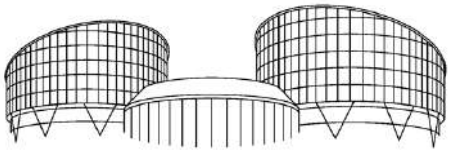

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LOUKILI v. THE NETHERLANDS

(Application no. 57766/19)

JUDGMENT

Art 8 • Expulsion • Family life • Revocation of residence permit of long-term settled migrant of Moroccan nationality and a ten-year entry ban due to repeated convictions for serious drug-related offences • Risk of reoffending • Lack of proper substantiation of interaction with his minor children who lived with their mother • Limited yet sufficient ties with Morocco to build a new life there • No obstacles to maintaining contact with his children • Limited duration of ban • Proportionality duly assessed by domestic courts in light of Court's case-law • Margin of appreciation not overstepped

STRASBOURG

11 April 2023

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 Loukili v. the Netherlands,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 57766/19) 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 Moroccan national, Mr Farid Loukili ("the applicant"), on 30 October 2019;

the decision to give notice to the Government of the Kingdom of the Netherlands ("the Government") of the complaint concerning Article 8 of the Convention;

the parties' observations;

Having deliberated in private on 14 March 2023,

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

INTRODUCTION

1. The case concerns the applicant's allegation of an unjustified interference with his right to respect for his family life as a result of decisions to revoke his residence permit and to impose an entry ban on him.

THE FACTS

2. The applicant was born in 1978 and lives in Rotterdam. He was represented before the Court by Mr C.H.M. Geraedts, a lawyer practising in Heerlen.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant lived in Morocco until he left for the Netherlands in 1981, together with his mother and siblings, to join his father. After he was registered in the Municipal Personal Records Database (*Gemeentelijke basisadministratie persoonsgegevens*) in January 1982, the applicant initially resided lawfully as a dependent family member. From 1993 to 2001 the

applicant had a temporary residence permit (*verblijfsvergunning regulier voor bepaalde tijd*).

6. On 29 February 2000 the applicant was convicted of intentional possession of cocaine and heroin. A forty-hour community service order (*taakstraf*) was imposed on him.

7. On 5 December 2001 he received a residence permit of indefinite duration (*verblijfsvergunning regulier voor onbepaalde tijd*) under section 20 of the Aliens Act 2000 (*Vreemdelingenwet 2000*).

8. From 2002 until an unknown date, the applicant was in a relationship with a Dutch national. Two sons were born to the couple in August 2008 and February 2014. The applicant was in pre-trial detention when his youngest child was born. The children live with their mother and have Dutch nationality. The applicant has acknowledged (*erkend*) his paternity of only the youngest child. It does not appear from the case file that the applicant has ever cohabited with the children and their mother.

9. On three separate occasions between 2004 and 2012 the applicant was convicted of intentional possession of cocaine and heroin, assault, intentional and unlawful destruction of property, and intentional handling of stolen goods. For those crimes (*misdrijven*) he was sentenced to two weeks' imprisonment (of which one week was suspended), one week's imprisonment and partial enforcement of the aforementioned suspended sentence, and fifty hours' community service (in lieu of which the applicant served twenty-five days' detention) respectively.

10. On 18 February 2014 a full-bench (*meervoudige kamer*) of the criminal-law chamber of the Maastricht Regional Court (*rechtbank*) convicted the applicant of complicity (*medeplegen*) in multiple acts of intentionally selling cocaine and heroin and intentionally possessing 4.6 grams of cocaine and 35.5 grams of heroin. Noting that hard drugs posed a grave danger to public health and caused harm to society, and that drug trafficking and use was often accompanied by other forms of (serious) crime, the court sentenced him to twelve months' imprisonment, of which two months were suspended, with a two-year probation period.

11. On 31 January 2017 a full-bench of the criminal-law chamber of the Maastricht Regional Court convicted the applicant of intentional possession of 500 grams of cocaine, committed in October 2016. Considering the commercial quantity (*handelshoeveelheid*) of the drugs and other indications of his involvement in drug dealing – such as related modifications to his car and his previous conviction of 18 February 2014 – and the fact that hard drugs posed grave danger to public health and that drug use was often accompanied by crime and other harm to society, the court sentenced the applicant to five months' imprisonment and declared his car forfeit (*verbeurd*).

12. On 22 June 2017 the applicant was notified that in view of his criminal convictions, the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*) intended to revoke the applicant's residence permit, to

issue a return decision (*terugkeerbesluit*) and to impose an entry ban (*inreisverbod*) on him for a period of ten years. The applicant was given the opportunity to submit written comments (*zienswijze*) to this notification of intent within four weeks.

13. In his written comments the applicant asserted that his residence permit should not be revoked, as this would separate him from his two sons, his parents, and siblings. He claimed that he had broken with his criminal past and had adopted a completely different lifestyle, which included employment and shared responsibility for his children. The applicant also pointed out that he did not have any ties with Morocco apart from a three-month holiday spent there with friends in 2016 (he later submitted a correction that it had been a three-week holiday). He submitted salary statements from different employers covering 2015, January and February 2016 and April to October 2017 and a brief statement dated 7 July 2017 – bearing the name and signature of his ex-girlfriend – according to which there was a practical arrangement (*afspraak*) in place by which he had access to his children at least every Wednesday afternoon and every other weekend.

14. The applicant waived the opportunity to explain his written comments at a hearing with the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*), stating that he had already submitted all the relevant information.

