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

FOURTH SECTION

DECISION

Application no. 64534/19
Abdi Ali MAHAMUD
against the Netherlands

The European Court of Human Rights (Fourth Section), sitting on 10 March 2026 as a Chamber composed of:

Lado Chanturia*, President*,
Jolien Schukking,
Faris Vehabović,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 10 December 2019,

Having regard to the observations submitted by the Government of the Kingdom of the Netherlands ("the Government") and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Office of the United Nations High Commissioner for Refugees and the Hungarian Helsinki Committee, which had been granted leave to intervene by the President of the Section,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns the rejection of a request, submitted by the applicant, for a provisional residence visa for the purpose of family reunification with his adult brother, who lives in Uganda. The applicant alleges that their relationship falls within the scope of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") because "additional factors of dependence, other than the normal emotional ties" have been shown to exist. He further asserts that the refusal to allow his

brother to reside with him in the Netherlands had been in breach of his right to respect for family life.

THE FACTS

2. The applicant, Mr Abdi Ali Mahamud, is a Dutch national, who was born in 1975 and lives in Borculo. He was represented before the Court by Ms I.N. Schalken, a lawyer practising in Apeldoorn.

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.

A. Background information

5. On 11 September 2009 the applicant, who had been granted international protection in the Netherlands on 24 August 2009, requested asylum-related family reunification (*nareis*) for his nine biological children, his foster child, his mother and his youngest brother Bashir, who was seventeen years old at the time. In his request the applicant explained that his mother and Bashir had lived with him and his family since the death of the applicant's and Bashir's father in 1992 as part of the same household that the applicant had provided for. The applicant's wife had died in May 2007, after which his mother had taken care of all the children at home and had continued to do so after the applicant's departure from Somalia in November 2007. It transpired that his mother had died in December 2009 and that the applicant's children and Bashir had left Somalia and ended up in Uganda. Family reunification was granted in respect of the biological children and the foster child in 2010, 2011 and 2015. The applicant's request for asylum-related family reunification with Bashir was rejected in two consecutive sets of proceedings on the grounds that he had not belonged to the applicant's nuclear family at the time that the applicant had fled Somalia as at that time their mother had still been alive, and Bashir had belonged to her nuclear family. No assessment under Article 8 of the Convention as part of asylum-related family reunification proceedings had taken place as domestic law did not require it at the time. The rejections of the requests for asylum-related family reunification in respect of Bashir were upheld by the domestic courts and became final on 18 December 2015. No application was lodged to the Court.

B. Regular family reunification proceedings

6. On 15 March 2016 the applicant applied for a provisional residence visa (*machtiging voorlopig verblijf*) for the purpose of regular family reunification (*regulier*) on behalf of Bashir. By then, Bashir was 23 years old.

7. Relying on Article 8 of the Convention, the applicant submitted that their relationship went beyond normal dependence. In his request he explained that he had cared for Bashir as if he were his own child. They regarded each other as father and son and Bashir had grown up with the applicant's own children. He further asserted that Bashir suffered from loneliness and depression because of their separation, given that he was the only family member who had not been able to reunite with the applicant in the Netherlands. The applicant further alleged that they spoke three to four times a day *via* Viber and Skype and that he paid for and managed Bashir's daily life from the Netherlands. Bashir was not in a relationship and lived in a dwelling with roommates. He did not go to school or work and had no useful daytime activities. Because the applicant's children were in the Netherlands, including his oldest child who was disabled, it was not possible for him to reunite with Bashir in Uganda. In support of his argument that Bashir was dependent on him, the applicant submitted a medical statement concerning Bashir, dated 26 February 2016 and signed by a Dr M.M., a psychiatrist from the Mulago National Referral Hospital in Kampala, which was addressed "to whom it may concern", indicating that Bashir was diagnosed with post-traumatic stress disorder and chronic bronchitis. The statement further indicated that those symptoms had exacerbated after his separation from his family who had moved abroad, and that any assistance offered to reunite him with his family would be greatly appreciated.

