



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

SECOND SECTION

CASE OF EMRE v. SWITZERLAND (No. 2)

(Application no. 5056/10)
(Extracts)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

11/01/2012

This judgment is final but it may be subject to editorial revision.

In the case of Emre v. Switzerland (n° 2),

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

Françoise Tulkens, *President*,

David Thór Björgvinsson,

Dragoljub Popović,

Giorgio Malinverni,

András Sajó,

Guido Raimondi,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 13 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 5056/10) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Emrah Emre (“the applicant”), on 11 January 2010.

2. The applicant was represented by Mr C. Tafelmacher, a lawyer practising in Lausanne (Canton of Vaud). The Swiss Government (“the Government”) were represented by their Deputy Agent, Mr A. Scheidegger, of the European Law and International Human Rights Protection Unit, Federal Office of Justice.

3. The applicant alleged that he was the victim of a violation of his right to respect for private and family life, as guaranteed by Article 8, on account of an order by the Federal Court, in a judgment of 6 July 2009, prohibiting him from re-entering Switzerland for a period of ten years.

4. On 22 April 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided, under Article 29 § 1, that the Chamber would rule on the admissibility and merits of the application at the same time. The President further decided, under Rule 41 of the Rules of Court, that the application would receive priority treatment.

5. The Turkish Government did not avail themselves of their right to intervene in the proceedings (Article 36 § 1).

6. On 1 February 2011 the Court’s Sections were reorganised. The application was assigned to the second Section (Rules 25 § 1 and 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1980 and currently lives in Stuttgart (Germany).

8. He entered Switzerland with his parents on 21 September 1986.

9. On 1 June 1990 he obtained a one-year residence permit, which was subsequently renewed on a regular basis.

10. On 12 November 1997, 10 November 1999 and 13 August 2002 he received, respectively, a suspended prison sentence of two and a half months, a six-month suspended prison sentence and a sentence of five months' imprisonment, for a number of offences committed between 1994 and 2000 (wounding, grievous bodily harm, assault, theft, robbery, damage to property, receiving stolen goods, proffering insults and threats, disturbance, a weapons offence and a serious breach of road traffic regulations).

11. In a decision of 2 June 2003 the Aliens Department for the Canton of Neuchâtel ordered the applicant's administrative removal for an indefinite duration. His appeals against that decision were dismissed, first on 12 December 2003 by the Administrative Court for the Canton of Neuchâtel (the "Administrative Court"), then on 3 May 2004 by the Federal Court.

12. On 20 October 2004 the applicant was deported to Turkey. After returning to Switzerland illegally in May or June 2005, he was arrested and taken into custody on 1 July 2005 pursuant to arrest warrants issued on the basis of his criminal convictions.

13. After various procedural developments and two further prison sentences, of three months and two months respectively, for the improper use of a communication facility and for the offence of returning to Switzerland while banished, he was apparently sent back to Turkey on 1 November 2005.

14. In the meantime, on 20 November 2004, he had lodged an application with the Court submitting that his removal from Switzerland for an indefinite duration, as upheld by the Federal Court, entailed a violation of Articles 3 and 8 of the Convention.

15. In a judgment of 22 May 2008, which became final on 22 August, the First Section of the Court unanimously declared admissible the complaint under Article 8 and found that there had been a violation of that provision. On that basis, it held that Switzerland had to pay the applicant the sums of 3,000 euros (EUR) for non-pecuniary damage and EUR 4,650 for the costs and expenses he had incurred "in the domestic proceedings and before the Court". The relevant passages of that judgment read as follows:

“- *Nature and seriousness of the offences committed by the applicant*

72. The Court notes, at the outset, that the relevant date for an assessment of the above-mentioned criteria is, in the present case, 21 May 2004, the date on which the applicant was notified of the final judgment of the Federal Court confirming the withdrawal of his residence permit (see, *mutatis mutandis*, *Yildiz v. Austria*, no. 37295/97, § 34, 31 October 2002).

73. As regards, first, the ‘seriousness’ of the offences committed by the applicant, the Court notes that in 1997 and 1999 he was given a suspended prison sentence of two and a half months, and then a six-month prison sentence, for proffering threats and insults, a serious breach of road traffic regulations, wounding, assault, theft, receiving stolen goods, robbery, damage to property and other property-related offences. In 2002 he was given a further prison sentence of five months, to be followed by deportation and a five-year ban on re-entering Switzerland, for disturbance and a weapons offence committed in 2000. Lastly, in 2005 he was sentenced again on two occasions, to two and three months respectively. The total duration of his prison sentences (eighteen and a half months in all) is thus far from negligible.

74. The Court also notes that the criminal activities in question were spread over a wide period (from 1994 to 2004) (contrast *Moustaquim*, cited above, § 44) and that the two suspended sentences of 12 November 1997 and 10 November 1999 were activated in view of the further offences committed by the applicant. At the same time, the Court observes that some of the conduct attributed to the applicant dated back to his adolescence and some to a relatively young age (see, to the same effect, *Moustaquim*, cited above, § 44; *Yildiz*, cited above, § 45; and *Yilmaz v. Germany*, no. 52853/99, § 46, 17 April 2003). Moreover, the sentences of 12 November 1997 and 10 November 1999 were handed down by the Guardianship Authority for the District of Neuchâtel. Therefore, at least some of the offences in question were committed by the applicant in a juvenile delinquency context. In this connection, the Court notes that according to the United Nations, experience has shown that juvenile delinquency tends to disappear spontaneously in most individuals with their transition to adulthood (see sub-paragraph I, 5 (e) of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), adopted and proclaimed by the General Assembly in its Resolution 45/112 of 14 December 1990).

75. As regards the ‘nature’ of the offences committed by the applicant, it is undeniable that the convictions for wounding weigh heavily against him. Concerning the weapons offence, however, it appears to have been constituted merely by the possession of a tear-gas canister. In addition, it has not been established that it was the applicant who stabbed a security guard with a knife during the attack on the discotheque on 5 March 2000 (Federal Court judgment, point 3.1; see paragraph 18 above). As to the road traffic offences, whilst they may well constitute a potential danger they should nevertheless be seen in the light of the relatively lenient penalties normally imposed in such matters (see, to this effect, *Keles*, cited above, § 59, and *Yildiz*, cited above, § 45).

