

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

FOURTH SECTION

DECISION

Application no. 53586/08
Celal AKBULUT
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 10 April 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 5 November 2008,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Celal Akbulut, is a Turkish national who was born in 1953 and lives in Turkey. He was represented before the Court by Wilson Solicitors LLP, a firm of lawyers practising in London.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant first entered the United Kingdom, as a visitor, in 1980. He married his wife, a British citizen born in Cyprus, later that same year. He and his wife lived in Turkey between 1980 and 1984, before returning to the United Kingdom, where the applicant was granted indefinite leave to remain in 1985. The applicant and his wife have four sons, all born in the United Kingdom in 1984, 1986, 1989 and 1993, respectively.

4. On 4 February 2002, the applicant was convicted of two counts of supplying Class A drugs, for which he was sentenced to fourteen years' imprisonment and made subject to a confiscation order for GBP 17,000. The sentencing judge found that the applicant had been near the top of the chain of an operation responsible for supplying huge amounts of heroin. The applicant was notified on 15 August 2007 of the Secretary of State's intention to deport him.

5. The applicant appealed against deportation and his appeal was heard by the then Asylum and Immigration Tribunal on 29 February 2008. The Immigration Judge noted that the applicant had been of good character prior to his conviction, and had been a "model prisoner" who had been assessed as presenting a low risk of reconviction. His relationships with his wife, four children, the youngest of whom was still under eighteen, and his wife's elderly and infirm parents were taken into account. The applicant's wife had stated that she would not accompany the applicant to Turkey if he were deported, as it would fracture her family, but that she would visit him and would maintain their relationship. The applicant's children were all British citizens who were well settled in the United Kingdom and in full-time education. The Immigration Judge found without hesitation that the applicant's deportation would be conducive to the public good, having regard to his extremely serious crime. His deportation would, however, impact severely on the Article 8 rights of his family, his wife and youngest child in particular. Nonetheless, it was observed that his family life had already been gravely affected by his conviction and subsequent imprisonment, which were of the applicant's own making, and that his wife had coped well raising their children in his absence for the past six years. It was her choice, which the Tribunal respected, not to relocate to Turkey with the applicant if his deportation should be ordered. Given these facts, and the fact that the applicant could maintain links with his family by means of visits and telephone calls, it was found that his deportation would not be disproportionate to the legitimate aim pursued.

6. The applicant sought reconsideration of the Tribunal's determination, which was refused on 8 April 2008 by a Senior Immigration Judge, on the basis that the Tribunal had handed down a careful and detailed determination which contained no error of law.

7. The applicant was deported to Turkey on an unknown date between 20 January 2009 and 25 June 2010.

B. Relevant domestic and international law

1. Domestic law

8. Section 3(5)(a) of the Immigration Act 1971 (as amended by the Immigration and Asylum Act 1999) provides that a person who is not a British citizen shall be liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good.

9. Section 32 of the United Kingdom Borders Act 2007 provides that the Secretary of State must make a deportation order in respect of a "foreign criminal," namely a person who is not a British citizen; who is convicted of an offence; and who is sentenced to a period of imprisonment of 12 months or more. Section 33(2) of the same Act provides an exception to automatic deportation in circumstances where it would breach the foreign criminal's rights under the Convention or the United Kingdom's obligations under the Refugee Convention.

10. Sections 82(1) and 84 of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against a decision to make a deportation order, *inter alia*, on the grounds that the decision is incompatible with the Convention.

2. Relevant instrument of the Council of Europe

11. Council of Europe *Recommendation Rec (2000) 15 Concerning the Security of Long-Term Migrants*, 13 September 2000, provides as follows:

> "4. As regards the protection against expulsion
>
> a. Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:
>
> - the personal behaviour of the immigrant;
>
> - the duration of residence;
>
> - existing links of the immigrant and his or her family to his or her country of origin.
>
> b. In application of the principle of proportionality as stated in paragraph 4a, member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member states may provide that a long-term immigrant should not be expelled:
>
> - after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension;

- after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years of imprisonment without suspension;

After twenty years of residence, a long-term immigrant should no longer be expellable.

c. Long-term immigrants born on the territory of the member state or admitted to the member state before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen.

Long-term immigrants who are minors may in principle not be expelled.

d. In any case, each member state should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

COMPLAINT

12. The applicant complained that his deportation to Turkey breached Article 8 of the Convention.

THE LAW

A. The applicant's submissions

13. The applicant claimed that his family, including his adult children who still all lived at home, was more than usually close and interdependent and that they had strong extended family ties with his wife's relatives. He claimed that, in considering the proportionality of his deportation, the domestic authorities had given insufficient consideration to the closeness of his ties to his family and the level of difficulty that his wife and children, none of whom spoke Turkish, would face in relocating to Turkey. The applicant also pointed to his good behaviour prior to and since his conviction and the efforts which he had made to rehabilitate himself. He claimed that the domestic authorities had not properly applied the guidance set down by this Court in, *inter alia*, *Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX.

