



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

COURT (CHAMBER)

**CASE OF MOUSTAQUIM v. BELGIUM**

*(Application no. 12313/86)*

JUDGMENT

STRASBOURG

18 February 1991

**In the Moustaquim case\*,**

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

Mr R. RYSSDAL, *President*,  
Mrs D. BINDSCHEDLER-ROBERT,  
Mr F. MATSCHER,  
Sir Vincent EVANS,  
Mr R. BERNHARDT,  
Mr J. DE MEYER,  
Mr N. VALTICOS,  
Mrs E. PALM,  
Mr I. FOIGHEL,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 29 September 1990 and 25 January 1991,

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 14 December 1989, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12313/86) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 15) by Mr Abderrahman Moustaquim, a Moroccan national, on 13 May 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Belgium recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

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\* The case is numbered 26/1989/186/246. 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 corresponding originating applications to the Commission.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

\*\*\* The amendments to the Rules of Court which came into force on 1 April 1989 are applicable to this case.

the respondent State of its obligations under Article 8 (art. 8) - taken alone or together with Article 14 (art. 14+8) - and Articles 3 and 7 (art. 3, art. 7).

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

3. The Chamber to be constituted included ex officio Mr J. De Meyer, the elected judge of Belgian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 27 January 1990, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mrs D. Bindschedler-Robert, Mr F. Matscher, Sir Vincent Evans, Mr R. Bernhardt, Mr N. Valticos, Mr I. Foighel and Mr R. Pekkanen (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently Mrs E. Palm, substitute judge, replaced Mr Pekkanen, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the Belgian Government ("the Government"), the Delegate of the Commission and the lawyers for the applicant on the need for a written procedure (Rule 37 § 1). In accordance with the Order made in consequence on 7 February 1990, the Registrar received the applicant's memorial on 11 April and the Government's memorial on 17 May. On 12 June the Deputy Secretary to the Commission informed the Registrar that the Delegate would submit his observations orally.

5. On 25 April the Commission produced the file of the proceedings before it, as the Registrar had requested on the President's instructions.

6. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 28 August that the hearing should take place on 26 September 1990 (Rule 38).

7. On 13 September the applicant's claims for just satisfaction were received at the registry.

8. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr C. DEBRULLE, Deputy Secretary,  
Ministry of Justice,

*Agent,  
Counsel;*

Mr F. HUISMAN, avocat,

- for the Commission

Mr H. VANDENBERGHE,

*Delegate;*

- for the applicant

Mr L. MISSON, avocat,

Mr J.-P. MOENS, avocat,

*Counsel.*

The Court heard addresses by Mr Huisman for the Government, Mr Vandenberghe for the Commission and Mr Misson and Mr Moens for the applicant, as well as their replies to questions put by one of the judges.

## AS TO THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. Mr Abderrahman Moustaquim, who is a Moroccan national, was born in Casablanca on 28 September 1963. He is currently living in Liège.

He arrived in Belgium with his mother in July 1965 at the latest, in order to join his father, who had emigrated some time before and ran a butcher's shop. Until he was deported in June 1984, he lived in Belgium and had a residence permit. Three of his seven brothers and sisters were born there. One of his elder brothers already had Belgian nationality at the material time.

#### **A. The custodial measures and criminal proceedings**

##### *1. Proceedings in the juvenile courts*

###### **(a) Liège Juvenile Court**

10. While the applicant was still a minor in criminal law, that is to say in the period up to 28 September 1981, the Liège Juvenile Court dealt with 147 charges against him, including 82 of aggravated theft, 39 of attempted aggravated theft and 5 of robbery. It made various custodial, protective and educative orders. On ten occasions between January 1980 and May 1981, for instance, it ordered Mr Moustaquim to be detained in Lantin Prison for periods not exceeding fifteen days (under section 53 of the Children's and Young Persons' Welfare Act of 8 April 1965 - see paragraph 27 below).

11. On 15 May 1981 the Liège investigating judge issued a warrant for the applicant's arrest.

###### **(b) Juvenile Division of the Liège Court of Appeal**

12. The 147 charges mentioned above subsequently came before the Juvenile Division of the Liège Court of Appeal, which in a judgment of 30 June 1981 relinquished jurisdiction. It noted in particular: "The juvenile was already committing offences before he was 14; in this regard he already came under the jurisdiction of the Criminal Court, and during the present

proceedings he has not ceased to commit offences." It accordingly remitted the case to Crown Counsel's Office for prosecution in the appropriate court (section 38 of the Act of 8 April 1965 previously cited - see paragraph 27 below).

