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

FOURTH SECTION

DECISION

*This version was rectified on 18 May 2021
under Rule 81 of the Rules of Court.*

Application no. 46595/19
M.T.
against the Netherlands

The European Court of Human Rights (Fourth Section), sitting on 23 March 2021 as a Chamber composed of:

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*

and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 5 September 2019,

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

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the information submitted by the Italian Government, who had been invited to intervene under Article 36 § 2 of the Convention,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms M.T., is an Eritrean national, who was born in 1992 and who is currently residing in Harderwijk. The Court decided that the applicant's identity should not be disclosed to the public (Rule 47 § 4 of the

Rules of Court). She was represented before the Court by Ms V.M. Oliana, a lawyer practising in Amsterdam.

2. The Dutch Government ("the Government") were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant and her two minor daughters, who were born in 2013 and 2015 respectively, entered the Netherlands on 21 March 2018 and applied for asylum on 23 March 2018.

5. As the Eurodac system (the EU fingerprint database for identifying applicants for international protection and irregular border-crossers) showed that the applicant had applied for international protection in Italy on 3 January 2018, the Dutch immigration authorities requested their Italian counterparts on 27 March 2018 to take back the applicant on the basis of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast; "the Dublin III Regulation"). The Italian authorities approved that request on 4 June 2018.

6. On 5 July 2018, the Deputy Minister of Justice and Security (*Staatssecretaris van Justitie en Veiligheid*; "the Deputy Minister") decided not to examine the asylum application, considering that Italy was responsible for its examination. The applicant's appeal against that decision was dismissed by the Regional Court (*rechtbank*) of The Hague, sitting in Middelburg, on 23 August 2018. The applicant did not lodge a further appeal (*hoger beroep*).

7. On or around 6 September 2018 the applicant and her children left for an unknown destination; for this reason their transfer to Italy did not take place.

8. On 5 December 2018, the applicant submitted a second asylum application. She argued that the Netherlands ought to take responsibility for the examination of that application in view of the recent entry into force in Italy of Legislative Decree no. 113/2018 (also called "the Salvini Decree"; see paragraph 27 below) which stipulated that applicants for international protection such as herself would no longer be eligible for access to the second-tier reception facilities provided under the former Protection System for Asylum-Seekers and Refugees (*Sistema di protezione per richiedenti asilo e rifugiati* – "SPRAR"; see paragraph 23 below), which had been renamed System for Protection of Beneficiaries of International Protection

and Unaccompanied Minor Foreigners (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati* – "SIPROIMI") in the new legislation. The applicant was interviewed on this application on 25 February 2019. On 25 April 2019 the Deputy Minister notified the applicant in writing of the intention not to examine her application for asylum. The applicant was given the opportunity to respond in writing to that notification, which a lawyer did on her behalf on 9 May 2019.

9. The Minister of Justice and Security (*Minister van Justitie en Veiligheid*; "the Minister") decided on 23 May 2019 not to examine the asylum application. The Minister considered that the entry into force of the Salvini Decree – which had meanwhile become Law no. 132/2018 – could not lead to the conclusion that such systemic deficiencies in the asylum procedures and the reception conditions pertained in Italy that the principle of mutual trust could no longer be relied upon. In this context the Minister also referred to the guarantees set out in the circular letter of the Italian Dublin Unit of 8 January 2019 (see paragraph 28 below) and to the decreased number of applicants for international protection arriving in Italy.

10. The Minister further referred to a judgment of the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) of 19 December 2018 (ECLI:NL:RVS:2018:4131). In that ruling, the Administrative Jurisdiction Division had found that even though the entry into force of the Salvini Decree entailed a number of changes to the reception system for foreigners in Italy, it did not have as a consequence that (vulnerable) persons who were to be returned to Italy in accordance with the Dublin III Regulation would no longer be provided with reception facilities. Furthermore, the fact that as a result of those changes more asylum-seekers would have to rely only on the first-reception locations did not have as an effect that those concerned would run a real risk of being subjected to treatment contrary to Article 3 of the Convention.

