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

FOURTH SECTION

CASE OF NNYANZI v. THE UNITED KINGDOM

(Application no. 21878/06)

JUDGMENT

STRASBOURG

8 April 2008

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 Nnyanzi v. the United Kingdom,

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

Lech Garlicki, *President,*
Nicolas Bratza,
Stanislav Pavlovschi,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 21878/06) 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 Ugandan national, Ms Evarista Evelyn Nnyanzi ("the applicant"), on 31 May 2006.

2. The applicant, who had been granted legal aid, was represented by Ms A. Azam, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Grainger of the Foreign and Commonwealth Office.

3. The applicant alleged that her expulsion to Uganda would violate her rights under Articles 3, 5 and 8 of the Convention.

4. On 10 July 2006 the President of the Chamber decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of the United Kingdom, under Rule 39 of the Rules of Court, that the applicant should not be expelled to Uganda until 18 July 2006.

5. On 11 July 2006 the Chamber decided that the application should be communicated to the respondent Government for their observations and granted priority under Rule 41. It also decided, under the provisions of Article 29 § 3 of the Convention, to examine the merits of the application at the same time as its admissibility and that the Rule 39 indication should remain in force until further notice.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, who was born in 1965, is a Ugandan national. Her mother and younger siblings live in Kenya. She is the daughter of Evaristo Nnyanzi, who was a government minister in Uganda between 1985 and 1986 and subsequently the Treasurer-General of the Democratic Party.

1. The events in Uganda

7. The applicant's father has been detained since 1998 on treason charges. Her father was first arrested in 1986 when the present regime, the National Resistance Movement (NRM), took power. He was ultimately charged with treason and detained. In 1987 she was followed and arrested by two men when she went to visit her father in prison and detained for one day during which she was asked questions about her father's political life. She escaped after claiming to be unwell and being allowed to visit a local hospital. She subsequently hid at a friend's house until her father was acquitted and released later in 1987.

8. In October 1996 the applicant's father disappeared. He was believed to have fled to Kenya, having been warned that he was likely to be re-arrested. The family, including the applicant, also went to live in Kenya for a while, but she returned to Uganda in January 1997 hoping that the situation had improved. Towards the end of 1997 she was questioned about her father's whereabouts and her passport was confiscated. She obtained another passport using her real name but a false date of birth. In July 1998 she again travelled to Kenya and then returned to Uganda.

9. In September 1998 the applicant obtained a ticket and tourist visa for the United Kingdom, originally planning to travel as a tourist.

10. On 21 September 1998 she was at home with family members when plain clothes police officers or soldiers raided the house, looking for evidence. They had brought the applicant's father with them in handcuffs. The applicant stayed with a friend for a few days and then travelled to the United Kingdom via Germany.

2. The applicant's arrival in the United Kingdom and the refusal of her asylum claim

11. On 27 September 1998 the applicant claimed asylum on arrival in the United Kingdom on the basis of her father's political activities in Uganda.

12. On 21 November 1999 the Secretary of State refused her application for asylum on the ground that she had not herself been involved in any

political parties or activities in Uganda and that she had not claimed to have experienced any arrests, detention or significant problems from the time of her father's release in 1987 until the claimed raid on her home in September 1998. This was considered to be evidence that she would not be of any adverse interest to the Ugandan authorities. Furthermore, she had used the passport she had obtained from the Ugandan authorities through the correct channels in the name of Evelyn Allen Nakato to leave Uganda without apparent difficulties, having previously used this passport to visit Kenya in 1998 for a holiday after which she had returned to Uganda. Despite her claims that her passport in the name of Evarista Nnyanzi had been confiscated earlier by the authorities and that the date of birth on the passport with which she had left Uganda was false, the names were ones which she used and which her parents had given her and she had submitted letters of residence to obtain the passport from the authorities. It was considered that she would not have been able to leave Uganda through normal immigration channels had she been of any particular or adverse interest to the authorities.

13. On 5 July 2000 a Special Adjudicator dismissed the applicant's appeal against the Secretary of State's decision to refuse her asylum claim. He found that there was no evidence that she had been deeply associated with her father's political activities. She held no personal political opinion, had not been politically active and had given no evidence at the hearing to demonstrate that she was any closer to her father than any other family members. Her arrest in 1987 had not occurred because of any imputed political opinion but was rather to inquire about her father. Following her release the authorities had shown no further interest in her. After returning from Kenya in 1997 she continued to live at home and was thus easy to locate. The applicant's assertion that she was believed by the authorities in Uganda to be involved in rebel activities and to assist her father politically was emphatically rejected.