## *2. Proceedings in the ordinary courts*

### **(a) Liège Criminal Court**

13. On 2 December 1981 Mr Moustaquim appeared before the Liège Criminal Court charged with 26 offences that had taken place between 10 February 1980 and January 1981.

The evidence against the defendant and his six accomplices included a summary report drawn up on 14 July 1980 by the Liège gendarmerie. In this it was noted that the persons concerned "live[d] like drop-outs, only rarely returning to their own homes or to the home in which they ha[d] been placed"; of the applicant the report said:

"Moroccan subject, elder brother of the above. Regarded as one of the leaders of the gang. Currently involved in major crime. He will stop at nothing and his 'training placements' in Lantin Prison have no beneficial effect. As soon as he comes out, he starts stealing again. He leads an idle life, sleeping by day and going out at night to commit his offences; and he associates with 'reliable types'. Some of the thefts he commits are planned and consequently on a large scale. On other occasions they are despicable and even sordid. He will stop at nothing and is becoming more and more steeped in crime. He is a real danger to society."

14. On the same day (2 December 1981) the Criminal Court found Mr Moustaquim guilty on 20 of the 26 charges and sentenced him to twenty months' imprisonment, half of which sentence was suspended for five years subject to a supervision order. He was acquitted on the other charges.

### **(b) Liège Court of Appeal**

15. The prosecution appealed and the Liège Court of Appeal gave judgment on 9 November 1982. It set aside the judgment of the court below and found the applicant guilty on 22 of the 26 charges. It passed prison sentences of two years (for 4 offences of aggravated theft, 12 offences of attempted aggravated theft, 1 offence of theft and 1 of handling stolen goods), one month (destroying a vehicle), two periods of eight days (on two counts of assault) and fifteen days (on a count of threatening behaviour). It acquitted him on 4 charges (indecent assault with violence on a minor girl aged over 16; criminal conspiracy; attempted theft; and criminal damage to fencing).

As none of these sentences was suspended, his immediate arrest was ordered.

### *3. The periods of time spent by the applicant in detention*

16. Earlier, Mr Moustaquim had been imprisoned on ten occasions between January 1980 and May 1981 for periods not exceeding fifteen days (see paragraph 10 above).

On 15 May 1981 the Liège investigating judge had him placed under arrest until, it would seem, his appearance before the Juvenile Division of the Liège Court of Appeal on 30 June 1981 (see paragraphs 11-12 above).

Mr Moustaquim was also briefly detained on remand before his trial on 2 December 1981 at the Liège Criminal Court (see paragraphs 13-14 above).

He served part - eighteen months out of twenty-six - of the prison sentences imposed on him by the Liège Court of Appeal on 9 November 1982 (see paragraph 15 above); he was released in April 1984. Between January and August 1983 he was given three days' prison leave on three occasions.

## **B. The deportation proceedings**

### *1. The opinion of the Advisory Board on Aliens*

17. On 9 September 1983 the Ministry of Justice referred the case to the Advisory Board on Aliens, which gave its opinion on 24 November 1983. It concluded that deportation would be justified in law but regarded it as "inappropriate" and gave the following reasons:

"The very large number of offences committed by Mr Moustaquim and for which he was sentenced by the Liège Court of Appeal on 9/11/1982 amounted, for the most part, to serious prejudice to public order (ordre public) justifying the proposed measure. They included 26 aggravated thefts in addition to ordinary thefts, handling stolen goods, destruction, assault and threatening behaviour. The sentences passed were: 2 years' imprisonment + 1 month + 8 days + 8 days + 15 days.

The Board excludes from the offences amounting to prejudice to public order the indecent assault with violence and threatening behaviour referred to in the account of the facts drawn up by Crown Counsel's Office (Note P. 2 - File - Document 27). Counsel for Mr Moustaquim told the Board that his client had been acquitted on this charge. The Board finds that in the same Document 27 forwarded by Crown Counsel's Office to the Aliens Office the section headed 'Nature of the charge' does not include the offence of indecent assault, whereas all the other offences referred to in the account of the facts are listed there. It is not possible to tell from the file whether it is the account of the facts or the section headed 'Nature of the charge' which is wrong.

While he was a minor in criminal law, he was placed several times in homes. The Juvenile Court relinquished jurisdiction in respect of the offences of which he was convicted in the Court of Appeal's judgment.

