



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

COURT (CHAMBER)

CASE OF BELDJOUDI v. FRANCE

(Application no. 12083/86)

JUDGMENT

STRASBOURG

26 March 1992

In the case of Beldjoudi v. France*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Mr R. PEKKANEN,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 October 1991 and 26 February 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 November 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12083/86) against the French Republic lodged with the Commission under Article 25 (art. 25) by Mr Mohand Beldjoudi, an Algerian citizen, and his wife Mrs Martine Beldjoudi née Teychene, a French national, on 28 March 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 (art. 8), taken either

* The case is numbered 55/1990/246/317. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

alone or together with Article 14 (art. 14+8), and Articles 3, 9 and 12 (art. 3, art. 9, art. 12).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. On 22 November 1990 the President decided that, in the interests of the proper administration of justice, this case should be considered by the Chamber constituted on 24 May 1990 to hear the Djeroud case* (Rule 21 para. 6). It included ex officio Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). The other seven members, whose names had been drawn by lot, were Mr F. Matscher, Mr J. Pinheiro Farinha, Sir Vincent Evans, Mr C. Russo, Mr J. De Meyer, Mr N. Valticos and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr S.K. Martens and Mr A. Spielmann, substitute judges, replaced Sir Vincent Evans and Mr Pinheiro Farinha, who had resigned from the Court and whose successors had taken up their duties before the hearing (Rules 2 para. 3, 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5) Mr Ryssdal, through the Registrar, consulted the Agent of the French Government ("the Government"), the Delegate of the Commission and the lawyer for the applicants on the organisation of the procedure (Rule 37 para. 1 and Rule 38). Pursuant to the orders made in consequence, the Registrar received the applicants' memorial on 29 April 1991 and the Government's memorial on 30 April. On 8 July the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

5. Counsel for the applicants wrote to the President on 14 October 1991, as did the Agent of the Government on 17 October, on the question whether Mr Beldjoudi would be able to attend the hearing in person, despite his detention (Article 4 para. 1 (a) of the European Agreement relating to Persons Participating in Proceedings before the European Commission and Court of Human Rights).

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 October 1991. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr J.-P. PUISSOCHET, Director of Legal Affairs,

Ministry of Foreign Affairs,

Mrs E. FLORENT, Administrative Court Judge,

Agent,

* Note by the Registrar: case no. 34/1990/225/289, struck out of the list on 23 January 1991 following a friendly settlement (Series A no. 191-B).

on secondment to the Department of Legal Affairs,
 Ministry of Foreign Affairs,
 Mr R. RIERA, Head of the Litigation Section,
 Department of Civil Liberties and Legal Affairs, Ministry
 of the Interior, *Counsel*;
 - for the Commission
 Mr H. DANELIUS, *Delegate*;
 - for the applicants
 Mr B. DONCHE, avocat, *Counsel*.

The Court heard addresses by Mr Puissochet for the Government, Mr Danelius for the Commission and Mr Donche for the applicants, as well as their replies to its questions.

Mr Beldjoudi was able to attend the hearing in person.

7. At the hearing, the Agent of the Government and the lawyer representing the applicants produced various documents. On that day and the following day, the former also provided certain information.

8. On 18 November the Agent supplied further information and observations, and produced certain documents, as the President had invited him to do during the hearing.

In a letter received at the registry on 6 December, the lawyer for the applicants made observations on these documents, and produced a schedule of costs and fees.

On 21 February 1992, the Government submitted a memorandum.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Introduction

9. Mr Mohand Beldjoudi, who is a mechanic by profession, is an Algerian citizen. He was born in France on 23 May 1950, in Courbevoie (Hauts-de-Seine department). He lived with his parents in the Paris region until October 1969. His parents were born in Algeria in 1909 and 1926 respectively. That country was a French department at the time, and became independent on 3 July 1962, following the Evian "Agreements" of 19 March 1962. In common with their children, they were deemed to have lost French nationality on 1 January 1963 (Law of 20 December 1966 - see paragraph 58 below), because they had not made a declaration recognising French nationality before 27 March 1967 (section 2 of the Order of 21 July 1962 -

see paragraph 57 below). Mr Beldjoudi's father arrived in metropolitan France in 1926 and served in the French army from 1931 to 1955. He subsequently worked until his retirement in 1970 as an assistant, later a civil servant, in the Ministry of Public Health and Population Affairs, this being a post reserved for French nationals. He died in Colombes (Hauts-de-Seine) in 1986.

Mohand Beldjoudi's mother, who left Algeria in 1948, and four of his brothers and sisters - all born in metropolitan France prior to 1 January 1963 - each have an Algerian national identity card. They reside in France, where they hold residence permits which are valid for ten years and are renewable. The youngest sister resumed French nationality on 20 July 1988.

10. Mrs Martine Teychene was born in France on 8 November 1951, both her parents being French. She has French nationality and works as a secretary.

11. The applicants were married at Colombes on 11 April 1970, after living together for some time. They live at La Garenne-Colombes (Hauts-de-Seine); they have no children.

12. Over the years Mr Beldjoudi was convicted and received custodial sentences as follows:

(a) 27 March 1969, eight months' imprisonment for assault and battery (Paris Criminal Court);

(b) 29 July 1974, six months' imprisonment for driving a vehicle without a licence and possession of category one or category four weapons or ammunition (same court);

(c) 10 January 1976, eighteen months' imprisonment, of which fourteen months suspended, and four years' probation for theft (Paris Court of Appeal);

(d) 25 November 1977, eight years' imprisonment for aggravated theft (Hauts-de-Seine Assize Court);

(e) 28 March 1978, three months' imprisonment for acquisition and possession of category one or category four weapons or ammunition (Nanterre Criminal Court);

(f) 4 February 1986, eighteen months' imprisonment, of which ten months suspended, and five years' probation for assault and battery and criminal damage (same court).

13. His periods of imprisonment before 1991, pending trial or after conviction, were as follows:

(a) 20 July - 17 September 1968, one month and twenty-eight days;

(b) 25 August - 8 October 1973, one month and fourteen days;

(c) 3 April - 21 August 1974, four months and eighteen days;

(d) 26 March 1975 - 4 December 1981, six years, eight months and eight days;

(e) 20 October 1985 - 25 April 1986, six months and five days.

Their total length was almost seven years, ten months and two weeks.

14. On 17 January 1991 the applicant was detained on remand at Fleury-Mérogis (Essonne) and his wife was placed under judicial supervision in Ecos (Eure), both having been charged with aggravated receiving of stolen property by an investigating judge at the Melun tribunal de grande instance (Seine-et-Marne).

In a judgment of 23 January 1992 the Indictments Division of the Paris Court of Appeal ordered Mr Beldjoudi's release subject to judicial supervision.

B. The deportation proceedings

1. The deportation order

15. The Minister of the Interior had on 2 November 1979 issued a deportation order against Mr Beldjoudi, on the ground that his presence on French territory was a threat to public order (*ordre public*).

The order, which was in accordance with the opinion of the Commission on Deportation of Aliens (*Commission d'expulsion des étrangers*), was served on the applicant on 14 November 1979 at Melun Prison.

2. The requests for the order to be withdrawn

16. Mr Beldjoudi requested the Minister of the Interior on five occasions to withdraw the order. The last request, of 8 August 1984, was the only one to receive a reply. This was sent to his lawyer on 4 December 1989 by the Director of the Department of Civil Liberties and Legal Affairs at the Ministry of the Interior, and read as follows:

"Following the decision of the European Commission of Human Rights of 11 July 1989 declaring Mr Beldjoudi's application admissible [(see paragraph 62 below)], you again drew my attention to your client's case. You wished in particular to know whether the Minister might be prepared to consider a friendly settlement of this matter.

In the light of a careful re-examination of Mr Beldjoudi's case, the Minister issued a compulsory residence order (*arrêté d'assignation à résidence*) on 31 August 1989 for the Hauts-de-Seine department, where the applicant has his habitual residence.

The residence document issued to him has attached to it permission to undertake paid work.

This goodwill decision in favour of Mr Beldjoudi, which has been taken in view of his family ties, may be continued if his conduct is not in conflict therewith.

I confirm, however, that in view of the seriousness and the number of the offences committed by Mr Beldjoudi, it has not appeared possible to revoke the deportation order issued against him.

..."

17. The compulsory residence order was served in November 1989.

3. The appeal for the order to be set aside

(a) Before the Versailles Administrative Court

18. On 27 December 1979 Mr Beldjoudi appealed to the Paris Administrative Court for the deportation order to be set aside. Having been born in France of parents who were themselves French at the time, he was to be regarded as French and hence not liable to deportation; further, he had no ties with Algeria and had been married to a Frenchwoman for nearly ten years.

