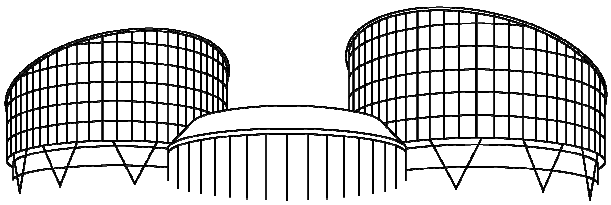

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF OMOJUDI v. THE UNITED KINGDOM

(Application no. 1820/08)

JUDGMENT

STRASBOURG

24 November 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Omojudi v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges*,
Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 1820/08) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Nigerian national, Mr Steven O. Omojudi ("the applicant"), on 9 January 2008.

2. The applicant was represented by Ms N. Mole of the Aire Centre, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms H. Upton of the Foreign and Commonwealth Office.

3. On 25 November 2008 the President of the Chamber decided to give notice of the application to the Government of the United Kingdom. It was also decided to judge on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Steven O. Omojudi, is a Nigerian national who was born in 1960. He currently lives in Nigeria.

5. The facts of the case, as submitted by the applicant, may be summarised as follows.

6. The applicant was born in Nigeria and lived there until 1982. He was educated in Nigeria and for a period he was employed by a Nigerian

aviation handling company. On 9 September 1982, when he was twenty-two years old, he was granted two months' leave to enter the United Kingdom as a student. His leave was subsequently extended to 15 January 1986. In 1983 the applicant was joined by his partner, who was also a national of Nigeria. The applicant married his partner in the United Kingdom in 1987. They had three children, who were born on 11 February 1986, 28 October 1991 and 16 September 1992. The children were born in the United Kingdom and all are British citizens. The oldest child has a daughter, who is now two years old.

7. Prior to the expiry of his leave in January 1986, the applicant applied for a further extension. The following day, however, he was caught returning from the Netherlands with a British visitor's passport obtained by deception. Although he was not prosecuted for the offence, the application to extend his leave was refused.

8. On 12 March 1987 the applicant was informed of his liability for deportation. He was served with a deportation order on 31 July 1987. He attempted to appeal against the order and a second deportation order was served on 4 December 1990. The applicant appealed against the second order, but the appeal was subsequently withdrawn.

9. The applicant was convicted of theft and conspiracy to defraud on 7 March 1989. He was sentenced to four years' imprisonment. Other convictions the same day resulted in five terms of twelve months' imprisonment to run concurrently.

10. On 24 October 1995 the applicant claimed asylum by post, but on 12 January 1998 the application was refused for non-compliance.

11. On 28 September 2000 the applicant and his wife applied for leave to remain under an overstayer's regularisation scheme. On 18 April 2005 they both were granted Indefinite Leave to Remain.

12. On 19 November 2006 the applicant was convicted of sexual assault. The conviction stemmed from an incident in which the applicant, in his capacity as a housing officer, touched a woman's breast without her consent. He was sentenced to fifteen months' imprisonment, with half to be spent in custody and half on licence, and he was registered as a sex offender. The offence was considered to be particularly serious as the applicant was in a position of trust at the time it was committed. The sentencing judge described the offence as “a gross sexual intrusion into the private life of a woman by someone in a position of trust”. He reduced the sentence, however, to lessen the impact on the applicant's family and he did not recommend him for deportation.

13. The Secretary of State for the Home Department made a deportation order on 31 March 2007 on the basis that deportation was necessary for the prevention of disorder and crime and for the protection of health and morals. The applicant appealed against that decision but the appeal was dismissed on 25 July 2007. Although the judge accepted that the applicant

had established a family life in the United Kingdom, and that deportation would interfere with that family life, he concluded that the measure was proportionate because the applicant remained a potential offender who posed a threat to society. The applicant sought permission to apply for judicial review, which was refused on 15 August 2007 and again on 28 November 2007.

14. The applicant subsequently was served with removal directions set for 23 January 2008. On 18 January 2008 he introduced his case with the Court and on 24 January 2008 the Court ordered that the case be notified urgently to the Government under Rule 40 of the Rules of Court. On the same day the applicant again sought permission to apply for judicial review. Permission was refused and on 25 April 2008 the appeal against this decision was dismissed at an oral hearing. The applicant was served with new removal directions and he was deported to Nigeria on 27 April 2008.

