



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

FOURTH SECTION

CASE OF AZERKANE v. THE NETHERLANDS

(Application no. 3138/16)

JUDGMENT

Art 8 • Expulsion • Justified decisions to revoke a residence permit and impose a ten-year entry ban on a twenty-two-year-old criminal offender of Moroccan nationality, born and raised in the Netherlands • Persistent and serious nature of the applicant's criminal offending • Threat to public order and security • No evidence as to the impossibility or exceptional difficulty of settlement in Morocco • Limited duration of ban • Very serious impact of the impugned measures on the applicant's family and private life given his length of residence in the Netherlands and-limited ties to Morocco • Fair balance struck by the authorities

STRASBOURG

2 June 2020

FINAL

02/09/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Azerkane v. the Netherlands,

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

Jon Fridrik Kjølbro, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Carlo Ranzoni,

Stéphanie Mourou-Vikström,

Jolien Schukking,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Moroccan national, Mr Khalid Azerkane (“the applicant”), on 8 January 2016;

the decision to give notice of the complaint under Article 8 of the Convention to the Dutch Government (“the Government”);

the parties’ observations;

Having deliberated in private on 15 April 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

The case concerns the applicant’s allegation of unjustified interference with his right to respect for his private and family life as a result of the decisions to revoke his residence permit and to impose an entry ban on him.

THE FACTS

1. The applicant was born in 1993 and lives in Rotterdam. He was represented by Mr A.W. Eikelboom, a lawyer practising in Amsterdam.

2. The Government were represented by their Agent, Ms B. Koopman, and their Deputy Agent, Ms K. Adhin, both of the Ministry of Foreign Affairs.

I. THE CIRCUMSTANCES OF THE CASE

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is a Moroccan national who was born in the Netherlands, where he has lived all his life with his parents. He has seven siblings. All his family members are residing lawfully in the Netherlands

and some were born there. The applicant's parents and five of his siblings also have Dutch nationality.

5. According to the applicant, he had held a temporary, renewable residence permit for the purpose of family reunion with his parents from the moment of his birth. According to the Government, the applicant had held this residence permit as of 11 December 2000. When that permit expired on 17 January 2005, no application to extend it was submitted until 15 February 2005. By a decision of 2 May 2005 a new temporary residence permit for the same purpose was granted, valid from 15 February 2005 to 14 February 2006. An objection (*bezwaarschrift*) lodged against this decision was rejected. The residence permit was most recently extended until 16 December 2014.

6. By a judgment of 24 October 2006 the Rotterdam Juvenile Court (*kinderrechter*) found the applicant guilty of street muggings committed between late 2005 and early 2006, and sentenced him to 150 days' juvenile detention, of which 82 days were suspended during a probationary period of two years, and imposed a sixteen-hour training order (*leerstraf*).

7. In 2007 the applicant agreed to an out-of-court settlement (*transactie*) and performed two hours' community service (*werkstraf*) for having set off fireworks on 29 December 2006.

8. The applicant was convicted on 6 May 2009 by the Rotterdam Juvenile Court of two counts of burglary from private houses committed in September and November 2007, and was sentenced to forty-two days' juvenile detention.

9. In 2009, when the applicant was sixteen years old, he and his family were involved in a serious car accident in Spain in which one of his sisters and an uncle died. Two other family members suffered extensive injuries. The applicant, who had been following an intermediate vocational training course on car mechanics, did not return to school after the accident. He worked in a call centre for a period of six to seven months.

10. On 11 August 2011 the applicant was found guilty by the full-bench (*meervoudige kamer*) of the criminal-law chamber of the Rotterdam Regional Court (*rechtbank*) of assault, theft accompanied by an act of violence against his father, domestic violence and criminal damage, committed in December 2010. He was sentenced to sixty days' juvenile detention.

11. On 21 October 2011, when he was eighteen years old, the applicant committed an armed robbery. He was convicted of this offence by the full-bench (*meervoudige kamer*) of the criminal law chamber of the 's-Hertogenbosch Regional Court on 8 June 2012. That court sentenced him to three years' imprisonment, with deduction of the time spent in pre-trial detention, and payment of 19,800 euros for material damage. The court further stipulated that it was to be examined whether, within the framework of a conditional early release, the applicant might be eligible for clinical

treatment in an institution, as had been recommended by a psychiatrist. It appears from a psychiatrist's report in the case file that the applicant has a mild intellectual disability (*licht verstandelijk beperkt*).

12. On 20 December 2012 the applicant was transferred from prison to the forensic psychiatric ward of an institution for persons with a mild intellectual disability and behavioural problems, in order to work on improving his behaviour. However, his treatment in that institution, which was intended to take nine months, was terminated prematurely after eight months because of a lack of motivation and openness on the part of the applicant. The applicant had to serve the remainder of his sentence in prison. The file does not disclose the exact date of the applicant's release; it appears that he was in any event still serving his sentence in late October 2014.

13. Meanwhile, on 22 October 2013 the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*, "the Deputy Minister") revoked the applicant's residence permit, imposed a ten-year entry ban (*inreisverbod*) on him, and informed him that he was required to leave the country immediately. The decision to revoke the applicant's residence permit was based on section 3.86 of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*; see paragraph 39 below). The total of forty-one months of custodial sentences imposed on the applicant for the offences committed by him (see paragraphs 6, 8 and 10-11 above) was set against the uninterrupted period of between six and seven years during which he had been lawfully resident in the Netherlands prior to committing that robbery.

