BGE 20201222_6325_15 vom 22. Dezember 2020

Bundesgericht (BGE), 2020-12-22, FR

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FR: BGE 20201222_6325_15 du 22 décembre 2020

IT: BGE 20201222_6325_15 del 22 dicembre 2020

Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH. Révocation de l'autorisation d'établissement d'un ressortissant espagnol, étranger de la deuxième génération, condamné pour infractions contre l'intégrité sexuelle. Les autorités nationales ont examiné de manière détaillée la situation personnelle du requérant et les différents intérêts en jeu et leurs conclusions n'apparaissent ni arbitraires ni manifestement déraisonnables. Eu égard à la gravité des infractions commises par le requérant, ainsi qu'aux liens maintenus avec l'Espagne, et en prenant en considération le droit souverain des États à contrôler et réglementer le séjour des étrangers sur leur territoire, la Cour estime que les autorités nationales ont mis en balance l'intérêt du requérant au respect de sa vie familiale et l'intérêt de l'État au maintien de la sûreté publique, à la défense de l'ordre et à la prévention des infractions pénales. L'État défendeur n'a pas accordé un poids excessif à ses propres intérêts en décidant de révoquer l'autorisation d'établissement du requérant et en ordonnant son expulsion et il n'a pas dépassé la marge d'appréciation dont il jouissait dans le cas d'espèce (ch. 55-75). Conclusion: non-violation de l'art. 8 CEDH. Inhaltsangabe des BJ (4. Quartalsbericht 2020) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Widerruf der schweizerischen Niederlassungsbewilligung eines spanischen Staatsangehörigen, der u. a. wegen sexueller Handlungen an einer Minderjährigen verurteilt wurde Der Beschwerdeführer ist spanischer Staatsangehöriger, in der Schweiz geboren und hat immer dort gelebt. Er hat einen in der Schweiz geborenen Sohn und ist mit einer weissrussischen Staatsangehörigen verheiratet. Im Jahr 2009 wurde er wegen sexueller Handlungen mit der minderjährigen Tochter seiner ausserehelichen Partnerin verurteilt. Nach einem neuen Strafverfahren und angesichts zahlreicher Verlustscheine widerrief das kantonale Migrationsamt seine Niederlassungsbewilligung, was das Bundesgericht bestätigte. Der Beschwerdeführer verliess daraufhin die Schweiz in Richtung Spanien. Vor dem Gerichtshof machte er eine Verletzung seines Rechts auf Achtung des Privat- und Familienlebens (Art. 8 EMRK) geltend. In seinem Urteil verwies der Gerichtshof auf seine ständige Rechtsprechung und befand, dass die Schweizer Behörden die verschiedenen Interessen sorgfältig abgewogen hatten. Keine Verletzung von Artikel 8 EMRK (einstimmig).

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Volltext

Bundesgericht (BGE) EGMR 22.12.2020 20201222_6325_15 (Z gegen Schweiz) Tribunal fédéral (ATF) CEDH 22.12.2020 20201222_6325_15 (Z gegen Schweiz) Tribunale federale (DTF) CEDU 22.12.2020 20201222_6325_15 (Z gegen Schweiz)

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Urteilskopf 6325/15 Z gegen Schweiz Urteil no. 6325/15, 22 décembre 2020 Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH . Révocation de l'autorisation d'établissement d'un ressortissant espagnol, étranger de la deuxième génération, condamné pour infractions contre l'intégrité sexuelle. Les autorités nationales ont examiné de manière détaillée la situation personnelle du requérant et les différents intérêts en jeu et leurs conclusions n'apparaissent ni arbitraires ni manifestement déraisonnables. Eu égard à la gravité des infractions commises par le requérant, ainsi qu'aux liens maintenus avec l'Espagne, et en prenant en considération le droit souverain des États à contrôler et réglementer le séjour des étrangers sur leur territoire, la Cour estime que les autorités nationales ont mis en balance l'intérêt du requérant au respect de sa vie familiale et

