



Expulsion of a sexual offender from Switzerland for a limited period of time was justified

In today's Chamber judgment¹ in the case of [M.M. v. Switzerland](#) (application no. 59006/18) 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 applicant's expulsion from Switzerland for a period of five years following the imposition of a 12-month suspended prison sentence for having committed acts of a sexual nature against a child and consumed narcotics.

The Court recognised that the cantonal courts and the Federal Supreme Court had carried out a serious assessment of the applicant's personal situation and the various interests at stake. These authorities had thus had very solid arguments in favour of the applicant's expulsion from Switzerland for a limited duration. In consequence, the Court concluded that the interference had been proportionate to the legitimate aim pursued and had been necessary in a democratic society, within the meaning of the Convention.

Principal facts

The applicant, M.M., is a Spanish national who was born in 1980 in Switzerland. Until his expulsion from Switzerland, he was in possession of a settlement permit. He currently lives in Spain.

On 10 January 2018 the X Police Court convicted the applicant of committing acts of a sexual nature on two occasions against a minor and of having consumed narcotics. The court imposed a fine and a 12-month prison sentence, suspended for three years, conditional on his receiving treatment in a prevention centre and taking part in an occupational activity. The police court did not order the applicant's expulsion or his exclusion from Switzerland.

By a judgment of 12 June 2018, the criminal division of the Y Cantonal Court upheld an appeal by the prosecution and amended the first-instance judgment, ordering that the applicant be expelled from Switzerland for a period of five years.

The Federal Supreme Court dismissed an appeal by the applicant against the decision ordering his expulsion.

By a letter of 14 November 2018, the immigration authority of the Canton of Y set a time-limit for the applicant to leave Switzerland; it expired on 31 December 2018.

In mid-July 2019, on termination of the supervisory measures (social assistance, professional insertion, probation assistance and therapy) that had been imposed on him, the applicant left Switzerland for Spain.

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.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant alleged that the expulsion and exclusion orders imposed following his criminal conviction had interfered with his private and family life.

The application was lodged with the European Court of Human Rights on 12 December 2018.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

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

Decision of the Court

Article 8

The Court reiterated that if an immigrant had spent his entire life in the host country very serious reasons were required to justify expulsion. The assessment of the relevant facts had to have been “acceptable”.

The Court noted at the outset that, with regard to the expulsion of foreign criminals, Article 66a of the Swiss Criminal Code did not impose automatic expulsion on foreign criminals who had been convicted of offences without judicial review of the proportionality of the measure. It also noted that the courts had to take account, in weighing up the interests involved, of the “particular situation of a foreign national who was born or grew up in Switzerland”. In the present case, the Court noted that the applicant had spent all of his life in Switzerland. It had to ascertain whether the domestic courts had put forward very serious reasons to justify his expulsion.

The Court noted that the Federal Supreme Court had taken into consideration the fact that the offences in question were serious ones, that the applicant had committed a sexual assault against a minor, and that he had thus very seriously breached security and public order in Switzerland. The Federal Supreme Court had also found that the applicant had shown a certain contempt for the Swiss legal order, noting that he had been convicted on three previous occasions. The federal judges had also assessed the risk of reoffending, having regard to the applicant’s interest in prepubescent girls, as was clear, in particular, from the numerous photographs of girls aged between ten and 12 found on his telephone, and the searches of a paedophile nature made on it.

The Court further noted that the Federal Supreme Court had found that the applicant had conducted himself rather well since committing the offence. A report drawn up by the Post-Sentencing Board indicated that the applicant attended the scheduled interviews, was taking an interest in his occupational activity, attended the prevention centre regularly and seemed to be benefitting from a supervisory structure that was enabling him to develop in a positive manner, although further efforts were still required.

While having regard to these elements, the Court noted that the Federal Supreme Court had nonetheless found that the prospects for the applicant’s reintegration in society seemed rather bleak. In this connection, the Court noted the federal judges’ finding that the occupational activity or

the treatment followed at the prevention centre could not be regarded as indicating any desire to integrate in Switzerland.

The Court further noted that the applicant had never raised before the domestic courts any medical issues which could have prevented his expulsion from Switzerland.

To sum up, the Court recognised that the cantonal courts and the Federal Supreme Court had carried out a serious assessment of the applicant's personal situation and the various interests at stake. These authorities had thus had very solid arguments to justify the applicant's expulsion from Switzerland for a limited duration. The Court accordingly concluded that the interference had been proportionate to the legitimate aim pursued and had been necessary in a democratic society within the meaning of the Convention.

It followed that there had been no violation of Article 8 of the Convention.

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.