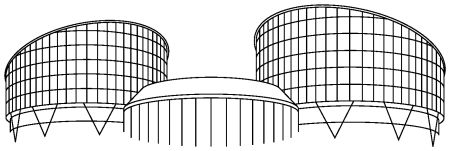

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF A.S. v. SWITZERLAND

(Application no. 39350/13)

JUDGMENT

STRASBOURG

30 June 2015

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 A.S. v. Switzerland,

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

Işıl Karakaş, *President,*
András Sajó,
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 39350/13) 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 a Syrian national, Mr A.S. ("the applicant"), on 17 June 2013. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr B. Wijkstrom, a lawyer practising in Geneva. The Swiss Government ("the Government") were represented by their Agent, Mr. F. Schürmann, of the Federal Office of Justice.

3. The applicant alleged that, if removed to Italy, he would face treatment contrary to Article 3 of the Convention and suffer an interference with his family and private life in violation of Article 8 of the Convention. Under Article 13 in conjunction with Article 3, he also alleged that by rejecting his request for interim relief while his appeal against the deportation order was pending, the domestic authorities violated his right to an effective remedy.

4. On 5 September 2013 the application was communicated to the Government, which submitted their observations on 26 November 2013. The applicant replied to the Government's observations on 24 January 2014.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Syrian national of Kurdish origin. He was born in 1988 and currently lives in Geneva. On an unknown date he entered Swizerland from Italy, where he had arrived also on an unknown date. On 18 February 2013 he sought asylum in Switzerland.

6. On 8 May 2013 the Federal Office of Migration (the "FOM") rejected the applicant's asylum request on the basis of the fact that his fingerprints had already been registered in EURODAC, in Greece, on 16 August 2012, and in Italy, on 21 January 2013. Furthermore, the Italian authorities had accepted the Swiss authorities' request of 17 April 2013 to take the applicant back into their territory by virtue of Article 10 § 1 of Regulation no. 343/2003/EC (the "Dublin Regulation"). The FOM further ruled that the applicant's two sisters, who were living in Switzerland respectively since 2006 and January 2012, did not fall under the category of "family members" as provided in Article 2 (i) of the Dublin Regulation. Regarding the back problems alleged by the applicant, it considered that Italy was obliged to grant him access to medical treatment and that nothing indicated that those health problems impeded the transfer of the applicant to Italy.

7. The applicant appealed against the FOM's decision to the Federal Administrative Court (the "FAC"). He maintained that he had fled his home country Syria because he had been persecuted, detained and tortured there. As established by medical certificates, he had been diagnosed with severe post-traumatic stress disorder, for which he was receiving medical treatment. He was also receiving medical treatment for his back problems. He claimed that the FOM's decision was in breach of Article 10 § 1 of the Dublin Regulation because Greece was the first member State he had entered less than twelve months before. Thus it was the Greek authorities which were theoretically responsible for examining his asylum request. It could not, however, be derived from the fact that he could not be returned to Greece as established in *M.S.S. v. Belgium and Greece* ([GC] no. 30696/09, ECHR 2011) that Switzerland could return him to Italy. Therefore, the Swiss authorities' request for his return to Italy was in breach of the law because they had known that the Italian authorities were not competent in that matter, and Italy had erroneously accepted the request. According to the applicant, the FOM's decision also violated Article 15 § 2 of the Dublin Regulation which provided that persons who were dependent on relatives who were residing in a member State should be kept together with them. In this regard he established that two of his older sisters were legally residing in Switzerland with their families. He claimed that owing to the presence of his sisters he had regained a certain emotional stability in his life. His expulsion to Italy, where he had no family member to care for him, would

therefore aggravate his mental health problems in such a way that he would be at risk of irreparable harm contrary to Articles 3 and 8 of the Convention.

