



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

FOURTH SECTION

CASE OF A.A. v. THE NETHERLANDS

(Application no. 7481/23)

JUDGMENT

Art 8 • Positive obligations • Family life • Refusal of the applicant's application for family reunification with five of his minor children born of polygamous marriages with his second and third wives, contracted in Yemen • Existence of family life between the applicant and his five children despite the non-recognition of polygamous marriages in the Netherlands • Applicant's decision to maintain all three marriages and not legitimise the situation, in knowledge of the ban and that his children would face immigration difficulties as a result • Existence of a strong European consensus as to the ban on polygamy • Wide margin of appreciation to be afforded to member States in deciding whether to allow family reunification between fathers and children born of polygamous marriages • Assessment of all relevant circumstances • Fair balance struck between competing interests at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 September 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.A. v. the Netherlands,

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

Lado Chanturia, *President*,

Faris Vehabović,

Anja Seibert-Fohr,

Ana Maria Guerra Martins

Anne Louise Bormann,

Sebastian Rădulețu,

András Jakab, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 7481/23) 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 Yemeni national, Mr A.A. (“the applicant”), on 9 February 2023;

the decision to give notice to the Government of the Kingdom of the Netherlands (“the Government”) of the complaint concerning the applicant’s right to respect for his family life;

the withdrawal from the case of Ms Corinna Wissels (Rule 28 of the Rules of Court), the judge elected in respect of the Kingdom of the Netherlands, and the appointment by the President of Ms Anne Louise Bormann to sit as *ad hoc* judge (Rule 29 § 2);

the decision not to have the applicant’s name disclosed;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the European Centre for Law and Justice (ECLJ), which was granted leave to intervene by the President of the Section;

Having deliberated in private on 8 July 2026,

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

INTRODUCTION

1. The case concerns the Dutch authorities’ refusal of the applicant’s request for residence permits for five of his minor children, who were born of marriages with his second and third wives. It raises issues under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Helvoirt. He was represented by Ms E.E.M. Bezem and Ms I.C. van Krimpen, lawyers practising in Amsterdam.

3. The Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant contracted polygamous marriages in Yemen with three women. Eight children were born of his marriage with his first wife, three children of his marriage with his second wife and two children of his marriage with his third wife.

6. On 17 October 2018 the applicant entered the Netherlands and applied for a temporary asylum residence permit (*verblijfsvergunning asiel voor bepaalde tijd*). The permit was granted on 12 July 2019 on the basis of section 29(1)(a) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), and was valid from 23 October 2018 until 23 October 2023. On 20 November 2023 the applicant was issued with a permanent asylum residence permit (*verblijfsvergunning asiel voor onbepaalde tijd*), which was valid from 23 October 2023.

II. APPLICATION FOR FAMILY REUNIFICATION

7. On 25 July 2019 the applicant applied to the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst* – IND), seeking provisional leave to remain for the purpose of family reunification (*nareis*) for his first wife and his 13 children, who had been born to his first, second and third wives. At that time, his family members were all in Türkiye.

8. In a letter of 30 August 2019, the IND informed the applicant that his polygamous marital situation with three women was contrary to public order in the Netherlands. He was asked to choose which marriage he wished to have recognised as a legal marriage under Dutch law, and was informed that only the wife and the children of that marriage would be eligible for family reunification under the applicable legislation.

9. In a letter of 16 September 2019, the applicant informed the IND that he wished to maintain his application for family reunification as it stood – that is, in respect of his first wife and the children from all three marriages. The authorities considered that, in doing so, the applicant had opted to have his first marriage recognised under Dutch law.

10. On 27 December 2019 the IND granted the application for family reunification in respect of the applicant's first wife and their eight children and denied it in respect of the five children born of the applicant's marriages with his second and third wives (R., Ra., W., N. and A.), on the grounds that polygamy was contrary to public order in the Netherlands. The legal basis for denying the application was Article 4(4) of Council Directive 2003/86/EC on the right to family reunification ("the Family Reunification Directive"), as

implemented in section 3.16 of the Aliens Decree 2000, which contains an exception to family reunification in cases of polygamy.

A. Objection

11. On 21 January 2020 the applicant lodged an objection (*bezwaarschrift*) against the IND's decision in respect of his five children born of his second and third marriages, and on 21 February 2020 he submitted detailed grounds for the objection. The applicant contended that polygamy was not automatically contrary to public order in the Netherlands and that each case had to be assessed on its facts. He argued that the State Secretary should have taken into consideration the specific circumstances of the case, namely that a divorce in Yemen would entail severe consequences for his second and third wives, such as "social stigma and discrimination"; that his children lived in disadvantaged circumstances in Türkiye because they only held temporary residence cards (*kimlik*), which allowed them limited access to services; and that it was impossible for the children to return to Yemen because of a real risk of ill-treatment, which was related to the human rights activities of the applicant and their mothers.

