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

Press Release
issued by the Registrar of the Court

ECHR 221 (2021)
09.07.2021

Authorities violated Convention with mandatory waiting period for family reunification

In today's **Grand Chamber** judgment[1] in the case of M.A. v. Denmark (application no. 6697/18) the European Court of Human Rights held, by a majority of 16 votes to 1, that there had been:

a violation of Article 8 (right to respect for private and family lhife) of the European Convention on Human Rights.The case concerned a delay of three years imposed in 2016 pursuant to Danish law on the applicant's right to family reunification owing to his temporary protection status.

The Court found in particular that, given the lack of an individualised assessment of the applicant's case and the length of the wait to be able to avail of his right to family reunification, the authorities had failed to strike a fair balance between the needs of the applicant individually and the economic well-being of the country in their assessment of his application to be reunited with his wife.

Principal facts

The applicant, M.A., is a Syrian national who was born in 1959 and lives in Marstal (Denmark).

The applicant fled Syria in January 2015 and requested asylum in Denmark in April of that year. His wife had remained in Syria. On 8 June 2015 the Immigration Service granted him "temporary protection status" (section 7(3) of the Aliens Act) for one year. That status was extended at yearly intervals. However, the authorities did not find that he met the requirements for being granted protection status (section 7(2) of the Aliens Act). The applicant appealed against that decision to the Refugee Appeals Board.

The Board upheld the decision not to grant him protection status, stating that the applicant had not been "subjected to specific and personal persecution during his stay in Damascus". That decision was final.

In the meantime, in November 2015, the applicant requested family reunification with his wife. That request was rejected in 2016 as the applicant had not had a residence permit for the previous three years. That decision was upheld by the Immigration Appeals Board.

The applicant went to court, complaining that the decision was in breach of his Convention rights. He also claimed that he was being discriminated against *vis-à-vis* people who had been granted protection. His action was dismissed at two levels of jurisdiction and then finally by the Supreme Court. The latter court stated, in extensive reasoning and with reference to European Court of Human Rights case-law, the following:

"Moreover, it appears that the number of newcomers determines whether the subsequent integration becomes successful and that it is necessary to strike the right balance to maintain a good and safe society.

Against this background, the Supreme Court finds that the restriction on the eligibility for family reunification is justified by interests to be safeguarded under Article 8 of the Convention. … the condition that [M.A.] must normally have been resident in Denmark for three years before he can be granted family reunification with his spouse falls within the margin of appreciation enjoyed by the

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.

State. … the decision made by the Immigration Appeals Board is not contrary to Article 8 of the European Convention on Human Rights."

On 22 October 2018 the applicant reapplied for family reunification. On 29 September 2019 the applicant's wife came to Denmark having been granted a residence permit.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination), the applicant complained that the authorities' decision to refuse to temporarily grant him family reunification with his wife on the grounds that he had not possessed a residence permit under section 7(3) of the Aliens Act for the previous three years had been in breach of his rights.

The application was lodged with the European Court of Human Rights on 30 January 2018. On 7 September 2018 the Danish Government was given notice of the application, with questions from the Court. On 19 November 2019 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 10 June 2020.

Third party submissions were received from the Council of Europe Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the Governments of Norway and Switzerland, and the Danish Institute for Human Rights.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Paul **Lemmens** (Belgium),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Pere **Pastor Vilanova** (Andorra),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),
María **Elósegui** (Spain),
Lorraine **Schembri Orland** (Malta),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 8

The Court noted from the outset that the applicant's complaint related to his 4 November 2015 application for family reunification with his wife only. At that time he had had a residence permit under section 7(3) of the Aliens Act for five months. This case concerned thus the deferral for three years of the applicant's right to be granted family reunification. The applicant did not however call into question that a waiting period of one year was "reasonable". The Court also pointed out that it

was the first time it had had to consider whether the imposition of a waiting period for granting family reunification to individuals who benefit from subsidiary or temporary protection status was Convention-complaint.

The Court reiterated that a State was entitled to control the entry of aliens into its territory and their residence there. The Convention did not guarantee the right of a foreign national to enter or to live in a particular country. The Court also pointed out that the particular immigration status of the individuals requesting family reunification – in particular their rights as beneficiaries of subsidiary protection – and the temporary nature of any refusal owing to a statutory waiting period of a given length, had not been at issue to date in its case-law. It concluded that States have wide discretion in this area, but that the processes set in place must be practical and effective.

The core question for the Court was whether the Danish authorities had struck a fair balance between the competing interests of the individual and of the community as a whole. Under Danish law, applicants with "temporary protection status" (section 7(3) of the Aliens Act) had their right to family unification restricted, which was not the case for others who had been given protection by the State (under sections 7(1) or (2)). The Court saw no reason to question the distinction between these two categories.

The Court stated that a waiting period of three years was a long time to be separated from family, and that that period did not include the actual decamping, meaning the period would inevitably be longer. This separation would disrupt family life. It accepted that there had been family life between the applicant and his wife. However, it noted that the applicant had not had deep ties with Denmark when he had made the application, having been in the State only for a matter of months. The Court observed that the sharp fall in the number of asylum seekers in 2016 and 2017 had not prompted Parliament to review the length of the waiting period.

The Court did state that the authorities had not had access to case-law relevant to the situation at hand. The Supreme Court had "accepted" that the spouses had faced insurmountable obstacles to cohabiting in Syria, but it had emphasised that the obstacle to their exercise of family life together had only been temporary. It found that the three-year waiting period fell within the State's discretion.

The Court however found that the Aliens Act did not allow for individualised assessment of a particular family's case. This had made the applicant's wait for family reunification obligatory. Given this, and the length of the applicant's marriage and the impossibility for him and his wife to live together in Syria, the Court found that the authorities had failed to strike a fair balance between the needs of the individual and the economic well-being of the country.

There had accordingly been a violation of the Convention.

Other articles

Given the finding under Article 8, the Court found no need to examine separately the applicant's complaint under Article 14 read in conjunction with Article 8.

Just satisfaction (Article 41)

The Court held that Denmark was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Mourou-Vikström expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

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