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

GRAND CHAMBER

CASE OF MASLOV v. AUSTRIA

(Application no. 1638/03)

JUDGMENT

STRASBOURG

23 June 2008

In the case of Maslov v. Austria,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Ireneu Cabral Barreto,
Karel Jungwiert,
Elisabeth Steiner,
Alvina Gyulumyan,
Ineta Ziemele,
Isabelle Berro-Lefèvre,
Päivi Hirvelä,
Giorgio Malinverni,
András Sajó,
Mirjana Lazarova Trajkovska,
Ledi Bianku,
Nona Tsotsoria, *judges*,

and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 6 February and on 28 May 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 1638/03) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Juri Maslov ("the applicant"), on 20 December 2002.

2. The applicant was represented by Mr M. Deuretsbacher, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. Under Article 8 of the Convention, the applicant alleged, in particular, that the imposition of an exclusion order on him and his expulsion to Bulgaria violated his right to respect for private and family life.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 2 June 2005 it was declared partly admissible by a Chamber of that Section, composed of Christos Rozakis,

Snejana Botoucharova, Anatoli Kovler, Elisabeth Steiner, Khanlar Hajiyev, Dean Spielmann, Sverre Erik Jebens, judges, and of Søren Nielsen, Section Registrar. On 22 March 2007 a Chamber of that Section, composed of Christos Rozakis, Loukis Loucaides, Nina Vajić, Elisabeth Steiner, Khanlar Hajiyev, Dean Spielmann, Sverre Erik Jebens, judges, and Søren Nielsen, Section Registrar, delivered a judgment in which it held, by four votes to three, that there had been a violation of Article 8 of the Convention and that the respondent Government should pay the applicant 5,759.96 euros in respect of costs and expenses.

5. On 24 September 2007, pursuant to a request by the respondent Government, the panel of the Grand Chamber decided to refer the case to the Grand Chamber in accordance with Article 43 of the Convention.

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicant and the Government each filed a memorial. The Bulgarian Government did not make use of their right to intervene (Article 36 § 1 of the Convention).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 February 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr F. TRAUTTMANSDORFF, *Agent*,
Ms B. OHMS, *Adviser*,
Mr C. SCHMALZL, *Adviser*;

(b) *for the applicant*
Mr M. DEURETSBACHER, *Counsel*.

The Court heard addresses by Mr Deuretsbacher and Mr Trauttmansdorff, as well as their answers to questions put by a number of judges.

9. Subsequently, András Sajó, substitute judge, replaced Riza Türmen, who was unable to take part in the further consideration of the case (Rule 24 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in October 1984 and currently lives in Bulgaria.

11. In November 1990, at the age of six, the applicant lawfully entered Austria together with his parents and two siblings. Subsequently, he was legally resident in Austria. His parents, who were lawfully employed, acquired Austrian nationality. The applicant attended school in Austria.

12. In late 1998 criminal proceedings were instituted against the applicant. He was suspected of, *inter alia*, having broken into cars, shops and vending machines; having stolen empties from a stock ground; having forced another boy to steal 1,000 Austrian schillings from the latter's mother; having pushed, kicked and bruised this boy; and of having used a motor vehicle without the owner's authorisation.

13. On 8 March 1999 the applicant was granted an unlimited settlement permit (*Niederlassungsbewilligung*).

14. On 7 September 1999 the Vienna Juvenile Court (*Jugendgerichtshof*) convicted the applicant on twenty-two counts of aggravated gang burglary and attempted aggravated gang burglary (*gewerbsmäßiger Bandendiebstahl*), forming a gang (*Bandenbildung*), extortion (*Erpressung*), assault (*Körperverletzung*), and unauthorised use of a vehicle (*unbefugter Gebrauch eines Fahrzeugs*), offences committed between November 1998 and June 1999. He was sentenced to eighteen months' imprisonment, thirteen of which were suspended on probation. The sentence was accompanied by an order to undergo drug therapy.

15. On 11 February 2000 the applicant was arrested and further criminal proceedings were opened against him relating to a series of burglaries committed between June 1999 and January 2000. The applicant and his accomplices were suspected of having broken into shops or restaurants, where they stole cash and goods. On 11 February 2000 the Vienna Juvenile Court remanded him in custody.

16. On 25 May 2000 the Vienna Juvenile Court convicted the applicant on eighteen counts of aggravated burglary and attempted aggravated burglary, and sentenced him to fifteen months' imprisonment. When fixing the sentence the court noted the applicant's confession as a mitigating circumstance, and the number of offences committed and the rapid relapse into crime after the last conviction as aggravating circumstances. It also observed that the applicant, though still living with his parents, had completely escaped their educational influence, had repeatedly been absent from home and had dropped out of school. It further noted that the applicant had failed to comply with the order to undergo drug therapy. Consequently, the suspension of the prison term imposed by the judgment of 7 September

1999 was revoked. Following the Vienna Juvenile Court's judgment, the applicant served his prison term.

17. On 3 January 2001 the Vienna Federal Police Authority (*Bundespolizeidirektion*), relying on section 36(1) and 2(1) of the Aliens Act 1997 (*Fremdengesetz*), imposed a ten-year exclusion order on the applicant. Having regard to the applicant's convictions, it found that it was contrary to the public interest to allow him to stay in Austria any longer. Considering the applicant's relapse into crime after his first conviction, the public interest in the prevention of disorder and crime outweighed the applicant's interest in staying in Austria.

18. The applicant, assisted by counsel, appealed. He submitted that the exclusion order violated his rights under Article 8 of the Convention as he was a minor who had come to Austria at the age of six, his entire family lived in Austria and he had no relatives in Bulgaria. He also referred to section 38(1)(4) of the Aliens Act 1997, pursuant to which an exclusion order could not be issued against an alien who had been lawfully residing in Austria from an early age.

