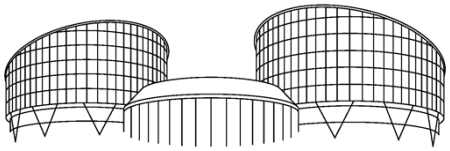

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF B.F. AND OTHERS v. SWITZERLAND

(Applications nos. 13258/18 and 3 others)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal of family reunification requests, for not fulfilling financial independence condition, of provisionally admitted refugees fearing persecution because of their illegal exit from their countries of origin • Member States having a certain margin of appreciation in requiring non-reliance on social assistance before granting family reunification to such refugees • Margin considerably narrower than that for introducing waiting periods for family reunification requested by persons without refugee status, but rather subsidiary or temporary protection status • International and European consensus for not distinguishing between different 1951 Convention refugees as regards family reunification requirements and for refugees to benefit from a more favourable reunification procedure than other aliens, reduces margin of appreciation • Particularly vulnerable situation of refugees *sur place* to be adequately considered when applying a requirement to their family reunification request • Insurmountable obstacles to enjoying family life in the country of origin progressively assuming greater importance in the fair-balance assessment as time passed • Need to apply requirement of non-reliance on social assistance with sufficient flexibility • Refugees not to be required to "do the impossible" to be granted family reunification • Fair balance between competing interests struck in one application but not in three
Art 8 • No breach on account of the duration of the family reunification proceedings in one application

STRASBOURG

4 July 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of B.F. and Others v. Switzerland,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 13258/18, 15500/18, 57303/18 and 9078/20) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Eritrean nationals and one Chinese national, listed in the appended table ("the applicants"), on the dates indicated in that table;

the decision to give notice to the Swiss Government ("the Government") of the applications;

the parties' observations;

the comments submitted by the Governments of Germany and of Norway as well as by the Office of the United Nations High Commissioner for Refugees (UNHCR), who were granted leave to intervene by the President of the Section, and the comments in reply by the respondent Government and by the applicants;

the decision not to have the applicants' names disclosed;

Having deliberated in private on 13 June 2023,

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

INTRODUCTION

1. The applications concern the refusal of requests for family reunification. The applicants residing in Switzerland were all recognised as refugees within the meaning of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention") and granted provisional admission rather than asylum, in line with the relevant Swiss legislation, since the grounds for their having refugee status were deemed to have arisen following their departure from their countries of origin and as a result of their own actions. Under domestic law, they therefore did not have a legal entitlement to family reunification in Switzerland, but family reunification was discretionary and subject to certain cumulative conditions being met. Their applications for family reunification were rejected, firstly, because one of these cumulative criteria, namely non-reliance on social assistance, was not satisfied, and, secondly, because the refusals were deemed not to breach Article 8 of the

Convention. All applicants invoked Article 8 of the Convention; some of the applicants also invoked Article 14 of the Convention in conjunction with Article 8 of the Convention.

THE FACTS

2. The applicants' names, their years of birth, the dates on which they lodged their applications with the Court and the names of their representatives are set out in the appended table.

3. The Government were represented by their Agent, Mr A. Chablais, of the Federal Office of Justice, and by their Deputy Agent, Mr A. Scheidegger, of that same office.

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

I. BACKGROUND TO AND KEY ELEMENTS OF THE APPLICATIONS

5. Refugees who are granted asylum are entitled to bring their nuclear family members who hold the same nationality to Switzerland under section 51 of the Asylum Act, without a waiting period or other conditions. Prior to 1 January 2007, provisionally admitted refugees could rely on section 51 of the Asylum Act. Following legislative amendments, family reunification for provisionally admitted persons, including refugees, was made discretionary and subject to certain cumulative requirements, which were firstly set out in section 14c(3 bis) of the former Aliens Act of 1931 (from 1 January 2007 until that Act was repealed) and which since 1 January 2008 have been set out in section 85(7) of the current Aliens Act, which entered into force on that day. These requirements include a three-year waiting period and non-reliance on social assistance (see paragraphs 45 and 51 below).

6. The applicants in applications nos. 13258/18, 57303/18 and 9078/20 are Eritrean nationals, and the applicant in application 15500/18 is of Tibetan origin. After entering Switzerland at different points in time between 2008 and 2012, the first applicant in application no. 13258/18 and the applicants in applications nos. 15500/18, 57303/18 and 9078/20 applied for asylum. In all cases, the (then) Federal Migration Office found that the applicants qualified for refugee status within the meaning of the 1951 Convention on account of the ill-treatment they were at risk of experiencing in their countries of origin in the event of their return. However, as their claims of the persecution which they had allegedly faced in their countries of origin prior to their departure were not deemed to be credible and the risk of ill-treatment upon their return stemmed from their illegal exit from those countries, the grounds for their having refugee status had arisen following their departure from their countries of origin and as a result of their own actions ("subjective post-flight

grounds"). Therefore, in accordance with section 54 of the Asylum Act, they were not granted asylum under section 49 of the Asylum Act (see paragraph 44 below), but provisional admission under section 83(3) of the Aliens Act (see paragraph 45 below). All the applicants were heard in person by the Federal Migration Office, but none of them was assisted by a lawyer before that authority. The decisions on the asylum applications also stated that family reunification for provisionally admitted refugees, in relation to spouses and children under the age of 18 years, was governed by and subject to the conditions set out in section 85(7) of the Aliens Act, and that requests had to be filed with the competent cantonal authorities.

7. The applicant in application no. 13258/18 lodged an appeal against the decision on her asylum application, with a view to being granted asylum. The Federal Administrative Court declared the appeal inadmissible on the ground that the applicant had not paid court fees in the amount of 600 Swiss Francs (CHF) in advance. It did not examine the appeal in substance. The applicants in the other applications did not appeal against the decisions of the Federal Migration Office.

8. The applicants subsequently sought to bring members of their nuclear family to Switzerland for the purposes of family reunification. In applications nos. 13258/18, 57303/18 and 9078/20, the family members whose admission to Switzerland was sought were children, all of whom were minors at the time the family reunification proceedings were initiated. In the domestic proceedings it was either established or presumed by the authorities (applications nos. 13258/18 and 9078/20), or submitted by the applicant and not contested by the authorities (application no. 57303/18), that the children's other parent was missing or dead. In application no. 15500/18, the family members whose admission to Switzerland was sought were the applicant's long-standing wife and their two minor children.

9. In the proceedings leading to the present applications, the Federal Administrative Court found that the requirement of non-reliance on social assistance (section 85(7) lit. c of the Aliens Act) was not met.

The applicants in applications no. 13258/18 and 9078/20 were fully reliant on social assistance. It was established in the domestic proceedings that both of them suffered from health problems and that they were expected to remain reliant on social assistance. The applicant in application no. 13258/18 was found by the competent Swiss authorities to be 100% unfit to work after the conclusion of the domestic proceedings. During the domestic proceedings, the applicant in application no. 9078/20 was deemed to be able to work at least part-time.

The applicants in applications nos. 15500/18 and 57303/18 were gainfully employed in Switzerland. However, the domestic authorities established that it was not expected that they could become financially independent in the foreseeable future if their family members joined them in Switzerland. The applicant in application no. 15500/18 worked full-time as a nursing staff

member in a care home. The applicant in application no. 57303/18 was working part-time, on a 50% basis, and was caring for her three minor children alone.

10. In all cases, the Federal Administrative Court found that the applicants, as refugees whose provisional admission to the country was not likely to be revoked in the near future, had *de facto* settled status in Switzerland and could rely on Article 8 of the Convention (see paragraph 53 below), but concluded that the refusal of the requests for family reunification did not breach that provision. In all cases, the Federal Administrative Court, in its assessment under Article 8 of the Convention, considered that the applicants' claims that they had had to leave their countries of origin owing to persecution had been rejected as not credible in the asylum proceedings (see paragraph 6 above).

As the facts of the cases, the applicants' submissions and the court's reasoning varied to a certain extent, the respective domestic proceedings are summarised individually below.

11. In applications nos. 13258/18 and 9078/20, the applicants submitted requests for humanitarian visas for their children abroad (see paragraph 48 below).

In application no. 13258/18, the request was rejected by the Swiss embassy in Khartoum as well as, subsequently, the State Secretariat for Migration and the Federal Administrative Court, in a judgment of 17 January 2017.

In application no. 9078/20, the applicant's representative submitted the request in writing to the Swiss embassy in Addis Ababa; no response to the request was given by the embassy, it being noted that, as a rule, requests for humanitarian visas had to be made in person.

The proceedings concerning humanitarian visas are not at issue in either of the applications.

II. THE PROCEEDINGS AT ISSUE

A. Application no. 13258/18

12. In June 2012 the first applicant, B.F., left Eritrea, where she had been living with her daughter D.E., the second applicant, who was born in 2001. B.F. arrived in Switzerland in July 2012, applied for asylum and was provisionally admitted as a refugee by a decision of the Federal Migration Office of 10 October 2014 (see paragraph 6 above).

13. On 9 September 2016 B.F. lodged a request for family reunification with the State Secretariat for Migration in respect of her daughter D.E., the second applicant, relying on section 51(1) and (4) of the Asylum Act (see paragraph 44 below). By a letter of 11 October 2016 the State Secretariat for Migration informed her that the legal basis for family reunification with her

daughter was provided for in section 85(7) of the Aliens Act, as she was a provisionally admitted refugee.

14. On 9 September 2016 B.F. also lodged a request for family reunification in respect of D.E. with the competent authority of the Canton of Fribourg, relying on section 85(7) of the Aliens Act. She submitted that D.E.'s living conditions in Sudan were precarious and that she and D.E. could not wait for the completion of the three-year waiting period.

15. By a decision of 22 December 2016 the State Secretariat for Migration, having received the opinion of the Canton of Fribourg, rejected the request, finding that the three-year waiting period had not been completed and that the requirement of non-reliance on social assistance was not met.

16. On 26 January 2017 B.F., acting in her own name and on behalf of D.E., lodged an appeal against that decision. She argued that section 85(7) of the Aliens Act had to be interpreted in conformity with Article 8 of the Convention and the best interests of the child. In her case, refusing the family reunification which had been requested on the basis of a failure to satisfy the requirements of section 85(7) of the Aliens Act was equivalent to a permanent obstacle to B.F. and D.E. being able to enjoy their family life; this was not justified under Article 8 of the Convention. As B.F. was illiterate, had difficulty learning French and suffered from various health problems, it was likely that she would never be able to meet the requirement of non-reliance on social assistance. Her doctors considered her completely unfit to work; a request for her to be recognised as unfit to work had not yet been filed with the relevant insurance fund, as she had not yet met the requirement of residence in Switzerland for five years in order to potentially have the benefit of that insurance. B.F. further submitted that she had left her daughter with her maternal grandparents when she had left Eritrea. These grandparents had since become unable to care for D.E. and the latter had decided to leave Eritrea for Sudan on her own, where she lived in precarious conditions. It was evident that it was in the best interests of D.E., who had never met her father, a man about whom B.F. had had no news since he had been detained in Eritrea in 2001, to be reunited with her mother in Switzerland. As an unaccompanied girl in Sudan, where her stay was illegal, she was particularly vulnerable and exposed to risks like abduction, sexual abuse, rape and organ trafficking, and would be similarly vulnerable and exposed in the event of her potential onwards journey to Europe, which she had threatened to undertake in an attempt to be reunited with her mother. It was not in her best interests to stay without a parent in Sudan, where she was unable to attend school and from where she risked being expelled. The applicants referred to a report by UNHCR, whose staff in Khartoum had interviewed D.E. in person. Her current living conditions in Khartoum were precarious. Both B.F. and D.E. were severely distressed. The matter was urgent; mother and daughter had been separated since 2012.

Lastly, B.F. claimed that she was being discriminated against in comparison with refugees who were granted asylum and were in a more favourable position to bring their nuclear family members to Switzerland, without there being valid reasons for such a difference in treatment. On average, provisionally admitted refugees did not stay in Switzerland for a shorter period than refugees who were granted asylum. She alleged a violation of Article 14 of the Convention read in conjunction with Article 8 of the Convention.

In March 2017 B.F. travelled to Sudan for three weeks in an attempt to find a temporary solution for D.E., who was in a state of continued stress and distress, as certified by a neuropsychiatrist in Khartoum.

17. By a judgment of 18 September 2017 the Federal Administrative Court rejected the appeal. It rejected the claim that B.F. was being discriminated against as a provisionally admitted refugee compared with refugees who were granted asylum. The latter were able to bring the members of their nuclear family to Switzerland from the moment they were granted asylum. Referring to its earlier case-law, the court considered that section 51 of the Asylum Act was meant to regulate, in a uniform manner, the status of the nuclear family unit as it had existed at the time of fleeing the country of origin, provided that the other family members had the same nationality as the refugee who had been granted asylum. Spouses and minor children were equally to be recognised as refugees and granted asylum (section 51(1)), and their entry into the country for the purposes of family reunification had to be authorised if they had been separated while fleeing and were thus abroad (section 51(4)). Section 51 of the Asylum Act was a special provision that allowed persons who met the relevant requirements to be accorded a more favourable status than those whose residence permit was based on requirements of the Aliens Act. Consequently, section 51 of the Aliens Act, and in particular its subsections 1 and 4, were not to be interpreted in an extensive manner and exclusively applied to the family members of refugees who were granted asylum in Switzerland. It therefore did not apply to any other category of foreign nationals, including provisionally admitted refugees, whose requests for family reunification were made under section 85(7) of the Aliens Act. The legislature had deliberately distinguished between refugees who were granted asylum and refugees who were provisionally admitted to the country.

18. In accordance with section 85(7) of the Aliens Act, the minor children of a provisionally admitted refugee could have the benefit of family reunification three years after the order for provisional admission at the earliest, and on the condition that the additional requirements of that provision were met. The three-year waiting period had not been completed when B.F., who had been provisionally admitted by the decision of 10 October 2014, had applied for family reunification on 9 September 2016, or at the time of the Federal Administrative Court's judgment (18 September

2017). Therefore, it was, strictly speaking, not necessary to examine whether the substantive requirements of section 85(7) of the Aliens Act were met. Given that the completion of the waiting period was imminent, the Federal Administrative Court nevertheless went on to examine whether those substantive requirements were met and concluded that they were not. It noted that B.F. had not disputed that she was fully reliant on social assistance, and thus did not meet the requirements of section 85(7) lit. c of the Aliens Act. She had instead relied on Article 8 of the Convention and on the Convention on the Rights of the Child.

19. In its assessment under Article 8 of the Convention, the court considered that B.F.'s departure from Eritrea had been voluntary (see paragraphs 6 and 7 above) and that she inevitably had to expect a lengthy separation from D.E., whom she had left behind, and could not count on family reunification being granted without any conditions; the respective conditions (see paragraph 54 below) were not met in the present case. While B.F. had lived in Switzerland for more than five years, she was socially and professionally not well integrated. She had difficulty learning French because she was, according to her own submissions, ill and illiterate. Since having been provisionally admitted to the country she had at no point been able to engage in gainful employment owing to her psychological problems, and was fully assisted by Caritas. In view of her state of health, there was a serious risk that her reliance on social assistance would continue in the long run. D.E. had initially been taken care of by her maternal grandparents in Eritrea. Doubts remained as to whether a genuine state of necessity had forced D.E. to leave Eritrea. Moreover, she had the opportunity to lodge an asylum application with UNHCR and the Commission for Refugees in Sudan. There was a UNHCR programme in Khartoum to assist unaccompanied minors, supporting their placement in foster families. D.E. had furthermore reached an age where she was increasingly independent and did not have the same needs as a younger child. Lastly, B.F. could visit D.E. in Sudan, which she had already done in March 2017. The serious risk of continued and long-term reliance on social assistance, without there being any concrete hope of that reliance decreasing, constituted an important public interest which justified refusing the family reunification requested in the present case. The applicants' understandable interest in being reunited did not outweigh the above-mentioned public interest and would not do so, at least not until B.F.'s financial situation improved, especially since it was possible for B.F. to be in contact with D.E. and visit her.

20. On 23 October 2017 the applicants lodged an appeal with the Federal Supreme Court, which that court declared inadmissible on 27 October 2017, finding that decisions concerning provisional admission were not amenable to appeal to the Federal Supreme Court (section 83 lit. c no. 3 of the Federal Supreme Court Act, see paragraph 49 below).

21. After the present application was lodged, on 31 January 2019 the competent Swiss authorities recognised B.F.'s unfitness (*invalidité*) for work, confirming that she was 100% unfit to work.

B. Application no. 15500/18

22. The applicant, a Chinese national of Tibetan ethnicity who entered Switzerland in November 2010, was provisionally admitted as a refugee by a decision of the (then) Federal Migration Office of 22 December 2010 (see paragraph 6 above).

23. On 9 October 2014 the applicant lodged a request for family reunification in respect of his long-standing wife and their two children, born in 2003 and 2007. The applicant submitted that he worked full-time, but that his income was not sufficient to cover the expenses of a family of four. However, he was sure that his wife would be able to work shortly after her arrival and that the family would become financially independent. He submitted the request to the Federal Migration Office, which forwarded it to the competent authority of the Canton of Uri.

24. By a decision of 18 December 2015 the State Secretariat for Migration, having received the opinion of the Canton of Uri, rejected the request, finding that the requirements under section 85(7) of the Aliens Act were not met, notably the requirement of non-reliance on social assistance. Moreover, the family could, in principle, live together in India, where the applicant's wife and their children had lived since early 2014.

25. On 20 January 2016 the applicant lodged an appeal against that decision. He submitted that the Swiss Red Cross was keeping an apartment available for him to use when his wife and children arrived and would rent it to him for CHF 1,200 a month, and that Mr B. would be a guarantor for the family's rent. The authorities' calculation concerning the family's reliance on social assistance was erroneous: in his submission, the total amount of the family's monthly expenses would be CHF 4,033.20, not CHF 4,777, and the family's income would amount to CHF 3,721, not CHF 3,577. The family's calculated income would thus fall short of the calculated expenses by only CHF 312.20 a month. The family was willing to live modestly and forgo social assistance, if only they were able to finally live together again. The applicant's wife was willing and able to work part-time as soon as possible. Hence, no reliance on social assistance was to be expected in the future. The standard to be applied to this assessment must not be too strict, given that the particular situation of provisionally admitted refugees had to be taken into account in the decision concerning the authorisation of family reunification, in accordance with section 74(5) of the Regulation on Admission, Residence and Employment ("the Regulation", see paragraph 47 below). The applicant submitted that he had made great efforts to integrate; he had taken several intensive German language courses, followed professional integration

programmes and completed professional training as a nursing staff member. Since mid-2014 he had worked full-time as a nursing staff member in a care home. It was unacceptable to hold the fact that work in the care sector was poorly paid in Switzerland against him and his family, and to deny the family reunification which had been requested on the sole ground that the applicant belonged to the working poor. He had done all that he could and it was discriminatory to deny the family reunification on the basis of his low salary.

