THE EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF A.A. v. THE UNITED KINGDOM

(Application no. 8000/08)

JUDGMENT

STRASBOURG, 20 September 2011

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 A.A. v. the United Kingdom,

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

Lech Garlicki, President,
Nicolas Bratza,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, judges,
and Lawrence Early, Section Registrar,

Having deliberated in private on 30 August 2011,

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

PROCEDURE

The case originated in an application (no. 8000/08) 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, A.A. ("the applicant"), on 15 February 2008. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

The applicant was represented before the Court by the Aire Centre, a non-governmental organisation based in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms L. Dauban, Foreign and Commonwealth Office.

The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the United Kingdom.

On 27 April 2010 the President of the Chamber decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

The applicant was born in Nigeria in October 1986 and currently lives in London.

On 5 September 2000, at the age of 13 he arrived in the United Kingdom from Nigeria, where he was granted entry clearance together with his two sisters to join their mother, who had resided for four years in the United Kingdom and was working as a nurse. The applicant has not seen his father since 1991, when the latter abandoned the family. Prior to arriving in the United Kingdom, he resided with his elderly maternal grandfather in a town a day's travel from Lagos.

On 27 September 2002, at the age of 15, the applicant was convicted of the rape, together with a group of other boys, of a 13 year-old girl. The sentencing judge remarked:

"The fact is that your self-centred behaviour has had a profound and distressing effect on the everyday life of a thirteen year-old girl. In my view, you are an intelligent and articulate young man, someone who tailored your account to your advantage and you cast deliberate aspersions on your victim. Your intention was to obtain sexual gratification with what in reality was an impressionable schoolgirl by a combination of persistence, charm and finally force ..."

Taking into account the applicant's age and previous good character and the fact that there were few aggravating features, the judge imposed a sentence of detention of four years at a Young Offenders' Institution, together with registration on the sex offenders' register under the Sex Offenders Act 1997.

On 7 July 2003, while the applicant was still in detention, the Home Office granted him Indefinite Leave to Remain in the United Kingdom following the grant of Indefinite Leave to Remain to his mother.

On 8 September 2003, the applicant was served by the Home Office with a notice of liability to a deportation order on account of the rape conviction.

On 17 May 2004 a Parole Assessment Report was prepared, concluding that the applicant's response to rehabilitation was positive overall and that he posed a low risk of re-offending and of causing harm to the public. It noted his exemplary conduct in prison and the consistently good reports received. While in detention, the applicant sat and passed national school education examinations, obtaining GSCE and AS-level qualifications.

On 27 July 2004, while still in detention, the applicant was served with a deportation order in the following terms:

"It is concluded that in light of the seriousness of your criminal offence your removal from the United Kingdom is necessary in a democratic society for the prevention of disorder and crime and for the protection of health and morals.

...

You have stated that if you are returned to Nigeria Article 8 would be infringed. The Home Office has carefully considered your representations, but we note that you were convicted of rape at Central Criminal Court for which you were sentenced to four years imprisonment. We consider that the concerns that you have raised about your family life are outweighed by the public interest in preventing crime and consider that any interference with your family life is in your case outweighed by the public interest in preventing crime, and your removal is proportionate in pursuit of that aim under Article 8(2)."

The applicant appealed against the order.

On 16 August 2004 the applicant was released from prison on licence for good behaviour, having served approximately one year and ten months of his four-year sentence. In September 2004, he enrolled at Croydon College in order to study towards obtaining A-level qualifications, the second part of national school education examinations. He obtained three A-levels in summer 2005.

On 6 July 2005, the applicant's probation officer confirmed that the applicant had complied with all reporting instructions since his release. The probation officer assessed the applicant's risk of re-offending as low.

On 12 August 2005, the Immigration Judge of the Asylum and Immigration Tribunal ("the AIT") allowed the applicant's appeal against the deportation order on the basis that the discretion to make the deportation order had not been exercised fairly and proportionately.

On 22 August 2005, the Secretary of State applied to the AIT for reconsideration of the decision. The Senior Immigration Judge duly ordered reconsideration on 25 August 2005.

