

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
ÜNER v. NETHERLANDS

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Üner v. the Netherlands* (application no. 46410/99).

The Court held, by 14 votes to three, that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

(The judgment is available in English and French.)

1. Principal facts

The case concerns an application brought by a Turkish national, Ziya Üner who was born in 1969 and lives in Eskişehir, (Turkey).

The applicant came to the Netherlands at the age of 12 with his mother and two brothers to join his father and, in 1988, obtained a permanent residence permit (*vestigingsvergunning*).

In or around June 1991, he started living with a Netherlands national. The couple had a son, born on 4 February 1992. The applicant moved out in November 1992, but remained in close contact with both his partner and son.

On 16 May 1993 the applicant was involved in a dispute in a café. He had two loaded guns on him and shot and killed one man and shot another in the leg. His claims that he was acting in self-defence were rejected by the trial courts; he was convicted of manslaughter (*doodslag*) and assault (*zware mishandeling*) on 21 January 1994 and sentenced to seven years' imprisonment. He had previous convictions for violent offences and for a breach of the peace.

His partner, son and second son (born to the applicant and his partner on 26 June 1996) visited him in prison at least once a week. Both his sons have Netherlands nationality and have been recognised (*erkend*) by him. Neither his partner nor his children speak Turkish.

On 30 January 1997 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) withdrew the applicant's permanent residence permit and imposed a ten-year exclusion order (*ongewenstverklaring*) on him in view of his conviction of 21 January 1994. The applicant appealed unsuccessfully.

He was deported to Turkey on 11 February 1998. However, it appeared that he returned to the Netherlands soon afterwards and was once more deported to Turkey on 4 June 1998. He again appealed unsuccessfully.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 4 August 1998 and declared partly admissible on 1 June 2004.

In its Chamber judgment of 5 July 2005, the Court held, by six votes to one, that there had been no violation of Article 8.

The applicant requested that the case be referred to the Grand Chamber (under Article 43¹ of the Convention and Rule 73 of the Rules of Court). The panel of the Grand Chamber accepted the request on 30 November 2005.

On 21 February 2006 the Government of Germany were granted leave to intervene in the written procedure before the Grand Chamber, under Article 36 § 2 (third party intervention) of the Convention.

A hearing took place in public in the Human Rights Building, Strasbourg on 5 April 2006.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Nicolas **Bratza** (British),
Boštjan M. **Zupančič** (Slovenian),
Giovanni **Bonello** (Maltese),
Lucius **Caflich** (Swiss)
Riza **Türmen** (Turkish),
John **Hedigan** (Irish),
Margarita **Tsatsa-Nikolovska** (citizen of “The former Yugoslav Republic of Macedonia”),
Rait **Maruste** (Estonian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Lech **Garlicki** (Polish),
Egbert **Myjer** (Netherlands),
Danutė **Jočienė** (Lithuanian),
Ján **Šikuta** (Slovakian), *judges*,

and also Lawrence **Early**, *Section Registrar*.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

3. Summary of the judgment¹

Complaint

The applicant complained that, as a result of the withdrawal of his residence permit and the imposition of a ten-year exclusion order, he had been separated from his family. He relied on Article 8 of the Convention.

Decision of the Court

Article 8

The Court accepted that the impugned measures constituted an interference with the applicant's right to respect for his family life, that that interference was in accordance with the law and that it pursued legitimate aims, namely ensuring public safety and preventing disorder or crime. Those measures also amounted to interference with the applicant's right to respect for his private life.

The Court considered at the outset that the applicant had lived for a considerable length of time in the Netherlands, where he had had permanent residence status. Moreover, he subsequently went on to found a family there. In those circumstances, the Court did not doubt that the applicant had strong ties with the Netherlands. That said, it could not overlook the fact that the applicant lived with his partner and first-born son for a relatively short period only and that he never lived together with his second son. Moreover, while it was true that the applicant came to the Netherlands at a relatively young age, the Court was not prepared to accept that he had spent so little time in Turkey that, at the time he was returned to that country, he no longer had any social or cultural (including linguistic) ties with Turkish society.

As to the criminal conviction which led to the impugned measures, the Court was of the view that the offences of manslaughter and assault committed by the applicant were of a very serious nature. While the applicant claimed that he had acted in self-defence – a claim that was in any event rejected by the trial courts – the fact remained that he had two loaded guns on his person. Taking his previous convictions into account, the Court found that the applicant might be said to have displayed criminal propensities.

The Court agreed with the Chamber in its finding that at the time the exclusion order became final, the applicant's children were still very young – six and one-and-a-half years old respectively – and therefore of an adaptable age. Given that they had Dutch nationality, they would – if they followed their father to Turkey – be able to return to the Netherlands regularly to visit other family members living there.

While not wishing to underestimate the practical difficulties entailed for the applicant's Dutch partner in following him to Turkey, the Court considered that, in the particular circumstances of the case, the family's interests were outweighed by other considerations.

The Court appreciated that the exclusion order imposed on the applicant had even more far-reaching consequences than the withdrawal of his permanent residence permit, as it rendered even short visits to the Netherlands impossible for as long as the order was in place.

¹ This summary by the Registry does not bind the Court.

However, having regard to the nature and the seriousness of the offences committed by the applicant, and bearing in mind that the exclusion order was limited to ten years, the Court could not find that the Netherlands assigned too much weight to its own interests when it decided to impose that measure. In that context, the Court noted that the applicant, provided he complied with a number of requirements, would be able to return to the Netherlands once the exclusion order had been lifted.

Finally, the Court noted that the applicant also complained of the fact that, after his conviction, a period of three years elapsed before the authorities decided to withdraw his residence permit and impose an exclusion order. The Government had explained the delay with reference to the relevant domestic law and practice. The Court considered that it did not have to take a stance on the issue, but noted that the applicant was still serving his sentence when the impugned measures were taken. Moreover, in adopting those measures, the authorities addressed all relevant considerations militating for or against the denial of residence and the use of an exclusion order.

In the light of the above, the Court found that a fair balance had been struck in the case in that the applicant's expulsion and exclusion from the Netherlands were proportionate to the aims pursued and therefore necessary in a democratic society. Accordingly, there had been no violation of Article 8.

Judge Maruste expressed a concurring opinion and Judges Costa, Zupančič and Türmen expressed a joint dissenting opinion, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.