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

SECOND SECTION

DECISION

Application no. 41100/19
A.B. and Others
against Finland

The European Court of Human Rights (Second Section), sitting on 20 April 2021 as a Committee composed of:

Valeriu Griţco, *President,*
Branko Lubarda,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 August 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 applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr A.B., who was born in 1973, his wife G.K., born in 1983 and their five children born in 2013, 2014, 2017 and 2018, respectively, are Libyan nationals. The President granted the applicants' request for their identity not to be disclosed to the public (Rule 47 § 4). They were represented before the Court by Ms K. Hytinantti, a lawyer practising in Helsinki.

2. The Finnish Government ("the Government") were represented by their Agent, Ms Krista Oinonen, from the Ministry for Foreign Affairs.

A. The circumstances of the case

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

1. Asylum proceedings

4. On 28 June 2018 the applicant family, with three minor children, arrived in Finland from Libya on Schengen visas issued by Italy and sought asylum. On 28 September 2018 two more children were born to the couple and their applications for international protection were lodged on the same day.

5. On 6 July 2018 the Finnish Immigration Service *(Maahanmuuttovirasto, Migrationsverket*) requested, in accordance with the Dublin Regulation, that the applicant family be transferred back to Italy for the examination of their application for international protection there. On 6 September 2018 the Service informed the Italian authorities that it had understood that the request had been accepted by default, in accordance with the Dublin Regulation.

6. On 28 November 2018 the Immigration Service refused the applicant family residence permits and ordered their removal to Italy. The Service noted that the Italian authorities had not replied to the Finnish authorities' query on whether they would agree to receive the applicants. Therefore the Finnish authorities concluded that the Italian authorities had agreed to receive them by default. According to the Dublin Regulation, Italy was in charge of the examination of the applicants' asylum application. The Italian health care system could provide the applicants the same services as in Finland. The Italian authorities had already announced in 2015, after the *Tarakhel* judgment by the Court, that they would not provide individual assurances in such cases but that the Court's judgment would be followed by virtue of that announcement. The list of suitable reception centres for families had been updated in 2016. The Service held that this announcement was a sufficient guarantee that the family's special needs would be taken into account. The parents were capable of taking care of their children and it was in the best interest of the children to stay with their parents. It was not contrary to the best interest of the children to remove the whole family to Italy.

7. On 13 December 2018 the applicants appealed against the decision of the Immigration Service.

8. On 7 June 2019 the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) dismissed the applicants' appeal. It found unanimously that, even if there was no general impediment to remove asylum-seekers to Italy, the reception system in Italy posed serious doubts and that therefore, before removal, it needed to be ascertained that the family would be placed in conditions which were suitable for children. The

Italian authorities had informed the member States about changes due to the so-called Salvini Decree (Decree No. 113/2018 on Security and Migration) on 8 January 2019 and had given assurances that families continued to be placed in accommodation other than SPRAR-centres which fulfilled the criteria of keeping families together and protecting minors. Although the Salvini Decree diminished asylum-seekers' rights, especially vis-à-vis specialised medical care, there were no such systemic deficiencies in the Italian reception system, even after the amendments, that could prevent all removals of families with children to Italy. No evidence had been presented in the present case that any of the family members were in need of specialised care. The son with spinal cord disease had already had an operation and he needed to visit hospital only for follow-up. It was thus not contrary to the best interest of the children to remove the whole family to Italy.

9. On 18 June 2019 the applicants further appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltnings-domstolen*), requesting also a stay on removal.

10. By a decision of 26 June 2019, the applicants' request for a stay on removal was refused.

11. On 29 July 2019 the Supreme Administrative Court refused the applicants leave to appeal. The removal decision is thus final and enforceable.

2. Proceedings before the Court

12. On 2 August 2019 the applicants lodged an application with the Court, accompanied by a request for an interim measure under Rule 39 of the Rules of Court.

13. On 5 August 2019 the Court decided, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Finland, under Rule 39, that the applicants should not be deported. This indication was valid until 26 August 2019.

14. On 26 August 2019, following the receipt of factual information from the Government, the Court decided to indicate to the Government, under Rule 39, that the applicants should not be deported from Finland until further notice.

