



Refusal to grant a residence permit in Sweden for family reunion purposes complied with the Convention

In its committee decision in the case of [Abokar v. Sweden](#) (application no. 23270/16) the European Court of Human Rights has **unanimously declared** the application under **Article 8 (right to respect for family life)** of the European Convention on Human Rights **inadmissible**.

The case concerned the Swedish authorities' refusal to grant the applicant a residence permit for family reunion purposes.

The Court was satisfied that the authorities had struck a fair balance between Mr Abokar's interests, on the one hand, and those of the State in the effective implementation of immigration policy, on the other.

The decision is final.

Principal facts

The applicant, Said Mohamed Abokar, is a Somali national who was born in 1986 and lives in Italy. The case concerns Mr Abokar is married to A, a Somali national who has held a permanent residence permit in Sweden since 2009. He married A in religious and civil ceremonies in May 2011 and April 2013 respectively. They started their relationship in Sweden and have never lived together in Somalia. They have two children: B, born in 2012 and C, born in 2014. In 2013 the applicant was granted a residence permit and refugee status in Italy.

In June 2010 Mr Abokar applied for asylum in Sweden under the identity of Abdirahman Mohamed Abukar, born on 22 February 1990. In August 2010 the Migration Agency rejected his application and, in accordance with the Dublin Regulation, decided to transfer him to Italy where he had previously applied for asylum and had been granted temporary residence. The Agency noted that the applicant had applied for asylum in Finland in January 2010 as Said Mohamed Abokar, born in 1986, and that he had spent time in Sweden during 2009 without registering.

In December 2012 Mr Abokar again applied for asylum in Sweden under the name of Abdirahman Mohamed Abukar, born on 22 February 1990. He requested that his asylum case be examined in Sweden where his wife, who is disabled, and their child were resident. In February 2013 the Agency rejected his application and transferred him to Italy, after confirmation from the Italian authorities that he had been granted a residence permit in the name of Said Mohamed Abokar, born in 1986.

In April 2013 he applied for a residence permit based on his family ties to A and B, but it was rejected. The Agency noted that he could only be granted a residence permit if his identity could be confirmed. Appeals to the Migration Court and the Migration Court of Appeal were rejected.

Mr Abokar applied again for a residence permit based this time on his ties to A, B and C. In contrast to his previous statement, he stated that he had not been married before. His application and subsequent appeals were all rejected.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 20 April 2016.

Relying on Article 8 (right to respect for family life), Mr Abokar complained that Sweden's failure to grant him a residence permit on the grounds that he could not prove his identity had amounted to a violation of his right to respect for his family life.

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

Georgios A. **Serghides** (Cyprus), *President*,
 Branko **Lubarda** (Serbia),
 Erik **Wennerström** (Sweden),

and also Fatoş **Aracı**, *Deputy Registrar*.

Decision of the Court

Article 8

The Court noted that Mr Abokar's situation had amounted to him having a family life within the meaning of Article 8 and that the decision not to grant him a residence permit in Sweden had interfered with his rights under that provision.

On the question of whether that refusal had been necessary in a democratic society and proportionate, within the meaning of Article 8 § 2, the Court noted that Mr Abokar had at no time been granted lawful residence in Sweden. Moreover, his family life with his wife and children had been created during his asylum proceedings, with the religious marriage taking place after his first asylum request had been rejected with final effect. He had known when he had started leading a family life that he would probably not be able to establish and maintain it in Sweden.

Furthermore, he had initially provided the Swedish authorities with incorrect information on his identity and had thus himself contributed to his problems in proving who he was. He had also breached immigration laws by refusing to leave the country after his first asylum application had been rejected. Moreover, he had not had any ties to Sweden, apart from his family.

The Court also noted that Mr Abokar had been granted temporary residence in Italy and that he was currently residing there. Since both the applicant and his wife had been granted residence permits in member States of the European Union, the family could easily travel between Italy and Sweden and stay for extended periods in either of those countries.

In those circumstances, the Court found that the Swedish authorities had not failed to strike a fair balance between Mr Abokar's right to respect for his family life and Sweden's interest in the effective implementation of its policy on controlling immigration, or that their assessment had been disproportionate.

Since the application was manifestly ill-founded, the Court, unanimously, declared it inadmissible.

The decision is available only in English.

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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.