14. On 26 September 2000 the Immigration Appeal Tribunal (IAT), by a majority of two to one, refused her appeal against the determination of the Special Adjudicator. It found that the Special Adjudicator was not correct in stating that there was no evidence of individuals being at risk of persecution because of the political activities of their relatives, as he should have considered and made a finding on a letter from the Democratic Party before him which contained evidence to the contrary. The Special Adjudicator had also erred in stating that the applicant had claimed to have been followed but never accosted or apprehended after she returned from Kenya in 1997 and it would have been better if he had referred to the applicant's claim to have gone into hiding when concluding that the authorities had shown no further interest in her after her release. Though the applicant was a credible witness and events in Uganda had given rise to a genuine fear of persecution on her part, she had not been seriously ill-treated when detained for a short

time in 1986 and questioned about her father's political activities. Her representative had conceded at the hearing that she had not been subjected to past persecution. There was no evidence that the authorities were looking for the applicant in the period between her being questioned and her father's release in 1987. However, it was noted that this may have been because she was in hiding. After the applicant's father disappeared in October 1997 there was a period before she went to Kenya during which the authorities could have found her at her home and arrested her if they had wanted to do so. They could have arrested her at any time between her return to Uganda in January 1997 and September 1998, except for a brief period from July 1998 during which she returned to Kenya. During this period, the applicant believed that she was being watched and followed. If this was the case and the authorities had as serious an interest in her as she claimed, it was difficult to understand why they had not arrested her. Whilst in late 1997 she was accosted by two men who asked her if she knew where her father was and confiscated her original passport, they did not arrest her or subject her to the persecution she claimed to fear. If she was correct and the authorities were looking for her father they were as likely to obtain information from her during that period as they would be during the period after he was detained.

15. The IAT also dismissed the applicant's assertion that the authorities believed her to be involved in rebel activities and to have assisted her father politically. It considered that the authorities could have arrested the applicant either during the periods outlined above or in September 1998, when they brought her father to the house in handcuffs when she was present. There was no claim that the applicant or any other member of the family present at that time had been arrested. The evidence showed that the only real interest the authorities had in the applicant was in discovering her father's whereabouts. They no longer needed this information since he was in custody. Though the applicant sought to argue that the Ugandan authorities might still wish to obtain information from her, which would assist the conviction of her father or his associates, it was likely that they were looking for incriminating evidence when they searched the home in September 1998. However they did not arrest the applicant. Having regard to the country information reports, the tribunal also found that there was no evidence that family members of political opponents were negatively associated or as a result persecuted in any way.

16. The two-member majority of the IAT did not find that the applicant had established a reasonable degree of likelihood that, as a family member of an opposition politician, she would herself be at risk of persecution. The minority member, however, considered that the applicant, because of her father's political position, would be perceived by the Ugandan Government as a political opponent. Moreover, the Government might attempt, by use of force if necessary, to obtain evidence from her to be used against her father

at trial. The majority of the IAT recommended on humanitarian grounds that the Secretary of State reconsider the applicant's position, in the light of her genuine subjective fear of returning to Uganda.

17. On 16 October 2000 the IAT refused the applicant permission to appeal to the Court of Appeal on the basis that the grounds of appeal did not disclose any arguable point of law.

3. The applicant's human rights appeal

18. By a letter dated 13 February 2001 the applicant made further representations to the Secretary of State claiming that her removal from the United Kingdom would be a breach of the latter's obligations under Articles 3, 5, 8, 9 and 10 of the Convention and the Human Rights Act 1998.

19. By a letter dated 4 June 2001 the Secretary of State rejected these representations, *inter alia*, on the basis that the Special Adjudicator and IAT had addressed all the reasons in their determinations and that the concerns raised under Article 8 in relation to difficulties the applicant might suffer in Uganda did not engage the United Kingdom's obligations.