19. By a decision of 19 July 2001, the Vienna Public Security Authority (*Sicherheitsdirektion*) dismissed the appeal. It confirmed the Federal Police Authority's finding.

20. On 17 August 2001 the applicant lodged complaints both with the Administrative Court (*Verwaltungsgerichtshof*) and the Constitutional Court (*Verfassungsgerichthof*). He stressed that he had come to Austria at the age of six, had attended school in Austria and could not speak Bulgarian. He had no relatives or other social contacts in Bulgaria. He also stressed the fact that he was still a minor.

21. On 18 September 2001 the Administrative Court dismissed the complaint and found that the exclusion order was justified under Article 8 § 2 of the Convention. It observed that the applicant had come to Austria only at the age of six, whereas – according to its constant case-law – section 38(1)(4) of the Aliens Act 1997 prohibited an exclusion order only in respect of aliens who had been legally resident from the age of three or younger. Considering the gravity and number of offences committed by the applicant, the fact that the first conviction had rapidly been followed by a second one and the severity of the penalties imposed, it found that the exclusion order did not constitute a disproportionate interference with the applicant's rights under Article 8, despite his lengthy residence and family ties in Austria.

22. By a decision of 19 September 2001, the Constitutional Court suspended the effects of the exclusion order pending its decision.

23. The applicant was released from prison on 24 May 2002 not having benefited from early release. According to the information given by counsel at the hearing, the applicant finished school during his prison term and helped in his father's transport business after his release.

24. On 25 November 2002 the Constitutional Court declined to deal with the applicant's complaint for lack of prospects of success.

25. In December 2002 a number of unsuccessful attempts were made to serve an order on the applicant to leave Austria.

26. On 18 August 2003 the Vienna Federal Police Authority issued a fresh order requiring the applicant to leave Austria.

27. On 14 October 2003 the order was served on the applicant at his parents' address and subsequently the Vienna Federal Police Authority ordered his detention with a view to his expulsion. He was arrested on 27 November 2003.

28. On 22 December 2003 the applicant was deported to Sofia. According to information given by counsel at the hearing, the applicant did not commit any further offences in Bulgaria and has found employment there.

29. At the hearing, the Government informed the Court that the exclusion order will expire on 3 January 2011, that is ten years after its issue (see paragraph 17 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Aliens Act 1997

30. At the material time the Aliens Act 1997 (*Fremdengesetz*) was in force. Sections 36 to 38, in so far as relevant, read as follows:

Section 36

"(1) An exclusion order can be issued against an alien if it can justifiably be supposed, on the basis of specific facts, that his residence

1. endangers public peace, order and security; or

2. runs counter to other public interests specified in Article 8 § 2 of the European Convention on Human Rights.

(2) The existence of specific facts within the meaning of paragraph 1 shall be made out, in particular, if an alien

1. has been sentenced by a domestic court to an unsuspended term of imprisonment of more than three months; to a term of imprisonment partly suspended on probation; or to a term of imprisonment of more than six months suspended on probation; or has been convicted by final judgment more than once for the same pernicious tendency to commit criminal acts."

Section 37

"(1) Should there be an interference with the alien's private or family life on account of ... an exclusion order, such a deprivation of the right of residence shall be permissible only if necessary as a matter of urgency in furtherance of one of the aims set out in Article 8 § 2 of the European Convention on Human Rights.

(2) ... an exclusion order shall not in any case be issued if its effects on the alien and his family's situation outweigh the adverse consequences of not taking such a measure. In weighing the above factors, regard shall be had in particular to the following circumstances:

1. the period of residence and the extent to which the alien or members of his family have integrated;

2. the strength of family or other ties."

Section 38

"(1) An exclusion order shall not be issued if

...

4. the alien has grown up in the host country from early childhood and has been lawfully settled there for many years."

31. The Administrative Court held that only aliens who had grown up in Austria from the age of three or younger had grown up there "from early childhood" within the meaning of section 38(1)(4) of the Aliens Act (see, for instance, decision of 17 September 2001, no. 96/18/0150; judgment of 2 March 1999, no. 98/18/0244; and judgment of 21 September 2000, no. 2000/18/0135).

B. Civil Code

32. Article 21 § 2 of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides:

"Minors are persons who have not yet reached the age of 18 years. ..."

This version of Article 21 of the Civil Code entered into force on 1 July 2001. Before that date the age of majority was 19 years.

III. RELEVANT INTERNATIONAL MATERIALS

A. Instruments of the Council of Europe

33. The following two Recommendations of the Committee of Ministers of the Council of Europe are of particular interest in the context of the present case.

34. The first one is Committee of Ministers Recommendation Rec(2000)15 concerning the security of residence of long-term migrants, adopted on 13 September 2000, which states, *inter alia*:

> "4. As regards the protection against expulsion
>
> (a) Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:
>
> – the personal behaviour of the immigrant;
>
> – the duration of residence;
>
> – the consequences for both the immigrant and his or her family;
>
> – existing links of the immigrant and his or her family to his or her country of origin.
>
> (b) In application of the principle of proportionality as stated in paragraph 4 (a), member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled
>
> – after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension; and
>
> – after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years' imprisonment without suspension.
>
> After twenty years of residence, a long-term immigrant should no longer be expellable.
>
> (c) Long-term immigrants born on the territory of the member State or admitted to the member State before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of 18.
>
> Long-term immigrants who are minors may in principle not be expelled.
>
> (d) In any case, each member State should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

35. The second one is Committee of Ministers Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification, adopted on 26 March 2002. It states that where the withdrawal of or the refusal to renew a residence permit, or the expulsion of a family member, is being considered:

> "... member States should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and well-being of children."

