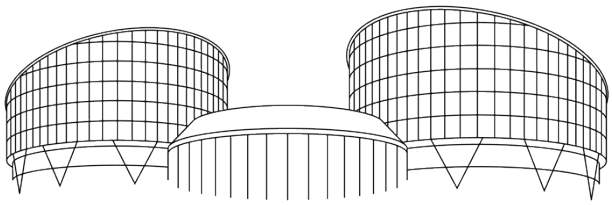

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8969/10
by Mary Magdalene OMEREDO
against Austria

The European Court of Human Rights (First Section), sitting on 20 September 2011 as a Chamber composed of:

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 8 February 2010,

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

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

The applicant, Ms Mary Magdalene Omeredo, is a Nigerian national who was born in 1973 and lives in Wels. She was represented before the Court by Ms S. Singer, a lawyer practising in Wels. The Austrian Government

("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

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

The applicant fled Nigeria in May 2003. She applied for asylum in Austria on 23 May 2003, stating that she comes from a village in Delta State and belongs to the Isoko group. Her mother still lives in that village, her father died when she was 5 years old.

In April 2003 she should have undergone FGM (female genital mutilation), as according to the custom in her village, every five years the unmarried women were to undergo FGM. The applicant's sister had died because of the consequences of FGM and the applicant had told her mother she did not want to undergo FGM, but was told that she would have to accept it. The applicant submitted that police would not interfere in what they saw as a tradition and that the other villagers might kill her if she refused FGM.

The applicant fled from her village and stayed with a friend in a neighbouring village for a few days but had to leave due to fights that broke out in the village. The applicant then travelled to Austria on an unknown route.

The Federal Asylum Office (*Bundesasylamt*) rejected the applicant's request for asylum on 10 July 2003 and stated that her expulsion to Nigeria was permissible. It held that the applicant, whose statements were credible, disposed of an internal flight alternative. She could for instance live in another province or in one of the big cities. Consequently, she could not be considered to be in danger of treatment contrary to Article 2 or Article 3 of the Convention. It stated that no national legal prohibition of FGM was in force in Nigeria, but several federal states had such provisions in force. The Federal Asylum Office concluded that the reasons for fear could not be imputed to the state. As the state could not be deemed unable or unwilling to offer protection, the applicant was expected to avail herself on the protection offered by the state.

The applicant, represented by counsel, lodged a complaint against the decision before the Asylum Court (*Asylgerichtshof*).

By decision of 10 September 2009 the Asylum Court rejected the complaint, finding that the Federal Asylum Office had not erred when assessing the evidence and no new circumstances had come to light to necessitate re-assessing the evidence. With regard to FGM, the Asylum Court held that the practise was declining, but still existed. However, state authorities might have afforded protection to the applicant, and the applicant disposed of an internal flight alternative. Since the applicant had stated to have attended school for 13 years and having gained 8 years' working

experience as a seamstress, it was reasonable to assume that the applicant would find work.

The applicant complained to the Constitutional Court and applied for legal aid. She argued that the Asylum Court had not sufficiently taken into consideration that she was a single woman without any family relations except for her mother, who lives in the village she had to flee to avoid FGM. In her situation, it was almost impossible that she could move to another area in Nigeria and make a living there, as single women were still viewed with suspicion and faced hardships e.g. when trying to rent a flat. The applicant further argued that the fact that she had to flee her family because of the threat of FGM and was expected to start a new life on her own in a different part of Nigeria, with the risk of ending up in poverty and in degrading circumstances, already amounted to a violation of Article 3 of the Convention.

By decision of 1 December 2009, the Constitutional Court refused legal aid and refused to deal with the complaint, holding that the complaint did not raise any issue of constitutional law and thus had no prospects of success. The decision was served on the applicant's counsel on 9 December 2009.

B. Relevant information with regard to FGM in Nigeria

The Court reiterates that in the case *Izevbekhai and others v. Ireland* (dec.), no. 43408/08, 17 May 2011, it noted the following with regard to FGM in Nigeria:

> " [1.] General
>
> 34. FGM comprises all procedures that involve partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. The World Health Organisation ("WHO") noted the following key facts about FGM in its Fact Sheet No. 241 (2010): an estimated 100-140 million girls and women worldwide live with the consequences of FGM. It is mostly carried out on young girls some time between infancy and 15 years of age and in Africa an estimated 92 million girls from 10 years of age and above have undergone FGM.
>
> 35. There are different forms of FGM (see Eliminating Female Genital Mutilation: An Interagency Statement 2008 of various international organisations including the WHO, the UN High Commissioner for Refugees ("UNHCR"), the UN Children's Fund ("UNICEF") and the UN Development Fund for Women ("UNIFEM")). These include Clitoridectomy, Excision and Infibulation.
>
> 36. The same Interagency statement described FGM as a violation of, *inter alia*, the right to freedom from torture, inhuman and degrading treatment so that protection from FGM was provided for by various international treaties (Convention on the Rights of the Child and Convention on the Elimination of All Forms of Discrimination Against Women), by regional treaties (Protocol to the African Charter on Human and People's Rights Relating to the Rights of Women in Africa, "Maputo Protocol") as well as by consensus documents of several international organisations. The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading

