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

THIRD SECTION

CASE OF TUQUABO-TEKLE AND OTHERS v. THE NETHERLANDS

(Application no. 60665/00)

JUDGMENT

STRASBOURG

1 December 2005

FINAL

01/03/2006

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 Tuquabo-Tekle and Others v. the Netherlands,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mrs R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 60665/00) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Netherlands nationals, Goi Tuquabo-Tekle, Adhanom Ghedlay Subhatu, and Tarreke, Tmnit and Ablel Tuquabo, and one Eritrean national, Mehret Ghedlay Subhatu ("the applicants"), on 12 July 2000.

2. The applicants, who had been granted legal aid, were represented by Mr S.D. Lugt, a lawyer practising in Amsterdam. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker of the Ministry of Foreign Affairs.

3. The applicants alleged that the refusal by the Netherlands authorities to allow Mehret Ghedlay Subhatu to reside in the Netherlands constituted a breach of their right to respect for family life as guaranteed by Article 8 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 19 October 2004 the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties were invited to reply in writing to each other's observations. Neither party availed itself of this opportunity.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant Goi Tuquabo-Tekle was born in 1963 and her son Adhanom Ghedlay Subhatu in 1978. Mrs Tuquabo-Tekle's husband, Tarreke Tuquabo, was born in 1952, and their children Tmnit and Ablel in 1994 and 1995, respectively. These applicants live in Amsterdam. The applicant Mehret Ghedlay Subhatu – a daughter of Mrs Tuquabo-Tekle – was born on 12 November 1981 and lives in Adi Hanso, Eritrea.

9. In 1989, after the death of her first husband and during the civil war, Mrs Tuquabo-Tekle fled from Ethiopia to Norway, where she applied for asylum. She submitted that she had been harassed and detained by the Ethiopian authorities on account of her husband's activities for the Eritrean People's Liberation Front. Although denied asylum, she was granted a residence permit on humanitarian grounds in 1990. Her eldest child, Adhanom, had stayed behind in Addis Ababa with a friend of his mother's, and she had left her other two children, Mehret and Michael, in the care of an uncle and their grandmother (in what subsequently became the State of Eritrea). After permission was granted by the Norwegian authorities for the children to reside with Mrs Tuquabo-Tekle, and with the assistance of those authorities and the UNHCR, her son Adhanom entered Norway in October 1991. It did not prove possible at that time to procure the departure of the other children from Eritrea, but it was Mrs Tuquabo-Tekle's intention to bring them to Norway later.

10. In June 1992 Mrs Tuquabo-Tekle married Mr Tuquabo, who was living in the Netherlands where he had been admitted as a refugee. On 19 July 1993 Mrs Tuquabo-Tekle and her son Adhanom moved to the Netherlands to live with Mr Tuquabo. Mrs Tuquabo-Tekle was granted a residence permit in order to reside in the Netherlands with her husband on 21 July 1993. Two children, Tmnit and Ablel, were subsequently born to the couple.

11. On 16 September 1997, Mrs Tuquabo-Tekle and Mr Tuquabo filed a request for a provisional residence visa (*machtiging tot voorlopig verblijf*) for Mehret, in an attempt to have their (step)daughter, who was then fifteen years old, join them in the Netherlands. Such a visa is normally a

prerequisite for the grant of a residence permit, which confers more permanent residence rights.

12. On 25 March 1998 the Minister of Foreign Affairs (*Minister van Buitenlandse Zaken*) rejected their request. The Minister concluded that there were no grounds to authorise family reunion in the Netherlands since the close family ties (*gezinsband*) between Mrs Tuquabo-Tekle and her daughter were considered to have ceased to exist and such ties had never existed between Mr Tuquabo and his stepdaughter. Ever since Mrs Tuquabo-Tekle had left Eritrea, Mehret had been living with an uncle and her grandmother; she was deemed to have been integrated into the latter's family and thus no longer actually belonged to Mrs Tuquabo-Tekle's family unit (*gezin*). There was no indication that this situation could not be maintained. Moreover, after marrying Mr Tuquabo, Mrs Tuquabo-Tekle had started a new family unit in the Netherlands to which her daughter had never belonged. Furthermore, the couple had not shown that they had been sufficiently involved with the upbringing and care of their (step)daughter. According to the information available, it was Mrs Tuquabo-Tekle's parents who had custody of Mehret.