B. Instruments of the United Nations

36. The United Nations Convention on the Rights of the Child of 20 November 1989, to which Austria is a State Party, provides:

Article 1

"For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

Article 3 § 1

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 40 § 1

"States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

37. The Committee on the Rights of the Child, in its concluding observations on the second periodic report of Austria (see CRC/C/15/Add. 251, 31 March 2005, §§ 53 and 54), expressed its concern about the increasing number of persons below the age of 18 placed in detention, a measure disproportionately affecting those of foreign origin, and recommended with regard to Article 40 of the Convention on the Rights of the Child that appropriate measures to promote the recovery and social integration of children involved in the juvenile justice system be taken.

38. In its General Comment no. 10 (2007) on children's rights in juvenile justice (see CRC/C/GC/10, 25 April 2007, § 71), the Committee on the Rights of the Child emphasised with regard to measures in the sphere of juvenile justice:

"... that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in Article 40 § 1 of CRC [Convention on the Rights of the Child] ... In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration".

C. European Union law and practice

39. Given the membership of Austria to the European Union (as from 1 January 1995) and of Bulgaria (as from 1 January 2007) the following two directives should be noted among those dealing with matters of migration, including the requirements for expulsion of nationals of another member State and third-country nationals.

40. The first one is Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. It provides:

Article 12 – Protection against explusion

"1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

..."

41. The second one is Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States. It provides:

Article 27 – General principles

"1. Subject to the provisions of this chapter, member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

...”

Article 28 – Protection against expulsion

“1. Before taking an expulsion decision on grounds of public policy or public security, the host member State shall take account of considerations such as how long the individual concerned has resided in its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member State and the extent of his/her links with the country of origin.

2. The host member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by member States, if they:

(a) have resided in the host member State for the previous ten years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.”

42. The case-law of the Court of Justice of the European Communities (ECJ) shows that measures of non-admission or expulsion have to rely on the individual conduct of the person concerned and on an assessment of whether the person concerned presents a genuine, present and sufficiently serious threat to public policy, public security or public health.

43. In its *Georgios Orfanopoulos and Others and Raffaele Oliveri v. Land Baden-Württemberg* judgment of 29 April 2004 (Joined Cases C–482/01 and C-493/01, operative part, points 3-5) the ECJ stated:

“3. Article 3 of Directive 64/221 precludes a national practice whereby the national courts may not take into consideration, in reviewing the lawfulness of the expulsion of a national of another member State, factual matters which occurred after the final decision of the competent authorities which may point to the cessation or the substantial diminution of the present threat which the conduct of the person concerned constitutes to the requirements of public policy. That is so, above all, if a lengthy period has elapsed between the date of the expulsion order and that of the review of that decision by the competent court.

4. Article 39 EC and Article 3 of Directive 64/221 preclude legislation and national practices whereby a national of another member State who has received a particular sentence for specific offences is ordered to be expelled, in spite of family considerations being taken into account, on the basis of a presumption that that person must be expelled, without proper account being taken of his personal conduct or of the danger which he represents for the requirements of public policy.

5. Article 39 EC and Directive 64/221 do not preclude the expulsion of a national of another member State who has received a particular sentence for specific offences and who, on the one hand, constitutes a present threat to the requirements of public policy and, on the other hand, has resided for many years in the host member State and can plead family circumstances against that expulsion, provided that the assessment made on a case-by-case basis by the national authorities of where the fair balance lies

between the legitimate interests at issue is made in compliance with the general principles of Community law and, in particular, by taking proper account of respect for fundamental rights, such as the protection of family life."

44. In its *Commission of the European Communities v. Spain* judgment of 31 January 2006 (Case C-503/03, operative part, point 1) the CJEU stated:

"... by refusing entry into the territory of the States Parties to the Agreement on the gradual abolition of checks at their common borders, signed on 14 June 1985 at Schengen, to Mr Farid, and by refusing to issue a visa for the purpose of the entry into that territory to Mr Farid and Mr Bouchair, nationals of a third country who are the spouses of member-State nationals, on the sole ground that they were persons for whom alerts were entered in the Schengen Information System for the purposes of refusing them entry, without first verifying whether the presence of those persons constituted a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, the Kingdom of Spain has failed to fulfil its obligations under Articles 1 to 3 of Council Directive 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicant complained about the exclusion order against him and about his subsequent expulsion to Bulgaria. He relied on Article 8 of the Convention which, so far as relevant, provides 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."

A. The Chamber judgment

46. The Chamber noted that it was not in dispute that there was an interference with the applicant's private and family life.

47. It accepted that the impugned measure had a basis in domestic law, namely section 36(1) of the Aliens Act 1997 and that there was nothing arbitrary in the refusal to apply section 38(1)(4) of that Act, which, according to the Administrative Court's constant case-law, prohibited the imposition of an exclusion order only in respect of aliens who had been legally resident in Austria from the age of three or younger. Furthermore,

the Chamber noted that it was not in dispute that the interference served a legitimate aim, namely the prevention of disorder and crime.

48. Having referred to the Court's established case-law under Article 8 on the expulsion of foreigners convicted of criminal offences, including the recent Grand Chamber judgment in *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 57-58, ECHR 2006-XII), the Chamber indicated the relevant criteria to be taken into account, namely:

– the nature and gravity of the offences committed by the applicant;

– the length of his stay in the host country;

– the period which elapsed between the commission of the offences and the impugned measure and the applicant's conduct during that period;

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

49. In applying these criteria to the present case, the Chamber had regard to the fact that the applicant had come to Austria with his family at the age of six, spoke German and had received his entire schooling in Austria, that the offences committed by him, although of a certain gravity, were rather typical examples of juvenile delinquency and, with one exception, did not involve any acts of violence and had not concerned drug dealing. Moreover, the Chamber attached weight to the period of good conduct between the applicant's release from prison in May 2002 and his deportation in December 2003, the solidity of his social, cultural and family ties in Austria and the lack of ties with Bulgaria, his country of origin. In view of these elements it found that, despite its limited duration, the ten-year exclusion order was disproportionate to the legitimate aim pursued. It therefore found that there had been a violation of Article 8 of the Convention.

