



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

THIRD SECTION

CASE OF I.B.A. v. SWITZERLAND

(Application no. 28995/20)

JUDGMENT

Art 8 • Expulsion • Family life • Five-year expulsion order against applicant residing in Switzerland for twenty years following criminal conviction for social benefit fraud spanning over twelve years • Relevant and sufficient reasons • Proportionality duly assessed by domestic courts in light of Court's case-law

Prepared by the Registry. Does not bind the Court.

STRASBOURG

26 November 2024

FINAL

28/04/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of I.B.A. v. Switzerland,

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

Jolien Schukking, *President*,

Georgios A. Serghides,

Darian Pavli,

Peeter Roosma,

Andreas Zünd,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 28995/20) 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 Tunisian national, Mr I.B.A. (“the applicant”), on 7 July 2020;

the decision to give notice of the application to the Swiss Government (“the Government”);

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 22 October 2024,

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

INTRODUCTION

1. The applicant alleged that his expulsion from Switzerland for five years following his criminal conviction for social benefit fraud had been a disproportionate measure which had violated his right to respect for family life under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1980 and lives in Switzerland. He was represented by Mr B. Wieduwilt, a lawyer practising in Winterthur.

3. The Government were represented by their Agent *ad interim*, Mr A. Scheidegger, of the Federal Office of Justice.

4. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

5. The applicant arrived in Switzerland in 1999 after marrying M.E., a Swiss national. They divorced in 2005. In the same year, he married M.B.B., a Tunisian national, who was born in the same town in Tunisia as the applicant and brought up there. She joined him in Switzerland at the age

of 28. The applicant and his second wife had three children in Switzerland: a daughter born in 2006, a son born in 2009 and a daughter born in 2015.

6. In 2004, as a result of a workplace accident in 2003, the applicant had the tip of his thumb amputated. After another accident in 2013, he underwent several surgeries on his arm; in the last one, a wrist joint replacement was performed, which led to restricted mobility in his hand. On account of those health impairments, he received a monthly payment from the Swiss National Accident Insurance Fund of 370 Swiss francs (CHF). The applicant only held temporary jobs and between April 2005 and April 2017 he and his wife received social welfare benefits.

7. On 8 April 2013 the Winterthur/Unterland public prosecutor's office fined the applicant sixty daily penalty units of CHF 70 (suspended with a two-year probation period) for the theft of a motor vehicle and driving in an unfit state and without a licence.

II. EXPULSION ORDER AGAINST THE APPLICANT AND HIS APPEALS AGAINST IT

8. On 16 May 2018 the Winterthur District Court sentenced the applicant to twenty-four months' imprisonment (suspended) and ninety daily penalty units of CHF 30 for fraud and unlawfully claiming social security or social welfare benefits – committed between 1 May 2005 and 30 April 2017 – and for falsifying documents. The District Court also ordered his expulsion from Switzerland for five years pursuant to Article 66a of the Swiss Criminal Code (see paragraphs 27-28 below). His expulsion was not entered into the Schengen Information System.

9. The District Court found that the applicant and his wife had fraudulently omitted to inform the social welfare authorities of the applicant's monthly insurance payments of CHF 370, his income from work and the financial support from his ex-wife in order to obtain higher amounts of social welfare benefits than they should have been entitled to. Those actions partly constituted fraud and had caused losses of at least CHF 186,960 to public funds. The court concluded that by not complying with his obligation to fully and truthfully declare his financial situation and his income, the applicant had not only concealed that information, but had actively deceived the authorities by submitting falsified documents and neglecting to declare that he legally owned a house in Tunisia for which M.E., his ex-wife, had paid. The decision also referred to the applicant's conviction in 2013 for car theft and the two-year probation period.

10. Regarding the expulsion order, the District Court stated that a conviction for unlawfully claiming social welfare benefits was one of the offences enumerated in Article 66a § 1 of the Swiss Criminal Code (which entered into force on 1 October 2016) that imperatively led to a foreign national's expulsion from Switzerland if the expulsion did not give rise to a

situation of personal hardship within the meaning of Article 66a § 2 of the Criminal Code (see paragraphs 29-30 below). The District Court pointed out that the applicant was not particularly well integrated into Swiss society despite his long stay in the country: he had never held a long-term job and did not have any close social contacts there other than his ex-wife and another Tunisian running a camel farm. He still had family in Tunisia, where he went every year. He owned a house in Tunisia and he could find work there.