15. By a decision of 21 November 2017, the Deputy Minister of Justice and Security (*Staatssecretaris van Justitie en Veiligheid*, the legal successor to the Deputy Minister of Security and Justice in these matters – "the Deputy Minister") revoked the applicant's residence permit with effect from 7 October 2016, issued a return decision with immediate effect and imposed a ten-year entry ban. The Deputy Minister noted that the applicant had been convicted in six final judgments of seven, mostly drug-related, crimes and that he had been sentenced to a total of sixteen months' imprisonment. The decision to revoke the applicant's residence permit was based on section 3.98 in conjunction with section 3.86 (4) and (5) of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*; see paragraphs 23 and 25 below). The Deputy Minister acknowledged that those measures constituted an interference with the applicant's right to respect for his family life with his two minor children as laid down in Article 8 of the Convention. However, he considered the interference justified and noted, *inter alia*, the following in that connection:

> "... I have also reviewed my decision in the light of the rules that the European Court of Human Rights has set for this purpose [in] *Boultif* [*v. Switzerland*, no. 54273/00, ECHR 2001-IX] and ... *Üner* [*v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII] ...
>
> *Nature and seriousness of the crime*
>
> [Y]ou have been convicted with final effect several times and sentenced to an unconditional prison sentence. In view of the pattern and gravity of your crimes, future crimes may still be expected. You committed serious crimes between 2004 and 2016.

You were convicted several times of violating the Opium Act. With respect to the last [such] conviction ... the court indicated that you were causing harm to public health. You were held jointly responsible for trafficking in hard drugs and all the adverse consequences thereof ... for the victims and their immediate environment [and for] the entire society. These serious infringements of public order and public health weigh heavily against you. [By committing those crimes] you caused considerable societal and material damage. In view of what is known to me, I cannot rule out that you will commit crimes again.

The duration of the stay in the Netherlands and the solidity of the alien's social, cultural and family ties with the Netherlands and the country of destination

You have now officially resided in the Netherlands for more than thirty-five years. After such a long stay it is considered that you have social and cultural ties with the Netherlands. Considering the fact that ... you regularly engaged in serious criminal activities in the period from 2004 to 2016, no decisive significance can be attached to [those ties]. The nature, seriousness and number of the criminal offences you have committed diminish the weight that is to be attributed to your long-term stay in the Netherlands. ...

As you have been engaged in serious criminal activities during a relatively short period, you have demonstrated that you have no respect for public order. Despite the penalties that have been imposed on you, you have continued to commit criminal offences. This shows that you do not respect the Dutch legal order either.

Furthermore, it is considered that you were born in Morocco and that you came to the Netherlands at the age of four. According to the information before me, your parents also come from Morocco and from them and other Moroccans in the Netherlands, you have learned about social and cultural customs in Morocco.

In your written comments you indicated that you went to Morocco [for a holiday] in 2016. You also indicated that you would have to integrate [*inburgeren*] in Morocco. This does not, however, take away from the fact that it may be expected of you as an adult male that you will be able to build a new life for yourself [*verwacht mag worden dat u als volwassen man in staat moet zijn een nieuw leven op te bouwen*] in Morocco.

The time that has elapsed since the offence was committed and the alien's conduct during that period

... Your most recently committed crime of 7 October 2016, of which you were convicted with final effect, concerned complicity in activities in violation of the Opium Act. You were sentenced to five months' imprisonment.

Although you state in your written comments that you have been employed since 1 September 2017, the salary statements do not indicate that this is permanent employment. This is insufficient for a decision not to revoke your residence permit ... The actual risk of a recurrence of your criminal activity is high.

In view of the great regularity with which you have committed criminal offences and the number of offences committed, you have not shown that the punishments have influenced your behaviour. Given your criminal past, I cannot rule out the possibility that you will not [*sic*] commit criminal offences again in the future. All the more so since you have not shown that you have learned any lessons from the prison sentences imposed on you.

The nationalities of the various persons concerned

You have two minor children with your ex-girlfriend ... Your minor children live with your ex-girlfriend. Your children have Dutch nationality. Your parents, brothers and sister also live in the Netherlands.

In your written comments you indicated that you are closely involved in the upbringing of your children. Your children stay with you every other weekend. You also indicated ... that you want to improve your life and be there for your children. Your eldest son was born [in] 2008 and the youngest was born [in] 2014. In view of the ... prison sentences ... it appears that you have been detained for most of your youngest son's life. Neither the prison terms imposed on you nor the fact that you have been unable to care for your children for extended periods prevented you from committing further criminal offences.

... You can exercise your right to family life with your children in Morocco. It is your and your ex-girlfriend's personal choice to do so. [...]

Your personal interests must be assessed against the interests of the Dutch State. Those interests have been carefully weighed up. In this balancing of interests, I have a certain margin of appreciation. After weighing up all interests, I conclude that the interference with your ... family life is permitted in the interests of protecting public order and the prevention of crime."

16. As to the imposition of the entry ban, the Deputy Minister, noting that it was based on section 66a(1)(a) read in conjunction with section 62(2)(c) of the Aliens Act 2000 (see paragraphs 27 and 28 below), stated the following:

"Because you pose a serious threat to public order, I impose a [ten-year] entry ban on you. ...

The individual circumstances you have presented are insufficiently special or serious to justify the imposition of an entry ban of a shorter duration. [...]

You have been convicted with final effect of seven offences and sentenced to a total of sixteen months in prison. Those crimes are listed above. You have continued to commit crimes, which shows that you have not learned from the punishments that have been imposed on you.

You have been convicted several times with final effect of complicity in acts in violation of the Opium Act. You have also been convicted of assault.

