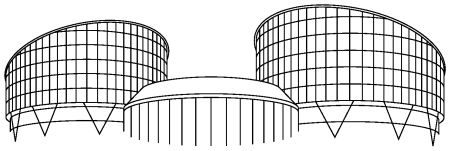

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no 15636/16
N.A. and Others
against Denmark

The European Court of Human Rights (Second Section), sitting on 28 June 2016 as a Chamber composed of:

Işıl Karakaş, *President*,
Julia Laffranque,
Nebojša Vučinić,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges*,
and Stanley Naismith, *Section Registrar*,

Having regard to the above application lodged on 22 March 2016,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the decision to grant the applicants anonymity,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

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

2. The applicants are Somali nationals, a mother and her two children. They were born in 1993, 2014 and 2015 respectively. They are currently living in Denmark. They are represented by the Danish Refugee Council (*Dansk Flygtningehjælp*).

3. The applicant mother entered Italy on 15 January 2014.

4. On 26 February 2014 she entered Denmark, where she had a child on 23 March 2014.

5. On 7 March 2014 the Immigration Service (*Udlændingestyrelsen*) found that the applicant should be returned to Italy under the Dublin Regulation. The Italian authorities accepted this on 16 May 2014.

6. On 15 July 2014 the Refugee Appeals Board decided to suspend transfer until judgment was delivered in *Tarakhel v. Switzerland* ([GC], no. 29217/12, ECHR 2014 (extracts)). The judgment was delivered on 4 November 2014.

7. In the light thereof, on 11 December 2014 the present case was referred back to the Immigration Service for a review.

8. On 27 March 2015 the Italian authorities provided a general guarantee stating that all families with minors transferred to Italy under the Dublin III Regulation would be kept together and accommodated in a facility where the reception conditions were appropriate for the family and the age of the children.

9. On 14 April 2015 the Immigration Service found that the applicants could be returned to Italy under the Dublin Regulation, which was accepted by Italy on 16 May 2015.

10. On appeal, on 12 June 2015 the decision was upheld by the Refugee Appeals Board (*Flygtningenævnet*), on the condition that the Immigration Service could obtain an individual guarantee meeting the criteria set out in the *Tarakhel* judgment, prior to the transfer of the applicants.

11. In the meantime, on 8 June 2015 the Dublin Unit of the Italian Ministry of the Interior sent a letter to the Dublin Units of the other member States of the European Union, 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 may stay together, the Italian authorities earmarked a total of 161 places, distributed over twenty-nine projects under the System for Protection of Asylum Seekers and Refugees (SPRAR). The Italian authorities confirmed that this number would be extended should the need arise. The circular letter read as follows: ‘RE: DUBLIN REGULATION Nr. 604/2013. Guarantees for vulnerable cases: family groups with minors. Further to the previous circular letters dd. February 2nd 2015 and in relation to the current European case-law concerning the guarantees in case of transfers of family groups with minors in compliance with the Dublin Regulation, you will find herewith enclosed the list of the SPRAR projects, which can provide reception to the international protection applicants. Specifically, in the framework of the

SPRAR – Protection System for International Protection Applicants and Refugees – provided for by the Act nr. 189/2002 and consisting of the network of the local bodies, as it can also be seen from the www.sprar.it website, specific places have been reserved for family groups in the framework of the implementation of local reception projects. These projects of "integrated reception" are financed by means of public resources on the basis of calls for tender with specific requirements, on a continuous basis, and they are implemented by the Municipalities with the support of the voluntary sector; they also provide for information, guidance, assistance and orientation measures, by creating individual and family paths of socioeconomic integration (autonomy and social inclusion paths) as well as specific paths for minors. These projects also ensure family unity, Italian language courses and job training. Any checks of the abovementioned requirements lie with the competent Authorities for the transfer to Italy of family groups, by means either of their delegates, or of their liaison officers or of Easo personnel with this specific task. We are therefore of the opinion that, despite the objective difficulties which Italy is facing on the grounds of the high number of migrants and international protection applicants who reach Europe through the Italian coasts, the guarantee requests by Member States concerning the reception standards specifically ensured to family groups with minors can be regarded as fulfilled, also in consideration of the principle of mutual trust, underlying the legislation which regulates the relations among member States.'

12. On 24 June 2015, Italy stated at a meeting of the [Dublin] Contact Committee in Brussels that the circular letter of 8 June 2015 from Italy had replaced the previous letter of 27 March 2015 according to which the member States had been requested to ask Italy for an individual guarantee at least 15 days before a removal was to take place. Italy also said at the meeting that individual guarantees would no longer be issued, but that it was the perception of Italy that the SPRAR centres that had been identified and would be used in future to accommodate families with minor children satisfied the requirements set out in the Tarakhel judgment.

