FIRST SECTION

CASE OF MASLOV v. AUSTRIA

(Application no. 1638/03)

JUDGMENT

STRASBOURG

22 March 2007

THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
23 June 2008

In the case of Maslov v. Austria,

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

Mr C.L. ROZAKIS, President,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, judges,

and Mr S. NIELSEN, Section Registrar,

Having deliberated in private on 15 February 2007,

Delivers the following judgment, which was adopted on that 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. The Bulgarian Government did not make use of their right to intervene (Article 36 § 1 of the Convention).

3. The applicant alleged, in particular, that the residence prohibition against him violated his right to respect for his private and family life.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 2 June 2005 the Court declared the application partly admissible.

THE FACTS

6. The applicant was born in 1984 and currently lives in Bulgaria.

7. In November 1990 the applicant lawfully entered Austria together with his parents and two siblings. Subsequently, he was legally resident in

Austria. His parents were lawfully employed and have meanwhile acquired Austrian nationality. The applicant attended school in Austria.

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

9. On 7 September 1999 the Vienna Juvenile Court (Jugendgerichtshof) convicted the applicant of some 22 counts of partially completed and partially attempted aggravated gang burglary (gewerbsmäßiger Bandendiebstahl), of extortion (Erpressung), of partially completed and partially attempted assault (Körperverletzung), and of the unauthorised use of a vehicle (unbefugter Gebrauch eines Fahrzeugs) committed between November 1988 and June 1999. He was sentenced to 18 months' imprisonment, 13 of which were suspended on probation. Moreover, he was instructed to start drug therapy.

10. 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.

11. On 25 May 2000 the Vienna Juvenile Court convicted the applicant of 18 counts of partially completed and partially attempted aggravated burglary and sentenced him to 15 months' imprisonment. When fixing the sentence the court noted the applicant's confession as a mitigating circumstance, the number of offences committed as well as 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 elapsed their educational influence, had repeatedly been absent from home, and had dropped out of school. It also noted that the applicant had failed to comply with the instruction to undergo drug withdrawal treatment. Consequently, the suspension of the prison term imposed by the judgment of 7 September 1999 was revoked.

12. Following the Vienna Juvenile Court's judgment, the applicant served his prison term until 24 May 2002. He did not benefit from early release.

13. Meanwhile, on 3 January 2001 the Vienna Federal Police Authority (Bundespolizeidirektion), relying on Section 36 § 1 of the 1997 Aliens Act (Fremdengesetz 1997), imposed a ten years' residence prohibition on the applicant. Having regard to the applicant's convictions, it found that his

further stay in Austria was contrary to the public interest. 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.

14. The applicant, assisted by counsel, appealed. He submitted that the residence prohibition 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 1997 Aliens Act, pursuant to which a residence prohibition may not be issued against an alien who has been lawfully residing in Austria from an early age.

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

16. On 17 August 2001 the applicant filed 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 was not able to speak Bulgarian. He had no relatives and other social contacts in Bulgaria. Moreover, he drew attention to the fact that he was still a minor.

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

18. On 25 November 2002 the Constitutional Court declined to deal with the complaint for lack of prospects of success.

19. On 18 August 2003 the Vienna Federal Police Authority requested the applicant to leave Austria.

20. On 14 October 2003 the Vienna Federal Police Authority ordered the applicant's detention with a view to his expulsion. He was arrested on 27 November 2003.

21. On 22 December 2003 the applicant was deported to Sofia.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained about the residence prohibition against him and about his subsequent expulsion to Bulgaria. He relied on Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The submissions of the parties

23. The applicant alleged that the impugned residence prohibition was not in accordance with the law, as the Administrative Court's interpretation of Section 38 § 1 (4) of the 1997 Aliens Act distinguished arbitrarily between the group of second generation immigrants who came to Austria before the age of three, who may not be subject to a residence prohibition, and other second generation immigrants like him, who still came at pre-school age but may be subject to a residence prohibition.

24. In the applicant's contention, the residence prohibition against him was disproportionate. He pointed out in particular that he was a second generation immigrant, having lived in Austria from the age of six. He had received his entire schooling there and had developed all his social, cultural and linguistic ties there, while he had no links with Bulgaria, except his nationality and two brief periods of holidays he spent there. He had no relatives or friends there and did not speak or write Bulgarian. Moreover, the applicant criticised that the impugned decisions did not take account of various factors speaking in his favour: he had committed the offences at issue at the age of 14 and 15 respectively, that is during a difficult period of adolescence and had only played a subordinate role in their commission. Later, he had not committed any further offences.

