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

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Family reunification procedure: need for flexibility, promptness and effectiveness

The European Court of Human Rights has today notified in writing three judgments and a decision concerning the difficulties encountered by applicants - who were either granted refugee status or lawfully residing in France – in obtaining visas for their children so that their families could be reunited.

In its Chamber judgments in the cases of **Mugenzi v. France** (application no. 52701/09), **Tanda-Muzinga v. France** (no. 2260/10) **and Senigo Longue and Others v. France** (no. 19113/09), which are not final[1], the Court held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The Court found in particular that the procedure for examining applications for family reunification had to contain a number of elements, having regard to the applicants' refugee status on the one hand and the best interests of the children on the other, so that their interests as guaranteed by Article 8 of the Convention from the point of view of procedural requirements were safeguarded.

In its admissibility decision in the case of **Ly v. France** (no. 23851/10), the Court declared the application inadmissible as manifestly ill-founded, considering that the decision-making process, taken as a whole, had enabled the applicant to be sufficiently involved to ensure his interests were defended.

Principal facts

Mugenzi v. France - Tanda-Muzinga v. France

The applicant in the first case, Japhet Mugenzi, is a Rwandan national who was born in 1950 and lives in Rouen (France). The applicant in the second case, Deo Tanda-Muzinga, is a Congolese national who was born in 1970 and lives in Vénissieux (France).

The applicant in the first case, Japhet Mugenzi, is a Rwandan national who was born in 1950 and lives in Rouen (France). The applicant in the second case, Deo Tanda-Muzinga, is a Congolese national who was born in 1970 and lives in Vénissieux (France). The applicants obtained refugee status and submitted applications for family reunion in March 2003 and June 2007 respectively to be able to live with their children, who were then in Kenya and Cameroon respectively. Although the principle of family reunification had been recognised in their cases, the consular authorities refused to issue visas for their children on account of difficulties in establishing the children's civil registration status. Mr Mugenzi received this refusal on 31 August 2005. As the procedure for family reunification concerned only children aged under nineteen years, the French Embassy in Nairobi ordered that a medical examination be carried out on his sons – apparently consisting in an

1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

examination of the mouth cavity – with a view to determining their age. After those examinations, the consular authorities concluded that there was a discrepancy between their physiological age and the age mentioned on the children's birth certificates; this was the ground for refusing to issue visas. Mr Mugenzi applied to the Appeals Board against decisions refusing entry visas to France ("the Appeals Board"), arguing in particular that the civil registration documents submitted in support of the visa applications were those which had been submitted to OFPRA (the French Office for the Protection of Refugees and Stateless Persons) in the course of his request for asylum, and were the only documents that he had been able to take with him when fleeing, and that his sons risked persecution were they to return to Rwanda. Although the Appeals Board issued a favourable decision in February 2007, he received another refusal to issue the visas, on the same ground. After applying to the *Conseil d'État* in April 2007 requesting that this decision be quashed, and emphasising in particular that one of his sons was suffering from health problems as a result of the trauma experienced in Rwanda, Mr Mugenzi lodged an urgent application with that court in January 2008, repeating that his children were unaccompanied and that his son Lambert was suffering major psychological after-effects. On 5 February 2008 the urgent applications judge held that the "criterion of urgency" had not been met, since the two children were, or soon would be, adults. He indicated that the appeal on the merits would be examined rapidly. On 23 March 2009 the *Conseil d'État* gave judgment against the applicant.

As to Mr Tanda-Muzinga, having received no news following his application for visas, he lodged an appeal against the consular authorities' implicit refusal; the Appeals Board did not respond. In June 2008 he lodged an urgent application before the *Conseil d'État*, and it was on this occasion that he learned that the Minister of Immigration had contested the birth certificates of two of his children, Benjamin and Michelle. In the meantime, the applicant had received a letter informing him that OFPRA had confirmed his family situation to the visa authorities. On a suggestion allegedly made by the "public rapporteur" (*rapporteur public*) at the hearing before the *Conseil d'État* on the merits of the case, the applicant's wife brought proceedings before the Yaoundé *tribunal de grande instance* seeking a judicial rectification of the birth certificate of their daughter Michelle. Having had his application dismissed by the *Conseil d'État* in July 2009, with the precision that the fraudulent nature of at least one of the documents submitted was such as to entail the refusal of all of the requested visas, the applicant submitted a second request for family reunification, which was rejected without explanation in April 2010. He applied to the Appeals Board, which did not reply. After the application had been communicated to the French Government by the European Court of Human Rights on 21 September 2010, Mr Tanda-Muzinga obtained an order from the urgent applications judge, holding that the "criterion of urgency" had been met, having regard to the length of time the family had been separated, and requested that his application be re-examined. On 19 November 2010 the lawyer for HCR Cameroon forwarded the judgment re-issuing Michelle's birth certificate – it had been possible to authenticate Benjamin's birth certificate following new checks in 2010 – and the consular authorities issued the visas one month later.