In September 2005, the applicant commenced a university undergraduate degree in economics, banking and finance. He lived with friends during term-time but continued to regard his mother's address as his permanent residence.

On 17 January 2007, a panel of the AIT unanimously concluded that there had been a clear material error in the approach of the Immigration Judge and quashed his decision. It adjourned the matter for reconsideration on all issues.

On 13 April 2007 a hearing de novo of the applicant's case was conducted by the AIT. Delivering judgment, the Immigration Judge indicated that the various factors to which this Court's case-law refers had been taken into account. He noted that the applicant was 20 years old and had spent almost fourteen years, including his youth and formative years, in Nigeria. He further observed that the applicant had resided for six years and seven months in the United Kingdom, a period which included two years and four months spent on remand or serving his sentence. He also considered the strength of the applicant's connections to the United Kingdom, observing that he was close to his mother (now a British citizen), sisters and uncle, all of whom resided in the United Kingdom, that he attended a church and that he was studying at university. The judge further had regard to the applicant's personal history, including his rape conviction and the grant of Indefinite Leave to Remain in July 2003. He took account of the applicant's domestic circumstances and his permanent residence with his mother and previous good character. He examined the nature of the offence for which the applicant was convicted, including the sentencing judge's remarks (see paragraph 8 above) and the absence of any reference to deportation, and accepted that the applicant was at low risk of re-offending. He considered the likely period before the applicant would be able to apply for

re-entry, which he assessed at eight years, observing that by that time the applicant was unlikely to have any ground for applying for entry clearance. Finally, he considered compassionate circumstances and the public interest. In respect of the latter, the judge noted that the presumption was in favour of deportation, that the applicant was 20 and in good health, that he had a grandfather with a home in Nigeria and probably had more relatives in Nigeria than he had admitted and that family visits would be possible. He concluded (at paragraph 130):

"Having considered all the evidence before us and the representations made on behalf of the [applicant], we find that:

a) the [applicant's] offence was one of the categories of offences regarded by the [Secretary of State] as particularly serious;

b) the circumstances in this case are not particularly exceptional, and they do not outweigh the presumption in favour of deportation in accordance with the current version of Rule 364 [see paragraph 29 below];

c) in any event, even if, contrary to our finding, the provisions of the previous Rule 364 had applied to his case, we would have found that the public interest would have outweighed the other factors in this case;

d) we accordingly dismiss the [applicant's] appeal against the [Secretary of State's] decision to deport him."

As regards the applicant's complaint under Article 8 of the Convention, the judge was not persuaded that the applicant currently had family life in the United Kingdom, given that he was 20 years old, lived with friends during term-time, and had no elements of dependence in respect of his mother, sisters or uncle going beyond normal emotional ties. However, he did accept that the applicant had established a private life in the United Kingdom given the length of his residence, the presence of family members in the United Kingdom, and his attendance at a church and university. He added:

"134. We also find that the [Secretary of State's] decision interferes with respect for that private life, in that he would be separated from his family and church, and his degree course ... would be cut short.

135. However, we also find that the interference pursues the lawful aim of immigration control, that it is in accordance with the law, and that it is proportionate, and in making the finding about proportionality we have balanced the following factors:

a) all the same factors, including the [applicant's] domestic circumstances, as we have already taken into account when considering the balancing exercise in relation to the deportation of the [applicant];

b) the fact that the public interest in maintaining an effective immigration control normally outweighs respect for an individual appellant's private life;

c) the fact, as we find, that the public interest in the prevention of crime in this case also outweighs the [applicant's] right to respect for private life;

d) and we find that none of the factors mentioned on behalf of the [applicant], individually or

cumulatively, prejudices the private life of the [applicant] in a manner sufficiently serious to amount to a breach of the fundamental right protected by Article 8 ..."

Accordingly, the applicant's appeal was dismissed.

The applicant sought permission to appeal to the Court of Appeal. Permission was refused by the Court of Appeal on 25 January 2008.

