

APPLICATION N° 25439/94

Younes EL MAZIANI v/FRANCE

DECISION of 5 April 1995 on the admissibility of the application

Article 8, paragraph 1 of the Convention *The expulsion of someone from a country where close members of his family live may interfere with his right to respect for family life*

Article 8, paragraph 2 of the Convention *Deportation following conviction of an alien who entered French territory at the age of eleven and who is married to a French national Interference in accordance with the law and considered on the facts to be necessary in a democratic society for the prevention of disorder or crime and proportionate to the aim pursued in the light of the seriousness of the offence and the applicant's links with his country of origin*

THE FACTS

The applicant is a Moroccan citizen. He was born in 1967 in Morocco. Before the Commission he is represented by his lawyer, Mr Romuald Gbedev of Saint Die

The facts of the case as submitted by the applicant may be summarised as follows:

The applicant arrived in France with his mother in January 1978, when he was eleven, in order to rejoin his father. On 14 June 1991 he married a French citizen.

Between 1983 and 1986 he was prosecuted twenty five times for theft and offences against the person.

On 21 June 1988 Doubs Assize Court sentenced the applicant to twelve years' imprisonment for gang rape

On 26 August 1991 the Minister of the Interior issued a deportation order against the applicant under Articles 23-25 of the Ordinance of 2 November 1945 (as amended) on the Conditions for Aliens' Entry into and Residence in France, the Commission on Deportation having, on 4 April 1991, recommended his deportation. The ground of the deportation order was that the applicant's conduct made his presence on French territory a grave threat to public order (ordre public)

The applicant applied to Nancy Administrative Court to have the deportation order quashed, relying on his right to respect for his family life

On 16 June 1992, Nancy Administrative Court dismissed the application. The applicant appealed to the "Conseil d'Etat"

On 4 February 1994 the "Conseil d'Etat" dismissed the appeal on the following grounds

"In support of his application to have the deportation order made against him by the Minister of the Interior on 26 August 1991 quashed, M E M [the applicant] submits that his whole family lives in France that he has been married to a French citizen since 14 June 1991 and that he no longer has any links with Morocco, of which he is a national. However, the case file reveals that M E M was sentenced to twelve years' imprisonment for rape by Doubs Assize Court on 21 June 1988. Given the seriousness of this offence, the decision to deport M E M, who does not claim to fall into any of the categories of person covered by Article 25 of the Ordinance of 2 November 1945, against whom such an order cannot be made, did not infringe the appellant's right to respect for his family life to an extent greater than was necessary for the protection of public order. Hence, M E M has no grounds for his claim that Nancy Administrative Court misdirected itself in law in reaching its judgment dismissing his application for review of the above mentioned ministerial order of 26 August 1991

When the applicant was released from prison he refused to board a plane to Morocco

On 27 July 1994, the President of the Commission rejected the applicant's request for Rule 36 of the Rules of Procedure to be applied

COMPLAINTS

The applicant claims that he can neither speak nor write Arabic and that he no longer has any family in Morocco. Given that he is married to a French citizen, he

considers that expelling him from French territory would disrupt his private and family life to a manifestly excessive extent and would constitute a violation of Article 8 of the Convention

THE LAW

1 The applicant complains that, taking into account his family ties in France, the deportation order breaches his right to respect for his private and family life as guaranteed by Article 8 of the Convention

Article 8 of the Convention provides as follows

"1 Everyone has the right to respect for his private and family life, his home and his correspondence

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 '

The Commission recalls its case law, according to which Article 8 of the Convention does not guarantee, as such, the right for an alien not to be expelled from a particular country, nor a right to reside in a particular country (see, for example No 9203/80, Dec 5 5 81, D R 24 p 239) However, taking into account the right to respect for family life protected by Article 8 expelling a person from a country where his family lives may pose a problem in relation to that provision of the Convention (see No 9478/81, Dec 8 12 81, D R 27 p 243)

In that regard, the Commission notes that the applicant came to France at the age of eleven, that all his family live there and that he has lived there ever since It notes that he married a French citizen in 1991 The Commission considers that taking into account the family ties and other links that the applicant has in France, the deportation order constitutes an interference with his right to respect for his private and family life within the meaning of Article 8 para 1 of the Convention

For an interference with a person's right to respect for his private and family life to be compatible with Article 8 of the Convention, it must, under paragraph 2 of that Article, be in accordance with the law pursue one or more legitimate aims and be necessary in a democratic society for that or those aims to be achieved

In the present case, the deportation order was made under Articles 23 25 of the Ordinance of 2 November 1945 (as amended) on the Conditions for Aliens' Entry and Residence Therefore, the interference is in accordance with the law

The Commission notes that the deportation order aims to prevent disorder which is a legitimate aim within the meaning of Article 8 para 2

As regards the question whether the interference was necessary, the Commission observes that the applicant arrived in France at the age of eleven, so that it can be assumed that he is not completely unfamiliar with his country of origin, and that, in particular, he can speak and understand Arabic. Admittedly, the applicant married a French citizen on 14 June 1991. However, his right to remain in France was already precarious at that time since on 4 April 1991, the Commission on Deportation had recommended his deportation and the deportation order was made on 26 August 1991.

A crucial factor in assessing the proportionality of the deportation is, however, the seriousness of the offence committed by the applicant, which is reflected by the fact that he was sentenced to twelve years' imprisonment by Doubs Assize Court.

Having regard to the above and in particular, first, to the seriousness of the crime committed by the applicant and the severity of the sentence imposed on him and, secondly, to the fact that it cannot be concluded that the applicant has lost all ties with Morocco, the Commission considers that, in the circumstances of the case, the French authorities could reasonably take the view that deporting the applicant was a measure which was necessary in a democratic society for the prevention of disorder or crime within the meaning of Article 8 para 2 of the Convention (see No 16990/90, Dec 7 4 92, unpublished). It follows that the application is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE