bari on 7 May 2009.

9. On 31 October 2009, a Dublin Claim interview (*gehoor Dublinclaim*) was held with the applicant. After the results of the Eurodac report had been put to him, he confirmed that he had been in Italy. He had lied about his age in Italy. He had stated that he was an adult. He had further been forced to give his fingerprints. He denied having applied for asylum in Italy and further stated that he had not had shelter or food in Italy.

10. On 1 November 2009, the Deputy Minister of Justice informed the applicant of her intention to reject his asylum request. The applicant filed his written comments (*zienswijze*) on this intention on 25 November 2009.

11. On 16 April 2010 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of Article 16 § 1 (c) of Council Regulation (EC) no. 343/2003 of 18 February 2003 ("the Dublin Regulation"). As the Italian authorities failed to react to that request within two weeks, they were considered under Article 20 § 1 of the Dublin Regulation as having acceded implicitly to that request.

12. The applicant's asylum request filed in the Netherlands was rejected on 2 June 2010 by the Deputy Minister, who found that, pursuant to the Dublin Regulation, Italy was responsible for the processing of the asylum application. The Deputy Minister rejected the applicant's argument that the Netherlands could not rely on the principle of mutual interstate trust in respect of Italy. The Deputy Minister did not find it established that Italy fell short of its international treaty obligations in respect of asylum seekers and refugees, and rejected the applicant's argument that he risked treatment in breach of Article 3 of the Convention in Italy.

13. The applicant's appeal against this decision, filed on 2 June 2010, was rejected on 29 July 2010 by the single-judge chamber (*enkelvoudige kamer*) of the Regional Court (*rechtbank*) of The Hague. It rejected, as insufficiently substantiated, the applicant's claim that the reception of minor aliens in Italy was deficient and also rejected his argument that, in his case, the Italian authorities had fallen short of their international obligations in respect of asylum seekers. It noted *inter alia* that the applicant had been given the opportunity to apply for asylum in Italy and found that it did not appear that the applicant had no access to adequate legal remedies. As regards the alleged risk of *refoulement* from Italy to Somalia, the Regional Court considered that he should and could raise this in proceedings in Italy and did not find it established that, where it concerned his possible removal from Italy, he would not be given the possibility to use a legal remedy against removal, including requesting the Court for an interim measure under Rule 39 of the Rules of Court.

14. On 27 August 2010, the applicant filed an objection (*verzet*) against this ruling with the Regional Court.

15. On 6 September 2010, the Minister of Justice notified the applicant of his intention to transfer the applicant to Italy on 22 September 2010 and not later than 1 November 2010.

16. The application was introduced to the Court on 7 September 2010. On 10 September 2010, the President of the Section decided, under Rule 39 of the Rules of the Court, to indicate to the Netherlands Government that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to remove the applicant to Italy.

17. On 22 December 2010, following a hearing held on 7 December 2010 and apparently after a decision to accept the applicant's objection of 27 August 2010, a three-judge chamber (*meervoudige kamer*) of the Regional Court of The Hague examined and rejected the applicant's appeal of 2 June 2010. The Regional Court held that the applicant had not demonstrated that Italy would fall short of its obligations under the 1951 Refugee Convention or Article 3 of the Convention. This finding was not altered by the fact that, on 10 September 2010, a Rule 39 indication had been given to the Netherlands as this temporary measure could not be interpreted as an indication about the eventual finding on the merits by the Court.

18. On 20 January 2011, the applicant filed a further appeal with the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*). On 11 November 2011, the Administrative Jurisdiction Division accepted the further appeal, quashed the judgment of 22 December 2010, accepted the applicant's appeal against the Deputy Minister's decision of 2 June 2010, and quashed this decision but ordered that its legal effects were to remain entirely intact. In view of the Court's judgment of 21 January 2011 in the case of *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, it noted that the applicant had relied from the outset on documents containing general information and found that these had not been examined in the manner as described in the *M.S.S. v. Belgium and Greece* judgment. As it did, however, not find any reason for reaching a different decision in the applicant's case, the Administrative Jurisdiction Division decided that the legal consequences of the impugned decision of 2 June 2010 were to remain intact. No further appeal lay against this decision.