In July 2008, the applicant completed his undergraduate degree. In December 2009 he completed a Master's degree. In April 2010 he was offered employment with a local authority in London, which he accepted. He currently lives with his mother and visits his two sisters, who also reside in England, regularly. The applicant continues to attend church in London.

On 17 September 2010 the applicant received a letter from the UK Border Agency indicating that the immigration authorities were considering whether deportation action should be taken in respect of the applicant's conviction. The applicant was requested to provide details of any change in his circumstances since his last contact with the immigration authorities. Upon being advised that a case was pending before this Court, the immigration authorities indicated that they would await the outcome of these proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Section 3(5)(a) of the Immigration Act 1971 (as substituted 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".

Section 5 provides that:

"(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Secretary of State may make a deportation order against him ... and a deportation order against a person shall invalidate any leave to enter or remain in the United Kingdom given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Secretary of State ..."

Sections 82(1), 82(2)(j) and (k) and 84 of the Nationality, Immigration and Asylum Act 2002 (as amended) provide for a right of appeal against such decision to make a deportation order or a refusal to revoke a deportation order on the grounds, inter alia, that the decision is incompatible with the Convention.

The Immigration Rules, prescribed by the Secretary of State under section 3(2) of the Immigration Act 1971 for the implementation of the Act, provide as follows:

"364. Subject to paragraph 380, while each case will have to be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees to

deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects ...

...

380. A deportation order will not be made against any person if his removal in pursuance of the order would be contrary to the United Kingdom's obligations under the Convention and Protocol relating to the Status of Refugees or the Human Rights Convention."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

The applicant complained that his deportation to Nigeria would violate his right to respect for his family and private life as provided in Article 8 of the Convention, which reads 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."

He further contended that Rule 364 of the Immigration Rules (see paragraph 29 above) did not adequately protect his rights under that Article.

The Government contested the applicant's arguments.

A. Admissibility

The Court notes that the applicant's complaints under Article 8 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The applicant

The applicant maintained that deportation interfered with his right to respect for private and family life. He contended in particular that he was a young adult who had not yet founded a family of his own and argued that his relationship with his mother and sisters constituted family life. He further disputed that the interference with his private and family life was limited.

Although he accepted that the interference was in accordance with the law, he disputed the legitimate aims relied on by the Government. In particular, he did not accept that his expulsion pursued the aims of "public safety" or "protection of the rights of others". He emphasised that there

was no reason to believe that he posed a risk to the public at large or to children in particular.

As to whether his deportation was necessary in a democratic society, the applicant referred to the fact that the first Immigration Judge to examine his case had found in his favour (see paragraph 16 above), a consideration which he contended was relevant to the Court's judgment in Bousarra v. France, no. 25672/07, § 51, 23 September 2010, BAILII: [2010] ECHR 1999. The other relevant factors in his case were the nature and seriousness of the offence, the length of his stay in the United Kingdom, the time which had elapsed since the offence and his conduct during that period and the solidity of social, cultural and family ties with the host country and the country of destination. He accepted that the offence for which he was convicted was serious; indeed he had never sought to deny this and had demonstrated significant remorse for the offence. However, he emphasised his young age at the time the offence was committed and the fact that he had not reoffended. He also considered relevant the extent of his reintegration into society following his release, achieved despite the threat of expulsion which had hung over him since September 2003, and that it was accepted that he posed a low risk of re-offending. He further stressed that he had now been in the United Kingdom for over ten years and had completed the greater part of his education, including an undergraduate and postgraduate degree, there. His ties, he concluded, were with the United Kingdom and his links with Nigeria were limited to his one remaining relative, who was sick and elderly.

Finally, the applicant relied upon the fact that he was granted Indefinite Leave to Remain after having been convicted for the offence of rape. He considered that this was important in considering whether the deportation decision was disproportionate, relying on Omojudi v. the United Kingdom, no. 1820/08, BAILII: [2009] ECHR 1942, § 42, 24 November 2009. He noted in particular that he was served with a notice of liability to deportation on grounds of the conviction in September 2003, less than two months after the grant of Indefinite Leave to Remain (see paragraphs 9-10 above), which showed that by that time at least – and probably even earlier – the immigration authorities were aware of his conviction. He thus disputed the Government's explanation that Indefinite Leave to Remain was granted without knowledge of the conviction.

