



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

THIRD SECTION

CASE OF MARTINEZ ALVARADO v. THE NETHERLANDS

(Application no. 4470/21)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal to grant an intellectually disabled man, fully dependent on the daily care of others, a residence permit on the basis of family reunification with his four adult sisters, all long-term residents of the Netherlands and/or Dutch citizens • Art 8 applicable • Relationship between the applicant and his sisters, on whose care and support he relied on for years, constituted “family life” • Additional elements of dependency, other than normal emotional ties, shown to exist • “Exclusive dependency” not always required to find the existence of “family life” • Domestic authorities’ failure to assess respondent State’s compliance with a positive obligation to allow the applicant to reside on its territory, their assessment being limited to the applicability of Art 8

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 December 2024

FINAL

10/03/2025

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

In the case of Martinez Alvarado v. the Netherlands,

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

Ioannis Ktistakis, *President*,
Peeter Roosma,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Andreas Zünd,
Oddný Mjöll Arnardóttir, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 4470/21) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Peruvian national, Mr Wilder Liborio Martinez Alvarado (“the applicant”), on 6 January 2021;

the decision to give notice to the Government of the Kingdom of the Netherlands (“the Government”) of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 19 November 2024,

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

INTRODUCTION

1. The case concerns the refusal to grant the applicant, an intellectually disabled adult man who is incapable of taking care of himself, a residence permit on the basis of family reunification with his four sisters, all of whom are long-term residents of the Netherlands and/or Dutch citizens. The applicant alleges that their relationship falls within the scope of protection of Article 8 of the Convention because “additional factors of dependence, other than normal emotional ties” have been shown to exist, and that not allowing him to reside with his sisters in the Netherlands is contrary to his right to respect for family life.

THE FACTS

2. The applicant was born in 1978 and currently lives with his eldest sister in the Netherlands. He was represented by Mr J.G. Wiebes, a lawyer practising in Lelystad.

3. The Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

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

5. The applicant comes from a family of six children. His four sisters live in the Netherlands and his brother lives in Peru. The applicant was born with intellectual disabilities. He functions at the cognitive level of an 8-year-old child, and, because of this vulnerability, he has never lived independently. The applicant was cared for by his parents in Peru until their deaths. His mother died on 30 August 2010 and his father on 29 December 2014. Immediately after the death of his father, his sister J. went to Peru to arrange the funeral and to take care of the applicant. On 30 January 2015 the applicant travelled with his sister to the Netherlands on a 90-day multiple-entry tourist visa that had been issued to him on account of his circumstances. Since then, he has lived with his sister J. and her family and, collectively, his four sisters look after him full-time.

6. On 17 March 2017 the applicant applied for a residence permit for the purpose of family reunification. In his application he argued that, given his limited intellectual capacities, he was fully dependent on his close family members for his daily care. The applicant indicated that he had difficulties with communication because his vocabulary was extremely limited, so that people who did not know him often found him incomprehensible. He also argued that he did not experience any ties to any particular country, but only ties to his family, who were the only “home” he knew. He provided a decision of the Peruvian authorities, dated 11 December 2006, authorising his registration in a register of citizens with an intellectual disability. The decision set out the following diagnosis: “mild mental retardation” with impairments in behaviour, communication, self-care, dexterity and situational awareness. That diagnosis was confirmed by a psychiatric report by the Hipolito Unanue Hospital in Peru, dated 6 October 2011, which stated that the applicant had an IQ of 65. The applicant had become eligible for permanent disability benefits in Peru on the basis of that psychiatric evaluation. Furthermore, the applicant alleged that there were no adequate services for people with mental disabilities in Peru. He also argued that his sisters could not be expected to move back to Peru with him as they all had had their own professional, private, and family lives in the Netherlands for years. Three of his four sisters had Dutch citizenship, and his fourth sister had been a legal resident of the Netherlands since 2009. His brother, who continued to live in Peru, could not care for him as he was rarely at home on account of his career as a professional football referee, which required frequent travel. He substantiated this by providing a letter dated 22 March 2017 from the Peruvian professional football referee association. No further relatives lived in Peru. The applicant argued that his relationship with his sisters amounted to dependence and “more than normal emotional ties” and therefore family life for the purpose of Article 8 of the Convention.

7. By a decision of 27 July 2017, the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*; “the Deputy Minister”) rejected the applicant’s application, finding that it had not been shown that

there was family life between the applicant and his sisters within the meaning of Article 8. This finding was based on the fact that his sisters had not been involved in the applicant's daily life prior to the death of their parents; that the applicant's brother in Peru could play a role in his care and that the applicant could receive care in a care home for people with (mental) disabilities in Peru, if need be, with (financial) support from his sisters in the Netherlands. The Deputy Minister noted that the claim that such facilities were not available in Peru was not substantiated.