20. On 11 January 2005 an Adjudicator refused the applicant's human rights appeal under section 65(1) of the Immigration and Asylum Act 1999 (“1999 Act”, see paragraph 27 below). He was of the opinion that as the applicant's claim had been considered and dismissed by both a Special Adjudicator and the IAT, albeit on a majority decision, he needed to consider whether there were any circumstances that had arisen since the date of the IAT's decision that would provide exceptional circumstances sufficient to engage Article 3. Though the current conditions in Uganda were certainly no better than they were at the time the applicant had left the country, there was nothing to suggest that they had seriously deteriorated or that the position of her father had worsened. The Adjudicator noted that the applicant's cousin had informed her that the remainder of her family were well in Uganda and that her legal representative had conceded that there was no emphatic ground to contend that Article 3 would be breached should the applicant be returned to Uganda. He further observed that, with commendable honesty, the applicant's legal representative had accepted that the Article 3 claim would be hard to uphold and had rather sought to concentrate on the Article 8 claim. As regards the applicant's submissions under Article 8, the Adjudicator found that the applicant had established a private and not family life in the United Kingdom as the relationship she enjoyed with a male friend did not constitute family life. Though she had established a private life during her stay in the United Kingdom in excess of six years, revolving around her employment in a church and her accountancy studies, her removal to Uganda, however sympathetic one might be to her circumstances, would not be disproportionate.

21. In mid-February 2005 the applicant was detained with a view to effecting her removal from the United Kingdom and removal directions were set for her return to Uganda on 19 February 2005.

22. On the evening of 18 February 2005 the applicant's solicitors obtained an injunction from a High Court judge over the telephone restraining the Secretary of State from removing the applicant from the United Kingdom.

23. On 19 February 2005 the applicant issued an application for permission to apply for judicial review of her removal directions on the basis that her removal would be in breach of her rights under the Convention.

24. By an order dated 1 April 2005, the applicant's application for permission to apply for judicial review was refused by a High Court judge following consideration of the documents. The judge refused the application holding that it was an abuse of process and merely an attempt to frustrate her removal directions since there had been no application for permission to appeal against the Adjudicator's determination dated 11 January 2005.

25. By a letter dated 27 March 2006 the Secretary of State refused the applicant discretionary leave to remain in the United Kingdom and found that the applicant's further submissions did not amount to a fresh claim. All the points raised in her submissions had already been addressed when the applicant's earlier claim had been determined and they were not significantly different from the material that had previously been considered. The applicant's fears that she might be detained, tortured or subjected to degrading treatment given the manner of her escape were considered speculative as she had provided no evidence to support this claim. The applicant had failed to provide any evidence that the Ugandan authorities were of the opinion that she could assist them with any inquiries regarding her father. No new or compelling evidence had been provided. Article 8 had already been considered during her appeal against the refusal of her human rights application and all the issues she had raised in her current representations had also been raised before and considered thoroughly by the Adjudicator. Furthermore, the applicant had the opportunity to apply for permission to appeal against the Adjudicator's determination of 11 January 2005 but had failed to do so.

26. Following the application of Rule 39 and communication of this case to the Government for their observations, the applicant was released from detention and granted temporary admission into the United Kingdom, with a requirement to report on a fortnightly basis. The Government confirmed in writing that, as a result of the Rule 39 indication, the applicant would not be removed from the United Kingdom pending the conclusion of the proceedings before the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Immigration legislation and rules

27. Paragraph 23 of the Immigration and Asylum Act 1999 ("1999 Act" in force at the relevant time) provided:

> "(1) If the Immigration Appeal Tribunal has made a final determination of an appeal brought under Part IV, any party to the appeal may bring a further appeal to the appropriate appeal court on a question of law material to that determination.
>
> (2) An appeal under this section may be brought only with the leave of the Immigration Appeal Tribunal or, if such leave is refused, of the appropriate appeal court.
>
> (3) "Appropriate appeal court" means—
>
> (a) if the appeal is from the determination of an adjudicator made in Scotland, the Court of Session; and
>
> (b) in any other case, the Court of Appeal."

28. Section 65 under Part IV of the 1999 Act stipulates as follows:

> "(1) A person who alleges that an authority has, in taking any decision under the Immigration Acts relating to that person's entitlement to enter or remain in the United Kingdom, acted in breach of his human rights may appeal to an adjudicator against that decision unless he has grounds for bringing an appeal against the decision under the [1997 c. 68.] Special Immigration Appeals Commission Act 1997.
>
> (2) For the purposes of this Part, an authority acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the [1998 c. 42.] Human Rights Act 1998.
>
> (3) Subsections (4) and (5) apply if, in proceedings before an adjudicator or the Immigration Appeal Tribunal on an appeal, a question arises as to whether an authority has, in taking any decision under the Immigration Acts relating to the appellant's entitlement to enter or remain in the United Kingdom, acted in breach of the appellant's human rights.
>
> (4) The adjudicator, or the Tribunal, has jurisdiction to consider the question.
>
> (5) If the adjudicator, or the Tribunal, decides that the authority concerned acted in breach of the appellant's human rights, the appeal may be allowed on that ground."