B. Relevant COUNTRY INFORMATION

1. Situation under the Salvini Decree

15. The report "Mutual Trust is Still not Enough" by the Danish Refugee Council and the Swiss Refugee Council of 12 December 2018 sets out the following:

> "3.3. The changes introduced by the Salvini Decree

Since Decree No. 113/2018 on Security and Migration (also called the 'Salvini Decree') entered into force on 5 October 2018 asylum-seekers, except for unaccompanied minors, no longer have access to SPRAR centres. As a result, the name SPRAR was changed to System of Protection for Holders of International Protection and Unaccompanied Minors. Asylum-seekers are now to be accommodated in the collective centres (CARA, CDA or CAS) until a final decision on their asylum application has been made. Except for unaccompanied minors, only those granted international protection (and their family members) can be accommodated in SPRAR centres. In its press release, the UNHCR voiced concerns about the negative impact of the measures introduced by the Decree on the Italian reception and asylum system.

On 25 October 2018 the Italian Ministry of Interior confirmed the practical consequences of the Salvini Decree in a letter addressed to all SPRAR centres. The letter specifies that asylum-seekers already offered accommodation in a SPRAR centre before 5 October 2018 remain entitled to accommodation in a SPRAR centre, but henceforth no asylum seekers, except for unaccompanied minors, are allowed to enter and stay in a SPRAR centre. The letter from the Ministry of Interior explicitly mentions that also vulnerable asylum-seekers are henceforth excluded from SPRAR centres.

Access to the Italian health care system, except for emergency treatment, is conditional on a person first obtaining a residence card in order to be issued a European Health Insurance Card, which will be valid for the same period as the residence card. Asylum-seekers are only entitled to emergency treatment until their asylum application has been officially registered by the Questura. As the Salvini Decree determines that asylum-seekers will no longer be issued with a residence card, asylum-seekers will henceforth only have access to the health care services provided at their accommodation centre. The First-Line collective centres, where all newly registered asylum-seekers will be accommodated, offer only limited access to emergency health care, whereby the Salvini Decree further restricts asylum-seekers' access to specialised health care.

Other changes introduced by the Salvini Decree include the abolition of the 'humanitarian residence permit', the form of protection that was previously the most used in Italy. To replace the humanitarian residence permit, the Salvini Decree introduced new residence permits for 'exceptional cases'."

16. In January 2020 the Swiss Refugee Council (OSAR) published an updated report on reception conditions in Italy, in particular vis-à-vis Dublin returnees:

"Since October 2018, asylum-seekers who are returned to Italy under the Dublin III Regulation are no longer entitled to accommodation in SIPROIMI (former SPRAR, see chapter 5.4). 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 first-line reception centres (see chapter 4.5.1) and temporary facilities (CAS, see chapter 4.5.2).

...

Centres formerly known as CARA are first-line reception centres, the legal framework for which is set out in Article 9 of Legislative Decree 142/2015. These centres are often large and very remote. In the end of 2018, 8,990 people were accommodated in CARA. Two large centres were closed in the beginning of 2019: Cona in Venice and Castelnuovo di Porto in Rome. In April 2019, 14 governmental

first-line reception centres were in operation. CARA offers only a very small part of places in first-line reception, most places in first-line reception are CAS.

The legal framework for the so-called *strutture temporanee*, better known as CAS centres is set out in Article 11 of the Legislative Decree 142/2015. CAS centres were originally set up as emergency centres during the North African Emergency. They are now part of the Italian reception system and have been institutionalised in Article 11 of Legislative Decree 142/2015, and provide for a parallel reception system of sorts. Most of the places currently available in the first-line reception system are in a CAS. The level of guaranteed services is a bare minimum.

Mandates for CAS centres are awarded by the respective prefecture, the call for tenders can take place every six months. This short contractual period for some CAS leads to financial insecurity, preventing the establishment of good, sustainable projects The vast majority (about 75%) of places in the accommodation system are in CAS centres; however there is no publicly available list of centres and their funding and mandates are opaque. Neither are there any clear national guidelines. CAS are run by various institutions, including municipalities, private organisations and NGOs. Their management often lacks experience in dealing with asylum-seekers.

