

BGE 20140325_2607_08 vom 25. März 2014

Bundesgericht (BGE), 2014-03-25, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20140325_2607_08

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH. Expulsion d'un ressortissant turc qui a sa famille en Suisse. Arrivé en Suisse en 1989 à près de 18 ans, le requérant a été mis en garde plusieurs fois par les autorités en raison de son comportement, ayant commis dix-neuf infractions entre 1995 et 2005, accumulé des dettes et n'ayant pas payé de pension alimentaire à sa famille entre 1999 et 2004. En 2013, il a obtenu un nouveau permis de séjour et vit désormais avec sa famille dont il assure l'entretien. La Cour estime que les autorités ont bien pesé les intérêts en présence dans le cadre de leur marge d'appréciation et que l'expulsion du requérant en 2008 était proportionnée aux buts de défense de l'intérêt et de l'ordre publics (ch. 54 - 64). Conclusion: non-violation de l'art. 8 CEDH. Inhaltsangabe des BJ (1. Quartalsbericht 2014) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Ausweisung eines rückfälligen Straftäters in die Türkei. Der Fall betraf die Ausweisung des Beschwerdeführers, welcher im Jahr 1989 in die Schweiz kam und Vater von drei minderjährigen Mädchen ist, in die Türkei. Gestützt auf Art. 8 EMRK beschwerte sich der Beschwerdeführer über die Weigerung der Behörden, seine Aufenthaltsbewilligung zu verlängern, und über die Entscheidung, ihn aus der Schweiz auszuweisen. Unter Berücksichtigung u.a. der beachtlichen Anzahl der vom Beschwerdeführer begangenen Widerhandlungen (19 zwischen 1995 und 2005), wovon eine Verurteilung wegen häuslicher Gewalt, der wiederholten Warnungen der Migrationsbehörden, der beachtlichen Anhäufung von Schulden, der unterlassenen Zahlung der Unterhaltsbeiträge an seine Familie nach der Trennung von seiner Ehefrau, des Umstandes, dass der Aufenthaltsstatus des Beschwerdeführers über längere Zeit ungewiss war, des Umstandes, dass der Beschwerdeführer seine Kindheit in seinem Herkunftsland verbrachte und die Verbindung zu diesem Land ebenso wie seine Ehefrau bewahrte sowie des Umstandes, dass seine Ausweisung in die Türkei ihn nicht daran hinderte, ein gewisses Familienleben aufrecht zu erhalten und dass die Kinder ein Alter haben, in welchem sie sich ohne grosse Schwierigkeiten an eine neue Umwelt anpassen können, kam der Gerichtshof zum Schluss, dass Art. 8 EMRK nicht verletzt ist (einstimmig).

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d'un délinquant récidiviste. L'affaire portait sur l'expulsion vers la Turquie du requérant, arrivé en Suisse en 1989, père de trois filles mineures. Invoquant l'article 8 CEDH, le requérant s'est plaint du refus des autorités de proroger son permis de séjour et de la décision de l'expulser de Suisse. Considérant, entre autres, le nombre considérable d'infractions commises par le requérant (19 entre 1995 et 2005), dont une condamnation pour violence domestique; les avertissements répétés des autorités d'immigration; une accumulation considérable de dettes; le non-paiement d'une pension alimentaire à sa famille après la séparation d'avec son épouse; le fait que le statut de résidence du requérant a été incertain pendant de longues périodes; le fait que le requérant a passé son enfance dans son pays d'origine avec lequel il a conservé des liens, de même que son épouse; le fait que son expulsion en Turquie n'a pas empêché le requérant de maintenir une certaine vie familiale et que les enfants ont un âge auquel ils peuvent s'adapter à un nouvel environnement sans grandes difficultés, la Cour a conclu qu'il n'y avait pas de violation de l'article 8 CEDH (unanimité).

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Volltext

Bundesgericht (BGE) EGMR 25.03.2014 20140325_2607_08 (Palanci Erol gegen Schweiz) Tribunal fédéral (ATF) CEDH 25.03.2014 20140325_2607_08 (Palanci Erol gegen Schweiz) Tribunale federale (DTF) CEDU 25.03.2014 20140325_2607_08 (Palanci Erol gegen Schweiz)

