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

FOURTH SECTION

**CASE OF ONUR v. THE UNITED KINGDOM**

*(Application no. 27319/07)*

JUDGMENT

STRASBOURG

17 February 2009

*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 Onur v. the United Kingdom,**

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

Lech Garlicki, *President,*
Nicolas Bratza,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 27 January 2009,

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

# PROCEDURE

1. The case originated in an application (no. 27319/07) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Ümit Onur ("the applicant"), on 29 June 2007.

2. The applicant, who had been granted legal aid, was represented by Mr James Elliott of Wilson & Co., Solicitors, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr Derek Walton of the Foreign and Commonwealth Office.

3. On 17 July 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, Mr Ümit Onur, is a Turkish national who was born in 1978 and now lives in Turkey. He is of Kurdish origin.

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

6. In 1989 the applicant, who was then eleven years old, arrived in the United Kingdom with his father, his brother and his four sisters to join his mother, who had arrived six weeks earlier. The applicant's father claimed asylum. The claim was refused but the family were granted Exceptional Leave to Remain which was periodically extended. In 1999 the applicant, his father and his other family members were granted Indefinite Leave to Remain. At an unspecified date his mother, father and three of his sisters were granted British nationality. One of the applicant's sisters left the United Kingdom for Turkey in 1993 and the family believe she may be in Iraq. The applicant's father died in 2006. His mother, brother and three of his sisters continue to reside in the United Kingdom.

7. The applicant stated that he had not returned to Turkey since his departure in 1989 but he could still speak Turkish. It is not clear whether he received any education in Turkey, although it appears that he received some schooling in the United Kingdom. He is a chef by profession although there is little information available regarding his employment history.

8. In 1994 he commenced a relationship with a British citizen. The relationship lasted six years, but during this time the applicant was convicted on seven occasions for a number of different offences. On 10 May 1996 he was convicted for driving whilst disqualified and sentenced to fifty hours' community service. Two months later he was convicted of burglary and given an eighteen month probation order. Later that same year he was convicted of aggravated burglary and sentenced to eight months of youth custody. On 28 April 1997 he was fined GBP 30 following a conviction for possession of cannabis. On 12 September 1997 he was again convicted of possession of cannabis and sentenced to one day's imprisonment. On 4 October 1997 he was convicted of two counts of burglary and sentenced to two years' imprisonment.

9. On 5 June 2000, the applicant pleaded guilty to robbery at Wood Green Crown Court. The trial judge noted that the applicant had been one of the ringleaders of the robbery, during which two of the four robbers carried weapons. He imposed a sentence of four and a half years' imprisonment but made no recommendation regarding the applicant's deportation from the United Kingdom.

10. The applicant's relationship with his partner ended when he was imprisoned. Shortly afterwards, in 2000, his partner gave birth to a daughter. The applicant is not named as the father on the birth certificate although his mother cared for the child until she was three years old.

11. On 7 September 2001 the Secretary of State for the Home Department wrote to the applicant to notify him that he was considering his immigration status and his liability to deportation in light of his conviction of 5 June 2000. The applicant was invited to make representations within twenty-eight days, but the representations made on his behalf were not answered and no further action was taken at that stage. Following the

applicant's release on 21 January 2003, his solicitors wrote to the Home Office to seek clarification of his position, but still no formal action was taken.

12. On 18 May 2005 the applicant was convicted of a road traffic offence and a failure to surrender to custody. He was given a sentence of twenty-eight days' imprisonment, a fine of GBP 200 and disqualified from driving for nine months.

13. In April 2006 the Secretary of State for the Home Office admitted that 1023 foreign national criminals, who should have been considered for deportation or removal, had completed their prison sentences and were released without any consideration of deportation or removal action. The news was widely reported in the British media and resulted in urgent action being taken by the Home Office to improve performance and crack down on foreign national criminals.

