



## Expulsion of an Ecuadorian whose wife and daughter are to stay in Switzerland would be unjustified

The case of [M.P.E.V. and others v. Switzerland](#) (application no. 3910/13) concerns the impending expulsion to Ecuador of a father whose asylum application has been rejected by the Swiss authorities and whose wife and minor daughter have been granted temporary residence in Switzerland.

In today's Chamber judgment in the case, which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously:

that there would be a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights if Mr E.V. was expelled to Ecuador.

The Court found that the Swiss authorities' decision had failed to strike a balance between the relevant interests involved. It considered that Mr E.V.'s expulsion would be disproportionate in view of: the moderate nature of the offences he had committed; his poor state of health; and, the fact that it was in his and his daughter's interest to remain in close contact.

### Principal facts

The applicants are four Ecuadorian nationals: a husband and wife, both born in 1969, the wife's daughter, born in 1986, who was also granted Swiss citizenship in 2012, and the couple's mutual daughter, born in 1999. They live in Geneva.

Having re-entered Switzerland after previous attempts to be granted asylum there, the applicants lodged a new asylum request in 2002. Their request was eventually rejected by the Refugee Office in March 2012, as regards the couple and their minor daughter.

In September 2012 the Federal Administrative Court partially reversed the decision, granting the mother and the minor daughter temporary residence, but declaring the father's expulsion lawful. The court noted in particular: that the couple had separated; that the minor daughter, who mainly lived with her mother, was fully integrated in Switzerland and hardly spoke any Spanish; and, that the father had a criminal record, having been convicted among other things of selling and buying stolen goods. The court also observed that the father suffered from post-traumatic stress disorder and had made several suicide attempts, but it considered that in Ecuador he would have access to specialist care in the main urban centres of the country. While noting that his attending doctors had found that his return to Ecuador was likely to jeopardize his health, the court held that his criminal record excluded him from being granted temporary residence in Switzerland.

<sup>1</sup> 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 on Article 8 (right to respect for private and family life), the applicants complained that the father's deportation to Ecuador would permanently separate him from his family. They further relied on Article 13 (right to an effective remedy) in conjunction with Article 8, complaining that they had no effective remedy available to them in respect of that complaint.

The application was lodged with the European Court of Human Rights on 8 January 2013.

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

Guido Raimondi (Italy), *President*,  
Işıl Karakaş (Turkey),  
Nebojša Vučinić (Montenegro),  
Helen Keller (Switzerland),  
Paul Lemmens (Belgium),  
Egidijus Kūris (Lithuania),  
Robert Spano (Iceland),

and also Abel Campos, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

As regards the admissibility of the case, the European Court of Human Rights dismissed the objection of the Swiss Government that the applicants had failed to exhaust the legal remedies at national level, as they had not appealed against the judgment of the Federal Administrative Court of September 2012. The European Court of Human Rights found that the Government had not established that a public law appeal would have been capable of providing redress in respect of the applicants' complaints under Article 8. In particular, the Federal Administrative Court had expressly stated that its decision was final.

The European Court of Human Rights declared admissible the complaint lodged by Mr E.V., his wife and his minor daughter. It confirmed that, as was uncontested by the Swiss Government, the relationship between Mr E.V. and his minor daughter qualified as "family life" within the meaning of Article 8. Furthermore, while he and his wife had separated, they had not divorced, they maintained regular contact with each other and, according to their submissions, Mr E.V.'s wife would lend him support in coping with his illness. Those factors were sufficient to bring their relationship within the scope of Article 8.

At the same time, the Court declared inadmissible the complaint lodged by Mr E.V.'s adult stepdaughter – who had a family of her own – noting that the applicants had not established that there was a sufficient element of dependence to bring the relationship between her and her stepfather within the scope of Article 8.

To determine whether the decision to expel Mr E.V. to Ecuador had struck a fair balance between the relevant interests – namely the three remaining applicants' right to respect for their private and family life on the one hand and the community's interest on the other – the Court took into consideration that the offences committed by Mr E.V. had been of a moderate nature. Between 2005 and 2009 he had been convicted four times, three times for property offences and once for a traffic offence, the most severe sanction being a nine-month prison sentence, suspended on probation. Moreover, since 2009 he had not reoffended. The Court further observed that the family's asylum proceedings had lasted for more than ten years.

With regard to Mr E.V.'s family situation, the Court reiterated that he continued to have a relationship with his wife, who helped him coping with his illness. The Swiss Federal Administrative Court had expressly acknowledged that his state of health gave reason for concern and that, according to his doctor, his return to Ecuador was likely to jeopardise his health.

Finally, the Swiss authorities had failed to give consideration to the mutual interest of Mr E.V. and his minor daughter in remaining in close personal contact. In that regard, the Court observed that Mr E.V. continued to be involved in his daughter's upbringing. Given that she was fully integrated in Switzerland and was to stay there – the Swiss court having concluded that her removal to Ecuador would be detrimental – it could be expected that personal contact between father and daughter would, at least, be drastically diminished if Mr E.V. was forced to return to Ecuador. The Swiss court, when considering Mr E.V.'s case, had not made any reference to the child's best interest.

In the light of these considerations, the Court found that the Swiss authorities' decision had been disproportionate in that they had failed to strike a fair balance between the relevant interests involved. Accordingly, there would be a violation of Article 8 if Mr E.V. was expelled to Ecuador.

In view of that finding, the Court did not consider it necessary to examine the complaint under Article 13 in conjunction with Article 8.

#### Just satisfaction (Article 41)

The Court did not make an award in respect of just satisfaction, as the applicants accepted that the finding of a violation of the Convention would constitute adequate just satisfaction for non-pecuniary damages. Furthermore, the Court held that Switzerland was to pay Mr E.V., his wife and his minor daughter 4,500 euros (EUR) in respect of costs and expenses.

*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.