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

THIRD SECTION

CASE OF KONSTATINOV v. THE NETHERLANDS

(Application no. 16351/03)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

24/09/2007

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 Konstatinov v. the Netherlands,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 29 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 16351/03) 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") on 20 May 2003 by Ms Jadranka Konstatinov ("the applicant"), who was born in Serbia; at that time forming a part of the former Socialist Federal Republic of Yugoslavia of which the applicant was a citizen.

2. The applicant was represented by Mr P. Baudoin, a lawyer practising in 's-Hertogenbosch. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, of the Ministry for Foreign Affairs.

3. On 31 January 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government of the State Union of Serbia and Montenegro, having been informed by the Section Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), notified the Court on 4 May 2006 that they would not avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, who is of Roma origin, was born in 1964 in Rgotina (Serbia) and is currently living in 's-Hertogenbosch. She is also known to the Netherlands authorities under the names of Arenka Sarkevic, Violetta Sarof, Harenka Sarof and Harenka Sharkevits.

6. As a young child and after the death of her mother, the applicant left Serbia with her father to travel. In 1986, the applicant contracted a traditional Roma marriage with Mr G., who was born in Rome in 1967 and who was living in the Netherlands where he had been granted a residence permit in 1977. His nationality, if any, is unknown.

7. On 16 February 1987, the applicant – under the name Arenka Sarkevic – was expelled from the Netherlands to Germany for unspecified reasons.

8. On 25 October 1988, Mr G. was granted a Netherlands permanent residence permit (*vestigingsvergunning*) which he holds to date. On 26 October 1988, the applicant – under the name Arenka Sarkevic – applied for a Netherlands residence permit for the purposes of stay with her partner Mr G. in the Netherlands. In April 1989, the applicant and Mr G. had a son named L.G.

9. On 13 February 1990, the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the applicant's request for a residence permit, as Mr G. did not meet the minimum income requirement under the applicable immigration rules, and as it had not been demonstrated that he was actually cohabiting with the applicant. After a request for reconsideration (*herzieningsverzoek*) filed on 13 March 1990 was denied suspensive effect as regards the applicant's removal from the Netherlands, the applicant left the Netherlands for an unknown destination on or around 6 December 1990.

10. On 1 June 1991, the applicant returned to the Netherlands where, on 10 September 1991, she married Mr G. under Netherlands civil law. On 1 November 1991, submitting a passport in the name of Jadranka Konstatinov – issued on 18 June 1991 in Pančevo (Serbia) by the authorities of the Socialist Federal Republic of Yugoslavia and valid until 18 June 1996 –, the applicant filed a request for a Netherlands residence permit for the purpose of stay with her spouse in the Netherlands. However, this application for a residence permit was not considered for seven years.

11. Between 4 September 1992 and 23 March 1998, the applicant was convicted on six occasions of (aggravated) theft and/or robbery and sentenced to terms of imprisonment varying from six weeks to twelve months.

12. On 19 August 1998, the applicant was heard by the police in connection with the intention to impose an exclusion order on her by declaring her an undesirable alien (*ongewenst vreemdeling*).

13. In a letter of 5 November 1998, in which he referred to previous letters sent on 8 May 1998 and 27 July 1998, the applicant's lawyer complained to the Deputy Minister of Justice about the failure to determine the applicant's request for a residence permit.

14. By letter of 18 November 1998, the Deputy Minister informed the applicant's lawyer that no letters dated 8 May 1998 and 27 July 1998 had been received, that the applicant's request of 1 November 1991 had been mislaid due to an internal office removal, that the applicant had been invited on 5 February 1998 to report to the Aliens Police (*Vreemdelingendienst*) to provide fresh information concerning her request for admission to the Netherlands, and that on 19 August 1998 she had been heard in connection with the intention to impose an exclusion order. The Deputy Minister admitted that the determination of the applicant's request for admission had lasted considerably longer than desirable and apologised for this delay. The applicant's case would now be determined within two weeks.

