



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

FIRST SECTION

CASE OF DABO v. SWEDEN

(Application no. 12510/18)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal of family reunification request of refugee who failed to fulfil maintenance requirement and applied outside the three-month exemption period • Wide margin of appreciation to be afforded to member States in deciding to implement such a condition • No issues in the case as to the calculation of the exemption period nor whether its application was sufficiently flexible • Applicant could lodge fresh request for family reunification at any time and had good prospects of being able to fulfil maintenance requirement in the future • Individualised assessment • Legal amendments allowing full or partial exemptions from maintenance requirement on “special grounds” • Fair balance struck between competing interests at stake • Margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 January 2024

FINAL

18/04/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Dabo v. Sweden,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Alena Poláčková,

Lətif Hüseyinov,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 12510/18) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Syrian national, Mr Abdelnaser Dabo (“the applicant”), on 6 March 2018;

the decision to give notice to the Swedish Government (“the Government”) of the complaint under Article 8 of the Convention, and to declare the remainder of the application inadmissible;

the parties’ observations;

the comments submitted by the Council of Europe Commissioner for Human Rights, who exercised her right under Article 36 § 3 of the Convention to submit written observations;

Having deliberated in private on 12 December 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a refusal to grant family reunification. The applicant was granted asylum in Sweden on 8 March 2016. On 20 July 2016 Law 2016:752 concerning temporary restrictions on the granting of permanent residence permits for asylum seekers in Sweden entered into force. It introduced, among other things, a maintenance requirement for family reunification, unless an application had been lodged within three months after the sponsor in Sweden had been granted asylum. The applicant’s first wife and five children applied in November 2016 for residence permits on the basis of family reunification. Their applications were refused because the applicant, at that time, could not fulfil the maintenance requirement. The applicant relied on Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1961 and lives in Timmersdala. He was represented by Ms Johanna Eriksson Ahlen, a senior legal adviser with the Swedish Red Cross in Stockholm.

3. The Government were represented by their Agent, Mrs Helen Lindquist, of the Ministry for Foreign Affairs.

4. The facts of the case may be summarised as follows.

5. The applicant is a doctor. He left Syria for Jordan in the summer of 2013.

6. The applicant's first wife and their five children (born in 2002, 2003, 2004, 2007 and 2009) appear to have left Syria for Jordan some months later. They still reside there under UNHCR protection.

7. After the summer of 2013, the applicant returned to Syria to work at a hospital. In November 2013, he left Syria again, and arrived in Greece in April 2014, having travelled via Turkey. In November 2014 he married his second wife (also a Syrian national) in a ceremony performed by an Imam in Greece.

8. On 12 December 2014, the applicant and his second wife entered Sweden and requested asylum. They were granted permanent residence permits as refugees on 8 March 2016 (pursuant to Chapter 4, Section 1 of the Aliens Act (*Utlänningslagen*, 2005:716)).

9. On 20 July 2016, the Law concerning temporary restrictions on the granting of permanent residence permits for asylum seekers (*Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, 2016:752 – henceforth “the Temporary Restrictions Act”) entered into force (remaining in force until 19 July 2019).

I. THE REQUEST FOR FAMILY REUNIFICATION

10. On 24 November 2016, at the Swedish Embassy in Amman, Jordan, the applicant's first wife and five children applied for Swedish residence permits based on their family ties with the applicant. In April 2017 the applications were supported with further documentation.

11. The applicant stated to the Migration Agency (*Migrationsverket*) that he intended to live in Sweden with both his wives and all of his children, although it is unclear whether this statement was made on a form submitted on 27 April 2017 or at an interview. The last time he had seen his children and his first wife had been in July 2013. The applicant's second wife had had a miscarriage and was pregnant again.

12. On 17 May 2017, the Migration Agency rejected the applications for family reunification for the following reasons.

13. Under Chapter 5, Section 3, subsection 1(1) and (2) of the Aliens Act, a residence permit may be granted to a foreign national who was the spouse or child of a person who was resident in Sweden.

However, by virtue of Section 9, subsection 1 of the Temporary Restrictions Act a residence permit could be granted only if the sponsor resident in Sweden could show sufficient income to maintain him- or herself and any person being sponsored (henceforth “the income requirement”) and had accommodation of a sufficient size and standard for him- or herself and those being sponsored (henceforth “the accommodation requirement” these requirements together being henceforth “the maintenance requirement”).

If the sponsor resident in Sweden had been granted refugee status, as had the applicant, or subsidiary protection, the maintenance requirement only applied if the application for a residence permit was submitted more than three months after the sponsor had been granted refugee or subsidiary protection status (see Section 10, subsection 3(1) of the Temporary Restrictions Act).

14. The applications for residence permits submitted by the applicant’s first wife and his children were registered with the Migration Agency on 24 November 2016, eight months after the applicant had been granted refugee status. The exemption from the maintenance requirement in Section 10, subsection 3(1) of the Temporary Restrictions Act therefore did not apply.

15. The applicant was living on “introduction benefits” (*etableringsersättning*), which was not considered a work-related benefit comparable to a salary.

16. He had rented an apartment consisting of one and a half rooms and a kitchenette, which could not be considered accommodation of a sufficient size and standard for them all to live there together.

17. The Migration Agency found that the applicant had failed to fulfil the maintenance requirement. His first wife and children could not therefore be granted a residence permit under Section 3, subsection 1(1) and (2) of the Aliens Act. That decision was not contrary to Sweden’s commitment under an international convention and was made under Section 13 of the Temporary Restrictions Act.

18. The applicant appealed against the Migration Agency’s decision to the Migration Court (*Migrationsdomstolen*), where he maintained that his first wife and children had contacted the Swedish Embassy in Jordan in April 2016 to make an appointment for an interview. The applicant asserted that this constituted a sufficient manifestation of intention for the application to be considered to have been made on that date.

19. On 1 August 2017 the Migration Court found against the applicant. It held first of all that the applicant had failed to substantiate his assertion that his first wife and children had been in contact with the Swedish Embassy on the date alleged. In view of this, and in the absence of any other evidence to the contrary, the court found the applications to have been received when they

were filed with the Migration Agency on 24 November 2016. Accordingly, the requirements set out in Section 9 of the Temporary Restrictions Act applied. The Migration Court did not dispute that the applicant had good prospects of obtaining a larger apartment and employment that would meet the accommodation and income requirements. At the time of its assessment, however, there was no reliable evidence to substantiate that the maintenance requirement had been met, and there was therefore at that time no basis for granting the applicant's first wife and children residence permits on the grounds of family reunification. The Migration Court found that the decision was not in violation of Article 8 of the Convention.

20. On 14 September 2017 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal.

II. THE APPLICANT AND THE MAINTENANCE REQUIREMENT

21. On 16 January 2017 the applicant submitted an application to the National Board of Health and Welfare (*Socialstyrelsen*) for an assessment of his overseas qualifications in order to obtain a licence to practise medicine in Sweden. In its decision of 14 March 2017, the Board found that the applicant's foreign training was comparable to the level, length and content of similar training in Sweden. Nevertheless, it decided that the applicant had to show that his knowledge and skills corresponded to those required for a Swedish medical degree. The applicant was informed that this could be done by taking one of the Board's proficiency tests. However, as this test had to be taken in Swedish, it required the applicant to have a good knowledge of the Swedish language. In this regard, the applicant provided the Migration Court with a copy of a certificate dated 1 February 2017 showing that he had taken a course in Swedish as a second language with a medical specialisation.