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as follows. 5. The applicant lived in Switzerland and held a permanent residence permit (Niederlassungsbewilligung) since birth. In 1991 his son, who still lives in Switzerland, was born (out of wedlock). In 2003 the applicant married A.G. (born in 1976), a Belarusian citizen, who was subsequently granted a residence permit as part of family reunification. 6. The applicant's mother, who also lived in Switzerland, returned to Spain in 2001. One of the applicant's brothers and his sister are still living in Switzerland. Another brother lives in Spain. 7. On 11 May 2009 the applicant was convicted by the competent District Court of multiple counts of sexual activity with a minor (mehrfache sexuelle Handlungen mit einem Kind), multiple counts of attempted sexual activity with a minor (mehrfacher Versuch der sexuellen Handlungen mit einem Kind), multiple counts of sexual assault (mehfache sexuelle Nötigung), rape (Vergewaltigung) and multiple counts of pornography (mehrfache Pornographie) committed between March and December 2006. The court considered the applicant to have a high and very serious level of culpability. The victim was the then 13-year-old daughter of his extramarital partner and the offences had been committed over a relatively long period of ten months. The District Court was of the opinion that the applicant had disregarded the victim's right to sexual self-determination without hesitation and had committed acts against the young daughter of his "sexual partner at the time" with complete disregard for the child's development. By taking advantage of his position of authority, he had abused her trust in the most shameful way to satisfy his inferior sexual inclinations. In doing so, he had not shied away from using psychological and physical violence and threats when pursuing his inappropriate goals. As a result of these terrible experiences, the victim developed serious psychological problems, from which she still suffers to date. 8. The applicant was sentenced to thirty months' imprisonment. He served six months under electronic surveillance (house arrest) and the remaining two years were suspended on probation because prior to his conviction the applicant had a clean criminal record. 9. Nine months after the end of his probation, the applicant installed three miniature cameras in the apartment of his former extramarital partner, the victim's mother. Criminal proceedings were opened against him in 2012 for coercion and breach of secrecy or privacy through the use of recording devices. The complaint was withdrawn and a settlement was reached, the applicant admitting to the offences. As a result, no conviction was entered. 10. By a decision of 20 January 2014, the competent Migration Office withdrew the applicant's permanent residence permit and ordered him to leave Switzerland by 30 April 2014. It based the withdrawal of the permit on Article 63 § 2 and Article 62 (b) of the Federal Act on Foreign Nationals of 16 December 2005 ("FAFN"; see paragraphs 29-30 below). 11. With regard to the public interest, the Migration Office considered that the applicant had disregarded fundamental norms and massively violated valuable legal interests. It also observed that there were forty-five open loss certificates (offene Verlustscheine) against the applicant amounting to a total of approximatively 75,000 Swiss francs (CHF). 12. It also held that the sexual assaults had represented a serious interference in the sexual development of the then 13-year-old girl. There were therefore considerable security and public safety interests in revoking the applicant's permanent residence permit. 13. Furthermore, the Migration Office pointed to the fact that the applicant had reoffended only nine months after the end of his probation. Even though he had admitted to having installed cameras in his ex-girlfriend's apartment, no conviction had been entered because the complaint had been withdrawn and settlement had been reached. Since particularly valuable legal interests were at stake, the risk of further delinquency was all the more unacceptable. 14. As to proportionality, the Migration Office held that the revocation of the