15. From 24 January 2008 until 25 April 2008 both the applicant and his representative requested the applicant's risk-assessment report from the Probation Service, initially on a weekly basis and subsequently at regular intervals. The report, however, was only disclosed on 25 April 2008.

II. RELEVANT DOMESTIC LAW

16. Section 5(3)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) provides that a person who is not a British citizen shall be liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good. Sections 82(1) and 84 of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against this decision on the grounds, *inter alia*, that the decision is incompatible with the Convention.

17. Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right, courts and tribunals must take into account any case-law from this Court so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

18. A person who has been deported may apply to have the deportation order revoked. Paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended) provide that:

> "390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:
>
> (i) the grounds on which the order was made;
> (ii) any representations made in support of revocation;
> (iii) the interests of the community, including the maintenance of an effective immigration control;
> (iv) the interests of the applicant, including any compassionate circumstances.

391. In the case of an applicant *who has been deported following conviction for a criminal offence* continued exclusion

(i) in the case of a conviction which is capable of being spent under the Rehabilitation of Offenders Act 1974, unless the conviction is spent within the meaning of that Act or, if the conviction is spent in less than 10 years, 10 years have elapsed since the making of the deportation order; or

(ii) in the case of a conviction not capable of being spent under that Act, at any time, unless refusal to revoke the deportation order would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees.

will normally be the proper course. In other cases revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before, or the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

392. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant submitted that his deportation to Nigeria violated his right to respect for his family and private life under Article 8 of the Convention. Article 8 provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

20. The Government contested that argument.

A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. The applicant submitted that prior to his deportation he enjoyed family life within the meaning of Article 8 of the Convention with his spouse, his three children and with his grandchild. He had co-habited with his spouse since 1980 and they have been married for twenty-two years. Their three children were born in the United Kingdom and have always lived in the family home. Even though the eldest child was an adult when the applicant was deported, he was not an independent person who had started his own family life. Rather, he was a student who still lived in the family home and who depended financially and emotionally on his parents. His daughter lived with him and prior to the applicant's deportation he relied on both of his parents to help him raise her while he pursued his studies. Following his deportation he relied solely on his mother.

23. The applicant submitted that his deportation interfered with his right to respect for his family life because his family was split up without any prospect of being reunited in the near future. Relocation was not an option for the family because his teenage children were British nationals who were being educated in the United Kingdom. His eldest son had a child of his own in the United Kingdom. The applicant's wife could not relocate with the applicant because she had to stay to take care of the children and to help raise her grandchild. The only communication which the applicant had had with his family following his deportation was via telephone and written communication.

24. The applicant accepted that the interference with his right to respect for his family and private life was in accordance with the law and in pursuit of a legitimate aim. He argued, however, that it was not necessary in a democratic society. He relied on the official risk assessment report prepared by the Probation Service, which indicated that he posed a low risk of reoffending.

25. The applicant further relied on the judgment of the Grand Chamber in *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII. With regard to the nature and seriousness of the offence, he submitted that the only relevant offence was the one which the deportation order specifically held as the basis for the deportation, namely the sexual assault committed on 1 November 2005. As the Secretary of State for the Home Department was fully apprised of the applicant's previous offending and immigration history when he exercised his discretion to grant him Indefinite Leave to Remain in 2005, he could not now rely on his earlier offences in order to

justify the decision to deport him. If considered in isolation, the applicant submitted that the sexual assault was not sufficiently serious to warrant deportation. In particular, he submitted that the sentence imposed for this offence, being less than two years, would not have resulted in a decision to deport under the policies in place at the time. This was reflected in the fact that the sentencing judge did not recommend deportation.

26. The applicant indicated that prior to his deportation he had lived in the United Kingdom for twenty six consecutive years. He had not returned to Nigeria during that period, except for a three-week vacation in the summer of 2005. His residence in the United Kingdom was lawful between 1982 and 1986, and between 2005 and 2008. Between 1986 and 2000 he was attempting to regularise his stay and between 2000 and 2005 he was waiting for the outcome of his application under the Regularisation Scheme for Overstayers. While the applicant accepted that he had spent his formative years in Nigeria, he submitted that his ties to his home country were significantly weakened and by the date of his deportation he had vastly stronger ties to the United Kingdom.