11. Lastly, the Minister found that the reports on the situation in Italy submitted by the applicant did not amount to sufficient substantiation of her claim of the existence of systemic deficiencies in the asylum procedure and the reception conditions in that country.

12. The applicant lodged an appeal with the Regional Court of The Hague, sitting in Haarlem, against the Minister's decision; she also applied for a provisional measure (*voorlopige voorziening*) in order to be allowed to await the outcome of the appeal in the Netherlands. She argued that as a result of the new Italian legislation, the general guarantees relating to families with minor children previously given by the Italian authorities were no longer valid. The need for extra protection and guarantees was even stronger in her case as her youngest daughter was suffering from a heart murmur and was being seen at a paediatric clinic in the Netherlands for further examination of, *inter alia*, her blood. Rather than simply refer to the

circular letter of 8 January 2019 (see paragraph 28 below), the Dutch authorities should, according to the applicant, investigate how vulnerable asylum-seekers were being accommodated in Italy; in any event, they should seek individual assurances from their Italian counterparts.

13. Following a hearing on 18 June 2019 the Regional Court rejected the appeal and denied the request for a provisional measure on 25 June 2019. Having regard to a recent ruling of the Administrative Jurisdiction Division of 12 June 2019 (ECLI:NL:RVS:2019:1861), in which that tribunal had considered that as regards Italy reliance could still be placed on the principle of mutual trust, the Regional Court saw no room for a finding to the contrary. It noted that the applicant had neither pointed to any reports post-dating the information relied on by the Administrative Jurisdiction Division, nor had she disputed in a concrete and substantiated manner that the ratio between the influx of asylum-seekers and the number of reception facilities in Italy had increased. As regards the question whether there were any indications that the Italian authorities would not comply with their obligations under the Convention in the specific case of the applicant and her children, the Regional Court took as a starting point that on the basis of the principle of mutual trust, the State of the Netherlands was entitled to assume that the medical facilities available in Italy were comparable to those in the Netherlands. It then noted that it had not appeared that the applicant's youngest daughter was receiving specialist treatment or that she required any such treatment. In this context the Regional Court took into account that, even if individual guarantees within the meaning of the *Tarakhel* judgment (see *Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014 (extracts)) were no longer sought, relevant health data of the applicant and her daughters would, if the applicant consented, be transmitted to the Italian authorities before they were transferred to Italy. Whether the transfer would go ahead was then dependent on the reaction of the Italian authorities to that information.

14. On 2 July 2019 the applicant lodged a further appeal against this judgment with the Administrative Jurisdiction Division. That appeal was rejected on 24 July 2019, the Administrative Jurisdiction Division finding that it did not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to section 91(2) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning was called for as the arguments submitted did not raise any questions requiring a determination in the interest of legal unity, legal development or legal protection in the general sense. No further appeal lay against this decision.

15. The transfer of the applicant and her children from the Netherlands to Italy, scheduled for 9 September 2019, was announced to the Italian authorities by email on 23 August 2019, by means of the standard form for the transfer of data prior to a transfer as prescribed in Article 31(4) of the

Dublin III Regulation. The form relating to the applicant included, *inter alia*, the following remark:

> "Furthermore, it concerns a family with minor children. In reference to your circular letter dated January 8th, 2019 in which you guarantee the protection of the fundamental rights, particularly the family unity and the protection of minors, I trust you will accommodate this family accordingly."

The form relating to the applicant's youngest daughter stated that this child had been diagnosed with anaemia and a vitamin D deficiency, for which a follow-up, preferably by a general practitioner or paediatrician, was required. That form was accompanied by a health certificate which had been obtained with the applicant's permission.

Also on 23 August 2019 a "proof of delivery" email was received from the Italian authorities.