12. On 10 June 2020 the IND asked the applicant about the possibility of divorce, which would bring the polygamous situation to an end and make the children from his second or third marriages eligible for family reunification under section 3.16 of the Aliens Decree 2000. In his replies of 1 and 30 July 2020, the applicant stated that it would not be possible for him to contact the Yemeni authorities and that his second and third wives had concerns about their future status as divorced women. On 30 July 2020 the applicant alleged that divorce would entail adverse consequences for his second and third wives, such as social stigma, exclusion, and pressure to return to Yemen and remarry. He argued that those consequences outweighed the Netherlands' interests in protecting public order. In addition, the applicant argued that his five children from his second and third marriages were having difficulty integrating in Türkiye and stated that it was too dangerous for them to return to Yemen, their country of origin, because of the threats directed at him and his family as a result of their human rights activities and the political situation there.

13. On 27 August 2020 the applicant was notified that he would be heard by an IND objections committee. Owing to the COVID-19 pandemic, it was decided in consultation with the applicant and his legal representative that the hearing would be conducted in writing.

14. On 7 September 2020 the IND sent a letter to the applicant, asking for additional clarifications. The applicant provided proof of bank transfers as evidence that he was supporting his family with his second and third wives financially. The letter also contained further material related to threats directed at the applicant which had been sent to his mobile phone.

15. On 28 September 2020 the applicant submitted declarations from his second and third wives in which they consented to their children living with their father in the Netherlands.

16. On 12 October 2020, in response to a request by the IND on 28 September 2020, the applicant submitted a translation of further evidence concerning recent death threats and threats of various forms of violence aimed at him and his family, and asked that that evidence be considered in the decision-making process.

17. In a decision of 21 January 2021, the IND held that the applicant's objection to the refusal of the application for family reunification was manifestly ill-founded, and as a consequence the contested decision of 27 December 2019 remained in force. In its decision, the IND considered that the applicant was already bound by a marriage recognised in the Netherlands and that therefore – on the basis of section 3.16 of the Aliens Decree 2000, with reference to paragraph B7/3.2.6 of the Aliens Act 2000 Implementation Guidelines (*Vreemdelingencirculaire* 2000) – a residence permit would be issued to only one wife and the minor children born to that foreign national. The IND pointed out that the State had an interest in protecting public order and that polygamy was contrary to public order in the Netherlands, and as a consequence the IND attached great weight to the applicant's polygamous situation in its considerations, to his detriment. The IND considered that the applicant had a right to respect for family life under Articles 7 and 24 of the Charter of Fundamental Rights of the European Union and Article 8 of the Convention, and that the interests of the children had to be taken into account. However, those Articles "confer[red] no subjective right" to be admitted to the territory of a State, and States enjoyed "a certain margin of appreciation when examining applications for family reunification". In assessing the interests involved, the IND explicitly considered the circumstances in which the applicant's children were living but concluded that the assessment did not weigh in the applicant's favour, informing him as follows:

"On the basis of Article 5(5) and Article 17 of Directive 2003/86/EC, the interests and the personal situation of the applicants in the present case have been carefully examined and weighed.

In that regard, it was taken into account that the applicants are not living in dire circumstances. After all, you stated that the applicants are currently living in Türkiye, on the basis of a tourist visa, with your second and third wives – their biological mothers, with whom they have always lived.

It is also apparent that each of the applicants has a *kimlik* [temporary protection identification document] since all of them have submitted a copy of the document. The 2019 General Country of Origin Information Report on Türkiye states as follows: 'Refugees registered in [Türkiye] as applicants for international protection receive a refugee identity card from the Turkish government after their registration interview: the *international protection applicant identity card*. Their stay in [Türkiye] is thus approved. The document gives refugees access to government services in [Türkiye]. The temporary protection identity document is called a *Geçici Koruma Kimlik Belgesi*

or *kimlik* for short, and includes a foreigner identification number'. The applicants therefore have a *kimlik*, which gives them access to government services and provisions in Türkiye.

In addition, the applicants are living with their biological mothers in Türkiye, which means they have a stable living environment. Furthermore, the applicants have access to housing and schools in Türkiye. You also stated that your family has access to private medical clinics. These clinics are indeed, as you stated, very expensive, but they are accessible in an emergency.

Given the foregoing, it can be concluded that the applicants' stay in Türkiye, which you characterise as illegal, cannot be deemed an obstacle to exercising family life in Türkiye.

In addition, you have not been caring for the applicants since your departure from Yemen. Your children have lived in Türkiye since 2015 with their biological mothers, who take care of them. You can continue your family life with the applicants in the same way as you do now, by maintaining contact by phone and internet or by visiting them. In March 2020 you went to Türkiye to visit the applicants and your wives.

In view of all the above considerations, it has been concluded that no special circumstances and/or compelling interests have been adduced that justify granting the application."

