



## A refusal to grant family allowances owing to failure to comply with the rules on family reunification was justified

In its decision in the case of [Okitaloshima Okonda Osungu v. France and Selpa Lokongo v. France](#) (applications nos. 76860/11 and 51354/13) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

The case concerned the authorities' refusal to award the applicants family benefits for their children who had joined them in France without complying with the family reunification procedure.

As the applicants had been unable to produce the medical certificates required by the Social Security Code and issued by the French Immigration and Integration Agency (OFII) in respect of each child following the family reunification procedure, they were refused family benefits.

The Court found that the refusal to grant family allowances to the applicants had not been founded solely on their nationality or on any other criterion covered by Article 14 (prohibition of discrimination) of the European Convention on Human Rights, but on the fact that they had failed to observe the rules on family reunification, which constituted a difference in treatment based on objective and reasonable grounds.

### Principal facts

The first and second applicants, Jean-Michel Okitaloshima Okonda Osungu and Anita Okitaloshima Okonda Osungu, are Congolese nationals who were born in 1968 and 1976 respectively and live in Chantepie (France). The third applicant, Elisabeth Selpa Lokongo, is a Congolese national who was born in 1975 and lives in Tournefeuille (France).

Mr and Mrs Okitaloshima Okonda Osungu and Mrs Selpa Lokongo have children who joined them after their arrival in France without complying with the family reunification procedure. They were refused family benefits for the children as they were unable in each case to produce the document required under Articles L. 512-2 and D. 512-2 of the Social Security Code, namely the medical certificate issued by the French Immigration and Integration Agency (OFII) following the family reunification procedure.

Mr and Mrs Okitaloshima Okonda Osungu have been lawfully resident in France since 9 October 2000. Their children C. and J., who were born in 1994 and 1997, joined them in May 2002. The parents unsuccessfully claimed family benefits from the Family Allowances Office (CAF) for C. and J. from June 2002.

Mrs Selpa Lokongo has been lawfully resident in France since January 2005 and her daughter joined her on 8 September 2008. She was also refused family benefits.

The applicants' claims were dismissed by the domestic courts at different stages of the proceedings. The courts took the view that the articles of the Social Security Code making the payment of family benefits conditional on the production of a document demonstrating that the children in question had entered France lawfully had an objective basis justified by the need in a democratic State to control the conditions for the reception of children, and did not constitute disproportionate interference with the right to family life under Articles 8 and 14 of the European Convention on Human Rights, nor were they in breach of Article 3-1 of the International Convention on the Rights of the Child. The domestic courts added that the relevant articles of the Social Security Code did not

amount to a disproportionate infringement of the principle of equal treatment between long-term residents and citizens of a European Union Member State.

Mr and Mrs Selpa Lokongo subsequently applied for family reunification with their daughter inside the country, but claimed that their application had been refused without the OFII issuing them with a written decision.

## Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 2 December 2011 and 7 August 2013.

Relying on Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights taken together, and – in the case of Mr and Mrs Okitaloshima Okonda Osungu – on Article 14 read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicants contended that the refusal to grant them family allowances for their children who had joined them outside the family reunification procedure amounted to unlawful discrimination.

The decision was given by a Chamber of seven judges, composed as follows:

Josep Casadevall (Andorra), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Vincent A. de Gaetano (Malta),  
André Potocki (France),  
Aleš Pejchal (the Czech Republic), *Judges*,

and Claudia Westerdiel, *Section Registrar*.

## Decision of the Court

### [Articles 8 \(right to respect for private and family life\) and 14 \(prohibition of discrimination\) taken together](#)

The Court began by observing that there had been a difference in treatment between the applicants and parents who received family benefits, based on a criterion linked to nationality and to compliance with the statutory provisions governing family reunification. The difference was applicable in the economic and social sphere and was not based exclusively on nationality, as the applicants had been refused family allowances because their children had entered France unlawfully as a result of deliberate conduct in breach of the law.

The Court attributed considerable importance to the fact that persons whose application for benefits had been turned down could effectively regularise their situation and ultimately obtain such benefits by means of the family reunification procedure for children already in France. However, the Court noted that none of the applicants could show that they had made serious efforts to obtain family reunification inside the country, although the resources they possessed were likely to meet the criteria laid down by the administrative authorities. Nor had the applicants demonstrated that the option of obtaining family reunification inside the country would have been ineffective in the circumstances of the case.

The Court concluded that the refusal to grant family allowances to the applicants had not been founded solely on their nationality or on any other criterion covered by Article 14, but on the fact

that they had not complied with the rules governing family reunification, which constituted a difference in treatment based on objective and reasonable grounds.

It followed that this complaint was manifestly ill-founded and should be rejected.

[Article 14 of the Convention \(prohibition of discrimination\) taken together with Article 1 of Protocol No. 1 \(protection of property\)](#)

The Court rejected this complaint as being manifestly ill-founded.

*The decision is available only in French.*

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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.