16. On 5 September 2019 the present application was lodged and the accompanying request for an interim measure within the meaning of Rule 39 of the Rules of Court, in the form of a stay of the applicant's transfer to Italy, was granted by the duty judge on 6 September 2019 until 4 October 2019. On that last date the duty judge prolonged the interim measure until further notice.

B. Relevant European Union law

17. The Dublin III Regulation, which entered into force on 1 January 2014, establishes the criteria and mechanisms for determining which of the States bound by that Regulation[1] is responsible for the examination of applications for international protection.

C. Relevant domestic law and practice

18. Under section 30(1) of the Aliens Act 2000, an application for international protection is not examined if it is established on the basis of the Dublin Regulation that a different State, bound by that Regulation, is responsible for doing so. Before it is decided not to examine an application for international protection for that reason, the person concerned is provided an opportunity to present his or her views on the application of the Dublin Regulation, in accordance with section 30(2) of the Aliens Act 2000.

19. If another State bound by the Dublin Regulation is found to be responsible for examining the application, it is also determined whether there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that State, resulting in a risk of inhuman or degrading treatment within the

[1] The member States of the European Union plus Iceland, Liechtenstein, Norway and Switzerland.

meaning of Article 3 of the Convention and Article 4 of the Charter of Fundamental Rights of the European Union. If such grounds are found to exist, the Dutch immigration authorities will either continue to examine the criteria set out in Chapter III of the Dublin III Regulation in order to establish whether another State bound by that Regulation can be designated as responsible, or will decide that it falls to the Netherlands to examine the application for international protection.

20. Against a decision not to examine an application for international protection an appeal lies to the Regional Court and, subsequently, a further appeal to the Administrative Jurisdiction Division. Neither the appeal nor the further appeal have suspensive effect on the transfer of the person concerned to the receiving authorities. However, a suspension may be requested from the Regional Court and the Administrative Jurisdiction Division, respectively.

21. The actual transfer to the responsible State will be announced to the competent authorities of that State ten to fifteen days beforehand. If relevant, explicit mention is made of the vulnerable position of the person at issue as a single parent, and the medical situation and the age of the children, in order to enable those authorities to ensure the availability of appropriate reception facilities suited to the age of the children and guaranteeing respect for family unity.

D. The Italian context

22. The Italian reception scheme for applicants for international protection is set out in Legislative Decree no. 142/2015 (hereinafter "the Reception Decree"). This decree, which entered into force on 30 September 2015, implemented Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast; "the Reception Conditions Directive") and Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

1. The reception scheme after the Tarakhel judgment but prior to the entry into force of the Salvini Decree

23. The Reception Decree provided for a two-tier system under which applicants for international protection would initially be accommodated in governmental first-reception centres (*centri governativi di prima accoglienza*)[2] or, in case of a temporary unavailability of places in those

[2] These centres used to be called "reception centres for asylum-seekers" (*centri di acoglienza per richiedenti asilo*, "CARA") at the time of the Court's examination of the case of *Tarakhel* (cited above).

centres, in temporary facilities (*strutture temporanee*), and subsequently – and provided the persons concerned lacked sufficient means of subsistence – in facilities belonging to the SPRAR network[3].

24. On 8 June 2015 the Dublin Unit of the Italian Ministry of the Interior sent a circular letter to the Dublin Units of all States bound by the Dublin Regulation, setting out the new policy of the Italian authorities on transfers to Italy of families with small children. The new policy was considered necessary in view of the fact that reception facilities, specifically reserved for such families, frequently remained unoccupied as a result of families having left for an unknown destination prior to transfer, or having obtained a court order barring their transfer. In order to safeguard appropriate facilities where families could stay together, the Italian authorities had earmarked a specific number of places – which would be extended should the need arise – within the SPRAR network for families with small children who were returned to Italy under the Dublin III Regulation.

25. On 24 June 2015, Italy stated at a meeting of the [Dublin] Contact Committee in Brussels that individual guarantees – within the meaning of the *Tarakhel* judgment (cited above, § 122) – would no longer be issued, but that it was the perception of Italy that the SPRAR centres that had been identified in the circular letter of 8 June 2015 and which would be used in future to accommodate families with minor children satisfied the requirements set out in the *Tarakhel* judgment (see *N.A. and Others v. Denmark* (dec.), no. 15636/16, §§ 11-12, 28 June 2016).

