AS TO THE ADMISSIBILITY OF

Application No. 24968/94
by Ahmed LAMRABTI
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Ms. M.-T. SCHOEPFER, 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 31 May 1994 by Ahmed LAMRABTI against the Netherlands and registered on 23 August 1994 under file No. 24968/94;

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

a. The particular circumstances of the case

The applicant is a Moroccan national, born in 1943, residing in Utrecht, the Netherlands. Before the Commission he is represented by Mr. B.J. Duinhof, a lawyer practising in Utrecht.

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

The applicant has been living in the Netherlands since 29 June 1976. At present he is without occupation.

From the applicant's marriage with his first wife, A, six children were born: Rachid (born on 5 January 1970), Ismael (born on 2 December 1971), Chafika (born on 19 June 1974), Yousseph (born on 12 February 1976), Ramdan (born on 5 August 1978) and Samera (born on 10 June 1982). The six children and their mother have always lived in Morocco. The applicant went to Morocco regularly, had contact by telephone regularly, took decisions concerning the upbringing of the children and contributed financially to their upbringing.

On 13 March 1986, the applicant contracted a second, bigamous, marriage with B, a Moroccan national who already had three children from her first marriage. B and her three children came to the

Netherlands in August 1986 to live with the applicant, after having obtained a residence permit for this purpose. From the marriage of the applicant and B three children were born.

In 1987, the applicant requested permission to bring the six children from his first marriage to the Netherlands. The aliens police informed him that his housing situation was inadequate and the applicant apparently did not pursue the request.

The marriage of the applicant and his first wife, A, was dissolved on 23 March 1990. On that date, A, by notarial act (notariële akte), renounced her rights to her six children and refused to care for them any longer. On the same day, she went to live with her mother who resided in the same village. A still lives in that village. The children from the applicant's first marriage, who had lived with their mother until 23 March 1990, were taken into the household of the applicant's mother, who also lived and still lives in the same village in Morocco. The applicant's mother is approximately 80 years old. In view of her age and the poor state of her health, it is alleged that she cannot continue to care for her grandchildren.

On 23 October 1990, the applicant requested entry visas (machtiging tot voorlopig verblijf) for the six children from his first marriage so that they could enter the Netherlands and take up residence with him. On 29 July 1991, the Minister of Foreign Affairs (Minister van Buitenlandse Zaken) rejected the request.

On 10 September 1991, the applicant filed an objection (bezwaarschrift) to the rejection of his request for entry visas with the Minister of Foreign Affairs.

After a hearing, the minister rejected the objection on 28 January 1992. He considered that, as the applicant's request was aimed at obtaining permanent residence in the Netherlands for his children, the general conditions for aliens wishing to obtain a residence permit, as laid down in Section 11 para. 5 of the Aliens Act (Vreemdelingenwet) and Chapter B19 of the Circular on Aliens (Vreemdelingencirculaire), should be fulfilled. The minister ruled that these conditions were not fulfilled as the children did not in fact belong to the applicant's family in the Netherlands. Moreover, it had not been demonstrated that the applicant had taken decisions concerning the upbringing of his children.

Regarding Article 8 of the Convention, the minister considered that there was family life between the applicant and the children from his first marriage but that the refusal to grant the children entry visas did not constitute an interference with their family life, since the relationship between the applicant and his children could continue as before if the children remained in Morocco. He added that a possible interference would be justified under Article 8 para. 2 as being necessary in a democratic society in the interest of the economic well-being of the country. In this respect he took into consideration that the children had always lived in Morocco, that it had not been demonstrated that there were frequent and regular contacts between the applicant and the children from his first marriage. He also had regard to the children's age, the fact that their mother, who lived in Morocco, also had an obligation to take care of the children, and the fact that the applicant had preferred to start a new family life in the Netherlands.

Finally, the minister stated that there were no other compelling humanitarian reasons on the basis of which the applicant's six children from his first marriage should be granted entry into the Netherlands.

On 26 February 1992, the applicant lodged an appeal with the Administrative Justice Division of the Council of State (Afdeling Bestuursrechtspraak van de Raad van State). He also requested an

interim measure that would oblige the Minister of Foreign Affairs to allow the children to come to the Netherlands. The request was rejected by the President of the Division on 3 November 1992.

Following a hearing on 30 November 1993, the Council of State rejected the applicant's appeal on 14 January 1994. It held that the requirements for residence permits for family reunification laid down in Chapter B19 of the Circular on Aliens were not met, as the applicant's children from his first marriage did not in fact belong to the family of the applicant and B in the Netherlands. The Council of State considered that the paternal grandmother had taken care of the children for some time, that the applicant had not demonstrated that his mother was unable to take care of the children, and that the elder children could assist in caring for the younger ones.

Regarding Article 8 of the Convention the Council of State found no interference with the applicant's family life since the case did not concern the revocation of a residence permit that had allowed the children to enjoy family life with their father in the Netherlands. The Council of State did not consider that the Dutch authorities, after weighing the personal interests of the applicant and his children against the general interest of the Netherlands, were under a positive obligation under Article 8 of the Convention to allow the children entry into the Netherlands.

b. Relevant domestic law and practice

The rules on entry and residence in the Netherlands and the grounds on which aliens may be expelled are laid down in the Aliens Act, the regulations implementing this Act, and the Circular on Aliens. The Circular on Aliens is a compilation of binding policy rules and directives drawn up and published by the Dutch Ministry of Justice.

