



## A temporary ban on the applicant's entry to Switzerland following his criminal conviction for drug-related offences did not breach the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [K.A. v. Switzerland](#) (application no. 62130/15) 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 dismissal of the applicant's request for an extension of his residence permit and the order imposing a temporary prohibition on entry to Switzerland, issued against him following his criminal conviction for a drug-related offence. The applicant was expelled from Switzerland, where his wife and son, who are both ill, are living.

The Court held that the national authorities, in particular the Federal Supreme Court, had carried out an adequate and convincing analysis of the relevant facts and considerations, and a thorough weighing up of the competing interests involved. Thus, despite the strength of the applicant's personal ties with Switzerland, the Swiss authorities could legitimately consider, in view of the applicant's conduct and the seriousness of the offences in question, that it was necessary, for the purposes of preventing disorder and crime, not to extend his residence permit and to prohibit him from entering Swiss territory for a limited duration of seven years.

### Principal facts

The applicant, Mr K.A., is a Kosovar national who was born in 1976 and previously lived in Lützelflüh (Switzerland).

K.A. lived and received his school education in Kosovo, before moving to Switzerland and applying for asylum there in September 1996. His asylum claim was rejected on 20 December 1996.

Following a period of illegal residence, on 30 April 1999 K.A. married a Bangladeshi national who held a settlement permit for Switzerland. Through the marriage, K.A. received a residence permit on the grounds of family reunion. In 2002 the couple had a son. The child has been in foster care since 2010.

On 19 November 2010 K.A. was convicted of a serious breach of the Federal Dangerous Drugs Act; he was sentenced to twenty-six months' imprisonment, of which six months were to be served immediately and twenty months were suspended for two years. In addition, eighteen sentence orders were issued against him between 1999 and 2012 and he accrued private debts.

On 6 October 2008 K.A. filed an application for an extension of his residence permit. Finding that the permit had lapsed, the cantonal authority dealt with the application as a request for a new residence permit, and on 31 October 2012 refused to issue one. It therefore made an order for K.A.'s removal from the country.

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).

By a judgment of 22 June 2015, the Federal Supreme Court dismissed an appeal by K.A., having taken Article 8 of the Convention into consideration. While acknowledging that the applicant was an important reference person for his wife and son, both of whom were ill, and that his presence with them was therefore important, it noted that he was not the person who was providing them with the necessary care. His lengthy prison sentence meant that he had lost his entitlement to a residence permit.

On 22 June 2015 the cantonal authority informed K.A. that, in view of the decision of 31 October 2012 and the dismissal of his appeals, he had until 22 July 2015 to leave Swiss territory.

On 8 July 2015 K.A. was refused entry to Switzerland for a period of seven years. The decision referred mainly to the threat that he represented as a result of the offences committed by him.

On 29 July 2015 the applicant lodged an appeal with the Federal Administrative Court against the prohibition on entering Switzerland.

On 13 October 2015 the Federal Administrative Court refused, in a final decision, to consider the appeal of 29 July 2015.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the expulsion order and prohibition on entering Switzerland that were imposed following his criminal conviction had breached his right to respect for his private and family life.

The application was lodged with the European Court of Human Rights on 14 December 2015.

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

Paul **Lemmens** (Belgium), *President*,  
Georgios A. **Serghides** (Cyprus),  
Helen **Keller** (Switzerland),  
Alena **Poláčková** (Slovakia),  
Gilberto **Felici** (San Marino),  
Lorraine **Schembri Orland** (Malta),  
Ana Maria **Guerra Martins** (Portugal),

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

## Decision of the Court

### Article 8

The Court noted that the applicant had been expelled from Switzerland and had joined his brother in another, unspecified country. Given that he had been separated from his wife and son, there had therefore been an interference with his right to respect for his family life.

The Court noted that the expulsion order and prohibition on entering the national territory imposed on the applicant had been based on the relevant provisions of the Aliens Integration Act. The Court had no doubt that the interference pursued aims that were fully compatible with the Convention, namely, in particular, “the prevention of disorder” and “the prevention of crime”.

At the time of the Federal Supreme Court’s judgment of 22 June 2015, the applicant had been living in Switzerland for almost nineteen years and had been married for sixteen years. However, he had not succeeded in integrating into professional life. In addition, he had lived with his wife only intermittently and had not lived with his son since the latter had been placed in a foster family in 2010.

The Court recognised that the applicant was an important reference person for his wife, who suffered from schizophrenia, and for his son, who suffered from autistic spectrum disorders, and that his presence near them was important. Nonetheless, he did not participate in their care on a daily basis, and contact with them had undoubtedly become less frequent during the period when he was serving his prison sentence. However, the applicant had the possibility of maintaining a relationship with his son via modern means of communication, or through his visits to Switzerland.

The Court considered that the national authorities, in particular the Federal Supreme Court, had carried out an adequate and convincing analysis of the relevant facts and considerations, and a thorough weighing up of the competing interests involved. Thus, despite the strength of the applicant's personal ties with Switzerland, the Swiss authorities could legitimately consider, in view of the applicant's conduct and the seriousness of the offences in question, that it was necessary, for the purposes of preventing disorder and crime, not to extend his residence permit and to prohibit him from entering Swiss territory for a limited duration of seven years.

That being so, the Court was able to conclude that the contested measures had been proportionate to the aims pursued.

*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 [@ECHR CEDH](https://twitter.com/ECHR_CEDH).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@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)

**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.