

BGE 20170530_79480_13 vom 30. Mai 2017

Bundesgericht (BGE), 2017-05-30, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20170530_79480_13

FR: BGE 20170530_79480_13 du 30 mai 2017

IT: BGE 20170530_79480_13 del 30 maggio 2017

Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE et ITALIE: Art. 3 CEDH. Renvoi en Italie d'une réfugiée reconnue et de son enfant mineur. Le gouvernement italien a confirmé qu'à leur retour, les requérants seraient logés dans une structure appropriée pour famille monoparentale. Lors du renvoi, les autorités suisses informeront les autorités italiennes afin que les requérants soient pris en charge de manière appropriée à l'âge de l'enfant et qu'ils ne soient pas séparés. Un réfugié reconnu en vertu de la Convention de 1951 sur les réfugiés a droit au travail et au bénéfice des dispositifs généraux prévus par le droit interne italien en matière d'aide sociale, de soins médicaux, de logement social et d'éducation. Les requérants n'ont pas établi qu'en cas de renvoi en Italie, ils devaient craindre d'un point de vue matériel, physique ou psychique, de subir des traitements d'un degré de sévérité suffisant pour tomber dans le champ d'application de l'art. 3 CEDH (ch. 20-29). Conclusion: requête déclarée irrecevable. Inhaltsangabe des BJ (2. Quartalsbericht 2017) Streichung im Register (Art. 37 Abs. 1 b EMRK); Verbot der Folter (Art. 3 EMRK); Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Dublin-Überstellung nach Italien. Gestützt auf Artikel 3 und 8 EMRK machten die Beschwerdeführer geltend, bei einer Dublin-Überstellung nach Italien drohten ihnen Lebensbedingungen, die mit diesen Bestimmungen nicht vereinbar seien, insbesondere angesichts des gesundheitlichen Zustands des dritten Beschwerdeführers. Der Gerichtshof hob hervor, dass das Staatssekretariat für Migration (SEM) am 1. April 2016 den Ausschaffungsentscheid aufgehoben und die Prüfung des Asylgesuchs der Beschwerdeführer wieder aufgenommen hatte; die Beschwerdeführer riskierten somit nicht mehr, nach Italien ausgeschafft zu werden. Zudem könne gegen jeden Entscheid des SEM über dieses Asylgesuch Beschwerde erhoben werden, in der Regel mit aufschiebender Wirkung. Im Verfahren vor dem Bundesverwaltungsgericht sei den Beschwerdeführern die aufschiebende Wirkung bereits zugesprochen worden. Die Angelegenheit habe sich somit erledigt. Streichung im Register (einstimmig).

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Volltext

Bundesgericht (BGE) EGMR 30.05.2017 20170530_79480_13 (E.T., N.T. c. Suisse, Italy)
Tribunal fédéral (ATF) CEDH 30.05.2017 20170530_79480_13 (E.T., N.T. c. Suisse, Italy)
Tribunale federale (DTF) CEDU 30.05.2017 20170530_79480_13 (E.T., N.T. c. Suisse, Italy)

