



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

COURT (CHAMBER)

CASE OF NASRI v. FRANCE

(Application no. 19465/92)

JUDGMENT

STRASBOURG

13 July 1995

In the case of Nasri v. France¹,

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 Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, President,
Mr R. BERNHARDT,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr J. DE MEYER,
Mr J.M. MORENILLA,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr D. GOTCHEV,

and also of Mr H. PETZOLD, Registrar,

Having deliberated in private on 25 February and 21 June 1995,

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") and by the French Government ("the Government") on 20 May and 7 July 1994 respectively, 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. 19465/92) against the French Republic lodged with the Commission under Article 25 (art. 25) by an Algerian national, Mr Mohamed Nasri, on 30 January 1992. Before the Commission the applicant was designated by the initial N.

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 Government's application referred to Article 48 (art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case

¹ The case is numbered 18/1994/465/546. 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.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

disclosed a breach by the respondent State of its obligations under Articles 3 and 8 (art. 3, art. 8) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant indicated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted 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)). On 28 May 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Matscher, Mr J. De Meyer, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr L. Wildhaber and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 14 November and 5 December 1994 respectively. On 10 February 1995 the Commission produced various documents, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 21 February 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr M. PERRIN DE BRICHAMBAUT, Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Mrs M. MERLIN-DESMARTIS, administrative court judge on secondment
to the Legal Affairs Department, Ministry of Foreign Affairs,
Mrs M. PAUTI, Head of the Comparative and International Law Office,
Department of Civil Liberties and Legal Affairs, Ministry
of the Interior, *Advisers*;

(b) for the Commission

Mr J.-C. GEUS, *Delegate*;

(c) for the applicant

Mr B. DESCLOZEUX, avocat, *Counsel*,

The Court heard addresses by Mr Perrin de Brichambaut, Mr Geus and Mr Desclozeaux and also their replies to its questions and to the questions of one of its members.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Nasri, an Algerian national, was born deaf and dumb in June 1960, in Algeria. He is the fourth of ten children, one of whom is deceased and six of whom are French nationals. He came to France with his family in February 1965. He is currently subject to a compulsory residence order pursuant to which he is required to live with his parents, at Nanterre (Hauts-de-Seine).

A. The applicant's schooling

7. According to the information provided to the Court, the applicant's schooling may be summarised as follows.

8. On their arrival in France in 1965 Mr and Mrs Nasri wanted to enrol their son in kindergarten, but he was refused admittance on account of his handicap. They then sought to have him admitted to the Institut Saint-Jacques in Paris, a specialist establishment for the deaf and dumb. The institute could not however take him because of a lack of places and because his intellectual level was not regarded as sufficient. As a result Mr Nasri was not able to attend a school until 1968.

In that year, after a social worker had intervened, he was admitted to the Centre audiométrique médico-psychopédagogique at Boulogne (Hauts-de-Seine) (a school specialising in hearing and speech difficulties). There he underwent therapy for his condition and received training adapted to his needs. On 11 December 1971 he was expelled for violent behaviour.

9. He then spent a further period with no schooling or training, which lasted until 1974, when he entered a training centre for the deaf and dumb at Tours (Indre-et-Loire). However, as his parents were unable to pay the boarding fees, he was returned to them after seven months.

On 20 September 1976 he began training as a house painter. On 20 October 1977, following various incidents, he was obliged to quit.

10. The applicant has indicated that he has no proficiency in deaf and dumb sign language, can neither read nor write and expresses himself in elementary fashion through signs that are intelligible only to his immediate circle of family and friends.

B. The applicant's criminal convictions

11. As early as 1977 the applicant came to the notice of the police as a result of a number of thefts. He appeared in court on several occasions.

