



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

FIRST SECTION

DECISION

Application no. 37442/19
Divine UMORU
against Italy

The European Court of Human Rights (First Section), sitting on 18 May 2021 as a Committee composed of:

Alena Poláčková, *President*,

Péter Paczolay,

Raffaele Sabato, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to the above application lodged on 16 July 2019;

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

Having regard to the decision to give notice to the Italian Government (“the Government”) of the complaint concerning the applicant’s expulsion to Nigeria;

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Divine Umoru, is a Nigerian national who was born in 1994 and lives in Bologna. He was represented before the Court by Ms C. Brandalise and Ms A. Lauri, lawyers practising in Bologna.

2. The Government were represented by their Agent, Mr Lorenzo D’Ascia, and by Mr Federico Russo, *Avvocati dello Stato*.

A. The circumstances of the case

1. *General background*

3. The applicant was born in Nigeria in 1994.

4. On 12 November 2003 he arrived in Italy following the issuance of a visa for family reunification.

5. On an unspecified date, his father returned to Nigeria and the applicant's care was entrusted to his mother.

6. On 28 February 2005 the Bologna Juvenile Court assigned custody of the applicant to social services and ordered his placement in care.

7. He was placed in foster care in different institutions until he came of age.

8. From August 2017 to June 2018, the applicant was under the care of the Centre for Mental Health of the local health authority for pathological personality traits, depressive symptomatology and overall psychopathologic vulnerability, which made it necessary to support him through psychotherapeutical care.

9. Since February 2018, social services have been helping him find employment and during 2018 he did several orientation sessions and trainings as well as an internship.

10. In September 2018 he started living with his partner, an Italian national, whom he married in August 2019.

11. Since 26 July 2019, the applicant has again been under the care of the Centre for Mental Health of the local health authority, which supports him through pharmacological and psychotherapeutical care.

12. He claims that since his arrival in Italy, he has never visited Nigeria and that his mother has been legally residing in Italy for more than fifteen years.

2. Proceedings for criminal offences

(a) The applicant's criminal record before 2016

13. On 28 July 2014 the applicant insulted a policeman and hit him on the hands. By a decision of 16 January 2015, the Bologna Court sentenced him to a fine of 25,000 euros (EUR) for insulting and behaving violently towards a police officer. The fine was suspended.

14. On 19 May 2016 the applicant was found carrying a knuckle duster without a justified reason. By a decision of 2 January 2017, the Bologna Court sentenced him to a fine of EUR 23,000 for carrying a potentially harmful object. The fine was suspended.

15. The applicant has been reported to the police repeatedly in relation to other acts allegedly committed from 10 February 2013 to 7 May 2016. As a result, criminal proceedings are currently pending against him for, *inter alia*, violence against others (*violenza privata*), destruction of property, interruption of public services, carrying potentially harmful arms or objects, theft and trespassing.

(b) The applicant's conviction for attempting to produce explosive substances

16. On 2 August 2016 the applicant, who was accused of making threats and attempting to produce explosive substances with the aggravating circumstance of terrorism or subversion of the democratic order, was arrested and subsequently detained on remand.

17. On 12 April 2017 the Bologna Court convicted the applicant of making threats and attempting to produce explosive substances, but excluded the aggravating circumstance of terrorism or subversion of the democratic order.

18. The Bologna Court sentenced him to two years' imprisonment, a punishment close to the statutory minimum, and fined him EUR 8,000. It suspended application of the penalty and released the applicant from detention on remand, on the grounds that he was a first-time offender and an optimistic prediction could be made as to his future behaviour.

19. The applicant challenged the judgment of the Bologna Court of 12 April 2017 before the competent court of appeal, which upheld it in a judgment of 18 March 2019 which became final on 4 June 2019.

20. The court of appeal found that after his conviction, the applicant had demonstrated good behaviour. However, it rejected the applicant's request for a more lenient sentence, taking into consideration the fact that before 2016 he had been reported to the police repeatedly for his participation in the political demonstrations of insurrectional anarchists.

3. The grant of humanitarian protection

21. On 12 April 2017 the applicant lodged a request for international protection, which the Territorial Commission in Bologna rejected on 4 May 2017.

22. The applicant challenged the decision of the Territorial Commission before the Bologna Court.

23. By a judgment of 14 July 2018, the Bologna Court upheld the decision of the Territorial Commission in so far as it rejected the applicant's request for asylum, but declared him eligible for humanitarian protection. In particular, the court attached importance to the fact that the applicant had been residing in Italy since 2003 and had not been to Nigeria since he was eight years old. It considered that the applicant did not have any significant ties with his country of origin, as he only spoke sporadically on the telephone with his father, from whom the applicant felt culturally and emotionally distant.

24. The Bologna Court further found that the applicant had started to pursue a path of personal development to overcome his past of sexual abuse and marginalisation; the medical reports demonstrated his need for psychotherapeutical care, and returning to Nigeria would negatively impact his precarious mental balance.

25. With reference to his criminal record, the Bologna Court considered that (i) the applicant had been convicted at first instance in a judgment which suspended his detention; (ii) an appeal against that judgment was still pending; and (iii) any future assessment of the possible danger to public order and safety the applicant could pose had to be entrusted to criminal judges.