26. Subsequently, the Italian Dublin Unit sent a number of other circular letters, containing updated lists of "the SPRAR projects where asylum-seeker family groups with children will be accommodated, in full respect of their fundamental rights and specific vulnerabilities".

2. *The Salvini Decree*

27. The Salvini Decree entered into force on 5 October 2018 and was subsequently converted into Law no. 132/2018, which entered into force on 4 December 2018. It amended, *inter alia*, the Reception Decree (see paragraphs 22-23 above) such as to render applicants for international protection – other than unaccompanied minors – ineligible for placement in the facilities of the SPRAR network, which was renamed SIPROIMI (see paragraph 8 above). This reform also removed the possibility for applicants for international protection to register with the local registry office.

28. The Italian Dublin Unit informed its counterparts in the other States bound by the Dublin Regulation of the amended legislation by means of a circular letter of 8 January 2019. This letter stated, *inter alia*:

> "In terms of reception of asylum applicants (including subjects under the Dublin procedure) and refugees, the new regulation reviews the provisions concerning the

[3] For the SPRAR network, see *Tarakhel*, cited above, §§ 46-49.

SPRAR system, which was renamed System for the protection of beneficiaries of international protection and unaccompanied foreign minors (SIPROIMI), by exclusively reserving the admission to the facilities to:

1. beneficiaries of international protection (subsidiary protection and refugee status),

2. unaccompanied foreign minors,

3. holders of 'new' permits of stay of humanitarian character.

Consequently, all applicants under the Dublin procedure will be accommodated in other Centres referred to in Legislative Decree no. 142/2015.

In consideration of the efforts made by the Italian Government in order to strongly reduce the migration flows, these Centres are adequate to host all possible beneficiaries, so as to guarantee the protection of the fundamental rights, particularly the family unity and the protection of minors."

3. Reactions to the Italian reception scheme after the entry into force of the Salvini Decree

29. The Council of Europe's Commissioner for Human Rights told the Italian ANSA news agency on 15 November 2018 that the new regulation constituted a "step back" and that "not allowing asylum-seekers to access the SPRAR system ... puts the Italian system of reception and integration into further difficulty."

30. In January 2020 the Swiss Refugee Council published a report entitled "Reception conditions in Italy; Updated report on the situation of asylum-seekers and beneficiaries of protection, in particular Dublin returnees, in Italy". It states, *inter alia* (footnotes omitted):

"As long as they are in the asylum procedure, *and as long as their right to reception conditions has not been revoked*, Dublin returnees – as for all asylum-seekers in Italy – can only be accommodated in [governmental] first-line reception centres ... and temporary facilities (CAS[4], ...).

...

The Salvini Decree restricted the scope [of] people allowed to enter the second-line reception system SPRAR (now called SIPROIMI). ... There are no exceptions for vulnerable asylum-seekers. They are accommodated in first-line reception centres, of which the CAS (originally introduced as emergency centres) constitute the vast majority. In the past, these centres were often not able to adequately host people with special needs, as the [European Court of Human Rights] also found in its Tarakhel ruling of 4 November 2014. Since the implementation of amendments following the Salvini Decree, the quality and the services offered by first-line reception centres have further deteriorated significantly. ... To sum up, people with special reception needs will most likely not be provided with adequate services and support in first-line reception. ...

[4] CAS are emergency accommodation centres (*centri di accoglienza straordinaria*; this is the original name for the 'temporary facilities' mentioned in paragraph 23 above).

> According to UNHCR, the reception of vulnerable asylum-seekers in large collective centres, which has been customary since October 2018, is particularly problematic."