B. The Court's assessment

1. General principles

14. The Court observes that no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention. As a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory (see, among many other authorities, *Boultif v. Switzerland*, cited above, § 39). Where immigration is concerned, Article 8 cannot be considered to impose on a Contracting State a general obligation to respect the choice by married couples of the country of their matrimonial residence or to authorise family reunion in its territory (*Gül v. Switzerland*, 19 February 1996, § 38, *Reports of Judgments and Decisions* 1996-I). However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see *Moustaquim v. Belgium*, 18 February 1991, § 36, Series A no. 193).

15. The Court has previously found that existence or non-existence of "family life" is essentially a question of fact depending upon the real existence in practice of close personal ties (see *K. and T. v. Finland* [GC], no. 25702/94, § 150, ECHR 2001-VII). However, family life must include the relationship arising from a lawful and genuine marriage (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 62, Series A no. 94). Furthermore, it follows from the concept of family on which Article 8 is based that a child born of a marital union is *ipso jure* part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to "family life" which subsequent events cannot break save in exceptional circumstances (see, among other authorities, *Berrehab v. the Netherlands*, 21 June 1988, § 21, Series A no. 138, and *Cılız v. the Netherlands*, no. 29192/95, §§ 59 and 60, ECHR 2000-VIII) until the child reaches adulthood. The Court has previously held that there will be no family life between parents and adult children unless they can demonstrate additional elements of dependence (*Slivenko v. Latvia* [GC], no. 48321/99, § 97, ECHR 2003 X; *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000).

16. The Court also recalls that, as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants such as the applicant and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Indeed it will be a rare case where a settled migrant will be unable to demonstrate

that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010). Not all settled migrants will have equally strong family or social ties in the Contracting State where they reside but the comparative strength or weakness of those ties is, in the majority of cases, more appropriately considered in assessing the proportionality of the applicant's deportation under Article 8 § 2.

17. 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" in order to achieve the aim or aims concerned. The Grand Chamber has summarised the relevant criteria to be applied, in determining whether interference, in the form of deportation, is necessary in a democratic society, at §§ 57-58 of *Üner,* cited above, as follows:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various persons concerned;
- the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- whether there are children of the marriage, and if so, their age; and
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

2. Application to the facts of the case

18. The first factor which must be considered is the seriousness of the applicant's offence. The Court notes in this regard that the applicant was sentenced to fourteen years' imprisonment for two counts of supplying Class A drugs, and that the judge who sentenced him found that he had occupied a position near the top of an organisation responsible for supplying huge amounts of heroin. The Court accepts that Contracting States are entitled to attach particular gravity to offences involving drugs, given the

destructive effects that such offences have on society as a whole (see, among many other authorities, *Dalia v. France*, 19 February 1998, § 48, *Reports of Judgments and Decisions* 1998-I). The Court also notes that, while all drugs-related offences are all properly to be viewed as serious given their nature, the applicant's crime was at the particularly serious end of the spectrum, as reflected by the lengthy sentence imposed. The applicant's offence, therefore, should be viewed as extremely serious.

19. Turning now to the applicant's length of stay in the United Kingdom, the Court notes that he spent under one year there in 1980, before returning with his wife to live in Turkey for four years. Since 1984, he has lived permanently in the United Kingdom, returning to Turkey only for visits. He had therefore, at the time of his deportation, amassed approximately twenty-five years' continuous residence in the United Kingdom. This is a length of time which clearly exceeds the twenty-year period after which the Council of Europe has recommended (see paragraph 11 above) that long-term immigrants should no longer be expellable. However, the Court reiterates its previous findings (see *Üner v. the Netherlands* [GC], cited above, § 55) that Article 8 cannot be construed as providing absolute protection from expulsion for any category of person, and that, notwithstanding the terms of the recommendation, length of residence should not alone determine whether there has been a violation of Article 8 (see, for example, *Iyisan v. the United Kingdom* (dec.), no. 7673/08, 9 February 2010).

20. The Court nonetheless considers that, in a case such as the present, where the applicant has been lawfully resident in a Contracting State for such a lengthy period, compelling reasons are required to render his deportation compatible with Article 8. The Court further notes that the applicant's conviction in 2002 represented his first offence; that he was, by all accounts, a model prisoner whilst serving his term of imprisonment; and that there is nothing to indicate that he offended again after his release. These factors are all to the applicant's credit.

21. The Court observes, with regard to the applicant's family situation, that he and his wife have been married for over thirty years. Their relationship was therefore formed many years before the applicant's only offence. The couple have four sons, of whom only the youngest was still a minor at the time of the applicant's deportation. The applicant's wife is a Cypriot-born British citizen and all of his children are British citizens who have never lived in Turkey. All four of his sons were in full-time education at the time of the applicant's deportation. The applicant stressed that he also has extended family in the United Kingdom, namely his wife's parents and siblings, whom his wife helps to care for, and that his entire extended family is unusually close and interdependent.

