



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

FIFTH SECTION

DECISION

Application no. 57633/10  
Azem IMAMOVIC and Sevleta IMAMOVIC  
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 13 November 2012 as a Chamber composed of:

Mark Villiger, *President*,

Boštjan M. Zupančič,

Ann Power-Forde,

Angelika Nußberger,

André Potocki,

Paul Lemmens,

Helena Jäderblom, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 30 September 2010,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Azem Imamovic (the first applicant) and Ms Sevleta Imamovic (the second applicant), are nationals of Bosnia and Herzegovina who were born in 1958 and 1959, respectively, and are

currently in Sweden. They were represented before the Court by Mr M. Ekelöf, a lawyer practising in Växjö.

The Swedish Government (“the Government”) were represented by their Agent, Ms I. Kalmerborn, of the Ministry for Foreign Affairs.

### **A. The circumstances of the case**

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

#### *1. First asylum proceedings*

The applicants arrived in Sweden for the first time in 2001 together with their two daughters, born in 1980 and 1984, respectively. They applied for asylum and submitted that they should be granted residence permits on humanitarian grounds. They claimed that they had fled from the war to Germany in September 1993. In 1998 they had returned and had been subjected to harassment by other villagers who had considered them traitors for fleeing. In addition, they claimed that the first applicant, who had run a small shop, had been harassed by the health department and other authorities.

On 26 November 2001 the Migration Board (*Migrationsverket*) rejected the application and held that the alleged harassment did not constitute grounds for asylum. The Board also noted that the applicants had failed to seek assistance from the domestic authorities before leaving Bosnia and Herzegovina.

The applicants appealed to the Aliens Appeals Board (*Utlänningsnämnden*) which, on 23 October 2002, upheld the Migration Board’s decision in full.

During 2002 and 2003, the applicants repeatedly applied to the Migration Board for re-examination of their case due to the continuous deterioration of their physical and mental health. All these motions were rejected both by the Migration Board and the Aliens Appeals Board.

At some point during 2003 the applicants left Sweden and travelled to Finland and Norway to apply for asylum. However, they were transferred back in accordance with the Dublin Regulation.

In December 2003 the applicants again applied for asylum. On 22 October 2004 the Migration Board rejected the application. The Aliens Appeals Board upheld the decision on 17 February 2005.

On 4 October 2006 the applicants turned again to the Migration Board and applied for a re-examination of their case. They added that their family had spent almost five years in Sweden and that their oldest daughter and her children had been granted residence permits. They also referred to their deteriorating health, in particular the first applicant’s poor mental health and his suicidal tendencies.

On 13 October 2006 the Migration Board decided to stay the enforcement of the deportation order until further notice. However, on 5 February 2007, the Board rejected the application and decided that the enforcement of the deportation order should proceed.

Upon appeal, the Migration Court (*Migrationsdomstolen*) upheld the decision and, on 11 May 2007, the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal.

The applicants were registered as missing on 21 August 2007 and the deportation order became time-barred on 17 February 2009.

## 2. *Second asylum proceedings*

On 19 March 2009 the applicants applied for asylum again. They maintained their earlier story and added the following. The first applicant suffered from severe mental illness and had received voluntary psychiatric care. He had also been considered for mandatory psychiatric care in a closed ward. Furthermore, he suffered from a severe heart condition. He submitted eight medical certificates issued between 2006 and 2009 from four different psychiatric clinics.

According to a certificate issued on 2 October 2009 by S.P., a psychologist at the Psychiatric Clinic in Mullsjö/Habo, the insulting treatment to which the first applicant and his family had been subjected in Bosnia and Herzegovina had caused him trauma and long lasting psychological harm. Due to this he suffered from memory loss, difficulties with sleeping and concentrating, moments of absence, anxiety attacks and a deep sense of depression. He had also developed hallucinations urging him to commit suicide. At one point he had tried to jump off a building, but had been stopped by a family member. He expressed fears of being left alone and not being able to resist the urge to commit suicide. This state was most probably aggravated by the uncertainty of his situation, not knowing whether he would be allowed to stay in Sweden or not. His physical health had also been affected by his mental illness and there were reasons to believe that this had been a factor causing him to suffer a heart attack in 2008.