B. Judicial review

18. On 19 March 2021 the applicant submitted an application for judicial review. He argued that the case did not concern the facilitation of a polygamous marriage because he had not submitted a request for family reunification with his second and third wives, but only in respect of his children born of his second and third marriages, with the consent of the children's mothers. In the applicant's view, none of the provisions of the law concerning aliens or of civil or criminal law in the Netherlands supported the stance that polygamy was automatically contrary to public order in the country. He reiterated his previous argument that polygamy was not automatically contrary to public order in the Netherlands and that each case should be assessed on its facts. The applicant emphasised that the purpose of the refusal to grant family reunification in cases of polygamy was to protect the rights of the women and children involved. However, in his case the rejection of his application for family reunification with his children had not served that purpose because polygamy was lawful in Yemen, his wives had voluntarily contracted polygamous marriages with him, and in the event of divorce, his wives would face social stigma and discrimination as divorced women in Yemen. He further argued that the State Secretary should also have taken into consideration the activities of his second wife as a women's rights activist and the real risk that his second and third wives and their children would be ill-treated in Yemen because of the applicant's activities related to the protection of human rights. The applicant maintained that the State Secretary had given insufficient weight to the children's interest in being reunited with their father in the Netherlands and their dependency on his care.

The applicant reiterated his previous arguments concerning the position of his children in Türkiye (see paragraph 11 above). He also submitted a psychometric evaluation of R., drafted on 28 May 2019 by a clinical psychologist at the Medipol Mega University Hospital in Istanbul, who described him as having cognitive difficulties, mainly connected with his lack of proper understanding of the Turkish language.

19. On 21 September 2021 the District Court of The Hague, sitting in Amsterdam, declared the applicant's application for review of the decision of 21 January 2021 unfounded. The District Court held that, in the contested decision, the IND had wrongly stated that the objection had been manifestly ill-founded. It had been a manifest clerical error and saw no further reason to attach consequences to it. It considered that the defendant had been, in principle, authorised to deny the application for family reunification owing to the polygamous situation on the basis of section 2p(1) of the Aliens Act 2000 in conjunction with section 3.16 of the Aliens Decree 2000. However, under Article 5(5) and Article 17 of the Family Reunification Directive, the IND was required to conduct an individualised assessment and to weigh all the relevant interests. According to established case-law, that assessment was analogous to the assessment under Article 8 of the Convention. The District Court considered that the relevant interests had been assessed correctly:

“4.2. The next matter to be considered is which of the plaintiffs' interests can be taken into account in the assessment. The plaintiffs argued, *inter alia*, that [K. – the applicant's second wife] and the sponsor's daughters have been subjected to threats on social media and that returning to Yemen would have consequences for the safety of the plaintiffs and their mothers. To support their position, the plaintiffs referred, *inter alia*, to various judgments of the Court of Justice of the European Union ('the Court of Justice'). The plaintiffs' argument fails. As the defendant also argues, the elements adduced by the plaintiffs are asylum-related in nature and cannot be addressed in proceedings such as these, which concern family reunification. Such elements are exclusively a matter for asylum proceedings. Furthermore, it cannot be inferred from the judgments cited by the plaintiffs that such elements should in fact play a role. The Court of Justice held in the judgments that it must be taken into consideration that family life cannot be exercised in the country of origin, that families are sometimes separated from each other for a long time and that it may be more difficult to comply with the requirements laid down in the Family Reunification Directive concerning accommodation, sickness insurance and income. The Court of Justice specifically did not hold that asylum-related problems of the family members of the individual seeking family reunification could play a role.

4.3. That leaves the interests that can be considered on the basis of Articles 5 and 17 of the Family Reunification Directive [to be taken into account]. These primarily constitute the interests of the plaintiffs, who are minors. The defendant takes the position that the outcome of the assessment of interests does not warrant granting provisional leave to remain (MVV). In the contested decision and the statement of defence, and at the hearing, the defendant based this on the fact that the children were not living in dire circumstances. According to the defendant, they live in a stable social environment with their mothers in Türkiye, they have access to healthcare and education and, as is evident from the *kimlik* submitted, they are beneficiaries of international protection provided by the Turkish authorities. In these circumstances, it

was reasonable, in the District Court’s opinion, for the defendant to conclude that there were no compelling interests requiring that the applications be granted despite the polygamous situation. The plaintiffs asserted that there were in fact compelling interests, but provided very little substantiation or further specifics. During judicial review proceedings, the plaintiffs’ authorised representative submitted a psychometric report concerning [R. – one of the children living in Türkiye], from which it can be inferred that he has learning difficulties. However, that is an insufficient reason to conclude that the assessment of interests should have led to a different conclusion.