13. It appears from *The SPRAR System*, a joint report of 13 July 2015 by the Ministries of Immigration of the Netherlands, Germany and Switzerland following a fact-finding mission to two SPRAR projects, that all SPRAR projects are to provide beneficiaries with personalised programmes to help them (re)acquire autonomy, and to take part and integrate effectively in Italian society, in terms of finding employment and housing, access to local services, social life and education. It further appears that a number of minimum services are guaranteed to beneficiaries of SPRAR projects, including provision by the managing entity of food, clothes, bed linen and sanitary products and pocket money. Moreover, the managing entity must facilitate access to and the use of public services and health care, and ensure the inclusion of children in the local school system and access to education

for adults, as well as Italian language classes, without interruption for the whole year, for a minimum of 10 hours per week. The managing entity must also facilitate the recognition of the beneficiaries' degrees and professional qualifications and encourage university enrolment. Moreover, the managing entity must provide information on Italian labour legislation and support the integration of beneficiaries into the labour market. As regards the housing market, it is incumbent on the managing entity to provide information about Italian housing legislation and to facilitate access to the public and private housing market by supporting and mediating between beneficiaries and potential landlords. The managing entity must also facilitate access to protected housing if the specific personal situation of the beneficiary so requires. Finally, the managing entity must promote dialogue between beneficiaries and the local community and procedures and provide support relating to family reunification and Italian and European asylum law.

14. On 9 September 2015 the applicant mother had a child with a refused asylum seeker of Somali nationality.

15. In October 2015 the Immigration Service decided four test cases, including the present case, concerning transfer of asylum-seeking families with minor children to Italy under the Dublin Regulation.

16. In the present case it found, on 2 October 2015, that reception conditions for the applicant and her two children in Italy would be suitable. It emphasised, *inter alia*, that the Italian authorities had launched a number of initiatives to improve reception and accommodation conditions for families with minor children, and at a meeting in Brussels on 24 June 2015, the Italian authorities informed the other member States that the capacity of centres deemed suitable for the accommodation of families with minor children would be adapted according to need. The Italian authorities had also said that the circular letter of 8 June 2015 replaced the previous Italian letter of 27 March 2015, and that it appeared from the circular letter of 8 June 2015 that families with minor children will be offered accommodation in conditions appropriate for families and minors and intended to guarantee the unity of the family, and that offers of language courses and job training are also made. The Danish Immigration Service further referred to *The SPRAR System*, published on 13 June 2015.

17. On 8 October 2015 the applicants, represented by the Danish Refugee Council, appealed against the decision to the Refugee Appeals Board and simultaneously requested representation by the Danish Refugee Council during the appeal proceedings. They requested that their case be examined in Denmark by virtue of Article 17(1) of the Dublin Regulation, and submitted that a removal would be contrary to Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union. The Danish Refugee Council also referred to the fact that the removal of the applicant to Italy would separate the applicant from her spouse and the children from [M.A.A.], who is the

biological father of the applicant's newborn child and acts as a father to the applicant's older child, as [M.A.A.] is an asylum-seeker in Denmark and cannot go to Italy. The Danish Refugee Council made the primary claim that the decision made by the Danish Immigration Service on 2 October 2015 on suitable reception conditions did not satisfy the requirements set out in the decision made by the Refugee Appeals Board on 12 June 2015, and the Danish Refugee Council also claimed that the circular letter of 8 June 2015 could not be considered a sufficient guarantee that the applicant and her minor children will be given one of the reception places in Italy which satisfy the requirements set out in *Tarakhel*, in the event of their removal. The Danish Refugee Council further submitted that a number of places corresponding to 161 was not sufficient to meet the current needs. Moreover, the circular letter was addressed to all Dublin Units, for which reason 161 places were far from sufficient to accommodate the number of families with children currently awaiting transfer under the Dublin Regulation, and this also had to be viewed in the context of the large number of individuals who continued to enter Italy, for which reason the Danish Refugee Council disagreed with the assessment made by the Danish Immigration Service that conditions had improved or were 'significantly different compared with previous conditions'. The Danish Refugee Council further claimed that no detailed information on the individual accommodation centres appeared in the circular letter or on the website to which reference was made in the circular letter, nor was it specified for how long an asylum-seeker might use this kind of accommodation. The Danish Refugee Council further referred to the circumstance that the description given by Switzerland, Germany and the Netherlands in the report of 13 July 2015 was not an adequate description of the general conditions at SPRAR centres. The Danish Refugee Council further observed that the circular letter was dated prior to the decision made by the Refugee Appeals Board on 12 June 2015, but that it was apparently not considered a sufficient guarantee of suitable reception conditions when the decision was made. As regards the consultation response from the Danish Immigration Service of 7 September 2015, the Danish Refugee Council failed to understand why most of the member States assumed that the Italian circular letter constituted a sufficient guarantee to transfer families with children, considering that there was a total of 31 member States, and only three member States had responded that their authorities accepted the Italian circular letter as a sufficient guarantee. The Danish Refugee Council made the alternative claim that the application for asylum submitted by the applicant and her children should be examined according to the standard asylum procedure in Denmark due to the long processing time, and in consideration of the best interests of the child to guarantee effective access to the asylum procedure as described in recital 5 of the Dublin Regulation. The Danish Refugee Council observed in this regard that it had brought ten