25. The fact that the residence prohibition was limited to ten years made little difference, as the major damage was done by his sudden removal from his family background and social ties in Austria.

26. The Government contested the applicant's argument that the residence prohibition against him was not in accordance with Section 38 § 1 (4) of the 1997 Aliens Act. They argued, in particular, that the Administrative Court applied its established case-law that the term “from an early age” in that provision meant aliens who had grown up in Austria as of the age of three at the latest.

27. As to the necessity of the interference, the Government asserted that the authorities had duly balanced the interests at stake, when finding that the public interest in issuing the residence ban outweighed the applicant's interest in remaining in Austria. They had regard to the nature of the offences committed by the applicant, the severity of the penalties imposed and the rapid relapse into crime after his first conviction. Further, the Government observed that the applicant only raised the argument that he did not speak or read Bulgarian at a late stage of the domestic proceedings. In any case, they found that he must have some knowledge of Bulgarian, as he had spent the first six years of his life in his country of origin. While conceding that the applicant received his schooling in Austria, the Government noted that he had dropped out of school and had not shown any interest in pursuing vocational training or to take up employment.

28. Finally, the Government emphasised that the authorities limited the residence ban to ten years. Moreover, the applicant's expulsion was only carried out once he had reached the age of majority.

B. The Court's assessment

1. Whether there was an interference

29. It is not in dispute that the residence prohibition against the applicant and the ensuing expulsion amount to an interference with his right to respect for his private and family life. It is therefore necessary to determine whether this interference satisfied the condition of paragraph 2 of Article 8, that is to say whether it was “in accordance with the law”, pursued one or more of the legitimate aims set out in that paragraph, and was “necessary in a democratic society” for the achievement of that aim or aims.

2. “In accordance with the law”

30. As to the applicant's argument that the residence prohibition was not “in accordance with the law”, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see Amann v. Switzerland [GC], no. 27798/95, § 52, ECHR 2000-II, and Yildiz v. Austria, no. 37295/97, § 38, 31 October 2002). In the present case, the residence prohibition had a basis in domestic law, namely Section 36 § 1 of the 1997 Aliens Act. Further, the Court notes that, according to the

Administrative Court's constant case-law, the exclusion of a residence prohibition provided for in Section 38 § 1 (4) of the said Act, only applies to aliens who have been legally resident in Austria from the age of three at the latest. Given that the applicant only came to Austria at the age of six, it cannot be said that the authorities arbitrarily refused to apply the provision at issue in his case.

3. Legitimate aim

31. It is not in dispute between the parties that the residence prohibition served a legitimate aim, namely the prevention of disorder and crime.

4. “Necessary in a democratic society”

32. The parties' arguments concentrated on the question whether the interference was “necessary in a democratic society”.

33. The Court reiterates that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport aliens 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 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, for instance, Üner v. the Netherlands [GC], no. 46410/99, § 54, ECHR-2006-...; Boultif v. Switzerland, no. 54273/00, § 46, ECHR 2001-IX with a reference to Dalia v. France, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 91, § 52, and Mehemi v. France, judgment of 26 September 1997, Reports 1997-VI, p. 1971, § 34).

34. The Court has recently confirmed that these principles apply to all categories of aliens. Even long-term immigrants who were born in the host State or arrived there during early childhood cannot derive a right from Article 8 not to be expelled on the basis of their criminal record, since paragraph 2 of that provision is couched in terms which clearly allow for exceptions to be made to the rights guaranteed in the first paragraph (Üner, cited above, § 55).

35. Accordingly, the Court's task in the present case consists in ascertaining whether the Austrian authorities, by imposing a ten years' residence prohibition on the applicant, struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder and crime, on the other.

36. The relevant criteria the Court will assess in a case like the present one, concerning a second generation immigrant, who has not yet founded a family of his own in the host country are the following:

– 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 with the country of destination (see for instance, Benhebba v. France, no. 53441/99, §§ 32-33, 10 July 2003 with a reference, among others, to Boultif, cited above, § 48, and Mehemi, cited above, § 36; see also, mutatis mutandis, Üner, cited above, §§ 57-58, relating to the situation of a long-term immigrant having a life companion and children of young age, all being nationals of the host country).

37. The applicant came to Austria at the age of six and had lived there for twelve years with his parents and siblings when the residence prohibition became final. He speaks German and received his entire schooling in Austria.

