CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 5607/05
by Faina RAGIMOVA and Others
against Sweden

The European Court of Human Rights (Second Section), sitting on 23 May 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 14 February 2005,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Chalysa Ragimova, Ms Faina Ragimova and Mrs Farida Nilsson, are sisters and Azerbaijani nationals, born in 1950, 1952 and

1954, respectively, and live in Sundsvall. They were represented before the Court by Ms N. Lindgren, a lawyer practising in Stockholm.

The respondent Government were represented by their Agent, Mr C.H. Ehrenkrona of the Ministry for Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 7 August 2002 the applicants, the second and third of whom were accompanied by their respective children, arrived in Sweden from Azerbaijan. They all applied to the Migration Board (*Migrationsverket*) for asylum and residence permits. They claimed that they had been persecuted in their home country, due to their Armenian ethnicity, and the first applicant, in addition, that she was suffering from the last stages of a fatal illness called ALS, *amyotrophic lateral sclerosis*, which, *inter alia*, gradually paralysed her respiratory organs.

On 19 May 2003 the Migration Board granted the first applicant a residence permit on humanitarian grounds. The second and third applicants invoked that it would be inhuman to deport them, thereby depriving them of the possibility to care for their dying sister.

On 4 October 2003 the Migration Board rejected the application. It found no grounds on which to grant the applicants asylum, holding that there was no State supported persecution in Azerbaijan, and that the actions about which the applicants were complaining had been carried out by private individuals. As regards the relationship between the first applicant and her sisters, the Board held, *inter alia*, that since the first applicant had not been dependent on the second and third applicants already in Azerbaijan, but the dependency had arisen in Sweden, there was no ground to grant them asylum on humanitarian grounds.

The applicants appealed to the Aliens Appeals Board (*Utlänningsnämnden*), maintaining their claims and adding that the second and third applicants had been supporting the first applicant already in Azerbaijan.

On 29 December 2004 the Aliens Appeals Board rejected the appeal, confirming the conclusions of the Migration Board.

On 10 and 12 February 2005 the applicants applied for a temporary stay of the enforcement of the decision to deport the second and third applicants. Both applications were rejected.

On 14 February 2005 the enforcement of the deportation decision was commenced but then interrupted.

On 14 February 2005 the applicants requested the Court to indicate to the Swedish Government under Rule 39 of the Rules of Court to suspend the deportation of the second and third applicants to Azerbaijan.

On the same day the President of the Section to which the case had been assigned applied Rule 39 and indicated to the Government not to deport the applicants until 15 May 2005.

On the same day the Migration Board, following the Court's request, decided to stay the deportation of the applicants until 15 May 2005.

On 14 April 2005, on humanitarian grounds, the Aliens Appeals Board granted the second and third applicants time-limited residence permits in Sweden, valid until 31 October 2005.

On 5 January 2006 the Court adjourned the case at the request of the Government following the enactment of an interim amendment to the Swedish Aliens Act, on the basis of which the applicants' case would be tried anew.

On 10 February 2006 the Government informed the Court that, on 22 January 2006, the Aliens Appeals Board had granted the applicants permanent residence permits in Sweden on humanitarian grounds in view of their sister's illness, and it had repealed the deportation orders.

COMPLAINTS

The applicants complained that the decision to deport them to Azerbaijan deprived them of the possibility to be together during the last stages of the first applicant's illness and would expose them, upon return to Azerbaijan, to persecution and, consequently, to a risk of ill-treatment treatment in violation of Article 3 of the Convention.

THE LAW

The applicants first complained that they faced a risk of being persecuted upon return to Azerbaijan and that separating the first applicant from the second and third ones, thereby depriving them of the possibility of being together during the last phase of the first applicant's illness, would amount to a violation of the Article 3 of the Convention.

The Swedish Government submitted that since the applicants had now been granted permanent residence permits in Sweden and the deportation order repealed, the matter had been resolved. Thus, they invited the Court to strike the case out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

The applicants claimed that, irrespective of the decision to grant them permanent residence permits, by exposing the applicants to serious anguish caused by the threat of being deported and separated, and by the suspended enforcement, a violation of the Convention had still occurred. The first applicant also complained that by granting the second and third applicants a temporary residence permit until a specific date, 31 October 2005, the authorities had made an official estimate of her life expectancy, which was

inhuman and degrading. The applicants claimed pecuniary compensation under Article 41 of the Convention.

The Court notes that there has been no friendly settlement or agreed arrangement in the present case. The grant of the permanent residence permits and the repeal of the deportation orders were measures which the Aliens Appeals Board had taken on 22 January 2006 under the interim amendment to the Swedish Aliens Act, having regard to the first applicant's health.

However, the Court considers that the circumstances lead to the conclusion that the matter has indeed been resolved. The applicants' initial complaint to the Court was essentially that their deportation to Azerbaijan and their separation would cause them harm, contrary to Article 3 of the Convention. That threat of a potential violation has however been removed by virtue of the decision of 22 January 2006 to grant the second and third applicants permanent residence permits in Sweden (see, *Paez v. Sweden*, judgment of 30 October 1997, Reports of Judgments and Decisions 1997-VII, p . 2445, § 29) . Thus, the Court is of the opinion that it is no longer justified to continue the examination of the application. Moreover, in accordance with Article 37 § 1 in fine, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the application.

In these circumstances, the Court also finds that there is no ground for examining the claim under Article 41 of the Convention. Accordingly, the case should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of the list of cases.

S. DOLLÉ
Registrar

J.-P. COSTA
President