29. Paragraph 22 (1) of Schedule 4 to the 1999 Act provided:

> "(1) Subject to any requirement of rules made under paragraph 3 as to leave to appeal, any party to an appeal, other than an appeal under section 71 (removal of asylum claimants to safe third countries), to an adjudicator may, if dissatisfied with his determination, appeal to the Immigration Appeal Tribunal.

(2) The Tribunal may affirm the determination or make any other determination which the adjudicator could have made."

30. Section 82 of the Nationality, Immigration and Asylum Act 2002 ("2002 Act") reads, as relevant:

"1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.

(2) In this Part "immigration decision" means—

(a) refusal of leave to enter the United Kingdom,

(b) refusal of entry clearance,

(c) refusal of a certificate of entitlement under section 10 of this Act,

(d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,

(e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,

(f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,

(g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),

(h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),

(i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),

(j) a decision to make a deportation order under section 5(1) of that Act, and

(k) refusal to revoke a deportation order under section 5(2) of that Act..."

31. Section 101 of the 2002 Act states that:

"A party to an appeal to an adjudicator under section 82 or 83 may, with the permission of the Immigration Appeal Tribunal, appeal to the Tribunal against the adjudicator's determination on a point of law."

32. Regulation 3 of the Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 ("Commencement Order 2003") provided:

"(1) Subject to Schedule 2, the new appeal provisions are not to have effect in relation to events which took place before 1 April 2003 and notwithstanding their

repeal by the provisions of the 2002 Act commenced by this Order, the old appeals provisions are to continue to have effect in relation to such events."

33. Regulation 4(3) of the Commencement Order 2003 specified that an event had taken place under the old Immigration Acts where inter alia (a) a notice was served or (b) a decision was made or taken.

34. The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) (Amendment) (No. 2) Order 2003 ("Commencement Amendment Order 2003") amended the Commencement Order 2003. Article 4, which came into force on 9 June 2003, amended the transitional provisions for appeals by applying sections 101(1) to (3), 102 and 103 of the 2002 Act (which relate to further appeals by a party to an appeal to an Adjudicator, and to statutory review of decisions of the Immigration Appeal Tribunal upon applications for permission to appeal against an Adjudicator's determination) in relation to an appeal under Part IV of the 1999 Act which was determined by an Adjudicator on or after 9 June 2003.

35. Paragraph 353 of the Immigration Rules (HC 395, as amended by HC 1112) states that:

"When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

III. RELEVANT COUNTRY BACKGROUND INFORMATION ON UGANDA

36. Paragraph 3.7.12 of the Home Office Operational Guidance Note on Uganda issued on 15 January 2007 states:

"Despite the relaxation on the rules governing political parties and the move towards multi-party politics, opposition political parties continued to face restrictions on their ability to assemble and organise and their supporters were subject to harassment and sometimes ill-treatment by the authorities. Some opposition supporters were detained by the security forces and some face charges of treason. However, others who were similarly detained were released without charge. In some cases particularly those of prominent members of political parties or those accused of treason who have been detained for long periods of time and who have suffered ill-treatment at the hands of the Ugandan authorities a grant of asylum or Humanitarian Protection may be appropriate. However, in other cases such as that of a

> low level activist detained for few days and then released without charge the harassment suffered will not reach the level of persecution or breach Article 3 of the ECHR and therefore they will not qualify for grant of asylum or Humanitarian Protection."

37. The U.S. State Department (USSD) Report on Human Rights Practices in Uganda released on 8 March 2006 states at paragraph 1(f) that:

> "There were reports that the government punished family members of suspected criminals and political opposition members."

However the next USSD Report on Uganda released on 6 March 2007 explains at paragraph 1 (f) that:

> "Unlike in the previous year, there were no reports that the government punished family members of suspected criminals and political opposition members."

38. The Immigration and Refugee Board of Canada's report entitled "Uganda: Treatment of family members of political opponents and suspected members of rebel movements such as Allied Defence Forces (ADF) and the Lords Resistance Army (LRA)" published on 4 October 2000 cites the following incident:

> "A mother of an alleged ADF rebel chief, Jamil Mukulu, whom security forces questioned several times regarding her son's whereabouts, was reportedly harassed and tortured by members of the Directorate of Military Intelligence (The Monitor 16 August 1999)."

THE LAW

39. The applicant complained that her expulsion to Uganda would violate her rights protected by Articles 3, 5 and 8 of the Convention.

