CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 47956/99
by Serring Momodou NJIE
against Sweden

The European Court of Human Rights (First Section) sitting on 19 October 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr L. Ferrari Bravo,
Mr C. Bîrsan,
Mr B. Zupančič,
Mrs W. Thomassen,
Mr T. Panţîru, *judges*,

and 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 13 January 1999 by Serring Momodou Njie against Sweden and registered on 7 May 1999 under file no. 47956/99;

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 national of Gambia, born in 1969. When introducing his application he was serving a two years' prison sentence in Sweden.

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

The applicant took up residence in Sweden in 1994 and subsequently married a Swedish woman. The couple has two children, born in 1996 and 1997. It appears that the applicant has no relatives left in Gambia but that he and his wife have visited Gambia on more than one occasion.

On 18 June 1998 the applicant was arrested under suspicion of having committed a narcotics offence of an aggravated nature (*grovt narkotikabrott*) that same day (possession of 30–40 grammes of heroin intended for sale). He was later detained and subsequently prosecuted.

The District Court (*tingsrätten*) of Gothenburg held an oral hearing in the case in the presence of the applicant and his legal counsel. The applicant and witnesses were heard. On 15 July 1998 the court convicted the applicant and another Gambian national of an aggravated narcotics offence. The applicant was sentenced to two years' imprisonment to be followed by expulsion from Sweden. The court found that the severity of the criminal offence and the obvious risk of a relapse motivated life-long expulsion. The reasons for the sentence were set out at length.

On 17 September 1998, after first having held an oral hearing in the presence of the applicant and his legal counsel and after having heard the applicant, the witnesses heard in the inferior court and two additional witnesses, the Court of Appeal (*hovrätten*) for Western Sweden upheld the District Court's judgment with extensive reasons. The appellate court issued a ten year prohibition on the applicant's return to Sweden (i.e. until 17 September 2008). Having regard to the applicant's family situation, the court came to the conclusion that the nature of the criminal offence justified expulsion, however for a limited time. On 21 October 1998 the Supreme Court (*Högsta domstolen*) refused leave to appeal.

The applicant petitioned the Government for a revocation of the expulsion order. He invoked, *inter alia*, a psychologist's certificate, dated 13 January 1999, stating that he was worried about his and his family's future. On 11 March 1999 the Government rejected the petition.

The National Parole Board (*Kriminalvårdsnämnden*) decided on 7 April 1999 that the applicant was to be released on probation on 20 June 1999, after having served half his sentence. There is no information in the case-file whether the applicant has actually been released and subsequently deported.

COMPLAINTS

The applicant invokes Articles 3, 6 and 8 of the Convention.

1. He claims that relatives of the other convicted Gambian have threatened to kill him if he returns to Gambia as they are of the opinion that his statements led to the conviction of his accomplice. He implies that he will commit suicide if the expulsion order is enforced.

2. He furthermore maintains that the courts have been prejudiced against him because of his ethnicity.

3. He also refers to his Swedish wife and the two children. Allegedly, they cannot follow him to Gambia and he will thus not be able to see them for ten years.

PROCEDURE

The application was introduced on 13 January 1999 and registered on 7 May 1999.

On 8 June 1999 the Court (First Section) decided not to apply Rule 39 of the Rules of Court.

THE LAW

1. The applicant claims that relatives of his accomplice have threatened to kill him if he returns to Gambia. He implies that he will commit suicide if the expulsion order is enforced.

He invokes Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

At the outset, the Court observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including Article 3, to control the entry, residence and expulsion of aliens (see, for example, the D. v. the United Kingdom judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 791-792, §§ 46–47).

However, an expulsion carried out by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned (see, for example, the Cruz Varas and Others v. Sweden judgment, Series A no. 201, p. 28, §§ 69 and 70).

The Court notes that, apart from the implied and unsubstantiated suicide threat, no evidence has been submitted indicating that an expulsion would be incompatible with the applicant's mental or physical health. The applicant has maintained that he has been threatened by relatives of his accomplice, and that his life therefore would be in danger in

Gambia. He has, however, not alleged that he would be ill-treated by the Gambian authorities.

It is true, owing to the absolute character of the right guaranteed be Article 3 of the Convention, that this Article may apply also where the danger emanates not from public authorities but from persons or groups of persons who are not public officials. However, it must then be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see the H.L.R. v. France judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 758, § 40).

The Court finds that the applicant has not shown that the Gambian authorities are incapable of affording him appropriate protection.

In the light of the foregoing considerations, the Court finds nothing in the complaints to disclose that the applicant faces a real risk of treatment contrary to Article 3 if returned to Gambia.

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

2. The applicant complains that the Swedish courts have been prejudiced against him because of his ethnicity.

He invokes Article 6 of the Convention which, so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by a[n] ... tribunal established by law..."

The Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Court has no competence to examine allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a possible violation of any of the rights and freedoms set out in the Convention (see, for example, the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, with further reference, to be published in *Reports* 1999).

The Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance and appellate courts' decisions were set out at length. The Court further observes that there is no indication that the courts acted arbitrarily or were biased, neither with regard to the applicant's ethnicity nor in any other way, when reaching their decisions.

In conclusion, the Court finds nothing in the complaints to disclose any appearance of a violation of the rights set forth in Article 6 § 1 of the Convention.

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

3. Lastly, the applicant refers to his Swedish wife and the two children. Allegedly, they cannot follow him to Gambia and he will thus not be able to see them for ten years if the expulsion order is enforced.

He invokes Article 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 Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint under Article 8 of the Convention.

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Josep Casadevall
President