



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35117/97
by Jude OKONKWO
against Austria

The European Court of Human Rights, sitting on 22 May 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 19 November 1996 and registered on 27 February 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Jude Okonkwo, born in 1963, was a Nigerian national until 1995 and is now stateless. He is currently living in Austria. He is represented before the Court by Mr G. Deinhofer, a lawyer practising in Vienna.

A. The circumstances of the case

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

The applicant went to Austria in 1985 and was legally resident there. In March 1992 he married an Austrian national with whom he has had two children, born in 1992 and 1994 respectively. In June 1993 the applicant requested Austrian citizenship.

On 18 October 1994 the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*) convicted the applicant of attempting to put into circulation large amounts of narcotic drugs, as well as certain minor offences under the Narcotic Drugs Act, and sentenced him to twenty months' imprisonment.

On 31 March 1995 the applicant renounced his Nigerian nationality in order to be able to obtain Austrian nationality.

On 3 August 1995, the Vienna Federal Police Authority (*Bundespolizeidirektion*) issued an unlimited residence prohibition against the applicant under section 18 §§ 1 and 2 of the Aliens Act 1992 (*Fremdengesetz 1992*).

On 27 September 1995 the Vienna Public Security Authority (*Sicherheitsdirektion*) dismissed the applicant's appeal. Referring to the applicant's living with an Austrian national and their having two children, it found that the residence prohibition constituted an interference with the applicant's right to respect for his private and family life. However, having regard to the serious nature of the offences committed by him, it was necessary for the aims set out in Article 8 § 2 of the Convention, namely for the prevention of crime and the protection of health and public safety.

On 14 February 1996 the Vienna Federal Police Authority detained the applicant with a view to his expulsion. It requested the Nigerian embassy to issue a travel document, which was refused on the ground that the applicant had renounced his Nigerian nationality. He was released on 7 March 1996 as his expulsion could not be carried out due to his statelessness.

On 18 July 1996 the Vienna Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) found, upon the applicant's complaint, that his above detention had been unlawful. It noted that, pursuant to section

41 of the Aliens Act 1992, an alien could be detained if this was necessary, *inter alia*, for securing his deportation. The applicant was stateless and his expulsion to Nigeria was, thus, impossible. The Vienna Federal Police Authority had been informed about the applicant's statelessness well before 14 February 1996. It followed that, from the outset, his detention could not possibly have served the purpose of securing his deportation.

On 26 February 1996 the Constitutional Court refused to deal with the applicant's complaint concerning the residence ban as it lacked sufficient prospects of success.

On 30 April 1996 the Administrative Court dismissed the applicant's complaint. The decision was served on 22 May 1996.

The applicant still lives in Austria. His request for Austrian citizenship remained unsuccessful and he is, according to his own submissions, still stateless. He and his wife divorced in April 1996. The applicant submits that they are planning to remarry but are prevented from doing so as he has no passport. A number of requests to have the residence ban quashed under the Aliens Act 1997, which has meanwhile entered into force, were dismissed.

COMPLAINT

The applicant complains under Article 8 of the Convention that the residence ban against him violates his right to respect for his family life. He submits that the residence ban is not necessary in a democratic society, as the competent authorities did not duly take into account his interests in staying in Austria.

THE LAW

The applicant alleges a violation of his right to respect for his family life. He relies on Article 8 which reads as follows:

- “1. Everyone has the right to respect for his private and family life, ...
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 ... for the prevention of disorder or crime, [or] for the protection of health ...”

The Government, referring to the importance of combatting drug criminality and the serious nature of the offences committed by the applicant, assert that the issue of a residence ban was necessary for the prevention of crime and the protection of health. Moreover, they point out that the applicant renounced his Nigerian nationality in 1995 thus bringing about the legal impossibility to expel him. In particular, the Aliens Act

1997, just like the Aliens Act 1992, contains a provision (section 69 § 2) according to which detention with a view to expulsion may only be applied as long as its aim - deportation in this case - can be achieved, which is impossible in the case of a stateless person. A stateless person can, therefore, neither be detained with a view to expulsion nor deported. Finally, with a view to the applicant's purported intention to re-marry, the Government state that the lack of a travel document does not preclude a marriage in Austria.

The applicant contests the necessity of the residence ban against him. He maintains that he is still stateless and submits that he sometimes gets arrested due to his lack of a residence permit but is always released after his statelessness has been verified. Finally, he claims that he is prevented from re-marrying as he has no passport.

The Court considers that the Government's submission that the applicant cannot be deported due to his statelessness raises the question whether the applicant can claim to be a victim within the meaning of Article 34 of the Convention.

The Court observes that the applicant renounced his Nigerian nationality in March 1995. According to his own submissions, he is still stateless. The Austrian authorities also treat him as a stateless person. In particular, the Independent Administrative Panel's decision of 18 July 1996 made it clear that the applicant, being stateless, cannot be deported. The legal situation has not changed since.

As matters stand, the applicant is not, despite the final residence ban against him, under a threat of expulsion and, thus, of being separated from his family (see *mutatis mutandis* no. 22802/93, decision 11.12.97, D.R. 91, p. 10). Nor has he shown that the residence ban against him is an obstacle to a re-marriage with his divorced spouse.

In these circumstances, the Court considers that the applicant cannot claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged violation of his right to respect for his family life.

It follows that the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President