Section 11 para. 5 of the Aliens Act states, inter alia, that a residence permit can be refused in the public interest. On the basis of this provision, the Dutch authorities pursue a restrictive immigration policy for the purposes of regulating the labour market and restricting immigration in a densely populated country. As a rule, a residence permit is granted if an international obligation must be respected, if the alien's presence in the Netherlands serves an essential Dutch interest, or if there are compelling humanitarian reasons.

Family reunification, which is dealt with in Chapter B19 of the Circular on Aliens, is one of the grounds on which a residence permit can be granted. Provided that a number of conditions concerning, inter alia, sufficient means of existence, health and public order, have been fulfilled, a residence permit on the grounds of family reunification can be granted to, inter alia, spouses of Dutch nationals or aliens who lawfully reside in the Netherlands, and to their minor children regardless of whether they were born in or out of wedlock, provided that these children in fact belong to their family. Other family members, for instance children who are of age, may be given a residence permit provided that they in fact belong to the family of the person living in the Netherlands and provided that their staying behind in the country of origin would be a disproportionate hardship.

If an alien is not entitled to a residence permit on the basis of the law and the policy, the authorities will always consider whether there are nonetheless compelling humanitarian reasons on the basis of which an alien should be granted residence in the Netherlands.

COMPLAINT

The applicant complains that the Dutch authorities' refusal to issue entry visas to the six children from his first marriage for the purpose of family reunification with him in the Netherlands, unjustly

interferes with his right to respect for his family life within the meaning of Article 8 of the Convention.

THE LAW

1. The applicant complains under Article 8 (Art. 8) of the Convention that the refusal of the Dutch authorities to issue entry visas to the six children from his first marriage constitutes an interference with his right to respect for his family life.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... 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 ... the economic well-being of the country ...."

The Commission recalls that the Convention does not guarantee a right to enter or to reside in a particular country. However, in view of the right to respect for family life as ensured by Article 8 (Art. 8) of the Convention, the exclusion of a person from a country in which his close relatives reside may raise an issue under this provision of the Convention (cf. No. 11274/84, Dec. 1.7.85, D.R. 43, p. 216).

2. The Commission notes that the two eldest children born out of the applicant's first marriage, Rachid and Ismael, were already no longer minors at the time when the applicant requested entry visas for them. In this respect the Commission recalls that relationships between adults -in the present case between a father and his adult sons - do not necessarily enjoy the protection of Article 8 (Art. 8) of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties (cf. No. 10375/83, Dec. 10.12.84, D.R. 40, p. 196). The Commission does not find that such elements have been established in the present case.

It follows that the complaint in regard to the two eldest children from his first marriage is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. As regards the links between the applicant and the four youngest children from the applicant's first marriage, the Commission finds that these links may be regarded as constituting family life within the meaning of Article 8 (Art. 8) of the Convention.

Consequently, the refusal to allow them to enter the Netherlands must be considered as an interference with their right to respect for their family life (cf. No. 13654/88, Dec. 8.9.88, D.R. 57, p. 287).

The question therefore arises whether this interference was justified under Article 8 para. 2 (Art. 8-2) of the Convention, i.e., whether it was "in accordance with the law" and could reasonably be considered as necessary in a democratic society for one or more of the legitimate aims referred to in this provision.

The Commission notes that the decision to refuse the children entry into the Netherlands was based on and taken in accordance with Section 11 para. 5 of the Aliens Act and Chapter B19 of the Circular on Aliens, which lays down special conditions for the granting of residence permits on the grounds of family reunification.

The Commission further notes that the Dutch immigration policy establishes special conditions for the purpose of regulating the labour

market, and generally of restricting immigration in a densely populated country. Thus the legitimate aim pursued is the preservation of the country's economic well-being within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention (cf. Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, p. 15, para. 26).

Regarding the necessity of the interference in a democratic society, the Commission recalls that the Contracting States have a margin of appreciation in the field of immigration policy. However, "necessity" implies that the interference must correspond to a pressing social need and, in particular, that it must be proportionate to the legitimate aim pursued (cf. Berrehab judgment, loc. cit., p. 16, para. 28).

The Commission notes that at the time when the applicant emigrated to the Netherlands - 29 June 1976 - the two youngest children, Ramdan and Samera, were not yet born, and that the other two children, Yousseph and Chafika, were four months old and two years old, respectively.

The Commission further notes that the four youngest children have never lived in the Netherlands. They have substantial links with Morocco, where they were born, where they have lived all their lives, first with their mother and subsequently with their paternal grandmother, and where a number of family members live, including two adult brothers. The Commission further observes that the children's mother also lives in the same village as the children. It has not been demonstrated that the four youngest children, who at present are between the ages of 20 and 12, are left without the necessary care.

Furthermore, the refusal of the Dutch authorities to grant the four youngest children entry into the Netherlands does not imply that the relationship between them and the applicant will be broken. In the past, the applicant went to Morocco regularly to visit his children and it has not been demonstrated that he cannot continue to do so in the future.

In these circumstances the Commission considers that the applicant's right to respect for his family life does not outweigh valid considerations relating to Dutch immigration policy and that a proper balance has been struck between the interests involved. It therefore finds that the Dutch authorities' refusal to grant the four youngest children from the applicant's first marriage entry visas cannot be regarded as disproportionate to the legitimate aim pursued and, accordingly, may reasonably be regarded as being necessary in a democratic society.

It follows that the complaint in regard to the four youngest children is also 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 Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)