

BGE 20241126_28995_20 vom 26. November 2024

Bundesgericht (BGE), 2024-11-26, DE

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH. Expulsion obligatoire d'un ressortissant tunisien condamné pour obtention illicite de prestations d'une assurance sociale ou de l'aide sociale. Les autorités suisses ont dûment examiné la situation personnelle du requérant et les différents intérêts en jeu conformément aux critères établis par la CourEDH. Elles disposaient d'arguments solides pour justifier son expulsion de Suisse pour une durée de cinq ans. L'ingérence était proportionnée au but légitime poursuivi et nécessaire dans une société démocratique au sens de l'art. 8 par. 2 CEDH (ch. 41-53). Conclusion: non-violation de l'art. 8 CEDH. Inhaltsangabe des BJ (4. Quartalsbericht 2024) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Ausweisung eines tunesischen Staatsbürgers. Der tunesische Beschwerdeführer kam 1999 im Alter von 19 Jahren in die Schweiz. Im Jahr 2005 heiratete er eine tunesische Staatsbürgerin, die zu ihm in die Schweiz zog. Das Paar wurde Eltern von drei Kindern. Zwischen 2005 und 2017 arbeitete der Beschwerdeführer nur vorübergehend und er und seine Frau bezogen Sozialhilfe. Im Jahr 2013 wurde er wegen Fahrzeugdiebstahls und Fahrens ohne Ausweis zu einer Geldstrafe von 60 Tagessätzen verurteilt. 2018 wurde er wegen Betrugs und des unrechtmässigen Bezugs von Sozialhilfeleistungen zwischen 2005 und 2017 zu einer bedingten Freiheitsstrafe von zwei Jahren und einer Geldstrafe von neunzig Tagessätzen verurteilt. Gemäss Artikel 66a des Strafgesetzbuchs ordnete das Bezirksgericht Winterthur eine Landesverweisung für die Dauer von fünf Jahren an. Auf Berufung des Beschwerdeführers hin verurteilte das Obergericht des Kantons Zürich den Beschwerdeführer zu einer Freiheitsstrafe von 30 Monaten, davon 20 Monate bedingt, und hielt die angeordnete Geldstrafe sowie die vom Bezirksgericht verfügte Ausweisung aufrecht. Das Bundesgericht wies seine Beschwerde ab. Vor dem Gerichtshof machte der Beschwerdeführer eine Verletzung von Artikel 8 EMRK geltend. Der Gerichtshof stellte fest, dass sich die angeordnete Ausweisung zwar nur auf die letzten sieben Monate der begangenen Straftaten bezog (Artikel 66a StGB trat erst am 1. Oktober 2016 in Kraft), das Bundesgericht jedoch klargestellt hatte, dass die Gesamtdauer der begangenen Straftaten und das frühere Verhalten des Beschwerdeführers ebenfalls zu berücksichtigen seien. Er stellte ausserdem fest, dass die Ehefrau des Beschwerdeführers wegen derselben Taten verurteilt worden war und auch gegen sie eine Ausweisung ausgesprochen worden war. Im Rahmen der Interessenabwägung berücksichtigte er insbesondere die geringe Integration des Beschwerdeführers in der Schweiz und die Einschätzung der innerstaatlichen Behörden, wonach die Kinder des Beschwerdeführers in Tunesien leben könnten. Der Gerichtshof stellte fest, dass die innerstaatlichen Behörden alle relevanten Kriterien geprüft und eine umfassende Interessenabwägung vorgenommen haben, wobei sie insbesondere das übergeordnete Interesse der Kinder, in der Schweiz zu bleiben, berücksichtigt haben, zumal sie die erste Ehefrau des Beschwerdeführers zu ihrer Pflegemutter erklärt haben. Keine Verletzung von Artikel 8 EMRK (einstimmig).