76. Therefore, in the light of comparable cases, the applicant’s convictions should be assessed for what they really are, both in terms of their seriousness and of the penalties ultimately imposed (contrast *Mokrani*, cited above, § 32; *Benhebbba*, cited above, § 34; *C. v. Belgium*, 7 August 1996, § 35, *Reports* 1996-III; *Dalia*, cited above, § 54; *Baghli*, cited above, § 48 *in fine*; and *Jankov v. Germany* (dec.), no. 35112/97,

13 January 2000; *Bouchelkia*, cited above, §§ 50-53; *Boujlifa*, cited above, § 44; and *Üner*, cited above, § 18).

- Length of the applicant's residence in Switzerland

77. As regards the length of the applicant's residence in the country from which he is to be deported, the Court notes that the applicant, who was born on 18 December 1980, arrived in Switzerland on 21 September 1986, before the age of six. At the time of the Federal Court's judgment of 3 May 2004 he was twenty-three and a half. He had thus spent more than seventeen and a half years in Switzerland.

- Time between the commission of the offences and the impugned measure, and the applicant's conduct during that period

78. As regards the time that elapsed between the commission of the offences and the time when the impugned measure became final, and the applicant's conduct during that period, the Court notes that his criminal activities were spread over a considerable period. Similarly, the domestic courts noted that he had not shown any awareness of his criminal activities and that he had refused to follow his psychotherapy (see, in this connection, *Keles*, cited above, § 60).

- Strength of social, cultural and family ties with host country and destination country

79. As regards the applicant's particular ties with his host country, the Federal Court noted that he had spent most of his life in Switzerland, including all his school years, and that his parents and brothers, one of whom had Swiss nationality, lived in the country. Whilst there is some debate between parties as to his professional integration in Switzerland (see above, paragraphs 44 and 58), the Court does not feel obliged to settle this question.

80. In comparison with the above factors, showing that the applicant is integrated to a certain extent in Switzerland, despite his criminal activity, his social, cultural and family ties with Turkey seem very tenuous. It can be seen from the case file that the applicant only stayed in that country for a month and a half in June and July 2002, and that only his grandmother is still living there. The Court is not convinced that his brief stay in Turkey after his first removal, a measure complained of in the present application, may be taken into consideration. Moreover, there is no certainty that the applicant is sufficiently fluent in Turkish. Even though relationships between parents and adult children would not attract the protection of Article 8 without 'evidence of further elements of dependency, involving more than the normal, emotional ties' (see, *mutatis mutandis*, *Kwakyé-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000), the Court also notes that the Federal Court itself admitted that his family ties with Turkey were far less significant than those he had made with his host country. Moreover, that court did not call into question the fact that the applicant would 'face major difficulties if returned to Turkey'.

- Specificities of the case: the medical aspect

81. The Court notes that a report of the Neuchâtel psychiatric and social centre dated 14 January 2003 indicated that the applicant showed signs of 'an emotionally labile personality disorder, with impulsive and borderline elements, together with a phobic anxiety disorder' *vis-à-vis* the prospect of his deportation (Federal Court

judgment, point 3.4.2; see above, paragraph 18). A letter from the family doctor dated 21 January 2003 moreover confirmed that the applicant had been brought up in a violent environment with little stimulation, and explained that deportation would distance him from the reassuring and structuring elements that he had built up in recent years (*ibid.*).

82. The views of the parties to the proceedings differ on this point. The applicant argued that his illness, having involved suicide attempts, could not be adequately treated in Turkey (see paragraph 42 above). The Government, for their part, claimed the contrary, considering that his family would still be able to support him financially from Switzerland. Moreover, they emphasised that the applicant had largely refused to undergo the psychiatric treatment prescribed for him (see paragraph 57 above).

83. The Court does not rule out the possibility that the applicant's health problems could be treated adequately in Turkey. Neither does it disregard the fact that the applicant neglected the prescribed treatment, at least at the outset. At the same time, it finds that his disorders, which the Government have certainly not called into question, whilst they are not sufficient in themselves to form the basis of a separate complaint under Article 8, nevertheless constitute an additional aspect that would render even more difficult the applicant's return to his country of origin, where his social network would be lacking.

- *The permanent nature of the expulsion*

84. In order to assess the proportionality of the impugned measure, the Court must also consider whether the exclusion from Swiss territory was a temporary or permanent measure.

85. It notes that in the present case the Police Court and the Criminal Court of Cassation of the Canton of Neuchâtel ordered the applicant's deportation for a period of seven years (see paragraph 11 above). However, his administrative removal was ordered by the Aliens Department for the Canton of Neuchâtel for an indefinite duration (see paragraph 15 above). The Court observes that the applicant's application is directed against his administrative removal, the duration of which it finds particularly harsh (see, as an example of cases in which the permanent nature of the exclusion order was considered by the Court in concluding that the measure had been disproportionate, *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001; *Keles*, cited above, § 65; *Yilmaz*, cited above, § 48, and *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; and by contrast, for cases where the limited duration of the impugned measure contributed to a conclusion that it was proportionate, see *Benhebba*, cited above, § 37; *Jankov*, cited above, and *Üner*, cited above, § 65). As to the possibility for the applicant to request that the exclusion order be suspended temporarily or permanently rescinded, the Court finds that this possibility remains purely speculative at present.

86. In view of the foregoing, and particularly in consideration of the relative seriousness of the applicant's convictions, the weakness of his links with his country of origin and the permanent nature of the removal measure, the Court finds that the respondent State cannot be regarded as having struck a fair balance between the interests of the applicant and his family, on the one hand, and its own interest in controlling immigration, on the other.

87. Accordingly, there has been a violation of Article 8."

16. When asked what action it would take in response to the Court's judgment, the Immigration Authority of the Canton of Neuchâtel (the "Cantonal Authority"), in a decision of 19 June 2008, refused to consider a request for leave to enter Switzerland on the ground that the matter had been dealt with on 3 May 2004 by a final judgment of the Federal Court. The Authority suggested that the applicant lodge a request for revision with that court.

17. In pleadings dated 19 November 2008, the applicant lodged a request for revision with the Federal Court, requesting it to annul its judgment of 3 May 2004 and the judgment previously delivered in the same case by the Administrative Court of the Canton of Neuchâtel on 12 December 2003.

18. The Federal Office of Migration submitted that the request for revision should be rejected.

19. In a judgment of 6 July 2009 the Federal Court upheld the request for revision and annulled its judgment of 3 May 2004. At the same time it quashed the 12 December 2003 judgment of the Administrative Court of the Canton of Neuchâtel, limiting the duration of the applicant's exclusion to ten years from 2 June 2003. The reasoning of the judgment reads as follows:

"... 3.2 In its judgment of 22 May 2008 the European Court observed that, in deporting Emrah Emre from its territory for an indefinite duration, Switzerland had breached his right to private and family life, as guaranteed by Article 8 ECHR. On that basis it awarded him EUR 3,000 in compensation for non-pecuniary damage under Article 41 ECHR. That provision gives the European Court the power to grant 'just satisfaction' to the injured party where the internal law of the State in question 'allows only partial reparation to be made' for the violation found. The payment of such compensation does not, however, necessarily release the State concerned from its obligation under Article 46 ECHR to comply with the judgments of the European Court. The respondent State, having been found responsible for a violation of the Convention or its Protocols, is thus obliged not only to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded (see, among other references, the judgment of the European Court of Human Rights in *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland*, no. 32772/02, §§ 46 and 47, 4 October 2007, and the numerous authorities cited therein). This is the principle of *restitutio in integrum*, which has the practical effect of limiting the freedom of States in the choice of means by which to remedy a violation of the Convention ...

4.1 Where, as in the present case, the Federal Court upholds a request for revision, it gives two separate decisions in succession, even though it generally does so in a single judgment. In the first, referred to as the *rescindant*, it annuls the judgment of which revision is sought; in the second, known as the *rescisoire*, it rules afresh on the application previously referred to it. The annulment decision puts an end to the revision procedure as such and leads to the re-opening of the previous proceedings. This has an *ex tunc* effect, such that the Federal Court and the parties are put back in

the situation in which they found themselves at the time the annulled judgment was delivered, and the case will have to be adjudicated as if that judgment had never existed (see the above-cited judgment 1F_1/2007 of 30 July 2007, point 3.3).

4.2 In its judgment, the European Court found that, in view of the circumstances, and particularly of the applicant's relatively serious convictions, the weakness of his links with his country of origin, and the permanent nature of the removal measure, Switzerland had failed to strike a fair balance between the interests (private and public) at stake (judgment cited above, para. 86). It specifically emphasised that the indefinite duration of the exclusion had been 'particularly harsh', taking the view that the possibility for the applicant to have the exclusion order suspended temporarily or permanently rescinded remained purely speculative at present (judgment, para. 85). In other words, it was not particularly opposed to the principle of the impugned measure but rather to its permanent nature. Generally speaking, in its most recent judgments, the European Court seems, moreover, to accord increasingly decisive weight to the latter criterion, refusing, with rare exceptions, to endorse permanent exclusions from a country, unlike bans of limited duration ...

That being said, in the light of the circumstances prevailing at the material time, namely when the annulled judgment was delivered (on 3 May 2004), an immediate revocation of the removal measure was not a matter for consideration. Admittedly, the applicant's links with Turkey were at that time weaker than those he enjoyed with Switzerland, such that a return to his country of origin appeared to be a relatively harsh measure for him. That obstacle had in fact been taken into consideration and discussed in the first judgment. However, the Federal Court had also observed, without being contradicted by the European Court on this point, that the applicant's presence in Switzerland represented a particularly serious danger for public order and security, because his conduct and offences showed that his 'mindset was hardly capable of resolving conflicts and frustrations otherwise than by violence, ready to impose his own rules, by himself or with the help of partners, without consideration for property or for the physical well-being of others, and openly contemptuous of the judicial authority' (judgment cited above of 3 May 2004, point 3.2). Moreover, the Federal Court also emphasised, and there is nothing in the European Court's judgment that would justify departing from this assessment, that the applicant had no awareness of the seriousness of his actions and that he thus presented a high risk of reoffending: he had committed further offences after his first convictions and had refused to follow psychiatric treatment during his detention (see the above-cited judgment of the Federal Court of 3 May 2004, point 3.3 *in initio*). In those circumstances, it was not possible for the applicant's private interest in remaining in Switzerland, bearing in mind that he was an adult, was single and had no children, to prevail over the public interest in his expulsion, at least for a certain period of time. In other words, the only appropriate solution in order to alleviate the effects of the impugned measure against the deportee and comply with the judgment of the European Court of Human Rights would consist in limiting the duration of the exclusion.

4.3 Consequently, it is justified to limit the removal measure ordered against the applicant to a period of ten years with effect from the removal decision of 2 June 2003. After such time he will be able to lodge an application for leave to remain, which will be examined by the competent authority in the light of the applicable law and the circumstances then prevailing (the applicant's family and personal situation; his conduct since his expulsion; etc.).

5. It follows from the foregoing that the request for revision must be upheld and the Federal Court's judgment of 3 May 2004 annulled. Moreover, the judgment delivered on 12 December 2003 by the Administrative Court must be set aside, and the measure of removal banning the applicant from Switzerland for an indefinite duration is to be replaced by removal with a ban of ten years from 2 June 2003.

..."

20. On 11 September 2009 the applicant married a German national. As a result of that marriage he has obtained a German residence permit.

21. On 19 April 2010 he lodged with the Administrative Court for the Canton of Neuchâtel an application for reconsideration of a decision of 27 December 2005 of the Immigration Authority, which had refused the suspension of his removal, relying in particular on his new situation, namely his marriage to a German citizen. In a judgment of 20 August 2010, the court rejected the request and referred the matter back to the Immigration Authority.