permanent residence permit would certainly hit the applicant hard, as he had lived in Switzerland since birth. However, he still maintained contact with his homeland and spoke Spanish. The professional experience he had gained in Switzerland would be an advantage for him in Spain. According to the Migration Office, the relationship with his wife could not stop him from committing criminal offences. His wife was free to follow him to Spain. However, if she decided to stay in Switzerland, she could maintain the relationship with her husband in the form of visits, e-mails, Skype, telephone calls and so forth. In addition, the Migration Office raised the question of how stable the relationship with his wife was, given that he had had an intimate relationship with the victim's mother for several years. 15. In conclusion, the Migration Office considered that the general interest in ensuring public safety outweighed the applicant's interest in being able to continue his private and family life with his wife in Switzerland. 16. The applicant filed an appeal with the competent Administrative Court in which he argued that he had not reoffended since the first judgment and that there were no indications that he would do so. In addition, the applicant argued that no new debt recovery operations had been recorded since 2000 and that he was fully integrated in Switzerland. 17. By a judgment of 26 June 2014, the Administrative Court dismissed this appeal, ordering the applicant to leave Switzerland by 30 September 2014. It based its decision on the same legal and public-interest grounds as those referred to by the Migration Office. 18. As to the proportionality of the measure, the Administrative Court held with regard to the right to respect for his private life that the permanent residence permit of a foreigner who had resided in Switzerland for a long time could only be revoked with particular restraint. That court also observed that no new debt recovery operations had been recorded since 2000, but that the applicant was far from being able to reimburse all his debts. 19. It further stated that even though the applicant had spent his entire life in Switzerland, part of his family lived there and he had no close relationship with Spain, he could still be expected to leave Switzerland and move to Spain, as it offered comparable sociocultural conditions and had a similar economic system. His mother and eldest brother lived there. Due to his good professional education and his knowledge of Spanish, he would be able to find a comparable job there and create an environment for new relationships. There appeared, therefore, to be no overriding private interest in him staying in Switzerland. 20. The Administrative Court assessed the proportionality of the measure with regard to the right to respect for his family life in a similar way. 21. In the court's view, the applicant's 23-year-old son did not fall within the scope of Article 8 of the Convention because he was an adult. Even though he had always sought to be close to the applicant, he was now leading an independent life. He lived with his girlfriend during the week and had been working since 2013. Special elements of dependency other than normal emotional ties between the applicant and his son had not been claimed and were not evident from the files. Spain was relatively easy to reach from Switzerland, which was why the relationship between the applicant and his son could be maintained even from a distance through occasional visits and various means of communication. This also applied to the applicant's brother and sister living in Switzerland. 22. As regards the applicant's wife, the Administrative Court held that she would certainly be hit hard if she had to follow the applicant to Spain. The applicant was however himself to blame for the consequences that his expulsion would have for his wife. She could still choose not to follow him to Spain. If she decided to stay in Switzerland, she could maintain her relationship with the applicant in the form of visits, e-mail, Skype, telephone calls and so forth. 23. The applicant appealed to the Federal Supreme Court of Switzerland, submitting, inter alia , that the revocation of the permanent

residence permit was disproportionate. 24. The Federal Supreme Court dismissed the applicant's appeal with a judgment of 5 January 2015, stating that the applicant's level of culpability (violation of the sexual integrity of a child) was extremely serious. He had committed a serious breach of public order and security through the offences committed. A risk of recidivism could not be ruled out, especially considering the later installation of a camera in the apartment of the victim's mother and her surveillance by a private detective in 2012, shortly after the end of his probation. The court stated that the applicant had thus shown that he was unwilling or unable to comply with the Swiss legal system in the future and that he therefore posed a threat to public safety. 25. The Federal Supreme Court also reiterated that there were forty-five open loss certificates against the applicant amounting to a total of approximatively 75,000 CHF, which also had to be taken into account in the assessment of the applicant's case. 26. The Federal Supreme Court further held that the lower court had correctly balanced the interests involved. The public interest was not outweighed by the private interests of the applicant in remaining in Switzerland. Contrary to the applicant's opinion, the difficult economic situation in Spain did not constitute such an overriding private interest or justify his stay in Switzerland. 27. The Federal Supreme Court held that the right to respect for one's private and family life was not absolute. Even though in the present case his permanent residence permit could only be revoked with particular restraint and the court had not failed to recognise the hardship that this would entail for the applicant, the offences committed, the applicant's level of culpability and the behaviour he had shown after committing the offences were so serious that they outweighed the private interest of the latter in remaining in Switzerland. 28. The applicant left Switzerland on 28 February 2015 and registered in Gandia (Spain) on 9 March 2015. According to information provided to the Court in April 2020, he currently lives in Spain and is unemployed. His wife lives in Switzerland. I. RELEVANT LEGAL FRAMEWORK 29. The relevant provisions of the Federal Act on Foreign Nationals of 16 December 2005 (Bundesgesetz über die Ausländerinnen und Ausländer ; SR 142.20 systematic report - "the FAFN"), as in force at the material time, read as follows: Article 62 "1. The competent authority may revoke authorisations, with the exception of a permanent residence permit, and other orders under this Act if the foreign national: (a) or their representative in the permit procedure provides false information or conceals material facts; (b) has been given a long custodial sentence or made subject to a criminal measure within the meaning of Articles 59 to 61 or 64 of the Criminal Code." Article 63 "1. The permanent residence permit can only be revoked if: (a) the conditions laid down in Article 62 § 1 (a) or (b) are fulfilled; (b) the foreigner has seriously violated or endangered public safety and order in Switzerland or abroad or endangered internal or external security; ... 2. The permanent residence permit of foreign nationals who have resided in Switzerland continuously and lawfully for more than [fifteen] years may only be revoked on the grounds of paragraph 1 (b) and Article 62 § 1 (b)." 30. Article 5 of Annex I to the Agreement of 21 June 1999 between the Swiss Confederation and the European Community and its member States on the Free Movement of Persons (Abkommens zwischen der Schweizerischen Eidgenossenschaft einerseits und der Europäischen Gemeinschaft und ihren Mitgliedstaaten andererseits über die Freizügigkeit ; SR 0.142.112.681 - "the AFMP") reads as follows: Public Order: "The rights granted under the provisions of this Agreement may be restricted only by means of measures which are justified on grounds of public order, public security or public health. ..." II. Other relevant Materials 31. Recommendation Rec(2000)15 of the Committee of Ministers concerning the security of residence of long-term migrants,