27. Three years passed between the applicant's last offence and his deportation. The applicant submitted that during that period he served his sentence and complied with the conditions of his licence. He engaged in offence-focussed work and his conduct was good, both in prison and upon release. He further indicated that between offences lengthy periods passed without transgression. In this respect the case could be distinguished from that of *Joseph Grant v. the United Kingdom*, no. 10606/07, 8 January 2009, where the applicant had no significant period of residence in the United Kingdom during which he did not offend.

28. The applicant also contended that his wife would experience serious difficulties were she to follow him to Nigeria. She left Nigeria in 1983 and had been living in the United Kingdom ever since. Apart from her elderly mother she had no family or social ties in Nigeria. Relocation would separate her from her eldest child and from her grandchild and cause her significant distress. The teenage children would also face serious difficulties if they were to relocate to Nigeria. They had no links with Nigeria and could no longer be described as being “of an adaptable age”. Their personal and professional development would be severely hampered if they were to move to Nigeria and thus such a move could not be described as being “in their best interests”. Moreover, Nigeria was not a Member State of the Council of Europe and the living conditions there were unlike those in which the applicant's children had been brought up.

29. The Government accepted that the applicant and his wife had a genuine, long-standing marriage and that family life existed between them. They further accepted that family life existed between the applicant and his two younger children, although they pointed out that they would come of age in October 2009 and September 2010 respectively. They contended,

however, that no family life existed between the applicant and his eldest son as there was no evidence of dependency involving more than the normal emotional ties of father and adult son.

30. The Government submitted that the applicant's deportation was a measure taken in accordance with the law and that any resulting interference with his right to respect for his family life under Article 8(1) of the Convention was proportionate in the interests of the prevention of crime.

31. In relation to the nature and seriousness of the applicant's offence, the Government submitted that it was appropriate to have regard to the applicant's background of offending as well as to the offence which directly gave rise to the decision to make a deportation order. The applicant had been convicted of nine criminal offences during his time in the United Kingdom, including a number of offences of deception and dishonesty, which demonstrated a persistent disregard for United Kingdom law. The most serious offence warranted a sentence of four years' imprisonment and was described by the Court of Appeal as a significant conspiracy to defraud London clearing banks of in excess of GBP 60,000.

32. In any case, the Government submitted that the offence committed by the applicant on 1 November 2005 was of itself a serious offence, warranting his registration as a sex offender for ten years in addition to a fifteen month term of imprisonment. Although the probation service recognised that the applicant's overall risk of re-conviction was low, the Government observed that he was assessed as presenting a medium risk of serious harm to known adults in the community. They therefore contended that they were entitled to regard a sexual offence involving the abuse of a position of trust as a serious matter and attach considerable weight to that factor.

33. Although the Government recognised that the applicant had spent over twenty four years in the United Kingdom at the date of the decision to deport him, they submitted that he was an adult when he arrived and during his stay he served two periods of imprisonment. Moreover, for the majority of his stay his immigration status was precarious as he had been refused extensions to his leave as a student, he was refused asylum and he had been the subject of deportation action. Indeed, the offence which prompted the decision to make a deportation order was committed only six months after he was eventually granted Indefinite Leave to Remain.

34. The Government further submitted that just over one year had elapsed from the commission of the sexual assault and the decision to make a deportation order. During that period the applicant was convicted of a further offence (failing to provide a specimen for analysis) and was disqualified from driving for three years.

35. Finally, the Government contended that the applicant had put forward no evidence to demonstrate that he and his wife had developed strong social and/or cultural ties with the United Kingdom. Although it was

accepted that the applicant was employed by a housing association at the time he committed the sexual assault, there was no other evidence to suggest that he or his wife were ever employed in the United Kingdom. The applicant's wife was a Nigerian citizen who had spent her formative years in Nigeria. Her mother still lived there and she had clearly maintained some ties with that country. The Government further contended that while the applicant's two younger children would face a degree of hardship in relocating to Nigeria, they were intelligent young people with no particular disabilities or needs and with the support of their parents they would be able to adjust to life in Nigeria. There was no evidence to suggest that it would be "impossible or exceptionally difficult" for the applicant's wife and younger children to relocate with him (see *Onur v. the United Kingdom*, no. 27319/07, § 60, 17 February 2009). Alternatively, should the applicant's family decide to remain in the United Kingdom, they could maintain contact with the applicant by letter or telephone and visit him for holidays in Nigeria.