14. In 2005 the applicant began a relationship with a British citizen. On 24 September 2006 the couple entered into a non-legally binding marriage by Kurdish rite ("the marriage") and their first child was born on 4 March 2007. A second child was born on 21 January 2008.

15. The applicant was served with an undated Notice of Decision to Make a Deportation Order on 1 October 2006. A letter entitled "Reasons for Deportation" had been prepared on 6 July 2006 on behalf of the Immigration Service Border Control & Enforcement Unit. It stated that in view of the applicant's conviction for robbery on 5 June 2000, the Secretary of State for the Home Department deemed it conducive to the public good to make a deportation order. The letter was signed and countersigned but it was not served on the applicant. On 5 September 2006 it was amended and reprinted. This amended letter was served on the applicant on 1 October 2006 together with the Notice of Decision to Make a Deportation Order. The amended letter entitled "Reasons for Deportation" set out all of the applicant's convictions, including that of 18 May 2005. It concluded that:

> "Full consideration has been given to all the known facts of your case in line with paragraphs 364 of HC 395 (as amended). Your personal and domestic circumstances have been carefully balanced against the seriousness of your crime and need to protect the wider community. It is concluded that in your case it is appropriate to deport you to Turkey."

16. The applicant appealed to the Asylum and Immigration Tribunal ("the AIT"), relying, *inter alia*, on Article 8 of the Convention. The Secretary of State requested an oral hearing. In the document setting out this request, the Secretary of State twice indicated that the decision to make a deportation order had been taken on 6 July 2006.

17. Before the AIT, the applicant argued, first, that the decision to deport him was not in accordance with the law. The relevant paragraph of the Immigration Rules, paragraph 364, had changed on 20 July 2006. The earlier version of the rule required the Secretary of State to conduct a

balancing exercise between the public interest and any compassionate circumstances of the case, taking into account all relevant factors. The post-20 July 2006 version of the rule established a presumption that the public interest required deportation. The Secretary of State would consider all relevant factors in considering whether the presumption was outweighed in a particular case, but it would be only in exceptional circumstances that the public interest in deportation would be outweighed in a case where it would not be contrary to the European Convention on Human Rights or the Refugee Convention to deport. The applicant argued that the decision to deport him had been taken on 6 July 2006 and thus his case should have been considered under the old version of paragraph 364, which was more favourable to him.

18. Secondly, the applicant argued that in light of his extensive private and family life in the United Kingdom and the length of his stay there, the decision to deport him was a violation of Article 8. He also submitted a report prepared by a consultant clinical psychologist who diagnosed him as having mild to moderate depression, panic disorder, mild mental retardation, borderline intellectual functioning and dyslexia.

19. In a determination dated 20 February 2007, the AIT dismissed the applicant's appeal. It found that the relevant date for the decision to deport was 1 October 2006, as the decision had remained incomplete until it was communicated to the applicant, and as a consequence his deportation fell to be considered under the later version of paragraph 364. In the alternative, the AIT found that if it was wrong in this conclusion and therefore had to conduct a balancing exercise pursuant to the earlier version of paragraph 364, it would have come to the same conclusion. The AIT also held that there had been no violation of Article 8 of the Convention.

20. The applicant applied for reconsideration of the AIT's decision. On 19 March 2007 a Senior Immigration Judge refused the application, holding that although the AIT had concluded that the decision to deport was made after paragraph 364 was amended, it had also considered the alternative. All relevant matters were considered by the AIT and no material error of law was disclosed.

21. The applicant's application for statutory review was dismissed by the High Court on 16 May 2007. On 8 June 2007 the deportation order in respect of the applicant was signed and it was served on him on 27 June 2007. On 11 July 2007 the applicant lodged an application for judicial review of the AIT's decision not to make an order for reconsideration, and applied to have the deportation revoked. The applicant was deported to Turkey on 12 July 2007.

