



## Decision revoking Moroccan national's residence permit in the Netherlands insufficiently took into account his mental illness

In today's **Chamber** judgment<sup>1</sup> in the case of [Azzaqui v. the Netherlands](#) (application no. 8757/20) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to private life)** of the European Convention on Human Rights.

The case concerned the revocation of Mr Azzaqui's residence permit in 2018 and a ten-year entry ban to the Netherlands on the grounds that he was a threat to public order. He had been convicted of several crimes, including rape in 1996. He had a personality disorder when he committed the latter crime, and has spent most of the following years in a custodial clinic.

The Court found that the Dutch authorities had failed to properly balance the interests at stake. In particular, they had not sufficiently taken into account that the applicant had been suffering from a serious mental illness, which had reduced his criminal culpability in the rape proceedings. Nor had they considered other personal circumstances, such as the progress he had made since his last offence and that the treatment he had been following was aimed at reintegration into Dutch society.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicant, Karim Azzaqui, is a Moroccan national who was born in 1972 and entered the Netherlands in 1982 to live with his father. In 1991 he obtained a permanent residence permit (*vergunning tot vestiging*).

From 1987 Mr Azzaqui was convicted of multiple crimes, ending with rape in 1996. For the latter offence, the criminal court found that he had diminished criminal culpability because of a personality disorder. He has spent most of the following years in a custodial clinic (*terbeschikkingstelling met bevel tot verpleging van overheidswege*).

In 2018 the Deputy Minister of Justice and Security decided to revoke Mr Azzaqui's residence permit and impose on him a ten-year entry ban to the Netherlands on the grounds that he was a threat to public order. In his decision he acknowledged that Mr Azzaqui had been living in and had built up social ties in the Netherlands for a very long time, but considered that that was outweighed by the seriousness of his crimes, the extensions to the court-ordered confinement in a custodial clinic and the risk of his reoffending. The Minister also found that he was an adult male who could fend for himself if repatriated to Morocco and that he had family there.

This decision was subsequently assessed and upheld by the national courts.

Pending these revocation proceedings Mr Azzaqui, who had been conditionally released in 2016 into an assisted living facility for consistent good behaviour, had had a relapse into substance abuse. According to the probation services this was because he had been severely disturbed by the Minister

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

announcing his intention to revoke his residence permit. The courts therefore ordered his resumed confinement in a custodial clinic from March 2019.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicant complained that the decision to revoke his residence permit and impose an entry ban had been disproportionate. He argued that the Dutch authorities had failed to sufficiently weigh in the balance his personal circumstances, in particular his mental illness.

The application was lodged with the European Court of Human Rights on 10 February 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,  
Jolien **Schukking** (the Netherlands),  
Yonko **Grozev** (Bulgaria),  
Georgios A. **Serghides** (Cyprus),  
Peeter **Roosma** (Estonia),  
Andreas **Zünd** (Switzerland),  
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

The Court reiterated that a State was entitled to control the entry of aliens into its territory and their residence there. Furthermore, the European Convention did not guarantee the right of an alien to enter or to reside in a particular country.

There was no dispute in the applicant's case that the revocation of his residence permit and the entry ban had interfered with his right to respect for private life, that those measures had been taken in accordance with the law and that they aimed to ensure public safety and prevent disorder or crime.

However, for a settled migrant who had lawfully spent all or the major part of his or her childhood and youth in the host country, such as in the applicant's case, very serious reasons, weighing up the various interests at stake, were required to justify expulsion.

It noted that the applicant's convictions, including crimes of a violent and of a sexual nature, could constitute such a "very serious reason", assuming that all other relevant criteria had adequately been taken into account by the national authorities in their overall balancing-test. However, when making that assessment, neither the Deputy Minister nor the courts had sufficiently taken into account the fact that the applicant had been suffering from a serious mental illness, which had reduced his criminal culpability.

Nor had the decision-making process apparently considered whether medication and treatment was available in Morocco for the applicant's needs or borne in mind the difficulties he might face there due to his mental vulnerability.

Indeed, the revocation proceedings had overall paid little attention to the applicant's personal circumstances. They had not sufficiently taken into account the progress he had made since his last offence and the fact that – up until the point when the Deputy Minister had announced his intention to revoke his residence permit – his treatment had been aimed at reintegration into Dutch society.

Despite the State's wide discretion ("margin of appreciation") to decide on such matters, the Court considered that, in the particular circumstances of the case, the Dutch authorities had failed to duly take into account and to properly balance the interests at stake. In the light of this, the Court found a procedural violation of Article 8.

#### Just satisfaction (Article 41)

The Court held, by six votes to one, that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained.

#### Separate opinion

Judge Serghides expressed a partly dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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