

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court <sup>1</sup> (English name in brackets if the court's language is not English):</b> Rechtbank Den Haag, zittingsplaats Zwolle ( <b>Court of first instance of The Hague, seat Zwolle</b> )	
<b>Date of the decision:</b>	18-07-2016
<b>Case number:<sup>2</sup></b>	NL16.1221
<b>Parties to the case:</b> Applicant v. State Secretary for Security and Justice	
<b>Decision available on the internet?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, please provide the link: (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Dutch	
<b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Unknown	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> the Netherlands	
<b>Any third country of relevance to the case:<sup>3</sup></b> Italy	
<b>Is the country of asylum or habitual residence party to:</b>	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <b>X</b>
<b>(Only for cases with statelessness aspects)</b> The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <b>No</b>	Relevant articles of the Convention on which the decision is based: <b>X</b>
<b>(Only for cases with statelessness aspects)</b> The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <b>No</b>	Relevant articles of the Convention on which the decision is based: <b>X</b>
<b>(For AU member states):</b> The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <b>No</b>	Relevant articles of the Convention on which the decision is based: <b>X</b>
<b>For EU member states:</b> please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision: <b>Dublin Directive (EU) nr. 604/2013</b> <b>European Convention on Human Rights</b>

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

Dublin Regulation  
Article 3 ECHR  
Family with minor child  
Italy

**Key facts (as reflected in the decision):** [No more than 200 words]

This case concerns an applicant whose asylum application was not examined, because the State Secretary of Security and Justice considered Italy to be responsible for the examination of his asylum application. This decision was taken on 26 May 2016. The applicant appealed the decision and the court session took place June 9.

The applicant argued that the transfer to Italy with her minor child would violate Article 3 ECHR. According to the applicant, there is no individual guarantee that there are reception facilities for her and her minor child in Italy, as required by the ECtHR following its judgment in the Tarakhel case (nr. 29217/12). The defendant referred to Italy's Circular Letter: Guarantees for vulnerable cases; family groups with minors, dated 8 June 2015. The defendant argued that the guarantees from this letter should be considered as individual guarantees as required by the Tarakhel judgment. The applicant argued that the guarantees given in the letter could no longer be considered as individual guarantees, pointing at the increased influx since the time the letter was published. During the proceedings Italy's Circular Letter of 15 February 2016 was also mentioned, as that circular letter mentions a specific number of available places for vulnerable individuals transferred under the Dublin regulation.

The court of first instance declared the appeal founded and quashed the State Secretary's decision. Consequently, the State Secretary was ordered to make a new decision, taking into account the considerations in this judgment.

**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]**

**Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original**

7. The defendant replied by letter of 23 June 2016 to a question from the court that defendant, after the Italian authorities were informed of the planned transfer of a vulnerable asylum seeker, does not expect a concrete guarantee from the Italian authorities. Only in the event where the Italian authorities reply that there is a specific reason why they cannot meet the required guarantees, action will be undertaken and the planned transfer will not take place. According to the defendant, this method is in accordance with the jurisprudence of the Administrative Jurisdiction Division of Council of State (hereinafter: Council of State) (judgments of 7 October 2015, No. 201506164/1, 16 December 2015, No. 201507134/1 and 8 April 2016, No. 201 507 933).

In these judgments, the Council of State made use of general information provided by the Italian authorities combined with a description provided by a Dutch, a German and a Swiss liaison officer of two of the assigned accommodations. Based on this information, the Council of State decided that the required individual guarantees by the ECtHR could be set aside. The statement by the State Secretary that he would immediately stop the transfer if he got notice that there was no reception in place that met the requirements mentioned before was said to contribute to this conclusion. In the present case it seems that the only way in which the transfer would be cancelled, is in the situation where the Italian authorities themselves explicitly state that they cannot provide satisfactory reception for these asylum seekers. This practice is not conform the Council of State's jurisprudence, according to the court of first instance, as there are indications that there aren't sufficient reception facilities for families with minor children. In this case the defendant should have, conform the Tarakhel judgment, asked for individual guarantees.

8. After being requested by the court, the defendant informed the court that in the period of 20 May 2015 until 21 June 2016 a total of 181 asylum seekers were transferred to Italy under the Dublin Regulation. In this group, there were twenty families with minor children, 64 persons in total. The court then looked at the Circular Letter of 15 February 2016, from which it became apparent that for Dublin transfers from all Member States, there were a total of 85 reception accommodations available.

9. The Court states that this leads to a clearly different situation than the situation under which the aforementioned judgments of the Council of State were adopted. There are only 85 out of the 161 accommodations available for vulnerable people, of which 64 accommodations were already claimed in one year by the Netherlands for families with minor children. Furthermore, taking into account that the Tarakhel judgment also concerned other vulnerable asylum seekers and not merely families with minor children, as well as the fact that other Member States also transfer vulnerable asylum seekers to Italy under the Dublin Regulation, it is more than unlikely that enough places are available that meet the requirements.

Transfer of these vulnerable asylum seekers from the Netherlands to Italy, will therefore entail a breach of Article 3 ECHR, as no individual guarantees have been obtained with regard to the place where these vulnerable asylum seekers will be received and as there is no clarity with respect to the circumstances under which this reception takes place (with respect to families with minor children it is required to have a guarantee that they will not be separated and that reception facilities are adapted to the age of the children).

The fact that the defendant brings forward that the list obtained from the Italian authorities is incomplete reinforces the doubts of the court when it comes to the reliability of such vague and general information. The fact that the Italian authorities promise that, if necessary, the list will be adapted or extended depending on the number of required accommodations, does not lead to a different conclusion, as this is an uncertain and future circumstance and this promise is not concretely substantiated.

Judgment

The court declares the appeal founded and quashed the State Secretary's decision. Consequently, the State Secretary was ordered to make a new decision, taking into account the considerations in this judgment.

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

European Court of Human Rights, Tarakhel vs. Switzerland, 4 November 2014, nr. 29217/12.

Administrative Jurisdiction Division of Council of State, sayings of October 7 2015, No. 201506164/1, 16 December 2015, No. 201507134/1 and 8 April 2016, No. 201 507 933 /1.

## **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.

### **Please submit this form to:**

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](mailto:refworld@unhcr.org)