



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

COURT (CHAMBER)

CASE OF C. v. BELGIUM

(Application no. 21794/93)

JUDGMENT

STRASBOURG

7 August 1996

In the case of C. v. Belgium¹,

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 Thór VILHJÁLMSSON,

Mr A. SPIELMANN,

Mr J. DE MEYER,

Mr A.N. LOIZOU,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

Mr P. KURIS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 February and 27 June 1996,

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 April 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 21794/93) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Moroccan citizen, Mr C., on 22 March 1993. The applicant asked the Court not to disclose his identity. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium 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 Articles 8 and 14 of the Convention (art. 8, art. 14).

¹ The case is numbered 35/1995/541/627. 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) (1 October 1994) 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.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated 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 J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4 (b)). On 5 May 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr B. Walsh, Mr A. Spielmann, Mr A.N. Loizou, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr L. Wildhaber, substitute judge, replaced Mr Walsh, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Belgian Government ("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 15 September and 9 October 1995 respectively. On 26 October 1995 the Secretary to the Commission informed the registry that the Delegate did not intend to reply in writing. On 8 February 1996 he supplied the Registrar with various documents he had requested 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 20 February 1996. The Court had held a preparatory meeting beforehand. There appeared before the Court:

(a) for the Government

Mr J. LATHOUWERS, Deputy Legal Adviser,
Head of Department, Ministry of Justice, *Agent,*
Mr F. HUISMAN, avocat, *Counsel;*

(b) for the Commission

Mr H. DANELIUS, *Delegate;*

(c) for the applicant

Mr A. MARX, avocat, *Counsel.*

The Court heard addresses by Mr Danelius, Mr Marx and Mr Huisman.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. The applicant, a Moroccan citizen born in 1955, is currently resident in Morocco.

7. In 1966 he came to live in Belgium with his parents, his brother and his three sisters, who were all Moroccan nationals. Between 1988 and 1991 the sisters adopted Belgian nationality. Two of them later left Belgium for Luxembourg. The applicant's father died in Morocco in 1989.

8. Mr C. lived in Brussels with his family in a house which they owned. After leaving school he trained as a mechanic. From 1984 onwards he worked for the family business as a taxi driver.

9. On 17 October 1985, in Morocco, he married a Moroccan woman who came to live with him in Belgium. Mrs C. gave birth to a son on 10 August 1986. On an unknown date Mr C. divorced his wife in Morocco. She then went back to live there. On 10 July 1991 the Kenitra Court of First Instance (Morocco) took formal note of the fact that Mrs C. had waived her right to custody of the child, who returned to Belgium after his father's release (see paragraph 13 below) and lived with his paternal grandmother. Since May 1992 he has apparently been living with one of his aunts in the Grand Duchy of Luxembourg.

10. On 6 April 1988 the Brussels Criminal Court convicted the applicant of criminal damage and sentenced him to two months' imprisonment, suspended for three years, and a fine of sixty times 400 Belgian francs (BEF).

11. Following the seizure of 17.2 kilograms of cannabis, the same court sentenced Mr C. on 14 December 1988 to seven years' imprisonment and a fine of sixty times BEF 1,000 for unlawful possession of drugs and conspiracy. On 30 June 1989 the Brussels Court of Appeal reduced the term of imprisonment to five years. On 28 July 1988, in the course of the judicial investigation, a deputy police superintendent at Ixelles had drawn up the following report on the applicant:

"[Mr C.] is of good conduct in the district. He has not brought himself to his neighbours' attention through any immoral behaviour. His main social contacts are with persons of Moroccan origin. He is known as a taxi driver and works for ... company, whose registered office is in Ixelles ... His average monthly net salary is BEF 25,000. He apparently has no other source of income. He lives in the house which his parents own. He occupies one room and pays no rent. As regards dependants, he was formerly married to [R. S.] and had a son from that union. The above persons no longer live in Belgium but in Morocco. He has to pay BEF 2,000 per month to his wife in maintenance. He is hard-working and gives his employer complete satisfaction."

