BGE 20161018_26456_14 vom 18. Oktober 2016

Bundesgericht (BGE), 2016-10-18, DE

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FR: BGE 20161018_26456_14 du 18 octobre 2016

IT: BGE 20161018_26456_14 del 18 ottobre 2016

Regeste

Inhaltsangabe des BJ (4. Quartalsbericht 2016) Verbot der unmenschlichen oder erniedrigenden Behandlung (Art. 3 EMRK); Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Recht auf eine wirksame Beschwerde (Art. 13 EMRK); Rückführung einer Mutter und ihres minderjährigen Kindes nach Malta im Rahmen des Dublin-Verfahrens. Die Bf. eine Mutter mit minderjährigem Kind machten geltend, eine Rückweisung nach Malta verstosse gegen Art. 3 EMRK, weil sie dort unmenschliche und entwürdigende Lebensverhältnisse erwarteten. Zudem schädigten die materiellen Entbehrungen die physische und psychische Integrität des Kindes. Zudem hätten sie keine wirksame Beschwerde gehabt (Art. 13 EMRK); die Beschwerde an das Bundesverwaltungsgericht habe keine aufschiebende Wirkung gehabt, das Gericht habe die vorgetragenen Rügen lediglich summarisch geprüft und sie seien ungeachtet ihrer Mittellosigkeit nicht unentgeltlich verbeiständet worden und hätten die Prozesskosten selbst tragen müssen. Der EGMR hat die Rügen der Bf. lediglich unter dem Gesichtspunkt von Art. 3 EMRK geprüft und den Entscheid des Staatssekretariats für Migration, das Asylgesuch einer neuen Prüfung zu unterziehen, zur Kenntnis genommen. Es bestehe gegenwärtig für die Bf. keine Gefahr einer Überstellung nach Malta. Mit Blick auf Art. 13 EMRK hat der EGMR festgestellt, dass die nationalen Behörden den Fall der Bf. umfassend und unabhängig geprüft hätten; auch wenn der Beschwerde an das Bundesverwaltungsgericht keine aufschiebende Wirkung zukomme, hätten die Behörden während der Rechtshängigkeit des Verfahrens nicht versucht, die Bf. nach Malta zu überstellen; angesichts des Art. 42 des Asylgesetzes, der jeder Person, die ein Asylgesuch in der Schweiz gestellt hat für die Dauer des Verfahrens das Recht auf Aufenthalt in der Schweiz gewährt, habe kein reelles Risiko einer Rückführung für die Bf. vor dem Entscheid des Bundesverwaltungsgerichts bestanden; die Bf. hätten erst vor dem EGMR die aufschiebende Wirkung verlangt (Art. 39 EMRK); das Bundesverwaltungsgericht habe ohne Verzug entschieden und schliesslich habe der EGMR bereits in einer Vielzahl ähnlich gelagerter Fälle wiederholt festgestellt, dass das schweizerische Asylsystem den Anforderungen von Art. 13 EMRK genüge. Streichung aus dem Register (einstimmig). Synthèse de l'OFJ (4ème rapport trimestriel 2016) Interdiction de traitements inhumains ou dégradants (art. 3 CEDH); droit au respect de la vie privée et familiale (art. 8 CEDH); droit à un recours effectif (art. 13 CEDH); renvoi d'une mère et son enfant mineur à Malte selon la procédure Dublin. Les requérants - une mère et son enfant mineur - font valoir que leur renvoi à Malte constituerait une violation de l'art. 3 CEDH du fait que, dans ce pays, leurs conditions de vie seraient inhumaines et dégradantes. Ils font également valoir que les privations matérielles sévères auxquelles serait exposé l'enfant dans ce pays seraient dommageables pour son intégrité physique et morale. Sous l'angle de l'art. 13 CEDH, ils allèguent ne pas avoir eu de recours efficace du fait que leur recours au Tribunal administratif fédéral (TAF) n'a pas eu d'effet suspensif; que ce tribunal a examiné leurs

