



## Swiss authorities' refusal to grant residence permits to three Kosovar children, illegally residing in Switzerland, was not a violation of parents' right to respect for family life

In today's Chamber judgment in the case of [Berisha v. Switzerland](#) (application no. 948/12), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the Swiss authorities' refusal to grant residence permits to the applicants' three children, who were born in Kosovo and entered Switzerland illegally, and the authorities' decision to expel the children to Kosovo.

The Court considered that the applicants were living in Switzerland because of their conscious decision to settle there rather than in Kosovo, and that their three children had not lived in Switzerland for long enough to have completely lost their ties with their country of birth, where they grew up and were educated for many years. Moreover the children still had family ties in Kosovo, the older two children, 17 and 19 years old, were of an age that they could be supported at a distance, and there was nothing to prevent the applicants traveling to, or staying with the youngest child, 10 years old, in Kosovo to safeguard her best interests as a child. Also taking into account the at times untruthful conduct of the applicants in the domestic proceedings, the Court concluded that the Swiss authorities had not overstepped their margin of appreciation under Article 8 of the Convention in refusing to grant residence permits to their children.

### Principal facts

The applicants, S. and S. Berisha, husband and wife, are Kosovar<sup>2</sup> nationals who live in Switzerland. Mr Berisha entered Switzerland in June 1997 and, having married a Swiss national, was granted a permanent residence permit for Switzerland in March 2005. Divorced, he married his current wife, S. Berisha, in January 2007, whom he had known since 1993 and with whom he had three children in Kosovo. Ms Berisha then entered Switzerland with a visa and was subsequently granted a residence permit, valid until April 2012, on grounds of family reunification. In July 2012 she was granted a permanent residence permit. When she completed the arrival form upon initially entering Switzerland she did not answer the question regarding family members.

Ms Berisha applied for residence permits for the three children in December 2007 on grounds of family reunification. In April 2009 the Cantonal Migration Office refused this

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

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

<sup>2</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

request for family reunification, noting that neither applicant had mentioned their children when entering Switzerland and that they had not conducted themselves correctly with regard to the application. The applicants did not appeal this decision and it became final. However, soon afterwards the three children came to Switzerland clandestinely. In April 2010 Ms Berisha also gave birth to a fourth child.

In May 2010, Mr Berisha notified the Cantonal Migration Office that the children had been living in Switzerland illegally for the previous nine months, citing in particular the fact that one of the children had been ill and stood a better chance of recovery in Switzerland. The applicants submitted requests for residence permits for the three children on grounds of family reunification, which were however dismissed by the Migration Office in August 2010. The applicants and their children appealed against this decision, producing evidence of the children's integration in Swiss schools and claiming in particular that the expulsion would separate the three children from their parents and youngest brother, born in Switzerland. Furthermore, there being no one to look after the children in Kosovo, they would end up in an orphanage. They also alleged that they had never attempted to deceive regarding the existence of their three children in Kosovo; in fact it had always been their intention to reunite the family in Switzerland.

Their appeal was dismissed at last instance by the Federal Supreme Court in November 2011 which ruled in particular that the positive development of the recovery of the child who had been sick would not justify the permanent establishment of the three children in Switzerland. Nor was the birth of the fourth child, or the three children's positive integration in Switzerland a decisive element. With a view to the applicants' untruthful conduct in the domestic proceedings, the refusal of the residence permits for the three children was therefore proportionate under domestic law as well as under Article 8 of the Convention.

In March 2012, the European Court of Human Rights dismissed a request from the applicants for an interim measure under Rule 39 of its Rules of Court, but granted their application priority.

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), the applicants complained about the refusal of the Swiss authorities to grant their three children residence permits so that they could join them to live as a family in Switzerland.

The application was lodged with the European Court of Human Rights on 21 December 2011.

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

Guido **Raimondi** (Italy), *President*,  
 Danutė **Jočienė** (Lithuania),  
 Peer **Lorenzen** (Denmark),  
 András **Sajó** (Hungary),  
 Işıl **Karakaş** (Turkey),  
 Nebojša **Vučinić** (Montenegro),  
 Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 8 (private and family life)

The Court considered that it was apparent that, after Ms Berisha's relocation to Switzerland in 2007, the applicants had always intended to reunite with their children there. However, they had been living in Switzerland due to their conscious decision not to remain in their home country and had not been prevented from maintaining the degree of family life that they had had for many years before. During the period after Mr Berisha had moved to Switzerland in 1997, he had returned to visit Ms Berisha and his children regularly, had a third child with her in 2003, and supported them financially.

Moreover the three children had had strong social and linguistic ties to their home country where they grew up and went to school, and the length of their stay in Switzerland had not been long enough for them to have completely lost those ties. Given that their grandmother had looked after them for more than two years and still lived in Kosovo it was also found that the children must have had strong family ties to their country of origin.

Regarding the illness of one of the children that the applicants claimed had necessitated their moving to Switzerland, the Court noted that it had not been disputed that her health had improved enough so that it would not be a hindrance to return to Kosovo. With respect to the older two siblings, who were now 19 and 17 years old respectively, the Court further held that they could also be supported at a distance. Regarding the youngest of the three siblings, 10 years old now, the Court established that nothing prevented the applicants from travelling to, or even staying with their youngest child in Kosovo to ensure she was provided with the necessary care and education.

Finally, the Court noted that the conduct of the applicants in the domestic proceedings had not been beyond reproach, and that although they would have preferred to maintain and intensify family links in Switzerland, Article 8 did not guarantee a right to choose the most suitable place to develop family life. Accordingly, the Swiss authorities had not gone too far in refusing to grant the children residence permits and no violation had occurred.

## Separate opinions

Judges D. Jočienė and I. Karakaş expressed a joint dissenting opinion, and Judge A. Sajó expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_Press](https://twitter.com/ECHR_Press).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.