

Netherlands - Raad van State (Council of State) - 201907322/1, 201907435/1, and 202001915/1 - 8 April 2020 - ECLI:NL:RVS:2020:986, ECLI:NL:RVS:2020:987, ECLI:NL:RVS:2020:1032

**Exceptional measures regarding the COVID-19 crisis - Salvini Legislative Decree - Principle of mutual interstate trust - Article 18(1)(b) Regulation 604/2013/EU (Dublin III Regulation) - Article 4 Charter of fundamental rights of the EU - Article 3 ECHR - Article 21 Directive 2013/33/EU (Reception Directive)**

*(Appellants against the State Secretary for Justice and Security)*

**Summary:**

The three abovementioned judgments of the Division all concern the transfer of foreign nationals to Italy. In the first two judgments, the Division has assessed the situation in Italy *prior to the outbreak of the corona virus* in order to decide whether it was possible to transfer vulnerable foreign nationals to Italy. The Division has ruled that those transfers were indeed still possible up until the outbreak of the corona virus.

Ever since the outbreak of the corona virus, it has been impossible in practice to transfer foreign nationals (both vulnerable and invulnerable) to Italy. The question is whether this also means that Italy cannot be qualified as the responsible Member State anymore for examining the asylum applications. In the third judgment, the Division rules that this is not the case, as the crisis is a temporary obstacle only. This means that Italy remains the responsible Member State for examination of the asylum applications, even though transfers are impossible in practice for the time being. The State Secretary must assess whether and when the transfer of the appellants can actually take place.

**Judgments on vulnerable foreign nationals prior to the outbreak of the corona crisis**

In two of the abovementioned judgments, the State Secretary refused to process the asylum applications from foreign nationals. One case (ECLI:NL:RVS:2020:987), concerned a single woman with a child born in mid-2019, the other case (ECLI:NL:RVS:2020:986), concerned a man with a serious mental illness. In both cases, Italy was responsible for examining the asylum applications under the EU Dublin Regulation III.

*Arguments appellants*

The appellants claim that the Secretary of State should have processed their applications because they are particularly vulnerable. Since the Salvini Legislative Decree of 24 September 2018, no. 113/2018, Italy lacks sufficient and adequate reception facilities for particularly vulnerable foreign nationals like them. The appellants pointed out that the current CAS and CARA reception centres in Italy do not meet the requirements set down in the ECtHR judgment of 4 November 2014, 29217/12, *Tarakhel v. Switzerland*, ECLI:CE:ECHR:2014:1104JUD002921712. According to the appellants, the circular letter of 8 January 2019 from the Italian authorities to the other EU Member States is not a sufficiently specific individual or general guarantee that complies with the requirements of the *Tarakhel* judgment. Finally, one of the appellants also pointed out that the report of the Schweizerische Flüchtlingshilfe (SFH / OSAR) 'Reception condition in Italy', published in January 2020, shows that reception in Italy has further deteriorated and that conditions for Dublin claimants are 'appalling'.

### *Arguments State Secretary*

The State Secretary argues that he does not have to ask for additional guarantees from Italy for the reception of foreign nationals in these cases. According to him, on the basis of the principle of mutual interstate trust, he can assume that, without any contradictory notice, the Italian authorities adequately meet the care and reception needs of particularly vulnerable foreign nationals. The State Secretary refers to the circular letter of 8 January 2019 and to the answers given by the Italian authorities in December 2019 to factual questions from the ECtHR about the reception in Italy under the Dublin Regulation III of the foreign nationals concerned in the case of F.O. and others, No. 48125/19.

### *Ruling of the Division*

The Division first considers that it has ruled in its previous judgments of 19 December 2018, ECLI:NL:RVS:2018: 4131, and of 12 June 2019, ECLI:NL:RVS:2019:1861 that the Salvini Legislative decree does not result in Dublin claimants no longer receiving childcare, and that the Secretary of State - regarding Italy - rightly relies on the principle of the mutual interstate trust, also in the case of families or parents with minor children. The Division subsequently rules that, although reception conditions in Italy have been cut back systematically in recent years, this does not mean that foreigners in Italy can no longer be accommodated adequately. In the first case, the State Secretary informed the Italian authorities that the foreigner was a mother with a baby, and in the second case, the man who had to be transferred to a medical practitioner. According to the Division, the Secretary of State can assume that the Italian authorities will provide suitable reception and that they will inform the Netherlands in case there is no suitable reception available. The Division takes into account that the Italian authorities have not only ensured in the circular letter of 8 January 2019 that they receive all foreign nationals entitled to reception, and provide for this reception in accordance with the foreigner nationals' fundamental rights, but also that the Italian authorities confirmed to the ECtHR in December 2019 once again that the reception conditions in Italy comply with the requirements laid down in the EU Reception Directive. In their answers, the Italian authorities explain that there are special reception facilities for particularly vulnerable people, such as single women with children and people suffering from serious mental disorders. Finally, the Division considers that the January 2020 SFH / OSAR report did not provide a substantially different picture of the situation in Italy for Dublin claimants than was already known at the time of the Divisions' judgment of 12 June 2019.

### **Judgment of the Division on transfers to Italy after the corona crisis**

Because of the corona crisis, it is temporarily impossible to transfer foreign nationals to Italy. The question is whether this means that Italy can no longer be deemed the responsible state for examining asylum applications. It follows from the third judgment of 8 April 2020 (ECLI: NL: RVS: 2020: 1032) that the State Secretary has rightly decided to transfer foreign nationals to Italy. The fact that a transfer is temporarily impossible is an 'actual obstacle', however, this does not change Italy's responsibility for examining the asylum application. The Division rules that the State Secretary must assess whether and when in the future the transfer of the foreign nationals can actually take place.