26. The applicant added that denying the requested family reunification also breached Article 8 of the Convention. In view of the situation in Tibet, his provisional admission to Switzerland was not likely to be revoked. The reasons why he had not been granted asylum had nothing to do with the degree of risk he faced in the country of origin or the likelihood of his return. In terms of settled status, his situation was comparable to those of refugees who were granted asylum. He had not separated from his wife and children voluntarily; he had been forced to flee. They were in contact very regularly and he transferred between CHF 800 and CHF 1,000 to them every month. The family could not, and could not reasonably be expected to, live together in India. Referring to a country report on the situation of Tibetan refugees in India, he submitted that India had not ratified the 1951 Convention or the 1967 Protocol thereto, and Tibetan refugees had no lawful residence in India. The stay of his wife and children there was illegal. Even if the Indian authorities tolerated their stay, their rights were severely restricted, for example as regards access to the labour market, to higher education and the right to own land. Having been recognised as a refugee in Switzerland, the applicant would not receive a residence permit in India. Their family life was only possible in Switzerland. It was in the children's best interests to live with both parents and to have access to education and to healthcare, which they currently did not have. His wife was ill and dependent on his support. Provisionally admitted refugees were to be accorded more favourable treatment than other foreigners, including other provisionally admitted persons.

27. In subsequent submissions, the applicant's representative repeatedly asked the court to adjudicate the case speedily. On one occasion the competent judge indicated that the adjudication of the applicant's appeal had been delayed because another judicial formation was preparing a leading judgment in a similar case.

28. By a judgment of 2 October 2017 the Federal Administrative Court rejected the appeal. It concurred with the State Secretariat for Migration that the requirements of section 85(7) of the Aliens Act were not met, notably the requirement of non-reliance on social assistance. The applicant's allegation that the authorities' calculation as to the family's reliance on social assistance in the event of family reunification was incorrect, as were the applicant's own calculations. For example, his calculations did not entail any expenses for furniture and certain types of insurance (household, personal liability), and

the health insurance for him, his wife and their children provided for an excess that would have to be borne by the family, which was likely to result in expenses, as the applicant suffered from depression and his wife had epilepsy. The amount by which the family would fall short of non-reliance on social assistance was therefore significantly higher than he claimed, even though it could not be calculated precisely in advance. The guarantee submitted by the applicant was void and he could not rely on it for relief. Consequently, the gap between insufficient income and expenses could not be expected to close in the foreseeable future, especially as the epilepsy of the applicant's wife limited her employment opportunities. Her desire and ability to work, as well as the hope that she would later be employed by the same employer as the applicant, could not be factored into the calculation of the family's income; a legally valid employment contract would be required to that end.

29. In so far as the applicant had submitted that the strict application of section 85(7) lit. c. of the Aliens Act in his case breached Article 8 of the Convention, the Federal Administrative Court considered that the applicant's claim that he had had to flee the Tibet Autonomous Region had been rejected in the asylum proceedings (see paragraphs 6 and 10 above). The applicant's level of integration into professional life was not above average, having regard to the duration of his stay. He had not claimed any deeper social ties to Switzerland and his wife had no links to the country at all, save to the applicant. Moreover, the wife's submission that she had only been living in India since 1 January 2014 was neither substantiated nor plausible. Fleeing from Tibet over the high mountain passes was very dangerous, even in summer, and a refugee's subsequent presence in Nepal was risky. Tibetan refugees only found a certain safety once they reached India. A document issued by the Tibet Office in Dharamsala stating that she had been in India since 1 January 2014 was without evidential value. In view of her submission and those of the applicant in the asylum proceedings – that he had never been to school and spoke not a word of Chinese, which indicated that he did not originate from the Tibet Autonomous Region – the Federal Administrative Court concluded that it was likely that the family, including the applicant, had stayed in India for a significantly longer period than they claimed. In any event, and regardless of whether he had stayed in India before, the applicant could live his family life in India. Tibetans were not threatened with removal from India, and there was effective protection against such removal. This was illustrated by the stay of his wife and children there. Considering that the family reunification which had been requested was expected to result in further costs to be borne by the authorities and to lead to a risk of significant reliance on social assistance, the important public interest in refusing the family reunification outweighed the private interests.

C. Application no. 57303/18

30. According to her submissions, the applicant left Eritrea in 2006 then stayed in Sudan until she left in May 2007 for Libya, where she stayed until November 2008, when she crossed the Mediterranean Sea. She subsequently entered Switzerland, together with her then partner and their two children, born in 2006 and 2007. A third child was born to the couple in 2009. The applicant was provisionally admitted as a refugee by a decision of the (then) Federal Migration Office of 10 February 2010 (see paragraph 6 above). The father of the three above-mentioned children returned to Eritrea in 2013; the applicant submitted that he had later disappeared entirely.

31. In March 2010 the applicant lodged a request for family reunification in respect of her eldest daughter X, who was born in November 2000 from a previous relationship. The applicant initially lodged the request with the Federal Migration Office, which forwarded it to the competent authority of the Canton of Vaud. By a decision of 17 March 2011 the Federal Migration Office, having received the opinion of the Canton of Vaud, refused the request. By a judgment of 18 December 2012 the Federal Administrative Court rejected an appeal against that decision.

32. On 3 December 2014 the applicant lodged a fresh request for family reunification in respect of X with the Federal Migration Office. By a letter of 18 December 2015 the State Secretariat for Migration, referring to the previous family reunification proceedings, noted that the request had to be lodged with the competent cantonal authorities, which was why the applicant had not received a response thus far. It informed the applicant that it had forwarded the request to the competent authority of the Canton of Vaud. On 8 September 2016 the applicant's legal representative lodged a family reunification request in respect of X with the competent authority of the Canton of Vaud. In their observations, the Government referred to that action by the applicant's representative as a reiteration of the request for family reunification, and referred to the proceedings initiated by the request of 3 December 2014 as the second set of family reunification proceedings. On multiple occasions the Canton of Vaud requested additional documents from the applicant, such as the birth certificate of X; the applicant submitted the last document requested on 7 May 2017. The Canton of Vaud sent its opinion on the family reunification request in July 2017, and by a decision of 5 December 2017 the State Secretariat for Migration rejected the request. It considered that the time-limit under section 74(3) of the Regulation (see paragraph 47 below) for filing a family reunification request concerning a child over the age of 12 had not been respected, and that the applicant did not satisfy the requirement of financial independence. The authority concluded that the refusal did not breach Article 8 of the Convention.

33. On 3 January 2018 the applicant lodged an appeal against that decision, acting in her own name and on behalf of her daughter. The applicant

alleged that the refusal to grant the family reunification which had been requested breached Article 8 of the Convention and was contrary to X's best interests. X had been eight years old at the time the applicant had lodged her first request for family reunification in 2010 (see paragraph 31 above); she was 16 years old now. It was impossible for the applicant, who was raising three young children alone, to satisfy the requirement of financial independence under section 85(7) lit. c of the Aliens Act, even though she was working. The applicant maintained that she had had to leave X behind in Eritrea at the time because fleeing the country would have been too dangerous for a small child. X was dependent on the applicant, who was her sole living parent, as her father had died. X lived in precarious conditions as a displaced person in Khartoum; she had not been schooled, was in poor health, and as a young girl without family support, she was exposed to various risks of abuse. Both mother and daughter were suffering enormously from being separated and it was not possible for them to live together somewhere other than Switzerland. As it was unlikely that the applicant would find a job that was sufficiently well paid to achieve non-reliance on social assistance, refusing the family reunification which had been requested on the ground of a lack of non-reliance on social assistance entailed a *de facto* permanent separation of mother and daughter.

34. By a judgment of 26 July 2018 the Federal Administrative Court rejected the appeal. Noting that X had been born in November 2000, it concurred with the State Secretariat for Migration that the time-limit of section 74(3) of the Regulation had not been respected: it had expired on 10 February 2014, one year after the three-year waiting period under section 85(7) of the Aliens Act had been completed on 10 February 2013. The family reunification which had been requested could therefore, in accordance with section 74(4) of the Regulation, only be granted for good cause. However, the question of whether that condition was met could be left open, as in any event the requirement of non-reliance on social assistance (section 85(7) lit c. of the Aliens Act) was not satisfied. The applicant, who had had the benefit of social assistance ever since she had arrived in Switzerland, had certainly taken steps likely to facilitate her professional integration. Notably, she had been taking French language courses since 2011 and had completed a six-month period of professional training in the cleaning sector in 2016; since January 2016 she had been doing two hours of housekeeping work per week, and since September 2017 she had been working part-time (on a 50% basis) in a hospital. Between September and December 2017 her monthly net income had amounted to CHF 1,714, CHF 1,759, CHF 1,770 and CHF 2,823 respectively, which had contributed to reducing the amount of social assistance allocated to the family. In December 2017 the monthly social assistance she had received had amounted to CHF 1,196.55, in addition to the rent for her apartment (CHF 1,810) being covered by social services. Notwithstanding her part-time employment, the

applicant remained largely reliant on social assistance, and she had not shown that it was likely that she would be able to achieve financial independence in the near future.

35. In its assessment under Article 8 of the Convention, the Federal Administrative Court considered that the applicant's claim that she had had to leave Eritrea owing to problems with the authorities had been rejected as not credible in the asylum proceedings (see paragraph 6 above). Her decision to leave Eritrea inevitably meant that she had to expect a lengthy separation from X, whom she had left with her own mother, and could not count on family reunification being granted without any conditions; the respective conditions (see paragraph 54 below) were not met in the present case. The applicant had not found part-time employment until September 2017, which paid her a monthly salary of CHF 2,000 gross. She remained largely reliant on social assistance and did not appear to be in a position to become financially independent in the near future, especially when taking into account that she no longer had the help of her partner, who had returned to Eritrea, and that she had to care for three minor children in Switzerland. It appeared from the file that X had left Eritrea with her grandmother and had lived with her in Khartoum until shortly before the court's judgment. Having regard to the applicant's submission that her daughter now lived there alone and that her living conditions as an unaccompanied girl were precarious, the Federal Administrative Court emphasised that she could lodge an asylum application with UNHCR and the Commission for Refugees in Sudan. There was a UNHCR programme in Khartoum to assist unaccompanied minors, supporting their placement in foster families. X had furthermore reached an age where she was increasingly independent and did not have the same needs as a younger child had. Lastly, the applicant could visit X in Sudan, which she had already done for a month in 2014. The serious risk of continued and long-term reliance on social assistance, without there being any concrete hope of that reliance decreasing, constituted an important public interest which justified refusing the family reunification which had been requested in the present case, especially as X's current situation had resulted from a personal choice and there were no indications that she was in an extremely critical situation. The interests of the applicant and her daughter in being reunited were certainly understandable, but did not outweigh the public interest and would not do so, at least not until the applicant's financial situation improved, especially since contact with her daughter in Sudan was possible.

D. Application no. 9078/20

36. The applicant left Eritrea in January 2012 and applied for asylum in Switzerland in March 2012. She was provisionally admitted as a refugee by a decision of the (then) Federal Migration Office of 3 February 2014 (see paragraph 6 above).

37. On 10 July 2014 the applicant lodged a request for family reunification in respect of her daughters, who were born in 1999 and 2007, with the Federal Migration Office, which forwarded the request to the competent authority of the Canton of Vaud on 14 July 2014. The authority subsequently requested additional information from the applicant, who submitted the last documents requested on 22 July 2017. By a decision of 3 November 2017 the State Secretariat for Migration, having received the opinion of the Canton of Vaud, rejected the request, finding that the applicant did not meet the requirements of section 85(7) lit. b and c of the Aliens Act.

38. On 28 November 2017, acting in her own name and on behalf of her two daughters, the applicant lodged an appeal against that decision, arguing that it was disproportionate and breached Article 8 of the Convention. The applicant maintained that she had been forced to leave Eritrea and that she had had to leave her then young daughters behind with her own parents because fleeing the country would have been dangerous for them; the separation had not been voluntary. She had made efforts to learn French and had undergone professional training as a cleaning lady, but had been unable to find a job. She also had serious health problems. As it was unlikely that she would find a job that was sufficiently well paid to achieve financial independence, refusing the family reunification which had been requested on the ground of a lack of financial independence entailed a *de facto* permanent separation. If the family reunification were granted, it was likely that the family's financial situation would evolve favourably in the future, as the girls had good potential. Both mother and daughters were suffering enormously from the separation. It was not possible for them to live together somewhere other than Switzerland. The girls had been living in precarious conditions in the Adi-Harush refugee camp in Ethiopia since September 2015, when they had arrived there with their aunt. Security and sanitary conditions in the camp were poor and they had limited access to water, food, medical care and schooling. The applicant referred to reports from UNHCR which, on the basis of in-person interviews with the girls, had concluded that their reunification with the applicant was in their best interests. The girls were very vulnerable, as they were separated from both of their parents – their father was presumably dead – and at risk of various forms of abuse and exploitation, abduction, early or forced marriage and human trafficking. In Ethiopia, they had no right to live outside a refugee camp, no right to work and no prospect of integration.

In April 2018 the applicant travelled to Ethiopia and subsequently informed the Federal Administrative Court in detail about the conditions in which she had seen her daughters living; these were extremely problematic and even worse than she had previously known. The health of her younger daughter, in particular, was deteriorating.

39. The applicant repeatedly asked the Federal Administrative Court to adjudicate the case speedily and argued that the duration of the proceedings

was in breach of Article 8 of the Convention. The Federal Administrative Court, in turn, repeatedly requested supplementary information from the applicant, including as regards her state of health, in particular, information about whether she was completely or partially unfit to work, her professional situation, and the state of health and level of education of her elder daughter. The applicant's last submission in response to these requests for supplementary information was made on 11 July 2019.

40. By a judgment of 9 September 2019 the Federal Administrative Court rejected the applicant's appeal. It found that the applicant met the requirement of section 85(7) lit. b of the Aliens Act, but concurred with the assessment of the State Secretariat for Migration that the requirement of financial non-reliance of section 85(7) lit. c. of the Aliens Act was not met. The applicant had been reliant on social assistance ever since she had been provisionally admitted to Switzerland. She had made certain efforts, notably by taking a French language course and completing six months of training as a cleaner in 2016, but she had never found work in Switzerland. She had initially searched for employment in 2016, but had failed to submit evidence of having searched for a job since, despite repeated requests by the court to provide such information. While she suffered from several medical problems which could render her job search more difficult, she was not completely unfit to work. A medical report of July 2019 attested to the fact that she had serious medical pathologies and had to avoid tasks that involved carrying heavy items, as well as contact with dust and solvent fumes. The court took the view that the applicant could work in an appropriate part-time job and that she was required to have training and continue her job search in a diligent manner. To support its finding that the applicant was physically able to work at least part-time, the Federal Administrative Court also had regard to the fact that she had been able to undertake a long journey in difficult conditions to visit her daughters in Ethiopia in April 2018. In so far as the applicant had submitted that her prospects of integrating professionally were very poor owing to a lack of training, the court noted that she had not made supplementary efforts to change that situation during the seven years of her stay in Switzerland. Allowing the family reunification which had been requested would entail a considerable risk that the family would continue to rely significantly on social assistance: no information on the education of the applicant's elder daughter, who was now 20 years old, had been provided, despite the court's requests for this, and it therefore could not be established that there was a certain likelihood that she could contribute in order to render the family financially independent; the younger daughter, who was 12 years old, was too young to be taken into account as a contributor.

41. In its assessment under Article 8 of the Convention, the Federal Administrative Court considered that the applicant's claim that she had had to leave Eritrea owing to problems with the authorities had been rejected as not credible in the asylum proceedings (see paragraph 6 above). Her decision

to leave Eritrea, where she had lived with her daughters – whom she had left with her own parents, and who had arrived at the Adi-Harush refugee camp in Ethiopia in September 2015, accompanied by their aunt and a cousin – inevitably meant that she had to expect a lengthy separation from them and could not count on family reunification being granted without any conditions; the respective conditions (see paragraph 54 below) were not met in the present case. In view of the serious risk of the family's continued reliance on social assistance, without any concrete hope of that reliance diminishing, there was a significant public interest in refusing the family reunification which had been requested, especially as the applicant's current situation had resulted from her own choice; there was no indication that she was in an extremely critical situation. The applicant's private interests in being reunited with her children, and in particular her minor daughter, were certainly understandable, but did not outweigh the public interest and would not do so, at least not until her financial situation improved, especially since contact with the children in Ethiopia was possible.

42. On 11 October 2019 the Federal Supreme Court declared the applicant's appeal against the Federal Administrative Court's judgment inadmissible.

43. After lodging her application with the Court, the applicant, by a letter of 30 September 2021, asked the State Secretariat for Migration to reconsider the refusal of the family reunification which had been requested. She submitted, *inter alia*, that her daughters were alone in Ethiopia following the departure of their aunt and cousin. By a letter of 2 November 2021 the State Secretariat for Migration informed the applicant that her request was not clear and that it would not process it in the absence of further submissions on her part. The applicant subsequently informed the Court that she would not make further submissions to the State Secretariat for Migration, as she considered these futile.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE RELEVANT DOMESTIC LAW AND PRACTICE

A. The relevant legislation

44. The relevant provisions of the Asylum Act provide as follows:

Section 3 [Definition of the term refugee]

"1. Refugees are persons who, in their native country or in their last country of residence, are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or owing to their political opinions.

...

3. Persons who are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages because they have refused to perform military service or have deserted are not refugees. The provisions of the Convention of 28 July 1951 relating to the Status of Refugees are reserved.

4. Persons who claim grounds on the basis of their conduct following their departure that are neither an expression nor a continuation of a conviction already held in their native country or country of origin are not refugees. The provisions of the Refugee Convention are reserved."

Section 49 [Principle]

"Asylum is granted to persons if they have refugee status and there are no grounds for denying asylum."

Section 51 [Family asylum]

"1. Spouses or registered partners of refugees and their minor children shall be recognised as refugees and granted asylum provided there are no special circumstances that preclude this.

...

4. If the entitled persons under subsection 1 were separated while fleeing and are now abroad, their entry must be authorised upon application."

Section 54 [Subjective post-flight grounds]

"Refugees shall not be granted asylum if they became refugees in accordance with section 3 only by leaving their native country or country of origin, or owing to their conduct after their departure."