22. On 16 July 2007 the application to revoke the deportation order was refused by the Secretary of State. On 10 October 2007 the High Court dismissed the judicial review application. The applicant brought an out-of-country appeal against this decision but the appeal was dismissed under

both the Immigration Rules and Article 8 of the Convention on 17 July 2008.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *1. Primary legislation*

23. Sections 1(4) and 3(2) of the Immigration Act 1971 provide for the making of Immigration Rules by the Secretary of State. Section 3(5)(b) of the same Act (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.

24. Sections 82(1) and 84(1)(a) of the Nationality, Immigration and Asylum Act 2002 provide for a right of appeal against a decision to deport, *inter alia*, on the grounds that the decision is incompatible with the Convention and that it was not in accordance with the Immigration Rules.

25. Section 2 of the Human Rights Act 1998 provides that, in determining any question that arises in connection with a Convention right, courts and tribunals must take into account any case-law from this Court so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

### *2. The Immigration Rules*

26. The version of paragraph 364 of the Immigration Rules, which was in force prior to 20 July 2006, provided as follows:

> "Subject to paragraph 380, in considering whether deportation is the right course on the merits, the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. [In the cases detailed in paragraph 363A, deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority]. Before a decision to deport is reached the Secretary of State will take into account all relevant factors known to him including:
>
> (i) age;
>
> (ii) length of residence in the United Kingdom;
>
> (iii) strength of connections with the United Kingdom;
>
> (iv) personal history, including character, conduct and employment record;
>
> (v) domestic circumstances;

(vi) previous criminal record and the nature of any offence of which the person has been convicted;

(vii) compassionate circumstances;

(viii) any representations received on the person's behalf."

27. The amended version of paragraph 364, in force since 20 July 2006, provides as follows:

"Subject to paragraph 380, while each case will be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects..."

28. In *EO (Deportation appeals: scope and process) Turkey* [2007] UKAIT 00062 the AIT considered whether the amendment to paragraph 364 substantively changed the rule. It concluded:

"we have no doubt that the substantive meaning of paragraph 364 after amendment by HC 1337 is very different from that which it previously bore. The range of issues expressly falling for consideration in the exercise of the discretion to make a deportation decision in the old version is such as to suggest a general duty to look at the issues already considered in the evaluation of the human rights claim and to apply what might be termed a lower standard to them. That range of considerations does not feature in the new version, which instead introduces a presumption in favour of deportation."

29. Paragraph 380 of the Immigration Rules, referred to in both versions of paragraph 364, provides as follows:

"A deportation order will not be made against any person if his removal in pursuance of the order would be contrary to the United Kingdom's obligations under the Convention and Protocol relating to the Status of Refugees or the Human Rights Convention [the European Convention on Human Rights]."

30. The Rules relating to the revocation of a deportation order are contained in paragraphs 390 to 392 of the Immigration Rules HC 395 (as amended), supplemented by Chapter 13 of the Immigration Directorate's Instructions ("IDIs"). There is no specific period after which revocation will be appropriate although Annex A to Chapter 13 of the IDIs gives broad guidelines on the length of time deportation orders should remain in force after removal. Cases which will normally be appropriate for revocation three years after deportation include those of overstayers and persons who failed to observe a condition attached to their leave, persons who obtained leave by deception, and family members deported under section 3(5)(b) of the Immigration Act 1971. With regard to criminal conviction cases, the

normal course of action will be to grant an application for revocation where the decision to deport was founded on a criminal conviction which is now "spent" under section 7(3) of the Rehabilitation of Offenders Act 1974. Paragraph 391 of the Rules, however, indicates that in the case of an applicant with a serious criminal record continued exclusion for a long term of years will normally be the proper course. This is expanded on in Annex A to Chapter 13 of the IDIs, which indicates that revocation would not normally be appropriate until at least 10 years after departure for those convicted of serious offences such as violence against the person, sexual offences, burglary, robbery or theft, and other offences such as forgery and drug trafficking.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that the decision to deport him was not in accordance with the law and constituted an unjustified interference with his right to respect for his private and family life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

