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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32797/96
by Saban ÖZTURK and Others
against Norway

The European Court of Human Rights (Third Section), sitting on 21 March 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 7 June 1996 and registered on 28 August 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicants are Mr Saban Özturk and his wife Nadir Özturk, respectively Turkish and Norwegian/Turkish nationals born in 1964 and 1958, and also their four children (born in the years indicated in brackets), all of whom are Norwegian nationals: Ismail (1982), Handan (1987), Alev (1987) and Kemal (1995). The first applicant lives in Turkey and the other applicants live in Oslo, Norway. They are represented before the Court by Mr Kaj R. Bjørnstad, a lawyer practising in Oslo.

The facts of the case, as described mainly in the judgments of the national courts, may be summarised as follows.

Mr Saban Özturk, the first applicant, is of ethnic Kurdish origin. During his 5 years of primary education in Turkey he was taught in Turkish. In 1972 his father travelled to Norway and in 1976 the first applicant joined him there, at the age of 12. Three years later also his mother, sister and 2 brothers followed. They were all granted a residence permit.

Following an introductory Norwegian course for foreigners in 1977, the first applicant joined a Norwegian secondary school, where he completed his studies after 3 years. He then worked for 4 years as an assistant in a car shop, 1 year at a concrete factory and thereafter for 4½ years as an assistant warehouse manager in a furniture shop, until he was arrested in May 1989.

In 1981 the first applicant married the second applicant, Mrs Nadir Özturk. She arrived in Norway, 23 years old, in 1982. She obtained Norwegian citizenship in 1991 but kept her Turkish citizenship. While her parents remained in Turkey, 2 of her 7 brothers and sisters are living in Norway. One of them, a brother, is married to one of the first applicant's sisters in Norway. The second applicant has worked as a cleaning assistant at a school for 11 years. She has no education beyond the 5 years' primary schooling in Turkey and a short course in Norwegian following her arrival in Norway.

On 12 January 1990, the *Eidsivating* High Court (*lagmannsrett*) convicted the first applicant under Article 162 (3), cf. (1) and (5) of the Penal Code for complicity in the importation of approximately 1 kilo of heroin from Turkey and for having acquired approximately 850 grams of the drug in May 1989. It sentenced him to 10 years' imprisonment. Two other persons were convicted in relation to these offences, one of whom was the first applicant's brother, Celal. In its judgment the High Court stated that the evidence did not clarify the whole context of the case, which was only the tip of an iceberg. The first applicant and his brother were not deemed to be the principal perpetrators, but they had received the drugs in Norway and found a place to keep them, following the directions of someone else. The first applicant was considered to have had a more important role than his brother in the operation. Unlike the brother, the first applicant had not previously been convicted. The third person convicted, also a Turkish national, had travelled regularly between Turkey and Norway and was found to have been put under considerable pressure, in particular from Turkey, but also from Saban and Celal Özturk in order to act as a courier in the transport of the drugs in question. Because of the pressure he had been put under, he had reported the matter to the police in Norway and had sought police protection. The police had not been able to help him but had advised him not to act as a courier. Despite this he had carried out the operation and had later informed the police of the quantity he had imported and where parts of the drugs could be found.

While serving his prison sentence, the first applicant took a 1-year course in engineering and mechanics and a ½-year course in building. After being released in March 1996, he gained employment as a manager in the welding department of a company.

On 16 November 1990 the Oslo Police, referring to the criminal conviction, decided to order the first applicant's expulsion. The decision was subsequently replaced by a decision dated 2 April 1992 of the Aliens Directorate (*Utlendingsdirektoratet*), in accordance with the relevant provisions of the Aliens Acts 1988 (*Utlendingsloven*, Act of 24 June 1988 No. 64). On appeal, the Ministry of Justice upheld the latter decision on 23 September 1992. The Ministry observed that, considering the case as a whole and having regard to the serious nature of the offence, the expulsion would not constitute a disproportionate measure vis-à-vis the members of the first applicant's close family. The family could, if it so wished, reunite in Turkey.

