



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

FIRST SECTION

CASE OF OKUBAMICHAEL DEBRU v. SWEDEN

(Application no. 49755/18)

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 • Principles set out in *Dabo v. Sweden* applied • Lack of objectively excusable reasons for not submitting family reunification request within that period • Applicant could lodge fresh request for family reunification at any time • Individualised assessment • Legal amendments allowing full or partial exemptions from maintenance requirement if “exceptional reasons” exist • Fair balance struck between competing interests at stake • Wide margin of appreciation not overstepped

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 July 2024

FINAL

25/10/2024

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

In the case of Okubamichael Debru v. Sweden,

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

Ivana Jelić, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseyinov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 49755/18) 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 an Ethiopian national, Mr Berhane Okubamichael Debru (“the applicant”), on 17 October 2018;

the decision to give notice to the Swedish Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 2 July 2024,

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

INTRODUCTION

1. The applicant, a recognised refugee, complains about the refusal to grant him family reunification with his wife and two children, on the ground that he, at the relevant time, failed to fulfil the maintenance requirement. The applicant relied on Articles 8 and 14 of the Convention.

THE FACTS

2. The applicant was born in 1954 in Ethiopia. He lives in Västerås, Sweden. He was represented by Mr Karl Nilsson, a lawyer from the Refugee Law Centre in Stockholm.

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

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

5. In 1998 the applicant moved from Ethiopia to Eritrea, where he married and had two daughters, born in 2004 and 2010.

6. In 2010 the applicant left for South Sudan, where he arrived around 2011. There he worked as a driver, among other things.

7. In 2013, the applicant’s wife and daughters moved to Uganda, where they lived as asylum seekers under the protection of the United Nations High

Commissioner for Refugees (the UNHCR). The applicant maintained contact with them and visited them there, for example, in 2014.

8. 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 (and remained in force until 19 July 2021).

9. At an unknown date, apparently at the beginning of 2017, the UNHCR requested that the applicant be accepted for resettlement within the framework of the Swedish Refugee Quota on the basis of “medical needs” as he suffered from an eye condition that could not be treated in South Sudan and which, without treatment, could lead to the loss of eyesight, which in return could lead to the loss of his job as a driver.

10. On 27 June 2017 the applicant was granted a permanent residence permit as a recognised refugee in Sweden pursuant to Chapter 4, section 1 and Chapter 5, section 2 of the Aliens Act (*Utlänningslagen*, 2005:716). A letter of the same date was sent to the applicant by the Swedish Migration Agency (*Migrationsverket*), in English, informing him about the practical arrangement and referring him to its website to obtain more information about resettlement in Sweden.

11. On 6 September 2017 the applicant arrived in Sweden, where he attended an introduction course for immigrants and was granted “introduction benefits” (*etableringsersättning*).

I. THE FIRST REQUEST FOR FAMILY REUNIFICATION

12. On 21 October 2017 the applicant’s wife and two daughters, still in Uganda, applied for Swedish residence permits on the basis of their family ties with the applicant; they did so via the internet, using the website of the Migration Agency.

13. On 7 February 2018 the Migration Agency rejected their applications for the following reasons.

14. 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 is the spouse or child of a person who is 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”, with these requirements together being henceforth “the maintenance requirement”).

If the sponsor resident in Sweden had been granted refugee status, as the applicant had been, 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).

15. The applications for residence permits submitted by the applicant's wife and children were lodged almost four months after the applicant had been granted a residence permit in Sweden as a recognised refugee. The exemption from the maintenance requirement in section 10, subsection 3(1) of the Temporary Restrictions Act therefore did not apply.

16. The applicant was living on "introduction benefits", which were not considered a work-related benefit comparable to a salary, and he had rented a one-bedroom flat, which was not 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 wife and children could not therefore be granted a residence permit under section 3, subsection 1(1) and (2) of the Aliens Act. The Migration Agency did not consider that decision contrary to section 13 of the Temporary Restrictions Act or to Sweden's commitments under any international conventions.

18. On 12 February 2018, the applicant appealed against the Migration Agency's decision to the Migration Court (*Migrationsdomstolen*), where he maintained that he and his family had failed to apply for family reunification within the three-month time-limit because the applicant had not been provided with a personal identity number during his first month in Sweden and because he had no knowledge of the Swedish legislation. Moreover, the applicant stated that he wanted to be self-supporting, but pointed out that he had only been in Sweden for a short while and that he had some health issues. The applicant relied on Article 8 of the Convention.