22. A document from the Swedish Public Employment Service (*Arbetsförmedlingen*) dated 29 May 2017 was submitted to the Migration Court which certified that one of the Service's duties was to establish a fast-track procedure (*snabbspår*) for admission to certain professions requiring a licence to practise, because of the severe labour shortage in these professions. The applicant had been participating in the Public Employment Service's introduction measures since 21 April 2016. The aim of the project was to identify medical practitioners at an early stage in the asylum process and to offer them courses in Swedish and an introduction to health care in Sweden in order to shorten the process of obtaining a licence to practise. Each participant was offered one year of participation in the project, accompanied by additional measures to meet the requirements set by the National Board of Health and Welfare for applying for a licence to practise as a doctor. On 1 February 2017, the applicant completed his participation in the project, and subsequently studied Swedish in order to reach the level required and became eligible to take a proficiency test and to then apply for a licence.

III. THE APPLICANT AND THE ACCOMMODATION REQUIREMENT

23. The applicant's landlord stated in a letter submitted to the Migration Court that he would make an effort to arrange for a larger apartment for the applicant if his family arrived in Sweden.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Aliens Act (2005:716)

24. Chapter 1, Section 1a of the Aliens Act states that if there are provisions in the Temporary Restrictions Act that deviate from this Act, those provisions should apply.

25. Chapter 1, Section 3 of the Aliens Act states that where a foreign national is granted "asylum" within the meaning of that Act, a residence permit should be granted to him or her as a refugee or person eligible for subsidiary protection.

26. Chapter 1, Section 10 states that in cases involving a child, particular attention must be given to the child's health and development and to the best interests of the child.

27. Under Chapter 4, Section 1 of the Aliens Act a "refugee" means a foreign national who is outside the country of his or her nationality because he or she has a well-founded fear of persecution on the grounds of race, nationality, religious or political belief, or on the grounds of his or her gender, sexual orientation or membership of some other particular social group and is unable (or because of his or her fear is unwilling) to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the risk of persecution or whether the alien risks being subjected to persecution from private individuals and it cannot be assumed that the alien will be offered effective protection that is not of a temporary nature. When making an assessment of whether adequate protection is being offered, only protection that is provided by the State or by parties or organisations that control all or a significant part of the State's territory will be taken into account.

28. Chapter 5, Section 1, subsection 1 states that refugees, persons eligible for subsidiary protection and persons otherwise in need of protection who are in Sweden are entitled to a residence permit.

29. Under Chapter 5, Section 1a, subsection 3, a residence permit granted under Chapter 5, Section 1a, subsection 1, will be permanent or valid for at least three years. If a new temporary residence permit is granted to an alien who has previously been granted a temporary residence permit, the new permit will be valid for at least two years. This does not apply if compelling

considerations of national security or public order require a shorter period of validity. However, the period of validity may not be shorter than one year.

30. Under Chapter 5, Section 3, subsection 1 of the Aliens Act, a residence permit will, unless otherwise provided in Sections 17-17b, be granted to an alien who is the spouse or cohabiting partner of someone who is resident or has been granted a residence permit to settle in Sweden. It should be noted that polygamy is not recognised in Sweden.

31. Under Chapter 5, Section 3, subsection 1(2) of the Aliens Act, unless otherwise provided for in Sections 17-17b of Chapter 5, a residence permit is to be granted to a child who is an alien, is unmarried and has a parent who is resident in or has been granted a residence permit to settle in Sweden.

32. Under Chapter 5, Section 3a, of the Aliens Act, unless otherwise provided in Chapter 5, Section 17, subsection 2, a residence permit may be granted to an alien who is, other than through the relationships referred to in Section 3 or in this Section, a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that previously existed in the country of origin.

B. The Temporary Restrictions Act (2016:752)

33. During 2015 Sweden experienced a record increase in asylum-seekers, whose numbers rose to almost 163,000 (see *M.T. and Others v. Sweden*, no. 22105/18, § 28, 20 October 2022).

34. Consequently, the Aliens Act was amended by the Temporary Restrictions Act (the Law concerning temporary restrictions on the granting of permanent residence permits for asylum seekers), in force from 20 July 2016 to 19 July 2019 in order to bring the Swedish legislation into line with the minimum level of provision under European Union Law. The Temporary Restrictions Act adjusted the validity of residence permits to the minimum level provided by the recast Qualification Directive (Council Directive 2004/83/EC, later repealed and replaced by Directive 2011/95/EU of the European Parliament and the Council) and adjusted the available grounds for family reunification to the minimum level provided for by the Family Reunification Directive (Council Directive 2003/86/EC of 22 September 2003 – see paragraphs 52-60 below). The Temporary Restrictions Act also limited the right to family reunification for both refugees and beneficiaries of subsidiary protection. Essentially, between 20 July 2016 and 19 July 2019 the right to family reunification for refugees was limited to immediate family, and the right to family reunification for beneficiaries of subsidiary protection was suspended. Moreover, and of specific relevance for the present case, the maintenance requirement was introduced, but it did not apply in certain cases, including where a request for

family reunification was submitted within three months after the person in Sweden had been granted refugee status.

35. As set out in the preparatory works to the Temporary Restrictions Act (proposal to temporarily restrict grants of a residence permit in Sweden, prop. 2015/16:174), Sweden had to temporarily amend its migration-related legislation in order to reduce the number of people seeking asylum there, while at the same time improving the capacity of its reception and integration arrangements. The Temporary Restrictions Act enabled it to operate in line with the minimum level of provision required under EU law and international conventions.

36. Under Section 9 of the Temporary Restrictions Act, a residence permit under Chapter 5, Section 3 or 3a of the Aliens Act may be granted if the sponsor can support the family and has accommodation of an adequate size and standard for them all.

37. The Government or a public authority designated by the Government may, by virtue of Chapter 8, Article 7 of the Instrument of Government (*Regeringsformen*), issue more detailed regulations concerning the resources required to support oneself and one's family and what constituted accommodation of adequate size and standard.

38. Section 10 of the Temporary Restrictions Act specifies that, if the sponsor has been granted a residence permit *inter alia* as a refugee, the requirements of Section 9 only apply if (1) the application for a family reunification residence permit is made more than three months after the sponsor was granted a residence permit as a refugee, (2) family reunification is possible in a country outside the EU to which the family has special ties, or (3) the applicant and the sponsor have not cohabited for a substantial period in another country and it cannot be shown by other means that the relationship is well-established.

39. Under Section 13 of the Act, if a family reunification residence permit cannot be granted on any other basis, such a permit is to be granted to a foreign national who is outside Sweden if a decision to refuse a residence permit would be contrary to Sweden's international obligations.

C. Legislative history of the Temporary Restrictions Act

40. The legislative history of the maintenance requirement set out in the Temporary Act (see Government Bill 2015/15:174, pp. 46 and 47) shows that the provisions were designed to temporarily align the right to family reunification with the minimum level required under the Family Reunification Directive, and that the changes were justified partly because, from an integration point of view, it is beneficial if a sponsor has adequate employment and accommodation when his or her family members arrive.

41. As a starting point a maintenance requirement should apply as a condition for granting a residence permit and exceptions to this general rule

should only be possible in cases where this appears inappropriate or contrary to EU law or international conventions.

42. It was stated that for obvious reasons children cannot be treated on the same basis as adults when it comes to maintenance requirements. Under the Temporary Restrictions Act, there was thus an exemption from the maintenance requirement if the sponsor was a child.