5. The conclusion is that the contested decision withstands judicial scrutiny. ...”

C. Appeal proceedings

20. On 19 October 2021 the applicant lodged an appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State* – “the Administrative Jurisdiction Division”) against the judgment of 21 September 2021 of the District Court of The Hague, sitting in Amsterdam. On 25 November 2021 and 2 February 2022, the applicant supplemented the notice of appeal by submitting additional grounds. He reiterated his previous arguments (see paragraphs 11 and 18 above) and added that the State Secretary should have also taken into consideration: the changing social views on family structures in the Netherlands, including the acceptance of polyamorous relationships; the asylum-related problems of the applicant’s family, such as the real risk of ill-treatment in Yemen, the threats they had received via social media, the impossibility of their living in Yemen and their interest in exercising family life in the Netherlands; and the best interests of the applicant’s children born of his second and third marriages and their dependence on him.

21. By a judgment of 13 October 2022, the Administrative Jurisdiction Division upheld the lower court’s judgment, dismissing the applicant’s appeal as unfounded. The relevant part of the judgment reads as follows:

“4.1. Under Article 4(4) of the Family Reunification Directive, Member States may limit the family reunification of minor children in the event of a polygamous relationship. The legislature implemented this limitation in section 3.16 of the Aliens Decree 2000. The District Court correctly held that the State Secretary had been justified in taking the position that the point of departure in the Netherlands is that polygamy is contrary to public order. As the Administrative Jurisdiction Division considered in paragraph 2.4 of its judgment of 11 December 2013 (ECLI:NL:RVS:2013:2453), according to prevailing social norms in the Netherlands, polygamy is contrary to public morality and public order. The fact that polygamy is prohibited by law confirms this. Article 1:33 of the Civil Code (*Burgerlijk Wetboek*) states that a person may be joined in marriage with only one other person at a time, and under Article 237 of the Criminal Code (*Wetboek van Strafrecht*), entering into a bigamous marriage is a criminal offence. The changing views in society about family structures referred to by the foreign nationals, such as the acceptance of polyamory in the Netherlands, do not alter the fact that the District Court correctly held that the point of departure is that polygamy is contrary to public order and that the Dutch State therefore does not facilitate it.

...

5. As the Administrative Jurisdiction Division considered in paragraphs 6 and 7 of its judgment of 31 January 2020 (ECLI:NL:RVS:2020:329), the State Secretary must nevertheless make an individualised assessment in all cases if he wishes to invoke this limitation in respect of a foreign national. In that judgment, the Administrative Jurisdiction Division also held that the State Secretary may, in that assessment, attach great weight to the fact that a child was born of a polygamous relationship that is deemed to be contrary to public order. In this case, the State Secretary made such an individualised assessment and was entitled to attach great weight to the polygamous situation to the detriment of the foreign nationals, as the District Court correctly held. The State Secretary therefore did not deny the foreign nationals' application solely on the grounds of a breach of public order, and for that reason their reference to the Court of Justice's judgments of 12 December 2019 (E.P., ECLI:EU:C:2019:1071, and V.G., ECLI:EU:C:2019:1072) concerning the public-order criterion under EU law can be of no use to them.

5.1. Both grounds for appeal fail.”

22. The Administrative Jurisdiction Division dismissed the other grounds for appeal by means of an abridged statement of reasons, because in its opinion those grounds could not lead to the District Court's judgment being set aside.

23. With that judgment, the rejection of the applicant's application for family reunification with his five children born of his second and third marriages became final.

D. Further developments

24. According to the Government, the applicant's second wife applied for asylum in the Netherlands, and her application was granted on 24 June 2025. On 18 July 2025 she applied for family reunification with her children, who had come with her to the Netherlands as well. That application appears to be pending. The applicant did not make any submissions or comments in that regard.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Aliens Act 2000

25. The relevant part of the Aliens Act 2000 reads as follows:

Section 29

“1. A temporary residence permit, as referred to in section 28, may be issued to an alien:

a. who is a refugee within the meaning of the Refugee Convention; or

...

2. A temporary residence permit as referred to in section 28 may further be issued to the following family members, provided that they belonged to the family of the alien referred to in subsection 1 at the time of his or her entry into the Netherlands and that they entered the Netherlands either simultaneously with that alien or within three months of the date on which that alien was granted a temporary residence permit as referred to in section 28:

a. the spouse or minor child of the alien referred to in subsection 1;

b. an alien who, as the partner or adult child of the alien referred to in subsection 1, is dependent on that alien to such an extent that he or she is considered to belong to his or her family for that reason;

c. the parents of the alien referred to in subsection 1, if that alien is an unaccompanied minor within the meaning of Article 2(f) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003, L 251).

...

4. A temporary residence permit as referred to in section 28 may likewise be issued to a family member as referred to in subsection 2 who did not follow the alien within three months of the date on which the alien referred to in subsection 1 was granted a temporary residence permit as referred to in section 28, provided that an application for provisional leave to remain (MVV) was submitted by or on behalf of that family member within those three months.

