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

THIRD SECTION

CASE OF BAGHLI v. FRANCE

(Application no. 34374/97)

JUDGMENT

STRASBOURG

30 November 1999

In the case of Baghli v. France,

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

Mr L. LOUCAIDES, *President*,
Mr J.-P. COSTA,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 October and 16 November 1999,

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") and by the French Government ("the Government") on 2 November 1998 and 5 January 1999 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 34374/97) against the French Republic lodged with the Commission under former Article 25 by an Algerian national, Mr Mohamed Baghli ("the applicant"), on 26 December 1996.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby France recognised the compulsory jurisdiction of the Court (former Article 46); the Government's application referred to former Articles 47 and 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 8 of the Convention.

2. Following the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 4 thereof read in conjunction with Rules 100 § 1 and 24 § 6 of the Rules of Court[1], a panel of the Grand Chamber decided on 14 January 1999 that the case would be examined by a Chamber constituted within one of the Sections of the Court.

1. *Note by the Registry*. The Rules of Court came into force on 1 November 1998.

3. In accordance with Rule 52 § 1, the President of the Court, Mr L. Wildhaber, then assigned the case to the Third Section.

4. The Chamber constituted within that Section included *ex officio* Mr J.-P. Costa, the judge elected in respect of France (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Sir Nicolas Bratza, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr L. Loucaides, Mr W. Fuhrmann, Mr K. Jungwiert, Mrs H.S. Greve and Mr K. Traja (Rule 26 § 1 (b)). Subsequently Sir Nicolas Bratza, Mr Fuhrmann and Mr Jungwiert, who were unable to take part in the further consideration of the case, were replaced by Mr Loucaides, as President, and Mr P. Kūris, Mrs F. Tulkens and Mr M. Ugrekhelidze, substitute judges.

5. On 4 May 1999 the Chamber decided, in accordance with Rule 59 § 2, to hold a hearing in the case, as requested by the Government.

6. The hearing took place in public in the Human Rights Building, Strasbourg, on 5 October 1999.

There appeared before the Court:

(a) *for the Government*
Mr D. DOUVENEAU, Deputy Secretary of Foreign Affairs, *Agent*,
Mr B. DALLES, *magistrat*, Criminal Cases and Pardons Department, Ministry of Justice, *Counsel*;

(b) *for the applicant*
Mr J. DEBRAY, of the Lyons Bar, *Counsel*.

The Court heard addresses by them and their answers to the questions of Mrs Greve, one of the judges.

7. Various documents were voluntarily produced by the applicant.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, an Algerian national, was born in 1964 in Algeria and lives at Tlemcen (Algeria).

9. He entered France in 1967 at the age of two. He has lived there ever since, as have all the members of his family. He has seven brothers and sisters, all French nationals. He did the whole of his schooling in France where he obtained a professional diploma (*certificat d'aptitude professionnelle*) as a fitter in 1982. Between 1982 and 1992 he did various

jobs and attended a number of professional training courses. In 1987 he met a French national, Miss L., with whom he had a steady relationship.

10. Between January 1984 and December 1985 the applicant performed his military service in Algeria.

11. In July 1990 gendarmes from the Belley investigation squad were informed of the plight of an 11-year-old girl whose father had just died of Aids and whose mother, Mrs C., was also suffering from the same disease, taking drugs and keeping company with several addicts. After an investigation had been opened on a complaint against a person or persons unknown for drug-related offences, the gendarmerie discovered in the course of their inquiries in the autumn of 1990 a drug-trafficking syndicate in which more than twenty people were implicated to differing degrees. The applicant was arrested and charged in the course of that investigation. He was accused by a number of co-defendants of being a dealer in drugs. It was established in the inquiry that he had been cohabiting with Mrs C. since July. He had been supplying her with hashish and heroin and together they had engaged in illegal trade in heroin.

12. On 10 September 1991 the Belley Criminal Court convicted the applicant of drug trafficking, sentenced him to fifteen months' imprisonment, twelve of which were suspended, and made an order excluding him from French territory for a period of ten years.

13. The applicant appealed. On 23 January 1992 the Lyons Court of Appeal increased the term of imprisonment to three years, two suspended, and upheld the exclusion order.