32. The Government contested that argument.

### A. Admissibility

33. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

34. The applicant submitted that the decision to deport him was not in accordance with the law. First, he contended that there was clear evidence that the date of the decision to deport him was 6 July 2006, and the subsequent letters merely explained the reasons for the earlier decision. The decision to deport the applicant was not, therefore, taken in accordance with the applicable provision of the domestic law as he was entitled to the advantage of the pre-20 July 2006 formulation of paragraph 364. The subsequent finding of the AIT that it would have come to the same conclusion even if it had applied the earlier version of paragraph 364 was not sufficient to correct the defect.

35. Secondly, the applicant argued that in its treatment of his case, the Home Office breached procedural expectations created by the September 2001 letter, which logically indicated that consideration was to be conducted in a reasonably timeous way. The effect of the delay was to allow the applicant's family and private life in the United Kingdom to strengthen or develop, and to undermine the Government's claim that deportation pursued a legitimate aim of preventing disorder or crime, and that it was strictly necessary. Moreover, when the reasons for deportation were served on the applicant in 2006, it was clear that the decision had been based on the representations made by him in 2001.

36. In the alternative, if the decision was “in accordance with the law”, the applicant submitted that it was not necessary in a democratic society. With regard to his criminal conduct, he submitted that the majority of his offences were committed when he was seventeen to eighteen years old, and he has expressed regret for his past actions. With the exception of the minor offence committed in May 2005, the applicant has not reoffended since his release from prison in 2003. Although the conviction which gave rise to the decision to deport was serious, the Government did not decide to initiate deportation action until more than six years after the applicant's conviction.

37. Moreover, the applicant had arrived in the United Kingdom in 1989, when he was eleven years old. He lived there for over nineteen years, including during the formative years of his childhood and early adulthood. He contended that there were three distinct strands to his family life in the United Kingdom. First, with the exception of his father, who died in 2007, and his sister, who he believed to be in Iraq, all other members of his family resided in the United Kingdom and either held settled status, with a permanent right of residency, or had been granted nationality. Secondly, the applicant had a daughter, a British citizen, from a previous relationship. Although she had never lived with the applicant she lived with his mother

for three years while he was in prison. She now lives with the applicant's former partner but he sees her for two to three days a week and they have formed a close relationship. The applicant submitted that his deportation has been detrimental to this child. Thirdly, the applicant married his British partner in a Kurdish ceremony on 24 September 2006, before he was served with the notice of decision to deport. No formal civilly binding ceremony could take place because the applicant was attempting to obtain an endorsement of his extant leave in his passport. The couple's first child was born on 21 March 2007, and the second on 21 January 2008. At the time of the marriage the applicant's partner was aware of the letter sent to him in 2001, but he submitted that the delay on the part of the Home Office entitled her to assume that no deportation action was to be instigated against him.

38. Finally, the applicant submitted that he no longer had social, cultural or family ties to Turkey. He did not return to Turkey during the nineteen years he lived in the United Kingdom and he had no family or friends there. Moreover, his partner, who is of white British ethnicity, had no effective connection to Turkey as she was born in the United Kingdom and never lived elsewhere.

39. The Government, on the other hand, submitted that the applicant's deportation was in accordance with the law. They argued that neither version of paragraph 364 of the Immigration Rules offended against the requirement of legality: both had a basis in domestic law, and were accessible and foreseeable (The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 47, Series A no. 30). The question of which version of paragraph 364 should be applied to the applicant, however, did not go to the question of whether the decision to deport him was in accordance with the law; rather, it was a factual question as to the date of the decision and the correct rule to be applied. The AIT, having heard all of the evidence, concluded first, that the decision to deport was taken when it was served on the applicant, and secondly, that even if this was not correct, the applicant's case could still not succeed under the criteria that applied prior to the amendment of the Immigration Rules. There was therefore no foundation for the applicant's contention that the AIT should have carried out the balancing exercise envisaged by the earlier version of paragraph 364.