11. The District Court then examined the effects of the applicant's expulsion on his children. In that connection, it found that the children spoke Arabic and were familiar with Tunisia and their relatives there from the yearly family visits, and they would not lose touch with the applicant's ex-wife E.M., since she intended to spend a significant part of the year in Tunisia with them in the house that she had bought for the applicant and his family. Regarding the applicant's eldest daughter, aged 13 at the time, the District Court noted that she had attention deficit hyperactivity disorder (ADHD), involving problems with concentration and focus, and suffered from various skin conditions and obesity. It was likely that the necessary multidisciplinary support that she received in Switzerland would not be available to the same extent in Tunisia. The District Court found, however, that all efforts to prepare her to lead an independent life had been made with the intention of remaining in Switzerland. As everyday life and the cultural circumstances in Tunisia were different from those in Switzerland, it could be assumed that family ties there were closer and that the applicant's eldest daughter would find support from her relatives in Tunisia. The fact that she could not obtain the same multidisciplinary support there did not mean that the care available in Tunisia would be insufficient. The District Court concluded that overall, the public interest in the applicant's expulsion prevailed over his and his children's interests in remaining in Switzerland.

12. The applicant appealed against his conviction and expulsion. In its judgment of 25 June 2019 the Supreme Court of the Canton of Zurich concluded that the actions of the applicant and his wife had caused damage to public funds in the period between 1 May 2005 and 30 April 2017. As Article 66a of the Criminal Code had only entered into force on 1 October 2016, the applicant's expulsion could only be ordered on the basis of the period of seven months between 1 October 2016 and 30 April 2017. Following the prosecutor's objection, the court increased the sentence to 30 months' imprisonment, 20 months of which were suspended with the remaining 10 months to be served, upheld the fines and the applicant's five-year expulsion.

13. The applicant appealed against his expulsion to the Swiss Federal Supreme Court. He stated, in particular, that the lower courts had failed to take into account the length of his stay in Switzerland; the lack of a criminal record prior to his conviction and his impeccable conduct since; the low risk of reoffending; and the fact that the concealment of facts relating to social

benefits had only been made punishable by expulsion in October 2016. His lack of linguistic and intellectual abilities had prevented him from fully complying with the obligation to provide the required financial information to the authorities. He stated that he only needed social assistance as a supplement and had never been completely dependent on it.

14. The applicant submitted that the amount of money obtained as a result of the offences, in view of the fact that it had been obtained over a period of twelve years for a family of five, had not had a major impact on the economic well-being of Switzerland. The offences had been financial and could not be compared to cases of murder or rape, where expulsion would be justified by the nature of the offence.

15. The applicant's level of integration into Swiss society was good, as proved by the fact that he had been employed for most of his stay in the country. Despite his injured wrist, he had been able to find a new job relatively quickly, which showed that he was well integrated. He also spoke German well.

16. The domestic courts had failed to duly take into account the interests of the applicant's children, who had been born and brought up in Switzerland and spoke German. Like the applicant and his wife, they thought of Switzerland as their home and were fully integrated, had social circles and saw their personal and professional futures there. They spoke Arabic, but could not write well in it, and therefore would not easily be able to study or otherwise integrate into Tunisian society. The applicant's children, especially the two eldest, were not very young and therefore not of an adaptable age. The domestic courts had not taken into consideration the fact that his eldest daughter's learning disability, ADHD, required multidisciplinary care, which would not be available in Tunisia at an adequate level and would make it difficult for her to adapt to life there. In addition, a gynaecological operation in 2019 had damaged her hymen, which would be considered a loss of virginity in Tunisia and would cause her "serious problems" in a traditional Muslim society.