Regeste SUISSE: Art. 8 CEDH. Expulsion obligatoire d'un ressortissant tunisien condamné pour obtention illicite de prestations d'une assurance sociale ou de l'aide sociale. Les autorités suisses ont dûment examiné la situation personnelle du requérant et les différents intérêts en jeu conformément aux critères établis par la CourEDH. Elles disposaient d'arguments solides pour justifier son expulsion de Suisse pour une durée de cinq ans. L'ingérence était proportionnée au but légitime poursuivi et nécessaire dans une société démocratique au sens de l'art. 8 par. 2 CEDH (ch. 41-53). Conclusion: non-violation de l'art. 8 CEDH. Synthèse de l'OFJ (4ème rapport trimestriel 2024) Doit au respect de la vie privée et familiale (art. 8 CEDH) ; expulsion d'un ressortissant tunisien. Le requérant, un ressortissant tunisien, est arrivé en Suisse en 1999 à l'âge de 19 ans. En 2005, il a épousé une ressortissante tunisienne, qui l'a rejoint en Suisse. Le couple a eu trois enfants. Entre 2005 et 2017 le requérant n'a travaillé que de manière temporaire et lui et son épouse ont perçu des allocations de l'aide sociale. En 2013, il a été condamné à une peine pécuniaire de soixante jours-amende pour vol de véhicule et conduite sans permis. En 2018, il a été condamné à une peine privative de liberté de 24 mois avec sursis et une peine pécuniaire de nonante jours-amende pour fraude et pour avoir perçu de manière irrégulière des allocations de l'aide sociale entre 2005 et 2017. Le Tribunal de district de Winterthur a ordonné son expulsion pour une durée de cinq ans en application de l'article 66a du Code pénal. Saisi d'un appel du requérant, le Tribunal cantonal de Zurich a condamné le requérant à une peine privative de liberté de 30 mois, dont 20 avec sursis, et maintenu la peine pécuniaire et l'expulsion ordonnées par le Tribunal de district. Le recours du requérant auprès du Tribunal fédéral a été rejeté par ce dernier. Devant la Cour, le requérant a fait valoir une violation de l'article 8 CEDH. La Cour a noté que, si l'expulsion ordonnée ne se rapportait qu'aux derniers sept mois des infractions commises (l'article 66a CP n'étant entré en vigueur qu'au 1er octobre 2016), le Tribunal fédéral avait néanmoins précisé que la durée totale des infractions commises et le comportement antérieur du requérant devaient également être pris en compte. Elle a également relevé que l'épouse du requérant avait été condamnée pour les mêmes faits et faisait également l'objet d'une mesure d'expulsion. Dans le cadre de la pesée des intérêts, elle a pris en compte en particulier la faible intégration du requérant en Suisse et l'appréciation des autorités internes selon laquelle les enfants du requérant pourraient s'établir en Tunisie. La Cour a relevé que les autorités internes avaient examiné tous les critères pertinents et procédé à une balance complète des intérêts, prenant notamment en compte le principe de l'intérêt supérieur des enfants à rester en Suisse, dans la mesure où elles ont désigné la première épouse du requérant comme leur mère nourricière. Non-violation de l'article 8 CEDH (unanimité).

Regesto Questo riassunto esiste solo in francese. SUISSE: Art. 8 CEDH. Expulsion obligatoire d'un ressortissant tunisien condamné pour obtention illicite de prestations d'une assurance sociale ou de l'aide sociale. Les autorités suisses ont dûment examiné la situation personnelle du requérant et les différents intérêts en jeu conformément aux critères établis par la CourEDH. Elles disposaient d'arguments solides pour justifier son expulsion de Suisse pour une durée de cinq ans. L'ingérence était proportionnée au but légitime poursuivi et nécessaire dans une société démocratique au sens de l'art. 8 par. 2 CEDH (ch. 41-53). Conclusion: non-violation de l'art. 8 CEDH. Sintesi dell'UFG (4° rapporto trimestriale 2024) Diritto al rispetto della vita privata e familiare (art. 8 CEDU); espulsione di un cittadino tunisino. Il ricorrente, un cittadino tunisino, è giunto in Svizzera nel 1999 all'età di 19 anni. Nel 2005 ha sposato una cittadina tunisina che l'ha raggiunto in Svizzera. La coppia ha avuto tre figli. Tra il 2005 e il 2017 il ricorrente ha lavorato soltanto a titolo temporaneo