I. THE GOVERNMENT'S OBJECTION ON NON-EXHAUSTION

A. The parties' submissions

40. The Government submitted that the applicant had failed to exhaust all available domestic remedies. Relying on Paragraph 23 of the 1999 Act, they argued firstly that the applicant had failed to renew her application for leave to appeal against the IAT's decision of 26 September 2000 before the Court of Appeal once such leave had been refused by the IAT (see paragraph 26 above). Secondly, the applicant had failed to apply for permission to appeal from the Adjudicator to the IAT in her human rights appeal (see paragraph 28 above). As the decision under appeal in the present case had been taken on 4 June 2001, when the Secretary of State had initially refused her appeal on human rights grounds, the 1999 Act was still applicable following the provisions of the Commencement Order 2003

(see paragraphs 31 and 32 above). Thirdly, the applicant had failed to apply for permission to apply for judicial review of the Secretary of State's decision of 27 March 2006. Finally, the applicant could have made further representations to the Secretary of State if there had been a relevant change of circumstances which she had not previously raised before the domestic authorities. If any such further submissions had been accepted as a fresh claim, she would have a right of appeal under section 82 of the 2002 Act (see paragraph 29 above). If her further submissions were rejected and not accepted as amounting to a fresh claim she could bring judicial review proceedings. The High Court could grant an injunction to prevent her removal from taking place before her judicial review application had been considered. However, this was very unlikely given the lack of evidence of a relevant change of circumstances and the comments made by the High Court judge in relation to her last application for leave to apply for judicial review.

41. The applicant did not respond to the first two of the Government's submissions. With regards to the Government's assertion that she could have applied for permission for judicial review of the decision of 27 March 2006, she claimed that her previous solicitors had advised her that as her first application for judicial review had been refused and that there had been no change of circumstances, a successful second application for judicial review was unlikely. As for the Government's final submission that she could have made further representations to the Secretary of State, the applicant contended that the Government themselves had recognised that there was no material that had not been previously considered and that therefore a fresh claim was not a realistic remedy. Furthermore, the Government had not argued that she would have stood any realistic prospects of success in any judicial review or fresh application.

B. The Court's assessment

42. The Court recalls that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time, namely, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999, § 55). Further, where there is a choice of remedies open to an applicant, Article 35 must be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the

rights and freedoms guaranteed by the Convention (*Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000).

43. As to the Government's submission that the applicant failed to exhaust available domestic remedies by not renewing her application for leave to appeal against the IAT's decision of 26 September 2000 to the Court of Appeal, the Court notes that this option was available to her under Paragraph 23 of the 1999 Act which provided only for appeals on "a question of law". According to the reasons given by the IAT, permission to appeal to the Court of Appeal was refused on the basis that the applicant's grounds of appeal did "not disclose any arguable point of law". Having regard to the clear position taken by the IAT, the Court is not persuaded that the Government have shown that a renewed application to the Court of Appeal for leave to appeal would have offered any reasonable prospects of success.

44. As regards the Government's second submission regarding non-exhaustion (see paragraph 39 above), even assuming that the applicant could have applied to the IAT against the Adjudicator's refusal of her human rights appeal of 11 January 2005 following the provisions of the Commencement Order 2003, despite the entry into force of the Commencement Amendment Order 2003 cited above (see paragraph 33 above), the Court does not regard this as a remedy which was accessible, capable of providing redress and offering reasonable prospects of success. In so finding, the Court observes that it was not entirely clear which provisions were applicable to the applicant's case due to the change to the applicable legislation introduced by the 2002 Act and its concomitant Commencement Orders. The Court further notes the Adjudicator's observation during the January 2005 hearing that the applicant's representative herself had conceded that the Article 3 point was difficult to uphold and considers this to be strong evidence that any further appeal, if available, would offer little if any prospects of success. In light of the foregoing, the Court finds that the applicant's application to the Secretary of State on human rights grounds and her subsequent appeal against that decision to an Adjudicator under section 65 of the 1999 Act, all following the failure of her initial asylum claim, were sufficient to dispense her from the obligation to exhaust all domestic remedies under Article 35 § 1 of the Convention.

45. As to the Government's third submission that the applicant could have applied for permission to apply for judicial review of the Secretary of State's decision of 27 March 2006, the Court notes the applicant's explanation that she was advised by her solicitors not to pursue leave to apply for judicial review for a second time, as there was no new evidence to support her claims. In light of the applicant's unsuccessful application for leave to apply for judicial review in April 2005 and the lack of any new evidence, the Court similarly finds that this remedy offered little if any

prospects of success. Finally, the Court does not consider the Government's final submission that the applicant could have made further representations to the Secretary of State tenable, as by the Government's own admission there was no material which had not been considered previously. It follows that this was not an adequate or effective remedy for the purposes of Article 35 § 1 of the Convention.