Subsequently the first applicant challenged the expulsion order before the Oslo City Court (*byrett*). He submitted, *inter alia*, that he felt like a Norwegian, that at present he had no links to Turkey, which was only a holiday destination for him and his family, who wished to remain in Norway. By judgment of 30 September 1993, the City Court upheld the decision by the Ministry of Justice. On appeal, this judgment was subsequently upheld by the High Court, in a judgment of 17 February 1995.

By judgment of 29 April 1996, the Supreme Court (*Høyesterett*) upheld the High Court's judgment and rejected the first applicant's appeal. In his opinion on behalf of a unanimous court, Mr Justice Bugge stated:

> "[I]n cases of serious narcotics offences, the expulsion of foreigners must fall within the Contracting States' margin of appreciation, even though the expulsion, because of the expelled person's links to the host country, will have a serious impact on him and his family.
>
> There is no reason to doubt that the expulsion would constitute a heavy burden for [the first applicant] and his family. He, his wife and the children have resided in Norway for a long period, the children since their birth. However, … the family does not have its vital interests solely linked to Norway and should not be considered alien to Turkish society. This is the case of [the first applicant] and his wife and also to a certain degree the children, who must be presumed to be or have become familiar with the Turkish language and way of life, even if they live in Norway. There is no question here of such qualified attachment to the country of residence for the expelled person and his family and such a lack of ties to the country of origin as are described in the Strasbourg Court's judgments in the cases of Moustaquim and Beljoudi.
>
> It is not possible for the Supreme Court to have any firm opinion about whether the first applicant's close family would elect to continue living in Norway. But even though expulsion would entail that Mr Özturk be separated from his family, it does not follow that the expulsion would transgress the limits of Article 8 § 2, when he has been found guilty of such a serious offence, with such damaging consequences to society, as in the present case.

> The State does not dispute that Mr Özturk could be exposed to prosecution in Turkey, where an indictment has been issued against him with respect to the exportation from Turkey of the heroin in question in May 1989 ... From the point of view of criminal law, it concerns a different offence than that for which he was convicted in Norway. According to information obtained by the Attorney General via the Norwegian Embassy in Ankara about Turkish penal practice in this area, the exportation of narcotic substances may be penalised with 6 to12 years' imprisonment and a fine, assessed in the light of the quantity in question. In the event of heroin and certain other substances, the punishment may be doubled; it may also be increased by 50% if the trial court finds that the trafficking is a part of organised crime. Punishment will normally be imposed even though the accused has been convicted and has served a sentence for the offence in another country, but will be deducted from that served in accordance with a judgment of the Turkish court... . In practice, prisoners are released after having served 40% when a sentence has also been served in another country. Therefore, according to what has been stated to the Embassy, it is rare that, after deduction has been made of the sentence served in the other country, there will be anything left to serve in Turkey. Moreover, it has been stated that the principle *ne bis in idem*, namely that punishment shall not be imposed twice for the same offence, is respected by Turkish trial courts.
>
> Against this background I find it clear that the possibility of Mr Özturk being prosecuted in Turkey could not lead to the finding of a violation of Article 8 of the Convention."

From 14 to 15 May 1996 the first applicant was committed for examination to the psychiatric ward of Aker Hospital, Oslo. According to a psychiatric report dated 22 May, the applicant was above all disappointed and bitter about the authorities. He had stated that he might as well die as go to a Turkish prison, but that he would not commit suicide until the day of his deportation, possibly after his arrival in Turkey. He was assessed as not being psychotic but moderately depressed. There was no psychiatric ground for his being committed to a psychiatric hospital.

In June 1996 the first applicant's expulsion was put into effect.

His brother, Celal, had been expelled in 1995, whereas his other brother had died. His sister continued to live in Norway and obtained Norwegian citizenship. Their parents returned to Turkey in 1993 for health reasons and, because of their long absence from Norway, forfeited their residence permit.