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Urteilskopf 2607/08 Palanci Erol gegen Schweiz Urteil no. 2607/08, 25 mars 2014 Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH . Expulsion d'un ressortissant turc qui a sa famille en Suisse. Arrivé en Suisse en 1989 à près de 18 ans, le requérant a été mis en garde plusieurs fois par les autorités en raison de son comportement, ayant commis dix-neuf infractions entre 1995 et 2005, accumulé des dettes et n'ayant pas payé de pension alimentaire à sa famille entre 1999 et 2004. En 2013, il a obtenu un nouveau permis de séjour et vit désormais avec sa famille dont il assure l'entretien. La Cour estime que les autorités ont bien pesé les intérêts en présence dans le cadre de leur marge d'appréciation et que l'expulsion du requérant en 2008 était proportionnée aux buts de défense de l'intérêt et de l'ordre publics (ch. 54 - 64). Conclusion: non-violation de l' art. 8 CEDH . Inhaltsangabe des BJ (1. Quartalsbericht 2014) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Ausweisung eines rückfälligen Straftäters in die Türkei. Der Fall betraf die Ausweisung des Beschwerdeführers, welcher im Jahr 1989 in die Schweiz kam und Vater von drei minderjährigen Mädchen ist, in die Türkei. Gestützt auf Art. 8 EMRK beschwerte sich der Beschwerdeführer über die Weigerung der Behörden, seine Aufenthaltsbewilligung zu verlängern, und über die Entscheidung, ihn aus der Schweiz auszuweisen. Unter Berücksichtigung u.a. der beachtlichen Anzahl der vom Beschwerdeführer begangenen Widerhandlungen (19 zwischen 1995 und 2005), wovon eine Verurteilung wegen häuslicher Gewalt, der wiederholten Warnungen der Migrationsbehörden, der beachtlichen Anhäufung von Schulden, der unterlassenen Zahlung der Unterhaltsbeiträge an seine Familie nach der

Trennung von seiner Ehefrau, des Umstandes, dass der Aufenthaltsstatus des Beschwerdeführers über längere Zeit ungewiss war, des Umstandes, dass der Beschwerdeführer seine Kindheit in seinem Herkunftsland verbrachte und die Verbindung zu diesem Land ebenso wie seine Ehefrau bewahrte sowie des Umstandes, dass seine Ausweisung in die Türkei ihn nicht daran hinderte, ein gewisses Familienleben aufrecht zu erhalten und dass die Kinder ein Alter haben, in welchem sie sich ohne grosse Schwierigkeiten an eine neue Umwelt anpassen können, kam der Gerichtshof zum Schluss, dass Art. 8 EMRK nicht verletzt ist (einstimmig). Sachverhalt SECOND SECTION CASE OF PALANCI v. SWITZERLAND (Application no. 2607/08) JUDGMENT STRASBOURG 25 March 2014 This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision. In the case of Palanci v. Switzerland, The European Court of Human Rights (Second Section), sitting as a Chamber composed of: Guido Raimondi, President, I■■■ Karaka■■, Peer Lorenzen, András Sajó, Helen Keller, Paul Lemmens, Robert Spano, judges, and Stanley Naismith, Section Registrar, Having deliberated in private on 18 February 2014, Delivers the following judgment, which was adopted on that date: PROCEDURE 1. The case originated in an application (no. 2607/08) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Erol Palanci ("the applicant"), on 11 January 2008. 2. The applicant was represented by Dr. iur. D. Thommen, a lawyer practising in Basel. The Swiss Government ("the Government") were represented by their Deputy Agent, Mr A. Scheidegger, of the Federal Office of Justice. 3. The applicant, who had lived in Switzerland for many years and had a family there, alleged that his expulsion to Turkey was in breach of his right to respect for family life under Article 8 of the Convention. Pending the proceedings before the Court, the applicant requested that Rule 39 of the Rules of Court be applied. 4. On 16 January 2008 the President of the First Section, to which the case had been allocated, decided not to apply Rule 39. 5. On 27 May 2010 the application was communicated to the Government. 6. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1). On 1 February 2014 the Court changed again the composition of its Sections (Rule 25 § 1). This case remained with the Second Section (Rule 52 § 1). THE FACTS I. THE CIRCUMSTANCES OF THE CASE 7. The applicant, Mr Erol Palanci, is a Turkish national, who was born in 1971 and lives in Basel, Canton of Basel-Stadt (Basle Urban). 8. In 1989 he entered Switzerland for the first time and applied for asylum. He lived there, working in the gastronomic sector, until 1993, when his asylum request was dismissed. On 19 November 1993 he left Switzerland for Germany. On 10 February 1994 he married his current wife, a Turkish national with a residence permit for Switzerland, in Germany. 9. Because his wife had a residence permit for Switzerland, the applicant was able to re-enter the country on 15 July 1994, and he was given a residence permit on 28 July 1994. Three daughters were born to the couple in Switzerland in 1995, 1997 and 2000. Additionally, the wife's eldest daughter from her first marriage, born in 1985, was also living with the couple. 10. In 1995 a criminal charge was brought against the applicant because he had been working without the requisite work permit. Furthermore, in 1997, having falsified his wife's signature on an official document, he was warned for the first time by the Directorate for Residence Services of the Department for Security of the Canton of Basel-Stadt (Sicherheitsdepartement des Kantons Basel-Stadt, Dienste Aufenthalte - hereinafter "the cantonal immigration authorities") that he would have to