14. The Deputy Minister acknowledged that these measures constituted interference with the applicant's right to respect for his family life as laid down in Article 8 of the Convention. However, he considered that an assessment on the basis of the guiding principles laid down by the European Court of Human Rights in its judgments in the cases of *Boultif v. Switzerland* (no. 54273/00, ECHR 2001-IX) and *Üner v. the Netherlands* ([GC], no. 46410/99, ECHR 2006-XII) led to the conclusion that the interests of public order and the prevention of crime outweighed the personal interests of the applicant. In this context he took into account, *inter alia*, the nature and seriousness of the offences committed by the applicant, in particular the armed robbery of 21 October 2011 (see paragraph 11 above). The Deputy Minister further had regard to the fact that the applicant had been born in the Netherlands and had always lived there. It was noted that, although the applicant had stated that he had learned from his mistakes, his early release had been revoked for his failure to comply with the conditions attached to that release and he had been convicted of multiple offences. Moreover, the applicant, an adult who had indicated that he wished to move out of his parents' home, had failed to explain why family life could not be enjoyed in another country, and his family would be able to

visit him in their country of origin and support him there financially if necessary.

15. Whilst accepting that the applicant enjoyed a degree of family life with his parents in the Netherlands, the Deputy Minister considered that the applicant also had ties to Morocco: his parents came originally from that country, he had visited it in 2009, and he had family living there. The fact that the applicant did not speak the language spoken in Morocco fluently and that the family in the Netherlands were in dispute with the family in Morocco did not constitute an objective impediment to the applicant's settling in the latter country.

16. On 31 October 2013 the applicant lodged an objection (*bezwaarschrift*) against this decision. He argued that no careful assessment had been made and that the balancing of interests had been unfair. Thus, the four-week gap in his lawful residence in 2005 (see paragraph 5 above) had only come about because his father had omitted to apply in time for an extension of the applicant's residence permit. The applicant had had no control over this as he had been twelve years old at the time. However, this gap had enabled the Deputy Minister to base the impugned decision in the applicant's case on a stay of less than seven years, despite the fact that he had lived his entire life in the Netherlands.

17. The applicant also submitted that neither the offence he had committed when he was eighteen nor the offences perpetrated when he was underage were of such seriousness as to justify disregarding his interests. With regard to the first-mentioned offence, the applicant claimed that he had not had a leading role but had acted as a follower. In addition, he claimed that he would not be able to fend for himself in Morocco as he had no contacts in that country and no knowledge of its culture and society, he did not speak Arabic, and – according to a forensic psychological examination – he had an intellectual disability. Moreover, apart from the time spent in detention, he had always lived in the parental home and the ties with his parents and siblings were very strong, especially since the car accident (see paragraph 9 above), with the family members needing each other for support in order to come to terms with what had happened. His parents could not be expected to accompany him to Morocco because they were long-time residents of the Netherlands, where some of his younger siblings still went to school.

18. After a hearing before an official board of inquiry (*ambtelijke hoorcommissie*) on 24 February 2014, the Deputy Minister declared the objection unfounded on 3 June 2014.

19. Reconsidering his earlier decision (see paragraphs 13-15 above), the Deputy Minister held that the applicant's residence permit should be deemed to have been revoked with retroactive effect as of 21 October 2011, that being the date on which he had committed the offence for which he had been sentenced to a non-suspended term of three years' imprisonment (see

paragraph 11 above). In this respect the Deputy Minister referred to section 3.86, subsection 4, of the Aliens Decree 2000 (see paragraph 40 below). The applicant had committed at least five serious offences and had received unsuspended custodial sentences totalling forty-one months, whereas the threshold in subsection 4 of section 3.86 of the Aliens Decree 2000, for persons whose period of lawful residence was between six and seven years, was seven months. The Deputy Minister noted, moreover, that even if the threshold of thirty months set out in the first two subsections of section 3.86 of the Aliens Decree 2000 were taken as the starting-point, this would also lead to the revocation of the applicant's residence permit.

20. The Deputy Minister further found that, because the applicant had not held a residence permit between 18 January and 15 February 2005 (see paragraph 5 above), his lawful stay in the Netherlands had not been continuous. The fact that the applicant had been a minor at the time the gap occurred did not alter this finding, as the decision to grant him a residence permit with a starting date of 15 February 2005 had become final.

21. According to the Deputy Minister, the applicant had failed to establish the existence between himself and his parents and siblings of more than the normal emotional ties which the European Court of Human Rights required to be present between parents and adult children before the protection afforded by Article 8 of the Convention could be invoked. Furthermore, and noting that the applicant had referred to his schooling and his social, cultural and family ties in the Netherlands, the Deputy Minister held that he had not provided any concrete evidence to substantiate these elements. Rather, it appeared that at the time the impugned decision was taken the applicant had not had a job and had not been in education, nor had he demonstrated any other social or cultural ties with the Netherlands.

22. In the context of the balancing exercise of the various interests at stake as required by Article 8 of the Convention, the Deputy Minister held, *inter alia*, as follows:

“... the Deputy Minister attaches great weight to the offences committed by the [applicant]. The [applicant] has received repeated custodial sentences in relation to the recurrent commission by him of very serious offences, such as violent crimes. Having regard to both the seriousness and the nature of these offences, and given that he is a recidivist, the [applicant] should have known that by committing offences in the country he would put his lawful residence in the Netherlands at risk. It is also important to note ... that the [applicant] – after he had attained the age of majority – continued to commit serious offences.

The assessment that no objective impediments exist for the [applicant] to continue family life with his parents, brothers and sisters in Morocco takes account of the fact that, given his majority, he should be considered capable of managing by himself in Morocco, even if the fact that he allegedly has no family in Morocco at the present time and does not speak the language spoken there may cause difficulties in adjusting. In this context the Deputy Minister attached decisive weight to the fact that the [applicant] has not made a plausible case for ... the existence of an objective impediment to family life with his parents, brothers and sisters in Morocco. It is noted

that the parents, brothers and sisters of the [applicant] have both Moroccan and Dutch nationality.

It is likewise not apparent that this would in fact be impossible for the parents, brothers and sisters ... The claim that the parents cannot be expected ... to follow the [applicant] to Morocco, that they lack the means to support him financially in Morocco from the Netherlands, [and] that the [applicant] does not speak Arabic have not been substantiated by means of documents from an objectively verifiable source. Furthermore, it appears from ... [a] letter written by the sisters of the [applicant] that he does speak (a little) Berber.

...

The impugned decision states that since 15 February 2005 the [applicant] has been sentenced to a total of forty-one months' detention, set against a period of residence of less than seven years, and that he has been convicted of serious offences such as domestic violence, several counts of street mugging including bag-snatching, damaging cars, burglary, etc. It is also to be noted that the [Regional Court in criminal proceedings] provided the applicant with the opportunity to bring about a positive change in his behaviour by having him admitted for clinical treatment. The [applicant], however, did not make full use of this opportunity and was returned to prison.

In view of the nature of the offences of which the [applicant] has been convicted, he constitutes a serious threat to public order.

The entry ban is not in breach of the right to private life protected by Article 8 of the European Convention on Human Rights. Even though the [applicant] has built up social ties with the Netherlands given that he has lived in the Netherlands for more than twenty years, the Deputy Minister takes the view that those ties do not outweigh the fact that he has repeatedly been convicted of very serious offences. This finding is not altered by the claim that the [applicant] has no family and friends in Morocco, since [he] is an adult and is considered capable of managing by himself in Morocco."

23. On 10 June 2014 the applicant appealed against the rejection of his objection.

24. In support of his appeal he argued, *inter alia*, that for the purposes of the assessment of his claims under Article 8 of the Convention, the duration of his stay in the Netherlands from 1993, rather than only from 2005, ought to be taken into account. He posited that in the balancing exercise of all the interests at stake, the Deputy Minister had failed to acknowledge that only negligible weight should be attached to the very short gap in the duration of his lawful residence, for which he could not be blamed and which had been the result of a mere oversight on the part of his father rather than bad faith.

25. According to the applicant, more weight ought to be given to his and his family's interest in continuing to be able to enjoy family life in the Netherlands. Most of the offences enumerated in the impugned decision had been committed whilst he had still been a minor, and although the offence which had led to the revocation of his residence permit had admittedly not been of a petty nature, it had not involved either drug dealing or violence. He argued, with reference to the Court's judgment in *A.A. v. the United Kingdom* (no. 8000/08, 20 September 2011) that, as a young adult, he ought

to be given the time and the opportunity to mend his ways. On completion of the prison sentence which he was serving, the applicant wished to return on a voluntary basis to the institution where he had previously received treatment (see paragraph 11 above), in order to complete that treatment so as to be able to deal with his problems. A place was available for him in that institution provided that his residence in the Netherlands was lawful.

26. Furthermore, the applicant argued that owing to the very serious consequences of the car accident which had happened in 2009 (see paragraph 9 above), his removal from the Netherlands would be very hard for his family to bear. Having regard to his intellectual disability – which he claimed had led to him being granted social benefits (*Wajong-uitkering*) as of 26 June 2013 (which had been stopped on 22 October 2013 when his residence permit had been revoked) – it was also likely that, although officially an adult, he would not be able to manage by himself in Morocco, where he had no network and no knowledge of any of the country's official languages. In addition, the house which his family had used when they were in Morocco had belonged to his grandparents and was no longer in his family's possession.

27. By a judgment of 28 October 2014 the Regional Court of The Hague, sitting in Groningen, dismissed the appeal. It held that a gap in a period of lawful residence preceding the offence leading to the impugned measure was relevant for the determination of the duration of a period of lawful stay within the meaning of the relevant legal provision. Because the applicant had held a residence permit which was valid until 18 January 2005 and had subsequently been granted a residence permit as of 15 February 2005 (see paragraph 5 above), the period of lawful residence preceding his most recent offence had only started to run on the latter date.

