

Moustaquim v. Belgium (Application No. 12313/86)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 18 February 1991

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695529&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

2) Facts

The Applicant alleged that Belgium infringed Article 8 on account interference with his family and private life, Article 14 in conjunction with Article 8 due to discrimination on grounds of nationality, Article 3 on account of inhuman and degrading treatment, Article 6 because the Conseil d'Etat was not an impartial tribunal, and Article 7 of the Convention because the penalty of deportation was imposed for acts that were not crimes at the time of their commission.

The Applicant is a Moroccan national who lived in Liege. He arrived in Belgium in 1965, at the age of 1, to join his father who had emigrated before and ran a butcher shop. Until he was deported in June 1984, he lived in Belgium on a residence permit. Three of his seven siblings were born in Belgium, and one of his elder brothers had Belgian nationality at that time.

In 1981, he was prosecuted as a minor with 147 charges, including 82 of aggravated theft. The Liege Juvenile Court had made various custodial and protective orders before this period. After being convicted on 26 of the charges, he was referred to the Advisory Board on Aliens for deportation proceedings. After the royal deportation order was issued in February 1984, he appealed to the Conseil d'Etat, which rejected his argument that 15 of the convictions were superfluous grounds for deporting him. After living abroad for a number of years, he obtained a royal order in December 1989 which temporarily suspended the original deportation.

3) Admissibility

The Court held the application admissible as to the consequences of the deportation but rejected the Article 6 complaint. Further the Court held that the application was not devoid of purpose. The Government submitted that the suspension of the deportation order rendered the matter moot. The Court found, instead, that since the suspension order did not make reparations to the Applicant, the case still has purpose.

4) Merits

The Court finds a violation of Article 8 because the deportation order was disproportionate to the aim of punishing the Applicant for his crimes. The Court finds dispositive the fact that the Applicant had lived in Belgium since he was a toddler, and that nearly his entire family resided there. However, there was no breach of Article 14 in conjunction with Article 8

because the Applicant is not comparable with Belgian juvenile delinquents who have a right to remain in their country and cannot be expelled from it. Thus, no issue of impermissible discrimination arose. Before the Court, the Applicant dropped his claims under Articles 3 and 7 and so the Court did not feel bound to rule on those issues.

5) Decision

The Court holds there has been a breach of Article 8, but no breach of Article 14 taken together with Article 8.

6) Dissenting Opinion

The dissent found no violation of Article 8, namely of the Applicant's family life. The dissent noted that the Applicant was an adolescent who had run away from home from time to time, and had begun to live his own life while returning to his family occasionally. Since the Applicant's crimes were numerous and serious, the dissent found nothing improper in the deportation order.