expect immigration measures to be taken if he did not improve his behaviour. 11. In August 1999 the applicant and his wife separated. The children remained with the applicant's wife and he was ordered to pay maintenance by the Cantonal Civil Court of the Canton of Basel-Stadt. 12. On 1 December 1999 the applicant was sentenced by the Criminal Court of Basel-Stadt to a suspended custodial sentence of three months for multiple bodily assaults on his wife, in part committed with a dangerous object. 13. In view of his conviction, his considerable accumulation of debts and his dependence on social welfare, the cantonal immigration authorities issued a further warning to the applicant on 22 December 1999. 14. In March 2001 his wife filed for divorce. In September 2001 the cantonal immigration authorities again warned the applicant, since his debts had grown further and his entire family was living on social welfare. 15. Despite those warnings, the applicant's debts grew further. In May 2002 they amounted to approximately 177,850 Swiss francs (CHF) (approximately 145,609 euros (EUR)). Additionally, he had failed to comply with his duty to pay maintenance for his family in the amount of CHF 46,150 (approximately EUR 37,783). In August 2002 the cantonal immigration authorities decided to extend the applicant's residence permit for another six months. However, he was firmly advised to take steps to improve his financial situation. 16. In November 2002 the applicant's wife withdrew her divorce petition. However, she did not wish to seek a reconciliation and the applicant was obliged to continue paying maintenance. 17. In March 2003 the applicant was sentenced to sixty days' imprisonment for wilful neglect of his obligation to pay maintenance. 18. In December 2003 the cantonal immigration authorities warned the applicant for the last time that he must expect implementation of the most serious immigration measures if his situation did not improve and his debts grew further. They gave him until June 2004 to prove that his financial and professional situation had stabilised and that he had complied with his obligation to pay maintenance. 19. In March 2004 the applicant's wife filed for divorce for the second time. She also brought another criminal charge against him for acts of aggression and threatening behaviour. 20. In August 2004 the applicant's wife withdrew her criminal complaint against the applicant for domestic violence. 21. By letter dated 11 October 2004 the immigration authorities informed the applicant of their intention to expel him from Swiss territory and granted him a period of grace in which to make his submissions. 22. On 22 October 2004 the applicant's wife withdrew her divorce action and from 25 October 2004 onwards the couple lived together again. 23. On 7 February 2005 the cantonal immigration authorities decided that the applicant's residence permit would not be extended and that he had to leave Switzerland for an indeterminate period of time. They held that over the preceding years, owing to the applicant's continuously accumulating debts and his failure to pay maintenance, his family had been dependent to a considerable degree on social welfare, and he had not proved that he was capable of observing public order and safety in Switzerland. In accordance with section 10 § 1 (b) and (d) of the Federal Act on the Temporary and Permanent Residence of Foreigners (hereinafter "the Foreigners' Residence Act" - see paragraph 29 below) and section 16 of its Implementing Ordinance (see paragraph 30 below), he could therefore be expelled. They reasoned that since 1994, when the applicant had entered Switzerland for the second time, he had repeatedly been convicted of offences. Furthermore, despite the immigration authorities' repeated warnings, his financial situation was serious and had continuously deteriorated. As at the date of the decision, his debts amounted to about CHF 352,890 (approximately EUR 288,918) and the outstanding maintenance payments to CHF 74,710 (EUR 61,166). In addition, from June 2004, he had

worked as an associate of a company in the gastronomic sector without having previously applied for the necessary work permit. Although he had never paid maintenance or complied with the debt repayment agreements, he had invested capital of CHF 20,000 (approximately EUR 16,374) in that company. The cantonal immigration authorities therefore concluded that the applicant had not complied with the conditions previously set out by them for renewal of his residence permit. Furthermore, the fact that the applicant had resumed matrimonial life with his wife on 25 October 2004 did not alter those findings, since his wife had already filed for divorce twice and there had been incidents of domestic violence in the past. The applicant had, moreover, registered his residence at the family home only after he had been informed by the immigration authorities in October 2004 of their intention to expel him. However, he had spent many months between September 2004 and March 2005 in Turkey and it could therefore hardly be assumed that he had actually re-established family life. The applicant's return to his country of origin - Turkey - was also feasible, because he had spent most of his life there and maintained close social and family ties with that country, as evidenced by his regular visits there. Additionally, even though he claimed that his relationship with his children was close, he had not paid maintenance for them since the separation from his wife. Lastly, the children were not prevented from visiting him in Turkey and the contact could be maintained at a distance. The applicant's expulsion was therefore proportionate and he was required to leave Switzerland by 7 May 2005. 24. On 14 September 2005 the applicant was sentenced for the second time to a suspended custodial sentence of forty-five days for wilful neglect of his obligation to pay maintenance. 25. The applicant lodged an appeal against the decision of the cantonal immigration authorities with the director of the Department for Security of the Canton of Basel-Stadt (*Vorsteher des Sicherheitsdepartement des Kantons Basel-Stadt* - hereinafter "the director"), who dismissed the appeal on 16 January 2006. The director established that the applicant had met the criteria for expulsion under domestic law in several respects. To begin with, the applicant had been logged in the criminal register nineteen times since 1995. While the majority of the sentences had been for minor offences - mainly against the Road Traffic Act - three of them were serious convictions. These were: one for domestic violence in 1999, resulting in a suspended custodial sentence of three months' imprisonment, and two others for wilful negligence of his obligation to pay maintenance, warranting sixty days' imprisonment in 2003 and a suspended custodial sentence of forty-five days in 2005. Since the applicant had thus been found guilty of imprisonable offences (see paragraph 31 below), he fulfilled the criterion for expulsion as provided in section 10 § 1 (a) of the Foreigners' Residence Act (see paragraph 29 below). Secondly, despite repeated warnings by the cantonal immigration authorities, the applicant's financial situation had continuously deteriorated. In this regard the director held that, despite having had several jobs in the gastronomic sector, the applicant had repeatedly tried to start his own business and had frivolously invested money in projects with poor prospects. His debts were therefore self-imposed and, from an overall perspective, he had, continuously throughout the years, failed to show any willingness to observe public order and to integrate into the Swiss system. He therefore additionally fulfilled the condition for expulsion according to section 10 § 1 (b) of the Foreigners' Residence Act (see paragraph 29 below) and section 16 of its Implementing Ordinance (see paragraph 30 below). By contrast, despite still not having paid back to the State all the maintenance received for his family, after 30 September 2004 the applicant's family had no longer been dependent on social welfare. Therefore, section 10 § 1 (d) of the Foreigners' Residence Act (see paragraph 29 below) no