13. On 20 April 1998 Mrs Tuquabo-Tekle and Mr Tuquabo filed an objection (*bezwaar*) through counsel with the Minister of Foreign Affairs, emphasising that Mehret could no longer lead a normal existence in Eritrea now that she had reached marriageable age and her grandmother had decided that, for that reason, Mehret should stop going to school. There were, moreover, sound reasons why Mrs Tuquabo-Tekle had been unable to bring her daughter to Norway or the Netherlands prior to September 1997. At the time when she had been granted leave to remain in Norway and permission to be joined by her children, contacts with Eritrea were impossible and it was for this reason that only Adhanom, who had been in Ethiopia at the time, was able to go to Norway. In September 1992 Mrs Tuquabo-Tekle had travelled to Eritrea but it had not proved possible to obtain travel documents for Mehret, as there were not yet any official bodies equipped to issue passports in Eritrea and the authorities in Ethiopia refused to do so for Eritrean citizens. The family's housing situation in the Netherlands had posed a further problem: despite the fact that they had been placed on a waiting list and had been issued with a certificate of urgency (*urgentieverklaring*), no rental accommodation suitable for a family of two adults and four children was available. Once it had become possible to obtain a passport for Mehret and more spacious accommodation had been obtained, the application for a provisional residence visa was lodged. Moreover, Mrs Tuquabo-Tekle and her husband had been sending money to Eritrea on a regular basis, initially by courier as bank transactions were impossible.

14. On 21 January 1999 the Minister rejected the objection, reiterating that the close family ties between Mrs Tuquabo-Tekle and her daughter had

ceased to exist. Mrs Tuquabo-Tekle and her husband had not shown that they had made a substantial parental or financial contribution to Mehret's upbringing. Furthermore, the couple had not sufficiently shown why, in view of Mehret's age, she could not remain in the care of her uncle or her grandmother, if necessary supported financially by her family from the Netherlands. The Minister did not find it established that serious attempts had been made to arrange for Mehret to come to the Netherlands as soon as possible: Mrs Tuquabo-Tekle had been legally resident in the Netherlands since July 1993 but the request for Mehret to be allowed to join her had not been lodged until September 1997. Contrary to what the applicants appeared to contend, under the applicable legal provisions a lack of adequate accommodation would not have stood in the way of a provisional residence visa being granted. It appeared that Mrs Tuquabo-Tekle and her husband had let the inexpediency of Mehret's presence in their cramped accommodation prevail over the desire to reunite Mehret with her mother as soon as possible. Thus, the Minister concluded, the child's integration into the uncle's and grandmother's family could not be considered to have been a temporary measure.

15. On behalf of Mehret, Mrs Tuquabo-Tekle and Mr Tuquabo lodged an appeal against this decision of the Minister, through counsel, with the Regional Court (*arrondissementsrechtbank*) of The Hague, sitting in Amsterdam, on 16 February 1999. In these proceedings, the Minister of Foreign Affairs argued, *inter alia*, that from 1994 it had been possible to request and obtain a passport in Eritrea.

16. On 17 January 2000 the Regional Court dismissed the appeal. It held that Mrs Tuquabo-Tekle had failed to show that her close family ties with her daughter had been maintained. It also found that, following her departure in 1989, Mrs Tuquabo-Tekle had no longer exercised parental authority over her daughter in the sense of being intensively involved with her daughter's upbringing or of taking decisions in this regard. The Regional Court agreed with the Minister of Foreign Affairs that the (step)daughter of Mrs Tuquabo-Tekle and Mr Tuquabo should be deemed to have become integrated into the family of her uncle and grandmother. The Regional Court attached importance to the fact that the couple had only requested to have their (step)daughter join them in the Netherlands on 16 September 1997, and that they had failed to provide any documentary evidence to substantiate their claim that, even after 1994, it had remained impossible to obtain a passport for Mehret in Eritrea.

