



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39633/98
by Edward Kiname ALIDJAH-ANYAME
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 4 May 1999 as a Chamber composed of

Mr J-P. Costa, *President*,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mr K. Jungwiert,
Mrs H.S. Greve,
Mr K. Traja, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 January 1998 by Edward Kiname Alidjah-Anyame against the United Kingdom and registered on 3 February 1998 under file no. 39633/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Ghanaian national, born in Accra in 1955. He is currently living in London, England, and is subject to a deportation order. He is married to a Ghanaian national who is living and working in Brazzaville. The two children of the marriage, the younger of whom was born in the United Kingdom, are living with the applicant.

The applicant is represented in the proceedings before the Court by Bajwa and Co., a firm of advocates practising in London, England.

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

The applicant claims that he originally entered the United Kingdom on 5 December 1988 and was granted leave to remain for a limited period to pursue a course of studies in London. While in London he became a member of the Ghana Democratic Movement ("GDM"), an anti-government group. On 22 January 1990 he returned to Ghana to visit his parents and to deliver publications on behalf of the GDM.

The applicant arrived back in the United Kingdom on 27 February 1990 through normal channels on a flight from Lagos, Nigeria. A week later he learned that the Ghanaian authorities had traced the distribution of the GDM leaflets to him. The applicant was given leave to enter for two months to complete his studies.

On 24 April 1990 he was granted further leave to remain as a student until 23 September 1990. In a letter dated 3 September 1990 the Commonwealth Welfare and Immigration Advisory Centre ("CWIAC") applied for political asylum on the applicant's behalf claiming that he was being sought by the Ghanaian authorities in connection with the distribution of anti-government publications. The Immigration and Nationality Department wrote to the applicant on 27 March 1996 inviting him to attend for interview on 24 April 1996. A copy of the letter was sent to the CWIAC. The applicant failed to attend. He maintains that this was due to the fact that the letter informing him of the interview had been wrongly addressed.

The applicant submitted an asylum application on 22 May 1991 claiming that he had a well-founded fear of persecution if he were to be returned to Ghana. The Secretary of State considered the request on the basis of the applicant's written representations. In a letter dated 29 October 1996 the Immigration and Nationality Department notified the applicant that the Secretary of State had refused his application. Among his reasons for refusing the request, the Secretary of State highlighted that the application was made less than three weeks before the date of expiry of his leave to remain as a student and over six months after he discovered that he was wanted by the Ghanaian authorities. In the Secretary of State's opinion these factors undermined the credibility of his asylum claim. In addition, the Secretary of State considered that the claim as a whole was vague, lacking in detail, substance and credibility, and that his account of being sought by the Ghanaian authorities had been fabricated in order to bolster a bogus claim made with the sole intention of circumventing the immigration rules less than three weeks before his limited leave to remain in the United Kingdom was due to expire.

Furthermore, the Secretary of State stated that the political and human rights situation in Ghana had changed radically since the applicant's departure in 1990 and there was no reason under the United Nations' Geneva Convention relating to the Status of Refugees 1951 why the applicant could not return safely to his country of nationality.

On 4 December 1996 the Special Adjudicator heard the applicant's appeal against the decision of the Secretary of State. The applicant appeared in person. At the hearing the applicant testified that he had two young children, one of whom was born in the United Kingdom. He stated that his wife was a United Nations official posted in Brazzaville and that she had travelled to the United Kingdom every year to see him up until 1996. He told the Special Adjudicator that he had been detained and tortured in 1982 and 1986. In 1987 he went to the United Kingdom to study but was able to travel back to Ghana in 1988 and in 1989 since he did not risk persecution during that period. It was only when he distributed the GDM materials during his visit in 1990 that the risk of persecution became a reality again.

On 9 January 1997 the Special Adjudicator dismissed the appeal. In his decision the Special Adjudicator agreed with the Secretary of State's opinion that the timing of the applicant's request for asylum as well as his failure to attend the interview reflected adversely on his credibility. He found the applicant's account of his arrest and torture in 1982 and in 1986 and his allegation of being sought by the authorities in connection with the distribution of GDM materials entirely unsubstantiated. He observed in addition that his movements back and forth between Ghana and the United Kingdom between 1987 and 1990 were not the actions of a man who has a well-founded fear of persecution. The Special Adjudicator concluded:

"... I do not find that the appellant is a credible witness and I find that he has fabricated the whole account.

It is quite clear that even if I accepted part of the appellant's account there has been an amnesty in Ghana and that there has been a sea change in the politics in Ghana and there has been a gradual return to democracy."

On 16 June 1997 the High Court refused the applicant's application for leave to apply for judicial review of the Secretary of State's decision. The applicant did not renew his application.

