

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

FIFTH SECTION

DECISION

Application no. 22255/11
by Stella-Maris Ekaette OKON and Daniella Victoria OKON
against Ireland

The European Court of Human Rights (Fifth Section), sitting on 13 December 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 31 March 2011,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Stella Maris Ekaette Okon and Ms Daniella Victoria Okon, are Nigerian nationals who were born in 1974 and 1999, respectively. They live in Dublin. They are represented before the Court by Ms A. Farrell, a lawyer practising in Dublin.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

On 13 February 2000 the applicants arrived in Ireland. Shortly thereafter they applied for asylum.

On 13 November 2000 the first applicant married an Irish national. On 21 November 2000 she applied for a residence permit on the basis of her marriage. She did not therefore pursue the asylum application. The marriage subsequently failed and the first applicant separated from her husband. Accordingly, on 19 July 2004 the Department of Justice, Equality and Law reform revoked her leave to remain as she was no longer residing with her spouse and proposed to deport her. The Minister for Justice Equality and Law Reform ("the Minister") issued a deportation order in December 2004.

On 10 November 2005 the applicants re-applied for asylum. The first applicant was interviewed on 23 November 2005. The application for asylum was based on the following claims. The first applicant claimed that she was ill in her late teens and was sent to live with the family of a native doctor ("E") in or around 1990. Thereafter, she was effectively detained by that family. E cut her with a blade and rubbed charcoal into her wounds and six months later began raping her. E threatened to kill the first applicant's father when the latter protested. Her father later died in 1997. She gave birth to her son in 1992 and to the second applicant in 1999. In November 1999 E died. Since E's brother wished to marry the first applicant, the applicants escaped from E's funeral. They fled to Ibadan. Following threats, they left for Lagos and, subsequently, they left for Ireland, *via* France, leaving the first applicant's son with her mother. The first applicant claims that she was subjected to Female Genital Mutilation ("FGM") against her will prior to the birth of the second applicant. She feared that, on return, that she would be kidnapped and re-detained by E's family and that the second applicant would be subjected to FGM. The first applicant claims that internal re-location is not an option and that the Nigerian police would not assist her.

By letter of 2 December 2005 the applicants were informed that the Refugee Applications Commissioner ("RAC") was recommending that they not be declared refugees. The RAC report highlighted, *inter alia*, certain inconsistencies and vagueness in her claims and her failure to seek protection from the Nigerian police.

By decision of 10 April 2006, notified to the applicant on 17 May 2006, the Refugee Appeals Tribunal ("RAT") affirmed the recommendation of the RAC. The RAT, *inter alia*, found parts of her claim to be inconsistent and vague, relied on the country-of-origin information about FGM in Nigeria and noted her failure to seek assistance of the Nigerian authorities or asylum in France. The applicants were legally represented before the RAT.

In June 2006 the applicants applied, pursuant to section 5 of the Illegal Immigrants (Trafficking) Act 2000, for leave to apply for judicial review citing the RAT, the Minister, Ireland and the Attorney General as respondents. They requested, *inter alia*, an order quashing the decision of the RAT as well as declarations that the RAT's failure to publish its previous decisions was unconstitutional and that the second applicant should have been heard as she was no longer an infant. They also took issue in some detail with the RAT's assessment of their factual claims.

On 4 September 2006 the respondents filed a replying affidavit. In October 2006 the case was listed for hearing in July 2007.

On 26 July 2007 the High Court heard the applicants' judicial review application and judgment was reserved.

In November 2007 the case was listed for mention when the parties were informed that judgment was not available. The applicants inquired on several later occasions about the delivery of the judgment.

The matter was listed for mention on 17 November 2009 and the parties were informed that a judgment was not available. The High Court requested the parties to explore a settlement of the action. Accordingly, on 19 November 2009 the applicants wrote to the respondents seeking a possible settlement. No response was received.

The case was again listed for mention on 23 November 2010 and the High Court informed the parties that a judgment was not available but that a judgment should be ready by the end of 2010.

By notice dated 29 March 2011, the applicants notified the High Court of their change of solicitor.

The case has not been re-listed since then and no judgment has been delivered to date.

COMPLAINT

The applicants complain about the delay of the High Court in delivering judgment in their judicial review action. They invoke Article 6 of the Convention.

THE LAW

The applicants argue that the length of time it has taken the High Court to deliver its judgment violates Article 6 of the Convention.

However, even if the impugned delay has repercussions on the applicant's private and family life, decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil

rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (*Maaouia v. France* [GC], no. 39652/98, §§ 38 and 40, ECHR 2000-X).

The Court observes that the judicial review proceedings, the duration of which the applicants impugn, concern solely their challenge to the refusal by the RAT of their asylum claim. Accordingly, those proceedings do not involve the determination of the applicants' civil rights within the meaning of Article 6 of the Convention.

The application is therefore incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3.

Declares inadmissible the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President