

**APPLICATION/REQUÊTE N° 16301/90**

**B v/BELGIUM**

**B c/BELGIQUE**

**DECISION** of 12 January 1991 on the admissibility of the application

**DÉCISION** du 12 janvier 1991 sur la recevabilité de la requête

---

**Article 26 of the Convention** *Whoever complains of an infringement of his right to respect for private and family life due to a decision of the Belgian authorities to expel him must, in order to exhaust domestic remedies apply to the Conseil d'Etat to have the expulsion order quashed, at the same time requesting a stay of execution*

*On the other hand, an appeal against an order to leave Belgian territory, made in enforcement of an expulsion order, is not regarded as an effective remedy*

*In this case, the depressive state which the applicant claimed to be in did not exempt him from the obligation to apply to have the expulsion order quashed*

**Article 26 de la Convention** *Celui qui se plaint d'une atteinte au droit au respect de sa vie privée et familiale en raison d'une mesure d'expulsion décidée par les autorités belges doit, pour épuiser les voies de recours internes, introduire auprès du Conseil d'Etat un recours en annulation, assorti d'une demande de sursis à exécution, de l'arrête d'expulsion*

*En revanche, n'est pas considérée comme efficace un recours contre la décision de quitter le territoire destinée à faire exécuter l'arrête d'expulsion*

*En l'espèce l'état dépressif dont le requérant prétendait souffrir ne le dispensait pas de l'obligation d'introduire un recours en annulation de l'arrête d'expulsion*

---

*(TRANSLATION)*

## **THE FACTS**

The facts, as submitted by the applicant, can be summarised as follows.

The applicant, who was born on 8 July 1963 in Triber Kebdana (Morocco), and is a Moroccan national, is at present detained in Louvain Prison. Before the Commission he is represented by Mr. Luc Lamine, a lawyer practising in Louvain.

He arrived in Belgium with his whole family in 1966

In 1985 the applicant was given a non-suspended sentence of ten months' imprisonment for drug-taking, several counts of theft and one count of aggravated theft.

On 26 June 1986 a royal decree was issued ordering his expulsion on the ground of the above conviction. This decree was served on the applicant on 18 July 1986.

Following his release, the applicant left Belgium of his own accord, but returned after seven months because he felt like a foreigner in Morocco.

In September 1989 the Brussels Criminal Court sentenced him to one year's imprisonment for the theft of two bottles of champagne and for breaching the expulsion order.

In early February 1990, after his release, the applicant was handed over to the Aliens Office and transferred to Louvain Prison. On 22 February 1990 an initial attempt to repatriate the applicant failed when he refused to board the aircraft. The same thing happened when a second attempt was made on 29 March 1990. On each occasion he was taken back to Louvain Prison.

On 22 May 1990, on the basis of Article 71 of the Law of 15 December 1980 on the entry, residence, settlement and expulsion of aliens, the applicant complained of his detention in an application for his release lodged with the "chambre du conseil" of the Louvain Criminal Court. On 23 May 1990 this application was examined by the "chambre du conseil". He was released on the same day after being served with an order requiring him to leave Belgian territory by 28 May 1990 at the latest. On 26 May 1990 the applicant lodged an application with the Conseil d'Etat in which he asked for this second expulsion measure to be quashed, pleading the violation of Articles 3, 6, 7 and 8 of the Convention.

*During the proceedings before the Conseil d'Etat the applicant was refused legal aid on 5 September 1990 on the ground that he had not submitted the documents required to prove his lack of means. In a decision dated 5 December 1990 the above-mentioned decision of 5 September 1990 was set aside and the applicant was granted legal aid.*

## COMPLAINTS

1 The applicant complains of a violation of Article 3 of the Convention. He considers that the expulsion of a foreigner who has no link whatsoever with his country of origin is an inhuman punishment, because he will be forced after his expulsion to live in a country whose language he does not understand and will be forced to live in the north of Morocco, where human rights are constantly violated.

In his first letter he also alleged that on his arrival in Morocco he would be arrested and detained indefinitely as a security measure, and that, in view of his mental state, this detention could have serious consequences

2 As his whole family has now put down roots in Belgium, his expulsion would also constitute a violation of Article 8 of the Convention. In this connection he maintains that, in view of his mental state, and despite his age, he needs the support of his family. In addition, he does not speak Arabic and, as he has received a European education, is unfamiliar with the way of life in Morocco, where he would be treated as a foreigner and a suspect person.

3 Lastly, the applicant complains of the violation of Article 6 para. 1 and Article 7 para. 1 of the Convention, on the ground that the expulsion, which he regards as a penalty, was not imposed by an independent and impartial tribunal, nor was it provided for by law.

The applicant adds that because he suffered a nervous breakdown in the summer of 1986, and at that time had no support from his family, he was unable to lodge an application for the expulsion order against him to be set aside.

## THE LAW

The applicant complains of the effects of his expulsion on the rights guaranteed by Articles 3, 6 para. 1, 7 para. 1 and 8 of the Convention.

Article 3 of the Convention prohibits in particular inhuman or degrading treatment or punishment. Article 6 para. 1 guarantees everyone the right, in the determination of his civil rights and obligations or of any criminal charge against him, to a fair trial before an independent and impartial tribunal. Article 7 para. 1 of the Convention prohibits the imposition of "a heavier penalty" than the one that was applicable at the time the criminal offence was committed. Article 8 of the Convention recognises the right of everyone to respect for his private and family life.

In so far as the applicant's complaints concern the 1986 royal decree ordering the applicant's expulsion, the question arises whether the applicant has exhausted domestic remedies in compliance with the condition laid down in Article 26 of the Convention, which provides as follows:

' The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law " "

In this case the applicant admits that he did not apply to the Conseil d'Etat to have the expulsion order quashed, requesting a stay of execution at the same time, and does not contest the effectiveness of that remedy. The Commission has already implicitly acknowledged, in cases concerning Belgium (No 12313/86, *Moustaquim v Belgium*, Dec 10 4 89, unpublished, No 13587/88, *X v Belgium*, Dec 14 3 89, unpublished), that an application to have an expulsion order quashed can be regarded as an effective remedy. In the case law of the Belgian Conseil d'Etat (see in particular C E, *Marcassoli* judgments, No 27 053, IIIeme ch, 22 October 1986, No 27 636, IIIeme ch, 11 March 1987, C E, *Say Hang Pok* judgment, No 26 932, VIIeme ch, 25 September 1986, C E, *Rezqui* judgment, No 23 240, VIIeme ch, 10 May 1983) it is a well-established principle, firstly, that a stay of execution in respect of an expulsion order may be granted when, for family reasons, immediate enforcement of the order is liable to cause the appellant serious prejudice which it would be difficult to redress and when the argument relating to an alleged violation of Article 8 of the Convention seems serious and capable of justifying annulment of the impugned decision. Secondly, the Conseil d'Etat also scrutinises the proportionality of the interference with the right to respect for private and family life, and in doing so it weighs public policy considerations on the one hand against family considerations on the other.

Consequently, an application to the Conseil d'Etat to quash an expulsion order must in principle be regarded as an effective remedy for the purposes of Article 26 of the Convention.

The Commission also considers that the applicant's alleged depressive state at the time when he was served with the expulsion order against him on 18 July 1986 was not a special circumstance which justified exempting him from the obligation to make use of the domestic remedies open to him.

In addition, the Commission takes the view that the appeal lodged by the applicant against the order requiring him to leave Belgian territory before a certain date cannot be regarded as equivalent to an appeal against the expulsion order, since the order requiring him to leave Belgian territory must be seen as an additional decision secondary to the expulsion order. The applicant's complaints under Article 8 of the Convention should have been raised in the form of an appeal against the expulsion order rather than an appeal against a decision with the limited aim of ensuring enforcement of that order.

It follows that the applicant has not satisfied the condition laid down in Article 26 of the Convention and that his application must be rejected, in accordance with Article 27 para. 3 of the Convention.

For these reasons, by a majority, the Commission

**DECLARES THE APPLICATION INADMISSIBLE.**