As regards the provision of the Reception Decree that concerns the circumstances under which reception facilities are to be withdrawn from applicants for international protection, the report states, *inter alia*:

> "The practical application of the possibility of withdrawal is very strict. ... A frequent problem occurs to Dublin returnees who have been accommodated in (or even only allocated to) a governmental first-line reception centre or a temporary facility and did not show up to make use of the reception centre or left this centre without notification. In these cases, they will ... have lost their right to be accommodated. ..."

31. On 27 May 2020 the Asylum Information Database (AIDA) of the European Council on Refugees and Exiles (ECRE) published its "Country Report: Italy, 2019 Update", which had been written by the Italian Association for Legal Studies on Immigration and edited by ECRE. It states, *inter alia*:

> "... following the 2018 reform of the reception system, Dublin returnees as asylum-seekers no longer have access to second-line reception SPRAR, now renamed SIPROIMI. Accordingly, places in second-line reception for vulnerable Dublin returnees are no longer reserved, as asylum-seekers do not have access to this type of accommodation.
>
> ...
>
> The new schemes also omit psychological support ..., replace legal support with a 'legal information service' reduced to 3 hours a week for 50 people, and significantly reduce cultural mediation to an overall 12 hours a week for 50 people. No services for vulnerable people are provided, thus leaving the protection of these persons to purely voluntary contributions.
>
> ...
>
> [I]n 2019 and in early 2020 ... the lack of civil registration has led in many cases to deny asylum-seekers access to social care services as public administration officials had not received instructions on how to guarantee these rights without civil registration."

4. Developments after the introduction of the application

32. A new Decree, no. 130/2020, which entered into force on 22 October 2020, made more amendments to the Reception Decree, including to some of the provisions which had previously been amended by the Salvini Decree. This Decree was converted to Law no. 173/2020 which entered into force on 20 December 2020.

33. The amendments introduced by Decree no. 130/2020 constituted a return to the two-tier system for the reception of applicants for international protection. Such applicants are henceforth first accommodated in governmental first-reception centres or temporary facilities, followed by a

transfer – in case the person concerned has insufficient means of subsistence – to facilities within the Reception and Integration System (*Sistema di accoglienza e integrazione* – "SAI", the former SIPROIMI), within the limits of places available. Moreover, applicants for international protection who fall in any of the categories defined as 'vulnerable' in the Reception Decree are transferred to SAI facilities as a matter of priority.

34. The categories defined as 'vulnerable' in the Reception Decree (Article 17) are the following: minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with minor children, victims of human trafficking, people suffering from serious illness or mental disorders, persons in respect of whom it has been established that they have suffered torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, and victims of genital mutilation. These categories correspond to those mentioned in Article 21 of the Receptions Conditions Directive (see paragraph 22 above).

35. The new Decree stipulated that certain standards which, according to the Reception Decree, applied in the first-reception centres would now also apply to the temporary facilities, and it extended the range of services to be provided in both types of accommodation to include, apart from material reception services, *inter alia*, health care, social and psychological assistance, Italian language courses and legal guidance services. It further restored the right of applicants for international protection to register with the local registry office.

36. In a circular letter of 8 February 2021 Italy informed the other States bound by the Dublin Regulation that Decree no. 130/2020 envisaged the implementation of a new protection system, SAI, which would introduce significant changes in the Italian system of reception. Above all, it provided the chance "for asylum-seekers to be hosted in the SAI system, including family groups, so as to guarantee the protection of such a fundamental right as family unity." The letter concluded by saying:

> "... in the framework of the new system these dedicated centres will host even Dublin family groups with minors, returned from other Member States, in accordance with the Tarakhel judgement."

5. *Reaction of the Office of the United Nations High Commissioner for Refugees (UNHCR) to Decree no. 130/2020*

37. In an item published on its Italy website on 21 December 2020, UNHCR welcomed the adoption of Law no. 173/2020 which converted Legislative Decree no. 130/2020 (see paragraph 32 *in fine* above), saying it introduced several changes that would positively affect the Italian asylum system. The new law ensured, *inter alia*, the provision of psychological assistance and Italian language courses in the first-reception centres and temporary facilities, and by restoring the right for asylum-seekers to register

their residence it guaranteed them effective access to essential services. In addition, the establishment of the Reception and Integration System constituted a return to a model that over the years had shown very positive results in terms of social inclusion.