17. On 4 December 2019 the Federal Supreme Court upheld the applicant's expulsion order. The judgment was received by the applicant on 10 January 2020. After noting that he had only mentioned the potential problems of living in Tunisia for his two eldest children, the court found that, while the applicant's youngest daughter, aged four (born in 2015), would not face any particular problems if she returned to Tunisia with her parents and siblings, his ten-year-old son (born in 2009) would certainly face a radical change, which he would be able to cope with thanks to his well-developed social skills. With regard to the eldest daughter, aged 13 (born in 2006), the court noted that she had been diagnosed with ADHD and required special medical, educational and socio-therapeutic care. After noting that 8% of adolescent schoolchildren were affected by ADHD, with symptoms persisting on average for six months, the Federal Supreme Court noted that

the diagnosis of the applicant's eldest daughter had not been made by a specialist, but a social worker had made references to "behavioural problems" combined with learning difficulties and the onset of puberty. The court then examined the relevant part of the report of a Swedish-Swiss fact-finding mission to Tunisia in 2011, which stated, with reference to the World Health Organization, that basic medical care was guaranteed in Tunisia. The circumstances referred to by the applicant with regard to his eldest daughter did not, therefore, constitute a case of personal hardship, as she did not suffer from an illness that could only be treated in Switzerland. The court concluded that although the applicant's eldest daughter could not receive the same multidisciplinary care in Tunisia as in Switzerland, this did not mean that the care available in Tunisia was entirely inadequate. The court went on to state that foreign nationals who were the subject of an expulsion order could not, in principle, claim the right to remain in the territory of a Contracting State in order to continue to receive medical care there, and that the high threshold of seriousness required by the case-law of the European Court of Human Rights in relation to the expulsion of persons relying on their state of health to oppose expulsion had not been reached. As for the application of expulsion only for the last few months of the offence (as of October 2016), the court stated that the applicant's previous criminal behaviour had to be kept in mind. The court noted that the applicant had been convicted of multiple offences of social welfare fraud from 1 May 2005 to 31 May 2016, of unlawfully receiving social security benefits or social assistance from 1 October 2016 to 30 April 2017 and of falsifying documents over the years in order to unlawfully obtain those payments.

18. With regard to the applicant's claim that the damage to his eldest daughter's hymen would cause her "serious problems" in a traditional Muslim society, the court stressed that that assertion was not based on an expert medical opinion and did not constitute an independent assessment. Furthermore, there was no evidence that the applicant's daughter would be exposed to gender-based violence or that her life would be in danger, and it was "unhelpful" to appeal against the expulsion order by referring to prejudices against Tunisia as a "dangerous Arab region". The court stressed that the applicant's arguments concerning his eldest daughter were an attempt to justify a case of personal hardship on the basis of her situation.

19. The court also noted that although the applicant and his wife had lived in Switzerland for twenty and fourteen years respectively, the applicant's social contacts were mainly with his Tunisian friend who ran a camel farm and his Swiss ex-wife. Returning to Tunisia would not destroy the social network he had built up in Switzerland, as his co-accused wife would also be expelled for the same period and his important reference person, his ex-wife, intended to move to Tunisia and live in the house they shared. The applicant had hardly been professionally integrated in Switzerland since he had never managed to find long-term employment. With regard to his reintegration in

Tunisia, there were no significant doubts that he and his wife would be able to return to their home country without any major problems. Finding a job might take some time, but as the applicant had worked in the tourism sector in Tunisia before arriving in Switzerland, it would be possible thanks to the language skills he had acquired in Switzerland. The applicant's state of health did not cause any particular hardship, as the necessary operations and rehabilitation had been carried out in Switzerland and basic medical care was also guaranteed in Tunisia. The court concluded that the applicant's reintegration into Tunisian society would not pose any particular difficulties for him, as he had lived in that country and maintained links with it. Lastly, the fact that the applicant had committed offences over a long period against the State which had supported him and his family in their time of need for a number of years demonstrated his lack of integration into Swiss society and his true attitude towards its values.

III. OTHER RELEVANT INFORMATION

20. In parallel proceedings relating to the same facts, the applicant's wife was also convicted and given an eighteen-month suspended prison sentence and, like the applicant, was expelled from Switzerland for five years. Her expulsion was likewise not entered into the Schengen Information System. In March 2020 she left for France to comply with the expulsion order and has since been living there, close to the Swiss border.

