CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35989/03
by Heyridin RAMADAN and Sevdie RAMADAN-AHJREDINI
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 10 November 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Ms I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 7 November 2003,

Having regard to the observations submitted by the respondent Government, the observations in reply submitted by the applicants and a number of supplementary observations submitted by both parties,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Heyridin Ramadan and Mrs Sevdie Ramadan-Ahjedini, are husband and wife. They originate from what is now the Former Yugoslav Republic of Macedonia ("the FYR of Macedonia") and are of ethnic Albanian origin. They were born in 1957 and 1966 respectively and live in Huizen. They introduced the application also on behalf of their daughter Djemile Ramadan, born in 1991, and their son Enes

Ramadan, born in 1995. They are represented before the Court by Mr P.B.Ph.M. Bogaers, a lawyer practising in Nieuwegein. The respondent Government are represented by Mr R.A.A. Böcker and Mrs J. Schukking of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

The applicants, accompanied by their daughter Djemile, arrived in the Netherlands on 12 December 1992. They applied for asylum on 21 December 1992. In an interview with an immigration official on 7 July 1993 they stated, *inter alia*, that their parents and siblings were living in the FYR of Macedonia.

On 6 April 1994 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the asylum application and informed the applicants that they would not be allowed to await the decision on any objection (*bezwaar*) they might lodge. The applicants lodged an objection and also requested the Regional Court (*arrondissementsrechtbank*) of The Hague, sitting in Haarlem, to issue a provisional measure in order for them to be allowed to await the outcome of their objection in the Netherlands. The President of the Regional Court rejected the applicants' request on 18 November 1994. From that moment on, the applicants were no longer authorised to stay in the Netherlands. However, no action was taken to expel them.

On 10 April 1995 the applicants' son Enes was born.

The Deputy Minister dismissed the objection against the refusal of the applicants' request for asylum. The appeal against that decision was rejected by the Regional Court of The Hague sitting in Haarlem on 29 May 1997. No further appeal lay against this judgment.

In a letter of 3 July 1997 the applicants' lawyer requested the Deputy Minister to seek advice from the Ministry of Justice's Medical Advice Bureau (*Bureau Medische Advisering*; "MAB") in order to see whether the medical situation of the applicants and Enes should not lead to their expulsion being deferred in accordance with Article 25 of the Aliens Act 1965 (*Vreemdelingenwet 1965*). The lawyer referred to a letter of 30 June 1997 from the applicants' general practitioner according to which – due to the tense and insecure situation in which they had found themselves in recent years – the applicants were experiencing difficulties in dealing with Enes, who was a difficult baby. A return to their country of origin meant that the applicants, for the time being, would not be capable of looking for different ways of dealing with Enes which, in these critical years, would entail consequences for the rest of his life.

The Deputy Minister informed the applicants that she perceived no cause to consult the Medical Advice Bureau. The applicants lodged an objection

against the Deputy Minister's refusal, which was declared inadmissible. The applicant's subsequent appeal and request for a provisional measure were rejected by the Acting President of the Regional Court of The Hague, sitting in Haarlem, on 27 March 1998. The Acting President held that, as long as the applicants were not actually being expelled, the refusal of the Deputy Minister did not affect their interests. No further appeal lay against this decision.

In a letter of 29 May 1998 to the applicants' lawyer, a psychiatrist working at the Regional Institute for Outpatient Mental Health Care (*Regionale Instelling voor Ambulante Geestelijke Gezondheidszorg* – "RIAGG"), wrote that both applicants were suffering from an adjustment disorder. Although the applicants' daughter Djemile was doing reasonably well, a forced return to the country of origin might, especially for her, lead to serious psycho-traumatic consequences.

On 25 February 1999 the applicants lodged a request for a residence permit on compelling humanitarian grounds or, alternatively, for the purposes of receiving medical treatment in the Netherlands. When, on 13 December 1999, the Deputy Minister had still not taken a decision, the applicants filed an objection against the implied refusal (*fictieve weigering*) of their request.