The Board considers, however, that the proposed measure would be inappropriate for the following reasons:

1. Mr Moustaquim's youth (he was born on 28.9.1963), both at the time of the offences and now.

2. He arrived in Belgium at the age of one, in July 1965.

3. His whole family lives in Belgium (father, mother and seven other children, four of whom were born here).

4. Mr Moustaquim is learning a trade - (as a butcher's apprentice) - and could be helped by his father, who is a butcher. The father apparently owns the butcher's shop that he runs.

5. Mr Moustaquim has already had prison leave on at least two occasions without any untoward incident occurring, and the granting of this shows some confidence in his behaviour."

## *2. The deportation order*

18. A royal order of 28 February 1984, which was served on Mr Moustaquim on 14 March and was to take effect from the moment of his release, required him to "leave the Kingdom and not return for ten years, ... except by special leave of the Minister of Justice". It was based on the following reasons:

"...

Having regard to the fact that [Mr Moustaquim] has committed a series of 26 offences of aggravated theft, attempted aggravated theft, theft, handling stolen goods, destroying a vehicle, assault and threatening behaviour, offences which were made out and for which on 9 November 1982, in a judgment that has now become final, he was sentenced by the Liège Court of Appeal to two years' imprisonment, one month's imprisonment, 8 days' imprisonment and 100 francs, 8 days' imprisonment and 100 francs, and 15 days' imprisonment and 100 francs;

Having regard to the fact that these were only some of the 147 offences committed by Mr Moustaquim while he was still a minor in criminal law and for which he was brought before the Juvenile Court (including 5 robberies, 82 offences of aggravated theft and 39 offences of attempted aggravated theft), not counting the 15 offences of theft of jewellery, weapons and cash committed after the offences which led to the aforementioned conviction;

Having regard to the opinion of the Advisory Board on Aliens, which considers that deportation is justified in law but nonetheless inappropriate;

Having regard to the fact that despite this opinion, the Board acknowledges that the very large number of offences committed by Mr Moustaquim amount, for the most part, to serious prejudice to public order justifying deportation;

Having regard to the fact that Mr Moustaquim has committed a substantial series of offences and that he is regarded by the local gendarmerie as one of the leaders of a dangerous gang of juvenile delinquents and as being a real danger to society;

Having regard to the fact that by his personal behaviour Mr Moustaquim has, consequently, seriously prejudiced public order;

Having regard to the fact that the maintenance of public order must prevail over the social and family considerations set out by the Board;

..."

The applicant had to comply with the order within thirty days of leaving prison.

19. On 17 February 1984 Mr Moustaquim's father had written to the Queen asking her to intervene on his son's behalf. On 22 March 1984 the Aliens Office informed him that his application had been rejected and the deportation order signed.

### *3. The applications to the Conseil d'État*

20. Acting as the applicant's representative, Mr Moustaquim's father made two applications to the Conseil d'État on 29 April 1984 seeking, firstly, to have execution of the deportation order stayed and, secondly, to have the order itself quashed.

The Conseil d'État rejected the first application on 22 June 1984. Mr Moustaquim left Belgium some days later.

On 16 October 1985 the Conseil d'État rejected the application for judicial review of the order on the following grounds:

"...

The impugned order is founded mainly on 147 offences admitted by Moustaquim. Twenty-six of those led to convictions and heavy sentences and were regarded by the Advisory Board on Aliens as amounting, for the most part, to serious prejudice to public order justifying deportation in law.

The 15 disputed offences appear, by the very terms of the impugned decision ('not counting the 15 offences'), as a superfluous ground in relation to the undisputed offences which were put forward as justifying the deportation.

It does not follow from Moustaquim's acquittal on the conspiracy charge that the information provided by the local gendarmerie that is mentioned in the impugned decision was inaccurate to the point that it was unusable as part of the basis of the assessment that Moustaquim was a real danger to society. The ground of appeal is unfounded.

In final pleadings - which were, moreover, out of time - Moustaquim put forward five further grounds. ... The third new ground, based on 'the violation of Articles 3 and 8 (art. 3, art. 8) of the European Convention for the Protection of Human Rights, in that the disputed act was both inhuman or degrading treatment and an intolerable infringement of private and family life', is unfounded. Firstly, deportation ordered in accordance with the law cannot be equated either with a punishment or with inhuman or degrading treatment within the meaning of Article 3 (art. 3) of the Convention; and secondly, respect for private and family life as guaranteed in Article 8 (art. 8) of the



Convention is not an obstacle to the taking of a measure which, in a democratic society, is necessary for public safety. The fourth new ground, based on the violation of Article 14 (art. 14) of the said Convention, is similarly unfounded, as there is no evidence to suggest that the applicant was a victim, by reason of his nationality, of discrimination prohibited by that Article (art. 14). ..."