Section 58 [Principle]

"The legal status of refugees in Switzerland is governed by the law applicable to foreign nationals, unless special provisions, in particular [those] of this Act and of the 1951 Convention relating to the Status of Refugees, apply."

Section 59 [Effect]

"Persons to whom Switzerland has granted asylum or who fulfil the requirements for refugee status are deemed, in their relations with all federal and cantonal authorities, to be refugees within the meaning of this Act and the 1951 Convention relating to the Status of Refugees."

45. The relevant provisions of the Aliens Act provide as follows, it being noted that section 85(7) lit. d and e, as well as subsections 7 bis and 7 ter of the Aliens Act, entered into force on 1 January 2019, following the adoption of amendments on 16 December 2016 (by which the name of the Act was changed to "the Aliens and Integration Act"):

Section 83 [Order for provisional admission]

"1. If the enforcement of removal is not possible, not permitted or not reasonable, the State Secretariat for Migration shall order provisional admission.

...

3. Enforcement is not permitted if Switzerland's obligations under international law prevent the foreign national from making an onward journey to their native country, to their country of origin or to a third country.

4. Enforcement may be unreasonable for foreign nationals if they are specifically endangered by situations such as war, civil war, general violence [or a] medical emergency in their native country or country of origin.

...

8. Refugees for whom there are reasons for refusing asylum in accordance with sections 53 and 54 Asylum Act shall be granted provisional admission.

..."

Section 84 [Termination of provisional admission]

"1. The State Secretariat for Migration periodically examines whether the requirements for provisional admission are still met.

2. The State Secretariat for Migration shall revoke provisional admission and order the enforcement of removal if the requirements no longer met.

..."

Section 85 [Regulation of provisional admission]

"1. The permit for provisionally admitted persons (section 41(2)) is issued by the canton of residence for a maximum of twelve months for control purposes and is extended subject to the reservation of section 84.

...

7. The spouses and unmarried children under 18 years of provisionally admitted persons and of provisionally admitted refugees may be reunited with the provisionally admitted persons or refugees three years after the order for provisional admission at the earliest, and may be included in that order if:

a. they live with the provisionally admitted persons or refugees;

b. suitable housing is available;

c. the family does not rely on social assistance;

d. they can communicate in the national language spoken at the place of residence; and

e. the family member they are joining is not claiming annual supplementary benefits under the [Supplementary Benefits Act] or would not be entitled to receive such benefits because of family reunification.

7 bis In order to be granted provisional admission, it is sufficient to register for a language support programme as an alternative to meeting the requirement set out in subsection 7 point d.

7 ter In the case of unmarried children under the age of 18, the requirement set out in subsection 7 point d does not apply. The requirement may also be waived for good cause, as set out in section 49a(2).

..."

Section 96 [Exercise of discretion]

"1. In exercising discretion, the competent authorities shall take account of public interests and personal circumstances, as well as the integration of foreign nationals.

..."

46. On 17 December 2021 amendments to the Aliens Act were enacted (BBl 2021 2999), which have not yet entered into force. The amendments, *inter alia*, will result in section 85(7) of the Aliens Act becoming a new section (section 85c) of the Aliens Act, without substantive changes to the provision's content.

47. The procedure allowing the spouses and minor children of provisionally admitted persons to obtain the same status on the basis of section 85(7) of the Aliens Act is set out in section 74 of the Regulation on Admission, Residence and Employment ("the Regulation"), which provides:

Section 74 [Family reunification for provisionally admitted persons (section 85(7) of the Aliens Act)]

"1. Requests for the inclusion of family members in a provisional admission order have to be filed with the cantonal migration authority (section 88(1)).

2. The cantonal migration authority transfers the request, together with its observations, to the State Secretariat for Migration. The observations state whether the legal requirements for family reunification are met.

3. If the temporal requirements provided for by section 85(7) of the Aliens Act, relating to family reunification, are met, the request to have the family members included in the provisional admission order has to be lodged within five years. For children of more than 12 years of age, requests for family reunification have to be lodged within twelve months after the satisfaction of the temporal requirements. If a family relationship is created after the completion of the waiting period provided for by section 85(7) of the Aliens Act, the above-mentioned time-limits start to run from that later date.

4. After the expiry of the above-mentioned time-limits, family reunification may only be granted for good cause relating to the family. If necessary, children over the age of 14 years will be heard in respect of family reunification. The hearing will, as a rule, take place at the Swiss representation at the place of residence.

5. The particular situation of provisionally admitted refugees has to be taken into account in the decision concerning the authorisation of family reunification. ..."

48. Section 4(2) of the Visa Regulation provides for the possibility for foreign nationals to be issued with a visa for a long-term stay on humanitarian grounds, with such grounds deemed to exist, in particular, if the relevant person's life or limb is directly, seriously and tangibly threatened in his or her country of origin. The issuance of such a visa is discretionary. As a rule, the person requesting a visa under section 4(2) has to present himself or herself in person at the relevant Swiss representation in order to submit the request (section 23(3)).

49. Section 83 lit. c no. 3 of the Federal Supreme Court Act (*Bundesgerichtsgesetz*) provides that appeals to the Federal Supreme Court concerning provisional admission are inadmissible.

B. Report of the Federal Council of 12 October 2016 and subsequent developments

50. On 12 October 2016 the Swiss Federal Council adopted a report entitled "Provisional admission and protection needs: analysis and options for action". It stated that the majority of provisionally admitted persons remained in Switzerland in the long run and that only few family reunification requests by provisionally admitted persons were granted in view of the requirements under section 85(7) of the Aliens Act, with between thirty and fifty persons per year being admitted provisionally by way of family reunification. The report explored three different options relating to how the status of provisional admission could be adapted. In this regard, the Federal Council pursued two overarching objectives: to improve the framework for a more rapid integration of persons in respect of whom it was foreseeable that they would remain in Switzerland for a longer period, and, at the same time, to avoid increased immigration. The Federal Council took the view that the introduction of a new status for persons in need of protection, which would be geared towards subsidiary protection status at European Union level, would best address the situation. The National Council subsequently adopted a motion to task the Federal Council with the preparation of draft legislation to that effect. The Council of States later rejected the motion.

C. Case-law of the domestic courts

51. Prior to 1 January 2007 refugees who were provisionally admitted could rely on section 51 of the Asylum Act by analogy, which was more favourable to them than the provisions which have been in force since. Following legislative amendments, family reunification for provisionally admitted persons, including refugees, was rendered discretionary and made subject to certain cumulative requirements, which were firstly set out in section 14c(3 bis) of the former Aliens Act of 1931 (from 1 January 2007 until that Act was repealed) and which since 1 January 2008 have been set out in section 85(7) of the current Aliens Act, which entered into force on that day. That latter provision exclusively governs family reunification requests by provisionally admitted refugees in respect of their family members abroad (paragraphs 5.1 and 5.2 of Federal Administrative Court judgment no. F-2186/2015 of 6 December 2016, including with respect to the legislative history). The requirements under section 85(7) of the Aliens Act correspond to those concerning the family reunification of foreign nationals holding a residence permit in Switzerland (section 44 of the Aliens Act), with

the exception of the three-year waiting period, which applies to the family reunification of persons granted provisional admission, including refugees, but not to foreign nationals holding a residence permit.

52. As a rule, the requirement of non-reliance on social assistance under section 85(7) lit. c of the Aliens Act is satisfied when the relevant individual's means reach a level where there is no entitlement to social assistance under the guidelines of the Swiss Conference for Social Welfare (paragraph 5.2 of Federal Administrative Court judgment no. F-2043/2015 of 26 July 2017, with further references). When assessing whether this requirement is satisfied, the specific circumstances of a person's refugee status have to be taken into account (ibid., with references to, *inter alia*, section 74(5) of the Regulation, cited at paragraph 47 above, and to the judgment of the Federal Supreme Court of 5 September 2013 in case no. 2C_983/2012, BGE 139 I 330). Where family reunification entails a risk of continued and significant reliance on social assistance, such a risk could justify refusing a provisionally admitted refugee family reunification. The assessment is to be based on the current circumstances of the family member who is lawfully residing in Switzerland, as well as on likely financial developments, taking into account the financial potential of all family members in the long run. The forward-looking assessment as to future reliance on social assistance is thus a global one, and has to have regard to the specific situation of the refugee, including his efforts to integrate and to financially support his family with his own means, as well as regard to the situation that could be expected in the medium and long term. If a recognised refugee has done all that could reasonably be expected of him to earn a living which covers his and his family's expenses, and has at least partly integrated into the labour market, this must be sufficient to allow for family reunification. In such circumstances, that is, where a refugee, despite such efforts and through no fault of his own, is unable to meet the requirement of section 85(7) lit. c of the Aliens Act within the relevant time-limits for family reunification, the amount by which the family falls short of non-reliance on social assistance must not exceed a reasonable amount and should be made up for in the foreseeable future, in order for family reunification to be granted (paragraph 5.2 of the Federal Administrative Court judgment no. F-2043/2015 of 26 July 2017, cited above). In a case concerning a provisionally admitted person who was unable to work for medical reasons, and consequently unable to satisfy the requirement of non-reliance on social assistance, the Federal Administrative Court found that the strict application of the provision was discriminatory and ordered that the family reunification in that case be granted, noting that the applicant had done all he could to avoid or at least reduce the family's reliance on social assistance, and that the family reunification was also expected to improve his state of health (Federal Administrative Court judgment no. E-1339/2010 of 24 July 2013).

53. In the above-mentioned judgment of 26 July 2017, the Federal Administrative Court – which had until then considered that provisionally admitted persons could not, as a rule, rely on Article 8 of the Convention, given that provisional admission was not a residence permit but a suspension from deportation and did not constitute "settled status" (*gefestigtes Aufenthaltsrecht*/*droit de présence assuré*) – changed its case-law in respect of Article 8 and the family reunification of provisionally admitted refugees. It considered that recognised refugees, whether they were provisionally admitted or granted asylum, were, as a rule, unable to return to their country of origin in the long run. It was therefore appropriate to consider that provisionally admitted refugees had *de facto* settled status (*faktisches Aufenthaltsrecht/droit de séjourner de facto*) and that they could, as a rule, invoke Article 8 of the Convention in respect of requests for family reunification with their spouses and minor children, unless the revocation of their status was foreseeable (ibid., paragraphs 6.2-6.4).

54. According to the case-law of the domestic courts, in cases where an individual satisfies the criteria of the definition of refugee on the basis of grounds which have arisen following the departure from the country of origin and as a result of his or her own actions ("subjective post-flight grounds"), it does not *per se* breach Article 8 of the Convention that entry for the purposes of family reunification is made subject to certain conditions. In order for family reunification to be granted, the individual's integration has to be well underway, so that at least a reduction of the family's reliance on social assistance appears seriously foreseeable (ibid., paragraph 7.2).

55. In a judgment of 24 November 2022 (no. F-2739/2022) the Federal Administrative Court held that a change in practice was required in respect of the three-year waiting period under section 85(7) of the Aliens Act, in order to ensure compliance with the developments brought by the judgment of this Court in *M.A. v. Denmark* ([GC], no. 6697/18, 9 July 2021). The Federal Administrative Court thus considered that until legislation was revised, the competent Swiss authorities would henceforth be required to carry out, at the request of applicants, an individual and detailed examination of their case once the effective waiting period approached two years, which meant six months before the end of the two-year waiting period at the earliest (judgment no. F-2739/2022, paragraph 6.4). In that individualised assessment, the Swiss authorities would have to take into account all the factors cited in *M.A. v. Denmark*, including, in particular, the level of integration in Switzerland, the existence of insurmountable obstacles to the pursuit of family life in the country of origin or in a third State and the best interests of the child, in order to determine whether the application of a period shorter than three years was necessary for considerations related to the protection of family life guaranteed by Article 8 of the Convention (ibid.). On the facts of the case, the Federal Administrative Court found that the State Secretariat for Migration had not carried out any individualised examination

when it had applied the three-year waiting period which it had therefore treated as a bar to the grant of family reunification, given that provisional admission had been granted about one year and eight months before the State Secretariat for Migration had taken its decision on the request for family reunification (ibid., paragraph 6.6). The court quashed the decision and referred the matter back to the State Secretariat for Migration for a fresh assessment.

II. OBSERVATIONS BY INTERNATIONAL STAKEHOLDERS AS REGARDS SWISS LEGISLATION AND PRACTICE CONCERNING FAMILY REUNIFICATION FOR PROVISIONALLY ADMITTED PERSONS

A. Observations by the Council of Europe Commissioner for Human Rights

56. The report of the Council of Europe Commissioner for Human Rights, issued on 17 October 2017, CommDH(2017)26, following his visit to Switzerland from 22 to 24 May 2017, stated (unofficial translation by the Registry, footnotes omitted):

> "101. In addition, aliens may be granted provisional admission in the two cases where they are excluded from refugee status. They would then be granted 'provisional admission [the F permit] as a refugee', which is accompanied by additional rights in relation to those conferred upon individuals with ordinary provisional admission, particularly in terms of access to employment. In late July 2017, out of a total of 39,752 individuals with provisional admission, 9,691 of them held provisional admission as a refugee.
>
> 102. Provisional admission may be granted for twelve months or more. The canton of residence may extend the duration, for twelve months at a time, if it still proves impossible to arrange for the person's return. However, it does not really amount to having a residence permit because those concerned are still in principle obliged to leave Switzerland. It is scarcely more than a confirmation that the person's removal is temporarily impossible. An alien who has been provisionally admitted and has lived in Switzerland for over five years may then apply for leave to remain.
>
> 103. The Commissioner notes that, in practice, the vast majority (about 90%) of aliens granted provisional admission remain in the country in the long term and about one half of them have been in Switzerland for more than five years. Some such aliens have lived in Switzerland for periods of over 15 years on the basis of provisional admission.
>
> 104. Provisional admission is sometimes compared to the subsidiary protection which is provided for by the EU regulatory framework. However, unlike types of refugee status or subsidiary protection, provisional admission carries significant legal restrictions especially in terms of geographical mobility (changing canton of residence or travelling abroad), family reunification and social assistance. Since 2006 migrants with provisional admission have had access to the labour market but solely at the discretion of the cantonal authorities. On that point there are major differences in practice between the cantons. However, recent figures show that migrants with

provisional admission take much longer to find a job. Professional integration is hindered by a number of restrictive administrative provisions and employers' ignorance of the status. The difficulty of accessing the labour market impedes access to family reunification, which depends in particular on the migrant's financial situation. Access to training is also difficult. In addition, various types of hassle, such as being denied a mobile phone subscription on account of the 'provisional' nature of one's residence, may seriously complicate the daily life of those concerned.

105. For all the reasons mentioned above, aliens granted provisional admission are thus placed permanently in a difficult and unstable situation which significantly hinders their professional and social integration, even though they are likely to remain in Switzerland in the long term and will ultimately obtain leave to remain, as has been seen in practice. Some prefer to refer to it as a 'non-status' and most agree that it will have to be reviewed.

106. On this subject, the Commissioner has been informed of a number of procedures underway with a view to bringing about some improvement in the situation of provisionally admitted aliens. ...

...

109. The Commissioner also recommends that the Swiss authorities rapidly put in place a status of international subsidiary protection guaranteeing the same rights as those conferred on individuals who have been granted official refugee status, especially in terms of leave to remain, family reunification, mobility, freedom to travel, social assistance and access to naturalisation, thus facilitating their integration. The Swiss authorities should adopt transitional measures to ensure that the new status can be granted to individuals who meet the conditions and are already present in Switzerland at the time it enters into force.

...

167. Since 2007 spouses and single children (under 18) of provisionally admitted aliens (with the F permit), including those considered to be refugees (without official status), have been able to apply for family reunification and for the same residence permit, no earlier than three years after the grant of provisional admission, in the following conditions: they must live together in the same household; they must have appropriate accommodation; and the family must not be reliant on social assistance. The accommodation condition is construed strictly, i.e. each child must have a bedroom and the housing must already be secured at the time the application is made. Those reliant on social assistance are not eligible for family reunification. In practice, on account of these requirements, very few requests for family reunification are granted by the SEM [State Secretariat for Migration]. According to the authorities, currently only 30 to 50 persons per year are thus admitted provisionally by way of family reunification.

...

169. The Commissioner, emphasising the importance of family reunification for the integration of individuals in need of international protection, recommends that the Swiss authorities carry out a major review of the regulatory framework and practice of family reunification for recognised refugees and those who are admitted provisionally, in order to guarantee family reunification procedures that are flexible, rapid and efficient for all refugees. In particular there should not be any discrimination stemming from a distinction between refugees under the 1951 Convention and provisionally admitted refugees. On this subject the Commissioner would point out that a time-frame of over a year for the family reunification process is unsatisfactory. The Swiss

authorities should also allow both parents and siblings to reunite when an unaccompanied minor is the sponsor (that is, the first family member arriving in a host State). Lastly, the Commissioner would draw the attention of the Swiss authorities to the recommendations made in the thematic document 'Realising the right to family reunification of refugees in Europe'."

B. Observations by United Nations Treaty Bodies

57. The United Nations Committee on the Rights of the Children (CRC) stated in its Concluding Observations on Switzerland of 26 February 2015 (CRC/C/CHE/CO/2-4):

"68. ... [T]he Committee remains concerned ... in relation to the reservation made to article 10 of the Convention [on the Rights of the Child], that the right to family reunification for persons granted provisional admission is too restricted ...

69. The Committee recommends that the State party:

...

(b) Review its system for family reunification, in particular for persons granted provisional admission; ..."

In its Concluding Observations on Switzerland of 22 October 2021 (CRC/C/CHE/CO/5-6), the Committee stated:

"42. ... The Committee is concerned that:

...

(d) Provisionally admitted persons or refugees are subject to a waiting period of three years for family reunification with their children, and family reunification is possible only if certain conditions are met; ...

43. ... [T]he Committee recommends that the State party:

...

(g) Review its system of family reunification, in particular for persons granted provisional admission or provisionally admitted refugees; ..."

58. The United Nations Committee on the Economic, Social and Cultural Rights (CESCR) stated in its Concluding Observations on Switzerland of 18 November 2019 (E/C.12/CHE/CO/4):

"42. The Committee is concerned about the many legal and practical barriers that restrict access to family reunification for persons with refugee status or temporary refugee status and foreign nationals admitted on a temporary basis. It is also concerned that article 85 (7) of the Federal Act on Foreign Nationals and Integration might deter foreign nationals admitted on a temporary basis from applying for social assistance and that a victim of spousal abuse might be reluctant to leave the family home for fear of losing his or her right of residence (art. 10).