8. On 13 June 2013 the FAC dismissed the applicant's appeal. It ruled that according to the Dublin Regulation the applicant had to return to Italy, whose authorities had, prior to accepting the Swiss request for return, been informed by Switzerland that the applicant had first entered the "Dublin area" in Greece. Furthermore, the FAC considered that in view of the dates of arrival in the respective countries it could not be excluded that on leaving Greece the applicant had left the "Dublin area" before entering Italy. Furthermore, it established that the applicant was not so severely ill that he was dependent on the assistance of his sisters. Therefore, Article 15 § 2 of the Dublin Regulation was not applicable in his case and neither was Article 8 of the Convention. Moreover, the FAC held that with regard to the asylum procedure and the availability of medical treatment for asylum seekers it had not been established that there were structural deficiencies in the Italian reception system and that Italy failed to respect its international obligations in respect of asylum seekers and refugees. Therefore, nothing indicated that the applicant would suffer treatment contrary to Article 3 of the Convention in the event of expulsion to Italy. Finally, the FAC stated that it was up to the Swiss authorities to inform their Italian counterparts about the applicant's health problems when they were executing the expulsion.

9. Before this Court the applicant produced in particular a medical report dated 6 June 2013 establishing that, as a result of trauma allegedly suffered in detention in Syria, he had back problems and showed severe symptoms of post-traumatic stress disorder. As a result, the applicant was put on a course of twice monthly psychotherapy sessions with a general practitioner and was prescribeda daily dose of Sertraline, an anti-depressant, as well as sleeping pills (Zolpidem) and pain-killers for his back (Tilur).

The report also stated that in the absence of medical treatment the applicant's health status would deteriorate quickly and put him at a high risk of alcohol or drug abuse as well as suicide. The risk of suicide would be greater should the applicant be returned to his country of origin.

Moreover, according to the report, the involvment of the applicant's sisters was "an absolute necessity" (*absolument nécessaire*) for him to gain some emotional stability in order to overcome the multiple traumas suffered.

Upon the recommendation of his doctor, the applicant was allocated an individual apartment unit for asylum seekers. The applicant also submitted his sisters' declarations, according to which he was virtually spending the whole time with their families, he was in great emotional need, could not be left alone and spent only the nights alone in his apartment. They added that they were willing and able to provide him with emotional support so that he could recover from his trauma.

II. RELEVANT DOMESTIC LAW AND RELEVANT LAW OF THE EUROPEAN UNION

10. The relevant domestic law is set out in the Court's judgment in the case of *Tarakhel v. Switzerland* ([GC], no. 29217/12, §§ 22-23 and 26-27, 4 November 2014).

11. The relevant instruments and principles of European Union law are set out in the same judgment (§§ 28-36).

12. In particular, the Court recalls that the Dublin Regulation is applicable to Switzerland under the terms of the association agreement of 26 October 2004 between the Swiss Confederation and the European Community regarding criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 53 of 27 February 2008). The Dublin Regulation was recently replaced by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (the "Dublin III Regulation"), which is designed to make the Dublin system more effective and to strengthen the legal safeguards for persons subjected to the Dublin procedure.

13. The Dublin III Regulation entered into force on 1 January 2014 and was passed into law by the Swiss Federal Council on 7 March 2014.

III. THE ITALIAN CONTEXT

14. A detailed description of the asylum procedure and the legal framework and organisation of the reception system for asylum seekers in Italy is also set out in the *Tarakhel* judgment (§§ 36-50).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained that if returned to Italy he would face treatment contrary to Article 3 of the Convention, which reads as follows:

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

16. The Government contested those arguments.

A. Admissibility

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

18. The applicant stressed that as an asylum seeker he belonged to a particularly vulnerable population group in need of special protection. In this connection, he referred to the Court's judgment in *M.S.S.* where the Court had found that the exposure of an asylum seeker to conditions of indigence amounted to a breach of the prohibition of inhuman and degrading treatment under Article 3 of the Convenetion.