14. In its judgment, the Court the Appeal stated, *inter alia*:

> "Mohamed Baghli, who became R.C.'s companion in the summer of 1990, acknowledges that he has taken hashish for many years and began taking heroin in June 1990.
>
> He admits that between the end of June and the end of July he made two trips a week to Lyons to obtain drugs from one A., ... who supplied him with the drugs, in particular, one gram or half a gram doses of heroin for 1,600 French Francs (FRF) or FRF 800.
>
> He shared the drugs with his companion ... but also sold a part ...
>
> Ultimately the heroin-trafficking offence of which Baghli stands accused, which the investigating judge's investigations fully establish, concerned about ten grams of heroin, some being for his own and his companion's use and some being sold on to finance further purchases after being adulterated in a way that made it particularly hazardous for the buyers' health ..."

15. The applicant lodged an appeal on points of law, which was dismissed by the Court of Cassation on 6 September 1993.

16. Mrs C. died in October 1992.

17. In December 1992 the applicant began a relationship with Miss I., a French national, whom he had known for several years.

18. After serving his sentence, the applicant was deported to Algeria on 14 May 1994, where he would appear still to be at the date of this judgment.

19. On 11 January 1994, while still in Villefranche-sur-Saône Prison, the applicant applied to the Lyons Court of Appeal for rescission of the exclusion order. He relied on Article 8 of the Convention.

20. In a judgment delivered on 30 June 1994, the Court of Appeal dismissed his application. The applicant lodged an appeal on points of law through his counsel against that decision relying, *inter alia*, on Article 8 of the Convention.

21. On 19 December 1995 the Court of Cassation dismissed the appeal, holding:

> "... after noting that Mohamed Baghli had been convicted for his part in a heroin-trafficking syndicate, the Court of Appeal said that while it was true that his family lived in France and most of its members were French nationals, he had not lost all contact with Algeria, having often spent his holidays there and done military service there in 1984 and 1985. The mere fact that he was planning to set up home with a French woman was not decisive as, at the material time, he was living with another woman whom he had involved in his drug trafficking.
>
> The Court of Appeal concluded from that that the exclusion order had not disproportionately interfered with the right to family life guaranteed by Article 8 of the Convention ...
>
> It added that although Article 14 of that Convention prohibited any discrimination on grounds of national origin, paragraph 3 of Article 2 of Protocol No. 4, an additional protocol, allowed aliens to be denied access to the territory if the measure was necessary in the interests of national security or public safety, for the maintenance of *ordre public*, and for the prevention of crime; that paragraph applied in the instant case, which concerned trafficking in narcotics, particularly heroin ..."

22. That judgment was not served on the applicant. His representative says that he (the representative) received a copy of the judgment in September 1996.

II. RELEVANT DOMESTIC LAW

23. Article L. 630-1, sub-paragraph 1, of the Public Health Code, as worded at the material time, provided:

> "Without prejudice to the application of Articles 23 et seq. of Ordinance no. 45-2658 of 2 November 1945, the courts may make an order excluding an alien convicted of an offence under Articles L. 626, L. 627-2, L. 628, L. 628-4 or L. 630 from French territory for between two and five years. They may make an order permanently excluding an alien convicted of an offence under Article L. 627.
>
> An exclusion order shall automatically entail deportation of the convicted person at the end of his sentence ..."

24. Former Article L. 627 of the Public Health Code provided:

> "Anyone who shall have contravened the provisions of the public-administration regulations laid down in the preceding Article concerning toxic plants or substances

classified under the regulations as narcotics shall be liable on conviction to between two and ten years' imprisonment and a fine of between FRF 5,000 and FRF 50,000,000, or one only of those penalties. The sentence for offences of importing, producing, manufacturing or unlawfully exporting the said substances or plants shall be between ten and twenty years' imprisonment ...

Penalties for attempts to commit any of the offences referred to in the preceding paragraph shall be the same as for the substantive offence. A like rule shall apply to criminal association or conspiracy to commit such offences ...

The following persons also shall be liable to imprisonment of between two and ten years and a fine of between FRF 5,000 and FRF 50,000,000, or to one only of those penalties:

(1) Anyone who shall have facilitated the use by another of the said substances or plants by procuring premises or by any other means, and whether or not for consideration ...

Where the person whose use of the said substances has been facilitated is a minor under 21 ... the term of imprisonment shall be between five and ten years ..."

25. Article 55-1 of the Criminal Code provides:

"... anyone who shall have incurred a disability ... as an automatic consequence of a criminal conviction or on whom such disability ... has been imposed by the convicting court in its judgment ... may request the court which convicted him ... to rescind the disability ..., in whole or in part, or to vary its duration."