17. When assessing whether the State's actions had been in compliance with the requirements of Article 8 of the Convention, the Regional Court addressed the question whether the refusal to grant Mehret a provisional residence visa, as such, constituted a violation of that provision. It pointed out that its task was to strike a fair balance between the interests of the applicants and those of society as a whole (the latter interest being served by

a restrictive immigration policy). It found that no obligation for the State to allow family reunion on its territory could be derived from Article 8 of the Convention. It further considered that there were no objective reasons why the family members in the Netherlands could not pursue family life with Mehret in Eritrea.

18. The Regional Court's decision was final and not subject to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. At the time relevant to the present application, the admission, residence and expulsion of aliens were regulated by the Aliens Act 1994 ("the Act" - *Vreemdelingenwet 1994*). On 1 April 2001 a new Aliens Act entered into force but this has no bearing on the present case.

20. As a rule, anyone wishing to apply for a residence permit in the Netherlands must first apply from his or her country of origin to the Netherlands Minister of Foreign Affairs for a provisional residence visa (*machtiging tot voorlopig verblijf*). Only once such a visa has been issued abroad may a residence permit for the Netherlands be granted. An application for a provisional residence visa is assessed on the basis of the same criteria as a residence permit.

21. The Government pursue a restrictive immigration policy owing to the population and employment situation in the Netherlands. Aliens are eligible for admission only on the basis of obligations arising from international agreements, or if their presence serves an essential national interest, or on compelling humanitarian grounds.

22. The admission policy for family reunion purposes was laid down in Chapter B1 of the Aliens Act Implementation Guidelines 1994 (*Vreemdelingencirculaire 1994*). It provided that the spouse, a minor child born of the marriage and actually belonging to the family unit, and a minor child born outside the marriage but actually belonging to the family unit (such as a child from an earlier relationship of either spouse or a foster child) could be eligible for family reunion, if certain further conditions (relating to matters such as public policy and means of subsistence) were met.

23. The person with whom a family member was seeking to be reunited in the Netherlands had to have suitable accommodation available to him or her on a permanent basis. This requirement was not imposed on Netherlands nationals, on refugees who had been admitted or on holders of a residence permit for the purposes of asylum.

24. The phrase "actually belonging to the family unit" (*"feitelijk behoren tot het gezin"*) used in Netherlands law only partly overlaps with the term "family life" in Article 8 of the Convention. The former is understood to mean, for instance, that the close family ties (*gezinsband*) between the child and its parents whom it wishes to join in the Netherlands

already existed in another country and have been maintained. For the rest, the question whether the close family ties can be deemed to have been severed is addressed on the basis of the facts and circumstances of each specific case. Factors taken into consideration include the length of time during which parent and child have been separated and the reasons for the separation, the way in which the relationship between parent and child has been developed during the separation, the parent's involvement in the child's care and upbringing, custody arrangements, the amount and frequency of the parent's financial contributions to the child's care and upbringing, the parent's intention to have the child join him or her as soon as possible and his or her efforts to do so, and the length of time that the child has lived in a family other than with the parent. The burden of proving that the close family ties between parent and child have not been severed lies with the parent residing in the Netherlands. The longer the parent and child have been separated, the heavier the burden of proof on the person in the Netherlands becomes. It is then incumbent on the parent to present sound reasons as to why he or she did not seek to bring the child to the Netherlands sooner.

25. If it is established that the conditions set in national policy have not been met, an independent investigation is then carried out to ascertain whether family life exists within the meaning of Article 8 of the Convention and, if so, whether this provision of international law imposes on the State an obligation, given the specific circumstances of the case, to permit residence in the Netherlands.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. In their observations submitted after the application had been declared admissible (see paragraphs 5 and 6 above), the Government contended that, in so far as the application had been brought by, or on behalf of, Mehret Ghedlay Subhatu, it was incompatible *ratione personae* with the provisions of the Convention, because that applicant did not fall within the jurisdiction of the State within the meaning of Article 1 of the Convention. The Government referred to the case-law of the Court (*Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, ECHR 2001-XII), according to which it was only in exceptional cases that acts of Contracting States performed, or producing effects, outside their territories could constitute the exercise of jurisdiction by those States. However, the act complained of in the present case – namely, the refusal of

a residence permit to Mehret – came nowhere near the kind of situation in which the Court had been prepared to accept extraterritorial jurisdiction under the Convention. The State of the Netherlands had merely exercised its day-to-day responsibility for the regulation and control of the entry of aliens into its territory. To infer from such acts a direct responsibility of the State for the protection of the rights enshrined in the Convention towards all persons residing abroad who wished to enter the Netherlands would, according to the Government, extend the notion of jurisdiction to an unacceptable level.