19. The applicant alleged that due to systemic deficiencies in the Italian reception system, if returned to Italy he would not benefit from proper housing and adequate medical treatment. In support of his allegations he referred to the findings of the 2013 report of the Swiss Refugee Council (OSAR), which the Court extensivley analysed in its *Tarakhel* judgment. Against this background he submitted that a return to Italy would cause a serious deterioration of his mental health status and put him at a very significant risk of suicide.

20. He stressed that the support of his sisters living in Switzerland was paramount for the successful outcome of his therapy as stated in the medical report of 6 June 2013.

(b) The Government

21. The Government contested the applicant's assessment as to the existence of systemic deficiencies in the Italian reception system and referred to a series of decisions where the Court had found such allegations to be manifestly ill-founded (*Mohammed Hussein and Others v. the Netherlands and Italy* (dec.), no. 27725/10, 2 April 2013; *Abubeker v. Austria and Italy* (dec.), no. 73874/11, 18 June 2013; *Halimi v. Austria and Italy* (dec.), no. 53852/11, 18 June 2013; *Miruts Hagos v. the Netherlands and Italy* (dec.), no. 9053/10, 27 August 2013; *Mohammed Hassan and Others v. the Netherlands and Italy* (dec.), no. 40524/10, 27 August 2013; and *Hussein Diirshi and Others v. the Netherlands and Italy* (dec.), no. 2314/10, 10 September 2013).

22. The Government stressed that the health system in Italy was capable of dealing with all sorts of diseases. Moreover, Italy was bound by the

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States ("the Reception Directive"), which provided for adequate medical treatment of asylum seekers, including those with special needs (Article 15).

23. As to the applicant's individual case, the Government recalled that during his interview with the FOM on 28 March 2013, the applicant had not raised any specific reason showing that his removal to Italy would be in breach of Article 3 of the Convention. He had merely stated that he wished to stay in Switzerland because some of his relatives were living there, without mentioning any particular health issue apart from his back pain at that stage. According to the Government, the applicant's present treatment for his post-traumatic stress disorder was not particularly heavy and consisted in a daily prescription of Sertraline, an anti-depressant, as well as a medical interview once every two weeks. The lower back pain was being treated with basic pain-killers.

24. The Government finally recalled that according to the Court's case law (*Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004) the risk of suicide does not require the State to refrain from enforcing an expulsion order, provided that concrete measures are taken to prevent those threats from being realized.

2. The Court's assessment

(a) General principles

25. The Court reiterates that according to its well-established case-law the expulsion of an asylum seeker by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161; *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 103, Series A no. 125; *H.L.R. v. France*, 29 April 1997, § 34, *Reports* 1997-III; *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, ECHR 2007-I; *Saadi v. Italy* [GC], no. 37201/06, § 152, ECHR 2008; and *M.S.S.*, cited above, § 365).

26. The Court has held on numerous occasions that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of

health of the victim (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *M.S.S.*, cited above, § 219).

27. The Court has also ruled that Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (see *Müslim v. Turkey*, no. 53566/99, § 85, 26 April 2005; and *M.S.S.*, cited above, § 249).

28. In the *M.S.S.* judgment (§ 250), the Court nevertheless took the view that what was at issue in that case could not be considered in those terms. Unlike in the *Müslim* case (cited above, §§ 83 and 84), the obligation to provide accommodation and decent material conditions to impoverished asylum seekers had entered into positive law and the Greek authorities were bound to comply with their own legislation transposing European Union law, namely the Reception Directive. What the applicant held against the Greek authorities in that case was that, because of their deliberate actions or omissions, it had been impossible in practice for him to avail himself of those rights and provide for his essential needs.

29. In the same judgment (§ 251), the Court attached considerable importance to the applicant's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. It noted the existence of a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR, and the standards set out in the European Union Reception Directive.