COMPLAINTS

The applicants complain that the deportation of the first applicant from Norway to Turkey unjustifiably interfered with their right to respect for private and family life, and thus violated Article 8 of the Convention. Furthermore, the first applicant alleged that the measure violated Article 3 of the Convention. The applicant children complained that their

separation from their father entailed discrimination in breach of Article 14. In addition, the applicants complained that the review afforded by the Norwegian authorities failed to comply with Articles 6 and 13 of the Convention.

THE LAW

1. The applicants complained that the first applicant's expulsion to Turkey constituted a violation of their right to respect for private and family life under Article 8 of the Convention, which reads:

> "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."

In the first place they argued that the expulsion did not pursue a legitimate aim. They submitted, *inter alia*, that whilst it had been imposed in the general interest of crime prevention, this purpose was too sweeping and permitted covert social cleansing of non-European nationals in the Contracting States. Moreover, the expulsion served no purpose beyond that pursued by the imposition of the sentence, the severity of which exceeded that imposed in respect of such offences in other Contracting States.

However, the Court is satisfied that the expulsion order pursued the legitimate aim under Article 8 § 2 of the Convention of the prevention of disorder or crime, notwithstanding the fact that the applicant's conviction and sentence also pursued that aim.

Secondly, the applicants maintained that the expulsion was not necessary in a democratic society. Whereas the applicants did not dispute the need for a Contracting State to apply a firm policy towards drug offenders generally, or the need to expel illegal immigrants and temporary residents who commit criminal offences, they stressed that there could be no pressing social need in taking remorseless action against integrated aliens, especially those who have been convicted only once and who have been offered no possibility of rehabilitation. Such action could only be justified in exceptional cases.

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. For that purpose they are entitled to order the expulsion of such persons convicted of criminal offences.

However, their decisions in this domain 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, among other authorities, the following judgments: Beldjoudi v. France,

26 March 1992, Series A no. 234-A, p. 27, § 74; Nasri v. France, 13 July 1995, Series A no. 320-B, p. 25, § 41; Boughanemi v. France, 24 April 1996, *Reports of Judgments and Decisions* 1996 II, Vol. 8, pp. 609-610, § 41; and C. v. Belgium, 7 August 1996, *Reports* 1996-III, Vol. 12, p. 924, § 31). The Court's task is to determine whether the expulsion at issue struck a fair balance between the relevant interests, namely the applicants' right to respect for their private and family life, on the one hand, and the prevention of disorder or crime, on the other.

The Court observes from the outset that the expulsion order was based on the particularly serious and damaging nature of the offences of which the first applicant was convicted, namely complicity in the importation into Norway of 1 kilo of heroin from Turkey, and the acquisition of approximately 850 grams of the drug. In the Court's view, even though the first applicant had not previously been convicted, this does not detract from the seriousness and gravity of such a crime (see the Bouchelkia v. France judgment of 29 January 1997, *Reports of Judgments and Decisions*, 1997-I, Vol. 28, p. 65, § 51).

Although the first applicant was 12 years old when he arrived in Norway and had spent 20 years there when he was expelled, his links to this country, as opposed to those of his country of origin, were not comparable to the situation of a second-generation immigrant (cf the Beldjoudi v. France judgment of 26 March 1992, Series A no. 234, p. 28, § 77; the Mehemi v. France judgment of 26 September 1997, *Reports* 1997-VI, Vol. 51, p. 1971, § 36).

Before leaving Turkey the first applicant had completed 5 years of primary education in Turkish and, after settling in Norway, he and his family had spent holidays in Turkey. His wife, who also originated from Turkey, had spent her first 23 years or so in that country and their children were all of an adaptable age. In the circumstances, it would not appear to have been unreasonable to expect the first applicant's wife and children to join him in Turkey.

Moreover, the Court notes that the first applicant has not only maintained strong links with his country of origin, but he has also abused them for the purposes of an international criminal activity. In Norway where the first applicant lived, he and his brother put substantial pressure on a fellow Turkish national to act as a courier for drugs between Turkey and Norway. In so doing, the first applicant and his brother acted in collusion with a drug trafficking network operating in Turkey. The first applicant also abused his position in Norway to act as a receiver for a large quantity of heroin, for complicity in which he was convicted. In short, the first applicant took advantage of his dual links to Turkey and Norway in order to establish his criminal activity.