12. At 10 March 1992 his police file recorded the following convictions:

(a) on 3 November 1981, 2 February 1982 and 21 January 1983 he was sentenced by the Paris Criminal Court to terms of imprisonment ranging from six months to one year for theft and attempted theft;

(b) on 15 May 1986 he was sentenced to five years' imprisonment, two of which were suspended, and five years' probation by the Hauts-de-Seine Assize Court for gang rape;

(c) on 17 September 1987 he was sentenced to one year and three months' imprisonment by the Nanterre Criminal Court for theft with violence;

(d) on 10 November 1988 he was sentenced to ten months' imprisonment by the Paris Court of Appeal for theft with violence;

(e) on 7 September 1989 he was fined two thousand francs by the Paris Criminal Court for assaulting a public official;

(f) on 10 December 1990 he was sentenced to six months' imprisonment by the Versailles Court of Appeal for theft with violence and receiving stolen goods.

In addition, on 21 May 1982 he had been given a suspended sentence of eight days' imprisonment for criminal damage and on 13 May 1992 he was sentenced to eight months' imprisonment for theft. On 31 March 1993 he was convicted of theft with violence, but the Court does not have any further details.

C. The applicant's deportation

13. On 21 August 1987 the Minister of the Interior ordered the applicant's deportation on the ground that his presence on French territory represented a threat to public order. The order, which was issued pursuant to sections 23 and 24 of the Order of 2 November 1945 as amended (see paragraph 27 below), cited the applicant's five recent convictions, including that of 15 May 1986 (see paragraph 12 above).

14. On 10 March 1988 the Versailles Administrative Court quashed the above-mentioned order. It found that the Minister had not been entitled to rely on the 1945 Order as amended by the Act of 9 September 1986, because the provisions of that Act were stricter than those that had previously been in force. To rely on them in the applicant's case, in respect of criminal convictions which all preceded that date, amounted to wrongfully modifying established situations.

15. On 15 February 1991 the Conseil d'Etat overturned the Administrative Court's judgment and dismissed Mr Nasri's applications for the quashing of the order or for a stay of execution. It took the view that the deportation of an alien was not a sanction, but an administrative measure exclusively designed to prevent disorder and to preserve public safety.

Accordingly, the provisions of the Act of 9 September 1986 could be applied as soon as they entered into force to aliens satisfying the conditions laid down therein, whatever the date of the convictions on which the measure was based.

16. On 30 January 1992 the applicant complied with a summons requiring him to report to the Hauts-de-Seine Prefecture at Nanterre, where he was first taken into police custody and then placed in administrative detention by order of the Prefect, for a period of twenty-four hours, with a view to his deportation to Algeria. As it proved impossible to deport him within that period, the Nanterre tribunal de grande instance issued a compulsory residence order dated 31 January requiring Mr Nasri to live with his parents.

17. On 31 January 1992, relying on Articles 3, 6, and 8 (art. 3, art. 6, art. 8) of the Convention, Mr Nasri lodged an application with the Paris Administrative Court challenging, *inter alia*, the deportation order and the detention order.

On 28 October 1992 his application was dismissed. According to the Administrative Court, the applicant's presence on French territory represented a serious threat to public safety in view of his numerous previous convictions, the gravity of the offences committed and his persistent re-offending. The impugned decision had not therefore constituted an infringement of his right to a family life that was "disproportionate to the aims pursued by the measure in question".

18. The deportation order has so far not been enforced, in compliance with the request for a stay of execution made by the President of the European Commission of Human Rights (see paragraph 29 below).

On 4 February 1992 the Minister of the Interior issued a compulsory residence order requiring Mr Nasri to live with his parents "until such time as he is in a position to comply with the deportation order concerning him". That measure has since been renewed.

D. The reports concerning the applicant

1. The medical reports

19. In connection with the criminal proceedings brought against the applicant, several expert reports were ordered with a view to studying his personality, his behaviour and his social environment.

(a) The reports predating the prosecution for rape

20. A report of a psychiatric examination effected in October 1977 at the request of the investigating judge of the Nanterre tribunal de grande instance presented the following conclusions:

"The accused is an adolescent aged 17; he is deaf and dumb and has not yet acquired the skills needed to cope with his handicap; he is not mentally retarded or mentally ill. He is, however, very easily influenced.

