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Communication from Denmark concerning the case of BIAO v. Denmark (Application No. 38590/10)

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Réunion : 1318e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication du Danemark concernant l'affaire BIAO c. Danemark (requête n° 38590/10)
(anglais uniquement)

JUSTITSMINISTERIET
Ministry of Justice

Date: 9. March 2018
Office: Constitutional Law and Human Rights Division
Contact: Mikkel Lindberg Laursen
Our ref.: 2017-624/03-0001
Doc.: 682463

Consolidated Action Report: Biao v. Denmark, application No. 38590/10

Description of the case

This case concerns the specific refusal of an application for spousal reunification with reference to the requirement that spouses must not have stronger aggregate ties with another country than with Denmark (known as the 'attachment requirement'). The case concerned a claim on discrimination against the applicants regarding their request for family reunification in Denmark as a result of the so-called 28-year rule in section 9(7) of the Danish Aliens Act (*udlændingeloven*), pursuant to which persons who had held Danish citizenship for at least 28 years were exempt from the attachment requirement for applying for family reunification. Persons who had not been Danish nationals for at least 28 years, but were born and raised in Denmark, or had arrived in Denmark as small children and were raised in Denmark, were also normally exempt from the attachment requirement, provided that they had resided lawfully in Denmark for at least 28 years.

The decision of the immigration authorities refusing the application for family reunification was upheld by the High Court of Eastern Denmark (*Østre Landsret*) in 2007 and by the Danish Supreme Court (*Højesteret*) in 2010 (by 4 votes to 3).

On 12 July 2010, the applicants lodged an application against Denmark with the European Court of Human Rights.

In its judgment of 24 May 2016, the Grand Chamber of the European Court of Human Rights held (by 12 votes to five) held that the 28-year, as it stood

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at the relevant times, constituted indirect discrimination on the basis of ethnicity, and that such an indirect discrimination could only be in accordance with Article 14 read in conjunction with Article 8 of the European Convention on Human Rights ('the ECHR'), if it was justified by compelling and very weighty reasons unrelated to ethnic origin. The Grand Chamber further held that the Government had failed to show that there were such weighty reasons and thus found that there had been a violation of Article 14 read in conjunction with Article 8 of the ECHR.

As compensation for the non-pecuniary damage suffered, the Grand Chamber awarded the applicants a sum of EUR 6,000.

Individual measures

The compensation awarded in the sum of EUR 6,000 / DKK 44,640 was transferred to Mr Biao's bank account on 21 June 2016, i.e. within the deadline set by the Court.

Following the judgment delivered by the European Court of Human Rights, the Danish Immigration Appeals Board (*Udlændingenævnet*) (the relevant complaints authority as of 1 January 2013) decided, on 16 December 2016, to reopen the family reunification case of Mr and Ms Biao and to refer the case back to the Danish Immigration Service for reconsideration at first instance. The applicants were notified of that decision by letter of 16 December 2016, including information on the opportunity for Ms Biao to apply for residence in Denmark for the duration of the reconsideration of the case.

On 24 January 2017, the Danish Immigration Service requested additional information from Mr and Ms Biao, including information on whether Ms Biao still wanted to apply for residence in Denmark, and – if so – whether there was any substantial new information for the case. On the same day, the Danish Immigration Service received notification that Mr. and Ms. Biao were represented by a new lawyer, who on 8 June 2017, asked the Danish Immigration Service to terminate the case. The Danish Immigration Service therefore gave notification to their lawyer, that the case of Mr. and Ms. Biao was closed.

The Danish Civil Registration System shows that Mr. Ousmane Biao exited Denmark to Sweden on 15 November 2003, and that he has not since had residence in Denmark.

Given that the just satisfaction has been paid and the applicants do not appear to wish to pursue their family reunification case in Denmark, the Danish Government considers that no further individual measures are necessary.

General measures

The main problem in the case was the discrimination against Danish citizens of ethnic origins other than Danish resulting from the so-called 28-year rule (converted to a 26-year rule by a later legislative amendment) in section 9(7) of the Aliens Act. Accordingly, the Danish authorities considered that legislative amendments were required in order to execute the Court's judgment.

By Act no. 504 of 23 May 2017, section 9(7) of the Aliens Act was amended. The 26-year rule contained in section 9(7) of the Aliens Act, which the case concerned, was thus repealed. The amendment entered into force on 25 May 2017.

Pending the repeal of the impugned rule, the Minister of Immigration and Integration (*Udlændinge- og Integrationsministeriet*) published a memorandum to the Danish Parliament regarding the legal consequences of the Court's judgment.

Before the legislative amendments entered into force, the Danish Immigration Service applied section 9(7) of the Aliens Act in accordance with the interpretation described in the memorandum (i.e. disregarding the 26-year rule when applying section 9(7) of the Aliens Act).

A Danish summary of the judgment has been published in the periodical EU-ret og Menneskeret (EU Law and Human Rights Law), issue No. 3/4 2016.

Furthermore, a Danish summary of the judgment was published on 28 June 2016 on the website of the Danish Immigration Service: www.nyidanmark.dk.

The judgment has also been disseminated to the relevant Danish authorities, including: the Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*), the Supreme Court, the High Court of Eastern Denmark and the City Court of Copenhagen.

On 7th February 2018 the Danish government reached a political agreement with af majority of the parties in the Danish Parliament reforming the rules on family reunification with a spouse or partner living in Denmark. As a part of the agreement, the 'attachment requirement' will be fully abolished. The political agreement will be transformed into a bill which will be introduced to the Parliament as soon as possible.

Conclusions of the respondent government

It is the position of the Danish Government that the legislative amendments have effectively removed the discriminatory nature of the legislation in question and will prevent similar violations from occurring in the future. No further individual measures are necessary. The Danish Government therefore invites the Committee of Ministers to close its supervision of the case.