Many centres are very remote, overfull and unsuitable. There are also reports of very poor hygienic standards. This situation has not improved in recent years. On the contrary, the conditions in the CAS have deteriorated further as the tender specifications are now based on the new *Capitolato*, which was published together with the Salvini Decree in 2018. Reports on the recruitment of victims of human trafficking, sexual abuse and rape of women show that there is a lack of supervision in CAS, and that these centres do not cater to the particular needs of vulnerable asylum-seekers.

According to the law transposing the Salvini Decree, the Minister of the Interior must monitor the trend of migration flows within the space of one year with a view to possibly closing the CAS structures. The year started at the date on which the law entered into force in December 2018. Until January 2020, no such efforts were reported to or observed by OSAR."

2. Decree-Law No. 130 of 21 October 2020

17. On 27 October 2020 the Italian Government provided the Court with the following factual information on the current reception conditions in Italy for Dublin returnees:

"The Decree-Law No. 130 of 21 October 2020 regarding "provisions on immigration, international and complementary protection, amendments to Articles 131a, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures on the prohibition of access to public establishments and public detention premises, the fight against the distorted use of the web and the regulation of the National Guarantor of the rights of persons deprived of personal freedom" modifies the reception system by extending to asylum-seekers the possibility of access to the reception and integration system, formerly named SIPROIMI, referred to in Article 1 sexies of Decree-Law No. 416/1989.

It also provides additional services in respect of those currently provided by the previous system. The amendments introduced by the Decree-Law also refer to applicants for international protection subject to the procedure provided for by Regulation (EU) No. 604/2013, pursuant to Article 1, paragraph 3, of Legislative

Decree No. 142/2015, which also provides for the application for them of the reception measures set out in the same decree.

The Decree-Law No. 130 of 21 October 2020 has been published in *Gazzetta Ufficiale* No. 261 of 21 October 2020 and it entered into force on 22 October 2020.

The new Article 8 of the Legislative Decree No. 142/2015, as replaced by Article 4, paragraph 1 of the Decree-Law No. 130 of 21 October 2020, provides to asylum-seeker a first assistance guaranteed in the structures referred to in Articles 9 and 11 of referred Legislative Decree No. 142/2015 and the reception ensured, within the limits of the available places, in the facilities of the Reception and Integration System (SAI, formerly SIPROIMI). An applicant who falls within the categories defined in Article 17 of Legislative Decree No. 142/2015, i.e. vulnerable, accesses to SAI facilities as a matter of priority.

No changes have been brought by the Decree-Law No. 130/2020 in relation to the category of "vulnerable" persons referred to in Article 17 of Legislative Decree No. 142/2015. Therefore, "vulnerable" persons include, among others, minors, unaccompanied minors and single parents with minor children (so-called one-parent families), in accordance to *Tarakhel* case-law."

3. Circular letter of 8 February 2021

18. On 8 February 2021 Italy sent to all States bound by the Dublin Regulation, including Finland, a circular letter concerning the reception of family groups returned to Italy. In the circular letter, Italy informed the member States that a Decree Law (No. 130/2020 of 21 October 2020) has replaced Law No. 132/2018 of 1 December 2018 establishing the so-called SIPROIMI (*Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati* – Beneficiaries of International Protection and Unaccompanied Foreign Minors Protection System). Moreover, the Decree envisages the implementation of a new protection system called SAI (*Sistema di accoglienza e integrazione* – Reception and Integration System) which will replace the former SIPROIMI.

19. According to the letter, the new system introduces significant changes in the Italian reception system. Above all, it provides 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. Further, according to the letter, these dedicated centres will host even Dublin family groups with minors, returned from other member States, in accordance with the *Tarakhel* judgment.

COMPLAINT

20. The applicants complained that their removal to Italy under the Dublin Regulation would breach Article 3 of the Convention as in all likelihood they would not be provided with adequate reception facilities for the children or access to medical care. There was also a serious risk of the family being deported from Italy to Libya.

