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

SECOND SECTION

CASE OF BOULTIF v. SWITZERLAND

(Application no. 54273/00)

JUDGMENT

STRASBOURG

2 August 2001

FINAL

02/11/2001

In the case of Boultif v. Switzerland,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, President,
Mr A.B. BAKA,
Mr L. WILDHABER,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH, judges,

and Mr E. FRIBERGH, Section Registrar,

Having deliberated in private on 5 October 2000, and on 28 June and 10 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 54273/00) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Algerian national, Mr Abdelouahab Boultif ("the applicant"), on 14 January 2000. The Swiss Government ("the Government") were represented by their Agent, Mr P. Boillat, Head of the International Affairs Division of the Federal Office of Justice.

2. The applicant complained under Article 8 of the Convention that the Swiss authorities had not renewed his residence permit. As a result, he has been separated from his wife, who is a Swiss citizen and cannot be expected to follow him to Algeria.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. By a decision of 5 October 2000 the Chamber declared the application admissible [Note by the Registry. The Court's decision is obtainable from the Registry].

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1). After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 in fine).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is an Algerian citizen born in 1967.

A. Proceedings in Switzerland

7. The applicant entered Switzerland with a tourist visa in December 1992. On 19 March 1993 he married M.B., a Swiss citizen.

8. On 27 April 1994 the applicant was convicted by the Zürich District Office (Statthalteramt) of the unlawful possession of weapons.

9. According to the charges subsequently raised against the applicant, he committed, on 28 April 1994 in Zürich, the offences of robbery and damage to property by attacking a man, together with another person, at 1 a.m., by throwing him to the ground, kicking him in the face and taking 1,201 Swiss francs from him.

10. The Zürich District Court (Bezirksgericht) convicted the applicant of these offences on 17 May 1995, though the judgment was quashed upon appeal as the applicant had not been represented by a lawyer. Proceedings were resumed before the District Court, which on 1 July 1996 sentenced the applicant to eighteen months' imprisonment, suspended on probation.

11. Both the public prosecutor's office and the applicant filed an appeal, whereupon on 31 January 1997 the Court of Appeal (Obergericht) of the Canton of Zürich sentenced the applicant to two years' unconditional imprisonment for robbery and damage to property. In its judgment the court considered that the applicant had been particularly ruthless and brutal, and that his culpability (Verschulden) was severe.

12. The applicant's further plea of nullity was dismissed on 17 November 1997 by the Court of Cassation (Kassationsgericht) of the Canton of Zürich.

13. On 11 May 1998 the applicant began his two-year prison sentence.

14. On 19 May 1998 the Directorate for Social Matters and Security (Direktion für Soziales und Sicherheit) of the Canton of Zürich refused to renew the applicant's residence permit (Aufenthaltsbewilligung).

15. The applicant's appeal against this decision was dismissed by the government (Regierungsrat) of the Canton of Zürich on 21 October 1998.

16. In a written statement of 18 November 1998, the applicant's wife complained of being expected to follow her husband to Algeria. While admitting that she spoke French, she claimed that she would have no work in Algeria and no money. She found it most shocking that a married couple was being separated.

17. The applicant's appeal against the decision of 21 October 1998 was dismissed by the Administrative Court (Verwaltungsgericht) of the Canton

of Zürich on 16 June 1999. In its decision, the court relied for the non-renewal of the applicant's residence permit in particular on sections 7 and 11 of the Federal Aliens' Domicile and Residence Act (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) and on Article 16 § 3 of the ordinance implementing the Act (Vollziehungsverordnung). The court considered that the non-renewal was called for in the interests of public order and security. It might well separate the applicant from his wife, though they could live together in another country, or visit each other.

18. On 2 August 1999 the applicant was given early release from prison.

19. The applicant's administrative-law appeal (Verwaltungsgerichts-beschwerde) against the decision of 21 October 1998 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. There was no breach of Article 8 of the Convention as the authorities refused to renew the applicant's residence permit in view of the serious offence which he had committed. The measure was imposed in the interests of public order and security. The fact that he had behaved well in prison was irrelevant as this did not concern his conduct outside.

20. The Federal Court's noted that a large number of the applicant's relations lived in Algeria, and that 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. Indeed, she spoke French and had been able to have some contact 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.