In the judgment [of 31 January 2017] regarding complicity in acts in violation of the Opium Act, the [Regional Court] stated that by intentionally being in possession of 500 grams of cocaine and trafficking in that amount of cocaine, large profits from criminal activity will have been made, dealers supplied, and many users served. The court held that the use of hard drugs such as cocaine harms public health. Hard drugs pose great danger to the health of the users. The court held you partly responsible for the serious damage that has been done to society, because addicts often resort to criminal activity to finance their [drug] use.

I have no reason to believe that you will not commit further criminal offences. This is all the more pressing [*dit klemt temeer*] as you do not wish to be heard. You have therefore not given me the opportunity to assess whether there may have been a positive change in your behaviour. I can therefore only conclude that there is still a great risk that you will continue to commit serious crimes. As a result, you still pose a current, real and serious threat. ...

In view of the nature of the crimes of which you have been convicted, it is therefore considered that you have several times damaged a fundamental interest of Dutch society.

You have deliberately committed offences related to hard drugs. Drugs are a harmful substance for the health of citizens. As a result, you have caused harm to the fundamental interests of society. It can be established that the crimes you have committed are of a very serious nature and that they have seriously upset the legal order [*de rechtsorde ernstig heeft geschokt*]. You have also been held partly responsible for trafficking in hard drugs and all its adverse consequences.

The effects of insecurity, nuisance and social damage are so far-reaching that it may be concluded that a fundamental interest [*fundamenteel belang*] of Dutch society has been harmed."

17. On 6 December 2017 the applicant objected (*bezwaar*) to the decision of 21 November 2017. He reiterated the arguments put forward in his written comments (see paragraph 13 above) and added that the bond with his children was much closer, with more regular and frequent contact, than it had been when he had committed the crimes that had given rise to the decision. Considering that factor, as well as his long-term residence and the fact that he had been employed at the time of the impugned decision, the applicant submitted that the measures in question were disproportionate.

18. On 27 March 2018 a hearing was held before an official board of inquiry of the Immigration and Naturalisation Service at which the applicant and his authorised representative were present. The applicant later submitted a copy of a letter dated 3 April 2018 in which a former employer indicated that the applicant would be re-employed under the same conditions if his residence permit were not revoked.

19. On 24 May 2018 the Deputy Minister dismissed the applicant's objection. In so far as relevant, he held as follows:

"It was found in the decision [of 21 November 2017] that you have family life with your children, even though you provided insufficient substantiation for [the existence of] that family life. The grounds for the objection ..., the additional documents and the content of your statements have not succeeded in reducing the doubt on my part regarding the substance [*invulling*] of your family life. That doubt still exists. The interference with your family life can take place because of the breaches [*schendingen*] of public order committed by you. The [above-mentioned] decision contains the arguments supporting that position. ...

... By staying for at least three weeks, you appear to have gotten to know Morocco again in a certain way. The visit reinforced your knowledge of Moroccan social and cultural customs, manners and [there], I assume, you spoke a language commonly used in Morocco.

...

You have not substantiated with objectively verifiable documents why your personal behaviour has changed. You stated that having a job constitutes one of the guarantees that you will not commit any more crimes. However, in the past you have also worked while committing crimes at the same time. You stated that you have worked at [company 1] for three years and at [company 2] for one year ..., as well as at

[company 3] ... In 2015 and early 2016 you worked on an agency basis [*uitzendbasis*] at [company 4] ... This was all before you worked at [company 5] and [company 6]. It appears that having a job is no guarantee that you will stop committing crimes. It appears that you commit crimes despite and in addition to having a job. You have done this in particular in the context of drug trafficking. The Regional Court has also elaborated on this in its judgment [of 31 January 2017; see paragraph 11 above]. There are many indications ... that you are involved in drug trafficking [, such as] the way in which your car has been modified.

Another guarantee that you claim would stop you from committing crimes is that of taking your family life seriously. It is assumed that you have a family life, but its substance is unclear. You have not corroborated in any way that you give any substance, limited or otherwise, to your family life with your children. ... You have also not provided corroboration for the financial contributions which you claimed to make to the upbringing of your children. In short, there is not a single (objectively verifiable) document that shows genuine contact [*duidelijke omgang*] with your children. The fact that you know where they went to school or which football club they joined is insufficient.

Because you have not further substantiated your arguments with regard to the reasons why you pose a reduced risk of reoffending, the position adopted in the [above-mentioned] decision remains unchanged and the balance of interests will still not be in your favour. ...

To my knowledge, your children are nine and four years old. You have not provided any information with regard to their physical and emotional development. However, you have indicated that they go to school and practise sports. You have not substantiated in any (objective) manner to what extent you have a bond with your children. You have also not substantiated with any documents that you have contact with your children; a note from the mother ... [describing the practical access arrangement], while it is unknown if that note is indeed from her, is insufficient. Moreover, the note was written almost one year ago and it only describes an arrangement with you. Whether you have stuck to the arrangement is unknown. Furthermore, it is assumed that the mother is living in the Netherlands and has Dutch nationality[,] that the children live with her and will be able to continue living with her in the Netherlands if you have to leave [, and] that the mother has custody. Therefore, it is not yet assumed that there is such a bond and relationship of authority that a relationship of dependency exists between you and your children as a result of which they would be forced to leave the territory of the [European] Union. ...

The fact that you can go to work and that you (may) have a good relationship with your children does not mean that you are not capable of committing criminal acts again. The fact that you had children, for example, did not prevent you from committing crimes in the past. Moreover, it is unclear whether your current relationship with your children differs from the relationship you had with them in the past.