43. Another exemption specified in Section 10 of the Temporary Restrictions Act was that of requests for family reunification submitted within three months from the date on which the sponsor had been granted refugee status. It was observed that this exemption would make considerable demands on the service to be provided by Swedish missions abroad. It meant, for example, that it would be unacceptable for a mission not to register an application for a residence permit promptly. An application had to be registered as soon as it was received by the mission, whether submitted on paper or electronically, and that date should not be affected by the fact that the application subsequently had to be supplemented.

D. Ordinance on temporarily restricting on the possibility to obtain residence permits in Sweden (2016:850)

44. Under Section 1 of the Ordinance on temporarily restricting on the possibility to obtain residence permits in Sweden (“the Temporary Restrictions Ordinance”) the maintenance requirement set out in Section 9 of the Temporary Restrictions Act is met if the sponsor has a salary that, after deductions for preliminary tax, amounts to the reserve amount for attachment of earnings purposes under Chapter 7, Section 5 of the Dept Enforcement Code (*Utsökningsbalken*). When calculating the amount, however, account is also taken of what is needed to support the family members. Benefits from an unemployment insurance scheme and other similar work-related benefits are treated as comparable to a salary. Insurance benefits are, however, not to be treated as comparable to a salary. The requirement is also met if the sponsor has income from business activities or capital that enables them to support the family. The Swedish Migration Agency may issue more detailed regulations concerning the ability to support oneself.

E. Regulations of the Swedish Migration Agency on the Maintenance Requirement for Family Members (MIGRFS 02/2017)

45. The requirement of accommodation of an adequate size and standard set out in Chapter 5, Section 3b of the Aliens Act and Section 9, subsection 1 of the Temporary Restrictions Act are met if, no later than when the family member arrives in Sweden, the sponsor has at their disposal accommodation that is owned, rented as a tenant or subtenant, or occupied as a secured tenant of a housing association. The sponsor must submit written proof of their

accommodation arrangements, for example a tenancy agreement or a certificate from a property owner, landlord or accommodation agency confirming that a tenancy will be available. If the accommodation is rented as a subtenant, the subtenancy must be approved by the landlord, housing association or regional tenancy tribunal. The accommodation must be of a reasonable standard and of a suitable size for the number of people who are to reside in it. Accommodation for two adults without children must have at least one room and a kitchen or kitchenette. If children are to reside in the accommodation, it must have more rooms. Two minor children can share a bedroom.

F. The maintenance requirement in the Aliens Act after 19 July 2021

46. On 20 July 2021 the Temporary Restrictions Act ceased to apply. At the same time, new provisions were introduced into the Aliens Act regarding the maintenance requirement for family reunification.

47. The amended Chapter 5, Section 3b of the Aliens Act provides that a residence permit should be granted under Chapter 5, Section 3 or 3a of the same Act only if the sponsor is able to support the family and has accommodation of adequate size and standard for them all.

48. Under Chapter 5, Section 3d, subsection 1 of the Aliens Act, if the sponsor has been granted a residence permit as *inter alia* a refugee, the requirements of Section 3b only apply if (1) the application for a residence permit is made more than three months after the sponsor was granted a residence permit as a refugee, (2) family reunification is possible in a country outside the EU to which the family has special ties, or (3) if the applicant and the sponsor have not cohabited for a substantial period in another country and it is not clear in some other way that the relationship is well-established.

49. Under Chapter 5, Section 3f of the Aliens Act, full or partial exemptions from the maintenance requirement can be granted if there are “exceptional reasons” to do so. The provision allows such exemptions where it would be unreasonable to enforce the requirement. This could apply to, for example, retired people who do not have an income at the required level or people who are unable to earn an income because of a permanent disability. There may also be other situations where it seems unreasonable to apply a maintenance requirement, *inter alia*, if in the individual case it would conflict with Sweden’s convention obligations. An overall assessment of circumstances has to be made in the individual case (see Government Bill 2020/21:191, p. 112).

II. RELEVANT EUROPEAN UNION LAW

A. The Charter of Fundamental Rights

50. The right to family life is set out in the Charter of Fundamental Rights of the European Union, OJ 2007/C 313/01 (hereinafter “the Charter”) and a number of EU legislative acts. Article 7 of the Charter reads as follows:

Respect for private and family life

“Everyone has the right to respect for his or her private and family life, home and communications.”

51. The Explanations relating to the Charter of Fundamental Rights (2007/C 303/02) contain the following guidance in the interpretation of Article 7:

Explanation on Article 7 – Respect for private and family life

“The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. ...

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR ...”

B. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (“the Family Reunification Directive”)

52. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, p. 12 (hereinafter “the Family Reunification Directive”) is the main EU secondary legislation dealing with the family reunification rights of third-country nationals (that is those who are not nationals of an EU member State). The purpose of the Family Reunification Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the member States.

53 Paragraph 11 of the Preamble to the Family Reunification Directive requires that right to be exercised in compliance with the values and principles recognised by the member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for the reunification of polygamous households.

54. Article 7 of the Family Reunification Directive sets out the following:

“1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.”

55. Article 9 § 2 of the Family Reunification Directive provides that Member States may confine the application of Chapter V to refugees whose family relationships predate their entry into the country.

56. Article 12 of the Directive is worded as follows:

“1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. ...”

57. Under Article 10 § 1, refugees’ family members are defined using the definition in Article 4, which excludes any more stringent definitions or additional requirements: the third subparagraph of Article 4 § 1 does not apply to the children of refugees. Article 4 § 4 requires that, in the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a member State, the member State concerned shall not authorise the entry for family reunification of a further spouse.

58. The communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification (COM/2014/0210) requires a sponsor’s resources to be sufficiently stable and regular and reasonably expected to be available for the foreseeable future, so that the applicant will not need to seek recourse to the social assistance system, and an applicant for a residence

permit on the basis of family reunification may provide evidence of that. In general, a permanent employment contract should therefore be sufficient. Article 7 § 1 (a) provides that member States may require evidence that the sponsor has accommodation of the standard usual for a comparable family in the same region and which meets the general health and safety standards in force in the member State concerned. The evaluation of the accommodation is left to the discretion of the member State, but the criteria adopted may not be discriminatory and the provision defines the upper limit of what may be required as to size, hygiene and safety in terms of number of family members and social status.

59. *Chakroun* (C-578/08, EU:C:2010:117, 4 March 2010), concerned the refusal of an application for family reunification made in 2006 by Mr Chakroun for his wife. He had held an indefinite residence permit in the Netherlands since 1972, but the application was refused because he was in receipt of unemployment benefit and his income fell below the applicable income standard. The Court of Justice of the European Union (“CJEU”) ruled as follows:

“The phrase ‘recourse to the social assistance system’ in Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies.”

It further stated:

“41 Article 4(1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights, on the Member States, since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation (Case C-540/03 *Parliament v Council* [2006] ECR I-5769, paragraph 60).

42 However, that provision is subject to compliance with the conditions referred to, in particular, in Chapter IV of the Directive. Article 7(1)(c) of the Directive forms part of those conditions and allows Member States to require evidence that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system of the Member State concerned. That provision also states that Member States are to evaluate those resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

43 Since authorisation of family reunification is the general rule, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Furthermore, the margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

44 In that regard, it follows from recital 2 in the preamble to the Directive that measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. The Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the ECHR and in the Charter. It follows that the provisions of the Directive, particularly Article 7(1)(c) thereof, must be interpreted in the light of the fundamental rights and, more particularly, in the light of the right to respect for family life enshrined in both the ECHR and the Charter. It should be added that, under the first subparagraph of Article 6(1) TEU, the European Union recognises the rights, freedoms and principles set out in the Charter, as adapted at Strasbourg on 12 December 2007 (OJ 2007 C 303, p. 1), which has the same legal value as the Treaties.