22. The applicant transmitted additional documents to the Immigration Authority on 30 August 2010 and 24 November 2010. The response to his request for the revocation of the removal measure so that he could settle in Switzerland was negative. In a letter of 7 December 2010, the Immigration Authority for the Canton of Neuchâtel took the view that it could not rule on a request for reconsideration, in particular for the following reasons:

"... Although the marriage solemnised on 11 September 2009 in Germany to a German national, together with the issuance of a German residence permit following that marriage, constitute new facts, we note that they do not by themselves constitute pertinent justification for the Immigration Authority to act upon the request for reconsideration. The nationality of the wife, by itself, does not have the effect of requiring the annulment of the removal or the granting of leave to remain in Switzerland. The wife would have to submit a request for leave to remain in Switzerland, to be in one of the situations covered by the Free Movement of Persons Agreement (ALCP), and to fulfil the conditions thereof, without being excluded by any public order or security grounds.

The right to family reunification is always predicated on the existence of original leave to remain granted to an EC/EFTA national under the provisions of the ALCP. The right of abode conferred on family members is a correlative right of which the validity is in principle subject to the duration of the original leave to remain.

..."

23. According to the applicant, there was no possibility of challenging or complaining about the content of that letter.

II. RELEVANT DOMESTIC LAW

24. Section 122 of the Federal Court Act of 17 June 2005, in force since 1 January 2007, provides as follows:

Section 122: Breach of the European Convention on Human Rights

“An application for review of a judgment of the Federal Court on account of a violation of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (ECHR) may be submitted if the following conditions are satisfied:

- (a) the European Court of Human Rights, in a final judgment, has found a violation of the ECHR or its Protocols;
- (b) compensation cannot remedy the effects of the violation;
- (c) the review is necessary to remedy the effects of the violation.”

25. The relevant provisions of Annex I of the Agreement between the European Community and the Swiss Confederation on the free movement of persons (the “ALCP”) read as follows:

Article 1: Entry and exit

“1. The Contracting Parties shall allow nationals of the other Contracting Parties and members of their family within the meaning of Article 3 of this Annex and posted persons within the meaning of Article 17 of this Annex to enter their territory simply upon production of a valid identity card or passport.

No entry visa or equivalent requirement may be demanded save in respect of members of the family and posted workers within the meaning of Article 17 of this Annex who do not have the nationality of a Contracting Party. The Contracting Party concerned shall grant these persons every facility for obtaining any necessary visas.

...”

Article 3: Members of the family

“1. A person who has the right of residence and is a national of a Contracting Party is entitled to be joined by the members of his family. An employed person must possess housing for his family which is regarded as of normal standard for national employed persons in the region where he is employed, but this provision may not lead to discrimination between national employed persons and employed persons from the other Contracting Party.

2. The following shall be regarded as members of the family, whatever their nationality:

- (a) his spouse and their relatives in the descending line who are under the age of 21 or are dependent;
- (b) his relatives in the ascending line and those of his spouse who are dependent on him;
- (c) in the case of a student, his spouse and their dependent children.

The Contracting Parties shall facilitate the admission of any member of the family not covered by the provisions of this paragraph under (a), (b) and (c), if that person is a dependant or lives in the household of the national of a Contracting Party in the country of provenance

...”

Article 5: Public order

“1. The rights granted under the provisions of this Agreement may be restricted only by means of measures which are justified on grounds of public order, public security or public health.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 TAKEN TOGETHER WITH ARTICLE 46 OF THE CONVENTION

26. Relying on Article 46 of the Convention, the applicant contended that the interpretation by the Federal Court, in its judgment of 6 July 2009, of the Court’s judgment of 22 May 2008, had not been consistent with the reasoning underlying the Court’s finding of a violation of Article 8 of the Convention in that judgment. He further took the view that his exclusion from Switzerland for ten years, ordered by the Federal Court in the same judgment, constituted a fresh breach of his right to respect for his private and family life within the meaning of Article 8. The provisions relied upon read as follows:

Article 8

“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.”

Article 46

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.”

27. The Government disputed the applicant’s arguments.

A. Admissibility

1. Compatibility ratione materiae of the application

(a) The parties’ submissions

(i) The Government

28. The Government claimed that it was not in dispute that they had paid the applicant the sum of EUR 7,650 that had been awarded by way of just satisfaction in the Court’s judgment of 22 May 2008.

29. They added that the applicant had also been able to apply to the Federal Court for revision of the judgment of 3 May 2004. They considered it appropriate to point out that, under section 122 of the Federal Court Act (see paragraph 24 above), the applicant was entitled to apply for revision but had no guarantee of obtaining one, and certainly not of obtaining the revision requested.

30. In the Government’s submission, the present case was fundamentally different from that of *Mehemi v. France (no. 2)* (no. 53470/99, ECHR 2003-IV), where the relevant facts to be examined by the Court in the second set of proceedings were different from those that it had taken into account for its first judgment since, in the meantime, the applicant had been able to partly restore his family life in France on the basis of temporary residence permits, together with a residence restriction, whilst in the present

case the Federal Court had expressly placed itself in the situation that had existed at the time of its judgment of 3 May 2004.

31. The Government further argued that, under Article 46 of the Convention, a finding of a violation of Article 8 did not have the automatic effect of annulling the impugned removal measure but merely obliged the State Party to carefully examine the various options for the execution of the judgment and take the necessary measures. By substituting a fixed-term exclusion for the measure of indefinite duration, the Federal Court, in its judgment of 6 July 2009, had shown that it had carried out an in-depth examination of the specific case in the light of the framework set out by the Court in its judgment of 22 May 2008.

32. In response to the applicant's complaint concerning his fear of not being able to obtain a new residence permit in Switzerland, the Government observed that such a request would be examined in the light of Convention requirements and, as he had married a German national, in accordance with the ALCP, and in particular Article 3 § 1 of Annex I thereto, which provided as follows: "A person who has the right of residence and is a national of a Contracting Party is entitled to be joined by the members of his family" (see paragraph 25 above). The applicant's argument that the limitation of the exclusion to ten years would be tantamount to exclusion for life was thus unfounded.

33. In view of the foregoing, the Government took the view that it could not be claimed that the judgment of the Federal Court of 6 July 2009 constituted a new problem, not settled by the judgment of 22 May 2008, within the meaning of the Court's relevant case-law (they referred to *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 62, ECHR 2009). They were convinced that the question whether the reduction in the length of the impugned exclusion was sufficient for the execution of the judgment of 22 May 2008, as an individual measure, was a matter for the Committee of Ministers under Article 46 § 2 of the Convention.

34. For those reasons, the Government concluded that the present application was incompatible *ratione materiae* with the Convention and its Protocols.

(ii) *The applicant*

35. The applicant did not dispute the fact that Switzerland had paid the amount awarded to him by the Court in respect of non-pecuniary damage. He was of the view, however, that this compensation constituted just one of the operative provisions of the Court's judgment and that the finding of a violation of Article 8 called for *restitutio in integrum*.

36. He argued that instead of remedying the effects of the violation of Article 8 by annulling its initial judgment and ordering the Cantonal authorities to take the necessary steps in order to guarantee his return to

Switzerland and to preserve his right to respect for his private and family life, the Federal Court had given a partial and arbitrary interpretation of the Court's final judgment, also taking into account facts that post-dated its judgment of 3 May 2004, without questioning him in that connection. Therefore, by its judgment upon a request for revision, the Federal Court had considerably modified the legal situation, creating a different factual situation from that which the Court had considered in its judgment of 22 May 2008.

37. The applicant further argued that the Federal Court's interpretation of the Court's judgment of 22 May 2008 was not consonant with the spirit of that judgment. The Federal Court had ultimately only taken account of the Court's last argument, concerning the measure's indefinite nature, and its ruling had thus been arbitrary.

(b) The Court's assessment

38. In the case of *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)* (cited above) the Grand Chamber summed up as follows the criteria to be taken into account in cases of this nature:

"61. The Court reiterates that findings of a violation in its judgments are essentially declaratory (see *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31; *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX; and *Krčmář and Others v. the Czech Republic* (dec.), no. 69190/01, 30 March 2004) and that, by Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

62. The Committee of Ministers' role in this sphere does not mean, however, that measures taken by a respondent State to remedy a violation found by the Court cannot raise a new issue undecided by the judgment (see *Mehemi v. France* (no. 2), no. 53470/99, § 43, ECHR 2003-IV, with references to *Pailot v. France*, 22 April 1998, § 57, *Reports* 1998-II; *Leterme v. France*, 29 April 1998, *Reports* 1998-III; and *Rando v. Italy*, no. 38498/97, § 17, 15 February 2000) and, as such, form the subject of a new application that may be dealt with by the Court. In other words, the Court may entertain a complaint that a retrial at domestic level by way of implementation of one of its judgments gave rise to a new breach of the Convention (see *Lyons and Others*, cited above, and also *Hertel v. Switzerland* (dec.), no. 3440/99, ECHR 2002-I).

63. Reference should be made in this context to the criteria established in the case-law concerning Article 35 § 2 (b), by which an application is to be declared inadmissible if it 'is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information'. The Court must therefore ascertain whether the two applications brought before it by the applicant association relate essentially to the same person, the same facts and the same complaints (see, *mutatis mutandis*, *Pauger v. Austria*, no. 24872/94, Commission decision of 9 January 1995, DR 80-A, and *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006)."

39. In the present case, the Court observes that the Government have argued that the question whether the reduction in the duration of the impugned exclusion constitutes a sufficient individual measure for the execution of the judgment of 22 May 2008 is a matter for the Committee of Ministers under Article 46 § 2 of the Convention. The Court does not share that view and observes in this connection that under paragraph 2 of Article 32, “[i]n the event of dispute as to whether the Court has jurisdiction, the Court shall decide”. As it has previously found, the powers assigned to the Committee of Ministers by Article 46 are not being encroached on where the Court has to deal with new information in the context of a fresh application (see *Verein gegen Tierfabriken Schweiz (VgT)* (no. 2), cited above, §§ 66 et seq.).

40. In order to ascertain whether this is a fresh application which can be distinguished in essence, within the meaning of the above-cited case-law, from the first, it is appropriate to refer to the proceedings that followed the judgment of 22 May 2008. Further to that judgment, the applicant lodged with the Federal Court an application for revision of its judgment of 3 May 2004. In a judgment of 6 July 2009 the Federal Court accepted that application and annulled the judgment in question. At the same time it set aside the judgment of the Administrative Court of the Canton of Neuchâtel dated 12 December 2003, reducing to ten years, from 2 June 2003, the duration of the applicant’s exclusion.

41. Having regard to the foregoing, the Court observes that, in its judgment of 6 July 2009 the Federal Court emphasised, in weighing up the interests at stake, the last argument that it had set out, concerning the indefinite duration of the exclusion measure. The Federal Court found it sufficient, in order to comply with the 22 May 2008 judgment, to reduce the exclusion measure from one of indefinite duration to one of ten years. It also carried out a fresh balancing of the interests at stake, finding, unlike the Court that “... it was not possible for the applicant’s private interest in remaining in Switzerland, bearing in mind that he was an adult, was single and had no children, to prevail over the public interest in his expulsion, at least for a certain period of time” (see point 4.2, paragraph 19 above).

42. It should also be observed that, in the present case, the Committee of Ministers has not yet begun its monitoring of the execution of the Court’s judgment of 22 May 2008 by the adoption of concrete measures: no resolution, not even an intermediate one, has been adopted in this case.

43. Those factors suffice for the Court to conclude that the Federal Court’s judgment of 6 July 2009 constitutes new information, capable of giving rise to a fresh violation of Article 8 (see *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, § 65), which the Court has jurisdiction to examine (contrast *Steck-Risch and Others v. Liechtenstein* (dec.), no. 29061/08, 11 May 2010).

44. Accordingly, the Court finds that this complaint is compatible *ratione materiae* with the provisions of the Convention and its Protocols.