adopted on 13 September 2000, states inter alia : "4. As regards the protection against expulsion (a) Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria: the personal behaviour of the immigrant; the duration of residence; the consequences for both the immigrant and his or her family; existing links of the immigrant and his or her family to his or her country of origin. (b) In application of the principle of proportionality as stated in paragraph 4 (a), member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled: - after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension; - after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years of imprisonment without suspension. After twenty years of residence, a long-term immigrant should no longer be expellable. (c) Long-term immigrants born on the territory of the member State or admitted to the member State before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen. Long-term immigrants who are minors may in principle not be expelled. (d) In any case, each member State should have the option to provide in its internal law hat a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety." 32. Recommendation Rec(2002)4 of the Committee of Ministers on the legal status of persons admitted for family reunification, adopted on 26 March 2002, reads as follows in the relevant parts: IV. Effective protection against expulsion of family members "1. When considering the withdrawal, refusal to renew a residence permit or the expulsion of a family member, member states should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and wellbeing of children. ..." 33. Recommendation 1504 (2001) of the Parliamentary Assembly on the non-expulsion of long-term immigrants, adopted on 14 March 2001, reads as follows, inter alia : "11. Taking account of Rec(2000)15 of the Committee of Ministers concerning the security of residence of long-term migrants, the Assembly recommends that the Committee of Ministers: 11.2 invite the governments of member states: ... (c) to undertake to ensure that the ordinary-law procedures and penalties applied to nationals are also applicable to long-term immigrants who have committed the same offence; ... (g) to take the necessary steps to ensure that in the case of long-term migrants the sanction of expulsion is applied only to particularly serious offences affecting State security of which they have been found guilty; (h) to guarantee that migrants who were born or raised in the host country and their under-age children cannot be expelled under any circumstances; ..." Erwägungen THE LAW I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION 34. The applicant complained that the facts as submitted disclosed a violation of his right to respect for private and family life under Article 8 of the Convention, which reads as follows: "1. Everyone has the right to respect for his private and family life ... 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 rights and freedoms of others." A. Admissibility 35. The Government considered the application manifestly ill-founded and therefore inadmissible. 36. The applicant claimed to have satisfied the admissibility criteria. 37. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible. B. Merits 1. The parties' submissions (a) The applicant 38. The applicant claimed that he had a close relationship with his son, M.G. (born in 1991). M.G. had spent most of his youth in children's homes, but had lived with the applicant after the age of 18. Even though M.G. now lives with his girlfriend, the applicant pointed out the strength of their relationship. Accordingly, he claimed that his relationship with his now adult son fell within the scope of protection of Article 8 § 1 of the Convention. 39. The applicant stated, relying on the case of Üner v. the Netherlands ([GC], no. 46410/99 , ECHR 2006-XII) that the length of residence in the expelling State was decisive with regard to the proportionality of an expulsion, especially in the case of foreigners born in the expelling State, which was why the Council of Europe recommended in Recommendation (2000)15 that a long-term resident immigrant should not be expelled after more than twenty years of residence. 40. The applicant denied that his level of culpability was very serious as regards the acts underlying the judgment of 9 May 2009. The most serious offence, rape, was punishable by a sentence of between one and ten years' imprisonment. The fact that he had only been sentenced to thirty months' imprisonment and that twenty-four months of that sentence had been suspended on probation spoke in his favour. 41. The applicant further submitted that, from a prognostic point of view in particular, it had to be noted that he had had to stand trial for the first time in 2009. The later criminal proceedings for breach of secrecy or privacy through the use of recording devices had been withdrawn by the complainant. She had been of the opinion that there was no longer any interest on her part in criminal proceedings. Moreover, it was undisputed that he was socially committed and very well integrated both professionally and personally in Switzerland. 42. His marriage had not only outlasted and survived the extramarital relationship and the criminal proceedings; he could only manage to make ends meet in Spain with and thanks to the support of his wife. 43. During his stay in Spain, he had only been able to find short-term employment, which offered little income. He had been receiving monthly unemployment benefits of 114.05 euros (EUR) since September 2015. This entitlement had ceased at the end of September 2017. As he had never worked in Spain for more than a year, he was no longer entitled to unemployment benefits. 44. In terms of his integration in Spain, it had to be reiterated that he only spoke broken Spanish. Moreover, his mother had since died. He emphasised that he had no contact with his brother living in Spain. Without any social network, the applicant was on his own. 45. His wife was of Belarusian nationality and spoke no Spanish. Even though she was well educated, she had had to start her professional career in Switzerland in the cleaning business and had only been able to work as a bookkeeper after completing a commercial apprenticeship. She would not, for linguistic reasons and probably also because of her age (born in 1976), be able to make a living. 46. In summary, after spending forty-five years in Switzerland, his expulsion had been based on merely one conviction. Moreover, it had occurred despite the fact that the first-instance court had not considered there to be an increased risk of recurrence, and despite the fact that he had completed his probation without further breaking the law. There was no confirmable assessment which presumed that he posed an above-average threat to public security. The expulsion in the present case had to therefore be considered disproportionate. (b) The Government 47. The Government