..."

B. Implementation Guidelines

26. Chapter B7 of the Aliens Act 2000 Implementation Guidelines sets out the policy on assessing regular family reunification applications. In relation to polygamy, the regular policy set out in paragraph B7/3.1.4 applies. It reads as follows:

"The IND will deny the application of the foreign spouse and any other family members if the sponsor residing in the Netherlands lives with another man or woman on a long-term basis."

27. The rule governing family reunification applications is laid down in paragraph C2/4.1.3 of the Aliens Act 2000 Implementation Guidelines, which sets out the policy on assessing asylum-related family reunification as follows:

"A polygamous situation exists if the alien or the person with whom the alien intends to live is at the same time married to or in a long-term relationship (for example, a registered partnership) with another person (or more than one other person).

If a polygamous situation exists, the question as to whether the family member falls within the target group of section 29(2) of the Aliens Act 2000 becomes relevant. If that is the case, the application will be deemed to fall within the scope of the family reunification procedure. If that is not the case, the applicant will be referred to a regular procedure or procedures. If the application falls within the scope of the family reunification procedure, the IND is obliged to make an individualised assessment, and

in doing so must take into account all of the factors set out in Article 5(5) and Article 17 of the Family Reunification Directive and Articles 7 and 24 of the EU Charter [of Fundamental Rights].

An important element of such an assessment is that only a spouse, registered partner or partner and any children born of that marriage/relationship are eligible to be considered for a residence permit. If the sponsor residing in the Netherlands lives with another man or woman on a long-term basis, the legal spouse and any other family members are not eligible to be considered for a residence permit.”

C. Aliens Decree 2000

28. Section 3.16 of the Aliens Decree reads as follows:

“If the alien or the sponsor is bound to more than one other person by marriage or partnership, a residence permit, as referred to in section 3.13(1) shall be granted to only one spouse, registered partner or partner at a time, and to any minor children born to that alien.”

II. EUROPEAN UNION

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251, p. 12

29. The Family Reunification Directive is the main EU secondary legislation dealing with family reunification rights of third-country nationals (that is, those who are not nationals of an EU Member State). The purpose of the Family Reunification Directive is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States. The relevant provisions of the Family Reunification Directive read as follows:

“Whereas:

...

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice [to] the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.”

Article 4

“...

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.”

Article 6

“1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.”

III. UNITED NATIONS

Convention on the Elimination of All Forms of Discrimination against Women

30. The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 by the United Nations General Assembly. In 1994 the Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 21 on equality in marriage and family relations. The Netherlands ratified CEDAW on 23 July 1991.

31. The relevant part of that Recommendation reads as follows:

Article 16

“1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

...;

Comment

...

Polygamous marriages

14. States parties’ reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the

constitutional rights of women, and breaches the provisions of article 5 (a) of the [CEDAW].”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained that the refusal to grant family reunification with five of his children had violated his right to respect for family life under Article 8 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to respect for his ... 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

33. The Court notes that this complaint 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

34. The applicant contended that the margin of appreciation afforded to the Member States in a situation such as in the present case was narrow, given his refugee status, and that as such he should have benefited from a more favourable family reunification procedure. He further argued that there was a consensus at international level that the culturally diverse interpretations of family membership should be respected, and that the United Nations High Commissioner for Refugees recommended that polygamous families should remain together during resettlement, particularly when children were concerned and when the marriages were valid under the laws of the country of origin. He also relied on the international consensus that in cases of family reunification the best interests of children should always be respected.

35. According to him, polygamy was not automatically contrary to public order in the Netherlands, and the authorities had an obligation to assess each case on its specific facts. The criminal offence of polygamy under the Criminal Code did not apply to polygamous marriages contracted by foreign nationals in States where polygamy was lawful, such were his marriages voluntarily accepted by all his wives in Yemen. The principle of monogamy

enshrined in the Civil Code did not apply to foreign citizens who had legally contracted polygamous marriages abroad.

36. Relying on the Family Reunification Directive and the case-law of the Court of Justice of the European Union, he argued that they supported the view that family reunification with children from polygamous marriages was not prohibited if the marriages had been lawfully contracted outside the Member States.

37. In his view, the Dutch authorities had not properly balanced all the relevant interests and had not provided sufficient reasons for rejecting his application for family reunification with the five children in question. They had not carefully assessed the facts of the case, taken into account the individual situation of his family, or properly applied the Convention standards developed in the Court's case-law.