27. The Government considered themselves entitled to raise this objection at this stage of the proceedings in view of the Court's judgment in the case of *Issa and Others v. Turkey* (no. 31821/96, § 55, 16 November 2004), where the Turkish Government had been allowed to put forward arguments on the jurisdiction issue at the merits stage of the proceedings.

28. The applicants submitted that the objection raised by the Government was not of such importance that they needed to comment on it.

29. The Court reiterates that in accordance with Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X).

30. In that context, the Court would first note that in *Issa and Others* the Turkish Government argued that the need had arisen to examine the jurisdiction issue in that case because the Court had reversed its case-law concerning the scope of interpretation of Article 1 of the Convention in a decision of 12 December 2001 (*Banković and Others*, cited above), which post-dated the admissibility decision in *Issa and Others*. However, in the present case, the Government submitted their observations on the admissibility of the application on 22 April 2004, more than two years after the Court's decision in the *Banković and Others* case.

Secondly, in its *Issa and Others* judgment the Court found that in the particular circumstances of that case – which concerned events alleged to have taken place in northern Iraq – the jurisdiction issue was inextricably linked to the facts and, as such, had to be considered to have been implicitly reserved for the merits stage (*Issa and Others*, cited above, § 55). It has not been argued and does not appear that such circumstances pertain in the present case.

31. In view of the above, the Government cannot be absolved from the obligation they had to raise their preliminary objection prior to the Court's decision of 19 October 2004 as to the admissibility of the application.

32. Consequently, the Government are estopped from raising a preliminary objection relating to jurisdiction at the present stage of the proceedings. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Arguments of the parties

1. The applicants

33. The applicants complained that the Netherlands authorities had not complied with the positive obligation, inherent in Article 8 of the Convention, to allow Mehret to reside in the Netherlands, thereby enabling them to enjoy family life in that country. Article 8, in so far as relevant, provides:

> "1. Everyone has the right to respect for his ... family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime ..."

34. The applicants submitted that their interests in Mehret being allowed to reside in the Netherlands outweighed those of the respondent State in refusing such residence. They insisted that insurmountable obstacles stood in the way of the family living together in the country of origin. Mr Tuquabo had been admitted to the Netherlands as a refugee and it was thus clear that he could not be expected to return. The fact that Mrs Tuquabo-Tekle had been granted a residence permit on humanitarian grounds in Norway showed that, in her case also, impediments to a return existed. In addition, the family members living in the Netherlands had achieved settled status in that country, with all of them now having Netherlands nationality and two of the children having been born there. Allowing Mehret to move to the Netherlands was therefore the most adequate solution for the applicants to develop family life together.

35. The applicants further argued that it was a distortion of the facts to suggest that they had let matters slide. On the contrary, they had worked incessantly in order to comply with the relevant requirements so that permission would be obtained for Mehret to join her family in the Netherlands. When Mrs Tuquabo-Tekle had first entered the Netherlands, she had been informed by the authorities that suitable housing constituted one of those requirements. According to the applicants, they were not exempted from this requirement: the fact that only children actually belonging to the family unit were eligible for family reunion meant that the

individuals concerned must already have been living together in the country of origin. Mehret had never lived with her stepfather in a family unit, and it was therefore not possible for her to derive an exemption from the housing requirement on the ground that her stepfather – unlike her mother – had been admitted as a refugee. Suitable housing had proved difficult to find; in the end Mrs Tuquabo-Tekle and Mr Tuquabo had opted to buy a house in a less reputable area of Amsterdam simply in order to comply with the requirement.