PROCEEDINGS BEFORE THE COMMISSION

26. Mr Baghli applied to the Commission on 26 December 1996. He alleged that the exclusion order imposed on him violated his right to respect for his private and family life guaranteed by Article 8 of the Convention.

27. On 4 March 1998 the Commission declared the application (no. 34374/97) admissible. In its report of 9 September 1998 (former Article 31 of the Convention), it expressed the opinion (by eleven votes to three) that there had been a violation of Article 8[1].

FINAL SUBMISSIONS TO THE COURT

28. In his memorial, Mr Baghli invited the Court to hold that the respondent State had violated Article 8 of the Convention, to award him compensation under Article 41 for pecuniary and non-pecuniary damage and to order reimbursement of his costs and expenses.

The Government invited the Court to hold that the applicant's application was inadmissible *ratione temporis* as it had been lodged with the

1. *Note by the Registry*. The report is obtainable from the Registry.

Commission outside the six-month time-limit laid down by former Article 26 of the Convention or, in the alternative, that there had been no violation of Article 8 of the Convention.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

29. As they had done before the Commission, the Government submitted that the applicant had failed to comply with the six-month time-limit imposed by Article 35 § 1 of the Convention (former Article 26) for lodging his application with the Commission. They observed that the application had been lodged with the Commission more than a year after the date of the final decision within the meaning of former Article 26 of the Convention. The Court of Cassation's decision dismissing his application for rescission of the exclusion order was delivered on 19 December 1995, but the applicant had not lodged his application until 26 December 1996. The Government said that, as required by the Code of Criminal Procedure, the Court of Cassation's judgment had subsequently been sent (on 16 February 1996) to the Public Prosecutor's Office at the Lyons Court of Appeal for service. However, staff at the Court of Appeal had been unable to effect service as the applicant had provided no information regarding his home address in Algeria. The Public Prosecutor's Office at the Lyons Court of Appeal had attempted to obtain the address but had had to resign itself to the fact that it would be physically impossible to serve the decision on the applicant. It followed that the failure to serve the Court of Cassation's judgment was not attributable to the relevant judicial department but, on the contrary, to the applicant's conduct. In addition, there was circumstantial evidence to suggest that the applicant had in fact become aware of the final domestic decision early enough to have been able to comply with former Article 26 of the Convention. A telephone call to the registry of either the Court of Cassation or the Court of Appeal would have sufficed to establish the tenor of the judgment of 19 December 1995. Furthermore, although the applicant was not represented by counsel at the hearing before the Court of Cassation, he had since 1994 been assisted by a lawyer, Mr J. Debray, who had prepared the notice of appeal on points of law on his behalf and had represented him before the Convention institutions. In conclusion, a combination of those factors showed that it had been the applicant's own conduct that had prevented his being served with the Court of Cassation's judgment and that he could have found out what the decision was from the day it was delivered. Consequently, the Government contended that the application was inadmissible *ratione temporis*.

30. The applicant contested that argument. He maintained that under the Commission's settled case-law, the six-month time-limit could not start to run until the applicant had effective and sufficient knowledge of the final decision. In the instant case, the Government did not deny that neither the applicant nor his representative had been informed of the date of the hearing or that there had been a failure to serve the decision on the applicant. Accordingly, the time-limit could not have started to run until communication of the decision to him in September 1996, when, after repeated requests, it was received by his lawyer. Furthermore, under the domestic rules of criminal procedure, only a lawyer at the *Conseil d'Etat* and Court of Cassation Bar could act for an appellant before the Court of Cassation. The fact that an applicant had filed his own memorial did not mean that he was entitled to representation before the Court of Cassation. Moreover, contrary to what the Government maintained, he had not lost interest in his appeal on points of law although it was obviously difficult, following his forced departure to Algeria, to follow the Court of Cassation proceedings closely. In any event, the Court of Cassation registry had not provided any information to either the appellant or his lawyer, the latter not being a member of the *Conseil d'Etat* and Court of Cassation Bar. Accordingly, the Government's objection had to be dismissed.