28. As regards the applicant's claims under Article 8 of the Convention, the Regional Court held as follows:

"3.2 ... In the initial decision as well as in the impugned decision [the Deputy Minister] has provided sufficient reasons as to why he is of the view that, when it comes to the interference with [the applicant's] private and family life brought about by the revocation of his residence permit, the general interest outweighs the interest of [the applicant] in being allowed to remain in the Netherlands. The court finds that [the Deputy Minister] rightly took into consideration the fact that [the applicant] has not substantiated his alleged social and cultural ties to the Netherlands. The court further considers that, although [the applicant] has always lived with his parents in the Netherlands, he has not substantiated his claim that more than 'normal emotional ties' exist between himself, his parents and his siblings. The claims concerning his allegedly not yet fully formed personality, emotional immaturity and intellectual disability, as well as concerning the close ties between [the applicant] and his family since the traffic accident that occurred in 2009, are insufficient in this context. The court further finds that [the Deputy Minister] rightly found it relevant that it does not appear that the applicant, if he returned, would be unable to manage by himself in Morocco. He is an adult, has grown up in both the Dutch and Moroccan cultures, has visited Morocco at least once, and in any event speaks Berber to some extent.

Therefore, [the applicant's] reliance on Article 8 of the European Convention on Human Rights cannot succeed.

3.3 ... In support of his claim that [the Deputy Minister] should refrain from imposing an entry ban, [the applicant] referred to the same circumstances which he adduced in the context of his claim under Article 8 of the European Convention on Human Rights. The court has already expressed its view on that issue in paragraph 3.2. It finds that these grounds likewise do not constitute a reason to refrain, for humanitarian reasons, from imposing an entry ban. Therefore, this ground of appeal cannot succeed."

29. The applicant lodged a further appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*), arguing, *inter alia*, that the Regional Court had been wrong to agree with the Deputy Minister that the applicant had not substantiated his social and cultural ties to the Netherlands. The existence of such ties for an alien who, like the applicant, had been born in the Netherlands and had received primary and secondary education there, should be considered a given, and it was for the Deputy Minister to establish that such ties did not exist.

30. By a judgment of 10 July 2015 the Administrative Jurisdiction Division found that the applicant's further appeal did not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to section 91(2) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning was called for, as the arguments submitted did not raise any questions requiring a determination in the interests of legal unity, legal development or legal protection in the general sense. No further appeal lay against this decision.

II. DEVELOPMENTS AFTER THE INTRODUCTION OF THE APPLICATION

31. On 3 May 2016 the applicant was found guilty by the Rotterdam Regional Court of unlawful possession of an automatic firearm and ammunition, and was sentenced to twelve months' imprisonment. He had committed the offence on 26 October 2015. In its determination of the sentence the Regional Court took account of the fact that when the applicant and two others were stopped by the police, in addition to the – loaded – automatic firearm and ammunition, a number of balaclavas, tie wraps prepared for use as handcuffs, a baseball bat and a dagger had been found in their car.

32. On 24 December 2017 the applicant was arrested on suspicion of unlawful possession of firearms. Following the criminal investigation the applicant was handed over to the Aliens Police on 25 December 2017 and placed in immigration detention.

33. The applicant's immigration detention was terminated on 2 January 2018 when he was placed in the custody of the criminal justice authorities

on suspicion of having committed the offence of threatening a police officer. Following his arrest and an investigation into the offence, the applicant was again placed in immigration detention on 3 January 2018. He was released on 28 May 2018 following an assessment of the various interests involved.

34. On 26 March 2018 the single judge trying criminal cases (*politierechter*) at the Rotterdam Regional Court convicted the applicant of threatening police officers with violence on 25 December 2017, and sentenced him to ten days' imprisonment.

35. On 25 July 2018 the applicant was convicted by the Rotterdam Regional Court of unlawful possession, on 24 December 2017, of a firearm, ammunition and a silencer. He was sentenced to nine months' imprisonment.

36. On four occasions (21 January 2014, 18 December 2015, 7 March 2016, 11 January 2018 and 7 November 2018) the Dutch authorities presented the case of the applicant, who had indicated that he would not cooperate in his expulsion to Morocco, at the Moroccan consulate in Rotterdam with a view to obtaining a replacement travel document. On the last-mentioned date, the application for a replacement travel document was accepted for processing. At the date of the latest information available to the Court (15 January 2019), no such document had yet been issued.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

37. Under section 19 read in conjunction with section 18(1)(e) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), the responsible Minister may revoke a temporary residence permit if the individual concerned constitutes a threat to public order or national security. The basic principle behind the policy on denying an individual continued residence is that the stronger a person's ties with the Netherlands, the greater must be the public-order impact of the offence he or she has committed before a residence permit may be revoked. The impact is measured on the basis of the severity of the sentence imposed. The severity is assessed on a sliding scale against the length of the individual's period of residence at the time he or she committed the offence. The sliding-scale principle and further detailed rules on this point are laid down in section 3.86 of the Aliens Decree 2000.

38. In the context of the sliding scale, "sentence" refers to the non-suspended part of a sentence, and "period of residence" refers to the uninterrupted period during which the individual had lived in the Netherlands whilst in possession of a residence permit prior to committing the offence (section 3.86(6) of the Aliens Decree 2000).