36. The applicants further argued that, in view of the policy applied at the relevant time by the Netherlands authorities, it was practically impossible that an exemption from the passport requirement would have been granted to a child of a person who had not been admitted as a refugee. Although, formally speaking, it might have been true that the Eritrean authorities had started issuing passports in 1994, in practice it was far from easy to obtain one. Those authorities demanded, for example, that persons applying for a passport retroactively pay a percentage of their income towards the reconstruction of the country.

37. Finally, the applicants submitted that Mehret's grandmother had taken decisions affecting Mehret's future – such as taking her out of school – with which they did not agree but which they were unable to undo as long as Mehret was not living with them in the Netherlands.

2. The Government

38. The Government, while accepting that family life within the meaning of Article 8 § 1 existed between Mrs Tuquabo-Tekle and Mehret, were of the view that their authorities did not have a positive obligation to grant Mehret a provisional residence visa to enable her and Mrs Tuquabo-Tekle to develop family life in the Netherlands. In this context they attached relevance to the fact that Mrs Tuquabo-Tekle had left Mehret behind in the care of her grandmother and uncle of her own free will. Meanwhile, Mrs Tuquabo-Tekle had started a new family in the Netherlands with Mr Tuquabo and had had two children. Mehret had never been part of that family. It had also not been shown that Mrs Tuquabo-Tekle was involved in Mehret's upbringing in the moral sense or that she exercised any authority over her, the family ties between mother and daughter consisting primarily of financial support.

39. The Government further argued that, although she had held a residence permit for the Netherlands since 1993, Mrs Tuquabo-Tekle had not taken any steps to bring Mehret to that country until 1997. The housing situation of the applicants in the Netherlands could not have stood in the way of an earlier visa application, given that Mr Tuquabo had been admitted as a refugee and subsequently obtained Netherlands nationality, such that he was in any event exempted from the housing requirement. As regards the applicants' argument that for a long time it had not been possible to obtain a

passport for Mehret, the Government submitted that they could have requested the Netherlands authorities to exempt her from the passport requirement and issue her with a *laissez-passer*. Moreover, it had been possible to apply for and obtain a passport in Eritrea since 1994. Mrs Tuquabo-Tekle had thus not been able to present sound reasons as to why she had waited so long before applying to bring Mehret to the Netherlands, and she had therefore failed to demonstrate that Mehret's inclusion in her grandmother's family was anything other than permanent.

40. According to the Government, the circumstances of Mehret having reached marriageable age and facing the risk of being married off without being allowed to continue her schooling were not so exceptional that the right to respect for family life gave rise to a positive obligation to allow her to reside in the Netherlands. This decision did not in any way prevent Mrs Tuquabo-Tekle from continuing family life in the same way and at the same level as in the seven years between her departure from Eritrea and the time of the visa application.

B. The Court's assessment

41. The Court notes that it is not in dispute between the parties that there is family life within the meaning of Article 8 § 1 of the Convention between Mrs Tuquabo-Tekle and her daughter Mehret. What divides the parties is the question whether or not Article 8 imposed on the respondent State a positive obligation to allow Mehret to reside in the Netherlands.

42. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2031, § 63).

43. In order to establish the scope of the State's obligations, the Court must examine the facts of the case in the light of the applicable principles, which it has previously set out as follows (see *Gül v. Switzerland*, judgment of 19 February 1996, *Reports* 1996-I, p. 175, § 38, and *Ahmut*, cited above, p. 2033, § 67):

(a) the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved and the general interest;

(b) as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory;

(c) where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory.

44. The present case hinges on the question whether the authorities of the respondent State were under a duty to allow Mehret to reside in the Netherlands with her mother, stepfather and siblings, thus enabling the applicants to develop family life there. The Court must examine whether in refusing to do so the Government can be said to have struck a fair balance between the applicants' interests on the one hand and its own interest in controlling immigration on the other. In its assessment, the Court will have regard to the age of the children concerned, their situation in their country of origin and the extent to which they are dependent on their parents. In this context it is to be borne in mind that the present case concerns not only immigration but also family life and that it involves an alien – Mrs Tuquabo-Tekle – who already had a family which she had left behind in another country until she had achieved settled status in her respective host countries, that is Norway and the Netherlands (contrast *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 68).