40. In any case, the Government submitted that the amendment did not impinge on the applicant's Article 8 rights as both versions of paragraph 364 were subject to paragraph 380, which provided that a deportation order would not be made against any person if his removal would be contrary to the United Kingdom's obligations under the Convention.

41. With regard to the applicant's family life in the United Kingdom the Government observed that he resided in Turkey until he was eleven years old. Although he arrived in the United Kingdom in 1989, between 1996 and 2000 he was a habitual offender and subject to intermittent terms of

imprisonment. He was in prison when his first child was born, and he had never resided with her. He is not named as her father on her birth certificate and he did not attempt to formalise his position as her father. Moreover, he met his current partner in 2005, after he had been served notice that the Secretary of State was considering his deportation, and he did not seek to ascertain his position before entering into a (non-legally binding) marriage rite and deciding to have a child. The Government further contended that there was nothing that inherently precluded the applicant's partner from joining him in Turkey, and their children were sufficiently young to be able to adapt to life there.

42. With regard to the applicant's criminal record the Government noted that his offending behaviour began when he was eighteen years old, before he was granted Indefinite Leave to Remain. His most serious offence, a robbery during which weapons were used, was committed after the grant of status. The term of imprisonment of four and a half years was demonstrative of the gravity of the offence. In particular, in his sentencing remarks the judge noted that the applicant was one of the ringleaders in a robbery that was terrifying for the victims. The Government submitted that although the offence committed in May 2005 was relatively minor, it demonstrated that the applicant had not been deterred from reoffending. As a consequence, although the applicant's deportation interfered with his Convention rights, the interference was proportionate to the legitimate aim pursued.

*2. The Court's assessment*

**(a) Was there an interference with the applicant's right to respect for his family and private life?**

43. It is clear from the Court's case-law that children born either to a married couple or to a co-habiting couple are *ipso jure* part of that family from the moment of birth and that family life exists between the children and their parents (see *Lebbink v. the Netherlands*, no. 45582/99, § 35, ECHR 2004-IV). The applicant therefore enjoyed family life in the United Kingdom with his current partner and their oldest child (the youngest was born after his deportation to Turkey).

44. The applicant's oldest child, however, is in a different position as his relationship with her mother had broken down before she was born and the child has never lived with the applicant. The Court has previously indicated that in the absence of co-habitation, other factors may serve to demonstrate that a relationship has sufficient constancy to create *de facto* family ties (*Kroon and Others v. the Netherlands*, 27 October 1994, § 30, Series A no. 297-C). Such factors include the nature and duration of the parents' relationship, and in particular whether they had planned to have a child; whether the father subsequently recognised the child as his; contributions made to the child's care and upbringing; and the quality and regularity of

contact (see *Kroon*, cited above, §30; *Keegan v. Ireland*, 26 May 1994, § 45, Series A no. 290; *Haas v. the Netherlands*, no. 36983/97, § 42 ECHR 2004-I and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 36, ECHR 2000-X). In the present case, the applicant had been in a six-year relationship with the child's mother. Although the relationship ended shortly before the child's birth, she knew the applicant as her father, and following his release from prison she spent two to three days a week with him. The Court therefore accepts that this relationship had sufficient constancy to amount to family life.

45. The Court does not find, however, that the applicant enjoyed family life with his mother and siblings as he has not demonstrated the additional element of dependence normally required to establish family life between adult parents and adult children (see *Slivenko v. Latvia* [GC], no. 48321/99 ECHR 2003-X).

46. Nevertheless, the Court recalls that, as Article 8 also 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 and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008 § 63).

47. Accordingly, the measures complained of interfered with both the applicant's "private life" and his "family life". Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 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.

