

BGE 20001005_54273_00 vom 5. Oktober 2000

Bundesgericht (BGE), 2000-10-05, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20001005_54273_00

FR: BGE 20001005_54273_00 du 5 octobre 2000

IT: BGE 20001005_54273_00 del 5 ottobre 2000

Volltext

Bundesgericht (BGE) EGMR 05.10.2000 20001005_54273_00 (Boultif Abdelouahab gegen Schweiz) Tribunal fédéral (ATF) CEDH 05.10.2000 20001005_54273_00 (Boultif Abdelouahab gegen Schweiz) Tribunale federale (DTF) CEDU 05.10.2000 20001005_54273_00 (Boultif Abdelouahab gegen Schweiz)

Urteilstkopf 54273/00 Boultif Abdelouahab gegen Schweiz Zulassungsentscheid no. 54273/00, 05 octobre 2000 Sachverhalt The European Court of Human Rights (Second Section), sitting on 5 October 2000 as a Chamber composed of Mr C.L. Rozakis, President, Mr A.B. Baka, Mr L. Wildhaber, Mr G. Bonello, Mrs V. Strá?nická, Mr P. Lorenzen, Mr M. Fischbach, judges, and Mr E. Fribergh, Section Registrar, Having regard to the above application introduced on 14 January 2000 and registered on 25 January 2000, Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant, Having deliberated, decides as follows: THE FACTS The applicant, an Algerian citizen born in 1967, resides in Zurich. A. The circumstances of the case The facts of the case, as submitted by the parties, may be summarised as follows. The applicant entered Switzerland with a tourist visa in December 1992. On 19 March 1993 he married M.B., a Swiss citizen. On 27 April 1994 the applicant was convicted by the Zurich District Office(Statthalteramt) of unlawful possession of weapons. On 31 January 1997 the Court of Appeal(Obergericht) of the Canton of Zurich sentenced the applicant to two years' imprisonment, inter alia, on account of robbery committed in April 1994. The Court considered, inter alia, that the applicant's culpability (Verschulden) was severe. He had been particularly ruthless and brutal in that, together with an accomplice, he had kicked an elderly man in his face in order to obtain his purse. The applicant's plea of nullity against this decision was dismissed by the Court of Cassation of the Canton of Zurich on 17 November 1997. As a result, on 19 May 1998 the Directorate for Social Matters and Security(Direktion für Soziales und Sicherheit) of the Canton of Zurich refused to renew the applicant's residence permit (Aufenthaltsbewilligung). According to a written statement of the applicant's wife, dated 18 November 1998, she complained of being expected to follow her husband to Algeria. She admitted that she spoke French, though she would have no work in Algeria and no money. She found it most shocking that a married couple was being separated. The applicant's appeal against the decision of 19 May 1998 was dismissed by the Government(Regierungsrat) and subsequently by the Administrative Court (Verwaltungsgericht) of the Canton of Zurich. The latter relied in particular on Sections 7 and 11 of the Federal Aliens' Domicile and Residence Act (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) and on Section 16 § 3 of the Ordinance implementing the Act (Vollziehungsverordnung). The Court found that the non-renewal might separate the applicant from his wife, though they could live together in another country, or visit each other. His administrative law appeal(Verwaltungsgerichtsbeschwerde) was dismissed by the Federal Court (Bundesgericht) on 3 November 1999. The Court