Senigo Longue and Others v. France

The applicants in the third case are Teclaire Senigo Longue (married name Rivet), René Mboum and Léopoldine Tahagnam Bissa, Cameroonian nationals who were born in 1967, 1990 and 1995 respectively. Ms Longue has lived lawfully in France since October 2005 as the wife of a French man. She obtained French nationality in November 2010.

In May 2007 she submitted a request for family reunification, so that her two children who had remained in Cameroon could join her in France. As part of this process, the children's birth certificates were re-issued, as Ms Senigo Longue claimed to have lost them. Although accepted in principle, her request was subsequently refused by the consular authorities in June 2008 on the ground that her children's birth certificates were not authentic. Ms Senigo Longue appealed against that decision to the Appeals Board, which did not reply. She then submitted an unsuccessful urgent

application and an application to have the consular decision set aside. In December 2008 she returned to Cameroon and had DNA checks carried out, which confirmed, for each of the children, that it was 99.99% probable that she was their mother. The *Conseil d'État* dismissed Mrs Senigo Longue's appeal on the ground that the parent–child relationship had not been established, in that the submitted documents had been forged. After the European Court of Human Rights communicated the application to the French Government, visas were issued for her children on 12 July 2010.

Ly v. France

The applicant, Adama Ly, is a Mauritanian national who was born in 1978 and lives in Cergy-le-Haut. As the holder of a residence permit in France, on 16 December 2005 he submitted an application for family reunification in favour of his alleged daughter, M. The applicant submitted a copy of the child's birth certificate, indicating that she had been born on 25 May 1998 in Teyarett (Mauritania). He was required to have the original birth certificate transmitted to the French Embassy in Mauritania for authentication. On 26 July 2007 he was informed that the embassy refused to issue the visa, on the ground that the birth certificate submitted had not been authentic. The Appeal Board dismissed the applicant's appeal, on account of a "lack of plausibility between the two birth certificates" submitted and because it had not been "established that [he had] contributed to the education of M., who attended school in Mauritania, nor to her upkeep since her birth".

In a letter of 25 September 2009 to the *Conseil d'État*, the applicant explained that his daughter's date of birth as recorded on the birth certificate submitted in support of his application for family reunification contained an error, since his daughter had been born on 25 October 1998 rather than on 25 May 1998. He acknowledged that there was a problem of authenticity, which was not, he submitted, of his doing. In a second letter to the *Conseil d'État*, dated 23 November 2009, Mr Ly explained that he had travelled to Mauritania and that the authorities in the municipality of Teyarett had acknowledged that an error had been made. He submitted a new certificate giving 25 October 1998 as his daughter's date of birth. By a judgment of 24 November 2010, the *Conseil d'État* dismissed the applicant's request on account of the contradictions in the first documents submitted, the inauthenticity of which had not, in the opinion of the *Conseil d'État*, been rectified by the documents subsequently submitted.

Complaints, procedure and composition of the Court

All of the applicants, relying in particular on Article 8 (right to respect for private and family life), alleged that the refusal by the consular authorities to issue visas to their children for the purpose of family reunification had infringed their right to respect for their family life.

The applications for *Mugenzi v. France*, *Tanda-Muzinga v. France*, *Senigo Longue and Others v. France* and *Ly v. France* were lodged with the European Court of Human Rights on 24 September 2009, 29 December 2009, 9 April 2009 and 22 April 2010 respectively.

The three judgments and the decision were given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),
and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Mugenzi v. France - Tanda-Muzinga v. France

The Court considered that the disputed refusals to issue the visas had not amounted to "interference" in the exercise of the applicants' right to respect for their family life. As part of the family reunification procedure, once authorisation had been granted by the Prefect the members of the family concerned were required to obtain an entry visa to France; the issuing of such visas was not automatic, and was subject to the requirements of the maintenance of public order.

According to the applicants, however, the decision-making process which led the French authorities to refuse to issue visas to their children had not guaranteed the protection of their interests. According to the Government, the refusals in question were based on considerations of public policy, verified at several stages of the procedure, in conformity with the room for maneouvre ("margin of appreciation") left to the national authorities in this area. The Court accepted that the authorities were faced with a delicate task when having to assess the authenticity of certificates of civil status, on account of the difficulties occasionally arising from failings on the part of civil-status departments in certain of the migrants' countries of origin, and the associated risks of fraud. The national authorities were in principle best placed to establish the facts on the basis of the evidence gathered by or submitted to them, and they had therefore to be allowed a measure of discretion in this respect.

However, in view of the decisions to grant refugee status to the applicants, and the subsequent recognition of the principle of family reunification, it had been of overriding importance that their visa applications be examined rapidly, attentively and with particular diligence. To that end, France had been under an obligation to institute a procedure that took into account the events which had disrupted and disturbed their family lives and had led to their being granted refugee status. The Court therefore decided to focus its examination on the quality of the procedure.