19. The Conseil d'État assigned the case to the Versailles Administrative Court, within whose local jurisdiction it fell.

20. On 27 November 1980 that court ordered additional investigative measures: it asked the Minister of the Interior to submit his observations on the applicant's latest memorial and to produce a copy of the decree of 16 September 1970 refusing him French nationality (see paragraph 32 below).

21. In an interlocutory judgment of 14 October 1983 it decided to adjourn the case until the ordinary courts had decided the question of Mr Beldjoudi's nationality (see paragraphs 34 and 35 below).

22. On 8 February 1984 Mr Beldjoudi turned down the provisional residence permit which had been offered to him by the prefecture of the Hauts-de-Seine department, on the grounds that by accepting it he would be acknowledging that he was of Algerian nationality.

23. Mr Beldjoudi resumed the proceedings on 20 January 1988, submitting a supplementary memorial, without waiting for a decision on his appeal to the Court of Cassation (see paragraph 41 below). He argued from a law of 9 September 1986, which had amended the second paragraph of section 25 of the 1945 Order on which the deportation order was based: having been habitually resident in France from birth, he could not be the subject of such an order, as he had not been convicted and sentenced to a term of imprisonment of at least six months not suspended or one year suspended in respect of offences committed after the coming into force of that law.

24. On 18 February 1988 Mr Beldjoudi added to his supplementary memorial. With reference to Article 8 (art. 8) of the Convention, he maintained that implementation of the said order would be a serious interference with the respect due to his private and family life; he pointed out in this connection that he had been married to a Frenchwoman since 1970, he had been born in France, had lived there uninterruptedly and had received a French education and upbringing there.

25. On 21 April 1988 the court dismissed the appeal for the following reasons:

"Considering that by the order dated 2 November 1979 the Minister of the Interior, following the opinion of the special commission set up under section 25 of the Order of 2 November 1945, ordered the deportation of Mr Beldjoudi, an Algerian citizen, who had been convicted by a criminal court on 25 November 1977 and sentenced to eight years' imprisonment for aggravated theft;

Considering that it does not appear from the case-file that the Minister, in deciding that the presence of Mr Beldjoudi was a threat to public order and consequently ordering his deportation, failed to examine all the evidence relating to the applicant's conduct or assessed that conduct in a manifestly erroneous manner; and that it is not alleged that this assessment was based on material errors of fact;

Considering that Mr Beldjoudi is not justified in relying on provisions emanating from the Declaration of the Rights of Man and of the Citizen, claiming to this end the benefit of provisions in section 25 of the Order of 2 November 1945 as amended in a version subsequent to the decision appealed against; that having regard to the fact that the measure taken against the applicant was necessary for public safety, he is not entitled to take advantage of the provisions of Article 8 (art. 8) of the European Convention on Human Rights and Fundamental Freedoms;"

(b) Before the Conseil d'État

26. Mr Beldjoudi appealed to the Conseil d'État on 17 June 1988, asking it to quash the judgment of 21 April 1988 and set aside the order of 2 November 1979 as being ultra vires.

27. The Government Commissioner (commissaire du Gouvernement), Mr Ronny Abraham, made the following submissions:

"The majority of the grounds of appeal should not keep you long. One of them, however, should induce you to re-examine, and in our opinion to amend, your case-law on a point which is of considerable importance.

...

According to the appellant, the deportation order against him is in breach of Article 8 (art. 8) [of the Convention], as it constitutes an excessive interference with his family life. Mr Beldjoudi has been married to a Frenchwoman since 11 April 1970. He had thus been so married for over nine years at the time of the decision appealed against.

In the current state of your case-law this ground of appeal would have to be dismissed as ineffective.

Thus in a decision of 25 July 1980, Touami ben Abdeslem, [Recueil Lebon, tables], p. 820, and JCP [Juris-Classeur périodique] 1981.II.19.613, note Pacteau, your court held that an alien 'cannot to any effect rely on ... the provisions of Article 8 (art. 8) of the Convention for the Protection of Human Rights and Fundamental Freedoms ... in support of his submissions asking for the deportation order against him to be set aside'. Making the same point, but expressed slightly differently, the Chrouki

judgment of 6 December 1985 found that Article 8 (art. 8) of the European Convention on Human Rights did not prevent exercise of the power conferred on the Minister of the Interior by section 23 of the Order of 2 November 1945, and dismissed the ground of appeal without further consideration (appeal no. 55912).

This is the dominant line of your case-law, although there are also some decisions in which you appear rather to have taken a position on the merits and circumstances of the case in order to reject the ground of appeal: the Bahi decision of 6 February 1981, for instance, held that the requirements of Article 8 (art. 8) of the Convention could not in the particular case prevent a deportation order, but the wording used is too lapidary to be seen as a real change of direction of your case-law.

Whatever the position may be on these uncertainties, we will suggest to you today that you definitely abandon the solution laid down in the Touami ben Abdeslem judgment and adopt an entirely new approach to the question before us.

There are three principal reasons why we suggest this new approach to you.

The first reason is a negative one. It is that we do not really see what can justify the radically unfavourable answer given in 1980.

You surely did not intend to deny Article 8 (art. 8) of the Convention its character as a provision which is directly applicable in the domestic legal order. All your case-law is consistent as to the direct effect of the European Convention on Human Rights, nor does the actual wording of the Touami judgment in any way suggest such an interpretation, as Article 8 (art. 8) was not rejected as such, but only with reference to the removal of aliens.

Was it your intention rather to apply the technique of the 'screen law', considering that as the law gives a complete and exclusive definition of the legal conditions for deportation, the addition of supplementary conditions derived from international agreements would amount to disregarding the legislature's intention? If that was the reason for your decision at the time, it would clearly no longer be applicable today, following your plenary court decision of 20 October 1989 in the Nicolo case, according to which treaties take precedence over laws, even if the laws postdate them. But we doubt whether this was the explanation of your decision in Touami: the decision related to a 1978 deportation order; but at that time the relevant internal legislation was not subsequent but prior to France's ratification of the Convention, and the 'screen law' theory explanation is thus not tenable.

More simply, it seems probable to us that you considered that a deportation order was not in itself an interference with the alien's family life: if the alien has family ties on French territory, nothing prevents the other members of the family group leaving France with him. But this is a very theoretical way of looking at things. It is no doubt correct that in certain cases there is nothing to prevent the family leaving French territory; but in other cases, especially if the alien has a spouse or children of French nationality, it may be difficult on practical or even legal grounds for the other members of the family to follow him, with the effect that the expulsion measure jeopardises the pursuit of an ordinary family life. In any event, it is in our opinion not possible to state that a deportation measure can never of itself be capable of interfering with the family life of the person concerned, and there is no reason to dismiss a priori as ineffective a ground of appeal based on Article 8 (art. 8).

There is a second reason which supports us in this view: your case-law is not at all in harmony with that developed by the European Court of Human Rights in recent years.

In the *Berrehab v. the Netherlands* judgment of 21 June 1988 the Strasbourg Court defined for the first time the possible impact of Article 8 (art. 8) on expulsion measures against aliens. The substance of its decision was that where the alien has real family ties in the territory of the State in which he is resident and the expulsion measure is such as to jeopardise the maintenance of those ties, the measure is justified with regard to Article 8 (art. 8) only if it is proportionate to the legitimate aim pursued, in other words, if the interference with family life which follows from it is not excessive with respect to the public interest to be protected. This balance between the public and private interests induced the Court to find in the *Berrehab* case that there had been a violation of the Convention by the Netherlands, with respect to an alien who was the father of a child born of a (dissolved) marriage with a Netherlands woman and who had been refused renewal of his residence permit for purely economic reasons, reasons which were indeed legitimate, but which led in the particular case to consequences whose seriousness was not proportionate to the public interest pursued.

Such an intellectual approach ought not to disconcert you, and we see nothing to prevent you henceforth adopting it as yours with reference to the deportation of aliens, provided of course that Article 8 (art. 8) of the Convention is in fact pleaded.

Reviewing proportionality is among your tried and tested techniques, and the concept of a balance to be struck between divergent public and private interests is certainly not unfamiliar to you, since you constantly make use of it in certain contexts. Admittedly, the field of deportation has until now been dominated rather by the concept of discretionary power and its corollary of a limited power of review restricted to manifest abuse of discretion. But even in this field you carry out a complete review where the statutory provisions require this - as in the case of the concepts of 'absolute urgency' and 'compelling necessity for national security' which exceptionally permit the expulsion of aliens belonging to categories who in principle are protected against such a measure, under the legislation in force after 1981 - and in our opinion the same should apply in the case of the application of Article 8 (art. 8) of the Convention.

