



## No breach of the Convention in withdrawing the Swiss permanent residence permit of a Croatian national convicted of drug trafficking

In today's **Chamber** judgment<sup>1</sup> in the case of [Veljkovic-Jukic v. Switzerland](#) (application no. 59534/14) the European Court of Human Rights held, by a majority, 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 withdrawal of the permanent residence permit of a Croatian national who has lived in Switzerland since the age of 14, because of her criminal conviction for drug trafficking, and her possible removal from Switzerland.

The Court found that Switzerland had not overstepped the margin of appreciation afforded to it, particularly given the seriousness of her conviction for a drug-related offence and the fact that the applicant and her family members could integrate without major difficulties in one of the destination countries proposed by the Federal Supreme Court: Bosnia and Herzegovina, Croatia or Serbia.

The Court also noted that the applicant had been refused entry to Swiss territory for a period of seven years (until 30 August 2021), and that the Federal Aliens Act enabled her to request a temporary suspension of this exclusion order so that she could visit her family members in Switzerland.

However, the Court considered it desirable that the national authorities reassess the applicant's situation in the light of developments since the Federal Supreme Court's judgment prior to taking a decision on whether to enforce the measures, especially in view of her conduct throughout the proceedings and the possibility, open to her, of applying for a new residence permit.

### Principal facts

The applicant, Renata Veljkovic-Jukic, is a Croatian national who was born in 1980 and lives in Gerlafingen, Switzerland, with her husband, a Serbian national, and their three children (born in 2007, 2008 and 2012). Ms Veljkovic-Jukic and her husband were granted leave to remain in Switzerland at the ages of 14 (in 1995) and 8 (in 1991) respectively.

In June 2012 the Canton of Zurich Higher Court, on appeal, sentenced Ms Veljkovic-Jukic to three years' imprisonment, 30 months of which were suspended, for a drugs offence and for driving a vehicle while incapacitated. In particular, she was found guilty of the trafficking in April 2010 of approximately 1 kg of heroin and 56 g of cocaine for a sum of 126,000 Swiss francs (CHF), of which CHF 6,000 was apparently intended for her, and of driving a vehicle after using cocaine. She served her sentence under a semi-custodial regime and was released in July 2013.

In September 2013, relying on Ms Veljkovic-Jukic's conviction and long-term custodial sentence, the Migration Office of the Canton of Solothurn withdrew her permanent residence permit and ordered her removal from Switzerland. She appealed against this decision, but her appeal was rejected at

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).

first instance and on appeal. The Federal Supreme Court held, in particular, that the security interest in the applicant's removal took precedence over her private interests and that this ground was also valid for persons who, like the applicant, had been residing in Switzerland for more than 15 years continuously and in a lawful manner. It also held that the applicant's return to Bosnia and Herzegovina (where she had spent 14 years as a child) or to Serbia or Croatia did not appear to be precluded for any reason. It further considered that her husband and children could follow her or that, if the family were to remain in Switzerland, contact could be maintained through visits and the use of available means of communication. Furthermore, it indicated that the applicant also had the possibility of applying for a new residence permit.

In August 2014 the Migration Office of the Canton of Solothurn issued an exclusion order against Ms Veljkovic-Jukic, banning her from Switzerland for the period from 31 August 2014 to 30 August 2021. However, the deportation order against the applicant was not enforced, pending the outcome of the proceedings before the European Court of Human Rights.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Veljkovic-Jukic complained that her permanent residence status had been revoked because of her criminal conviction.

The application was lodged with the European Court of Human Rights on 26 August 2014.

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

Paul **Lemmens** (Belgium), *President*,  
Georgios A. **Serghides** (Cyprus),  
Helen **Keller** (Switzerland),  
María **Elósegui** (Spain),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Ana Maria **Guerra Martins** (Portugal),

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

## Decision of the Court

### [Article 8 \(right to respect for private and family life\)](#)

The Court considered that the decision to withdraw Ms Veljkovic-Jukic's permanent resident permit and to order her removal from Switzerland amounted to an interference with her right to respect for her "private" and "family" life, given the very long period that she had been resident in Switzerland and the fact that she lived there with her husband and children. The interference had been in accordance with the Federal Aliens Act and pursued a legitimate aim: the prevention of disorder or crime. As to whether the measure was necessary in a democratic society, the Court noted the following.