In early 2000 the second applicant underwent an operation for a slipped disc. In view of her long case history, the neurologist treating her considered it likely that she would continue to have an increased vulnerability to physical and psychological violence. The neurologist was of the opinion that a forced return of the second applicant to the FYR of Macedonia, where such a situation pertained, might lead to her becoming physically disabled.

A report dated 22 April 2000 from the Medical Advice Bureau concluded that both applicants were suffering from an adjustment disorder. The first applicant had emotional and behavioural problems and the second applicant was suffering from anxiety and depression. The applicants had initially been treated by a RIAGG psychiatrist and subsequently by their general practitioner. To the best of the Medical Advice Bureau's knowledge, the applicants were not receiving specialist treatment at the time of the report. The medical conditions from which the applicants were suffering could be treated in their country of origin in more or less the same way as in the Netherlands. The Medical Advice Bureau further stated that a failure to provide immediate treatment to either of the applicants would not lead to an acute medical emergency (a situation where a person is suffering from a disorder which in its pertaining phase, if not treated immediately, would lead to death, invalidity or another form of serious psychological and/or physical harm). Neither applicant required intensive psychiatric or in-patient treatment, and they showed no symptoms of psychological decompensation or obsessive-compulsive suicidal tendencies. The longer term consequences of a failure to provide treatment would probably be the applicants' being

afflicted for longer and/or more seriously compared with the situation in which they received counselling. It could not be excluded that in the longer term a medical emergency might arise.

In a letter of 12 July 2000, the RIAGG psychiatrist informed the applicants' lawyer that, to his consternation, he had found that the psychological state of health of both applicants and their children had seriously deteriorated since he had last examined them in 1998. This had been caused by the chronic uncertainty with which the applicants had been confronted since 1992. The first applicant was suffering from a depression with psychotic characteristics, and the second applicant from a depressive disorder. Both required immediate and continuing specialist help, which would be provided by a psychiatric nurse and the psychiatrist in the form of consultations and medication. On 14 July 2000 the applicants' general practitioner confirmed that the situation of, in particular, the first applicant had deteriorated. He was currently so frantic that the doctor feared the worst if he were to be expelled. The doctor further thought it likely that the first applicant would attempt to evade expulsion, if necessary through suicide. Should the first applicant nevertheless reach the FYR of Macedonia, it was doubtful that adequate help would be available there.

The Deputy Minister transmitted the information from the RIAGG psychiatrist and the general practitioner to the Medical Advice Bureau. By letter of 9 August 2000 the Medical Advice Bureau commented on the new information. While conceding that the applicants' condition had deteriorated, it concluded that there was no reason to amend the earlier recommendations and it was still felt that the applicants could be treated in their country of origin. As regards the possibility of the first applicant committing suicide, the Medical Advice Bureau noted that this was not related to the discontinuation of treatment but to a negative decision on his request and return to his country of origin.

The Medical Advice Bureau further provided information on the system of health care in the FYR of Macedonia, which was stated as being well-developed, although a person's ethnic origin did play a role when it came to the question of availability of health care. Anti-depressants could be obtained from private pharmacies (at a fairly high price) and from state hospitals, albeit that stocks were running low in the latter establishments and anti-depressants were therefore only used to treat serious cases. Treatment for various psychological disorders was said to be available, with psychotherapy commonly used as a treatment modality.

A hearing on the applicants' objection took place on 23 March 2001. On this occasion the applicants submitted, *inter alia*, that regard should also be had to the fact that they had been living in the Netherlands for eight years and to the effects which an expulsion would have on their minor children who were going to school in the Netherlands.

In a letter of 27 March 2001 to the applicants' representative, the psychiatric nurse treating them reported a further deterioration of their psychological situation. The applicants were being treated in accordance with a PTSD-protocol. It was expected that their complaints would deteriorate if they had to return to their country of origin. The second applicant was quoted as saying she would prefer to be dead in that case.

