



## Switzerland was under no obligation to recognise the marriage of a 14-year old child

In today's **Chamber** judgment<sup>1</sup> in the case of **Z. H. and R. H. v. Switzerland** (application no. 60119/12) 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 asylum applications of two Afghan nationals, Ms. Z.H. and Mr. R.H., who married in a religious ceremony in Iran when Ms Z.H. had been a child, and which were considered separately – the couple not being considered legally married by the Swiss authorities – resulting in the expulsion of Mr R.H. to Italy. In the proceedings before the European Court, the couple alleged that the expulsion of Mr R.H. had breached their right to respect for their family life.

The Court found that at the time of the removal of Mr R.H. to Italy, the Swiss authorities had been justified in considering that the applicants were not married. It held, in particular, that Switzerland was under no obligation to recognise the marriage of a child, emphasising the importance of the protection of children and considering the regulation of marriage an issue best addressed by the national courts.

### Principal facts

The applicants, Ms. Z.H. and Mr. R.H. are Afghan nationals who were born in 1996 and 1992 respectively and live in Geneva (Switzerland). The case concerns the applicants' asylum claims.

The applicants entered Switzerland, via Italy, and, presenting themselves to the authorities as a married couple, applied for asylum in September 2011. According to the couple they had married in a religious ceremony in Iran in 2010. At the time, Ms Z.H. was 14 years old and Mr R.H. was 18 years old.

Their asylum request was rejected in December 2011 and March 2012, the migration authorities considering that under European Union law (the "Dublin II Regulation"), Italy was responsible for examining their asylum application as it was the first EU state that they had entered.

In the subsequent appeal proceedings, the domestic courts upheld the rejection of their asylum request, finding that the couple had failed to submit a certificate of marriage and that in any event their religious marriage could not be validly recognised in Switzerland because the law in Afghanistan prohibited marriage for women under the age of 15. Furthermore, the couple's marriage was incompatible with Swiss law on grounds of public policy given that sexual intercourse with a child under the age of 16 was a crime in Switzerland. As such, Ms Z.H. could not be qualified as a member of Mr R.H.'s family under EU law and they could not claim a right to family life under the European Convention.

Mr R.H. was expelled to Italy on 4 September 2012 but returned to Switzerland illegally a few days later.

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).

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to family life), the applicants complained that the expulsion of Mr R.H. to Italy in 2012 had violated their right to respect for their family life.

The application was lodged with the European Court of Human Rights on 18 September 2012.

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

Luis **López Guerra** (Spain), *President*,  
George **Nicolaou** (Cyprus),  
Helen **Keller** (Switzerland),  
Helena **Jäderblom** (Sweden),  
Johannes **Silvis** (the Netherlands),  
Dmitry **Dedov** (Russia),  
Branko **Lubarda** (Serbia),

and also Marialena **Tsirli**, *Deputy Section Registrar*.

## Decision of the Court

The Court held that Article 8 of the Convention could not be interpreted as imposing on a member State an obligation to recognise a marriage, religious or otherwise, contracted by a 14-year old child. It noted in this connection that Article 12 (right to marry) of the Convention expressly provided for regulation of marriage by national law. Given the sensitivity of the moral choices which the Swiss courts had to rule on and the importance attached to the protection of children and the fostering of secure family environments, the Court considered that the national courts were better placed to address and rule on the issues raised by the applicants' case. Therefore, at the time of the removal of Mr R.H. to Italy, the national authorities had been justified in considering that the applicants were not married. In any case, Mr R.H. had returned to Switzerland only three days after his removal to Italy and his asylum application had eventually succeeded.

The Court therefore found that there had been no violation of Article 8 on account of Mr R.H.'s removal to Italy.

## Separate opinion

Judge Nicolaou expressed a concurring opinion which is annexed to the judgment.

*The judgment is available only in English.*

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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.