

APPLICATION/REQUÊTE N° 6357/73

X. v./the FEDERAL REPUBLIC OF GERMANY
X. c/REPUBLIQUE FÉDÉRALE D'ALLEMAGNE

DECISION of 8 October 1974 on the admissibility of the application
DÉCISION du 8 octobre 1974 sur la recevabilité de la requête

Article 8 of the Convention : The exclusion of a person from a country where close members of his family are living can amount to a violation of Article 8.

Article 8, paragraph 2 of the Convention : A substantial interference with the family life of a person who has not committed any serious criminal offence, may not be justified on the grounds of public safety or the prevention of disorder.

Article 26 of the Convention : Failure to appeal against refusal of petition for asylum. Failure to lodge a constitutional appeal from the decision granting extradition.

Article 8 de la Convention : Le renvoi d'une personne du territoire d'un Etat où vit sa proche famille peut violer l'article 8.

Article 8, paragraphe 2, de la Convention : La défense de l'ordre ou la prévention du crime ne peuvent être invoquées pour justifier une atteinte à la vie familiale d'une personne qui n'a pas commis de délit grave.

Article 26 de la Convention : Défaut de recours contre le refus du droit d'asile. Défaut de recours constitutionnel contre une décision d'extradition.

Summary of the facts

(français : voir p. 78)

Syrian citizen living in the Federal Republic of Germany with his German wife and two children. Syrian authorities having requested the applicant's extradition with a view to the carrying out of a sentence imposed on him for fraud.

Convicted in German of an offence against the Aliens Act, the applicant was ordered to leave the country. He then filed a petition for political asylum, alleging a fear of persecution in Syria, on account of his political opinions.

After his petition for asylum had been refused, the applicant appealed to the Administrative Court of Appeal. The appeal proceedings were however terminated by the Court on the ground that the applicant had failed to pay the advance on the Court fees.

The applicant also appealed to the Court of Appeal from the decision ordering his extradition. This appeal was refused. The applicant alleges that both he and his wife are suspected by the Syrian Authorities.

THE LAW (Extract)

The Commission finds that the application raises an issue under Article 8 of the Convention which secures to everyone the right to respect for his family life. According to the Commission's case-law, the exclusion of a person from a country where close members of his family are living can amount to an infringement of this right ; a relevant factor in such cases is the possibility for the wife and children to follow the husband (see Applications No. 3325/67, Yearbook 10, p. 536 and No. 5269/71, Collection 39, p. 107).

The present applicant has lived in the Federal Republic of Germany for the last ten years ; he is married to a German wife (since 1967) and has two children. It may be possible for his wife and children to follow him to Syria, but in the circumstances they may have a valid reason for not doing so. The applicant's extradition to Syria could thus lead to a lasting separation from

his wife and children. Such a substantial interference with the applicant's family life, who does not seem to have committed any serious criminal offence in Federal Republic of Germany, may not be justified, under para. 2 of Art. 8, on the ground of public safety or the prevention of crime.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 8 as, under Article 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. In the present case the applicant apparently failed to appeal against the expulsion order of ... February 1971; he also did not pursue his appeal before the Administrative Court of Appeal in the asylum proceedings and moreover failed to lodge a constitutional appeal from the decision of the Court of Appeal of ... November 1973 by which that Court confirmed the lawfulness of the extradition. The applicant has therefore not exhausted the remedies available to him under German law. Moreover, an examination of the case does not disclose the existence of any special circumstances which might have absolved him, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Article 27 (3) of the Convention.

Résumé des faits

Ressortissant syrien vivant en République Fédérale d'Allemagne avec son épouse allemande et leurs deux enfants. Demande d'extradition formée par la Syrie pour y purger une condamnation pour faux. Condamnation assortie d'une décision d'expulsion, prononcée en R.F.A. pour infraction à la loi sur les étrangers. Le requérant demande l'asile politique en R.F.A., au motif qu'il craint d'être persécuté en Syrie pour des raisons politiques. L'asile politique lui ayant été refusé, le requérant recourt auprès de la cour d'appel administrative mais néglige d'avancer les frais, ce qui provoque la clôture de la procédure. D'autre part, le requérant recourt auprès de la cour d'appel contre la décision ordonnant son extradition. Recours rejeté. Le requérant allègue que non seulement lui-même mais également sa femme sont suspects en Syrie.

Résumé du considérant pertinent

Le renvoi d'une personne du territoire d'un Etat où vit sa proche famille peut violer l'article 8 de la Convention. Il importe, en pareil cas, de savoir si les proches parents pourraient ou non suivre l'intéressé. En l'espèce, l'épouse du requérant pouvait avoir de bonnes raisons de ne pas se rendre en Syrie.

Le requérant n'ayant commis aucun délit grave en République Fédérale d'Allemagne, une atteinte à son droit à la vie familiale ne pourrait guère être justifiée, selon l'article 8, paragraphe 2, par les nécessités du maintien de l'ordre ou de la prévention du crime.

Il semble toutefois que le requérant n'a pas recouru contre l'ordonnance d'expulsion. Quant à sa demande d'asile politique, il a laissé clore la procédure de recours. Enfin, il n'a pas formé de recours constitutionnel contre la décision confirmant son extradition.

Requête rejetée pour non-épuisement des voies de recours internes (article 26 de la Convention).