8. The Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie;* hereinafter, "the Deputy Minister") dismissed the application on 4 August 2016. Referring to the same reasons given in the asylum-related family reunification proceedings (see paragraph 5 above), the Deputy Minister found that Bashir did not qualify as the applicant's foster child, as he had belonged to his mother's nuclear family when the applicant had fled Somalia. Furthermore, the Deputy Minister held that it had not been demonstrated that there were "additional elements of dependency, amounting to more than the normal emotional ties" between the two adult brothers so as to constitute "family life" within the meaning of Article 8 of the Convention. The Deputy Minister noted that Bashir had lived independently from the applicant in Somalia and Kenya, and for the last 6 years as an adult in Uganda. Given those circumstances, the Deputy Minister considered that it had not been demonstrated that Bashir would not be able to take responsibility for himself, including his means of subsistence. Noting that nothing prevented the applicant from continuing to provide financial support from the Netherlands, the Deputy Minister recalled that financial dependence alone was not sufficient to assume the existence of dependency beyond the normal emotional ties. The Deputy Minister finally considered that no proof of daily contact between Bashir and the applicant had been submitted, but that such proof would not have made any difference for the conclusion that there was no'more than normal emotional dependence'within the meaning of Article 8

of the Convention between the two. The same applied to the fact that Bashir was the only family member to have stayed behind in Uganda and the less favourable daily circumstances and possibilities for Bashir in that country. As regards Bashir's medical circumstances, the Deputy Minister found that the statement of Dr M.M. did not show that Bashir was not receiving or unable to receive medical treatment in Uganda, or that he was unable to function independently in daily life or was prevented from working in whole or in part.

9. An objection against that decision was lodged on Bashir's behalf. In support, a medical statement dated 12 November 2016, signed by a Dr M.J., psychiatrist from the Mulago National Referral Hospital in Kampala, was submitted, addressed "to whom it may concern", which indicated that Bashir was depressed because he was lonely as a result of his separation from the applicant who had settled in the Netherlands. Dr. M.J. referred to the strength of the bond between Bashir and the applicant, who was like a father to him, and concluded his statement with the remark that assistance offered to Bashir to link him up with the applicant would be highly appreciated. In addition, the applicant provided proof of two money transfers to Bashir in May and August 2016 of a total amount of 183.50 euros (EUR).

10. The Deputy Minister dismissed the objection on 1 February 2017. The Deputy Minister referred to his decision of 4 August 2016 (see paragraph 8 above) and noted that no new facts and circumstances had been put forward that could lead to a different conclusion. The newly submitted medical statement confirmed Bashir's heath issues but did not prove more than normal dependency.

11. An appeal was lodged on behalf of Bashir with the Regional Court (*rechtbank*) of The Hague, sitting in Arnhem. The applicant provided proof of two additional money transfers to Bashir in January and March 2017 of a total amount of EUR 148.

12. By a judgment of 13 October 2017, the Regional Court allowed the appeal and quashed the decision of 1 February 2017. The Regional Court found that the Deputy Minister had wrongly attached decisive weight to the role played by Bashir's and the applicant's mother in its assessment of whether the relationship between the applicant and Bashir amounted to family life under Article 8 of the Convention. The fact that, legally speaking, Bashir had belonged to his mother's nuclear family at the time the applicant fled Somalia did not exclude the existence of close personal ties between Bashir and the applicant. The Regional Court considered that the Deputy Minister had insufficiently demonstrated that he had taken these special, factual circumstances into account when assessing the ties between Bashir and the applicant.

13. The Deputy Minister invited the applicant, in his capacity as Bashir's sponsor, to a hearing before an official board of inquiry (*ambtelijke hoorcommissie*) of the Immigration and Naturalisation Department of the Ministry of Justice and Security in proceedings to deliver a fresh decision in

respect of the objection. In those proceedings the applicant submitted a medical statement, dated 20 November 2017 and signed by a Dr D.G.R. from the Mulago Hospital Complex in Kampala, which stated that Bashir had been undergoing psychotherapy and taking antidepressants, due to his separation from the applicant which had caused his psychological problems. The applicant also provided proof of an additional money transfer of EUR 133 to Bashir in November 2017.

14. On 15 February 2018 the Deputy Minister delivered a fresh decision in which the objection was once again dismissed, because "additional elements of dependency, more than the normal emotional ties" between the applicant and Bashir had not been demonstrated. The Deputy Minister reiterated that Bashir had been part of his mother's nuclear family when the applicant left Somalia. Further, it did not follow from the medical statements that Bashir could not function independently. As regards Bashir's living situation, the Deputy Minister noted that Bashir appeared to live independently and not alone, as he shared a dwelling with other people of his age. The fact that Bashir stayed behind in Uganda owing to the departure of other family members did not alter the fact that, in view of his age (25 years), he was considered capable of taking care of himself.