longer applied to the applicant. With regard to Article 8 of the Convention, the director further established that the applicant's expulsion was a proportionate interference with his right to respect for family life. The applicant had maintained close ties with his home country, which he had visited on many occasions. The applicant's wife had lived in her home country until the age of nineteen and she had visited Turkey, together with the children, on many occasions. Moreover, she had also accumulated debts amounting to CHF 134,830 (approximately EUR 110,388) and was receiving an invalidity pension. Lastly, the children were still relatively young (the oldest daughter being ten years old at the time of the decision) and they would therefore not encounter any serious difficulties if they returned to Turkey with the applicant. The public interest in expelling the applicant to Turkey therefore outweighed his personal interest in remaining in Switzerland. 26. On 21 March 2007 the Administrative Court of the Canton of Basel-Stadt (Appellationsgericht des Kantons Basel-Stadt - hereinafter "the Administrative Court") dismissed the applicant's appeal, a decision that was upheld by the Federal Supreme Court (hereinafter "the FSC") on 24 October 2007. With particular regard to the applicant's rights under Article 8 of the Convention, both courts held that, considered as a whole, his expulsion was proportionate. Even though the applicant had been living together with his wife again since October 2004, his matrimonial situation had not proved to be very stable in the past. Furthermore, despite having maintained a close relationship with his children, for many years ■ until September 2004 ■ he had completely neglected his obligation to pay them maintenance. Moreover, it would be possible to maintain a relationship with them at a distance without serious difficulty. The courts also found that the family would not encounter any major obstacles if they returned to Turkey with the applicant. The children were still at an age where they could easily adapt to a new environment and the Turkish language was their mother tongue. Furthermore, his wife had not proved to be particularly well integrated in Switzerland and was receiving an invalidity pension. The expulsion order against the applicant was therefore upheld. 27. The cantonal immigration authorities gave the applicant a deadline of 22 January 2008 for leaving Switzerland. The applicant left Switzerland alone. 28. In letters of 7 June 2013 and 28 June 2013, the applicant's representative informed the Court that the applicant had been issued with a residence permit for Switzerland on 10 February 2013. He nevertheless wanted to maintain his application because between 2008 and 2013 he had been obliged to live in Turkey while his wife and children had remained in Switzerland. During this period he had not been able to support them financially but had visited them, at least once, in Switzerland. II. RELEVANT DOMESTIC LAW 29. Section 10 of the Federal Act on the Temporary and Permanent Residence of Foreigners of 16 March 1931, as in force at the material time, read as follows: Section 10 "1 A foreign national can be expelled from Switzerland or one of its cantons only if: (a) he or she has been convicted by a judicial authority of a serious punishable offence [Verbrechen] or a less serious punishable offence [Vergehen]; (b) his or her behaviour, in its entirety, or his actions demonstrate an unwillingness to adapt to the order established in the country that offers him hospitality or he is not capable of so adapting; ... (d) if he or she, or a person he or she has to care for, is reliant on social welfare continuously and to a considerable degree..." 30. Section 16 of the Implementing Ordinance to the Federal Act on the Temporary and Permanent Residence of Foreigners of 1 March 1949, as in force at the material time, read as follows: Section 16 " ... 2 An expulsion pursuant to section 10 § 1 (b) of the Foreign Nationals Act is in particular justified where there are serious and repeated infringements of norms or official orders; ...