### **C. Events since the deportation**

#### *1. Whereabouts abroad*

21. After his departure from Belgium at the end of June 1984, Mr Moustaquim went not to Morocco but to Spain, where he was accommodated by friends of his parents.

On being asked to leave Spain, he settled in Stockholm, where he remained virtually without a break until 20 January 1990. He lived there - at times legally and at other times illegally - by his wits and by taking the odd undeclared job in Greek and Italian restaurants; he was put up by his employers and chance acquaintances. When he managed to save up enough money, he went to a non-Scandinavian country in order to obtain a three-month Swedish tourist visa. He also applied for a long-term residence permit, and on 10 March 1989 the Swedish embassy in Athens issued him a permit authorising him to live in Sweden until 27 August of the same year; this permit was subsequently renewed for six months.

22. In a notarially certified document of 24 April 1985 Mr Moustaquim instructed his lawyer to make a "declaration of election of nationality" under, in particular, Article 13 § 4 of the new Belgian Nationality Code (see paragraph 29 below).

The Liège Registrar of Births, Deaths and Marriages considered the declaration to be inadmissible in Liège as the applicant had not been resident there since his deportation. In response to a similar application, the Belgian embassy in Sweden said that it could not take account of unlawful residence.

23. The applicant's lawyers made an urgent application to have execution of the deportation order stayed on the ground that Mr Moustaquim's position had worsened - on 24 September 1987 a Stockholm psychiatrist had diagnosed the applicant as suffering from a depression brought about by the disruption of his family ties.

In an order dated 21 March 1988 the Liège judge responsible for hearing urgent applications refused to order the interim measure sought.

24. On 1 April 1988 one of the applicant's lawyers requested the Minister of Justice to "revoke or suspend the deportation order", but he received no reply to his letter.

## *2. Return to Belgium*

25. On 14 December 1989 a royal order was issued, temporarily suspending the deportation order:

"...

Having regard to the fact that Mr Moustaquim came to Belgium at the age of two;

Having regard to the fact that all his family are lawfully resident in Belgium;

Having regard to the fact that Mr Moustaquim should be given an opportunity for rehabilitation;

On a proposal by Our Minister of Justice,

We hereby order as follows:

1. The royal deportation order made on 28 February 1984 pursuant to the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens against Abderrahman Moustaquim, born in Casablanca on 28 September 1963, shall be suspended for a trial period of two years during which the applicant shall be authorised to reside within the Kingdom.

2. Continuation of the suspension and of the residence authorisation provided for in Article 1 shall be subject to compliance by Mr Moustaquim with the following two conditions: (a) he must personally have sufficient means of subsistence; and (b) he must not prejudice public order or national security.

3. Unless a decision is taken to the contrary, the royal deportation order of 28 February 1984 shall automatically be rescinded at the end of the two-year trial period provided for in Article 1.

..."

The Aliens Office informed the applicant's lawyer on 29 December, stating that the necessary steps had been taken to ensure that his client had no difficulty when he arrived at Brussels Airport pending completion of the administrative formalities. On 29 January 1990 the Aliens Office sent him a safe-conduct authorising Mr Moustaquim to enter Belgian territory and remain there for thirty days.

26. The applicant had already returned on 20 January, and on 6 February he reported to the municipal authorities in Liège and was registered as living there with his parents. On 13 April he received a residence permit - a certificate of entry in the Aliens Register - which was valid for one year and was renewable.

He is working in his father's butcher's shop and has enrolled at the local school for continuing education for small firms and traders.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Children's and Young Persons' Welfare Act of 8 April 1965

27. The Children's and Young Persons' Welfare Act of 8 April 1965 replaced an Act of 15 May 1912; its purpose is to protect the health, morals and education of young people under the age of eighteen ("juveniles"). Under it, "offending acts" committed by juveniles can normally be dealt with only by means of custodial, protective or educative measures and not by means of criminal sanctions.

The 1965 Act contains provisions relating to "social welfare" and others relating to "protection by the courts".

Judicial protection of juveniles is provided by specialised courts: the Juvenile Court, which is a section of the tribunal de première instance (regional court of first instance) and sits as one or more single-judge courts, and the juvenile divisions of the Court of Appeal, which likewise have a single member.

Section 36 of the 1965 Act lays down the cases in which the juvenile courts may take the various measures set out in the Act in respect of juveniles. They may make an order on an application by Crown Counsel in several instances, including the case of "juveniles ... proceeded against for an act classified as an offence".