As already noted, having a job has not put a stop to your offences. It is considered that usually only a positive, independent opinion, such as, for example, an opinion by the probation and social rehabilitation service [*reclassering*], must be submitted in order to accept that you will no longer commit crimes. ...

Apart from the offences found proven by the [Regional Court in its] judgment [of 31 January 2017] ... [t]here are indications that you are involved in drug trafficking. This is strongly held against you and there are no indications that you have left the drug-trafficking world, only that you have not committed any more crimes since the previous one. But that is no guarantee of improvement.

> Considering the relatively short time that has passed since your previous final conviction for a drug offence, the passage of time has not shown that your personal behaviour has improved. Your criminal record shows that longer periods of time passed before you were caught again committing a (drug) offence."

20. On 21 June 2018 the applicant lodged an appeal (*beroep*) against the decision of 24 May 2018. He reiterated his grounds of objection, emphasised that he had left Morocco at the age of three and asserted that he had broken with his criminal past to focus on his family. With regard to the balancing of interests, the applicant argued that the impugned measures were disproportionate in view of his long stay in the Netherlands, his ties with the children and their mother and the absence of any real ties with Morocco. The applicant argued that the contested decision had therefore been insufficiently substantiated in view of the very far-reaching consequences for his children residing in the Netherlands and of the severing of his family ties with them. The applicant also submitted a statement from his ex-girlfriend, dated 2 June 2018, in which she described the practical role the applicant played in their children's lives, their behavioural changes when they did not regularly see him and the financial difficulties it would cause for her and her children to visit him in Morocco.

21. Following a hearing on 17 January 2019, the Regional Court of The Hague, sitting in Roermond, dismissed the applicant's appeal by a judgment of 12 March 2019. It noted that it was not in dispute between the parties that family life existed between the applicant and his two children. Referring to the judgments in the cases of *Boultif* and *Üner* (both cited above), the court noted that in assessing whether Article 8 of the Convention justified the interference with family life in a particular case, a "fair balance" had to be struck between the interests of the individual and the general interest of the member State concerned. It added that, in determining whether the interference with the applicant's family life was justified in the interest of public order, the Deputy Minister had taken into account the "guiding principles" formulated by the Court. After reiterating the reasoning put forward by the Deputy Minister in the decisions of 21 November 2017 and 24 May 2018, it held as follows:

> "9. The Regional Court is of the view that, by referring to, *inter alia*, the nature and seriousness of the offences committed by [the applicant] and the relatively short time between his most recent conviction and the date of the decision [of 21 November 2017] (approximately ten months), the [Deputy Minister] has provided an adequate explanation as to why [the applicant] poses a current threat to public order. It does not appear from [the applicant's] appeal that his conduct has changed to such an extent as to warrant the conclusion that he no longer poses a current, genuine and sufficiently serious threat to a fundamental interest of society. The fact that [the applicant] has had a job since 1 September 2017 is insufficient in that context, especially since it has not been shown that this employment is permanent. The same is true of the mere assertion that [the applicant] is no longer involved in criminality. Moreover, [the applicant] has not submitted any documents, for example a probation report, to support his claim that his conduct has improved. ...

> 13. The Regional Court considers that [the applicant] cannot derive a right of residence [based on Article 20 of the Treaty on the Functioning of the European Union] from the ... case-law [of the Court of Justice of the European Union] because he has not provided evidence to support his submission that a relationship of dependency exists with his children. The documents submitted by [the applicant] in this context, namely a letter from his ex-girlfriend ..., are insufficient for that purpose. After all, this does not constitute objectively verifiable evidence.
>
> 14. The Regional Court finds that it has not been shown that [the Deputy Minister] did not take into account all relevant facts and circumstances in his extensively reasoned weighing of interests. Furthermore, the Regional Court finds that [the Deputy Minister] has not wrongly taken the position that the contested decision is in accordance with the 'fair balance'. [The Deputy Minister] was therefore entitled to let the interest of public order prevail over the [applicant's] interest in exercising his family life in the Netherlands. [The applicant's] mere assertion that he has no ties with Morocco does not constitute cause to reach a different conclusion."

22. By a judgment of 29 August 2019, the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*) found that the applicant's further appeal did not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to section 91(2) of the Aliens Act 2000, no further reasoning was called for, as the arguments submitted did not raise any questions requiring a determination in the interests of legal unity, legal development or legal protection in the general sense. No further appeal lay against that decision.

RELEVANT LEGAL FRAMEWORK

I. REVOCATION OF A RESIDENCE PERMIT OF INDEFINITE DURATION

23. The minister responsible may revoke a residence permit of indefinite duration on grounds of public order if the holder has been convicted by a final court judgment of a criminal offence that is punishable by a custodial sentence of three years' imprisonment or more (section 20(1)(b) read in conjunction with section 22(2)(c) of the Aliens Act 2000) and if the revocation is in keeping with the "sliding scale" principle (section 3.98 of the Aliens Decree 2000). The basic idea behind denying an individual continued residence in accordance with the sliding scale principle is that the longer an alien has been lawfully resident in the Netherlands on the basis of a residence permit, the heavier the sentence imposed must be before such a permit can be revoked. The sentence is thus assessed on a sliding scale – set out in section 3.86 of the Aliens Decree 2000 – against the length of the individual's period of residence at the time he or she committed the offence.

24. In the context of the sliding scale, "period of residence" refers to the uninterrupted period during which the individual had lived in the Netherlands whilst in possession of a residence permit prior to committing the offence

(section 3.86(6) of the Aliens Decree 2000). The period of residence after this date is not relevant to the application of the sliding scale, but it is taken into account when the competing interests are assessed under Article 8 of the Convention.