He is not insane within the meaning of Article 64 of the Criminal Code, but his emotional immaturity and intermittent personality disorders, combined with the fact that he is deaf and dumb, mean that his criminal responsibility is diminished to a considerable extent. He is by no means an insane person. He is not dangerous in a psychiatric sense. He can be restored to his family. He is unlikely to respond to a criminal penalty

..."

21. A medico-psychological report drawn up on 26 November 1982 at the request of the investigating judge of the Paris tribunal de grande instance, stated as follows:

"The subject's personal history is very sketchy, for the very reason that he mimes more than he uses sign language. None the less, we learn that he was born in Algeria some twenty-two years ago; he is unable to provide us with his precise date of birth. He indicates that he came from Algeria to France while still a very young child. Both parents are living. His father still works. His mother stays at home and is described as an invalid.

...

As regards his schooling, [he] indicates that he attended a special school for the deaf and dumb, where he learnt the trade of house painter. He further indicates that he is unable to write and has to ask another deaf and dumb person to assist him in that task. He does not know his parents' address in Paris.

...

His intellectual level is very low. He is incapable of accurately identifying significant dates in his life. He indicates that he can neither write nor read. The interpreter for the deaf and dumb tells us that he has a very poor knowledge of sign language and that he uses mime more than an appropriate language.

...

He should receive socio-professional supervision and be helped to find employment genuinely compatible with his condition."

(b) The reports drawn up in connection with the rape prosecution

22. A report of a medico-psychological examination submitted on 21 November 1983 notes:

"Mohamed Nasri appears to us to have only very limited means of communication and of understanding of the world. In his family and in society he has been in a situation apart where he has built up a closed universe for himself. As his communication with the outside world remains rudimentary, it is often expressed in aggressive terms, especially since he is only able to identify with individuals who embody a certain aggressiveness towards a social environment that has not provided him with the means of communication he could expect. He thus appears to have taken

refuge in the North African community, the only one to confer any status on him, but one which places him in a situation where he manifests this status by means of criminal or aggressive acts. That is what makes any intervention or assistance difficult.

Mohamed Nasri has the level of understanding and communication of a child. His perception of the world remains rudimentary; his expression and comprehension are poor. The therapy he has received has been unable to equip him with proper and adequate means of communication and he has had to revert, in a way that is regressive, to his milieu of origin, with which he has to identify in order to have a status and an identity. In his milieu of origin, where he is integrated under the nickname which establishes his difference, 'the mute', it is inevitable that [he] should adopt attitudes of criminality and aggression, which in view of his condition are the only means he has of maintaining his status and identity."

23. A psychiatric report of the same date concluded as follows:

"We know very little of a personal history that has been marked by deaf-mutism and attempts at therapy which have achieved very moderate results ... [He] spent his childhood and his entire adolescence in France and has never returned to Algeria, although he has kept his Algerian nationality ... He lives with his parents, goes out, hangs around, uses the pocket money that his mother gives him; they now live in publicly subsidised housing at Nanterre.

He was sent to prison a year or two ago for picking pockets; while in prison he presented signs of acute anxiety that made it necessary for him to be transferred to a psychiatric ward, where he spent three months.

...

[His] intelligence, which was no doubt normal at the outset, is now to be assessed in terms of intellectual efficiency, namely he uses a limited number of signs and his technique is rudimentary; his comprehension is inadequate. He therefore has very little understanding of abstract concepts of time, place, etc. ... His scholastic accomplishments are limited: he cannot read, or only titles, street names; he writes his name but nothing else; and he has not mastered the mechanism of addition involving the carrying-over of numbers. Our interpreter sees him as a young deaf and dumb boy aged 7 or 8 who has never had the benefit of specialist attention ..."

24. According to the findings of a psychiatric report of 31 July 1984:

"He is deaf and dumb and has received practically no therapy. It is well known that such deficiencies, over and above the mere physical defect, affect in a much more general way the whole process of conceptualisation and in particular the acquisition of moral values; it may therefore be concluded that he does not obey the same scales of values as a person who is normally integrated in society and who hears normally; these psychological factors should be taken into account when assessing the offence that he has committed.