19. On 18 January 2012, the President of the Section decided that information was required from the Italian Government and a number of factual questions were put to the Government of Italy which concerned the applicant's situation in Italy before his arrival in the Netherlands. The Italian Government submitted their replies on 12 March 2012 and the applicant's comments in reply were submitted on 13 May 2012. He stated, *inter alia*, that he had lied about his age at the time of his initial arrival in Italy as well as when he later applied for asylum, fearing that admitting that he was a minor would entail his separation from his countrymen with whom

he had arrived in Italy. The applicant denied having left the Bari-Palese centre of his own volition. He was forced to leave this centre because it was about to be closed down. As no subsequent reception facilities were provided to him, he had been forced to live in the streets in horrendous circumstances.

B. Relevant domestic law and practice

20. The relevant European, Italian and Netherlands law, instruments, principles and practice in respect of asylum proceedings, reception of asylum seekers and transfers of asylum seekers under the Dublin Regulation have recently been summarised in *Tarakhel v. Switzerland* [GC], no. 29217/12, §§ 28-48, 4 November 2014; *Hussein Diirshi v. the Netherlands and Italy and 3 other applications* (dec.), nos. 2314/10, 18324/10, 47851/10 & 51377/10, §§ 98-117, 10 September 2013; *Halimi v. Austria and Italy* (dec.), no. 53852/11, §§ 21-25 and §§ 29-36, 18 June 2013; *Abubeker v. Austria and Italy* (dec.), no. 73874/11, §§ 31-34 and §§ 37-41, 18 June 2013; *Daybetgova and Magomedova v. Austria* (dec.), no. 6198/12, §§ 25 29 and §§ 32-39, 4 June 2013; and *Mohammed Hussein v. the Netherlands and Italy* (dec.), no. 27725/10, §§ 25-28 and 33-50, 2 April 2013.

COMPLAINTS

21. Invoking Article 1 of the Convention the applicant complains of the Netherlands authorities' refusal of his request for protection.

22. He further complains that his transfer to Italy will be in breach of Article 3 in that he risks to be exposed there to bad living conditions where no reception, care and legal aid are available for asylum seekers.

23. The applicant further complains that his removal to Italy will be contrary to his rights under Article 2 and/or Article 3 in that he fears that the Italian authorities will expel him directly to Somalia without an adequate examination of his asylum claim, which will expose him to a risk of being killed or ill-treated owing to his refusal to join al-Shabaab whereas due to the bad situation in Somalia he will not be protected.

24. The applicant also complains that upon return to Somalia he will have to live his life in hiding as al-Shabaab is active in all of Somalia which amounts to a violation of Article 5 of the Convention.

25. The applicant complains under Article 6 of the Convention that his transfer to Italy may entail that the merits of his asylum claim will not be considered and that he will not have a fair and public trial.

26. Relying on Article 13 of the Convention, he lastly complains that he will not be provided with an adequate effective remedy in Italy, as asylum seekers are often not given a hearing in their asylum proceedings and, if heard, are not assisted by a legal adviser or interpreter, and often the decision lacks reasoning and is not available in the correct language.

THE LAW

27. The applicant complains that, if transferred to Italy, he will be exposed to a real risk of being subjected to treatment proscribed by Article 3 of the Convention due to the harrowing living conditions of asylum seekers in Italy. Article 3 of the Convention reads:

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

28. The Court reiterates the relevant principles under Article 3 of the Convention as set out most recently in its judgment in the case of *Tarakhel* cited above, §§ 93-99 and §§ 101-104, 4 November 2014, including 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.