8. The applicant lodged an objection against that decision. In his objection, the applicant argued that the Deputy Minister had failed to consider the fact that there had been no need for his sisters to be more involved in his day-to-day care prior to their parents' deaths, as his parents had always taken care of him, and it was their fathers' death that had necessitated his sisters taking over his care, which they had immediately done. The applicant also pointed out that by the time he had lodged his objection, his sisters had already been his primary caregivers for three years, arguing that this fact should be considered in the assessment of whether their relationship constituted family life within the meaning of Article 8. The applicant further submitted, with reference to various NGO publications, that care for persons with mental disabilities in Peru was insufficient and showed that his sisters had also provided financial support to him prior to the death of their parents.

9. The Deputy Minister rejected the applicant's objection by a decision dated 6 February 2018, largely based on the same findings as in the decision of 27 July 2017 (see paragraph 7 above). The Deputy Minister, in essence, considered that although it was not in dispute that the applicant needed care in his daily life, it had been insufficiently substantiated that this care could only be provided by his sisters. He therefore did not accept that "more than normal emotional ties" between them had been shown to exist. He further noted that the applicant had not provided sufficient evidence that institutions in Peru could not care for him, and that it had not been shown that his sisters could not afford to pay for such care. The Deputy Minister found that the applicant's objection was manifestly ill-founded, and as such, it had not been necessary to invite him to a hearing.

10. The applicant lodged an appeal against that decision with the Regional Court (*rechtbank*) of The Hague, in which he repeated his previous arguments (see paragraphs 6 and 8 above) and argued that he should have been given the opportunity to explain his position orally.

11. By a judgment of 7 December 2018, the Regional Court of The Hague, sitting in Haarlem, declared the applicant's appeal well-founded on the ground that the applicant's arguments, raised in the objection phase, had merited an oral hearing. In that connection the Regional Court noted that this was even more pressing because the Deputy Minister in his decision of 6 February 2018 had erred in limiting his examination of the ties between the

applicant and his sisters to the situation prior to their father's death. The Deputy Minister did not appeal against that judgment.

12. On 25 March 2019 the applicant was invited to appear before a hearing commission convened by the Deputy Minister. The applicant, his counsel and his sister J. appeared at the hearing. A Spanish interpreter was also present. In reply to questions, his sister stated that when her parents came to visit her and the applicant's other sisters in the Netherlands, they had always brought the applicant with them, that she and her sisters had visited their parents and the applicant in Peru two or three times over the course of a three-year period, that the sisters cared for the applicant, who currently lived with her, alternately and that they were able to financially support the applicant in the Netherlands.

13. By a fresh decision of 3 April 2019, the Deputy Minister again rejected the applicant's objection against his decision of 27 July 2017 (see paragraph 7 above), essentially repeating the considerations set out in his decision of 6 February 2018 (see paragraph 9 above) and further considering that there was still no evidence that the sisters had been involved in the applicant's care before 2015 which meant that there was no evidence that there existed more than normal emotional ties between them. In that connection the Deputy Minister noted that it appeared from the statements made during the hearing (see paragraph 12 above) that the sisters had not visited the applicant very often.

14. The applicant lodged an appeal against the decision of 3 April 2019, in which he, *inter alia*, argued that the Deputy Minister had, despite the findings of the Regional Court in its judgment of 7 December 2018, declined to examine the current relationship between the applicant and his sisters, and had limited himself to examining the relationship as it had been prior to their parents' deaths. The questions asked during the hearing had focussed on that period. The applicant reiterated that the care provided by his sisters extended beyond physical care and included his emotional dependency on them on account of his intellectual disability.

15. In his statement of defence, the Deputy Minister argued that it followed from a judgment of the Administrative Jurisdiction Division of the Council of State ("the Administrative Jurisdiction Division") of 4 April 2019 (see paragraph 28 below) that only exclusive dependency could qualify as "more than normal emotional ties" for the purpose of Article 8. He further argued that it could not be inferred from the case-law of the Administrative Jurisdiction Division and of the Court that in situations where family members had not lived together for a long time, the need for care on the part of either of them triggered protection under that provision. Thus, the fact that the applicant's sisters had left the parental home much earlier and that they and the applicant had therefore hardly been in physical proximity to each other since then, was rightly considered in the assessment.