Furthermore - and here we come to our final argument - maintaining your case-law as in *Touami ben Abdeslem* would have the awkward consequence of making appeals to the Strasbourg institutions directly available to aliens who were the subject of a deportation order and complained of an interference with their family life, without their being obliged first to have recourse to the domestic courts.

For it is a known fact that, according to the consistent case-law of the European Commission of Human Rights, the rule that domestic remedies must first be exhausted, which under Article 26 (art. 26) of the Convention is a condition of admissibility of individual applications submitted to the Commission, must be understood as imposing on an applicant the obligation only to have prior recourse to domestic remedies which have a reasonable chance of success, having regard in particular to the case-law of the highest courts, with the effect that a definite line of case-law excluding a priori the taking into account of Article 8 (art. 8) of the Convention would entitle an alien to take his claims directly to the European institutions.

The present case is a perfect illustration of this. Without waiting for you to give a decision and hence before having exhausted all possible domestic remedies, Mr Beldjoudi lodged with the European Commission of Human Rights an application complaining of a violation of Article 8 (art. 8) of the Convention which he claimed to be the victim of. Despite the proceedings still pending before you, the European Commission of Human Rights declared the application admissible in a decision of 11 July 1989, referring in particular to your Touami ben Abdeslem decision.

Further, after adopting its report, the European Commission of Human Rights referred the application to the European Court of Human Rights, and the same case is thus simultaneously pending before you and before the Strasbourg Court, which will no doubt give a decision this year. This is an exceptional situation, which cannot be regarded as satisfactory or normal with respect to the control machinery set up by the European Convention on Human Rights, which is based on the concept of the subsidiarity of control by the European institutions to control by the domestic courts.

The only way to avoid such a situation occurring again, and indeed to avoid the domestic courts losing jurisdiction altogether in favour of the European Court, consists in you yourselves reviewing compliance with Article 8 (art. 8) rather than leaving this task to the Strasbourg institutions, whom incidentally you would not be doing a favour by allowing applicants immediate access to them.

If you agree with us on this question of principle, you will then have to make a decision on two points in the present case: firstly, does the deportation of Mr Beldjoudi constitute an 'interference' with his 'right to respect for his family life', to use the language of Article 8 (art. 8)? Secondly, is this 'interference' necessary and proportionate to the aim pursued, in the circumstances of the case?

We suggest that you answer both questions in the affirmative.

In our opinion, it cannot be doubted that the deportation of the applicant jeopardises his family life to a certain extent.

No doubt the possibility cannot be excluded of his French spouse being able to follow him abroad, which in practice means to Algeria. But it must be admitted that that would not be easy, and that legal and practical obstacles could make it difficult for the couple to restart life abroad.

However, the serious nature of the offences committed by the applicant appears to us to justify the deportation order issued against him, and the interference with the applicant's family life is in the instant case not disproportionate to the threat to public order which the applicant's presence on French territory represented on 2 November 1979, the date for you to have reference to.

We are indeed far removed from the circumstances which gave rise to the above-mentioned Berrehab judgment.

From 1969, when he was only nineteen years of age, Mr Beldjoudi committed various offences for which he received various convictions: assault and battery, driving a vehicle without a licence, carrying a prohibited weapon.

Above all, on 5 February 1975 he gained entry at night, together with accomplices, to the residence of two people who were subjected to violence by the criminals in

order to steal their savings. For these acts the applicant was convicted on 25 November 1977 and sentenced to eight years' imprisonment for aggravated theft.

In these circumstances, the decision taken with respect to him in 1979 does not appear to us to have been disproportionate to the aim pursued, or to be excessive even having regard to the family consequences it has for the applicant.

In one pan of the scales one must place the public interest in the removal of an individual who is a serious threat to the safety of persons and property. In the other pan one must bear in mind the difficulties Mr Beldjoudi and his wife (the couple have no children) would have in resettling abroad without damaging their family life. It seems to us that the balance is tilted towards the public interest.

We would not have any doubt in reaching this conclusion, had not the European Commission of Human Rights - as it is now necessary to mention - adopted an opposite position, in the report it drew up on this case under Article 31 para. 1 (art. 31-1) of the Convention and which it referred to the Court together with the application.

The Commission was of the opinion, by twelve votes to five, that the deportation of Mr Beldjoudi constituted a violation of Article 8 (art. 8).

The greatest regard must of course be had to such an opinion, but it must, however, not be forgotten that it is only an opinion, albeit a highly authoritative one and deserving of respect, as the Commission in a sense fulfils for the Court the same function as the Government Commissioner before your court; this is a sufficient indication of its importance, but the Court is not obliged to follow it; and in the past the Court has on several occasions differed from the Commission's opinion.

We for our part are unable to agree with the Commission's reasoning. It is clear from reading its report that it based itself not so much on Mr Beldjoudi's matrimonial ties, as on the fact that the applicant was born in France, has always lived there, appears not to have personal ties with Algeria, and does not know the Arabic language and that, in the words of the Commission, 'the nationality link, though a legal reality, in no way reflects the real situation in human terms' (see paragraph 64 of the report).

We appreciate the significance in human terms of these facts. Under the post-1981 legislation they might perhaps have protected Mr Beldjoudi against deportation, despite the seriousness of the offences committed by him. But they appear to us to have nothing to do with the concept of 'family life' protected by Article 8 (art. 8), or with that of 'private life', which two members of the Commission, in a concurring but separate opinion annexed to the report, suggested as a better basis for a finding of a violation of Article 8 (art. 8).

In fact, what the Commission intended to protect was not the applicant's 'family life' or 'private life' but rather his personal life and social life. But that seems to us to be outside the scope of the Article relied on.

We add for the sake of completeness of information that the deportation of Mr Beldjoudi has not actually been enforced and that the authorities have, in a spirit of conciliation, assigned him to compulsory residence in the Hauts-de-Seine department, where he still is.

For all these reasons, we submit that the appeal should be dismissed."

28. On 18 January 1991 the Conseil d'État ruled in accordance with the above submissions, and gave the following reasons for its decision:

"The technical correctness of the judgment appealed against

Considering, firstly, that contrary to what the appellant maintains, the judgment appealed against did not omit to rule on the ground of appeal based on the application of section 25 of the Order of 2 November 1945;

Considering, secondly, that it follows from a judgment of the Versailles Court of Appeal of 14 October 1987, given prior to the judgment appealed against, that the appellant is of Algerian nationality; that the Administrative Court was thus rightly able to regard the question of nationality, on which it had by an earlier judgment adjourned a decision, as having been settled and to give no decision on the ground of appeal based on Mr Beldjoudi's French nationality, abandoned by him;

The lawfulness of the Minister of the Interior's order of 2 November 1979

Considering that Mr Beldjoudi, who did not raise any ground of appeal before the Administrative Court relating to the outward legality of the order for his deportation, is in any event not entitled to raise for the first time on appeal arguments based on the lack of reasons in the opinion of the Commission on Deportation, the order pronouncing deportation and the letter notifying it, which are based on legal grounds different from those on which his application at first instance was based;

Considering that according to section [23] of the Order of 2 November 1945, in the wording in force at the time of the decision appealed against, prior to the Law of 29 October 1981, 'deportation may be ordered by an order of the Minister of the Interior if the alien's presence on French territory constitutes a threat to public order or public finance'; that it can be seen from the documents in the case-file that the aforesaid measure was taken by the Minister of the Interior after he had taken into consideration not only the criminal convictions pronounced against Mr Beldjoudi but also the totality of Mr Beldjoudi's conduct; that it is thus not tainted by error of law;

Considering that under Article 8 (art. 8) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, '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'; that the measure appealed against, based on the defence of public order, was necessary for the defence of that order in view of the applicant's conduct and the seriousness of the offences committed by him; that in these circumstances it was not in violation of Article 8 (art. 8) of the said Convention;

Considering that it follows from the foregoing that Mr Beldjoudi is not justified in requesting the quashing of the judgment appealed against, by which the Versailles Administrative Court dismissed his claim that the order of the Minister of the Interior of 2 November 1979, requiring him to leave French territory, be set aside;" (Recueil Lebon 1991, p. 18)

4. The applications for a stay of execution

29. On 27 December 1979 Mr Beldjoudi had lodged with the registry of the Conseil d'État an application for a stay of execution. It was dismissed by the court on 16 May 1980, on the grounds that "none of the arguments relied on appear[ed] such as to justify withdrawal of the deportation order".