38. As to the applicant's criminal record, the Court notes that the applicant was convicted in September 1999 of numerous counts of aggravated burglary committed as a member of a gang, unauthorised use of a vehicle, extortion and bodily assault. A prison term of 18 months' of which 13 were suspended on probation was imposed on him and he was ordered to undergo drug therapy. He was convicted a second time in rapid succession, namely in May 2000, of numerous counts of burglary committed as a member of a gang and was sentenced to a prison term of 15 months. As he had failed to undergo drug therapy as ordered, the partial suspension of the first prison term was revoked.

39. The Court does not deny that the offences committed by the applicant were of a certain gravity. Nor does the Court disregard the fact that severe penalties were imposed on the applicant, amounting to a total of two years' and nine month unconditional imprisonment. However, it observes that the applicant committed the offences at the age of 14 and 15, during the difficult period of adolescence. The offences committed are rather typical examples of juvenile delinquency and, with one exception, did not involve any acts of violence. Nor was the applicant involved in drug dealing.

40. In the Court's view the present case can, therefore, be distinguished from a number of cases concerning applicants in a comparable personal situation (i.e. second generation immigrants who were at the time of the impugned measures young single adults who had not yet founded a family of their own in the host country) in which the Court found no violation as regards the imposition of a residence ban. These cases concerned violent crime, such as rape or armed robbery, for which unconditional prison terms

of five or more years had been imposed (see for instance, Bouchelkia v. France, judgment of 29 January 1997, Reports 1997-I, p. 65, §§ 50-53, and Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI, pp. 2263-64, § 44) or offences of drug dealing for which at least partly unconditional prison terms had been imposed, whereby drug dealing is an area where the Court has shown understanding of domestic authorities' firmness with regard to those actively involved in the spread of this scourge (El Bouchaïdi v. France, judgment of 26 September 1997, Reports 1997-VI, p. 1992, § 41, and Baghli v. France, no. 34374/97, § 48, ECHR 1999-VIII).

41. Moreover, the Court attaches weight to the period of good conduct after the applicant's release. It notes that the commission of the offences ended in January 2000. From February 2000 until May 2002 the applicant was in prison. Subsequently, he stayed in Austria for another one and a half years, namely until his expulsion in December 2003. During this time he did not commit any further offences. The fact that he was able to resume life in freedom without relapsing into crime during a substantial period mitigates the fear that the applicant may constitute a danger to public order and security (see, Boultif, cited above, § 51).

42. As to the solidity of the applicant's social, cultural and family ties in Austria, the Court observes that the applicant has spent the formative years of his childhood and youth there and that all his close family members are living there.

43. As to the applicant's ties with his country of origin, the Government asserted that the applicant speaks Bulgarian while the latter denies this. The Court notes that while it appears likely that the applicant, who lived in Bulgaria until the age of six has some basic knowledge of the spoken language, it seems credible that he does not read or write Cyrillic since he never went to school in Bulgaria. Nor does it appear that he has any close relatives there or that he maintained any other contacts with his country of origin, except for spending holidays there twice.

44. Finally, the Government argued that the residence prohibition was limited in duration. It is true that the duration of a residence prohibition is to be taken into account when assessing its proportionality. However, it is only 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 v. France, no. 47160/99, § 35, 13 February 2001; Yilmaz v. Germany, no. 52853/99, §§ 48-49, 17 April 2003; Radovanovic v. Austria, no. 42703/98, § 37, 22 April 2004; see as cases in which the limited duration of a residence probation was considered as a factor in favour of its proportionality: Benhebba, cited above, § 37; Jankov v. Germany (dec.), no. 35112/92, 13 January 2000; Üner, cited above, § 65).

45. Having regard to the circumstances of the present case, in particular to the nature and severity of the offences, which are to be qualified as non-

violent juvenile delinquency, the applicant's good conduct after his release from prison and his lack of ties with his country of origin, a ten years' residence prohibition appears nevertheless disproportionate to the legitimate aim pursued.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

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

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

50. Having regard to its findings in comparable cases (see for instance Yildiz, cited above, § 51; Jakupovic, cited above, § 37; Radovanovic v. Austria (just satisfaction), no. 42703/98, § 11, 16 December 2004; Mehemi, cited above, § 41), the Court agrees with the Government that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

51. The applicant claimed a total amount of EUR 5,759.96, inclusive of value-added tax (VAT). This sum is composed of EUR 3,797.96 for the domestic proceedings and EUR 1,962 for the proceedings before the Court.

52. The Government observed that the Court was not bound by domestic rates of fees, although they could serve as a starting point for the assessment of the applicant's claims.

53. The Court is satisfied that the costs and expenses claimed by the applicant have been actually and necessarily incurred and are reasonable as to quantum. It therefore awards them in full, i.e. EUR 5,759.96, inclusive of VAT.

