

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): The Council of State (Raad van State)	
Date of the decision:	09 /06 / 2015
Case number: ²	201404115/1/V3
Parties to the case: X. and others v. the State Secretary of Security and Justice	
Decision available on the internet? Yes http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2015:1913	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? No	
Country(ies) of origin of the applicant(s): Iran	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): the Netherlands	
Any third country of relevance to the case: ³ Italy	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees Yes	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons NA	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness NA	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa NA	Relevant articles of the Convention on which the decision is based:
For EU member states: European Convention on Human Rights and Fundamental Freedoms	Relevant articles of the EU instruments referred to in the decision: Art. 3

Topics / Key terms: (see attached 'Topics' annex):

Minor asylum seekers,

European Convention on Human Rights,

inhumane and degrading treatment,

Dublin Regulation,

Tarakhel v. Switzerland

Key facts (max. 200 words)

Applicants contest their transfer under the Dublin Regulation to Italy.

On 22 April 2014 the Court of the Hague rejected their appeal against the decision taken by the immigration service on 16 January 2014. The Court ruled that the transfer of the asylum seekers to Italy would not amount to a violation of article 3 ECHR.

The parents of the minor asylum seeker, whom they represent in this case argue that the impugned decision fails to duly recognize the possible violation of their rights in contravention with Article 3 ECHR, because it did not take into account the requirement that the transfer of minor asylum seekers and their families is preceded by obtaining individual guarantees as regards shelter, as laid out in the *Tarakhel v. Switzerland* Decision of 4 November 2014, see *Tarakhel v. Switzerland*, Application no. 29217/12, Council of Europe: European Court of Human Rights, 4 November 2014,

<http://www.refworld.org/docid/5458abfd4.html>

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

4. The applicants state that the Court has erred in rejecting the ground for appeal regarding the transfer of the applicants to Italy being in violation of article 3 European Convention on Human Rights and Fundamental Freedoms (ECHR). They maintain that the State Secretary has failed to obtain individual guarantees from the Italian authorities as required by the European Court of Human Rights in a decision of 4 November 2014 in the case *Tarakhel versus Switzerland*, no. 29217/12 (www.echr.coe.int; hereafter “Tarakhel Decision”).
 - 4.1. As the Council of State (hereafter: “the Council”) has held before (decision of 20 May 2015 in the case no. 201407654/1/V3) the Tarakhel Decision provides that the transfer of a minor to Italy amounts to a violation of Article 3 ECHR, if the State Secretary has not obtained individual guarantees from the Italian authorities that the child and his relatives will be sheltered together and in adequate conditions. The prior decisions in this case do not indicate that the State Secretary has taken into account the requirement of obtaining individual guarantees, which implies that the Court has erred in considering that the State Secretary’s point of view that the transfer would not amount to a violation of article 3 ECHR was justified.
5. The appeal is grounded. The decision will be annulled.
6. However, considering the following, the Council decides, in line with article 8(72)(3) *General Administrative Law Act* that the legal effects of prior decisions should be upheld.
 - 6.1. In a letter of 2 March 2015, the State Secretary has provided a declaration of the Italian authorities, in which they guarantee the reception of several families, specified on a list that was not enclosed, in accordance with the requirements of the Tarakhel Decision. In the declaration the Italian authorities call on the State Secretary to inform them at least 15 days prior to the actual transfer of each of the families, in order for them to communicate in which specific accommodation the respective family will be received. In a letter of 24 April 2015 the State Secretary has disclosed the name list, on which the applicants and their child are mentioned. Assuming that the State Secretary will indeed inform the Italian authorities 15 days prior to their actual transfer, that the Italian authorities will indeed communicate in which specific accommodation the applicants will be received, and that the State Secretary will not execute the transfer until this information is acquired, the Council does not consider that the State Secretary has erred in claiming that the transfer of the applicants will not amount to a violation of article 3 ECHR.

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Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

A similar approach was adopted in the Council of State's decision of 15 June 2015 (201404968/1/V3: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2015:2006>).

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org