45 As Mrs Chakroun pointed out at the hearing, the concept of ‘social assistance system of the Member State’ is a concept which has its own independent meaning in European Union law and cannot be defined by reference to concepts of national law. In the light, in particular, of the differences existing between the Member States in the management of social assistance, that concept must be understood as referring to social assistance granted by the public authorities, whether at national, regional or local level.

46 The first sentence of Article 7(1)(c) of the Directive sets up, on the one hand, the concept of ‘stable and regular resources which are sufficient to maintain [the applicant]’ against, on the other, that of ‘social assistance’. It follows from this contrast that the concept of ‘social assistance’ in the Directive refers to assistance granted by the public authorities, whether at national, regional or local level, which can be claimed by an individual, in this case the sponsor, who does not have stable and regular resources which are sufficient to maintain himself and the members of his family and who, by reason of that fact, is likely to become a burden on the social assistance system of the host Member State during his period of residence (see, by way of analogy, Case C-291/05 Eind [2007] ECR I-10719, paragraph 29).

47 The second sentence of Article 7(1)(c) of the Directive allows Member States to take into account the level of minimum national wages and pensions as well as the number of family members when evaluating the sponsor’s resources. As has been pointed out in paragraph 43 of the present judgment, that faculty must be exercised in a manner which avoids undermining the objective of the Directive, which is to promote family reunification, and the effectiveness thereof.

48 Since the extent of needs can vary greatly depending on the individuals, that authorisation must, moreover, be interpreted as meaning that the Member States may indicate a certain sum as a reference amount, but not as meaning that they may impose a minimum income level below which all family reunifications will be refused, irrespective of an actual examination of the situation of each applicant. That interpretation is supported by Article 17 of the Directive, which requires individual examination of applications for family reunification.

49 ... The concept of ‘social assistance’ in Article 7(1)(c) of the Directive must be interpreted as referring to assistance which compensates for a lack of stable, regular and sufficient resources, and not as referring to assistance which enables exceptional or unforeseen needs to be addressed.

...”

60. *K and B* (C-380/17, EU:C:2018:877, 7 November 2018), was about a request for family reunification with a third country national who had been granted subsidiary protection. The CJEU found that Article 12 § 1 of the

Family Reunification Directive did not preclude national legislation under which an application for family reunification lodged on behalf of a member of a refugee's family on the basis of the more favourable provisions for refugees of Chapter V of that Directive could be rejected on the ground that the application was lodged more than three months after the sponsor had been granted refugee status, where it was possible to lodge a fresh application under a different set of rules [notably those laid down in Article 7 § 1 of the Directive], provided that the relevant legislation:

(i) laid down that those grounds for rejection could not apply where particular circumstances made the late submission of the initial application objectively excusable;

(ii) laid down that the persons concerned must be fully informed of the consequences of the decision rejecting their initial application and of the measures which they could take to make an effective application for family reunification; and

(iii) ensured that sponsors who had been recognised as refugees continued to benefit from the more favourable conditions for the exercise of the right to family reunification applicable to refugees, as specified in Articles 10 and 11 or in Article 12(2) of the Directive.

The CJEU further stated:

“44 The first subparagraph of Article 12(1) of Directive 2003/86 provides that, by way of derogation from Article 7 thereof, the Member States are not to require the refugee or his family members to provide, in respect of applications concerning those family members referred to in Article 4(1) of that directive, the evidence that the sponsor fulfils the requirements set out in Article 7 thereof.

45 However, whilst it is stated in recital 8 of Directive 2003/86 that that directive lays down more favourable conditions for refugees' exercise of the right to family reunification, including the rules set out in the first subparagraph of Article 12(1) of that directive, the fact remains that the Member States have the possibility to subject granting the benefits afforded by those rules to the condition that an application be lodged within a certain period of time.

46 Thus, the third subparagraph of Article 12(1) of the directive states that Member States may require the refugee to meet the conditions referred to in Article 7(1) of that directive if the application for family reunification is not submitted within a period of three months after the granting of refugee status.

...

48 The third subparagraph of Article 12(1) of Directive 2003/86 cannot be interpreted as requiring the Member States to regard failure, without any valid reason, to comply with the time limit for lodging an application for family reunification submitted on the basis of the more favourable rules set out in the first subparagraph of Article 12(1) of that directive as forming only one factor to be taken into consideration for the overall assessment of the merits of that application and as capable of being offset by other factors.

...

52 The decision of a member State to require that the conditions set out in Article 7(1) of the Directive are satisfied does not prevent the merits of the request for family reunification being examined, with due regard, in accordance with Article 5(5) and Article 17 of the Directive, to the best interests of minor children, the nature and solidity of the person's family relationships and the duration of his/her residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin."

III. INTERNATIONAL LAW AND MATERIAL

61. Following his visit to Sweden from 2 to 6 October 2017, the Council of Europe Commissioner for Human Rights issued a report on 16 February 2018 (CommDH(2018)4), in which he stated as follows:

"1.2. RIGHT TO FAMILY REUNIFICATION

...

24. The Commissioner is concerned that the temporary law makes it more difficult to be reunited with family members, especially for beneficiaries of subsidiary protection and those recognised as refugees under the Geneva Convention whose family members do not apply for reunification within the three-month deadline. ...

...

1.2.1 CONCLUSIONS AND RECOMMENDATIONS

28. The Commissioner urges the Swedish authorities to ensure that refugees and other beneficiaries of international protection fully enjoy their right to family reunification, as further detailed in the Commissioner's Issue Paper "Realising the right to family reunification of refugees in Europe". In particular, the Commissioner calls on the Swedish authorities to:

- grant persons receiving subsidiary protection the same family reunification rights as those recognised as refugees under the Geneva Convention;
- assess how practical obstacles to family reunification, such as onerous documentary requirements to prove identity and access to far away embassies, can be overcome, to give effect to the European Court's case-law that requires refugee family reunification procedures to be flexible, prompt and effective;
- abolish the three-month deadline for applications for family reunification;
- ensure that extended family members are also eligible for family reunification when they are dependent on the sponsor, with the concept of dependency allowing for a flexible assessment of emotional, social, financial and other ties between the sponsor and his/her family member(s).

29. In light of the mid-review of the temporary law in 2018, the Commissioner expresses the hope that the restrictions to the right to family reunification in particular will be lifted on that occasion and that refugees and beneficiaries of subsidiary protection will notably enjoy the same rights in this regard."

62. The UN High Commissioner for Refugees (UNHCR) made *inter alia* the following observations on the proposal of 10 March 2016 to restrict the grant of a residence permit in Sweden:

“c. Maintenance requirement

20. As expressed in its earlier law comments and recommendations, UNHCR is concerned that the already onerous maintenance requirement in Sweden – which entails strict income and accommodation requirements if the application for family reunification is not submitted within three months from the date of granting of protection status - is impossible for many beneficiaries of international protection to fulfil and does not sufficiently take into account the particular circumstances of persons who have been forced to flee. In practice, UNHCR has observed that imposing financial requirements often forces the parents to choose to only apply for family reunification with some of their children, leaving the other children behind, a practice which raises serious concerns. Rather than reuniting families, this has the effect of dividing families.

21. UNHCR further recalls the jurisprudence of the CJEU, according to which the maintenance requirement must not be used in a manner that would undermine the objective and effectiveness of the FRD. The granting of family reunification is the general rule, and the faculty of the maintenance requirement must therefore be interpreted strictly. The Directive “must be interpreted in the light of its general objective, which is to promote rather than prevent family reunification”.