16. By a judgment of 20 December 2019, the Regional Court of The Hague, sitting in Haarlem, declared the applicant's appeal well-founded on the grounds that the Deputy Minister had breached his duty to take a careful decision and provide proper reasons, and ordered him to take a fresh decision. In that connection the Regional Court, in so far as relevant for the case before the Court, noted that it agreed with the applicant that the Deputy Minister had insufficiently complied with its judgment of 7 December 2018 in which it had explicitly ruled that it was incumbent on the Deputy Minister to have the applicant clarify further, through a hearing, facts and circumstances relevant to the assessment of Article 8 of the Convention. In the court's view, the hearing commission had failed to ask the relevant questions, particularly in relation to the applicant's situation since 2015.

17. The Deputy Minister appealed against that judgment to the Administrative Jurisdiction Division, arguing, *inter alia*, that the Regional Court had failed to recognise that in his decision of 3 April 2019 (see paragraph 13 above) he had provided sufficient reasons for rejecting the applicant's claim that 'more than normal emotional ties' existed between him and his sisters, and further that it had not been wrong to reach the conclusion that such ties were lacking. In that connection the Deputy Minister noted that he inferred from the Court's case-law in *Senchishak v. Finland* (no. 5049/12, §§ 56-57, 18 November 2014) that the circumstance that family life was interrupted for a prolonged period by the departure of one of the family members is relevant in assessing the existence of family life within the meaning of Article 8 of the Convention. He considered that because the applicant and his sisters had hardly been in physical proximity to each other since the sisters had left the parental home, significant weight could be attached to the situation prior to 2015. Given this, the applicant's situation after 2015 was rightly not given decisive weight. The Deputy Minister further disputed that it was a matter of fact that the applicant's brother was unable to provide him with full-time care. The Deputy Minister argued that the applicant's brother could play some role in his care, with the financial support of the applicant's sisters in the Netherlands, and with the possibility of the applicant being placed in a care facility in Peru. In that context, the Deputy Minister referred to various publications which pointed to the existence of such facilities in Peru. According to the Deputy Minister, it had not been substantiated that the applicant would not be able to afford such institutional care.

18. Pending the further appeal proceedings, the Deputy Minister, acting on the order of the Regional Court, made a fresh assessment of the arguments raised by the applicant in his objection against his first decision and rejected the objection again by decision of 10 February 2020, on essentially the same grounds as before, reiterating that only exclusive dependency could qualify as "more than normal emotional ties" for the purpose of Article 8.

19. On 13 February 2020 the applicant submitted written comments in reply to the appeal lodged by the Deputy Minister with the Administrative Jurisdiction Division, arguing that Article 8 of the Convention required the Deputy Minister to take account of the current situation, whereby full-time care, on which the applicant was undisputedly dependent, had been provided by the applicant's sisters since 2015. He stated that the care provided by his sisters could not simply be replaced by care provided in a care facility, even assuming that such facilities were available and accessible, which the applicant denied. The applicant stated that given his intellectual disability he was extremely vulnerable to being exploited and/or victimised, which was not uncommon in Peru, without family members present to shield him from such maltreatment. The applicant also argued that his situation differed from that in *Senchishak* (cited above). His previous far-reaching dependence on his parents had been replaced by a similar dependency on his sisters (and their families). Furthermore, he pointed out that the Court in *Senchishak* had considered it relevant that the Russian applicant had not lived far from her daughter in neighbouring Finland, whereas in Peru he would be far removed from his caregivers in the Netherlands. Finally, the applicant stated that reliable, public information about the existence of care facilities in Peru was very hard to find, as most people in the applicant's situation in Peru were cared for by their family. In that context he pointed out that one of the websites containing publications relied on by the Deputy Minister was defunct.

20. On 10 March 2020 the Deputy Minister informed the applicant that he would withdraw his decision of 10 February 2020, would make a fresh decision on the objection, and would reimburse the applicant's costs and expenses.

21. On 30 June 2020 the applicant again appeared before a hearing commission convened by the Deputy Minister in the company of his counsel and his sister J. In reply to questions, the applicant's sister explained again that the applicant had grown up with his parents, brother and sisters; that his family constituted his entire world, that he had no awareness of the outside world and that when his parents died, he had moved in with her in the Netherlands. The applicant could wash and dress himself but only after receiving prompts to do so from his sister. The applicant sometimes suffered panic attacks, and the presence of his sister helped to calm him down, especially in public places that were busy or unfamiliar to him. Without his sister by his side, he could easily get lost in such spaces. He was unable to orientate himself. He reiterated that in the absence of care from family members, intellectually disabled people in Peru ended up on the streets. The applicant's brother continued to travel a lot for his work and was at home no more than one day per week. His brother's landlord would not allow more than one person to live in the property, as was evidenced by the rental

agreement. Widespread corruption in Peru made it untenable to employ private home carers from a distance.