griefs en procédure sommaire et qu'ils n'ont pas eu d'assistance judiciaire gratuite et ont dû payer les frais de procédure malgré leur indigence. La Cour a examiné les griefs des requérants soulevés sous les art. 3 et 8 CEDH seulement sous l'angle de l'art. 3 CEDH. Elle a pris note de la décision du SEM de reconsidérer la demande d'asile des requérants et constaté que, de ce fait, ils ne courent plus de risque d'être renvoyés à Malte. Sous l'angle de l'art. 13 CEDH, la Cour a constaté que les autorités nationales ont examiné le cas des requérants de manière indépendante et rigoureuse; que, même si le recours au TAF n'avait pas d'effet suspensif, les autorités n'ont pas essayé de renvoyer les requérants à Malte alors que la procédure était pendante; que selon l'art. 42 de la loi sur l'asile, il n'y a pas de risque réel d'expulsion des requérants avant le jugement définitif du Tribunal administratif fédéral; que les requérants n'ont demandé l'effet suspensif sous l'art. 39 CEDH qu'après le jugement du Tribunal administratif fédéral; que le Tribunal administratif fédéral a tranché le cas des requérants sans retard et que la Cour a considéré dans plusieurs autres affaires que le système d'asile suisse est conforme aux exigences de l'art. 13 CEDH. Radiation du rôle (unanimité). Sintesi dell'UFG (4° rapporto trimestriale 2016) Divieto di trattamenti inumani o degradanti (art. 3 CEDU); diritto al rispetto della vita privata e familiare (art. 8 CEDU); diritto ad un ricorso effettivo (art. 13 CEDU); rinvio a Malta di una madre con figlio minorenne in applicazione della procedura Dublino. La ricorrente, una madre con figlio minorenne, sosteneva che il rinvio a Malta violasse l'articolo 3 CEDU: riteneva disumane e degradanti le condizioni di vita in loco e temeva che le privazioni materiali compromettessero l'integrità fisica e psichica del figlio. Inoltre criticava l'assenza di uno strumento di ricorso effettivo (art. 13 CEDU) adducendo che il ricorso al Tribunale amministrativo federale non aveva avuto effetto sospensivo, che i giudici si erano limitati a un esame sommario delle censure e che lei stessa, seppur indigente, non aveva beneficiato del patrocinio gratuito vedendosi quindi costretta a sostenere le spese giudiziarie. La Corte si è limitata ad analizzare le censure alla luce dell'articolo 3 CEDU, prendendo atto della decisione della Segreteria di Stato della migrazione di riesaminare la domanda d'asilo. Rileva che al momento la ricorrente non corre il rischio di essere trasferita a Malta. Riguardo all'articolo 13 CEDU, constata quanto segue: le autorità nazionali hanno esaminato il caso della ricorrente in modo approfondito e indipendente; sebbene il ricorso al Tribunale amministrativo federale non abbia effetto sospensivo, le autorità non hanno cercato di trasferire la ricorrente a Malta in corso di causa; la ricorrente non ha mai realmente rischiato di essere rinviata prima della decisione giudiziaria poiché l'articolo 42 della legge sull'asilo concede a chiunque abbia presentato una domanda d'asilo in Svizzera il diritto di soggiornarvi fino a conclusione della procedura; la ricorrente ha chiesto l'effetto sospensivo soltanto dinanzi alla Corte EDU (art. 39 CEDU); il Tribunale amministrativo federale si è pronunciato senza indugio; e per finire, la Corte EDU ha constatato a varie riprese, in merito a numerosi casi analoghi, che il sistema d'asilo svizzero adempie i requisiti dell'articolo 13 CEDU. Cancellazione dal ruolo (unanimità).