COMPLAINT

38. The applicant complained under Article 3 of the Convention that her and her children's transfer to Italy would expose them to treatment contrary to Article 3 of the Convention.

THE LAW

39. The applicant complained that her family's transfer under the Dublin III Regulation from the Netherlands to Italy would be in breach of Article 3 of the Convention which reads:

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

A. The parties' submissions

1. The Government

40. In their observations, submitted before the Reception Decree in force had been amended by Legislative Decree 130/2020, the Government argued that the situation in Italy differed substantially from that which obtained at the time of the judgment in *Tarakhel v. Switzerland* ([GC], no. 29217/12, ECHR 2014 (extracts)). Thus, in view of the considerable improvement since 2018 in the ratio of the number of new applicants for international protection to the number of reception places, it could be concluded that a shortage of capacity was no longer a problem in Italy. As regards the quality of reception facilities, the available information did not warrant the conclusion that these were so bad that there was a real risk of a breach of Article 3 of the Convention. In addition, in their circular letter 8 January 2019 (see paragraph 28 above), the Italian authorities had confirmed that fundamental rights were guaranteed in Italy, referring explicitly to family unity and the protection of minors. According to the Government, therefore, the need to obtain individual guarantees prior to transfer as held in *Tarakhel* (cited above, § 122) did not apply in the present case.

41. The Government further submitted that seventeen days prior to the planned transfer of the applicant and her children, the Italian authorities had been informed of the fact that the applicant was a single mother, of the age of her minor children and of the medical situation of the youngest daughter (see paragraph 15 above). If the Italian authorities had indicated that they

could not ensure appropriate reception facilities, the transfer would have been cancelled, but no such indications had been received.

42. Subsequently, the Government, commenting on the information provided by the Italian Government on 27 October 2020 (see paragraph 47 below), contended that the new developments, as well as the attitude of the Italian authorities, supported even more the position that the situation in Italy did not warrant the conclusion that there were systemic deficiencies in the reception conditions for applicants for international protection, including for families with children under the age of 18, which constituted substantial grounds for believing that applicants for international protection would face a real risk of being subjected to inhuman or degrading treatment.

2. The applicant

43. In her observations in reply, also submitted before the Reception Decree in force had been amended by Legislative Decree 130/2020, the applicant insisted that the situation in Italy had deteriorated compared to the time when, in accordance with the *Tarakhel* judgment, individual guarantees would be provided by the Italian authorities. She posited that, in this context, it was to be borne in mind that while the number of applications for international protection in Italy had indeed decreased, so had the available accommodation. Moreover, applicants for international protection were no longer entitled to second-tier reception facilities, and it had been reported that the situation of vulnerable persons, such as children, in first-tier reception facilities had suffered. As the applicant had left the accommodation where she had been housed during her first stay in Italy, it was, moreover, far from certain that she would be granted reception facilities anew.

44. The applicant concluded that in these circumstances the Government ought not to have placed reliance on the circular letter of 8 June 2019 (see paragraph 28 above) and on the fact that the Italian authorities had not explicitly indicated that they would be unable to provide the applicant and her children with accommodation where their special needs would be met. Instead, the Dutch authorities should have conducted a thorough examination of the particular situation of the applicant and her children as well as of the situation pertaining in Italy, and should have insisted on receiving individual guarantees from their Italian counterparts before proceeding to schedule their transfer to Italy.

