



Rejection of a visa application to bring a child adopted in Côte d'Ivoire to France: non-exhaustion of domestic remedies

In its decision in the case of [O.L.G. v. France](#) (application no. 47022/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the rejection of a visa application by O.L.G. to bring a child born on 6 October 2014 whom he had adopted in Côte d'Ivoire to France.

The Court observed that the proceedings relating to the applicant's appeal to set aside the decision to withhold a visa was pending before the Nantes Administrative Court. It also observed that O.L.G. ought to have appealed to the *Conseil d'État* against the decision of 16 December 2016 rejecting his urgent application for protection of a fundamental freedom seeking a provisional travel document for the child. Finally, the Court noted that all the other urgent applications lodged by O.L.G. had concerned the stay of execution of the refusal to issue a visa and the re-examination of his application, and not the issue of a temporary travel document. Those remedies were not sufficient to redress the alleged violation of Article 8.

The Court therefore concluded that the applicant had not exhausted all the domestic remedies and that the application was inadmissible.

Principal facts

The applicant, O.L.G., is a French national who was born in 1974 and lives in Marrakesh (Morocco).

On 24 July 2015 O.L.G. obtained an adoption decision from the Abidjan Court of First Instance and submitted a visa application to the French Consul General with a view to enabling the child to travel with him to France. The French Consul General rejected the visa application on the grounds of serious doubts as to the child's precise origin and the validity of the biological parents' consent.

O.L.G. lodged three consecutive applications to set aside the decisions to withhold a visa issued successively by the Appeals Board and the Minister for Foreign Affairs, as well as urgent applications to suspend the administrative visa refusals, seeking reconsideration of the visa application. By three successive orders the urgent applications judge of the Nantes Administrative Court ruled that the conditions – particularly the urgency criterion – were fulfilled such as to require the authorities to reconsider the application. However, the Minister for Foreign Affairs upheld the rejection of the visa application on the grounds of irregularities in the adoption procedure. The *Conseil d'État* urgent applications judge, deciding on an application to set aside a fourth decision given by the Nantes Administrative Court, finally dismissed the application for prompt re-examination of the visa application.

On 14 December 2016 O.L.G. lodged a further urgent application with the Nantes Administrative Court seeking the issue of a temporary travel document in order to obtain a final judgment on the matter. That application was dismissed. Finally, on 23 May 2017, the Nantes Administrative Court dismissed an appeal on the merits against the administrative decisions rejecting the visa application. An appeal was lodged against the latter judgment with the Nantes Administrative Court of Appeal, and is currently still pending.

The child was first of all entrusted to a foster family in Côte d'Ivoire by O.L.G., who has visited him regularly. Since July 2017 the child has been in Marrakesh with O.L.G., who now lives there.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 November 2016.

Relying on Article 8 of the Convention (right to respect for private and family life), the applicant complains about the rejection of his application for a visa for the child, thus preventing him from living with the latter in French territory.

The decision was given by a Chamber of seven judges, composed as follows:

Erik Møse (Norway), *President*,
Síofra O’Leary (Ireland),
Lətif Hüseynov (Azerbaijan),

and also Milan Blaško, *Deputy Registrar*.

Decision of the Court

Article 8

The Court reiterated at the outset that it could only hear and determine a case if all the relevant domestic remedies had been exhausted (Article 35 § 1 of the Convention). Therefore, the Court could only accept applications where normal use (in compliance with the formal requirements and time-limits laid down in domestic law) had been made of the remedies likely to be effective, adequate and accessible.

The Court noted that O.L.G. had lodged an appeal with the administrative court against the decision given on 23 May 2017 by the Nantes Administrative Court dismissing his application to set aside, on grounds of abuse of authority. That appeal was currently pending. The Court noted that concurrently, on 14 December 2016, O.L.G. had lodged an urgent application for protection of a fundamental freedom with the urgent applications judge of the Nantes Administrative Court seeking an injunction on the authorities to issue a travel document so that the child could enter French territory. Under that procedure, the domestic court could have redressed the violation of the Convention complained of by O.L.G. before the Court.

However, the Court held that for the exercise of that procedure to have fully exhausted domestic remedies, O.L.G. would have had to appeal to the *Conseil d’État* against the decision of 16 December 2016 rejecting his application.

The Court also observed that the other urgent applications for protection of a fundamental freedom lodged by O.L.G. had not been geared to obtaining a temporary travel document, but had instead sought a stay of execution of the rejection of the visa application and a re-examination of that application. Those remedies were not sufficient to redress the alleged violation of Article 8. Similarly, the two urgent applications for a stay of execution lodged by O.L.G. could not be used in isolation from an appeal on the merits. Such urgent procedure only concerned a stay of execution of the administrative decision, the merits of which had also been contested, pending the decision on the merits.

Accordingly, as O.L.G. had not exhausted all the relevant domestic remedies within the meaning of Article 35 § 1 of the Convention, the Court declared the application inadmissible.

The decision is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.