



[ECtHR - Ghadamian v. Switzerland](#)

Switzerland refused to issue a residence permit to an elderly foreign national from Iran, who had been living in the country for over 50 years and cited strong family and social ties in Switzerland. The applicant was residing unlawfully because a deportation decision issued against him had not been enforced due to the lack of an Iranian passport. The Court found that Switzerland breached its positive obligation under Article 8 ECHR to regularise a foreigner who was unlawfully present, and found that a fair balance had not been struck between the public interest and his right to respect for private life.

Case name (in original language) : Affair Ghadamian c. Suisse

Case status: Decided

Case number: 21768/19

Citation: Ghadamian v. Switzerland, no. 21768/19, 9 May 2023

Date of decision: 09/05/2023

State: Switzerland

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: French

Applicant's country of birth: Iran

Applicant's country of residence: Switzerland

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Deportation and removal, Residence permit, Statelessness determination

Relevant Legislative Provisions:

- Domestic Law: Stay and Establishment of Foreign Nationals (LSEE)
- European Law: Article 8 of the Convention

Facts

The claimant was born in Iran in 1940 and now lives in Aarau, Switzerland. He entered Switzerland legally in November of 1969 and had two sons. He received a

residence permit but faced numerous legal issues, including various criminal convictions for forgery, repeated breaches of trust, coercion, multiple threats, and property offences. In June 1999, the Aargau Supreme Court sentenced him to 27 and a half months' imprisonment and deportation from Switzerland for five years. The decision became legally binding on 1 January 2002. Despite repeated requests to leave Switzerland, he continued to reside there unlawfully, accumulating unlawful residence convictions. The authorities denied his appeals for residence permits and upheld the expulsion. The court relied on his offences, his illegal residence for over fourteen years and indications of a family network in Iran as justification for rejecting his appeals. The claimant's pleas based on family and private life were also rejected. Despite having two sons in Switzerland, the court found that his ties were insufficient to warrant a residence permit. The claimant's prolonged illegal stay and non-compliance with legal procedure led to the dismissal of his claims. He remains illegally resident in Switzerland.

Legal arguments by the applicant

The applicant alleges a violation of Article 8 of the Convention, arguing that his deportation following the Federal Court's denial of a residence permit for pensioners on October 29, 2018, infringed upon his private and family life, home, and correspondence. It stipulates that public authorities cannot interfere with his right unless such interference is lawful, necessary in a democratic society and serves specific purposes. The applicant argues that the convictions that bore weight in the expulsion decision related to the same dispute with his ex-wife and he had already served the prison sentence required. Furthermore, the applicant's most recent convictions do not suggest he is a threat to public safety but instead relate to his status as an illegal immigrant. Finally, the applicant left Iran fearing for his life after his father, a president of a local court, was executed for political reasons. He no longer has any family connections in Iran and has only returned for important occasions, such as his mother's funeral in 2001. In contrast, his sons and five grandchildren live in Switzerland where he has a Swiss partner of fourteen years, close friends, and ties to the community.

Legal arguments by the opposing party

The government argues that the applicant, since the 2000 expulsion decision, lacks the right to reside in Switzerland for a period exceeding three months as per Article

10 paragraph 1 of the LEI, and both the obligation to apply for a permit and its rejection are legally established. It contends that the applicant's extensive criminal record, even after the expulsion decision, poses a threat to public safety and the rights of others, aligning with the legitimate aims under Article 8 § 2 of the Convention. Despite his long stay in Switzerland, it has been illegal since 2002. The government asserts a continuing risk of re-offending due to the absence of a significant period without new convictions. While acknowledging the attempts to enforce the expulsion order, it cites difficulties outside its control, such as the absence of a valid passport. Additionally, it questions the depth and credibility of the applicant's ties in Switzerland, asserting that rehabilitation difficulties in Iran are not insurmountable, given his economic independence and family network there. It emphasises he cannot invoke these difficulties after evading expulsion for twenty years.

Decision & Reasoning

The Court assessed the refusal to allow the applicant to reside in Switzerland based on his private and family life. While emphasising the obligation of foreign nationals to comply with immigration rules and leave when ordered, the Court examined, *inter alia*, the applicant's situation, noting his lengthy stay in Switzerland, his close ties to the country and his advanced age. The court concluded that, given these unique circumstances, the Swiss authorities did not strike a fair balance between the applicant's interests in continuing to reside in Switzerland and the state's immigration control interests. The court found that there were special circumstances surrounding the applicant's case. It found that the arguments put forward by the national authorities relating to the applicant's previous decisions to leave the country, his illegal residence since 2002 and his previous convictions for criminal offences are relevant but not sufficient grounds. They are not sufficient considering his extremely long stay in Switzerland, the connections established during his legal stay, his advanced age, the lack of relationships still existing in Iran and the lack of serious criminal offences since 2005.

Regarding the alleged violation of Article 13 in conjunction with Article 8, the Court did not separately address this claim considering its findings under Article 8. Finally, in accordance with Article 41 of the Convention, the Court reserved the right to provide just satisfaction to the injured party due to the violation found in the case.

Outcome

The complaint regarding a violation of Article 8 was unanimously declared admissible. The court held that there was no need to examine the admissibility or merits of the complaint under Article 13. By a majority vote of six to one the Court decided that the finding of a violation of Article 8 was sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. The court unanimously ordered the respondent State to pay the applicant the sum of EUR 6,425 within three months. The remainder of the claim for just satisfaction was dismissed by a majority vote of six to one.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Strasbourg Observers, "The exceptional case of Ghadamian v Switzerland":
<https://strasbourgobservers.com/2023/08/29/the-exceptional-case-of-ghadamian-v-switzerland-private-life-and-the-obligation-to-regularize-migrants/#more-9351>

Caselaw cited

- *Mart and Others v. Turkey* [2019]
- *Önal v. Turkey* [2019]
- *Gürbüz and Bayar v. Turkey* [2019]
- *Gezginci v. Switzerland* [2010]
- *Krasniqi v. Austria* [2017]
- *Vasquez v. Switzerland* [2013]
- *Danelyan v. Switzerland* [2018]
- *Slivenko v. Latvia* [2003]
- *A.S. v. Switzerland* [2015]
- *Kwakye-Nti and Dufie v. Netherlands* [2000]
- *Emonet and Others v. Switzerland* [2007]
- *Belli and Arquier-Martinez v. Switzerland* [2018]
- *I.M. v. Switzerland* [2019]
- *Jeunesse v. Netherlands* [2014]
- *A.S. v. Switzerland* [2020]
- *Pormes v. the Netherlands* [2020]
- *Maslov v Austria* [2008]
- *Neulinger and Shuruk v. Switzerland* [2010]
- *Udeh v. Switzerland* [2013]
- *L.B. v. Hungary* [2023]

- *Grzęda v. Poland* [2022]
- *Artico v. Italy* [1980]