The same courts can also intervene up on a complaint by "persons having paternal authority or having custody ... of a juvenile ... who on account of his misconduct or indiscipline gives serious cause for concern".

The measures they may order are, for the most part, set out in section 37:

- (a) a warning (section 37(1));
- (b) placing the juvenile under the supervision of the Youth Welfare Board or of a Youth Welfare Officer (section 37(2));
- (c) keeping the juvenile in his own surroundings, subject to certain conditions, such as having to attend an educational establishment, to perform educative or socially useful tasks or to comply with instructions from an educational-counselling centre or mental-health centre (section 37(2));
- (d) placing the juvenile in the home of any trustworthy person or in any appropriate institution, under the supervision of the Youth Welfare Board or of a Youth Welfare Officer (section 37(3));
- (e) placing the juvenile in a State reformatory (section 37(4)).

Where a juvenile over sixteen has been brought before the juvenile courts for an "act classified as an offence", they may, if they consider the measures referred to in section 37 to be "inadequate", relinquish jurisdiction and remit the case to Crown Counsel so that proceedings may be taken in the appropriate court (section 38 of the 1965 Act).

Relinquishment of jurisdiction is regarded as an exceptional measure, to be applied only as a last resort. The legislature made provision for it in order to cope with precocious or depraved juvenile delinquents.

In 1987 the Belgian juvenile courts gave 13,904 decisions; they relinquished jurisdiction in favour of the Criminal Court in 87 cases.

By section 53 of the 1965 Act, a juvenile may, "if it is materially impossible to find an individual or an institution able to accept the juvenile immediately, ... be provisionally detained in a remand prison for a period not exceeding fifteen days".

### **B. Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens**

28. The Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens governs aliens' administrative status.

Even foreigners with residence permits may be deported under the Act where they have "seriously prejudiced public order or national security" (section 20, second paragraph).

Before making such a deportation order, the Minister of Justice must seek the opinion of the Advisory Board on Aliens, which consists of a judge, a barrister and a member of an aliens' welfare association.

Deportation orders are signed by the King. They are subject to judicial review by the Conseil d'État (section 69), which on an application by the person concerned may grant a stay of execution until the application for review has been heard (section 70, first paragraph). The Conseil d'État satisfies itself that the deportation appealed against is based wholly on the alien's personal behaviour; the mere fact that he has a criminal conviction does not automatically entail deportation.

### **C. The new Belgian Nationality Code**

29. The new Belgian Nationality Code is contained in an Act of 12 July 1984 and came into force on 1 January 1985 - that is to say after the material events. Article 13 § 4 of the Code confers the right to acquire Belgian nationality on "a child who, for at least one year before the age of six, has had his principal residence in Belgium with a person to whose authority he was legally subject".

The Code replaces, in particular, the Act of 25 March 1984, which required a private naturalisation Act, even for foreigners born in Belgium.

## PROCEEDINGS BEFORE THE COMMISSION

30. In his application of 13 May 1986 to the Commission (no. 12313/86) Mr Moustaquim alleged that his deportation from Belgium infringed several provisions of the Convention: Article 8 (art. 8), on account of interference with his family and private life; Article 14 taken together with Article 8 (art. 14+8), on account of discrimination based on nationality; Article 3 (art. 3), on account of inhuman and degrading treatment; Article 6 (art. 6), because the Conseil d'État was not in the instant case an impartial tribunal; and Article 7 (art. 7), because the deportation was a punishment imposed in respect of acts which did not all amount to criminal offences at the time they were committed.

31. On 10 April 1989 the Commission declared the application admissible as to the consequences of the deportation but rejected the complaint based on Article 6 (art. 6), which it said was inapplicable in the instant case. In its report of 12 October 1989 (made under Article 31) (art. 31), it expressed the opinion that there had been a breach of Article 8 (art. 8) (by ten votes to three) but not of Article 14 taken together with Article 8 (art. 14+8) or of Articles 3 and 7 (art. 3, art. 7) (unanimously). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment\*.

## FINAL SUBMISSIONS TO THE COURT

32. In his memorial the applicant requested the Court

"to hold that in the case ... the Belgian State [had] infringed the applicant's rights guaranteed by Article 8 (art. 8) of the Convention taken alone and together with Article 14 (art. 14+8) ... [and] to reserve the claim for just satisfaction under Article 50 (art. 50)".

At the hearing, counsel for the Government submitted that "the application must be held to be unfounded".