21. By a decision of 1 December 1999 the Federal Aliens' Office (Bundesamt für Ausländerfragen) issued an order prohibiting the applicant from entering Switzerland as of 15 January 2000 for an unspecified period of time (auf unbestimmte Dauer). By a decision of 3 December 1999 the Office ordered the applicant to leave Switzerland by 15 January 2000.

22. On an unspecified date in 2000 the applicant left Switzerland and is currently living in Italy.

B. The applicant's professional training, employment and conduct in prison

23. In December 1997 the applicant passed a training course to become a waiter. From 20 August 1997 until 21 January 1998 he worked as a painter for an organisation for refugees in Zürich.

24. While the applicant was serving his prison sentence at the Ringwil prison colony in Hinwil, the prison services issued an interim report on 12 November 1998 on his conduct, according to which his work as a gardener and stable-hand had been satisfactory. The report also stated that

he had good manners and a very agreeable personality; that his room was always tidy; that as a rule he returned punctually from his leave; and that various urine tests for detecting drugs had all shown negative results.

25. According to a work report from the C. company, dated 28 February 2000, the applicant had been working satisfactorily with that company since 3 May 1999 as an assistant gardener and electrician. A work report from the V. company, dated December 1999, stated that the applicant had worked well as an assistant gardener for that company for eighteen weeks between May and November 1999.

C. The applicant's status in Italy

26. According to a letter from the Italian Ministry of the Interior to the Swiss embassy in Rome, dated 20 February 2001, the applicant had lawfully resided in Italy from 16 August 1989 until 21 February 1992 and since that date he had not renewed his residence permit (permesso di soggiorno).

II. RELEVANT DOMESTIC LAW

27. Section 7(1) of the Federal Aliens' Domicile and Residence Act (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer), of 26 March 1931, provides:

> "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."

28. 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 ...".

29. Section 11(3) of the Act provides that "expulsion shall only be ordered if it appears appropriate in view of the circumstances as a whole".

30. Article 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 offence committed by the foreigner; the duration of his stay in Switzerland; and the damage which he and his family would suffer if he were to be expelled. If there appears to be legal justification according to section 10(1)(a), even though it may be inappropriate under the circumstances, the foreigner shall be threatened with expulsion. The threat of expulsion

must be issued as a written and justified decision and shall clearly state what is expected of the foreigner."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that the Swiss authorities had not renewed his residence permit. As a result, he had been separated from his wife, who was a Swiss citizen and could not be expected to follow him to Algeria. He relied on Article 8 of the Convention, the relevant parts of which state:

"1. Everyone has the right to respect for his ... family life ...

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."

A. The parties' submissions

32. The applicant submitted that the mere fact that his wife spoke French was insufficient to make it possible for her to join him in Algeria. Moreover, in Algeria people lived in constant fear on account of fundamentalism. It was also unsatisfactory for him and his wife to visit each other occasionally. In any event, every case was different. The applicant also pointed out that he had worked successfully, both in prison and thereafter, as assistant to a gardener and to an electrician. He had even had a contract prepared on the condition that his residence permit would be renewed.

33. The applicant pointed out that although he was currently living with friends in Italy, there was no guarantee that he could do so in the future, and he would not be granted a work permit. In any event, his wife could not be expected to lead her married life in Italy.

34. The Government contested the allegation of a breach of Article 8 of the Convention. Reference was made to sections 7(1), 10(1) and 11(3) of the Aliens' Domicile and Residence Act as well as to Article 16 § 3 of the ordinance implementing the Act, all of which had been duly published and which provided a sufficient legal basis for the interference. According to these provisions, the residence permit of the foreign spouse of a Swiss citizen would not be renewed if there was a ground for expulsion. The

Swiss authorities were called upon to examine the proportionality of the measure. Given the offences which the applicant had committed in Switzerland, there could be no doubt that the refusal not to renew the residence permit 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.

35. The Government further contended that the measure had been necessary in a democratic society within the meaning of Article 8 § 2 of the Convention and that the Swiss authorities had not overstepped their margin of appreciation. Particular reference was made to the nature of the offences committed, the length of the prison sentence, the duration of the applicant's stay in Switzerland and the effects which the refusal to prolong the residence permit would have on the applicant's wife. In the present case, both the Federal Court and the Administrative Court of the Canton of Zürich carefully examined the applicant's situation. Their analysis of the situation could not be called in question by reason of the fact that the applicant had not committed any offences after his release from prison.

