



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

FOURTH SECTION

DECISION

Application no. 13950/12
O.G.O.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 18 February 2014 as a Chamber composed of:

Ineta Ziemele, *President*,

Päivi Hirvelä,

Ledi Bianku,

Nona Tsotsoria,

Zdravka Kalaydjieva,

Paul Mahoney,

Faris Vehabović, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having regard to the above application lodged on 8 March 2012,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, O.G.O., is a Nigerian national who was born in 1988 and lives in London. The President granted the applicant's request for her identity not to be disclosed to the public (Rule 47 § 3). She was represented before the Court by Mr A. Weiss of the Aire Centre, a lawyer practising in London.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms L. Dauban of the Foreign and Commonwealth Office.

A. The circumstances of the case

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

1. Events in Nigeria

3. The applicant claimed that at the age of seven she was forced to work as a domestic servant on a farm. When she was eleven she was given to a family in Lagos, who forced her to do domestic labour without pay. She was ill-treated and beaten on occasion.

4. In approximately 2004 the same family arranged for the applicant to travel to the United Kingdom with them. The family arranged the applicant's travel documents and promised her that she would be able to study in the United Kingdom.

2. Events after the applicant's arrival in the United Kingdom

5. On arrival in the United Kingdom, the applicant was forced to work full-time for the family in London as a domestic servant without pay. She was prohibited from leaving the home except in the course of her duties and did not attend school. The family kept her identity and travel documents. They regularly beat her and threatened that, if she left the home, she would be sent back to Nigeria.

6. At an unknown date the applicant left the family's home.

3. The applicant's applications to regularise her immigration status in the United Kingdom

7. At some point in 2009 the applicant met someone who submitted an application for a residence permit on her behalf. The application was refused by the United Kingdom Border Agency on 28 January 2010.

8. On 21 April 2010 the applicant was detained as an illegal entrant. She lodged an asylum application on the same day. She claimed that she had been placed in a situation of domestic servitude at a very young age; had been trafficked to the United Kingdom; and had a fear of destitution and forced labour in Nigeria.

9. On 5 May 2010 the United Kingdom Border Agency, acting in their capacity as a "competent authority" under the United Kingdom's National Referral Mechanism ("NRM"), found that there were reasonable grounds to believe that the applicant was a victim of human trafficking.

10. However, on 14 May 2010 the United Kingdom Border Agency refused her asylum application. It concluded that, even if the applicant had been trafficked, that would not engage the United Kingdom's obligations under the Refugee Convention. Furthermore, it considered that there would

be a sufficiency of protection available to her in Nigeria and if necessary she could internally relocate for safety.

11. On 5 July 2010 the First-tier Tribunal (Immigration and Asylum Chamber) dismissed her appeal, finding that she was not credible and that she had failed to demonstrate that she would be at any risk upon return to Nigeria. The applicant had not attended or been represented at the appeal hearing.

12. On 10 August 2010 the Upper Tribunal ordered a fresh hearing before the First-tier Tribunal.

13. On 29 November 2010 the First-tier Tribunal dismissed her appeal. The Immigration Judge did not accept that the applicant's account was plausible or credible and did not believe that the applicant had been trafficked into the United Kingdom. In any event, he found that the applicant, who would be returning to Nigeria as an adult, could seek protection from the Nigerian authorities, who were taking steps to tackle the issue of trafficking.

14. On 17 November 2010 and 20 January 2011, the First-tier Tribunal and Upper Tribunal respectively refused her applications for permission to appeal.

15. On 16 March 2011 the United Kingdom Border Agency, acting again as the "competent authority" under the NRM, made a conclusive decision that the applicant was not a potential victim of trafficking. It considered that, even if the applicant's account was wholly credible, which it was not, there would be a sufficiency of protection from the Nigerian authorities available to her.

16. Removal directions to Nigeria were issued and her removal was scheduled for 20 April 2011. However, the removal directions were cancelled when the High Court granted an injunction.

17. On 12 October 2011 the applicant submitted further representations to the United Kingdom Border Agency regarding her risk of destitution and ill-treatment on return to Nigeria.

18. On 20 February 2012 the United Kingdom Border Agency decided that those representations did not amount to a fresh asylum claim because the applicant's claim had already been fully examined and rejected by the First-tier Tribunal in a determination upheld by the Upper Tribunal.

19. On 8 March 2012 the applicant's representatives applied for judicial review of the Secretary of State's decision of 20 February 2012.