15. On 27 November 1998, the Deputy Minister gave a decision rejecting the applicant's request for a residence permit. The Deputy Minister noted at the outset that the applicant did not hold the required, valid provisional residence visa (*machtiging tot voorlopig verblijf*) issued by a Netherlands diplomatic or consular mission in the applicant's country of origin. Further noting that Mr G.'s sole income consisted of benefits under the General Welfare Act (*Algemene Bijstandswet*), the Deputy Minister held that Mr G. did not comply with the minimum income requirement under the applicable immigration rules whereas he was not dispensed of this requirement. Noting that the applicant had been convicted and sentenced to imprisonment on several occasions, the Deputy Minister also found that public-order considerations opposed granting her request for a residence permit. In so far as the applicant had relied on the so-called “three years policy” (*driejarenbeleid*), according to which a residence title could be granted if a request for a residence permit had not been determined within a period of three years for reasons not imputable to the petitioner and provided that there were no contra-indications such as, for instance, a criminal record, the Deputy Minister held that the applicant was not eligible for a residence permit under this policy given her criminal record which comprised various offences committed between 1991 and 1994, i.e. pending the running of the three year period. In the same decision, the Deputy Minister declared the applicant an undesirable alien, entailing a five year

exclusion order, on account of her criminal record in the Netherlands. As regards Article 8 of the Convention, the Deputy Minister considered that the applicant's personal interests in exercising her family life in the Netherlands were outweighed by those of the Netherlands authorities in protecting public order and preventing crime.

16. On 30 November 1998, the applicant lodged an objection (*bezwaar*) against this decision. On the same day, she applied to the Regional Court (*arrondissementsrechtbank*) of The Hague for a stay of expulsion pending the final outcome of the proceedings.

17. On 3 March 1999, after a hearing held on 6 January 1999, the Regional Court of The Hague sitting in 's-Hertogenbosch accepted the applicant's request for a provisional measure and ordered the applicant's expulsion stayed until four weeks after the Deputy Minister had given a decision on the objection. Having noted the seven years that had elapsed between the filing of the applicant's request for a residence permit and the first decision taken on that request, the Regional Court failed to see what interest the Deputy Minister had in not allowing the applicant to await the outcome of her objection in the Netherlands.

18. On 10 August 2000 the applicant appealed to the Regional Court of The Hague against the notional dismissal (*fictieve weigering*) of her objection, the Deputy Minister not having given a decision by that date. On 10 January 2001 the Regional Court accepted the applicant's appeal and ordered the Deputy Minister to give a decision within six weeks or within ten weeks if there was to be a hearing before an advisory board.

19. On 29 May 2001 the applicant was heard on her objection before the Advisory Board on Matters Concerning Aliens (*Adviescommissie voor vreemdelingenzaken*). She stated, among other things, that her son L.G. had been suffering from asthma since his birth, and that since her last conviction in 1995 she no longer had had any dealings with the Netherlands criminal justice authorities. Her lawyer referred to a policy, set out in a letter dated 10 January 1984 from the Deputy Minister of Justice and which had still been in force in 1991, under which requests for residence permits lodged by Roma for marriage purposes were given favourable consideration.

20. The Deputy Minister gave a decision on 12 July 2001. The objection was dismissed on the ground that Mr G. (still) did not comply with the minimum income requirement under the applicable immigration rules whereas he was not dispensed of this requirement. In addition, when heard on 29 May 2001, the applicant had denied that she had had recent dealings with the Netherlands criminal justice system, whereas in reality she had amassed further convictions of theft since 1998 and had been arrested for shoplifting in May 2001; from this it could be concluded that the applicant was a danger to public order. The applicant's criminal record also rendered her ineligible for a residence permit under the three years policy. The Deputy Minister further rejected the applicant's argument that – given the

uncertainty about her actual citizenship – she should be regarded as a stateless person, as well as her arguments under Article 8 of the Convention.

21. The applicant lodged an appeal against this decision to the Regional Court of The Hague, together with an application for a provisional measure, i.e. a stay of deportation. On 18 November 2002, following a hearing held on 10 October 2002, the Regional Court endorsed the decision of the Deputy Minister and dismissed the appeal. As regards Article 8 of the Convention, it held:

> "It is not in dispute that there is 'family life' between the appellant, her husband and child. There is no question of an interference with this family life within the meaning of the second paragraph of Article 8 of the Convention as the impugned decision does not entail the withdrawal of a residence title that enabled her to exercise that family life. The remaining question is whether [the Netherlands authorities] are under a positive obligation under Article 8 to enable the appellant to exercise her family life in the Netherlands. In order to determine the existence of such a positive obligation, a balancing exercise must be carried out – on the basis of reasonableness – between the interests of the person concerned and those of society as a whole. The Regional Court accepts the finding of [the Deputy Minister] that the appellant's interests are outweighed by the public interests pursued by [the Netherlands authorities]. In this balancing exercise, the Regional Court puts first that the countless, ever recurring antecedents of both the appellant and her husband weigh very heavily. The Regional Court further considers it of importance that the family's subsistence needs are met by public funds and that none of the family members holds Netherlands citizenship. As to the alleged statelessness of the appellant, the Regional Court notes that she stated at the outset of the present proceedings that she was holding Yugoslav citizenship and submitted a Yugoslav passport. It was only later that she declared to be stateless. It appears from the fax message of 28 June 2001 of the 's-Hertogenbosch Aliens Police that the appellant presented herself in order to obtain the return of her Yugoslav passport for the purpose of having her son registered in this passport. It is further relevant that the appellant and her son are registered under the above-cited citizenship in the Municipal Personal Records Database (*Gemeentelijke Basisadministratie*). For the above reasons, the Regional Court is of the opinion that the alleged statelessness of the appellant and her son has not been established and that it has not been demonstrated that the appellant's son could not follow her to the country of origin.
>
> According to the data from the Municipal Personal Records Database, the citizenship of the appellant's husband is unknown. [Pursuant to the relevant immigration rules], where it is registered in respect of an alien that the citizenship cannot be determined, or where – such as in the instant case – in the category citizenship the standard value 0000 ('unknown') is recorded, statelessness has not been established. Noting this as well as the fact that also the alleged statelessness of the appellant has by no means been established, the Regional Court does not find it demonstrated that the appellant's husband is stateless. As it has neither appeared that he is a recognised refugee, no objective obstacles have appeared for exercising family life in the Federal Republic of Yugoslavia or at least outside of the Netherlands.

> As an exclusion order has also been imposed on the appellant, the impugned decision does to that extent entail interference with the family life between the appellant, her husband and son. In order to determine whether that interference is justified under the second paragraph of Article 8 of the Convention, [the Deputy Minister] must strike a reasonable balance between the interests of the individual and of society as a whole. In this, the Regional Court refers to the weighty arguments which it has found decisive in the above balancing of [competing] interests. The Regional Court finds that these also justify the interference with the family life [at issue]."

Also the applicant's request for a provisional measure was rejected. No further appeal lay against this ruling.

22. As of 13 February 2004, and as the applicant was apparently no longer living at the address she had given to the Netherlands authorities who were unaware of her whereabouts, the applicant was registered as having left for an unknown destination. On 2 September 2005, the applicant's son L.G. was granted a Netherlands residence permit for the purpose of stay with his father, valid from 28 March 2001 until 28 March 2006. This residence permit was subsequently prolonged until 28 March 2011.

23. The applicant and her family are reportedly living in very reduced circumstances. Mr G. is still unemployed, and receives non-contributory general welfare benefits as a single parent, the applicant's residence in the Netherlands not being recognised as legal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The admission, residence and expulsion of aliens were regulated at the material time by the Aliens Act 1965 (*Vreemdelingenwet 1965*). Further rules were set out in the Aliens Decree (*Vreemdelingenbesluit*), the Regulation on Aliens (*Voorschrift Vreemdelingen*) and the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*; a body of directives drawn up and published by the Ministry of Justice).

25. On 1 April 2001, the Aliens Act 2000 entered into force – replacing the Aliens Act 1965 – along with a new Aliens Decree, a new Regulation on Aliens and new Implementation Guidelines.

26. As a rule, anyone wishing to apply for a residence permit in the Netherlands must first apply from his or her country of origin to the Netherlands Minister of Foreign Affairs for a provisional residence visa. Only once such a visa has been issued abroad may a residence permit for the Netherlands be granted. An application for a provisional residence visa is assessed on the basis of the same criteria as a residence permit.

27. The Government pursue a restrictive immigration policy owing to the population and employment situation in the Netherlands. Aliens are eligible for admission only on the basis of obligations arising from international agreements, or if their presence serves an essential national interest, or on compelling humanitarian grounds.

28. The admission policy for family reunion purposes is laid down in Chapter B1 of the Aliens Act Implementation Guidelines. A spouse is in principle eligible for family reunion, if certain further conditions (relating to matters such as public policy and means of subsistence) are met. General welfare benefits are not accepted as constituting (a part of the) means of subsistence within the meaning of the immigration rules.

29. According to a letter dated 10 January 1984 by the Deputy Minister of Justice, the admission to the Netherlands of foreign marital partners of persons of Roma origin living in the Netherlands was subject to the same conditions as for other foreign marital partners seeking admission for family formation (*gezinsvorming*), namely:

> "a. it concerns a marriage on the basis of which residence can be granted. This requirement entails, *inter alia*, that it should concern a marriage valid under Netherlands (international) private law. Marriages concluded by partners younger than 16 years are not recognised in the Netherlands;
>
> b. the partner living in the Netherlands must hold a valid Netherlands residence title, have sufficient means of subsistence and suitable housing;
>
> c. the foreign marital partner must not represent a danger for public peace, public order or national security."