43. The Committee recommends that the State party review its legislation and its practice relating to the requirements for family reunification applicable to persons with refugee status or temporary refugee status and persons admitted on a temporary basis, with a view to prioritizing family reunification and facilitating the integration of such persons into the State party."

59. The United Nations Committee on the Elimination of Racial Discrimination (CERD) stated in its Concluding Observations on Switzerland of 13 March 2014 (CERD/C/CHE/CO/7-9):

> "16. ... [T]he Committee expresses deep concern at the undue hardship faced by persons who are granted [provisional admission] status if they remain in the State party for a long time. It notes with concern that this status is not linked with a residence permit, and imposes restrictions on 'F' permit holders in most areas of their lives, which could give rise to de facto discrimination against such vulnerable non-citizens, including ... (b) de facto lack of access to employment due, inter alia, to the perceived uncertainty of the provisional admission status; (c) the lengthy waiting period of three years or more for family reunification, which also requires an adequate level of income and a suitable place of accommodation ...
>
> The Committee urges the State party to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. ... The Committee recommends that the State party eliminate disproportionate restrictions on the rights of provisionally admitted persons, in particular those who have been in the State party for a long time, ... by facilitating the process of family unification and access to employment ..."

III. FURTHER RELEVANT INTERNATIONAL, EUROPEAN AND COMPARATIVE LAW

60. The 1951 Convention relating to the Status of Refugees does not contain a specific provision on refugees' right to family reunification, nor does the 1967 Additional Protocol thereto. In its Conclusion No. 24 (XXXII) on Family Reunification (1981), the UNHCR's Executive Committee stated:

> "1. In application of the Principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families.
>
> 2. For this purpose it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that the reunification of separated refugee families takes place with the least Possible delay.
>
> ...
>
> 9. In appropriate cases family reunification should be facilitated by special measures of assistance to the head of family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members."

61. Article 10(1) of the Convention on the Rights of the Child provides that "[i]n accordance with the obligation of States Parties under article 9, paragraph 1 [no separation of children and parents against their will], applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner." In its General Comment No. 6 on the Treatment of Unaccompanied and Separated Children Outside their

Country of Origin (CRC/GC/2005/6) of 1 September 2005, the CRC considered:

> "81. ... [A]ll efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child ...
>
> ...
>
> 83. Whenever family reunification in the country of origin is not possible, ...the obligations under article 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. ..."

62. Further relevant international law and material, European Union law and other European material is summarised in *M.A. v. Denmark* (cited above, §§ 36-62). Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, page 12 ("the Family Reunification Directive", cited at §§ 45-50 of that judgment with further background information), sets out common rules on the exercise of the right to family reunification by third country nationals residing lawfully in EU member States. Chapter V of the Directive provides for more favourable treatment with respect to family reunification for refugees than for other third-country nationals, with no distinction made between different 1951 Convention refugees. In particular, whereas waiting periods and accommodation, insurance, and income requirements may be applied, under the Directive, to applications for family reunification by third country nationals who are not refugees (Articles 7 and 8), the first subparagraph of Article 12(1) provides that refugees' right to family reunification must not be made conditional on compliance with integration measures, or on producing evidence that the refugee in question has sufficient accommodation, sickness insurance, and financial resources to maintain himself or herself and his or her family, without recourse to the social assistance system of the member State concerned. However, under the third subparagraph of Article 12(1), member States may require refugees to meet the conditions set out in Article 7(1) of the Directive – i.e. sufficient accommodation, insurance and income – if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

63. In its judgment in *K and B* (C-380/17, EU:C:2018:877, 7 November 2018), the Court of Justice of the European Union found that Article 12(1) of the Directive did not preclude national legislation which permitted an application for family reunification lodged on behalf of a member of a refugee's family, on the basis of the more favourable provisions for refugees of Chapter V of that Directive, to be rejected on the ground that that application was lodged more than three months after the sponsor was granted refugee status, whilst affording the possibility of lodging a fresh application under a different set of rules [notably those laid down in Article 7(1) of the Directive] provided that that legislation (i) laid down that such a ground of

refusal cannot apply to situations in which particular circumstances render the late submission of the initial application objectively excusable; (ii) laid down that the persons concerned are to be fully informed of the consequences of the decision rejecting their initial application and of the measures which they can take to assert their rights to family reunification effectively; and (iii) ensured that sponsors recognised as refugees continue to benefit from the more favourable conditions for the exercise of the right to family reunification applicable to refugees, specified in Articles 10 and 11 or in Article 12(2) of the Directive. The decision of a member State to require that the conditions set out in Article 7(1) of the Directive are satisfied does not prevent the merits of the request for family reunification being examined, with due regard, in accordance with Article 5(5) and Article 17 of the Directive, to the best interests of minor children, the nature and solidity of the person's family relationships and the duration of his/her residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin (§ 52).

64. Article 12(2) of the Directive provides that refugees shall not be required to have resided in a member State's territory for a certain period of time before becoming eligible for family reunification. Where family reunification is possible in a third country with which the sponsor and/or family member has special links, member States may require provision of such evidence (Article 12(1), second subparagraph).

65. In addition to the parts cited in *M.A. v. Denmark* (cited above, § 60), Resolution 2243 (2018) of the Parliamentary Assembly of the Council of Europe stated:

> "10. The Assembly recalls that child refugees and minors have rights under the revised European Social Charter (ETS No. 163), including the right to financial and other support by the authorities of the States in which they reside. Therefore, family reunification should not be dependent on the financial situation of a parent who is a migrant or refugee. In this context, the Assembly notes with concern that children are sometimes left behind in another country for financial reasons ..."

66. Comparative law information concerning the right to family reunification of refugees and other persons in need of international protection and the conditions under which that right is granted, including in particular compliance with waiting periods, in Council of Europe member States is contained in *M.A. v. Denmark* (cited above, § 69). According to information available to the Court at that time, beneficiaries of subsidiary protection were treated less favourably than refugees in six States, in respect of requirements to have sufficient accommodation, health, insurance and financial resources at their disposal. The vast majority of States did not distinguish between refugees and beneficiaries of subsidiary protection in this regard.

THE LAW

I. JOINDER OF THE APPLICATIONS

67. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE REFUSAL OF THE REQUESTS FOR FAMILY REUNIFICATION

68. The applicants in all four applications complained that the refusal of their requests for family reunification had breached their right to respect for their family life as provided for in Article 8 of the Convention. That 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."

A. Admissibility

69. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

70. The applicants residing in Switzerland in applications nos. 13258/18 and 15500/18 emphasised that they were refugees within the meaning of the 1951 Convention, and that under Swiss law there was no difference, in terms of nature and duration, between the stay of refugees who were granted asylum and that of refugees who were provisionally admitted. There was a consensus at international and European level on the need for refugees to have the benefit of a family reunification procedure that was more favourable than that provided for other aliens (they referred to *Tanda-Muzinga v. France*, no. 2260/10, § 75, 10 July 2014, and *Mugenzi v. France*, no. 52701/09, § 54, 10 July 2014). In the case of refugees, there were insurmountable obstacles to their continuing a family life elsewhere: it was notably not possible to live

in the country of origin where they faced a risk of persecution, but the Court had also recognised this where a family member of a refugee had been in a third, transit country, as in *Tanda-Muzinga* and *Mugenzi*. The applicants in all four applications submitted that, in reality, having their requests for family reunification granted and being allowed to continue their family life in Switzerland was the only way in which they could continue their family life.

(i) More specifically, the applicant in application no. 15500/18 submitted that there were insurmountable obstacles to him, his wife and their children living together in India. India had ratified neither the 1951 Convention nor the 1967 Protocol thereto, and his wife and children were staying there illegally; their access to the labour market and to education was restricted, they had no health insurance and were fully dependent on the applicant's income in Switzerland, from which he transferred between CHF 800 and CHF 1,000 to them every month. The applicant himself had no way of legally residing in India. The Federal Administrative Court had not examined any of these aspects and had exclusively focused on the risk of removal from India to the country of origin, which was the wrong standard. To rebut the submission that it was likely that he and his family had stayed in India for a longer time, the applicant pointed out that the Federal Administrative Court had found in earlier cases that most Tibetans, in particular those from the countryside, spoke little, if any, Chinese, and that the State Secretariat for Migration had published a report stating that most Tibetans crossed the border from China to Nepal in winter with the help of smugglers.

(ii) The applicants in application no. 13258/18 submitted that the second applicant was not legally residing in Sudan and that the first applicant had no way of doing so. The Federal Administrative Court had not examined this aspect at all.

(iii) The applicant in application no. 57303/18 similarly submitted that her daughter X was not legally residing in Sudan and that she herself had no way of doing so. Moreover, her other three minor children, whom she was raising as a single parent, had all grown up in Switzerland and were integrated in that country. Moving those children to Sudan would be another uprooting for them. In that connection, she was unable to visit her daughter X in Sudan more often because she had to care for her children in Switzerland, where she was residing indefinitely.

(iv) The applicant in application no. 9078/20 submitted that her daughters had no lawful residence in Ethiopia and were fully dependent on the money which she transferred to them every month. The family could not live together in Ethiopia.

71. In all four applications, the applicants residing in Switzerland submitted that it was not true that they had left their family members behind voluntarily and had deliberately taken the irrevocable decision to definitively renounce their family life and abandon all ideas of family reunification when they had fled their country of origin. They maintained that they had been

forced to flee their countries. The applicants in applications nos. 13258/18 and 15500/18 also referred to *El Ghatet v. Switzerland* (no. 56971/10, § 48, 8 November 2016), where the adult applicant had left his country of origin to seek asylum in Switzerland and the Court had considered that even though that application had been rejected by the Swiss authorities, caution was called for when determining whether he had left his child behind of "his own free will". The applicants in all four applications submitted that they had attempted to bring their family members to Switzerland as soon as possible, it being borne in mind that there was a three-year waiting period for provisionally admitted refugees. The applicant in application no. 15500/18 added that he had waited a further nine months after the completion of the waiting period, by which time he had started permanent employment in a full-time job.

72. With respect to the requirement of non-reliance on social assistance, the applicants submitted that the domestic authorities had not properly taken their particular vulnerabilities into account.

(i) More specifically, the applicant in application no. 15500/18 maintained that the authorities' calculation concerning his family's reliance on social assistance was erroneous and arbitrary. He was permanently employed in a full-time job and his ability to work was not limited by his medical condition, which only required medication. The same held true as regards his wife's ability to work; she would thus be able to contribute to the family's income. Hence, no reliance on social assistance was to be expected in the long run. It was doubtful whether the family would even be granted social assistance, given that the discrepancy between the calculated income and expenses was small and the applicant had saved some CHF 33,000. It was unacceptable to hold the fact that work in the care sector was poorly paid in Switzerland against the applicant and his family, and to deny the family reunification which had been requested on the sole ground that his salary was not sufficient to cover the calculated expenses of a family of four. This was no fault of his own, he had done all he could to be financially independent. The domestic authorities had not properly taken into account his situation as a recognised refugee when they had determined that the requirement of non-reliance on social assistance was not met. In July 2021, subsequent to the exchange of observations, the applicant informed the Court that he now earned a monthly salary of CHF 4,352.30 gross and argued that that amount was sufficient to cover the family's expenses.

(ii) In application no. 57303/18, at the time of the exchange of observations, the applicant submitted that she was working part-time (on a 50% basis) as a cleaner and also working extra hours. Her monthly net income varied but was in the range of nearly CHF 2,900. As her children grew older, she would be able to work more and achieve non-reliance on social assistance.

(iii) In application no. 13258/18, the applicant B.F. emphasised that the Swiss authorities themselves, after the conclusion of the family reunification

proceedings, had determined that she was 100% unfit to work, because of her psychiatric and physical problems. She could not therefore be reproached for not being in gainful employment; this was a result of her state of health. She was reliant on social assistance through no fault of her own. As she was completely unfit to work, it was objectively impossible for her to integrate into the labour market. The requirement of non-reliance on social assistance, as applied in her case, constituted an absolute impediment to her being reunited with her daughter and was discriminatory towards her as an invalid. While the Federal Administrative Court had acknowledged that she had health problems and that there was a serious risk that she would continue to rely on social assistance in the long run, it had not considered that her state of health constituted an objective and justified impediment to her satisfying the requirement of non-reliance on social assistance. It should instead have considered the combination of factors which rendered B.F. particularly vulnerable: she was (i) a recognised refugee who was (ii) provisionally admitted (which triggered the requirement of non-reliance on social assistance) and (iii) unable to meet the requirement of non-reliance on social assistance owing to her complete unfitness for work. In these circumstances, refusing the request for family reunification on account of the lack of financial independence had been disproportionate. In this connection, the applicants questioned the legitimate aim relied on in refusing their request – the economic well-being of the country. In view of B.F.'s unfitness for work, there was no prospect of a positive evolution which would render her financially independent, regardless of the refusal of the family reunification request. Her daughter D.E., by contrast, had her full professional life ahead of her, and it could be expected that she would be able to support herself after a period of adaptation.

(iv) In application no. 9078/20, the applicant submitted that she had serious health problems which were well documented, and suffered enormously as a result of being separated from her daughters. This affected her ability to learn French and, more broadly, to integrate in Switzerland. She had not been schooled, did not speak French well and, even though she had undergone professional training as a cleaner, had been unable to find a job since. She could hardly carry out cleaning tasks owing to a lack of physical strength, and her prospects as regards her professional life were poor. She had travelled to Ethiopia to see her daughters regardless of her health problems and the difficult conditions, as any mother would.

73. The applicants in all four applications argued that the best interests of the children involved militated in favour of granting the requests for family reunification, both in terms of the children being reunited with their parent in Switzerland, and in view of their living conditions and the risks they were exposed to in the countries in which they were currently living. The applicants in applications nos. 13258/18 and 15500/18 added that the Swiss authorities had not even taken the best interests of the children into account when

adjudicating the requests for family reunification, which in itself had breached the procedural obligations inherent in Article 8 (they referred to *El Ghatet*, cited above, §§ 52-54).

(i) More specifically, the applicants in application no. 13258/18 maintained that the Swiss authorities had ignored the report prepared by UNHCR about D.E.'s living conditions in Sudan, which was based on a thorough assessment of her specific situation and entailed an objective evaluation of her best interests. The report concluded that it was of fundamental importance that she be reunited with her mother as quickly as possible. Rather than considering that evaluation and examining all aspects which formed part of a proper assessment of the best interests of the child, the Federal Administrative Court had not explained why it was allegedly in the best interests of D.E. to remain in Sudan rather than be reunited with her mother, who had raised her as a single parent and was her only attachment figure. D.E. was an unaccompanied and vulnerable adolescent in poor health, who lived illegally and in very precarious conditions in Sudan, where she had no right to attend school and was exposed to various risks of ill-treatment and abuse; she particularly needed parenting and family support. As regards her ability to apply for asylum in Sudan and the reproach concerning the fact that she had not contacted the UNHCR office there, this did not relate to the question of whether doing so would indeed correspond to her best interests, nor did it exempt the Swiss authorities from properly evaluating her best interests. D.E. questioned whether registering with UNHCR in Sudan could tip the balance as regards the competing interests and make it more likely that she would not be reunited with her mother. Similarly, B.F.'s ability to visit D.E. in Sudan did not respond to the question of whether it was in D.E.'s best interests to remain far away from her mother. It could not be held against the applicants that D.E. was not a young child and therefore allegedly not as dependent on her mother, also bearing in mind her particular vulnerability (they referred to *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, 1 December 2005 and *Mugenzi*, both cited above). It was not their fault that B.F.'s asylum proceedings had taken almost two years and that the family reunification proceedings, which had been initiated when D.E. had been 15 years old, had taken as long as they had.

(ii) The applicant in application no. 57303/18 made similar submissions as to the precarious living conditions which her daughter X faced in Sudan, and added that the idea that UNHCR in Sudan would take adequate charge of her daughter was illusory.

(iii) The applicant in application no. 9078/20, in essence, referred to her submissions in the domestic proceedings concerning the vulnerability of her daughters and the precarious situations in which they lived in Ethiopia. She added that her elder daughter had been 14 years old when the applicant had first initiated the family reunification proceedings; while she was now a

young adult, she was not married or settled and was still dependent on the applicant.

(iv) The applicant in application no. 15500/18 pointed out that his children had been aged seven and eleven years when he had lodged the request for family reunification, after the completion of the three-year waiting period. It was not his fault that the family reunification proceedings then took another three years. Nevertheless, his children were still of an age where they were particularly dependent on their parents.

74. In respect of the submissions by the intervening Governments of Germany and of Norway (see paragraphs 80 to 82 below), the applicants in applications nos. 13258/18 and 15500/18 emphasised that neither Germany nor Norway restricted the right to family reunification of persons recognised as refugees under the 1951 Convention; notably, there were no requirements as to financial independence and no waiting periods. The applicants were refugees within the meaning of the 1951 Convention. The applicants in application no. 13258/18 argued that the submissions of the intervening Governments thus supported their claim. The applicant in application no. 15500/18 added that both intervening Governments seemed to misunderstand the Swiss "F permit" for refugees. The applicants in application no. 13258/18 added that it was important not to confuse the different groups of persons who were provisionally admitted in Switzerland ("F permit holders"): there were those who were refugees under the 1951 Convention (as in the present case) and those who were not considered refugees, whose status was deliberately temporary. It was a particularity of Swiss law, which was not replicated elsewhere in Council of Europe member States, to grant the precarious status of "provisional admission" to refugees whose well-founded fear of persecution arose from their illegal departure from their country of origin; this legal fiction allowed the Swiss authorities to curtail the rights of a category of persons whose situation was *de jure* and *de facto* indistinguishable from that of refugees who were granted asylum. This difference in treatment could not be justified. The applicant in application no. 15500/18 submitted that Switzerland appeared to be the only country in Europe which restricted family reunification for refugees within the meaning of the 1951 Convention. The applicants in application no. 13258/18 added that the consequence of a judgment in their favour would have the effect of bringing Switzerland closer to the European consensus. The applicant in application no. 15500/18 fully agreed with the submission made by UNHCR (see paragraphs 83 to 87 below).