The Court reiterated that family unity was an essential right for refugees and that family reunification was a fundamental element in enabling persons who had fled persecution to resume a normal life. There existed a broad consensus at the international and European level concerning the need for refugees to benefit from a more favourable family reunification procedure than that foreseen for other foreigners. Furthermore, the Court had to take account of the standards set out in the international instruments in this area[2] and to bear in mind the recommendations made by non-governmental organisations specialising in the rights of aliens. In particular, with regard to evidence provided by the applicants, the national authorities were urged to take into consideration "other evidence" of the existence of family ties where the refugee was unable to provide official supporting documents.

In the *Mugenzy* case, the Court noted that it was a summary medical examination which proved decisive in evaluating the doubtful authenticity of the birth certificates submitted in the visa applications. In the *Tanda-Muzinga* case, it noted that it had been impossible for the applicant to understand what exactly were the objections to his plans for family reunification, since no explanations or reasons were provided at the early stages. In both cases, it noted the difficulties encountered by the applicants in participating effectively in the procedure and especially in putting forward "other elements" of proof of a parent-child relationship and/or the children's ages. In particular, it noted that the applicants had referred to their children from the start of their asylum applications and that OFPRA had certified the composition of their families. Thus, the Court

[2] 1951 Geneva Convention relating to the Status of Refugees, Preamble to Council Directive 2003/86/EC on the right to family reunification, European Commission Green Paper on the right to family reunification of third-country nationals living in the European Union and response by the High Commissioner for Refugees to the Green Paper (February 2012), Recommendation no. R(99)23 of the Committee of Ministers of the Council of Europe and Memorandum by the Council of Europe Commissioner for Human Rights (May 2008). See §§ 43 to 49 of the *Tanda-Muzinga v. France* judgment.

observed that the applicants had been confronted with multiple difficulties over the years, in spite of the fact that they had already undergone traumatic experiences. Lastly, it had taken almost three and a half years and five years respectively for Mr Tanda-Muzinga and Mr Mugenzi to obtain a final decision on their applications; in the Court's opinion, these time periods were excessive, given the applicants' specific situations and what was at stake for them in the verification procedure.

Senigo Longue and Others v. France

The Court reiterated that the disputed refusal to issue the visas had not amounted to "interference" in the exercise of the applicants' right to respect for their family life and that the national authorities were best placed to assess the authenticity of certificates of civil status (see above).

The consular authorities had refused to issue visas to Ms Senigo Longue's children on the ground that the parent-child relationship had not been established. There was nothing to indicate that she had decided not to pursue family reunification, as attested by her numerous efforts, including her journeys to Cameroon, and the dismissal of her applications had left her with a choice of either abandoning the status she had acquired in France or accepting that she would not live with her children. In that context, it had been of overriding importance that her visa applications be examined rapidly, attentively and with particular diligence. To that end, France had been under an obligation to institute a procedure that took into account the best interests of the children[3].

The Court observed that it had been difficult for the applicant to understand what exactly were the objections to her application for family reunification. The Appeals Board had not replied to her, the urgent applications judge had based his reply on the initial civil-status documents and not the rectified versions, and the *Conseil d'État* had not indicated which documents were causing a problem. The Court also noted the difficulties encountered by the applicant in participating effectively in the procedure. Thus, the *Conseil d'État* had issued its decision before receiving Ms Senigo Longue's statement of appeal, in which she reported, among other elements, on the DNA testing carried out in Cameroon. Lastly, the authorities had taken four years to cease contesting the reality of the parent-child relationship between her and her children. The protracted nature and accumulation of the difficulties encountered had not enabled her to assert her right to live with her children, whose situation ought to have been given greater consideration.

In those three cases, since the national authorities had not given due consideration to the applicants' specific circumstances, the Court concluded that the family reunification procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life. For that reason, the State had not struck a fair balance between the applicants' interests on the one hand, and its own interest in controlling immigration on the other, in violation of Article 8.

Ly. v. France

The Court noted firstly that the applicant's request for family reunification, seven years after the birth of the child M., had been tardy, and that there was nothing to indicate that he had developed a "family life" with her. As to the decision-making process, it considered that it had afforded the applicant the protection required under Article 8. In Mr Ly's case, the relevant authorities had taken reasoned decisions and had indicated to him throughout the procedure the reasons why it had not been possible to establish the parent-child relationship, emphasising the inconsistencies between the submitted documents. It was to be noted that the applicant had not taken steps to correct those inconsistencies – in particular, by obtaining a court decision rectifying the civil-status certificate or transmitting a birth certificate issued on the basis of reliable Mauritanian records.

[3] Several reports criticise practices which impede family reunification on account of an excessive length of the procedure, which may have serious consequences for children who are separated from their parents. See paragraphs 43 and 58 of the judgment.

Thus, and in spite of the length of the procedure, about which the applicant had not complained, the Court considered that the decision-making process, taken as a whole, had enabled the applicant to defend his interests. It therefore dismissed his complaint as manifestly ill-founded. The same applied to his complaints under other provisions of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay Mr Mugenzi 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,522.90 in respect of costs and expenses, EUR 5,000 to Mr Tanda-Muzinga in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses, and EUR 5,000 to the applicants in the *Senigo Longue* case in respect of non-pecuniary damage.

The judgment is available only in French.

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