30. While his appeal for the order to be set aside was pending before the Versailles Administrative Court (see paragraphs 18-25 above), the applicant twice requested a stay of execution. The requests, which were registered on 26 March 1986 and 22 February 1988, were joined to the merits of the case and dismissed on 21 April 1988 (see paragraph 25 above).

C. The applications for resumption or recognition of French nationality

1. The application for resumption

31. On 1 April 1970, eleven days before his marriage, Mr Beldjoudi made a declaration before the Colombes tribunal d'instance with a view to resumption of French nationality. He relied on section 3 of the Law of 20 December 1966, which allowed such a right to minor children born before 1 January 1963 whose parents had not made such a declaration.

32. A prime ministerial Decree, adopted on 16 September 1970 in accordance with the opinion of the Conseil d'État and served on 3 February 1972, refused him recognition of French nationality (section 4 of the Decree of 27 November 1962).

33. The applicant was at his request registered with the 1973 intake, and on 7 July 1971 at Blois he was given a certificate of fitness for national service, issued by the commanding officer of the French Army selection centre no. 10. He did not do the said military service, however, as the commanding officer of the Versailles recruitment office had deleted his name from the register on 25 June 1971.

2. The application for recognition

(a) Before the Colombes tribunal d'instance

34. On 17 June 1983 Mr Beldjoudi submitted a declaration of nationality to the Colombes tribunal d'instance, accompanying it by supporting documents. He claimed that he had enjoyed uninterrupted ostensible possession (possession d'état) of French status.

35. On 15 July the judge sent the file back to the applicant's lawyer, informing him that the applicant should apply to the prefecture of the Hauts-de-Seine department with a request for naturalisation.

36. On 21 December Mr Beldjoudi asked the judge in question to issue him with a certificate of French nationality. In an opinion of 28 December the judge declined, as the evidence produced was not sufficient to prove that the applicant enjoyed French nationality.

(b) Before the Nanterre tribunal de grande instance

37. On 17 January 1984 the applicant started proceedings against the procureur de la République in the Nanterre tribunal de grande instance, in order to have his French nationality recognised.

38. The court dismissed the claim on 15 December 1985, on the grounds that the applicant had lost French nationality on 1 January 1963, pursuant to the second paragraph of section 1 of the Law of 20 December 1966 (see paragraph 58 below).

(c) Before the Versailles Court of Appeal

39. Mr Beldjoudi appealed against the judgment to the Versailles Court of Appeal on 7 March 1986. He maintained that his father had not passed on to him anything which would allow him to claim an Algerian identity as to culture and language, that the Islamic religion was foreign to him, that he had ostensible possession of French status, and that the challenge to his French nationality on the basis of his Islamic status represented a discriminatory interference with his freedom of conscience and his right to lead a normal family life, in manifest breach of Articles 3, 8, 9, 12 and 14 (art. 3, art. 8, art. 9, art. 12, art. 14) of the Convention.

40. The Court of Appeal dismissed his appeal on 14 October 1987. It gave the following reasons for its decision:

"Considering that civil status is transmitted by descent; that a child born of two parents with special civil status (statut civil de droit local) possesses that status; that prior to Algerian independence Mr Beldjoudi senior did not, as he could have done, declare that he renounced his personal special civil status in order to acquire normal civil status (statut civil de droit commun); that the fact that Mr Mohand Beldjoudi had Islamic special civil status concerned only the rules applicable to the exercise of his civil rights and respected his freedom of religious conviction and did not require him to adhere to the Islamic religion; that, contrary to his claims, Mr Beldjoudi cannot claim for himself and his father ostensible possession of French status when, according to a letter from the Prefect and Commissioner of the Republic for the Department of Hauts-de-Seine dated 4 June 1984, his father, brothers and sisters have all for many years been holders of Algerian national identity cards and aliens' residence permits, and he himself has never since Algerian independence held documents such as a French national identity card or a French passport providing evidence of his ostensible possession of French status, but was the subject of a deportation order on 2 November 1979 which has apparently not prevented him up to now leading a normal family life in France; that accordingly the final ground of appeal he relies on, based on ostensible possession of French status and a violation of the European Convention on Human Rights, which was moreover not in force when he lost French nationality, must be dismissed;"

The decision was served on the applicant on 20 July 1989.

(d) Before the Court of Cassation

41. Mr Beldjoudi had appealed on 15 February 1989. The appeal was dismissed by the Court of Cassation (First Civil Division) on 12 March 1991 for the following reasons:

"Whereas according to the recitals of the judgment appealed against (Versailles, 14 October 1987), Mr Mohand Beldjoudi, born at Courbevoie on 23 May 1950, the son of Seghir Beldjoudi, born on 9 April 1909 at Sidi-Moufouk (Algeria), and Hanifa Khalis, born in 1926 at Elflaya (Algeria), brought proceedings in order to have his French nationality recognised; and whereas his application was dismissed on the grounds that, being aged under eighteen on the coming into force of Order no. 62-825 of 21 July 1962, he had, as regards the effect of the independence of Algeria on his nationality, followed the status of his parents, who were natives of that territory and had special civil status, and, not having benefited from the collective effect of a declaration recognising French nationality made by his father at the appropriate time, he was deemed to have lost French nationality on 1 January 1963, in accordance with paragraph 2 of section 1 of Law no. 66-945 of 20 December 1966;

Whereas Mr Beldjoudi complains that the judgment appealed against reached its decision on an invalid ground, namely that review of the constitutionality of the Law of 20 December 1966 was not a matter for the ordinary courts, in dismissing his ground of appeal based on the fact that the said Law was contrary to the provisions of Article 5 (d) (iii) of the International Convention of 7 March 1966 on the Elimination of All Forms of Racial Discrimination, ratified by France and published in the Official Journal of 10 November 1971, which prohibited all discrimination based on origin, especially ethnic origin, in the granting or withdrawing of nationality of the citizens of member States;

But whereas the judgment appealed against held that Law no. 66- 945 of 20 December 1966 based itself, in order to regulate the consequences for nationality of Algerian independence, on the civil status of persons originating from that territory and not on criteria prohibited by the aforesaid convention;

It follows that the judgment does not warrant the criticism made of it by the ground of appeal, which cannot be upheld;"

II. RELEVANT DOMESTIC LAW

A. Deportation of aliens

42. Deportation of aliens is governed by the provisions of the Order of 2 November 1945 relating to the conditions of entry and residence of aliens in France. The wording of the Order has been amended on several occasions, including amendments subsequent to 2 November 1979, the date when the ministerial order relating to the applicant was issued (see paragraph 15

above). The legislation in question did not include any transitional provisions.

1. Grounds for deportation

(a) The position in 1979

43. In 1979, section 23 of the 1945 Order read as follows:

"... deportation may be ordered by an order of the Minister of the Interior if the alien's presence on French territory constitutes a threat to public order or public finance."

(b) The situation after 1979

44. Section 23 was amended by a Law of 29 October 1981, under which deportation was now subject to the existence of a "serious threat to public order".

Section 26 of the new Law, however, provided for a derogation, except in the case of aliens under eighteen years of age:

"In the event of absolute urgency ..., deportation may be ordered where it constitutes a compelling necessity for the security of the State or for public safety.

..."

45. These rules were altered by a Law of 9 September 1986.

Section 23 resumed its original wording, that of 1945. It added, however, that "the deportation order [could] be revoked at any time by the Minister of the Interior".

As for section 26, it stated that "a threat [to public order] having a particularly serious character" could in the event of absolute urgency justify deportation.

46. A Law of 2 August 1989 reintroduced the 1981 provisions.

47. The Minister of the Interior issued 383 deportation orders in 1990. Of these, 101 were based on section 26 of the 1945 Order, 54 relating to ordinary criminal offences and 47 to offences against the external or internal security of the State.

2. Persons liable to deportation

(a) The position in 1979

48. The 1945 Order did not define any categories of persons who were protected against all deportation measures.

(b) The position after 1979

49. By contrast, after being amended by the Law of 29 October 1981, section 25 of the Order stated:

"The following may not be the subject of a deportation order under section 23:

1. An alien under eighteen years of age;
2. An alien who proves by any means that he has habitually resided in France since attaining the age of ten years at the most;
3. An alien who proves by any means that he has habitually resided in France for over fifteen years, and also an alien who has lawfully resided in France for over ten years;
4. An alien who has been married for at least six months and whose spouse is of French nationality;
5. An alien who is the father or mother of a French child residing in France, provided that he exercises parental authority (at least in part) with respect to that child or is actually meeting his needs;
6. An alien who is the beneficiary of a pension in respect of an accident in employment or occupational illness paid by a French organisation, and whose permanent disability percentage is greater than or equal to 20%;
7. An alien lawfully residing in France under one of the residence documents provided for by the present Order or international agreements, and who has not been definitively convicted and sentenced to a penalty equivalent at least to one year's non-suspended imprisonment.