submitted in relation to the right to family life that even if the relationship between the applicant and his son was very close, there was no evidence of further elements of dependency involving more than the normal emotional ties. The applicant could not invoke the right to respect for family life in relation to his son or to his sister or brother, who lived in Switzerland. 48. It was appropriate to note the nature of the applicant's conviction, including the fact that the sexual abuse had taken place over a period of several months, and the length of the custodial sentence imposed (thirty months, twenty-four of which had been suspended on probation). In addition, the applicant's subsequent conduct was also relevant. The Government reiterated that shortly after the end of his probation, he had installed three surveillance cameras in the apartment of the victim's mother and hired a private investigator, which he had admitted. This showed that the applicant was unwilling to comply with the rules of law in force. The Swiss courts could not therefore be criticised for holding that his conduct constituted a current threat to public order and drawing the conclusion that there was a risk of recidivism. 49. Referring to the nature and seriousness of offences against the sexual integrity of a child, the Government stated that there had been an overriding public interest in not tolerating the applicant's continued presence in Switzerland. His expulsion had been motivated by the need to maintain public order, prevent criminal offences and protect the rights and freedoms of others. 50. As to the necessity of the interference, the Government pointed out that the Court had always emphasised that the State concerned enjoyed a certain margin of appreciation and that, in pursuance of their task of maintaining public order, Contracting States had the power to expel an alien convicted of criminal offences. 51. With regard to the nature and seriousness of the offence committed by the applicant, the Government stated that the applicant's guilt had been classified as extremely serious. His attempts to minimise ex post the seriousness of the offences committed and his guilt did not therefore correspond to the findings of the criminal court. In the case of serious criminal offences (such as rape), the FAFN did not require that the public remain exposed to a risk, however small, of further damage to important legal interests. 52. The Government also pointed out that the applicant's wife was of Belarusian nationality. No children had been born from the marriage. The marriage had not prevented the applicant from committing serious crimes or from maintaining an extramarital relationship with the victim's mother. The applicant's wife had held a residence permit since 2014; she therefore had the choice of whether or not to follow him abroad. She could encounter difficulties if she opted to live with him abroad. However, her integration in Spain would not come up against insurmountable difficulties. 53. The Government recognised that the return to Spain undoubtedly had significant consequences for the applicant. But he spoke Spanish and had a brother there. These elements could facilitate his integration into Spanish society. 54. The Government concluded that the revocation of the applicant's permanent residence permit had been a necessary measure within the meaning of Article 8 § 2 of the Convention and that the domestic courts had not exceeded the margin of appreciation which they enjoyed in the present case. 2. The Court's assessment (a) General principles 55. 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; Boujlifa v. France , 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI, and Üner , § 54, cited above). 56. The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance 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 Article 8 § 1, 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; Slivenko v. Latvia [GC], no. 48321/99 , § 113, ECHR 2003-X ; and Üner v. the Netherlands [GC], no. 46410/99 , § 54, ECHR 2006-XII). 57. In the case of Üner (cited above, §§ 57-58), the Court summarised the relevant criteria to be applied in determining whether interference, in the form of expulsion, is necessary in a democratic society: - 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 of the marriage, and if so, their age; and - 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. 58. The Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for interference, but that 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 Boultif , § 47, and Slivenko , § 113, both cited above). 59. The Court also points out that domestic courts must give sufficiently detailed reasons for their decisions, not least to enable the Court to carry out the European supervision entrusted to it (see, mutatis mutandis , X v. Latvia [GC], no 27853/09 , § 107, ECHR 2013 , and El Ghatet v. Switzerland [GC], no 56971/10 , § 47, 8 November 2016). The Court reiterates that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile (Maslov , cited above, § 75). 60. In recent cases concerning the expulsion of settled migrants, the Court declined to substitute its conclusions for those of the domestic courts, which had thoroughly assessed the applicants' personal circumstances, carefully balanced the competing interests and taken into account the criteria set out in its case law, and reached conclusions which were "neither arbitrary nor manifestly unreasonable" (see, in particular, Hamesevic v. Denmark (dec.), no. 25748/15 , § 43, 16 May 2017 and Alam v. Denmark (dec.), no. 33809/15 , § 35, 6 June 2017; see also Ndidi v. the United Kingdom , no. 41215/14 , §§ 76-81, 14 September 2017). The assessment of the facts must be "acceptable" (Saber and Boughassal v. Spain , nos. 76550/13 and 45938/14 , § 41, 18 December 2018). 61. On the other hand, insufficient reasoning on the part of the domestic courts, without any proper balancing of the interests involved, is contrary to the requirements of Article 8 of the Convention (Saber and