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Urteilkopf 79480/13 E.T., N.T. c. Suisse, Italy Décision d'irrecevabilité no. 79480/13, 30 mai 2017 Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE et ITALIE: Art. 3 CEDH . Renvoi en Italie d'une réfugiée reconnue et de son enfant mineur. Le gouvernement italien a confirmé qu'à leur retour, les requérants seraient logés dans une structure appropriée pour famille monoparentale. Lors du renvoi, les autorités suisses informeront les autorités italiennes afin que les requérants soient pris en charge de manière appropriée à l'âge de l'enfant et qu'ils ne soient pas séparés. Un réfugié reconnu en vertu de la Convention de 1951 sur les réfugiés a droit au travail et au bénéfice des dispositifs généraux prévus par le droit interne italien en matière d'aide sociale, de soins médicaux, de logement social et d'éducation. Les requérants n'ont pas établi qu'en cas de renvoi en Italie, ils devaient craindre d'un point de vue matériel, physique ou psychique, de subir des traitements d'un degré de sévérité suffisant pour tomber dans le champ d'application de l' art. 3 CEDH (ch. 20-29). Conclusion: requête déclarée irrecevable. Inhaltsangabe des BJ (2. Quartalsbericht 2017) Streichung im Register (Art. 37 Abs. 1 b EMRK); Verbot der Folter (Art. 3 EMRK); Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Dublin-Überstellung nach Italien. Gestützt auf Artikel 3 und 8 EMRK machten die Beschwerdeführer geltend, bei einer Dublin-Überstellung nach Italien drohten ihnen Lebensbedingungen, die mit diesen Bestimmungen nicht vereinbar seien, insbesondere angesichts des gesundheitlichen Zustands des dritten Beschwerdeführers. Der Gerichtshof hob hervor, dass das Staatssekretariat für Migration (SEM) am 1. April 2016 den Ausschaffungsentscheid aufgehoben und die Prüfung des Asylgesuchs der Beschwerdeführer wieder aufgenommen hatte; die Beschwerdeführer riskierten somit nicht mehr, nach Italien ausgeschafft zu werden. Zudem könne gegen jeden

Entscheid des SEM über dieses Asylgesuch Beschwerde erhoben werden, in der Regel mit aufschiebender Wirkung. Im Verfahren vor dem Bundesverwaltungsgericht sei den Beschwerdeführern die aufschiebende Wirkung bereits zugesprochen worden. Die Angelegenheit habe sich somit erledigt. Streichung im Register (einstimmig). Sachverhalt

THIRD SECTION DECISION Application no. 79480/13 E.T. and N.T. against Switzerland and Italy The European Court of Human Rights (Third Section), sitting on 30 May 2017 as a Chamber composed of: Helena Jäderblom, President, Branko Lubarda, Guido Raimondi, Luis López Guerra, Helen Keller, Dmitry Dedov, Pere Pastor Vilanova, judges, and Stephen Phillips, Section Registrar, Having regard to the above application lodged on 17 December 2013, 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 decision to grant priority to the above application under Rule 41 of the Rules of Court, Having deliberated, decides as follows: THE FACTS

1. The applicants, Ms E.T. ("the first applicant"), born in 1986, and her son N.T. ("the second applicant"), born in 2009, are Eritrean 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 S. Motz, a lawyer practising in Zurich. A. The circumstances of the case 2. The facts of the case, as submitted by the applicants, may be summarised as follows. 3. In 2004 the first applicant fled her home country, travelling via Sudan and Libya, from where she reached the island of Lampedusa in Italy where she claimed asylum on 9 November 2006. She was assigned to a centre for asylum-seekers in Crotone, Calabria. After two months there, she was recognised as a refugee. However, she was no longer entitled to stay in the asylum centre. She therefore went to Rome where her boyfriend, who had fled with her from Eritrea and had also been recognised as a refugee, was living. It was very difficult for the first applicant to find a place to stay and she slept in a train station in Rome and later in a squat for refugees called "Selam Palace". She claimed that the situation in that squat had been especially difficult for women. Her boyfriend had not been allowed to stay with her and she therefore had lived under the constant threat of sexual attacks from other men living there. Without knowledge of the Italian language it was furthermore impossible for her to find a job. She received food from soup kitchens run by Caritas in Rome. The first applicant and her boyfriend also approached the Ufficio Immigrazione in Via Assisi 39a, the communal accommodation office for homeless people in Rome ("the immigration office"). The immigration office put them on a waiting list. Some months later, on 11 February 2008, the first applicant was allocated a sleeping place but she was somehow not informed of this. The applicant remained in the Selam Palace for more than a year. She became pregnant with the second applicant and her boyfriend left her. Owing to the unbearable living conditions in Italy she decided, when she was several months pregnant, to apply for asylum in Switzerland. 4. On 5 March 2009 she applied for asylum in Switzerland. On 25 June 2009 she gave birth to her son, the second applicant. By a decision of 23 July 2009 the Federal Office for Migration ("the FOM") dismissed her asylum request based on her having been granted refugee status in Italy. In November 2009 both applicants were removed to Italy. 5. During the applicants' second stay in Italy, they were informed by the immigration office in Rome that they could not be provided with housing immediately, but that they would be put on a waiting list. The first applicant approached private organisations to obtain housing, without success. As she was even unable to find a place for her and her son to sleep in one of the squats in Rome, both applicants ended up sleeping in the streets and in the main train station with other homeless