31. The Court points out that the six-month period cannot start to run until the applicant has effective and sufficient knowledge of the final domestic decision. Furthermore, it is for the State which relies on the failure to comply with the six-month time-limit to establish the date when the applicant became aware of the final domestic decision (see, *mutatis mutandis*, the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, pp. 14-15, § 26). In the instant case, the Court observes that the Government did not deny that the judgment of the Court of Cassation had not been served on the applicant, but maintained that if the applicant had not become aware of the judgment until 26 June 1996, it was through his own lack of diligence. The Court observes, however, that when the judgment of the Court of Cassation was delivered, the applicant was in an unstable situation in Algeria that had almost certainly made it difficult for him to obtain information about the outcome of his appeal in France. In addition, the decision was not served on the applicant's counsel either, despite the fact that he had lodged the notice of appeal on points of law on the applicant's behalf, and the Court of Cassation registry had his address. Under those circumstances and in the absence of any irrefutable evidence showing that the applicant or his counsel was aware of the judgment of the Court of Cassation before the date indicated, the Court finds the applicant's affirmation that he only became aware of the judgment in question in September 1996 credible (see, *mutatis mutandis*, *Papachelas v. Greece* [GC], no. 31423/96, §§ 30 and 31, ECHR 1999-II). Consequently, the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. In the applicant's submission, the ten-year exclusion order imposed on him infringed his right to private and family life and violated Article 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."

A. Paragraph 1 of Article 8

33. It must first be determined whether the applicant may claim to have a "private and family life" in France within the meaning of Article 8 § 1 and whether the contested measure amounted to an interference with it.

34. The applicant submitted that he had arrived in France in 1967 at the age of two. He was the eldest child of the family and all his brothers and sisters were French nationals. Until his deportation in September 1993 he had always lived in France. His entire family lived there, and he had done all his schooling there. He held a qualification as a fitter, had done various jobs and completed vocational training courses. Moreover, he had lived with a French national for several years until her death in October 1992. Subsequently, he had formed a relationship with Miss I., a French national, whom he had known for many years.

35. The Government did not contest the fact that the exclusion order imposed on the applicant constituted an interference with his private life. However, they considered that he could not claim to have had a family life within the meaning of Article 8 § 1. In that connection, the Government pointed to the fact that the applicant was single and had no children. Furthermore, he had at no stage adduced evidence that he had close relations with his parents or brothers and sisters, or that they were in any way dependent on one another. Although he professed to a relationship with Miss I., they had not been living together as man and wife and had had no children; their plans to set up home together had not come to fruition. Moreover, the relevant date for determining whether the applicant could rely on a family life within the meaning of the Convention was when the measure was imposed. In the instant case, it appeared that the applicant's relationship with Miss I. had begun in December 1992: a year after the judgment of the Lyons Court of Appeal upholding the exclusion order.

36. It is with regard to the position at the time the exclusion order became final that the Court must examine the question whether the

applicant had a family life within the meaning of Article 8 of the Convention (see the Bouchelkia v. France judgment of 29 January 1997, *Reports of Judgments and Decisions* 1997-I, p. 63, § 41, and the El Boujaïdi v. France judgment of 26 September 1997, *Reports* 1997-VI, pp. 1990-91, § 33). In the instant case, the exclusion order became final in September 1993 when the Court of Cassation dismissed the appeal against the Court of Appeal's judgment of 23 January 1992. The applicant may therefore rely on his relationship with Miss I., which had begun earlier.

37. The Court observes that the applicant entered France in 1967 at the age of two and, with the exception of the period he spent doing his military service in Algeria, lived there until the exclusion order was enforced in May 1994. He did all his schooling in France and worked there for several years. In addition, his parents and brothers and sisters live in France. Consequently, the Court has no doubt that the temporary exclusion order amounts to an interference with the applicant's right to respect for both his private and his family life.

B. Paragraph 2 of Article 8

38. It must accordingly be determined whether the exclusion order satisfied the conditions set out in paragraph 2, that is to say whether it was "in accordance with the law", pursued one or more legitimate aims set forth and was "necessary in a democratic society" for them to be achieved.

1. "In accordance with the law"

39. It is common ground that the ten-year exclusion order imposed on the applicant was based on Article L. 630-1 of the Public Health Code.

2. Legitimate aim

40. It was accepted, too, that the interference pursued aims that were wholly compatible with the Convention: the "prevention of ... crime", the "protection of health" and the "prevention of disorder".

3. "Necessary in a democratic society"

41. The applicant said that he had arrived in France at the age of two, all his family lived in France, all his schooling had been in France and he had worked there until being sent to prison. He added that he had remained with his companion, who was suffering from Aids, until her death in October 1992. As regards his links with Algeria, he observed that as an Algerian national he had had no alternative but to do his military service in Algeria if he wished to avoid being considered insubordinate and the consequent forfeiture of, among other things, his passport and Algerian identity card, documents that were essential not only for his freedom of movement but

also for obtaining a residence permit in France. He had no close family in Algeria. With regard to the nature and seriousness of the offence of which he had been convicted, he pointed out that two-thirds of his sentence had been suspended. He argued that the exclusion order, even though for a temporary period of ten years, had the same effects as a permanent exclusion order, which could not be regarded as a measure that was necessary in a democratic society, within the meaning of Article 8. In that connection, the applicant referred to a report delivered to the Minister of Justice in November 1998 by a commission established to review exclusion orders. One of its recommendations was that, regardless of the nature or seriousness of the offence, "it should be wholly impossible for an exclusion order to be imposed on aliens educated in France and habitually resident there ever since".