39. At the relevant time – that is, on 21 October 2011 (see paragraphs 11-13 above) – subsection 1 of section 3.86 provided that the residence permit of an alien whose residence in the Netherlands was of a

duration set out in subsection 2 could be revoked if the total length of the non-suspended parts of the custodial sentences imposed was equal to or exceeded the threshold provided for in subsection 2. Thus, for aliens whose period of residence in the Netherlands was between six and seven years, the threshold laid down in subsection 2 of section 3.86 was thirty months. That threshold was ninety-six months for aliens whose period of residence in the Netherlands was between fifteen and twenty years.

40. Subsection 4 of section 3.86 provided that the residence permit of an alien whose residence in the Netherlands was of a duration set out in subsection 5 could be revoked if he or she had been convicted of at least five serious offences (*misdrijven*) and the total length of the non-suspended parts of the custodial sentences imposed was equal to or exceeded the threshold set out in subsection 5. For aliens whose period of residence in the Netherlands was between six and seven years, the threshold laid down in subsection 5 was seven months. The threshold was twelve months where the person's residence had lasted for at least ten years but less than fifteen years, and fourteen months for aliens whose period of residence in the Netherlands was at least fifteen, but less than twenty years.

41. In the assessment of whether or not to revoke a residence permit that was granted to an alien for the purpose of residing as a family member, proper account was to be taken of the nature and closeness of the family ties of the alien as well as the existence of family ties or cultural or social ties with the country of origin (section 3.86(13) of the Aliens Decree 2000). Moreover, pursuant to section 3.86(18), a residence permit must not be revoked if removal of the alien would be contrary to Article 8 of the Convention.

42. An entry ban is imposed on aliens who have been required to leave the Netherlands immediately, provided that they are not nationals of a European Union member State and/or their state of health does not make it inadvisable for them to travel (section 66a(1) of the Aliens Act 2000).

43. The imposition of an entry ban on an alien is considered to constitute interference with his or her private and family life and no ban is imposed where this would be contrary to Article 8 of the Convention; its compatibility with Article 8 must therefore be considered – within the framework of which a balancing exercise is to be carried out – before it is imposed (sections B7/3.8.2-3 and A4/2.2 of the Aliens Act 2000 Implementation Guidelines (*Vreemdelingencirculaire 2000*)).

44. Where an entry ban relates to an alien who constitutes a serious threat to public order or public security, its maximum length is ten years. Evidence of such a serious threat may consist, for example, in a conviction for a violent crime (section 6.5a(5) of the Aliens Decree 2000). The period of validity of the entry ban starts to run on the date on which the alien actually leaves the Netherlands (section 66a(4) of the Aliens Act 2000).

45. In order better to align Dutch policy with the Court’s case-law on family life within the meaning of Article 8 of the Convention between parents and young adult children, an amendment of section B7/3.8.1. of the Aliens Act 2000 Implementation Guidelines entered into force on 8 September 2016 (that is, after the proceedings in the present case had concluded). Under the current version of that provision, such family life is considered to exist between parents and their adult children, without more than the normal degree of dependency being required, if the adult child is a young adult (between 18 and around 25 years of age), is living with his or her parent(s) as a family, does not provide for himself or herself, and has not founded his or her own family.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant complained of unjustified interference with his right to respect for his private and family life as provided for in Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private and 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. Admissibility

47. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

48. The applicant maintained that he had family life within the meaning of Article 8 of the Convention with his parents and siblings, as his relationships with them went beyond the normal emotional ties between adult relatives. Thus, he was a young adult who had always, apart from periods spent in detention, lived with his parents. Further, the applicant claimed that as a result of the car accident in which the family had been involved in 2009 (see paragraph 9 above), the ties between the various family members had become particularly close. Besides that, the applicant

argued that he was more reliant on his parents than others of his age because he had a mild intellectual disability. In addition, owing to his lack of legal residence he had no means of generating an income and was therefore dependent on his family for his survival. His parents suffered from various health problems, partly due to the aforementioned accident, and the applicant helped them with chores.

49. Moreover, the applicant stated that since January 2018 he had been in a relationship with a Dutch woman. They did not live together, but would seek to deepen their relationship if the applicant's residence status in the Netherlands were more secure.

50. The applicant contended that the measures at issue were disproportionate. He had been born in the Netherlands and had lived there all his life. Had it not been for the delay of less than one month with which his parents had applied for the renewal of his residence permit when he was twelve years old (see paragraph 5 above), he would have acquired a residence permit of indefinite duration and his parents could then have applied for his naturalisation, whereupon his legal status would have corresponded to what he was in reality: a Dutch person.

51. According to the applicant he had committed the most serious of his offences in 2011 (see paragraph 11 above) and had subsequently been convicted of less serious offences, relating to the possession of firearms while he was travelling in a car with other persons (see paragraphs 31-35 above). He regretted having found himself in these circumstances and admitted that he had mixed with the "wrong friends". However, he was hopeful that his serious relationship with the above-mentioned woman and the fact that he was older now would help him get on the right track and remain there.

52. As to his ties with Morocco, the applicant submitted that these were almost non-existent. His Moroccan nationality was no more than a formality, a fact exemplified by the Moroccan authorities' refusal to cooperate with the Dutch authorities in order to facilitate the applicant's travel to that country (see paragraph 36 above). Furthermore, he had only notions of Berber, spoke no Arabic and had no knowledge of Moroccan culture. All his immediate family were living in the Netherlands and would be unable to accompany him to Morocco. The house which his family owned in Morocco was small and in a state of disrepair. His partner was a Dutch national and could not be expected to follow the applicant to Morocco as she did not speak any language spoken in that country and she had a job in the Netherlands. The applicant claimed that he would not be able to take care of himself in Morocco due to his mild intellectual disability.