C. Default interest

54. The Court considers it appropriate that the default interest 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 four votes to three that there has been a violation of Article 8 of the Convention.

2. Holds by four votes to three
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,759.96 (five thousand seven hundred and fifty-nine euros ninety-six cents) in respect of costs and expenses;
   (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 notified in writing on 22 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following are annexed to this judgment:
(a) dissenting opinion of Mr Loucaides;
(b) statement of dissent by Mrs Vajić;
(c) dissenting opinion of Mrs Steiner.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE LOUCAIDES

I am unable to agree with the majority in this case that there has been a violation of Article 8 of the Convention. The majority, in reaching their conclusion, took into account the following facts in particular: (1) that the offences of which the applicant was convicted were "to be qualified as non-violent juvenile delinquency"; (2) "the applicant's good conduct after his release from prison"; (3) "his lack of ties with his country of origin"; and (4) the fact that the residence prohibition was going to have a duration of ten years. The majority found that the prohibition in question was disproportionate to the legitimate aim pursued. There are, I believe, other facts which may lead to a different conclusion, such as those referred to in the dissenting opinion of Judge Steiner, with which I agree.

What has been crucial for me is my conclusion that the residence prohibition in this case cannot be said to have exceeded the margin of appreciation of the respondent State. I believe that the majority did not give sufficient weight to this aspect of the case. According to the Court's case-law, "[i]n determining whether an interference was 'necessary in a democratic society', the Court makes allowance for the margin of appreciation that is left to the Contracting States" (see Berrehab v. the Netherlands, judgment of 21 June 1988, Series A no. 138, p. 15, § 28; and also W. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121-A, p. 27, § 60 (b) and (d), and Olsson v. Sweden (no. 1), judgment of 24 March 1988, Series A no. 130, pp. 31-32, § 67).

In view of the nature of the case, it may be useful to bear in mind the approach of international law on which the power to expel aliens is founded, to the extent that this approach is compatible with the relevant provisions of the Convention and the case-law concerning them. According to international law[1], States have the power to expel aliens, though this power is not absolute. Aliens must be treated in a civilised manner and the power of expulsion must be exercised in good faith. Due consideration must be given to the interests of the individual, including his basic human rights, his family and other links with the State of residence. These must be weighed against the competing demands of State interests as regards such matters as public safety and prevention of disorder or crime. International law allows States a fairly wide margin of appreciation in determining whether these interests justify an expulsion. They have the right to judge by national criteria whether the facts and circumstances warrant the expulsion. As regards both the grounds for expulsion and the question whether an individual qualifies for expulsion on those grounds, the expelling State is in the best position to pronounce upon such matters. State practice accepts that

1. See, *inter alia*, Guy S. Goodwin-Gill "The Limits of the Power of Expulsion in Public International Law", 47 B.Y. (1974-1975), pp. 55 et seq.

expulsion is justified in cases of involvement in criminal activities. This applies to the facts in the present case.

I have in the past expressed the view that "general principles of international law are not embodied in the Convention except in so far as reference is expressly made to them by the Convention ... Therefore, one should be reluctant to accept restrictions on Convention rights derived from principles of international law..." (see my dissenting opinion in McElhinney v. Ireland [GC], no. 31253/96, ECHR 2001-XI). However, in the present case the above principles of international law are not irreconcilable with the provisions of Article 8 of the Convention which are at issue in this case. It is, I think, useful to recall here the principle established by the case-law of the Court to the effect that the Convention "... should so far as possible be interpreted in harmony with other rules of international law of which it forms part..." (see Al-Adsani v. the United Kingdom [GC], no. 35763/97, § 55, ECHR 2001-XI). In fact I believe that in the present case it is reasonably possible to give effect to both the international law principles and the relevant Convention right without any problem of contradiction between them.

I referred to the principles of international law and used them as an aid for the interpretation and application of the concept of "margin of appreciation" in the context of expulsion of aliens, which is a permissible restriction of the right to respect for private life under Article 8 of the Convention and the jurisprudence of the Court. It is obvious that the "margin of appreciation" for expelling aliens plays a special role in such cases.

The case-law of the Court has interpreted the right to respect for private life in a progressive manner. According to this case-law, the right in question includes the prohibition of the absolute power to expel aliens from a country where they have their residence. Care should be taken, however, not to overprotect in practice the corresponding right of non-nationals under Article 8 of the Convention so as to emasculate the power of States to effectively enjoy a fairly wide margin of appreciation in safeguarding their interests in respect of which an expulsion under Article 8 of the Convention is permissible and determining whether the continued residence of any alien is or is not necessary.