30. Still in *M.S.S.* (§§ 252 and 253), having to determine whether a situation of extreme material poverty could raise an issue under Article 3, the Court reiterated that it had not excluded "the possibility that the responsibility of the State [might] be engaged [under Article 3] in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity" (see *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

31. With regard to the expulsion of seriously ill persons, the Court has summarized the applicable principles in its judgment in the case of *N. v. the United Kingdom* [GC], no. 26565/05, § 42-44, ECHR 2008) as follows.

Aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced

if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In the *D. v. the United Kingdom* case (2 May 1997, *Reports of Judgments and Decisions* 1997-III) the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care of him or provide him with even a basic level of food, shelter or social support.

The Court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally compelling. However, it considers that it should maintain the high threshold set in *D. v. the United Kingdom* and applied in its subsequent case-law, which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.

Although many of the rights it contains have implications of a social or economic nature, the Convention is essentially directed at the protection of civil and political rights (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). Furthermore, inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Soering*, cited above, § 89). Advances in medical science, together with social and economic differences between countries, entail that the level of treatment available in the Contracting State and the country of origin may vary considerably. While it is necessary, given the fundamental importance of Article 3 in the Convention system, for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases, Article 3 does not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. A finding to the contrary would place too great a burden on the Contracting States.

32. With regard, in particular, to persons suffering from serious mental illnesses, the Court recalls that in *Bensaid v. the United Kingdom* (no. 44599/98, ECHR 2001-I), which concerned the removal from the United Kingdom of an Algerian national who was a schizophrenic, the Court unanimously rejected the complaint under Article 3 and held as follows (§§ 36-40):

"In the present case, the applicant is suffering from a long-term mental illness, schizophrenia. He is currently receiving medication, olanzapine, which assists him in managing his symptoms. If he returns to Algeria, this drug will no longer be available to him free as an outpatient. He does not subscribe to any social insurance fund and cannot claim any reimbursement. It is, however, the case that the drug would be available to him if he was admitted as an inpatient and that it would be potentially available on payment as an outpatient. It is also the case that other medication, used in the management of mental illness, is likely to be available. The nearest hospital for providing treatment is at Blida, some 75 to 80 km from the village where his family live.

The difficulties in obtaining medication and the stress inherent in returning to that part of Algeria, where there is violence and active terrorism, would, according to the applicant, seriously endanger his health. Deterioration in his already existing mental illness could involve relapse into hallucinations and psychotic delusions involving self-harm and harm to others, as well as restrictions in social functioning (such as withdrawal and lack of motivation). The Court considers that the suffering associated with such a relapse could, in principle, fall within the scope of Article 3.

The Court observes, however, that the applicant faces the risk of relapse even if he stays in the United Kingdom as his illness is long term and requires constant management. Removal will arguably increase the risk, as will the differences in available personal support and accessibility of treatment. The applicant has argued, in particular, that other drugs are less likely to be of benefit to his condition, and also that the option of becoming an inpatient should be a last resort. Nonetheless, medical treatment is available to the applicant in Algeria. The fact that the applicant's circumstances in Algeria would be less favourable than those enjoyed by him in the United Kingdom is not decisive from the point of view of Article 3 of the Convention.

The Court finds that the risk that the applicant would suffer a deterioration in his condition if he were returned to Algeria and that, if he did, he would not receive adequate support or care is to a large extent speculative. The arguments concerning the attitude of his family as devout Muslims, the difficulty of travelling to Blida and the effects on his health of these factors are also speculative. The information provided by the parties does not indicate that travel to the hospital is effectively prevented by the situation in the region. The applicant is not himself a likely target of terrorist activity. Even if his family does not have a car, this does not exclude the possibility of other arrangements being made.

The Court accepts the seriousness of the applicant's medical condition. Having regard, however, to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm, the Court does not find that there is a sufficiently real risk that the applicant's removal in these circumstances would be contrary to the standards of Article 3. The case does not disclose the exceptional circumstances of *D. v. the United Kingdom* (cited above), where the applicant was in the final stages of a terminal illness, Aids, and had no prospect of medical care or family support on expulsion to St Kitts."

