



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

**AFFAIRE EL BOUJAÏDI c. FRANCE/
CASE OF EL BOUJAÏDI v. FRANCE**

(123/1996/742/941)

ARRET/JUDGMENT

STRASBOURG

26 septembre/September 1997

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SUMMARY¹

Judgment delivered by a Chamber

France – enforcement of order for permanent exclusion from French territory of convicted Moroccan national whose parents and four brothers and sisters were lawfully resident in France and who had recognised paternity of the child of a Frenchwoman with whom he had been cohabiting

ARTICLE 8 OF THE CONVENTION

A. Paragraph 1

Question whether applicant had a private and family life within meaning of Article 8 to be considered at time when exclusion order became final – applicant could not therefore plead his relationship with a Frenchwoman or fact that he was father of her child, since these circumstances had come into being long afterwards – nevertheless, there had been interference, as applicant had arrived in France at age of 7, received most of his schooling there and worked there, and his parents and four brothers and sisters lived there.

B. Paragraph 21. “In accordance with the law”

Not contested.

2. Legitimate aim

Prevention of disorder or crime.

3. “Necessary in a democratic society”

Reference to Court’s case-law: obligation for Contracting States to maintain public order, in particular by exercising right to control the entry and residence of aliens – included power to order expulsion of aliens convicted of criminal offences.

Applicant had arrived in France at age of 7, lived there lawfully for seventeen years, received most of his education there and worked there – his parents, brother and sisters lived there.

1. This summary by the registry does not bind the Court.

However, applicant did not claim not to know Arabic or that he had never returned to Morocco, nor did it appear that he had ever shown any desire to acquire French nationality – not established that he had lost all links with country of origin other than nationality – seriousness of offence committed and subsequent conduct counted heavily against him.

Conclusion: no violation (eight votes to one).

COURT'S CASE-LAW REFERRED TO

29.1.1997, Bouchelkia v. France

In the case of El Boujaïdi v. France¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr I. FOIGHEL,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

Mr E. LEVITS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 April and 25 August 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 16 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25613/94) against the French Republic lodged with the Commission under Article 25 by a Moroccan national, Mr Abderrahim El Boujaïdi, on 7 November 1994. The applicant, who was initially designated by the letters A.E.B., subsequently consented to the disclosure of his identity.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to

Notes by the Registrar

1. The case is numbered 123/1996/742/941. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant, who had been granted legal aid before the Court, stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. On 17 September 1996 Mr R. Ryssdal, the President of the Court, decided, pursuant to Rule 21 § 7, that the present case should be allocated to the Chamber already set up to hear the case of *Mehemi v. France* (no. 85/1996/704/896). That Chamber included *ex officio* Mr L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 7 August 1996, in the presence of the Registrar, Mr Ryssdal had drawn by lot the names of the other seven members, namely Mr R. Macdonald, Mr C. Russo, Mr I. Foighel, Sir John Freeland, Mr M.A. Lopes Rocha, Mr L. Wildhaber and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 2 and 17 December 1996 respectively. On 22 January 1997 the Secretary to the Commission informed the Registrar that the Delegate did not intend to reply in writing. On 24 March 1997 the applicant filed claims under Article 50 of the Convention.

5. On 4 February 1997 the Commission had produced various documents requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 April 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr J.-F. DOBELLE, Deputy Director of Legal Affairs,
Ministry of Foreign Affairs,

Agent,

Mr J. LAPOUZADE, Administrative Court Judge, on secondment
to the Legal Affairs Department,
Ministry of Foreign Affairs,

Mr G. BITTI, Human Rights Office, European and
International Affairs Department,
Ministry of Justice,

Advisers;

(b) *for the Commission*

Mr H. DANELIUS,

Delegate;

(c) *for the applicant*

Mr J. DEBRAY, *avocat*, of the Lyons Bar,

Counsel.