45. In comments on the information provided by the Italian Government on 27 October 2020 (see paragraph 47 below), the applicant argued that the legislative changes as described by that Government did not guarantee that she and her children would be placed in accommodation in second-tier reception facilities and that it was not clear whether the conditions in those facilities were comparable to those in the former SPRAR network. Moreover, it appeared that the new rules had not yet been implemented.[1]

B. Submissions of the Italian Government, third-party intervener, in reply to factual questions by the Court

1. Submissions of 29 November 2019

46. The Italian Government set out that in the reception facilities designated for the reception of applicants for international protection following the entry into force of the Salvini Decree, high quality material conditions and essential services continued to be ensured. The body of rights and procedures in place in relation to applications for international protection ensured that the applicant and her children would be provided with adequate protection and accommodation due to their specific status under domestic law as "vulnerable persons". The fact that the applicant had previously left accommodation assigned to her in Italy without prior notice did not affect her right to be provided with accommodation in that country; upon return to Italy under the Dublin III Regulation she would once more be considered an applicant for international protection.

2. Submissions of 27 October 2020

47. The Italian Government explained that Legislative Decree no. 130/2020 (see paragraphs 32-35 above) had modified the reception system by extending to applicants for international protection, within the limits of places available, the possibility of access to facilities within the SAI network. When such applicants fell within a category defined as "vulnerable" in Article 17 of Legislative Decree no. 142/2015 (see paragraph 34 above), he or she had access to SAI facilities as a matter of priority. Legislative Decree no. 130/2020 had not amended the categories defined as "vulnerable" in the aforementioned Article 17; in accordance with the *Tarakhel* case-law these categories thus continued to include, *inter alios*, minors, unaccompanied minors and single parents with minor children.

Moreover, Legislative Decree no. 130/2020 had also introduced services additional to those provided under the previous system.

C. The Court's assessment

48. The Court reiterates the relevant principles of Article 3 of the Convention, as set out in *Tarakhel* (cited above, §§ 93-99), which include the need for ill-treatment to attain a minimum level of severity to fall within the scope of Article 3 (see also *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 127, 21 November 2019). The assessment of this minimum

[1] Rectified on 18 May 2021: the text was "Although invited to do so, the applicant did not submit any comments on the information provided by the Italian Government on 27 October 2020 (see paragraph 47 below)."

is relative; it depends on all the circumstances of the case, 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. In determining whether substantial grounds have been shown for believing that the applicant runs a real and imminent risk of suffering treatment contrary to Article 3 if transferred to Italy, the Court will examine the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008).

49. The Court further notes that it has previously examined cases in which it was alleged that a removal to Italy under the Dublin Regulations would be in breach of Article 3 of the Convention. In its Grand Chamber judgment in the case of *Tarakhel* it held, when applying the above principles, that in view of the situation as regards the reception system in Italy pertaining at that material time, and as the case concerned children in respect of whom the requirement of "special protection" of asylum-seekers was particularly important in view of their specific needs and their extreme vulnerability, it was incumbent on the transferring State to obtain assurances from their Italian counterparts that upon their arrival in Italy, the persons concerned would be received in facilities and in conditions adapted to the age of the children, and that the family would be kept together (see *Tarakhel*, cited above, §§ 118-20).

50. From 8 June 2015 onwards, such assurances were provided by the Italian authorities by means of a general guarantee set out in circular letters (see paragraphs 24 and 26 above). In a number of cases, in which the Italian authorities had been duly informed by the authorities of the transferring State about the family situation and the scheduled arrival of the persons to be returned to Italy, the Court considered that that general guarantee was sufficient, since it entailed that the persons at issue would be placed in one of the SPRAR reception facilities in Italy which had been earmarked for families with minor children (see, amongst others, *J.A. and Others v. the Netherlands* (dec.), no. 21459/14, § 30, 3 November 2015; *S.M.H. v. the Netherlands* (dec.), no. 5868/13, § 50, 17 May 2016; *F.M. and Others v. Denmark* (dec.), no. 20159/16, § 28, 13 September 2016; and *Ali and Others v. Switzerland and Italy* (dec.), no. 30474/14, § 34, 6 October 2016).