The applicant finally argued that the presumption in the Immigration Rules that when a person was liable to deportation, deportation was in the public interest, was incompatible with Article 8. In placing the burden on the applicant to show that deportation was not justified, he argued, paragraph 364 of the Immigration Rules departed from the approach adopted by the Convention and the Court.

b. The Government

The Government considered that the AIT was correct to conclude that deportation would not interfere with the applicant's right to respect for family life. They accepted, however, that deportation would constitute an interference with the applicant's right to respect for his private life but contended that the extent of the interference was limited. In particular, after deportation the applicant would be able to maintain his relationships with friends and family in the United Kingdom and would be able to continue attending church in Nigeria.

They further argued that the interference was justified pursuant to Article 8 § 2. They noted that the applicant accepted that the deportation was "in accordance with the law". As to the legitimate aims pursued, the Government relied on the aims of "public safety", "prevention of disorder or crime" and "protection of the rights of others".

They also contended that deportation was also necessary in a democratic society. In this regard, they referred to the criteria listed by the Court in Maslov v. Austria [GC], no. 1638/03, BAILII:

[2008] ECHR 546, § 68, 23 June 2008 and Üner v. the Netherlands [GC], no. 46410/99, BAILII: [2006] ECHR 873, §§ 54-58, ECHR 2006 XII which they emphasised had been fully taken into account by the AIT. Aside from the young age of the victim and the fact that the rape was committed with a group of other boys, the applicant had been involved in luring the victim to the address where the offence took place, demonstrating a degree of planning and sophistication. It was also relevant that the applicant had pleaded not guilty thus forcing the victim to relive the ordeal at trial. Although the offence was committed when the applicant was under the age of eighteen, he was substantially above the age of criminal responsibility. The Government were also of the view that the applicant was capable of living independently. He had spent relatively little time living with family members since his arrival in the United Kingdom and was resourceful and intelligent, in good physical and mental health and would be able to establish a private life in Nigeria without difficulty.

The Government argued that the length of time the applicant had spent in the United Kingdom was not a significant factor, given that he had been in the country for less than two years before committing the offence, that the deportation order was made while he was still in detention and that the time since his release had been taken up with his challenge to deportation. The time which had elapsed since the offence was committed was also not significant, for similar reasons.

As to the grant of Indefinite Leave to Remain following the applicant's conviction, the Government explained that it was granted automatically following the grant of Indefinite Leave to Remain to his mother and the authorities were not aware of the conviction at the time because it was not entered into the internal case database until 8 September 2004. Had the applicant applied himself, he would have had to disclose the conviction which would have been taken into account. Accordingly, the Government argued, the case was materially different from Omojudi, cited above, where the Court placed considerable weight on the fact that the Secretary of State was fully aware of the offending history when Indefinite Leave to Remain was granted.

In conclusion, the Government argued that deportation was proportionate to the need to protect the public, including vulnerable members of the public such as children, from the serious harm posed by those who, like the applicant, had committed a serious sexual offence against a child.

Finally, regarding the applicant's complaint about paragraph 364 of the Immigration Rules, the Government contended that the complaint was misplaced. In particular, it was not necessary for the Court to undertake an abstract review of every aspect of the domestic legal framework to assess compatibility with the Convention. In any event, the AIT considered that even under the previous rule, which the applicant was satisfied complied with Article 8, the public interest in favour of deportation outweighed other public interest factors.