33. In a more recent case, concerning the removal of a Moroccan national from Finland to Morocco (*S.B. v. Finland* (dec.), no. 17200/11 § 36, 24 June 2014) the Court found that mental health care was available in Morocco, that treatment for depression as well as for anxiety disorders was in general available in outpatient and inpatient clinics and that the applicant also had access to the anti-depressant medication

which had been prescribed for her. It therefore considered that the applicant had access to treatment for her severe depression, post-traumatic stress disorder and generalised anxiety disorder in Morocco and was therefore not at risk of treatment contrary to Article 3 of the Convention if removed to Morocco.

34. Finally, as far as the risk of suicide is concerned, the Court reiterates that the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see, for example, *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004; *Karim v. Sweden* (dec.), no. 24171/05, 4 July 2006; and *Kochieva and Others v. Sweden* (dec.), no. 75203/12, 30 April 2013). The Court has reached the same conclusion also regarding applicants who had a record of previous suicide attempts (see *Goncharova and Alekseytsev v. Sweden* (dec.), no 31246/06, 3 May 2007; and *A.A. v. Sweden* (dec.), no. 8594/04, § 71, 2 September 2008).

(a) Application of the above principles to the present case

35. The Court notes that according to the medical information provided the applicant shows severe symptoms of post-traumatic stress disorder for which he is being treated by a doctor and receives medication (paragraph 9 above). The Court must therefore determine whether his return to Italy would put him in a situation of harm which would reach the high threshold set by Article 3 of the Convention.

36. In *Tarakhel* (§ 115), the Court found that while the structure and overall situation of the reception arrangements in Italy could not in themselves act as a bar to all removals of asylum seekers to that country, the data and information available to the Court nevertheless raised serious doubts as to the capacities of the system. Accordingly, in the Court's view, the possibility that a significant number of asylum seekers might be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, could not be dismissed as unfounded. The applicant is not, however, at the present time critically ill. The rapidity of any deterioration which he would suffer because of his removal from Switzerland and the extent to which he would be able to obtain access to medical treatment in Italy must involve a certain degree of speculation (see, *mutatis mutandis*, *N. v. the United Kingdom*, cited above, § 50). At present, there is no indication that the applicant, if returned to Italy, would not receive appropriate psychological treatment (see, *mutatis mutandis*, *Halimi v. Austria and Italy*, (dec.) no. 53852/11, 18 June 2013) and would not have access to anti-depressants of the kind that he is currently receiving in Switzerland. In this respect, the Court notes that it is common knowledge that Sertraline or equivalent treatment is available in Italy.

37. In the Court's view, the applicant's case cannot be distinguished from those cited in paragraphs 32 and 33 above. It does not disclose very exceptional circumstances, such as in *D. v. the United Kingdom* (cited above), where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support (*Bensaid*, cited above, § 40).

38. Accordingly, the Court finds that the implementation of the decision to remove the applicant to Italy would not give rise to a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. Under Article 8 of the Convention the applicant alleged that, by severing his relationship with his sisters who live in Switzerland, his removal to Italy would violate his right to respect of his family and private life. Article 8 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

40. The Court notes that the complaint under Article 8 raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no other grounds for declaring this part of the application inadmissible. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

41. The applicant stressed that he had no family members living in Italy and that he was young and unmarried. He submitted that his relationship with his two sisters living in Switzerland fell within the protective scope of his right to respect for his family life owing to his severe mental health status which should be considered as an additional factor of dependence, other than normal emotional ties. In this respect he referred to the Court's judgment in *Bousarra v. France* (no. 25672/07, §§ 38-39, 23 September 2010).