The Court heard addresses by Mr Danelius, Mr Debray and Mr Dobelle.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Mr El Boujaïdi was born in Morocco in 1967 and is a Moroccan national. In 1974 he went with his mother, his three sisters and his brother to join his father in France. He has been living in Morocco since enforcement on 26 August 1993 of an order for his permanent exclusion from French territory.

8. The applicant went to school in France, where he also worked for several years.

A. The criminal proceedings

1. In Saint-Etienne Criminal Court

9. In October 1986 a network of traffickers in heroin imported from the Netherlands was discovered in the Saint-Etienne area (Loire). Eight people, including the applicant, were committed for trial at Saint-Etienne Criminal Court charged with consumption of and trafficking in prohibited drugs.

10. On 24 March 1988 the Saint-Etienne Criminal Court sentenced Mr El Boujaïdi to three years' imprisonment, to run concurrently with another sentence of thirty months' imprisonment imposed by the Annecy Criminal Court on 25 September 1987 for dealing in heroin, and ordered him to pay customs fines. Applying Article L. 630-1 of the Public Health Code, it further imposed permanent exclusion orders on Mr El Boujaïdi and three of his co-defendants and a three-year exclusion order on a fourth.

2. In the Lyons Court of Appeal

11. On appeal by the prosecution, the Lyons Court of Appeal, in a judgment of 12 January 1989, increased the applicant's sentence to six years' imprisonment, with ineligibility for parole during the first two-thirds thereof, and confirmed the permanent exclusion order. The reasons for the judgment were set out as follows:

“In April 1987, in the course of an inquiry aimed at breaking up a heroin-trafficking network operating in Saint-Etienne, the police arrested [the applicant], who had been named as a supplier by various users.

During questioning by the police and the investigating judge El Boujaïdi admitted that he had been using heroin for several months and that he injected himself with up to 1.5 grams per day. According to his statements, he obtained his supplies from [K., A. and I.], who obtained their supplies in Holland.

Again according to his own statements, El Boujaïdi had been peddling heroin since November 1986 to finance his own consumption. He even stated at one interview that each time he bought five grams he sold on three.

The various users named in the charge as buyers from El Boujaïdi confirmed during the course of the inquiry that they had obtained varying quantities of heroin from him throughout the relevant period, namely from September 1986 to April 1987.

According to the statements made by a number of these buyers, El Boujaïdi was known to drug addicts in Saint-Etienne as a supplier and users could meet him in a bar in Place Chavanelle, where the transactions took place.

El Boujaïdi was found guilty of selling heroin to [B.] in a judgment of Annecy [Criminal] Court of 25 September 1987, which has become final. There is therefore no need to rule on that offence. As regards the remaining charges, and in view of the extreme seriousness of the accused's conduct, the Court upholds the guilty verdict referred from the court below and sentences El Boujaïdi to six years' imprisonment, to run concurrently with the thirty-month sentence passed on 25 September 1987 by Annecy Criminal Court ...

The Court orders [the applicant's] permanent exclusion from French territory.

...”

B. The first application to have the exclusion order rescinded

12. On 25 March 1991, pleading his family ties in France, Mr El Boujaïdi lodged a first application to have the order permanently excluding him from French territory rescinded.

In a judgment of 14 May 1991 the Lyons Court of Appeal declared the application inadmissible on the ground that under Article L. 630-1 of the Public Health Code an alien permanently excluded from French territory could not apply for the relevant order to be rescinded.

C. The conviction for robbery

13. Following an attempted robbery, the applicant – who had been released on 19 June 1991 – was arrested and, on 6 December 1992, detained under a committal warrant. For this offence and the fact that he had stayed in France in spite of the permanent exclusion order imposed on him, on 11 January 1993 the Saint-Etienne Criminal Court sentenced him to one year's imprisonment.