e lui e la sua coniuge hanno percepito prestazioni dell'aiuto sociale. Nel 2013, è stato condannato a una pena pecuniaria di sessanta indennità giornaliere per furto di veicolo e guida senza licenza di condurre. Nel 2018 è stato condannato a una pena detentiva di 24 mesi sospesa condizionalmente e a una pena pecuniaria di novanta indennità giornaliere per frode e per aver percepito in modo irregolare prestazioni dell'aiuto sociale tra il 2005 e il 2017. Il tribunale distrettuale di Winterthur ha ordinato la sua espulsione per una durata di cinque anni in applicazione dell'articolo 66a del Codice penale. Adito su appello del ricorrente, il Tribunale cantonale zurighese lo ha condannato a una pena detentiva di 30 mesi di cui 20 sospesi condizionalmente mantenendo la pena pecuniaria e l'espulsione ordinate dal tribunale distrettuale. Il Tribunale federale ha poi respinto il ricorso del ricorrente. Dinanzi alla Corte il ricorrente fa valere una violazione dell'articolo 8 CEDU. La Corte ha fatto notare che, sebbene l'espulsione si riferisse soltanto agli ultimi sette mesi dei reati commessi in quanto l'articolo 66a CP è entrato in vigore soltanto il 1° ottobre 2016, il Tribunale federale aveva nondimeno precisato che dovevano essere considerati anche la durata totale dei reati commessi e il precedente comportamento del ricorrente. Ha pure rilevato che la coniuge del ricorrente è stata condannata per i medesimi fatti ed era anch'essa oggetto di un provvedimento di espulsione. Nell'ambito della ponderazione degli interessi, la Corte ha tenuto conto in particolare della scarsa integrazione del ricorrente in Svizzera e della valutazione delle autorità interne secondo cui i figli del ricorrente potrebbero stabilirsi in Tunisia. La Corte ha rilevato che le autorità interne avevano esaminato tutti i criteri pertinenti ed effettuato una ponderazione completa degli interessi, tenendo conto in particolare del principio dell'interesse preminente dei figli di restare in Svizzera, nella misura in cui hanno designato come madre affiliante la prima sposa del ricorrente. Non violazione dell'articolo 8 CEDU (unanimità).

Erwägungen

E. 33

The applicant complained that the order for his expulsion following a criminal conviction violated 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." 1. Admissibility

E. 34

The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible. 2. Merits 1. The applicant

E. 35

The applicant argued that the expulsion order had been a disproportionate and unnecessary measure and he criticised the domestic courts for insufficient reasoning in their decisions. He reaffirmed the points made in his appeal to the Swiss Federal Supreme Court, emphasising that his offences had been financial in nature, which he believed did not justify the severe measure of expulsion. He suggested that compulsory expulsion for social

security fraud, introduced in October 2016, merely reflected the frustration of Swiss taxpayers.

E. 36

The applicant contended that the domestic courts had incorrectly assessed his level of integration into Swiss society. He highlighted his long-term residence in Switzerland, stating that he had been employed for the majority of his stay in the country and that he had been able to quickly find a new job despite his injured wrist. His proficiency in German was evidence of his strong integration. Furthermore, joining his wife in France was not a viable option since he did not have a residence permit there.

E. 37

The applicant argued that the domestic courts had failed to adequately consider the interests of his children and the adverse effect his expulsion would have on his family life with them. Born and raised in Switzerland, his three children spoke German, viewed Switzerland as their home, and were fully integrated into Swiss society, with social circles and aspirations rooted in the country. All three of his children spoke only some Arabic and would struggle to study or integrate into Tunisian society. This was particularly relevant for his eldest daughter, who had a learning disability requiring specialised care unavailable in Tunisia. Additionally, the perceived loss of virginity could create significant social and personal problems for her in Tunisia. 2. The Government

E. 38

The Government submitted that, although the expulsion order had interfered with the applicant's right to respect for family life under Article 8 of the Convention, it had been in accordance with the law, necessary and proportionate to the aim pursued, and that the decisions of the domestic courts had been duly reasoned and detailed.

E. 39

The Government maintained that, given the seriousness of the applicant's fraud offence and the length of time over which it had been committed, in addition to his unlawful receipt of social security benefits, the public interest in his expulsion outweighed his private interest in remaining in Switzerland. His expulsion had been ordered for the minimum period of five years and the applicant's situation had not constituted a case of serious personal hardship that would warrant an exemption. The applicant's wife had received a fully suspended sentence and her details had not been entered into the Schengen Information System, allowing her freedom to move within the Schengen area. Under domestic law, hardship as defined in Article 66a § 2 of the Swiss Criminal Code had to mainly affect the convicted person directly. The applicant's argument of hardship had centred on the allegedly negative impact of his expulsion on his children's personal situation, particularly that of his eldest daughter.