In addition, the applicant alleged that a removal to Italy would also infringe his right to respect for his private life because it would affect his moral and physical integrity, as he would no longer benefit from his sisters' support, which was paramount for the successful outcome of his therapy. In support of his argument, the applicant relied on *Bensaid* (cited above, § 47) where the Court held that mental health must be regarded as a crucial part of private life associated with the aspect of moral integrity.

Moreover, the applicant considered that the interference with his family and private life in case of removal to Italy would not be "in accordance with the law" as provided by Article 8 of the Convention, since the Swiss authorities did not conduct the asylum procedures according to Article 15 § 2 of the Dublin Regulation which was specifically intended to protect persons like him.

(b) The Government

42. The Government considered that the applicant, who is an adult, could not claim any interference with his family and private life in case of removal to Italy.

With regard to family life, the Government stressed that the applicant's sisters had settled in Switzerland years before the applicant's arrival and when the applicant was already an adult. The applicant had therefore already lived away from his sisters with whom he did not have particularly strong ties. The Government also recalled that siblings were not listed as "family members" under Article 2(i) of the Dublin Regulation and that Article 15 of the same regulation which dealt with asylum seekers depending on the assistance of their relatives only referred to "serious illness" or "severe handicap".

With regard to private life, the Government referred to their observations under Article 3 of the Convention and considered that the applicant's removal to Italy, where adequate medical assistance was available, did not disclose a sufficient interference with his moral integrity to fall within the scope of Article 8.

43. In the event that the Court accepted the applicant's argument that his removal to Italy would result in an interference with his family and private life, the Government stressed that any such interference would be in accordance with the law and would be motivated by the legitimate aim of enforcing immigration control, which served the general interests of the economic well-being of the country. Moreover, since the applicant had spent little time in Switzerland and in full knowledge that his situation was precarious, he only had his sisters in Switzerland and not more immediate relatives such as a spouse, parents or children and, in any event, it had not been shown that his sisters were unable to follow him to Italy, the applicant's removal would be a measure proportionate to the legitimate aim pursued by the Swiss authorities.

2. The Court's assessment

44. The Court recalls that where a Contracting State tolerates the presence of an alien in its territory, thereby allowing him or her to await a decision on an application for a residence permit, an appeal against such a decision or a fresh application for a residence permit, such a Contracting State enables the alien to take part in the host country's society, to form relationships and to create a family there. However, this does not automatically entail that the authorities of the Contracting State concerned are, as a result, under an obligation pursuant to Article 8 of the Convention to allow him or her to settle in their country. In a similar vein, confronting the authorities of the host country with family life as a *fait accompli* does not entail that those authorities are, as a result, under an obligation pursuant to Article 8 of the Convention to allow the applicant to settle in the country. The Court has previously held that, in general, persons in that situation have no entitlement to expect that a right of residence will be conferred upon them (*Jeunesse v. the Netherlands* [GC], no. 12738/10, § 103, 3 October 2014).

The same applies to cases of asylum seekers whose presence on the territory of a Contracting State is tolerated by the national authorities on their own motion or accepted in compliance with their international obligations.

45. Like *Jeunesse* (§ 104), the present case may be distinguished from cases concerning "settled migrants" as this notion has been used in the Court's case-law, namely, persons who have already been granted formally a right of residence in a host country. A subsequent withdrawal of that right, for instance because the person concerned has been convicted of a criminal offence, will constitute an interference with his or her right to respect for private and/or family life within the meaning of Article 8. In such cases, the Court will examine whether the interference is justified under the second paragraph of Article 8. In this connection, it will have regard to the various criteria which it has identified in its case-law in order to determine whether a fair balance has been struck between the grounds underlying the authorities' decision to withdraw the right of residence and the Article 8 rights of the individual concerned (*ibid.*, § 104).