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\* Note by the Registrar. For practical reasons this annex will only appear with the printed version of the judgment (volume 193 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

## AS TO THE LAW

### I. WHETHER THE CASE HAS BECOME DEVOID OF PURPOSE

33. In their memorial the Government submitted that the application had become devoid of purpose in that the deportation order of 28 February 1984 had been suspended for a trial period of two years by a royal order of 14 December 1989 and the applicant was thus authorised to reside in Belgium.

Since the order of 28 February 1984 only suspended the deportation order and did not make reparation for its consequences, which Mr Moustaquim suffered for more than five years, the Court considers that the case has not become devoid of purpose (see, *mutatis mutandis*, the Eckle judgment of 15 July 1982, Series A no. 51, pp. 30-31, § 66).

### II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

34. Mr Moustaquim submitted that his deportation by the Belgian authorities interfered with his family and private life. He relied on Article 8 (art. 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."

The Government rejected this argument, but the Commission accepted it.

#### **A. Paragraph 1 of Article 8 (art. 8-1)**

35. The Government expressed doubts as to whether the applicant and his parents had any real family life at the time he was deported, as family ties were, at the least, strained in view of the number of occasions on which the youth had run away and had been imprisoned. They did not, however, expressly dispute that Article 8 (art. 8) was applicable.

36. Mr Moustaquim lived in Belgium, where his parents and his seven brothers and sisters also resided. He had never broken off relations with them. The measure complained of resulted in his being separated from them for more than five years, although he tried to remain in touch by correspondence. There was accordingly interference by a public authority with the right to respect for family life guaranteed in paragraph 1 of Article 8 (art. 8-1).

**B. Paragraph 2 of Article 8 (art. 8-2)**

37. It must accordingly be determined whether the deportation in question satisfied the conditions in paragraph 2, that is to say was "in accordance with the law", in the interests of one or more of the legitimate aims listed, and "necessary in a democratic society" for achieving them.

*1. "In accordance with the law"*

38. Like the Government and the Commission, the Court notes that the royal deportation order of 28 February 1984 was based on sections 20 and 21 of the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens (see paragraph 28 above). The applicant did not dispute that, and the Belgian Conseil d'État moreover held in its judgment of 16 October 1985 that the deportation was lawful (see paragraph 20 above).

*2. Legitimate aim*

39. In Mr Moustaquim's submission, the interference in question did not pursue any of the legitimate aims set out in Article 8 § 2 (art. 8-2), in particular "the prevention of crime" and, more broadly, of "disorder". He claimed that it was in reality a sanction for old offences.

40. Both the Government and the Commission considered, on the contrary, that it did pursue an aim fully compatible with the Convention: the prevention of disorder. The Court, like the Belgian Conseil d'État (see paragraph 20 above), reaches the same conclusion.

*3. "Necessary in a democratic society"*

41. Mr Moustaquim claimed that his deportation could not be regarded as "necessary in a democratic society".

The Commission accepted this argument, taking the view that the measure was disproportionate as the authorities had not achieved a just balance between the applicant's interest in maintaining a family life and the public interest in the prevention of disorder.

42. The Government relied on the large number of offences (147) of which Mr Moustaquim was accused, the periods of imprisonment which resulted on several occasions, the exceptional nature of the Juvenile Division's relinquishment of jurisdiction in favour of the Criminal Court and the severity of the sentences imposed by the Liège Court of Appeal (see paragraphs 10, 15, 16 and 27 above). They also pointed out that the youth had continued to commit offences even while under the supervision of the Juvenile Court (see paragraph 12 above). Lastly, they emphasised the serious risk of his reoffending. In short, Mr Moustaquim's dangerousness had made his presence on Belgian territory unacceptable to the community.

43. The Court does not in any way underestimate the Contracting States' concern to maintain public order, in particular in exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (see the *Abdulaziz, Cabales and Balkandali* judgment of 28 May 1985, Series A no. 94, p. 34, § 67, and the *Berrehab* judgment of 21 June 1988, Series A no. 138, pp. 15-16, §§ 28-29).

However, in cases where the relevant decisions would constitute an interference with the rights protected by paragraph 1 of Article 8 (art. 8-1), they must be shown to 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.