25. Subsection 4 of section 3.86 of the Aliens Decree 2000 provides that a residence permit of indefinite duration for an alien who has been convicted of three or more criminal offences can be revoked if the total length of the non-suspended parts of the custodial sentences imposed is equal to or more than the threshold set out in subsection 5. For aliens whose period of residence in the Netherlands is fifteen years or more, the threshold laid down in subsection 5 is fourteen months' imprisonment.

26. A non-asylum-based residence permit of indefinite duration cannot be revoked if removal of the alien would be contrary to Article 8 of the Convention (section 3.86(17) of the Aliens Decree 2000).

27. A decision to revoke an alien's residence permit is considered a return decision, which means that the alien is no longer legally entitled to reside in the Netherlands and that he or she must leave of his or her own volition (section 27(2)(c) in conjunction with section 27(1) of the Aliens Act 2000). This must take place within four weeks unless the alien has lodged an objection or appeal with suspensive effect (section 27(3) in conjunction with sections 27(1)(b) and 62 of the Aliens Act 2000). If an alien poses a threat to public order, public security or national security, the minister may require him or her to leave the Netherlands immediately (section 62(2)(c) of the Aliens Act 2000).

II. IMPOSITION OF AN ENTRY BAN

28. An entry ban is imposed on aliens who have been required to leave the Netherlands immediately, provided that they are not nationals of a European Union member State and their state of health does not make it inadvisable for them to travel (section 66a(1) of the Aliens Act 2000).

29. Where an entry ban is imposed on an alien who constitutes a serious threat to public order, public security or national security, its maximum length is ten years (section 66a(4) of the Aliens Act 2000). Evidence of such a threat includes a conviction for a violent crime (*geweldsdelict*), an offence under the Opium Act (*opiumdelict*) or an offence punishable by a custodial sentence of more than six years' imprisonment (section 6.5a(5) of the Aliens Decree 2000).

30. The period of validity of the entry ban starts to run on the date on which the alien actually leaves the Netherlands (section 66a(4) of the Aliens Act 2000).

31. The imposition of an entry ban on an alien is considered to constitute an interference with his or her private and family life and no ban is imposed where this would be contrary to Article 8 of the Convention; its compatibility

with Article 8 must therefore be considered – within the framework of which a balancing exercise is to be carried out – before it is imposed (sections B7/3.8.2-3 and A4/2.2 of the Aliens Act 2000 Implementation Guidelines – *Vreemdelingencirculaire 2000*).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicant complained of an unjustified interference with his right to respect for his family life as provided for in Article 8 of the Convention, which, in so far as relevant, reads 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 the application 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 submitted that the revocation of his residence permit, the return decision and the ten-year entry ban had been disproportionate. The Deputy Minister and the domestic courts had insufficiently taken into account his and his children's interests and had failed to recognise that their interests outweighed the public interest. In particular, the applicant submitted that the active, frequent and close involvement he had had (including while detained) and continued to have in his children's lives would effectively cease if he were to be expelled to Morocco. His ex-girlfriend did not have the financial means to visit him regularly in Morocco, and it could not be expected of her and the children to give up their lives in the Netherlands and settle in a country of which they did not have the nationality and with which they had no ties. The applicant also submitted that on account of the revocation of his residence permit he was unable to be gainfully employed in the Netherlands, that he had not incurred any further criminal convictions and that he had no ties with Morocco apart from a three-week holiday in 2016 (see paragraph 13

above). Accordingly, the domestic decisions had to be considered arbitrary and manifestly unreasonable.

35. In reply to the Government's statement of facts and without having raised this argument in the process of exhausting domestic remedies, the applicant further submitted that the revocation of his residence permit had not been in accordance with section 21(4) of the Aliens Act 2000 because he had not been convicted of drug trafficking (*handel in verdovende middelen*) and sentenced to more than sixty months' imprisonment.

(b) The Government

36. The Government took the position that the domestic courts had thoroughly assessed the applicant's personal circumstances, carefully balanced the competing interests on the basis of the relevant criteria set out in the Court's case-law and reached findings that were neither arbitrary nor manifestly unreasonable.

37. With respect to the nature and seriousness of the offences and the time which had elapsed since the applicant's last offence, the Government submitted that he had been convicted of, *inter alia*, assault and four drug-related offences, all of which were considered crimes at the most serious end of the spectrum. Moreover, it was apparent from the Maastricht Regional Court's judgment of 31 January 2017 that there were indications that the applicant had been involved in drug trafficking (see paragraph 11 above). The Government further submitted that the applicant's assertion that his personal conduct had changed and that his work and children would guarantee that he remain on the straight and narrow had remained unsubstantiated.

38. The Government also drew the Court's attention to the fact that the applicant had never applied for Dutch nationality, that he had linguistic, social and cultural ties with Morocco, and that he had to be considered capable of building a life for himself in that country. The Regional Court of The Hague had rightly found that no decisive significance could be attributed to the applicant's long-term residence in and social and cultural ties with the Netherlands. His regular engagement in serious criminal activity from 2004 to 2016 showed a lack of respect for the Dutch legal order.

39. With respect to the applicant's family life with his children, the Government submitted that the applicant had never acknowledged his paternity of the eldest child, that he had spent a large part of the children's lives in detention, that the children lived with their mother, who exercised parental authority, and that his expulsion would have no major effects on the children's day-to-day lives. As confirmed by the Regional Court of The Hague, sitting in Roermond, the applicant's statements regarding his involvement, limited or otherwise, with his children and the financial maintenance he contributed had not been backed up by objective evidence. Moreover, as the Regional Court had shown, there was no indication that the

children were in an exceptional situation of particular vulnerability or dependency on their father.