46. In view of the foregoing, the Court dismisses the Government's objections on non-exhaustion. It concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor have any other grounds for declaring it inadmissible been established. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that her expulsion to Uganda would violate Article 3 of the Convention as there was a real risk that she would be ill-treated upon return.

Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

1. The applicant

48. The applicant submitted that she faced a real and immediate risk of ill-treatment and arbitrary detention if returned to Uganda. She would be targeted due to the political activities of her father who had been detained without trial in Uganda since 1998 on treason charges. The authorities might ill-treat her in order to extract information concerning her father. She argued that the fact that her original passport had been confiscated and that she had once been detained and twice interrogated before her arrival in the United Kingdom was evidence of her past persecution. She emphasised that the domestic authorities had all found her to be credible and had concluded that she had a genuine subjective, if not objectively reasonable, fear of persecution. She relied on the 2006 US State Department Report which referred to accounts that the Ugandan government had punished family members of, *inter alia*, political opponents (see paragraph 36 above) and the 2000 report published by the Immigration and Refugee Board of Canada, which recounted an incident when the mother of an alleged rebel chief was harassed and tortured after being questioned several times concerning her

son's whereabouts (see paragraph 37 above), as objective country evidence that family members of political opponents were at risk in Uganda.

2. The Government

49. The Government submitted that the applicant had produced no evidence to displace the findings of the IAT on her asylum claim and the Adjudicator on her human rights appeal that her return to Uganda would not constitute a breach of Article 3. In particular, they noted that her legal representative had accepted that her Article 3 claim "would be hard to uphold" before the Adjudicator on 11 January 2005. The IAT and both Adjudicators had concluded that the applicant held no political opinion of her own, had not been politically active and had not in any way been perceived as having assisted her father politically. Available country information on Uganda did not indicate that the applicant might suffer persecution in her own right or by any form of association with her father. While it was accepted that the Ugandan government might still target political opponents, the applicant would not be perceived as a political opponent herself and neither was there any reasonable likelihood that she would be targeted merely because of her father.

B. The Court's assessment

(a) General principles

i. Responsibility of Contracting States in the event of expulsion

50. It is the Court's settled case-law that as a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, § 67, and *Boujlifa v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 42). In addition, neither the Convention nor its Protocols confer the right to political asylum (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 102, and *Ahmed v. Austria*, judgment of 17 December 1996, *Reports* 1996-VI, § 38, cited in *Saadi v. Italy*, [GC], no. 37201/06, judgment of 28 February 2008, §§ 124).

51. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case Article 3 implies an

obligation not to deport the person in question to that country (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, §§ 90-91; *Vilvarajah and Others*, cited above, § 103; *Ahmed*, cited above, § 39; *H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 34; *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007; and *Saadi*, cited above, § 125).

ii. Material used to assess the risk of exposure to treatment contrary to Article 3 of the Convention

52. In determining whether substantial grounds have been shown for believing that there is a real risk of treatment incompatible with Article 3, the Court will take as its basis all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, cited above, § 37, and *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). In cases such as the present the Court's examination of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi*, cited above, § 128).

53. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

54. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine;* and *Saadi*, cited above, *§§* 128-129).

55. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001) and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by

other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I § 73; *Müslim*, cited above, § 68; and *Saadi*, cited above, § 131).

56. With regard to the material date, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion. However, if the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal*, cited above, §§ 85-86, and *Venkadajalasarma v. the Netherlands*, no. 58510/00, § 63, 17 February 2004). This situation typically arises when, as in the present case, deportation or extradition is delayed as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court (see *Mamatkulov and Askarov*, cited above, § 69). Accordingly, while it is true that historical facts are of interest in so far as they shed light on the current situation and the way it is likely to develop, the present circumstances are decisive (see, *Saadi*, cited above, § 133).

iii. The concepts of "inhuman or degrading treatment"

57. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006).

