AS TO THE ADMISSIBILITY OF

Application No. 26157/95
by E.S.
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 4 July 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 22 September 1994 by E.S. against Finland and registered on 9 January 1995 under file No. 26157/95;

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 Bulgaria, born in 1954 and currently resident in Sofia. He is a tile layer by profession.

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

Particular circumstances of the case

In 1985 the applicant married a Norwegian citizen in Bulgaria. In 1986 they moved to Norway, where they subsequently divorced. The applicant nevertheless remained in Norway.

In the beginning of the 1990's the applicant on one occasion found his then girlfriend with another man. During a subsequent row he slashed her cheek with a pocket knife, causing her a 10 centimetre-long scar of a permanent character.

The applicant's conviction and sentence was finally upheld in August 1992. He was found to have made a totally unprovoked assault, thereby causing bodily harm (legemsbeskadigelse), and was sentenced to ten months' imprisonment. He was later released after having served six months of the sentence.

Basing itself on the applicant's conviction and sentence, the Norwegian Aliens Directorate (utlendingsdirektoratet), on 15 March 1993, ordered his expulsion from Norway. In its decision the Aliens Directorate further prohibited him from re-entering Norway or entering another Nordic country. Such a re-entry or entry could only be allowed after a specific permission to this effect had been granted.

In August 1993 the applicant spent holidays in Finland, having been granted a short-term tourist visa. He then met R., a Finnish citizen, whom he had previously met already in Norway. He later returned to Bulgaria, where he and R. cohabited for about a month before marrying on 4 December 1993.

The applicant and R. re-entered Finland on 22 December 1993, the applicant having been granted a further tourist visa. In January 1994 he requested a residence permit, referring to his ties to the country on account of his marriage.

When applying for his visas and residence permit, the applicant apparently made no reference to the re-entry and entry ban.

On 13 May 1994 the Aliens Centre (ulkomaalaiskeskus, utlännings-centralen) of the Ministry of the Interior (sisäasiainministeriö, inrikesministeriet) rejected the request. It noted the applicant's conviction in Norway and the re-entry and entry ban. It furthermore found no reason under section 20 of the 1991 Aliens Act (ulkomaalais-laki 378/91, utlänningslag 378/91) for issuing him with a short-term residence permit. It finally ordered his expulsion.

In the subsequent appeal proceedings before the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltnings-domstolen) the applicant alleged, inter alia, that the expulsion order issued in Norway had not indicated that the ban on his re-entry had also been valid in respect of the other Nordic countries.

On 13 September 1994 the applicant's appeal was rejected. The Supreme Administrative Court noted that he had been convicted of a violent offence by a Norwegian court and sentenced to ten months' imprisonment. As a result he had been expelled and prohibited from re-entering a Nordic country. Having regard to, among other provisions, Article 8 of the Convention, the Court found that so little time had passed since his offence that his future behaviour in Finland was not yet predictable. Therefore he was not, for the time being, to be issued with a residence permit. Finally, the Court noted that the applicant and R. were free to move to Bulgaria or a third State.

On 22 September 1994 the expulsion order was enforced and the applicant returned to Bulgaria, R. remaining in Finland.

Relevant domestic law

An alien who has been prohibited from entering or re-entering Finland or another Nordic country shall be expelled upon having arrived in Finland, unless he or she is granted a visa or a residence permit (section 37, subsection 2, as amended by Act no. 639/93). An alien arriving in Finland without holding a residence permit may nevertheless be granted a temporary permit if, for instance, he or she has been cohabiting with a resident of Finland prior to the arrival and regardless of whether the two have been married. A permit may also be granted, if a refusal would clearly be unreasonable (section 20, subsection 1 (2) and (4) of the Aliens Act). A visa may be granted for tourism or other short-term residence purposes (section 11, subsection 1, as amended by Act no. 639/93).

COMPLAINTS

The applicant complains about his expulsion from Finland which he considers unjustly interfered with his family life and, moreover, constituted a second and more severe punishment for the offence he had committed in Norway. He asserts that he has never committed any other offence in Finland or elsewhere. At the time of his expulsion from Finland he had become well integrated. He had, for instance, been offered employment and had also taken up studies in Finnish. He invokes Article 8 of the Convention as well as Article 1 of Protocol No. 7 as well as Article 2 of Protocol No. 4.

THE LAW

The applicant complains about his expulsion from Finland which he considers unjustly interfered with his family life and, moreover, constituted a second and more severe punishment for the offence he had committed in Norway. He invokes Article 8 (Art. 8) of the Convention as well as Article 1 of Protocol No. 7 (P7-1) as well as Article 2 of Protocol No. 4 (P4-2).

1. The Commission has first examined the application under Article 8 (Art. 8) of the Convention which 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 the Contracting States are in principle free to control the entry, residence and expulsion of aliens. Nevertheless, expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (e.g., Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193, pp. 19 et seq., paras. 43 et seq.).

The Commission observes that at the time of his expulsion from Finland the applicant was married to R., a citizen of that country, with whom he was also living. In these circumstances his expulsion interfered with his right to respect for his family life within the meaning of Article 8 para. 1 (Art. 8-1). Under Article 8 para. 2 (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 (Art. 8-2) and it must be "necessary in a democratic society" for that aim or those aims. The necessity requirement implies the existence of a pressing social need and, in particular, requires that the measure be proportionate to the legitimate aim pursued (the above-mentioned Moustaquim judgment, pp. 18 et seq., paras. 37 et seq.). 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). As a rule, this margin allows expulsion for reasons of general prevention of crime.

The Commission is satisfied that the expulsion was "in accordance with the law". It also considers that it pursued a legitimate aim under Article 8 para. 2 (Art. 8-2) such as the prevention of crime.

As regards the question whether the expulsion was "necessary in a democratic society" in pursuit of the above-mentioned aim, the

Commission observes that the applicant married R. only after having been prohibited from re-entering a Nordic country. It notes that it was clearly indicated in the Norwegian expulsion order that the ban on his re-entry also concerned the other Nordic countries. In these circumstances the Commission finds that at the time of establishing family life the applicant could not legitimately expect to be able to pursue his family life in Finland. Nor has it been shown that R. would have lacked a practical and reasonable opportunity of accompanying or following the applicant to Bulgaria or a third State (cf., e.g., No. 11333/85, Dec. 17.5.85, D.R. 43 p. 227). Finally, although, for the time being, the applicant is, in principle, prohibited from re-entering Finland, he is not prevented from visiting R. there after having been issued with a visa to this effect. There is no indication that a request to this effect would be refused.

In these particular circumstances and taking into account the margin of appreciation left to the Contracting States, the Commission concludes that the applicant's expulsion was justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it could reasonably be considered "necessary in a democratic society" for the prevention of crime. Accordingly, there is no appearance of a violation of Article 8 (Art. 8).

2. The Commission finds no further issue under the other provisions invoked by the applicant.

3. It follows that the application as a whole 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)