19. On 15 March 2018 the Migration Court upheld the Migration Agency's decision of 7 February 2018 and found that that the decision to refuse family reunification could not be considered to be in breach of the Convention.

20. On 26 March 2018, relying on Article 8 of the Convention, the applicant requested leave to appeal to the Migration Court of Appeal (*Migrationsöverdomstolen*), which was refused on 27 April 2018.

II. THE SECOND REQUEST FOR FAMILY REUNIFICATION

21. In the meantime, on 6 March 2018, the Swedish Employment Service registered that the applicant had a reduced working capacity owing to impaired mobility.

22. In January 2019, when the applicant turned 65 years old, his income in the form of “introduction benefits” was replaced by a “guarantee pension”, a national public pension granted to persons with little or no pensionable income in Sweden. In addition he received a rent subsidy.

23. On 15 January 2019 the applicant’s wife and children applied again for Swedish residence permits based on their family ties with the applicant. They referred to the fact that the applicant had retired and earned his living from the above-mentioned guarantee pension.

24. On 21 August 2019 the Migration Agency rejected the application. It concluded that the guarantee pension received by the applicant could not be considered a work-related benefit comparable to a salary.

25. The applicant appealed against that decision to the Migration Court. He submitted that he was 66 years old and suffered from various health issues, including stress, high blood pressure, and impaired vision in his left eye, all of which resulted in him being unable to fulfil the maintenance requirement.

26. On 18 January 2021 the Migration Court ruled against him. It did not question the family members’ strong ties and that their situation was difficult. However, the Migration Court concluded that it had not emerged that their social or humanitarian situation appeared particularly vulnerable. It therefore considered, taking into account the individual circumstances of the case, that the application of the maintenance requirement could not be regarded as disproportionate in view of society’s interest in maintaining regulated immigration.

27. On 4 May 2021 the Migration Court of Appeal again refused the applicant leave to appeal.

III. THE THIRD REQUEST FOR FAMILY REUNIFICATION

28. 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 (see paragraph 34 below and *Dabo v. Sweden*, no. 12510/18, §§ 46-49, 18 January 2024).

29. The applicant visited his wife and children in Uganda from the end of 2021 to the beginning of 2022.

30. On 17 February 2022 the applicant’s family applied a third time for residence permits in Sweden on the ground of family ties with the applicant.

31. Their requests were granted on 14 July 2022 by the Migration Agency. It referred to Chapter 5, section 3f of the Aliens Act (see paragraph 35 below) and found, having regard to the applicant’s age and state of health, that it was neither likely nor reasonable to expect that he, at that time or in the future, would be able to obtain a sufficient work-related income to meet the requirements. It concluded that it would be unreasonable to uphold the maintenance requirement in the applicant’s case. Accordingly, the applicant’s

wife and children (the latter of whom were by that point 17 and 12 years' old) were granted residence permits in Sweden.

32. The applicant's wife and two children arrived in Sweden in September 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

33. The relevant domestic law and practice, European Union law, international law and material, comparative law and statistics were recently set out in *Dabo* (cited above, §§ 24-66).

34. In particular, it will be recalled that 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 (*ibid.*, §§ 46-49).

35. The rules on the maintenance requirement if an application for family reunification was made more than three months after the sponsor was granted a residence permit as a refugee were retained (Chapter 5, sections 3b and 3d of the Aliens Act). However, under Chapter 5, section 3f of the Aliens Act, full or partial exemptions from the maintenance requirement could be granted if there were "exceptional reasons" to do so. The provision allowed such exemptions where it would be unreasonable to enforce the requirement. That could apply to, for example, retired people who did not have an income at the required level or people who were unable to earn an income because of a permanent disability (see *Dabo*, cited above, § 49).

36. Moreover, subsection 2 was added to Chapter 5, section 3d of the Aliens Act; it sets out that if the sponsor is a recognised refugee to be resettled within the framework of the Swedish Refugee Quota ("*vidarebosättning*", also referred to as "*kvotflyktingar*"), the three months should be calculated from the date the sponsor enters Sweden (that provision was subsequently removed on 1 January 2023, but the exception in Chapter 5, section 3f still applies, in accordance with which regard can be had to whether it was objectively excusable because of special circumstances that the application was lodged after 3 months have passed).

37. It will also be recalled (see *Dabo*, cited above, § 60) that the Court of Justice of the European Union (the CJEU), in its judgment of 7 November 2018 in *K and B*, C-380/17, EU:C:2018:877 about a request for family reunification with a third country national who had been granted subsidiary protection, found that Article 12(1) of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (hereinafter 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 (specifically those laid down in Article 7(1) of the Directive), provided that the relevant legislation:

(i) laid down that that ground 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.

