



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

Press Release
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Failure to renew residence permit of a Somali girl who grew up in Denmark with her family violated her rights

In today's Chamber judgment in the case Osman v. Denmark (application no. 38058/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the refusal to renew the Danish residence permit of a Somali girl, who had grown up with her family in Denmark, after she spent more than two years, allegedly against her will, living in Kenya. The right to family reunification for young people of her age (15-17) was abolished while she was away.

Principal facts

The applicant, Sahro Osman, is a Somali national who was born in Somalia on 1 November 1987. She now lives in Esbjerg (Denmark).

Ms Osman lived in Somalia from 1987 to 1991 and spoke Somali, she then moved to Kenya, where she lived from 1991 to 1995.

She was granted a Danish residence permit in November 1994 and subsequently moved to Denmark to live with her father and sister (who had been granted asylum in Denmark) in February 1995, when she was seven years old. Her mother and her three other siblings subsequently joined them.

She spent her formative years in Denmark, from the age of seven to 15. She spoke Danish and went to school in Denmark until August 2002. All her close family live in Denmark.

Her father sent her back to Kenya – allegedly against her will – in 2003, when she was 15, where she took care of her paternal grandmother at the Hagadera refugee camp in north-eastern Kenya for more than two years.

On 9 August 2005, aged 17 and therefore still a minor, she applied to be reunited with her family in Denmark.

On 21 December 2006 the Danish Immigration Service found that Ms Osman's residence permit had lapsed, under section 17 of the Aliens Act, because she had been absent from Denmark for more than 12 consecutive months. They also considered that she was

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution



not entitled to a new residence permit under section 9, sub-section 1 (ii), of the Aliens Act, because, by then, it applied only to children below the age of 15. Finally, the Immigration Service found that no special circumstances existed allowing it to grant her a residence permit under section 9 c, sub-section 1, of the Aliens Act; Ms Osman had not seen her mother for four years, her mother had agreed to send her to Kenya, and, she could continue to live with her grandmother or her children.

Section 9, subsection 1 (ii) of the Aliens Act had been amended on 1 July 2004 – after Ms Osman left Denmark – limiting the right to family reunification to children under 15, instead of under 18, to discourage the practice of sending children on “re-upbringing trips” for extended periods of time to be “re-educated” in line with their ethnic origins. The law was designed to ensure foreign minors living in Denmark spent as many of their formative years as possible in Denmark.

The applicant claimed that she re-entered Denmark illegally in June 2007.

She had reached the age of majority when the refusal to renew her residence permit became final on 19 January 2008, after leave to appeal to the Supreme Court was refused.

She has not applied for asylum.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, Ms Osman complained about the refusal to reinstate her residence permit.

The application was lodged with the European Court of Human Rights on 19 July 2009.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
Elisabeth **Steiner** (Austria),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Julia **Laffranque** (Estonia), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that the refusal to renew Ms Osman’s residence permit interfered with both her private and family life. She was still a minor when she applied to be reunited with her family in Denmark and, for young adults who had not yet founded a family of their own, their relationship with their parents and other close family members constituted “family life”. In addition, all the social ties between settled migrants and the community in which they were living constituted “private life” and the expulsion of a settled migrant constituted an interference with his or her right to respect for private life.

The measure in question had a basis in domestic law and pursued the legitimate aim of immigration control.

The main issue to be determined was whether the Danish authorities were under a duty to renew Ms Osman's residence permit after she had been in Kenya for more than two years.

The Court observed that Ms Osman had spent her formative years in Denmark, that she spoke Danish, went to school in Denmark and that her close family lived in Denmark. She therefore had social, cultural and family ties in Denmark as well as in Kenya and Somalia.

Ms Osman maintained that the Danish authorities had a duty to protect her interests and that it was obvious that her father's decision to send her to Kenya was not in her best interests.

The Court reiterated that, for a settled migrant, like Ms Osman, who had lawfully spent all or the major part of his or her childhood and youth in a host country, very serious reasons were required to justify expulsion. Ms Osman was not expelled for having committed a crime, but because her residence permit had expired.

The Court also noted that, although the law in question was designed to discourage parents from sending their children to their countries of origin to be "re-educated" in a manner their parents considered more consistent with their ethnic origins, the children's right to respect for private and family life could not be ignored.

The applicant maintained that she had been obliged to leave Denmark to take care of her grandmother for more than two years; that her stay there was involuntary; that she had no means to leave the camp; and, that her father's decision to send her to Kenya had not been in her best interests.

Those arguments were disregarded by the authorities with reference to the fact that her parents had custody of her at the relevant time. The Court agreed that the exercise of parental rights constituted a fundamental element of family life, and that the care and upbringing of children normally and necessarily required that the parents decide where the child should live and also imposed, or authorised others to impose, various restrictions on the child's liberty. Nevertheless, in respecting parental rights, the authorities could not ignore the child's interests, including her or his right to respect for private and family life.

The applicant's point of view was also disregarded by, for example, the Immigration Service with reference to the fact that she had not seen her mother for four years. In the Court's view, the fact that Ms Osman's mother did not visit her in Kenya, or that they apparently had very limited contact for four years, could be explained by various factors, including practical and financial constraints, and could hardly lead to the conclusion that they did not wish to maintain or strengthen family contact.

In May 2003, when Ms Osman was 15 and sent to Kenya, even if section 17 of the Aliens Act set out that her residence permit might lapse after 12 consecutive months abroad, she could still apply for a residence permit in Denmark under Section 9, subsection 1(ii) of the Aliens Act. That law was amended, however, when she was still in Kenya, limiting the right to family reunification to children under 15 instead of those under 18. The Court did not question the amended legislation as such, but noted that Ms Osman and her parents could not have foreseen that amendment when she was sent to Kenya or at the time when the 12 month time-limit expired.

The Court therefore found that there had been a violation of Article 8, because Ms Osman's interests had not been taken into account in the authorities' refusal to renew her Danish residence permit and a fair balance had not been struck between her interests and the State's interest in controlling immigration.

Other articles

The Court declared Ms Osman's other complaints inadmissible

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Denmark was to pay the applicant 15,000 euros (EUR) in respect of non pecuniary damage and EUR 6,000 in respect of costs and expenses.

The judgment 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.