38. Furthermore, the asylum-related situation of his family should have been given more weight in the balancing of the interests at stake. In that connection, he and the five children in question had enjoyed family life for a number of years in Yemen before he had been granted refugee status in the Netherlands. He also pointed to the risk of ill-treatment that his family faced in Yemen, which presented an insurmountable obstacle to their living there. He also expressed fear that his minor children might face ill-treatment in Türkiye given that he and his family had frequently received serious threats to their safety and lives, or they might be removed from Türkiye and sent back to Yemen. The applicant described the living conditions of his family in Türkiye as poor since they only had temporary residence cards, which allowed only limited access to services. As such, the children had not been provided with a safe, stable living environment with access to adequate schooling and public healthcare.

39. In addition, the Dutch authorities had not given sufficient consideration to the fact that he was a refugee and had settled status in the Netherlands and that the stepmother and siblings of the five children concerned by the present application also resided in the Netherlands. On the contrary, they had given disproportionate weight to the fact that his five children who lived in Türkiye had never been to the Netherlands, without acknowledging that they could not come to the Netherlands without the proper visa, which had never been issued to them.

40. In the applicant's view, the only way for his family to resume their family life was to live together in the Netherlands.

41. The applicant further asserted that the authorities had not taken into consideration the best interests of his children because they had not properly assessed the issues concerning the children's well-being, the family's situation, and the full and harmonious development of their personalities. The children should not be separated from their parents against their will unless that was in their best interests, and applications for family reunification by

children should be dealt with by domestic authorities in a positive, humane and expeditious manner.

42. Lastly, the applicant pointed to the young age of the children concerned, which ranged from two to nine years of age at the time he had lodged the application for family reunification with them, and to their complete dependence on him, both financially and emotionally. Even though he had maintained daily contact with them, their separation had caused anguish to all of them; in particular, it had led R. to develop severe mental health issues and learning difficulties; R. had had to be placed in a private school as he had been harassed by a teacher.

(b) The Government

43. In the Government's view, the domestic authorities enjoyed a wide margin of appreciation, given the prohibition of polygamy in Member States and the lack of consensus as regards any obligation to facilitate polygamous situations.

44. The State had a legitimate interest in immigration control and the protection of public order weighed heavily in the case at issue. The Dutch authorities had an interest in enforcing "public order" and "the values of democracy for Convention purposes" (the Government referred to *Refah Partisi (The Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 128, ECHR 2003-II, and *Şerife Yiğit v. Turkey*, no. 3976/05, § 81, 2 November 2010), which meant that no situation could be permitted to arise that was contrary to Dutch law. Polygamy was prohibited in the Netherlands and was also a ground for denying an application for family reunification.

45. The Administrative Jurisdiction Division's finding that "according to prevailing social norms in the Netherlands, polygamy is contrary to public morality and public order" was in line with the Court's case-law, which had recognised a State's right to prohibit polygamy for the good of "public order" and "the values of democracy for Convention purposes". The Government also pointed out that, in the context of family reunification, the Court had assessed whether recognition of certain family ties could have conflicted with the legal order of the Contracting State concerned (they referred to *E.A. and A.A. v. the Netherlands*, no. 14501/89, Commission decision of 6 January 1992, Decisions and Reports 72, p. 118, and *Bibi v. the United Kingdom*, no. 19628/92, Commission decision of 29 June 1992, unreported).

46. The authorities had complied with their positive obligations under Article 8 of the Convention and had fairly weighed all relevant interests in the case at issue. They had taken into consideration the arguments raised by the applicant and had made an individualised assessment of the circumstances of the case. They had acknowledged that the applicant's family life with the five children in question had already been in existence when he had arrived in the Netherlands, that the case concerned minor children, and that significant weight had to be attached to their interests. While the domestic

authorities had accepted that there were insurmountable obstacles to the family's ability to live in Yemen, they had found that the five children concerned actually lived in Türkiye, in a stable environment with their mothers, and had access to education and healthcare. They had also taken into account the applicant's family's residence status in Türkiye (as evidenced by their possession of temporary residence cards) and the fact that family life between the applicant and his children born of his second and third marriages could have been affected by their living in different countries, but had not been effectively ruptured since they had been able to continue to exercise family life through the use of modern means of communication. Moreover, the applicant had not presented any objective grounds as to why he would not be able to visit his children in Türkiye or in other countries. The Government pointed out that the applicant had, indeed, visited his family members residing in Türkiye.

47. They had also assessed the issue of the best interests of the applicant's children, and had concluded that those interests could not outweigh the public interests in the case at issue. They had found that the children lived with their respective mothers, had access to schooling and housing, and were able to obtain medical care. They had further assessed that the applicant had failed to sufficiently substantiate his claims that the children had been living in poor circumstances in Türkiye or that they had been at risk of real and imminent ill-treatment there. The domestic authorities had also addressed R.'s alleged learning difficulties and integration problems and found that his condition had not been of such severity as to engage a positive obligation on the part of the respondent State to grant him the right of residence in its territory.

48. The Government further contended that the applicant had failed to provide sufficient evidence that the children born of his second and third marriages had any particular dependence on him other than financial. There was no indication that the applicant would not be able to continue to financially support them in Türkiye in the same way as he had been doing.