4. *Expulsion proceedings*

26. On 15 July 2019 the Ministry of the Interior notified the applicant of an expulsion order in his regard dated 12 July 2019. The reasoning, in so far as relevant, reads as follows:

“... Having examined the documents of this office which show that [the applicant] is particularly active in the movement of insurrectional anarchists of Bologna and that, on 2 August 2016, he was arrested for the crime defined in section 1 of Law no. 895/1967 with the aggravating circumstance of terrorism, having been found in possession of a large amount of explosive material;

Considering that information collected in the course of investigative activities shows that [the applicant] has offered material support to known anarchic extremists considered responsible for sending packages containing explosive devices to judges and civil servants, and has also offered to those extremists the possibility to use his home;

Considering that he has shown in different contexts that he poses a significant danger, as demonstrated by the fact that he was reported to the police repeatedly and arrested for crimes related to disturbances of public order and individual conduct such as criminal damage, aggravated burglary, violence against others [*violenza privata*], carrying potentially harmful arms or objects, interrupting a public service;

Considering that his presence on the Italian territory constitutes a threat to the security of the State and might facilitate, in various ways, terrorist organisations or activities;

Considering that the length of his stay in Italy, his age, his family and economic situation, his health condition, his level of social and cultural integration and the importance of his ties with Italy do not negate the need for the adoption of an expulsion order ...”

27. On 15 July 2019, relying on the expulsion order of the Ministry of the Interior of 12 July 2019, the Bologna police authority (*questore*) issued a decree revoking the applicant’s residence permit and ordering that he be escorted to Milan Malpensa Airport to be deported.

5. *Developments after the introduction of the application*

28. On 16 July 2019 the applicant requested the Court to stay his expulsion under Rule 39 of the Rules of Court. The duty judge decided to indicate to the Government the stay of the expulsion for the duration of the proceedings before the Court and to submit questions to the Government.

29. On 23 July 2019 the Government replied to the questions and requested that the interim measure be lifted.

30. On 8 August 2019, on the basis of the information provided by the Government and the applicant, the duty judge decided to reject the Government's request to lift the interim measure.

31. Following the application of Rule 39, the applicant challenged the expulsion order before the Lazio Regional Administrative Court ("the TAR Lazio").

32. By a decision of 10 September 2019, the TAR Lazio rejected the applicant's request for interim measures.

33. By a judgment of 23 April 2021, it decided on the merits of the applicant's claim and dismissed it.

34. In a letter of 30 April 2021 the applicant informed the Court that he intended to appeal against the judgment of the TAR Lazio to the Council of State.

B. Relevant domestic law

35. The expulsion order concerning the applicant was issued by the Minister of the Interior under Article 13 of Legislative Decree no. 286 of 25 July 1998, which regulates the administrative expulsion of foreigners, and Article 3 of Decree-Law no. 144 of 27 July 2005, converted with amendments into Law no. 155 of 31 July 2005, which sets forth rules on the expulsion of foreigners on the grounds of prevention of terrorism.

36. Under Article 13 of Legislative Decree no. 286, for reasons of public order or State security, the Minister of the Interior may order the expulsion of a foreigner by informing the President of the Council of Ministers and the Minister for Foreign Affairs in advance. The expulsion is to be ordered by means of a reasoned decree and is immediately enforceable. An appeal against it before the competent courts does not stay its execution.

37. Under Article 3 of Decree-Law no. 144, the Minister of the Interior may order the expulsion of a foreigner in respect of whom there are justified reasons to believe that his stay in the territory of the State could in some way facilitate the operation of terrorist organisations or terrorist activities, including international ones.

COMPLAINT

38. The applicant complained under Article 8 of the Convention that his expulsion to Nigeria would amount to a disproportionate interference with the exercise of his right to private and family life.

THE LAW

39. The applicant complained that his expulsion to Nigeria would be contrary to Article 8 of the Convention, the relevant parts of which provide as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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.”

40. The Government argued that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They took the view that, pursuant to this provision, the Court could judge on the merits of the application only after a final domestic decision had been given. They pointed out that proceedings on the lawfulness of the expulsion order are currently pending before the national courts. The Government submitted that the judicial review offered by the administrative courts amounts to an effective remedy against alleged violations of Article 8 of the Convention, and provided examples of judgments of the TAR Lazio reviewing claims raised under that provision.

41. The applicant did not contest this fact, but rather argued that the TAR Lazio had rejected his request for an interim measure to stay his expulsion to Nigeria. Therefore, were the Court to declare inadmissible the application, the applicant would immediately be expelled, giving rise to an irreparable violation of Article 8 of the Convention, and the obligation for him to wait in Nigeria for the national courts to give a final decision.

42. The Court reiterates that the purpose of the rule requiring domestic remedies to be exhausted is to afford the Contracting States the opportunity of preventing or putting right the alleged violations before those allegations are submitted to the Court.

43. The Court has held that where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect. In the context of an alleged violation of Article 8, this provision combined with Article 13 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 83, ECHR 2012, and *Moustahi v. France*, no. 9347/14, § 151, 25 June 2020).

44. The Court observes that the complaint raised by the applicant does not involve any allegation that the expulsion itself would interfere with any of his rights protected under the Convention requiring effective intervention by a judicial authority prior to his expulsion (see, for instance, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 276-81, 15 December 2016, and *De Souza Ribeiro*, cited above, §§ 84-100).

45. Therefore, since the administrative courts have not issued yet a final decision on the lawfulness of the expulsion order, the Council of State being an effective remedy to still be exhausted by the applicant, the Court considers that the applicant's complaint under Article 8 of the Convention must at the present time be regarded as premature and that it should therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

46. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

47. The above findings do not prevent the applicant from lodging a new application before the Court at the end of the domestic proceedings, in compliance with the requirements of Articles 34 and 35 of the Convention, should he so wish.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 June 2021.

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Liv Tigerstedt
Deputy Registrar

Alena Poláčková
President