**(b) "In accordance with the law"**

48. The Court reiterates that it has consistently held that the expression "in accordance with the law" requires first, that the impugned measure should have a basis in domestic law, but also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (The Sunday Times *v. the United Kingdom (no. 1)*, §§ 48 - 49, cited above).

49. In the present case the applicant contends that the impugned measure was not in accordance with the law because the decision to deport was taken

pursuant to the incorrect version of the Immigration Rules. The Court notes that paragraph 364 of the Immigration Rules did not contain the power to deport, but rather set out the factors that immigration officials were to consider in deciding whether deportation would be conducive to the public good and clarified how those factors should be weighted against the public interest. The power to deport was contained in section 3(5)(b) of the Immigration Act 1971 ("the 1971 Act"), which provided that a person who was not a British citizen would be liable to deportation if the Secretary of State deemed his deportation to be conducive to the public good. The legal basis for the impugned measure, for the purposes of Article 8 of the Convention, was therefore section 3(5)(b) of the 1971 Act read together with paragraph 364 of the Immigration Rules.

50. It is for the domestic courts to develop the domestic law by interpretation. However clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation (*C.R. v. the United Kingdom*, 22 November 1995, § 34, Series A no. 335-C). In the present case, the AIT held that the decision to deport the applicant only became final when it was served on him, and that the amended paragraph 364 of the Immigration Rules therefore applied.

51. The Court finds that section 3(5)(b) of the 1971 Act was formulated with sufficient precision to enable a non-British national reasonably to foresee that he could be liable to deportation if he committed a crime of sufficient gravity. Furthermore, the decision of the AIT to apply the amended version of paragraph 364 was not unforeseeable. In any case, regardless of which version of paragraph 364 was applied, the applicant could reasonably have been expected to foresee that the commission of an offence as serious as robbery would have made him liable to deportation. Moreover, as pointed out by the Government, both versions of paragraph 364 were subject to this rule that a deportation order would not be made against a person if his removal would be contrary to the obligations of the United Kingdom under the Convention.

52. Finally, the Court does not accept that the delay in issuing the Notice of Decision to Deport rendered that decision otherwise than in accordance with the law. Nothing in the Immigration Act 1971 or the Immigration Rules HC 395 (as amended) could have given rise to a legitimate expectation that a decision would be taken within any given timeframe. Clearly there was a long delay between the letter notifying the applicant that the Secretary of State was considering deportation and the decision to deport him. In the present circumstances, however, the delay is only relevant to the question of whether deportation was necessary in a democratic society as it permitted the applicant to build closer ties to the United Kingdom.

**(c) Legitimate aim**

53. It is not in dispute that the interference served the legitimate aims of "the interest of public safety" and "the prevention of disorder and crime".

**(d) "Necessary in a democratic society"**

54. The final question for the Court is whether the measure was necessary in a democratic society. The relevant criteria that the Court uses to assess whether an expulsion measure is necessary in a democratic society have recently been summarised as follows (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57 - 58, ECHR 2006-...):

> "57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, [cited above]; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yılmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:
>
> - 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.
>
> 58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:
>
> - 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."

55. Although the majority of the applicant's criminal convictions were at the less serious end of the spectrum of criminal activity and were non-violent in nature, the Court cannot ignore the more serious convictions for burglary and robbery. The conviction for robbery was particularly serious: in sentencing the applicant to four and a half years' imprisonment the judge

noted that the applicant was one of the ringleaders of the operation and that the use of weapons made it a terrifying ordeal for the victims. Moreover, although the applicant submits that the majority of his offences were committed when he was between seventeen and eighteen years old, he was in fact nineteen years old when he was last convicted of burglary and twenty-two years old when he was convicted of robbery. The present case is therefore readily distinguishable from *Maslov v. Austria* [GC], no. 1638/03, § 81, 23 June 2008, where the Court found a violation of Article 8. In *Maslov*, the (mostly non-violent) offences were committed by the applicant when he was between fourteen and fifteen years old and could therefore be regarded as acts of juvenile delinquency.