40. The Government also pointed out that the entry ban was of a limited duration of ten years.

41. In response to the applicant's reliance on section 21(4) of the Aliens Act 2000 and with reference to a judgment of the Administrative Jurisdiction Division of the Council of State of 17 June 2020 (ECLI:NL:RVS:2020:1384), the Government noted that section 21(4) governs the rejection of an application for a residence permit, rather than its revocation to which section 22 of the Aliens Act 2000 is applicable.

2. The Court's assessment

42. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there. To that end, States have the power to deport aliens convicted of criminal offences (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, 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 provision 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", that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII, and *Boultif v. Switzerland*, no. 54273/00, § 41, ECHR 2001-IX).

(a) Whether there was an interference with the applicant's right to respect for his family life

43. The first question to be addressed is whether family life within the meaning of Article 8 of the Convention existed between the applicant and his two minor children. Although, as a rule, cohabitation may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* "family ties". The existence or non-existence of "family life" for the purposes of Article 8 is essentially a question of fact depending upon the real existence in practice of close personal ties (see *L. v. the Netherlands*, no. 45582/99, §§ 35-36, ECHR 2004-IV). In this connection, the Court does not find any indication in the case file that the applicant has ever cohabited with his

children and their mother, the applicant's ex-girlfriend. Moreover, the Court observes that the applicant has acknowledged his paternity of only the youngest son (see paragraph 8 above) and that he had been detained for most of that son's life by the time the Deputy Minister took the decision of 21 November 2017 (see paragraph 15 above). The Court further notes that, apart from the two statements from his ex-girlfriend (see paragraphs 13 and 20 above) which are not precise as regards the moment from which he started to engage with his children, no information has been submitted showing that the applicant had any involvement in his children's upbringing prior to the moment that he was notified in June 2017 of the Deputy Minister's intention to revoke his permit (see paragraph 12 above) and that there were doubts as regards the substance of his family life at the relevant time (see paragraph 19 above). The domestic authorities nevertheless accepted the existence of "family life". Taken this into account and noting that the children were born from a genuine relationship between the applicant and his ex-girlfriend, and that it was confirmed in the above-mentioned statements that the applicant had contact with his children, the Court will also accept that there existed certain ties between the applicant and his minor children which were sufficient to attract the protection of Article 8 of the Convention and that the impugned measures interfered with it (see paragraphs 15, 19 and 21 above).

(b) "In accordance with the law"

44. In so far as the applicant's belated argument based on section 21(4) of the Aliens Act 2000 (see paragraph 35 above) can be entertained despite it not having been raised during the process of exhausting domestic remedies, the Court notes that the measures in question were taken pursuant to section 20(1)(b) read in conjunction with section 22(2)(c) of the Aliens Act 2000, and to section 66a(1) of the Aliens Act 2000 and section 3.86 of the Aliens Decree 2000 (see paragraphs 23 and 28 above). The interference at issue was thus in accordance with the law.

(c) "Legitimate aim"

45. The Court accepts that the impugned measures pursued the legitimate aims of ensuring public safety and preventing disorder or crime (see *Üner*, cited above, § 61, and *Azerkane v. the Netherlands*, no. 3138/16, § 68, 2 June 2020). It remains to be ascertained whether they were also "necessary in a democratic society" within the meaning of the Court's case-law.

(d) "Necessary in a democratic society"

(i) General principles

46. The relevant criteria for assessing whether the revocation of the residence permit and the imposition of an entry ban were necessary in a

democratic society and proportionate to the legitimate aims pursued under Article 8 of the Convention have been laid down by the Court in its case-law (see *Üner*, cited above, §§ 57-58, and *Maslov v. Austria* [GC], no. 1638/03, §§ 68-76 and 98, ECHR 2008). These criteria 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;

– 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;

– the solidity of social, cultural and family ties with the host country and with the country of destination; and

– the duration of the exclusion order.

47. Moreover, for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (see *Maslov*, cited above, § 75).

48. The Court reiterates that it has never set a minimum requirement as to the sentence or seriousness of the crime which ultimately results in expulsion, nor has it, in the application of all the relevant criteria, qualified the relative weight to be accorded to each criterion in the individual assessment (see *Khan v. Denmark*, no. 26957/19, §§ 68-69, 12 January 2021, and *Munir Johana v. Denmark*, no. 56803/18, §§ 53-54, 12 January 2021, with further references). That must be decided on a case-by-case basis, in the first place by the national authorities, subject to European supervision.

49. Where an applicant is being expelled as a consequence of a criminal offence, the Court has considered that this decision first and foremost concerns him or her and has accepted in the context of the balancing exercise under Article 8 of the Convention that the family's interests may be outweighed by other factors, including the seriousness of the offence (see *Otite v. the United Kingdom*, no. 18339/19, § 51, 27 September 2022). It has further tended to consider the seriousness of a crime in this context not merely by reference to the length of the sentence imposed but rather by reference to the nature and circumstances of the particular criminal offence or offences committed by the applicant in question, and has previously shown