51. The applicant in the present case contended that no such reliance should be placed on the circular letter of 8 January 2019, since as a result of the amendments introduced to the reception system in Italy in 2018, applicants for international protection were no longer eligible for accommodation in the second-tier reception facilities of the SPRAR network, which had been renamed SIPROIMI (see paragraph 44 above).

52. The Court reiterates its established case-law to the effect that if an applicant has not yet been removed, the material point in time for the assessment of the claimed Article 3 risk is that of the Court's consideration of the case. Given that it is the present conditions which are decisive, the

Court will make a full and *ex nunc* evaluation where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 86 and 97, *Reports of Judgments and Decisions* 1996-V, and *F.G. v. Sweden* [GC], no. 43611/11, § 115, 23 March 2016, with further references).

53. It notes in that context that the latest modifications to the Italian system of reception of applicants for international protection took effect on 22 October 2020 and that these entailed, *inter alia*, that applicants for international protection would once more, within the limits of places available, have access to the second-tier reception facilities within the SAI (former SIPROIMI) network (see paragraphs 32-33, 36 and 47 above); a modification welcomed by UNHCR (see paragraph 37 above).

54. Since, as confirmed by the Italian Government, if transferred to Italy under the Dublin III Regulation, the applicant would be considered an applicant for international protection who would be entitled to accommodation within the Italian system of reception facilities (see paragraph 46 *in fine* above), the Court cannot but conclude that, following the latest legislative changes, she would be eligible for placement in the SAI network. This also follows from the contents of the circular letter of 8 February 2021 cited in paragraph 36 above. What is more, such placement would be given priority in view of the fact that the applicant, as a single mother with two minor children, belongs to one of the categories of persons defined as "vulnerable" in Italian legislation (see paragraphs 33-34 and 47 above). In the absence of any concrete indication in the case file, the Court does not see any reasons to assume that the applicant and her children will be unable to obtain a place within the SAI network when they arrive in Italy or that the facilities within that network and the conditions provided would not be adapted to the age of the children.[1]

55. However, even if the applicant and her children would, pending placement in SAI facilities, initially be accommodated in first-tier reception

[1] Rectified on 18 May 2021: the text was "Since, as confirmed by the Italian Government, if transferred to Italy under the Dublin III Regulation, the applicant would be considered an applicant for international protection who would be entitled to accommodation within the Italian system of reception facilities (see paragraph 46 in fine above; see also paragraph 36 above), the Court cannot but conclude that, following the latest legislative changes, she would be eligible for placement in the SAI network. What is more, such placement would be given priority in view of the fact that the applicant, as a single mother with two minor children, belongs to one of the categories of persons defined as "vulnerable" in Italian legislation (see paragraphs 33-34 and 47 above). In the absence of any concrete indication in the case file, and noting that the applicant declined the opportunity to comment on the information provided by the Italian Government about the latest modifications to the reception system in Italy (see paragraph 45 above), the Court does not see any reasons to assume that the applicant and her children will be unable to obtain a place within the SAI network when they arrive in Italy."

facilities, the Court notes that the latest amendments also included an extension of the range of services to be provided in those facilities (see paragraph 35 above). According to UNHCR, moreover, effective access to essential services was guaranteed as the right of applicants for international protection to register their residence had been restored (see paragraph 37 above).

56. The Court further has no reason to assume that the Dutch authorities would not inform their Italian counterparts of the scheduled arrival date in Italy of the applicant and her children, of their family situation and of any medical needs of any of them (see paragraph 21 above), as they did previously (see paragraph 15 above). In that context the Court lastly notes that the applicant has not argued that her youngest daughter requires specialist treatment unavailable in Italy.

57. In view of the above, the Court considers that the applicant has not demonstrated that her future prospects, if transferred to Italy with her children, whether looked at from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship that is severe enough to fall within the scope of Article 3.

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

59. Consequently, the application of Rule 39 of the Rules of Court comes to an end.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 April 2021.

{signature_p_1} {signature_p_2}

Andrea Tamietti
Registrar

Yonko Grozev
President