Boughassal, cited above, § 42). This is the case where the domestic authorities fail to demonstrate convincingly that interference with a right protected by the Convention is proportionate to the aims pursued and therefore corresponds to a "pressing social need" within the meaning of the above-mentioned case-law (see El Ghatet , cited above, § 47, and I.M. v. Switzerland , no. 23887/16, §§ 72 and 77, 9 April 2019). (b) Application of the above principles in the instant case 62. In the examination of the present case, the Court keeps in mind that the expulsion of long-term immigrants should be an exception (see, inter alia , Recommendation (2000)15 of the Committee of Ministers and Recommendation 1504(2001) of the Parliamentary Assembly; paragraphs 31 and 33 above; and Maslov , cited above, § 75). The Court finds it useful to clarify that the term "long-term immigrant" commonly applies to persons who, such as the applicant, are born in the country from which they are expelled and have lived there all their life ("long-terms residents"). 63. It has no difficulty in accepting that the impugned measures constituted an interference with the applicant's right to respect for his family life and right to respect for his private life, that the interference was in accordance with the law and that it pursued the legitimate aims of the interest of public safety and the prevention of disorder or crime. 64. As far as the nature and seriousness of the offences committed by the applicant are concerned, the Court observes that the applicant was, in 2009, convicted of multiple counts of sexual activity with a minor, multiple counts of attempted sexual activity with a minor, multiple counts of sexual assault, rape and multiple counts of pornography, committed between March and December 2006. He was sentenced to thirty months' imprisonment, twenty-four of which were suspended on probation. The domestic courts established that the applicant had even used psychological and physical violence and threats to satisfy his sexual needs. They also observed a high and very serious level of culpability on the part of the applicant. 65. The Court, in so far as it is competent to do so, finds these conclusions neither unreasonable nor arbitrary. It is also not convinced by the applicant's submission that his guilt was not severe because he had only been sentenced to two years and six months' imprisonment as opposed to the maximum sentence possible for rape of twenty years' imprisonment. The judging District Court itself had established serious culpability, and the actual reason for the suspended part of his sentence was because until then he had had a clean criminal record (paragraph 8 above). There is no reason for the Court to challenge these findings. 66. In sum, the Court considers that the applicant committed very serious offences against important legal interests of the victim. 67. As regards the length of the applicant's stay in the host country, the Court observes that the applicant lived his entire life in Switzerland, the country in which he was born in 1968. His stay in Switzerland was thus of a considerable length of time. In such circumstances, very serious reasons are required to justify expulsion. 68. With regard to the time elapsed since the offence was committed and the applicant's conduct during that period, the Court notes that he committed the above-mentioned offences in 2006 and was convicted of them in 2009. It also notes that only nine months after the end of his probation the applicant set up cameras in the apartment of his former extra-marital partner and had her monitored by a private detective. Even though the proceedings were discontinued because the complaint was withdrawn and a settlement was concluded, the applicant admitted to the offences. This shows that he was not deterred by the prison sentence and that there was a real risk of relapse. The Court shares the argument of the Federal Supreme Court that such a risk need not be accepted for legal interests as important as the sexual integrity of minors. 69. As regards the applicant's family situation, he has been married to his wife since 2003 and it has not been explicitly