However, as a derogation from no. 7 above, any alien who has been definitively convicted and sentenced to a penalty of non-suspended imprisonment for any length of time for an offence under sections 4 and 8 of Law no. 73-548 of 27 June 1973 on multiple occupation, Article L.364-2-1 of the Code of Employment or Articles 334, 334-1 and 335 of the Criminal Code, may be deported.

..."

50. The Law of 9 September 1986 restricted the categories of non-deportation, but the Law of 2 August 1989 returned to the 1981 legislation.

3. Enforcement of deportation

51. Deportation is regarded in French law as a police measure, not a criminal sanction. An alien affected does not benefit from the retrospective effect of the more favourable later provisions. He can thus not rely on them in support of an application for a decision concerning him to be set aside.

52. Once a deportation order has been issued by the Minister of the Interior, it remains in force indefinitely. The alien concerned may at any time, as often as he wishes, request that it be revoked.

53. If the alien has been absent from French territory for over five years and wishes to obtain such revocation, his request is considered by a committee which consists of judges only. If the committee finds in his favour, its opinion is binding on the Minister.

54. It frequently happens that the Minister of the Interior waives enforcement of a deportation order while nevertheless declining to revoke it. In such cases a compulsory residence order is issued in respect of the alien, in the hope of his reintegration into society. If he continues to disturb public order, he may be deported. This is then a fresh decision, separable from the order and itself capable of being challenged before the administrative court judge.

If the matter is referred to the judge, he considers the behaviour of the person concerned during the period when his presence on French territory has been tolerated. In order to assess the lawfulness of the measure, he thus considers the facts as they are at the date when he takes his decision.

4. The case-law of the Conseil d'État

55. For a period of some ten years the Conseil d'État considered arguments based on Article 8 (art. 8) of the Convention to be of no effect as against a deportation order (see for example the Touami ben Abdeslem judgment of 25 July 1980, Recueil Lebon 1980, p. 820, and *Juris-Classeur périodique* 1981, jurisprudence, no. 19613, with note by Mr Bernard Pacteau, and the Chrouki judgment of 6 December 1985).

The Beldjoudi judgment of 18 January 1991 (see paragraph 28 above) marks the abandonment of this line of case-law. Instead of reviewing whether there has been a manifest error of discretion with reference only to the threat to public order, the court now carries out a complete review of proportionality, and this has sometimes led to the setting aside of deportation orders (see for example the Belgacem judgment of 19 April 1991 (plenary court), with submissions by Government Commissioner Mr Ronny Abraham, *Revue française de droit administratif* 1991, pp. 497-510, and the Hadad judgment of 26 July 1991 (the President of the Judicial Division), to be reported in the Recueil Lebon).

B. Acquisition of French nationality

1. Recognition of nationality

(a) The Law of 28 July 1960

56. The Law of 28 July 1960 inserted into the Code of Nationality a Part VII, "Recognition of French Nationality".

It was limited to overseas territories (TOM), and introduced a new method for certain categories of "domiciled persons" and their descendants to have their French nationality recognised, subject to the two conditions of settling on French territory and making a declaration.

(b) The Order of 21 July 1962

57. Algeria did not have the status of a TOM when it gained independence. This induced the French legislature to enact the Order of 21 July 1962 relating to various provisions on nationality.

Under this Order persons of normal civil status, and persons of special civil status who had not been granted Algerian nationality under Algerian law, kept their French nationality as of right.

With respect to other persons of special civil status - the category to which the applicant's family belonged - section 21 provided that as from 1 January 1963 they and their children would not be able to establish their French nationality except by showing that they had made a declaration of "recognition of French nationality".

(c) The Law of 20 December 1966

58. The Law of 20 December 1966 terminated the application of the 1962 Order as from 21 March 1967. It brought about the loss of French nationality in the absence of a declaration of recognition.

Paragraph 2 (c) of section 1 of the Law stated that:

"Persons of special civil status of Algerian origin who have not by that date made the declaration provided for in Article 152 of the Code of Nationality shall be deemed to have lost French nationality on 1 January 1963. However, persons of special civil status of Algerian origin shall keep French nationality as of right if no other nationality has been conferred on them after 3 July 1962."

Section 3 nevertheless offered minor children born before 1 January 1963 - such as the applicant - the possibility of resuming French nationality where the parent whose nationality they had taken had not made the declaration of recognition.

(d) The Law of 9 January 1973

59. The Law of 9 January 1973 abolished recognition and deleted this word from the Code of Nationality. Part VIII of the Code, completely rewritten, laid down for the future special conditions for resumption of nationality for certain categories of persons who had lost French nationality following the gaining of independence by their country.

2. *Naturalisation*

60. Naturalisation is granted by decree. It may be granted *inter alia* to "nationals or former nationals of territories or States over which France has exercised sovereignty or a protectorate or a mandate or trusteeship" (paragraph 5 of Article 64 of the Code of Nationality).

However, "an alien who has been the subject of a deportation order or a compulsory residence order shall not be eligible for naturalisation unless such order has been revoked in the form in which it was issued" (first paragraph of Article 65). In addition, "no one may be naturalised if he is not of good character and morals or if he has been convicted of one of the offences mentioned in Article 79 ..." (Article 68).

PROCEEDINGS BEFORE THE COMMISSION

61. In their application (no. 12083/86) lodged with the Commission on 28 March 1986 Mr and Mrs Beldjoudi alleged that the deportation order against Mr Beldjoudi violated several provisions of the Convention: Article 8 (art. 8), by infringing their right to respect for their private and family life; Article 3 (art. 3), as the probable refusal of the Algerian authorities to issue Mr Beldjoudi with a passport allowing him to leave Algeria would constitute inhuman and degrading treatment; Article 14 in conjunction with Article 8 (art. 14+8), by discriminating on the grounds of Mr Beldjoudi's religious beliefs or ethnic origin; Article 9 (art. 9), by interfering with their freedom of thought, conscience and religion; and Article 12 (art. 12), by infringing their right to marry and to found a family.

62. The Commission declared the application admissible on 11 July 1989. In its report of 6 September 1990 (Article 31) (art. 31), it expressed the opinion:

(a) that the deportation of Mr Beldjoudi would violate his and his spouse's right to respect for their family life within the meaning of Article 8 (art. 8) (twelve votes to five), but would not violate Article 3 (art. 3) (unanimously);

(b) that there had not been a failure to comply with the requirements of Article 14 in conjunction with Article 8 (art. 14+8) (unanimously) or with those of Articles 9 and 12 (art. 9, art. 12) (unanimously).

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 234-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

63. In their memorial the Government asked the Court "to hold that in the present case there [had] not been a violation of Article 8 (art. 8) of the Convention, or of the other Articles relied on by the applicants".

64. Counsel for the applicants made the following final submissions:

"Mr and Mrs Beldjoudi ask the Court:

to hold that the deportation order issued against Mr Mohand Beldjoudi by the French Government on 2 November 1979 constitutes a violation both of Article 8 (art. 8) of the ... Convention ... and of Article 8 in conjunction with Article 14 (art. 14+8) of the said Convention.

Should the French Government not put an end to this violation without delay, Mr and Mrs Beldjoudi ask that France be ordered to pay them, as compensation for the damage resulting from these violations, the sum of 10,000,000 French francs as damages and the sum of 100,000 French francs as reimbursement of irrecoverable costs incurred for the defence of their interests before the European Commission and Court of Human Rights."

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

65. The applicants claimed that the decision to deport Mr Beldjoudi interfered with their private and family life. They relied on Article 8 (art. 8) of the Convention, which reads 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."

This claim was disputed by the Government, but the Commission agreed with it, at least with regard to family life.

A. Paragraph 1 of Article 8 (art. 8-1)

66. The Government initially expressed doubt as to the existence of a real family life linking Mr Beldjoudi on the one hand and his parents, brothers

and sisters and his wife on the other hand. They did not repeat this point before the Court.

67. The Court merely notes, in agreement with the Commission, that enforcement of the deportation order would constitute an interference by a public authority with the exercise of the applicants' right to respect for their family life, as guaranteed by paragraph 1 of Article 8 (art. 8-1).

B. Paragraph 2 of Article 8 (art. 8-2)

68. It must therefore be determined whether the expulsion in issue would comply with the conditions of paragraph 2 (art. 8-2), that is to say, whether it would be "in accordance with the law", directed towards one or more of the legitimate aims listed, and "necessary" for the realisation of those aims "in a democratic society".