2. The Government's request to have the application struck out

45. The Government emphasised that the fact that the applicant had married a German national constituted new information on which he could rely to seek the revocation of his removal, on the basis, if appropriate, of the relevant provisions of the ALCP, in particular Articles 3 and 5 of Annex I thereof, which provided among other things that the rights granted under the provisions of the Agreement could be restricted only by means of measures which were justified on grounds of public order, public security or public health (see paragraph 25 above). Without wishing to speculate on the result of a fresh application for leave to remain based on those provisions, the Government expressed surprise that the applicant had not filed such a request in order to have his removal revoked.

46. Having regard to the foregoing, the Government argued that from the circumstances of the present case it could be concluded that it was no longer justified to continue the examination of the application (they referred to Article 37 § 1 (a) of the Convention). Consequently, they requested the Court to strike the present application out of its list of cases.

47. The Court finds that the Government's arguments are not devoid of ambiguity, since they cited sub-paragraph (c) of Article 37 § 1, then sub-paragraph (a) of that provision. That being said, the Court does not find it appropriate to examine the substance of these arguments in any greater depth, because there is nothing to suggest that the applicant does not intend to pursue his application (Article 37 § 1 (a)) or that for any other reason it is no longer justified to continue the examination of the application (sub-paragraph (c)). The mere fact that the applicant has not lodged an application for leave to remain based on the relevant provisions of the ALCP, relying on his marriage to a German national, does not suffice to establish a presumption that he no longer intends to return to Switzerland.

48. Accordingly, the Court rejects the Government's request for the application to be struck out.

3. Conclusion

49. The Court further finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. The Merits

1. *The parties' submissions*

(a) The applicant

50. The applicant took the view that when a final judgment of the Court was not executed in accordance with its findings, but was interpreted unilaterally and partially, and relativised by the decision of a domestic court, the question to be examined concerned the extent of the States' obligation to abide by the Court's final judgments.

51. As regards the obligation under Article 46 § 1 of the Convention to comply with the Court's judgments, he argued that the States had a fundamental obligation to guarantee, as far as possible, *restitutio in integrum*. He contended that this entailed an obligation of result, with the choice of means being left to the respondent State.

52. In the present case, as the measure of indefinite exclusion from Switzerland had been reduced to one of ten years, the applicant was of the view that his case was identical to that of *Mehemi*, cited above. He suggested that the only difference might lie in the fact that, in *Mehemi*, the French Government had granted the applicant leave to remain in France within a period of three months from the date of the Court's final judgment, and had also imposed a compulsory residence order pending the outcome of the administrative proceedings that were supposed to remedy the violation of Article 8. The French authorities having authorised Mr Mehemi's return, the Court had taken the view that the ten-year exclusion order had been deprived of all legal effect and had been superseded by the compulsory residence order. Mr Emre, for his part, claimed that he was still unable to return to Switzerland in spite of the Court's judgment and the action he had taken; the revision judgment delivered by the Federal Court on 6 July 2009 had by no means altered his personal or family situation.

53. The applicant further argued that the ten-year exclusion order was in itself a new fact, was not necessary in a democratic society within the meaning of Article 8 § 2, and thus constituted a fresh violation of his right to respect for his private and family life. He added that the offences he had committed were not of such a nature or seriousness as to justify maintaining his exclusion at the present time. He argued in this connection that the offences had been mistakes of youth and that, by the time of the Federal Court's revision judgment of 6 July 2009, he had become a responsible adult, being a married man and in gainful employment.

54. The applicant disputed the Government's claim that his marriage to a German national would be capable of remedying what he regarded, for his part, as a serious and flagrant breach of Article 8: in his view, the right to respect for private and family life was not a correlative right but a predicate,

individual right, which should be recognised regardless of the marital situation, failing which any termination of marriage would necessarily entail the loss of the right to respect for private and family life.

55. Furthermore, the ALCP, as relied upon by the Government, certainly did not guarantee unconditional access to Swiss territory or an unconditional right of family reunification for family members of a national of one of the States Parties. The applicant emphasised in this connection that, under Article 1 § 1 of Annex I to the ALCP, family members could be obliged to obtain an entry visa, and that Article 5 § 1 of that Annex enabled the administrative authorities to restrict the free movement of persons for reasons of public security (see paragraph 25 above). Accordingly, the assertion that leave to enter Switzerland could be granted to him on the basis of his marriage to a German national was pure speculation and did not take account of the practice of the Swiss administrative authorities and courts.

56. In addition, after the Court's final judgment, the applicant had used all the remedies available in Switzerland to recover his rights to enter and remain in that country. In view of the Federal Court's revision judgment of 6 July 2009, the Administrative Court's judgment of 20 August 2010 and the Immigration Authority's letter of 7 December 2010 (see paragraphs 19-22 above), he argued that it would be wrong to assert that he had not exhausted all the possibilities under domestic law.

57. In view of the foregoing, the applicant submitted that to order a ten-year exclusion measure against a person who had spent the majority of his life in Switzerland, and whose social, family and cultural ties with that country were stronger than with any other, constituted a breach of his rights that was disproportionate and thus incompatible with Article 8.

(b) The Government

58. The Government submitted that the applicant's expulsion had been in accordance with the law, had pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention and had complied with the Court's judgment of 22 May 2008.

59. As regards the necessity of the impugned measure in a democratic society, they argued that the current situation could be distinguished from that which had guided the Court in its judgment of 22 May 2008 essentially on account of the following two factors: first, the exclusion was no longer permanent but was limited to ten years from 2 June 2003; secondly, the applicant was now living in Germany, where he had married a German national.

60. The Government further observed that, in its judgment of 22 May 2008 (paragraph 86), the Court had described as particularly harsh the indefinite duration of the applicant's exclusion and had found that the permanent nature of the measure rendered it disproportionate. In their view,

it had not, however, criticised the Federal Court's assessment to the effect that the applicant's presence in Switzerland had constituted, on the date of that court's first judgment, a particularly serious danger for public order and security (see Federal Court judgment of 3 May 2004, point 3.2) and, secondly, it had accepted that the applicant had not realised the seriousness of his actions and was thus very likely to reoffend, as could be seen by his further offences after the initial convictions and his refusal to follow psychiatric treatment during his detention (*ibid.*, point 3.3).