disputed by the respondent Government that real and effective family ties existed between the applicant and his wife. The marriage remains childless. It should be noted that the applicant's wife could not have known about the offences at issue at the time when she entered into a family relationship with the applicant, the couple having married in 2003 and thus prior to the commission of the offences in 2006. 70. The Court observes that the applicant's wife is a Belarusian national. She was born in 1976 and entered Switzerland in 2002. The Court shares the domestic courts' view that the expulsion of the applicant would certainly affect her. It follows from the information provided by the applicant by letter in April 2020 (see paragraph 28 above), that she still lives in Switzerland. The Court considers that she can maintain contact with the applicant through means of telecommunication and visits, as considered by the domestic courts. 71. The applicant has an adult son from a previous relationship. Despite his claim that he has a very close relationship with his son, the latter has been living with his girlfriend since 2014. The Court endorses the domestic courts' conclusion that the applicant could not demonstrate, and it is also not apparent from the files, that there exist additional elements of dependency other than normal emotional ties between him and his adult son which would make it necessary to consider this relationship with regard to the right to respect for "family life" within the meaning of Article 8 of the Convention (see, in particular, Kwakye-Nti and Dufie v. the Netherlands (dec.), no. 31519/96, 7 November 2000, and, mutatis mutandis , Emonet and Others v. Switzerland , no. 39051/03 , § 80, 13 December 2007, and Belli and Arquier-Martinez v. Switzerland , no. 65550/13, § 65, 11 December 2018). 72. As to the strength of the applicant's social, cultural and family ties with the host country, the Court notes that the applicant lived his entire life in Switzerland. He went to school and has worked in different jobs there. His friends and some of his siblings live in Switzerland. That country thus became the centre of his life. Moreover, he speaks German. In these circumstances, the Court does not doubt that the applicant had strong ties with Switzerland. The applicant's social and cultural integration is not in dispute. 73. As to the applicant's ties with the country of destination, the Court notes that he is a Spanish citizen. It can be seen from the parties' submissions that he has maintained contact with Spain and speaks Spanish, even though perhaps only imperfectly. Moreover, one of his brothers still lives in Spain. As a result, the Court finds that the applicant can rely on certain ties with Spain. 74. The foregoing considerations enable the Court to conclude that the domestic authorities reviewed all the above-mentioned factors in detail and drew conclusions that appear neither arbitrary nor manifestly unreasonable. Against the background of the seriousness of the offences and the ties with Spain that he still maintains (in particular language and nationality) and considering the sovereignty of States to control and regulate the residence of aliens on their territory, the Court accepts that the domestic authorities balanced the applicant's right to respect for his family life reasonably against the State's interests in public safety and in preventing disorder and crime (contrast I.M. v. Switzerland , § 78, and El Ghatet , §§ 52-53, both cited above). It cannot find that the respondent State attributed excessive weight to its own interests in deciding to revoke the applicant's permanent residence permit and order his expulsion to Spain. The Court therefore finds that the respondent State has not overstepped the margin of appreciation afforded to it in the present case. 75. It follows that there has 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 22 December 2020, pursuant to

Rule 77 §§ 2 and 3 of the Rules of Court. Milan Blaško Registrar Paul Lemmens President