On 1 June 2001 the Deputy Minister upheld the applicants' objection in so far as it was directed against the failure to decide in a timely fashion on the request for a residence permit, but dismissed the objection for the remainder. Noting that according to the Medical Advice Bureau, treatment for the applicants' medical and psychological complaints was available in the FYR of Macedonia, the Deputy Minister found that the applicants were ineligible for a residence permit for the purpose of receiving medical treatment in the Netherlands, since it could not be said that the latter country was the most appropriate country (*het meest aangewezen land*) for the applicants to receive such treatment. The applicants also did not have sufficient financial means to pay for treatment and neither did they hold valid passports. The Deputy Minister further considered that the applicants had failed to establish that compelling reasons of a humanitarian nature existed, on the basis of which they should be granted a residence permit.

The applicants appealed this decision to the Regional Court of The Hague, sitting in Amsterdam, submitting, *inter alia*, that the Medical Advice Bureau had not itself examined the applicants but had based its conclusions on information obtained from others. Furthermore, the applicants maintained that treatment would not be available to them in the FYR of Macedonia, not in the last place because they were ethnic Albanians.

The Regional Court rejected the appeal on 16 June 2003, finding that the Minister for Immigration and Integration (*Minister voor Immigratie en Integratie*; the successor of the Deputy Minister of Justice) could reasonably have refused the requested residence permits.

The applicants lodged a further appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*; "the Division"). In these proceedings they argued that there was no question of there being available in the FYR of Macedonia treatment more or less similar to that provided in the Netherlands. In this context the applicants submitted a number of reports from which they concluded that the health-care system in the FYR of Macedonia had fallen below western-European standards in recent years due to the conflict in the Balkans. Treatment of psychological disorders only took place in the form of medication. According to a report drawn up in October 2002 by the Swiss Refugee Council, there were barely adequate therapy possibilities for the treatment of post-traumatic stress disorders. Moreover, the national system of health insurance was only open to officially registered nationals

of the FYR of Macedonia. According to the applicants, they were unable to obtain the nationality of the FYR of Macedonia as they did not comply with certain requirements. Nevertheless, even insured persons generally needed to resort to bribery in order to obtain specialist treatment. The applicants concluded that an expulsion to the FYR of Macedonia, where they would arrive penniless and without employment and where they would not have access to any kind of treatment of their psychological problems, constituted degrading or inhuman treatment in breach of Article 3 of the Convention.

Finally, the applicants argued that the physicians working at the Medical Advice Bureau were not independent specialists, as was illustrated by the fact that this Bureau had completely misjudged the situation in the FYR of Macedonia.

The Division rejected the further appeal on 30 September 2003, holding that the Regional Court had been correct in finding that the fact that treatment methods in the FYR of Macedonia were different than in the Netherlands did not mean that no treatment was available in the FYR of Macedonia. The reports submitted by the parties for the first time in the proceedings before the Division could not lead to their further appeal being upheld, as the Regional Court had not been able to have regard to the information contained therein. The applicants' complaint to the effect that the question whether or not they would have access to health care facilities in the FYR of Macedonia had not been addressed by the Minister was also rejected, as the Division held that this issue must be assumed to have played a role in the starting points of the Minister's policy. Moreover, the applicants were found to have failed to substantiate their complaint that the advice of the Medical Advice Bureau was not objective. Finally, the Division held that it could not examine the applicants' argument relating to their inability to obtain the nationality of the FYR of Macedonia as this argument had not been raised by them in the proceedings before the Regional Court.

In an e-mail message of 9 October 2003 from the Officer of International Affairs of the (Netherlands-based) Pharos Knowledge Centre for Refugees and Health, the applicants' representative was informed that in the FYR of Macedonia psychological problems were mainly treated with medication.

In a letter of 11 November 2003 from a RIAGG physician to the applicants' representative, the first applicant was described as utterly desperate, extremely nervous and tense. He experienced the decision to remove the family to the FYR of Macedonia after such a long time as a death sentence and considered himself a failure as head of the family. In the opinion of the physician, the possibility of the first applicant acting on impulse or suicidally if the family were to be expelled should not be discounted.

