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

FIFTH SECTION

DECISION

Application no. 20596/18
R.Z.
against Switzerland

The European Court of Human Rights (Fifth Section), sitting on 28 November 2024 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Gilberto Felici,
Kateřina Šimáčková*, judges*,
and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 20596/18) 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") on 26 April 2018 by a Kosovar national, Ms R.Z. ("the applicant"), who was born in 2003, lives in Rahovec and was represented by Mr F. Pezzati, a lawyer practising in Lugano;

the decision to give notice of the application to the Swiss Government ("the Government"), represented by their Agent *ad interim*, Mr A. Scheidegger, of the Federal Office of Justice;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a request for family reunification by a Kosovan national living in Switzerland since 2005 for his daughter (the applicant) who has been in the care of her grandparents since her father left Kosovo[1].

[1] All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with the United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

2. On 5 April 2016 the applicant's father applied for family reunification for his third wife, their children, and the applicant. While the applicant's mother-in-law and her two half-sisters were granted entry and residence permits, the Migration Office of the Canton of Ticino, by decision of 15 June 2016, refused the applicant an entry and residence permit for the purpose of family reunification on the grounds that the application had not been submitted in time in virtue of Article 47 of the Federal Act on Foreign Nationals and Integration (FNIA). Subsequent family reunification can only be authorized if there are important family reasons therefor. This was not the case as the applicant was still living with her grandparents in Kosovo.

3. In her appeal to the Cantonal Council of Ticino (Consiglio di Stato) the applicant pointed out in particular that her paternal grandparents, who were ill and elderly (born in 1938 and 1950), were no longer able to look after her properly, so that it was in her best interests to be able to settle with her nuclear family in Switzerland.

4. On 26 October 2016 the Cantonal Council of Ticino dismissed her appeal.

5. On 31 July 2017 the Administrative Court of the Canton of Ticino confirmed the decision of the Cantonal Council of Ticino.

6. On 10 January 2018 the Federal Supreme Court dismissed the applicant's appeal. It confirmed that the time limits for applying for family reunification had long since expired. Following the entry into force of the new Federal Act on Foreign Nationals and Integration (FNIA) on 1 January 2008, the applicant's father should have submitted an application for family reunification by the end of 2012 but did not do so until April 2016. The applicant had completed her schooling in Kosovo, where she had always lived with her grandparents. This arrangement had been desired by her father, who therefore accepted that family relations with his daughter would be limited to telephone contacts, correspondence, and visits. The grandparents' illnesses - cardiorespiratory ailments [grandfather], rheumatic and depressive illnesses [grandmother] - would not entirely prevent them from continuing to look after their granddaughter, who is now of an adolescent age and no longer requires the same care and attention. As the applicant has spent her entire life in Kosovo and has never lived with her father this solution was also in her best interests within the meaning of the United Nations Convention on the Rights of the Child. For the applicant, giving up the family, social and cultural ties she had built up in Kosovo in order to move to a country whose language she does not speak and where she has never lived - not even on holiday to visit her parents - would not be an appropriate solution. It concluded that the application for family reunification in 2016 appeared to be motivated by the prospect of better educational and employment opportunities in Switzerland.

7. Relying on Article 8 of the Convention, the applicant maintained that the refusal of family reunification was a disproportionate interference with her right to respect for her private and family life and was not in the best interests of her as a child.

THE COURT'S ASSESSMENT

8. The Government submitted that important family reasons could be invoked after the time limits for applying for family reunification had expired, if the best interests of the child could only be guaranteed by family reunification in Switzerland. In such cases, recognition of the right to family reunification presupposes that there has been a significant change in circumstances, such as a change in the possibilities for childcare abroad, which was not the case for the applicant. On the contrary, it was not in the best interests of the child to start a new life in Switzerland, where she had never lived.

9. The applicant argued that there had been an important change in her family situation. Due to the age and health of her grandparents, accommodation with them had become less and less appropriate and she had no alternative accommodation in Kosovo.

10. The Court reiterates that the Convention includes no right, as such, to establish one's family life in a particular country (see, *inter alia, Jeunesse v. the Netherlands* [GC], no. 12738/10, § 107, 3 October 2014, and *Biao v. Denmark* [GC], no. 38590/10, § 117, 24 May 2016).

11. In a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest. Factors to be taken into account in this context are the extent to which family life would effectively be ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of the alien concerned and whether there are factors of immigration control or considerations of public order weighing in favour of exclusion (see *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 38, 31 January 2006, and *Solomon v. the Netherlands* (dec.), no. 44328/99, 5 September 2000).

12. The Court has also stated in its case law that the domestic courts must place the best interest of the child at the heart of their considerations and attach crucial weight to it. For that purpose, in cases regarding family reunification the Court pays particular attention to the circumstances of the minor children concerned, especially their age, their situation in their country of origin and the extent to which they are dependent on their parents (see *Tuquabo-Tekle and Others v. The Netherlands*, no. 60665/00, § 44, 1 December 2005). However, the best interest of the child cannot be a "trump card" which requires the admission of all children who would be better off living in a Contracting State (see *El Ghatet v. Switzerland,* no. 5697/10*,* § 46, 8 November 2016).

13. Turning to the present case, the Court notes that the application lodged by the applicant's father for family reunification was out of time according to

Swiss law. Throughout the proceedings the applicant's father did not provide any objectively excusable reasons for not having applied for family reunification earlier (see *Okubamichael Debru v. Sweden,* no. 49755/18, § 68, 25 July 2024).

14. The Government argued that since 2005 the applicant and her father had been living their family life cross-border, with all the inherent limitations, which was deliberately chosen by the father. On the basis of the contents of the case file, the Court cannot find that the circumstances of the case are such that the applicant's family life would effectively be ruptured if she were refused a residence permit. The applicant has not alleged that there are major impediments for the applicant's father to establish a family life in Kosovo.

15. The Court is satisfied that sufficient weight was attached to the best interest of the child in refusing the applicant a residence permit. In their decisions the domestic courts took into account that the applicant had always lived with her grandparents in Kosovo and that from the submitted documents it does not appear that the grandparents would no longer be able to care for the applicant.

16. Having regard to the above considerations, the Court finds that the Swiss authorities, acting within their margin of appreciation, did not fail to strike a fair balance between the applicant's interests, on the one hand, and the State's interest in ensuring effective immigration control, on the other. Nor was their assessment disproportionate in pursuance of the legitimate aim under Article 8 of the Convention.

17. Consequently, the Court finds that the issues raised by the applicant do not disclose any appearance of a violation of her right to respect for her private and family life.

18. Accordingly, the complaint under Article 8 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 December 2024.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President