...

An examination of Mr Mohamed Nasri does not disclose any major mental, psychological or behavioral anomalies amounting to insanity; he is nevertheless a person who has been uprooted, who is badly integrated, desocialised and handicapped

by his deaf-mutism with the implications that that has for his process of conceptualisation and his understanding of moral rules.

He was not insane within the meaning of Article 64 of the Criminal Code at the material time. From a strictly psychiatric point of view, the anomalies found are not such as to diminish his responsibility.

He is susceptible to the imposition of a criminal sanction. He does not need special treatment, but would benefit from specialised supervision for his deaf-mutism, which might improve the prognosis for his rehabilitation. Placing him in a psychiatric hospital does not appear desirable either in his interests or in those of the community."

25. According to a medico-psychological report submitted on 18 June 1985:

"The examination reveals nothing to justify the conclusion that [Mr Nasri] is not in a position to understand normally social rules and prohibitions, or that his capacity for self-control has been diminished by a clear pathological process.

It is, on the other hand, evident that the frustration that he feels, the difficulty of communicating, the impossibility of expressing his wishes by word combine to create the psychological conditions in which there is very low resistance to acting out his desires."

2. The police report

26. A police report of 13 April 1992 concerning the applicant states as follows:

"His handicap, deaf-mutism, is real and does not prevent him from wandering the streets of Villeneuve-la-Garenne and other villages at all hours of the day and night and from assiduously frequenting the bars where he drinks alcohol, which makes him aggressive or even violent.

...

He inspires terror in many inhabitants of Villeneuve and also in his accomplices. He has been involved in numerous incidents of theft or violence. This violent and antisocial individual makes no effort whatsoever to be integrated in our society and takes advantage of his handicap and of the favourable provisions of the administrative and justice systems. He is a real danger to public order, especially since he appears to be the leader of the young delinquents of Villeneuve owing to the fear he inspires."

II. RELEVANT DOMESTIC LAW

27. Deportation of aliens is governed by the Order of 2 November 1945 concerning the conditions of entry and residence of aliens in France. Section 23, as amended on 29 October 1981, provides:

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

An Act of 9 September 1986 had deleted the word "serious" from the above provision, but on 2 August 1990 the wording adopted in 1981 was reinstated.

PROCEEDINGS BEFORE THE COMMISSION

28. Mr Nasri applied to the Commission on 30 January 1992 (application no. 19465/92). He complained that his deportation to Algeria would entail a violation of Articles 3 and 8 (art. 3, art. 8) of the Convention; he also alleged a breach of Article 6 (art. 6).

29. The same day the President of the Commission indicated to the French Government, pursuant to Rule 36 of the Commission's Rules of Procedure, that it would be desirable in the interests of the parties and the proper conduct of the proceedings for the French authorities to refrain from deporting the applicant until 21 February 1992, the end of the next Commission session. The Commission extended the application of Rule 36 several times.

30. On 11 May 1993 the Commission declared the application admissible as regards the complaints concerning Articles 3 and 8 (art. 3, art. 8) of the Convention and inadmissible for the rest.

In its report of 10 March 1994 (Article 31) (art. 31), it expressed the opinion that the applicant's deportation to Algeria would constitute a violation of Articles 3 (art. 3) (nineteen votes to three) and 8 (art. 8) (twenty votes to two). 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 judgment³.

FINAL SUBMISSIONS TO THE COURT

31. In their memorial the Government invited "the Court to dismiss Mr Nasri's application".

32. The applicant asked the Court to hold that the execution of the order for his deportation to Algeria would constitute a violation of Articles 3 and 8 (art. 3, art. 8) and "to request the French authorities purely and simply to annul [that] order ...".

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 320-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

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

33. Mr Nasri maintained that his deportation by the French authorities would infringe his right to respect for his family life and would breach Article 8 (art. 8) of the Convention, which is worded 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 accepted this contention; the Government did not.