36. The Government also submitted that the applicant's conviction justified the refusal to renew his residence permit. Sixteen months after having entered Switzerland he had committed a serious offence and had also been convicted for the unlawful possession of weapons. The applicant's stay in Switzerland had been prolonged on the grounds that the judgment of the Court of Appeal of the Canton of Zürich had not yet acquired legal force and that he had had to serve his prison sentence. Bearing in mind the brutal manner in which the offence was committed, the Government considered that the Court's case-law concerning drug offences applied by analogy also to the present case (see 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 warranted non-renewal of the applicant's residence permit.

37. The Government argued that the applicant had grown up in Algeria where a large part of his family lived. He had left the country mainly on economic grounds. Before travelling to Switzerland he had lived in Italy for seven years. There was no indication that he had any ties with Switzerland, where he had been unemployed since October 1994. He had only been living with his wife for a short time. She was born in Switzerland, where she had spent all her life and was, at the time when the application was filed, employed. She did not therefore depend on her husband from an economic point of view. While she would experience some inconvenience if she had to follow her husband to Algeria, she had been able to establish oral contact, 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 integration into that country. The couple, who have

no children, could be expected to travel to another country. Finally, the applicant was free to visit his wife in Switzerland.

38. The Government pointed out that they were not in a position to indicate the applicant's whereabouts. According to his wife, he was living in Italy where he had social contacts, for which reason the applicant and his wife could be expected to lead their family life in Italy. In fact, the applicant's current whereabouts were not relevant since the public interest demanded his removal from Switzerland in view of the short time he had spent in Switzerland, his criminal conviction and the particularly brutal manner in which he had committed the offence.

B. The Court's assessment

1. Whether there was an interference with the applicant's right under Article 8 of the Convention

39. The Court recalls that the Convention does not guarantee the right of an alien to enter or to reside in a particular country. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see Moustaquim v. Belgium, judgment of 18 February 1991, Series A no. 193, p. 18, § 36).

40. In the present case, the applicant, an Algerian citizen, is married to a Swiss citizen. Thus, the refusal to renew the applicant's residence permit in Switzerland interfered with the applicant's right to respect for his family life within the meaning of Article 8 § 1 of the Convention.

41. Such an interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 8. It is therefore necessary to determine whether it was "in accordance with the law", motivated by one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society".

2. Whether the interference was "in accordance with the law"

42. The Court observes, and this was not in dispute between the parties, that the Swiss authorities, when refusing to renew the applicant's residence permit, relied on various provisions of the Federal Aliens' Domicile and Residence Act. According to section 7(1) of this Act, a foreigner who has married a Swiss citizen is entitled to a residence permit, or to have it prolonged, although this right will expire if there are grounds for expulsion. Section 10(1)(a) provides that there is such a ground if the person concerned has been convicted of a criminal offence. According to section 11(3) of the Act, expulsion must appear appropriate in view of the circumstances as a whole.

43. The interference was, therefore, "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

3. Whether the interference pursued a legitimate aim

44. When refusing to renew the applicant's residence permit, the Swiss authorities, such as the Federal Court in its judgment of 3 November 1999, considered that the applicant's residence permit should not be renewed in view of the serious offence which he had committed and in the interests of public order and security.

45. The Court is, therefore, satisfied that the measure was imposed "for the prevention of disorder or crime" within the meaning of Article 8 § 2 of the Convention.

4. Whether the interference was "necessary in a democratic society"

46. The Court recalls that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport 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 Dalia, cited above, p. 91, § 52, and Mehemi v. France, judgment of 26 September 1997, Reports 1997-VI, p. 1971, § 34).

47. Accordingly, the Court's task consists in ascertaining whether in the circumstances the refusal to renew the applicant's residence permit struck a fair balance between the relevant interests, namely the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other.

48. The Court has only a limited number of decided cases where the main obstacle to expulsion was that it would entail difficulties for the spouses to stay together and, in particular, for one of them and/or the children to live in the other's country of origin. It is therefore called upon to establish guiding principles in order to examine whether the measure in question was necessary in a democratic society.