12. According to a questionnaire filled in by the authorities at Forest Prison on 24 June 1988, the applicant is said to have claimed to be able to speak Arabic, French and Spanish.

13. Mr C. was released on parole on 23 May 1991. His son, who had been living with his mother while Mr C. was in prison, joined him in Belgium in July 1991 (see paragraph 9 above).

14. A royal order of 25 February 1991, which was served in March 1991, required the applicant to leave Belgium, on the following grounds:

" Whereas [Mr C.] has been found guilty of causing criminal damage, for which he was sentenced on 6 April 1988, in a judgment which has become final, to 2 months' imprisonment and a fine of 400 francs, the term of imprisonment being suspended for 3 years; Whereas he has been found guilty, as principal or joint principal, of possessing and dealing in prohibited drugs, namely 17.2 kilos of cannabis, aggravated by the fact that this offence also constituted participation in the principal or secondary activities of a criminal organisation, for which offences he was sentenced on 30 June 1989, in a judgment which has become final, to 5 years' imprisonment and a fine of 1,000 francs; Whereas, accordingly, by his personal conduct, he has seriously prejudiced public order;"

In reaching the above decision the Minister of Justice had declined to follow the advice of the Aliens' Office, which had suggested that Mr C. should not be deported but served with a warning.

15. On 13 September 1990 the Advisory Board on Aliens had expressed the opinion that deportation was warranted, on the following grounds in particular:

"[Mr C.] was married to a compatriot but is now divorced. A child was born of this marriage in 1986 and lived for a time with his mother in Morocco. He is apparently now with her in the Netherlands ... There is nothing to suggest that the serious threat posed by Mr C.'s behaviour has been removed. Were the deportation of an alien to be held to constitute interference with the exercise of his right to respect for his private and family life, within the meaning of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 8), such interference would be legitimate in the present case, being in accordance with the law and, in the applicant's case, in view of the seriousness of the threat posed by his presence in Belgium, necessary in the interests of public safety and the prevention of disorder and crime."

16. On 21 May 1991 the applicant asked the Conseil d'Etat to quash the deportation order, but on 7 October 1992 the Conseil d'Etat dismissed this application on the following grounds:

"The applicant's first ground of appeal is that there has been a breach of the Minister of Justice's circular of 8 October 1990 and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 8), in that the Minister and the Advisory Board on Aliens failed to take account of the fact that he had been living in Belgium since 1966, that his mother and sisters also lived there, and that he no longer had any links with Morocco, whose language he did not speak.

The Minister undertook in his circular not to deport an alien who had been settled in the country for more than ten years unless he had been sentenced to a term of

imprisonment of five years or more. He reserved the power to deport the alien in certain circumstances. The Minister examined the circumstances in this case and had valid grounds to conclude that, in view of the seriousness of the facts, the applicant should be deported, particularly in the light of the family circumstances described by the Advisory Board on Aliens. In so doing, he was not in breach of either his own circular or Article 8 of the Convention (art. 8).

In his second ground of appeal, the applicant alleges the breach of Article 6 of the Constitution, of the Minister of Justice's circular of 8 October 1990, of section 62 of the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens and of Articles 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 8, art. 14), in that the Minister unreasonably declined to follow the advice of his department not to deport the applicant.

The Minister's attention was drawn to the arguments of the Aliens Office and the Advisory Board on Aliens. He did not exceed his powers in deciding that, in view of the seriousness of the facts, the applicant should be deported on the ground that the protection of public order had to prevail over his personal and family interests."

On 11 September 1991 the Conseil d'Etat had declared inadmissible an application by the applicant for a stay of execution, on the ground that he had failed to appear in court.

17. After his release on parole on 23 May 1991 (see paragraph 13 above) Mr C. had thirty days in which to leave Belgium; this time-limit was later extended to 25 September 1991. He complied with the order on an unknown date.

