



## The Swiss Federal Court's decision to disqualify the applicants' lawyer rendered the proceedings unfair

In today's **Chamber judgment**<sup>1</sup> in the case of **Rivera Vazquez and Calleja Delsordo v. Switzerland** (application no. 65048/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.**

The case concerned an alleged violation of the adversarial principle in proceedings before the Swiss Federal Court.

The Court observed that the Federal Court had deprived the applicants of legal representation after raising of its own motion the question of the validity of their choice of lawyer. The applicants had not been informed and had not been asked for their views or given the opportunity to remedy the lack of representation, contrary to the express terms of the law.

The Court took the view that the Federal Court's decision to deprive the applicants of a lawyer, without allowing for adversarial debate, had thus objectively placed them in a situation of significant disadvantage in relation to the other party.

### Principal facts

The applicants, Sergio Rivera Vazquez and Katherine Danise Calleja Delsordos, are Mexican nationals, who were born in 1961 and 1973, and live in the USA.

In April 2008 and July 2009 the applicants entered into agreements for the lease of a house and providing for annual rents of 83,800 and 62,800 euros (EUR). The lessor did not provide them with the statutory form for the purpose of setting the initial rent amount.

In October 2010, the applicants, represented by the Geneva Tenants' Association acting in particular through the intermediary of P.S., brought proceedings for the setting of the initial rent. The Leases and Rents Tribunal rejected the applicants' action and they appealed. That appeal was dismissed by the Leases and Rents Court, which upheld the Tribunal's decision and took the view that the applicants had committed an abuse of rights by complaining of the lessor's failure to notify the initial rent by means of an official form. The applicants vacated their tenancies in December 2012. On 21 January 2013 they lodged a civil appeal with the Federal Court, being represented by P.S. The Federal Court partly upheld the appeal and remitted the case to the court below. Moreover, it did not award them any compensation for their own lawyer's fees, taking the view that they had not been validly represented.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicants complained about the Federal Court's decision to disqualify their lawyer P.S. from acting before it, without giving them an opportunity to

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](http://www.coe.int/t/dghl/monitoring/execution).

express their view on this matter and refusing to award them expenses, even though they had been partly successful.

The application was lodged with the European Court of Human Rights on 9 October 2013.

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

Vincent A. **De Gaetano** (Malta), *President*,  
 Branko **Lubarda** (Serbia),  
 Helen **Keller** (Switzerland),  
 Pere **Pastor Vilanova** (Andorra),  
 Alena **Poláčková** (Slovakia),  
 Georgios A. **Serghides** (Cyprus),  
 María **Elósegui** (Spain),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court reiterated that the adversarial principle and equality of arms principle, being intertwined, were fundamental elements of the notion of a fair hearing within the meaning of Article 6 § 1 of the Convention.

Section 40 of the Federal Court Act had entitled the applicants to be represented by a lawyer of their choosing, and they had thus signed a form of authority instructing P.S., who was registered with the Geneva Bar. His capacity to represent tenants had already been called into question in parallel proceedings, owing to a conflict of interest with the Geneva Tenants' Association (ASLOCA). However, the Court noted that, in those proceedings, P.S. had challenged the conflict of interest and the Federal Court's judgment finding that he should be disqualified had been delivered more than one month after the applicants' complaint had been lodged in their own proceedings. The Court concluded that, with regard to the dispute between the applicants and their lessor in the Federal Court, the applicants had entrusted the defence of their interests to a lawyer who appeared qualified to represent them before that body. They had therefore been caught unawares by the unpredictable and unexpected impact on their proceedings of the Federal Court's decision to disqualify their lawyer.

The Court observed that, on the one hand, as he had not been able to prejudge the Federal Court's decision in the parallel proceedings, P.S. had not been required to advise his clients to change lawyer at the time when they lodged their complaints. On the other hand, as the Federal Court itself had noted, P.S. was not validly representing the applicants as he had a conflict of interest which logically undermined their case. Therefore, without being aware of this, at the time when they lodged their complaints, they had not had the benefit of advice from a lawyer qualified to represent them.

The Court reiterated that the principle of adversarial proceedings required that courts should not base their decision on elements of fact or law which had not been discussed during the proceedings and which gave the dispute an outcome which neither party would have been able to anticipate. It also pointed out that the adversarial principle and the equality of arms principle required that each of the parties to a dispute should be given a reasonable opportunity to put its case in conditions that did not place it at a significant disadvantage in relation to the other party or parties.

In the present case, the Federal Court had deprived the applicants of representation after having raised, of its own motion, the question of P.S.'s capacity to act, but the applicants had not been informed of this and had not been asked for their views or given an opportunity to remedy the situation, contrary to the express terms of the law.

The Court took the view that the Federal Court's decision to deprive the applicants of representation, taken in the absence of adversarial proceedings, had therefore placed them objectively at a clear disadvantage compared to the other party, which was validly represented.

The applicants' right had thus been impaired and there had been a violation of Article 6 § 1.

### Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicants 2,334 euros (EUR) in respect of pecuniary damage, and EUR 7,000 in respect of costs and expenses.

*The judgment is available only in French.*

---

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 [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

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

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

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

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

**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.