38. Both the Council of Europe Commissioner for Human Rights and the UN High Commissioner for Refugees (UNHCR) were concerned about a strict application of the calculation of the three-month time-limit and recommended that it be abolished altogether (see *Dabo*, cited above, §§ 61 and 62).

39. By decision of 31 March 2021 the Migration Court of Appeal found, in another case, which concerned a family where the sponsor had arrived in Sweden more than three months after he had been granted a residence permit as a quota refugee in Sweden, that there had been objectively excusable reasons for his not having applied for family reunification within the set three-month time-limit and that therefore the maintenance requirement should not be applied. The Migration Court of Appeal referred, *inter alia*, to the judgment by the CJEU in *K and B* (see paragraph 37 above).

THE LAW

I. PRELIMINARY OBJECTION

40. The Government submitted that the matter had been resolved, and that the case should therefore be struck out under Article 37 § 1 (b) of the Convention. The Temporary Restrictions Act had ceased to apply on 20 July 2021, and the Aliens Act from then on contained a specific exception clause under Chapter 5, section 3f, which could be relied on in situations like the present one, where the sponsor had little or no income (see paragraph 37 above) or submitted that there were objectively excusable reasons for submitting the application for family reunification after the three-month time-limit. Moreover, on 14 July 2022 the Migration Agency had indeed exempted the applicant from complying with the maintenance requirement and granted him family reunification with his wife and two children.

41. The applicant disagreed and pointed out that the Government had neither acknowledged the alleged violation of the Convention nor granted redress for the period between 7 February 2018 until 14 July 2022 during which family reunification was refused owing to the impossibility for the applicant of complying with the maintenance requirement.

42. The Court reiterates that in order to assess whether the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention, the Court must answer two questions in turn: firstly, whether the circumstances complained of by the applicant still exist and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 48, 7 December 2007).

43. The applicant was granted family reunification with his wife and two children on 14 July 2022 (see paragraph 31 above) and his family members arrived in Sweden in September 2022 (see paragraph 32 above). However, that does not alter the fact that the requests of the applicant's family members for family reunification of 21 October 2017, which are at issue in the present application, were refused by a decision that became final on 27 April 2018, during the period where the Temporary Restrictions Act was in force.

44. It should be noted that the applicant did not call upon the Court to assess whether the second request for family reunification, which was refused by a final decision 4 May 2021, was in violation of the Convention. That decision is therefore not part of the present application.

45. Nevertheless, and although accepting that the procedure relating to the first application for family reunification lasted only from 21 October 2017 until 27 April 2018 (see paragraphs 12 and 20 above), and that the second set of proceedings is not part of the present application, the Court cannot ignore that the applicant arrived in Sweden in September 2017, as a recognised refugee, and was not reunited with his wife and two children until September 2022, that is five years later. It also considers that the refusal of 27 April 2018, together with that of 4 May 2021, unavoidably had an impact on the said overall period, during which the family was separated. In these circumstances, the Court cannot find that the effects of a possible violation of the Convention in respect of the first refusal to grant the applicant family reunification were redressed by the decision of 14 July 2022 granting the family reunification. The applicant was therefore entitled to complain to the Court that the first refusal to grant him family reunification was contrary to Article 8 taken alone and in conjunction with Article 14 of the Convention (see, *mutatis mutandis*, *M.A. v. Denmark* [GC], no. 6697/18, § 23, 9 July 2021; *Konstantin Markin v. Russia* [GC], no. 30078/06, § 88, ECHR 2012 (extracts); and *Tanda-Muzinga v. France*, no. 2260/10, § 58-59, 10 July 2014).

46. Accordingly, the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

47. The applicant complained that the Swedish authorities' refusal to grant his wife and two children residence permits, which became final on 27 April 2018, 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

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

49. 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

50. The applicant maintained that the Swedish authorities had failed to engage in a thorough balancing test to weigh up the relevant factors, notably that the family had been separated for a long time and that, owing to the applicant's age and health, it would have been impossible for him to fulfil the maintenance requirement.

51. The applicant also asserted that he had not been provided with a personal identity number during his first month in Sweden and that he had had no knowledge of Swedish legislation at that time. Thus, there had been objectively excusable reasons for his not having submitted the application for family reunification within the first three months after his arrival in Sweden. He also noted that the Aliens Act was amended on 20 July 2021 so that the three-month time-limit was to be calculated from the date the sponsor had arrived in Sweden (see paragraph 36 above).

52. 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.