2. The Court's assessment

a. Whether there was an interference with the applicant's right to respect for his private and family life

The Court recalls that in Bouchelkia v. France, 29 January 1997, BAILII: [1997] ECHR 1, § 41, Reports of Judgments and Decisions 1997 I, when considering whether there was an interference with Article 8 rights in a deportation case, it found that "family life" existed in respect of an applicant who was 20 years old and living with his mother, step-father and siblings. In Boujlifa v. France, 21 October 1997, BAILII: [1997] ECHR 83, § 36, Reports 1997 VI, the Court considered that there was "family life" where an applicant aged 28 when deportation proceedings were commenced against him had arrived in France at the age of five and received his schooling there,

had lived there continuously with the exception of a period of imprisonment in Switzerland and where his parents and siblings lived in France. In Maslov, cited above, § 62, the Court recalled, in the case of an applicant who had reached the age of majority by the time the exclusion order became final but was living with his parents, that it had accepted in a number of cases that the relationship between young adults who had not founded a family of their own and their parents or other close family members also constituted "family life".

However, in two recent cases against the United Kingdom the Court has declined to find "family life" between an adult child and his parents. Thus in Onur v. the United Kingdom, no. 27319/07, §§ 43-45, 17 February 2009, BAILII: [2009] ECHR 289, the Court noted that the applicant, aged around 29 years old at the time of his deportation, had not demonstrated the additional element of dependence normally required to establish "family life" between adult parents and adult children. In A.W. Khan v. the United Kingdom, no. 47486/06, BAILII: [2010] ECHR 27, § 32, 12 January 2010, the Court reiterated the need for additional elements of dependence in order to establish family life between parents and adult children and found that the 34-year old applicant in that case did not have "family life" with his mother and siblings, notwithstanding the fact that he was living with them and that they suffered a variety of different health problems. It is noteworthy, however, that both applicants had a child or children of their own following relationships of some duration.

Most recently, in Bousarra, cited above, §§ 38-39, the Court found "family life" to be established in a case concerning a 24-year old applicant, noting that the applicant was single and had no children and recalling that in the case of young adults who had not yet founded their own families, their ties with their parents and other close family members could constitute "family life".

49. An examination of the Court's case-law would tend to suggest that the applicant, a young adult of 24 years old, who resides with his mother and has not yet founded a family of his own, can be regarded as having "family life". However, it is not necessary to decide the question given 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. Thus, regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant constitutes an interference with his right to respect for private life. While the Court has previously referred to the need to decide in the circumstances of the particular case before it whether it is appropriate to focus on "family life" rather than "private life", it observes that in practice the factors to be examined in order to assess the proportionality of the deportation measure are the same regardless of whether family or private life is engaged (Üner, cited above, §§ 57-60).

An interference with right to respect for private life 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 and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

b. "In accordance with the law"

The parties did not dispute that the deportation order was in accordance with the law. The Court notes that the deportation order was made pursuant to section 3(5)(a) of the Immigration Act 1971 (see paragraph 26 above).

c. Legitimate aim

The Court observes that the deportation order served on the applicant in July 2004 indicated that his deportation was considered necessary for the "prevention of disorder and crime" and for the "protection of health and morals" (see paragraph 12 above). Before the Court, the Government contended that the applicant's deportation would serve the aims of "public safety", "prevention of disorder or crime" and "protection of the rights of others" (see paragraph 40 above).

The Court recalls that in its previous examination of cases in which an applicant was deported, or was threatened with deportation, following his conviction of a criminal offence, the Court has consistently considered that the legitimate aim pursued by deportation was the "prevention of disorder or crime" (see, for example, Bouchelkia, cited above, § 44; Boujlifa, cited above, § 39; Boultif v. Switzerland, no. 54273/00, BAILII: [2001] ECHR 497, § 45, ECHR 2001 IX; Maslov, cited above, § 67; Omojudi, cited above, § 40; and Bousarra, cited above, § 42).

In Üner, cited above, § 61, and Onur, cited above, § 53, the Court accepted that both "public safety", and "prevention of disorder or crime" were engaged. However, it appears that the aims asserted by the Government in these cases were not disputed by the applicants. Further, the Court notes that in Üner, prior to commission of the offence in respect of which deportation was ordered, the applicant had committed other less serious, although still violent, offences and had not produced any evidence to support his statement that his risk of reoffending was low (see § 24 of the judgment). In Onur, following the conviction for the offence for which he was to be deported, the applicant had committed a further offence and subsequently failed to surrender to custody (see paragraph 56 of the judgment).

