



Expulsion from Switzerland of national of Bosnia and Herzegovina breached the European Convention

In today's **Chamber** judgment¹ in the case of [P.J. and R.J. v. Switzerland](#) (application no. 52232/20) the European Court of Human Rights held, by 5 votes to 2, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a national of Bosnia and Herzegovina's expulsion from Switzerland following his conviction for drug trafficking.

The Court found in particular that the national courts had failed to carry out a careful balancing of the individual and public interests in the case. They had focused their assessment on the nature and gravity of the offence, without weighing in the balance other aspects to the case such as the fact that the applicant had no criminal record and had only been given a suspended sentence, the fact that he had secured stable employment after his conviction and had shown good behaviour from then on and the adverse impact of the expulsion on his family.

Principal facts

The applicants are a married couple: Mr P.J. who was born in 1983 and is a national of Bosnia and Herzegovina; and, Ms R.J. who is Serbian and was born in 1986. Mr P.J. currently lives in Bijeljina (Bosnia and Herzegovina), while Ms R.J. lives in Langnau am Albis (Switzerland) with their two daughters, born in 2014 and 2016. Ms R.J. has lived in Switzerland all her life. She and her daughters were granted Swiss nationality in 2021.

The applicant couple married in 2013 and Mr P.J. moved to Switzerland. He was arrested in 2018 while transporting cocaine for a third party. The District Court of Zurich subsequently found him guilty of drug trafficking. The court gave him a suspended prison sentence, taking into account that he had a clean criminal record, had been cooperative in the proceedings and was unlikely to reoffend. The court also ordered his compulsory expulsion from Switzerland for five years under the relevant domestic law (Article 66a of the Swiss Criminal Code).

All Mr P.J.'s subsequent appeals were unsuccessful. The courts found that although he had probably not been involved in large-scale drug trafficking, his offence was serious because he had transported a large quantity, 194 grammes, of cocaine, thus endangering others and public safety. Moreover, his resettlement in Bosnia and Herzegovina would not amount to any particular personal hardship given that he was not well integrated into Swiss society: he had arrived in Switzerland at the age of 30, spoke little German and up until his conviction had only had temporary jobs. His main interest in remaining in Switzerland was his family, but his children were young and could adapt to a new environment, while his wife, who was a qualified nurse, could easily integrate professionally in Bosnia and Herzegovina.

Mr P.J. was expelled from Switzerland in July 2021.

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 couple alleged that the expulsion had been a disproportionately harsh measure, which had an adverse effect on their family life.

The application was lodged with the European Court of Human Rights on 24 November 2020.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný **Mjöll Arnardóttir** (Iceland),

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

Decision of the Court

The Court reiterated that States had the right and the power to expel a lawfully resident alien who had committed a criminal offence on their territory. The national courts had to give sufficiently detailed reasons for such a decision, striking a fair balance between the individual and public interests.

It found, however, that in imposing and upholding the five-year expulsion in the case at hand the national courts had not satisfactorily applied the Court's case-law mandating such a balancing exercise. The courts had failed to give due weight to Mr P.J.'s low level of culpability, the fact that his sentence had been suspended, his lack of a criminal record, his status as a long-term immigrant and the adverse impact of the expulsion on his family.

Moreover, the courts had only focused their assessment on the nature and gravity of the offence, without taking into consideration that Mr P.J. no longer posed a threat to public safety. In particular, shortly after his conviction, he had found a full-time job which he had kept until his expulsion. He had had no subsequent administrative or criminal offences, demonstrating his rehabilitation and commitment to lawful conduct.

The Court therefore held that there had been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

Separate opinion

Judges Schukking and Arnardóttir expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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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.