Volltext

Bundesgericht (BGE) EGMR 18.10.2016 20161018_26456_14 (M.G. et E.T. c. Suisse)
Tribunal fédéral (ATF) CEDH 18.10.2016 20161018_26456_14 (M.G. et E.T. c. Suisse)
Tribunale federale (DTF) CEDU 18.10.2016 20161018_26456_14 (M.G. et E.T. c. Suisse)

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du Tribunal administratif fédéral; que le Tribunal administratif fédéral a tranché le cas des requérants sans retard et que la Cour a considéré dans plusieurs autres affaires que le système d'asile suisse est conforme aux exigences de l'art. 13 CEDH. Radiation du rôle (unanimité). Sintesi dell'UFG (4° rapporto trimestriale 2016) Divieto di trattamenti inumani o degradanti (art. 3 CEDU); diritto al rispetto della vita privata e familiare (art. 8 CEDU); diritto ad un ricorso effettivo (art. 13 CEDU); rinvio a Malta di una madre con figlio minorenne in applicazione della procedura Dublino. La ricorrente, una madre con figlio minorenne, sosteneva che il rinvio a Malta violasse l'articolo 3 CEDU: riteneva disumane e degradanti le condizioni di vita in loco e temeva che le privazioni materiali compromettessero l'integrità fisica e psichica del figlio. Inoltre criticava l'assenza di uno strumento di ricorso effettivo (art. 13 CEDU) adducendo che il ricorso al Tribunale amministrativo federale non aveva avuto effetto sospensivo, che i giudici si erano limitati a un esame sommario delle censure e che lei stessa, seppur indigente, non aveva beneficiato del patrocinio gratuito vedendosi quindi costretta a sostenere le spese giudiziarie. La Corte si è limitata ad analizzare le censure alla luce dell'articolo 3 CEDU, prendendo atto della decisione della Segreteria di Stato della migrazione di riesaminare la domanda d'asilo. Rileva che al momento la ricorrente non corre il rischio di essere trasferita a Malta. Riguardo all'articolo 13 CEDU, constata quanto segue: le autorità nazionali hanno esaminato il caso della ricorrente in modo approfondito e indipendente; sebbene il ricorso al Tribunale amministrativo federale non abbia effetto sospensivo, le autorità non hanno cercato di trasferire la ricorrente a Malta in corso di causa; la ricorrente non ha mai realmente rischiato di essere rinviata prima della decisione giudiziaria poiché l'articolo 42 della legge sull'asilo concede a chiunque abbia presentato una domanda d'asilo in Svizzera il diritto di soggiornarvi fino a conclusione della procedura; la ricorrente ha chiesto l'effetto sospensivo soltanto dinanzi alla Corte EDU (art. 39 CEDU); il Tribunale amministrativo federale si è pronunciato senza indugio; e per finire, la Corte EDU ha constatato a varie riprese, in merito a numerosi casi analoghi, che il sistema d'asilo svizzero adempie i requisiti dell'articolo 13 CEDU. Cancellazione dal ruolo (unanimità).

Urteilskopf 26456/14 M.G. et E.T. c. Suisse Décision de radiation no. 26456/14, 18 octobre 2016 Inhaltsangabe des BJ (4. Quartalsbericht 2016) Verbot der unmenschlichen oder erniedrigenden Behandlung (Art. 3 EMRK); Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Recht auf eine wirksame Beschwerde (Art. 13 EMRK); Rückführung einer Mutter und ihres minderjährigen Kindes nach Malta im Rahmen des Dublin-Verfahrens. Die Bf. eine Mutter mit minderjährigem Kind machten geltend, eine Rückweisung nach Malta verstosse gegen Art. 3 EMRK, weil sie dort unmenschliche und entwürdigende Lebensverhältnisse erwarteten. Zudem schädigten die materiellen Entbehrungen die physische und psychische Integrität des Kindes. Zudem hätten sie keine wirksame Beschwerde gehabt (Art. 13 EMRK); die Beschwerde an das Bundesverwaltungsgericht habe keine aufschiebende Wirkung gehabt, das Gericht habe die vorgetragenen Rügen lediglich summarisch geprüft und sie seien ungeachtet ihrer Mittellosigkeit nicht unentgeltlich verbeiständet worden und hätten die Prozesskosten selbst tragen müssen. Der EGMR hat die Rügen der Bf. lediglich unter dem Gesichtspunkt von Art. 3 EMRK geprüft und den Entscheid des Staatssekretariats für Migration, das Asylgesuch einer neuen Prüfung zu unterziehen, zur Kenntnis genommen. Es bestehe gegenwärtig für die Bf. keine Gefahr einer Überstellung nach Malta. Mit Blick auf Art. 13 EMRK hat der EGMR festgestellt, dass die nationalen Behörden den Fall der Bf. umfassend und unabhängig geprüft hätten; auch wenn der Beschwerde an das

