



Forthcoming Grand Chamber judgment concerning alleged discrimination in granting family reunion in Denmark

The European Court of Human Rights will be delivering a **Grand Chamber** judgment¹ in the case of **Biao v. Denmark** (application no. 38590/10) at a public hearing on 24 May 2016 at 11 a.m. in the Human Rights Building, Strasbourg.

The case concerns the Danish authorities' refusal to grant a Danish citizen of Togolese origin, Ousmane Biao, and his Ghanaian wife family reunion. Mr Biao and his wife notably allege discrimination under the relevant domestic law between those born Danish nationals and those, like Mr Biao, who had acquired Danish citizenship later in life as well as between Danish nationals of Danish ethnic origin and Danish nationals of other ethnic origin.

Principal facts and complaints

The applicants, Ousmane 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 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 as well as between Danish nationals of Danish origin and Danish nationals of other origin.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Procedure

The case was lodged with the European Court of Human Rights on 12 July 2010.

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 of 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. As concerned the discrimination issue, the Court held in particular 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 24 June 2014 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 8 September 2014 the panel of the Grand Chamber [accepted](#) that request. A Grand Chamber hearing on the case was held in public in Strasbourg on 1 April 2015.

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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.