II. RELEVANT DOMESTIC LAW

18. The Act of 15 December 1980 "on the entry, residence, settlement and expulsion of aliens", which has since been amended several times, governs the administrative status of aliens. Under section 20, second paragraph, an alien who has been granted a settlement permit may be deported "where he has seriously prejudiced public order or national security". Before such a deportation the Minister of Justice must seek the opinion of the Advisory Board on Aliens, which is composed of a judge, a lawyer and a member of an association for the protection of aliens' interests. Deportation orders are signed by the King and are subject to judicial review by the Conseil d'Etat (section 69).

PROCEEDINGS BEFORE THE COMMISSION

19. In his application to the Commission of 22 March 1993 (no. 21794/93) Mr C. complained of an infringement of his right to respect for his private and family life (Article 8 of the Convention (art. 8), taken separately and in conjunction with Article 14 (art. 14+8)).

20. The Commission declared the application admissible on 27 June 1994. In its report of 21 February 1995 (Article 31) (art. 31), it expressed the opinion that there had been no violation of Article 8 (art. 8) either taken separately (nineteen votes to three) or in conjunction with Article 14 (art. 14+8) (twenty-one votes to one). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment³.

AS TO THE LAW

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

21. According to the applicant, his deportation by the Belgian authorities infringed his right to respect for his private and family life and violated Article 8 of the Convention (art. 8), which provides:

"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 Government and the Commission rejected this argument.

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

22. It must first be ascertained whether Mr C. can rely on a "private and family life" within the meaning of Article 8 para. 1 (art. 8-1).

23. The Government answered this question in the negative. They maintained that the applicant no longer had any particular links with Belgium, as the family nucleus which had settled there in 1966 had subsequently broken up. The applicant's father had died in Morocco and two of his sisters had gone to live in the Grand Duchy of Luxembourg. Unlike his sisters, Mr C. had not applied for Belgian nationality, although he could have done so on reaching the age of 18. The applicant no longer belonged to the family taxi business, had ceased to work for it at the time of his arrest and had not worked for it subsequently. On the other hand, the applicant had

³ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-III), but a copy of the Commission's report is obtainable from the registry.

preserved strong links with his country of origin, as was shown by his marriage in Morocco to a Moroccan woman and then his divorce there in accordance with the local rite. It was also in accordance with Moroccan custom that the applicant and the mother of his son had agreed that he should have custody of the child. In addition, a 1988 police report had stated that Mr C.'s main social contacts were with people of Moroccan origin, and in the same year he had stated at Forest Prison that he spoke Arabic and Spanish (see paragraphs 11 and 12 above).

24. According to the Commission, the fact that the applicant's son had lived in Belgium with his paternal grandmother and that Mr C. had worked for the family business revealed the existence of some kind of family life within the meaning of Article 8 (art. 8).

25. The Court reiterates that the concept of family on which Article 8 (art. 8) is based embraces, even where there is no cohabitation, the tie between a parent and his or her child, regardless of whether or not the latter is legitimate. Although that tie may be broken by subsequent events, this can only happen in exceptional circumstances (see, among other authorities, the *Gül v. Switzerland* judgment of 19 February 1996, Reports of Judgments and Decisions 1996-I, pp. 173-74, para. 32, and the *Boughanemi v. France* judgment of 24 April 1996, Reports 1996-II, pp. 607-08, para. 35). In the present case the mere fact that the applicant was imprisoned and subsequently deported or that his son was then taken in by Mr C.'s sister in the Grand Duchy of Luxembourg, which borders on Belgium, do not constitute such circumstances. In addition, Mr C. established real social ties in Belgium. He lived there from the age of 11, went to school there, underwent vocational training there and worked there for a number of years. He accordingly also established a private life there within the meaning of Article 8 (art. 8), which encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature (see, *mutatis mutandis*, the *Niemietz v. Germany* judgment of 16 December 1992, Series A no. 251-B, p. 33, para. 29). It follows that the applicant's deportation amounted to interference with his right to respect for his private and family life.