According to another medical certificate, issued on 8 October 2010 by I.P., senior physician and specialist in general medicine and general psychiatry at Ryhov hospital in Jönköping, the first applicant had tried to commit suicide on several occasions and could therefore never be left on his own. He suffered panic attacks, mostly at night, and therefore had trouble sleeping. In connection with the attacks, he had trouble communicating properly, even with his closest family. Heavy medication had not helped and his prognosis was considered negative.

The second applicant suffered from diabetes and a skin disease. She submitted a medical certificate to this effect issued on 2 April 2009.

On 10 December 2009 the Migration Board rejected the application. It observed that the applicants had not submitted any new information regarding their need for protection and thus there was no need for it to make a new evaluation. It further considered that the medical certificates regarding the first applicant did not clearly indicate his mental state or what kind of care he needed. The certificates only showed that he suffered from mental illness, but not that it was life threatening. Furthermore, the Board noted that country information showed that health care was available in Bosnia and Herzegovina. The applicants' health problems were therefore not sufficient grounds to grant them asylum. Lastly, the Board noted that one of the applicants' daughters had been granted a permanent residence permit in Sweden in 2004. However, it stressed that the general rule was that an application for residence permit on the grounds of family relations should be submitted before entering Sweden. The Board held that no exception to this rule was applicable in the present case. It was not unreasonable to expect the applicants to file such an application from Bosnia and Herzegovina.

The applicants appealed against the decision and requested the Migration Court to hold an oral hearing where they could submit oral evidence as to their deteriorating health.

On 9 March 2010 the Migration Court rejected the motion for an oral hearing and requested the applicants to submit further written observations.

The applicants claimed that the Migration Board had not duly considered the fact that there was an imminent risk that the first applicant would commit suicide and that he was highly dependent on his older daughter for his mental well-being. They also added that the second applicant did not have the means or the ability to care of her husband alone if they were to return to Bosnia and Herzegovina.

On 30 August 2010 the Migration Court, by a majority, upheld the Board's decision. It noted that the applicants' allegations of persecution had been assessed by the domestic authorities in Sweden on several occasions since they had first applied for asylum in 2001. Moreover, no new information had been submitted and therefore there was no reason to depart from the earlier assessments. Regarding the first applicant's health, the court found that his mental and physical state was not severe enough to constitute a sufficient ground for asylum. The court observed that his mental illness seemed to have developed only after arriving in Sweden and also seemed to be connected to the pressure of going through the asylum proceedings. His state had not improved although he had received medication. In conclusion the court held that his illness was not life threatening and hence not serious enough to allow him to stay. Furthermore, it shared the Migration Board's assessment that the applicants could reasonably be expected to apply for residence permits from their home country.

The presiding judge gave a dissenting opinion and considered that the first applicant's severe mental illness and his connection to his older daughter, who had a residence permit in Sweden, constituted sufficient grounds for allowing him and his wife to stay. The presiding judge also pointed out that several attempts to enforce the applicants' deportation had failed, *inter alia*, due to the first applicant's state of health and, consequently, nothing indicated that future enforcement attempts would be more successful.

The applicants appealed to the Migration Court of Appeal. They submitted a new medical certificate issued on 15 September 2010 by S.P., in which the progression of the first applicant's illness, his current state and acute suicidal tendencies were described in detail.

The Migration Court of Appeal refused leave to appeal on 24 September 2010.

In the meantime, on 19 June 2010, the Migration Board granted the applicants' younger daughter, her husband and their two children residence permits in Sweden.

### *3. Request for application of Rule 39 of the Rules of Court and further information*

On 1 October 2010 the applicants requested the Court to apply Rule 39 of the Rules of Court in order to stop their deportation to Bosnia and Herzegovina.

On 28 October 2010 the President of the Section to which the case had been allocated granted the applicants' request for interim measures until further notice. On the same day, the Migration Board, with reference to the Court's decision, stayed the enforcement of the applicants' deportation order until further notice.

Subsequently, the applicants again applied for a re-examination of their case before the Migration Board, first on 8 February 2011 and then on 13 April 2011. However, both motions were rejected.

Before the Court, the applicants submitted several medical certificates, issued between October 2010 and August 2011 by two different doctors, regarding the applicants' state of health.