B. The parties' submissions

1. The applicant

50. The applicant emphasised that he had still been a minor when the exclusion order was imposed and that the measure had therefore first and foremost affected his "family life".

51. The applicant agreed with the Chamber's judgment and emphasised that the Chamber had rightly attached particular weight to the fact that he had committed the offences as a juvenile and that – with one exception – they were non-violent offences. Furthermore, he contested the Government's argument that offences committed by a drug addict, such as burglary, were to be compared to drug dealing in gravity. In addition, he relied on the solidity of his family ties, arguing that following his release from prison he had lived with his parents and that his mother had even accompanied him to Bulgaria when he was expelled to help him during the first weeks. He also underlined the fact that he had received his entire

schooling in Austria and added that, after having dropped out of school at the time of the commission of the offences, he had completed his schooling during his prison term.

52. Lastly, the applicant asserted that he had no family or social ties with Bulgaria. As regards his knowledge of Bulgarian, the applicant asserted at the hearing that his family belonged to the Turkish minority in Bulgaria. He therefore had no knowledge of Bulgarian.

2. The Government

53. The Government did not dispute that the exclusion order constituted an interference with the applicant's private and family life. However, they noted that, while the applicant had been a minor when the exclusion order was imposed, he had reached the age of majority in the course of the proceedings. They added that the relationship between an adult and his parents did not necessarily qualify as "family life".

54. Their further observations concentrated on the necessity of the interference. They argued that the Chamber's judgment disregarded the State's margin of appreciation as in fact the Court had not limited itself to examining whether the guiding principles established by its case-law had been taken into account but had actually replaced the domestic authorities' weighing of interests by its own assessment. The Court had thus acted as a Court of Appeal or, as was sometimes said, as a "fourth-instance" court.

55. The Government criticised the lack of clarity of the Court's case-law and argued that the dynamics of the Court's case-law and differences in approach or emphasis of the different Chambers made it difficult for the domestic authorities to avoid decisions which violated Article 8 of the Convention.

56. The Government argued that the Chamber's judgment did not correctly apply the criteria as set out in *Boultif v. Switzerland* (no. 54273/00, § 48, ECHR 2001-IX) and *Üner* (cited above, § 57). They asserted that the offences committed by the applicant were of considerable gravity. What was at stake were offences committed by a drug addict to which similar weight should be attached as to drugs offences. Moreover, the sentence was particularly severe, given that, pursuant to section 5(4) of the Juvenile Court Act, the maximum penalty that could otherwise be imposed was reduced by one half. The Government also emphasised the weakness of family ties in that the applicant had escaped the educational influence of his parents and, contrary to *Boultif* and *Üner* (both cited above), had not yet founded a family of his own, the weakness of social ties and the lack of integration in that the applicant had dropped out of school, had not pursued any vocational or professional training and had never taken up employment in Austria.

57. The Government had previously claimed that the applicant must have had some knowledge of Bulgarian since he had spent the first six years of his life in Bulgaria. However, at the hearing they did not dispute the

explanation given by the applicant as to his lack of knowledge of Bulgarian (see paragraph 52 above).

58. Moreover, a point of principle raised by the Government was that the Chamber judgment attached weight to facts which had occurred after the final domestic decision, namely the applicant's good conduct after his release from prison in May 2002 until his deportation in December 2003.

59. Referring to *Kaya v. Germany* (no. 31753/02, § 57, 28 June 2007), the Government argued that the time when the residence prohibition had become final in the domestic proceedings had to be taken as the relevant point in time, with the consequence that any later developments were not to be taken into account by the Court. Any other interpretation, which allowed circumstances that had occurred after the final domestic decision to be taken into account, would run counter to the rationale underlying the requirement of exhaustion of domestic remedies in Article 35 § 1 of the Convention, namely that a Contracting State was answerable only for alleged violations after having had an opportunity to put things right through its own legal system. In fact, domestic law provided a possibility for the exclusion order to be lifted, either on the applicant's request or by the authorities of their own motion if the reasons underlying it no longer existed.

60. The Government noted that the present case was unusual in that normally there was only a short lapse of time between the date when the exclusion order became final and the date of the expulsion. The considerable delay in the applicant's case was explained by the fact that the authorities had waited for the applicant to reach the age of majority before they expelled him.

C. The Court's assessment

1. *Whether there was an interference with the applicant's right to respect for his private and family life*

61. The Court considers that the imposition and enforcement of the exclusion order against the applicant constituted an interference with his right to respect for his "private and family life". It reiterates that the question whether the applicant had a family life within the meaning of Article 8 must be determined in the light of the position when the exclusion order became final (see *El Boujaïdi v. France*, 26 September 1997, § 33, *Reports of Judgments and Decisions* 1997-VI; *Ezzouhdi v. France*, no. 47160/99, § 25, 13 February 2001; *Yildiz v. Austria*, no. 37295/97, § 34, 31 October 2002; *Mokrani v. France*, no. 52206/99, § 34, 15 July 2003; and *Kaya*, cited above, § 57).

62. The applicant was a minor when the exclusion order was imposed. He had reached the age of majority, namely 18 years, when the exclusion order became final in November 2002 following the Constitutional Court's

decision, but he was still living with his parents. In any case, the Court has accepted in a number of cases concerning young adults who had not yet founded a family of their own that their relationship with their parents and other close family members also constituted "family life" (see *Bouchelkia v. France*, 29 January 1997, § 41, *Reports* 1997-I; *El Boujaïdi*, cited above, § 33; and *Ezzouhdi*, cited above, § 26).