understanding of the domestic authorities' firmness as regards those actively involved in drug dealing (see *Udeh v. Switzerland*, no. 12020/09, § 46, 16 April 2013). And while the Court does not necessarily take the same approach as regards those convicted of offences related to drug consumption or possession (see *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001, and *Maslov*, cited above, § 80), it must be emphasised that, in principle, drug-related offences are properly to be viewed as at the most serious end of the criminal spectrum, given their nature and the destructive effects they have on society as a whole (see *Akbulut v. the United Kingdom* (dec.), no. 53586/08, § 18, 10 April 2012 and *Unuane v. the United Kingdom*, no. 80343/17, § 87, 24 November 2020, with further references). The same can be said of violent offences such as assault (see *Üner*, § 63; *Unuane*, § 87; and *Munir Johana*, §§ 56-57 and 59, all cited above). Additional aspects of the totality of a person's criminal history which must be taken into account under the criterion of "nature and seriousness of the offence" are the risk of reoffending (see *Ndidi v. the United Kingdom*, no. 41215/14, §§ 29, 78 and 81, 14 September 2017; *Levakovic v. Denmark*, no. 7841/14, §§ 19 and 44, 23 October 2018; *Azerkane*, cited above, §§ 22, 78 and 84; and *Munir Johana*, cited above, §§ 56 and 58-59; and compare *Udeh*, cited above, § 47, and *Kolonja v. Greece* (dec.), no. 49441/12, §§ 54 and 57, 19 May 2016), the severity of the criminal penalty (see *Unuane*, § 86, and *Azerkane*, § 73, both cited above) and whether the offences were committed as a juvenile or as an adult (see, for example, *Maslov*, cited above, § 81). The fact that the offence committed by an applicant was at the more serious end of the criminal spectrum is not in and of itself determinative of the case but rather one factor which has to be weighed in the balance, together with the other criteria which emerge from the judgments in *Boultif* and *Üner* (see *Unuane*, cited above, § 87).

50. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but that it goes hand in hand with European supervision. The Court is empowered to give the final ruling on whether an expulsion measure is reconcilable with Article 8. The competent national authorities, including the domestic courts, must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic decisions is insufficient, and the interests in issue have not been weighed in the balance, there will be a breach of the requirements of Article 8 of the Convention (see, for instance, *I.M. v. Switzerland*, no. 23887/16, § 72, 9 April 2019). Where the competent national authorities, including the domestic courts, have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details

of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *M.A. v. Denmark* [GC], no. 6697/18, § 149, 9 July 2021, and *Savran v. Denmark* [GC], no. 57467/15, §§ 187-189, 7 December 2021, with further references).

(ii) Application of these principles to the present case

51. The Court notes that the Dutch authorities took as their legal point of departure the relevant sections of the Aliens Act 2000, the Aliens Decree 2000 and, notably, the relevant criteria to be applied in the proportionality assessment to be conducted in the light of Article 8 of the Convention and the Court's case-law. The Court recognises that the Deputy Minister (see paragraphs 15-16 and 19 above) and the Regional Court of The Hague, sitting in Roermond, (see paragraph 21 above) thoroughly examined the relevant criteria and were fully aware that very serious reasons were required to justify the measures taken against the applicant, a settled migrant who had entered the Netherlands at a very young age and had lawfully spent most of his childhood and youth in the host country. The Regional Court's judgment was upheld by the Administrative Jurisdiction Division of the Council of State (see paragraph 22 above). The Court is therefore called upon to examine whether such "very serious reasons" were adequately adduced by the national authorities when assessing the applicant's case.

52. The Deputy Minister and the Regional Court considered it of significant importance that the applicant had committed crimes at the most serious end of the spectrum, specifically assault, complicity in selling heroin and cocaine and four counts of possession of heroin and/or cocaine. The Court finds that the nature and seriousness of those offences and their adverse impact on public health and society were understandably considered by the Deputy Minister to weigh heavily against the applicant. It was further emphasised that the applicant continued to reoffend, undeterred by previous convictions and the sentences imposed on him. Indeed, with convictions for six offences from 2004 until October 2016 (see paragraphs 9-11 above) the applicant repeatedly showed a lack of will to comply with Dutch law (see, *mutatis mutandis*, *Miah v. the United Kingdom* (dec.), no. 53080/07, § 25, 27 April 2010; *Levakovic*, cited above, § 44; and *Khan*, cited above, § 71). Against that background, the Deputy Minister found that there was a significant risk that he would also commit violent and/or drug-related crime in the Netherlands in the future if he were not expelled.

53. The Court cannot rule out that if the sentence of five months' imprisonment imposed for the crime that triggered the expulsion order (see paragraph 11 above), viewed in isolation, is lenient, this may raise an issue under Article 8 and militate against ordering expulsion. Nevertheless, the Court reiterates that the assessment of proportionality must be based on a concrete examination of each case, taking into account all the criteria of

relevance as established by the Court's case-law, including the totality of the applicant's criminal history (see the cases cited in paragraph 49 above). It should also be taken into account in this connection that member States have differing legislation, not only in respect of criminal sanctions to be imposed for various criminal offences, but also as regards the issuing of expulsion orders (see *Khan*, cited above, § 70). In some member States, such as the Netherlands, an expulsion order is issued administratively together with the revocation of a residence permit, having regard to the overall criminal behaviour of the alien in question, whereas in other member States the issue is decided on by the courts in connection with the criminal proceedings relating to the most recent criminal offence. Thus, the fact that a convicted long-term settled migrant may be said to have been given one or more relatively lenient prison sentences – a combined one year and four months' imprisonment in the applicant's case – does not preclude a finding that an expulsion is, or would be, founded on important public order interests of the Contracting State (see, *mutatis mutandis*, *Boughanemi v. France*, 24 April 1996, *Reports* 1996-II; *Lagergren v. Denmark* (dec.), no. 18668/03, 16 October 2006; and *Tran v. Norway* (dec.), no. 34029/05, 14 June 2007).

54. In view of the above, the Court can accept the assessment of the Deputy Minister and the Regional Court according to which the drug-related offence committed by the applicant in October 2016 was of such a nature that it had serious consequences for the lives of others and that it was the last in a series of similar offences.