2. The Court's assessment

(a) Was there an interference with the applicant's right to respect for his family and private life?

36. The Government have accepted that the applicant's deportation interfered with his family life as reflected in his relationship with his wife and two youngest children. The Court endorses this view. Having regard to the concession made by the Government as to the existence of family life, it is unnecessary to decide whether the close bond which the applicant undoubtedly had with his eldest son and his granddaughter was itself sufficient to give rise to family life between them.

37. The Court further recalls that, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008 § 63).

38. In the instant case, the Court finds that the measures complained of interfered with both the applicant's "private life" and his "family life". Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the

law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

(b) "In accordance with the law"

39. It is not in dispute that the impugned measure had a basis in domestic law, namely section 5(3)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999).

(c) Legitimate aim

40. It is also not in dispute that the interference served a legitimate aim, namely "the prevention of disorder and crime".

(d) "Necessary in a democratic society"

41. The principal issue to be determined is whether the interference was "necessary in a democratic society". The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have recently been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57 - 58, ECHR 2006-...):

> "57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, [cited above]; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yılmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:
>
> - the nature and seriousness of the offence committed by the applicant;
> - the length of the applicant's stay in the country from which he or she is to be expelled;
> - the time elapsed since the offence was committed and the applicant's conduct during that period;
> - the nationalities of the various persons concerned;
> - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
> - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
> - whether there are children of the marriage, and if so, their age; and
> - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
>
> 58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination."

42. The Court observes that the applicant's most serious offences were committed in 1989 and 2005. During the sixteen years between these offences, the applicant largely stayed out of trouble (with the exception of a number of driving offences, none of which resulted in a prison sentence). The present case can therefore be distinguished from that of the previously cited case *Joseph Grant v. the United Kingdom* in a number of respects. First, the applicant in *Grant* was a habitual offender and there was no prolonged period during which he was out of prison and did not offend. This is clearly not the case for the present applicant. Secondly, Mr Grant committed all of his offences after he had been granted Indefinite Leave to Remain in the United Kingdom. Moreover, deportation was considered at a relatively early stage and while the Secretary of State for the Home Department decided not to deport Mr Grant, it warned him that if in future he came to the adverse attention of the authorities, deportation would again be considered. In the present case the applicant was granted Indefinite Leave to Remain following his conviction for relatively serious crimes involving deception and dishonesty. The Court attaches considerable weight to the fact that the Secretary of State for the Home Department, who was fully aware of his offending history, granted the applicant Indefinite Leave to Remain in the United Kingdom in 2005. Thirdly, the vast majority of the offences committed by Mr Grant were related to his drug use. There was therefore a history and pattern of offending that was unlikely to end until the underlying problem was addressed. In the present case, however, the applicant's offences were of a completely different nature and there was no indication that they were the result of any "underlying problem". In particular, there is no evidence of any pattern of sexual offending.

43. Therefore, in the circumstances of the present case, the Court finds that for the purposes of assessing whether the interference with the applicant's family and private life was necessary in a democratic society, the only relevant offences are those committed after the applicant was granted Indefinite Leave to Remain.

44. The Court reiterates that sexual assault is undoubtedly a serious offence, particularly where it also involves a breach of a position of trust. The Court observes, however, that the maximum available sentence for sexual assault was ten years' imprisonment. It is therefore clear that even taking into account the aggravating factor of a breach of a position of trust, the applicant's offence was not at the most serious end of the spectrum of sexual offences.

45. The Court is mindful of the fact that the applicant has lived in the United Kingdom since 1982 and his wife has lived there since 1983. Although they both spent the formative years of their lives in Nigeria, their ties there have significantly weakened and they now have much stronger ties to the United Kingdom. While their residence in the United Kingdom was not always lawful, over the years they made numerous attempts to regularise their position and they were eventually granted Indefinite Leave to Remain in 2005. Their family life began in the United Kingdom before the applicant committed his first criminal offence and at a time when the applicant and his wife had leave to remain. Their children were born in the United Kingdom and are British citizens. Moreover, all three children have always lived in the family home and the family continued to live together as one unit until the applicant's deportation to Nigeria. The applicant's oldest son now has a daughter of his own and prior to his deportation the applicant and his wife were helping him to raise her while he pursued his studies.

