



## No grounds to call into question UK authorities' decision to deport a Nigerian national

The case [Ndidi v. the United Kingdom](#) (application no. 41215/14) concerned a Nigerian national's complaint about his deportation from the United Kingdom. Mr Ndidi, the applicant, arrived with his mother in the UK aged two. He had an escalating history of offending from the age of 12, with periods spent in institutions for young offenders. He was released in March 2011, aged 24, and served with a deportation order. All his appeals were unsuccessful. He is currently awaiting deportation, pending an application to the Nigerian authorities for a valid travel document.

In his complaint to the European Court of Human Rights Mr Ndidi alleged in particular that his deportation would constitute a disproportionate interference with his right to respect for his family and private life, notably with his son who was born in 2012 to a British national with no connection to Nigeria.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court held, by six votes to one, that there had been:

**no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.**

The Court considered that Mr Ndidi's case required careful scrutiny, given the length of his residence in the UK, his relationship with his son and other family members there, and his limited ties to his home country. However, the Court saw no grounds for calling into question the domestic authorities' decision to deport him. All the domestic decision-makers had given thorough and careful consideration to the requirements of Article 8 of the Convention in the case, including the requirement that the deportation order had to strike a fair balance between Mr Ndidi's right to private and family life, on the one hand, and the community's interests, on the other. The Court pointed out in particular that there would have to be strong reasons for it to carry out a fresh assessment of this balancing exercise, especially where independent and impartial domestic courts had carefully examined the facts of the case, applying the relevant human rights standards consistently with the European Convention and its case-law.

### Principal facts

The applicant, Ifeanyi Chukwu Ndidi, is a Nigerian national who was born in 1987 and lives in London. Mr Ndidi entered the United Kingdom with his mother in 1989 and was granted indefinite leave to remain in the country in 2003.

In 1999, aged 12, he received police cautions for assault and robbery. On four occasions in 2003 and 2004 he was convicted of a number of offences, including robbery, assault and burglary. On the latest of these occasions, in November 2004, he was sentenced to three years' detention in an institution for young offenders. In 2006 the Secretary of State for the Home Department warned him that should he offend again in the future, he could be liable to deportation. In 2008 Mr Ndidi

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](http://www.coe.int/t/dghl/monitoring/execution).

pleaded guilty to the supply of Class A drugs. In March 2009, he was sentenced to seven years' imprisonment, which was later substituted by the appeal court with a sentence of seven years' detention in an institution for young offenders.

When he was released in March 2011 he was served with a decision stating that he was liable to automatic deportation and that removal would not breach his rights under either the Refugee Convention or the European Convention on Human Rights. His appeal against the decision was initially allowed, but that decision was later set aside and his appeal was dismissed by the Upper Tribunal in April 2012. The Tribunal considered that, in spite of his long residence and his family ties in the UK, serious reasons existed to justify his expulsion. In particular, he had a long history of offending; he had received a fair warning, but despite his assurances that he was turning his life around he had continued to be engaged in drug dealing and his criminal behaviour had escalated; and whilst serving his most recent sentence, he had received 16 adjudications, the majority of them for violence and disobedience. As to the risk to the public, the Tribunal found it difficult to accept his assurances that he was changing his life, given that he had made similar assurances in the past. Furthermore, he was of an age where he could be expected to cope with the challenge of starting a new life in Nigeria, where he had a number of relatives. The courts refused Mr Ndidi permission to appeal.

In November 2012 Mr Ndidi submitted further representations to the Secretary of State based on his relationship with a British national, who had no connection to Nigeria, and the birth of their son in October 2012. However, the Secretary of State refused to revoke the deportation order. In a new decision of April 2013 she confirmed that decision, after having considered Mr Ndidi's arguments in light of the new Immigration Rules. Following an amendment of 9 July 2012, the Rules provided, in particular, that the deportation of foreign criminals would be conducive to the public good if they were sentenced to four or more years' imprisonment and that in such cases the public interest would only be outweighed in "exceptional circumstances".