20. On the same day the applicant lodged her application with this Court and the Acting President of the Section applied Rule 39 to stop her removal to Nigeria that evening.

21. The application for judicial review of the Secretary of State's decision of 20 February 2012 was withdrawn by consent on 29 May 2012 as the United Kingdom authorities had agreed to consider whether or not the applicant was a victim of trafficking under the NRM.

22. On 29 April 2013 the applicant learned that she had been granted refugee status in the United Kingdom. In addition, the United Kingdom Competent Authority concluded that she had been a victim of trafficking.

23. By letter of 2 May 2013 the applicant's representative notified the Court of these developments. In the letter the representative anticipated that the Court might wish to strike the case out of the list. However, as the applicant had a pending civil claim concerning her treatment in detention and the authorities' initial failure to identify her as a victim of trafficking, he suggested that the Court might prefer to keep the case open until the civil proceedings had concluded.

COMPLAINTS

24. The applicant complained that:

- i. her proposed expulsion to Nigeria would expose her to treatment contrary to Article 3 of the Convention both because of the conditions that she would face as a victim of trafficking without any protection and because she would be at real risk of ill-treatment from her traffickers and their affiliates;
- ii. the applicant had further complained that her expulsion would breach Article 4 of the Convention both because it would expose her to a real risk of re-trafficking in Nigeria and because it would make it impossible for the British police to conduct an effective criminal investigation into her trafficking claims as required by the Trafficking Convention;
- iii. the applicant had also complained that her expulsion would be a disproportionate interference with her rights to moral and physical integrity under Article 8 of the Convention given her vulnerability as a trafficking victim and ongoing mental health problems; and
- iv. finally, the applicant had complained that the failure of the domestic authorities to identify her as a victim of trafficking deprived her of an effective remedy under Article 13 of the Convention taken with Articles 3, 4 and 8 of the Convention.

THE LAW

A. Complaints under Articles 3, 4, 8 and 13 of the Convention

25. The Court considers that this matter has resolved and should therefore be struck out pursuant to Article 37 § 1(b). In this regard, it notes that the applicant is no longer at risk of being removed from the United Kingdom as she has been granted Indefinite Leave to Remain (see, among other examples, *L.R. v. the United Kingdom* (dec.), no. 49113/09, 14 June 2011). Moreover, the United Kingdom authorities have accepted that she was a victim of trafficking.

26. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

27. In view of the above, it is appropriate to lift the interim measure indicated under Rule 39 of the Rules of Court and to strike the case out of the list.

B. Application of Rule 43 § 4 of the Rules of Court

28. Rule 43 § 4 of the Rules of Court provides:

“When an application has been struck out, the costs shall be at the discretion of the Court. ...”

29. The applicant claimed reimbursement of GBP 2781.25 in legal costs on the ground that the need to bring an application in the present case arose from the authorities’ failure to identify her as a victim of trafficking. In addition, she had to seek a Rule 39 application in order to prevent her removal to Nigeria.

30. Although the Government accepted that the applicant had not been found to be a victim of trafficking at the date she lodged her application with the Court, they pointed out that the Home Office had agreed to reconsider her claim by way of settlement of the domestic judicial review claim. It was this agreement – and not the application to the Court – which led to the eventual grant of refugee status. Moreover, it had not been necessary for her to seek a Rule 39 indication from the Court as there had been a domestic remedy available to her in the form of an application to the Administrative Court for an injunction preventing her removal.

31. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 of the Rules of Court are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002,

Voorhuis v. the Netherlands (dec.), no 28692/06, 3 March 2009, and *Youssef v. the Netherlands* (dec.), no. 11936/08, 27 September 2011). 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 are reasonable as to quantum.

32. In the present case, the application was lodged with the Court on 8 March 2012, which was the same day that the applicant lodged her application for judicial review of the Secretary of State's decision on 20 February 2012. The Home Office indicated its intention to reconsider the allegations of trafficking in early April 2012, more than a month before the applicant's complaints were communicated to the Government by the Court. As a result of the Home Office's decision, the applicant withdrew judicial review proceedings on 29 May 2012. The application to this Court was therefore neither necessary for, nor instrumental in, the resolution of the case. Moreover, the applicant had obtained an injunction to halt her removal on 20 April 2011 and she has not satisfactorily explained why a further injunction could not have been sought to halt her removal on 8 March 2012. The Court is therefore unable to accept that the legal costs claimed by the applicant were necessarily incurred.

33. Accordingly, the Court sees no grounds to award the applicant any sum under this head.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President