63. Furthermore, the Court observes that not all settled migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy "family life" there within the meaning of Article 8. However, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Regardless of the existence or otherwise of a "family life", the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Üner*, cited above, § 59).

64. Accordingly, the measures complained of interfered with both the applicant's "private life" and his "family life".

65. Such interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

2. "In accordance with the law"

66. The impugned measure had a basis in domestic law, namely section 36(1) of the Aliens Act 1997. The applicant did not maintain the argument that the Administrative Court had arbitrarily refused to apply section 38(1)(4) of that Act. The Grand Chamber observes, like the Chamber, that, according to the Administrative Court's constant case-law, section 38 (1)(4) only applied to aliens who had grown up in Austria from the age of three or younger and had been legally resident there (see paragraphs 31 and 47 above). The applicant only came to Austria at the age of six. The Grand Chamber sees no reason to deviate from the Chamber's finding that the interference complained of was "in accordance with the law".

3. Legitimate aim

67. It is not in dispute that the interference served a legitimate aim, namely the "prevention of disorder or crime".

4. "Necessary in a democratic society"

(a) General principles

68. The main issue to be determined is whether the interference was "necessary in a democratic society". The fundamental principles in that regard are well established in the Court's case-law and have recently been summarised as follows (see *Üner*, cited above, §§ 54-55 and 57-58):

> "54. 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 (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, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and 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 *Dalia v. France*, 19 February 1998, § 52, *Reports* 1998-I; *Mehemi v. France*, 26 September 1997, § 34, *Reports* 1997-VI; *Boultif*, cited above, § 46; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).
>
> 55. The Court considers that these principles apply regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there. In this context the Court refers to Recommendation 1504 (2001) on the non-expulsion of long-term immigrants, in which the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers invite member States, *inter alia*, to guarantee that long-term migrants who were born or raised in the host country cannot be expelled under any circumstances (see paragraph 37 above). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record (see paragraph 39 above), such an absolute right not to be expelled cannot, however, be derived from Article 8 of the Convention, couched, as paragraph 2 of that provision is, in terms which clearly allow for exceptions to be made to the general rights guaranteed in the first paragraph.
>
> ...
>
> 57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim*, cited above; *Beldjoudi v. France*, 26 March 1992, Series A no. 234-A; and *Boultif*, cited above; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yilmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, no. 32231/02,

27 October 2005). In the *Boultif* case the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria, as reproduced in paragraph 40 of the Chamber judgment in the present case, are the following:

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

– the time elapsed since the offence was committed and the applicant's conduct during that period;

– the nationalities of the various persons concerned;

– the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

– whether the spouse knew about the offence at the time when he or she entered into a family relationship;

– whether there are children of the marriage, and if so, their age;

– the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:

– the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled;

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

As to the first point, the Court notes that this is already reflected in its existing case law (see, for example, *Şen v. the Netherlands*, no. 31465/96, § 40, 21 December 2001, and *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 47, 1 December 2005) and is in line with the Committee of Ministers' Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification (see paragraph 38 above).

As to the second point, it is to be noted that, although the applicant in the case of *Boultif* was already an adult when he entered Switzerland, the Court has held the '*Boultif* criteria' to apply all the more so (*à plus forte raison*) to cases concerning applicants who were born in the host country or who moved there at an early age (see *Mokrani v. France*, no. 52206/99, § 31, 15 July 2003). Indeed, the rationale behind making the duration of a person's stay in the host country one of the elements to be taken into account lies in the assumption that the longer a person has been residing in a particular country the stronger his or her ties with that country and the weaker the ties with the country of his or her nationality will be. Seen against that background, it is self-evident that the Court will have regard to the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there."

69. In the *Üner* judgment, as well as in the *Boultif* judgment (§ 48) cited above, the Court has taken care to establish the criteria – which were so far implicit in its case-law – to be applied when assessing whether an expulsion measure is necessary in a democratic society and proportionate to the legitimate aim pursued.

70. The Court would stress that while the criteria which emerge from its case-law and are spelled out in the *Boultif* and *Üner* judgments are meant to

facilitate the application of Article 8 in expulsion cases by domestic courts, the weight to be attached to the respective criteria will inevitably vary according to the specific circumstances of each case. Moreover, it has to be borne in mind that where, as in the present case, the interference with the applicant's rights under Article 8 pursues, as a legitimate aim, the "prevention of disorder or crime" (see paragraph 67 above), the above criteria ultimately are designed to help evaluate the extent to which the applicant can be expected to cause disorder or to engage in criminal activities.

71. In a case like the present one, where the person to be expelled is a young adult who has not yet founded a family of his own, the relevant criteria are

– 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; and

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

72. The Court would also clarify that the age of the person concerned can play a role when applying some of the above criteria. For instance, when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult (see, for instance, *Moustaquim v. Belgium*, 18 February 1991, § 44, Series A no. 193, and *Radovanovic v. Austria*, no. 42703/98, § 35, 22 April 2004).

73. In turn, when assessing the length of the applicant's stay in the country from which he or she is to be expelled and the solidity of the social, cultural and family ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came as an adult. This tendency is also reflected in various Council of Europe instruments, in particular in Committee of Ministers Recommendations Rec(2000)15 and Rec(2002)4 (see paragraphs 34-35 above).

74. Although Article 8 provides no absolute protection against expulsion for any category of aliens (see *Üner*, cited above, § 55), including those who were born in the host country or moved there in their early childhood, the Court has already found that regard is to be had to the special situation of aliens who have spent most, if not all, of their childhood in the host country, were brought up there and received their education there (see *Üner*, § 58 *in fine*).

75. In short, the Court considers that 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. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.