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

34. Like the Commission and the Government, the Court takes the view that the execution of the impugned measure would amount to an interference with the exercise by the applicant of his right to respect for his family life.

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

35. It accordingly falls to determine whether the deportation in question would satisfy the conditions laid down in paragraph 2, namely whether it would be "in accordance with the law", whether it would pursue one or more of the legitimate aims listed in that provision and whether it would be "necessary in a democratic society" to attain the said aim or aims.

1. *"In accordance with the law"*

36. Like the participants in the proceedings before it, the Court notes that the ministerial order of 21 August 1987 is based on sections 23 and 24 of the Order of 2 November 1945, as amended, concerning the conditions of entry and residence of aliens in France (see paragraph 27 above). Mr Nasri did not contest this and indeed the Conseil d'Etat found in its decision of 15 February 1991 that the deportation order was lawful (see paragraph 15 above).

2. *Legitimate aim*

37. The Government and the Commission considered that the interference in question would pursue aims fully compatible with the Convention: the "prevention of disorder" and the "prevention of crime"; this was not disputed by the applicant.

The Court arrives at the same conclusion.

3. *"Necessary in a democratic society"*

38. Mr Nasri maintained that his deportation could not be regarded as necessary in a democratic society. In view of the fact that he was deaf and dumb, illiterate and with no command of deaf and dumb sign language, he would have enormous difficulties in communicating if he were removed from his family circle, the only persons capable of understanding the signs he used to express himself. His parents and his brothers and sisters had not left France since 1965; six of his brothers and sisters had acquired French nationality. He himself had never severed links with his family; indeed, apart from certain periods spent with his sister and his brother-in-law, he had always lived at his parents' home. It was, moreover, there that he was required to live under the compulsory residence order to which he was currently subject.

In addition, the applicant had no knowledge of Arabic. The little schooling he had been given had been received solely in France and his contacts with the North African community were confined to the second generation, the very large majority of whom did not speak Arabic.

Most of the offences of which he had been convicted, such as the thefts, had been petty offences. It was true that he had also been convicted of rape, which conviction moreover lay at the origin of his deportation. Nevertheless the Assize Court had sentenced him to a term of imprisonment not exceeding five years (emprisonnement) - rather than a term exceeding five years (réclusion) -, part of which was suspended, and probation (see paragraph 12 above). Since that offence, which was committed in 1983, there had been no further instances of rape.

39. The Delegate of the Commission essentially subscribed to the applicant's view. He drew attention to the need to take into consideration the causes of Mr Nasri's behaviour. He had never been given the psychiatric supervision that his condition necessitated, despite the numerous recommendations made by the experts consulted by the courts. It was therefore important to qualify considerably the authorities' negative assessment of him.

40. The Government laid stress on the applicant's long criminal record, which included some thirty arrests and ten or so convictions over the period from 1981 to 1993. Between 1 January 1981 and 6 July 1993, he had spent one hundred and three months in prison and each time he had been released

he had used his short periods of liberty to commit new offences; he had been sentenced for the most recent such offence - theft with violence - on 31 March 1993.

Nevertheless, the decision to deport the applicant had been principally based on his conviction for rape. Because of this crime, Mr Nasri's case was much more serious than that of Mr Moustaquim or of Mr Beldjoudi (*Moustaquim v. Belgium* judgment of 18 February 1991, Series A no. 193, and *Beldjoudi v. France* judgment of 26 March 1992, Series A no. 234-A).

Furthermore the applicant had shown himself to be perfectly capable of making himself understood and establishing relationships outside his family circle. Several police reports disclosed in this connection that he spent the majority of his time with gangs of youths with whom he conducted a social life that was as active as it was criminal.

In short, the serious and repeated breaches of public order committed by the applicant outweighed the protection to be accorded to his family life, the reality of which appeared in any event disputable.

41. The Court reiterates 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 and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences.

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 (see, as the most recent authority, the *Beldjoudi* judgment, cited above, p. 27, para. 74).

