



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

Information Note on the Court's case-law 37

December 2001

***Sen v. the Netherlands* - 31465/96**

Judgment 21.12.2001 [Section I]

Article 8

Article 8-1

Respect for family life

Family reunion involving child who had remained several years without his parents in native his country: *violation*

Facts: The first and second applicants, both Turkish nationals, are settled in the Netherlands. The first applicant went to live there under a family reunion arrangement in 1977. In 1982 he married the second applicant in Turkey. In 1983, the couple had a child – the third applicant. In 1986 the second applicant obtained a residence permit and went to join her husband, leaving the third applicant in the care of an aunt in Turkey. The applicants had two further children, in 1990 and 1994, both born in the Netherlands. In the meantime, in 1992, the first applicant had asked the Dutch authorities for a temporary residence permit for the third applicant, who was still living in Turkey. This was refused by the Minister of Foreign Affairs on the grounds that because of the mother's departure the child had changed family units and that the first two applicants had contributed to her upbringing.

Law: Article 8 – It was necessary to determine whether the Dutch authorities had a positive obligation to authorise the third applicant to live in the Netherlands, to enable the applicants to maintain and develop a family life in Dutch territory. In order to establish the scope of a State's obligations, the facts had to be assessed by the yardstick of a number of principles set out in the *Gül v. Switzerland* and *Ahmut v. the Netherlands* judgments. Firstly, the scope of a State's obligation to admit immigrants' relatives to its territory depends on the situation of the persons concerned and the general interest. Secondly, as a matter of well-established international law, a State has the right to control the entry of non-nationals into its territory and their residence there. Lastly, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect the choice by married couples of the country of their matrimonial residence and to authorise family reunion in its territory. Other factors to be taken into account are the age of the children concerned, their situation in the country of origin and their degree of independence from their parents. In the present case the applicants lived apart as a result of the decision taken by the first two applicants of their own accord when the second applicant joined the first applicant in the Netherlands in 1986. The third applicant, who was left in the care of close relatives, had lived all her life in Turkey and had consequently formed strong ties with the linguistic and cultural environment of her country, where she still had close family. However, there was a major obstacle to the return of the applicants' family to Turkey. The first two applicants had established their matrimonial home in the Netherlands, where they had been legally resident for many years and where they had had two other children, born in 1990 and 1994. Those two children had always lived in the Netherlands, in the Dutch cultural

environment, and attended schools there. They therefore had very few links, if any, with Turkey other than their nationality. Accordingly, a move to the Netherlands by the third applicant was the most appropriate way to establish family life with her, especially as, she being still a child, there was a particular need to integrate her into her parents' family unit. The fact that in 1986 the second applicant had left the third applicant, then aged three, in Turkey in order to join her husband in the Netherlands could not be regarded as an irrevocable decision to leave her in Turkey permanently and to give up the idea of reuniting their family. That was also true of the fact that the applicants had been unable to make a financial contribution towards their daughter's upbringing. In short, the respondent State had failed to strike a fair balance between the interests of the applicants and its own interest.

Conclusion: violation (unanimously).

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