



Refusing a residence permit to the Surinamese mother of three children born in the Netherlands breached their right to respect for their family life

In today's Grand Chamber judgment in the case of [Jeunesse v. the Netherlands](#) (application no. 12738/10), which is final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for family life) of the European Convention on Human Rights.

The case concerned the refusal by the authorities to allow a Surinamese woman married to a Netherlands national, with whom she had three children, to reside in the Netherlands on the basis of her family life in the country.

The Court took into consideration that, apart from Ms Jeunesse, all members of her family were Dutch nationals entitled to enjoy family life with each other in the Netherlands, that Ms Jeunesse had been living in the Netherlands for more than 16 years (and the Netherlands authorities had been aware of this), that she had no criminal record and that settling in Suriname would entail a degree of hardship for the family. The Court further considered that the Netherlands authorities had not paid enough attention to the impact on Ms Jeunesse's children of the authorities' decision to refuse her request for a residence permit. Indeed, the authorities had failed to take account of and assess evidence on the practicality, feasibility and proportionality of the refusal at issue in order to give effective protection and sufficient weight to the best interests of the children.

The Court concluded that a fair balance had not been struck between the personal interests of Ms Jeunesse and her family in maintaining their family life in the Netherlands and the public order interests of the Government in controlling immigration.

Principal facts

The applicant, Meriam Margriet Jeunesse, is a Surinamese national who was born in 1967 and lives in The Hague.

Ms Jeunesse entered the Netherlands in 1997 on a tourist visa and continued to reside there after her visa expired. In 1999, she married a naturalised Netherlands national of Surinamese origin, Mr W., who, like her, had always lived in Suriname and with whom she had already cohabited in the country, having met there in 1987. In 1991, Mr W. travelled from Suriname to the Netherlands. He was later granted Netherlands nationality which entailed the renunciation of his Surinamese nationality.

On 4 March 1997, after five requests had been rejected, the applicant's sixth request for a Netherlands short-stay visa for visiting a relative was granted. Ms Jeunesse entered the Netherlands on 12 March 1997 and did not return to Suriname when her visa expired 45 days later. To date, she has been staying in the Netherlands – initially in Rotterdam and, since 1998, in The Hague.

Ms Jeunesse and Mr W. have had three children together. The children are Netherlands nationals like their father. Between 1997 and 2010 Ms Jeunesse applied five times for a residence permit. Her

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

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

last three requests were dismissed, as she did not hold a provisional residence visa issued by the Netherlands mission in Suriname.

Having failed to respond to a summons to report to the alien's police, she was placed in aliens' detention in April 2010 with a view to her deportation. In August 2010, she was released because she was pregnant with her third child, who was born in November 2010.

Complaints, procedure and composition of the Court

Ms Jeunesse complained in particular that denying her residence in the Netherlands had been contrary to her rights under Article 8 (right to respect for family life). She complained that she had not been exempted from the obligation to hold a provisional residence visa issued by the Netherlands mission in Suriname before being able to apply for a residence permit in the Netherlands.

When lodging her application, Ms Jeunesse also complained, in particular, that the obligation to return to Suriname in order to obtain a provisional residence visa and the resulting separation from her children in the Netherlands, her placement in aliens' detention and the lack of an effective remedy had breached her rights under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy). She further alleged a violation of her rights under Article 14 (prohibition of discrimination), Article 3 § 1 of Protocol No. 4 (prohibition of expulsion of nationals) and Article 1 of Protocol No. 12 (general prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 1 March 2010. In a [decision](#) on admissibility taken on 4 December 2012 a Chamber of the Court declared Ms Jeunesse's complaint under Article 8 admissible and the remainder of her application inadmissible. On 14 May 2013, the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A [Grand Chamber hearing](#) was held on 13 November 2013 in Strasbourg.

The non-governmental organisations Defence for Children and the Immigrant Council of Ireland – Independent Law Centre were authorised to submit written observations as third parties (Article 36 § 2).

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

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Ján **Šikuta** (Slovakia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),
Ann **Power-Forde** (Ireland),
Işıl **Karakaş** (Turkey),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),
Johannes **Silvis** (the Netherlands),
Krzysztof **Wojtyczek** (Poland),

and also Lawrence **Early**, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 8 (right to respect for family life)

The Court reiterated its well-established case-law that, where family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious, it is only in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8. The Court then examined whether there had been any exceptional circumstances in Ms Jeunesse's case.

The Court noted that Ms Jeunesse's situation in the Netherlands had been irregular since she had overstayed her 1997 tourist visa. Having made numerous unsuccessful attempts to regularise her residence status in the Netherlands, she was aware – well before she commenced her family life in the Netherlands – of the precariousness of her situation.

However, the Court noted also that, apart from Ms Jeunesse, all members of her family were Dutch nationals entitled to enjoy family life with each other in the Netherlands. It further considered that Ms Jeunesse's position was not comparable to that of other potential immigrants in that she had been born a Dutch national but had lost this nationality involuntarily in 1975 when Suriname had become independent under the provisions of the Agreement between the Kingdom of the Netherlands and the Republic of Suriname concerning the assignment of nationality of 25 November 1975.

The Court further took into account that, although Ms Jeunesse had failed to comply with the obligation to leave the Netherlands, her presence had been tolerated in there for 16 years, during which it had been open to the authorities to remove her. Her address, unchanged for the last 15 years, had always been known to the authorities. Such a lengthy period of time had actually enabled her to establish and develop strong family, social and cultural ties in the Netherlands. The Court also noted that Ms Jeunesse did not have a criminal record and that settling in Suriname would entail hardship for the family.

The Court lastly considered the question whether the best interests of Ms Jeunesse's children had been sufficiently taken into account in the decision to deny their mother residence in the Netherlands. It found that the domestic decision-making bodies had not paid enough attention to the impact on Ms Jeunesse's children of the decision to deny their mother a residence permit and that these bodies had failed to take account of or assess evidence as to the practicality, feasibility and proportionality of denying Ms Jeunesse residence in the Netherlands.

Viewing these factors cumulatively, the Court concluded that the circumstances of Ms Jeunesse's case were indeed exceptional. Accordingly, a fair balance had not been struck between the personal interests of Ms Jeunesse and her family in maintaining their family life in the Netherlands and the public order interests of the Government in controlling immigration. Consequently, there had been a violation of Article 8.

Article 41 (just satisfaction)

The court held that the Netherlands was to pay Ms Jeunesse 1,714 euros (EUR) in respect of non-pecuniary damage and 564.50 EUR in respect of costs and expenses.

Separate opinions

Judges Villiger, Mahoney and Silvis expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available in English and French.

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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.