42. The Government observed that, even if his private life could be said to be in France, the applicant had not shown a willingness to integrate into French society. Thus, unlike his brothers and sisters, who were French, the applicant had retained his Algerian nationality and had never evinced any desire to take up French nationality when he had been entitled to do so. On the contrary, he had spent two years in Algeria (from January 1984 to December 1985) doing his military service. Overall, although the applicant had spent much of his life in France, he had demonstrated above all his attachment to Algeria and had retained Algerian nationality. Furthermore, the applicant had manifestly maintained private relations in Algeria throughout his stay in France and had relatives there. Thus, in a letter from Miss L., it was stated that the applicant's grandmother lived in Algeria. Moreover, while living in France the applicant had had holidays in Algeria.

43. The Government further stated that the applicant had become marginalised in France through his use of and trade in narcotics. In particular, he had supplied his companion, Mrs C., with heroin, thereby increasing her dependence at a time when she was seriously ill. Moreover, as the Lyons Court of Appeal had found, he had supplied other users in the syndicate, adulterating the heroin in a way that made it particularly hazardous for them, namely by mixing it with other products, undoubtedly so that he would have larger quantities to sell. Added to that, of all the people implicated in the trafficking, it was the applicant who had received the heaviest sentence. He appeared in practice to have been at the heart of the syndicate. Under the circumstances, the Lyons Court of Appeal had increased the term of imprisonment imposed by the first-instance court and made the exclusion order. The Government added that the applicant, who was single and had no children, had no established family life in France and was not living with anyone as man and wife.

44. They concluded that having regard to the gravity of the offence and the fact that the applicant had no family life in France, the temporary exclusion order was wholly proportionate to the offence and a fair balance

had been struck between the legitimate aim pursued and the applicant's right to respect for his private and family life.

45. The Court reiterates 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 (see, as the most recent authorities, the El Boujaïdi judgment cited above, p. 1992, § 39, and the Boujlifa v. France judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42).

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, as the most recent authority, the Boujlifa judgment cited above, p. 2264, § 42).

46. Thus the Court's task is to determine whether the measure in issue struck a fair balance between the conflicting interests, namely, on the one side, the applicant's right to respect for his private and family life and, on the other, the prevention of disorder or crime and the protection of health.

47. The applicant arrived in France at the age of two and lived there lawfully from 1967 to 1994, except for a two-year period when he performed his military service in Algeria. He was educated in France and worked there for several years. His parents and all his brothers and sisters, who all have French nationality, live in France.

48. However, the applicant, who is single and has no children, has not shown that he has close ties with either his parents or his brothers and sisters living in France. In addition, it should be noted that when the applicant's relationship with Miss I. began in December 1992 the exclusion order had already been imposed; accordingly he must have been aware of the precariousness of his position.

Furthermore, he retained his Algerian nationality and has never suggested that he cannot speak Arabic. He performed his military service in his country of origin and went there on holiday several times. It appears, too, that he never evinced a desire to become French when he was entitled to do so. Thus, even though his main family and social ties are in France, there is evidence, as the Government submitted, that the applicant has preserved ties, going beyond mere nationality, with his native country.

As regards the seriousness of the offence, the Court notes that the Lyons Court of Appeal sentenced the applicant to three years' imprisonment, two of which were suspended, for dealing in heroin, part of which was for his own and his companion's use and the remainder for sale to finance further purchases, after being adulterated in a way that made it particularly hazardous for buyers. The offence indisputably constituted a serious breach of public order and undermined the protection of the health of others. In

view of the devastating effects of drugs on people's lives, the Court understands why the authorities show great firmness with regard to those who actively contribute to the spread of this scourge (see the Dalia v. France judgment of 19 February 1998, *Reports* 1998-I, p. 92, § 54).

49. In the light of the foregoing, the Court considers that the ten-year exclusion order was not disproportionate to the legitimate aims pursued. There has therefore been no violation of Article 8.