22. Furthermore, the UN Committee on the Rights of the Child recently urged Sweden to facilitate reunification of children with their families, including by abolishing the maintenance requirement and time limit of three months for applications submitted by a family member who has been granted a residence permit.”

...

“IV. Concluding recommendations:

29. ...

4. Refrain from the proposal to move the three-month cut-off date for resettled refugees to be exempted from the maintenance requirement from the date of arrival to the date of decision of the residence permit.”

63. The 1951 Convention relating to the Status of Refugees does not contain a specific provision on refugees’ right to family reunification, nor does the 1967 Additional Protocol thereto. In its Conclusion No. 24 (XXXII) on Family Reunification (1981), the UNHCR Executive Committee stated:

“1. In application of the Principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of refugee families.

2. For this purpose it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least possible delay.

...

9. In appropriate cases family reunification should be facilitated by special measures of assistance to the head of family so that economic and accommodation difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members.”

64. Article 10 § 1 of the UN Convention on the Rights of the Child (1989) provides that “[i]n accordance with the obligation of States Parties under article 9, paragraph 1 [no separation of children and parents against their

will], applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.” In its General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin (CRC/GC/2005/6) of 1 September 2005, the UN Committee on the Rights of the Child considered:

“81. ... [A]ll efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child ...

...

83. Whenever family reunification in the country of origin is not possible, ...the obligations under article 9 and 10 of the Convention come into effect and should govern the host country’s decisions on family reunification therein. ...”

IV. COMPARATIVE LAW

65. Comparative law information concerning the right to family reunification of refugees and other persons in need of international protection and the conditions under which that right is granted, including maintenance requirements, and waiting periods, in Council of Europe member States is contained in *M.A. v. Denmark* [GC] (no. 6697/18, § 69, 9 July 2021) and *Biao v. Denmark* [GC] (no. 38590/10, § 61, 24 May 2016).

V. STATISTICS

66. Annual statistics recently set out in *M.T. and Others v. Sweden*, cited above, §§ 41-46, showed that the total number of asylum seekers in Sweden was as follows:

2015: 162,877 (including 51,338 Syrians)

2016: 28,939 (including 5,457 Syrians)

2017: 25,666 (including 4,718 Syrians)

67. The number of persons granted asylum (including those granted subsidiary protection – see figures in brackets) was as follows:

2015: 36,630 (18,456)

2016: 71,562 (48,355)

2017: 36,607 (13,804)

2018: 25,377 (4,978)

68. The number of residence permits granted on the basis of family reunification with a person already granted asylum or subsidiary protection was as follows:

2015: 16,251

2016: 15,149

2017: 19,129

2018: 16,637

69. In 2015, the main destinations in Europe, for asylum-seekers, with approximate figures (per 100,000 of population) were: Hungary (1,770), Sweden (1,600), Austria (1,000), Norway (590), Finland (590), Germany (460), Luxembourg (420), Malta (390) and Denmark (370).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

70. The applicant complained that the Swedish authorities' refusal to grant his first wife and five children residence permits had violated his right to respect for his family life as guaranteed by Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

71. The Government disagreed with the applicant's submission.

72. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

73. The applicant maintained that the Swedish authorities had failed to engage in a thorough balancing test to weigh up the interests at stake, and that they had notably disregarded the fact that the spouses' separation had been involuntary and lengthy; that there were minor children; that the family's living conditions in Jordan were poor; and that there was no prospect of family reunification elsewhere. In his view it would be impossible for most people to fulfil the maintenance requirement and the authorities had applied the rules in a rigid and inflexible manner.

74. The applicant estimated that in order for him to fulfil the maintenance requirement he would need to have a monthly salary of at least 45,000 Swedish kronor (SEK) (approximately 3,900 Euros (EUR)) before tax, which very few employees would be able to earn. Even if, as a doctor, he might one

day be able to earn such a sum, there was significant uncertainty as to when he would obtain his professional licence and be employed.

75. The applicant also pointed out that the aim of the Family Reunification Directive was to facilitate family reunification, not to hinder it, and that the margin of appreciation afforded to the member States could not be used in a manner that would undermine the objective and effectiveness of the Directive.

76. There should therefore be some flexibility, for example, when calculating the three months during which a sponsor was exempted from the maintenance requirements, in particular in a case such as the present one, where the applicant's first wife had contacted the Swedish Embassy in April 2016 to make an appointment for an interview.

77. Lastly, in his observations before the Court, the applicant contended that he and his second wife had lived separately after June 2016, and that therefore there were no issues of polygamy.

78. The Government maintained that the refusal to grant the applicant family reunification had been in accordance with the law and had pursued the legitimate aim of protecting the public interest in controlling immigration, and that a fair balance had been struck between the various interests at stake.

79. They pointed out that both the income and accommodation aspects of the maintenance requirement introduced by the Temporary Restrictions Act were based on similar provisions in the Family Reunification Directive, which applied to all the member States of the European Union.

80. Moreover, had the application for family reunification been lodged within the first three months after the applicant had been granted asylum, the maintenance requirement would not have applied.

81. Since the application had been lodged after the entry into force of the Temporary Restrictions Act, the maintenance requirement applied, but it was not a permanent obstacle to the reunion of the applicant and his first wife and his children.

82. In the Government's view, it was reasonable to require the applicant to be in employment and accommodated in a larger apartment before being granted family reunification. The Court in its case-law had also found it compliant with Article 8 to require a foreign national seeking family reunification to demonstrate that he or she was in receipt of sufficient reliable income, not welfare benefits, to meet the basic living expenses of the family members he or she was seeking to bring into the country.

83. In their submission, it also had to be taken into account that the applicant's first wife and five children were then living in Jordan, where the applicant had left them before he remarried, and that he had not pointed to any insurmountable obstacles to reunion with them in Jordan.

84. Lastly, they pointed out that polygamy was not recognised in Sweden. Accordingly, only one spouse could benefit from family reunification. They

also noted that there was no information as to whether the applicant's two wives shared the applicant's intention that they should all live together.

2. *The submissions of the Council of Europe Commissioner for Human Rights*

85. The Council of Europe Commissioner for Human Rights referred to her position particularly as set out in the Commissioner's 2016 Issue Paper *Time for Europe to get migrant integration right*, in which family reunification was identified as a key factor for promoting the effective integration of migrants in Council of Europe member States, and the Commissioner's 2017 Issue Paper *Realising the right to family reunification of refugee in Europe*, in which the negative effects of prolonged family separation on family members left behind were underlined, particularly where the beneficiary of protection in Europe was the head of household. The 2017 paper also recommended the extension of time-limits for refugees to apply for family reunification without being subjected to maintenance requirements. It was noted that persons seeking family reunification might face problems tracing family members, obtaining the requisite documents, and arranging for family members to travel to embassies, so that short deadlines could be impossible to meet.

86. The Commissioner referred specifically to the restrictions on family reunification in Sweden, while recognising that EU law prescribed a three-month time-limit for refugees to lodge a request for family reunification without being subjected to maintenance requirements. Like her predecessor, she recommended the abolition of the time-limit, or at a very minimum its application with sufficient flexibility to ensure that refugees were not effectively denied the opportunity of prompt family reunification, and so faced with long-term family separation.

87. Moreover, the Commissioner considered that if member States insisted on imposing maintenance requirements, they should apply them flexibly and on a case-by-case basis, since a person granted international protection would be at a disadvantage in earning sufficient income and obtaining appropriate accommodation. It was crucial that such requirements did not lead to unnecessary prolongation of family separation, especially when children were involved. She also pointed out that some would never be able to meet such requirements, and would therefore be deprived of family life indefinitely.