42. In this instance the applicant's deportation was decided following his conviction for gang rape. The perpetrator of such a serious offence may unquestionably represent a grave threat to public order. In the present case, however, there are other aspects to be taken into account. Thus the *Hauts-de-Seine* Assize Court accepted that there were extenuating circumstances and sentenced the applicant to five years' imprisonment, two of which were suspended, and probation. It also recognised implicitly that Mr Nasri had not been the instigator of the offence in question. In addition, as far as rape is concerned, the applicant has not re-offended since that offence was committed, in 1983.

43. Above all it is necessary to take account of Mr Nasri's handicap. He has been deaf and dumb since birth and this condition has been aggravated by an illiteracy which was the result in particular of largely inadequate schooling, even though this was to a certain extent attributable to the applicant since on account of his bad behaviour he was expelled from the establishments that he attended. Like the Delegate of the Commission, who relied on the expert reports concerning the applicant, the Court is inclined to the view that, for a person confronted with such obstacles, the family is

especially important, not only in terms of providing a home, but also because it can help to prevent him from lapsing into a life of crime, all the more so in this instance inasmuch as Mr Nasri has received no therapy adapted to his condition.

44. It should also be stressed that the applicant has always lived with his parents - except for certain periods when he lived with his sister. He moved with them when they moved house and never severed his links with them. In this respect the fact that he spends a lot of time out with "gangs" makes no difference.

The applicant's parents arrived in France with their children in 1965 and have never left the country since. In the meantime six of his nine brothers and sisters have acquired French nationality. As regards the applicant himself, the meagre schooling that he was given was all received in France.

45. The Court accepts as credible Mr Nasri's affirmation that he does not understand Arabic, which was not contested. Admittedly he mixes with the North African community, but it is a well-known fact that there is an increasing tendency among the younger members of that community not to speak the language of their country of origin, and this would be particularly likely in the case of a deaf-mute.

46. In view of this accumulation of special circumstances, notably his situation as a deaf and dumb person, capable of achieving a minimum psychological and social equilibrium only within his family, the majority of whose members are French nationals with no close ties with Algeria, the decision to deport the applicant, if executed, would not be proportionate to the legitimate aim pursued. It would infringe the right to respect for family life and therefore constitute a breach of Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 3 (art. 3) OF THE CONVENTION

47. Mr Nasri also contended that his deportation to Algeria would amount to inhuman and degrading treatment in breach of Article 3 (art. 3) of the Convention.

48. Having regard to its conclusion in paragraph 46 above, the Court does not consider it necessary to examine this complaint.

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

49. Mr Nasri, who received legal aid before the Strasbourg institutions, did not claim either compensation for damage or the reimbursement of his costs and expenses under Article 50 (art. 50) of the Convention. The Court sees no ground for examining this question of its own motion.

50. As regards the applicant's request to have the deportation order annulled (see paragraph 32 above), the Court notes that the Convention does

not empower it to require the French State to take such a measure (see, *mutatis mutandis*, the *Saïdi v. France* judgment of 20 September 1993, Series A no. 261-C, p. 57, para. 47).

FOR THESE REASONS, THE COURT

1. Holds unanimously that there would be a violation of Article 8 (art. 8) of the Convention if the decision to deport the applicant were executed;
2. Holds by seven votes to two that it is not necessary also to examine the case under Article 3 (art. 3) of the Convention;
3. Holds unanimously that it is not necessary to apply Article 50 (art. 50) of the Convention in the present case.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 July 1995.

Rolv RYSSDAL
President

For the Registrar
Vincent BERGER
Head of Division in the registry of the Court

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

- (a) concurring opinion of Mr Pettiti;
- (b) partly dissenting opinion of Mr De Meyer;
- (c) partly dissenting opinion of Mr Morenilla; and
- (d) concurring opinion of Mr Wildhaber.

R. R.
V. B

CONCURRING OPINION OF JUDGE PETTITI

(Translation)

I voted with my colleagues in the Chamber to find that there would be a violation of Article 8 (art. 8) in the event of expulsion because of the accumulation of circumstances (see paragraph 46 of the judgment).