As regards the first applicant, the certificates stated, *inter alia*, that he was suffering from post-traumatic stress disorder and that the practical enforcement of the deportation order could endanger his life since mental pressure would strongly increase the risk of an immediate heart attack. According to a medical certificate issued in June 2011, his health had further deteriorated. It also stated that the first applicant had not had any contact with psychiatric clinics before he came to Sweden.

As regards the second applicant's state of health, a certificate issued on 7 March 2011 was submitted. It stated that she suffered from diabetes and

anxiety related to the deportation, which had caused her trouble sleeping and feelings of depression.

## **B. Relevant domestic law and practice**

The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716). It defines the conditions under which an alien can be deported or expelled from the country, as well as the procedures relating to the enforcement of such decisions.

Chapter 5, Section 1, of the Aliens Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, Section 1, of the 2005 Act, the term “refugee” refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By “an alien otherwise in need of protection” is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2, of the Aliens Act).

Moreover, if a residence permit cannot be granted on the above grounds, a permit may nevertheless be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) as to allow him or her to remain in Sweden (Chapter 5, section 6 of the Aliens Act). During this assessment, special consideration should be given to, *inter alia*, the alien’s state of health. In the preparatory works to this provision (Government Bill 2004/05:170, pp. 190-191), life-threatening physical or mental illness for which no treatment can be given in the alien’s home country could constitute a reason for granting a residence permit.

According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, Section 1, of the Aliens Act). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, Section 2, of the Aliens Act).

Under Chapter 5, Section 3 a, first paragraph, point 2 of the Aliens Act a residence permit may be given to an alien who is a close relative of someone who is resident in or who has been granted a residence permit to settle in Sweden, if he or she has been a member of the same household as that person and there exists a special relationship of dependence between the relatives that already existed in the country of origin.

By virtue of Chapter 5, Section 18, of the Act, an alien who wants a residence permit in Sweden on account of family ties or serious relationships must have applied for and been granted such a permit before entering the country. An application for a residence permit may not, as a general rule, be approved after entry. However, exemptions from this rule can be made for example if the alien has strong ties to a person who is resident in Sweden and it cannot reasonably be required that he or she travel to another country to submit an application there (Chapter 5, Section 18, second paragraph, point 5). As regards this exemption, the preparatory works to the provision (Government Bill 1999/2000:43, p. 55 et seq.) state that the main emphasis should be placed on the question of whether it is reasonable to require that the alien return to another country in order to submit an application there. Relevant elements, which may be favourable for the alien, may be whether he or she can be expected, after returning home, to encounter difficulties in obtaining a passport or exit permit and this is due to some form of harassment on the part of the authorities in the country of origin. It may also be whether the alien will be required to complete a long period of national service or service under unusually severe conditions. It may also be relevant whether the alien has to return to a country where there is no Swedish foreign representation and where major practical difficulties and considerable costs are associated with travelling to a neighbouring country to submit the application there. Relevant elements, which may count against the alien, may be that he or she is staying in the country illegally, that their identity is unclear or if there are strong ties to the country of origin. An exemption may also be made if there are some other exceptional grounds (Chapter 5, Section 18, second paragraph, point 6).

The requirement that, in principle, residence permits for family members have to be granted before entry into Sweden was introduced as one of a number of measures aimed at reducing the possibilities of obtaining a residence permit by means of marriages or relationships of convenience. Subsequently, the Swedish Government and Parliament have underlined on several occasions that the requirement that residence permits be obtained before entry into Sweden is an important part of measures to maintain regulated immigration. Moreover, the preparatory works to the Aliens Act state that it is important that aliens staying in Sweden illegally do not enjoy a better position than those who comply with decisions by the authorities to return to their country of origin in order to apply for a permit from there (Government Bill 1999/2000:43).

### **C. Health care in Bosnia and Herzegovina**

The Country of Origin Information Centre (Landinfo), an independent human rights research body set up to provide the Norwegian immigration authorities with relevant information has, in a note concerning health care in Bosnia and Herzegovina, dated 22 November 2010, observed that extensive reforms have been made in the health care sector. Among other things, centres for psychiatric health care have been built, offering specialist treatment for patients suffering from mental ill-health. Persons suffering from mental health problems can seek help either at the nearest centre for psychiatric health, or at the social services. Persons with serious mental health problems are referred to hospital or to a psychiatric ward at a central hospital. As for heart disease, most problems can be treated in the country and medication for unstable heart disease is available there.