21. On 29 March 2021 the child protection authority allowed the applicant's ex-wife, M.E., to become the foster parent of his three children at their place of residence in Switzerland. The applicant and his wife were consulted beforehand.

22. On various dates in 2020 and 2021 the applicant lodged appeals against his prison sentence with the Prison and Reintegration Service of the Canton of Zurich, the Department of Justice and Home Affairs and the Administrative Court of the Canton of Zurich, asking to serve the ten-month non-suspended part of his sentence in semi-detention (spending only nights in prison) on account of his children, his eldest daughter's medical problems and the fact that he had lodged an application with the European Court of Human Rights. The applicant's appeals were dismissed after a detailed examination of his arguments.

23. On 26 January 2022 the Administrative Court of the Canton of Zurich confirmed that the applicant was to serve the non-suspended part of his custodial sentence in the normal way. On 11 May 2022 the applicant started to serve his sentence.

24. On 13 January 2023 the Migration Office of the Canton of Zurich instructed the applicant to leave Switzerland for Tunisia immediately after his release from prison. As of 20 January 2023 the applicant was still serving his prison sentence and therefore had not yet complied with the instruction. At

some point in 2023 he was released from prison. His expulsion has not yet been enforced.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

25. The second paragraph of Article 5 of the Federal Constitution of the Swiss Confederation, adopted on 18 April 1999 (Systematic Compilation of Swiss Federal Legislation (RS) 101), provides:

“The activity of the State must be in the public interest and proportionate to the aim pursued.”

The relevant part of Article 13 reads as follows:

“1. Everyone has the right to respect for his or her private and family life ...”

26. Article 121 concerns legislation on foreign nationals and asylum. Following the acceptance by the Swiss people and the cantons on 28 November 2010 of the federal popular initiative for the removal of foreign criminals (the removal initiative), paragraphs 3 to 6 were added. The relevant parts of the Article now read as follows:

“1. The Confederation is responsible for legislation on entry to and exit from Switzerland, the residence and the permanent settlement of foreign nationals and on the granting of asylum.

2. Foreign nationals who pose a threat to the country’s security may be expelled from Switzerland.

3. Irrespective of their status under the law on foreign nationals, foreign nationals shall lose their right of residence and all other legal rights to remain in Switzerland if they:

...

(b) have improperly claimed social insurance or social welfare benefits.

4. The legislature shall specify the facts constituting the offences referred to in paragraph 3. It may add other offences.

5. Foreign nationals who, by virtue of paragraphs 3 and 4, are deprived of their residence permit and of all other rights of residence in Switzerland must be expelled from the country by the competent authorities and banned from entering the country for a period of five to fifteen years. In the event of a repeat offence, the ban on entering the country shall be set at twenty years.

...”

27. Articles 66a to 66d of the Swiss Criminal Code of 21 December 1937 (RS 311.0), which entered into force on 1 October 2016, grant the criminal court jurisdiction to order the expulsion from Swiss territory of a foreign national who has committed a serious crime or a lesser criminal offence.

28. Article 66a of the Criminal Code provides for the compulsory expulsion of a foreign national convicted of one of the offences or a combination of offences listed in its first paragraph (letters (a)-(o)). The part relevant to the case in question reads as follows:

“1. The court shall expel a foreign national from Switzerland for a period of five to fifteen years if he or she is convicted of one of the following offences, irrespective of the amount of the sentence imposed:

...

(e) fraud (Article 146 § 1) related to social insurance or social assistance, unlawful claims for social insurance or social welfare benefits (Article 148a § 1);

...

2. The court may, by way of exception, refrain from ordering expulsion if it would cause serious personal hardship to the foreign national and the public interest in expulsion does not outweigh the foreign national’s private interest in remaining in Switzerland. In such cases, the court shall take into account the particular situation of foreign nationals who were born or raised in Switzerland.

...”

Article 146 § 1 of the Criminal Code provides as follows:

“Any person who, with a view to securing an unlawful gain for himself or herself or another, wilfully misleads someone by concealing or suppressing facts or wilfully reinforces an erroneous belief and thus causes that person to act in a way that damages his or her own or another person’s financial interests, shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.”