D. The second application to have the exclusion order rescinded

14. On 25 May 1992 Mr El Boujaïdi again applied to have the exclusion order rescinded. He submitted that the length of time he had been living in France brought him into a category of convicted aliens on whom, under Article L. 630-1 of the Public Health Code, in its new version as amended by the Law of 31 December 1991, an exclusion order could not be imposed. He also argued that on account of his family ties in France the exclusion order was in breach of Article 8 of the Convention.

15. The Lyons Court of Appeal refused this application on 26 November 1992 in a judgment containing the following reasons:

“The applicant has submitted not only that the order permanently excluding him from French territory should be rescinded in the light of Article 8 of the ... Convention ... but also that, as a matter of fact, he has lived in France since 1974 and the whole of his family lives here too.

...

While Mr El Boujaïdi's application has become admissible since the repeal by the Law of 31 December 1991 ... of the last paragraph of Article L. 630-1 of the Public Health Code, the applicant cannot rely on the substantive provisions of that legislation, which are not retrospectively applicable to convictions that became final, as in this case, before its entry into force.

His application must accordingly be dealt with on its own merits, on the basis of Article 55-1 of the Criminal Code.

Mr El Boujaïdi has adduced no new evidence since his conviction on 12 January 1989.

He cannot argue, as an unmarried man, that his exclusion from French territory is an intolerable interference in his family life within the meaning of Article 8 of the Convention ...

The offences he has committed, after two previous convictions for drug offences, make his presence on French territory dangerous for public health and public order.

...”

16. On 15 March 1994 the Court of Cassation (Criminal Division) dismissed an appeal on points of law lodged by the applicant on 30 November 1992 against the judgment of the Lyons Court of Appeal on the ground that Mr El Boujaïdi’s statement of the grounds of appeal did not bear his signature.

E. The third application to have the exclusion order rescinded, enforcement of the order and the changes in the applicant’s personal circumstances

17. On 22 July 1993 Mr El Boujaïdi made a third application requesting the Lyons Court of Appeal to rescind the exclusion order. In support of his appeal – which was based on Article 8 of the Convention – he pleaded changes in his personal circumstances, namely the fact that he was living with a Frenchwoman, Mrs M., and was the father of the child she had given birth to on 6 July.

On 5 August 1993 the social worker at the prison where Mr El Boujaïdi was detained wrote to his lawyer in the following terms:

“...

In reply to your letter of 28 July 1993 concerning the steps taken over the last few months regarding recognition of the child of Mr El Boujaïdi, currently imprisoned, for whose social welfare I am responsible, I can inform you that, at the request of Mr El Boujaïdi and [Mrs M.], his cohabitant:

1. In April I prepared the paperwork for a prenatal recognition of paternity and sent the file both to the town hall of La Talandière and to Assistant State Counsel so that the appropriate submissions could be made to the Registrar of Births, Marriages and Deaths.

2. As this application had been unsuccessful and the child had been born – on 6 July 1993 – I compiled a new recognition of paternity file and sent it on 3 August 1993 to State Counsel’s Office at the Saint-Etienne *tribunal de grande instance*.

...”

18. On 26 August 1993 the exclusion order was enforced.

19. On 20 October 1993, at the French Consulate in Fez, Mr El Boujaïdi recognised paternity of Mrs M.'s child.

20. In a judgment of 16 December 1993 the Lyons Court of Appeal refused the application to have the exclusion order rescinded on the following grounds:

“Mr El Boujaïdi’s lawyer has produced various documents showing that Mr El Boujaïdi met Mrs M. in January 1992, that is at a date when he should not have been present on French territory. Their child was born on 6 July 1993. The circumstances he relies on therefore came into being at a time when he was permanently excluded from French territory.

The exclusion order was imposed to penalise a dangerous trade in heroin. That being so, the Court does not see fit to allow the present application.

...”