76. Finally, the Court reiterates that national authorities enjoy a certain margin of appreciation when assessing whether an interference with a right protected by Article 8 was necessary in a democratic society and proportionate to the legitimate aim pursued (see *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X, and *Berrehab v. the Netherlands*, 21 June 1988, § 28, Series A no. 138). However, the Court has consistently held that its task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see, among many other authorities, *Boultif*, cited above, § 47). Thus, the State's margin of appreciation goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court (see, *mutatis mutandis*, *Société Colas Est and Others v. France*, no. 37971/97, § 47, ECHR 2002-III). The Court is therefore empowered to give the final ruling on whether an expulsion measure is reconcilable with Article 8.

(b) Application of the above principles in the instant case

(i) Nature and seriousness of the offences committed by the applicant

77. The Court notes that the offences at issue were committed over a period of a year and three months, namely between November 1998 and January 2000 (see paragraphs 14-15 above), when the applicant was between 14 and 15 years old.

78. The applicant's first conviction of September 1999 related to twenty-two counts of aggravated gang burglary and attempted aggravated gang burglary, forming a gang, extortion, assault, and unauthorised use of a vehicle. He was sentenced to eighteen months' imprisonment, of which thirteen months were suspended on probation. In addition, he was ordered to undergo drug therapy.

79. The second conviction – of May 2000 – related to eighteen counts of aggravated burglary and attempted aggravated burglary. The applicant was sentenced to fifteen months' imprisonment. As a consequence of his failure to undergo drug therapy, the judgment revoked the suspension of the first prison term.

80. The Court agrees with the Chamber that the offences committed by the applicant were of a certain gravity and that severe penalties were imposed on him amounting to a total of two years and nine months' unconditional imprisonment. The Government argued that the offences should be considered to be of a gravity similar to drugs offences, as the applicant had committed them as a drug addict in order to finance his drug

consumption. The Court disagrees with this view. It is true that in the sphere of drug dealing the Court has shown understanding of the domestic authorities' firmness as regards those actively involved in the spread of this scourge (see, for instance, *Dalia v. France*, 19 February 1998, § 54, *Reports* 1998-I, and *Baghli v. France*, no. 34374/97, § 48, ECHR 1999-VIII). However, it has not taken the same approach as regards those convicted of drug consumption (see *Ezzouhdi*, cited above, § 34).

81. In the Court's view, the decisive feature of the present case is the young age at which the applicant committed the offences and, with one exception, their non-violent nature. This also clearly distinguishes the present case from *Boultif* and *Üner* (both cited above) in which violent offences, in the first case robbery and in the second case manslaughter and assault committed by an adult, were the basis for imposing exclusion orders. Looking at the applicant's conduct underlying the convictions, the Court notes that the majority of the offences concerned breaking into vending machines, cars, shops or restaurants and stealing cash and goods. The one violent offence consisted in pushing, kicking and bruising another juvenile. Without underestimating the seriousness of and the damage caused by such acts, the Court considers that they can still be regarded as acts of juvenile delinquency.

82. The Court considers that where offences committed by a minor underlie an exclusion order, regard must be had to the best interests of the child. The Court's case-law under Article 8 has given consideration to the obligation to have regard to the best interests of the child in various contexts (for instance in the field of childcare; see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII), including the expulsion of foreigners (see *Üner*, cited above, § 58). In *Üner* the Court had to consider the position of children as family members of the person to be expelled. It underlined that the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant were likely to encounter in the country to which the applicant was to be expelled, was a criterion to be taken into account when assessing whether an expulsion measure was necessary in a democratic society. The Court considers that the obligation to have regard to the best interests of the child also applies if the person to be expelled is himself or herself a minor, or if – as in the present case – the reason for the expulsion lies in offences committed when a minor. In this connection, the Court observes that European Union law also provides for particular protection of minors against expulsion (see paragraph 41 above, Article 28 § 3 (b) of Directive 2004/38/EC). Moreover, the obligation to have regard to the best interests of the child is enshrined in Article 3 of the United Nations Convention on the Rights of the Child (see paragraph 36 above).

83. The Court considers that, where expulsion measures against a juvenile offender are concerned, the obligation to take the best interests of

the child into account includes an obligation to facilitate his or her reintegration. In this connection, the Court notes that Article 40 of the Convention on the Rights of the Child makes reintegration an aim to be pursued by the juvenile justice system (see paragraphs 36-38 above). In the Court's view this aim will not be achieved by severing family or social ties through expulsion, which must remain a means of last resort in the case of a juvenile offender. It finds that these considerations were not sufficiently taken into account by the Austrian authorities.

84. In sum, the Court sees little room for justifying an expulsion of a settled migrant on account of mostly non-violent offences committed when a minor (see *Moustaquim*, cited above, § 44, concerning an applicant who had been convicted of offences committed as a juvenile, namely numerous counts of aggravated theft, one count each of handling stolen goods and destruction of a vehicle, two counts of assault and one count of threatening behaviour, and *Jakupovic v. Austria*, no. 36757/97, § 27, 6 February 2003, in which the exclusion order was based on two convictions for burglary committed when a minor and where, in addition, the applicant was still a minor when he was expelled).

85. Conversely, the Court has made it clear that very serious violent offences can justify expulsion even if they were committed by a minor (see *Bouchelkia*, cited above, § 51, where the Court found no violation of Article 8 as regards a deportation order made on the basis of the applicant's conviction of aggravated rape committed at the age of 17; in the decisions *Hizir Kilic v. Denmark* (dec.), no. 20277/05, and *Ferhat Kilic v. Denmark* (dec.), no. 20730/05, both of 22 January 2007, the Court declared inadmissible the applicants' complaints about exclusion orders imposed following their convictions for attempted robbery, aggravated assault and manslaughter committed at the age of 16 and 17 respectively).

(ii) Length of applicant's stay

86. The applicant came to Austria in 1990, at the age of six, and spent the rest of his childhood and youth there. He was lawfully resident in Austria with his parents and siblings and was granted a permanent-settlement permit in March 1999.