According to the European Commission's *Bosnia and Herzegovina 2010 progress report*, published on 9 November 2010, there has been some progress in the area of mental health. The South-Eastern Europe Health Network accepted the application of the Bosnia and Herzegovina Ministry for Civil Affairs to set up the regional centre for cooperation and development in the area of mental health for South-Eastern Europe. The regional centre was operational. Both Entities adopted mental health strategies and new mental health centres were opened. However, establishment of community-based services, provision of aid to dependent persons and mental health care for children and young people needed further attention.

According to the European Commission's *Bosnia and Herzegovina 2011 progress report*, published on 12 October 2011, progress was reported in the area of mental health. The country amended the Law on Protection of Persons with Mental Disorders, improving the protection of human rights and dignity of persons with mental disorders as well as the legal protection of legally incapacitated adults. The Regional Health Development Centre for Mental Health in South- Eastern Europe in Sarajevo became operational. However, further actions remained to be taken towards promoting inclusion of people with mental health problems and their empowerment. Community-based mental health services of high quality that focused on recovery needed further support.

## **COMPLAINTS**

The applicants complained that the implementation of the Swedish authorities' decision to deport them to Bosnia and Herzegovina would violate Articles 2, 3 and 8 of the Convention, having regard to their poor



health and the separation of the applicants from their daughters and grandchildren.

The applicants also complained under Article 6 of the Convention as well as Article 1 of Protocol No. 7 to the Convention about the asylum proceedings.

## THE LAW

1. The applicants complained that the enforcement of the deportation order would put the first applicant's life at risk due to his poor health. They also complained that there was a real risk of suicidal acts by both of the applicants if they were to be deported. They invoked Articles 2 and 3 of the Convention which in relevant parts read as follows:

### Article 2

"1. Everyone's right to life shall be protected by law. ..."

### Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submitted that this complaint should be declared inadmissible as being manifestly ill-founded. They held that the health of the first applicant was not such as to reveal a violation of Article 3 of the Convention if the applicants were to be returned to Bosnia and Herzegovina. They noted that the applicants had not claimed before the Court that the first applicant would have limited access to available health care in Bosnia and Herzegovina. Moreover, they pointed out that both the Migration Board and the Migration Court had concluded that appropriate treatment was available in Bosnia and Herzegovina. The Government also stressed that one of the main considerations in planning and executing the enforcement of deportation orders in cases where the rejected asylum seeker suffered from ill-health was to see to it that the condition of the individual in question would not deteriorate as a consequence of the enforcement of the deportation order. The Government further claimed that this implied, *inter alia*, that no enforcement of an expulsion order would occur unless the authority responsible for the enforcement of the order considered that the medical condition of the individual so permitted. They stated that, on 20 October 2010, the Migration Board had held a follow-up meeting with the second applicant and the younger daughter where the officer had informed them that for the deportation order to be executed, a medical certificate was necessary to ensure that the first applicant was fit to travel. During the meeting, the second applicant and the daughter had stated that

they would be able to take care of the first applicant on the plane themselves. The officer had also stated that contact would be made with the doctors who had been treating the applicants in order to obtain an overall assessment.

The applicants maintained that due to their poor health, implementation of the deportation order to Bosnia and Herzegovina would be in breach of Articles 2 and 3 of the Convention.

The Court reiterates that the Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, *inter alia*, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94; and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008).

The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005).

Moreover, aliens who are subject to expulsion cannot, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that an applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling (see, *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008).

Turning to the present case, the Court finds that the applicants' complaints under Articles 2 and 3 of the Convention are indissociable and it will therefore examine them together.

The Court first notes that the applicants applied for asylum, and re-examination of their case, before the domestic authorities on several occasions and that their claims were carefully examined by the domestic authorities. There are no indications that these proceedings lacked effective guarantees to protect the applicants against arbitrary *refoulement* or were otherwise flawed. The Court will therefore continue by examining whether the information presented before this Court would lead it to depart from the domestic authorities' conclusions.

As concerns the second applicant, the Court notes that she has submitted medical certificates stating that she suffers from diabetes and a skin disease. The certificates further reveal that her mental health is affected by the asylum process. Having regard to the Court's case-law and the high threshold set by Article 3, it is evident that neither the physical nor the mental health problems of the second applicant are of such a serious nature as to raise an issue under Article 3 of the Convention.