21. Relying mainly on Article 8 of the Convention and the European Court’s case-law, the applicant appealed on points of law. In a judgment of 25 October 1994 the Court of Cassation dismissed the appeal on the following grounds:

“The judgment under appeal shows that Abderrahim El Boujaïdi, who is a Moroccan national, was sentenced, *inter alia*, to be permanently excluded from French territory for an offence against the dangerous drugs legislation, in a judgment of the Lyons Court of Appeal of 12 January 1989, which has become final, and that by an application dated 22 July 1993 he sought to have that exclusion order rescinded.

In rejecting that application the Court of Appeal observed that the family circumstances on which the appellant relies came into being while he was permanently excluded from French territory. It further stated that the purpose of the additional penalty imposed on the appellant was to ‘penalise a dangerous trade in heroin’.

... Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms does not prohibit limitations prescribed by law on the right to respect for family life, provided that they are necessary for, among other things, public safety, the prevention of disorder and the protection of health. That is the position in the present case.

It follows that the appeal, which amounts to a challenge to the courts’ discretionary power under Article 55-1 of the Criminal Code, then in force, cannot be allowed.

...”

II. RELEVANT DOMESTIC LAW

A. The Public Health Code

22. Article L. 630-1 of the Public Health Code formerly provided:

“... the courts ... may order an alien convicted of an offence under Article L. 627 to be permanently excluded from French territory.

Exclusion from French territory shall of itself entail the deportation of the convicted person at the end of his sentence.

...

Where a person, on conviction, is permanently excluded from French territory, he may not request the benefit of the provisions of Article 55-1 of the Criminal Code.”

Law no. 91-1383 of 31 December 1991 replaced the last three paragraphs by the following provisions:

“However, exclusion from French territory shall not be imposed on:

...

2. a convicted alien who is the father or mother of a French child resident in France, provided that he or she is vested with or shares parental authority over that child or provides for its needs;

...

Nor shall exclusion from French territory be imposed on a convicted alien who can prove either:

1. that he has been normally resident in France since reaching the age of 10 at the most or for more than fifteen years; or

2. that he has been lawfully resident in France for more than ten years.

...

Exclusion from French territory shall of itself entail the convicted person’s deportation, where necessary after the end of his prison sentence.”

Article L. 630-1 was repealed by Law no. 92-1336 of 16 December 1992.

B. The Criminal Code

23. Article 55-1 of the Criminal Code provides:

“... ”

Any person who has incurred a disability ... as an automatic consequence of a criminal conviction or on whom such disability ... has been imposed by the convicting court in its judgment ... may request the court which convicted him ... to rescind the disability ..., in whole or in part, or vary its duration.

...”

PROCEEDINGS BEFORE THE COMMISSION

24. Mr El Boujaïdi applied to the Commission on 7 November 1994. He submitted that his permanent exclusion from French territory was in breach of Article 8 of the Convention.

25. On 17 January 1996 the Commission (Second Chamber) declared the application (no. 25613/94) admissible. In its report of 26 June 1996 (Article 31), it expressed the opinion by eleven votes to two that there had been no violation of that provision. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

26. In his memorial the applicant submitted “that there [had] been a violation of Article 8 of the Convention and that the Court should find against the French Government”.

27. The Government submitted “that the Court should reject the application”.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. Mr El Boujaïdi submitted that the order permanently excluding him from French territory interfered in his private and family life, in breach of Article 8 of the Convention, which provides:

“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.”

Neither the Government nor the Commission agreed.

A. Paragraph 1 of Article 8

29. The Court must first determine whether the applicant is entitled to claim that he has a “private and family life” in France within the meaning of Article 8 § 1 and whether the measure in issue amounted to an interference therein.

30. Mr El Boujaïdi asserted that he had arrived in France in 1974 at the age of 7, that he had lived there until 26 August 1993 (when the exclusion order was enforced) and that his parents, his three sisters and his brother were lawfully resident there.

He further asserted that he was the father of a child born in France on 6 July 1993, that he had met the child’s – French – mother in January 1992 and that he had afterwards cohabited with her. Those were facts which, albeit subsequent to the making of the permanent exclusion order, could not be ignored.