15. On behalf of Bashir, an appeal was lodged with the Regional Court of The Hague, sitting in Zwolle.

16. The Regional Court upheld the Deputy Minister's decision by a judgment of 12 December 2018, considering that the Deputy Minister had adduced valid grounds for concluding that dependence had not been demonstrated. It held, in so far as relevant, that the Deputy Minister had not been wrong to take into account that Bashir had been part of his mother's nuclear family when the applicant left Somalia and had never belonged to the applicant's nuclear family as the applicant had already left by the time their mother died. The Regional Court recognised that Bashir regarded the applicant as a father-figure but noted that the factual situation was that there was no parent-child relationship between them. Moreover, the Deputy Minister had rightly considered Bashir's adult age of 25, in finding that he must be considered capable of looking after himself, as he had done for the past decade. The fact that the applicant supported Bashir from the Netherlands, as he could continue to do, was insufficient to find that Bashir depended exclusively on the applicant. As to Bashir's medical circumstances, the Regional Court found that he was receiving appropriate treatment in Uganda. Further, the medical statements did not show that Bashir could not function without the exclusive care of the applicant.

17. On behalf of Bashir, a further appeal was lodged with the Administrative Jurisdiction Division. On 24 June 2019 the Administrative Jurisdiction Division of the Council of State summarily rejected the appeal as manifestly ill-founded. No further appeal lay against that judgment.

COMPLAINT

18. The applicant complained under Article 8 of the Convention that the authorities had failed to recognise "family life" within the meaning of that provision between him and his adult brother Bashir and argued that refusal to allow Bashir to reside with him in the Netherlands was contrary to his right to respect for family life.

THE LAW

19. The applicant complained of a breach of Article 8, which, in so far as relevant, provides as follows:

> "1. Everyone has the right to respect for his ... family life ...
>
> 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."

Whether Article 8 is applicable to the applicant's case

1. The parties' observations

20. The Government submitted that there was no "family life" between the applicant and Bashir within the meaning of Article 8 of the Convention. The family ties between Bashir and the applicant (which were not established through objectively verifiable evidence) did not imply that there were "additional elements of dependence". The Government noted that at the time of the application for family reunification in 2016, Bashir was well over the age of majority and had been living in Uganda for over a decade with people of his own age. The Government argued, relying on *A.W. Khan v. the United Kingdom* (no. 47486/06, § 32, 12 January 2010) and *Senchishak v. Finland* (no. 5049/12, § 57, 18 November 2014), that it had not been shown that Bashir had been entirely incapacitated, that he had been unable to get support from others in Uganda, that he could not function without the applicant's presence or that he had had to reside in the Netherlands in order to receive care and/or support which he had thus far received from a distance. The fact that the applicant felt an obligation towards Bashir and that they missed each other, did not alter this finding. The same applied to the medical certificates which did not show that Bashir was unable to function without the physical presence of the applicant (and his family), and, moreover, showed that Bashir was receiving appropriate medical care in Uganda.

21. The applicant complained that the rejection of the application for family reunification between Bashir and him had not been compatible with Article 8 of the Convention. He reiterated that no Article 8 assessment had

been undertaken in the asylum-related family reunification proceedings which had begun in 2009, which in his opinion had, in itself, been contrary to the State's obligations under Article 8. Further, the applicant reiterated that Bashir had grown up as a foster child in his family since he had been a baby and that they shared an emotional bond, that Bashir's medical problems had stemmed from his separation from the applicant and his family, and that he provided financial support to Bashir. The applicant argued that the authorities had failed to take those specific factual circumstances sufficiently into account and had thus failed to fulfil their positive obligations under Article 8. The fact that Bashir had remained in Uganda by himself had not been the result of a choice made by Bashir, but rather a decision forced on Bashir because of the fleeing of the applicant.

2. Third-party interveners

22. The Office of the United Nations High Commissioner for Refugees (UNHCR) expressed the view that the Dutch immigration authorities attached too much weight to the requirement that ties be so strong that family members were not able to function independently, whereas the existence of "more than the normal emotional ties" was a factual question and depended on the actual existence of close personal ties. Referring to Conclusion No. 24 of the UNHCR's Executive Committee and the 2017 Summary Conclusions on the Right to Family Life, the UNHCR promoted an inclusive, pragmatic and flexible approach to asylum-related family reunification in general and to the concept of dependence in particular, with due regard to the fact that for refugees, family separation was often not a deliberate choice. The UNHCR noted that the Council of Europe Commissioner for Human Rights had also recommended such an inclusive interpretation of dependency and that it followed from European Union law, as interpreted by the Court of Justice of the European Union, that States must examine applications for asylum related family reunification on a case-by-case basis and take into account, in a balanced and reasonable manner, all the relevant aspects of the personal situation of the family members.

23. The Hungarian Helsinki Committee (HHC) pointed to the positive obligation for States to take steps to ensure the unity of the family of the refugee, as prescribed in many international legal instruments and the case-law of the Court. It further observed that the concept of dependence in family reunification proceedings varied widely between European Union member States and submitted that dependence must be assessed in a comprehensive manner with due regard to all circumstances, especially in the case of refugees. In the view of the HHC, applicants should not be required to show exclusive dependence, as this would make reunification excessively difficult.