Turning to the first applicant, the Court notes that he is suffering from rather severe mental and physical health problems, including threats to commit suicide. It observes that some of the doctors and psychiatrists with whom he has been in contact have diagnosed him as suffering from, *inter alia*, depression and panic attacks. They also seem to agree that his state of health is to some extent connected to his uncertain situation and his fear of being deported. Moreover, some other medical certificates submitted to the domestic authorities, as well as to the Court, state that enforcement of the deportation order would put him at risk of suffering a heart attack. However, there are no elements indicating that Sweden will enforce the deportation order if the applicant's overall state of health is considered too serious to travel to his home country. This finding is supported by the enforcement procedure in Sweden, according to which implementation of a deportation order will occur only if the authority responsible for the deportation considers that the medical condition of the alien so permits and according to which the responsible authority will ensure that appropriate measures are taken with regard to the alien's particular needs (see, for example, *Karim v. Sweden*, cited above, and *Ayegh v. Sweden*, (dec.), no. 4701/05, 7 November 2005). The Court also observes that the applicants have not opposed the Government's account of the follow-up meeting held on 20 October 2010. Thus, the Migration Board's handling of the case further indicates that the deportation order will be executed only if the medical condition of the first applicant so permits. Moreover, the Court considers that the second applicant's health problems do not appear to be of such a serious nature as to render her unable to assist the first applicant if the deportation order were to be executed.

In so far as concerns the risk of the first applicant trying to commit suicide, the Court reiterates that the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see, for example, *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004 and *Karim v. Sweden* (dec.), no. 24171/05, 4 July 2006). The Court has reached the same conclusion also regarding applicants who had a record of previous suicide attempts (see *Goncharova and Alekseytsev v. Sweden* (dec), no 31246/06, 3 May 2007 and *A.A. v. Sweden* (dec.), no. 8594/04, § 71, 2 September 2008; and, *mutatis mutandis*, *Ovdienko v. Finland*, (dec.), no. 1383/04, 31 May 2005). Thus, the fact that the first applicant has expressed thoughts of committing suicide cannot be decisive for the Court's assessment.

The Court further notes that the applicants have not claimed that they would be refused health care in Bosnia and Herzegovina. In this connection, the Court observes that the information available suggests that health care, including psychiatric health care, is accessible in Bosnia and Herzegovina, albeit not of the same standard as in Sweden. As noted above, the fact that the applicants' circumstances in Bosnia and Herzegovina may be less favourable than those they enjoyed in Sweden cannot be regarded as decisive from the point of view of Article 3 of the Convention.

Thus, having regard to all of the above and to the high threshold set by Article 3 of the Convention, particularly where the case does not concern the direct responsibility of the Contracting State for the possible harm, the Court does not find that it would be contrary to this provision, nor to Article 2, if the applicants were to be deported to Bosnia and Herzegovina. In the Court's view, the present case does not disclose the very exceptional circumstances established by its case-law (see *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, 20 December 2011).

Consequently, this part of the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The applicants also complained that, since their daughters had been granted permanent residence permits in Sweden, implementation of the deportation order would violate their right to family life under Article 8 of the Convention. This provision 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.”

The Government submitted that this complaint should be declared inadmissible as being manifestly ill-founded. They noted that even though one of the applicants' daughters was a minor at the time of the family's arrival in Sweden in 2001, both daughters were now adults and had their own families in Sweden. Furthermore, they highlighted that the applicants had been obliged to leave Sweden together with their daughters already in 2002 and then again in 2005. The Government also pointed out that both the Migration Board and the Migration Court had found that it was not unreasonable to require that the applicants return to their home country to apply for residence permits from there on the basis of their family ties with their daughters. They further stressed that the present case did not relate to settled immigrants but to individuals seeking asylum. Thus, the applicants were aware that they ran a risk of having their asylum application rejected and of being expelled together or separately. In the Government's opinion, it could therefore be argued that the separation, which *de facto* would occur if the applicants were returned to Bosnia and Herzegovina, should not be considered an interference with their family life within the meaning of the Convention.