61. The Government were of the view that it was necessary to take account of these public interest considerations, which in their view remained valid, and that, accordingly, the limitation of the exclusion to ten years had accounted for all the relevant interests, especially as the applicant had been able to establish his own family life in Germany, regular contact with his family remained possible and more than six out of the ten years of the exclusion measure had already passed at the time of the Federal Court's second judgment.

62. In the Government's opinion, the Federal Court had struck a fair balance between the various interests at stake and could not therefore be criticised for limiting the duration of the exclusion following a detailed examination, rather than purely and simply annulling the measure. Accordingly, there had been no violation of Article 8 of the Convention.

2. The Court's assessment

(a) Preliminary observations

63. The Court readily accepts that the ten-year exclusion from Switzerland constitutes a fresh interference with the applicant's right to respect for his private and family life within the meaning of Article 8 of the Convention.

64. Such interference breaches the Convention if it does not meet the requirements of paragraph 2 of Article 8. It must therefore be ascertained whether it was "in accordance with the law", was justified by one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society".

65. The Court does not doubt that the applicant's expulsion was in accordance with the law and pursued a legitimate aim within the meaning of Article 8 § 2, in particular the "prevention of disorder or crime". It remains to be examined whether the interference with the applicant's right was necessary in a democratic society.

66. The Court reiterates that the Convention must be read as a whole. In the context of the present case, the examination as to whether there has been a fresh violation of Article 8 must take into account the importance in the Convention system of the effective execution of the Court's judgments in accordance with Article 46 of the Convention (see, *mutatis mutandis*,

Verein gegen Tierfabriken Schweiz (VgT), cited above, § 83), which provides as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

...”

(b) Principles concerning the execution of the Court’s judgments

67. In the *Verein gegen Tierfabriken Schweiz (VgT)* (no. 2) judgment, cited above, the Grand Chamber summed up the principles which should guide States Parties in their execution of the Court’s final judgments, finding in particular as follows:

“85. As regards the requirements of Article 46, it should first be noted that a respondent State found to have breached the Convention or its Protocols is under an obligation to abide by the Court’s decisions in any case to which it is a party. In other words, a total or partial failure to execute a judgment of the Court can engage the State Party’s international responsibility. The State Party in question will be under an obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress the effects, the aim being to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded (see, among many other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Assanidze v. Georgia* [GC], no. 71503/01, § 198, ECHR 2004-II).

...

88. Admittedly, subject to monitoring by the Committee of Ministers, the respondent State in principle remains free to choose the means by which it will discharge its obligations under Article 46 § 1 of the Convention, provided that such means are compatible with the conclusions set out in the Court’s judgment (see *Scozzari and Giunta*, cited above, § 249, and *Lyons and Others*, cited above). However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measures that might be taken to put an end to the situation – often a systemic one – which has given rise to the finding of a violation (see, for example, *Öcalan v. Turkey*, no. 46221/99, § 210 *in fine*, ECHR 2005-IV; *Broniowski*, cited above, § 194; and *Popov v. Russia*, no. 26853/04, § 263, 13 July 2006). Sometimes, the nature of the violation does not even leave any choice as to the measures to be taken (see *Assanidze*, cited above, § 202).

...

90. In the instant case the Chamber considered that the reopening of proceedings at domestic level could constitute an important aspect of the execution of the Court’s judgments. The Grand Chamber shares that view. However, the reopening procedure

must also afford the authorities of the respondent State the opportunity to abide by the conclusions and the spirit of the Court judgment being executed, while complying with the procedural safeguards in the Convention. This applies all the more where, as in the instant case, the Committee of Ministers merely notes the existence of a reopening procedure without awaiting its outcome. In other words, the reopening of proceedings that have infringed the Convention is not an end in itself; it is simply a means – albeit a key means – that may be used for a particular purpose, namely the full and proper execution of the Court’s judgments. Seeing that this is the sole criterion for assessing compliance with Article 46 § 1 and applies equally to all Contracting States, no discrimination can result between those which have introduced a reopening procedure in their legal system and others.”

(c) Application of those principles to the present case

68. The question which arises in the present case is whether, in the judgment that it delivered further to the applicant’s request for revision, the Federal Court acted in accordance with Switzerland’s obligations in the light of the above-mentioned guidelines for the effective execution of the Court’s judgments. In other words, the Court must examine whether the reduction to ten years of the original measure of indefinite duration is consistent with the “conclusions and spirit” of the 22 May 2008 judgment or whether, on the contrary, the Federal Court should have purely and simply annulled the removal order and thus permitted the applicant to return immediately to Switzerland.

69. The Court reiterates that its judgments have binding force pursuant to Article 46 of the Convention. Admittedly, States remain free to choose the means to be used in order to comply with them, all the more so in a situation like that in the present case, where it did not give any indication, in the judgment itself, as to how it should be executed (contrast *Assanidze v. Georgia* [GC], no. 71503/01, ECHR 2004-II). Moreover, the aim is to put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded (*restitutio in integrum*) (see the references in paragraph 67 above).

70. In its judgment the Federal Court found it appropriate, in order to follow up the Court’s judgment, to reduce to ten years the duration of the applicant’s exclusion from Switzerland. It thus took the view that the applicant’s private interest in remaining in that country did not prevail over the public interest in his exclusion. In so finding, the Federal Court engaged in a fresh balancing of the interests at stake, arriving at a result that was at odds with that reached by the Court in its judgment of 22 May 2008.

71. In the light of the above-mentioned principles, the Court is of the view that the Federal Court enjoyed a certain margin of appreciation in the interpretation of the Court’s judgment. However, it cannot but note that, in the present case, it substituted its own interpretation for that of the Court. Even supposing that such an approach was admissible and justified in the

light of the Convention, it would still be necessary for the Federal Court's fresh assessment of the Court's arguments to be complete and convincing.