46. As the factual and legal situation of a settled migrant and that of an alien seeking admission, whether or not as an asylum seeker, are not the same, the criteria developed in the Court's case-law for assessing whether the withdrawal of a residence permit of a settled migrant is compatible with Article 8 cannot be transposed automatically to the situation of the applicant. Rather, the question to be examined in the present case is whether, having regard to the circumstances as a whole, the Swiss authorities were under a duty pursuant to Article 8 to grant the applicant a residence permit in Switzerland, whether or not as an asylum seeker, thus enabling him to exercise any family life he might have established on Swiss

territory (*mutatis mutandis*, *ibid.*, § 105). The instant case thus concerns not only family life but also immigration *lato sensu*. For this reason, it is to be seen as one involving an allegation of failure on the part of the respondent State to comply with a positive obligation under Article 8 of the Convention (*mutatis mutandis*, *ibid.*, § 105).

47. The Court recalls that 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. 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 (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (*ibid.*, § 107).

48. Another important consideration is whether 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. It is the Court's well-established case-law that, where this is the case, 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 (*ibid.*, § 108).

49. In the present case, the Court notes that there is no trace of the applicant's presence in Switzerland before he lodged his asylum request on 18 February 2013 (paragraph 5 above), four months before the lodging of the present application. During this very short period of time, the applicant's presence on Swiss territory was accepted by the domestic authorities only for the purpose of examining his status as an asylum seeker and complying with their relevant obligations under the Dublin Regulation and national law.

The Court recalls that it has already held that there would be no family life, within the meaning of Article 8, between parents and adult children or between adult siblings unless they could demonstrate additional elements of dependence (see *F.N. v. the United Kingdom* (dec.), no. 3202/09, § 36, 17 September 2013).

Assuming that the applicant and his sisters had maintained family ties when they were living in Syria and assuming that additional elements of dependence could be demonstrated in the applicant's case, it cannot be argued that the tolerance by the domestic authorities of the applicant's presence on Swiss territory for a lengthy period of time enabled him to establish and develop strong family ties in Switzerland (*a contrario*, *Jeunesse*, cited above, § 116).

50. Bearing in mind the margin of appreciation afforded to States in immigration matters, the Court finds that a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant in establishing any family life in Switzerland on the one hand and, on the other, the public order interests of the respondent Government in controlling immigration (*a contrario, ibid.*, § 121 and 122)

51. As to the applicant's complaint regarding the fact that his removal to Italy would prevent him from continuing to benefit from the support from his sisters in the context of his therapy, it has already been dealt with under Article 3. The Court does not consider that it raises any separate issue under Article 8 of the Convention (*mutatis mutandis, F.N. v. the United Kingdom*, cited above, § 38).

52. In view of the above considerations, the Court finds that the implementation of the decision to remove the applicant to Italy would not give rise to a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

53. Under Article 13 in conjunction with Article 3 the applicant claimed that the FAC failed to grant him interim relief pending the outcome of the proceedings before it. Thereby, it made his appeal a totally ineffective remedy because, despite his severe mental health status, he was not protected from being expelled to Italy at any time, which would have put him at a serious risk of a treatment contrary to Article 3 of the Convention (see *Mohammed v. Austria*, no. 2283/12, § 72, 6 June 2013). Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

54. The Government contested that argument.

55. In his observations of 24 January 2014, the applicant informed the Court that he intended to withdraw this part of the application.

56. The Court, having regard to Article 37 of the Convention, finds that the applicant does not intend to pursue this part of the application, within the meaning of Article 37 § 1 (a). The Court also finds no reasons of a general character, affecting respect for human rights, as defined in the Convention, which require the further examination of the present complaint by virtue of Article 37 § 1 of the Convention *in fine* (see, for example, *Chojak v. Poland*, no. 32220/96, Commission decision of 23 April 1998, unreported; *Singh and Others v. the United Kingdom* (dec.), no. 30024/96,

26 September 2000; and *Stamatios Karagiannis v. Greece*, no. 27806/02, § 28, 10 February 2005).

57. It follows that this part of the application must be struck out in accordance with Article 37 § 1 (a) of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Articles 3 and 8 admissible;

2. *Holds* that there would be no violation of Article 3 of the Convention in the event of removal of the applicant to Italy;

3. *Holds* that there would be no violation of Article 8 of the Convention in the event of removal of the applicant to Italy;

4. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention in so far as it concerns the applicant's complaint under Article 13 in conjunction with Article 3 of the Convention.

