CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43218/98
by Maher Ben Mohamed FARAH
against Sweden

The European Court of Human Rights (First Section) sitting on 24 August 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr Gaukur Jörundsson,
Mr C. Bîrsan,
Mr B. Zupančič,
Mrs W. Thomassen,
Mr T. Pantiru, *Judges*,

with Mr M. O'Boyle, *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 24 April 1997 by Maher Ben Mohamed Farah against Sweden and registered on 1 September 1998 under file no. 43218/98;

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 Tunisian national born in 1966. He is represented before the Court by Mr Carl-Gustaf Elwe, Karlskoga.

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

The applicant met M, a Finnish citizen, in Tunisia in 1984. In January 1985 their first daughter was born in Finland. The applicant went to Finland in the autumn of 1986 and married M. As he had been sentenced to three years' imprisonment and expulsion by a Danish court in 1984, his application for a residence permit in Finland was refused, however. He was expelled in March 1987. M and the daughter followed the applicant to Tunisia but returned to Finland some months later. Later, the applicant was granted a visa to enter Finland. He arrived in October 1987. As he was unable to find employment in Finland, the family decided to move to Sweden. M was later granted a permanent residence permit in that country.

The family arrived in Sweden in March 1988. After the applicant had been refused a residence permit, he returned to Tunisia on 1 July 1988 and applied anew for a residence permit. M and the daughter joined him in Tunisia for a month in the late summer. In September 1988 the applicant was granted a permit to reside in Sweden for six months, and so the family returned to Sweden. The applicant's permit was renewed for six months at a time until he was granted a permanent residence permit in 1990. In August 1990 the applicant's and M's son was born. In January 1993 they had a second daughter.

The applicant had started using hash and in April 1993 he sought treatment for his drug problems. In June 1993 the applicant and M were detained on remand, suspected of narcotics offences. On 20 October 1993 the District Court (*tingsrätten*) of Handen convicted the couple - and a few co-accused - of the offences and sentenced them to imprisonment, the applicant for ten years and M for two years. Upon appeal, the Svea Court of Appeal (*Svea hovrätt*) acquitted the applicant of some of the charges. However, by a judgment of 5 January 1994 he was found guilty of an aggravated narcotics offence involving 300 grams of heroin and of smuggling of goods. He was sentenced to six years in prison. In addition, the court ordered his expulsion from Sweden in accordance with Chapter 4, Section 7 of the Aliens Act (*Utlänningslagen*, 1989:529) and issued a prohibition on his return. Having regard to his family connections to Sweden, this prohibition was limited to ten years, i.e. until 5 January 2004. M's involvement in the offence was considered to be less serious, and her sentence was accordingly reduced to ten months' imprisonment. The Supreme Court later refused leave to appeal against the Court of Appeal's judgment.

In April 1997 the applicant requested the Government to exercise its power under Chapter 7, Section 16 of the Aliens Act to annul the expulsion order. By a decision of 5 June 1997 the Government rejected the request.

On 5 June 1997 the applicant was released on probation and expelled to Tunisia. Upon arrival he was allegedly arrested and detained for a month. M and the three children visited the applicant in Tunisia between 10 June and 16 August 1997.

On 22 January 1998 the Government rejected a further request for an annulment of the expulsion order.

COMPLAINT

The applicant complains that his expulsion to Tunisia separates him from his family in Sweden and consequently violates his right to respect for his family life under Article 8 of the Convention. Allegedly, the separation will harm the children.

PROCEDURE

The application was introduced on 24 April 1997.

On 4 June 1997 the applicant requested the Commission to secure a stay of his deportation. The same day the Commission decided not to indicate to the respondent Government, pursuant to Rule 36 of the Commission's Rules of Procedure, the measure suggested by the applicant.

Following further correspondence, the application was registered on 1 September 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the application fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant complains that his rights under Article 8 of the Convention have been violated. This provision 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 recalls that the 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 (see, among other authorities, the Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, §§ 43-46).

In the present case, the applicant's expulsion could be considered as an interference with his right to respect for his family life. However, as the expulsion was ordered under the applicable provision of the Aliens Act following the applicant's conviction for a narcotics offence, the interference was in accordance with law and pursued the legitimate aim of preventing disorder or crime.

It therefore remains for the Court to ascertain whether the measure in issue struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder or crime, on the other. In this respect the Court notes that the applicant met M in Tunisia and that she and the eldest daughter visited the applicant in that country in 1987 and 1988. Moreover, the whole family joined the applicant in Tunisia soon after his expulsion from Sweden in June 1997 and stayed there for more than two months. It has not been alleged that the family members had any difficulties during that stay. Further, the prohibition on the applicant's return to Sweden is not for life but applies until 5 January 2004. As regards the seriousness of the crime committed by the applicant, the Court recalls that he was sentenced for an aggravated narcotics offence involving 300 grams of heroin to imprisonment for six years.

Having regard to the foregoing, the Court concludes that the Swedish authorities have not failed to fulfil their obligation to strike a fair balance between the relevant interests. Accordingly, the interference with the applicant's right under Article 8 of the Convention is justified in that it can reasonably be considered as necessary in the interest of preventing disorder or crime.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President