55. In respect of the criteria "the length of the applicant's stay in the country from which he or she is to be expelled" and "the solidity of social, cultural and family ties" with that country, the Deputy Minister duly recognised that the applicant had long-lasting ties with the Netherlands. In this connection the Court reiterates that although the applicant moved there at a very young age, more than forty years ago, the length of residence alone has never been a decisive factor for it to find a violation of Article 8. That provision cannot be construed as providing absolute protection from expulsion for any category of person and the length of residence alone should not determine whether there has been a violation of Article 8 (see *Üner*, cited above, § 55; *Akbulut*, cited above, § 19; and *Iyisan v. the United Kingdom* (dec.), no. 7673/08, 9 February 2010). Thus, the Court did not find a violation of Article 8 in several cases involving settled migrants who had been convicted of serious crimes and who had been resident in the host country for more than twenty years, be it after having entered the country as an adult (see *Akbulut*, cited above; *Sarközi and Mahran v. Austria*, no. 27945/10, 2 April 2015; and *Hamesevic v. Denmark* (dec.), no. 25748/15, 16 May 2017) or as a young child (see *Ndidi*, and *Levakovic*, both cited above) or after having been born there (see *Azerkane*, cited above, and *Johansen v. Denmark* (dec.), no. 27801/19, 1 February 2022). In view of these precedents, the Deputy Minister acted within reason when holding that the nature, seriousness and

totality of the criminal offences committed by the applicant diminished the weight of his long-term residence in the Netherlands and that no decisive significance could be attached to the latter.

56. Regarding the criterion "the time [that has] elapsed since the offence was committed and the applicant's conduct during that period", it is observed that the most recent offence was committed in October 2016 and that the applicant was convicted less than one year later, in January 2017 (see paragraph 11 above), with the final decision on the expulsion order and the entry ban being given in August 2019 (see paragraph 22 above). In view of the applicant's criminal record – in particular, as the Deputy Minister and the Regional Court also stressed, the number of crimes and the time span in which they were committed, during which period the applicant had children and was employed (see paragraphs 15 and 21 above) – the national authorities cannot be said to have acted in an arbitrary or unreasonable manner in finding that there remained a risk of his reoffending in the future.

57. The Court notes that the applicant has two minor children with Dutch nationality and that they live with their Dutch mother (the applicant's ex-girlfriend) who has custody. The Deputy Minister found that the applicant had not substantiated the practical manner or intensity of the contact with his children. It was further emphasised that the applicant had been detained for a substantial part of his youngest son's life. These and other considerations led the Deputy Minister to find that the applicant's personal interests did not outweigh the general public interest. In view of the material before it, the Court sees no cause to disagree with those findings. Without underestimating the disruptive effect that the applicant's expulsion would have on his and his children's lives, it is unlikely to have the same impact as it would if the applicant, his ex-girlfriend and/or their sons had been living together as a family (see, *mutatis mutandis*, *Onur v. the United Kingdom*, no. 27319/07, §§ 58-59, 17 February 2009; *Üner*, cited above, § 62; and *Akbulut*, cited above, § 23). Moreover, contact by telephone and email can easily be maintained from Morocco and, apart from the alleged financial difficulties it would cause (which remained unsubstantiated), there would be nothing to prevent his children and their mother from visiting the applicant in Morocco or any other territory not covered by the entry ban (see also *Onur*, cited above, § 58; *Salem v. Denmark*, no. 77036/11, § 81, 1 December 2016; *Hamesevic*, cited above, §§ 34 and 44; and *Munir Johana*, cited above, § 64).

58. The Deputy Minister acknowledged that the applicant had limited ties with the country of destination but found them sufficient for the impugned measures. In that context, it was noted, in particular, that he was a Moroccan national who was familiar with its social and cultural customs, that he had a command of a language spoken there – which does not appear to be contested by the applicant – and that as an adult male he would be able to overcome integration challenges and build a new life for himself (see also *Üner*, § 62; *Ndidi*, §§ 22, 31, 42 and 81; and *Azerkane* §§ 15 and 81, all cited above).

59. Lastly, the Court notes that alongside the revocation of the applicant's residence permit, a ten-year entry ban was issued. The fact that such a ban is limited in time is an element to which the Court has attached importance in its case-law (see *Üner*, cited above, § 65, and *Azerkane*, cited above, § 83).

60. The foregoing considerations enable the Court to conclude that the competent national authorities, including the domestic courts, carefully examined the facts and reviewed all the relevant factors which emerge from the Court's case-law in detail. Against the background of, in particular, the seriousness and repetitive nature of the offences committed, their impact on society as a whole, the lack of proper substantiation of the applicant's interaction with his children at the relevant time and his social and cultural ties with Morocco, and considering the sovereignty of States to control and regulate the residence of aliens on their territory, the Court accepts that the domestic authorities adequately balanced the applicant's right to respect for his family life against the State's interests in public safety and in preventing disorder and crime (contrast *I.M. v. Switzerland*, cited above, § 78, and *El Ghatet v. Switzerland*, no. 56971/10, §§ 52-53, 8 November 2016). It cannot find that the respondent State attributed excessive weight to its own interests in deciding to revoke the applicant's residence permit and impose a ten-year entry ban. The Court therefore concludes that the respondent State has not overstepped the margin of appreciation afforded to it in the present case.

61. Accordingly, the applicant's expulsion and the implementation of the entry ban would not be in violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's expulsion and the implementation of the entry ban would not be in violation of Article 8 of the Convention.

Done in English, and notified in writing on 11 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President