45. Turning to the particular circumstances of the case, the Court notes that the Government's submissions centre on their contention that the applicants could have applied for Mehret to come to the Netherlands much sooner, and that, in the absence of sound reasons for their not having done so, it had to be assumed that Mehret's staying with her grandmother and uncle in Eritrea was intended to be a permanent arrangement. However, the Court has previously held that parents who leave children behind while they settle abroad cannot be assumed to have irrevocably decided that those children are to remain in the country of origin permanently and to have abandoned any idea of a future family reunion (see *Şen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001). Indeed, it appears clearly from the facts of the present case that Mrs Tuquabo-Tekle always intended for Mehret to join her. Thus, as soon as she had been granted leave to remain in Norway, she took steps in order to be reunited with her children. Having obtained the Norwegian authorities' permission, she managed to be reunited with her son Adhanom but did not succeed in bringing Mehret to Norway at that time, owing to circumstances beyond her control (see paragraph 9 above).

46. The Court further notes that the Government have not disputed that Mrs Tuquabo-Tekle and her husband made efforts to obtain a passport for Mehret and accommodation suitable for the number of persons which their

family would comprise if Mehret joined them. The Court accepts that any delays which occurred stemmed from the applicants' sincerely held belief – in which they were apparently supported by their legal representative – that it was not possible to apply for family reunion in the Netherlands until these matters had been taken care of, rather than from any decision on their part that Mehret should stay in Eritrea. Similarly, the fact that, according to the Government, Mrs Tuquabo-Tekle and her husband were not required to take these steps does not detract from the aim manifestly underlying their efforts: to be (re)united with Mehret in the Netherlands.

47. As regards the question to what extent it is true that Mehret's settling in the Netherlands would be the most adequate means for the applicants to develop family life together, the Court observes that the present application is very similar to the case of *Şen v. the Netherlands* (cited above), in which it found a violation of Article 8 of the Convention. That case also concerned parents with settled immigrant status in the Netherlands who chose to leave a daughter (Sinem) behind in the care of relatives in her country of origin (Turkey) for a number of years before they applied to be reunited with her. At this juncture the Court would remark that it is questionable to what extent it can be maintained in the present case, as the Government did, that Mrs Tuquabo-Tekle left Mehret behind of "her own free will", bearing in mind that she fled Eritrea in the course of a civil war to seek asylum abroad following the death of her husband. Be that as it may, it is in any event the case that Mrs Tuquabo-Tekle and her husband, just like Mr and Mrs Şen, have been lawfully residing in the Netherlands for a number of years, even opting for, and obtaining, Netherlands nationality. In addition, and also just as in the *Şen* case, two children have been born to the couple in the Netherlands: Tmnit in 1994 and Ablel in 1995. These two children have always lived in the Netherlands and its cultural and linguistic environment, have Netherlands nationality and attend school there. Consequently, they can only have minimal ties, if any, to their parents' country of origin (see *Şen*, cited above, § 40).

48. It was precisely these circumstances which led the Court to conclude in the case of *Şen* that a major impediment existed to that family's return to Turkey, and that allowing Sinem to come to the Netherlands would be the most adequate way in which the family could develop family life with her. The Court added that this was all the more so as, in view of Sinem's young age, her integration into her parents' close family unit was particularly exigent (*ibid.*, § 40). It is in this latter context that the two cases are different: whereas Sinem Şen was 9 years old when her parents sought to be reunited with her (*ibid.*, §§ 10 and 13), Mehret was already 15 when her mother and stepfather applied for a provisional residence visa on her behalf (see paragraph 11 above). The question therefore arises whether this constitutes such a material difference that the present case ought, for that reason, to be distinguished from *Şen*, and lead to a different outcome.

49. The Court has indeed previously rejected cases involving failed applications for family reunion and complaints under Article 8 where the children concerned had in the meantime reached an age where they were presumably not as much in need of care as young children and increasingly able to fend for themselves. In cases of this nature, the Court has also examined whether the children had grown up in the cultural and linguistic environment of their country of origin, whether they had other relatives there, and whether it could be expected of the parents to return to that country (see, for instance, *Benamar v. the Netherlands* (dec.), no. 43786/04, 5 April 2005; *I.M. v. the Netherlands* (dec.), no. 41266/98, 25 March 2003; and *Chandra and Others v. the Netherlands* (dec.), no. 53102/99, 13 May 2003).