The First-tier Tribunal then dismissed Mr Ndidi's appeal in September 2013. It concluded, firstly, that his relationship with a British national and the birth of their child did not amount to "exceptional circumstances" within the meaning of the Immigration Rules. Secondly, it found that the legitimate interest in maintaining appropriate immigration control was not outweighed by Mr Ndidi's rights under Article 8 of the European Convention on Human Rights. Notably, he had failed to disclose his immigration status to his partner until after she was pregnant; he and his partner had never lived together; his partner and child had the full support of her family in the United Kingdom, which would continue following Mr Ndidi's deportation; and his child could visit him in Nigeria so as to maintain the family relationship. The courts refused Mr Ndidi permission to appeal in December 2013.

## Complaints, procedure and composition of the Court

Mr Ndidi brought two complaints under Article 8 (right to respect for private and family life). First, he complained that the requirements of the amended Immigration Rules, namely that there should be "exceptional circumstances" before his removal would be in breach of Article 8 of the Convention, imposed a higher standard than what was required under the Convention, that standard being whether the deportation order had struck a fair balance between Mr Ndidi's right to private and family life, on the one hand, and the community's interests, on the other ("the proportionality test"). Secondly, he submitted that his deportation would constitute a disproportionate interference with his right to respect for his family and private life, having particular regard to the fact that: he had lived in the UK for 28 years; his criminal offences had been committed when he had been either a minor or young adult; and he had not reoffended since his release in March 2011.

The application was lodged with the European Court of Human Rights on 23 May 2014.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,  
 Kristina **Pardalos** (San Marino),  
 Ksenija **Turković** (Croatia),  
 Armen **Harutyunyan** (Armenia),  
 Pauliine **Koskelo** (Finland),  
 Tim **Eicke** (the United Kingdom),  
 Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

In so far as the complaint about the amended Immigration Rules was concerned, the Court found that Mr Ndidi had not raised it at the last level before the domestic courts – in his application for permission to apply for judicial review – and therefore declared it inadmissible for failure to exhaust domestic remedies.

As concerned Mr Ndidi’s second complaint, the Court recalled that Contracting States had certain room for manoeuvre (“margin of appreciation”) in deciding whether an interference with the right to respect for family and private life had been necessary in a democratic society and proportionate. The State’s room for manoeuvre went hand in hand with European supervision. However, such supervision did not mean that the Court had to conduct the Article 8 proportionality assessment afresh, especially where independent and impartial domestic courts had carefully examined the facts of a case, applying the relevant human rights standards consistently with the European Convention and its case-law. There would have to be strong reasons for the Court to substitute its own assessment of the merits for that of the competent national authorities.

In the case at hand, regardless of whether the Immigration Rules had imposed a higher standard than that under the Convention, all the domestic decision-makers – from the Secretary of State through to the First-tier and Upper Tribunals – had given thorough and careful consideration to the proportionality test required by Article 8 of the Convention, including the criteria set out in the Court’s case-law on the expulsion of settled migrants. Thus, having balanced Mr Ndidi’s rights against the public interest in deportation, the domestic authorities had concluded that his deportation would not constitute a disproportionate interference with his right to respect for his family and private life.

Undoubtedly the facts of Mr Ndidi’s case required careful scrutiny, given the length of his residence in the UK, his relationship with his son and other family members there, and his limited ties to his home country. However, in view of his long and escalating history of offending, continuing even after the Secretary of State’s warning in 2006, and beyond his attaining the age of majority, the Court saw no grounds for calling into question the domestic authorities’ decision to deport him.

Furthermore, there had been no change in Mr Ndidi’s circumstances since the last domestic decision in his case which would provide the Court with strong reasons to substitute its own assessment of proportionality for that of the domestic authorities. In fact, following the last domestic decision Mr Ndidi’s relationship with his partner had ended, and his contact with his son had been restricted to alternate Sundays.

Accordingly, the Court held that Mr Ndidi’s deportation would not be in breach of Article 8 of the Convention.

## Separate opinion

Judge Turković expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

**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.