



## The Swiss authorities' refusal to grant the applicant a residence permit for pensioners breached his right to respect for private life

In today's **Chamber** judgment<sup>1</sup> in the case of [Ghadamian v. Switzerland](#) (application no. 21768/19) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the order for the applicant's expulsion from Switzerland following the Federal Supreme Court's refusal in 2018 to grant him a residence permit for pensioners, on the grounds that he had been unlawfully resident in the country since 2002 and had a number of convictions for serious criminal offences.

In view of the specific circumstances of the applicant's case, the Court held that the considerations invoked by the national authorities in support of their decisions could not be regarded as sufficient, bearing in mind, in particular, the fact that the applicant had lived in Switzerland for a very long time, the family and emotional ties he had already established while lawfully resident, and his advanced age. The uncertain nature of his remaining ties with his country of origin, Iran, also had to be taken into account, as well as the fact that he had not committed any serious criminal offences since 2005 and the insufficient efforts made by the national authorities for over 20 years to expel him from Switzerland. Lastly, the Court noted that the Federal Supreme Court, in its judgment of 29 October 2018, had dismissed the applicant's appeal without an in-depth assessment of the criteria under Article 8 of the Convention and without fully weighing up all the relevant aspects of the case.

The Court held that the domestic authorities, despite their margin of appreciation, had not demonstrated in the particular circumstances of the present case that they had struck a fair balance between the competing interests, but instead had attributed excessive weight to the public interest by refusing to issue the applicant with a residence permit for pensioners.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

### Principal facts

The applicant, Mansur Ghadamian, is an Iranian national who was born in 1940 in Iran and lives in Aarau (Switzerland).

Mr Ghadamian entered Switzerland lawfully in November 1969 at the age of 29 and was granted a residence permit. He had two sons with D.B., whom he married in 1971. The couple divorced in 1989.

In November 1979 he was issued with a residence permit by the Aliens Police of the Canton of Aargau ("the Aliens Police").

Between November 1988 and January 2004 Mr Ghadamian was sentenced to several terms of imprisonment totalling approximately five years for various criminal offences. In particular, on

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).

11 June 1999 the Court of Appeal of the Canton of Aargau imposed a custodial sentence on the applicant and ordered his expulsion from Switzerland for five years. On 8 February 2000 the Aliens Police set the deadline for his expulsion at 15 March 2000. That decision became legally binding on 1 January 2002. The authorities invited the applicant to leave Switzerland in 2000, 2003 and 2011, without success.

In February 2008 Mr Ghadamian requested the Migration Office of the Canton of Aargau ("the Migration Office") to revoke the order for his expulsion and issue him with a residence permit. The Migration Office refused his request.

In May 2008 the applicant lodged a request for a residence permit for pensioners which was declared inadmissible by the Migration Office. In August 2015 he reiterated his request. On 8 July 2016 the Migration Office rejected the request and subsequently confirmed its decision.

On 27 June 2018 the Administrative Court of the Canton of Aargau dismissed an appeal lodged by the applicant, finding that the expulsion order of 8 February 2000 was still valid and that the conditions for reconsidering the expulsion were not satisfied. Nevertheless, the court examined in detail the scope for granting a residence permit under the Federal Foreign Nationals and Integration Act of 16 December 2005.

On 29 October 2018 the Federal Supreme Court found it established that the applicant no longer had the permanent residence permit issued to him in 1979, and had not had any permit allowing him to stay in Switzerland for more than three months since his expulsion became legally binding in 2002. The court held that there were no grounds for reviewing the 2000 expulsion order.

On 4 December 2018 the Migration Office ordered the applicant to leave the country by 11 December 2018.

Mr Ghadamian continues to reside unlawfully in Switzerland.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant complained that the order for his expulsion following the Federal Supreme Court's refusal of 29 October 2018 to grant him a residence permit for pensioners had infringed his right to private and family life. Under Article 13 (right to an effective remedy) read in conjunction with Article 8, he alleged that he had not had an effective remedy by which to complain of the violation of his right to respect for his private and family life.

The application was lodged with the European Court of Human Rights on 18 April 2019.