53. 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, and that if the application for family reunification had been lodged within the first three months after the applicant had been granted a residence permit as a recognised quota refugee, the maintenance requirement would not have applied.

54. Furthermore, the applicant had been able to work most of his life and was only 63 years old when the first application for family reunification had been lodged. The maintenance requirement had not been a permanent obstacle to the reunion of the applicant and his family, which was confirmed when family reunification was indeed granted on 14 July 2022.

55. The Government also submitted that it had to be taken into account that the applicant had been separated from his first wife and two daughters since 2010, that the family had managed well in Uganda, and that he had not pointed to any insurmountable obstacles to reunion with them in Uganda.

2. *The Court's assessment*

(a) *The general principles*

56. The relevant principles were recently set out in the case of *Dabo* (cited above, §§ 88-93). In respect of the scope of the margin of appreciation to be afforded to the competent national authorities in cases like the present one, the Court found as follows:

“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*, [nos. 13258/18 and 3 others, § 95, 4 July 2023]; *Haydarie v. Netherlands* (dec.), no. 8876/04, 20 October 2005; *Konstatinov v. the Netherlands*, no. 16351/03, § 50, 26 April 2007; and *Hasanbasic v. Switzerland*, no. 52166/09, § 59, 11 June 2013)].

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.”

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

57. Since the applicant’s wife and his two 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. 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 (see, *Dabo*, §§ 94-95).

(i) The time-limit for being exempted from the maintenance requirement

58. From the outset, the applicant maintained that there had been objectively excusable reasons for his not having submitted the application for family reunification within the first three months after he had been granted a residence permit in Sweden. He pointed to his not having been provided with a personal identity number during his first month in Sweden and his lack of knowledge of the relevant Swedish legislation at the time (see paragraphs 18 and 51 above).

59. The Court finds it regrettable that neither the Migration Court, in its judgment of 15 March 2018, nor the Government in their observations to the Court, addressed that issue specifically. The Court will therefore proceed on the assumption that the Migration Agency and the Migration Court either failed to examine the applicant’s argument, or that they dismissed it as being immaterial, without providing any reasons, implied in their decisions that the application of the maintenance requirement could not be considered contrary to section 13 of the Temporary Restrictions Act or Sweden’s commitments under any international conventions.

60. In the present case the three-month time-limit commenced to run on 27 June 2017, when the applicant was granted a residence permit in Sweden, and expired on 27 September 2017. The applicant arrived in Sweden on 6 September 2017. The applications for family reunification were lodged on 21 October 2017 (see paragraphs 10-12 above), which is to say more than three weeks after the expiry of the deadline.

61. The Court observes, on the one hand, in respect of the calculation of the three-month time-limit, that the CJEU in the judgment *K and B* (C-380/17,

EU:C:2018:877, 7 November 2018) 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, provided that the relevant legislation, among other things, laid down that that ground for rejection could not apply where particular circumstances made the late submission of the initial application objectively excusable (see paragraph 37 above).

62. Moreover, the Council of Europe Commissioner for Human Rights and the UNHCR were concerned about a strict application of the calculation of the three-month time-limit, and recommended that it be abolished altogether (see paragraph 38 above).

63. The Court also notes that, by a decision of 31 March 2021 in another case – concerning a family where the sponsor arrived in Sweden more than three months after he had been granted a residence permit as a quota refugee in Sweden – the Migration Court of Appeal found that there had been objectively excusable reasons for his not having applied for family reunification within the set three-month time-limit and that therefore the maintenance requirement should not be applied (see paragraph 39 above).

64. In addition, on 20 July 2021 the Aliens Act was amended so that the three-month time-limit was to be calculated from the date the sponsor arrived in Sweden, if the sponsor was a refugee accepted for resettlement. However, that provision was repealed on 1 January 2023 (see paragraph 36 above).

65. The Court observes, on the other hand, that the applicant in the present case has failed to explain how the lack of a personal identity number during his first month in Sweden had any impact, or constituted an obstacle, for his wife and children in applying for family reunification. The application could be lodged via the internet on the website of the Swedish Migration Agency (see paragraph 12 above), and there is no indication that a personal identity number was required or that it would not have sufficed to refer to the applicant's name and, perhaps, his date of birth, sex, and citizenship, information which was already known to the Swedish authorities at the relevant time.

66. As to the applicant's argument that he was not familiar with Swedish law, he has not asserted that it was impossible to seek such assistance or legal advice while the three-month time-limit was running. It is noteworthy in this respect that, by a letter of 27 June 2017, the Swedish Migration Agency referred him, in English, to its website, where he could have obtained more information about resettlement in Sweden (see paragraph 10 above). In addition, when the applicant arrived in Sweden on 6 September 2017, he attended an introduction course for immigrants (see paragraph 11 above).