Article 148a § 1 of the Criminal Code provides as follows:

“Any person who misleads another by providing false or incomplete information, failing to disclose information or in any other way, or who compounds an existing error so that he or she or an associate obtains social insurance or social welfare benefits to which he or she or the associate is not entitled shall be liable to a custodial sentence not exceeding one year or to a monetary penalty.”

II. RELEVANT DOMESTIC PRACTICE

29. In applying the hardship clause provided for in Article 66a § 2 of the Criminal Code, the Swiss courts are guided by the criteria that govern the granting of a residence permit in individual cases of extreme seriousness. These criteria are defined in the first paragraph of Article 31 of the Ordinance of 24 October 2007 on the admission, residence and exercise of gainful employment (RS 142.201), which reads as follows:

“1. A residence permit may be granted in individual cases of extreme seriousness. When assessing the case, particular account must be taken of:

(a) the applicant’s integration on the basis of the integration criteria defined [in the Federal Act on Foreign Nationals and Integration];

...

- (c) the family situation, in particular the period of schooling and the length of schooling of the children;
 - (d) the financial situation;
 - (e) length of time spent in Switzerland;
 - (f) state of health; and
 - (g) the possibility of reintegration in the country of origin.
- ...”

30. Neither the Federal Council’s message concerning the amendment of the Criminal Code (implementation of Article 121 §§ 3-6 of the Constitution on the expulsion of foreign criminals; FF 2013 5423) nor the parliamentary proceedings propose a definition of the hardship clause provided for in Article 66a § 2 of the Criminal Code.

31. According to the relevant case-law of the Swiss Federal Supreme Court, the new provisions on expulsion under Article 66a of the Criminal Code (see paragraph 28 above) are only applicable if the triggering offence was committed after October 2016, on account of the prohibition of retroactive application of criminal law. However, when deciding whether to order an individual’s expulsion and examining a case of hardship, the criminal court may also take into account offences committed before the entry into force of Article 66a, on the basis of which it may not order the individual’s expulsion but may generally assess integration, the risk of reoffending and/or the proportionality of the penalty (see judgments 6B_651/2018 of 17 October 2018 E. 8.3.3 (the case concerned attempted theft, attempted grievous bodily harm, brawling and robbery); 6B_1043/2017 of 14 August 2018 E. 3.2.2 (the case concerned theft, damage to property and working illegally); and 6B_506/2017 of 14 February 2018 E. 2.5.1 (the case concerned theft, unlawful entry and a drug-related offence). Similarly, while offences committed before 1 October 2016 cannot give rise to a non-mandatory expulsion, they may be taken into account when assessing whether such an expulsion is proportionate (see judgments 6B_607/2018 of 10 October 2018 E. 1.4.3 (the case concerned aggravated drunk driving and car theft) and 6B_770/2018 of 24 September 2018 E. 1.3 and 2.2.1 (the case concerned theft, robbery, damage to property and forgery of documents)).

III. COUNCIL OF EUROPE DOCUMENTS

32. The Council of Europe has adopted numerous instruments in the field of immigration. Reference should be made in particular to the Committee of Ministers’ Recommendations Rec(2000)15 concerning the security of residence for long-term migrants and Rec(2002)4 on the legal status of persons admitted for family reunification (for the relevant paragraphs of these instruments, see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 35-38, ECHR 2006-XII).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the order for his expulsion following a criminal conviction violated his right to respect for family life as provided in 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. Admissibility

34. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant

35. The applicant argued that the expulsion order had been a disproportionate and unnecessary measure and he criticised the domestic courts for insufficient reasoning in their decisions. He reaffirmed the points made in his appeal to the Swiss Federal Supreme Court, emphasising that his offences had been financial in nature, which he believed did not justify the severe measure of expulsion. He suggested that compulsory expulsion for social security fraud, introduced in October 2016, merely reflected the frustration of Swiss taxpayers.