29. As regards the applicant's age, which is one of the relevant factors in making this assessment, the Court cannot but take into account that the applicant himself deliberately told the Italian authorities that he was an adult and sought to mislead the authorities in order to prevent his separation from the group of persons with whom he had arrived in Italy. The Court finds that the authorities processing asylum claims must be entitled to rely on the personal information given by the claimants themselves save where there is a flagrant disparity of some kind or the authorities have otherwise been put on notice of a special need for protection. However there is nothing in the present case to suggest that the Italian authorities did not themselves act in good faith in that regard.

30. In any event, as regards the material date, the existence of the alleged exposure to a risk of treatment contrary to Article 3 must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion. However, if an applicant has not yet been removed when the Court examines the case, the relevant time for assessing the existence of the risk of treatment contrary to Article 3 will be that of the proceedings before the Court (see *Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008, and *A.L. v. Austria*, no. 7788/11, § 58, 10 May 2012).

31. Accordingly, the applicant is to be considered as an adult asylum seeker in Italy, even if he has already been admitted in Italy in the past as an alien requiring subsidiary protection, as the validity of his Italian residence permit granted for that reason has expired in the meantime. Consequently, if returned to Italy, he will have to file a fresh asylum request there.

32. It thus has to be determined whether the situation in which the applicant is likely to find himself, if removed to Italy, can be regarded as incompatible with Article 3, taking into account his situation as an asylum seeker and, as such, belonging to a particularly underprivileged and vulnerable population group in need of special protection (see *Tarakhel*, cited above, § 97; and *M.S.S. v. Belgium and Greece*, cited above, § 251, ECHR 2011).

33. In this connection, the Court has noted that the applicant landed on the coast of Ragusa on 11 April 2009 and that the next day he was subjected to an identification procedure in which he indicated that he was an adult. Two days later, he was admitted to a reception centre for asylum seekers where, maintaining that he was an adult, he applied for asylum. Under this identity, he was subsequently granted a residence permit for subsidiary protection valid until 23 August 2012. The applicant stayed in the reception centre until 7 May 2009. According to information supplied by the Italian Government, the applicant left it of his own volition. According to the applicant, he had been forced to leave this centre because it was about to be closed down. The Court understands that the centre was not yet closed when the applicant left it and has found no substantiation of the applicant's claim that he was forced to leave it.

34. The Court further notes that, unlike the applicants in the case of *Tarakhel*, cited above, who were a family with six minor children, the applicant is an able young man with no dependents and that, as regards transfers to Italy under the Dublin Regulation, the Netherlands authorities decide in consultation with the Italian authorities how and when the transfer of an asylum seeker to the competent Italian authorities will take place and that in principle three working days' notice is given (see *Mohammed Hussein*, cited above, no. 27725/10, § 30, 2 April 2013).

35. The Court reiterates that the current situation in Italy for asylum seekers can in no way be compared to the situation in Greece at the time of the *M.S.S. v. Belgium and Greece* judgment, cited above, that the structure and overall situation of the reception arrangements in Italy cannot in themselves act as a bar to all removals of asylum seekers to that country (see *Tarakhel*, cited above, §§ 114-115).

36. The Court therefore finds, bearing in mind how he was treated by the Italian authorities after his arrival in Italy, that the applicant has not established that his future prospects, if returned to Italy, whether taken from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of

Article 3. The Court has found no basis on which it can be assumed that the applicant will not be able to benefit from the available resources in Italy for asylum seekers or that, in case of difficulties, the Italian authorities would not respond in an appropriate manner.

37. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and therefore inadmissible pursuant to Article 35 § 4.

38. The applicant further alleged that his transfer to Italy would be in violation of Articles 1, 2, 5, 6 and 13 of the Convention. However, in the light of all the material in its possession, and in so far as these complaints are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

39. It follows that the remainder of the application must be rejected in accordance with Article 35 of the Convention.

40. The application of Rule 39 of the Rules of Court thereby comes to an end.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 5 February 2015.

Stephen Phillips
Registrar

Josep Casadevall
President