continuously malicious or dissolute non-observance of obligations under public or private law; other continued dissoluteness or work-shy behaviour ..." 31. Section 9 of the Swiss Criminal Code of 21 December 1937, as in force at the material time, read as follows: Section 9 "1 Serious punishable offences [Verbrechen] are offences for which the custodial sentence is imprisonment in a penal institution [Zuchthaus]. 2 Less serious punishable offences [Vergehen] are offences for which the most severe sentence is detention in prison [Gefängnis]." Erwägungen THE LAW I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION 32. The applicant complained that the refusal of the Swiss authorities to prolong his residence permit and the decision to expel him breached his right to respect for family life as provided in Article 8 of the Convention, which reads as follows: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." 33. The Government contested that argument. A. Admissibility 34. The Government observed that in his application of 11 January 2008, the applicant referred to circumstances and developments that had arisen only after the Administrative Court's decision of 21 March 2007. It was this decision which had established the facts on the basis of which the FSC had delivered its judgment on 24 October 2007. The FSC had not yet had the opportunity to consider the following new facts, based on which the applicant's request for reconsideration at domestic level had a good chance of success: he had once again been leading a family life within the meaning of Article 8 of the Convention and was fulfilling his financial duties towards them; he had not had any convictions, and no incidents of domestic violence had occurred since 2005; he had found a stable job with a regular income and had not accumulated further debts; and his wife was in need of support in relation to the education of the children since she was suffering from serious depression. The Government therefore proposed that the application be struck out pursuant to Article 37 § 1 c) of the Convention. 35. The applicant contested that the above-mentioned facts were new and stated that they had been taken into account by the FSC in its judgment of 24 October 2007. A request for reconsideration at domestic level in his view therefore had no chance of success. Furthermore, if the Government had taken the view that a request for reconsideration would be successful, they could have agreed to a friendly settlement before the Court. However, the Government had declined that possibility in a letter of 21 September 2010. Therefore, there were no grounds for striking the case out. 36. The Court notes that the final domestic decision dated 24 October 2007 had been enforced in the meantime and the applicant had left Switzerland for some years. The question whether a request for reconsideration would have been successful at the domestic level is thus no longer pertinent. In addition, the Court agrees with the applicant that the domestic courts had in their judgments already taken into account the fact that since October 2004 the applicant was again living together with his wife and that his family no longer depended on social welfare (see paragraphs 23 and 25-26 above). The Court therefore dismisses the Government's request to strike out the application pursuant to Article 37 § 1 (c) of the Convention. It further notes that the application is not inadmissible on any of the grounds set out in Article 35 of the Convention. It must therefore be declared admissible. B. Merits 1. The parties' submissions (a) The applicant 37. In his observations dated 11 November 2010, the applicant alleged that the Swiss authorities'

decision not to extend his residence permit and to expel him to his home country of Turkey had disproportionately interfered with his right to respect for family life under Article 8 of the Convention. 38. With regard to the crimes of which he had been found guilty, the applicant alleged that none of them had endangered public safety. He regretted deeply that he had assaulted his wife. However, it had not involved third parties, and, in Swiss case-law, a suspended custodial sentence of three months was deemed a "minor case". Furthermore, he had been sentenced for that offence in 1999, more than eight years before the final domestic decision. In addition he claimed that it was due to his financial difficulties that he had not been able to pay the maintenance, and his behaviour could therefore not be considered criminal *sensu stricto*. He had not thereby endangered public safety or public order or the economic wellbeing of Switzerland. It had also been the social security department, and not his wife, who had brought a criminal complaint against him in that respect. Lastly, the applicant argued that the rest of his offences had been minor ones: most of them concerned breaches of the Road Traffic Act which dated back ten to fifteen years. Hence, the applicant's convictions were not of a kind that would lead to the conclusion that he did not have the will or capacity to adapt to public order. 39. The applicant further stated that he had arrived in Switzerland for the first time in 1989, when he had been less than eighteen years old. At the time of his application to the Court, he had been living in Switzerland for more than eighteen years, apart from a short interruption in 1993-94. He also maintained that he spoke German fluently and that he had established close social ties with Switzerland. By contrast, his ties with his home country Turkey had been reduced to occasional holidays and visits to his mother, who was ill. If he were to return, he would therefore encounter serious difficulties. 40. Regarding his financial situation the applicant claimed that he had not accumulated debts because he had been unwilling to work, lazy or idle. On the contrary, apart from short periods of unemployment, he had always worked while in Switzerland. He had also repeatedly tried, through the acquisition or management of companies in the gastronomic sector, to establish a business of his own as a means of existence for his family but had not been successful owing to lack of knowledge and experience, and also through the fault of third parties. This was the reason why he had been unable to pay maintenance and his family had been dependent on social welfare. Nevertheless, neither the Canton of Basel-Stadt nor Switzerland had been damaged by his behaviour. Moreover, from mid-2004 until 2008, when he had had to leave Switzerland, he had been in a job with a regular income and his family had no longer had to live on social welfare. 41. The applicant also stated that his wife had entered Switzerland at the age of nineteen and, at the time of his application to the Court, had lived in that country for more than twenty-four years. She was suffering from a major depressive disorder and was receiving an invalidity pension. Owing to that illness, she was in need of her husband's support. Lastly, with regard to the marital problems he had had with his wife in previous years, the applicant claimed that the couple had been able to overcome them and they had been living together again since September 2004. Subsequently his wife had also withdrawn the criminal complaint and the divorce petition against him. 42. The applicant further claimed that even during the separation from his wife, he had stayed in daily contact with his children, with whom he maintained a close relationship. Moreover, between September 2004 and 2008, he had played an important part in the children's upbringing as his wife had not been able to raise them on her own. The children were born in Switzerland, had grown up there and went to school there. They had established close social ties with that country and would encounter major obstacles if they attended school in Turkey because they