50. In the present case the Court notes that the applicants have not alleged that Mehret, who undoubtedly has strong cultural and linguistic links with Eritrea, could no longer be looked after by the relatives who have been doing so ever since her mother left. They have, nevertheless, argued that Mehret's age – rather than making her less dependent on her mother – made it even more pertinent for her to be allowed to join her family in the Netherlands. This was because, in accordance with Eritrean custom, Mehret's grandmother had taken her out of school, and Mehret had also reached an age where she could be married off (see paragraph 13 above). Although Mrs Tuquabo-Tekle disagreed with the choices made for Mehret, she was unable to do anything about them as long as her daughter was living in Eritrea. The Court agrees with the Government that the applicants' arguments in this context do not, by themselves, warrant the conclusion that the State is under a positive obligation to allow Mehret to reside in the Netherlands. Even so – and bearing in mind that she was, after all, still a minor – the Court accepts in the particular circumstances of the present case that Mehret's age at the time the application for family reunion was lodged is not an element which should lead it to assess the case differently from that of *Şen*.

51. The Court would, moreover, add that, although not in itself decisive, it is noteworthy that when Mrs Tuquabo-Tekle successfully sought leave from the Norwegian authorities to be reunited with her daughter in Norway, Mehret was much the same age as Sinem Şen was when her parents lodged such an application with the Netherlands authorities (see paragraph 9 above).

52. Having regard to the above, the Court finds that the respondent State has failed to strike a fair balance between the applicants' interests on the one hand and its own interest in controlling immigration on the other.

Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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."

54. The applicants themselves, rather than their representative, submitted claims for just satisfaction as set out below.

A. Damage

1. Pecuniary damage

55. The applicants claimed they had incurred expenses in respect of the following:

(a) Postage and telephone calls: the applicants had posted numerous letters, sometimes by registered mail, to Mehret. They had further sent Mehret packages containing, *inter alia*, clothes and objects she needed for school, and had telephoned her. The applicants were unable to provide documentary evidence as they had not kept the relevant bills and receipts, except for two receipts for the dispatch of registered mail to Eritrea, one of which was for a letter to Mehret's uncle and grandmother. However, the applicants estimated that they had spent between 4,537 and 6,806 euros (EUR) under this head.

(b) Money transfers: every three months the applicants had sent an amount of money for Mehret's upkeep to the relatives in Eritrea. They submitted a number of bank statements from which it appears that sums of about 900 US dollars were transferred to the grandmother and uncle, and that commission was charged.

(c) Air travel: in July 2000 and July 2001 a number of the applicants in the Netherlands had visited Mehret in Eritrea. In order to pay for one of these journeys, Mr Tuquabo had taken out a bank loan of 15,000 Netherlands guilders (NLG; about EUR 6,800) which, including interest payments, had cost him a total of EUR 10,263.89. The cost of the second journey was EUR 3,630.24.

(d) Unpaid child benefit: from 1993 until 1995 the social-security authorities in the Netherlands had refused to pay Mrs Tuquabo-Tekle child benefit for Mehret since she was unable to prove that she provided for her daughter financially; bank transfers to the fledgling State of Eritrea not yet being possible at that time, the applicants had entrusted the money to persons travelling to Eritrea. This benefit, which Mrs Tuquabo-Tekle was entitled to but was unable to claim, amounted to EUR 4,149.

56. The Government noted that the various items of the applicants' claims either lacked precision and specification, or bore no direct relation to the alleged violation of the Convention. As they did not, therefore, feel able to give a more reasoned assessment of the claims, the Government left the matter to the Court's discretion.

57. The Court observes, in the first place, that the applicants would have incurred costs for Mehret's upbringing regardless of whether she was living in Eritrea or in the Netherlands. Those costs, therefore, are not eligible for reimbursement by way of just satisfaction (see *Aktaş v. Turkey*, no. 24351/94, § 358, 24 April 2003). Secondly, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court notes that the claims put forward in respect of unpaid child benefit relate to a time when the applicants had not yet applied to the Netherlands authorities for Mehret to be allowed to reside in their territory. As such, there is no causal link between the violation of Article 8 of the Convention and the pecuniary damage claimed under this head.

58. The Court further reiterates that, pursuant to Rule 60 of the Rules of Court, claims for just satisfaction must, in general, be supported by independent evidence, failing which those claims may be rejected in whole or in part (see *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 60, ECHR 2002-V). It considers that the remaining claims submitted by the applicants under this head are either insufficiently supported by relevant documentary evidence or lack specification. For this reason no award in respect of alleged pecuniary damage will be made.

2. Non-pecuniary damage

59. The applicants submitted that, as it was impossible to express in monetary terms the non-pecuniary damage they had suffered, they would leave the award under this head to the discretion of the Court. Nevertheless, they emphasised that as a result of the prolonged separation from her daughter, Mrs Tuquabo-Tekle had developed medical problems, and the distress caused by the negative attitude of the Netherlands authorities had affected all the applicants.

60. The Government did not specifically address this issue.

61. The Court accepts that the applicants, and in particular Mrs Tuquabo-Tekle and Mehret, must have suffered non-pecuniary damage as a result of being separated from each other, which is not sufficiently compensated for by the finding of a violation of the Convention. Making an

assessment on an equitable basis, as required by Article 41, the Court awards the applicants EUR 8,000.

B. Costs and expenses

62. Finally, the applicants claimed compensation for costs and expenses. These claims comprised:

(a) Legal fees: the applicants submitted bank statements showing that in February and July 1999 they had paid a total of NLG 1,113.60 (EUR 505.33) to their representative's law firm, which, they claimed, pertained to work carried out by him until March 1999. They further presented the Court with an invoice dated 14 November 2000 from their representative for an amount of NLG 2,379.38 (EUR 1,079.72), relating to activities in respect of the present application undertaken between April 1999 and November 2000. The applicants submitted that they had not yet been billed for the subsequent work of their representative.

(b) Translation costs: the applicants had arranged for the translation of a number of documents relating to Mrs Tuquabo-Tekle's residence permit in Norway and that country's decision on her request for family reunion, for submission to the Court. According to the invoices submitted, they were charged NLG 355.93 (EUR 161.51).

(c) Postage: the applicants claimed that in their attempts to bring Mehret to the Netherlands, they had been obliged to communicate with a large number of authorities, both in the Netherlands and Eritrea, by (registered) mail. In this connection, they submitted two receipts for the dispatch of registered mail addressed to the Aliens Police in Amsterdam.

63. The Court assumes that the Government's comments as set out in paragraph 56 above also apply to their views on the applicants' claims under this head.

64. As mentioned in paragraph 59 above, all claims for just satisfaction must show particulars and be supported by relevant documentation, failing which the claims may be rejected in whole or in part. The Court observes that, apart from the one invoice, the applicants have not submitted itemised bills of costs in respect of their claims for legal fees. While it indeed appears that the applicants paid a sum of money to their representative's law firm on two occasions in 1999, it cannot be ascertained to which proceedings these payments related – the present application not yet having been lodged at that time – nor is the Court able, without details of the work done and the hourly rates charged, to determine whether the costs were necessarily incurred and reasonable as to quantum. The applicants' representative has furthermore not seen fit to inform either his clients or the Court of his fees for the work carried out by him after November 2000. In these circumstances, the Court is prepared to award only a total of EUR 1,079.72 in respect of the

applicants' legal fees, less an amount of EUR 701 received by way of legal aid from the Council of Europe.

65. The Court further considers that the cost of the translation of documents was necessarily and reasonably incurred. It therefore awards the amount sought (EUR 161.51) in full.

66. As regards, finally, the award for an unquantified amount of postage costs sought by the applicants, the Court notes that it has not been provided with relevant documentation showing that these expenses were incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention (see, among many other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 493, ECHR 2004-VII). The Court will not, therefore, make an award in respect of these expenses.

C. Default interest

67. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,241.23 (one thousand two hundred and forty-one euros and twenty-three cents), less EUR 701 (seven hundred and one euros), in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President