THE LAW

Complaint under Article 3 of the Convention

21. The applicants complained that their removal to Italy under the Dublin Regulation would breach Article 3 of the Convention, which reads as follows:

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

1. The parties' submissions

(a) The Government

22. The Government observed that, under the Dublin Regulation, Italy was responsible for examining the applicants' asylum applications on the merits. Italy had informed all EU member States on 8 June 2015 that it would no longer give detailed individual guarantees for each family with children that they would get the reception services required by the *Tarakhel* judgment. That letter itself constituted a sufficient guarantee that families with children would be kept together and accommodated as required by the *Tarakhel* judgment. On 16 February 2016 Italy sent to all member States an updated list of reserved reception centres. By letter dated 8 January 2019, Italy again informed the EU member States that it would continue to guarantee these rights after the entry into force of the so-called Salvini Decree. Although families with children were no longer admitted to second-line reception facilities, they would be admitted to other centres which were adequate to host all possible beneficiaries.

23. The Government pointed out that the Dublin Regulation imposed on the Immigration Service and the police an obligation to communicate to the Italian authorities any special needs of the applicants, including the need for health care and the fact that the transfer involved a family with children, at least 15 days before their transfer. In August 2019, when the applicants lodged their application with the Court, no formal procedures or travel arrangements had been made to remove the applicant family to Italy. When such arrangements were made, the Finnish authorities would inform the Italian authorities of any persisting health problems of the applicants prior to their transfer so that the Italian authorities were adequately prepared for their arrival. If the state of health of the applicants so required, the transferring authority could arrange the transfer, for example, on a charter flight with medical staff and no other passengers on board. Moreover, the transfer to Italy was not contrary to the best interests of the children.

24. The Government pointed out that the applicants would have the same right to cost-free emergency medical care in Italy in the same manner as in Finland. The Italian health care services could also provide the

applicants' son with any necessary treatment and medication. However, the applicants had not provided any evidence of any family member's need for specialised medical care. The Administrative Court had held that, even after the Salvini Decree, reception conditions in Italy did not show any systemic deficiencies and that in their letter of 8 January 2019 the Italian authorities had given assurances that their reception centres continued to guarantee the unity of the families, as required by the *Tarakhel* judgment. In the Government's view, the application was manifestly ill-founded. At any rate, there was no violation of Article 3 of the Convention.

25. When asked to comment on the factual information provided by the Government of Italy (see paragraph 16 above), the Government considered that that factual information supported the Government's position that there were no systemic deficiencies that would prevent the applicants' transfer to Italy. The new decree would bring back the smaller reception centres which had been closed down by the Salvini Decree, and extend many reception services to all asylum-seekers which had previously been limited only to persons with refugee status and to unaccompanied minors. The Government concluded that Italy was capable and willing to provide adequate reception services and that the applicants did not face a real risk of being subjected to treatment contrary to Article 3 of the Convention upon return to Italy.

(b) The applicants

26. The applicants argued that the Government had not been able to dispel any doubts about a real risk of ill-treatment as the domestic authorities had not examined the reception conditions, access to cost-free medical care in Italy and the actual implementation of this right in an adequate manner. No proper and up-to-date assessment of reception conditions had been made, even after it had become clear that the authorities had no knowledge of how families with children had been accommodated after the entry into force of the Salvini Decree. The case-law of the Court cited by the domestic courts had dated from the time before the Salvini Decree had entered into force.

27. The applicants claimed that there was a high risk that they would be left without any shelter and that they would have no access to health care, since the first-line centres would offer only limited access to emergency health care. They would not be able to obtain their National Health Service Card, which would give them access to doctors, since it was no longer possible for them to register in the civil register of municipalities. If the applicants did somehow manage to register, they would not be able to pay for health care. The applicants could also be considered as economic migrants and their asylum application might not be assessed at all for this reason. Moreover, the massive evictions from reception centres amounted to a systemic flaw in the Italian reception system and the risk of *refoulement* to Libya was significant.

28. The applicants noted that a Swiss court had found in December 2019 that the guarantees indicated in the letter of 8 January 2019 did not fulfil the individual guarantees required by the *Tarakhel* judgment. Also, several other countries (Germany, the Netherlands, the United Kingdom and Luxembourg) had prevented vulnerable asylum-seekers from being sent back to Italy due to poor living conditions. The Finnish authorities had failed to make a full and *ex nunc* assessment of the legislative changes in Italy and their consequences for the applicants. They had ignored their own independent country of origin information which had provided facts which raised doubts about Italian reception conditions. The Italian authorities had not replied at all to the Finnish authorities' request to receive the applicants. Although the applicants' deportation had been imminent in August 2019, the Finnish authorities had not provided any information to the Italian authorities on the medical condition of the sick child. There was thus a violation of Article 3 of the Convention.