Done in English, and notified in writing on 30 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Sajó, Vučinić and Lemmens is annexed to this judgment.

A.I.K.
S.H.N.

JOINT CONCURRING OPINION OF JUDGES SAJÓ, VUČINIĆ AND LEMMENS

1. We voted with our colleagues in finding that there would be no violation of Articles 3 and 8 of the Convention in the event of the removal of the applicant to Italy.

However, with regard to the complaint based on Article 8, our reasoning differs somewhat from that of our colleagues.

2. The majority does not take a clear stance on whether the applicant can be considered to enjoy "family life" with his two sisters. It bases its reasoning under Article 8 on the assumption "that the applicant and his sisters had maintained family ties when they were living in Syria" and the assumption "that additional elements of dependence could be demonstrated in [his] case" (see paragraph 49 of the judgment). The requirement of "additional elements of dependence" is in line with what the Court decided in other cases involving adult members of a family (see, for example, *F.N. v. the United Kingdom* (dec.), no. 3202/09, § 36, 17 September 2013 (quoted in the same paragraph 49); and *Senchishak v. Finland*, no. 5049/12, § 55, 18 November 2014).

We would prefer to be more affirmative. Under certain circumstances the relationship between siblings falls within the concept of "family life" (see *Vasquez v. Switzerland*, no. 1785/08, § 48, 26 November 2013). We see no reason to doubt that the applicant and his two sisters had an effective family life in Syria, before they each left for Switzerland. In this regard we are mindful of the fact that there may be different conceptions of what constitutes a "family" in the various parts of the world. For the purpose of Article 8 of the Convention, it is sufficient in our opinion for there to exist in practice close personal ties between the family members (see *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII). In any event, we do not see why the relationship between the applicant and his two sisters, once they were reunited in Switzerland, should not be considered as family life. In this regard we attach weight to the circumstance that the three siblings seem to be the only members of the family living in Switzerland, a fact which should normally lead to a strengthening of the ties between them.

Moreover, the applicant claims that, because of his mental health, he is dependent on the emotional support of his sisters (see paragraph 41 of the judgment). The sisters themselves confirmed that their brother spends almost his whole time with them and their families, and that they provide him with emotional support so that he can recover from his trauma (see paragraph 9 of the judgment). We find that this information, not disputed by the Government, contains additional elements illustrative of the existence of family life.

3. When it comes to the examination of whether the respondent State complied with its positive obligation under Article 8, the majority gives the

impression that it simply refers to "the margin of appreciation afforded to States in immigration matters", in order then to conclude "that a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant, in establishing any family life in Switzerland on the one hand and, on the other, the public order interests of the respondent Government in controlling immigration" (see paragraph 50 of the judgment).

In our opinion, it is not sufficient to refer to the margin of appreciation in order to come to the conclusion that a fair balance has been struck. We would prefer to see a more explicit assessment of the proportionality of the refusal to allow the applicant to stay with his family, in the light of the Government's interest in controlling immigration.

On this point, what made us join the majority in its conclusion is the fact that while the ties between the applicant and his sisters may now be relatively strong, they cannot be considered so strong as to require the applicant's continued presence in Switzerland. While the majority is of the opinion that there has not been enough time "to establish and develop strong family ties in Switzerland" (see paragraph 49 of the judgment), we would like to point to the fact that the applicant and his sisters lived for a number of years in different countries, obviously without being in close contact with each other. The applicant has not shown that he would suffer in an unacceptable way from the separation from his sisters, a situation he has already experienced in the past.