B. World Health Organisation (WHO) information on mental health care in the FYR of Macedonia

The Mental Health Atlas-2005[1] states, *inter alia*, the following as regards mental health care in the FYR of Macedonia:

> "A mental health policy has been reviewed and it is in the process of being adopted by the Government. The document is constituted of three parts, namely National Policy, Strategy with Action Plan and Legislation on Mental Health. ...
>
> A National Master Mental Health Plan is already prepared by the National Task Force Team (assigned by the Minister of Health) in collaboration with WHO. It is expected to be adopted shortly by the Government.
>
> There is a list of essential drugs covered by the Health Insurance Fund as part of the health insurance scheme. Currently, this list is under revision to reflect prevailing needs. ...
>
> There are budget allocations for mental health services ... The country has disability benefits for persons with mental disorders. ... Mental health patients according to the newly developed law are treated in the same way regarding employment as persons with somatic disabilities. There are examples from practice in the cities of Gevgelia and Skopje where there are companies that facilitate the employment possibilities of mentally ill persons, an issue that previously was available only for persons with somatic disabilities. ...
>
> The country had traditional hospital-based mental health services. New policy developments recognise the need for reform in this sector especially towards decentralisation and community-based services. ... A National Board for promotion and implementation of community-based services on mental health has been created. ...
>
> ... traditional hospital-based mental health services ... are not efficient and largely depend on a centralised organisation; they have not been able to meet ... extensive needs. The services are unsatisfactory from the medical, psychological, human, outcome, efficiency or economic points of view. ...
>
> The country has specific programmes for mental health for children. The host families, local health and social services, the local communities and society in general are all involved in tackling the refugee and internally displaced persons problem. ...
>
> [A number of] therapeutic drugs are generally available at the primary health care level of the country."

COMPLAINTS

1. The applicants complained in the first place that their expulsion to the FYR of Macedonia would amount to a violation of Article 3 of the Convention in that, even if they were admitted to that country's territory,

1. A project of WHO's Department of Mental Health and Substance Abuse. "Project Atlas" was launched by WHO in 2000 in an attempt to map mental health resources in the world.

they would not have access to the treatment which they required for their psychological problems – treatment which according to certain sources did not even exist in the FYR of Macedonia. Expulsion would also entail a serious deterioration of the state of health of the applicants who were currently still receiving specialist treatment in the Netherlands.

2. In the second place, the applicants argued that the further appeal to the Division did not constitute an effective remedy within the meaning of Article 13 of the Convention. In this context they referred to that tribunal's refusal, firstly, to take account of relevant documents submitted by them; secondly, to examine whether the advice of the Medical Advice Bureau had been drawn up in an impartial, objective and transparent manner; and thirdly, to examine the applicants' argument relating to their inability to obtain the nationality of the FYR of Macedonia which entailed that they would have no access to the health care system in that country.

THE LAW

1. The applicants complained that their expulsion to the FYR of Macedonia would amount to inhuman treatment. They invoked Article 3 of the Convention, which provides as follows:

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

The Government were of the opinion that the applicants' expulsion was not incompatible with Article 3 of the Convention. It could not be maintained that the applicants, who were undergoing specialist treatment in the Netherlands consisting of talk therapy and medication, would not be able to receive treatment for their conditions in the FYR of Macedonia. In this context the Government referred to WHO information according to which the FYR of Macedonia has a separate budget for mental health care, which forms part of the general health care system. It further appeared from this information that NGOs are involved in mental health care in the FYR of Macedonia, and that these contribute primarily to advocacy, promotion and rehabilitation. There are also mental health programmes specifically for children. Conditions such as schizophrenia, severe depression, bipolar disorders and post-traumatic stress disorder can be treated in the FYR of Macedonia. Drugs are available for the treatment of psychoses, depression and anxiety. Finally, psychotherapy is a common form of treatment in the FYR of Macedonia.

The Government noted that the reports issued by the Medical Advice Bureau concerned the availability of medical treatment in the applicants' country of origin and contained no comments on the actual accessibility of medical services. However, the Government argued that the contention that

the applicants would not be able to gain access to medical services for financial and geographical reasons was not a sufficient reason to grant residence permits for the purpose of receiving medical treatment.

The Government concluded that even if the health care facilities which the applicants would encounter in the FYR of Macedonia were less favourable than those in the Netherlands, their personal circumstances were not sufficiently exceptional to justify the classification of their expulsion to the FYR of Macedonia as treatment proscribed by Article 3 of the Convention.

The applicants considered that the Government underestimated the seriousness of their mental health problems. No reliance could be placed on the reports of the Medical Advice Bureau as these had not been drawn up either independently or with due care. Thus, the applicants disputed that treatment similar to that which they were receiving in the Netherlands would be available in the FYR of Macedonia, let alone that they would have access to it. In this connection they referred to the report compiled by the Swiss Refugee Council in October 2002, according to which there existed barely adequate therapy possibilities for the treatment of post-traumatic stress disorders in the FYR of Macedonia.

No account had been taken of the applicants' interests, who were only able to survive with the psychiatric treatment they were receiving in the Netherlands. As the result of an expulsion to the FYR of Macedonia the applicants would enter a terminal phase: as the Medical Advice Bureau had held in its report of 9 April 1991, it could not be excluded that without treatment, a medical emergency, which might lead to death, would occur in the longer term.

The Court recalls at the outset that the Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, in exercising their right to expel such aliens Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies (see, among others, *Hilal v. the United Kingdom*, no. 45276/99, § 59, ECHR 2001-II).

While it is true that Article 3 has been more commonly applied by the Court in contexts in which the risk to the individual of being subjected to any of the proscribed forms of treatment emanates from intentionally inflicted acts of the public authorities or non-State bodies in the receiving country (see, for example, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2207, § 44), the Court has, in the light of the fundamental importance of Article 3, reserved to itself sufficient flexibility to address the application of that Article in other contexts which might arise. It is not, therefore, prevented from scrutinising an applicant's claim under Article 3 where the source of the risk of proscribed treatment in the receiving country stems from factors

which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. The Court has held that to limit the application of Article 3 in this manner would be to undermine the absolute character of its protection. In any such contexts, however, the Court must subject all the circumstances surrounding the case to rigorous scrutiny, especially the applicant's personal situation in the expelling State (see *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, p. 792, § 49).

Turning to the circumstances of the present case, the Court observes that, after lodging an asylum application in 1992, the applicants' authorised stay in the Netherlands came to an end on 18 November 1994 when they were denied interim relief which would have allowed them to remain in the country pending the asylum proceedings. The applicants did not, however, leave the country, and it also does not appear that the Netherlands authorities took any steps to remove the applicants from their territory. More than four years later, in February 1999, the applicants once again applied for a residence permit.

The applicants' medical situation was first brought to the attention of the Netherlands immigration authorities in July 1997, with their representative requesting that the applicants' expulsion be deferred on that account. According to their general practitioner, the applicants' medical problems were due to the tense and insecure situation in which they had found themselves in recent years. Indeed, several of the health care providers with whom the applicants have been in contact while in the Netherlands agree that their vulnerable health status was primarily due to the insecurity concerning their residential status in the Netherlands and anxiety about their future.

The Court further observes that in 2000 the first applicant was diagnosed as suffering from a depression with psychotic characteristics, and the second applicant as suffering from a depressive disorder. Whilst in the Netherlands, the applicants have not been admitted to compulsory psychiatric care or otherwise been hospitalised due to their mental problems, but they have been receiving treatment, in the form of therapy and medication, for some time. Nevertheless, according to the most recent information contained in the file, which dates from November 2003, the applicants' condition does not appear to have undergone a noticeable improvement.

The Court does not question that the applicants have suffered from the uncertain situation in their lives and acknowledges that they are experiencing serious mental health problems. However, the Court reiterates that, according to established case-law, 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 provided by the expelling State unless such

exceptional circumstances pertain as to render the implementation of a decision to remove an alien incompatible with Article 3 of the Convention owing to compelling humanitarian considerations (see *D. v. the United Kingdom*, cited above, § 54).

