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

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Grand Chamber Panel's decisions

At its last meeting (Monday 8 September 2014), the Grand Chamber panel of five judges decided to refer four cases, to adjourn one case, and to reject requests to refer 15 other cases[1].

The following cases have been referred to the Grand Chamber of the European Court of Human Rights.

Schatschaschwili v. Germany (application no. 9154/10): which concerns the complaint by a man convicted of aggravated robbery and extortion. He maintains that his trial was unfair as neither he nor his counsel had had an opportunity at any stage of the proceedings to question the only direct witnesses of the crime allegedly committed.

Biao v. Denmark (no. 38590/10): concerning the Danish authorities' refusal to grant family reunion to a Danish citizen of Togolese origin and his Ghanaian wife.

Avotiņš v. Latvia (no. 17502/07): concerning the enforcement in Latvia of a judgment delivered in Cyprus with regard to the repayment of a debt.

W.H. v. Sweden (no. 49341/10): concerning the deportation of a failed-asylum seeker from Sweden to Iraq.

Referrals accepted

Schatschaschwili v. Germany (application no. 9154/10)

The applicant, Swiadi Schatschaschwili, is a Georgian national who was born in 1978 and lives in Georgia. In April 2008 he was convicted by a German court of two counts of aggravated robbery in conjunction with aggravated extortion by means of coercion – committed with others in October 2006 in Kassel and in February 2007 in Göttingen – and sentenced to nine years and six months' imprisonment. As regards the offence allegedly committed in Göttingen, the trial court relied in particular on the witness statements by the two victims of the crime in the course of police interrogations at the pre-trial stage, which were read out during the trial. Shortly after their examination, the witnesses had left Germany and subsequently refused to testify at Mr Schatschaschwili's trial, stating that they were traumatised by the crime. Finally, in October 2009 the Federal Constitutional Court declined to consider Mr Schatschaschwili's constitutional complaint.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, Mr Schatschaschwili complains that his trial was unfair as neither he nor his counsel had had an opportunity at any stage of the proceedings to question the only direct witnesses of the crime allegedly committed in February 2007.

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In its Chamber judgment of 17 April 2014 the Court held, by five votes to two, that there had been no violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention, concluding that there were sufficient counterbalancing factors to compensate for the difficulties to the defence which resulted from the admission of the two victims' statements.

On 8 September 2014 the case was referred to the Grand Chamber at the request of the applicant.

Biao v. Denmark (no. 38590/10)

The applicants, Ousmane Ghanian Biao, a Danish national of Togolese origin, and his wife, Asia Adamo Biao, a Ghanaian national, were born in 1971 and 1979 respectively and live in Malmö, Sweden. They have a son, born in Sweden in May 2004, who is Danish due to his father's nationality. The case concerns the couple's complaint about the Danish authorities' refusal to grant them family reunion in Denmark. Mr Biao was born in Togo and lived there until the age of six when he went to live in Ghana with his uncle until the age of 21. He entered Denmark in July 1993 and, having married a Danish national in November 1994, was issued with a residence permit in 1997. He learnt Danish and had steady employment for the next five years and was granted Danish nationality in 2002. In the meantime, Mr Biao divorced in 1998. In the period from 1998 to 2003 he visited Ghana four times and during his last visit there, in February 2003, he married his current wife, Asia Adamo Biao, born and raised in Ghana. A week after their marriage, Ms Biao requested a residence permit for Denmark, which was refused by the Aliens Authority in July 2003 and then on appeal in August 2004. The authorities found in particular that the applicants did not comply with the requirement that a couple applying for family reunion must not have stronger ties with another country, Ghana in the applicants' case, than with Denmark (known as the "attachment requirement"). The High Court and the Supreme Court upheld the refusal to grant family reunion in September 2007 and January 2010, respectively. Meanwhile in the summer of 2003, Ms Biao had entered Denmark on a tourist visa and the couple moved to Sweden in November 2003.

Mr and Ms Biao complain that the decision of August 2004 refusing to grant Ms Biao a residence permit in Denmark for family reunion breached their rights under Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The applicants also rely on Article 14 (prohibition of discrimination) in conjunction with Article 8 of the Convention, alleging that an amendment to the Aliens Act in December 2003 – notably the attachment requirement was lifted for those who had held Danish citizenship for at least 28 years – resulted in a difference in treatment between those born Danish nationals and those, like Mr Biao, who had acquired Danish citizenship later in life.

In its Chamber judgment of 25 March 2014 the Court held, unanimously, that there had been no violation of Article 8 and, by four votes to three, that there had been no violation Article 14 in conjunction with Article 8.

The Court found in particular that the Danish authorities had struck a fair balance between the public interest in ensuring effective immigration control, on the one hand, and the applicants' need to be granted family reunion in Denmark, on the other. The couple had never been given any assurances by the Danish authorities that Ms Biao would be granted a right of residence in Denmark and, following amendments to the Aliens Act which had entered into force before their marriage, they could not have been unaware of the precarious nature of her immigration status when she entered Denmark on a tourist visa. Indeed, there was nothing to prevent the couple from exercising their right to family life in Ghana where they both had strong ties.

As concerned the discrimination issue, the Court held in particular that that there had been a difference in treatment between Mr Biao who had been a Danish national for fewer than 28 years and persons who had been Danish nationals for more than 28 years.

However, refusing to exempt Mr Biao, who had only been a Danish national for two years when his request for family reunion had been rejected (in 2004), from the attachment requirement could not in the Court's view be considered disproportionate to the aim of the 28-year rule, namely to favour a group of nationals, who had lasting and long ties with Denmark (such as Danish expatriates), and who could be granted family reunion with a foreign spouse without problems as the spouse could normally be successfully integrated into Danish society.