22. By a fresh decision of 4 August 2020, the Deputy Minister again rejected the applicant's objection against his first decision on essentially the same grounds as before. The applicant appealed against that decision directly to the Administrative Jurisdiction Division on 28 August 2020.

23. By a judgment of 9 September 2020, the Administrative Jurisdiction Division upheld the appeal by the Deputy Minister. The Division, firstly, upheld the Deputy Minister's grievance that the Regional Court in its judgment had erroneously considered that insufficient effect had been given to the earlier ruling (see paragraph 11 above). In that connection the Administrative Jurisdiction Division noted that the Deputy Minister had given the applicant the opportunity to clarify the facts and circumstances relevant for the assessment of his reliance on Article 8 of the Convention. It further considered that the Deputy Minister had not been wrong to ask a number of questions about the applicant's situation before he moved in with his sister, noting that it could be inferred from the Court's case-law in *Senchishak* (cited above) that to answer the question whether there existed "more than normal emotional ties" and thus family life, weight may be attached, *inter alia*, to the possibility that care could be provided by people other than the applicant's sisters. To that extent, the situation in which the applicant had found himself before he had moved to the Netherlands was relevant. Secondly, as regards the Deputy Minister's grievance that the Regional Court had failed to recognise that in his decision of 3 April 2019 (see paragraph 13 above) he had provided sufficient reasons for rejecting the applicant's claim, the Division considered as follows:

"3.1 [...] the Deputy Minister did not err in attaching great weight to the circumstance that it was not shown that only his sisters could care for him. The foreign national did not submit any recent (medical) documents in this regard. The Deputy Minister was therefore right to take the view that there was a real possibility that third parties could provide this care, possibly with the support of the foreign national's brother. The Deputy Minister was also justified in taking the view that the foreign national had not made it plausible that his sisters could not pay for any private care in Peru from the Netherlands. The foreign national did not submit any documents in this regard either. While it was understandable that the foreign national would like his sisters to care for him, this wish did not in itself mean that there were no real alternatives. Furthermore, with regard to the alleged emotional dependence, the Deputy Minister rightly included in the assessment the fact that the foreign national's sisters had been living in the Netherlands for years and that there was no evidence that they had been involved in his care before the foreign national came to the Netherlands."

24. With this judgment the rejection of the applicant's application for a residence permit for the purpose of family reunification became final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Aliens Act 2000

25. Section 14 of the Aliens Act 2000 reads as follows:

“1. Our Minister shall be authorised:

a. to grant ... a temporary [regular] residence permit;

...

3. A temporary residence permit shall be granted subject to restrictions relating to the purpose of the stay. Regulations may be attached to the permit. Rules regarding the automatic granting, modification and extension, the conditions and the regulations may be laid down by or pursuant to an executive decree (*algemene maatregel van bestuur*) ...”

B. Aliens Decree 2000

26. Section 3.13 of the Aliens Decree 2000 reads as follows:

“1. A temporary regular residence permit, subject to a restriction relating to residence as a family member, shall be granted to the family member ... of the sponsor, if all the requirements set out in sections 3.16 to 3.22a are met.”

C. Aliens Act 2000 Implementation Guidelines

27. Paragraph B7/3.8.1 of the Aliens Act 2000 Implementation Guidelines, at the relevant time, included the following passage:

“The Immigration and Naturalisation Department of the Ministry of Justice and Security (‘the IND’) assumes the existence of family life between adults provided there is more than normal dependency between them (more than normal emotional ties).”

Paragraph B7/3.8.3 of these same Guidelines read as follows:

“In order to determine whether a refusal of (the continuation of) a foreign national’s residence violates Article 8 of the [Convention], the IND shall consider all the relevant facts and circumstances and undertake a reasoned weighing of interests. The interests to be included in the IND’s balancing of interests will depend on each individual case. Importantly, that assessment will always relate to the facts of the individual case, which will differ from case to case. Since this assessment and weighing of various interests will vary from case to case, the IND has a certain degree of discretion in this respect.”

II. DOMESTIC CASE-LAW

28. A leading judgment of the Administrative Jurisdiction Division of the Council of State on the assessment of the existence family life within the meaning of Article 8 between adults was delivered on 4 April 2019

(ECLI:NL:RVS:2019:1003). This judgment includes the following considerations:

“3.1. As the Division has previously considered (judgment of 29 May 2017, ECLI:NL:RVS:2017:1417), it follows from, *inter alia*, the [Court’s] judgment of 17 February 2009, in *Onur v. the United Kingdom* [no. 27319/07] that the establishment of family life meriting protection, as referred to in Article 8 of the [Convention], between parents and their adult (not young adult) children requires the existence of ‘additional elements of dependency’ - or ‘more than the normal emotional ties’. It follows from the [Court’s] judgment of 17 January 2012 in *Kopf and Liberda v. Austria* [no. 1598/06] that the existence or non-existence of such family life is essentially a question of fact and depends on the actual existence of close personal ties. From, *inter-alia*, the decisions of the European Commission of Human Rights of 10 December 1984 in *S. and S. v. the United Kingdom* [no. 10375/83, Decisions and Reports (DR) 40, p. 196], and 29 June 1992 in *Akhtar and Others v. the Netherlands* [no. 14852/89], it emerges that elements such as financial or material dependency, the health of one of the persons concerned and links with the country of origin may be important when assessing the actual existence of close personal ties. Furthermore, it follows from the [Court’s] judgments of 12 January 2010 in *A.W. Khan v. the United Kingdom* [no. 47486/06], and 18 November 2014 in *Senchishak v. Finland* [cited above] and the decisions of the Division of 3 August 2012, ECLI:NL:RVS:2012:4060, 14 July 2016, ECLI:NL: RVS:2016:2070, and 25 July 2018, ECLI:NL:RVS:2018:2533, that in determining whether the aforementioned ‘ties’ exist, weight may be given to, *inter alia*, whether other family members or third parties can also provide the care required by the dependent family member.

3.2. [...] Financial or material dependency, among other things, may be important in the establishment of these ties, and the Deputy Minister may give weight to the answer to the question of whether there is a real possibility that other family members or third parties can also provide the care required by the dependent family member, but this will not be decisive. Therefore, in accordance with the case law of the [Court] and the Division, the Deputy Minister, when assessing whether the aforementioned ‘ties’ exist between the foreign national in question and the sponsor in question, takes into account, *inter alia*, whether the alleged dependency between them is exclusive.”

29. A recent judgment of 27 March 2024 (ECLI:NL:RVS:2024:1188) of the Administrative Jurisdiction Division contains the following considerations:

“3. In its case-law the [Court] has considered that relationships between adult family members may fall under the protection of Article 8 of the [Convention] if the ties between them can be characterised as “further elements of dependency, involving more than the normal emotional ties” (see, for example, paragraph 64 of the judgment in *Azerkane v. the Netherlands* [no. 3138/16]). Thus, according to the [Court], family life within the meaning of Article 8 (1) of the [Convention] exists between adults outside the nuclear family if there are additional elements of dependency between them that transcend the normal emotional ties. The Division will refer to these ties as ‘additional elements of dependency’ in the remainder of this judgment. This is more in line with the case law of the [Court] and, in the opinion of the Division, it better reflects the essence of the ties in question than the use of the term ‘more than the normal emotional ties’. Indeed, the main issue is whether there is a dependency between the adult family members involved, which can be established on the basis of objective or objectively verifiable facts and circumstances, that goes beyond the normal, or usual. It is therefore

not only a question of whether the relationship is emotionally beyond what is usual between adult family members.

...

5.2. [...] The Deputy Minister must make a broad assessment of whether additional elements of dependency exist, in which he considers all the individual circumstances of the case. He is not allowed to include in this assessment only whether a foreign national is dependent on a sponsor because of his medical condition but must make a case-specific assessment of all the facts and circumstances put forward by a foreign national which may mean that there are additional elements of dependency. Elements such as financial and material dependency, the health of the persons concerned and links with the country of origin, in so far as they have been put forward, must play a role in that assessment. [...] This has also been confirmed by the [Court] in its admissibility decision of 6 May 2003 in *Nessa and Others v. Finland* [no. 31862/02, § 2)]. Furthermore, for example, the degree of emotional dependency and whether the persons concerned have lived together before may be relevant. This individual assessment is in line with the assessment required by Article 17 of the Family Reunification Directive [...].

5.3. It is for the foreign national concerned to state, and as far as possible substantiate, the facts and circumstances from which the additional elements of dependency can be inferred. It is then up to the Deputy Minister to assess whether additional elements of dependency exist. This assessment is of a factual nature.” [...]

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicant complained that the refusal to grant him a residence permit to reside with his sisters in the Netherlands 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

1. *The parties’ submissions*

(a) **The Government**

31. The Government did not dispute the applicant’s intellectual disability, his functioning at the level of an 8-year-old child and his dependency on others for daily care and supervision. However, the Government were of the opinion that the applicant was not specifically dependent on his sisters for the

care and supervision he needed, and that alternative options were available to him. The Government pointed to the presence of the applicant's brother in Peru, the possibility of employing outside help, and the availability of care institutions in Peru, and argued that the applicant had not demonstrated that he would be unable to access such care. The Government also considered it significant, given the Court's findings in *Senchishak* (cited above, § 56), that the applicant's sisters had not played a role in the applicant's care prior to their parents' death, and that their role in his day-to-day care had taken its current form during the applicant's stay in the Netherlands without a residence permit. Lastly, the Government pointed out that the applicant still had ties to Peru, as he was born and raised there and lived there until 2015.