(iii) Time elapsed since the commission of the offences and the applicant's conduct during that period

87. As noted above, the applicant committed no further offences after January 2000. When assessing his conduct since the commission of the offences, the Chamber had regard to the period up until his expulsion in December 2003. It attached weight to the period of good conduct after his release from prison in May 2002, noting that in the one and a half years prior to his expulsion he did not commit any further offences.

88. In the Government's opinion, the Chamber should not have had regard to facts which had occurred after the final domestic decision (see paragraphs 58-59 above). They argued that the Administrative Court had given its decision before the applicant's release. In any case, both the Administrative Court and the Constitutional Court had to take their decision on the basis of the facts established by the last-instance administrative authority. In the present case that had been the decision of the Vienna Public Security Authority of 19 July 2001.

89. The Court notes that the *Boultif* judgment (cited above, § 48) established "the time elapsed since the commission of the offence[s] and the applicant's conduct during that period" as a criterion to be taken into account. In that case the Court had regard to the entire period between the commission of the offences in 1994 and the applicant's departure from Switzerland in 2000, considering that the applicant's exemplary conduct in prison and his employment thereafter mitigated the fears that he constituted a danger to public order and security. However, on the facts of the case it is not clear how much time exactly elapsed between the final domestic decision given by the Swiss Federal Court in November 1999 and the applicant's departure "on an unspecified date in 2000" (ibid., §§ 19 and 22). In a subsequent case, in which seven months elapsed between the Austrian Administrative Court's decision in December 1996 and the applicant's departure in July 1997, the Court had regard to the applicant's good conduct between the last conviction in April 1994 and the termination of the proceedings in December 1996 (see *Yildiz*, cited above, §§ 24-26 and 45).

90. Under the approach taken in the *Boultif* judgment (cited above, § 51), the fact that a significant period of good conduct elapses between the commission of the offences and the deportation of the person concerned necessarily has a certain impact on the assessment of the risk which that person poses to society.

91. In this connection, it is to be borne in mind that according to the Court's established case-law under Article 3, where an expulsion has taken place before the Court gives judgment, the existence of the risk the applicant faced in the country to which he was expelled is to be assessed with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion. In cases in which the applicant has not yet been deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008). Thus, in these cases the Court does not limit itself to assessing the situation at the time when the final domestic decision ordering the expulsion was given.

92. The Court is not convinced by the Government's argument, drawn from Article 35 § 1 of the Convention, to the effect that developments which occurred after the final domestic decision should not be taken into account. It is true that the requirement to exhaust domestic remedies is

designed to ensure that States are only answerable for their acts before an international body after they have had an opportunity to put matters right through their own legal system (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV). However, such an issue will only arise in the event that a significant lapse of time occurs between the final decision imposing the exclusion order and the actual deportation.

93. In this connection, the Court would point out that its task is to assess the compatibility with the Convention of the applicant's actual expulsion, not that of the final expulsion order. *Mutatis mutandis*, this would also appear to be the approach followed by the CJEU which stated in its *Orfanopoulos and Oliveri* judgment that Article 3 of Directive 64/221 precludes a national practice whereby the national courts may not take into consideration, in reviewing the lawfulness of the expulsion of a national of another member State, factual matters which occurred after the final decision of the competent authorities (see paragraph 43 above). Consequently, in such cases it is for the State to organise its system in such a way as to be able to take account of new developments. This is not in contradiction with an assessment of the existence of "family life" at the time when the exclusion order becomes final, in the absence of any indication that the applicant's "family life" would have ceased to exist after that date (see paragraph 61 above). Even if it had done so, the applicant could still claim protection of his right to respect for his "private life" within the meaning of Article 8 (see paragraph 63 above).

94. The Government indicated in this respect that proceedings allowing for a review of whether the conditions for an exclusion order still pertained could be instituted either at the applicant's request or at the initiative of the authorities acting of their own motion. It follows that in the present case it was open to the domestic authorities to make a new assessment.

95. The Court will therefore have regard to the applicant's conduct between the commission of the last offence, in January 2000, and his actual deportation in December 2003. Of this period of almost three years and eleven months the applicant spent two years and three and a half months in prison, namely from 11 February 2000 to 24 May 2002. Following his release from prison and up until 27 November 2003, when he was taken into detention with a view to his expulsion, he spent one and a half years at liberty without reoffending. However, unlike in the *Boultif* case (cited above, § 51), little is known about the applicant's conduct in prison – except that he did not benefit from early release – and it is even less clear to what extent his living circumstances had stabilised after his release. Consequently, unlike the Chamber, the Court considers that "the time elapsed since the commission of the offence[s] and the applicant's conduct during that period" carries less weight as compared to the other criteria, in particular the fact that the applicant committed mostly non-violent offences when a minor.

(iv) Solidity of social, cultural and family ties with the host country and the country of origin

96. The Court observes that the applicant spent the formative years of his childhood and youth in Austria. He speaks German and received his entire schooling in Austria where all his close family members live. He therefore has his principal social, cultural and family ties in Austria.

97. As to the applicant's ties with his country of origin, the Court notes that he has convincingly explained that he did not speak Bulgarian at the time of his expulsion as his family belonged to the Turkish minority in Bulgaria. It was not disputed that he was unable to read or write Cyrillic as he had never gone to school in Bulgaria. It has not been shown, nor even alleged, that he had any other close ties with his country of origin.