In the light of the above elements, the Court considers that, in concluding that the public interest in the first applicant's expulsion from Norway to Turkey was preponderant, the authorities of the respondent State acted within their margin of appreciation. The Court finds that the interference with the applicants' right to respect for private and family life was supported by relevant and sufficient reasons, was proportionate for the purposes of Article 8 § 2 and could reasonably be viewed as necessary in a democratic society.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

2. The first applicant in addition argued that his expulsion entailed a violation of Article 3 of the Convention, which reads:

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

In this connection he relied on the same facts on which he based his complaint under Article 8 of the Convention. In addition, he claimed that the expulsion would destroy his health and life. Unless he committed suicide, which he said he might very well do, he would face a new trial in Turkey in relation to the same offence and risked a new conviction and sentence of 12 to 36 years' imprisonment and special hardship, being a Kurd and the brother-in-law of another Kurd who was persecuted by Turkish security police.

The Court, having regard to its finding with respect to the first applicant's complaint under Article 8 and to the additional factors he invokes, does not find that the circumstances of the case are sufficiently substantiated to disclose the appearance of such severe treatment as to come within the ambit of Article 3 of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. The four applicant children complained that their father's expulsion amounted to a violation of Article 14 of the Convention, taken in conjunction with Article 8. Article 14 reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

They maintained that the expulsion of their father on the basis that he was a foreigner originating from a country outside the European Union (EU) and the European Economic Area (EEA), constituted an unjustified difference in treatment of them as children, compared with other Norwegian children whose parents were nationals of countries within the EU and the EEA. The Norwegian practice in this field was generally discriminatory towards innocent children of integrated aliens who are found guilty of a criminal offence. This practice was not limited to cases of notorious or especially dangerous criminals but extended to cases, such as theirs, where the parent in question was not likely to re-offend and would be of valuable assistance and support to the children if allowed to return to Norway.

The Court recalls that, for the purposes of Article 14, a difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see, amongst many authorities, the Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, pp. 35-36).

The Court notes that no evidence of a differential practice has been submitted to substantiate the applicant children's claim that they have been victims of discriminatory treatment. Even assuming that a differential practice is applied in this area, the Court reiterates its findings above that, for the purposes of Article 8, the expulsion as such pursued a legitimate aim and did not amount to a disproportionate interference with the applicants' right to respect for their private and family life.

Moreover, the fact that a Contracting State, in the exercise of its discretion in expulsion matters, gives nationals of certain countries with which it entertains particularly close relations, for instance within the EU and the EEA, more favourable treatment than nationals of other countries, does not of its own give rise to an issue under Article 14 (see the above-mentioned Abdulaziz, Cabales and Balkandali judgment, pp. 39-40, §§ 84-85). Although the expulsion in question in this case affected the applicant children's enjoyment of their Article 8 rights, they have failed to show that the difference in treatment they complained of could be regarded as not having an objective and reasonable justification falling within the Contracting State's margin of appreciation.

The Court finds, therefore, that the circumstances of the present case do not disclose evidence of any appearance of discrimination contrary to Article 14 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 and must be rejected in accordance with Article 35 § 4.

4. The applicants complained of violations of Articles 6 and 13 of the Convention, which guarantee, respectively, the right to a fair hearing in the determination of a criminal charge or civil rights and obligations, and the right to effective remedies for Convention breaches. They apparently argue that they were not afforded an effective remedy against the first applicant's deportation, because of limitations in the scope of review by the domestic authorities, including the courts.

The Court notes, however, even assuming that these Convention provisions apply to the present case, that the expulsion order was reviewed first at an administrative level and then at three judicial levels. There is nothing to indicate that the review afforded did not comply with the procedural guarantees of the Convention.

It follows that this part of the application must be also rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé N. Bratza
Registrar President