COMPLAINTS

The applicant maintains that he has a well-founded and legitimate fear that his right to liberty and security of person would be violated if he were to be returned to Ghana. He also complains that his removal to Ghana would result in long-term separation from his wife who is working in Brazzaville. He refers to the fact that the two young children of their marriage are living with him in the United Kingdom, the younger having been born there. In addition he maintains that he is being treated for a serious eye condition in the United Kingdom. The applicant invokes Articles 5, 8, 9, 10 and 11 of the Convention.

THE LAW

1. The applicant maintains that his removal to Ghana would be in breach of Article 5 of the Convention, which provides as relevant:

“1. Everyone has the right to liberty and security of person...”

The Court recalls that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. Moreover, the right to political asylum is not contained in either the Convention or its Protocols. However, it is well established in the case-law of the Convention institutions that expulsion by a Contracting State may give rise to an issue under Article 3 (prohibiting inhuman and degrading treatment) and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see, among many other authorities, the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1853, §§ 73-74).

The Court notes that the applicant has not specifically invoked Article 3 of the Convention, relying rather on an alleged threat to his liberty and security under Article 5 of the Convention and the consequences which that will entail for him. It observes that the fact that an applicant who is subject to a deportation order may risk imprisonment in the receiving country cannot *per se* give rise to an issue under Article 3. Furthermore, to the extent that the complaint relates to the severity of the prison sentence which will be imposed by the authorities of the receiving State, it would observe also that it is only in exceptional circumstances that the length of a prison sentence will raise such an issue.

In any event, the Court notes that in the instant case the applicant has not substantiated on the materials he has adduced before it that he is being sought by the authorities in connection with an alleged political offence. It observes that the domestic authorities were particularly sceptical of the veracity of his account and it sees no reason to depart from that finding, it being noted that the Special Adjudicator heard the applicant in person and was able to establish the inconsistencies in his evidence. The Court would further observe that, even assuming that there was a possibility that the applicant will be arrested and detained in Ghana, there is nothing to suggest that he is at risk of being subjected to treatment prohibited by Article 3 in the receiving country.

As to the applicant's complaint that his deportation and subsequent detention would result in an aggravation of his eye complaint, the Court notes that it is only in exceptional circumstances that the medical condition of a person to be deported can raise an issue under Article 3 of the Convention (see the *D. v. the United Kingdom* judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, p. 794, § 54). In the Court's view the facts as alleged by the applicant do not disclose any appearance of a potential violation of that Article on the ground referred to by the applicant.

It follows that this complaint is inadmissible as being manifestly-ill founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant further relies on Article 8 of the Convention which provides as relevant:

“1. Everyone has the right to respect for his .. family life...”

The Court observes that the expulsion or removal of an alien by the authorities of a Contracting State in which his or her close relatives reside or have the right to reside may give rise to issues under Article 8 of the Convention (see, among other authorities, the *Nasri v. France* judgment of 13 July 1995, Series A no. 320-B, §§ 34-46).

The Court notes that the applicant has failed to comply with the immigration controls of the respondent State and has like his spouse, who is living and working in Brazzaville, no claim to residence in the United Kingdom. He and his spouse, had their second child in the United Kingdom in the knowledge of the applicant’s precarious status in the United Kingdom and his liability to deportation. Furthermore, the children born of the marriage are of a young and adaptable age and it can be reasonably considered that they can make the transition to Ghanaian culture and society without undue hardship. In these circumstances, and in view of the real possibility of the family unit being successfully reconstituted in Ghana, the Court finds that there are no elements concerning respect for family life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the applicant’s removal does not disclose a lack of respect for his right to family life as guaranteed by Article 8 of the Convention.

For these reasons the applicant’s complaint under Article 8 must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicant also raises complaints in respect of his deportation under Articles 10 and 11 of the Convention, which provide respectively and as relevant:

“1. Everyone has the right to freedom of expression...”

and

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others...”

The Court recalls that Articles 10 and 11 do not themselves grant a right of asylum or a right to stay in a given country. Deportation of an alien pursuant to immigration controls does not therefore constitute an interference with the rights guaranteed under these Articles. Furthermore, an alien’s rights under Articles 10 and 11 are independent of his or her right to stay in the country and do not protect this latter right. In the instant case the applicant has not, whilst in the jurisdiction of the United Kingdom, been subjected to any restrictions on his rights to impart information on the situation in Ghana or to associate with groups for that purpose. Nor has the applicant shown that the refusal of his asylum request and the decision to remove him in reality constituted a penalty imposed on him for having exercised his rights under Articles 10 and 11 rather than a proper exercise of the discretionary power of deportation reserved to Contracting States. Moreover, the fact that there is a risk that restrictions may be imposed on the applicant’s rights to freedom of expression and association in the receiving country cannot in itself override the exercise of the said discretionary power.

For these reasons the Court finds that there is no indication of an interference with the applicant's rights under the above-mentioned Articles of the Convention and these complaints are therefore to be dismissed as being manifestly ill-founded within the meaning of 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