67. The applicant has not asserted either that he did not know his family's whereabouts or that he was unable to contact them in order for them to apply for family reunification within the three-month time-limit. On the contrary, it is clear that they maintained contact since they went to Uganda, where he visited them, for example in 2014 (see paragraph 7 above).

68. In these circumstances the Court is not convinced that there existed objectively excusable reasons for the applicant's not having submitted the application for family reunification within the prescribed three-month time-limit, or that for that reason alone the domestic courts should have exempted the applicant from complying with the maintenance requirement.

(ii) The maintenance requirement

69. The application for family reunification was lodged on 21 October 2017. It was refused by the Migration Agency on 7 February 2018 and by the Migration Court on 15 March 2018, as the applicant could not fulfil the maintenance requirement (see paragraphs 12 to 19 above). At the relevant time he was living on the so-called "introduction benefit" in a rented one-bedroom flat. Neither the Migration Agency nor the Migration Court considered the refusal to grant family reunification to be contrary to section 13 of the Temporary Restrictions Act or to Article 8 of the Convention.

70. The Court observes that the request of 21 October 2017 for family reunification was the first application lodged by the applicant's wife and children. At that time, the applicant had been living in Sweden for approximately six weeks. When the refusal to grant family reunification became final, on 27 April 2018 (see paragraph 20 above), the applicant had held a residence permit as a recognised refugee in Sweden for ten months (see paragraph 10 above).

71. The applicant and his family could have lodged a fresh request for family reunification at any time, which would have meant that the domestic authorities had to re-examine whether the applicant fulfilled the maintenance requirement or whether he could and should be exempted from it (see paragraphs 21 to 27, and 28 to 31 above).

72. The applicant was 63 years old at the relevant time. His most recent employment, which he had pursued up until he entered Sweden, had been as a driver (see paragraphs 6 and 9 above). He stated to the Swedish authorities that he wanted to be self-supporting, but pointed out that he had only been in Sweden for a short while and that he had some health issues (see paragraph 18 above). On 6 March 2018 the Swedish Employment Service registered that the applicant had a reduced working capacity owing to impaired mobility (see paragraph 21 above), but there is no indication that he was incapable of working. In these circumstances, 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 (see *Dabo*, cited above, § 113, and compare and

contrast *B.F. and Others v. Switzerland*, nos. 13258/18 and 3 others, §§ 127 and 133, 4 July 2023).

73. 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 *Dabo*, cited above, § 114).

74. 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" to do so, particularly in situations where the requirement would appear unreasonable, for example, in the case of retired or permanently disabled people (see paragraph 35 above).

75. In fact, that provision was applied when the applicant's family lodged their third request for residence permits in Sweden, which were granted to them by the Migration Agency on 14 July 2022 (see paragraphs 30-31 above).

(iii) *Other relevant circumstances*

76. It is not in dispute that there were "insurmountable obstacles" to the applicant, his wife and two daughters enjoying family life in Eritrea, but it is noteworthy that since 2013 the applicant's family had resided as asylum seekers, under the protection of the UNHCR, in Uganda, where they were able to maintain contact with the applicant, and where he had visited them (see paragraph 7 above).

77. Moreover, in October 2017, when the application for family reunification was lodged, the applicant's daughters were aged approximately 13 and 7 years. The applicant has not pointed to any particular dependence on him, or to any 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, *Dabo*, cited above, § 120; *M.T. and Others v. Sweden*, no. 22105/18, § 82, 20 October 2022; and *I.A.A. and Others v. the United Kingdom* (dec.), 25960/13, § 46, 8 March 2016).

78. 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 *Dabo*, cited above, § 118).

(iv) *Conclusion*

79. 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.

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

III. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

81. The applicant also complained that, in the light of his age and state of health, the decision to refuse family reunification, which became final on 27 April 2018, was in breach of Article 14 read in conjunction with Article 8 of the Convention. The former reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

82. The applicant maintained that he had been discriminated against on the basis of his age and health.

83. The Government disagreed with the applicant’s claim and submitted that the complaint should be declared inadmissible.

84. The Court finds, in so far as the matters complained of are within its competence, and in the light of all the material in its possession, and its finding above under paragraphs 72, 78 and 80, that they do not disclose any appearance of a violation of Article 14 read in conjunction with Article 8 of the Convention.

85. It follows that this part of the application must be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

Done in English, and notified in writing on 25 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Ivana Jelić
President