The applicant in the present case committed a single offence and has produced reports indicating that his risk of reoffending was low (see paragraphs 11 and 14 above). Further, the AIT in its judgment of April 2007 accepted that there was a low risk that the applicant would reoffend (see paragraph 20 above). It is also of some significance that the deportation order served on the applicant in July 2004 did not refer to the aims of "public safety" or "protection of the rights of others". In light of these considerations, and in the absence of any specific observations from the Government to support their contention that the applicant's deportation would serve the additional aims to which they now refer, the Court considers that in the present case the intended deportation of the applicant pursued the legitimate aim of the "prevention of disorder or crime".

d. "Necessary in a democratic society"

The assessment of whether the impugned measure was necessary in a democratic society is to be made with regard to the fundamental principles established in the Court's case-law and in particular the factors summarised in Üner, cited above, §§ 57-85, namely:

- 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 which has 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 any 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;

- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;

- the best interests and well-being of any 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.

The Court reiterates that these criteria are meant to facilitate the application of Article 8 in expulsion cases by domestic courts and that the weight to be attached to the respective criteria will inevitably vary according to the specific circumstances of each case. Further, not all the criteria will be relevant in a particular case. It is in the first instance for the domestic courts to decide, in the context of the case before them, which are the relevant factors and what weight to accord to each factor. However, the State's margin of appreciation in this regard goes hand in hand with European supervision and the Court is therefore empowered to give the final ruling on whether an expulsion measure is reconcilable with Article 8 (see Maslov, cited above, § 76).

It should also be borne in mind that where, as in the present case, the interference with the applicant's rights under Article 8 pursues the legitimate aim of "prevention of disorder or crime", the above criteria ultimately are designed to help evaluate the extent to which the applicant can be expected to cause disorder or to engage in criminal activities (see Maslov, cited above, § 70).

In the present case, the Court considers the relevant factors to be the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in United Kingdom; the time which has elapsed since the offence was committed and the applicant's conduct during that period; and the solidity of social, cultural and family ties with the host country and with the country of destination.

The Court has made it clear that very serious violent offences can justify expulsion even if they were committed by a minor (see Maslov, cited above, § 85). There can be no doubt that the applicant's offence was a serious one and the Court considers the comments of the sentencing judge as to the applicant's conduct and the effect of the attack on the victim to be relevant factors to be taken into account (see paragraph 8 above). The sentence imposed – four years in a Young Offenders' Institution – demonstrates the gravity of the offence. However, the fact that the applicant was a minor at the time the offence was committed is a relevant consideration in assessing the proportionality of a deportation (see Maslov, cited above, § 72). In this regard, the Court recalls that where offences committed by a minor underlie an exclusion order, regard must be had to the best interests of the child. In particular, the obligation to take the best interests of the child into account includes an obligation to facilitate his reintegration, an aim that the Court has previously held will not be achieved by severing family or social ties through expulsion (see Maslov, cited above, §§ 82-83).

The Court observes that the total length of the applicant's stay in the United Kingdom to date is eleven years. He arrived in the country at the age of 13 and has therefore now spent almost half his

life in the United Kingdom. The Court notes that the applicant committed the offence which rendered him liable to deportation less than two years after his arrival in the United Kingdom. Further, following his conviction, he spent some two years in detention, during which time he was served with a deportation order. While the applicant was granted Indefinite Leave to Remain during this period, the Court is persuaded by the Government's submissions that leave was granted in ignorance of the applicant's conviction and, as a result, considers that no significance can be attached to the fact that Indefinite Leave to Remain was granted following the conviction (compare and contrast Omojudi, cited above, § 42). It is also true that the applicant has been aware since July 2003 of the fact that he was liable to be deported on account of his conviction. However, the Court nonetheless observes that he has now spent seven years at liberty in the United Kingdom following his release and despite having exhausted appeal rights in January 2008, no steps appear to have been taken in respect of his deportation until September 2010 (see paragraphs 23-25 above).