(b) Application of the above principles to the present case

58. The Court notes that the most severe form of persecution that the applicant experienced in Uganda before coming to the United Kingdom was her arrest by two unidentified men when visiting her father in prison in 1987 and her subsequent detention for one day during which she was questioned about her father's political activities. At no point has it been suggested that she was ill-treated during her detention. In fact, the applicant's own account is that she was allowed to visit the local hospital after claiming to be unwell. Accordingly, the Court does not consider that the circumstances of the applicant's detention for one day's duration reach the minimum level of severity required to fall within the scope of Article 3 (see *Price v. the United Kingdom*, cited above, § 24,). As to the mental effects that such treatment had on the applicant, the Court notes that she opted to return to Uganda in January 1997, following her flight to Kenya in the wake of her father's disappearance, as by her own admission she was hopeful that the

situation would improve. The Court regards the applicant's voluntary return to Uganda and admitted optimism as to the future as evidence of the limited negative mental effects of her detention.

59. The Court further observes that the applicant was then left undisturbed until the end of 1997 when she was questioned about her father's whereabouts and her passport was confiscated. Furthermore, she was not in any way harassed in the time between her return to Uganda in January 1997 and her alleged questioning at the end of 1997. It is also noteworthy that she was subsequently able to obtain another passport under another one of her known and actively used names, with which she was able to travel to Kenya without any difficulty in July 1998 before again voluntarily returning to Uganda.

60. The Court views the applicant's account that she had initially planned to visit the United Kingdom as a tourist before late September 1998, when her father was brought to the family home handcuffed by the authorities who were searching for evidence, as an indication that she was not fearful of the situation in Uganda until that event. It further notes the observations of the domestic authorities in this regard, in particular that of the IAT in its majority decision of 26 September 2000, that neither the applicant nor any other family members were arrested or in any way mistreated during the said raid on the family home, and their conclusion that if the authorities had intended to use the applicant to extract information to assist in her father's conviction they would have done so during the raid of September 1998 when they were specifically looking for incriminating evidence. Despite the raid on her family home, the Court notes that the applicant managed to leave Uganda on her own passport a few days after the incident without any reported difficulties.

61. Moreover, the Court cannot ignore the fact that the applicant's father has now been in detention and in the custody of the Ugandan authorities for almost ten years. It considers further that if the authorities had wanted information concerning the applicant's father they would have been more likely to detain her before he was found and taken into their exclusive custody. Nor has it been explained why the applicant would be expected to know any more about her father's political activities than he himself, particularly after the passage of almost ten years during which she has been out of the country. Having regard to all these considerations, the Court finds that no substantial grounds have been shown for believing that the applicant is of any continuing special interest to the Ugandan authorities or that she will be persecuted upon her return.

62. In support of its above conclusion, the Court takes into consideration the applicant's representative's concession before the Adjudicator on 11 January 2005 that the Article 3 complaint would be hard to uphold and that there was “no emphatic ground” on which to contend that Article 3 would be breached. It also notes that despite the fact that the applicant's

mother and siblings appear to reside in Kenya, the rest of the family, including her niece, were doing well in Uganda at the time of the Adjudicator's determination of January 2005.

63. As is incumbent upon it, the Court has taken into account all relevant country information submitted by the parties and that obtained *proprio motu*. As to the 2006 US State Department (USSD) report on Uganda which the applicant submitted and its references to reports that the Ugandan Government has punished family members of opposition members, the Court observes that the more recent USSD report released in March 2007 explains that "unlike in the previous year, there were no reports that the government punished family members of suspected criminals and political opposition members" (see paragraph 36 above). Similarly the Court takes into consideration the Home Office's recent Operational Guidance Note on Uganda of 15 January 2007 (see paragraph 35 above), which states that in cases of low-level activists detained for a few days and then released without charge the harassment suffered would not reach a level of persecution in breach of Article 3 of the Convention. The Court notes that by the applicant's own admission she was not politically active in any way in Uganda, a fact which was highlighted by the domestic courts and the respondent Government. Considering that the country information shows that even low-level activists would not be at risk of persecution in Uganda, the Court finds no reason to believe that someone who has never been active at all would be at risk merely by association with a relative. This conclusion is further supported by the 2007 USSD report cited above.

64. The Court observes that the only suggestion of potential targeting of the family members of political opponents is to be found in the applicant's reference to the Immigration and Refugee Board of Canada report dated October 2000, which refers to an event in 1999 when a mother of an alleged rebel chief, whom security forces had questioned several times regarding her son's whereabouts, was reportedly harassed and tortured by members of the Directorate of Military Intelligence. The Court notes that this event occurred a significant time ago, approximately nine years, and that it is unsupported by any other corroborating country evidence as to the existence of a general risk to the families of political opponents. Furthermore, this reported incident can be distinguished from the facts of the present case in that it involved questioning as to a son's whereabouts on numerous occasions on which the mother had presumably initially failed to cooperate. In the instant case, however, the applicant's father's location is known as he has been in detention and in the custody of the authorities for almost ten years. Furthermore, the applicant has not been detained or questioned during several periods when it was clearly open to the authorities to do so.

