CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44944/98
by Recep DEMIR
against Finland

The European Court of Human Rights (Fourth Section) sitting on 23 March 1999 as a Chamber composed of

Mr G. Ress, *President*,
Mr M. Pellonpää,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *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 9 December 1998 by Recep DEMIR against Finland and registered on 14 December 1998 under file no. 44944/98;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national national, born in 1971 and resident in Kuopio, Finland. He is represented before the Court by Mr Pertti Suonio, a lawyer practising in Kuopio.

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

A. Particular circumstances of the case

The applicant arrived in Finland on 12 August 1989 with a visa at the age of 17. He married a Finnish citizen on 20 December 1989. The applicant was refused a residence and work permit on 2 January 1990. He left Finland but returned again on 1 March 1990 as he had been granted a residence and work permit in the Finnish Embassy of Ankara on the basis of his marriage. The applicant was granted a further residence and work permit later on. The applicant and his first Finnish wife divorced on 27 June 1995.

The applicant has committed several crimes during his stay in Finland. He has been sentenced to several suspended prison sentences and to community service. He has also been ordered to pay fines. According to the applicant he has not committed any crimes since 23 May 1997.

On 5 June 1997 local police requested the Directorate of Immigration (*ulkomaalaisvirasto, utlänningsverket)* to expel the applicant. The Directorate of Immigration ordered on 11 March 1998 that the applicant be expelled to Turkey as he had no family ties in Finland and as he had repeatedly committed crimes for which the maximum penalty was more than one year imprisonment. The applicant was also forbidden by the decision of the Directorate of Immigration to enter Finland, Sweden, Norway, Iceland or Denmark for five years. The applicant appealed against the decision to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen)*, stating that there were no legal reasons for his expulsion as the crimes he had committed were not serious enough to justify such an expulsion and as his then girlfriend, T., was pregnant. The applicant also alleged that he would be convicted of desertion and sentenced to a lengthy prison sentence in Turkey, if expelled.

In the meantime, on 10 September 1998, the applicant married T., who is a Finnish citizen, and who was pregnant by the applicant. The applicant's daughter was born on 1 November 1998.

On 8 December 1998 the Supreme Administrative Court refused the applicant's appeal. The Supreme Administrative Court found, taking into account the applicant's numerous convictions, that the applicant's expulsion was justified and lawful. It was also noted by the court that the applicant had not submitted any evidence concerning the alleged inhuman treatment in Turkey, if expelled. The Supreme Administrative Court further stated that Article 8 of the Convention does not guarantee to the spouse of a citizen a general right to be granted a residence permit. Taking into account, however, that the applicant's family lives in Finland, the Supreme Administrative Court reduced the period of the prohibition to enter Finland or other Nordic countries to two years from the original five years' prohibition.

B. Relevant domestic law and practice

According to Section 40, subsection 1.3, of the Aliens Act (*ulkomaalaislaki, utlänningslag 378/1991)*, an alien can be expelled from Finland, *inter alia,* if he or she has committed an offence for which the minimum penalty is more than one year's imprisonment, or if he or she has repeatedly committed criminal offences.

According to Section 41 of the Aliens Act, the circumstances (such as the length of the alien's stay in Finland, the existence of a parent-child relationship, family and other ties to Finland, or, in connection with Section 40, subsection 1.3, of the Act, the nature of the offence or offences committed) have to be taken into account as a whole when an expulsion is considered. No one may be expelled to an area where he or she might risk being subjected to inhuman treatment or persecution, nor to another area from which he or she might be sent to such an area.

According to Section 42 of the Aliens Act, the expulsion is decided by the Directorate of Immigration if so requested by police. The Directorate of Immigration may in some exceptional circumstances decide an expulsion even if the measure is not requested by the police. The alien concerned must also be given an opportunity to be heard in the matter.

According to Section 43 of the Aliens Act, an alien may be prohibited from entering the country for a maximum of five years or for an indefinite period. The prohibition may be cancelled permanently or for the time being, because of a change in circumstances or important personal reasons. Such a cancellation is decided by the Directorate of Immigration.

According to Section 58 of the Aliens Act, decisions of the Directorate of Immigration concerning, *inter alia,* expulsion orders, may be appealed within 14 days before the Supreme Administrative Court.

COMPLAINT

The applicant complains that the Finnish authorities' decision to expel him to Turkey and to prohibit his entering Finland or other Nordic countries for two years violates his right to respect for his family and private life within the meaning of Article 8 of the Convention, as he will be separated from his family in Finland. It is alleged by the applicant that his family has no reasonable prospect of following him as he might be convicted of desertion and sentenced to a lengthy prison sentence in Turkey, if expelled, because he had not done his military service in Turkey.

PROCEEDINGS BEFORE THE COURT

The application was introduced on 9 December 1998 and registered on 14 December 1998.

On 15 December 1998 the Court (Fourth Section) decided not to indicate to the Government of Finland, pursuant to Rule 39 of the Rules of Court, the interim measure requested by the applicant.

THE LAW

The applicant complains under Article 8 of the Convention that his expulsion to Turkey and the prohibition from entering Finland or other Nordic countries for two years violates his right to respect for his family and private life within the meaning of Article 8 of the Convention. This Article 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 Court notes that the Convention organs have repeatedly held that no right of an alien to enter or to reside in a particular country, nor a right not to be expelled from a particular country, is as such guaranteed by the Convention (cf. no. 11278/84, Dec. 1.7.1985, D.R. 43, p. 216, and no. 12461/86, Dec. 10.12.1986, D.R. 51, p. 258).

It is true that the applicant claims that his wife and child could not follow him to Turkey and that, according to the Convention organs' case-law, the expulsion of a person from a country where close members of his family are living may amount to an interference with the right to respect for family life, as guaranteed in Article 8 § 1 of the Convention. This situation may arise, as in the present case, when a married person and a father of a child is obliged to leave a State in which he has been living with his spouse and child, and where it is claimed that the family would be unable to follow him to his new residence.

However, Article 8 § 2 permits interferences with the rights guaranteed by Article 8 § 1 that are in accordance with the law and necessary in a democratic society for the prevention of disorder or crime, or for the protection of health and morals.

The Court is satisfied that the expulsion and the prohibition on return was "in accordance with law". It also considers that the measures pursued a legitimate aim under Article 8 § 2 such as the prevention of crime.

As regards the question whether the interference was "necessary in a democratic society", the Court notes the applicant's repeated criminal convictions. It also notes that the Supreme Administrative Court took into account the applicant's family ties in Finland by reducing the prohibition to enter Finland and other Nordic countries to two years from the original five years' prohibition.

In view of the above, and assuming that the decision to expel the applicant from Finland constitutes an interference with his family life, the Court finds that the decision is justified under Article 8 § 2 in that it can reasonably be considered "necessary in a democratic society".

As to the applicant's allegations concerning a lengthy prison sentence awaiting him in Turkey, the Court notes that the applicant has not invoked Article 3 of the Convention ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment"). In any case the applicant has not substantiated that he would be subjected to treatment prohibited by that Article.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Georg Ress
President