AS TO THE ADMISSIBILITY OF

Application No. 20202/92
by D.F.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 2 December 1992, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
E. BUSUTTIL
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First Chamber a.i.

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 June 1992 by D.F. against Finland and registered on 22 June 1991 under file No. 20202/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Jamaica born in 1965 and currently residing in Kingston, Jamaica. Before the Commission he is represented by Mr. Markku Fredman, a lawyer practising in Helsinki.

Particular circumstances of the case

In June 1989 the applicant moved to Finland together with a Finnish woman, Ms. T.P., and took up university studies.

In February 1991 the City Court (raastuvanoikeus, rådstuvurätten) of Jyväskylä convicted the applicant of rape and possession of an edged weapon in a public place (both committed on 13 September 1990), assault (on 17 November 1990) and heinous assault (on 1 January 1991). He was sentenced to imprisonment for two years, four months and fifteen days.

In March 1991 a daughter was born to the applicant and Ms. E-K.P. The applicant recognized the paternity of the child and agreed to pay maintenance.

In May 1991 the Court of Appeal (hovioikeus, hovrätten) of Vaasa upheld the City Court's judgment.

On 21 October 1991 the Ministry of the Interior (sisäasiainministeriö, inrikesministeriet) at the request of the City Police Department of Jyväskylä ordered that the applicant be expelled from Finland upon release from prison and prohibited from returning to Finland or any other Nordic Country during a period of two years unless special permission had been given to this effect. The Ministry had

special regard to the nature of the offences committed by the applicant.

The applicant appealed to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen).

On 28 November 1991 the applicant and Ms. T.P. married.

On 4 March 1992 the Supreme Administrative Court, by three votes to two, rejected the applicant's appeal. In the dissenting opinion it was stated as follows:

(translation from Finnish)

> "... [The applicant] has repeatedly committed criminal offences. Having regard to his marriage with a Finnish citizen permanently resident in Finland, to his child here as well as to other circumstances pertinent to the case ... I consider, in the light of Section 41 para. 1 of the Aliens Act and Article 8 of [the Convention] that in these circumstances [he] should not be expelled..."

On 9 March 1992 the applicant requested that his expulsion be suspended and that his prohibition from returning be completely or partly revoked. The applicant referred to his marriage, his recognized daughter and the fact that he would be finishing his university studies in about a year.

The request was rejected by the Ministry of the Interior on 16 March 1992. The Ministry noted that the reasons invoked had already been taken into account in the consideration of the expulsion order and that due to the applicant's family ties to Finland the prohibition on his return would only apply for a period of two years.

Having been released on parole the applicant was deported to Jamaica on or about 11 March 1992. His wife joined him there.

Relevant domestic law

Under Section 40, para. 1, subpara. 3 of the 1991 Aliens Act (ulkomaalaislaki 378/91, utlänningslag 378/91) an alien may be expelled from Finland if he has committed an offence for which at least one year's imprisonment has been prescribed, or if he has repeatedly committed criminal offences.

When considering a possible expulsion regard should be had to all pertinent circumstances, including the period of time that the alien has been staying in the country, any child-parent relationship, family or other ties to Finland and the nature of the offences committed (Section 41, para. 1).

The expulsion order is normally issued by the Ministry of the Interior at the request of the police. The alien and the Aliens' Ombudsman shall be given an opportunity to be heard in the matter (Section 42).

The order may include a prohibition on return for up to five years or for an indefinite period. The Ministry of the Interior may revoke a prohibition either completely or for a specific period of time due to changed circumstances or any other weighty personal reason put forward by the alien (Section 43).

An appeal against an expulsion order and a prohibition on return issued by the Ministry lies with the Supreme Administrative Court (Section 58).

Under Article 9 of the Nordic Convention of 1957 on the Abolition of Passport Controls at the Boundaries between the Nordic Countries (sopimus passintarkastuksen poistamisesta pohjoismaiden välisillä rajoilla, överenskommelsen om upphävande av passkontrollen vid de internordiska gränserna) a Party to the Convention shall not, without a specific permission, allow the entry of an alien who has been expelled from another Party.

COMPLAINT

The applicant complains that his expulsion is violating his right to respect for his family life. He submits that he is unable to see his daughter until March 1994 and that his wife has been forced to interrupt her studies in order to join him in Jamaica. He asserts that as he already served his prison sentence in Finland there are no reasons under para. 2 of Article 8 justifying his expulsion and prohibition on return.

THE LAW

The applicant complains of his expulsion and prohibition on return to Finland. He submits that these prevent him from seeing his daughter until March 1994 and that his wife has been forced to interrupt her studies in order to join him in Jamaica. As he had already served his prison sentence he sees no reason under para. 2 of Article 8 (Art. 8-2) justifying his expulsion and prohibition on return.

Article 8 (Art. 8) of the Convention 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."

The Commission recalls that no right of an alien to enter or reside in a particular country is as such guaranteed by the Convention. However, 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 para. 1 (Art. 8-1) of the Convention (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, to be published in Series A no. 234-A).

In the present case, the Commission notes that both the applicant's child with Ms. E.-K.P. and his wife, with whom he had moved to Finland prior to their marriage and the expulsion decision of 21 October 1991, are Finnish citizens and thus entitled to reside in that country. Therefore the Commission considers that the applicant's expulsion from Finland interfered with his right to respect for family life within the meaning of Article 8 para. 2 (Art. 8-2).

In order to be justified under the terms of para. 2 of Article 8 (Art. 8-2) such an interference must satisfy three conditions: it must be "in accordance with the law," it must pursue one or more of the aims enumerated in para. 2 and it must be necessary in a democratic society for that aim or those aims (ibid., para. 68).

In the case at issue there is no indication that the expulsion

order and the prohibition on return were not issued in accordance with the law, nor is there any indication that they were not made in the interest of public safety and for the prevention of crime.

As regards the question whether the interference was "necessary in a democratic society" for the above-mentioned aims the Commission recalls 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 (ibid., para. 74). The necessity requirement implies that the relevant decisions are shown to be justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (Eur. H.R., Moustaquim judgment of 18 Feb. 1991, Series A no. 193, p. 19, para. 43). Regard should further be had to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

In the case at issue the Commission observes that during a period of less than four months the applicant committed four offences part of which must be considered very serious. His family ties were taken into account in that the prohibition on his return was limited to two years. The Commission further notes that it is not unreasonable to expect the applicant's wife to follow him to Jamaica for that period, as she actually did.

Taking into account the margin of appreciation which is left to the Contracting States, the Commission considers that the interference with the applicant's right to respect for family life was justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it could reasonably be considered as "necessary in a democratic society in the interest of ... public safety or ... for the prevention of disorder or crime".

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber a.i. President of the First Chamber

(M. de SALVIA) (J.A. FROWEIN)