(b) The Government

75. The Government referred to the facts as established in the domestic proceedings and to the considerations of the Federal Administrative Court in its judgments in the applicants' cases. They maintained that the domestic authorities had thoroughly examined whether the refusals to grant the family

reunifications which had been requested were proportionate, had thoroughly balanced the competing interests and had struck a fair balance. They had not overstepped their margin of appreciation. It was permissible, under Article 8 of the Convention, to make entry for the purposes of family reunification subject to certain conditions. The applicants' claim that they had been forced to flee their countries of origin had been rejected as not credible in the asylum proceedings; hence, they had left their countries of origin and separated from their family members voluntarily, unlike in the situation in *Mugenzi* (cited above, § 53) and *Tanda-Muzinga* (cited above, § 74), where the adult applicants had been forced to flee. The applicants who were in Switzerland had been provisionally admitted as refugees solely on the grounds of the risk of ill-treatment they faced owing to their illegal exit from their countries of origin. Provisionally admitted refugees were thus not in an "analogous or relevantly similar" situation to refugees who had had a well-founded fear of persecution in their countries of origin prior to fleeing those countries, and who had been forced to flee and were granted asylum in Switzerland. The Swiss legislature had therefore deliberately set out distinct rules for family reunification for refugees who were granted asylum and refugees who were provisionally admitted. Moreover, refugees who were granted asylum were meant to stay in Switzerland permanently; therefore, the legislature had decided to facilitate the arrival of their family members via family reunification by providing more favourable conditions for such reunification. By contrast, the stay of provisionally admitted refugees was precarious and not meant to be permanent. Making the family reunification of provisionally admitted refugees subject to conditions corresponded to the important public interest in controlling immigration. Conversely, denying a Contracting State the opportunity to set conditions for family reunification in situations like the ones at issue would lead to too far-reaching positive obligations under Article 8 of the Convention. The State would systematically have to privilege private interests and the balance would be offset to the detriment of the public interest, including in controlling immigration and requiring integration into society. The margin of appreciation which States enjoyed in this area would not be sufficiently taken into account.

76. In so far as the applicants appeared to challenge the requirement of financial independence in family reunification cases, the Government emphasised that the Court had previously recognised that the entry and stay of foreign nationals could legitimately be limited on considerations of the economic wellbeing of the country (they referred to *Konstatinov v. the Netherlands*, no. 16351/03, § 50, 26 April 2007, and *Hasanbasic v. Switzerland*, no. 52166/09, § 59, 11 June 2013). The majority of States in Europe had made family reunification subject to waiting periods and conditions concerning suitable housing and financial independence. These conditions applied in particular to provisionally admitted persons like the applicants, who did not merit the grant of asylum. In all four applications, the

domestic authorities had established that the applicants who were in Switzerland would not have sufficient means to cover the costs of their family members if those relatives were allowed to join them in Switzerland. There was a serious risk that the family reunifications, if granted, would result in long-term reliance on social assistance.

(i) In applications nos. 13258/18 and 9078/20, the applicants who were in Switzerland had been fully reliant on social assistance ever since they had been provisionally admitted to Switzerland; they had never been gainfully employed.

In application no. 13258/18, the Federal Administrative Court had considered that in view of the applicant's state of health, there was a serious risk of long-term reliance on social assistance. The Government did not address the decision of the Swiss authorities to declare the first applicant completely unfit to work, of which the applicants had informed the Court in their observations; they stated in their observations in reply that the applicants' observations had not contained any arguments unknown to the Government which justified further submissions.

In application no. 9078/20, the Federal Administrative Court had recognised that the applicant suffered from medical problems which affected her capacity to work, but had concluded that she was not completely unfit to work. That finding was based on medical reports and the applicant had not submitted evidence before the Court to question it. The Government noted that the applicant had submitted that she did not have the physical strength to work part-time, but that in 2018 she had nonetheless undertaken a long journey to Ethiopia in difficult conditions to see her daughters. It had been legitimate for the Federal Administrative Court to take her lack of initiative in improving her financial situation into account.

(ii) In application 57303/18, the applicant had been reliant on social assistance since she had been provisionally admitted as a refugee. She had never worked full-time. Given that she was raising three minor children alone and that it was difficult for her to work full-time in such circumstances, no reduction of the family's reliance on social assistance was foreseeable.

(iii) In application no. 15500/18, the applicant's income was not sufficient to cover the expenses of a family of four. No potential income of his wife could be taken into account in the calculation, as it was not certain that she could integrate easily into the labour market, owing to her health problems, among other things.

77. As regards the applicants being able to enjoy family life with their family members in another country, the Government argued that the facts at issue in applications nos. 13258/18 and 15500/18 differed from those of *El Ghatet* (cited above, § 49), where the parent who had been present in the respondent State had had another child with another partner there, which had constituted an obstacle to enjoying family life in another country. Having regard to the applicant's submission in application no. 15500/18, the

Government did not maintain their initial submission that it was likely the applicant's family had stayed in India for a longer period; they maintained, however, that the applicant could live there with his wife and children. They contested the applicant's submission that his children did not have access to education and healthcare in India.

78. With regard to the best interests of the children involved, the domestic authorities had recognised that they had an interest in being reunited with their parent in Switzerland, but had concluded that this interest did not outweigh the public interest in refusing family reunification.

(i) In applications nos. 13258/18 and 57303/18, the Government submitted that the children involved were of an age where they were increasingly independent. The first applicant in application no. 13258/18 and the applicant in application no. 57303/18 could have contact with and visit their children in Sudan, which they had already done in the past. There were serious doubts as to whether the children had had to leave Eritrea. In Sudan, the children could apply for asylum. In so far as it was claimed that the children now lived in Khartoum as unaccompanied minors, the Government pointed out that UNHCR ran a programme to facilitate the placement of unaccompanied minors in foster families. However, the second applicant in application no. 13258/18 had not shown any willingness to contact that organisation and potentially have the benefit of aid. While the applicants had produced a medical certificate confirming that the second applicant suffered from depression and loneliness, her situation was not as dramatic as that of the girl who had been the applicant in *Tuquabo-Tekle* (cited above). Similarly, in application no. 57303/18, the Federal Administrative Court had considered that there were no indications that the situation of the applicant's daughter X in Sudan was extremely critical. The Government added that that application had been lodged by the applicant in her own name only, and that X had been an adult at the time it had been lodged. The applicant was thus no longer X's legal representative; X had never submitted any information about her current situation to the Court.

(ii) In application no. 9078/20, the Government also questioned whether the applicant's children had had to leave Eritrea.

79. Endorsing the submissions by the intervening Governments of Germany and of Norway in respect of applications nos. 13258/18 and 15500/18, which attested to the existence of different legal frameworks among Contracting States to the Convention in this area, and to the importance of affording States a margin of appreciation, the Government maintained that this margin had not been exceeded in the present cases. In respect of the submission made by UNHCR in application no. 15500/18, the Government essentially repeated the submissions they had made in respect of the applicant's observations.

2. Third-party interveners

(a) The Governments of Germany and Norway

80. Intervening in respect of applications nos. 13258/18 and 15500/18, both the German and the Norwegian Government provided information on the relevant legal framework in their countries and emphasised the need to afford a margin of appreciation to the Contracting States, in particular the legislature, regarding the family reunification of foreign nationals. The German Government referred to the large influx of persons eligible for protection which Germany had experienced in 2015 and 2016, and burdens incumbent on the State and on the social systems for receiving and integrating such people which needed to be managed. Both Governments referred to the international and European consensus concerning the need for refugees to have the benefit of a family reunification procedure that was more favourable than that provided for other aliens, and explained that their respective legal frameworks provided refugees within the meaning of the 1951 Convention with a largely unconditional and unrestricted right to family reunification with their nuclear family members. The German Government added that as regards housing and financial requirements – which existed in respect of family reunification in the case of other aliens – it was a precondition for these requirements being waived in respect of refugees within the meaning of the 1951 Convention that a family could not live together in another State to which the persons concerned had a particular link. Where this precondition was not met, housing and financial requirements could, however, still be waived on a discretionary basis.

81. Both Governments took the view that the situation of those granted temporary protection differed from that of refugees, including as to the duration of protection needs, and could justify the setting of less favourable conditions for family reunification for those granted temporary protection. The German Government argued that the prospect of a person remaining in the country was a suitable criterion to consider in exercising the margin of appreciation in family reunification cases. Typically, where a short-term residence permit was issued, there was a strong justification for concluding that the legitimate interests of the host State in managing inward migration took priority. The Court's criteria for granting family reunification were not met by forms of residence that, from the very outset, were foreseeably no more than temporary. In those cases, family life was not envisaged in the host State in the long run, since the prospect existed of family unity being achieved in the country of origin in the foreseeable future. The State had an interest in preventing foreseeably temporary residence arrangements from becoming permanent as a result of unnecessary family reunification. Under German law, stricter criteria for family reunification, including housing and financial requirements, applied to persons who did not qualify as refugees within the meaning of the 1951 Convention or for subsidiary protection, and who were

therefore granted a temporary residence permit because their removal to a specific country was prohibited. However, family reunification was not ruled out entirely in these cases either, but could be granted on a discretionary basis in accordance with the particular circumstances of the individual case.

82. The Norwegian Government argued that neither Article 8 of the Convention nor Article 14 taken in conjunction with Article 8 of the Convention prohibited Contracting States from placing conditions on family reunification, such as subsistence requirements, housing requirements or requirements that the sponsor lawfully reside in the territory for a certain time prior to applying for family reunification. It was within the States' margin of appreciation to decide whether to set conditions on family reunification and, if so, which conditions. As appeared from *Biao v. Denmark* ([GC], no. 38590/10, § 61, 24 May 2016), requirements obliging the person seeking family reunification to have sufficient means of subsistence were common in most Contracting States. The Court had accepted in several cases that the Contracting States might impose requirements on persons seeking family reunification in the form of minimum income requirements and/or requirements that the person in question not be receiving welfare benefits (they referred to *Konstatinov*, cited above, § 50; *Haydarie v. the Netherlands* (dec.), no. 8876/04, 20 October 2005; *Chandra and Others v. the Netherlands* (dec.), no. 53102/99, 13 May 2003; and *Gül v. Switzerland*, no. 23218/94, 19 February 1996). Sponsors whose residence status was temporary had to be distinguished from "settled migrants", with the latter notion, in the Norwegian Government's view, being reserved for persons who had been granted a permanent right to remain.

(b) UNHCR

83. Intervening in application no. 15500/18, UNHCR submitted that the 1951 Convention did not make a distinction between persons who had fled their country for reasons of persecution and persons who became refugees at a later date (refugees *sur place*). There was no hierarchy among refugees who satisfied the definition of Article 1A(2) of the 1951 Convention. Thus, no objective criteria justified a different status (both in nature and duration) for refugees *sur place* or the provision of different rights or standards of treatment, including differences impeding their right to family unity. There was no evidence that the protection needs of provisionally admitted persons were of a different nature or shorter duration than those of refugees granted asylum. In practice, provisionally admitted persons, in particular refugees who were not granted asylum under Swiss law, were generally not able to return home earlier than refugees granted asylum. Importantly, at its core, refugee status was a temporary status which should last as long as international protection was needed. In UNHCR's view, there were no objective and reasonable grounds to justify the difference in treatment between provisionally admitted refugees ("F permit refugees") and

refugees who were granted asylum in Switzerland ("B permit refugees"), who frequently shared the same experiences and protection needs. It was a common characteristic of refugees that they could not resume family life elsewhere.

84. UNHCR added that it had repeatedly expressed concern about the overall restrictive interpretation of the definition of refugee and the unreasonably high standards imposed on credibility assessments in Switzerland. As a consequence, many persons whom UNHCR considered to be refugees within the meaning of the 1951 Convention were not recognised as such and were not granted asylum in Switzerland. In so far as the Swiss authorities contended that the restrictions on the right to family reunification imposed on provisionally admitted refugees were justified, as those refugees represented only a small proportion of all provisionally admitted persons, this did not correspond to the available statistics. Between 2013 and 2018 the State Secretariat for Migration had granted 45,548 provisional admissions, 9,531 of which had been in respect of recognised refugees. In addition, the number of provisionally admitted refugees had corresponded to around 27.7% of the overall number of recognised refugees, and had been up to 90% for some nationalities.

85. While the 1951 Convention did not specifically refer to the right to family reunification, the Final Act of the Conference of Plenipotentiaries at which the Convention had been adopted affirmed "that the unity of the family ... [was] an essential right of the refugee", and UNHCR's Executive Committee had repeatedly emphasised the "fundamental importance" of family reunification. There was a broad consensus at international and European level on the need for refugees to have the benefit of a more favourable family reunification regime than that provided for other foreigners; this was irrespective of the type of residence permit which refugees might be granted, and was equally important for the beneficiaries of temporary or subsidiary protection. The status of an applicant was not determinative, but rather whether there was an obstacle preventing the applicant from enjoying family life in his or her home country or in a third country. In the case of recognised refugees, such obstacles to resuming family life elsewhere were insurmountable, including where an applicant's family members were in a transit country. This was particularly the case if neither the family nor the applicant could obtain a residence permit in the transit country, or access to the labour market or other fundamental rights. While the Court had not ruled out, in principle, the application of financial requirements to refugees, they had only been found to be reasonable in so far as the level of income was equal to welfare benefits, and where they were lifted after a period of three years if the person concerned had made serious but unsuccessful efforts to find gainful employment (referring to *Haydarie*, cited above). None of these criteria were met in the Swiss context, since the income thresholds were fixed. The imposition of maintenance requirements on

refugees and other beneficiaries of international protection had the effect of keeping families separate rather than reuniting them, and did not take into account the particular circumstances of persons who had been forced to flee. In practice, provisionally admitted refugees were often unable to meet the requirements for family reunification under Swiss legislation, in particular those of non-reliance on social assistance and suitable accommodation, owing to obstacles in accessing the labour market, among other things.

86. In order for people to effectively enjoy the right to family life, it was important that family reunification mechanisms be swift and efficient so as to bring families together as early as possible. Hence, a three-year ban on applying for family reunification which resulted in the completion of the proceedings being delayed even further was problematic and excessive. In view of the very high threshold applied in the issuing of humanitarian visas under the Swiss Visa Regulation, that mechanism did not compensate for the excessively restrictive law and practice which undermined family reunification for provisionally admitted refugees.

87. In conclusion, UNHCR submitted that Swiss legislation and practice were at variance with both international and European human rights law, as they undermined the fundamental right to family life of refugees and impacted certain groups in a disproportionate and discriminatory fashion, contrary to the requirements of Article 8 of the Convention as well as Article 14 in conjunction with Article 8 of the Convention. This was all the more problematic where children were involved, as the excessively long waiting period and strict imposition of such requirements failed to take into account the child's best interests in the context of family reunification, and undermined the essential right to family life of persons who were found to be in need of international protection.

3. The Court's assessment

(a) Relevant general principles

88. The Court recently summarised the relevant principles under Article 8 of the Convention in respect of family reunification in *M.A. v. Denmark* (cited above). In that case, the Court confined its examination to the question of whether the refusal to grant the applicant family reunification with his wife owing to the three-year waiting period applicable to beneficiaries of temporary protection entailed a violation of Article 8 of the Convention. It explicitly stated that it was not called upon to assess whether the State might impose other conditions, material or economic, for granting family reunification (ibid., § 128). It reiterated the general principles on family reunification developed in its case-law relating to other types of situations, as they had been summarised in *Jeunesse v. the Netherlands* ([GC], no. 12738/10, 3 October 2014):

"131. In the first place it should be reiterated that a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country (ibid., § 100).

132. Moreover, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on 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 and is subject to a fair balance that has to be struck between the competing interests involved. Factors to be taken into account in this context are the extent to which family life would effectively be 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 the alien concerned and whether there are factors of immigration control (ibid., § 107).

133. Finally, there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance. Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight (ibid., § 109)."

89. Recapitulating its case-law on the substantive requirements of family reunification, the Court continued:

"134. In general, in line with the above-mentioned principles, the Court has been reluctant to find that there was a positive obligation on the part of the member State to grant family reunification, when one or several of the following circumstances, not all of which are relevant to the present case, were present:

i. Family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious. In such a situation, it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8 (see, among many others, *Jeunesse*, cited above, § 108; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, cited above; *Bouchelkia v. France*, judgment of 29 January 1997, Reports 1997-I; *Baghli v. France*, no. 34374/97, ECHR 1999-VIII; *Konstatinov v. the Netherlands*, no. 16351/03, 26 April 2007; *Darren Omoregie and Others v. Norway*, no. 265/07, 31 July 2008; *Antwi and Others v. Norway*, no. 26940/10, 14 February 2012; and *Priya v. Denmark* (dec.) no. 3594/03, 6 July 2016).

ii. The person requesting family reunification had limited ties to the host country, which by implication was usually the case, when he or she had only stayed there for a short time, or stayed there illegally (see, *a contrario*, *Jeunesse*, cited above). So far there have been no cases in which the Court has found an obligation on the part of the member State to grant family reunification to an alien, who had only been granted a short-term residence or a temporary residence permit, with a family member, who had not entered the host country.

iii. There were no insurmountable obstacles in the way of the family living in the country of origin of the person requesting family reunification (see, for example, *Gül v. Switzerland*, no. 23218/94, 19 February 1996; *Ahmut v. Netherlands*, no. 21702/93, 28 November 1996; *Chandra and Others v. Netherlands*, no. 53102/99, 13 May 2003;

Berisha v. Switzerland, no. 948/12, 30 July 2013; *Nacic and Others v. Sweden*, cited above; and *I.A.A. v. the United Kingdom* (dec.), no. 25960/13, 8 March 2016).

iv. The person requesting family reunification (the sponsor) could not demonstrate that he/she had sufficient independent and lasting income, not being welfare benefits, to provide for the basic cost of subsistence of his or her family members (see, notably, *Haydarie v. Netherlands* (dec.), no. 8876/04, 20 October 2005; *Konstatinov v. the Netherlands*, cited above, § 50; and *Hasanbasic v. Switzerland*, no. 52166/09, § 59, 11 June 2013).

135. On the other hand, the Court has generally been prepared to find that there was a positive obligation on the part of the member State to grant family reunification when several of the following circumstances, not all of which are relevant to the present case, were cumulatively present:

i. The person requesting family reunification had achieved a settled status in the host country or had strong ties with that country (see, *inter alia*, *Tuquabo-Tekle and Others v. Netherlands*, no. 60665/00, § 47, 1 December 2005 and *Butt v. Norway*, no. 47017/09, §§ 76 and 87, 4 December 2012).

ii. Family life was already created, when the requesting person achieved settled status in the host country (see, among others, *Berrehab v. the Netherlands*, cited above, § 29 and *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 44).

iii. Both the person requesting family reunification, and the family member concerned, were already staying in the host country (see, *inter alia*, *Berrehab v. the Netherlands*, cited above, § 29).

iv. Children were involved, since their interests must be afforded significant weight (see, for example, *Jeunesse*, cited above, §§ 119-120; *Berrehab v. the Netherlands*, cited above, § 29; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 47; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 44, ECHR 2006-I; and *Nunez v. Norway*, no. 55597/09, § 84, 28 June 2011).

v. There were insurmountable or major obstacles in the way of the family living in the country of origin of the person requesting family reunification (see, *inter alia*, *Sen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001; *Tuquabo-Tekle and Others v. Netherlands*, cited above, § 48; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, cited above, § 41; and *El Ghatet v. Switzerland*, no. 56971/10, § 49, 8 November 2016)."