cases before the European Court of Human Rights in which the applicants and their children also risked being transferred to Italy under the Dublin Regulation and that in October 2015 the Danish Immigration Service had decided to permit an examination of half of those cases according to the standard asylum procedure. The Danish Refugee Council found that the processing time of the case of the applicant and her children had been almost as long, and they were correspondingly vulnerable. Finally, the Danish Refugee Council appended an opinion of 8 October 2015 by a network officer of the Jammerbugt Municipality from which it appeared that the officer was concerned about whether the applicant would be able to manage her life and her children's if she had to manage the children on her own, and that [M.A.A.] provided great support for the applicant and her children.

18. On 3 February 2016, in a decision which ran to 11 pages, the Refugee Appeals Board upheld the decision by the Immigration Service, setting out, *inter alia:*

> "...the Refugee Appeals Board makes the following statement:
>
> The applicant is a currently 22-year-old Somali woman who entered Italy illegally and was registered in Italy on 15 January 2014. On 26 February 2014, the applicant entered Denmark and applied for asylum. On 23 March 2014, she gave birth to her daughter [S.]. On 16 May 2014, Italy agreed to take back the applicant and her daughter under Article 13(1) of the Dublin Regulation. On 9 September 2015, the applicant gave birth to yet another daughter. According to the information available, the applicant and her children are in perfect health. [M.A.A.], the father of the younger child, who is also a Somali national, has been refused asylum in Denmark.
>
> The members of the Refugee Appeals Board agree that the formal rules of the Dublin Regulation governing the return of the applicant and her children to Italy have been satisfied.
>
> The issue to be determined by the Refugee Appeals Board is whether such circumstances exist that the applicant and her children cannot be returned to Italy anyway and that the application must be examined in Denmark, see Articles 3(2) and 17 of the Dublin Regulation. The issue at stake is therefore whether the applicant and her children must be assumed to be subject to circumstances on their return to Italy which are so burdensome that the circumstances would be contrary to Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union.
>
> The majority of the members of the Refugee Appeals Board find that the applicant, as a single mother with two children, must be deemed to belong to a particularly underprivileged and vulnerable group in need of special protection.
>
> Based on the circular letter of 8 June 2015 from Italy and Italy's subsequent assurances on the adaptation of its reception capacity at the meeting of the Contact Committee on 24 June 2015, the majority of the members of the Refugee Appeals Board find that Italy must be considered to satisfy the requirements to take charge of the applicant and her children. The majority also refer to the unanimous decisions made by the European Court of Human Rights in *J.A. and Others v. the Netherlands* (decision of 3 November 2015) and *A.T.H. v. the Netherlands* (decision of 17 November 2015) finding inadmissible applications from other asylum-seekers with

minor children who had complained that they would be subjected to treatment proscribed by Article 3 of the European Convention on Human Rights if returned to Italy under the rules of the Dublin Regulation.

It is observed that the Refugee Appeals Board had not yet received the circular letter of 8 June 2015 from Italy when it made its decision on 12 June 2015, for which reason the circular letter was not included in the basis of the decision of the Refugee Appeals Board.

The majority of the members of the Refugee Appeals Board further find that the applicant had not demonstrated that her future prospects, if transferred to Italy together with her two children, whether taken from a material, physical or psychological perspective, would be contrary to Article 3 of the European Convention on Human Rights. It is observed in this respect that the applicant is a young woman in perfect health, according to her own statement to the Danish Immigration Service at the asylum screening interview. It cannot lead to a different conclusion that the Danish Refugee Council has submitted that it appears from the appended opinion of 8 October 2015 that an officer of the Jammerbugt Municipality expressed concern as to whether the applicant is able to manage the lives of herself and her children if she is to manage the children on her own and that [M.A.A.] is a great support for the applicant and the children. Accordingly, the majority of the members of the Refugee Appeals Board find no basis on which it could be assumed that the applicant would not be able to benefit from the resources available in Italy to a female asylum-seeker with two minor children or that, in case of health-related or other difficulties, the Italian authorities would not respond in an appropriate manner. The majority find that the consideration of the applicant's children cannot independently justify that the family should not be transferred to Italy. It is observed in this respect that the applicant's application for asylum has to be processed according to the regular asylum procedure, no matter which country is responsible for examining the application for asylum lodged by the applicant and her children, and within the processing time that can be expected for the procedure.