The measure was imposed following Ms Veljkovic-Jukic's conviction for drug trafficking. The Court considered that this conviction weighed heavily in its assessment; in view of the destructive effect of drugs on people's lives, the Court had always understood why the authorities showed great firmness with regard to those who actively contributed to the spread of this scourge.

On the date that the Federal Supreme Court's judgment was adopted, Ms Veljkovic-Jukic had been resident in Switzerland for 19 years, and her conduct following her release had been irreproachable. This positive development, particularly the fact that she had been released on probation after serving part of her sentence, could be taken into consideration in weighing up the interests at stake.

As to her ties with her country of origin, Ms Veljkovic-Jukic had spent some of her youth in Bosnia and Herzegovina, where her mother still lived. Her husband, who had been resident in Switzerland since 1991, was a Serb national. Thus, the family's integration in one of the possible destination countries, namely Bosnia and Herzegovina, Croatia or Serbia, although it would be difficult, did not seem impossible. The children (7, 11 and 13 years) were still at an age at which they could adapt to a new environment.

The national authorities had conducted an adequate and convincing examination of the facts and relevant considerations, balancing Ms Veljkovic-Jukic's personal interests against the general interests of society. The Federal Supreme Court had admittedly attached great significance of the seriousness of the drug trafficking offence committed by Ms Veljkovic-Jukic, but it had also taken account of the criteria set out by the Court in the *Üner*<sup>2</sup> judgment, including, in particular, Ms Veljkovic-Jukic's personal situation, the extent to which she was integrated into Swiss life and the potential difficulties that she and her family would face were they to return to their country of origin. Thus, the Federal Supreme Court had acknowledged that Ms Veljkovic-Jukic's removal after 18 years spent in Switzerland was a very harsh measure, which was, however, to be nuanced by her young age and the fact that she had arrived in Switzerland aged 15, after having spent all of her childhood and part of her youth in Bosnia and Herzegovina. A return to Bosnia and Herzegovina, Croatia or Serbia would not therefore be impossible. The Federal Supreme Court had also examined the situation of the children, finding that separation from their mother would amount to a serious interference in their family life. However, it considered that Ms Veljkovic-Jukic's husband, a Serb national, could follow her to her country of origin, and that the children's integration ought not to pose a problem, given that they were still young enough to adapt.

Thus, the Court was satisfied that the national authorities, especially the Federal Supreme Court, had carried out a sufficient and convincing examination of the facts and relevant considerations and a thorough weighing up of the competing interests. Moreover, it noted that Ms Veljkovic-Jukic had been refused entry to Swiss territory for a period of seven years (until 30 August 2021), and that the Federal Aliens Act enabled her to request a temporary suspension of this exclusion order so that she could visit her family members in Switzerland.

In consequence, having regard in particular to the seriousness of Ms Veljkovic-Jukic's conviction for a drug-related offence, and the fact that she and her family members could integrate without major difficulties in one of the destination countries proposed by the Federal Supreme Court (Bosnia and Herzegovina, Croatia or Serbia), the Court considered that Switzerland had not overstepped the margin of appreciation afforded to it.

#### **There had been no violation of Article 8 of the Convention.**

However, the Court considered it desirable that the national authorities reassess Ms Veljkovic-Jukic's situation in the light of the developments since the Federal Supreme Court's judgment prior to deciding whether to enforce the measure, having regard in particular to her conduct throughout the proceedings and the possibility, available to her, of applying for a new residence permit (section 43 of the Federal Aliens Act).

#### **Separate opinion**

Judges Felici and Guerra Martins expressed a joint dissenting opinion, which is annexed to the judgment.

<sup>2</sup> *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII.

*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.