In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant's stay in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant's conduct during that period; the nationalities of the various persons concerned; the applicant's family situation, such as the length of the marriage; other factors revealing whether the couple lead a real and genuine family life; whether the spouse knew about the offence at the

time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant's country of origin, although the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion.

49. The Court notes that the applicant arrived in Switzerland in 1992, and that he married his wife in 1993, whereupon he obtained a residence permit. However, the permit was not renewed following his criminal conviction in 1997. The Zürich Court of Appeal considered in its judgment of 31 January 1997 that the applicant's culpability was severe. The Government, moreover, have drawn attention to the brutal manner in which the offence concerned had been committed, and that it had occurred only sixteen months after the applicant entered Switzerland.

50. The Court has first considered the extent to which the offence committed by the applicant can provide a basis for assuming that he constituted a danger to public order and security.

51. It is true that the applicant committed a serious offence and was sentenced to a prison sentence which he has served in the meantime. The Court further notes that the Zürich District Court in its judgment of 17 May 1995 had considered that a mere conditional sentence of eighteen months' imprisonment, suspended on probation, was adequate punishment for the offence committed by the applicant. The Zürich Court of Appeal later pronounced an unconditional sentence of two years' imprisonment. Furthermore, the offence at issue was committed in 1994, and in the six years thereafter until the applicant's departure from Switzerland in 2000 he committed no further offence. Before he began his prison sentence, he obtained professional training as a waiter and worked as a painter. His conduct in prison was exemplary, and indeed he was given early release. As from May 1999 until his departure from Switzerland in 2000 he worked as a gardener and an electrician, with the possibility of continuing employment.

As a result, whilst the offence which the applicant committed may give rise to certain fears that he constitutes a danger to public order and security for the future, in the Court's opinion such fears are mitigated by the particular circumstances of the present case (see, mutatis mutandis, Ezzouhdi v. France, no. 47160/99, § 34, 13 February 2001, unreported, and Baghli v. France, no. 34374/97, § 48, ECHR 1999-VIII).

52. The Court has next examined the possibility for the applicant and his wife to establish their family life elsewhere.

53. The Court has considered, first, whether the applicant and his wife could live together in Algeria. The applicant's wife is a Swiss national. It is true that she can speak French and has had contact by telephone with her mother-in-law in Algeria. However, the applicant's wife has never lived in Algeria, she has no other ties with that country, and indeed does not speak

Arabic. In these circumstances she cannot, in the Court's opinion, be expected to follow her husband, the applicant, to Algeria.

54. There remains the question of the possibility of establishing family life elsewhere, notably in Italy. In this respect the Court notes that the applicant lawfully resided in Italy from 1989 until 1992 when he left for Switzerland, and he now appears to be living with friends in Italy again, albeit unlawfully. In the Court's opinion, it has not been established that both the applicant and his wife could obtain authorisation to reside lawfully in Italy, so that they could lead their family life in that country. In that context, the Court has noted that the Government have argued that the applicant's current whereabouts are irrelevant in view of the nature of the offence which he has committed.

55. The Court considers that the applicant has been subjected to a serious impediment to establishing a family life, since it is practically impossible for him to live his family life outside Switzerland. On the other hand, when the Swiss authorities decided to refuse permission for the applicant to stay in Switzerland, he presented only a comparatively limited danger to public order. The Court is therefore of the opinion that the interference was not proportionate to the aim pursued.

56. There has accordingly been a breach of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

58. The applicant has not made any claim in respect of pecuniary or non-pecuniary damage under Article 41 of the Convention. In these circumstances, the Court is not called upon to make an award under this head.

B. Costs and expenses

59. The applicant requested a total of 21,128.60 Swiss francs (CHF) for costs and expenses in the domestic proceedings. He itemised them as follows: CHF 13,216.90 for the proceedings before the District Court and the Court of Appeal of the Canton of Zürich; CHF 2,060 for costs arising in the proceedings before the Court of Cassation of the Canton of Zürich;

CHF 505 for costs paid to the Office of the Zürich Police Judge (Polizeirichteramt); and a total of CHF 5,346.70 for costs arising in the proceedings before the Federal Court as well as for legal advice.