Furthermore, the majority of the members of the Refugee Appeals Board find that the length of the processing time cannot justify the processing of the application in Denmark. The majority emphasise in this respect that the applicant was informed already on 8 December 2014 that she was to be transferred back to Italy and that the subsequent processing time is attributable solely to the applicant's complaint and the need to clarify the consequences of the *Tarakhel* judgment. The consequences must now be deemed clarified by Italy's letter of 8 June 2015 and the decisions of the European Court of Human Rights of 3 and 17 November 2015. The circumstance that the Danish Immigration Service has decided to process other applications in Denmark cannot lead to a different decision.

The Refugee Appeals Board also finds that the applicant's relationship with [M.A.A.], who is the father of her younger child, cannot lead to the decision to process the application in Denmark. In this connection, the Board emphasises that the applicant only established cohabitation with [M.A.A.] in Denmark and after being notified of the decision to return her to Italy. Moreover, [M.A.A.] has been finally refused asylum in Denmark and must leave Denmark.

Against that background and based on a review of the case, the Refugee Appeals Board informs you that the Board finds no basis for reversing the decision made by the Danish Immigration Service, see section 48a(1), first sentence, cf. section 29a(1), of the Danish Aliens Act (*udlændingeloven*), see the Dublin Regulation.

> The Refugee Appeals Board observes that the Board presumes that the Danish National Police will ensure, prior to the removal of the applicant and her children to Italy, that the Italian authorities agree to receive the applicant's younger child as well and that the Italian authorities are notified of the relevant information on the applicant's needs."

19. Another circular letter dated 15 February 2016 was sent by the Dublin Unit of the Italian Ministry of the Interior to the Dublin Units of the other member States of the European Union, in which the Italian Dublin Unit provided an updated list of "the SPRAR projects where asylum-seeker family groups with children will be accommodated, in full respect of their fundamental rights and specific vulnerabilities".

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, ECHR 2014 (extracts)); *Hussein Diirshi v. the Netherlands and Italy and 3 other applications* ((dec.), nos. 2314/10, 18324/10, 47851/10 and 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).

21. Pursuant to section 56, subsection 8, of the Aliens Act, decisions by the Refugee Appeal Board are final, which means that there is no avenue for appeal against the Board's decisions.

22. Aliens may, however, by virtue of Article 63 of the Danish Constitution (*Grundloven*) bring an appeal before the ordinary courts, which have authority to adjudge on any matter concerning the limits to the competence of a public authority.

Article 63 of the Constitution reads as follows:

> "1. The courts of justice shall be empowered to decide any question relating to the scope of the executives' authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority.
>
> The courts will normally confine the review to the question of deciding on the legality of the administrative decision, including shortcomings of the basis for the decision and illegal assessments, but will generally refrain from adjudging on the administrative discretion exercised."

Review by the courts pursuant to section 63 of the Constitution is a common legal remedy. Consequently, in cases where an alien claims that a refusal to grant a residence permit or a deportation order would be in violation of the Convention, the courts examine intensively whether the Administration's decision is in accordance with Denmark's obligations under the Convention, including Article 8 (see, for example, *Priya v. Denmark* (dec.), no 13594/03, 6 July 2006, and *Saeed v. Denmark* (dec.), no. 53/12, 24 June 2014). The courts cannot grant an alien a residence permit but they can annul the decision of the Administration and thus send the case back to the Administration for a renewed examination, for instance if the courts find that the refusal to grant a residence permit constitutes a violation of the alien's right to respect for family life according to Article 8 of the Convention. An application pursuant to section 63 of the Constitution has no automatic suspensive effect. However, an application pursuant to section 63 of the Constitution may be granted suspensive effect if very particular circumstances (*ganske særlige omstændigheder*) exist.

COMPLAINT

23. The applicants complained that their removal to Italy would be contrary to Article 3 of the Convention. They also complained that the removal would be in breach of Article 8 since they would be separated from the father of the second child.

