



**In view of the seriousness of the offences committed, a ten-year exclusion order imposed as a criminal sanction on an alien who had come to France more than 20 years before did not excessively interfere with his right to respect for his private and family life**

In its decision in the case of [Ngumbu Kikoso v. France](#) (application no. 21643/19) the European Court of Human Rights has unanimously declared the application inadmissible, rejecting as manifestly ill-founded his complaint under Article 8, which protects private and family life.

The case concerned an order for the applicant's deportation and exclusion from France, imposed in addition to the applicant's six-month prison sentence for possession and use of falsified administrative documents.

The Court found that the domestic courts had been entitled legitimately to consider, on account of the applicant's conduct and the seriousness and repetition of the offences in question, that a measure banning him from France for ten years was necessary for the prevention of disorder or crime. The measure had been proportionate to the aims pursued and was not an excessive interference with the applicant's right to respect for his private and family life in spite of the length of time he had lived in France.

The decision is final.

## Principal facts

The applicant, Serge Ngumbu Kikoso, is a Congolese national who was born in 1971 and lives in Paris.

On 6 March 2014 the Strasbourg Criminal Court sentenced Mr Ngumbu Kikoso to six months' imprisonment for the offences, committed in 2013, of possessing and using falsified administrative documents in order to get married and thereby enable a compatriot to obtain a residence permit. The Criminal Court imposed an additional penalty of deportation and exclusion from France for ten years.

The Colmar Court of Appeal upheld that judgment and the sanctions imposed. It found that the applicant had intentionally sought to deceive and had been fully aware of the falsification of the administrative documents he had presented for the purpose of marriage. It pointed out that the applicant had several previous criminal convictions. Lastly, it held that the applicant, who claimed to have been living in France since 1995, could not prove lawful residence for more than twenty years and it had therefore been possible, under Article L. 541-1 of the Immigration and Asylum Code (CESEDA), to impose an exclusion order as an additional penalty.

The Court of Cassation dismissed his appeal against this judgment.

On 21 March 2016 Mr Ngumbu Kikoso signed an employment contract of indefinite duration to work as a carer.

As a result of the exclusion order, the prefect of Bas Rhin decided on 31 March 2016 not to extend Mr Ngumbu Kikoso's temporary "private and family life" residence permit, which included authorisation to work. The employer thus terminated his employment contract.

Mr Ngumbu Kikoso served his six-month prison sentence under a day release scheme between 31 January and 19 June 2017.

On 7 February 2017, while serving that sentence, Mr Ngumbu Kikoso applied to have the exclusion order set aside. The Colmar Court of Appeal dismissed his application. On 17 October 2018 his appeal to the Court of Cassation was unsuccessful.

On 17 November 2019 the prefect of Indre et Loire issued an administrative detention order against Mr Ngumbu Kikoso pending his deportation to the destination country, Congo, that had been specified for the enforcement of the exclusion order. Mr Ngumbu Kikoso then applied for a review of his asylum application. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) had already rejected a previous asylum application on 20 July 2000, which had been confirmed by the National Asylum Court (CNDA) on 7 March 2001.

On 28 November 2019 the OFPRA, ruling in a fast-track procedure, rejected the application for review as inadmissible.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 April 2019.

Relying on Article 8 (right to respect for private and family life), the applicant complained that the ten-year exclusion order was disproportionate to the aim pursued by the law and that it constituted an excessive interference with his right to respect for his private and family life.

The decision was given by a Committee of three judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,  
 Arnfinn **Bårdsen** (Norway),  
 Mattias **Guyomar** (France),

and also Martina **Keller**, *Deputy Registrar*.

## Decision of the Court

The Court began by noting that the domestic courts had expressly carried out, in accordance with the requirements of Article 8 of the Convention, a review of the proportionality of the interference with the applicant's right to respect for his private and family life. The Court of Appeal had taken account of the duration of his lawful residence in France.

The Court further noted that the sanction ordered on March 2014 by the Criminal Court, as upheld by the Court of Appeal, had been based on the criminal offences committed by the applicant.

It reiterated that, in order to determine whether an alien subject to an exclusion order had a family life within the meaning of Article 8 of the Convention, it was necessary to assess the situation at the time when the measure became final, thus on 17 October 2018 in this case. Born in 1971, the applicant claimed to have arrived in France in 1995 and had thus lived in his country of origin at least until the age of 24. He was single and had no children. Before the Court of Appeal he had not provided any precise indications of family or private ties in France.

In the light of the circumstances and weighing the various interests in the balance, the domestic courts had been entitled legitimately to consider, on account of the applicant's conduct and the seriousness and repetition of the offences in question, that a measure banning him from France for ten years was necessary for the prevention of disorder or crime. The measure had been proportionate to the aims pursued and was not an excessive interference with his right to respect for his private and family life. The applicant's complaint was manifestly ill-founded and had to be rejected.

*The decision is available only in French.*

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