



Refusal to renew expatriate citizen's passport to force him to return to Switzerland for criminal investigation was not a disproportionate measure

In today's Chamber judgment in the case **M. v. Switzerland** (application no. 41199/06), which is not final¹, the European Court of Human Rights held, unanimously, 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 issue a new passport to a Swiss national living in Thailand, in order to oblige him to return to Switzerland for a criminal investigation, and the effects of that measure on his private and family life.

Principal facts

The applicant, Mr M., is a Swiss national who was born in 1942 and has lived in Thailand for a number of years. He lives with a Thai national, who already had three children and had another two with Mr M., in 2005 and 2009. Switzerland pays him an invalidity pension.

In October 2004 he applied to the Swiss Embassy in Bangkok to renew his passport, to enable him to marry his partner. His application was forwarded to the Federal Police Office (Fedpol) in Switzerland, which found that Mr M. was wanted for fraud. In conformity with the Federal Law on identity documents of Swiss nationals, Fedpol contacted the public prosecutor's office, which opposed the renewal of the passport. Only a "*laissez-passer*" permitting his direct return to Switzerland could be issued. In response to Mr M.'s protests, the public prosecutor informed him that he did not rule out issuing an international arrest warrant against him if he did not return to Switzerland. By decision of 1 April 2005, Fedpol formally rejected Mr M.'s passport application after examining his arguments in detail. It justified that decision by the need to guarantee the proper conduct of the criminal proceedings, and added that the medical certificates produced by Mr M. attesting that he could not travel by plane did not prove that he could not travel by some other means.

Mr M. took various steps to challenge that decision. On 15 April 2005 he challenged it before the Federal Department of Justice and Police. On 26 July 2005 that appeal was rejected. The decision explained, among other things, why, in view of the offence with which he was charged, the refusal to issue him with a passport to oblige him to submit to a criminal investigation was a proportionate measure (and less harsh than an

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

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

international arrest warrant), why questioning him in person in Switzerland was more appropriate in his case than issuing instructions for him to be questioned in Bangkok, and why the – relatively old – medical certificates Mr M. had produced did not prove that it was impossible for him to travel by any means at all. On 11 April 2006 the Federal Court rejected an administrative-law appeal lodged by Mr M., based largely on the same arguments as those used by the lower court.

When he subsequently tried to register his children, Mr M. was told by the Swiss Embassy in Bangkok that in order to register them he had to present his passport. He made a new application for a passport, but to no avail.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, Mr M. complained about the Swiss authorities' refusal to issue him with a new passport and the repercussions of that decision on his private and family life. Among other things, he complained that it made it impossible for him to marry in Thailand or to register his children born out of wedlock or his future wife's children with the Swiss embassy, which would enable him to claim child benefits in addition to his invalidity pension, and also that it prevented him from being admitted to hospital for surgery.

The application was lodged with the European Court of Human Rights on 6 October 2006.

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

Françoise **Tulkens** (Belgium), *President*,
David Thór **Björgvinsson** (Iceland),
Dragoljub **Popović** (Serbia),
Giorgio **Malinverni** (Switzerland),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,

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

Decision of the Court

An interference with the right to respect for private and family life such as that caused by the refusal to renew Mr M.'s passport (making it impossible for him to marry or register his children in Thailand) was acceptable under Article 8 only if certain conditions were fulfilled. First, it must be in accordance with the law and pursue a legitimate aim. This was certainly the case here, as the measure had been taken in conformity with the Federal Law on identity documents of Swiss nationals, with the aim of guaranteeing the proper conduct of criminal proceedings. It also had to be "necessary in a democratic society", i.e. answer a "pressing social need" and be proportionate to the legitimate aim pursued. On this key question the Court made the following observations.

Mr M. must have been aware that he was under investigation for fraud, a criminal offence under Swiss law. By refusing to return to Switzerland he was intentionally avoiding prosecution. That was why the competent authorities, applying the law, had preferred not to renew Mr M.'s passport, in order to make him return to Switzerland.

The Court pointed out that it was in the first place for the national authorities to apply domestic law and that the States enjoyed a wide margin of appreciation in deciding

whether or not to prosecute a person suspected of having committed a crime and what investigation and prosecution measures should be taken.

In Mr M.'s case the Swiss authorities had stated the reasons for their decisions, explaining why Mr M.'s presence in Switzerland was necessary for the proper conduct of the criminal proceedings, and showing with relevant arguments that the medical certificates produced by Mr M. showed no compelling reasons why he should be unable to travel to Switzerland by one means or another.

Furthermore, the action the Swiss authorities had taken was less harsh than other steps they could equally well have taken to oblige Mr M. to cooperate with the criminal investigation. Issuing an international arrest warrant with an extradition request, for example, could have led to his detention for some time in Thailand.

In the light of the detailed decisions of the Swiss authorities and considering the importance, in the public interest, of bringing criminals to justice, the Court found that in Mr M.'s case the refusal to issue a new passport was acceptable for the purposes of Article 8, and that there had been no violation of that provision.

The judgment is available only in French.

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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.