This letter further specifies that admission is refused when one or more of these conditions are not met unless special facts or circumstances constitute a compelling reason of a humanitarian nature warranting admission nevertheless.

30. Under Section 21 of the 1965 Aliens Act, replaced on 1 April 2001 by Section 67 of the Aliens Act 2000, an exclusion order may be imposed on an alien when he or she has been convicted of an offence punishable by a prison sentence of three years or more.

31. According to Chapter A5/6.4 of the 1965 Aliens Act Implementation Guidelines and Chapter A3/4.2.2 of the 2000 Aliens Act Implementation Guidelines, an exclusion order shall – upon a request thereto from the person concerned – be lifted after a defined number of years, depending on the grounds on which basis the decision was taken.

32. Section 197 of the Criminal Code (*Wetboek van Strafrecht*) provides that staying in the Netherlands while knowing that an exclusion order has been imposed constitutes a criminal offence punishable by up to six months' imprisonment or a fine of up to 4,500 euros (EUR).

33. Under the relevant provisions of the Criminal Code, theft attracts a prison sentence of up to four years (Section 310), aggravated theft and depending on the circumstances in which it was committed, a prison sentence of up to six or nine years (Section 311), and robbery a prison sentence of up to nine, twelve or fifteen years, depending on the circumstances in which it was committed and whether it had resulted in death (Section 312).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant complained that her expulsion from the Netherlands would constitute an unjustified interference with her right to respect for her private and family life as guaranteed by Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and 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."

35. The Government contested that argument.

A. Admissibility

36. 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

37. The applicant submitted that she has been living already for 21 years in the Netherlands, where she met and married Mr G., where their son L. was born and raised and where L. attended school All three of them have strong ties with the Netherlands and speak the Dutch language, and both the applicant's husband and son are holding a Netherlands residence permit. The applicant further submitted that she left Yugoslavia at the age of seven, only speaks Dutch and Romani and is not conversant in any language spoken in the former Yugoslavia.

38. The applicant further pointed out that, since 1991, she has been trying to obtain a Netherlands residence permit, but her request was refused because her husband did not have sufficient income and because she had a criminal record. On this point, the applicant explained that, as she was not staying legally in the Netherlands, her husband was not entitled to welfare benefits for a family but only to reduced benefits. The resulting financial

problems for the applicant and her family had led to the thefts. Being overweight and a diabetic formed an obstacle for Mr G. to get work. Furthermore, following a major operation in 2005, he was currently not allowed to work.

39. The applicant further submitted that her expulsion from the Netherlands would not only entail a separation from her husband and son, but also from her husband's relatives – namely his mother and six siblings – all of whom are living in the Netherlands where Mr G.'s entire family group was granted admission in 1977. Also two siblings of the applicant herself are living in the Netherlands. As, according to the applicant, family ties are more important for Roma than for many other people, such a separation would be emotionally very burdensome.

40. The applicant lastly submitted that it is uncertain whether she and her son have Yugoslav citizenship and that it cannot be expected from her and her family to settle in the former Yugoslavia. Her husband and son have never been there, do not speak the language and have no relatives there. In any event, Mr G. does not have Yugoslav citizenship and he might not be admitted to the former Yugoslavia.

41. The applicant argued that, consequently, her expulsion from the Netherlands would entail a breach of her right to respect for her family life, as guaranteed by Article 8 of the Convention.

42. The Government accepted that there is family life between the applicant, her husband and their son. However, the Government could not be regarded as being under a positive obligation under Article 8 to admit the applicant to the Netherlands or to refrain from expelling her. The applicant had never resided lawfully in the Netherlands, and her husband had never met the conditions that would have made the applicant eligible for the residence permit she had applied for; including compliance with the minimum means of support requirement under the applicable immigration rules. There was no justification for the applicant's expectation that she would be admitted to the Netherlands and allowed to exercise her family life there.

43. The Government further refuted the applicant's alleged statelessness, and considered that the applicant and her son were citizens of what, at the time of the introduction of the application, was called the State Union of Serbia and Montenegro. According to the Government, it had not been demonstrated that objective obstacles existed to the applicant's family life with her husband and son being enjoyed in a country other than the Netherlands. The Government also pointed out that the applicant's son would attain majority in April 2007, that he was under medical supervision of his general practitioner and an asthma specialist, and that it had not been established that he would not be able to stay with paternal relatives in the Netherlands until he came of age.