had knowledge only of spoken Turkish. Their relocation would therefore lead to a considerable upheaval. In this context the applicant also alleged that the Swiss authorities had never conducted a hearing with the rest of his family and the Swiss authorities had thus not taken the children's best interests sufficiently into account. (b) The Government 43. In their observations dated 21 September 2010 and 14 December 2010, the Government submitted that, in view of the applicant's numerous criminal convictions, his expulsion from Swiss territory served the legitimate aim of maintaining public order and safety as provided in Article 8 § 2 of the Convention and was a proportionate interference with his right to respect for family life. The applicant had been sentenced repeatedly for criminal offences between 1995 and 2005. His convictions in 1999, 2003 and 2005 were particularly serious, not only because they included custodial sentences but also because they had been directed against members of his own family. Furthermore, during the criminal proceedings in 1999, his wife had stated that he used to hit her on a regular basis. Moreover, even his conviction in 1999 had not prevented him from refraining from further domestic violence: in May 2004 the police had had to intervene again because he had become violent towards his wife.

44. Neither of the warnings from the cantonal immigration authorities had had any effect on the applicant. He had continuously breached public order and even during the domestic proceedings regarding his residence permit had accumulated further debts. By 6 July 2007, sixty-four certificates of unpaid debts (Verlustscheine) amounting to CHF 362,537 (approximately EUR 296,816) had been issued against him and fifty-four debt enforcement proceedings (Betreibungen) involving a total amount of CHF 317,500 (approximately EUR 259,943) were pending. As established by the domestic courts, his situation was self-inflicted and ultimately obliged him and his family to live off social welfare for many years. In the view of the Government, all this illustrated that the applicant had not been willing to adapt his conduct to comply with the rules governing public order in Switzerland.

45. With regard to the duration of the applicant's stay in Switzerland, the Government found that his situation had to be distinguished from that of persons who were born or had arrived as small children in Switzerland because the applicant was already an adult when he entered that country. Moreover, the purpose of his first stay in Switzerland, between 1989 and 1993, had been his request for asylum and not the reunification of the family. The Government also found that after the first warning from the cantonal immigration authorities in 1997, the applicant could no longer rely on the fact that his residence permit would be continuously extended so that he would be able to remain in Switzerland. Moreover, after 3 June 2004 he had no longer been in possession of a valid residence permit and his presence in Switzerland was reliant solely on the tolerance of the Swiss authorities. Additionally, the applicant had maintained close ties with his home country, which he had visited almost every year since 1999. Between 2003 and 2007 the applicant had even spent a minimum of a couple of months each year in Turkey visiting his parents. 46. As demonstrated by the separation, the discontinued divorce proceedings, and the incidents of domestic violence, the applicant's married life had not been particularly stable between 1999 and 2004. During that period it had, moreover, been principally the applicant's wife who had cared for the children, which - according to the Government - demonstrated that she was able to do so despite her illness. 47. In any case, the Government found that there were no major obstacles preventing the family's return to Turkey. His wife had grown up and lived there until the age of nineteen and it had not been demonstrated that she was particularly well integrated in Switzerland. Furthermore, the children were of an age where they could easily adapt to a new environment, especially since they were familiar with the

language and culture of Turkey, a country they knew from their holidays and from relatives who were still living there. The applicant also originated from Ankara, a city with a high standard of living and a good education system. It had ultimately not been necessary to hold a hearing with the children because it was not disputed in the applicant's or his wife's submissions that he had maintained a close relationship with them. 48. Given all those circumstances, the Government concluded that the applicant had not become integrated in Switzerland in such a way that his expulsion breached his right to respect for family life. His expulsion to Turkey had therefore been a proportionate immigration measure according to Article 8 of the Convention. 2. The Court's assessment (a) General principles 49. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, 19 February 1998, § 52, Reports 1998-I; *Mehemi v. France*, 26 September 1997, § 34, Reports 1997-VI; *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX; and *Slivenko v. Latvia [GC]*, no. 48321/99, § 113, ECHR 2003-X). 50. The Court observes in this context that not all migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy "family life" there within the meaning of Article 8. However, Article 8 also protects the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III) and can sometimes embrace aspects of an individual's social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). It must therefore be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. The expulsion of a settled migrant can therefore constitute an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Üner v. the Netherlands*, no. 46410/99, § 59, 5 July 2005). 51. In order to assess whether an expulsion order and the refusal of a residence permit were necessary in a democratic society and proportionate to the legitimate aim pursued under Article 8 of the Convention, the Court has laid down the relevant criteria in its case-law (see *Üner*, cited above, § 56; *Maslov v. Austria [GC]*, no. 1638/03, § 68-76, ECHR 2008; and *Emre v. Switzerland*, no. 42034/04, §§ 65-71, 22 May 2008). In *Üner*, the Court summarised those criteria as follows: - the nature and seriousness of the offence committed by the applicant; - the length of the applicant's stay in the country from which he or she is to be expelled; - the time elapsed since the offence was committed and the applicant's conduct during that period; - the nationalities of the various persons concerned; - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; - whether the spouse knew about the offence at the time when he or she entered into a family relationship; - whether

there are children from the marriage and, if so, their age; - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and - the solidity of social, cultural and family ties with the host country and with the country of destination. 52. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but it goes hand in hand with European supervision. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Slivenko and Others*, cited above, § 113, and *Boultif*, cited above).

b) Application of the above principles in the instant case (i) Interference with the rights established in Article 8 of the Convention 53. The applicant resided in Switzerland between 1989 and 2008, that is to say for more than eighteen years - with a short interruption in 1993-94 - and he worked and raised his family there. The Court has therefore no reason to doubt that the applicant had established social, professional and family ties in the respondent State. The immigration measures taken by the domestic authorities therefore clearly interfered with his rights under Article 8 of the Convention. This has also been acknowledged by the Swiss Government.