people. With the remainder of the money the first applicant had received from the Swiss authorities she decided to travel, together with the second applicant, to Norway to apply for asylum there. She sought to claim asylum there in December 2009 and her asylum request was registered on 1 January 2010. Approximately one and a half years later it was dismissed and in February 2011 they were removed from Norway to Italy. 6. In Italy the first applicant unsuccessfully approached on several occasions the immigration office in Rome as well as private organisations in order to obtain accommodation. In relation to a residence document for her son, the immigration office informed her that she should return to Crotone since she had been registered there and the authorities there were responsible for her. In April 2011 the applicant therefore travelled to Crotone in order to register her son and to seek accommodation for them. The authorities there however informed her that there was no organisation which could assist her and that she should return to Rome. Upon her return to Rome, the immigration office eventually registered her on the waiting list on 18 June 2011. Since no accommodation in Rome was available, the applicants had to return to the Selam Palace. The living conditions in that squat were unacceptable, especially for a child. Owing to the precarious sanitary conditions and the lack of adequate nutrition, the second applicant suffered serious dental problems. As the first applicant could furthermore not pay the required fees for staying in the Selam Palace, she was repeatedly asked to leave the place. 7. Out of despair and in order to avoid sleeping in the streets of Rome in wintertime with a little child, the first applicant decided to travel to Switzerland again. She applied a second time for asylum in Switzerland on 10 November 2011. According to the immigration office in Rome, the applicants would have received a place to stay in November 2011, but at this point they had already gone to Switzerland. On 25 October 2012 the FOM dismissed the applicants' request on the basis that the applicants could avail themselves of the protection of a safe third country, namely Italy. 8. On 1 July 2013 the applicants lodged a qualified application for review with the FOM. The applicants claimed that the FOM had failed to take into account the various indications that the applicants had to live in inhuman conditions in Italy. By decision of 2 August 2013 the FOM dismissed their request ruling that Italy was under an obligation under the EU Qualification Directive to provide the applicants with accommodation and financial support. In addition, private aid organisations could also assist the applicants. The FOM also held that the removal to Italy would not violate the rights of the child under the United Nations Convention on the Rights of the Child. 9. Upon appeal, the Federal Administrative Court ("the FAC") granted the applicants interim measures on 26 August 2013 in order to await the outcome of the proceedings in Switzerland. By a decision of 14 November 2013 the FAC dismissed the applicants' appeal. 10. With regard to a possible breach of Article 3 of the Convention, the FAC established that based on the facts of the case no particular risk of ill-treatment in Italy could be identified. Italy had signed all the relevant international human-rights treaties which it was obliged to respect and was bound to the EU Qualification Directive, which provides that recognised refugees should in principle be treated like nationals regarding social assistance and health care. The FAC found that some structural deficits for refugees in Italy existed, primarily in the regions of Lampedusa, Sicily and Calabria as well as in Rome and Milan. Based on the facts of the case, the FAC had no doubts that the situation for refugees and asylum-seekers in Rome was unbearable and that they were not provided with basic social assistance. Furthermore, it accepted that there was a considerable risk if returned to Rome, the applicants would be obliged to live in the streets again. Since the immigration office in Rome had already offered the applicants a place to stay in the past, it

could be expected that they would also be offered one in the future, however not immediately. Therefore, the FAC considered the risk of the applicants' living in the streets of Rome upon their return there to be considerable. However, the situation for refugees was not as bad in other regions of Italy as in Rome. As recognised refugees, the applicants had the possibility to settle in another region of Italy where the living conditions were presumably better. In this regard the FAC held that it was not comprehensible why the first applicant, who had been able to seek refuge in Switzerland and Norway, had not travelled to another region of Italy, in particular to the North, in order to look for housing there. It found that it was feasible to expect the applicants to seek and find housing in another region of Italy, as, for example, provided by Caritas in Bolzano (House of Margareth), in Bressanone (House of Solidarity), in Bologna (Centro polifunzionale Madre Teresa di Calcutta) as well as in different places in Trieste. The FAC stated that it was more likely than not that the applicants would be able to find adequate accommodation there and would be able to live with dignity. Therefore, they were not at risk of ill-treatment if returned to Italy.