1. "In accordance with the law"

69. The Court, in agreement with those appearing before it, takes note that the ministerial order of 2 November 1979 was based on section 23 of the Order of 2 November 1945 relating to the conditions of entry and residence of aliens in France (see paragraph 43 above). It was also found to be lawful by the Conseil d'État in its judgment of 18 January 1991 (see paragraph 28 above).

2. Legitimate aim

70. The Government and the Commission considered that the interference in issue was directed at aims which were entirely in accordance with the Convention, the "prevention of disorder" and the "prevention of crime". The applicants did not dispute this.

The Court reaches the same conclusion.

3. "Necessary in a democratic society"

71. The applicants argued that the deportation of Mr Beldjoudi could not be regarded as "necessary in a democratic society".

They relied on a number of circumstances. Thus, Mr Beldjoudi was born in France of parents who originated from a territory which was French at the time, namely Algeria; he had always lived in France, as had his brothers and sisters (see paragraph 9 above); he stated that he did not know Arabic, and had received a French education and upbringing; he had married a Frenchwoman in 1970 (see paragraphs 10-11 above), who would be forced to go into exile from her own country in order not to be separated from her husband; he claimed to have had ostensible possession of French status until 3 February 1972, when he was served with the prime ministerial decree refusing to recognise his French nationality (see paragraph 32 above); the

Prefect of Hauts-de-Seine had early in 1984 offered him a temporary residence permit (see paragraph 22 above) and the Minister of the Interior had issued a compulsory residence order in his favour on 31 August 1989 (see paragraph 16 above); he would not have been liable to deportation if the Laws of 29 October 1981 and 9 September 1986 had entered into force earlier (see paragraphs 44 and 45 above).

In short, Mr Beldjoudi - who does not regard himself as a "second generation immigrant" - and his wife claimed that all their family ties, social links, cultural connections and linguistic ties were in France. They claimed that there were no exceptional circumstances which could justify deportation.

72. The Commission agreed in substance with this argument, but attached particular weight to two additional factors. Firstly, Mrs Beldjoudi might have good grounds for not following her husband to Algeria, especially as she had reason to believe at the time of her marriage that she would be able to continue living with him in France. Secondly, the offences committed by Mr Beldjoudi - both before and after the deportation order - were ultimately not of such a type that the requirements of public order should outweigh considerations of a family nature.

73. The Government's first argument was based on the nature of the facts justifying the deportation. They stressed the large number and serious nature of the offences committed by Mr Beldjoudi, all of them during his adult life, over a period of fifteen years (see paragraph 12 above). They also noted the severity of the sentences passed by the French courts, in particular by the Hauts-de-Seine Assize Court for an offence classified as a serious crime (see paragraph 12 above); they totalled over ten years in prison. Finally, they pointed out that Mr Beldjoudi had continued with his life of crime even after being served with the deportation order, and that he was currently detained on remand, charged with a fresh offence (see paragraphs 12 and 14 above). In short, the dangerous character of Mr Beldjoudi meant that his presence on French territory could not be tolerated by the community.

The Government also considered that the extent of the interference complained of should not be exaggerated. Only the family life of the applicants as spouses was relevant, as Mr Beldjoudi had not lived with his parents since 1969 and did not contribute to the maintenance of his brothers and sisters; furthermore, the couple had no children. But the applicants had had to separate for long periods because of Mr Beldjoudi's terms of imprisonment. Moreover, Mr Beldjoudi had not shown that his wife would be unable to accompany him to Algeria (a State which had preserved numerous ties with France) or a third country, if he were in fact compelled to leave French territory. In short, the difficulties of resettling outside France without destroying family life would not be insurmountable.

74. The Court acknowledges that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of

well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (see the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985, Series A no. 94, p. 34, para. 67, the *Berrehab v. the Netherlands* judgment of 21 June 1988, Series A no. 138, pp. 15-16, §§ 28-29, and the *Moustaquim v. Belgium* judgment of 18 February 1991, Series A no. 193, p. 19, para. 43).

However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8 (art. 8-1), be necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued.

75. In the present case, as was rightly emphasised by the Government, Mr Beldjoudi's criminal record appears much worse than that of Mr Moustaquim (see the above-mentioned judgment, Series A no. 193, p. 19, para. 44). It should therefore be examined whether the other circumstances of the case, relating to both applicants or to one of them only, are enough to compensate for this important fact.

76. The applicants lodged a single application and raised the same complaints. Having regard to their age and the fact that they have no children, the interference in question primarily affects their family life as spouses, as the Government rightly pointed out.

They were married in France over twenty years ago and have always had their matrimonial home there. The periods when Mr Beldjoudi was in prison undoubtedly prevented them from living together for a considerable time, but did not terminate their family life, which remained under the protection of Article 8 (art. 8).

77. Mr Beldjoudi, the person immediately affected by the deportation, was born in France of parents who were then French. He had French nationality until 1 January 1963. He was deemed to have lost it on that date, as his parents had not made a declaration of recognition before 27 March 1967 (see paragraph 9 above). It should not be forgotten, however, that he was a minor at the time and unable to make a declaration personally. Moreover, as early as 1970, a year after his first conviction but over nine years before the adoption of the deportation order, he manifested the wish to recover French nationality; after being registered at his request in 1971, he was declared by the French military authorities to be fit for national service (see paragraphs 31 and 33 above).

Furthermore, Mr Beldjoudi married a Frenchwoman. His close relatives all kept French nationality until 1 January 1963, and have resided in France for several decades.

Finally, he has spent his whole life - over forty years - in France, was educated in French and appears not to know Arabic. He does not seem to have any links with Algeria apart from that of nationality.

78. Mrs Beldjoudi for her part was born in France of French parents, has always lived there and has French nationality. Were she to follow her husband after his deportation, she would have to settle abroad, presumably in Algeria, a State whose language she probably does not know. To be uprooted like this could cause her great difficulty in adapting, and there might be real practical or even legal obstacles, as was indeed acknowledged by the Government Commissioner before the Conseil d'État (see paragraph 27 above). The interference in question might therefore imperil the unity or even the very existence of the marriage.

79. Having regard to these various circumstances, it appears, from the point of view of respect for the applicants' family life, that the decision to deport Mr Beldjoudi, if put into effect, would not be proportionate to the legitimate aim pursued and would therefore violate Article 8 (art. 8).

80. Having reached this conclusion, the Court need not examine whether the deportation would also infringe the applicants' right to respect for their private life.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 (art. 14+8)

81. In view of the finding in paragraph 79 above, the Court does not consider it necessary also to examine the complaint that the applicants would, if Mr Beldjoudi were deported, suffer discrimination contrary to Article 14 (art. 14) in the enjoyment of their right to respect for their family life.

III. ALLEGED VIOLATION OF ARTICLES 3, 9 AND 12 (art. 3, art. 9 art. 12)

82. The applicants also relied on Articles 3, 9 and 12 (art. 3, art. 9, art. 12) before the Commission.

These complaints were not mentioned before the Court, which does not consider it necessary to examine them of its own motion.

IV. APPLICATION OF ARTICLE 50 (art. 50)

83. Under Article 50 (art. 50),

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Pursuant to this Article (art. 50), the applicants claimed compensation for loss and reimbursement of costs.

84. No breach of Article 8 (art. 8) has as yet occurred. Nevertheless, the Court having found that the Minister's decision to deport Mr Beldjoudi would, if implemented, give rise to such a breach, Article 50 (art. 50) must be taken as applying to the facts of the present case (see, *mutatis mutandis*, the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, p. 49, para. 126).

A. Damage

85. Mr and Mrs Beldjoudi alleged that they had suffered damage because of the failure to comply with the requirements of the Convention, and claimed 10,000,000 French francs.

The Government considered this figure to be entirely unprecedented and in any case completely unjustified, as the deportation order had not been enforced.

The Delegate of the Commission also considered the claim to be excessive. He suggested, however, that a reasonable sum should be awarded in respect of non-pecuniary damage; this should be less than that awarded to Mr Moustaquim, who had been obliged to live outside Belgium for some years after being deported.

86. The applicants must have suffered non-pecuniary damage, but the present judgment provides them with sufficient compensation in this respect.

B. Costs and expenses

87. Mr and Mrs Beldjoudi sought reimbursement of the costs and expenses allegedly incurred by them during the proceedings before the Convention institutions, namely 100,000 French francs.

The Government argued that the account submitted by counsel for the applicants was excessively vague. However, a sum of 40,000 francs would be acceptable, in the absence of special circumstances duly proved.