90. Moreover, there are certain procedural requirements pertaining to the processing of requests for family reunification: the decision-making process has to sufficiently safeguard the flexibility, speed and efficiency required to comply with the applicant's right to respect for family life, and requires an individualised fair-balance assessment of the interest of family unity in the light of the concrete situation of the persons concerned (see *M.A. v. Denmark*, cited above, §§ 137-139, 149, 162-163 and 192-193, with further references). There "exists a consensus at international and European level on the need for refugees to benefit from a family reunification procedure that is more favourable than that foreseen for other aliens" (ibid., §§ 138 and 153, with further references).

91. Applying the above-mentioned principles, the Court found a breach of Article 8 in *M.A. v. Denmark* (cited above) in respect of the statutory

waiting period of three years to which the applicant, a Syrian national who had been granted so-called "temporary protection status" in Denmark in 2015, had been subjected before he could apply for family reunification with his long-standing wife. The Court considered, in particular, that the applicant had not had a real opportunity under domestic law to have an individualised assessment of whether a shorter waiting period was warranted by considerations of family unity, despite it having been accepted in the domestic proceedings that there were insurmountable obstacles in the way of the couple's enjoyment of family life in their country of origin (ibid., §§ 192-194). By contrast, the Court found no violation of Article 8 in the subsequent case of *M.T. and Others v. Sweden* (no. 22105/18, 20 October 2022), where the statutory waiting period had been gradually reduced, the applicants had been *de facto* affected by the suspension of the right to be granted family reunification for a period of less than a year and a half only, and there were no indications that an individualised assessment of the interests of family unity in the light of the concrete situation of the persons concerned had not been carried out.

(b) Application of these principles to the present case

92. As the family members in respect of whom the applicants present in Switzerland requested family reunification had not previously resided in Switzerland, the case concerns the question of whether the Swiss authorities, pursuant to Article 8, were under a duty to grant the family reunifications which had been requested, thus enabling the applicants, who were all recognised as refugees in Switzerland, and their family members to enjoy family life on their territory. The case is to be seen as one involving an allegation of failure on the part of the respondent State to comply with its positive obligations under Article 8 of the Convention (see *M.A. v. Denmark*, § 164; *M.T. and Others v. Sweden*, § 59; and *Jeunesse*, §§ 100-105, all cited above).

93. The crux of the matter is thus whether the Swiss authorities, when refusing the requests for family reunification because the families, if reunited in Switzerland, would not be financially independent, struck a fair balance, subject to their margin of appreciation, between the competing interests of the individuals and of the community as a whole. The applicants had an interest in being reunited with their family members, whereas the Swiss State had an interest in controlling immigration as a means of serving the general interests of the economic well-being of the country.

(i) Scope of margin of appreciation

94. In *M.A. v. Denmark* (cited above, § 140), the Court noted that it had not previously been called upon to consider whether, or to what extent, the imposition of a statutory waiting period for granting family reunification to

beneficiaries of subsidiary and temporary protection was compatible with Article 8 of the Convention, and thus found it pertinent to clarify the scope of the margin of appreciation afforded to member States. After examining a number of factors, it concluded that the member States should be afforded a wide margin of appreciation in deciding whether to impose a waiting period for family reunification requested by persons who had not been granted refugee status but who enjoyed subsidiary protection or, like the applicant, temporary protection (ibid., §§ 141-163).

95. As was the case in *M.A. v. Denmark*, the Court has so far not dealt with the question before it in the present case, notably whether, or to what extent, member States may make family reunification conditional upon the family being financially independent, with regard to those refugees within the meaning of the 1951 Convention whose fear of persecution in their country of origin has arisen only following their departure from the country of origin and as a result of their own actions – for example, in the present case, the applicants' illegal exit from their countries of origin (see paragraph 6 above). In this connection, the Court observes the following in relation to the cases referred to in *M.A. v. Denmark* (cited above, § 134 (iv), reproduced at paragraph 89 above), that is, those where the person requesting family reunification (the sponsor) could not demonstrate that he or she had a sufficient independent and lasting income, not including welfare benefits, to provide for the basic cost of his or her family members' subsistence. The residence permits of the sponsors in the cases of *Konstatinov* and *Hasanbasic* were not linked to any risk of ill-treatment they would face in their countries of origin in the event of their return; the same holds true for the cases of *Chandra and Others* and *Gül* (all cited above). Only in *Haydarie* had the sponsor – having had her asylum request rejected – been granted a residence permit in the respondent State because her expulsion to the country of origin would have entailed undue hardship in view of the general situation there at the relevant time. She was, however, not recognised as a refugee within the meaning of the 1951 Convention; such recognition would have exempted her from any income requirements for family reunification under the domestic law. Instead, under the domestic law, her family reunification request fell to be examined under the regular immigration rules on family reunion, which included minimum income requirements. The Court stated that, in principle, it did not consider unreasonable a requirement that an alien who sought family reunification had to demonstrate that he or she had a sufficient independent and lasting income, not including welfare benefits, to provide for the basic costs of the subsistence of his or her family members with whom reunification was sought. As to the question of whether such a requirement was reasonable in that case, the Court considered that it had not been demonstrated that the first applicant had in fact actively sought gainful employment after she had become entitled to work in the respondent State, and concluded that it could not be said that the domestic authorities had failed

to strike a fair balance between the applicants' interests on the one hand and its own interest in controlling immigration and public expenditure on the other.

96. The Court notes that certain factors on which the Court relied in *M.A. v. Denmark* (cited above) to determine that the margin of appreciation afforded to member States was wide in relation to the question at issue in that case are also present in the case now before it. Firstly, there are no absolute rights under Article 8. Notably, where immigration is concerned, that provision cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. The Court has on numerous occasions recognised that immigration control is a legitimate aim in respect of which the State may interfere with the right to respect for family life within the meaning of Article 8 of the Convention. The same applies with regard to positive obligations (ibid., § 142, with further references). Secondly, the Court has acknowledged that immigration control serves the general interests of the economic well-being of a country, in respect of which a wide margin is usually allowed to the State (ibid., § 143)

97. However, other important factors differ between the two cases. Notably, the statutory waiting period at issue in *M.A. v. Denmark* concerned persons who were not granted refugee status. The Court considered that, whereas there was consensus at international and European level that refugees needed to have the benefit of a family reunification procedure that was more favourable than that provided for other aliens, the position was not quite same for beneficiaries of subsidiary protection (ibid., § 153). Notably, European Union law left an extensive margin of discretion to the member States when it came to granting family reunification for persons under subsidiary protection and introducing waiting periods for family reunification (ibid., §§ 155-56). Furthermore, no common ground emerged from the comparative law material (ibid., §§ 69 and 151) or at international level (ibid., § 160).

98. By contrast, in the present case, the applicants residing in Switzerland were all recognised as refugees within the meaning of the 1951 Convention (see paragraphs 6, 44 and 45 above). The Court takes note of UNHCR's submission that the 1951 Convention did not distinguish between persons who had fled their country for reasons of persecution and persons who became refugees at a later date, that there was no hierarchy among refugees who satisfied the definition of Article 1A(2) of the 1951 Convention, and that no objective criteria justified the provision of different treatment for refugees *sur place*, such as the applicants, including as regards their right to family unity (see paragraph 83 above). At European Union level – a standard by which Switzerland is not bound – family reunification of refugees within the meaning of the 1951 Convention is not subject to conditions, provided that the application for family reunification is submitted within three months after the granting of refugee status, and no distinction is made between different

refugees under that Convention (see paragraphs 62-64 above). The restrictions on the right to family reunification imposed on certain beneficiaries of international protection in other European States do not concern persons recognised as refugees under the 1951 Convention (see paragraphs 80 to 82 above as regards the situations in Germany and Norway as explained by the intervening third-party Governments; see also *M.A. v. Denmark*, cited above, §§ 45-62, 69 and 151-60, as well as paragraph 66 above). Consequently, the Court considers that common ground can be discerned at national, international and European levels in terms of not distinguishing between different refugees within the meaning of the 1951 Convention as regards requirements for family reunification. Such common ground reduces the margin of appreciation afforded to member States (see, more generally, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 186-187, 17 January 2023), as does the above-mentioned consensus at international and European level that refugees within the meaning of the 1951 Convention, such as the applicants residing in Switzerland, need to have the benefit of a more favourable family reunification procedure than other aliens.

99. The respondent State's disputed approach in the present case – to differentiate in respect of the requirements to be met in order for family reunification to be granted, depending on whether a recognised refugee within the meaning of the 1951 Convention had had a well-founded fear of persecution in his or her country of origin prior to fleeing that country and had thus been forced to flee, or whether his or her fear of persecution had subsequently arisen following his or her departure and as a result of his or her own actions – thus appears to be unique in the international, European and comparative spectrum (see also paragraph 74 above). The Court also notes that the Council of Europe Commissioner for Human Rights, CERD and UNHCR criticised the difference in treatment set out in Swiss legislation in respect of conditions for family reunification for provisionally admitted refugees and for refugees who were granted asylum as discriminatory (see § 169 of the report of the Council of Europe Commissioner for Human Rights issued on 17 October 2017, cited in paragraph 56 above, as well as paragraphs 59, 83 and 87 above).

100. Another factor which has an impact on the scope of the margin of appreciation is the quality of the parliamentary and judicial review in question (see *M.A. v. Denmark*, cited above, §§ 147-50), it being noted that the requirement of non-reliance on social assistance – which applies to the family reunification requests of provisionally admitted refugees like the applicants, but not to those of refugees who are granted asylum – was introduced by the legislature on 1 January 2007 and applied thereafter (see paragraphs 5 and 51 above). The Government argued that the legislative distinction was justified in view of, firstly, the difference, in terms of nature and duration, between the stay of refugees who were granted asylum, whose stay was meant to be

permanent from the outset, and that of provisionally admitted refugees, whose stay was precarious and not meant to be permanent (see paragraph 75 above). However, the Court considers that this assertion does not appear to be sufficiently supported by evidence. The 2016 report of the Swiss Federal Council found that the majority of provisionally admitted persons remained in Switzerland in the long run (see paragraph 50 above). Similarly, the Council of Europe Commissioner for Human Rights noted that some 90% of provisionally admitted persons stayed in Switzerland for a long time (see § 103 of the report issued on 17 October 2017, cited in paragraph 56 above). UNHCR submitted that, in practice, refugees who were granted provisional admission to Switzerland in particular were generally not able to return to their countries of origin earlier than refugees who were granted asylum; there was no evidence that the protection needs of provisionally admitted persons were of a different nature or shorter duration than those of refugees granted asylum (see paragraph 83 above). The Court considers that the findings by the Swiss Federal Council and the submissions by the Council of Europe Human Rights Commissioner and by UNHCR are mirrored by the development in the Federal Administrative Court's case-law in 2017. The effect of the development has been that since 2017 the court has considered that recognised refugees, whether they have been provisionally admitted or granted asylum, are, as a rule, unable to return to their countries of origin in the long run, and that provisionally admitted refugees therefore have *de facto* settled status in Switzerland, unless the revocation of their status is foreseeable (see paragraph 53 above).

101. The stay of the applicants in Switzerland emphasises that the stay of provisionally admitted refugees tends to be of long duration: these applicants arrived in the country at different points in time between 2008 and 2012 and were provisionally admitted as refugees by decisions taken between 2010 and 2014 (see paragraphs 12, 22, 30 and 36 above), and the Federal Administrative Court found that they all had *de facto* settled status, as their provisional admission was not likely to be revoked (see paragraph 10 above). Accordingly, and reiterating that provisionally admitted refugees are recognised as having refugee status under the 1951 Convention, the Court is not convinced by the argument advanced by the Government to justify the difference in treatment. The situation in this case is different from that in *M.A. v. Denmark* and *M.T. and Others v. Sweden*, where the Court, in respect of waiting periods for family reunification, saw no reason to question the distinction made between persons granted protection owing to an individualised threat, namely those who had refugee status under the 1951 Convention, and persons granted protection owing to a generalised threat, be it temporary protection or subsidiary protection status (see *M.A. v. Denmark*, §§ 166-77, and *M.T. and Others v. Sweden*, §§ 60-65, both cited above).

102. The second argument advanced to justify the legislative distinction between provisionally admitted refugees and refugees who were granted

asylum, in respect of conditions for family reunification, is that the former had left their countries of origin and separated from their family members voluntarily, whereas the latter had been forced to flee (see paragraph 75 above). The applicants disputed that they had left their countries of origin and separated from their family members voluntarily, and maintained that they had been forced to flee (see paragraph 71 above), thus challenging the assessment made by the domestic authorities in the asylum proceedings that the applicants' claims that they had faced persecution in their countries of origin prior to their departure were not credible (see paragraph 6 above) and the findings made by the domestic authorities in the family reunification proceedings (see paragraphs 19, 29, 35 and 41 above). The Court reiterates, firstly, that it does not itself examine actual asylum applications (see *F.G. v. Sweden* [GC], no. 43611/11, § 117, 23 March 2016, and *M.T. and Others v. Sweden*, cited above, § 114) and, secondly, that it had previously found that caution was called for when determining whether a father, whose asylum application was subsequently rejected by the authorities of the respondent State, had left his child behind "of his own free will" (see *El Ghatet*, cited above, § 48).

103. Nevertheless, the Court is not in a position to question that their departure from their countries of origin and their separation from their family members occurred in different circumstances from those of refugees who were forced to flee persecution in their countries of origin (see also, *mutatis mutandis*, *M.T. and Others v. Sweden*, cited above, §§ 98-105). While the Court's case-law does not require that the circumstances in which the departure from the country of origin and the separation from the family members occurred be taken into account as an element in the assessment as to whether a State is under a duty under Article 8 of the Convention to grant the family reunification which has been requested, the Court cannot discern that it is manifestly unreasonable to do so *per se* (see also, *mutatis mutandis*, *M.T. and Others v. Sweden*, cited above, §§ 98-111). In this connection, the Court reiterates that it has so far not recognised an absolute and unconditional right to family reunification for refugees within the meaning of the 1951 Convention (see also *M.A. v. Denmark*, cited above, §§ 142 and 193), but rather established a number of elements to be taken into account in the assessment as to whether a State is under a duty under Article 8 of the Convention to grant the family reunification which has been requested (see paragraphs 88-90 above). The Court also observes that the 1951 Convention does not contain a provision on refugees' right to family reunification, and that the relevant guidance on international refugee law is to be found in conclusions of UNHCR's Executive Committee (see paragraphs 60 and 85 above, and *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 178, 13 February 2020, as regards the Court's reliance on such conclusions).

104. In the light of the considerations set out in paragraphs 94 to 103, the Court considers, on the one hand, that member States enjoy a certain margin

of appreciation in relation to requiring non-reliance on social assistance before granting family reunification in the case of refugees who have left their countries of origin without being forced to flee persecution and whose grounds for refugee status have arisen following their departure and as a result of their own actions. On the other hand, this margin is considerably more narrow than the margin afforded to member States in relation to the introduction of waiting periods for family reunification when that is requested by persons who have not been granted refugee status, but rather subsidiary or temporary protection status (compare *M.A. v. Denmark*, cited above, § 161).

105. As the object and purpose of the Convention call for an understanding and application of its provisions such as to render its requirements practical and effective, not theoretical and illusory, in their application to the particular case (ibid., §§ 162 and 192-93), the Court considers that the particularly vulnerable situation in which refugees *sur place* find themselves – notably, the insurmountable obstacles to their being reunited with their family members in their country of origin, given that they now face a risk of ill-treatment there – needs to be adequately taken into account in the application of a requirement (such as the requirement of non-reliance on social assistance) to their family reunification requests. It reiterates that refugees need to have the benefit of a family reunification procedure that is more favourable than that provided for other foreign nationals (see paragraphs 90 and 98 above). As it did in relation to waiting periods going beyond a duration of two years, the Court considers that insurmountable obstacles to enjoying family life in the country of origin progressively assume greater importance in the fair-balance assessment as time passes (compare *M.A. v. Denmark*, cited above, §§ 162 and 192-93). Reiterating that the fair-balance assessment should form part of a decision-making process that sufficiently safeguards, *inter alia*, the flexibility required to comply with the refugee's right to family life (ibid., § 163), the requirement of non-reliance on social assistance needs to be applied with sufficient flexibility, as one element of the comprehensive and individualised fair-balance assessment, as time passes and insurmountable obstacles to family life in the country of origin remain (see also § 9 of Conclusion No. 24 (XXXII) on Family Reunification (1981), cited in paragraph 60 above, as well as § 10 of Resolution 2243 (2018) of the Parliamentary Assembly of the Council of Europe, cited in paragraph 65 above). Having regard to the waiting period applicable to the family reunification of provisionally admitted refugees under Swiss law (see paragraphs 45 and 55 above), this consideration is applicable by the time provisionally admitted refugees become eligible for family reunification under domestic law as interpreted by the domestic courts (see paragraph 55 above). More generally, the Court observes that refugees, including those whose fear of persecution in their country of origin has arisen only following their departure from the country of origin and as a result of their own actions, should not be required

to "do the impossible" in order to be granted family reunification. Notably, where the refugee present in the territory of the host State is and remains unable to meet the income requirements, despite doing all that he or she reasonably can to become financially independent, applying the requirement of non-reliance on social assistance without any flexibility as time passes could potentially lead to the permanent separation of families.

106. In the present case, the Court is not called upon to determine whether and/or to what extent these considerations apply in scenarios in which refugees may have to fulfil such requirement in the event that they did not submit the application for family reunification within a certain time-limit after the granting of refugee status, without particular circumstances which rendered the late submission objectively excusable, it being noted that such question may arise in cases where European Union member States made use of the possibility afforded to them under the third subparagraph of Article 12(1) of the Family Reunification Directive (see paragraphs 62-63 and 98 above). The relevant Swiss legislation does not contain such distinction in respect of the applicability of the income requirement based on when the application for family reunification was submitted.