As to the lapse of time and the applicant's conduct since commission of the offence in 2002, the Court observes at the outset that the applicant has committed no further offences. While in detention, the applicant took advantage of the educational opportunities available to him and obtained a number of high school qualifications (see paragraph 11 above). At the time of his release from detention in August 2004, his risk of reoffending was assessed to be low (see paragraph 11 above), an assessment subsequently reiterated by his probation officer in 2005 and accepted by the AIT in 2007 (see paragraphs 15 and 20 above). Since his release, the applicant's conduct appears to have been exemplary. He enrolled in college in September 2004 in order to sit his A-level examinations, which he obtained in summer 2005 (see paragraph 14 above). He was subsequently offered a place at university to study towards an undergraduate degree, which he obtained in 2008, followed by a postgraduate degree, which he completed in 2009 (see paragraphs 18 and 24 above). He commenced stable employment with a local authority in 2010 (see paragraph 24 above).

The Government have not pointed to any concern regarding the applicant's conduct in the seven years since his release from prison and rely solely on the seriousness of the offence to justify concerns as to his continued presence in the United Kingdom and his risk to the public (see paragraphs 41-42 and 44 above). The Court reiterates that the factors to be taken into consideration in cases involving deportation following a criminal offence are partially designed to evaluate the extent to which the applicant can be expected to cause disorder or to engage in criminal activities (see paragraph 57 above). In particular, the fact that a significant period of good conduct has elapsed following the commission of the offence necessarily has an impact on the assessment of the risk which the applicant poses to society (see Boultif, cited above, § 51; Maslov, cited above, § 90; and A.W. Khan, cited above, § 41). Accordingly, the Court considers the present factor to be of particular importance when assessing whether the seriousness of the offence in itself is sufficient to justify the applicant's deportation for the prevention of disorder or crime.

Finally, as regards the applicant's ties with the United Kingdom and with Nigeria, the Court observes that the applicant continues to reside with his mother and has close relationships with his two sisters and an uncle, all of whom reside in England. He has completed the majority of his high school and further education in the United Kingdom and has now commenced a career with a local authority in London. He is also a member of a church community. While he spent a significant period of his childhood in Nigeria, he has now not visited the country for eleven years. He has had no contact with his father since 1991.

The Court recalls that all of the above factors were referred to and discussed, with reference to the relevant facts at the time, by the AIT in its decision of April 2007 (see paragraphs 20-22 above). Like the AIT, the Court is persuaded that it is appropriate to accord significant weight to the seriousness of the offence for which the applicant was convicted when considering the

proportionality of deportation for the prevention of disorder or crime. At the time the AIT considered the applicant's appeal, he had been at liberty following his release from detention for less than three years and was in the second year of his undergraduate degree. The AIT decided at that time that the public interest in favour of deportation prevailed. The Court considers that, having identified the relevant factors, the AIT's assessment of the weight to be accorded to each of these factors was within its margin of appreciation. The Court observes that no subsequent assessment of the proportionality of the applicant's deportation took place: in January 2008, the Court of Appeal refused leave to appeal without examining in detail the merits of the applicant's case (see paragraph 23 above).

Although the refusal of leave by the Court of Appeal meant that the applicant had exhausted his appeal rights, the immigration authorities appear to have taken no steps to deport him following the conclusion of the domestic proceedings, even though no interim measures preventing the applicant's expulsion were ever sought by him, or applied by the Court. As a consequence, the applicant has remained in the United Kingdom for a further period of over three and a half years since the domestic courts last considered the proportionality of his deportation. In that time, as noted above, he has completed his university education and commenced stable employment. He has committed no further offences.