49. Lastly, the Government submitted that the applicant could have benefited from more favourable conditions for family reunification with the five children in question had he divorced his second and third wives under section 3.14(c) in conjunction with section 3.16 of the Aliens Decree 2000. However, irrespective of the fact that he had been informed of that possibility by the IND and that marriages contracted abroad could be terminated in the Netherlands, he had maintained his initial position.

2. Comments submitted by the third-party intervener, the ECLJ

50. The ECLJ submitted its general assessment of the issue of polygamy and stressed that it should not be accepted in Europe, in the interests of public order and gender equality. It argued that the protection of the best interests of children born of such marriages could not prevail over the protection of public order, since such a situation would amount to the implicit acceptance of

polygamy. It called on the Court to interpret the guarantees under Article 8 of the Convention in connection with those under Article 12 of the Convention and to find that the concept of family life did not apply to polygamous marriages.

3. *The Court's assessment*

(a) **General principles**

51. The Court recently summarised the relevant principles under Article 8 of the Convention in respect of family reunification in *M.A. v. Denmark* ([GC], no. 6697/18, 9 July 2021), by referring to *Jeunesse v. the Netherlands* ([GC], no. 12738/10, 3 October 2014), as follows:

“131. In the first place it should be reiterated that a State is entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. The Convention does not guarantee the right of a foreign national to enter or to reside in a particular country ([see *Jeunesse*, cited above], § 100).

132. Moreover, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest, and is subject to a fair balance that has to be struck between the competing interests involved. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control (*ibid.*, § 107).”

52. The Court has held in family reunification cases that the best interests of the child are of paramount importance. Whilst alone the best interests of the child cannot be decisive, such interests must be afforded significant weight (see *Jeunesse*, cited above, §§ 109 and 118). Similarly, the Court has held that the best interests of the child cannot be a “trump card” which requires the admission of all children who would be better off living in a Contracting State, but that domestic courts must place the best interests of the child at the heart of their considerations and attach crucial weight to them (see *El Ghatet v. Switzerland*, no. 56971/10, § 46, 8 November 2016, and *M.T. and Others v. Sweden*, no. 22105/18, § 82, 20 October 2022).

(b) **Application of these principles to the case at issue**

53. The present case concerns a refusal to allow the applicant's application for family reunification with his five children born of polygamous marriages with his second and third wives, contracted in Yemen. The Government did not contest that the applicant and the children concerned had enjoyed family life within the meaning of Article 8 of the Convention before

the applicant had come to the Netherlands. The Court also notes that the Netherlands does not recognise polygamous marriage.

54. The Court has held that Article 8 applies to the “family life” of the “illegitimate” family as it does to that of the “legitimate” family. The notion of the “family” is not confined solely to marriage-based relationships and may encompass other *de facto* “family” ties where the parties are living together outside of marriage. A child born out of such a relationship is *ipso jure* part of that “family” unit from the moment and by the very fact of his or her birth. Thus, there exists between the child and his or her parents a bond amounting to family life (see *Şerife Yiğit*, cited above, § 94, with further references).

55. Accordingly, irrespective of the fact that polygamous marriages are not recognised in the Netherlands, the Court accepts that there was family life between the applicant and his five children born of his second and third marriages.

56. The Court also notes that the applicant’s second wife has in the meantime come to the Netherlands together with her children and has been granted asylum. Her application for family reunification with her children is still pending (see paragraph 24 above). However, that does not alter the fact that the applicant’s request for family reunification with, *inter alia*, his children born of his second marriage – which is at issue in the present application – was refused by a decision that became final on 13 October 2022, during the period when the children in question were still in Türkiye (compare *Okubamichael Debru v. Sweden*, no. 49755/18, § 43, 25 July 2024).

(i) *Scope of the margin of appreciation*

57. The Court reiterates that in family reunification cases such as the present case, the question is not whether there has been an interference, but whether the respondent State complied with a positive obligation to allow the family reunification which had been requested, thus enabling the applicant, who was granted asylum, and his family members, to enjoy family life in its territory. The boundaries between the State’s positive and negative obligations under Article 8 do not lend themselves to precise definition and the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Jeunesse*, cited above, § 106; see also *B.F. and Others v. Switzerland*, nos. 13258/18 and 3 others, § 92, 4 July 2023).

58. The margin of appreciation to be afforded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see, among other authorities, *M.A. v. Denmark*, cited above, § 140, and *Dabo v. Sweden*, no. 12510/18, § 96, 18 January 2024).

59. In the Court's view, there are several factors which are relevant to the scope of the margin of appreciation.

60. While it is true that the present application concerns the applicant's children with his second and third wives only and not those wives themselves, the Court cannot ignore the fact that the children concerned were born of the applicant's polygamous marriages. That is the core of this case because the Dutch authorities refused the applicant's request for family reunification with his children born to his second and third wives specifically on account of the ban on polygamy in the Netherlands.