53. Finally, the applicant submitted that he had lost his Moroccan passport and that his departure to Morocco was therefore dependent on the cooperation of the Moroccan authorities, which had so far proved elusive.

As a result, the measures at issue were deprived of any positive effect for the Netherlands, whereas they robbed the applicant of the opportunity to improve his life by obtaining a job and starting a family.

(b) The Government

54. The Government argued that the applicant did not have family life in the Netherlands that warranted protection under Article 8 of the Convention. In reply to the applicant's arguments (see paragraph 48 above) they submitted, firstly, that it had not been demonstrated that there were additional elements of dependency between the applicant – who was an adult when the impugned measures had been imposed – and his parents other than the normal emotional ties. Although the Government understood the applicant's situation and recognised that a past traumatic event and a mild intellectual disability could to some extent affect an individual's personal life, they believed that these factors alone did not explain and certainly did not excuse the applicant's very serious and repeated criminal behaviour. This view was strengthened by the fact that the applicant had been able to function effectively on many occasions throughout his life, such as at secondary school where, according to his records, he had outperformed many of his peers and as a result had been moved from the lower level practical education (*praktijkonderwijs*) to the higher level of pre-vocational secondary education (*voorbereidend middelbaar beroepsonderwijs*). Secondly, the Government considered that the purported relationship between the applicant and a Dutch woman (see paragraph 49 above) had not been substantiated in any way.

55. The Government accepted that the applicant's expulsion interfered with his right to private life, but they maintained that the measures at issue had been taken in accordance with the law and pursued a legitimate aim.

56. Moreover, these measures were necessary in a democratic society. In this context the Government submitted that the applicant was a notorious repeat offender who had been convicted of serious violent offences that had had a serious impact on public order. Although the applicant had committed some of the offences of which he had been convicted while still at a young age, his long period of residence in the Netherlands did not alter the fact that conditions could be attached to his continued residence, especially in view of the fact that since reaching the age of majority he had persisted in committing offences of increasing seriousness, despite knowing that this behaviour could affect his right of residence. The Government thus did not discern any improvement in the conduct of the applicant.

57. As to the relevance of the short period in 2005 during which the applicant had not held a residence permit, the Government considered that it was pure speculation on his part to contend that, had it not been for that gap, he would have been issued with a residence permit of indefinite duration or even become a naturalised Dutch national. They noted that the application

submitted in 2005 had been for the renewal of the applicant's temporary residence permit (see paragraph 5 above), and thus not for a residence permit of indefinite duration or for naturalisation. They further added that under section 3.86(5) of the Aliens Decree 2000 as in force at the relevant time (see paragraph 40 above) the authorities could have revoked the applicant's residence permit regardless of the short gap in his lawful residence.

58. The Government acknowledged that the applicant had strong family ties with the Netherlands, the country where he had lived since birth and whose language he spoke. However, he was an adult with Moroccan nationality; he had been raised by two Moroccan-born parents; he had been to Morocco before; he spoke Berber and had family members living in Morocco. It had further emerged in the course of one of the criminal trials that his parents had a house in Morocco where the applicant would be able to live. The Government therefore considered that it could be assumed that the applicant would be able to build a life for himself in Morocco, if necessary under the supervision and with the support of family members in the Netherlands and Morocco.

59. In the view of the Government, the national authorities had made a thorough assessment of the applicant's circumstances, had carefully balanced the competing interests, and had taken into account the criteria set out in the Court's case-law, with the result that a fair balance had been struck.

60. Finally, the Government submitted that it was not the case that the Moroccan authorities were refusing to cooperate in the applicant's removal to Morocco; those authorities had, in November 2018, accepted an application for a replacement travel document to be issued to the applicant (see paragraph 36 above). Rather, it was the applicant who had not been prepared to cooperate in applying for such a document. The fact that it had not so far proved possible to remove the applicant to Morocco should not lead to the conclusion that the Government intended to accept his unlawful residence in the Netherlands.

2. *The Court's assessment*

61. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. To that end they have the power to deport aliens convicted of criminal offences (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of

criminal offences. However, an interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "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 *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII).

(a) Whether there was interference with the applicant's right to respect for his private and family life

62. The Court notes that it is not in dispute between the parties that the decisions to revoke the applicant's residence permit and to impose an entry ban on him interfered with his right to respect for his private life (see paragraph 55 above). It sees no reason to find otherwise. However, the parties' opinions differed as to whether the applicant had a family life to be protected under Article 8 (see paragraphs 48 and 54 above).

63. The Court reiterates that the question whether an applicant had "family life" within the meaning of Article 8 falls to be determined in the light of the position when the impugned measure became final (see *Maslov v. Austria* [GC], no. 1638/03, § 61, ECHR 2008, with further references). In the present case, the applicant – who had already come of age at the time the initial decision of 22 October 2013 was taken (see paragraph 13 above) – was twenty-two years old when the decisions at issue became final in July 2015 following the ruling of the Administrative Jurisdiction Division of the Council of State (see paragraph 30 above).

