



Grand Chamber hearing concerning alleged discrimination in granting family reunion in Denmark

The European Court of Human Rights is holding a **Grand Chamber**¹ hearing today **Wednesday 1 April 2015 at 9.15 a.m.** in the case of **Biao v. Denmark** (application no. 38590/10).

The case concerns the Danish authorities' refusal to grant a Danish citizen of Togolese origin, Ousmane Biao, and his Ghanaian wife family reunion and notably their allegation of 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.

The hearing will be broadcast from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

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

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.

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.

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. 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 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.

"The AIRE Centre" has been granted leave to intervene as a third party in the written proceedings (Article 36 § 2 of the Convention).

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Mark **Villiger** (Liechtenstein),
Işıl **Karakaş** (Turkey),
Elisabeth **Steiner** (Austria),
Päivi **Hirvelä** (Finland),
Boštjan M. **Zupančič** (Slovenia)
Ján **Šikuta** (Slovakia),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),

André **Potocki** (France),
Paul **Mahoney** (the United Kingdom),
Ksenija **Turković** (Croatia),
Jon Fridrik **Kjølbro** (Denmark), *judges*,
Iulia Antoanella **Motoc** (Romania),
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland), *substitute judges*,

and also Lawrence **Early**, *Jurisconsult*.

Representatives of the parties

Government

Jonas Bering **Liisberg**, *Agent*,
Nina **Holst-Christensen**, *Co-Agent*,
Kim **Lunding**, Anders **Herping Nielsen**, Martin **Bang** and Maria Aviaja **Sander Holm**, *Advisers*;

Applicants

Steen **Petersen**, *Counsel*,
Niels-Erik **Hansen** and Henrik Karl **Nielsen**, *Advisers*.

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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.