On 8 September 2014 the case was referred to the Grand Chamber at the request of the applicants.

Avotiņš v. Latvia (no. 17502/07)

The applicant, Pēteris Avotiņš, is a Latvian national living in Riga. The case concerns the enforcement in Latvia of a judgment delivered in Cyprus with regard to the repayment of a debt. In 2003 a commercial company registered in Cyprus, F.H.Ltd., sued Mr Avotiņš for the payment of 100,000 US dollars in respect of a loan agreed between them in 1999. A court in Cyprus sent a summons to the presumed address of Mr Avotiņš, who stated, however, that he had never received it. In 2004, ruling in his absence, the Cypriot courts ordered Mr Avotiņš to repay F.H.Ltd. in full. On an application by F.H.Ltd, the Latvian courts in 2006 ordered the recognition and enforcement of the 2004 judgment. It was not until June 2006, however, that Mr Avotiņš became aware, by chance according to him, of the existence of those court decisions. He claimed before the Latvian courts that the recognition and enforcement of the Cypriot judgment in Latvia infringed a regulation of the Council of the European Union, namely the "Brussels 1 Regulation". The Latvian courts upheld his claim and overturned the order of 2006. F.H.Ltd. referred the matter to the Senate of the Supreme Court, which quashed and annulled the judgment concerned, and ordered the recognition and enforcement of the Cypriot judgment. Mr Avotiņš repaid his debt in 2007.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Avotiņš complains that the Latvian courts authorised the enforcement of the Cypriot judgment of 2004 which, in his opinion, was delivered in breach of his defence rights and was thus clearly unlawful.

In its Chamber judgment of 25 February 2014 the Court held, by four votes to three, that there had been no violation of Article 6 § 1. Like the Senate of the Latvian Supreme Court, the Court noted that Mr Avotiņš should have appealed against the Cypriot court's judgment. It took the view that the Latvian authorities, which had correctly fulfilled the legal obligations arising from Latvia's status as a member State of the European Union, had sufficiently taken account of Mr Avotiņš' rights.

On 8 September 2014 the case was referred to the Grand Chamber at the request of the applicant.

W.H. v. Sweden (no. 49341/10)

The applicant, W.H., is an Iraqi national who was born in 1978 and currently lives in Sweden. She is originally from Baghdad and is of Mandaean denomination. She arrived in Sweden in August 2007 and subsequently claimed asylum. Her request was examined by the Migration Board and Migration Court and ultimately rejected in 2010 on the ground that she was not in need of protection in Sweden.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, W. H. alleges that, a divorcee belonging to a small, vulnerable ethnic/religious minority, she would be at real risk of inhuman and degrading treatment if returned to Iraq. She submits in particular that, without a male network or any remaining relatives in Iraq, she would be at risk of persecution, assault, rape, forced conversion to another religion and forced marriage.

In its Chamber judgment of 27 March 2014 the Court held, unanimously, that W.H.'s deportation to Iraq would not involve a violation of Article 3, provided that she was not returned to parts of the country situated outside the Kurdistan Region. The Court concluded that, although the applicant, as a Mandaean single woman, might face a real risk of being subjected to treatment contrary to Article 3 if returned to the southern and central parts of Iraq, she could reasonably relocate to the Kurdistan Region, where neither the general situation nor her personal circumstances would put her at risk of inhuman and degrading treatment. The Court further decided to indicate to the Swedish Government, under Rule 39 (interim measures) of its Rules of Court, not to deport the applicant to Iraq until the Chamber judgment became final or until further order.

On 8 September 2014 the case was referred to the Grand Chamber at the request of the applicant.

Request for referral adjourned

Request for referral submitted by the applicants

Paposhvili v. Belgium (application no. 41738/10), judgment of 17 April 2014

Requests for referral rejected

Judgments in the following 15 cases are now final[2].

Requests for referral submitted by the applicants

Natsvlishvili and Togonidze v. Georgia (no. 9043/05), judgment of 29 April 2014

Müller v. Germany (no. 54963/08), judgment of 27 March 2014

Konstantinidis v. Greece (no. 58809/09), judgment of 3 April 2014

Blaj v. Romania (no. 36259/04), judgment of 8 April 2014

Oran v. Turkey (nos. 28881/07 and 37920/07), judgment of 15 April 2014

National Union of Rail, Maritime and Transport Workers v. the United Kingdom (no. 31045/10), judgment of 8 April 2014

Requests for referral submitted by the Government

Magyar Keresztény Mennonita Egyház and Others v. Hungary (nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12), judgment of 8 April 2014

Stefanetti and Others v. Italy (nos. 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10), judgment of 15 April 2014

Beraru v. Romania (no. 40107/04), judgment of 18 March 2014

Gayratbek Saliyev v. Russia (no. 39093/13), judgment of 17 April 2014

Ismailov v. Russia (no. 20110/13), judgment of 17 April 2014

Mikiyeva and Others v. Russia (nos. 61536/08, 6647/09, 6659/09, 63535/10 and 15695/11), judgment of 30 January 2014

Nizamov and Others v. Russia (nos. 22636/13, 24034/13, 24334/13 and 24528/13), judgment of 7 May 2014

Z. and Khatuyeva v. Russia (nos. 39436/06 et 40169/07), judgment of 30 January 2014

[2] Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

Nusret Kaya and Others v. Turkey (nos. 43750/06, 43752/06, 32054/08, 37753/08 et 60915/08), judgment of 22 April 2014

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