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

26. It is therefore necessary to ascertain whether the deportation in issue satisfied the conditions of paragraph 2 (art. 8-2), that is to say whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society" for the achievement of that aim or aims. 1. "In accordance with the law"

27. It is not contested that the royal order of 25 February 1991 (see paragraph 14 above) was based on sections 20 and 21 of the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens

(see paragraph 18 above). The Conseil d'Etat, moreover, ruled that it was lawful (see paragraph 16 above). 2. Legitimate aim

28. Those appearing before the Court agreed that the interference in issue had aims which were compatible with the Convention, namely "the prevention of disorder or crime". 3. "Necessary in a democratic society"

29. The Government argued that the deportation in issue was justified by Mr C.'s delinquent conduct. The particular seriousness of the facts which had led to his conviction for unlawful possession of drugs and conspiracy gave reason to fear the greatest risks to public order, since the applicant had not shown any intention of mending his ways. It was further asserted that his attachment to his family and to the host country was not so strong as that of Mr Moustaquim and Mr Beldjoudi (see the Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, and the Beldjoudi v. France judgment of 26 March 1992, Series A no. 234-A). The consequences of his deportation for his private and family life could not therefore be regarded as disproportionate.

30. The Commission agreed with the above argument in substance.

31. 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 proportionate to the legitimate aim pursued.

32. The Court's task is to determine whether the deportation in issue struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other.

33. The Court notes that the applicant had real links with Belgium, where he lived from the age of 11 with his parents, his brother and his sisters in a house belonging to his family. He received part of his schooling there, underwent vocational training and worked as a taxi driver in the family business. Later, he lived there with his wife and son, who was himself born in Belgium and went to school there. Unlike his sisters, however, the applicant did not apply for naturalisation.

34. However, Mr C. also appears to have preserved important links with Morocco. As he did not leave Morocco before the age of 11, he must have learnt the language and established his first social and school relationships there. It was also in Morocco that he married a Moroccan woman. It was there that he divorced her and concluded an agreement with her giving him custody of their child. Lastly, it was in Morocco too that the applicant's father died. In short, the interference in issue was not so drastic as that

which may result from the expulsion of applicants who were born in the host country or first went there as young children.

35. Furthermore, the Court attaches great importance to the seriousness of the offences which gave rise to Mr C.'s long term of imprisonment and his deportation, namely unlawful possession of drugs and conspiracy. The applicant had assisted in the sale of more than 17 kilograms of cannabis. In the light of the ravages of drugs among the population, and especially among young people, it is not surprising that the authorities show great firmness with regard to those who actively contribute to the spread of this scourge.

36. Having regard to the nature of the applicant's links with Belgium and Morocco and to the seriousness of the offences which gave rise to his deportation, it has not been shown and there is nothing to indicate that in the circumstances of the case the Belgian authorities acted in an arbitrary or unreasonable manner, or failed to fulfil their obligation to strike a fair balance between the relevant interests. The applicant's expulsion cannot therefore be regarded as disproportionate to the legitimate aims pursued. There has accordingly been no violation of Article 8 (art. 8).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION INCONJUNCTION WITH ARTICLE 8 (art. 14+8)

37. As a Moroccan national Mr C. claimed to be a victim of discrimination on the grounds of nationality and race. He maintained that, in breach of Article 14 of the Convention taken in conjunction with Article 8 (art. 14+8), his deportation amounted to less favourable treatment than was accorded to criminals who, as nationals of a member State of the European Union, were protected against such a measure in Belgium.

38. Like the Government and the Commission, the Court considers that such preferential treatment is based on an objective and reasonable justification, given that the member States of the European Union form a special legal order, which has, in addition, established its own citizenship (see the previously cited Moustaquim judgment, p. 20, para. 49). There has accordingly been no violation of Article 14 taken in conjunction with Article 8 (art. 14+8).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no violation of Article 8 of the Convention (art. 8);

2. Holds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 (art. 14+8).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 7 August 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar