CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 54448/00
by Pietro, Germania, Maria and Veronica CARUSO
against Switzerland

The European Court of Human Rights (Second Section) sitting on 10 February 2000 as a Chamber composed of

Mr C.L. Rozakis, *President*,
Mr B. Conforti,
Mr L. Wildhaber
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka, *judges*,

and Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 23 January 2000 by Pietro, Germania, Maria And Veronica Caruso against Switzerland and registered on 28 January 2000 under file no. 54448/00;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, a family, reside in Domat/Ems in Switzerland. The first applicant is an Italian citizen born in 1962. The second applicant, his wife, is a citizen of the Dominican Republic born in 1962. The third and fourth applicants are their daughters, born in 1996 and 1999, respectively. The third applicant is an Italian citizen. Before the Commission they are represented by Mr Th. Fingerhuth, a lawyer practising in Zurich.

The facts of the case, as submitted by the applicants, may be summarised as follows.

The first applicant entered Switzerland together with his parents in 1969 or 1970. In 1981 he was sentenced to detention in an educational labour institution (*Arbeitserziehungsanstalt*) on account of contravening the Narcotics Act (*Betäubungsmittelgesetz*). Still in 1981 he fled to Italy where he spent one year undertaking his military service.

In 1984 the first applicant returned to Switzerland whereupon his sentence of 1981 was converted to 18 months' imprisonment suspended on probation.

In 1994 the first applicant was sentenced to a fine of 300 Swiss Francs (CHF) on account of a drug offence.

The first and second applicant married in 1994. In 1996, their first daughter, the third applicant, was born. The first applicant acquired the authorisation to establish domicile (*Niederlassungsbewilligung*) in Switzerland, the second and third applicants obtained a residence permission (*Aufenthaltsbewilligung*).

In 1997 the Zurich District Court (*Bezirksgericht*) sentenced the first applicant to 39 months' imprisonment for having contravened the Narcotics Act. The District Court regarded his culpability (*Verschulden*) as severe. Thus, the first applicant, who was himself a drug addict, had obtained two kilos of cocain, of which he had used half a kilo for himself, and sold the remainder. However, the punishment was suspended in favour of stationary therapy. The first applicant has since been working in a pizzeria. According to a progress report of 24 September 1998, his expulsion would endanger his integration into social and professional life.

As a result of the first applicant's criminal conviction, the Grisons Aliens' Police (*Fremdenpolizei*) withdrew on 31 March 1998 his right to establish domicile in Switzerland and ordered his expulsion. His appeal was dismissed by the Grisons Department for Justice, Police and Health on 9 September 1998, his further appeal by the Grisons Administrative Court (*Verwaltungsgericht*) on 17 November 1998.

On 1 May 1999 the fourth applicant was born. She has kidney problems and must regularly take antibiotic medication.

The first, second and third applicant filed an administrative law appeal which the Federal Court (*Bundesgericht*) dismissed on 30 June 1999. The Court relied in particular on Section 10 § 1 (a) of the Aliens' Domicile and Residence Act (*Bundesgesetz über Aufenthalt und Niederlassung der Ausländer*) according to which a foreigner may be expelled from Switzerland if he or she has been convicted by a court of a criminal offence. The Court then

considered, also in the light of Article 8 of the Convention, the proportionality of expelling the first applicant.

The Federal Court considered, on the one hand, that the first applicant had repeatedly been convicted, and that the Zurich District Court had regarded his culpability as severe. It nevertheless noted that, after his criminal conviction he was afforded therapeutic treatment in the context of which he had found employment. According to a therapy report, his expulsion would endanger his integration into social and professional life.

On the other hand, while the first applicant had been living in Switzerland for approximately 25 years, he had spent some four years in Italy where he had undertaken his military service. As a result, life in his home country would bring about certain difficulties, though he could not be considered a foreigner there. He would also benefit from the professional training obtained in Switzerland. His wife, the second applicant, had only lived for a period of four and a half years in Switzerland, and the circumstances in Italy did not substantially differ from those in Switzerland. Their daughter, the third applicant, was still of an adaptable age. It would not be unreasonable for them to travel to Italy.

COMPLAINT

The applicants complain under Article 8 of the Convention of the withdrawal of the first applicant's residence permission. Having lived 25 years in Switzerland, the first applicant is now obliged to return to Italy and will be separated from his wife and their two children. However, he has no ties with Italy. He has not committed any further criminal offences, and now that he has regular employment in Switzerland, he can support his young family. The other applicants also lack ties with Italy and do not speak Italian, and they have adapted very well to life in Switzerland. Moreover, the fourth applicant is ill. In these circumstances, the applicants cannot be expected to travel to Italy. The applicants also invoke Articles 2 and 3 of the Convention.

THE LAW

The applicants complain of the first applicant's expulsion to Italy. As a result, he will be separated from his wife and children who cannot be expected to follow him. The applicants invoke Articles 2, 3 and 8 of the Convention.

The Court has examined this complaint under Article 8 of the Convention which states, insofar as relevant:

> "1. Everyone has the right to respect for his private and family life ... .
>
> 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 Court recalls that no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention. Nevertheless, the expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life guaranteed in Article 8 § 1 of the Convention (see Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, p. 18, § 36).

In the present case, the Court finds that the first applicant's obligation to return to Italy would interfere with his right to respect for his private and family life within the meaning of Article 8 § 1 of the Convention.

The Court must, therefore, examine whether such interference is justified under Article 8 § 2 of the Convention.

The Court notes that the Federal Court relied in particular on Section 10 § 1 (a) of the Aliens' Domicile and Residence Act according to which a foreigner may be expelled from Switzerland if he or she has been convicted by a court of a criminal offence. The interference is, therefore, "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

Moreover, when deciding not to renew the applicant's residence permission, the Swiss authorities considered that he had been convicted of criminal offences. The measure was therefore imposed "for the prevention of ... crime" within the meaning of Article 8 § 2 of the Convention.

Finally, the Court has examined whether the measure is "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention, as interpreted in the Court's case-law (see Eur. Court HR, Bouchelkia v. France judgment of 29 January 1997, Reports of Judgments and Decisions, 1997-I, p. 65, § 48).

In this respect the Court observes at the outset that the Federal Court carefully examined the various interests at stake.

The Court considers, next, that the applicant was sentenced to 39 months' imprisonment on account of drug offences. In this respect, the Swiss authorities regarded the applicant's culpability as severe.

Insofar as the first applicant claims that he has spent 25 years in Switzerland, the Court notes that he has Italian nationality and that life in Italy should not appear alien to him as he has spent approximately four years in Italy and also served in the Italian army.

It is true that the other applicants have settled in Switzerland. However, it has not been sufficiently shown that the second applicant would encounter difficulties of integration in Italy. Moreover, their children, i.e. the third and fourth applicants, are still of an adaptable age.

Taking into account the margin of appreciation which is left to Contracting States in such circumstances (see Eur. Court HR, Boughanemi judgment of 24 April 1996, Reports of Judgments and Decisions, 1996-II, p. 610, § 41), the Court considers that the interference with the applicants' rights to respect for his private and family life is justified under Article 8

§ 2 of the Convention in that it can reasonably be considered "necessary in a democratic society ... for the prevention of crime".

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President