It is to be noted that the WHO information, as put forward by the Government and as cited by the Court above, does not paint quite as bleak a picture of the mental health care situation in the FYR of Macedonia as that presented by the applicants. In particular, the report of the Swiss Refugee Council relied on by the applicants is now more than three years old, with in particular the information contained in the Mental Health Atlas-2005 thus being considerably more recent. It appears that, even though such care in the FYR of Macedonia may not be of the same standard as in the Netherlands, psychotherapy is a common form of treatment and that various therapeutic medicines are available. In any event, the fact that the applicants' circumstances in their country of origin would be less favourable than those enjoyed by them while residing in the Netherlands cannot be regarded as decisive from the point of view of Article 3 (see *Bensaid v. the United Kingdom*, no. 44599/98, § 38, ECHR 2001-I).

The Court furthermore considers that the risk that the applicants would suffer a deterioration in their condition if they were returned to the FYR of Macedonia and that, if they did, they would not receive adequate support or care is to a large extent speculative. It observes in this context that the applicants still have parents and siblings living in the FYR of Macedonia, and it has not been argued nor has it appeared that they would be unable to provide the applicants with support. Moreover, the Court is not prepared to accept that the applicants' condition can be described as terminal.

On the basis of the foregoing, and having regard 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 applicants' expulsion in these circumstances would be contrary to the standards of that provision. In the view of the Court, the present case does not disclose the exceptional circumstances of *D. v. the United Kingdom* (cited above, § 52), 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.

Accordingly, this part of the application is manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicants also alleged a violation of Article 13 of the Convention, which reads:

> "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."

The Government noted that the applicants' complaints under this provision related solely to the limitations in the review carried out by the

Administrative Jurisdiction Division. In their opinion, the mere fact that the Division, as an appeals body, has less scope for review is not sufficient reason to cast doubt on the Netherlands appeals system.

The Government pointed out that the Division had held that a number of documents, including the report of the Swiss Refugee Council, could not be admitted as these documents had not been presented to the Regional Court – even though they dated from well before that court gave judgment. Similarly, the Division had not been able to entertain the applicants' complaints relating to the alleged impossibility of their acquiring the nationality of the FYR of Macedonia as they had failed to raise this issue before the Regional Court. According to the Government, the fact that these procedural requirements were held against the applicants by no means implied that no effective remedy was available.

As regards the applicants' assertion that the Division should itself have investigated whether the Medical Advice Bureau prepared its reports impartially and with due care, the Government submitted that the Division had agreed with the Regional Court's ruling that the applicants had not advanced anything in their appeal proceedings on the basis of which it should be concluded that the Minister ought not have based his decision on that Bureau's reports.

The applicants maintained that no rigorous scrutiny had been conducted of their claims. As the Division had had the report of the Swiss Refugee Council at its disposal, Article 13 in conjunction with Article 3 of the Convention required that it should have had regard to that report in its examination of the applicants' appeal. The same applied with regard to the applicants' claim that they would not be eligible for the nationality of the FYR of Macedonia: the Division was also well aware of that argument, but chose to ignore it for formal reasons.

The applicants further submitted that the Medical Advice Bureau was not independent from the Ministry of Immigration and Integration. Where the reports drawn up by that Bureau contradicted the information provided by the experts treating the applicants, it had been incumbent on the Division to carry out a further investigation. However, the State, including the Regional Court and the Division, had ignored the information submitted by the applicants, both as regards their medical situation and as regards the impossibility for them to obtain treatment in the FYR of Macedonia.

The Court reiterates its constant case-law according to which Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, amongst many authorities, *A. v. the United Kingdom*, no. 35373/97, § 110, ECHR 2002-X). The Court has found above that the applicants' complaint under Article 3 is manifestly ill-founded. It follows that the applicants do not have an "arguable claim" and this complaint does not attract the guarantees of Article 13.

The Court concludes that this part of the application must therefore also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President