FOR THESE REASONS, THE COURT

Holds by five votes to two that there has been no violation of Article 8 of the Convention.

Done in French, and notified in writing on 30 November 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

L. LOUCAIDES
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Mr Costa and Mrs Tulkens is annexed to this judgment.

L.L.
S.D.

JOINT DISSENTING OPINION OF JUDGES COSTA AND TULKENS

(*Translation*)

We regret that we are unable to agree with the majority, who considered that there had been no violation of Article 8 of the Convention.

Admittedly there are a number of arguments to support a finding of no violation. We recognise, too, that the Court's case-law, at least since the Boughanemi v. France judgment of 24 April 1996 (*Reports of Judgments and Decisions* 1996-II, p. 593), has moved towards a greater severity: in the vast majority of cases between 1996 and 1998 concerning aliens who had been deported or on whom an exclusion order had been imposed the Court found no violation of Article 8, albeit often on a split decision.

However, Mr Baghli's case appears to us to reveal a disproportionate interference with his right to respect for his private (if not his family) life. The issue is clearly whether the impugned measure (a ten-year exclusion order) was proportionate, as there is no doubt that it was in accordance with the law and pursued a legitimate aim.

When examining the issue of proportionality, the European Court of Human Rights takes a number of factors into account: whether the alien was born in the host country or, if not, his age on arrival; whether his family lives there, the strength of his ties with the host country or conversely, the extent to which he has maintained links with his country of origin; the nature of the offence committed by the alien and the grounds for his conviction; the nature and the length of the main sentence; and, lastly, the period for which he is required not to re-enter the host country.

In that connection, the nature of the offence – Mr Baghli was convicted under the drug-trafficking legislation – was obviously a weighty factor. However, it is not of itself decisive as, although in the Mehemi v. France judgment of 26 September 1997 (*Reports* 1997-VI, p. 1959) the Court did indeed say: "in view of the devastating effects of drugs on people's lives" it understood "why the authorities show great firmness with regard to those who actively contribute to the spread of this scourge" (see paragraph 37), it nonetheless held (unanimously) that there had been a violation of Article 8 of the Convention. Other factors therefore have to be taken into consideration and in that regard the arguments relied on by the majority in the instant case (see paragraph 48) do not appear to us to be decisive either.

On the contrary, Mr Baghli, who was born in Algeria, arrived in France at the age of two. He has always lived there with his family and is the eldest son. He did all his schooling in France and qualified as a fitter before taking up various jobs. Before unfortunately getting involved in drugs, he had,

with the exception of his two years' military service, lived in France for twenty-one years without interruption.

Furthermore, despite the fact that the case concerned narcotics, we cannot help but be struck by the fact that the offences and the penalties were unusually minor. The applicant had no criminal record. After being charged, he spent only four weeks in pre-trial detention before being released on licence and taking up employment. The amount of heroin traded in the deals that led to his arrest was approximately ten grams and he was convicted at first instance to only three-months' immediate imprisonment, with twelve months suspended (on appeal that became a year's immediate imprisonment and two years suspended). Was that a serious offence under the drug-trafficking legislation? There is room for doubt, unless one takes the view that every offence under that legislation is serious, irrespective of its nature or the penalty.

The length of the exclusion order was fixed at first instance at ten years (compared to three months' imprisonment, one of which had been spent in pre-trial detention). Although the Court of Appeal did not increase the length of that order – whereas it did increase the term of imprisonment – it seems to us to be sufficiently long to ruin the life of a man who was 29 years' old when the order was executed, and disproportionate to the offence and the main penalty imposed.

In summary, Mr Baghli is a second-generation immigrant, virtually a French national, the vast majority of whose family, social, occupational and cultural ties were in France. As Mrs Palm observed in her dissenting opinion in the case of Bouchelkia v. France (see the judgment of 29 January 1997, *Reports* 1997-I, p. 47), that consideration ought under ordinary circumstances to incite the host country to treat Mr Baghli in the same way as it would treat nationals. Certainly he broke the rules. But is not a year in prison enough to pay off the debt? Was it necessary to multiply the prison sentence by ten when determining the length of lawful banishment to which exclusion orders are tantamount? We do not think so, since that is something which, in a democratic society, is not *necessary*.

As exclusion orders can be made solely in respect of people who are in law aliens, they should only be imposed with caution and for very good reason on people who have spent practically their entire life in the host country, especially where the order is far lengthier (and may have more serious consequences) than the main sentence. Those conditions do not appear to have been complied with in this instance.