However, I consider that the reasoning in relation to that accumulation of circumstances could have included two additional considerations. In the first place there is the fact that the conviction for gang rape on which the deportation was based dated back to 1986 (15 May); this period during which the applicant remained on French territory altered the consequences of a deportation which was to be executed at a time when the circumstances had changed (this is not forgetting the fact that the French Government agreed to stay the measure at the Commission's request once an application had been lodged with the latter). The second consideration which merits attention is the way in which social conditions in relation to Mr Nasri's physical handicap and general conditions existing in the two countries concerned evolved between 1983 and 1995.

The European Court now has pending before it several cases concerning the deportation of aliens who have been convicted of offences and who are habitual re-offenders. The European Convention excluded from its substantive law the deportation of aliens by States (except collective deportations). However, when Article 8 (art. 8) and, in circumstances of exceptional gravity, Article 3 (art. 3) are involved, the Court may examine individual cases without overstepping the limits of what is laid down in Article 8 (art. 8) concerning the notion of private life. But this line of decisions does not provide a solution to the general problem, which is a matter for the member States of the Council of Europe, if they have the will to harmonise their policies in this field and cooperate, so as to take account of immigration flows and differences in the conditions applied with regard to integration and family reunion by certain States with a view to strengthening the protection of families, rules that have not been adopted by others.

At this stage it is also necessary to harmonise criminal policy involving questions of deportation and double punishment on the basis of the different existing judicial traditions.

The European Court will in the future probably have to specify the criteria which it intends to adopt: the threshold level of convictions and re-offending, physical and linguistic handicaps taken into account, the nature of offences, the substance of family life and definition of the family community to be protected under Article 8 (art. 8), definition of European public order in this context. To this end a study of comparative law should be undertaken by the member States by appointing an ad hoc committee of

experts to examine the legislation and judicial and administrative practices of the member States in these areas so as to avoid divergences from country to country, which would not be compatible with the common undertaking of member States to guarantee together the protection of the rights enshrined in the European Convention on Human Rights.

PARTLY DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

I was not able to approve point 2 of the operative provisions of this judgment for the reasons that I gave in the case of Beldjoudi v. France¹.

In the present case I consider likewise, and in particular in view of Mr Nasri's disability², that his deportation would not only interfere with his private and family life but would above all amount to inhuman treatment.

¹ Series A no. 234-A, p. 35.

² See paragraphs 20 to 25, 43 and 46 of the judgment.

PARTLY DISSENTING OPINION OF JUDGE MORENILLA

(Translation)

1. In my opinion, the order for Mr Nasri's deportation, in the circumstances noted by the majority (see paragraph 46), should above all be classified as inhuman treatment. The Court ought first to have ruled on the express complaint made by the applicant under Article 3 (art. 3) of the Convention and should have followed the approach of the majority of the Commission, concluding that there had been a violation.

2. The applicant's dramatic personal situation (his deaf-mutism with no schooling, his inability to adapt to society and his long criminal record) should not however be allowed to obscure the more general question which underlies the application to the instant case of Article 3 (art. 3) of the Convention: namely as to the limits to be imposed on administrative measures - or sanctions - of deportation to the country "of origin", on account of criminal or antisocial behaviour on the part of "second generation" aliens, including those who, like the applicant, came as children accompanying their migrant worker parents.

3. The deportation of such dangerous "non-nationals" may be expedient for a State which in this way rids itself of persons regarded as "undesirable", but it is cruel and inhuman and clearly discriminatory in relation to "nationals" who find themselves in such circumstances. A State which, for reasons of convenience, accepts immigrant workers and authorises their residence becomes responsible for the education and social integration of the children of such immigrants as it is of the children of its "citizens". Where such social integration fails, and the result is antisocial or criminal behaviour, the State is also under a duty to make provision for their social rehabilitation instead of sending them back to their country of origin, which has no responsibility for the behaviour in question and where the possibilities of rehabilitation in a foreign social environment are virtually non-existent. The treatment of offenders whether on the administrative or criminal level should not therefore differ according to the national origin of the parents in a way which - through deportation - makes the sanction more severe in a clearly discriminatory manner.