44. Mr Moustaquim's alleged offences in Belgium have a number of special features. They all go back to when the applicant was an adolescent (see paragraphs 10-15 above). Furthermore, proceedings were brought in the criminal courts in respect of only 26 of them, which were spread over a fairly short period - about eleven months -, and on appeal the Liège Court of Appeal acquitted Mr Moustaquim on 4 charges and convicted him on the other 22. The latest offence of which he was convicted dated from 21 December 1980. There was thus a relatively long interval between then and the deportation order of 28 February 1984. During that period the applicant was in detention for some sixteen months but at liberty for nearly twenty-three months.

45. Moreover, at the time the deportation order was made, all the applicant's close relatives - his parents and his brothers and sisters - had been living in Liège for a long while; one of the older children had acquired Belgian nationality and the three youngest had been born in Belgium.

Mr Moustaquim himself was less than two years old when he arrived in Belgium. From that time on he had lived there for about twenty years with his family or not far away from them. He had returned to Morocco only twice, for holidays. He had received all his schooling in French.

His family life was thus seriously disrupted by the measure taken against him, which the Advisory Board on Aliens had judged to be "inappropriate".

46. Having regard to these various circumstances, it appears that, as far as respect for the applicant's family life is concerned, a proper balance was not achieved between the interests involved, and that the means employed was therefore disproportionate to the legitimate aim pursued. Accordingly, there was a violation of Article 8 (art. 8).

47. This conclusion makes it unnecessary for the Court to consider whether the deportation was also a breach of the applicant's right to respect for his private life.



### III. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 8 (art. 14+8)

48. Mr Moustaquim claimed to be the victim of discrimination on the ground of nationality, contrary to Article 14 taken together with Article 8 (art. 14+8), vis-à-vis juvenile delinquents of two categories: those who possessed Belgian nationality, since they could not be deported; and those who were citizens of another member State of the European Communities, as a criminal conviction was not sufficient to render them liable to deportation.

The Government made no observations on the matter.

49. Like the Commission, the Court would reiterate that Article 14 (art. 14) safeguards individuals placed in similar situations from any discriminatory differences of treatment in the enjoyment of the rights and freedoms recognised in the Convention and its Protocols (see, among other authorities, the Marckx judgment of 13 June 1979, Series A no. 31, pp. 15-16, § 32).

In the instant case the applicant cannot be compared to Belgian juvenile delinquents. The latter have a right of abode in their own country and cannot be expelled from it; this is confirmed by Article 3 of Protocol No. 4 (P4-3).

As for the preferential treatment given to nationals of the other member States of the Communities, there is objective and reasonable justification for it as Belgium belongs, together with those States, to a special legal order.

There has accordingly been no breach of Article 14 taken together with Article 8 (art. 14+8).

### IV. ALLEGED VIOLATION OF ARTICLES 3 AND 7 (art. 3, art. 7)

50. Before the Commission the applicant also relied on Articles 3 and 7 (art. 3, art. 7).

He did not raise them again before the Court, which does not consider itself bound to deal with these questions of its own motion.

### V. APPLICATION OF ARTICLE 50 (art. 50)

51. Article 50 (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision the applicant claimed compensation for pecuniary and non-pecuniary damage and reimbursement of costs.

## **A. Damage**

### *1. Pecuniary damage*

52. Mr Moustaquim stated, firstly, that his deportation had deprived him of the possibility of pursuing a normal occupation in Belgium. However, he confined his claims to one-third of the national minimum guaranteed wage that he could have earned over a period of five and a half years, that is to say 550,000 Belgian francs (BEF).

The Government considered the claim to be unfounded, as the applicant had been able to work in Sweden and save some money.

53. Like the Delegate of the Commission, the Court perceives no causal link between the breach of Article 8 (art. 8) and the alleged loss of earnings. There is therefore no ground for compensation under this head.

### *2. Non-pecuniary damage*

54. The applicant claimed compensation in the amount of BEF 500,000 for non-pecuniary damage. He said he had suffered greatly from having to live a long way away from his family and friends, in a country whose language and customs were unfamiliar to him and where he did not, at the outset, have any ties or connections.

The Government submitted that the finding of a breach would be sufficient compensation. The Delegate of the Commission left the matter to the Court's discretion.

55. Taking its decision on an equitable basis, the Court awards the applicant compensation in the amount of BEF 100,000.

## **B. Costs and expenses**

56. Mr Moustaquim also sought reimbursement of costs and expenses said to have been incurred in the proceedings before the Belgian authorities and subsequently before the Convention institutions.

### *1. Costs relating to national proceedings*

57. He sought, firstly, payment of costs and lawyer's fees before the Advisory Board on Aliens and the Conseil d'État, amounting to BEF 90,000.

The Government left it to the Court to take its decision on the basis of its case-law.