(ii) Justification of the interference 54. The Court has no difficulty in accepting that the interference with the applicant's right to respect for his private and family life was based on domestic law. As established by the domestic authorities (see, in particular, paragraph 25 above), the immigration measures taken by the Swiss authorities were based on the *Foreigners' Residence Act* (see paragraph 29 above) and its implementing ordinance (see paragraph 30 above). 55. The Court also considers that the interference with the applicant's right to respect for his private and family life was in pursuit of legitimate aims provided for in Article 8 § 2 of the Convention, that is to say, in the interests of public order and safety. 56. The current case therefore hinges on the question of whether or not the expulsion order against the applicant and the refusal of a residence permit were necessary in a democratic society. In order to assess whether the respondent State struck a fair balance between the applicant's interests and its own interests in safeguarding public safety and order, the Court will apply the criteria established in its case-law (see paragraph 51 above). The Court also reiterates that in cases like the present one - where an applicant has been expelled but some years later was granted a fresh residence permit for the respondent State - it looks at whether the alleged violation took place during the period in which the applicant was separated from his family. 57. With regard to the applicant's criminal record the Court finds that although most of the offences were minor ones, their number - nineteen in total between 1995 and 2005 - is considerable and indicates to a certain extent that, during this period at least, the applicant was not always willing to respect public order in Switzerland. While the Court agrees with the applicant that his convictions for failing to pay maintenance do not reveal strong criminal intentions, it considers that his conviction for domestic violence in 1999 was a serious one, especially since it was based on not only one but multiple incidents of domestic violence which were in part committed with a dangerous object. The Court further notes that the applicant had received repeated warnings from the immigration authorities and he must therefore have been aware that, under the *Foreigners' Residence Act*, he could be expelled if he committed an offence punishable with imprisonment (see paragraph 29 above). The Court has therefore no reason to doubt that

those convictions, especially when considered in the context of the applicant's behaviour on a whole, were valid reasons for expulsion. However, the Court also takes into account that between September 2005 and January 2008 the applicant was not convicted again.

58. Apart from his criminal convictions, the Court observes that the applicant's continuously growing debts and his failure to pay his family maintenance were pertinent for the domestic authorities' decision when deciding on the immigration measures. In this regard they had considered that despite the immigration authorities' repeated warnings, the applicant's financial situation had continuously deteriorated because of his unsuccessful attempts to establish a business of his own. The Court therefore agrees with the domestic authorities that the applicant lacked the necessary diligence and responsibility in financial and professional matters, with the result that the number of debts increased and he and his family were dependent on social welfare until September 2004. Since the applicant, furthermore, only changed his behaviour in financial matters once he had been informed by the immigration authorities in October 2004 that his expulsion was imminent, the Court takes the view that the domestic authorities rightly assumed that the applicant's behaviour had been a threat to public order. 59. Regarding the duration of the applicant's stay in Switzerland, the Court considers that eighteen years was certainly a long enough period for the applicant to have established strong ties with Switzerland, especially since he was working in that country and was raising his children there. However, the Court cannot overlook the fact that the applicant's residence status remained uncertain between 1989 and 1993, when he was awaiting the outcome of his asylum request, and also between September 2004 and October 2007, when the domestic proceedings regarding his residence permit were pending. The Court is therefore not willing to attribute the same weight to the duration of the applicant's stay in Switzerland as it would do if he had lived there with a valid residence permit throughout that period. Moreover, after 1997 the applicant was repeatedly cautioned by the immigration authorities and he must therefore have been aware that immigration measures were imminent if his situation and behaviour did not improve. 60. The Court further points out that the applicant arrived in Switzerland at the age of almost eighteen. Unlike the case of Emre (cited above, § 77), he had spent his childhood in his home country, Turkey, where he had received a school education. Furthermore, his parents still lived there and, as stated by the Government, between 2003 and 2007 he had regularly returned to Turkey for periods as long as several months. While the Court is prepared to accept that in 2008, at the time he returned to Turkey, the applicant's ties with his country of origin might have weakened after all the years spent in Switzerland, it regards it as sufficiently established that the applicant had retained some social and cultural - including linguistic - ties in addition to family ties. 61. With regard to the applicant's family situation, the Court reiterates that he lived apart from his wife between 1999 and 2004 but maintained a close relationship with his children during those years. In financial matters, however, he grossly neglected his duties towards them. Furthermore, from 2004 until 2008 he once again lived with his wife and helped her with the upbringing of the children. The separation from his family between 2008 and 2013 therefore certainly affected all family members. Contrary to the applicant's submissions, the Court however considers that his expulsion to Turkey had not impeded him to maintain a family life. On the one hand, the Court holds that, it had been possible for the applicant to stay in contact with his family even from a distance without difficulties. It thereby takes into account that between 2008 and 2013, the applicant had been allowed to visit his family once in Switzerland and that his family also had the possibility to visit him in Turkey. On the other