Bundesverwaltungsgericht keine aufschiebende Wirkung zukomme, hätten die Behörden während der Rechtshängigkeit des Verfahrens nicht versucht, die Bf. nach Malta zu überstellen; angesichts des Art. 42 des Asylgesetzes, der jeder Person, die ein Asylgesuch in der Schweiz gestellt hat für die Dauer des Verfahrens das Recht auf Aufenthalt in der Schweiz gewährt, habe kein reelles Risiko einer Rückführung für die Bf. vor dem Entscheid des Bundesverwaltungsgerichts bestanden; die Bf. hätten erst vor dem EGMR die aufschiebende Wirkung verlangt (Art. 39 EMRK); das Bundesverwaltungsgericht habe ohne Verzug entschieden und schliesslich habe der EGMR bereits in einer Vielzahl ähnlich gelagerter Fälle wiederholt festgestellt, dass das schweizerische Asylsystem den Anforderungen von Art. 13 EMRK genüge. Streichung aus dem Register (einstimmig). Sachverhalt THIRD SECTION DECISION Application no. 26456/14 M.G. and E.T. against Switzerland The European Court of Human Rights (Third Section), sitting on 18 October 2016 as a Chamber composed of: Luis López Guerra, President, Helena Jäderblom, Helen Keller, Dmitry Dedov, Branko Lubarda, Alena Polá■ková, Georgios A. Serghides, judges, and Stephen Phillips, Section Registrar, Having regard to the above application lodged on 4 April 2014, Having deliberated, decides as follows: FACTS AND PROCEDURE 1. The applicants, Ms M.G. and Mr E.T., are Eritrean nationals who were born in 1985 and 2013 respectively and live in Geneva. The President granted the applicants' request for their identity not to be disclosed to the public (Rule 47 § 4 of the Rules of Court). They were represented before the Court by B. Wijkström, the director of the CSDM (Centre Suisse pour la Défense des Droits des Migrants), an association registered in Geneva. 2. The Swiss Government ("the Government") were represented by Mr F. Schürmann, Agent of the Swiss Government. 3. The applicants complained under Article 3 of the Convention that their expulsion to Malta would expose them to a risk of ill-treatment, and under Article 13 that they had not been provided with an effective remedy as regards their Article 3 complaint. 4. The facts of the case, as submitted by the applicants, may be summarised as follows. 5. The first applicant worked for the Eritrean Ministry of Defence. She was imprisoned without charge in March 2009 in relation to her work. She had no legal advice and was not provided with the requisite medical treatment in prison. 6. In 2012 the first applicant escaped from prison and travelled to Dubai, where she gave birth to the second applicant in July 2013. She got in touch with a person organising illegal transfers abroad and stated that she would like to travel to Switzerland in order to seek asylum there. 7. That person obtained a visa for Malta for the applicants. Consequently, in November 2013 the applicants flew from Dubai, apparently first to Italy and then continued by bus to Switzerland. 8. On 10 December 2013 the applicants entered Switzerland and applied for asylum. 9. The Federal Migration Office ("the FMO") conducted a EURODAC and CS-VIS background check which revealed that the applicants had entered the European Union on a Maltese visa. 10. On 30 December 2013 the applicants were interviewed in relation to their asylum application. The first applicant stated that she did not know that they had obtained a visa for Malta, since the agreement with the person organising her travel had been to transfer her and her son to Switzerland, where they had family members. 11. The FMO launched a procedure to return the applicants to Malta in accordance with Article 9 § 4 of Council Regulation (EC) No. 343/2003 ("Dublin II"). 12. In the ensuing correspondence with the Maltese authorities, on 17 February 2014 the latter agreed to take charge of the applicants under the Dublin Regulation. 13. In a letter from the Maltese authorities dated 19 February 2014 as regards accommodation for the applicants, they stated that there was "severe pressure on the reception network in Malta" and that "every attempt