3. *The Court's assessment*

(a) *The general principles*

88. The Court recently summarised the relevant principles under Article 8 of the Convention in respect of family reunification in *M.A. v. Denmark* (cited above). In that case, the Court confined its examination to the question

whether the refusal to grant the applicant family reunification with his wife owing to a three-year waiting period applicable to beneficiaries of temporary protection had entailed a violation of Article 8 of the Convention. It explicitly stated that it was not called upon to assess whether the State might impose other conditions, material or economic, for granting family reunification (*ibid.*, § 128). It reiterated the general principles on family reunification developed in its case-law relating to other aspects of immigration policy (as summarised in *Jeunesse v. the Netherlands* [GC], no. 12738/10, 3 October 2014):

“131. In the first place it should be reiterated that a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country (*ibid.*, § 100).

132. Moreover, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple’s choice of country for their matrimonial residence or to authorise family reunification on its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State’s obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest and is subject to a fair balance that has to be struck between the competing interests involved. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control (*ibid.*, § 107).

133. Finally, there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight (*ibid.*, § 109).”

89. Recapitulating its case-law on the substantive requirements of family reunification, the Court continued:

“134. In general, in line with the above-mentioned principles, the Court has been reluctant to find that there was a positive obligation on the part of the member State to grant family reunification, when one or several of the following circumstances, not all of which are relevant to the present case, were present:

(i) Family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious. In such a situation, it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8 (see, among many others, *Jeunesse*, cited above, § 108; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, cited above; *Bouchelkia v. France*, judgment of 29 January 1997, Reports 1997-I; *Baghli v. France*, no. 34374/97, ECHR 1999-VIII; *Konstatinov v. the Netherlands*, no. 16351/03, 26 April 2007; *Darren Omoregie and Others v. Norway*, no. 265/07, 31 July 2008; *Antwi and Others v. Norway*, no. 26940/10, 14 February 2012; and *Priya v. Denmark* (dec.) no. 3594/03, 6 July 2016).

(ii) The person requesting family reunification had limited ties to the host country, which by implication was usually the case, when he or she had only stayed there for a short time, or stayed there illegally (see, *a contrario*, *Jeunesse*, cited above). So far there have been no cases in which the Court has found an obligation on the part of the member State to grant family reunification to an alien, who had only been granted a short-term residence or a temporary residence permit, with a family member, who had not entered the host country.

(iii) There were no insurmountable obstacles in the way of the family living in the country of origin of the person requesting family reunification (see, for example, *Gül v. Switzerland*, no. 23218/94, 19 February 1996; *Ahmut v. Netherlands*, no. 21702/93, 28 November 1996; *Chandra and Others v. Netherlands*, no. 53102/99, 13 May 2003; *Berisha v. Switzerland*, no. 948/12, 30 July 2013; *Nacic and Others v. Sweden*, cited above; and *I.A.A. v. the United Kingdom* (dec.), no. 25960/13, 8 March 2016).

(iv) The person requesting family reunification (the sponsor) could not demonstrate that he/she had sufficient independent and lasting income, not being welfare benefits, to provide for the basic cost of subsistence of his or her family members (see, notably, *Haydarie v. Netherlands* (dec.), no. 8876/04, 20 October 2005; *Konstatinov v. the Netherlands*, cited above, § 50; and *Hasanbasic v. Switzerland*, no. 52166/09, § 59, 11 June 2013).

135. On the other hand, the Court has generally been prepared to find that there was a positive obligation on the part of the member State to grant family reunification when several of the following circumstances, not all of which are relevant to the present case, were cumulatively present:

(i) The person requesting family reunification had achieved a settled status in the host country or had strong ties with that country (see, *inter alia*, *Tuquabo-Tekle and Others v. Netherlands*, no. 60665/00, § 47, 1 December 2005 and *Butt v. Norway*, no. 47017/09, §§ 76 and 87, 4 December 2012).

(ii) Family life was already created, when the requesting person achieved settled status in the host country (see, among others, *Berrehab v. the Netherlands*, cited above, § 29 and *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 44).

(iii) Both the person requesting family reunification, and the family member concerned, were already staying in the host country (see, *inter alia*, *Berrehab v. the Netherlands*, cited above, § 29).

(iv) Children were involved, since their interests must be afforded significant weight (see, for example, *Jeunesse*, cited above, §§ 119-120; *Berrehab v. the Netherlands*, cited above, § 29; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 47; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 44, ECHR 2006-I; and *Nunez v. Norway*, no. 55597/09, § 84, 28 June 2011).

(v) There were insurmountable or major obstacles in the way of the family living in the country of origin of the person requesting family reunification (see, *inter alia*, *Sen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 48; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, cited above, § 41; and *El Ghatet v. Switzerland*, no. 56971/10, § 49, 8 November 2016)."

90. Moreover, there are certain procedural requirements for the processing of requests for family reunification: the decision-making process must be sufficiently flexible, speedy and efficient to comply with the

applicant's right to respect for family life, and it requires an individualised assessment that weighs up the interests of family unity fairly in the light of the specific situation of the persons concerned (see *M.A. v. Denmark*, cited above, §§ 137-39, 149, 162-63 and 192-93, with further references). There "exists a consensus at international and European level on the need for refugees to benefit from a family reunification procedure that is more favourable than that foreseen for other aliens" (*ibid.*, §§ 138 and 153, with further references).

91. Applying the above-mentioned principles, the Court found a breach of Article 8 in *M.A. v. Denmark* (cited above) in respect of the statutory waiting period of three years to which the applicant, a Syrian national who had been granted "temporary protection status" in Denmark in 2015, had been subjected before he could apply for family reunification with his wife, to whom he had been married for some considerable time. The Court found in particular that there had been no individualised assessment of whether a shorter waiting period was warranted in the interests of family unity, despite its having been accepted in the domestic proceedings that there were insurmountable obstacles to the couple enjoying family life in their country of origin (*ibid.*, §§ 192-94).

92. By contrast, the Court found no violation of Article 8 in the subsequent case of *M.T. and Others v. Sweden* (no. 22105/18, 20 October 2022), where the statutory waiting period had been gradually reduced, the applicants' right to family reunification had only been suspended for less than a year and a half, and there was no indication that there had been no individualised assessment of the interests of family unity.

93. In a recent case, *B.F. and Others v. Switzerland* (nos. 13258/18 and 3 others, 4 July 2023), the Court was called upon to determine whether the Swiss authorities had struck a fair balance between the competing interests, when refusing requests for family reunification to one type of refugees recognised under the 1951 Convention, namely those whose refugee status arose following their departure from their countries of origin, that is, refugees *sur place*, and who were therefore "only" granted provisional admission. In relation to them, requirements for being granted family reunification included a three-year waiting period and non-reliance on social assistance. The applicants in that case had stayed in Switzerland for many years (they had entered at different times between 2008 and 2012) and Swiss law did not contain a provision similar to the third subparagraph of Article 12 § 1 of the Family Reunification Directive, exempting the sponsor from the maintenance criteria if the request for family reunification had been lodged within three months after the granting of asylum. The Court found violations of Article 8 in three out of the four cases. In two cases the applicants were gainfully employed, and in the third case the applicant was subsequently determined medically unfit to work. In the fourth case (no. 9078/20), the Court found no violation in that the authorities had not misused their discretion when they

had taken into account the lack of initiative of the applicant – who was able to work at least part-time – to improve her financial situation, in weighing up the competing interests and refusing her application for family reunification. The Court stated, *inter alia*, as follows.