(v) Duration of the exclusion order

98. Lastly, when assessing the proportionality of the interference, the Court has regard to the duration of an exclusion order. The Chamber, referring to the Court's case-law, has rightly pointed out that the duration of an exclusion measure is to be considered as one factor among others (see, as cases in which the unlimited duration of a residence prohibition was considered as a factor supporting the conclusion that it was disproportionate, *Ezzouhdi*, cited above, § 35; *Yilmaz v. Germany*, no. 52853/99, §§ 48-49, 17 April 2003; and *Radovanovic*, cited above, § 37; see, as cases in which the limited duration of a residence prohibition was considered as a factor in favour of its proportionality, *Benhebba v. France*, no. 53441/99, § 37, 10 July 2003; *Jankov v. Germany* (dec.), no. 35112/97, 13 January 2000; and *Üner*, cited above, § 65).

99. The Grand Chamber agrees with the Chamber that the limited duration of the exclusion order is not decisive in the present case. Having regard to the applicant's young age, a ten-year exclusion order banned him from living in Austria for almost as much time as he had spent there and for a decisive period of his life.

(vi) Conclusion

100. Having regard to the foregoing considerations, in particular the – with one exception – non-violent nature of the offences committed when a minor and the State's duty to facilitate his reintegration into society, the length of the applicant's lawful residence in Austria, his family, social and linguistic ties with Austria and the lack of proven ties with his country of origin, the Court finds that the imposition of an exclusion order, even of a limited duration, was disproportionate to the legitimate aim pursued, "the prevention of disorder or crime". It was therefore not "necessary in a democratic society".

101. Consequently, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The Chamber judgment

103. The Chamber had regard to comparable cases (see *Yildiz v. Austria*, no. 37295/97, § 51, 31 October 2002; *Jakupovic v. Austria*, no. 37295/97, § 37, 6 February 2003; *Radovanovic v. Austria* (just satisfaction), no. 42703/98, § 11, 16 December 2004; and *Mehemi v. France*, 26 September 1997, § 41, *Reports of Judgments and Decisions* 1997-VI) and held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

2. The parties' submissions

104. The applicant maintained his claim of 5,000 euros (EUR) for non-pecuniary damage suffered as a result of the separation from his family.

105. The Government argued that the finding of a violation would in itself provide sufficient just satisfaction.

3. The Court's decision

106. The Court considers that the applicant must have suffered distress and anxiety as a result of his expulsion. Making an assessment on an equitable basis it awards the applicant EUR 3,000 under the head of non-pecuniary damage (see *Mokrani*, cited above, § 43), plus any tax that may be chargeable.

B. Costs and expenses

1. The Chamber judgment

107. The Chamber awarded the applicant EUR 5,759.96, inclusive of value-added tax (VAT), for costs and expenses incurred in the domestic proceedings and in the Convention proceedings up to and including the Chamber judgment. This sum was composed of EUR 3,797.96 for the domestic proceedings and EUR 1,962 for the proceedings before the Court.

2. The parties' submissions

108. Before the Grand Chamber the applicant maintained his claims in respect of the domestic proceedings. In respect of the Convention proceedings he claimed a total amount of EUR 12,190.56, inclusive of VAT, of which EUR 6,879.84, inclusive of VAT, concerned the proceedings before the Grand Chamber. In addition, he claimed EUR 457.26 for travel and subsistence related to counsel's participation at the hearing.

109. The Government noted that costs and expenses up to the conclusion of the proceedings before the Chamber had been accepted by the Chamber, which had awarded them in full, namely, EUR 5,759.96. The Government did not make any comment regarding the costs incurred in the proceedings before the Grand Chamber.

3. The Court's decision

110. Regarding the costs and expenses of the domestic proceedings and of the Convention proceedings up to the Chamber judgment, the Court agrees with the Chamber that they were actually and necessarily incurred and were reasonable as to quantum and therefore confirms the award of EUR 5,759.96. Regarding the costs and expenses for the proceedings before the Grand Chamber, the Court also considers that they were actually and necessarily incurred and were reasonable as to quantum. It therefore awards the amount claimed, namely EUR 6,879.84, inclusive of VAT, plus EUR 457.26 for travel and subsistence, that is a total amount of EUR 7,337.10.

111. Consequently, the Court awards the applicant a total amount of EUR 13,097.06 under the head of costs and expenses.

C. Default interest

112. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by sixteen votes to one that there has been a violation of Article 8 of the Convention;

2. *Holds* by sixteen votes to one
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable and EUR 13,097.06 (thirteen thousand and ninety-seven euros and six cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 June 2008.

Vincent Berger
Jurisconsult

Jean-Paul Costa
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Steiner is annexed to this judgment.

J.-P.C.
V.B.

DISSENTING OPINION OF JUDGE STEINER

(Translation)

Much to my regret, and despite the changes that have been made to the "Law" part of the judgment on the question of whether it was necessary to expel the applicant, I am unable to agree with the reasoning of the majority.

My reasons are as follows: I maintain to a large extent the points I made in my dissenting opinion annexed to the Chamber judgment and to which I now refer, with one reservation.

To my mind, the main issue in the present case centres on the assessment of the factors militating for or against the applicant. It goes without saying that I agree with the judgment as far as the general interpretation is concerned. I disagree only with the conclusion as to the proportionality.

The exclusion order of which the applicant complains is of ten years' duration. The majority consider (see paragraphs 98, 99 and 100 of the judgment) that when weighing the interests of the applicant, who was a minor at the material time, against the interests of Austrian society in expelling all aliens who have seriously infringed the law the balance tips in favour of the applicant. The consideration given to the proportionality of the measure must also embrace other factors, including the possibility open to the applicant of requesting – after a certain amount of time has elapsed – that the authorities reverse their decision. He would then be able to argue that he has not committed any further criminal offences in his current country of residence. He would also be able to argue that Bulgaria, of which he is a national, is now a member of the European Union. These two factors combined provide the applicant with a possibility that he did not have before. Having regard to the requirement of proportionality which must also be considered alongside the margin of appreciation afforded to States in a sphere in which the public expects decisions that safeguard individual rights but also the legitimate rights of society, I incline to the conclusion that there has not been a violation.