THE LAW

A. Alleged violation of Article 3 of the Convention

24. The Court reiterates the relevant principles of Article 3 of the Convention, as set out most recently in *Tarakhel v. Switzerland* ([GC], no. 29217/12, §§ 93-99, ECHR 2014 (extracts), which include the need for the ill-treatment to attain a minimum level of severity to fall within the scope of Article 3. 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.

25. The Court considers that the applicant's situation as a single mother of two minor children, who were born during her stay in Denmark, is one of the relevant factors in making this assessment. The material date for making this assessment is the actual date 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 *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports of Judgments and Decisions* 1996-V; *Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008; *M.A. v. Switzerland*, no. 52589/13, § 54, 18 November 2014; and *Khamrakulov v. Russia*, no. 68894/13, § 64, 16 April 2015).

26. The applicant mother was registered in Italy on 15 January 2014. On 26 February 2014, she entered Denmark and applied for asylum. On 16 May 2014, Italy agreed to take back the applicant and her daughter under Article 13(1) of the Dublin Regulation. On 9 September 2015, the applicant gave birth to another daughter. It thus has to be determined whether the situation in which the applicant mother is likely to find herself in Italy can be regarded as incompatible with Article 3, taking into account her situation as an asylum-seeking single mother with two small children and, as such, belonging to a particularly underprivileged and vulnerable population group in need of special protection (see *Tarakhel*, cited above, § 97, and also *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, § 251, ECHR 2011).

27. The Court reiterates that the current situation in Italy for asylum-seekers cannot be compared to the situation in Greece at the time of the *M.S.S. v. Belgium and Greece* judgment (cited above) and 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).

28. As to the applicant's personal situation, the Court has noted that, similar to the applicants in *Tarakhel* (cited above), who were a family with six minor children, the applicant is a single mother with two young children. However, unlike the situation in *Tarakhel*, the Danish authorities – as regards transfers to Italy under the Dublin Regulation – decide in consultation with the Italian authorities how and when the transfer of an asylum-seeker to the competent Italian authorities will take place. In particular, where it concerns a family with children, prior notice of transfer is given to the Italian authorities, thus allowing the latter to identify where adequate accommodation is available.

29. The Court accepts that for efficiency reasons the Italian authorities cannot be expected to keep open and unoccupied for an extended period of time places in specific reception and accommodation centres reserved for asylum-seekers awaiting transfer to Italy in accordance with the Dublin Regulation and that, for this reason, once a guarantee of placement in a reception centre has been received by the State requesting transfer, transfer should take place as quickly as practically possible.

30. The Court notes that the Refugee Appeals Board's decision of 3 February 2016 was based, among other things, on the circular letter of 8 June 2015 from Italy and Italy's subsequent assurances on the appropriate

standard of its reception capacity at the meeting of the Contact Committee on 24 June 2015, and the decisions in *J.A. and Others v. the Netherlands* ((dec.), no. 21459/14, 3 November 2015) and *A.T.H. v. the Netherlands* ((dec.), no. 54000/11, 17 November 2015). It was thus a prerequisite for the applicants' removal to Italy that they would be accommodated in one of the said reception facilities earmarked for families with minor children, that those facilities satisfied the requirements of suitable accommodation which could be inferred from *Tarakhel* and, in addition, that the Italian Government would be notified of the applicants' particular needs before the removal.

31. The Court further understands from the two circular letters sent by the Italian Dublin Unit (see paragraphs 11 and 19), that the applicant and her children will be placed together in one of the reception facilities in Italy which have been earmarked for families with minor children.

32. The Court has noted the applicants' concern that the number of places earmarked will be insufficient but, in the absence of any concrete indication in the case file, does not find it demonstrated that the applicant and her children will be unable to obtain such a place when they arrive in Italy. Furthermore, the Court considers that the applicant has not demonstrated that her future prospects, if returned 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.

33. It follows that this part of 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.

B. Alleged violation of Article 8 of the Convention

34. In respect of the requirements of exhaustion of domestic remedies, (see, *inter alia*, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014), the Court reiterates that States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to rely on the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. It should be emphasised that the Court is not a court of first instance.

35. In the present case, even if it can be said that the applicants relied on Article 8 of the Convention, in form or substance, before the Immigration Service and the Refugee Appeals Board, they did not bring before the domestic courts, as they could have done (see paragraph 22 above), the complaint now lodged before the Court, that their removal to Italy would be

at variance with Article 8 of the Convention because they would be separated from the father of the second child.

36. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

37. Consequently, the application of Rule 39 of the Rules of Court must be discontinued.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 21 July 2016.

Stanley Naismith
Registrar

Işıl Karakaş
President