“104. In the light of the considerations set out in paragraphs 94 to 103, the Court considers, on the one hand, that member States enjoy a **certain margin** [emphasis added] of appreciation in relation to requiring non-reliance on social assistance before granting family reunification in the case of refugees who have left their countries of origin without being forced to flee persecution and whose grounds for refugee status have arisen following their departure and as a result of their own actions. On the other hand, this margin is considerably more narrow than the margin afforded to member States in relation to the introduction of waiting periods for family reunification when that is requested by persons who have not been granted refugee status, but rather subsidiary or temporary protection status (compare *M.A. v. Denmark*, cited above, § 161).

105. As the object and purpose of the Convention call for an understanding and application of its provisions such as to render its requirements practical and effective, not theoretical and illusory, in their application to the particular case (*ibid.*, §§ 162 and 192-93), the Court considers that the particularly vulnerable situation in which refugees *sur place* find themselves – notably, the insurmountable obstacles to their being reunited with their family members in their country of origin, given that they now face a risk of ill-treatment there – needs to be adequately taken into account in the application of a requirement (such as the requirement of non-reliance on social assistance) to their family reunification requests. It reiterates that refugees need to have the benefit of a family reunification procedure that is more favourable than that provided for other foreign nationals (see paragraphs 90 and 98 above). As it did in relation to waiting periods going beyond a duration of two years, the Court considers that insurmountable obstacles to enjoying family life in the country of origin progressively assume greater importance in the fair-balance assessment as time passes (compare *M.A. v. Denmark*, cited above, §§ 162 and 192-93). Reiterating that the fair-balance assessment should form part of a decision-making process that sufficiently safeguards, *inter alia*, the flexibility required to comply with the refugee’s right to family life (*ibid.*, § 163), the requirement of non-reliance on social assistance needs to be applied with sufficient flexibility, as one element of the comprehensive and individualised fair-balance assessment, as time passes and insurmountable obstacles to family life in the country of origin remain (see also § 9 of Conclusion No. 24 (XXXII) on Family Reunification (1981), cited in paragraph 60 above, as well as § 10 of Resolution 2243 (2018) of the Parliamentary Assembly of the Council of Europe, cited in paragraph 65 above). Having regard to the waiting period applicable to the family reunification of provisionally admitted refugees under Swiss law (see paragraphs 45 and 55 above), this consideration is applicable by the time provisionally admitted refugees become eligible for family reunification under domestic law as interpreted by the domestic courts (see paragraph 55 above). More generally, the Court observes that refugees, including those whose fear of persecution in their country of origin has arisen only following their departure from the country of origin and as a result of their own actions, should not be required to “do the impossible” in order to be granted family reunification. Notably, where the refugee present in the territory of the host State is and remains unable to meet the income requirements, despite doing all that he or she reasonably can to become financially independent, applying the requirement of non-reliance on social assistance without any flexibility as time passes could potentially lead to the permanent separation of families.

106. In the present case, the Court is not called upon to determine whether and/or to what extent these considerations apply in scenarios in which refugees may have to fulfil such requirement in the event that they did not submit the application for family reunification within a certain time-limit after the granting of refugee status, without particular circumstances which rendered the late submission objectively excusable, it being noted that such question may arise in cases where European Union member States made use of the possibility afforded to them under the third subparagraph of Article 12(1) of the Family Reunification Directive (see paragraphs 62-63 and 98 above). The relevant Swiss legislation does not contain such distinction in respect of the applicability of the income requirement based on when the application for family reunification was submitted.

(b) The application of those principles to the present case

94. Since the applicant's first wife and his five children had not previously resided in Sweden, the case is to be seen as one involving an allegation of failure on the part of the respondent State to comply with its positive obligations under Article 8 of the Convention (see *M.A. v. Denmark*, § 164; *M.T. and Others v. Sweden*, § 59; and *Jeunesse*, §§ 100-05, all cited above).

95. The crux of the matter is therefore whether the Swedish authorities struck a fair balance, subject to their margin of appreciation, between the competing interests, on the one hand those of the applicant in being reunited with his family members and on the other those of the State in controlling immigration in the general interests of the economic well-being of the country. They refused the request for family reunification firstly because it had not been lodged within three months after the applicant had been granted asylum, which would have exempted him from complying with the maintenance requirement, and secondly because, at the relevant time, the applicant could not comply with the maintenance requirement.

(i) Scope of the margin of appreciation

96. The Court reiterates that the margin of appreciation to be afforded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see, among other authorities, *M.A. v. Denmark*, cited above, § 140).

97. In *B.F. and Others v. Switzerland* (cited above, § 104) the Court found that the member States enjoyed a certain margin of appreciation when requiring applicants for family reunification who were refugees *sur place* not to be reliant on welfare benefits.

98. In the present case the Court notes that there are several additional factors of relevance to the scope of the margin of appreciation.

99. Firstly, the legislation at issue applied equally to all refugees. There was therefore no distinction between refugees who had fled their country due to the risk of persecution in that country, and refugees *sur place*, whose asylum status arose as a result of events after they had left their country of origin.

100. Secondly, in Sweden, persons recognised as refugees (as opposed to persons granted subsidiary protection) were not subjected to any waiting period before being eligible to request family reunification (in contrast to the three-year waiting period in the Swiss legislation for the spouses and minor children of a refugee who had been given provisional admission; see *B.F. and Others v. Switzerland*, cited above, § 45).

101. Thirdly, by virtue of Section 10 of the Temporary Restrictions Act the maintenance criteria only applied if the application for family reunification was lodged more than three months after the sponsor had been granted refugee status. In other words, during the first three months after being granted refugee status, all refugees could be granted family reunification without any maintenance requirement. Only a later request for family reunification would be subject to the maintenance requirement.

102. Fourthly, the margin of appreciation in the present case reflected common ground among the national laws of numerous Contracting States. The introduction by the Temporary Restrictions Act of the maintenance requirement after a three-month exemption period as a condition for granting a refugee family reunification was fully in line with the provisions of the Family Reunification Directive, particularly Article 7 and the third subparagraph of Article 12 § 1 (see paragraphs 54 and 56 above), which applied to the EU member States (except the United Kingdom, Ireland and Denmark, which were not bound by it): see also the findings of the CJEU in *K and B* (paragraph 60 above).

103. It also appears that other Council of Europe member States have introduced maintenance requirements as a condition for granting family reunification to refugees and other persons in need of international protection (see paragraph 65 above).

104. Fifthly, the quality of parliamentary and judicial review is a factor which has an impact on the margin of appreciation. Because of a record increase in asylum-seekers in 2015 (see paragraphs 66-69 above), which placed a great strain on the Swedish immigration authorities and other central functions of society, Swedish migration legislation had to be temporarily changed in order to reduce the number of asylum-seekers, while at the same time the capacity of reception and integration arrangements had to be improved and the effective implementation of immigration control had to be ensured. Domestic legislation was therefore brought into line with the minimum level required by EU law and Sweden's international obligations (see also *M.T. and Others v. Sweden*, cited above, § 112). It should be borne in mind that member States were not all concerned to the same extent by the influx of displaced persons from Syria in 2015 and 2016 (see *M.A. v. Denmark*, cited above, § 151) or by applications for asylum in general at the relevant time. The Court points out in this respect that it has acknowledged that immigration control serves the general interests of the economic well-being of a country and is an aspect of national policy in respect of which a

wide margin is usually allowed to the State (see, for example, *Biao v. Denmark* [GC], no. 38590/10, § 117, 24 May 2016, and *M.A. v. Denmark*, cited above, § 143).