31. The Government argued that the applicant had attained the age of majority by the time he was convicted and was now nearly 30 years old. That being so, his links with his parents and his brother and sisters did not constitute family ties for the purposes of Article 8. Moreover, the facts pleaded by the applicant, namely his cohabitation with his girlfriend and his paternity of the child, could not be taken into account, since any period of time when they might have lived together – which could not, in any case, have lasted more than a few weeks – and the applicant’s recognition of the child had both followed a very long time after the final decision ordering his permanent exclusion (12 January 1989).

In addition, too much should not be made of the applicant's private life in France. He and his family were poorly integrated in France and did not have strong ties there; the applicant had not severed all links with his country of origin and neither his parents nor any of his brothers and sisters had acquired French nationality.

32. The Commission took the view that enforcement of the exclusion order amounted to interference with the applicant's right to respect for his private and family life.

33. The question whether the applicant had a private and family life within the meaning of Article 8 must be determined by the Court in the light of the position when the exclusion order became final (see, *mutatis mutandis*, the Bouchelkia v. France judgment of 29 January 1997, *Reports of Judgments and Decisions* 1997-I, p. 63, § 41). That means at the beginning of 1989, since the last judgment relating to the applicant's conviction was the Lyons Court of Appeal's judgment of 12 January 1989 (see paragraph 11 above). Mr El Boujaïdi cannot therefore plead his relationship with Mrs M. and the fact that he is the father of her child, since these circumstances came into being long after that date (see paragraphs 17 and 19 above).

However, the Court observes that he arrived in France in 1974 at the age of 7 and lived there until 26 August 1993. He received most of his schooling there and worked there for several years. In addition, his parents, his three sisters and his brother – with whom it was not contested that he had remained in contact – live there (see paragraph 7 above). Consequently, the Court is in no doubt that enforcement of the exclusion order amounted to interference with the applicant's right to respect for his private and family life.

B. Paragraph 2 of Article 8

34. The Court must accordingly determine whether the order in issue satisfied the conditions of paragraph 2, namely whether it was "in accordance with the law", whether it pursued one or more of the legitimate aims listed therein and whether it was "necessary in a democratic society" in order to achieve the aim or aims concerned.

1. "In accordance with the law"

35. It has not been contested that the order permanently excluding Mr El Boujaïdi from French territory was based on Article L. 630-1 of the Public Health Code.

2. *Legitimate aim*

36. Nor has it been disputed that the interference in question sought to achieve aims which are wholly compatible with the Convention, namely “the prevention of disorder or crime”.

3. *“Necessary in a democratic society”*

37. The applicant pointed out that he had been only 19 years old when he committed the offence on account of which he was permanently excluded from French territory. He asked the Court not to make too much of the seriousness of this offence, as he had been punished only for using drugs over a period of a few months and selling approximately seventeen grams of heroin. Moreover, the sentences imposed by different courts for identical offences varied considerably, so that the length of a term of imprisonment could not be a reliable guide to the “dangerousness” of the accused. Accordingly, no decisive conclusion could be drawn from the fact that he had been sentenced to six years’ imprisonment. The robbery he had committed some time after his release had not been the result of a decision on his part to continue in a life of crime but of the impossible situation in which his exclusion from French territory had placed him; being unlawfully present in France, he had been wholly without means of support. In any event, this offence had been committed after the measure in issue and could not therefore be allowed to count against him. Lastly, he had no family ties in Morocco.

In short, such a radical measure as permanent exclusion from French territory was markedly disproportionate to the aim pursued.

38. The Government and the Commission observed that Mr El Boujaïdi had been sentenced first to six years’ and later to one year’s imprisonment for heroin trafficking and attempted robbery respectively. They emphasised the seriousness of these offences and the sentences imposed, noted that the applicant had continued to lead a life of crime and had not established that he had lost all links with Morocco other than his nationality and submitted in conclusion that there had been no breach of Article 8.

