CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33449/96
by Ahmet SAHINTÜRK
against Austria

The European Court of Human Rights (Third Section) sitting on 23 March 1999 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, J*udges*,

with Mrs S. Dollé, *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 17 September 1996 by Ahmet SAHINTÜRK against Austria and registered on 15 October 1996 under file no. 33449/96;

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 Turkish national, born in 1970. He is currently living in Turkey. He is represented before the Court by Mr. R. Soyer, a lawyer practising in Vienna.

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

The applicant lived in Austria with his parents and siblings since 1978. He went to school there and later on took up employment. His parents and one brother have meanwhile acquired Austrian citizenship.

On 27 September 1992 the Vienna Federal Police Authority (*Bundespolizeidirektion*) revoked the applicant's unlimited residence permit. It noted that the Vienna Regional Criminal Court, on 19 September 1990, had convicted the applicant of damage to property and burglary and had sentenced him to four months' imprisonment suspended on probation. On 6 December 1991 the same court had convicted him of attempted theft and attempted intimidation and had sentenced him to three months' imprisonment suspended on probation. In view of these convictions, both of which were final, the applicant no longer fulfilled the requirements for an unlimited residence permit.

On 13 January 1993 the Vienna Federal Police Authority issued a residence ban of unlimited duration against the applicant on account of his convictions.

On 14 July 1993 the Vienna Public Security Authority (*Sicherheitsdirektion*), upon the applicant's appeal, quashed the residence ban against him. It relied on S. 20 § 2 of the 1992 Aliens Act (*Fremdengesetz*) according to which no residence ban may be issued against an alien if it would have been possible to grant him citizenship under S. 10 § 1 of the Citizenship Act, i.e. if he has been resident in Austria without interruption for ten years, before the offences in question were committed, except in case of offences punishable with more than five years' imprisonment.

On 17 June 1994 the Vienna Regional Government dismissed the applicant's request for a residence permit. His appeal to the Federal Ministry for the Interior was to no avail.

On 1 February 1995 the Vienna Federal Police Authority issued a deportation order against the applicant. It relied on S. 17 of the 1992 Aliens Act, according to which illegally resident aliens are to be ordered to leave the Federal territory. It noted that in addition to his convictions in 1990 and 1991, the applicant had been convicted of possession of illicit drugs by the Vienna District Criminal Court on 7 May 1992, without an additional sentence being passed. On 12 October 1992 the Vienna Regional Criminal Court had convicted him of making illicit drugs accessible to minors and sentenced him to three months' imprisonment. On 3 March 1993 the Vienna Regional Criminal Court had convicted him of a number of offences including aggravated fraud, theft, assault and obstructing public authority and had sentenced him to eight months' imprisonment. The authority acknowledged that the deportation constituted a serious interference with the applicant's private and family life. According to S. 19 of the 1992 Aliens Act a deportation order was only to be issued if it was necessary within the meaning of Article 8 § 2 of the European Convention of Human Rights. Having regard to the applicant's repeated convictions including those for drugs offences, which involved particular dangers for public safety, the public interest in deporting him outweighed his interest in remaining in Austria.

On 24 April 1995 the Vienna Public Security Authority dismissed the applicant's appeal.

On 13 June 1995 the Constitutional Court (*Verfassungsgerichtshof*) refused to entertain the applicant's complaint. Subsequently, it referred the case to the Administrative Court (*Verwaltungsgerichtshof*).

On 8 February 1996 the Administrative Court dismissed the applicant's complaint. It found that the deportation order against the applicant was necessary within the meaning of Article 8 § 2 of the European Convention on Human Rights in the interests of public safety and the prevention of crime, having regard to his prolonged illegal residence since the withdrawal of his residence permit and the gravity of the offences, in particular the drugs offences, committed by him.

The decision was served on the applicant on 15 May 1996.

On 21 July 1996 the applicant left Austria and is now living in Turkey.

COMPLAINT

The applicant complains under Article 8 of the Convention that the deportation order against him violated his right to respect for his private and family life. He submits that he came to Austria at the age of eight, received his schooling there, and was still living in his parent's household. He claims that he has no links with his country of origin where he is currently living without any family support.

THE LAW

The applicant complains that the deportation order against him violated his right to respect for his private and family life. 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, noting that the applicant has lived in Austria since the age of eight with his parents and his siblings and that he, being a young single adult, was still living with his original family when the deportation order was issued, finds that the contested measure constituted an interference with his private and family life (see Eur. Court HR, Bouchelkia v. France judgment of 29 January 1997, Reports 1997-I, p. 63, § 41; El Boujaïdi v. France judgment of 26 September 1997, Reports 1997-VI, p. 1990-91, § 33; Boujlifa v. France judgment of 21 October 1997, Reports 1997-VI, p. 2263, § 36).

It is therefore necessary to determine whether the deportation order at issue satisfied the conditions of paragraph 2 of Article 8, that is to say whether is was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" for the achievement of that aim or aims.

The Court finds that the deportation order against the applicant was in accordance with the law, being based on S. 17 of the 1992 Aliens Act, and served a legitimate aim, namely the prevention of disorder or crime.

As to the necessity of the interference, the Court recalls that it is for the Contracting States to maintain public order in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. For that purpose they are entitled to order the expulsion of such persons convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. The Court's task accordingly consists in ascertaining whether the issuing of a deportation order against the applicant 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 (see Bouchelkia v. France judgment, op. cit., p. 65, § 48 with further references; Dalia v. France judgment of 19 February 1998, Reports 1998-I, p. 91, § 52).

As to the applicant's ties with Austria, the Court notes that the applicant arrived in Austria in 1978 at the age of eight and lived lawfully there until the end of 1992 when his residence permit was revoked. He received all his schooling in Austria. His parents and siblings still live there. His parents and one of his brothers have acquired Austrian citizenship. Unlike them, the applicant did not show any desire to acquire Austrian citizenship when he would have been entitled to do so. The applicant claims to have no family and social ties in Turkey.

The applicant was, between 1990 and 1993, convicted five times by the criminal courts for various offences including drugs offences, assault and obstructing public authority. He was sentenced to terms of imprisonment varying between three and eight months. The Court finds that quite apart from the fact that the applicant re-offended several times, the offences committed by him were not of a minor nature. The Court attaches particular importance to the fact that the applicant was twice convicted of drugs offences, one of which related to making illicit drugs accessible to minors. Irrespective of the modest sentence passed on him in this context, this conviction weighs heavily against him (see *mutatis mutandis*, Dalia v. France judgment, op. cit., p. 92, § 54). In sum, the domestic authorities could legitimately consider that the deportation order against the applicant was necessary to prevent disorder or crime.

In conclusion, the Court considers that the deportation order against the applicant cannot be regarded as disproportionate to the legitimate aim pursued. There is, thus, no appearance of a violation of Article 8 of the Convention.

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

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

N. Bratza
President