32. For the foregoing reasons the Government asserted that it had not been shown that there were "additional factors of dependence, other than normal emotional ties" between the applicant and his sisters, constituting "family life" within the meaning of Article 8 of the Convention.

(b) The applicant

33. The applicant submitted that family life, in the sense of Article 8 of the Convention, existed between him and his sisters. To support this position, he referred to the arguments he had put forward in the domestic proceedings (see paragraphs 6, 8, 12, 14, 19 and 21 above). In particular, he pointed out that it was not in dispute that due to his intellectual disability he needed full-time care, without which he could not function. When his parents were alive, they had constituted his "entire world" and provided the necessary care to him. Since their deaths, that place had been taken by his sisters. Given the fact of their parents' deaths, the situation as it had existed in Peru prior to his arrival in the Netherlands had ceased to exist. Referencing *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII, the applicant asserted that the close bond formed by the factual circumstances between him and his sisters, should primarily be considered when answering the question whether family life as referred to in Article 8 exists. Since 2015 he functioned as "an extra child" in the household of his sister J. and his sisters, alternately, assisted him in his daily life. Aside from the question of whether care for the applicant was available in Peru, which he alleged was not the case, the applicant should not be torn away from his very limited, familiar environment in which his sisters were indispensable.

34. He further argued that the facts of his case were not comparable with those in *Senchishak*, cited above. In addition to his strong dependency on his sisters due to his disability, there was no viable alternative to the care the applicant currently received from his sisters *inter alia* because Peru was not geographically close to the Netherlands, which would preclude his sisters' involvement in his day-to-day care in Peru, and because, as substantiated by the applicant, his brother could not provide care, safety, and a home for him on account of his job and housing situation in Peru (see paragraphs 6 and

21 above). The applicant also pointed out that he had not seen his brother since January 2015, and he had grown estranged from him. Professional care facilities in Peru were not equipped to care for people with his disabilities, since intellectually disabled people tended to be cared for by their family. The applicant had no extended family in Peru and his sisters could not afford to arrange for private care by a live-in nurse. The applicant, without the care and protection of his sisters, would be extremely vulnerable to exploitation in Peru, given his childlike intellectual abilities.

2. *The Court's assessment*

(a) **General principles**

35. As regards the question of the existence or non-existence of “family life”, the Court has held that this is essentially a question of fact depending upon the existence of close personal ties. The notion of “family” in Article 8 may also encompass *de facto* “family ties” (see *Marckx v. Belgium*, 13 June 1979, § 31, Series A no. 31; *K. and T. v. Finland*, cited above, § 150; *Emonet and Others v. Switzerland*, no. 39051/03, § 37, 13 December 2007; and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 140, 24 January 2017).

36. The Court has held that family life for the purpose of Article 8 of the Convention is normally limited to the core family (see *Slivenko v. Latvia* [GC], no. 48321/99, §§ 94 and 97, ECHR 2003-X) and that there will be no family life between parents and adult children or adult siblings unless they can demonstrate “additional elements of dependence, involving more than the normal emotional ties” (see, among other authorities, *Kwaky-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000; *Senchishak*, cited above, § 55; and *Emonet and Others*, cited above, § 35).

37. This interpretation originates from the context of family reunification (see *S. and S. v. the United Kingdom*, no. 10375/83, Commission decision of 10 December 1984, Decisions and Reports 40, p. 196) and has been followed in other contexts. In the context of the expulsion of settled migrants, the Court has made an exception for young adults who are still living with their parents and have not yet started a family of their own (see *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], request no. P16-2022-001, Supreme Court of Finland, § 50, 13 April 2023). In that particular situation, “dependency” is assumed (see *Maslov v. Austria* [GC], no. 1638/03, § 62, ECHR 2008, and *Savran v. Denmark* [GC], no. 57467/15, § 174, 7 December 2021).

38. It follows from the Court’s case-law that the question whether “additional elements of dependency” exist is to be decided on a case-by-case basis. The finding of the existence of “family life” based on “additional elements of dependency other than normal, emotional ties” will often be the

result of a combination of elements. Several case-law examples are provided below by way of further clarification.