29. When asked to comment on the factual information provided by the Government of Italy (see paragraph 16 above), the applicants argued that the Italian Government had not clarified what exactly would change for vulnerable asylum-seekers in practice, nor given any individual guarantees of access to SAI facilities or to specialised medical care. Nor did the Italian Government reply to the question of how many places were available for vulnerable asylum-seekers under the SPRAR/SIPROIMI scheme, which gave reason to suspect that not all vulnerable asylum-seekers would have access to them.

2. The Court's assessment

30. The Court observes that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012, and *F.G. v. Sweden* [GC], no. 43611/11, § 111, 23 March 2016). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008, and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 93, ECHR 2014 (extracts)).

31. The Court considers that the applicants' situation as a family with minor children is one of the relevant factors in making this assessment. The material date for 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 *J.K. and Others v. Sweden* [GC], no. 59166/12, § 83, 23 August 2016). The Court thus examines the present case from the point of view of the current reception conditions in Italy.

32. The applicants are to be considered as asylum-seekers in Italy. It thus has to be determined whether the situation in which the applicants are likely to find themselves in Italy can be regarded as incompatible with Article 3, taking into account the family's situation as asylum-seekers with young children and serious health problems 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* [GC], no. 30696/09, § 251, ECHR 2011).

33. The Court observes that it has already found that the 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 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, and *M.A.-M. and Others v. Finland* (dec.), no. 32275/15, § 24, 4 October 2016).

34. As to the applicants' personal situation, they are a family with five minor children. Their situation is thus similar to that of the applicants in *Tarakhel* (cited above), who were a family with six minor children. As regards transfers to Italy under the Dublin Regulation, the Finnish 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. In particular, where a family with children is involved, prior notice of transfer is given to the Italian authorities, thus allowing the latter to identify where adequate accommodation is available (see *M.A.-M. and Others v. Finland*, cited above, § 25). In this context, the Finnish authorities would also inform the Italian authorities of any persisting health problems of the applicants prior to their transfer so that the Italian authorities can be adequately prepared for their arrival.

35. The Court acknowledges the applicants' concern that, because of the entry into force of the Salvini Decree in October 2018, they would not be provided with adequate reception facilities for the children or have access to medical care. However, a new Decree-Law No. 130 entered into force on 22 October 2020 which amends the Salvini Decree to a significant extent. The new Decree-Law reintroduces the smaller reception centres which were closed down by the Salvini Decree, and it extends many reception services to all asylum-seekers instead of limiting them only to persons with refugee status and to unaccompanied minors, as was the situation under the Salvini Decree. Moreover, no changes are brought by the Decree-Law to the category of "vulnerable" persons but they still include, among others,

minors, unaccompanied minors and single parents with minor children in accordance with *Tarakhel* case-law (see paragraph 17 above).

36. 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 (see *M.R. and Others v. Finland* (dec.), no. 13630/16, § 27, 24 May 2016; *S.M.H. v. the Netherlands* (dec.), no. 5868/13, § 49, 17 May 2016; and *M.A.-M. and Others v. Finland*, cited above, § 26).

37. In this context, the Court notes that in August 2019, when the present case was lodged with the Court, no formal procedures or travel arrangements had yet been made to remove the applicant family to Italy. The Court is confident that, when the applicants' removal takes place, the Finnish authorities will duly inform the Italian authorities of the applicants' removal, in order for the applicants to be taken charge of, upon arrival, in a manner appropriate to the age of the children and that the family will be kept together (see *Tarakhel*, cited above, and the Italian authorities' assurances provided in the circular letter of 8 February 2021 (see paragraphs 18-19 above)).

38. The Court notes the applicants' concern that no individual or specific guarantees have yet been given by the Italian authorities but, in the absence of any concrete indication in the case file, does not find it demonstrated that the applicants would be unable to obtain such guarantees before their removal to Italy. Furthermore, the Court considers that the applicants have not submitted any evidence showing that their future prospects, if returned to Italy, 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.

39. 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.

40. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 May 2021.

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Hasan Bakırcı
Deputy Registrar

Valeriu Griţco
President