However, if the Court were to find that there had been an interference with the applicants' right to respect for their family life, the Government argued that it was evident that the deportation order against them was in accordance with the law and served a legitimate aim. They also claimed that the enforcement of the deportation order was necessary in a democratic society. The Government noted in this connection that the applicants would be able to have contact with their daughters and visit each other. They noted that, as of 15 December 2010, nationals of Bosnia and Herzegovina do not need a visa to visit Sweden.

The applicants maintained that enforcement of the deportation order would be in breach of Article 8 of the Convention since they would be separated from their daughters and grandchildren.

The Court reiterates that Article 8 of the Convention does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (see *Gül v. Switzerland*, judgment of 19 February 1996, Reports 1996-I, pp. 174-75, § 38, and *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 39, ECHR 2006-I). Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law)

or considerations of public order weighing in favour of exclusion (see *Rodrigues da Silva and Hoogkamer*, cited above; *Ajayi and Others v. the United Kingdom* (dec.), no. 27663/95, 22 June 1999; and *Solomon v. the Netherlands* (dec.), no. 44328/98, 5 September 2000).

The first question in the present case is whether, in view of the circumstances, the applicants still had a family life in Sweden within the meaning of Article 8 of the Convention after the applicants' daughters had reached the age of majority.

The Court notes that the applicants lived together as a family until their daughters left home and founded their own families. Even since this time, the applicants have shared a home with the daughters in turn. The Court also notes that the applicants appear somewhat dependent on their daughters due mainly to the first applicant's unstable health. In these circumstances the Court considers that the applicants' situation amounted to family life within the meaning of Article 8 § 1 of the Convention, even after the applicants' children had reached the age of majority. It further finds that the impugned decision to remove the applicants from Sweden interfered with their right to family life.

As to the next question, whether the interference was justified under Article 8 § 2 of the Convention, the Court is satisfied that it had a legal basis in national law and that it pursued the legitimate aims of preventing "disorder" and protecting the "economic well-being of the country".

In considering whether the impugned decision was "necessary in a democratic society", the Court notes that, although the applicants have a family life in Sweden, their daughters have reached the age of majority and have their own families. Thus an enforcement of the deportation order would not rupture the applicants' core family life. Moreover, while recognising that the applicants are somewhat dependent on their daughters due mainly to the first applicant's poor health, the Court reiterates its finding above, that the second applicant's health problems do not appear to be of such a serious nature as to render her unable to assist the first applicant. Furthermore, health care is available in their home country. The Court also notes that the applicants are being deported to Bosnia and Herzegovina, a country which the applicants' daughters and grandchildren will be able to visit. In a long term perspective, there do not seem to be any obstacles for the applicants to visit their daughters and grandchildren in Sweden since there is no longer a visa requirement. Therefore, there are no insurmountable obstacles for the applicants and their daughters to maintain a close relationship even if the applicants are deported to Bosnia and Herzegovina.

Furthermore, whilst recognising that the applicants have been in Sweden more or less constantly since 2001, the Court observes that they were obliged to leave the country already in 2002, then in 2005, and then again in 2010. Thus, they have remained in Sweden for several years despite valid

deportation orders against them. Having regard to this, the fact that the applicants have spent a long period in Sweden cannot be decisive for the Court's assessment.

Lastly, the Court notes that the applicants can apply for family reunification from Bosnia and Herzegovina.

Having regard to all of the above, and taking into account the margin of appreciation afforded to States under Article 8 § 2 of the Convention, the Court considers that the Swedish authorities did not fail to strike a fair balance between the personal interests of the applicants as regards their family life on the one hand and to ensure an effective implementation of immigration control and hence to preserve the economic well-being of Sweden on the other.

Accordingly, this complaint is also manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. Turning to the applicants' complaint under Article 6 of the Convention, the Court notes that this provision does not apply to asylum proceedings as they do not concern the determination of either civil rights and obligations or of any criminal charge (*Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. As regards the applicants' complaint under Article 1 of Protocol No. 7 to the Convention, this provision only applies to "aliens lawfully resident in the territory of a State" and, in the present case, the applicants have not been granted residence permits in Sweden and thus are not lawfully residing in Sweden. Consequently, this provision is not applicable in the instant case and the complaint must therefore be rejected for being incompatible *ratione materiae* in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

5. Under these circumstances, the interim measure applied under Rule 39 of the Rules of Court comes to an end.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Claudia Westerdiek  
Registrar

Mark Villiger  
President