

HUMAN RIGHTS COMMISSION

REPORT NO. 15

THE HUMAN RIGHTS OF AUSTRALIAN-BORN CHILDREN:
A REPORT ON THE COMPLAINT OF MR AND MRS M. YILMAZ

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I. INTRODUCTION

In November 1984 the Commission received a complaint that the proposed deportation of Mr and Mrs Mustafa Yilmaz and their children, Taygan and Alkan, was inconsistent with or contrary to human rights. The complaint was referred to the Department of Immigration and Ethnic Affairs by officers of the Commission, but, despite their endeavours, no settlement was attained. The family left Australia, under threat of deportation, on 22 December 1984.

2. The report is made by the Human Rights Commission pursuant to its functions under sections 9(1) (b) and 16(2) of the Human Rights Commission Act 1981 (Cwlth) to inquire into any act or practice that may be inconsistent with or contrary to any human right and, where it has endeavoured without success to effect a settlement, to report to the Minister.

III. REASONSHuman Rights Issues

8. This complaint raises one substantial human rights issue. It is whether a husband and wife who are prohibited non-citizens should not be deported on the ground that their deportation would infringe the human rights of their Australian born children.

9. This same issue was dealt with at length in the Commission's Report No.10 on The Human Rights of Australian-born Children: A Report on the Complaint of Mr and Mrs R.C. Au Yeung, and in its Report No.13 on Human Rights and the Migration Act 1958, at paras 57, 112, and 213 and Recommendation 60. The Commission does not propose to recapitulate in full what it said in those reports, but invites a reconsideration of the arguments carefully developed in them. As in the Au Yeung case, the Commission is of the opinion that the expulsion of Mr and Mrs Yilmaz from Australia amounted in practice to the deportation of two Australian citizens, their sons Taygan and Alkan. This was inconsistent with Articles 23 and 24 of the International Covenant on Civil and Political Rights (ICCPR), several Principles of the Declaration of the Rights of the Child, and arguably also in conflict with Article 7 of the International Covenant. The text of these Articles and Principles is set out in Appendix A.

V. FINDINGS AND RECOMMENDATIONS

10. Having conducted an inquiry into a Commonwealth act or practice complained of by Mr and Mrs M. Yilmaz, namely, the requirement that they leave Australia or be deported, the Commission finds that this act or practice is inconsistent with or contrary to human rights, in particular, the rights of their Australian born sons, Taygan and Alkan, set out in the Declaration of the Rights of the Child and the International Covenant on Civil and Political Rights. Its reasons for these findings are summarised in the preceding pages of this report. Consequently, the Commission recommends that Mr and Mrs Yilmaz be permitted to return to Australia as permanent residents and that in other cases involving the human rights of the Australian born children of parents who are not citizens of Australia recognition be given to the paramountcy of the legal and human rights of these children in the making of immigration decisions concerning their parents.

11. Whilst the human rights of Australian citizens must invariably be observed, nothing in the ICCPR or the Declaration of the Rights of the Child requires the children of prohibited non-citizens to become Australian citizens merely because they are born in Australia. The current practice, in cases like this, is to treat them as if, in effect, they were not citizens, with the result that their human rights are denied. This is an unjust result. It may be fairer in the long run to change the rule that birth in Australia automatically results in Australian citizenship for the children of prohibited non-citizens, provided that otherwise stateless children born in Australia are granted Australian citizenship. The Commission observes, further, that more effective supervision of temporary entrants would remove or substantially reduce the kind of problem presented in this case.

International Covenant on Civil and Political Rights

ARTICLE 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

ARTICLE 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

ARTICLE 21

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality,

Declaration of the Rights of the ChildPrinciple 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