The Government did not argue in their written observations that the Court should not have regard to facts which occurred after the final domestic decision in January 2008. The Court recalls that according to its established case-law under Article 3 of the Convention, the existence of a risk faced by an applicant in the country to which he is to be expelled is assessed by reference to the facts which were known or ought to have been known at the time of the expulsion; in cases where the applicant has not yet been deported, the risk is assessed at the time of the proceedings before the Court (see Saadi v. Italy [GC], no. 37201/06, BAILII: [2008] ECHR 179, § 133, ECHR 2008 ...). The Court sees no reason to take a different approach to the assessment of the proportionality of a deportation under Article 8 of the Convention and points out in this regard that its task is to assess the compatibility with the Convention of the applicant's actual expulsion and not of the final expulsion order (see Maslov, cited above, § 93). Any other approach would render the protection of the Convention theoretical and illusory by allowing Contracting States to expel applicants months, even years, after a final order had been made notwithstanding the fact that such expulsion would be disproportionate having regard to subsequent developments. The Government have not explained whether further remedies within the domestic legal system are now available to allow the applicant to challenge his deportation a second time, nor have they suggested that the Court is precluded from examining developments on the basis that the applicant has failed to exhaust domestic remedies. In the circumstances, it is appropriate for the Court itself to assess the effect of this additional lapse of time on the proportionality of the applicant's deportation.

The Court has already indicated that in a case where deportation is intended to satisfy the aim of preventing disorder or crime, the period of time which has passed since the offence was committed and the applicant's conduct throughout that period are particularly significant (see paragraph 63 above). The Court has further referred to the importance, in cases where the deportation offence was committed by the applicant when he was a minor, of facilitating his reintegration into society (see paragraph 60 above). Thus while the fact that the applicant was a minor when he committed the offence does not preclude his deportation given the seriousness of the offence in question, the latter consideration must be carefully weighed against the applicant's exemplary conduct and, as the evidence before the Court demonstrates, commendable efforts to rehabilitate himself and to reintegrate into society over a period of seven years. In such circumstances, the Government are required to provide further support for their contention that the applicant can reasonably be expected to cause disorder or to engage in criminal activities such as to render his deportation

necessary in a democratic society. However, the Government have neither cited other relevant concerns nor submitted any documents capable of supporting such a contention.

The foregoing considerations are sufficient to enable the Court to conclude that the applicant's deportation from the United Kingdom would be disproportionate to the legitimate aim of the "prevention of disorder and crime" and would therefore not be necessary in a democratic society.

There would accordingly be a violation of Article 8 of the Convention if the applicant were deported to Nigeria.

In the circumstances the Court considers it unnecessary to examine the applicant's arguments regarding paragraph 364 of the Immigration Rules.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

The applicant complained that deportation would deprive him of the right to education by terminating his university studies in the United Kingdom. He relied on Article 2 of Protocol No. 1 to the Convention, which provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Court observes that the applicant completed his undergraduate studies in the summer of 2008 and his postgraduate studies in December 2009. Accordingly, to the extent that Article 2 of Protocol No. 1 applies in the present case (see Leyla Şahin v. Turkey [GC], no. 44774/98, BAILII: [2005] ECHR 819, §§ 134-142, ECHR 2005 XI), the applicant is in any event not a victim of any alleged violation of that Article. The complaint is accordingly incompatible ratione personae with the provisions of the Convention and its Protocols and must be declared inadmissible pursuant to Article 35 §§ 3 and 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

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

The applicant submitted that a finding by the Court that his expulsion would violate the Convention would in itself provide sufficient just satisfaction and accordingly he did not claim damages. The Court therefore makes no award under this head.

B. Costs and expenses

The applicant also claimed GBP 5,729.49 for the costs and expenses incurred before the Court.

The Government argued that the case was straightforward and that no new issue of principle arose. In these circumstances, they considered that the number of lawyers involved in the

preparation of the case, the rates charged and the time spent were excessive. They proposed the sum of GBP 2,460, which corresponded to the costs incurred by the Government in the proceedings before the Court.

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, the Court considers it reasonable to award the sum of EUR 4,000 for the proceedings before the Court.

C. Default interest

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

Declares the complaints concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

Holds that there would be a violation of Article 8 of the Convention in the event of the applicant's deportation;

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 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 20 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Lech Garlicki
Registrar President