11. Following this ruling, the Swiss Refugee Council (Schweizerische Flüchtlingshilfe), a Swiss non-governmental organisation ("NGO"), contacted on behalf of the applicants the mentioned organisations in Bolzano, Bressanone, Bologna and Trieste in order to enquire whether the applicants could be accommodated there. The Swiss Refugee Council was however informed that none of the organisations would be able to accommodate the applicants as they firstly needed to have their official residence in that municipality and secondly there were no resources for a single mother with her child. As there were very long waiting lists, it was impossible to tell how long it would take to obtain a place. In addition, the fact that the applicants had been registered in Crotona made it even more difficult for them to relocate elsewhere despite the fact that the situation in Crotona was well-known for being inadequate for single mothers with children. It was also possible that the mother and the child would be separated since social services only had obligations towards the child but not towards the mother.

12. On 26 May 2014, the applicants submitted a letter written by the teacher of the second applicant about his integration in Switzerland. The applicants also repeated their complaints.

B. Relevant domestic law

13. The relevant provisions of the Federal Asylum Act of 26 June 1998, as in force at the relevant time, read as follows: Section 6 a ■ Competent authority "... 2. The Federal Council shall identify states in which on the basis of its findings: a. States of origin or provenance which are safe, that is to say those in which the applicant runs no risk of persecution; b. safe third countries, that is to say those in which it considers that the principle of non-refoulement, within the meaning of section (5)(1), is actually observed. 3. It shall periodically review decisions made under paragraph 2. Section 34 ■ Decision not to examine in the absence of a risk of persecution in the other country 1. If the asylum-seeker has arrived from a country where he or she does not run the risk of persecution within the meaning of section 6 a (2)(a), the Office [the Federal Office for Migration, now the State Secretariat for Migration [Staatssekretariat für Migration]] shall not examine the application unless there are signs of persecution. 2. As a general rule, the Office shall not examine an asylum application where the asylum-seeker a. can return to a safe third country within the meaning of section 6a(2)(b) where he or she has resided previously; ..." 14. A detailed description of the asylum procedure and the legal framework and organisation of the reception system for asylum-seekers in Italy is also set out in the Grand Chamber judgment *Tarakhel v. Switzerland* (no. 29217/12 , §§ 37-50, ECHR 2014 (extracts)).