will be made to allocate [the first applicant] and her child to an open accommodation center where their needs can be followed". Additionally, mainstream health services, which are mostly free, would be available to them. The Maltese authorities held that "motherhood per se is not a vulnerability" and that "this woman will no longer be defined as vulnerable once the child starts growing and [the first applicant] gradually becomes more and more independent". 14. On 5 March 2014 the FMO decided that Switzerland was not responsible for the applicants' asylum application owing to their Maltese visa and ordered their return to Malta. Notwithstanding the recognised difficulties in reception conditions and shortcomings in the examination of asylum applications in that country, as reported by various sources, the Federal Administrative Court's long-standing jurisprudence held that there were no systematic breaches leading to a general halt on transfers to Malta. The fact that the applicant was a single mother with a small child was not sufficient to decide against a transfer. The FMO took into account the fact that the applicants would have the possibility to lodge an asylum application and would receive adequate treatment by the Maltese authorities. Lastly, the FMO's decision expressly stated that an appeal did not stay the execution of the removal order. 15. The applicants appealed, maintaining that the first-instance decision had not taken into account the fact they had family members residing in Switzerland and that no individual assessment had taken place concerning the applicants' particular vulnerability. They referred to many observer reports noting severe deficiencies in reception conditions in Malta as well as calls by various European actors on States to stop transfers to that country. Lastly, they relied on Articles 3 and 8 of the Convention, arguing that there was a real risk that they would be exposed to degrading and inhuman living conditions in Malta, which would go against the best interests of the second applicant, who was a small child. 16. On 1 April 2014 the Federal Administrative Court upheld in summary proceedings the first-instance decision to return the applicants to Malta. It noted that the Dublin Regulation did not grant the right to choose in which state to lodge an asylum application. Although family affiliations in a certain country could be taken into account, a cousin did not fall under the definition of a family member as set out in the relevant provision. Concerning a possible violation of Article 3 of the Convention, there were no sufficiently concrete indications of a systematic failure in the asylum procedures in Malta which violated European norms. Given the correspondence between the Swiss and Maltese authorities, the Federal Administrative Court found no indications that the applicants would be exposed to inhuman or degrading treatment. Their appeal and application for partial legal aid were dismissed and they were ordered to pay 600 Swiss francs (CHF) for the costs of the proceedings. 17. On 4 April 2014 the applicants requested that the Court apply Rule 39 of the Rules of Court and stay their return to Malta pending the outcome of their application before it. On the same date, the Acting Section President indicated to the Swiss Government that the applicants should not be returned to Malta until further notice. In addition, the Acting President decided to give priority to the application under Rule 41 of the Rules of Court. 18. On 9 July 2015 the applicants' complaints were communicated to the Government and they were invited to submit written observations on the admissibility and merits of the case. 19. By a letter of 24 August 2015 the Government informed the Court that by a decision of 17 August 2015 the SEM (Secrétariat d'État aux migrations ; formerly the FMO) had withdrawn its decision of 5 March 2014 and had reopened the asylum proceedings concerning the applicants on the basis of the Federal Law on Asylum of 26 June 1998 (LAsi; RS 142.31). The Government further added that, following the annulment of the decision ordering the applicants'