46. The Court attaches considerable weight to the solidity of the applicant's family ties in the United Kingdom and the difficulties that his family would face were they to return to Nigeria. The Court accepts that the applicant's wife was also an adult when she left Nigeria and it is therefore likely that she would be able to re-adjust to life there if she were to return to live with the applicant. She has, however, lived in the United Kingdom for twenty-six years and her ties to the United Kingdom are strong. Her two youngest children were born in the United Kingdom and have lived there their whole lives. They are not of an adaptable age and would likely encounter significant difficulties if they were to relocate to Nigeria. It would be virtually impossible for the oldest child to relocate to Nigeria as he has a young daughter who was born in the United Kingdom. Consequently, the applicant's wife has chosen to remain in the United Kingdom with her children and granddaughter. The applicant's family can, of course, continue to contact him by letter or telephone, and they may also visit him in Nigeria from time to time, but the disruption to their family life should not be underestimated. Although the Immigration Rules do not set a specific period after which revocation would be appropriate, it would appear that the latest the applicant would be able to apply to have the deportation order revoked would be ten years after his deportation.

47. Finally, the Court turns to the conduct of the applicant following the commission of the offence on 1 November 2005. The applicant committed a driving offence during this period, having failed to provide a specimen for analysis. As a consequence, he was banned from driving for three years. The remainder of his conduct is difficult to assess as he spent most of the period from the conviction to his deportation in detention. His criminal sentence came to an end on 1 June 2007, after which he remained in immigration detention until he was granted bail on 25 June 2007. He was

detained again on 14 September 2007 and remained in detention until he was deported on 27 April 2008.

48. Having regard to the circumstances of the present case, in particular the strength of the applicant's family ties to the United Kingdom, his length of residence, and the difficulty that his youngest children would face if they were to relocate to Nigeria, the Court finds that the applicant's deportation was not proportionate to the legitimate aim pursued.

49. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

50. The applicant further submitted that the delay by the Probation Service in providing him with the risk-assessment report interfered with his right to effectively present his case before the Court. Article 34 provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

51. The Court has examined this complaint but finds, in the light of all the material in its possession and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

52. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

54. The applicant claimed EUR 3,000 in respect of non-pecuniary damage for the distress, anxiety and frustration caused by the deportation proceedings, the execution of the deportation order and the enforced

separation from his wife, children and grandchild from 26 April 2008 onwards. The applicant further submitted that the Court should ensure that the Government exempted him from the fees associated with applying for his deportation order to be revoked, his application for entry clearance to return to the United Kingdom and the travel costs of his return from Nigeria to the United Kingdom. He also sought a resettlement allowance of EUR 500.

55. The Government submitted that the sum sought in respect of a resettlement allowance was unprecedented before the Court and had not been quantified in any way. In the circumstances, the Government invited the Court not to make any award in this respect.

56. The Court considers that the applicant must have suffered distress and anxiety as a result of his deportation and separation form his family. Making an assessment on an equitable basis it awards the applicant EUR 3,000 under the head of non-pecuniary damage (see *Mokrani v. France*, no. 52206/99, 15 July 2003; *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008; and *Emre v. Switzerland*, no. 42034/04, 22 May 2008) plus any tax that may be chargeable.

57. The Court dismissed the applicant's other claims.

B. Costs and expenses

58. The applicant claimed GBP 8,782.95 in respect of legal costs and expenses.

59. The Government submitted that this sum was excessive. In particular, the Government submitted that as legal advice from the Aire Centre was provided on a *pro bono* basis, no costs or expenses had actually been incurred in this regard and thus no award should be made in respect of that advice. Moreover, the Government submitted that the total of ninety hours claimed by the applicant's lawyers was excessive by reference to the legal and factual context of the application.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 for the proceedings before this Court.

C. Default interest

61. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 6,000 (six thousand Euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into British Pounds at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President