64. In its case-law in immigration cases, the Court has laid down as a general rule that relationships between adult relatives do not necessarily attract the protection of Article 8 without further elements of dependency involving more than the normal emotional ties (see, for instance, *Konstadinov v. the Netherlands*, no. 16351/03, § 52, 26 April 2007, and *Z. and T. v. the United Kingdom* (dec.), no. 27034/05, ECHR 2006-III). However, it has not insisted on such further elements of dependency in a number of cases concerning young adults who were still living with their parents and had not yet started a family of their own (see *Bouchelkia v. France*, 29 January 1997, § 41, *Reports* 1997-I; *Ezzouhdi v. France*, no. 47160/99, § 26, 13 February 2001; *Maslov*, cited above, §§ 62 and 64; *Osman v. Denmark*, no. 38058/09, §§ 55-56, 14 June 2011; and *Yesthla v. the Netherlands* (dec.), no. 37115/11, § 32, 15 January 2019). Indeed, domestic law currently reflects that case-law (see paragraph 45 above). Since those were also the circumstances in which the applicant found himself at the relevant time, the Court sees no reason to address the parties' submissions as regards the existence or not of further elements of dependency. The Court is therefore satisfied that the applicant's relationship

with his parents constituted family life within the meaning of Article 8 of the Convention.

65. However, on the basis of the lack of detailed information provided about the relationship which the applicant claimed he had recently – in January 2018 – started with a Dutch woman (see paragraph 49 above), the Court cannot find that this amounts to family life. Instead, it notes that such a relationship belongs to the realm of the applicant’s private life within the meaning of Article 8, given that that concept encompasses the totality of social ties between settled migrants and the community in which they are living (see *Üner*, cited above, § 59).

66. Accordingly, the decision to expel the applicant interfered with his right to respect for both his family and his private life.

(b) “In accordance with the law”

67. The parties did not dispute that the revocation of the applicant’s residence permit and the imposition of an entry ban had been in accordance with the law. The Court notes that these measures were taken pursuant to section 19 read in conjunction with section 18(1)(e) of the Aliens Act 2000, and to section 66a(1) of the Aliens Act 2000 and section 3.86 of the Aliens Decree 2000 (see paragraphs 37-38 and 40-42 above).

(c) “Legitimate aim”

68. The Court has no difficulty in accepting that the impugned measures pursued the legitimate aims of the interest of public safety and of the prevention of disorder or crime (see *Üner*, cited above, § 61). It remains to be ascertained whether they were also “necessary in a democratic society” within the meaning of the Court’s case-law.

(d) “Necessary in a democratic society”

(i) General principles

69. The relevant criteria for assessing whether the revocation of the residence permit and the imposition of an entry ban were necessary in a democratic society and proportionate to the legitimate aims pursued under Article 8 of the Convention have been laid down by the Court in its case-law (see *Üner*, cited above, §§ 57-58, and *Maslov*, cited above, §§ 68-76).

70. In a case like the present one, where the person who is to be expelled and barred from re-entry for a certain duration has not yet founded a family of his own, the relevant criteria are:

- the nature and seriousness of the offences committed by the applicant;
- the time elapsed since the offence was committed and the applicant’s conduct during that period;

- the length of the applicant’s stay in the country from which he or she is to be expelled;
- the solidity of social, cultural and family ties with the host country and with the country of destination; and
- the duration of the exclusion order (see *Maslov*, cited above, §§ 71 and 98, and *Külekci v. Austria*, no. 30441/09, § 39, 1 June 2017).

71. Moreover, for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (see *Maslov*, cited above, § 75).

72. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but that it goes hand in hand with European supervision. The Court’s task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual’s rights protected by the Convention on the one hand and the community’s interests on the other (see *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X; *Boultif v. Switzerland*, no. 54273/00, § 47, ECHR 2001-IX; and *M.P.E.V. and Others v. Switzerland*, no. 3910/13, § 53, 8 July 2014).

(ii) *Application of these principles to the present case*

73. Turning to the circumstances of the present case the Court notes in the first place that before turning eighteen the applicant had already amassed three criminal convictions (see paragraphs 6-8 and 10 above). Some of the offences concerned – such as assault, theft accompanied by an act of violence, and domestic violence – certainly cannot be regarded as mere acts of juvenile delinquency (compare *Maslov*, cited above, § 81 *in fine*). Moreover, after he had turned eighteen, the applicant committed an armed robbery on 21 October 2011 (see paragraph 11 above), which was undoubtedly a very serious offence, as evidenced by the fact that it gave rise to a sentence of three years’ imprisonment.

74. The Court therefore cannot but agree with the domestic authorities that the applicant’s behaviour constituted a threat to public order and security.

75. The Court next observes that the applicant did not reoffend during the period of about three years and eight months that elapsed between the commission of the offence of armed robbery and the final decision of the Administrative Jurisdiction Division of the Council of State of 10 July 2015 on the revocation of his residence permit and the imposition of an entry ban (see paragraph 30 above). However, for most of this time he was incarcerated (see paragraph 11 above). Whilst the applicant was provided, during his detention, with an opportunity to work on improving his behaviour through treatment at an institution, a lack of motivation and openness on his part meant that the treatment was stopped before it was

completed (*ibid.*). Despite the fact that the applicant subsequently expressed a desire to complete the treatment on a voluntary basis after he had finished serving his sentence (see paragraph 25 above) (completion of the treatment apparently did not come about due to the fact that he no longer had lawful residence in the Netherlands), the Court considers that the applicant's conduct during that period carries less weight than the serious nature of his criminal offences.