deportation to Malta, their asylum proceedings would be re-examined according to the Federal Law on Asylum. Moreover, the applicants would have at their disposal an appeal with suspensive effect to contest the proceedings before the SEM. 20. On 12 October 2015, in reply to the Government's observations, the applicants acknowledged that following the reopening of their asylum proceedings they were no longer at risk of being expelled to Malta. However, they also stated that they did not wish to reach a friendly settlement as regards their complaint under Article 13 read in conjunction with Article 3 of the Convention. COMPLAINTS 21. The applicants complained that their expulsion to Malta would violate Article 3 of the Convention as they would face inhuman and degrading living conditions in that country. 22. The applicants also complained under Article 8 that the exposure of the second applicant to conditions of severe material deprivation in Malta would be contrary to his best interests and harmful to his physical and moral integrity. 23. Lastly, the applicants complained that they had been denied an effective remedy, as provided for by Article 13 in conjunction with their complaint under Article 3, because (a) their appeal to the Federal Administrative Court had not had suspensive effect; (b) the court had examined their claim in summary proceedings, without an individualised examination of their fundamental rights; and (c) they had been denied legal aid and ordered to pay the costs of the proceedings despite their indigence. Erwägungen THE LAW A. The complaints under Articles 3 and 8 24. The applicants' complaint under Article 8 of the Convention appears to be closely linked to that under Article 3. The Court will therefore examine the complaint concerning the applicants' reception conditions in Malta solely from the standpoint of Article 3 of the Convention (see Tarakhel v. Switzerland [GC], no. 29217/12 , § 55, ECHR 2014 (extracts)). 25. The Government invited the Court to strike the case out of the list, under Article 37 § 1 (c) of the Convention, on the grounds that the applicants were no longer at risk of being expelled to Malta. 26. Article 37 § 1 (c) of the Convention reads as follows: "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that... (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires." 27. The Court considers that, in view of the SEM's decision to reopen the applicants' asylum proceedings, which would entail a full examination on the merits of their asylum claim, the applicants no longer face a risk of expulsion to Malta. It thus follows that the threat of a substantive violation of Article 3 in respect of an expulsion to Malta no longer exists. That is not contested by the applicants. 28. In order to decide whether the application should be struck out of the list in application of Article 37 § 1 (c), the Court must consider whether the circumstances lead it to conclude that "for any other reason ... it is no longer justified to continue the examination of [it]". It is clear from this provision that the Court enjoys a wide discretion in identifying grounds capable of being relied on in striking out an application on this basis, it being understood, however, that such grounds must reside in the particular circumstances of each case (see Association SOS Attentats and de Boery v. France [GC], (dec.), no. 76642/01 , § 37, ECHR 2006-XIV). 29. In this regard, the Court notes that it has found many times that it was no longer justified to continue the examination of an application when a Government undertook not to expel an applicant pending a fresh decision by the domestic authorities on his or her particular circumstances (see, for instance, Sharifi v. Switzerland (dec.), no. 69486/11 , 4 December 2012). 30. It follows that it is no longer justified to continue the examination

of this part of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, in accordance with Article 37 § 1 in fine , the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of this part of the case. 31. In view of the above, it is appropriate to strike this part of the case out of the list and to discontinue the application of Rule 39. B. The complaint under Article 13 read in conjunction with Article 3 32. The applicants insisted that their complaint under Article 13 taken in conjunction with Article 3 could not be struck out since the remedy available to them had failed to satisfy the conditions set out in the Court's case-law. First of all, the Federal Administrative Court had examined the applicants' circumstances in summary proceedings. Secondly, under Article 107 (a) (1) of the 1998 Asylum Act their appeal had not automatically had suspensive effect. They could apply for a decision with suspensive effect, which they had done, but it had not been granted to them. Thirdly, the applicants pointed out that not only had their legal aid application been denied but that they had also had to pay CHF 600 in court fees, which had created a potentially insurmountable obstacle to their right to an effective remedy. 33. The Government invited the Court to strike out this complaint with reference to the Court's conclusion in the case of Nasseri v. the United Kingdom (dec.) (no. 24239/09 , 13 October 2015). In that decision, after considering the case resolved as the applicant had no longer risked being expelled from the United Kingdom, the Court concluded that although the applicant had focused his complaints on Article 13 and on the procedural requirements of Article 3, in essence those complaints had been inextricably connected to his proposed expulsion. Having been granted asylum in the United Kingdom, the applicant in that case no longer faced expulsion to Greece or any other country, with the consequence that the alleged threat of a violation had been removed. The Court thus struck the case out of its list pursuant to Article 37 § 1 (b) of the Convention. 34. The Court reiterates that the notion of "effective remedy" within the meaning of Article 13 taken in conjunction with Article 3 requires, firstly, "independent and rigorous scrutiny" of any complaint made by a person in such a situation, where "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and, secondly, "the possibility of suspending the implementation of the measure impugned" (see Hirsi Jamaa and Others v. Italy [GC], no. 27765/09 , § 198, ECHR 2012). For the purposes of its examination of Article 13 of the Convention, the Court will proceed on the assumption that the applicants had an arguable claim under Article 3. 35. The Court observes at the outset that the applicants' case has been subjected to close scrutiny by the domestic authorities. They were interviewed and given the opportunity to present arguments as to why they should not be returned to Malta. The domestic authorities carefully examined their claims and gave detailed reasons for their decisions. The fact that the proceedings took the form of a summary procedure or did not lead to a favourable outcome does not automatically render the remedy ineffective (see, mutatis mutandis , M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 289, ECHR 2011; and De Souza Ribeiro v. France [GC], no. 22689/07, § 79, ECHR 2012). The Court can thus accept that there has been an independent and rigorous scrutiny of the applicants' claim. 36. As regards the second requirement of Article 13 - namely that any effective remedy in an expulsion context must have an automatic suspensive effect - it is true that, in the context of a simplified procedure used in Dublin return cases, the applicants' appeal to the Federal Administrative Court did not have an automatic suspensive effect. Instead, the applicants applied for a decision with suspensive effect, but that application was dismissed by the Federal Administrative Court, which