88. Having regard to the detailed information subsequently provided, the Court considers it reasonable to award 60,000 French francs under this head.

FOR THESE REASONS THE COURT

1. Holds by seven votes to two that, in the event of the decision to deport Mr Beldjoudi being implemented, there would be a violation of Article 8 (art. 8) with respect to both applicants;
 2. Holds by eight votes to one that it is not necessary also to consider the case from the point of view of Article 14 in conjunction with Article 8 (art. 14+8), or of Articles 3, 9 and 12 (art. 3, art. 9, art. 12);
 3. Holds unanimously that with respect to the non-pecuniary damage suffered by the applicants the present judgment constitutes in itself sufficient just satisfaction for the purposes of Article 50 (art. 50);
 4. Holds unanimously that the respondent State is to pay to the applicants within three months 60,000 (sixty thousand) French francs for costs and expenses;
 5. Dismisses unanimously the remainder of the claim for just satisfaction.
- Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 March 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) dissenting opinion of Mr Pettiti;
- (b) separate opinion of Mr De Meyer;
- (c) dissenting opinion of Mr Valticos;
- (d) concurring opinion of Mr Martens.

R.R.
M.-A.E.

DISSENTING OPINION OF JUDGE PETTITI

(Translation)

Unlike the majority, I have not voted in favour of a violation of Article 8 (art. 8).

To be sure, the effect of the judgment is confined to the particular case and to the special circumstances: Mr Beldjoudi has spent forty-one years of his life to date in France and has been married to a Frenchwoman for twenty-two years. But it seems to me that neither the reasoning on the principle nor the grounds given for the decision are consistent with a precise construction and evaluation of Article 8 (art. 8) of the European Convention, with reference to the deportation of aliens who have committed crimes.

The majority have indeed taken into account the fact that the deportation order was issued on 2 November 1979, before the convictions of 28 March 1978 and 4 December 1986; but they also seem to have accepted as additional criteria or reasons the authorities' refusal in 1970 to grant Mr Beldjoudi the French nationality sought by him, and also the absence of links with Algeria. They consider that deportation would not be proportionate to the legitimate aim, without giving adequate specifications of the extent of that proportionality in reply to the distinctions drawn by the Conseil d'État.

The Convention does not limit the sovereign right of States to decide to deport from their territory aliens who have committed crimes.

The right of an alien to reside on the territory of a High Contracting Party is not guaranteed as such by the Convention. Similarly, the right of asylum and the right not to be deported do not appear as such in the series of rights and freedoms guaranteed by the Convention (this is stated in several decisions of the Commission).

Only in exceptional circumstances can expulsion mean a violation of the Convention, for example if there is a very serious risk of treatment contrary to Article 3 (art. 3) in the destination State, especially where there is no possibility of deportation to some other democratic State. The Moustaquim judgment had a different context, as it concerned a young adolescent who had no roots outside the country where his family lived, and who had been reintegrated into society.

In the present Beldjoudi case, the circumstances are just the contrary: as an adult, a persistent offender, a person within the sphere of attacks on public order, he came within the class of legitimate deportations.

Moreover, he apparently refused to acquire French nationality by marriage, and had even turned down a compulsory residence order, and so forth.

The European Court appears also to have considered as an implicit reason for its decision the non-attribution of French nationality. This is to forget that the Evian agreements are an international treaty. The determination of nationality, including the opportunity to choose, was defined by France and Algeria. This was therefore not a unilateral decision by France. Algeria for its part had also insisted on such choices, and does not refrain from deporting Frenchmen who have committed crimes, even if they were born in Algeria and have lived there. Such a bilateral treaty is based on reciprocity and public international law. France cannot be accused of violating the European Convention on Human Rights for having applied the provisions of the Evian agreements and the Code of Nationality to determine Mr Beldjoudi's nationality. Moreover, like any State, France is sovereign in granting or refusing naturalisation.

It appears that the majority of the Court also considered that Mr Beldjoudi was a quasi-Frenchman, a concept which is unknown in international law.

The fact of having lived continuously in the host country or country of residence cannot be a complete bar to the exercise of the right to deport criminals. The special relationship between France and Algeria cannot in itself be considered as preventing deportation, as other member States of the Council of Europe also have similar situations arising from historical relationships between Germans and Poles, Austrians and Italians, Britons and Commonwealth citizens, etc., and such relationships do not prevent justified deportations.

Member States expel criminal citizens in the normal course of events. The only possible general defence should be a reference to Article 3 (art. 3), otherwise a long period of residence would suffice for reliance on Article 8 (art. 8). A great many deportations of aliens from Europe would be affected.

The majority did indeed take note of the significant factor following from Mr Beldjoudi's criminal record and conduct, even after the deportation order of 1979; but they balanced this factor against his personal and family life, on the basis of proportionality. Again, precise criteria should be defined for this balancing exercise, as the European Court normally does. In this judgment there is no definition of the threshold of risks and level of reoffending which should determine whether or not criminal aliens are to be deported. The majority also appear to have considered that departure for Algeria would inevitably have followed in the event of deportation, but this is not certain.

The serious problem of deportations of aliens who have committed crimes, which is a very different problem from that of administrative deportations not brought about by criminal convictions, some of which have dramatic consequences for families, is the subject of concern by the European Economic Community, the Council of Europe and the international organisation Interpol. An overall European policy should be

sought, in the spirit of the Convention for the Protection of Fundamental Rights.

In my opinion, the decision of the majority carries within it a source of contradictions, in an exponential interpretation of Article 8 (art. 8), if an interference with the private or family life of a persistent offender suffices to prevent deportation, as the position of a persistent offender would amount to a sort of immunity for his benefit. In fact, any deportation affects private or family life, just as any detention does. If a further offence is committed, there would be a further interference. But in that case private life is affected by the conduct of the person concerned.

Each member State remains the master of its own criminal policy, just as it retains the right to define the severity of sentences. In many States deportation is an exemplary penalty in addition to the sentence. In countries with a high proportion of aliens in the population, it is deportation much rather than the threat of prison which is a safeguard against repeated offending and strengthens the national consensus in favour of welcoming immigrants of good character who by their work share in the prosperity of the nation. A deportation measure, as accepted in criminology and criminal policy, is also a measure of protection for the potential victims of repeated offenders, especially in countries with a serious increase in crime and a high concentration of organised crime.

The Convention on Human Rights cannot ignore the aspect of the rights of others and their necessary protection. It would no doubt have been preferable if the French Government, bearing in mind the new provisions (closer to Article 8 of the Convention) (art. 8) of the Law of 29 October 1981 (sections 23 and 25) and the Law of 2 August 1989, had waived deportation in this particular case, in view of the position of the French spouse. If the European Court intended to move towards the review of deportations in similar cases for all member States, it would have to examine matters from the point of view either of Article 6 (art. 6), if that Article had been violated with reference to the domestic proceedings seen in the light of the European Convention on Human Rights, or of Article 3 (art. 3) (inhuman and degrading treatment). The concept of a balance of interests in the event of the possible but not certain use of Article 8 (art. 8) would require a strict application of proportionality, which in my opinion is lacking in the reasoning of the Beldjoudi judgment. The State's right to deport aliens who commit crimes is to a certain extent for the general interest the counterpart of the welcome given to persons enjoying the right of asylum and migrants, which is a key element of international solidarity and the protection of human rights.

SEPARATE OPINION OF JUDGE DE MEYER

(Translation)

Like the majority of my colleagues, I consider that there would be a violation of the applicants' fundamental rights "in the event of the decision to deport Mr Beldjoudi being implemented".

But which right or rights are these?

Our colleague Mr Martens was right to wonder whether the case did not concern their right to respect for their private life just as much as their right to respect for their family life. I agree to a great extent with his observations*.

It seems to me, however, that ultimately, bearing in mind the circumstances mentioned in paragraphs 77 and 78 of the judgment, the deportation of Mr Beldjoudi, with respect to both applicants, would not merely constitute an unacceptable interference with their private and family life, but would actually be inhuman treatment**.

This would be so, not indirectly because of what might await them in Algeria - that is not the point in issue here*** - but directly, in that Mr Beldjoudi would be ejected, after over forty years, from a country which has always in fact been "his" since birth, even though he does not possess its "nationality".

While it is true, as the documents in the case show, that Mr Beldjoudi has already been convicted of numerous offences, mostly comparatively serious ones, and is now once more under suspicion of having committed others****, he can be sufficiently punished for these by the criminal law.

* See pp. 37 to 39 below.

** It is because the case should in my opinion also have been examined from this point of view that I have been unable to approve of point 2 of the operative provisions of the judgment. I entirely agree with it in so far as it relates to Articles 9, 12 and 14 (art. 9, art. 12, art. 14) of the Convention.

