CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51268/99
by Zakria Sadiq MIR
against Switzerland

The European Court of Human Rights (Fourth Section), sitting on 26 March 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr L. WILDHABER,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 17 February 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Zakria Sadiq Mir, is a citizen of the United Kingdom born in 1937. A lawyer and banker by profession, he resides in Zurich in Switzerland.

After marrying in 1968 the applicant and his then wife moved to the United Kingdom where they took up residence with their two children, born in 1967 and 1970 respectively. In 1972 they moved to Switzerland, although from 1975-1978 the applicant resided in the United States and the United Kingdom. He then returned to Switzerland where he obtained annual residence permits (*Aufenthaltsbewilligung*).

Meanwhile, having been separated from his wife since 1975, their marriage was dissolved in 1977.

Subsequently, the applicant was frequently unemployed and intermittently depended on social assistance.

In 1978, and again in 1980, 1983, 1984 and 1990, the Police Directorate (*Polizeidirektion*) of the Canton of Zurich refused the applicant's request for a long-term residence authorisation (*Niederlassungsbewilligung*) in view of his continuing tax and alimony debts and his dependence on public welfare. In 1985 the applicant was in fact warned by the Government (*Regierungsrat*) of the Canton of Zurich that he would be expelled from Switzerland if he failed to comply with his alimony payments and if he continued to be a burden on the social assistance fund.

In 1994 the applicant's residence permit was renewed until 1995. In 1996 the Aliens' Police requested the applicant to regularise his status in Switzerland. The applicant's further request for a domicile authorisation was refused by the Police Directorate on 13 November 1996, which, furthermore, ordered him to leave the Canton of Zurich by 31 January 1997. In its decision, the Police Directorate noted, *inter alia*, that the applicant was unemployed and had not tried to find employment; he had debts amounting to 53,000 Swiss francs (CHF), and the social assistance had paid out over CHF 140,000 to him.

The applicant's appeal against this decision was dismissed by the Government of the Canton of Zurich on 29 April 1998.

On 27 November 1998 the Federal Court (*Bundesgericht*) rejected the applicant's administrative law appeal (*Verwaltungsgerichtsbeschwerde*). In its judgment, the court found that the applicant could not rely on Article 8 of the Convention as he was no longer married and his children were adults. Moreover, the applicant could not claim to have any particular ties with Switzerland in view of his unemployment, his debts, and his dependency on social assistance. Warnings had also not been heeded.

On 17 December 1998 the Aliens' Police of the Canton of Zurich ordered the applicant to leave Switzerland by 28 February 1999.

On 22 December 1998 the applicant filed with the Federal Court a public law appeal (*staatsrechtliche Bescherde*) against the decision of 29 April 1998. When informed by the Federal Court that he had missed the time-limit for appealing, the applicant insisted on pursuing his appeal, pointing out that the decision of 29 April 1998 had not contained a statement as to possible remedies available to him. On 19 January 1999 the Federal Court declared the applicant's public law appeal inadmissible.

On 1 October 1999 the applicant was brought by the police to Zurich airport where he boarded a plane to London.

On 10 November 1999 the Zurich District Court (*Bezirksgericht*) fined the applicant CHF 40 for failing to comply with the order to leave Switzerland by 28 February 1999.

On 13 November 1999 the applicant married a Swiss citizen and on the same day moved to Zurich. It appears that he subsequently obtained an annual residence permit.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention of the unfairness and the length of the proceedings leading to his expulsion from Switzerland.

2. Under Article 8 of the Convention the applicant complains of a breach of his right to respect for his private and family life in that the Swiss authorities refused to allow him to stay in Switzerland. He submits that his children mean everything to him.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention of the unfairness and the length of the proceedings leading to his expulsion from Switzerland.

However, according to the Court's case-law, "decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention" (see *Maaouia v. France*, no. 39652/98, § 40, ECHR 2000-). Consequently, Article 6 § 1 is not applicable in the instant case.

This part of the application is, therefore, incompatible *ratione materia*e with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

2. The applicant further complains of a breach of his right to respect for his private and family life in that the Swiss authorities refused to let him stay in Switzerland.

Even assuming that the applicant, who in 1999 married a Swiss citizen and returned to Switzerland, can still claim to be a victim of the alleged violations within the meaning of Article 34 of the Convention, the Court notes that the applicant's children are now adults, that there is no element of dependency between the applicant and his children, and that he divorced his first wife in 1977. As regards these persons, therefore, he cannot rely on the right to respect for family life within the meaning of Article 8 of the Convention. Moreover, as the Federal Court confirmed in its judgment of 27 November 1998, the applicant had not up until then shown that he has any particular close ties with Switzerland. Long-term residence cannot of itself constitute in the circumstances of this case "private life", the more so having regard to the precariousness of his residence in Switzerland since 1978. He cannot therefore maintain that his deportation interfered with his right to respect for private life within the meaning of Article 8 of the Convention.

There has, therefore, been no interference with the applicant's rights under Article 8 of the Convention.

It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President