adopted its judgment in their case less than a month after the appeal had been lodged. What must be decided in the present case is whether the foregoing considerations prevent the Court from striking out the applicants' Article 13 complaint in view of the fact that they no longer risk being returned to Malta. 37. In that connection, the Court notes that in certain cases it has considered that applicants who could no longer claim to be victims of Article 3 because the risk of their expulsion no longer existed, could still claim victim status as regards their Article 13 complaint (see, for example, M.A. v. Cyprus , no. 41872/10 , § 120, ECHR 2013 (extracts); I.M. v. France , no. 9152/09 , § 100, 2 February 2012; and Gebremedhin [Gaberamadhien] v. France , no. 25389/05 , § 56, ECHR 2007-II). For instance, in M.A. v. Cyprus (cited above) the Court noted that at the time the applicant was to be sent back to Syria, his asylum application was being re-examined by the authorities and that his deportation had been halted only because of the indication of Rule 39 by the Court. In addition, the decision granting the applicant refugee status had been taken more than ten months after he had lodged his complaints before the Court. In I.M. v. France (cited above) a Rule 39 indication issued by the Court also seemed to have been the only reason that the applicant had not been deported to Sudan. 38. However, the circumstances of the present case differ significantly - and thus must be distinguished - from the above-mentioned cases (see, in that sense, Mir Isfahani v. the Netherlands (dec.) no. 31252/03 , 31 January 2008). First of all, there was no indication that the authorities tried to deport the applicants to Malta while their appeal before the Federal Administrative Court was still pending. In fact, under Article 42 of the Asylum Act, any person who applies for asylum in Switzerland may stay in the country until the conclusion of his or her asylum procedure. It would thus appear that the applicants were not at a real risk of expulsion to Malta before their appeal had been finally decided by the Federal Administrative Court. 39. The above conclusion is further supported by the fact that the applicant filed a request to stay their return to Malta under Rule 39 only after the Federal Administrative Court had dismissed their appeal. What is more, the Court observes that the Federal Administrative Court decided the applicants' appeal without undue delay. 40. Lastly, in similar previous cases, the Court has consistently held that the asylum system in Switzerland is in conformity with the requirements of Article 13 (see, as recent examples, Tarakhel , cited above, §§ 123-132; and A.M. v. Switzerland (dec.), no. 37466/13 , §§ 27-30, 3 November 2015). 41. For the above reasons, and bearing in mind the Court's wide discretion in identifying grounds capable of being relied upon in striking out an application on the basis of Article 37 § 1 (c) (see above § 28), the Court is satisfied that the applicants' Article 13 complaint can equally be struck out of the list of cases and that respect for human rights, as defined in the Convention and its Protocols, does not require it to continue the examination of the application under Article 37 § 1 in fine (see, a contrario , I.M. v. France , cited above, § 102). Entscheid For these reasons, the Court, unanimously, Decides to strike the application out of its list of cases. Done in English and notified in writing on 17 November 2016. Stephen Phillips Luis López Guerra Registrar President