hand, the Court also takes the view that no major obstacles existed in 2008 for the applicant's family to accompany him to Turkey. In this regard it reiterates that the applicant's wife also originates from Turkey, where she lived until the age of nineteen and where she had regularly returned, together with her children, for holidays. It therefore seems clear to the Court that she had maintained social and linguistic ties with her country of origin. Furthermore, the Court agrees with the domestic authorities that at the time of the final domestic decision on 24 October 2007 the children were still of an age where they would be able to adapt to a new environment without serious difficulties, not least because Turkish was their mother tongue, they knew Turkey from their holidays when they were visiting relatives, and they were to return to Ankara, a city with a well-established education system. Therefore, the Court holds that even if their relocation would have led to a certain uprooting since they had spent all their previous life in Switzerland, it cannot be said that their interests as children were not duly taken into account. 62. Lastly, in order to assess the proportionality of the impugned immigration measures, the Court must also take into account the fact that - despite the indefinite duration of the entry ban against the applicant - he was able to visit his family at least once in Switzerland between 2008 and 2013, and the entry ban was permanently lifted on 10 February 2013, when he received a new residence permit for Switzerland. Based on those particular facts, the Court therefore holds that the entry ban was not overly intrusive as regards the applicant's rights under Article 8 of the Convention (see, by contrast, *Emre*, cited above, § 85, and the case-law referred to therein).

63. Taking into account the foregoing, the Court emphasises that all of the above factors were referred to and discussed, with reference to the relevant facts at the material time, by the domestic authorities involved at all four levels of jurisdiction (see paragraphs 23 and 25-26 above). The Court also reiterates that the domestic authorities had in their judgment already noted the fact that the applicant had resumed matrimonial life and had been fulfilling his financial duties towards his family from October 2004 onwards. The Swiss authorities decided at that time, however, that the public interest in favour of deportation prevailed. The Court considers that, having identified the relevant factors, the domestic authorities' assessment of the weight to be accorded to each of these factors was within their margin of appreciation according to Article 8 of the Convention. 64. In conclusion, the Court holds that a fair balance was struck in that the refusal of the applicant's residence permit and his expulsion from Switzerland were proportionate to the aims pursued and could therefore be regarded as necessary in a democratic society. There has accordingly been no violation of Article 8 of the Convention. **Entscheid FOR THESE REASONS, THE COURT, UNANIMOUSLY, 1. Declares the application admissible; 2. Holds that there has been no violation of Article 8 of the Convention.** Done in English, and notified in writing on 25 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Stanley Naismith Registrar Guido Raimondi President In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Raimondi, Sajó and Spano is annexed to this judgment. **G.R.A. S.H.N. JOINT CONCURRING OPINION OF JUDGES RAIMONDI, SAJÓ AND SPANO 1. We agree with the Court's resolution of this case. However, we write separately to express disagreement with the way in which the Court categorises the aim, in Convention terms, of the domestic authorities' reference to the applicant's financial situation and its effect on the decision to expel him from Switzerland in 2004. 2. The Court has previously held that one of the legitimate aims that a Contracting state may pursue under Article 8 § 2, when deciding whether to expel a foreigner, is whether the interference with the foreigner's right**

to family and private life is justified on the basis of the "economic well-being of the country" (see *Hasanbasic v. Switzerland*, no. 52166/09, § 52, 11 June 2013). In our view, the financial conduct of the applicant in the present case was an element that the domestic authorities were justified in taking into account on this basis. 3. However, in paragraph 58, in fine, of the Court's judgment, it is stated that the domestic authorities "rightly assumed that the applicant's [financial] behaviour had been a threat to public order". 4. In this regard, we note, that "public order", as such, is not listed as one of the legitimate aims under the limitation clause of Article 8 § 2 justifying a restriction on the rights afforded in paragraph 1 of that Article. However, the limitation clause does contain the synonymous aims of "public safety" and "the prevention of disorder or crime". 5. In our view, it is clear that a foreigner's financial disarray, provided no criminal offence is involved, and in particular, the extent to which he or she has had to rely on material support from the State, cannot be equated with conduct that is capable, in principle, of constituting a threat to "public safety" within that term's autonomous meaning under the Convention. It is furthermore self-evident that an expulsion order on the basis of a foreigner's financial conduct, if it does not contravene domestic law, cannot be justified by the aim of "the prevention of disorder or crime". 6. It is true that the respondent Government did not directly plead before this Court that the expulsion order in the applicant's case was based on the legitimate aim of securing the economic well-being of the country and thus only referred to the aim of securing public order. This is, in our view, immaterial for the resolution of this case and the way in which the Court must examine the facts under Article 8. It may well be that domestic legislation, including a concept such as "public order", can be applied by domestic authorities to a foreigner's financial situation, as seems to have been the case here. However, this does not mean that the same conclusion obtains when the Court is engaged in interpreting and applying the autonomous concepts under Article 8 to the facts of an application lodged with the Court.

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