60. The Government replied that the costs for the proceedings before the District Court, the Court of Appeal and the Office of the Police Judge were not related to the present proceedings; and that the Court of Cassation had written off the sum of CHF 2,060. On the other hand, the Government agreed to reimburse the remaining sum of CHF 5,346.70.

61. The Court observes that, according to its case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, Philis v. Greece (no. 1), judgment of 27 August 1991, Series A no. 209, p. 25, § 74).

62. In the present case, the Court accepts the Government's submissions as to those costs which were not incurred in order to prevent or rectify a violation of the Convention, or which did not in fact arise. Accordingly, the Court awards the sum of CHF 5,346.70 in respect of legal costs incurred by the applicant.

C. Default interest

63. According to the information available to the Court, the statutory rate of interest applicable in Switzerland at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 8 of the Convention;

2. Holds
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, CHF 5,346.70 (five thousand three hundred and forty-six Swiss francs seventy centimes) for costs and expenses;
   (b) that simple interest at an annual rate of 5 % shall be payable from the expiry of the above-mentioned three months until settlement;

3. Dismisses the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 2 August 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Baka, Mr Wildhaber and Mr Lorenzen is annexed to this judgment.

C.L.R
E.F.

CONCURRING OPINION OF JUDGES BAKA, WILDHABER AND LORENZEN

We agree with the majority that the refusal to renew the applicant's residence permit interfered with the applicant's right to respect for his private and family life within the meaning of Article 8 § 1 of the Convention and that the interference was "in accordance with the law" and pursued a legitimate aim. As to whether the interference was "necessary in a democratic society", we would like to make the following observations.

The majority has rightly stressed that according to the constant case-law of the Court, it is for the Contracting States to maintain public order, and to that end they have the power to deport aliens convicted of criminal offences. However, their decisions comply with the requirements of Article 8 only if they are justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued. Accordingly, there must be 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 and crime, on the other.

A considerable proportion of the Court's judgments on expulsion of aliens relates to the problems of "second generation" immigrants, that is persons who were born or have lived most of their life in the country from which they are going to be expelled. The main obstacle to expulsion in such cases is the length of the applicant's stay in, combined with his family ties to, that country. In a considerable proportion of the cases the Court has not found a violation of Article 8 even where the applicant has lived all or most of his life in the country and has fairly close family ties there: see Boughanemi v. France, judgment of 24 April 1996, Reports of Judgments and Decisions 1996-II; C. v. Belgium, judgment of 7 August 1996, Reports 1996-III; Bouchelkia v. France, judgment of 29 January 1997, Reports 1997-I; El Boujaïdi v. France, judgment of 26 September 1997, Reports 1997-VI; Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI; Dalia v. France, judgment of 19 February 1998, Reports 1998-I; Benrachid v. France (dec.), no. 39518/98, ECHR 1999-II; Farah v. Sweden (dec.), no. 43218/98, 24 August 1999, unreported; Djaid v. France (dec.), no. 38687/97, 9 March 1999, unreported; Baghli v. France, no. 34374/97, ECHR 1999-VIII; and Öztürk v. Norway (dec.), no. 32797/96, 21 March 2000, unreported. By contrast, the Court has found a violation of Article 8 in the following cases: Moustaquim v. Belgium, judgment of 18 February 1991, Series A no. 193; Beldjoudi v. France, judgment of 26 March 1992, Series A no. 234-A; Nasri v. France, judgment of 13 July 1995, Series A no. 320-B; Mehemi v. France, judgment of 26 September 1997, Reports 1997-VI; Ezzouhdi v. France, no. 47160/99, 13 February 2001, unreported.

As regards the relevant criteria in cases where there are difficulties for the spouses to stay together and, in particular, for one of them to live in the

other's country of origin, we agree with the guiding principles which have been correctly set out in paragraph 48 of the Court's judgment.

Basing ourselves on an assessment of all the relevant facts of the present case, we agree with the majority that there has been a breach of Article 8 of the Convention. We attach particular importance to the facts that the offence was committed in April 1994 and that, according to the information available, the applicant has not committed further offences since then and now seems to be rehabilitated. Even if we are not fully convinced that it would be impossible for his spouse to live in Algeria, we accept that it would cause her obvious and considerable difficulties. That being the case, we do not find the seriousness of the offence committed to be sufficient to make the expulsion proportionate.