Having regard to the foregoing considerations, and taking into account the facts and circumstances of the case and, in particular, the nature, seriousness and repetition of the applicant's offences, his lack of social ties in Austria, and the fact that the residence prohibition was not unlimited in time, I find that this prohibition was within the margin of appreciation of the respondent State in the interests of public safety and for the prevention of disorder or crime, and therefore does not amount to a violation of Article 8.

STATEMENT OF DISSENT BY JUDGE VAJIĆ

I do not share the opinion of the majority as to the interpretation made of the general principles of the Court's case-law as set out in the recent judgment Üner v. the Netherlands ([GC], no. 46410/99, ECHR 2006-...).

DISSENTING OPINION OF JUDGE STEINER

I voted against the finding of a violation of Article 8 for the following reasons:

1. The applicant came to Austria at the age of six and had lived there for twelve years with his parents and siblings when the residence prohibition became final. He speaks German and received his entire schooling in Austria.

2. As to the nature and gravity of the offences, I note that the applicant was convicted in September 1999 of numerous counts of aggravated burglary committed as a member of a gang, unauthorised use of a vehicle, extortion and bodily assault. A prison term of 18 months of which 13 were suspended on probation was imposed on him and he was ordered to undergo drug therapy. He was convicted a second time in rapid succession, namely in May 2000, of numerous counts of burglary committed as a member of a gang and was sentenced to a prison term of 15 months. As he had failed to undergo drug therapy as ordered, the partial suspension of the first prison term was revoked.

3. Although the applicant committed these offences as a juvenile, they are far from being of a petty nature. Their considerable number, the lengthy period over which they were committed (November 1998 until January 2000), the fact that two of the offences, namely extortion and assault, included threat of violence or use of violence against a person and in particular the rapid recidivism after the first conviction illustrate their serious nature. This is also expressed by the severity of the penalties imposed. In sum, the applicant received unconditional prison terms of two years and nine months.

4. The applicant argues that he committed the offences at an early age and did not re-offend later. I note that the applicant committed offences until January 2000. It is true that a period of some three years and eleven months elapsed before the applicant's expulsion in December 2003 without the commission of any further offences. However, the applicant spent the major part of this period, namely from February 2000 until May 2002, in prison. He did not benefit from early release. Therefore, it cannot be said that the applicant's conduct in the period intervening between the commission of the offences and the impugned measure mitigates the fear that he constitutes a danger to public order and security (a contrario, see Boultif, cited above, § 51).

5. As regards the solidity of the applicant's social, cultural and family ties in Austria, the authorities noted his lack of integration, in particular that he had elapsed his parent's educational influence, had dropped out of school and had failed to undergo drug therapy (see paragraph 11 above).

6. As to his ties with Bulgaria, the Government assert that the applicant speaks Bulgarian while the latter denies this. I note that the applicant has spent the first six years of his life in Bulgaria. It is therefore not credible that he does not at least have some basic knowledge of Bulgarian. However, given that he never went to school there it appears credible that he does not read or write Cyrillic. Nor does it appear that he has any close relatives there or that he maintained any other contacts with his country of origin, except spending holidays there twice.

7. As to the proportionality of the impugned measures, I finally note that the authorities imposed a residence ban of limited duration. In this context, I observe that in a number of cases it found a residence prohibition disproportionate on account of its unlimited duration (see, for instance, Ezzouhdi v. France, no. 47160/99, § 35, 13 February 2001; Yilmaz v. Germany, no. 52853/99, §§ 48-49, 17 April 2003; and Radovanovic v. Austria, no. 42703/98, § 37, 22 April 2004) while, in other cases, it has considered the fixed duration of a residence prohibition as a factor speaking in favour of its proportionality (see Benhebba, cited above, § 37; Jankov v. Germany (dec.), no. 35112/92, 13 January 2000; and Üner, cited above, § 65).

8. Having regard to the foregoing considerations and in particular to the gravity and repetition of the applicant's offences and his lack of social ties, I find that by imposing a ten years' residence prohibition the authorities duly balanced the interests at stake. Moreover, I observe that although the residence ban was imposed when the applicant was still a minor, the authorities did not proceed to his expulsion before he reached majority (see, a contrario, Jakupovic v. Austria, no. 36757/97, § 29, 6 February 2003, where we attached weight to the fact that the applicant was only 16 years old when he was expelled). Although, in the present case, his expulsion must have uprooted the applicant, he was already an adult at the time and was moreover not left without any perspective of returning to Austria. I therefore find that the measures complained of were proportionate to the legitimate aim pursued.

9. Consequently, there has been no violation of Article 8.