76. Given that it is the Court's task to examine the compatibility with the Convention of the applicant's actual removal and not of the final removal order (see *Maslov*, cited above, § 93), the assessment of the proportionality of a deportation under Article 8 of the Convention in a case like the present, where the applicant has not yet been removed, is to be conducted at the time of the proceedings before the Court (see *A.A. v. the United Kingdom*, no. 8000/08, § 67, 20 September 2011). Account is thus also to be taken of the applicant's conduct after the decisions to revoke his residence permit and impose an entry ban became final.

77. In that context, the Court finds it of considerable relevance that the applicant committed a further serious criminal offence, namely unlawful possession of a loaded automatic firearm and ammunition, on 26 October 2015 – less than four months after the final ruling of the Administrative Jurisdiction Division of the Council of State and within, at most, about a year after he had been released from prison (see paragraphs 11 and 30-31 and above). This was followed by a further two convictions in quick succession, on 26 March and 25 July 2018; one of these offences also involved the unlawful possession of a firearm (see paragraphs 34 and 35 above).

78. It therefore does not appear that between his first conviction in 2006 and the two convictions in 2018 – which are the applicant's most recent convictions of which the Court has been informed – there was a significant period during which the applicant was not involved in criminal activities, other than the time when he was serving his sentence for armed robbery.

79. Turning now to the length of the applicant's stay in the Netherlands, the Court observes that he was born in that country, has lived there all his life with his parents, and received all his schooling there. His parents and siblings either hold Dutch nationality or have a right of residence (see paragraph 4 above). In these circumstances, the Court does not doubt that the applicant has strong ties with the Netherlands.

80. To the extent that the applicant argued that too much emphasis had been placed by the domestic authorities on the period of one month in 2005 when he did not have legal residence (see paragraph 5 above), the Court notes that this issue relates to the legal basis for the interference and not to the question whether that interference was necessary in a democratic society. The Court observes that in the latter context, the authorities did

acknowledge that the applicant had lived in the Netherlands all his life (see paragraphs 14, 22 and 28 above).

81. The Court accepts that the applicant's ties with Morocco are limited. Nevertheless, and although the Court would not wish to underestimate the practical difficulties which settling in Morocco would entail for him, no evidence has been adduced which would indicate that it would be either impossible or exceptionally difficult for him to do so. In particular, no evidence has been provided to substantiate the claim that the applicant would not be able to fend for himself owing to his mild intellectual disability. In this respect it is observed that the applicant appears to have performed well at school before he dropped out (see paragraphs 9 and 54 above), and that he also worked in a call centre for some time (see paragraph 9 above). It is also noted that the applicant was brought up by Moroccan-born parents, that he speaks some Berber – the language of a sizeable proportion of the population of Morocco (see *Tajdirti v. the Netherlands* (dec.), no. 22050/04, 11 October 2005) – and that accommodation is available for him there, even if this is in need of some repair (see paragraphs 52 and 58 above). In addition, he did not advance any substantiated arguments which would call into question the possibility for his family to visit him in Morocco and to stay in contact via telephone and the Internet.

82. As regards, finally, the duration of the entry ban, the Court has previously found such a ban disproportionate on account of its unlimited duration (see, for instance, *Ezzouhdi*, cited above, § 34 *in fine*, and *Keles v. Germany*, no. 32231/02, §§ 65-66, 27 October 2005) while, in other cases, it has considered the limited duration of a residence prohibition as a factor weighing in favour of its proportionality (see, for instance, *Benhebbba v. France*, no. 53441/99, § 37, 10 July 2003, and *Üner*, cited above, § 65).

83. The Court appreciates that the entry ban imposed on the applicant has even more far-reaching consequences than the withdrawal of his permanent residence permit, as it renders even short visits to the Netherlands impossible for as long as the order is in place. However, having regard to the nature and the seriousness of the offences committed by the applicant, and bearing in mind that the entry ban is limited to ten years, the Court cannot find that the respondent State assigned too much weight to its own interests when it decided to impose that measure (see *Üner*, cited above, paragraph 65).

84. As previously stated, very strong reasons are required to justify the deportation of settled migrants (see paragraph 71 above). Indeed, the Court has no doubt that the impugned measures will have a very serious impact on the applicant's family and private life, given his length of residence in the Netherlands and his limited ties to his country of origin. Nevertheless, having regard in particular to the persistent and serious nature of the applicant's offending, the Court considers that a fair balance was struck by

the national authorities in this case in that the applicant's expulsion and exclusion from the Netherlands was proportionate to the aims pursued and therefore necessary in a democratic society.

85. Accordingly, the Court finds that the applicant's expulsion and the implementation of the entry ban would not be in violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that the applicant's expulsion and the implementation of the entry ban would not be in violation of Article 8 of the Convention.

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Jon Fridrik Kjølbro
President