recalled that according to Section 10 § 1 of the Federal Aliens Domicile and Residence Act the criminal conviction of a foreigner served as a ground for expulsion. It did not breach Article 8 of the Convention if the authorities refused to renew the applicant's residence permit in view of the offence which he had committed. The fact that he had behaved well in prison was irrelevant as this did not concern his conduct in liberty. In the Court's opinion, a large part of the applicant's relations lived in Algeria, and he had not demonstrated particularly close links with Switzerland. While it would not be easy for his wife to follow him to Algeria, this was not completely impossible. Thus, she spoke French and had been able to have certain contacts by telephone with her mother-in-law. The couple could also live in Italy where the applicant had spent some time before coming to Switzerland. By decision of 1 December 1999 the Federal Aliens' Office(Bundesamt für Ausländerfragen) issued a prohibition for the applicant to enter Switzerland as from 15 January 2000 for an unspecified period of time (auf unbestimmte Dauer). By decision of 3 December 1999 the Office ordered the applicant to leave Switzerland by 15 January 2000. B. Relevant domestic law and practice Section 7 § 1 of the Federal Aliens' Domicile and Residence Act(Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) provides: "1. The foreign spouse of a Swiss citizen is entitled to be granted a residence permit, or to have it prolonged. After a regular and uninterrupted residence of five years the spouse shall be entitled to the right to domicile. The right expires if there is a ground for expulsion." According to Section 10 § 1 (a) of the Act, "the foreigner can be expelled from Switzerland or from a Canton if (a) he has been punished by a court for having committed a criminal offence or misdemeanour". Section 11 § 3 of the Act provides that "expulsion shall only be ordered if it appears appropriate in view of the entire circumstances." Section 16 § 3 of the Ordinance implementing the Federal Aliens' Domicile and Residence Act(Vollziehungsverordnung) provides: "In order to establish the appropriateness (Section 11 § 3 of the Act), the following elements are important: the severity of the culpability of the foreigner; the period of his stay in Switzerland; the disadvantages which he and his family would incur. Expulsion shall not be threatened if it appears legally justified according to Section 10 § 1 (a), though inappropriate under the circumstances. The threat of expulsion must be issued as a written and motivated decision and shall clearly state what is to be expected from the foreigner." COMPLAINTS The applicant complains under Article 8 of the Convention that his residence permit has not been renewed. He accepts that he made a mistake, but he has now served his sentence and not committed any offences after his release. He claims that his Swiss wife, who does not speak Arabic, cannot be expected to live in Algeria with its increasing fundamentalist movement and where she could not communicate or move about freely. The applicant submits that neither he nor his wife have a residence permit to live in Italy. Erwägungen THE LAW The applicant complains under Article 8 of the Convention that the Swiss authorities have not renewed his residence permit. As a result, he will be separated from his wife, who is a Swiss citizen and cannot be expected to follow him to Algeria. The Government submit that the present case discloses no violation of Article 8 of the Convention. Sections 7 § 1, 10 § 1 and 11 § 3 of the Aliens Domicile and Residence Act as well as Section 16 § 3 of the Ordinance implementing the Act, all of which have been duly published, provide a sufficient legal basis for the interference. According to these provisions, the residence permit of the foreign spouse of a Swiss citizen will not be renewed if there is a ground for expulsion. The Swiss authorities are called upon to examine the proportionality of the measure. Given the offences which the applicant committed in Switzerland, there can be no doubt that the measure was called for

in the interests of public safety, for the prevention of disorder or crime, and for the protection of the rights and freedoms of others, within the meaning of Article 8 § 2 of the Convention. The Government further contend that the measure was necessary in a democratic society within the meaning of Article 8 § 2 of the Convention and that the Swiss authorities have not overstepped their margin of appreciation. Elements to be considered here are the nature of the offences committed, the length of the prison sentence, the length of the applicant's stay in Switzerland, and the effects which the refusal to prolong the residence permit will have on the applicant's wife. In the present case, both the Federal Court and the Administrative Court of the Canton of Zurich carefully examined the applicant's situation. Their analysis of the situation cannot be called in question by the fact that the applicant did not commit any offences after his release from prison. The Government submit that the applicant's conviction justified the refusal to renew the applicant's residence permit. 16 months after having entered Switzerland he committed a serious offence and was also convicted for the unlawful possession of arms. The applicant's stay in Switzerland was prolonged on the grounds that the judgment of the Court of Appeal of the Canton of Zurich had not yet entered into legal force and that the applicant had to serve his prison sentence. Bearing in mind the brutal manner in which the offence was committed, the Government consider that the Court's case-law concerning drug offences applies by analogy also to the present case (see Eur. Court HR, *Dalia v. France* judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 92, § 54). This particularly serious breach of public order in itself justifies non-renewal of the applicant's residence permit. The Government point out that the applicant grew up in Algeria where a large part of his family lives. He left the country mainly on economic grounds. Before travelling to Switzerland he lived in Italy for seven years. There is no indication that he has any attachment to Switzerland where he was unemployed as from October 1994. With his wife he has only spent a short time together. She was born in Switzerland where she spent all her life and is currently employed. She does not therefore depend on her husband from an economic point of view. While she would experience some inconveniences if she had to follow her husband to Algeria, she has been able to establish oral contacts, thanks to her knowledge of the French language, with the applicant's mother. Moreover, the applicant's family in Algeria would be able to assist her with the integration into that country. The couple, which has no children, may be expected to travel to another country. Finally, the applicant is free to visit his wife in Switzerland. The applicant submits that it is insufficient for his wife to join him in Algeria merely because she speaks French. Moreover, in Algeria people live in constant fear on account of fundamentalism. It is also insufficient if he and his wife can occasionally visit each other. In any event, every case is different. The applicant also points out that he worked successfully, both in prison and thereafter, as a gardener's and electrician's assistant. He even had a contract prepared on condition that his residence permit would be renewed. It is true that the applicant became disheartened when he received numerous objections for job applications, but all this has become better. The Court considers, in the light of the parties' submissions, that the application raises serious issues of law and fact under the Convention, the determination of which should depend on an examination of its merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. *Entscheid* For these reasons, the Court, unanimously, **DECLARES THE APPLICATION ADMISSIBLE**, without prejudging the merits of the case. Erik Fribergh Christos Rozakis Registrar President

Export aus OpenCaseLaw (CC0). Verbindlich ist allein der vom erlassenden Gericht veröffentlichte Originaltext. Quellen-URL siehe oben.