

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

14 September 2010

THIRD SECTION

Application no. 2303/10
by Shukri IBRAHIM ALI
against the Netherlands and Italy
lodged on 13 January 2010

STATEMENT OF FACTS

THE FACTS

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

The applicant applied for asylum in the Netherlands on 16 March 2009. She was eight months pregnant at the time and subsequently, on 8 April 2009, gave birth to a son.

It appeared from the so-called Eurodac system that before coming to the Netherlands, the applicant had been in Italy. She admitted that that was indeed the case and that she had been granted a residence permit for humanitarian reasons, valid for three years, in Italy. The Italian authorities had not put any questions to her about the reasons for her asylum application but only about her personal details and country of origin. After the granting of the residence permit, the applicant was no longer eligible for State-sponsored facilities and she found herself living on the streets, heavily pregnant.

The asylum application in the Netherlands was rejected because the authorities were of the opinion that pursuant to Council Regulation (EC) No. 343/2003 of 18 February 2003 ("the Dublin II Regulation"), Italy was responsible for the processing of the asylum application. The applicant's appeal against this decision was rejected by the Regional Court (*rechtbank*) of The Hague, sitting in Almelo, on 18 December 2009. An objection (*verzet*) lodged by the applicant was still pending before the same Regional Court at the time the application was introduced with the Court in Strasbourg, but it did not enjoy suspensive effect.

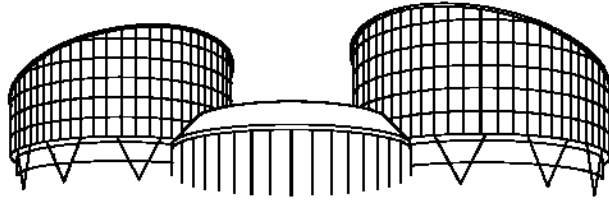
On 14 January 2010, at the request of the applicant, the President of the Chamber decided to indicate to the Government of the Netherlands that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to expel the applicant to Italy (Rule 39 of the Rules of Court).

The applicant is currently pregnant with her second child.

COMPLAINTS

Against the Netherlands

Invoking Articles 3 and 8 of the Convention, the applicant complains of the Dutch authorities' refusal to examine the merits of her asylum application and of their reliance on the principle of inter-state trust despite



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the information available about the alarming situation of asylum seekers in Italy. By proceeding in this manner, the Dutch authorities exposed her to a real risk of being returned to Somalia without a proper examination of her Article 3 claim having taken place. She further claims that, in Italy, she runs a real risk of being subjected to inhuman treatment – as she and her son will not be provided with (State-sponsored) accommodation, sustenance, medical assistance or health insurance and will be forced to live on the streets –, and that she will be unable to build up a normal family life there and that there is even a risk of her child being taken into care because she is unable to provide for it.

The applicant also complains under Article 13 of the Convention that the Dutch authorities considered that, despite her contestations to the contrary, she would, once she had returned to Italy, be able to put her grievances in relation to the unavailability of State-sponsored facilities before an Italian court or the Strasbourg Court.

Against Italy

The applicant complains of having been subjected to treatment in breach of Article 3 of the Convention during her stay in Italy, the more so as she was heavily pregnant at the time. She fears that she will be subjected to the same treatment if returned to Italy. She furthermore alleges that her eligibility for asylum was not examined in Italy and that, should her temporary residence permit not be prolonged, she would be expelled to Somalia where she would run a real risk of being subjected to treatment in breach of Article 3. Referring to the same complaints raised in respect of the Netherlands, the applicant also alleges a violation of Articles 8 and 13 of the Convention in respect of Italy.

QUESTIONS TO THE PARTIES

To the Government of the Netherlands

In the light of the applicant's claims and the documents which have been submitted, would her removal to Italy pursuant to the provisions of Council Regulation (EC) No. 343/2003 of 18 February 2003 (“the Dublin II Regulation”) amount to treatment in breach of Article 3 of the Convention as long as there are no specific guarantees that the applicant in the present case will be provided with accommodation for herself and her infant son as well as with the required medical assistance and facilities in view of her current pregnancy?

To the Government of Italy

1. Can the Government issue a specific guarantee that the applicant in the present case will be provided in Italy with accommodation for herself and her infant son as well as with the required medical assistance and facilities in view of her current pregnancy?
2. If no such specific guarantee can be issued, is there a real risk of the applicant being homeless and/or of the required medical assistance and facilities not being available to her in Italy, and, if so, would that constitute treatment in breach of Article 3 of the Convention?