61. As to the applicant's arguments that polygamy is lawful in Yemen and that all three of his wives had voluntarily entered into a polygamous marriage, as well as that there have been changes in societal attitudes towards polyamorous relationships, including acceptance of polygamy, the Court notes as follows. In the Netherlands, as in all other Council of Europe Member States, polygamy is forbidden without exception, regardless of whether it is voluntary or involves any element of coercion.

62. The Court further notes that the Dutch authorities invited the applicant to legitimise his situation and choose which marriage he wished to have recognised as a legal marriage under Dutch law. However, the applicant declined and maintained his position that all three marriages were legitimate.

63. Had the applicant complied with the invitation of the Dutch authorities to divorce his second and third wives under the Dutch law, he would have been in a different position as regards his right to family life with his five children born of those marriages, as submitted by the Government (see paragraph 49 above), and given the right of parents to enjoy family life mutually with children born outside marriage (see paragraph 54 above).

64. The decision to maintain all three marriages must have been taken by the applicant and his family in the knowledge that the applicant's children from his second and third marriages would face immigration difficulties as a result. The applicant must have been aware of the general ban on polygamy in the Netherlands ever since his arrival there (compare *Bibi*, cited above).

65. Indeed, there exists a strong European consensus as to the ban on polygamy, as evidenced by the fact that it is outlawed without exception in all Member States of the Council of Europe. In the light of the considerations above, the Court finds that the Member States should be afforded a wide margin of appreciation in deciding whether to allow family reunification between fathers and children born of polygamous marriages.

(ii) Other relevant circumstances

66. The Court notes that the Dutch authorities considered that, with regard to the refusal of the applicant's family reunification request, the applicant's right to respect for his family life, in so far as it was affected, was outweighed by the public interests at stake, namely the ban on polygamy in the Netherlands. In their assessment, they balanced the applicant's interests

protected under Article 8 of the Convention and the interests of public order. In that connection, the Court stresses the close connection between immigration policy and considerations of public order and reiterates that in establishing an immigration policy on the basis of family ties, a Contracting State cannot be required to give full recognition to polygamous marriages which are in conflict with their own legal order (see *E.A and A.A*, cited above, and *Bibi*, cited above).

67. As to the considerations concerning the applicant and his five children's individual situation, the Court notes as follows.

68. It is not in dispute that there were "insurmountable obstacles" to the applicant and the five children concerned enjoying family life in Yemen, but it is noteworthy that the applicant's five children resided with their respective mothers in Türkiye, where, as established by the domestic courts (see paragraph 19 above), they were in possession of temporary residence cards and had access to schooling and health services (compare *Okubamichael Debru*, cited above, § 76). As to the applicant's allegations that his family members were at risk of violence in Yemen, the Court notes that they are not in Yemen, but in Türkiye. There is no evidence that the applicant's family members in Türkiye have been exposed to any violence, or that the Turkish authorities would not be able to protect them in case of violent attacks on them.

69. As to the applicant's arguments concerning R.'s mental health issues, the Court notes that the psychologist's report indicated that his problems were mainly related to his lack of proper understanding of the Turkish language (see paragraph 18 above).

70. The children in respect of whom family reunification was requested had never been to the Netherlands and had no ties to the country other than their relationship to the applicant, who was residing there (compare *Dabo*, cited above, § 118, and *Okubamichael Debru*, cited above, § 78).

71. Moreover, there is no indication that the applicant was unable to maintain contact with the children, and he has not presented any objective grounds as to why he would be prevented from visiting them in Türkiye or in other countries. The applicant has not pointed to any particular way in which his children were dependent on him, save for financially, or to any difficulties that might have arisen from the fact of their living apart (compare *D.H. and Others v. Sweden*, no. 34210/19, § 72, 25 July 2024). The Court also observes that the best interests of a child, of whatever age, cannot constitute an unassailable consideration that requires the admission of all children who would be better off living in a Contracting State (see, among other authorities, *Dabo*, cited above, § 120; *I.A.A. and Others v. the United Kingdom* (dec.), no. 25960/13, § 46, 8 March 2016; and *Okubamichael Debru*, cited above, § 77, and the authorities cited in paragraph 52 above).

(iii) Conclusion

72. The Court considers that, having regard to the margin of appreciation afforded to the respondent State, the assessment of the domestic authorities struck a fair balance between the interests of the applicant and those of the State as regards the applicant's right to respect for his family life. In conclusion, having regard to Article 8 § 2 of the Convention, the Court finds that there are insufficient elements concerning respect for family life to outweigh the considerations relating to the proper enforcement of immigration controls and upholding public order.

73. It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 8 September 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Lado Chanturia
President