105. In the light of the considerations above, the Court considers that the member States should be afforded a wide margin of appreciation in deciding that, after being exempted from any maintenance requirement for three months, refugees should have to satisfy such a condition when subsequently seeking family reunification. A refugee will most likely stay permanently in the host country, which will have taken and will take various measures to secure successful integration, including the granting of family reunification without any maintenance requirement during the first three months after the sponsor is granted refugee status. The Court does not consider it unreasonable that, subsequently, in order to be granted family reunification, a refugee sponsor should be required to demonstrate that he or she has a sufficient independent and stable income, without recourse to welfare benefits, in order to meet the basic living expenses of the family members with whom he or she seeks reunification (see, *mutatis mutandis*, *B.F. and Others v. Switzerland*, § 95; *Haydarie*; *Konstatinov*, § 50; and *Hasanbasic*, § 59, all cited above).

106. The Court observes that the Council of Europe Commissioner for Human Rights and the UNHCR have both expressed specific concern that it may be impossible for many beneficiaries of international protection to fulfil the Swedish maintenance requirement and that it does not sufficiently take into account the particular circumstances of persons who have been forced to flee. They have also found the three-month exemption period too short or too inflexibly applied, and have recommended that the time-limit be abolished (or presumably extended) (see paragraphs 61-62 above).

107. The Court points out in this respect, as also stated in *M.A. v Denmark* (cited above, §§ 162 and 192-93) and *B.F. and Others v. Switzerland* (cited above, § 105), that insurmountable obstacles to enjoying family life in the country of origin progressively assume greater importance in the fair-balance assessment as time passes. In particular, where the refugee resident in the territory of the host State is and remains unable to meet income requirements, despite doing all that he or she reasonably can to become financially independent, continuing to apply the maintenance requirement without any flexibility could potentially lead to the permanent separation of families.

(ii) *The applicant's family reunification applications*

108. The applicant entered Sweden on 12 December 2014 and was granted asylum on 8 March 2016, together with his second wife. Four months and twelve days later, on 20 July 2016, the Temporary Restrictions Act entered into force. Had the applicant sponsored his first wife and five children for family reunification between 8 March and 19 July 2016, it would have been granted without their being subjected to a maintenance requirement. However, when on 24 November 2016 the application for family

reunification was lodged, the applicant had held refugee status for more than eight months and he was, accordingly, subjected to the maintenance requirement (see paragraphs 8 to 10 above).

109. The applicant's allegation that his first wife and children had been in contact with the Swedish Embassy in Jordan in April 2016 to make an appointment for an interview was dismissed as unsubstantiated by the Swedish Migration Court (see paragraphs 18 and 19 above). The Court does not find any reason to question that decision. It also notes that the authorities accepted that the application had been supplemented with further documentation in April 2017 (see paragraph 10 above). The present case therefore raises no issues as to the calculation of the three-month exemption, nor as to whether its application was sufficiently flexible, in particular whether the failure to submit the request for family reunification within the first three months (or four months and twelve days, in the applicant's case) was due to particular circumstances which rendered the late submission of the initial application "objectively excusable" (see paragraph 60 above).

110. The application for family reunification was refused on 17 May 2017 as the applicant could not fulfil the maintenance requirement (see paragraphs 12 and 13 above). At the relevant time he was living on so-called "introduction benefit" with his second wife in a rented apartment consisting of one and a half rooms and a kitchenette (see paragraphs 15 and 16 above). The Migration Agency and the Migration Court did not find the refusal to grant family reunification contrary to Section 13 of the Temporary Restrictions Act, or to Article 8 of the Convention (see paragraphs 17 and 19 above).

111. The Court observes that the request of 24 November 2016 for family reunification was the first application lodged by the applicant, his first wife and his children. At that time, the applicant had lived in Sweden for almost two years, but for only eight months as a recognised refugee. When the refusal to grant family reunification became final, on 14 September 2017 (see paragraph 20 above), the applicant had held a residence permit as a refugee in Sweden for one and a half years (contrast *B.F. and Others v. Switzerland*, cited above, §§ 111 and 112, where the applicants had stayed in Switzerland for many years when their request for family reunification was refused).

112. However, the Court notes that the applicant, his first wife and his children could lodge a fresh request for family reunification at any time, which would mean that the domestic authorities would make a new examination of whether the applicant fulfilled the maintenance requirement or whether he could and should be exempted from it (see paragraphs 114 and 115 below).

113. Moreover, the applicant was a doctor by profession and had worked as such in Syria. He had participated in the Public Employment Service's integration measures since April 2016 and studied Swedish (see paragraphs 21 and 22 above). Therefore, as stated by the Migration Court (see paragraph

19 above), he had good prospects of being able to fulfil the maintenance requirement in the future. He had not yet found employment, though, and it cannot be concluded that he had done all that could reasonably be expected of him to earn sufficient income to cover his and his family's expenses (compare and contrast, for example, *B.F. and Others v. Switzerland*, cited above, §§ 127 and 133).

114. The Court also notes that there is no indication that the Temporary Restrictions Act did not allow for an individualised assessment of the interests of family unity in the light of the specific situation of the persons concerned under Section 13 of the Act, or that such an assessment was not carried out in the applicant's case (see, for example, *M.T. and Others v. Sweden*, cited above, § 84).

115. In addition, after 19 July 2021 the Aliens Act was amended so that under Chapter 5, Section 3f, it became possible to grant full or partial exemptions from the maintenance requirement if there were considered to be "exceptional reasons", particularly in situations where the requirement would appear unreasonable, for example, for the retired or the permanently disabled (see paragraph 49 above).

116. It is not in dispute that on 17 May 2017, when the Migration Agency refused the application for residence permits on the basis of family reunification, the general situation in Syria meant that there were "insurmountable obstacles" to the applicant, his first wife and children enjoying family life there (see, for example, *M.T. and Others v. Sweden*, cited above, § 77).

117. On the other hand, since the applicant's first wife and children resided in Jordan, they were able to maintain contact via, *inter alia*, phone calls and text messages (see also *M.A. v. Denmark*, cited above, § 184), and the applicant has not presented any objective grounds for why he would be excluded from visiting them there or in other countries.

118. The family members abroad in respect of whom family reunification had been requested had never been to Sweden and had no ties to the country other than their relationship to the applicant, who was residing there (see *B.F. and Others v. Switzerland*, § 113; *M.A. v. Denmark*, §§ 135 (iii) and 183; and *M.T. and Others v. Sweden*, § 74, all cited above).

119. The applicant's first wife had been living under UNHCR protection in Jordan since the summer of 2013 and the applicant had not seen her since then (see paragraph 11 above). It is noteworthy that he remarried in November 2014, and that polygamy is not legal in Sweden.

120. Likewise, the applicant's five children by his first wife had also been residing with their mother under UNHCR protection in Jordan since the summer of 2013. In November 2016, when the application for family reunification was lodged, they were aged approximately 14, 13, 12, 9 and 7 years old. The applicant has not pointed to any particular dependence on him, or difficulties that might have arisen from the fact of their living apart.

The Court also observes that the best interests of a child, of whatever age, cannot constitute an unassailable consideration that requires the admission of all children who would be better off living in a Contracting State (see, among other authorities, *M.T. and Others v. Sweden*, cited above, § 82, and *I.A.A. and Others v. the United Kingdom* (dec.), 25960/13, § 46, 8 March 2016).

121. Having regard to the foregoing, the Court concludes that in the circumstances of the present case, the domestic authorities struck a fair balance between the interests of the applicant and those of the State in controlling immigration, and that they did not overstep the margin of appreciation afforded to them when refusing the request for family reunification.

122. It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 18 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President