39. The Court reiterates 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 and notably to order the expulsion of aliens 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 (see, as the most recent authority, the Bouchelkia judgment cited above, p. 65, § 48).

40. The Court's task therefore consists in ascertaining 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.

The Court notes that Mr El Boujaïdi arrived in France at the age of 7 and lived there lawfully from 1974 until 19 June 1991 (the date of his release – see paragraph 13 above). He received most of his education there, he worked there and his parents, his three sisters and his brother live there (see paragraph 7 above).

However, while he asserted that he had no close family in Morocco, he did not claim that he knew no Arabic or that he had never returned to Morocco before the exclusion order was enforced. It also seems that he has never shown any desire to acquire French nationality. Accordingly, even though most of his family and social ties are in France, it has not been established that he has lost all links with his country of origin other than his nationality. In addition, the applicant had a previous conviction – a sentence of thirty months' imprisonment having been imposed on him by the Annecy Criminal Court for heroin dealing in 1987 – when the Lyons Court of Appeal sentenced him to six years' imprisonment and ordered his permanent exclusion from French territory for drug use and drug trafficking (see paragraphs 10 and 11 above). Once he was released, and at a time when he was unlawfully present in France, he continued to lead a life of crime and committed an attempted robbery (see paragraph 13 above). The seriousness of the offence on account of which the measure in issue was imposed on the applicant and his subsequent conduct count heavily against him.

41. Having regard to the foregoing, the Court does not find that enforcement of the order for the applicant's permanent exclusion from French territory was disproportionate to the legitimate aims pursued. There has accordingly been no breach of Article 8.

FOR THESE REASONS, THE COURT

Holds by eight votes to one that there has been no breach of Article 8 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 September 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the dissenting opinion of Mr Foighel is annexed to this judgment.

Initialed: R.B.
Initialed: H.P.

DISSENTING OPINION OF JUDGE FOIGHEL

1. Mr El Boujaïdi was born in Morocco in 1967. When he was 7 years old, together with his three sisters and his brother, he was brought by his mother to join his father in France. He stayed in France until 26 August 1993 when the order for his permanent exclusion from French territory was enforced. At that time he was 26 years old and had lived in France for nearly twenty years. The whole of his family, his child and the child's mother live in France.

2. Mr El Boujaïdi belongs to the category of “integrated aliens” or “second-generation immigrants”. As such he did not choose his country of residence of his own free will and he went through his entire upbringing, schooling, etc., under the same conditions as French nationals.

3. I share the opinion expressed by Judge Martens in the case of *Boughanemi v. France*¹ that integrated aliens – i.e. aliens who have spent all or practically all their lives in a State – should in principle be treated in the same way as nationals as regards the question of their expulsion. As mentioned by Judge Martens, the expulsion of nationals is forbidden by Article 3 § 1 of Protocol No. 4. An effective consequence of this principle would be that – with the possible exception of absolutely extraordinary cases – integrated aliens would not be subject to expulsion.

This view, which has also been advocated by Judges De Meyer², Morenilla³, Baka⁴ and Palm⁵, is also consistent with the fact that nationality is not a condition for the exercise of the rights guaranteed by the Convention, unless the Convention expressly states as much in relation to a specific right.

4. The criminal law of the country of residence should normally be sufficient to punish criminal acts committed by an integrated alien, in the same way as it is deemed sufficient to punish criminal acts committed by a national.

1. Judgment of 24 April 1996, *Reports of Judgments and Decisions* 1996-II.

2. See notably his separate opinion in the *Beldjoudi v. France* judgment (26 March 1992, Series A no. 234-A, p. 35).

3. See his partly dissenting opinion in the *Nasri v. France* judgment (13 July 1995, Series A no. 320-B, p. 31).

4. See his dissenting opinion in the above-mentioned *Boughanemi* judgment.

5. See her dissenting opinion in the *Bouchelkia v. France* judgment (29 January 1997, *Reports of Judgments and Decisions* 1997-I).