72. In this connection the Court would refer to the extremely detailed reasoning of its first judgment, involving a meaningful balancing of the various interests at stake (paragraphs 72-86) and thus encompassing the examination of numerous factors: the nature of the offences committed by the applicant, the harshness of the sentences, the length of his residence in Switzerland, the passage of time between the perpetration of the offences and the impugned measure, the applicant's conduct during that period, the strength of his social, cultural and family ties with the host country and the destination country, the specificities of the present case, namely the applicant's health problems, and lastly the indefinite nature of the exclusion measure. The Court observes that the Federal Court's considerations were confined to that last factor. It is of the view that, in order to fulfil the stringent obligations imposed on States under Article 46 of the Convention, the examination should in fact have addressed all these points.

73. As regards the ten-year period to which the Federal Court limited the applicant's exclusion from Switzerland, the Court finds that it must be regarded as a lengthy and disproportionate period in relation to the offences committed (see paragraphs 10 et seq. above). The fact that the ten-year exclusion takes effect from 2 June 2003 does not detract from that finding.

74. Furthermore, the Government seem to have attributed much weight to facts that post-date the Court's judgment, in particular the applicant's marriage and settlement in Germany. Whereas the Government have interpreted them as factors capable of mitigating the effects of expulsion to Turkey, the Court sees them as indications of the more positive conduct that the applicant subsequently adopted. It does not in fact appear that he has been charged again with any offences since his last convictions of 2005, one of which concerned an offence committed in 2003 and the other the offence of returning to Switzerland while banished, the latter offence thus having the same origin as the complaint submitted in the present proceedings before the Court, namely the expulsion measures that the applicant alleges to have been unjustified. Like the applicant, the Court takes the view that these are clear indications that his criminal activities may be regarded as errors of youth that he seems to have acknowledged. The Court is prepared to accept that since then he has been behaving as a responsible individual, who has been engaged in a regular professional activity consistent with his capacities and has created his own family circle.

75. In view of the foregoing, the Court finds that the most natural execution of its judgment, and that which would best correspond to the principle of *restitutio in integrum*, would have been to annul purely and simply, with immediate effect, the exclusion measure ordered against the applicant. Even assuming that another result would have been acceptable, the Court is of the view that the binding force of its judgments under

Article 46 § 1 and the importance of their effective execution, in good faith and in a manner compatible with the “conclusions and spirit” of the judgment, necessarily required, in the circumstances of the case, a more in-depth examination of the considerations set out in the Court’s first judgment.

76. Accordingly, the applicant’s exclusion from Switzerland for ten years, which is a considerable period in a person’s life, cannot be regarded as necessary in a democratic society within the meaning of Article 8 § 2 of the Convention.

77. In view of the foregoing, there has been a violation of Article 8, taken together with Article 46 of the Convention.

...

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible in respect of the complaint under Article 8, taken together with Article 46, and inadmissible for the remainder;
2. *Holds*, by five votes to two, that there has been a violation of Article 8, in conjunction with Article 46;

...

Done in French, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Malinverni, joined by Judge David Thór Björgvinsson, is annexed to the present judgment.

F. T.
S.H.N.

DISSENTING OPINION OF JUDGE MALINVERNI,
JOINED BY JUDGE DAVID THÓR BJÖRGVINSSON

(Translation)

1. With much regret, I am unable to follow the reasoning which led the majority to find a violation of Article 8, taken together with Article 46 of the Convention.
2. In the *Verein gegen Tierfabriken Schweiz (VGT) v. Switzerland* (ECHR 2009, § 62) judgment, the Grand Chamber summed up the principles which should guide States Parties in their execution of the Court's final judgments. In the present case, it was the Court's task to examine, in the light of those principles, whether the Federal Court's judgment of 6 July 2009 was compliant with the judgment in which the Court found a violation of Article 8.
3. The more precise question which arose was whether, in its judgment, the Federal Court had acted in accordance with Switzerland's obligations in the light of those principles. More concretely, the Court had to examine whether the reduction to ten years of the applicant's original exclusion for an indefinite duration was consistent with the conclusions and spirit of its 22 May 2008 judgment or whether, on the contrary, the Federal Court should have purely and simply annulled the removal order and thus permitted the applicant to return immediately to Switzerland.
4. Whilst the Court's judgments have binding force pursuant to Article 46 § 1 of the Convention, States remain free to choose the means to be used in order to comply with them, all the more so in a situation like that in the present case, where it did not give any indication, in the judgment itself, as to how it should be executed (contrast *Assanidze v. Georgia* [GC], no. 71503/01, ECHR 2004-II).
5. In its judgment upon the applicant's request for revision, the Federal Court found it appropriate, in order to follow up the Court's judgment, to reduce to ten years the duration of his exclusion from Switzerland. It thus took the view that the applicant's private interest in remaining in that country did not prevail over the public interest in his exclusion. In my opinion, it thus varied one of the main points of its first judgment.
6. I would like to add, in general terms, that the right to submit a request for revision does not mean that such a revision will be obtained. In the present case, the Court's finding of a violation of Article 8 did not have the automatic effect of obliging the authorities to annul the impugned removal measure but merely obliged the Federal Court to carefully examine the various options for the execution of the judgment and to take the necessary measures. By substituting a fixed-term exclusion for the measure of indefinite duration, the Federal Court showed that it had

carried out such an in-depth examination in the light of the framework set out by the Court.

7. Neither can it be claimed, in my opinion, that the Federal Court's judgment constitutes new information not taken into consideration by this Court's judgment. It seems to me that the present case is fundamentally different from that heard by the Court in *Mehemi v. France (no. 2)* (no. 53470/99, ECHR 2003-IV). In that case, the relevant facts to be examined by the Court in the second set of proceedings were different from those that it had taken into account for its first judgment since, in the meantime, the applicant had been able to partly restore his family life in France on the basis of temporary residence permits, combined with a residence restriction. In the present case, by contrast, the Federal Court expressly placed itself in the situation that had existed at the time of its first judgment.
8. For all these reasons, I am of the opinion that the grounds on which the Federal Court based its second judgment fell within the margin of appreciation of the national authorities. There has not therefore been a violation of Article 8 taken together with Article 46 of the Convention.