



Deportation would not violate the Convention despite family ties and previous granting of Indefinite Leave to Remain in the UK

In today's **Chamber** judgment¹ in the case of [Otite v. the United Kingdom](#) (application no. 18339/19) the European Court of Human Rights held, by five votes to two, that there would be:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights if the applicant were deported from the United Kingdom to Nigeria.

The case concerned a Nigerian national being served in October 2015 with notice of his liability to deportation, despite having been granted Indefinite Leave to Remain in the UK in 2004. The notice came after his conviction in 2014 on two counts of conspiracy to make or supply articles for use in fraud which had resulted in a four-year-and-eight-month prison sentence. His appeal against deportation was dismissed as the Upper Tribunal concluded that the effect on his wife and children, all British citizens, would not be "unduly harsh".

The Court found in particular that the strength of the applicant's family and private life in the UK did not outweigh the public interest in his deportation.

Principal facts

The applicant, Junior Otite, is a Nigerian national, who was born in 1972 and lives in Orpington (United Kingdom), having entered the UK in 2003 as the spouse of a settled person. His wife, also of Nigerian origin, was born in the UK and is a British citizen, as are their three children, born in 2003, 2005 and 2010. In September 2004 Mr Otite was granted Indefinite Leave to Remain in the UK.

However, in May 2013 an application for naturalisation as a British citizen was refused on account of his having a criminal record since 2007 for tendering a false statement for which he had received a suspended sentence. In October 2015 he was served with notice of his liability to deportation after a conviction the previous year on two counts of conspiracy to make or supply articles for use in fraud which had resulted in a four-year-and-eight-month prison sentence. It would seem that over a four-year period, Mr Otite had operated a factory, producing documents to facilitate fraudulent acts involving large numbers of victims and significant sums.

His appeal against deportation was ultimately dismissed as it was concluded that the effect on his wife and children would not be "unduly harsh" and there were no "very compelling circumstances" capable of outweighing the public interest in his deportation, although the First-tier Tribunal had originally found that his deportation was likely to have a detrimental impact on all the children and would lead to a significant deterioration in his wife's mental state.

The Upper Tribunal deemed that Mr Otite's family could either return to Nigeria with him, as his wife was of Nigerian origin and the children could also claim Nigerian citizenship. Alternatively, the children could remain in the UK with their mother, as she was their main carer, was a British citizen and had both family in the country and ties to the community. She and the children had already spent considerable time without their father due to his incarceration. It underlined that the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

children's best interests had to be balanced against other factors, including the public interest in deporting foreign criminals.

Complaints, procedure and composition of the Court

Relying on Article 8, the applicant complained that his expulsion would breach his right to respect for his private and family life and that the final domestic decision fell short of the balancing exercise required by the case-law of the Court.

The application was lodged with the European Court of Human Rights on 1 April 2019.

Third party interventions were received from The Joint Council for the Welfare of Immigrants and the AIRE Centre.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

The Court recognised that the deportation order had a legal basis and was aimed at preventing disorder and crime, so the principal issue was to determine whether it struck a fair balance between Mr Otite's Convention rights on the one hand and the community's interests on the other.

The Court found that the Upper Tribunal had given detailed consideration to the facts of the case and had balanced the seriousness of the applicant's offence against the likely impact on his family and private life. In doing so, it had taken into account many of the criteria identified by the Court in its case-law, including the nature and seriousness of the offence committed; his family situation; and the impact his deportation was likely to have on his wife and children.

However, it had not considered the difficulties his wife and children might face if they returned with him to Nigeria, as it did not think that that was a likely outcome. Also, its balancing exercise had been conducted solely within the framework provided by the Immigration Rules, with a view to determining whether the impact of Mr Otite's deportation on his family would be "unduly harsh" and whether there were any "very compelling circumstances" capable of outweighing the public interest in his deportation; it had not referred to the case-law of the Court.

Therefore, as the Upper Tribunal had not conducted the balancing exercise required by the Court's case-law, the Court conducted the balancing exercise itself. In so doing, it considered that the fraud offence committed by Mr Otite was serious and that multiple convictions for fraud outweighed the interests of a long-term resident alien who had only arrived in the country as an adult. Although he did not have multiple convictions, his offence had been conducted over a four-year period and had targeted a large number of victims and involved significant sums of money. Moreover, he had not recognised the severity of his offence and the impact and consequences it had had on the victims so there was a risk that he might reoffend. The Court recognised that in all decisions concerning children, their best interests have to be given significant weight, but when an offender is being deported as a consequence of a criminal offence, the deportation decision first and foremost

concerns him. The Court accepted that the family's interests might be outweighed by other factors, including the seriousness of the offence.

While Mr Otite's deportation would undoubtedly be difficult for his wife and children, there was nothing to suggest that they were in absolute need of his support. His children were now 19, 17 and 12 years old. His eldest daughter had type 1 diabetes, but it had not been shown that his presence in the UK was important for her physical well-being. According to the evidence before the Upper Tribunal, the children had had no contact with him while he was in prison and, following that, while he had been detained in immigration detention. Mr Otite had not provided the Court with any information about his release, or about his conduct following his release.

The family, who had already coped with his lengthy absence, had ties in the community and would have a support network in the event of his deportation. In addition, although the Upper Tribunal had proceeded on the basis that Mr Otite's family would not return to Nigeria with him, there was no evidence to suggest that they could not do so, especially as his wife was of Nigerian origin and his children would also be entitled to Nigerian citizenship. Furthermore, as he had only left Nigeria at the age of 31, it was likely that he had family, social, cultural and linguistic ties there.

All things considered, the Court concluded that the strength of the applicant's family and private life in the UK was not such as to outweigh the public interest in his expulsion. The Court held, by five votes to two, that Mr Otite's deportation would not violate Article 8 of the Convention.

Separate opinion

Judges Guerra Martins and Motoc expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.