22. The Court notes that, at the time of the applicant's appeal against deportation, his wife gave evidence before the Tribunal to the effect that, if

her husband were deported, she would not accompany him to Turkey as her life and that of her family was in the United Kingdom. The Court further observes that, subsequent to the applicant's deportation, his wife remains in the United Kingdom, as do their sons. The Court accepts that it would have been difficult for the applicant's wife to have accompanied him to Turkey, given her stable job in the United Kingdom and responsibilities towards her elderly and infirm parents and four sons, one of whom was still a minor at the time. However, the Court does not consider that it would have been impossible or exceptionally difficult for the applicant's wife to have relocated to Turkey, if not at the time of his deportation then perhaps once their youngest child had reached the age of majority and finished with school. The Court notes in this regard that the applicant's wife previously lived in Turkey for several years with the applicant, and that she has several siblings in the United Kingdom who also assist in caring for their parents. The Court accepts that such an outcome would still have created a split in the applicant's family, as he and his wife would have been separated from their children, but recalls that there is no family life, in terms of Article 8, between parents and adult children. For the foregoing reasons, the Court concludes that there were no insurmountable obstacles to the applicant's wife relocating to Turkey and maintaining her family life with the applicant in this manner (see *Onur v. the United Kingdom*, no. 27319/07, § 60, 17 February 2009).

23. The Court notes that, as the applicant's youngest child was a minor at the time of the applicant's deportation (though he turned eighteen in May 2011), his best interests must be given due weight. The Court does not doubt that it would have been strongly preferable for his son had the applicant not been deported to Turkey. However, the fact is that the applicant's youngest son's life continued, after his father's deportation, much as it had for the seven or so previous years, during which he lived with his mother and brothers and his father was absent from the family by reason of his imprisonment. Although the Court accepts that the applicant's youngest child, like his other sons, was able to visit him more frequently in prison than he is likely to be able to do in Turkey, it is not possible to find, given the length of the applicant's sentence, that his deportation would have had a major effect on the day-to-day life of his minor son. The best interests of any children affected by the deportation of a parent or relative, though an important concern, must be weighed in the balance with all the other relevant factors. In this case, for the reasons outlined above, the Court cannot attach undue weight to the impact of the applicant's deportation on his one then-minor child.

24. The final criterion which the Court must consider is the relative solidity of the applicant's social, cultural and family ties to the United Kingdom and to Turkey. In the light of the foregoing information regarding his wife, children and extended family, the Court does not doubt that the

applicant has stronger family ties to the United Kingdom, though he has relations in Turkey. It is also accepted, given the length of his residence, that his social ties to the United Kingdom are also considerably stronger than those he may have retained to Turkey. However, the Court notes that the applicant was an adult of thirty-one years old when he left Turkey; has returned to visit his country of origin; and still speaks Turkish. He spent all of his childhood and formative years and was wholly educated in Turkey. As such, the Court has no doubt that the applicant has retained sufficient cultural ties to Turkey to permit his reintegration in that country (see *Chair and J. B. v. Germany*, no. 69735/01, § 62, 6 December 2007).

25. In respect of, *inter alia,* the solidity of ties to Turkey, the present applicant's case bears strong similarities to *Iyisan*, cited above, in which the applicant, a Turkish national like the present applicant, who also had a Cypriot-British wife, was sentenced to thirteen years' imprisonment for the importation of large amounts of heroin. The applicant in that case had an adult daughter and a grandchild. The Court held that,

> "In spite of the length of the applicant's residence in the United Kingdom, and notwithstanding the Council of Europe's Recommendation Rec(2000)15 Concerning the Security of Long-Term Migrants, the Court finds that, if considered against the criteria set down in *Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX and *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-..., the interference with the applicant's private and family life was proportionate to the legitimate aims pursued, namely the maintenance of an effective system of immigration control, the prevention of disorder and crime and the protection of health and morals. In particular, the Court has had regard to the seriousness of the applicant's criminal offence and the maintenance of social, cultural and family ties to Turkey."

26. Although the applicant's circumstances differ from the applicant's in *Iyisan* in that he has more children, one of whom was a minor at the time of his deportation, the Court finds that the two cases are analogous. Having paid close regard and attached significant weight to the applicant's length of residence in and strength of ties to the United Kingdom, and in particular to the impact on his wife and children caused by his deportation, the Court is nevertheless of the view that these factors are outweighed by the seriousness of the one offence committed by the applicant.

27. In the light of the foregoing analysis, the Court finds that a fair balance was struck in this case in that the applicant's expulsion was proportionate to the aims pursued and therefore necessary in a democratic society. It follows that the applicant's complaint under Article 8 is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President