*** The present case differs in this respect from the Soering (Series A no. 161) and Cruz Varas (Series A no. 201) cases.

DISSENTING OPINION OF JUDGE VALTICOS

(Translation)

I regret that I must express my dissent from the opinion of the majority of the Court, who have concluded that there was a violation of Article 8 (art. 8) of the Convention in the instant case, with reference in particular to Mr Beldjoudi's family life.

My explanation need not be long, as it is based in essence on the dissenting opinion I gave in the similar, although not identical, case of the youth Moustaquim.

The differences between the two cases cut both ways: on the one hand, the present case concerns the ties between a husband and his wife, not those between a young man and his family. On the other hand, young Moustaquim's criminal behaviour consisted of the offences of an adolescent, very numerous but for the most part comparatively unimportant, whereas here there were repeated crimes of violence committed by a person aged about forty, who had been sentenced to nearly eleven years' imprisonment in less than seventeen years. Moreover, the Court acknowledged that Mr Beldjoudi's criminal record was "much worse".

The deportation of aliens - which one can understand being contemplated in a case as serious as this one - is a prerogative of States, and its use is restricted by the Convention (Article 5 para. 1 (f) of the Convention and Protocols Nos. 4 and 7) (art. 5-1-f, P4, P7) only in well-defined cases. This is not one of them.

Admittedly, the Court has in the present case interposed the concept of family life, which is protected by Article 8 (art. 8) of the Convention. It considers that there was on the part of the Government an interference by a public authority with the exercise of the applicants' right to respect for their family life. One may well wonder, however, whether Article 8 (art. 8) is really applicable to a case such as this and whether it was designed to prohibit the deportation of aliens married to citizens of the host country. Such an interpretation might open the way to many abuses.

In any event, it does not seem to me to be possible to use Article 8 (art. 8) of the Convention to restrict the right of States to take deportation measures, where they have valid reasons for deciding on them in defence of public safety, and where their effect on family life is only an indirect consequence.

CONCURRING OPINION OF JUDGE MARTENS

1. I agree with the findings of the Court but, as far as Mr Beldjoudi is concerned, I would have preferred its decision to have been based on (a) a less casuistic reasoning and (b) interference with the right to respect for private life.

2. Paragraph 1 of Article 3 of Protocol No. 4 (P4-3) to the Convention forbids the expulsion of nationals. In a Europe where a second generation of immigrants¹ is already raising children (and where violent xenophobia is increasing to an alarming extent) it is high time to ask ourselves whether this ban should not apply equally to aliens who were born and bred in a member State or who have otherwise, by virtue of long residence, become fully integrated there (and, conversely, become completely segregated from their country of origin)².

In my opinion, mere nationality does not constitute an objective and reasonable justification for the existence of a difference as regards the admissibility of expelling someone from what, in both cases, may be called his "own country". I therefore have no hesitation in answering the above question in the affirmative. I believe that an increasing number of member States of the Council of Europe accept the principle that such "integrated aliens" should be no more liable to expulsion than nationals³, an exception being justified, if at all, only in very exceptional circumstances. My own country is one of those States⁴ and since 1981 - with the exception of the period 1986-1989 so is France⁵.

¹ I realise, of course, that the present case may be distinguished from an ordinary "second-generation immigrant's expulsion case" in that Mr Beldjoudi's parents, when they took up residence in France, were not "immigrants" *stricto sensu* but French citizens coming to live in their own country. I think, however, that it is legitimate to ignore this difference for present purposes.

² This question has, of course, a more limited scope in those member States where, under the principle of *ius soli*, second-generation immigrants acquire citizenship by reason of their birth within the territory; it is, therefore, probably more exact to refer to expulsion of "integrated aliens" rather than "second-generation immigrants' expulsion".

³ This principle has already been accepted in the context of the International Covenant on Civil and Political Rights: under Article 12 para. 4 of the Covenant "no one shall be arbitrarily deprived of the right to enter his own country"; this right implies a ban on the expulsion not only of nationals, but also - as appears from the drafting history of the words "his own country" - of all "integrated aliens" (such as second-generation immigrants); see M. Nowak, CCPR- Kommentar, Art. 12, Randnummern 45-51; Van Dijk & Van Hoof, *De Europese Conventie*, 2nd edition, p. 551; Velu and Ergec, *La Convention européenne des Droits de l'Homme*, para. 372 (p. 322).

⁴ See the 1990 version of the "Circular on Aliens": *Nederlandse Staatscourant* 12 maart 1990, no. 50; see further on this issue, *inter alia*: Groenendijk, *Nederlands Juristenblad* 1987, pp. 1341 et seq.; Swart, *Preadvies*, *Nederlandse Juristen-vereniging* 1990, para. 35 (pp. 242 et seq.).

⁵ See paragraphs 42-50 of the Court's judgment.

I would have preferred the Court's decision in the present case to have been based on the aforesaid principle, coupled with a finding that there were no very exceptional circumstances justifying a departure therefrom. A judgment along those lines would have achieved what the *Moustaquim v. Belgium*⁶ and the present judgment have failed to do, namely introduce a measure of legal certainty; this seems highly desirable, especially in this field.

3. The latter consideration also militated, as Mr Schermers rightly pointed out⁷, in favour of basing the Court's decision - if possible - on interference with the right to respect for private life, since, whilst not all "integrated aliens" threatened with expulsion are married, they all have a private life.

In my opinion, it is possible to do so. Expulsion severs irrevocably all social ties between the deportee and the community he is living in and I think that the totality of those ties may be said to be part of the concept of private life, within the meaning of Article 8 (art. 8).

It is true that, at least at first sight, the text of this provision seems to suggest otherwise. Read as a whole, it apparently guarantees immunity of an inner circle in which one may live one's own, one's private, life as one chooses. This "inner circle" concept presupposes an "outside world" which, logically, is not encompassed within the concept of private life. Upon further consideration, however, this "inner circle" concept appears too restrictive. "Family life" already enlarges the circle, but there are relatives with whom one has no family life *stricto sensu*. Yet the relationship with such persons, for instance one's parents, undoubtedly falls within the sphere which has to be respected under Article 8 (art. 8). The same may be said with regard to one's relationships with lovers and friends. I therefore share the view of the Commission, which has repeatedly held that "respect for private life"

"comprises also to a certain degree the right to establish and to develop relationships with other human beings, especially in the emotional field, for the development and fulfilment of one's own personality"⁸.

I think that the Court's *Dudgeon v. the United Kingdom*, *Rees v. the United Kingdom*, *Cossey v. the United Kingdom* and *B. v. France* judgments⁹ are also based on the idea that to a certain extent a person's

⁶ Judgment of 18 February 1991, Series A no. 193.

⁷ See his concurring opinion appended to the Commission's opinion in the present case pp. 48 and 49.

⁸ See, *inter alia*: Decisions and Reports, no. 5, pp. 86-87, and no. 10, p. 100; Series B no. 36, pp. 25-26.

If the Commission, in so holding, intended to give a definition of "private life" within the meaning of Article 8 (art. 8) (as has been suggested by Doswald-Beck, *Human Rights Law Journal* 1983, p.288), I do not agree: it is highly difficult to define the concept and I submit that the time has not yet come to try to do so.

"external" relations with others (outside the "inner circle") do fall within the sphere of private life¹⁰.

The same idea presumably underlies the aforementioned ban on the expulsion of nationals: when speaking of nationals, one almost always thinks primarily of those whose links with a given country are particularly close and manifold because they have been born and bred there¹¹, in a family which has lived there for generations¹²; it was clearly felt to be unacceptable that, by compelling such persons to leave, never to return, a State should be entitled to sever those ties irrevocably.

To sum up: I think that expulsion, especially (as in the present case) to a country where living conditions are markedly different from those in the expelling country and where the deportee, as a stranger to the land, its culture and its inhabitants, runs the risk of having to live in almost total social isolation, constitutes interference with his right to respect for his private life.

⁹ Judgments of 22 October 1981, 17 October 1986, 27 September 1990 and 25 March 1992, Series A nos. 45, 106, 184 and 232-C.

¹⁰ See further: *Velu and Ergec*, *La Convention européenne des Droits de l'Homme*, para. 652 (pp. 535 et seq.).

¹¹ See paragraph 88 of the Court's *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985 (Series A no. 94, p. 41).

¹² For the idea that a person's personal history and memories may be said to fall within the sphere which has to be respected under Article 8 (art. 8), see the Court's *Gaskin v. the United Kingdom* judgment of 7 July 1989 (Series A no. 160).