44. The Government lastly submitted that the applicant's most recent criminal conviction was one of aggravated theft committed on 28 October 2005. This conviction was handed down on 8 November 2005 by a single-judge chamber (*politierechter*) of the Regional Court of The Hague, who imposed a twelve week prison sentence. This only confirmed that the applicant posed a threat to the peace and public order on the basis of which an exclusion order had been imposed. The applicant was aware that this was one of the reasons why she was not eligible for the residence permit sought, but showed no inclination whatsoever to discontinue the behaviour that was stopping her from qualifying for it.

45. The Government therefore considered that, in denying the applicant admission to the Netherlands and in declaring her an undesirable alien, a reasonable balance was struck between the competing interests.

2. The Court's assessment

46. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 42, 1 December 2005).

47. As the applicable principles are similar, the Court does not find it necessary to determine whether in the present case the impugned decisions, namely the refusal to grant the applicant – who has never lawfully resided in the Netherlands – a residence permit and to declare her an undesirable alien, constitutes an interference with her exercise of the right to respect for her family life or is to be seen as one involving an allegation of failure on the part of the respondent State to comply with a positive obligation.

48. The Court further reiterates that, moreover, Article 8 does not entail a general obligation for a State to respect immigrants' choice of the country of their residence and to authorise family reunion in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of

public order weighing in favour of exclusion. Another important consideration will also be whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would be precarious from the outset. The Court has previously held that where this is the case it is likely only to be in the most exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8 (see *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 39, ECHR 2006-..., with further references).

49. Turning to the circumstances of the present case, the Court notes that the applicant has never held a Netherlands provisional admission or residence title and that the relationships relied on by her were created at a time and developed during a period when the persons involved were aware that the applicant's immigration status was precarious and that, until Mr G. complied with the minimum income requirement under the domestic immigration rules, the persistence of that family life within the Netherlands would remain precarious. This is not altered by the fact that the applicant's second request for a residence permit for stay with Mr G. filed on 1 November 1991 was left undetermined for a period of more than seven years because her file had been mislaid by the responsible immigration authorities, as – like in 1990 in respect of her first request for a residence permit for stay with Mr G. – one of the main reasons why this second request was rejected on 27 November 1998 by the Deputy Minister was because Mr G. failed to meet the minimum income requirement.

50. In principle, the Court does not consider unreasonable a requirement that an alien having achieved a settled status in a Contracting State and who seeks family reunion there must demonstrate that he/she has sufficient independent and lasting income, not being welfare benefits, to provide for the basic costs of subsistence of his or her family members with whom reunion is sought. As to the question whether such a requirement was reasonable in the instant case, the Court considers that it has not been demonstrated that, between 1990 and 1998, Mr G. has in fact ever complied with the minimum income requirement or at least made any efforts to comply with this requirement whereas the applicant's claim that he is incapacitated for work has remained wholly unsubstantiated.

51. The Court further notes that, between 4 September 1992 and 8 November 2005, the applicant has amassed various convictions of criminal offences attracting a prison sentence of three years or more, thus rendering her immigration status in the Netherlands even more precarious as this entailed the risk of an exclusion order being imposed, which risk eventually materialised. On this point the Court reiterates that, where the admission of aliens is concerned, Contracting States are in principle entitled to expel an alien convicted of criminal offences (see *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-...).

52. As regards the question whether there are any insurmountable obstacles for the exercise of the family life at issue outside of the Netherlands, the Court notes that the applicant's son will come of age in April 2007 whereas, according to its well-established case-law under Article 8, relationships between adult relatives do not necessarily attract the protection of Article 8 without further elements of dependency involving more than the normal emotional ties (see *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001). The Court considers the fact that the applicant's son is suffering from asthma does not constitute such a further element of dependency. The Court further notes that the applicant was born in Serbia where she lived until the age of seven, that she held a valid passport issued in Pančevo (Serbia) by the authorities of the former Socialist Federal Republic of Yugoslavia when she filed her second request for a Netherlands residence permit in 1991, and that her claim of having become stateless after the dissolution of this Federal Republic is no more than conjecture. The same applies to her claim that Mr G. is stateless and might be denied admission to her country of origin. In any event, the decision to declare the applicant an undesirable alien does not entail a permanent exclusion order, but an exclusion order of a temporary validity in the sense that – at the applicant's request – it can be lifted after a limited number of years of residency outside of the Netherlands.

53. The foregoing considerations are sufficient to enable the Court to conclude that it cannot be said that the Netherlands authorities have failed to strike a fair balance between the applicant's interests on the one hand and its own interest in controlling immigration and public expenditure and in the prevention of disorder or crime on the other. Consequently, there has been no violation of the applicant's right to respect for her rights guaranteed by 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 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President