4. Attention has rightly been drawn (see Andrew Drzemczewski, "The position of aliens in relation to the European Convention on Human Rights", Council of Europe, Strasbourg, 1985, pp. 7-9) to the way in which international law has changed over the last few years, under the influence of recent developments in the human rights field, towards according equal treatment between aliens and nationals. This equality becomes more and more evident where the aliens are "immigrants integrated" in the community where they work. In the words of Article 12 para. 4 of the International Covenant on Civil and Political Rights, their "own country" is that in which

they were born or in which they grew up and which is theirs despite the difficulties of integration inherent in being of foreign origin or belonging to a different family culture. In any event, legal considerations or reliance on the traditional notion of State sovereignty cannot today serve as the basis for such treatment.

5. Nevertheless, for the third time in four years (see the *Moustaquim v. Belgium* judgment of 18 February 1991, Series A no. 193, p. 20, para. 50, and the *Beldjoudi v. France* judgment of 26 March 1992, Series A no. 234-A, p. 29, para. 82), the Court has provided further evidence of its traditional "circumspection" (see Marc-André Eissen, *El Tribunal Europeo de Derechos Humanos*, Spanish translation, Civitas, Madrid, 1985, pp. 81 and 95). The majority "does not consider it necessary to examine this complaint" (see paragraph 48) and confines itself to finding a violation of Article 8 (art. 8) of the Convention, regarding the measures in question as an interference with the family life of the person concerned. I regret this because the importance and topicality of the issue requires the Court to give a ruling in this matter and to express its opinion with clarity, which would not exclude taking into consideration the specific circumstances of the case before it.

6. Finally, I voted with the majority for the violation of Article 8 (art. 8) of the Convention in this case, even though I do not subscribe to the reasoning based on Mr Nasri's situation as a non-national and on his responsibility in view of his "bad behaviour" (see paragraphs 22-25 and 43). Given the applicant's distressing situation, I nevertheless find the majority's approach too formalistic (see paragraph 46) in so far as it gives to Mr Nasri's deportation the legal classification of interference with his family life rather than his private life, a more general concept of which family life is one element.

In fact Article 8 (art. 8) of the Convention recognises the right to respect by the public authorities of the "private sphere" of the individual (see Stephan Breitenmoser, *Der Schutz der Privatsphäre gemäss Art. 8 (art. 8) EMRK*, Juristische Fakultät der Universität Basel, Basle, 1986), of his personal life, which, under the terms of the Convention, includes his private and family life, his home and his correspondence. Deportation from a country in which the person concerned has lived from birth or from childhood constitutes an interference with this private and personal sphere where it entails, as in this case, the separation of the person concerned from his essential social environment, his emotional and "social circle", including his family. This interference by the public authorities infringes the right that every person has to respect for his private and family life if it is not justified under paragraph 2 of the same Article 8 (art. 8-2) of the Convention. As the majority found, in the present case it was not so justified.

CONCURRING OPINION OF JUDGE WILDHABER

In my opinion, this is a special case which does not easily lend itself to generalisation. Like the applicant himself, our Court, in relying on Article 8 (art. 8), invokes only the right to respect due to his family life. This approach is somewhat artificial, because the element of the respect of his private life is missing. In such cases, it would be more realistic to look at the whole social fabric which is important to the applicant, and the family is only part of the entire context, albeit an essential one.

Like the majority of the Court, I have not found it necessary to rely on Article 3 (art. 3). Indeed, had we relied on Article 3 (art. 3), we might have implied that no balancing of public interests can take place but rather that immigrants of the "second generation" cannot be expelled at all. It seems to me that this would go too far and that, exceptionally, the expulsion of those immigrants of the "second generation" who have committed very serious crimes (such as murder, rape, massive drug trade) must continue to be possible in accordance with the general principles of international law.