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

Pere **Pastor Vilanova** (Andorra), *President*,  
Georgios A. **Serghides** (Cyprus),  
Carlo **Ranzoni** (Liechtenstein),  
Jolien **Schukking** (the Netherlands),  
Darian **Pavli** (Albania),  
Peeter **Roosma** (Estonia),  
Ioannis **Ktistakis** (Greece),

and also Olga **Chernishova**, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court reiterated that family life, within the meaning of Article 8 of the Convention, between parents and their adult children could not be found to exist without evidence of further elements of dependency. In the present case the Court agreed with the Federal Supreme Court's view that the applicant could not claim such elements of dependency in respect of his adult children, since he was autonomous in his daily life despite his advanced age. Nor were there any other elements amounting to "family life" between the applicant and his adult children. Hence, the issues raised by the present case related solely to the applicant's private life.

The Court reiterated that where a Contracting State tolerated the presence of an alien in its territory, that did not automatically mean that the authorities of the State concerned had an obligation under Article 8 of the Convention to allow him or her to settle in the country.

The Court observed that the applicant had not had lawful residence status in Switzerland since 1 January 2002, when the expulsion order of 8 February 2000 had become legally binding. The question to be examined in the present case was whether the Swiss authorities were obliged under Article 8 of the Convention to issue the applicant with a residence permit so that he could lead his private life in Switzerland, and not to expel him. The present case therefore concerned not just private life but also immigration, and thus had to be examined from the standpoint of the respondent State's positive obligations.

Where a foreign national had established his or her private life on the territory of a State while residing there unlawfully, a subsequent refusal to issue a residence permit gave rise to a violation of Article 8 only in exceptional circumstances. The Court observed, however, that the applicant had established his private life in Switzerland over the 33 years in which he had been lawfully resident there. The Court would therefore weigh up the interests at stake on the basis of an examination of all the relevant facts in the light of the factors, defined in its case-law, to be taken into account in determining whether a State was under a positive obligation to give an alien who was unlawfully resident in its territory permission to remain.

At the time when the Federal Supreme Court had rejected his request for a residence permit, the applicant was aware that his presence in Switzerland had been unlawful since 1 January 2002, when the expulsion order of 8 February 2000 had become legally binding. The applicant had therefore been under an obligation to leave Switzerland when he received the order to do so, having been lawfully refused permission to remain.

The Court noted that the offences committed by the applicant had been a decisive factor in the order of 8 February 2000 for his expulsion from Switzerland and in the Federal Supreme Court's refusal of 29 October 2018 to grant him a residence permit for pensioners. In view of the applicant's repeated criminal convictions since 1999, the Court accepted that the Swiss authorities had had a certain interest in expelling him on public-order grounds.

The Court observed, however, that the applicant had clearly been resident in Switzerland for a very long time. He had been living there for approximately 49 years when the Federal Supreme Court rejected his application for a residence permit for pensioners, even though he had been unlawfully resident for 16 years. The Court emphasised that the applicant had established close ties with Switzerland over the 33 years in which he had been lawfully resident following his arrival in the country in 1969, and that he had lived there for the great majority of his life, during which time he had had two sons who lived with their five children in Switzerland and to whom he claimed to be very close. The applicant himself stated that, at his age, his family in Switzerland constituted the main focus of his private life. Moreover, the Court considered that it was clear from the applicant's conduct that he had integrated into working life in Switzerland, as he had worked there and was in

receipt of a retirement pension. The applicant also maintained that he no longer had any ties with his country of origin, Iran. It was indisputable that, even though he was physically and economically independent, had no major health problems and was not married, the applicant, now aged 83, would face a challenging situation if he were returned to Iran. He would be separated from his children and grandchildren and would most likely find it difficult to reintegrate.

The Court held that the domestic authorities, despite their margin of appreciation, had not demonstrated in the particular circumstances of the present case that they had struck a fair balance between the competing interests, but instead had attributed excessive weight to the public interest by refusing to issue the applicant with a residence permit for pensioners.

There had therefore been a violation of Article 8 of the Convention.

#### Article 13 read in conjunction with Article 8

In view of its finding concerning Article 8 of the Convention, the Court considered it unnecessary to rule separately on the admissibility and merits of the complaint under Article 13 of the Convention read in conjunction with Article 8.

#### Just satisfaction (Article 41)

The Court held, by a majority, that the finding of a violation of Article 8 constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicant. It held, unanimously, that Switzerland was to pay the applicant 6,425 euros (EUR) in respect of costs and expenses.

#### Separate opinion

Judge **Serghides** expressed a partly dissenting opinion which is annexed to the judgment.

*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.