



EU Asylum: judgement of the European Court of Human Rights on the transfer of asylum seekers under the EU Dublin Regulation

Brussels, 04 November 2014

The European Court of Human Rights (ECtHR) today issued a judgement on whether a Dublin transfer by Switzerland to Italy would be contrary to the European Convention of Human Rights. This judgment underlines that compliance with fundamental rights in the operation of the Dublin system must be ensured in all cases.

The Court ruled that in this particular case (of a family) the suspension of the transfer to Italy could be justified, in the absence of prior individualised guarantees from the Italian authorities as to the specific facility of destination. However, the Court does not find that there are systemic deficiencies in the Italian system that would justify a general suspension of Dublin transfers to Italy.

The European Commission will carefully assess the ECtHR judgement as well as its possible implications for the functioning of the asylum system in Italy and the EU. However, it is primarily for Member States to draw conclusions from this judgement, and in particular to assess what implications it should have for the decisions which they may take in relation to 'Dublin transfers' to Italy, and for the manner in which such transfers are carried out.

The Commission is closely following the asylum situation in Italy, in particular given the large number of arrivals by sea to Italy over the past year, and is in close and regular contact with the Italian authorities. Concrete steps have been taken to support Italy in its efforts to improve the situation on the ground.

Background information

Judgement by the Grand Chamber of the ECtHR

The European Court of Human Rights (ECtHR) today issued a judgement in the case *Tarakhel v. Switzerland*. The case concerns the expulsion of asylum seekers in application of the EU Dublin Regulation. Mr. G. Tarakhel and his family, Afghan nationals, arrived to Italy by boat on 16 July 2011. They then moved to Austria, where their asylum application was rejected, and lodged a new application in Switzerland. On the request of the Swiss authorities, Italy accepted to take back the applicants in accordance with the Dublin Regulation. The applicants challenged the transfer decision before Swiss Court and then before the ECtHR.

The ECtHR has reached the conclusion that, given the current deficiencies of the Italian asylum reception system, the transfers of certain vulnerable categories such as children or families may raise issues in respect of Article 3 ECHR (prohibition of inhuman and degrading treatments) in the absence of prior individualised guarantees from the Italian authorities as to the specific facility of destination.

The ECtHR does not consider that there are systemic deficiencies in the Italian system such as would justify a general suspension of Dublin transfers to Italy. The Court stresses that the situation in Italy is not comparable to the situation in Greece which led to the *MSS* judgment (a judgement which ultimately led to the suspension of Dublin transfers to Greece by other Member States).

However, the Court points out that there are 'serious doubts' about the capacity of the reception system for asylum-seekers in Italy, with reports of over-crowding and poor conditions. 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.

Therefore, the Court held that there would be a violation of Article 3 ECHR if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation 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 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 an adequate manner.

Financial assistance to Italy for migration, asylum and borders

Many actions have been undertaken to support Italy in the framework of the migration and asylum policy. Following the Lampedusa tragedy additional emergency funding was mobilised to an unprecedented extent. In 2013 the Commission granted a 30 million euro package of Emergency Assistance to Italy which aims on the one hand at increasing the capacity of accommodation and of the authorities examining asylum cases, and on the other hand at supporting surveillance and rescue operations at sea.

As a whole Italy has been the largest beneficiary of the additional emergency funding disbursed during the period 2007-2013.

But the Commission does not merely react to emergencies. From 2007-2013 Italy received a basic allocation of €478.7 million from the EU under the four former Funds in the area of Migration (European Refugee Fund, European Fund for the Integration of Third Country Nationals, European Return Fund and External Borders Fund).

For the 2014-2020 period at least €310 million from the Asylum, Migration and Integration Fund in addition to €156 million from the Internal Security Fund (Borders) will be made available to Italy. With a total of €466 million, Italy will therefore continue to be one of the main beneficiaries of EU funding for actions in these fields between 2014 and 2020.

European Commission support to improvements of asylum system in Italy

The European Commission and the European Asylum Support Office (EASO) are working with Italy in order to improve its asylum system. The Commission is monitoring Italy's application of EU asylum law with a view to making improvements for example to improve the time taken to consider asylum applications; to improve the arrangements for the guardianship of minors; improving living and reception conditions; access to rights for beneficiaries of international protection; and free legal assistance in appeal procedures.

EASO has a Special Support Plan to Italy that was signed in 2012. This support focuses on the organisation of reception, for example through a definition of a set of quality standards and a mechanism for reception; and assistance in training the National Asylum Commission. Several Member States have committed experts to be deployed in Asylum Support Teams in Italy.

Asylum statistics

In 2013 Italy registered 26.620 asylum applications – a sharp increase compared to the year before (17.350 applications). This represents around 6% of the total applications in the EU Member States in 2013, but was much lower than the 2013 figures for Germany (125.000), France (65.000) and Sweden (55.000) that received more than 50% of the 435.000 asylum requests filed in the EU between them. Figures for January to July 2014 show a further sharp increase in asylum applications in Italy to 30.755 representing 10,4% of total EU applications, but this remains considerably lower than the 94.300 in Germany, 41.315 in Sweden or 36.680 in France.

While Italy has been under considerable pressure, the ratio of asylum applications/national population was below the EU-28 average over the period 2009-2013. In 2013, 135 700 asylum seekers were granted protection in the EU Member States.

MEMO/14/1401

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