65. Therefore, after examining the individual circumstances of the applicant in the light of the current general situation in Uganda (see *Vilvarajah and Others*, cited above, § 108), the Court finds that no

substantial grounds have been established for believing that she would be exposed to a real risk of torture or inhuman or degrading treatment within the meaning of Article 3 of the Convention if expelled.

66. Accordingly, the expulsion of the applicant to Uganda would not be in violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

67. The applicant complained that her expulsion to Uganda would also violate Article 5 of the Convention as there was a real risk that she would be detained arbitrarily upon return.

68. In light of its conclusions on the applicant's Article 3 complaint, the Court finds that no separate issue arises under Article 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

69. The applicant further complained that her removal to Uganda would constitute a disproportionate interference with her right to respect for her private life in breach of Article 8 of the Convention, which provides as relevant:

> "1. Everyone has the right to respect for his private ... 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 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."

A. The parties' submissions

70. The applicant submitted that she had established a private life in the United Kingdom which involved close ties with her church and her part-qualification as an accountant. She had a male friend and hoped that the relationship would develop. Furthermore, the State was responsible for several instances of delay during the processing of her asylum claim and subsequent human rights appeal, which rendered her case exceptional. She had been living in the United Kingdom for almost ten years. Moreover, her removal to Uganda would be traumatic and would likely exacerbate her asthmatic condition.

71. The Government contested that argument. They submitted that the applicant's circumstances were not capable of coming within the ambit of private life under Article 8 of the Convention as the provision did not provide a right to choose the country in which a person sought to reside and

work without regard to that country's immigration laws. Even assuming that the applicant had established private life in the United Kingdom and that it had been interfered with, such interference was in accordance with the law, pursued a legitimate aim, namely the maintenance and enforcement of immigration control, *inter alia*, for the preservation of the economic well-being of the country, the protection of health and morals and the protection of the rights and freedoms of others and was proportionate in the circumstances.

B. The Court's assessment

1. Relevant principles

72. The Convention does not guarantee the right of an alien to enter or to reside in a particular country. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, p. 18, § 36). The Court has also recognised that, regardless of the existence or otherwise of "family life", and depending on the circumstances of a particular case, such removal may also give rise to an infringement of an applicant's right to respect for his private life (see *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-, § 59).

73. The Court also reiterates its finding in *Bensaid v. the United Kingdom* (no. 44599/98, judgment of 6 February 2001 at § 46) that "not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8."

74. However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, pp. 60-61, § 36).

75. Any interference with Article 8 rights will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 8. It is therefore necessary to determine whether the interference was "in accordance with the law", motivated by one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society".

2. Application of the above principles to the present case

76. The Court does not consider it necessary to determine whether the applicant's accountancy studies, involvement with her church and friendship of unspecified duration with a man during her stay of almost ten years in the United Kingdom constitute private life within the meaning of Article 8 § 1 of the Convention. Even assuming this to be the case, it finds that her proposed removal to Uganda is "in accordance with the law" and is motivated by a legitimate aim, namely the maintenance and enforcement of immigration control. As to the necessity of the interference, the Court finds that any private life that the applicant has established during her stay in the United Kingdom when balanced against the legitimate public interest in effective immigration control would not render her removal a disproportionate interference. In this regard, the Court notes that, unlike the applicant in the case of *Üner* (cited above), the present applicant is not a settled migrant and has never been granted a right to remain in the respondent State. Her stay in the United Kingdom, pending the determination of her several asylum and human rights claims, has at all times been precarious and her removal, on rejection of those claims, is not rendered disproportionate by any alleged delay on the part of the authorities in assessing them.

77. Nor does the Court find there to be sufficient evidence that the applicant's removal with her asthma condition, which she asserts is exacerbated by stress, would have such adverse effects on her physical and moral integrity as to breach her rights under Article 8 of the Convention.

78. Accordingly, the applicant's removal to Uganda would not give rise to a violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that the applicant's removal to Uganda would not give rise to a violation of Article 3 of the Convention;

3. *Holds* that no separate issue arises under Article 5 of the Convention;

4. *Holds* that the applicant's removal to Uganda would not give rise to a violation of Article 8 of the Convention.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President