C. Factual information submitted by the Italian Government 15. By a letter of 9

January 2014, the co-Agent of the Italian Government submitted a message of 7 January 2014 of the Servizio centrale , the body running the SPRAR (Sistema di protezione per richiedenti asilo e rifugiati) network, stating that it had asked the municipality of Sezze to accommodate the applicants as a single-parent family in the appropriate structures put in place by the municipality. 16. By a letter of 27 January 2014, the co-Agent of the Italian Government submitted a note from the Ministry of the Interior and replied to the Acting President's invitation to provide the Court with a letter from the NGO in question which confirms the availability of accommodation for the applicants. The co-Agent's reply included the following: "It is clear from the aforementioned memorandum that the Ministry of the Interior, on the basis of its own requirements, may directly allocate places in favour of beneficiaries of international protection in the reception facilities that are part of the SPRAR network. Accordingly, the message of 7 January 2014 of the Servizio centrale , which is running the SPRAR network, constitutes in itself confirmation of the reservation in the reception project in favour of the applicant and her son, without further confirmation being necessary." COMPLAINTS 17. The applicants complained that if returned to Italy they would face treatment contrary to Article 3 of the Convention. This complaint was brought against both Switzerland and Italy. 18. Under Article 8 of the Convention the applicants claimed that their return to Italy would be a disproportionate interference with their rights to respect for private life, namely the right to physical and moral integrity. This complaint was brought both against Switzerland and Italy. 19. Under Article 13 in conjunction with Articles 3 and 8, the applicants claimed that they did not have an efficient remedy to assess the alleged violation of their rights under Articles 3 and 8 of the Convention. This complaint was brought only against Switzerland. Erwägungen THE LAW A. Complaint under Article 3 of the Convention 20. The applicants alleged that, given the precarious living conditions in Italy and with a particular view to the young age of the second applicant, if removed to that country they would be subjected to inhuman and degrading treatment prohibited by Article 3 of the Convention. Article 3 provides as follows: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." 21. The Court notes that the applicants, a single mother and her minor child, were no longer asylum-seekers in Italy, as the first applicant had been recognised as a refugee (see paragraph 4 above). Therefore, the present case, unlike cases like Tarakhel (cited above) and Ali and others v. Switzerland and Italy ((dec.), no. 30474/14 , 4 October 2016), does not concern the Dublin regulation, which lays down the criteria and mechanisms for determining the State responsible for examining an application for international protection. 22. The Court reiterates that the expulsion of an alien 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 in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, Saadi v. Italy [GC], no. 37201/06 , §§ 124-25, ECHR 2008, and J.K. and Others v. Sweden [GC], no. 59166/12 , § 79, ECHR 2016). 23. The Court has held that Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (see Chapman v. the United Kingdom [GC], no. 27238/95, § 99, ECHR 2001-I). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (see Müslim v. Turkey , no. 53566/99 , § 85, 26 April 2005; M.S.S. v.

Belgium and Greece [GC], no. 30696/09 , § 249, ECHR 2011; Tarakhel , cited above, § 95; and Hunde v. the Netherlands , no. 17931/16, § 51, 5 July 2016). The Court nevertheless reiterates that State responsibility under Article 3 could arise for treatment where an applicant, in circumstances wholly dependent on State support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity (see, for instance, Budina v. Russia (dec.), no. 45603/05 , 18 June 2009; M.S.S. v. Belgium and Greece , cited above, § 253; and Tarakhel , cited above, § 98).

24. Turning back to the present case, the Court notes that the Italian Government confirmed that the applicants, upon their return, would be accommodated as a single-parent family in a reception facility belonging to the SPRAR network (see, *mutatis mutandis* , Ali and others , cited above, § 34; and paragraphs 15 to 16 above). 25. The Court is therefore confident that, when the applicants' removal takes place, the Swiss authorities will duly inform the Italian authorities of the applicants' removal, and that the applicants will be taken charge of, upon arrival, by the Italian authorities, in a manner appropriate to the age of the child and that the family will be kept together (see, *mutatis mutandis* , M.A.-M. and others v. Finland , no. 32275/15 , § 27, 4 October 2016). 26. Moreover, the Court underlines that, in Italy, a person recognised as a refugee under the 1951 Refugee Convention is entitled, *inter alia* , to work and to benefit under the general schemes for social assistance, health care, social housing and education provided for by Italian domestic law (see Tarakhel , cited above, § 41). In any event, the Court stresses that it is for the applicants to assert their rights under the Convention before the Italian courts. 27. The Court further finds that the applicants have not demonstrated that their prospects, on return to Italy, whether considered from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3 (see, *mutatis mutandis* , F.M. and others v. Denmark , no. 20159/16 , § 29, 13 September 2016, and, *mutatis mutandis* , Ali and others , cited above, § 35). 28. In view of the above considerations, and even assuming Italian jurisdiction within the meaning of Article 1 of the Convention, the applicants' complaint under Article 3 is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention. 29. Consequently, the application of Rule 39 of the Rules of Court comes to an end. B. Other complaints 30. The Court has examined the applicants' other complaints. However, in the light of all the material in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, they are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. *Entscheid* For these reasons, the Court, unanimously, Declares the application inadmissible. Done in English and notified in writing on 22 June 2017.

Stephen Phillips Registrar Helena Jäderblom President

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