56. As a result of the Secretary of State's delay in issuing the Notice of Decision to Make a Deportation Order, the applicant enjoyed the benefit of three years at liberty in the United Kingdom following his release from prison. Although he did not commit any serious offences during this period, in May 2005 he was sentenced to twenty-eight days' imprisonment following his conviction for a road traffic offence and failure to surrender to custody. While the Court would not place much weight on the road traffic offence, the fact remains that the applicant subsequently failed to surrender to custody, and the imposition of a custodial sentence would suggest that he did so without reasonable cause.

57. The Court accepts that the applicant has spent a significant amount of time in the United Kingdom although it could not be said that he spent the major part of his childhood or youth there. He did not return to Turkey during the nineteen years he lived in the United Kingdom and although he spoke Turkish at the time of his removal from the United Kingdom, he no longer had any social, cultural or family ties to Turkey. His partner and his three children live in the United Kingdom and are British citizens. His mother, his brother and three of his sisters hold either British citizenship or a permanent right of residency. In the circumstances, the Court does not doubt that the applicant has strong ties to the United Kingdom.

58. The applicant's eldest child is currently eight years old. Although she has never lived with the applicant, the Court has already held that their relationship amounted to family life as she had a close relationship with him prior to his deportation, spending on average two to three days a week with him. Nevertheless, without underestimating the disruptive effect that the applicant's deportation has had, and will continue to have, on her life, it is unlikely to have had the same impact as it would if the applicant and his daughter had been living together as a family. Contact by telephone and e-mail could easily be maintained from Turkey, and there would be nothing to prevent his daughter from travelling to Turkey to visit him.

59. The Court has found that the applicant also enjoyed family life in the United Kingdom with his current partner and their oldest child. The fact remains, however, that he lived for a relatively short period with his partner

and their first born child, and he has never lived with their youngest child. Moreover, the applicant's partner was aware of his criminal record and immigration history when they decided to marry and start a family. In particular, she was aware that in 2001 the Secretary of State had advised the applicant that he was considering deportation. Although the Court has some sympathy with the applicant on account of the long and inexplicable delay in the commencement of deportation action, in the circumstances of the present case it does not accept that the delay entitled the applicant and his partner to assume that no further action would be taken. The Home Office had never indicated that it had considered his case and decided against deportation, and in April 2006, just five months before the marriage, the Home Office had announced that there would be a "crackdown" following the much-publicised admission that 1023 foreign national criminals, who should have been considered for deportation or removal, had completed their prison sentences and were released without any consideration of deportation or removal action.

60. Although the Court would not wish to underestimate the practical difficulties entailed for the applicant or his partner in relocating to Turkey, no evidence has been adduced which would indicate that it would be either impossible or exceptionally difficult for them to do so. Although the applicant was, prior to his deportation, diagnosed as suffering from mild to moderate depression, panic disorder, mild mental retardation, borderline intellectual functioning and dyslexia, there is no evidence to suggest that he could not receive treatment or counselling in Turkey should the need arise. Furthermore, although the applicant's partner is British, there are no circumstances that would inherently preclude her from living in Turkey. The couple's children are still very young – the eldest is just under two years old and the youngest just under one – and thus of an adaptable age. Given that they have British citizenship, if the applicant's partner and children followed him to Turkey they would be able to return to the United Kingdom regularly to visit other family members residing there.

61. Finally, the Court has had regard to the duration of the deportation order. Although the Immigration Rules do not set a specific period after which revocation would be appropriate, it would appear that at the very latest the applicant would be able to apply to have the deportation order revoked ten years after his deportation.

62. In light of the above, the Court finds that a fair balance was struck in this case in that the applicant's expulsion and exclusion from the United Kingdom was proportionate to the aims pursued and therefore necessary in a democratic society.

63. There has accordingly 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 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Lawrence Early<br>Registrar | Lech Garlicki<br>President |