107. Section 74(5) of the Regulation (see paragraph 47 above) and the case-law of the domestic courts provide that the specific circumstances of refugee status have to be taken into account when assessing whether the requirement of non-reliance on social assistance is satisfied, and that for the purposes of allowing family reunification, it must be deemed sufficient if a recognised refugee has undertaken all that could reasonably be expected of him or her to earn a living sufficient to cover his or her expenses and those of his or her family, and has at least partly integrated into the labour market (see paragraph 52 above). Similarly, where a provisionally admitted person was unable to work for medical reasons, the Federal Administrative Court found that the applicant had done all he could to avoid or at least reduce his family's reliance on social assistance, and ordered that the family reunification which had been requested be granted (ibid.). This flexibility in the application of the requirement of non-reliance on social assistance in the case of family reunification requests by provisionally admitted refugees corresponds to what is required under the Convention, and the flexibility recently shown by the Federal Administrative Court in relation to the three-year waiting period under section 85(7) of the Aliens Act, to ensure compliance with the developments brought by the judgment of this Court in *M.A. v. Denmark* (cited above, see paragraph 55 above), is to be commended.

108. At the same time, the Court does not overlook that the case-law of the domestic courts also provides that, even where provisionally admitted refugees have at least partly integrated into the labour market, the amount by which a family falls short of non-reliance on social assistance must not exceed a reasonable amount, and should be made up for in the foreseeable future in order for family reunification to be granted (see paragraph 52 above). It is

obvious that these conditions circumscribe flexibility in the application of the requirement of non-reliance on social assistance, which forms part of a comprehensive individualised fair-balance assessment. The Court takes note of UNHCR's submission that in practice, provisionally admitted refugees were often unable to meet the requirements for family reunification under Swiss legislation, in particular those of non-reliance on social assistance and suitable accommodation, partly owing to obstacles in their accessing the labour market (see paragraph 85 above). It also notes the reports by the Swiss Federal Council and by the Council of Europe Commissioner for Human Rights indicating that as a result of the strict requirements, only thirty to fifty persons a year were provisionally admitted by way of family reunification (see paragraph 50 above and § 167 of the report cited in paragraph 56 above), while there were nearly 40,000 provisionally admitted persons in total in 2017, of whom nearly 10,000 were provisionally admitted refugees (see § 101 of the report cited in paragraph 56 above). In addition, the CERD, the CRC and the CESCR expressed concern that family reunification for provisionally admitted persons, including provisionally admitted refugees, was too restricted (see paragraphs 57-59 above).

(ii) The applicants' individual cases

109. The Court's task in the present case is not to assess the relevant legislation of the respondent State in the abstract, but rather to determine whether the manner in which it actually affected the applicants infringed their rights under Article 8 of the Convention (see *Von Hannover v. Germany (no.2)* [GC], nos. 40660/08 and 60641/08, § 116, ECHR 2012, and *M.T. and Others v. Sweden*, cited above, § 94). The Court will therefore now turn to the examination of whether the applicants' requests for family reunification were processed by the domestic authorities with the flexibility required to comply with their right to family life, and whether they entailed an individualised fair-balance assessment of the interest of family unity in the light of the concrete situation of the persons concerned. To that end, it will firstly recapitulate the elements of the four applications at hand which are relevant for that assessment.

(α) The duration of the applicants' stay, their status in and their ties to Switzerland

110. In the cases at hand, the applicants present in Switzerland had been residing in the country for different periods of time when they lodged the relevant family reunification requests. This is firstly owing to the difference between the dates on which they lodged their asylum applications and the dates on which they were provisionally admitted, with the relevant periods ranging from one month in application no. 15500/18 (see paragraph 22 above) to more than two years in application no. 13258/18 (see paragraph 12 above), and secondly because the family reunification requests at issue were lodged

either after the completion of the three-year waiting period applicable to the family reunification of provisionally admitted refugees (see paragraphs 22-23 and 30-32 above) or prior to the completion of that period (see paragraphs 12, 14 and 36-37 above).

111. At the time when the Federal Administrative Court adjudicated the applicants' appeals against the decisions refusing their requests for family reunification, the three-year waiting period had nearly been completed in application no. 13258/18 (see paragraphs 17-18 above), and the first applicant in that case had been residing in Switzerland for more than five years (see paragraphs 12 and 14 above). The three-year waiting period had been completed long before the Federal Administrative Court adjudicated the applicants' appeals in the other three applications. In the proceedings leading to application no. 15500/18, the Federal Administrative Court decided on the appeal three years after the applicant had initiated the family reunification proceedings, and seven years after he had lodged his asylum application and been provisionally admitted as a refugee in Switzerland (see paragraphs 22, 23 and 28 above). In the proceedings leading to application no. 57303/18, the Federal Administrative Court adjudicated the applicant's appeal more than three and a half years after she had initiated the family reunification proceedings, more than eight years after she had been provisionally admitted as a refugee in Switzerland and nearly ten years after she had lodged her asylum application (see paragraphs 30, 32 and 34 above). In the proceedings leading to application no. 9078/20, the Federal Administrative Court adjudicated the applicant's appeal more than five years after she had initiated the family reunification proceedings, some five and a half years after she had been provisionally admitted as a refugee and more than seven and a half years after she had lodged her asylum application (see paragraphs 36, 37 and 40 above).

112. Hence, in all four applications, the applicants present in Switzerland resided there for a significantly longer period than the applicant in *M.A. v. Denmark* (cited above, § 183) and the second applicant in *M.T. and Others v. Sweden* (cited above, § 73) resided in the respective respondent States. Indeed, in all cases at hand, the Federal Administrative Court found that the applicants, as refugees whose provisional admission was not likely to be revoked in the near future, had *de facto* settled status in Switzerland (see paragraphs 10 and 53 above), illustrating that the stay of provisionally admitted refugees in Switzerland generally tends to be of long duration (see paragraphs 100-105 above). This weighs in favour of finding that there is a positive obligation on the part of the respondent State to grant family reunification (see *M.A. v. Denmark*, cited above, § 135 (i), and contrast with § 134 (ii) of that judgment, cited at paragraph 89 above).

113. In addition to the duration of the stay of the applicants residing in Switzerland, the domestic authorities assessed their ties to the country, focusing primarily on their professional integration and their efforts to learn

an official language. The outcomes varied among the different applicants, with the level of integration of the first applicant in application no. 13258/18 and the applicant in application no. 9078/20, neither of whom had ever been gainfully employed in Switzerland, determined to be mostly poor (see paragraphs 19 and 40 above). The assessment was more positive, but still not overly so, in relation to the applicants in applications nos. 15500/18 and 57303/18, who had been gainfully employed in Switzerland (see paragraphs 29 and 34 above). In all four applications, the family members abroad in respect of whom family reunification had been requested had never been to Switzerland and had no ties to the country, except to their family members residing in Switzerland as provisionally admitted refugees (see *M.A. v. Denmark*, §§ 135 (iii) and 183, and *M.T. and Others v. Sweden*, § 74, both cited above).

(β) The time when the applicants' family life was created

114. In all four applications, the applicants present in Switzerland had a long-standing family life with their family members abroad in respect of whom they had applied for family reunification, which also weighs in favour of finding that there is a positive obligation on the part of the respondent State to grant family reunification (see *M.A. v. Denmark*, cited above, § 135 (ii), and contrast with § 134 (i) of that judgment, cited in paragraph 89 above; see also § 181 of that judgment). While it has no bearing on the present case, the Court would underline in this connection that it previously found there to be no justification for treating refugees who married post-flight differently, in terms of the entitlement of a spouse to join the other spouse who was recognised as refugee in the host State, from those who married pre-flight (see *Hode and Abdi v. the United Kingdom*, no. 22341/09, § 55, 6 November 2012).

(γ) The possibility to enjoy family life elsewhere

115. As regards the applicants' opportunity to enjoy family life somewhere other than Switzerland, the Court notes firstly that the Swiss authorities recognised the applicants residing in Switzerland as refugees within the meaning of the 1951 Convention on account of the ill-treatment they were at risk of experiencing in their countries of origin in the event of their return (see paragraph 6 above). It follows that there are insurmountable obstacles in the way of the families living together in the countries of origin of the persons requesting family reunification (compare *M.A. v. Denmark*, § 184; *Tanda-Muzinga*, § 74; and *Mugenzi*, § 53, all cited above).

116. As the family members in respect of whom family reunification has been requested are not in their countries of origin, but in third countries, the Federal Administrative Court and the Government considered, in essence, that the family members concerned could remain in these countries and that

the applicants residing in Switzerland could at least visit them there, as they had done in the past (see paragraphs 19, 35, 40-41 and 77-78 above), or, in application no. 15500/18, even live together in the third country (see paragraphs 29 and 77 above). The applicants residing in Switzerland submitted, in particular, that their family members were not staying in the third countries lawfully, and that they themselves could not lawfully reside there (see paragraph 70 above).

117. The Court has previously dealt with cases of applicants who were recognised as refugees in the respondent State and had lodged requests for family reunification in respect of their family members who were refugees in a third country at the time (see *Tanda-Muzinga*, §§ 6-8 and 74, and *Mugenzi*, §§ 6, 8-9 and 53, both cited above). In those cases, the Court found that the arrival of the applicants' family members in the respondent State was the only means by which family life could resume (see *Tanda-Muzinga*, § 74, and *Mugenzi*, § 53, both cited above). The Court did not address the living conditions in the third country or the possibility of reunification there, although in one case it emphasised that the applicant's fears that his two children would be removed from the third country to the country of origin and face persecution there, which lay at the core of his family reunification request, had not been examined in the domestic proceedings (see *Mugenzi*, cited above, §§ 55 and 60). Rather, it reiterated that "family unity [was] an essential right of refugees and that family reunion [was] an essential element in enabling persons who ha[d] fled persecution to resume a normal life" (see *Tanda-Muzinga*, § 75, and *Mugenzi*, § 54, both cited above).

118. In the circumstances of the present case, the following considerations regarding the families' opportunity, or lack thereof, to live in the third countries concerned reinforce the finding that the arrival in Switzerland of the applicants' family members in respect of whom family reunification has been requested is the only means by which family life could resume, which also weighs in favour of finding that there is a positive obligation on the part of the respondent State to grant family reunification (see*, mutatis mutandis*, *M.A. v. Denmark*, cited above, § 135 (v), and contrast with § 134 (iii) of that judgment, cited in paragraph 89 above):

(i) Even if Tibetans were not threatened with removal from India to China (see paragraph 29 above, and *D.C. and Y.D. v. Switzerland* (dec.), nos. 7267/13 and 23273/13, §§ 48-51, 1 July 2014) and the issues of whether and to what extent the wife and children of the applicant in application no. 15500/18 experience restrictions in exercising certain rights in India (see paragraphs 70 and 77 above) were not in dispute, India has not ratified the 1951 Convention or the 1967 Additional Protocol thereto. In addition, the applicant's submissions indicating that the stay of his wife and children there was not lawful and that he himself could not lawfully reside there (see paragraph 70 above, as well as paragraph 26 above as regards the submissions made in the domestic proceedings, and paragraph 29 as to the findings of the

Federal Administrative Court) were not rebutted in a substantiated manner by the Government (see paragraph 77 above).

(ii) The second applicant in application no. 13258/18 and the daughter of the applicant in application 57303/18 are both in Sudan. While they may be able to apply for asylum there (see paragraphs 19, 35 and 73 above) and regularise their stay there (see paragraphs 16, 33 and 70 above), the Government did not contest the submission that the first applicant in application no. 13258/18 and the applicant in no. 57303/18 could not lawfully reside in Sudan (see paragraph 70 above).

(iii) In application no. 9078/20, the Federal Administrative Court did not address the applicant's submission that in Ethiopia, her children had no right to live outside a refugee camp (see paragraphs 38 and 41 above). The Government similarly did not address her submissions that her children did not lawfully reside there and that the family could not live together there, but limited themselves to questioning whether the children had been forced to leave Eritrea (see paragraphs 70 and 78 above).

(δ) The best interests of the children

119. While the best interests of the child cannot be a "trump card" which requires the admission of all children who would be better off living in a Contracting State, the domestic courts must place the best interests of the child at the heart of their considerations and attach crucial weight to it (see *El Ghatet*, § 46, and *M.T. and Others v. Sweden*, § 82, both cited above, with further references). In essence, the Federal Administrative Court considered: (i) the children in application no. 15500/18 lived with their mother (see paragraph 29 above); (ii) the children in applications nos. 57303/18 and 9078/20 lived with other relatives in the third country, or at least had done so initially (see paragraphs 35 and 41 above); (iii) the unaccompanied child in application no. 13258/18 and the child in application no. 57303/18 – in the event that the latter child was unaccompanied, as the applicant had submitted – could turn to UNHCR in Sudan to seek placement in a foster family (see paragraphs 19 and 35 above); (iv) the children in applications no. 13258/18 and 57303/18 had reached an age where they were increasingly independent (see paragraphs 19 and 35 above); and (v) there were no indications that the child in application no. 57303/18 was in an extremely critical situation (see paragraph 35 above).

The Government advanced, in essence, similar arguments (see paragraph 78 above), whereas the applicants emphasised the vulnerabilities of the children and the precarious living conditions they faced in the third countries, and argued that their children continued to be dependent on them (see paragraph 73 above).

120. It is not the Court's task to take the place of the competent authorities in determining the best interests of the child, but to ascertain whether the domestic courts secured the guarantees set out in Article 8 of the Convention,

particularly taking into account the child's best interests, which must be sufficiently reflected in the reasoning of the domestic courts (see *El Ghatet*, cited above, § 47). However, the Court cannot overlook that it was either established or presumed by the authorities in the domestic proceedings (applications nos. 13258/18 and 9078/20), or submitted by the applicant and not contested by the authorities (application no. 57303/18), that the other parent of the children in those cases was missing or dead (see paragraph 8 above, and, for a similar scenario, *Tuquabo-Tekle and Others*, cited above, and contrast *El Ghatet*, cited above, § 50). Noting that this specific aspect has not been addressed by the Federal Administrative Court, and in the absence of any indications to the contrary (see paragraph 81 of paragraph 61 above), the Court considers that it would appear to be in the best interests of the children to be reunited with their sole parent who is alive in Switzerland, regardless of whether the children are or have been living with other relatives in the third countries or could apply for a placement in a foster family there (see paragraphs 19, 35, 41, 43 and 73 above). The Court notes that this conclusion was also reached by UNHCR, on the basis of in-person interviews with the children concerned in applications nos. 13258/18 and 9078/20 (see paragraphs 16 and 38 above). It would moreover appear to be in the best interests of the children in application no. 15500/18, who were still minors when the Federal Administrative Court rejected the applicant's appeal and who are in India with their mother, the applicant's wife, to be reunited with the applicant in Switzerland and live there with both of their parents. These considerations weigh in favour of finding that there is a positive obligation on the part of the respondent State to grant family reunification (see *M.A. v. Denmark*, cited above, § 135 (iv), cited in paragraph 89 above).

121. It is true that the second applicant in application no. 13258/18 and the applicant's daughter in application no. 57303/18 had reached an age where they were increasingly independent when the Federal Administrative Court adjudicated the appeals in the family reunification proceedings – the second applicant in application no. 13258/18 was 16 years old at the time (see paragraphs 12 and 17 above), and the applicant's daughter in application no. 57303/18 was nearly 18 years old (see paragraphs 31, 34 and 35 above). However, the girls were only 14 (in application no. 57303/18, see paragraphs 31-32 above) and 15 years old (in application no. 13258/18, see paragraphs 12 and 14 above) respectively when their mothers initiated the family reunification proceedings at issue. The Court moreover observes that the asylum proceedings of the first applicant in application no. 13258/18 lasted more than two years (see paragraph 12 above). The family reunification proceedings were concluded some three years later (see paragraphs 17 and 20 above), and the conclusion of those proceedings coincided with the completion of the statutory three-year waiting period for family reunification for provisionally admitted refugees, which the applicants had not waited for before lodging their request (see paragraphs 12, 14, 17 and 18 above). In

application no. 57303/18 the applicant lodged the family reunification request at issue after the completion of the three-year waiting period (see paragraphs 30-32 above); the proceedings were terminated three and a half years later (see paragraph 34 above). The Court considers that the statutory three-year waiting period means that it is inevitable that families will be separated for several years prior to a final domestic decision on their request for family reunification, especially if they wait for the completion of that period before lodging their request, it being borne in mind that the waiting period only starts to run from the moment the asylum application is adjudicated and the person is provisionally admitted as a refugee (see also *M.A. v. Denmark*, cited above, § 179). Children will inevitably grow older in the meantime, and the Court considers that in these circumstances only very limited weight can be attributed to the fact that the children in applications nos. 13258/18 and 57303/18 – who had been separated from their sole surviving parent for years – had reached an age when they were increasingly independent by the time the final domestic decisions in the family reunification proceedings were taken.

While the Government have not made a submission to that effect, the Court considers that the same holds true in relation to the elder daughter of the applicant in application no. 9078/20, who was a minor when the request for family reunification was lodged and a young adult by the time the domestic proceedings were concluded more than five years later (see paragraphs 37 and 40 above). It also notes that according to the applicant, the elder daughter had not yet founded a family of her own (see paragraph 73 above).

122. Moreover, in application no. 13258/18, it cannot be ignored that the second applicant was an unaccompanied minor in Sudan, which undoubtedly rendered her vulnerable (see paragraphs 19, 73 and 78 above). Secondly, even though the severity of her medical conditions is in dispute between the parties (see paragraphs 73 and 78 above), the existence of such health problems is not in dispute and needs to be taken into account (see also *Mugenzi*, cited above, § 55). Thirdly, the first applicant in that application was recognised by the competent Swiss authorities as being unfit to work for medical reasons (see paragraphs 21 and 72 above); while that determination took place after the completion of the family reunification proceedings, she had already relied on her medical problems during those proceedings (see paragraphs 16 and 19 above). In these circumstances, the Court considers that the applicants in application no. 13258/18 showed that they were particularly dependent on each other and that they had particular difficulty in living apart (compare and contrast *M.T. and Others v. Sweden*, cited above, §§ 73-74 and 81-82).

123. Without overlooking that it could not be clarified in the domestic proceedings whether the daughter of the applicant in application no. 57303/18 was an unaccompanied minor at the time of the Federal Administrative Court's judgment (see paragraph 35 above), and that she had become an adult

by the time the application to this Court was lodged, the Court takes note of the applicant's submission that her daughter's living conditions as a girl who was a refugee in Sudan were precarious (see paragraphs 33, 73 and 118 above), which illustrated the difficulty she faced as a result of not living with the applicant.