Treatment or Punishment considers that FGM amounts to torture even if it is legal and/or medicalised (Report to the UN General Assembly, 14 January 2008. See also joint *Global strategy to stop health-care providers from performing female genital mutilation 2010* of, *inter alia*, the WHO, UNHCR, UNICEF and UNIFEM).

[2.] Legal position as regards FGM in Nigeria

37. Nigeria is a federal republic of 36 states with a population of approximately 150 million. English is one of its official languages.

38. In 1995 Nigeria ratified the Maputo Protocol, Article 5 of which requires State Parties to legislate to prohibit FGM. Article 34(1)(a) of the 1999 Federal Constitution prohibits "torture or inhuman or degrading treatment". A Bill banning FGM was introduced at federal level in Nigeria and it was withdrawn when the National Assembly stepped down in 2003. Since this Bill has not been re-introduced, there is currently no general federal law against the practice of FGM in Nigeria. However, approximately 12 of the 36 States in Nigeria have adopted laws specifically prohibiting FGM, including the south-south States (one of which is the Edo State) and almost the whole of the south-west. The federal Child Rights Act 2003 provides that causing FGM is a punishable offence and that federal Act has been enacted in 18 of the 36 States of Nigeria."

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that she runs the risk of being subject to FGM if the authorities expelled her to Nigeria, where no effective protection is available.

She also complained that relying on an internal flight alternative and moving to another part of Nigeria as an unmarried woman without her family to help her, would amount to a situation in violation of her rights under Article 3 of the Convention.

2. Without relying on any provision of the Convention, the applicant complained that the Asylum Court's decision was arbitrary and that her case had been pending for more than 6 years.

THE LAW

1. The applicant complained that if she were returned to Nigeria, she would be in danger of having to undergo female genital mutilation (FGM), a practise contrary to Article 3 of the Convention. Article 3 of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government argued that the Austrian authorities found the applicant's submission that she had left her village to escape female genital

mutilation credible. However, the authorities came to the conclusion that she did dispose of an internal flight alternative within Nigeria, and consequently the authorities rejected her claim to asylum.

The Government pointed out that the applicant had obtained 16 years of education and 8 years' working experience as a seamstress. Against this background, the applicant was considered able to find shelter and an adequate job in another part of the country in order to live there.

Lastly, the Government argued that the fact that the applicant had to abandon her family due to the danger of having to undergo FGM, and would have to live and work outside family bounds, would not in itself amount to a violation of Article 3 of the Convention.

The applicant maintained the arguments brought forward in the domestic proceedings.

It is not in dispute that subjecting any person, child or adult, to FGM would amount to ill-treatment contrary to Article 3 of the Convention (see *Izevbekhai,* quoted above, § 73). The Court notes that the domestic authorities found that the applicant's fear of being forced to undergo FGM in Nigeria, was well-founded, but that she disposed of an internal flight alternative within the country.

Therefore, the Court must assess the applicant's personal situation in Nigeria. The applicant, now 37 years old, has obtained school education for at least 13 years, and has worked as a seamstress for 8 years. While it might be difficult to live in Nigeria as an unmarried woman without support of her family, the Court reiterates that the fact that the applicants' circumstances in Nigeria would be less favourable than those enjoyed by her in Austria cannot be regarded as decisive from the point of view of Article 3 (see also *Bensaid v. the United Kingdom*, no. 44599/98, § 38, ECHR 2001-I; *Salkic and Others v. Sweden* (dec.), no. 7702/04, 29 June 2004; and *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007). The Court concludes that owing to her education and working experience as a seamstress, there is reason to believe that the applicant will be able to build up her life in Nigeria without having to rely on support of family members.

The Court thus finds that the complaint under Article 3 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must therefore be rejected pursuant to Article 35 § 4 of the Convention.

2. The applicant complained that the decision of the Asylum Court was arbitrary, and the duration of the proceedings was excessive. She did not explicitly rely on any Article of the Convention in that respect.

In so far as this part of the application should be considered under Article 6 of the Convention, the Court reiterates that that provision of the Convention does not apply to asylum matters (see *Maaouia v. France* [GC], no. 39652/98, § 33 - 40, ECHR 2000-X and *Katani and Others v. Germany*

(dec.), no. 67679/01, 31 May 2001). Furthermore, the Court does not find that any other provision applies.

It follows this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President