36. The applicant contended that the domestic courts had incorrectly assessed his level of integration into Swiss society. He highlighted his long-term residence in Switzerland, stating that he had been employed for the majority of his stay in the country and that he had been able to quickly find a new job despite his injured wrist. His proficiency in German was evidence of his strong integration. Furthermore, joining his wife in France was not a viable option since he did not have a residence permit there.

37. The applicant argued that the domestic courts had failed to adequately consider the interests of his children and the adverse effect his expulsion would have on his family life with them. Born and raised in Switzerland, his three children spoke German, viewed Switzerland as their home, and were fully integrated into Swiss society, with social circles and aspirations rooted

in the country. All three of his children spoke only some Arabic and would struggle to study or integrate into Tunisian society. This was particularly relevant for his eldest daughter, who had a learning disability requiring specialised care unavailable in Tunisia. Additionally, the perceived loss of virginity could create significant social and personal problems for her in Tunisia.

2. The Government

38. The Government submitted that, although the expulsion order had interfered with the applicant's right to respect for family life under Article 8 of the Convention, it had been in accordance with the law, necessary and proportionate to the aim pursued, and that the decisions of the domestic courts had been duly reasoned and detailed.

39. The Government maintained that, given the seriousness of the applicant's fraud offence and the length of time over which it had been committed, in addition to his unlawful receipt of social security benefits, the public interest in his expulsion outweighed his private interest in remaining in Switzerland. His expulsion had been ordered for the minimum period of five years and the applicant's situation had not constituted a case of serious personal hardship that would warrant an exemption. The applicant's wife had received a fully suspended sentence and her details had not been entered into the Schengen Information System, allowing her freedom to move within the Schengen area.

Under domestic law, hardship as defined in Article 66a § 2 of the Swiss Criminal Code had to mainly affect the convicted person directly. The applicant's argument of hardship had centred on the allegedly negative impact of his expulsion on his children's personal situation, particularly that of his eldest daughter.

40. Referring to the case-law of the Court in *El Ghatet v. Switzerland* (no. 56971/10, 8 November 2016) and *Üner* (cited above), the Government argued that the domestic courts had thoroughly examined all the relevant information and carefully weighed up the interests involved, including the best interests of the applicant's children. The domestic judgments ordering and upholding the expulsion had been well reasoned and sufficiently detailed, reflecting a thorough consideration of the circumstances. Furthermore, the domestic authorities had arranged for the applicant's children to be placed in the care of his Swiss ex-wife, ensuring that they would have the opportunity to remain in Switzerland.

3. The Court's assessment

41. The parties did not dispute that the expulsion order amounted to an interference with the applicant's right to respect for his family life, that it had been "in accordance with the law" and had been justified by one or more

legitimate aims under Article 8 § 2. However, they disagreed as to whether it had been necessary and proportionate and whether the domestic courts had given sufficient reasoning in their decisions.

42. The Court therefore has to examine whether the impugned measure was “necessary in a democratic society”.

(a) General principles

43. The relevant general principles have been summarised in, among other authorities, *Üner* (cited above, §§ 54-60) and *Shala v. Switzerland* (no. 52873/09, § 46, 15 November 2012).

44. The States have the right, without prejudice to their treaty obligations, to control the entry of aliens into their territory (see, among many other authorities, *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI, and *Üner*, cited above, § 54) and the power to expel those convicted of criminal offences who have entered and are lawfully resident in their territory. However, their decisions in that regard must 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 example, *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX, and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X). The Court’s task is to determine whether the measures at issue struck a fair balance between the interests at stake, namely, on the one hand, the individual’s rights protected by the Convention and, on the other, the interests of society (see *Slivenko*, cited above, § 113, and *Boultif*, cited above, § 47).