Like the Delegate of the Commission, the Court does not find the sum sought excessive. Belgium should therefore reimburse the applicant BEF 90,000 under this head.

*2. Costs relating to the European proceedings*

58. For the costs in connection with the proceedings before the Convention institutions, the applicant claimed BEF 390,000, corresponding to 130 hours' work by his lawyers, subject to deduction of the sums paid by the Council of Europe by way of legal aid.

The Government made no comment. The Delegate of the Commission found it difficult to express a view in the absence of any supporting documents, but the amount claimed did not seem to him to be unreasonable.

59. Having regard to the inadequacy of the particulars and vouchers supplied by Mr Moustaquim, the Court can only, on an equitable basis, award him BEF 250,000 less the 10,730 French francs paid by the Council of Europe for costs and lawyer's fees.

FOR THESE REASONS, THE COURT

1. Holds by seven votes to two that there has been a breach of Article 8 (art. 8);
2. Holds unanimously that there has been no breach of Article 14 taken together with Article 8 (art. 14+8);
3. Holds unanimously that it is unnecessary to examine the case also under Articles 3 and 7 (art. 3, art. 7);
4. Holds by seven votes to two that the respondent State is to pay the applicant 440,000 (four hundred and forty thousand) Belgian francs, less 10,730 (ten thousand seven hundred and thirty) French francs, under Article 50 (art. 50);
5. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 February 1991.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 53 § 2 of the Rules of Court, the dissenting opinion of Mrs Bindschedler-Robert and Mr Valticos is annexed to this judgment.

R.R.  
M.-A.E.

DISSENTING OPINION OF JUDGES BINDSCHEDLER-  
ROBERT AND VALTICOS

(Translation)

We cannot share the view of the majority of the Court that there has been a violation of Article 8 (art. 8) of the Convention in this case or, to be more exact, of the applicant's family life.

The "family life" of the applicant, who was an adolescent at the material time, had already ceased to have the closeness and regularity normally associated with the concept. He would disappear when he "ran away" - as it has euphemistically been put, in order not to say committing his offences - and he would return to the fold from time to time, particularly when things were difficult for him. More generally, this was a case of an adolescent who had begun to "live his own life" but without leaving the family home completely. We would not, however, go so far as to deny that he had any family life, but attention must be drawn at the outset to the danger of misusing the concept of interference with "family life" in cases concerning the prosecution and punishment of criminal activities.

Assuming, therefore, that there was an interference with family life, it has to be asked whether the alleged interference, that is to say the applicant's deportation, was necessary in a democratic society in the interests of public safety or for the prevention of disorder or crime.

Certainly the factors which might have prompted greater indulgence cannot be disputed: the fact that the applicant came to Belgium when very young; that he apparently had little knowledge of the language of his country of origin; that he had committed offences during his adolescence, which is sometimes a critical period; and so on. That does not, however, justify underestimating the seriousness and continuity of his criminal behaviour: this was not merely occasional, minor crime, petty pilfering, but a systematic campaign by organised gangs, which even had means of transport and of which he was allegedly one of the ringleaders. He was charged with 147 offences, including 87 offences of aggravated theft, 39 offences of attempted aggravated theft and 5 robberies. As a result, he was imprisoned on ten occasions by decision of the Juvenile Court and - quite exceptionally for a youth of his age - was brought before the Criminal Court and then the Court of Appeal in respect of 26 of the offences, which were committed after he had reached the age of sixteen. He was sentenced to twenty-six months' imprisonment for some of these offences and served the greater part of that sentence. The situation was therefore more serious than the - in our view - emollient wording of paragraph 44 of the judgment suggests.

It is against that background that the Belgian Government took the decision to deport Mr Moustaquim. It should not be forgotten that the

Convention (in Article 5 § 1 (f) (art. 5-1-f) and Protocols Nos. 4 and 7 (P4, P7)) expressly provides for the possibility of deporting aliens. No doubt in the present case the measure may be regarded as a harsh one, seeing that the youth had spent practically all his life in Belgium and would certainly have experienced great difficulty in adapting in his country of origin or other countries. Nevertheless, one cannot go so far as to consider that the Belgian State did not act within its right to take a measure that it had valid reasons to deem necessary in the interests of public safety or for the prevention of disorder or crime.

We therefore consider that it cannot be held that there has been a breach of Article 8 (art. 8) of the Convention. The fact that since then the Belgian Government has authorised Mr Moustaquim to return to Belgium is a gesture of goodwill which gives him a further chance; but that is of course a different chapter in his life.