3. The Court's assessment

(a) General principles

24. The case-law on assessing the existence of family life between adults has been summarised in *Martinez Alvarado v. the Netherlands*, (no. 4470/21, §§ 35-45, 10 December 2024). The Court reiterates 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 *Martinez Alvarado*, cited above, § 36 and further caselaw references mentioned therein). This interpretation originates from the context of family reunification 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 *Martinez Alvarado*, cited above, § 37 and further caselaw references mentioned therein).

25. 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. Such dependency may arise where adults have a physical or mental disability or illness of sufficient seriousness and are in need of constant care and support from other family members (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).

26. The Court's case-law further reveals that financial dependence or other case-specific circumstances such as, for instance, the fact that the person with whom ties were claimed was the only surviving relation or 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 be of relevance in this assessment (see *Martinez Alvarado*, cited above, §§ 41-43). Financial dependency on its own has never been considered sufficient to constitute additional ties of dependency, and

accordingly family life between adult family members (ibid., § 42). A finding of the existence of "family life" based on "additional elements of dependency" will often be the result of a combination of elements.

27. The assessment of whether "additional elements of dependence, 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 (ibid. § 44).

28. Finally, the Court will assess the question whether a relationship between adult family members constitutes "family life" within the meaning of Article 8 on the basis of the facts occurring prior to the date that the decision regarding the request for family reunification became final (ibid. § 45).

(b) Application of these principles to the present case

29. The Court notes at the outset that the authorities' rejection of the applicant's request for asylum-related family reunification with Bashir became final in 2015 and that the applicant did not lodge an application to the Court at that time (see paragraph 5 above). Due to time limits set by Article 35(1) of the Convention for lodging such an application, the issues at stake in those proceedings can no longer be considered by the Court.

30. The Court further notes that the applicant's application lodged to the Court on 10 December 2019 relates to a moment in time when Bashir had reached the age of majority. He was 23 years old when the request for a provisional residence permit was submitted (see paragraph 6, above) and 25 years old at the time the refusal had become final (see paragraph 17 above).Therefore, in the light of the Court's case-law (see paragraphs 24-28 above), it must establish whether it has been demonstrated that the relationship between the applicant and Bashir amounted to "family life" within the autonomous meaning Article 8 of the Convention and thus falls within the scope of that provision.

31. The Court takes note of the applicant's and Bashir's shared past and the fact that they regarded their relationship more as one of father and son than that of brothers. However, from the perspective of the established case-law of the Court, this makes no difference, since there will be no family life in the sense of Article 8 of the Convention between parents and adult children or adult siblings unless they can demonstrate "additional elements of dependence, involving more than the normal emotional ties" (see paragraph 24 above).

32. The Court notes that, in addition to an explanation of their shared past, Bashir's dependence was invoked on health and on financial grounds. It follows from the medical statements issued in 2016 and 2017 - submitted in the domestic proceedings - that Bashir was lonely and depressed as a result of his separation from the applicant and the rest of his family. While the Court accepts that the circumstances in which Bashir found himself in those years

caused an impact on his mental well-being, there is no evidence before it which suggests that his condition was so severe that he was dependent on others. Further, he received medical care in Uganda and there are no indications in the casefile that this treatment had been inadequate or that his medical situation had deteriorated after 2017. The Court concludes that it has not been demonstrated that Bashir's health problems were sufficiently serious to prove Bashir's dependency on the applicant or anyone else. As for the emotional and moral support, which the applicant indicated he had given to Bashir through phone calls after the departure of the applicant's children, the Court does not consider that to be unusual in a relationship between close adult family members. The Court observes that the casefile does not contain any information originating from Bashir himself. In addition, there are no indications in the casefile that Bashir, who lived with housemates, is deprived of any social contacts or is unable to take care of himself.

33. In respect of financial support, the Court observes that the applicant has submitted proof of five money transfers to Bashir in 2016 and 2017 (see paragraphs 9, 11 and 13 above). Apart from the fact that those money transfers are insufficient to establish that Bashir is financially dependent on the applicant (compare *Kumari v. the Netherlands* (dec.), no. 44051/20, § 52, 19 November 2024), such dependence on its own has never been considered to constitute additional ties of dependency (see paragraph 26 above).

34. Based on the foregoing specific facts and circumstances of the case, the Court concludes that "additional elements of dependency, involving more than normal emotional ties" between Bashir and the applicant, have not been shown to exist. In view of this, the Court finds that their relationship did not constitute "family life" within the meaning of Article 8 of the Convention.

35. The applicant's complaint is therefore inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 April 2026.

Hasan Bakırcı
Registrar

Lado Chanturia
President