39. In cases where adults had a physical or mental disability or illness of sufficient seriousness and were in need of constant care and support from other family members, the Court has accepted such dependency (see, for instance, *Emonet and Others*, cited above, § 37, in which an adult child became paraplegic after a serious illness; *Bierski v. Poland*, no. 46342/19, § 47, 20 October 2022, in which an adult child suffered from Down syndrome and was fully incapacitated; *Belli and Arquier-Martinez v. Switzerland*, no. 65550/13, § 65, 11 December 2018, in which an adult child had been deaf since birth, had difficulty speaking her mother tongue and had no capacity of discernment on account of a severe disability which had required comprehensive therapeutic provision throughout her life; and *I.M. v. Switzerland*, no. 23887/16, §§ 30-31, 9 April 2019, in which an elderly father was completely dependent on his sons because he suffered from serious depression and autism).

40. Conversely, in cases concerning the following medical conditions the Court refused to accept that the state of health of the applicants or their relatives was serious enough or, even if sufficiently serious, was sufficient in itself to warrant a finding of the existence of dependency and thus of “family life” within the meaning of Article 8 of the Convention: diabetes, an (undefined) heart condition and chronic obstructive pulmonary disease, and ulcerative colitis requiring treatment, none of which conditions were entirely incapacitating (see *A.W. Khan v. the United Kingdom*, no. 47486/06, 12 January 2010); asthma (see *Konstatinov v. the Netherlands*, no. 16351/03, 26 April 2007); and paranoid schizophrenia which, while very serious, did not incapacitate the applicant to the extent that he was compelled to rely on his family’s care and support in his daily life (see *Savran*, cited above, §§ 177-78).

41. Financial dependency has also played a role in the Court’s analysis of “additional elements of dependency” (see, for instance, *Kwaky-Nti and Dufie*, cited above, in which the Court observed that it had not been established that the adult children of the applicants, who had sought their admission, were financially or for any other material reason dependent on them; and *Savran*, cited above, § 178, in which the Court noted that it had not been argued that the applicant was dependent on any of his relatives financially).

42. Depending on the circumstances of the case, the Court has found that financial support could be provided from a distance (see, for instance, *Berisha v. Switzerland*, no. 948/12, § 60, 30 July 2013, and *Senchishak*, cited above, § 57). However, in *I.M. v. Switzerland*, (cited above, § 62) in which case it had already been established that the applicant was dependent on his adult sons in his daily life for health reasons (see paragraph 39 above), the Court held that the fact that family members could contribute financially to him

upon his removal, did not call into question the existence of a relationship of dependency between him and his sons. Financial dependency on its own has never been considered sufficient to constitute additional ties of dependency, and accordingly family life between adult family members.

43. Other elements that played a role in the Court’s analysis of “additional elements of dependency” in a migration context include, for example, the fact that the person with whom ties were claimed was the only surviving relation (see *F.N. v. the United Kingdom* (dec.), no. 3202/09, § 36, 17 September 2013), or the fact that substantial links with the country of origin continued to exist (see *S. and S. v. the United Kingdom*, cited above, p. 199; *Nessa and Others v Finland* (dec.), no. 31862/02, § 2, 6 May 2003). The presence of family members who can provide care - or other viable alternatives - in the country of origin or where the person requiring care and support lives, may also be such an element (see *A.W. Khan*, cited above, § 32, and *Senchishak*, cited above, § 57).

44. It thus follows from the Court’s case-law that the assessment of whether additional elements of dependency, other than normal emotional ties, have been shown to exist, requires an individualised review of the relationship at issue, and other relevant circumstances of the case.

45. In the context of family reunification, the Court will assess the question whether a relationship between adult family members constituted “family life” within the meaning of Article 8 on the basis of all the facts occurring prior to the date that the decision regarding the request for family reunification became final (see, for instance, *T.C.E. v. Germany*, no. 58681/12, § 55, 1 March 2018, and *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 41, ECHR 2006-I). However, when one of the family members was a minor at the time the request for family reunification was lodged, the Court will assess the question on the existence of “family life” based on the situation as it obtained on that date in order to avoid that a child ‘ages out’ pending the proceedings (see, for instance, *El-Ghatet v. Switzerland*, no. 56971/10, § 51, 8 November 2016, and *Tanda-Muzinga v. France*, no. 2260/10, § 74 *in fine*, 10 July 2014).

(b) Application of the above principles in the present case

46. The applicant’s complaint concerning the refusal to grant family reunification relates to a moment in time at which he had reached the age of majority. Therefore, in the light of the Court’s case law (see paragraphs 35-45 above), it is necessary to establish whether it has been demonstrated that the relationship between him and his adult sister(s) constituted “family life” within the meaning of Article 8 of the Convention and thus falls within the scope of that provision.

47. The Court, firstly, notes that it has been substantiated by the applicant that, due to his intellectual disability, he functions at the level of an 8-year-old

child and is fully dependent in his daily life on the care of others. This is not in dispute between the parties.