45. The domestic courts must give sufficiently detailed reasons for their decisions, in particular to enable the Court to carry out the European supervision entrusted to it (see, *mutatis mutandis*, *X v. Latvia* [GC], no. 27853/09, § 107, ECHR 2013, and *El Ghatet*, cited above, § 47). Insufficient reasoning by the domestic courts, without a proper balancing of the interests at stake, is contrary to the requirements of Article 8 of the Convention. This is the case where the domestic authorities fail to demonstrate convincingly that the interference with a right protected by the Convention is proportionate to the aims pursued and therefore corresponds to a “pressing social need” within the meaning of the above-mentioned case-law (see *El Ghatet*, cited above, § 47, and *I.M. v. Switzerland*, no. 23887/16, §§ 72 and 77, 9 April 2019). Where the competent national authorities have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant’s personal interests against the more general public interest in the case, the Court will substitute its own assessment of the merits for that of the competent national authorities only where there are shown to be strong reasons for doing so (see *M.A. v. Denmark* [GC], no. 6697/18, § 149, 9 July 2021, and *Azzaoui v. the Netherlands*, no. 8757/20, § 52, 30 May 2023).

46. In balancing the interests relating to the expulsion of a parent, the best interests of minor children must be taken into account. This involves considering in particular the seriousness of the difficulties that children may face in the country to which the parent is to be expelled, as illustrated *Üner* (cited above, §§ 57-58).

(b) Application of the above principles to the present case

47. The Court notes that the offences for which the applicant was given a five-year expulsion order were of a non-violent nature and spanned over a period of twelve years. Having fraudulently obtained social benefits for his family, the applicant was given a two-year suspended prison sentence, daily fines and spent ten months in prison (see paragraph 12 above). There is no information on his conduct after his release (see paragraph 24 above).

48. Prior to the conviction at issue, the applicant had a conviction in 2013 for car theft, for which he was given a two-year probation period (see paragraph 7 above). Although the Federal Supreme Court noted that the expulsion order had been triggered by the last seven months of the applicant's offences (as social benefit fraud became punishable by expulsion only as of October 2016, see paragraphs 27-28 above), it also emphasised that the overall duration of the criminal offences, along with the applicant's previous behaviour, should be taken into account (see paragraph 17 above). It should be noted that the applicant's wife was also convicted of the same offences and was the subject of an expulsion order.

49. The applicant arrived in Switzerland at the age of 19 to join his Swiss wife. By the time of his criminal conviction in 2019, he had resided in the country for twenty years. However, the domestic court found that the applicant was not well integrated into Swiss society and maintained limited connections with the local community (see paragraph 19 above). In addition, the applicant's assertion of integration and having good German language skills was contradicted by his own statements claiming that his linguistic limitations had prevented him from complying with the relevant regulations (see paragraphs 13 and 15 above). In the meantime, he had maintained links with Tunisia by making annual visits and owning a house there (see paragraph 10 above). While in Switzerland, in 2005 he was remarried to a Tunisian national and had three children with her. The children were 13, 10 and 4 years old when the decision to expel the applicant was upheld with final effect by the Swiss Federal Supreme Court.

50. The domestic courts did not question the nature or closeness of the applicant's ties with his children. They found that, although leaving Switzerland and moving to Tunisia with their parents might pose potential problems for the eldest daughter and son (aged 13 and 10 respectively), the children would be able to cope. The Federal Supreme Court questioned the validity of the applicant's daughter's diagnosis of ADHD and his reference to the other aspects that could have a potentially negative impact on her life

in Tunisia if she moved there (see paragraphs 17 and 18 above). With reference to relevant documentation (see paragraph 17 above), the Federal Supreme Court concluded that her and the other children's move to Tunisia would not have such a negative impact on their family life with the applicant as to render his expulsion impracticable.

51. The Court notes that in the present case the domestic courts considered the relevant criteria (see *Üner*, cited above, §§ 57-58), as well as the risk of parents exploiting the situation of their children to avoid removal. The domestic authorities took into account the best interest of the children and enabled them to remain in Switzerland (see paragraph 21 above).

52. Having regard to the considerations set out above, the Court concludes that the interference with the applicant's family life was supported by relevant and sufficient reasons. The domestic courts carefully examined the facts, applied the relevant human rights standards in accordance with the Convention and its case-law, and appropriately balanced the applicant's personal interests against the broader public interest in the case. It is therefore not for the Court to substitute its own assessment of the merits of the present case for that of the competent national authorities, in the absence of compelling reasons for doing so.

53. The Court therefore considers that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 26 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Jolien Schukking
President