124. As regards their particular dependence on each other and their particular difficulty in living apart, the Court notes the undisputed submission by the applicant in application no. 9078/20 that her children were not allowed to leave the Adi-Harush refugee camp in Ethiopia, faced poor living conditions there, and that their other family members had since left the camp. It is also undisputed that the applicant herself suffered from medical problems (see paragraph 38, 40, 41, 43, 72, 76 and 118 above).

125. In application no. 15500/18, the particular dependence of the applicant's wife and minor children on the applicant was demonstrated by the consistent and undisputed submissions that his wife and children were fully dependent on his income in Switzerland and that he transferred between CHF 800 and CHF 1,000 to them every month (see paragraphs 26 and 70 above).

(ε) The requirement of non-reliance on social assistance

126. The domestic authorities based their decisions refusing the applicants' requests for family reunification on the finding that the applicants would not be financially independent if their family members were allowed to join them in Switzerland (see paragraphs 18-19, 28-29, 34-35 and 40-41 above). The Government, in essence, maintained that finding (see paragraph 76 above). The applicants, for their part, argued that the domestic authorities had not properly taken their particular vulnerabilities into account (see paragraph 72 above). Reiterating that the requirement of non-reliance on social assistance needs to be applied with sufficient flexibility in relation to family reunification requests as time passes and insurmountable obstacles to family life in the country of origin remain (see paragraph 105 above), as well as its observations in respect of the case-law of the domestic courts (see paragraphs 107-108 above), the Court makes the following observations in respect of the different applications before it.

– *Application no. 15500/18*

127. The applicant in application no. 15500/18 was gainfully employed in a full-time job at the time he lodged his request for family reunification, after the completion of the statutory three-year waiting period (see paragraphs 22-23 above), and continued to be thus employed. Nonetheless, the domestic authorities found that he would be unable to meet the relevant income requirements for his family of four to be financially independent if his wife and minor children were allowed to join him in Switzerland (see

paragraphs 25-26, 28-29, 72 and 76 above). The Federal Administrative Court decided on his appeal in the family reunification proceedings three years after the applicant had initiated those proceedings, and seven years after he had been provisionally admitted to Switzerland as a refugee (see paragraphs 22, 23, 28 and 111 above). In these circumstances, the Court cannot but consider that the applicant, who had been integrated into the labour market for years, had done all that could reasonably be expected of him to earn a living that sufficed to cover his and his family's expenses (compare and contrast *Haydarie*, summarised at paragraph 95 above).

128. Having regard to all of the above considerations in relation to this application, the Court is not satisfied that the authorities of the respondent State, when applying the requirement of non-reliance on social assistance in the way they did, struck a fair balance between, on the one hand, the applicant's interest in being reunited with his wife and children in Switzerland, and on the other hand, the interest of the community as a whole in controlling immigration with a view to protecting the economic well-being of the country, notwithstanding their margin of appreciation (see, *mutatis mutandis*, *M.A. v. Denmark*, cited above, § 194). It follows that there has been a violation of Article 8 of the Convention.

– *Application no. 57303/18*

129. Noting that the applicant in application no. 57303/18 had commenced part-time employment (on a 50% basis) while her request for family reunification had been pending before the administrative authorities, the Federal Administrative Court found that she remained largely reliant on social assistance and did not appear to be in position to become financially independent in the near future, not least because she was raising three minor children as a single parent and did not earn much money (see paragraphs 34-35 above), an assessment whose findings the Government echoed (see paragraph 76 above). The Court concurs that it is indeed difficult for a parent who is raising three minor children alone to work full-time, and considers that by working part-time (on a 50% basis) the applicant had done all that could reasonably be expected of her to support herself and her children (compare and contrast *Haydarie*, summarised at paragraph 95 above). In view of her salary (see paragraphs 34 and 72 above), it appears unlikely that she would be able to earn the income required to support a family of five without relying on social assistance. In these circumstances, the Court considers that the requirement of non-reliance on social assistance, if applied without flexibility, constitutes a permanent bar on family reunification in the case of the applicant and her daughter X, despite the applicant having done all that she could reasonably be expected to do in the circumstances.

130. Therefore, and having regard to all of the above considerations in relation to this application, the Court is not satisfied that the authorities of the respondent State, when applying the requirement of non-reliance on social

assistance in the way they did, struck a fair balance between, on the one hand, the applicant's interest in being reunited with her daughter X in Switzerland, and on the other hand, the interest of the community as a whole in controlling immigration with a view to protecting the economic well-being of the country, notwithstanding their margin of appreciation (see, *mutatis mutandis*, *M.A. v. Denmark*, cited above, § 194). It follows that there has been a violation of Article 8 of the Convention.

– *Application no. 13258/18*

131. The situation in application no. 13258/18 differs from those in the two above-mentioned applications, in that the first applicant in application no. 13258/18 had never been gainfully employed in Switzerland (see paragraph 19 above). Before the Federal Administrative Court she submitted that she suffered from various health problems and that her doctors considered her completely unfit to work (see paragraph 16 above). After the conclusion of the family reunification proceedings the competent Swiss authorities then recognised her as being 100% unfit to work (see paragraph 21 above). She thus submitted that she was reliant on social assistance through no fault of her own and that the requirement of non-reliance on social assistance, as applied in her case, constituted a permanent obstacle to her being reunited with her daughter (see paragraph 72 above). The Court considers, on the one hand, that the Federal Administrative Court cannot be blamed for not having had regard to the subsequent determination by another authority of the applicant's unfitness for work. On the other hand, also having regard to the judgment of the Federal Administrative Court in the case of a provisionally admitted person who was unable to work for medical reasons (see paragraphs 52 and 107 above), the Court is not satisfied that the Federal Administrative Court – which found that there was a serious risk that the first applicant would continue to rely on social assistance in the long run, especially in view of her state of health (see paragraph 19 above) – sufficiently examined whether the first applicant's health would enable her to work, at least to a certain extent, and consequently whether the requirement of non-reliance on social assistance needed to be applied with flexibility, in view of her health (compare and contrast the approach taken in the proceedings leading to application no. 9078/20, see paragraphs 39-40 above).

132. Therefore, and having regard to all of the above considerations in relation to this application, the Court is not satisfied that the authorities of the respondent State, when applying the requirement of non-reliance on social assistance in the way they did, struck a fair balance between, on the one hand, the first applicant's interest in being reunited with her daughter in Switzerland, and on the other hand, the interest of the community as a whole in controlling immigration with a view to protecting the economic well-being of the country, notwithstanding their margin of appreciation (see,

mutatis mutandis, *M.A. v. Denmark*, cited above, § 194). It follows that there has been a violation of Article 8 of the Convention.

– *Application no. 9078/20*

133. The situation of the applicant in application no. 9078/20 is similar to that of the first applicant in application no. 13258/18, in so far as she had never been gainfully employed in Switzerland either and similarly asserted that she was in poor health (see paragraphs 38, 40 and 72 above). In that case, however, the Federal Administrative Court took steps to assess the applicant's health (see paragraph 39 above) and determined, on the basis of medical reports, that the applicant suffered from medical problems affecting her capacity to work, but could at least work part-time (see paragraph 40 above). It thereby demonstrated that it could apply the requirement of non-reliance on social assistance with flexibility in the applicant's case, in the sense that it might be sufficient for the applicant to demonstrate that she had done all that she could to seek at least part-time employment and reduce her reliance on social assistance (see paragraphs 52 and 107 above). The Federal Administrative Court concluded, however, that the applicant had not made any efforts to find such employment (as was the case in *Haydarie*, summarised at paragraph 95 above). In these circumstances, the Court cannot conclude that the Federal Administrative Court, by taking the applicant's lack of initiative in improving her financial situation into account when balancing the competing interests, overstepped the margin of appreciation afforded to it. It follows that there has been no violation of Article 8 of the Convention.

(iii) Conclusion

134. In applications nos. 15500/18, 57303/18 and 13258/18 there has been a violation of Article 8 of the Convention on account of the refusal of the family reunification which had been requested by the applicants. In application no. 9078/20 there has been no violation of Article 8 of the Convention on account of that refusal.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE DURATION OF THE FAMILY REUNIFICATION PROCEEDINGS

135. The applicants in applications nos. 15500/18, 57303/18 and 9078/20 further alleged that the duration of the family reunification proceedings did not comply with the requirement under Article 8 of the Convention to process such requests speedily.

A. Applications nos. 15500/18 and 57303/18

136. Having regard to its finding in applications nos. 15500/18 and 57303/18 that the refusal of the family reunification which had been requested by the applicants amounted to a violation of Article 8 of the Convention (see paragraphs 127-130 and 134 above), the Court does not consider it necessary to examine separately whether the duration of the family reunification proceedings fell foul of the requirement to process family reunification requests speedily.

B. Application no. 9078/20

137. By contrast, having regard to the finding that the refusal of the requested family reunification did not constitute a violation of the applicant's rights under Article 8 of the Convention in application no. 9078/20 (see paragraphs 133-134 above), the Court needs to examine whether the duration of the family reunification proceedings in that case amounted to a breach of that provision.

1. Admissibility

138. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

139. The applicant asserted that it was not her fault that the proceedings had taken so long.

140. The Government pointed out that the applicant had lodged the request for family reunification only five months after being provisionally admitted as a refugee, despite the statutory waiting period of three years, and that she should have waited for that waiting period to be completed before lodging her request. Moreover, the applicant in that case had failed to submit relevant information and documents in good time, even after being asked to do so by the authorities at different stages of the proceedings.

141. While the procedural requirements pertaining to the processing of requests for family reunification include a requirement that the decision-making process has to sufficiently safeguard the flexibility, speed and efficiency so as to comply with the applicant's right to respect for family life (see paragraph 90 above), the Court reiterates that a margin of appreciation is applicable in this context (see *Tanda-Muzinga*, §§ 73-82, and *Mugenzi*, §§ 52-62, both cited above, and *Senigo Longue and Others v. France*, no. 19113/09, §§ 67-75, 10 July 2014).

142. The Court notes that the State Secretariat for Migration rendered its decision some three years and four months after the applicant had lodged her family reunification request. It appears that the duration of those proceedings was partly due to the statutory three-year waiting period, which had been completed nine months earlier (see paragraphs 35-36 above), and partly due to the time the applicant took to respond to requests to provide additional information (see paragraph 37 above). Furthermore, additional information was repeatedly requested from her in the proceedings before the Federal Administrative Court (see paragraph 39 above). That court rendered its judgment one year and ten months after the applicant had lodged her appeal against the decision of the State Secretariat for Migration, but less than two months after the applicant's last submission in response to the requests for supplementary information (see paragraphs 38-40 above).

143. While the overall duration of the family reunification proceedings does as such raise concerns as to the compliance with the requirement to process family reunification requests speedily, the Court, having regard to the aforementioned circumstances of the present case and to the margin of appreciation allowed to the State, cannot conclude that the domestic authorities failed to comply with the procedural requirements for processing family reunification requests on account of the duration of the proceedings.

144. It follows that there has been no violation of Article 8 of the Convention on account of the duration of the family reunification proceedings in application no. 9078/20.

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

145. The first applicant in application no. 13258/18 and the applicants in applications nos. 15500/18 and 57303/18 also complained that refusing their requests for family reunification had been in breach of Article 14 read in conjunction with Article 8 of the Convention.

146. Having regard to its reasoning and findings under Article 8 of the Convention in respect of these applications, the Court concludes that there is no need for it to examine separately the applicants' complaint under Article 14 read in conjunction with Article 8 of the Convention (see *M.A. v. Denmark*, cited above, §§ 196-97).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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."

148. The applicant in application no. 57303/18 did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

A. Damage

149. The applicants in applications nos. 13258/18 and 15500/18 did not make claims in respect of pecuniary damage. Accordingly, the Court makes no award under this head.

150. The applicants in both applications made claims in respect of non-pecuniary damage: the applicants in application no. 13258/18 claimed 5,000 Swiss francs (CHF – approximately 5,125 euros (EUR)) each, and the applicant in application no. 15500/18 claimed CHF 15,000 (approximately EUR 15,375).

151. The Government referred to *El Ghatet* (cited above, § 58) and submitted that an award of CHF 8,000 in total for both applicants in application no. 13258/18 in respect of non-pecuniary damage would be appropriate if the Court were to find a violation of Article 8. They submitted that an award of CHF 5,000 (approximately EUR 5,125) in application no. 15500/18 would be appropriate in respect of non-pecuniary damage if the Court were to find a violation in respect of both complaints raised by the applicant (under Article 8, and under Article 14 in conjunction with Article 8 of the Convention), and that the award should be reduced by 50% if the Court found a violation in relation to only one of the two complaints.

152. The Court considers it undeniable that the applicants sustained non-pecuniary damage on account of the violation of Article 8 of the Convention. It has regard to *M.A. v. Denmark* (cited above, § 201), where, after finding a violation of Article 8 of the Convention and considering it not necessary to examine separately the applicant's complaint under Article 14 read in conjunction with Article 8 of the Convention, it awarded the applicant EUR 10,000 under this head. Making its assessment on an equitable basis as required by Article 41 of the Convention, and having regard to the significant duration of the applicant's separation from his family members in application no. 15500/18, which was not attributable to the applicant, the Court awards him EUR 15,375 in respect of non-pecuniary damage, plus any tax that may chargeable.

Having regard to the principle of *ne ultra petita*, the Court awards the applicants in application no. 13258/18 EUR 5,125 each in respect of non-pecuniary damage, plus any tax that may be chargeable (see, *mutatis mutandis*, *Mateescu v. Romania*, no. 1944/10, § 39, 14 January 2014).

B. Costs and expenses

153. The applicants in application no. 13258/18 also claimed CHF 14,950 (approximately EUR 15,325) for the costs and expenses incurred in the proceedings before the Court, and submitted a fee note from their representatives. The itemised note listed a total of forty-two hours of work at an hourly rate of CHF 350 (approximately EUR 358). The applicants did not submit a claim in respect of costs and expenses incurred before the domestic courts.

The applicant in application no. 15500/18 claimed CHF 9,924.45 (approximately EUR 10,173) in respect of his representative's fees and expenses incurred in the proceedings before the domestic courts and before the Court, as well as CHF 600 (approximately EUR 615) in respect of court fees for the proceedings before the Federal Administrative Court. The applicant submitted relevant supporting documents.

154. The Government submitted, in relation to both applications, that any award made under this head should be reduced by 50% if the Court found a violation in relation to only one of the two complaints raised by the applicants.

They argued that the costs and expenses claimed by the applicants in application no. 13258/18, which essentially consisted of their representatives' fees, were excessive. In view of the submissions made in the proceedings before the Court and the fact that those were essentially the same as the ones made before the domestic courts, and having regard to awards made by the Court in other cases (they referred to *El Ghatet*, cited above, among other authorities), they considered that an amount of CHF 5,000 (approximately EUR 5,125) would be appropriate in respect of the applicants' costs and expenses for the proceedings before the Court.

Having regard to the documents submitted by the applicant in application no. 15500/18, the Government did not contest his claim in respect of costs and expenses.

155. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017). Furthermore, costs and expenses are only recoverable to the extent that they relate to the violation found (see *Denisov v. Ukraine* [GC], no. 76639/11, § 146, 25 September 2018).

156. In the present case, the Court found a violation of the Convention in relation to one of the applicants' two complaints, and in view of its reasoning resulting in that finding, considered it not necessary to examine separately the other complaint. In these circumstances, the Court considers that the finding of a violation in relation to only one of the two complaints raised does not call for a reduction of the award in respect of costs and expenses, as the

situation is not comparable to one where the Court has found no violation in relation to some complaints raised by an applicant or declared such complaints inadmissible (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 155-56 and 164-66, ECHR 2014; compare and contrast *Denisov*, cited above, § 146, and the references cited therein).

157. Noting that the Government, having regard to the documents submitted by the applicant in application no. 15500/18, did not dispute that he had incurred the costs and expenses he claimed, the Court awards him the sum claimed in respect of costs and expenses incurred in the proceedings before the domestic courts and in the proceedings before the Court, that is, EUR 10,788, plus any tax that may be chargeable to the applicant.

158. As regards the Government's submission that the fees claimed by the applicants in application no. 13258/18 were excessive, the Court considers, regard being had to the documents in its possession and the above criteria, that the number of hours of work claimed is not unreasonable in the circumstances of the present case, and nor is the hourly rate, in view of the hourly rates for legal work in the respondent State. The Court therefore awards the sum of EUR 15,325 in respect of costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 8 of the Convention about the refusal of the requests for family reunification in all four applications and the complaint about the duration of the family reunification proceedings in application no. 9078/20 admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the refusal of the requests for family reunification in applications nos. 13258/18, 15500/18 and 57303/18;

4. *Holds* that there has been no violation of Article 8 of the Convention on account of the refusal of the request for family reunification in application no. 9078/20;

5. *Holds* that there has been no violation of Article 8 of the Convention on account of the duration of the family reunification proceedings in application no. 9078/20;

6. *Holds* that there is no need to examine separately the complaints under Article 8 of the Convention about the duration of the family reunification proceedings in applications nos. 15500/18 and 57303/18;

7. *Holds* that there is no need to examine separately the complaints under Article 14 read in conjunction with Article 8 of the Convention in applications nos. 13258/18, 15500/18 and 57303/18;

8. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State (Swiss francs), at the rate applicable at the date of settlement:

(i) EUR 5,125 (five thousand one hundred and twenty-five euros) to each of the applicants in application no. 13258/18, and EUR 15,375 (fifteen thousand three hundred and seventy-five euros) to the applicant in application no. 15500/18, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 15,325 (fifteen thousand three hundred and twenty-five euros) to the applicants jointly in application no. 13258/18, and EUR 10,788 (ten thousand seven hundred and eighty-eight euros) to the applicant in application no. 15500/18, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 4 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant, Year of Birth, Nationality	Represented by
1.	13258/18	B.F. and D.E. v. Switzerland	15/03/2018	B.F., 1967, Eritrean D.E., 2001, Eritrean	Gabriella Tau and Boris Wijkström (Centre Suisse pour la Défense des Droits des Migrants)
2.	15500/18	J.K. v. Switzerland	29/03/2018	J.K., 1977, Chinese	Urs Ebnöther
3.	57303/18	S.Y. v. Switzerland	30/11/2018	S.Y., 1980, Eritrean	Mathias Deshusses (SAJE - Service d'Aide Juridique aux Exilé-e-s)
4.	9078/20	S.M. v. Switzerland	10/02/2020	S.M., 1977, Eritrean	Karine Povlakic (SAJE - Service d'Aide Juridique aux Exilé-e-s)