48. Secondly, the Court notes that it is also undisputed that this care has always been provided to him by close family members. Prior to his parents' deaths, the applicant's life revolved around his parents as it was them who met all his needs. After their deaths, that place was taken by the applicant's sisters. Since 2015 the applicant has lived with his sister J. in the Netherlands. His four sisters have cared for him collectively, which comprised both physical and psychological assistance with his daily needs (see paragraph 21 above), as well as financial support. At the time that the decision regarding the applicant's request for family reunification became final, they had cared for him for more than five-and-a-half years. These are relevant facts for the Court's assessment of whether the relationship between the applicant and his sisters constituted "family life" within the meaning of Article 8 (see paragraph 45 above). In that connection the Court further notes that the fact that family ties were created or developed at a time when the immigration status of one of the family members was not regulated, is a factor to be taken into account in the balancing exercise under the second paragraph of Article 8 of the Convention; it has, however, no bearing on the determination of the existence of "family life" (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 108, 3 October 2014, and *M.A. v. Denmark* [GC], no. 6697/18, § 134, 9 July 2021). The Court therefore sees no reason for the domestic authorities to have primarily focused their assessment, in their consecutive decisions (see paragraphs 7, 13, 18 and 22 above), on the ties between the applicant and his sisters prior to their parents' deaths.

49. The Court, thirdly, notes that it transpires from its case-law, as reflected in the judgments of the Administrative Jurisdiction Division of 4 April 2019 and 27 March 2024 (see paragraphs 28-29 above), that, in a family reunification context, the presence of family members who can provide care – or other viable alternatives – in the country of origin or where the person requiring care and support lives, may also be of relevance in the assessment. However, because the existence of "family life" must be assessed on a case-by-case basis (see paragraph 44 above), the weight to be accorded to this element is relative and depends on the other facts and specific circumstances of the case. Thus, it cannot be derived from the above-mentioned case-law, as the authorities seem to assume (see paragraphs 15, 18 and 22 above), that "exclusive dependency" is always required in order to find that "family life" exists.

50. In making its assessment of the existence of "family life" within the meaning of Article 8 in the present case, the Court takes into account that it is undisputed that the applicant's disability is of such a seriousness that he depends on the care of others in his daily life, which care has always been provided to him by his close family members (by his parents and, after they had passed away, by his sisters who have provided care and support to him

for many years). The Court further affords considerable weight to the fact that, given his disability, the applicant's perception of society was very limited, that his immediate family circle constituted most of his world and that for people outside this circle his communications were often incomprehensible. It also takes note of the fact that the applicant has substantiated that his brother, who is the only remaining family member in Peru, was unable to provide the necessary daily care and that the availability of viable alternatives has not been established. In that regard the Court notes that the applicant's cogent arguments in support of his claim that such alternatives were lacking in Peru (see paragraphs 8, 19 and 21 above), have not been convincingly rebutted by the Government. The Court considers that in view of those facts and circumstances, it has been sufficiently demonstrated that the applicant's disability incapacitated him to the extent that he was compelled to rely on his sisters' care and support in his daily life, and concludes that "additional elements of dependency, other than normal emotional ties" have been shown to exist.

51. In view of the foregoing, the Court finds that the relationship between the applicant and his sisters constituted "family life" within the meaning of Article 8, which provision is therefore applicable *ratione materiae* in the present case.

52. The Court further notes that this complaint 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

53. The parties' submissions on the merits of the complaint essentially concerned the applicability of Article 8. The Court has described these submissions above (see paragraphs 33-31 above).

2. The Court's assessment

54. The Court recalls that in family reunification cases such as the present case, the question is not whether there has been an interference, but whether the respondent State complied with a positive obligation to allow the applicant to reside on their territory. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition and the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Jeunesse*, cited above, § 106, and *El Ghatet*, cited above, § 43). Factors to be

taken into account in this context are set out in the Court's *Jeunesse*-judgment (ibid., §§ 107-109).

55. Turning to the present case, the Court notes that, as follows from the statements of the facts (see paragraphs 6-24 above), as well as from the documents submitted by the parties, the domestic authorities' assessment was limited to the question of applicability of Article 8. Given the above considerations (see paragraphs 46-51 above), the Court finds that the analysis of applicability of Article 8 of the Convention – and, consequently, the assessment of whether the respondent State complied with a positive obligation under that provision – was not carried out at the domestic level in a manner consistent with the Convention and the Court's case-law (see *L. v. the Netherlands*, no. 45582/99, §§ 40-42, ECHR 2004-IV).

56. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

58. The applicant did not submit a claim under Article 41. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention.

Done in English, and notified in writing on 10 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President