E. 40

Referring to the case-law of the Court in *El Ghatet v. Switzerland* (no. 56971/10, 8 November 2016) and *Üner* (cited above), the Government argued that the domestic courts had thoroughly examined all the relevant information and carefully weighed up the interests involved, including the best interests of the applicant's children. The domestic judgments ordering and upholding the expulsion had been well reasoned and sufficiently detailed, reflecting a thorough consideration of the circumstances. Furthermore, the domestic

authorities had arranged for the applicant's children to be placed in the care of his Swiss ex-wife, ensuring that they would have the opportunity to remain in Switzerland. 3. The Court's assessment

E. 41

The parties did not dispute that the expulsion order amounted to an interference with the applicant's right to respect for his family life, that it had been "in accordance with the law" and had been justified by one or more legitimate aims under Article 8 § 2. However, they disagreed as to whether it had been necessary and proportionate and whether the domestic courts had given sufficient reasoning in their decisions.

E. 42

The Court therefore has to examine whether the impugned measure was "necessary in a democratic society". 1. General principles

E. 43

The relevant general principles have been summarised in, among other authorities, *Üner* (cited above, §§ 54-60) and *Shala v. Switzerland* (no. 52873/09, § 46, 15 November 2012).

E. 44

The States have the right, without prejudice to their treaty obligations, to control the entry of aliens into their territory (see, among many other authorities, *Boujlifa v. France*, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI, and *Üner*, cited above, § 54) and the power to expel those convicted of criminal offences who have entered and are lawfully resident in their territory. However, their decisions in that regard must be 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, for example, *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX, and *Slivenko v. Latvia [GC]*, no. 48321/99, § 113, ECHR 2003-X). The Court's task is to determine whether the measures at issue struck a fair balance between the interests at stake, namely, on the one hand, the individual's rights protected by the Convention and, on the other, the interests of society (see *Slivenko*, cited above, § 113, and *Boultif*, cited above, § 47).

E. 45

The domestic courts must give sufficiently detailed reasons for their decisions, in particular 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*, cited above, § 47). Insufficient reasoning by the domestic courts, without a proper balancing of the interests at stake, is contrary to the requirements of Article 8 of the Convention. This is the case where the domestic authorities fail to demonstrate convincingly that the 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). Where the competent national authorities have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant's personal interests against the more general public interest in the case, the Court will substitute its own assessment of the merits for that of the competent national authorities only where there are shown to be strong reasons for doing so (see *M.A. v. Denmark [GC]*, no. 6697/18, § 149, 9 July 2021, and

Azzaqui v. the Netherlands , no. 8757/20 , § 52, 30 May 2023).

E. 46

In balancing the interests relating to the expulsion of a parent, the best interests of minor children must be taken into account. This involves considering in particular the seriousness of the difficulties that children may face in the country to which the parent is to be expelled, as illustrated Üner (cited above, §§ 57-58). 2. Application of the above principles to the present case

E. 47

The Court notes that the offences for which the applicant was given a five-year expulsion order were of a non-violent nature and spanned over a period of twelve years. Having fraudulently obtained social benefits for his family, the applicant was given a two-year suspended prison sentence, daily fines and spent ten months in prison (see paragraph REF paragraph00012 \h 12 above). There is no information on his conduct after his release (see paragraph REF paragraph00024 \h 24 above).

E. 48

Prior to the conviction at issue, the applicant had a conviction in 2013 for car theft, for which he was given a two-year probation period (see paragraph REF paragraph00007 \h 7 above). Although the Federal Supreme Court noted that the expulsion order had been triggered by the last seven months of the applicant's offences (as social benefit fraud became punishable by expulsion only as of October 2016, see paragraphs REF paragraph00027 \h 27- REF paragraph00025 \h 28 above), it also emphasised that the overall duration of the criminal offences, along with the applicant's previous behaviour, should be taken into account (see paragraph REF paragraph00017 \h 17 above). It should be noted that the applicant's wife was also convicted of the same offences and was the subject of an expulsion order.

E. 49

The applicant arrived in Switzerland at the age of 19 to join his Swiss wife. By the time of his criminal conviction in 2019, he had resided in the country for twenty years. However, the domestic court found that the applicant was not well integrated into Swiss society and maintained limited connections with the local community (see paragraph REF paragraph00019 \h 19 above). In addition, the applicant's assertion of integration and having good German language skills was contradicted by his own statements claiming that his linguistic limitations had prevented him from complying with the relevant regulations (see paragraphs REF paragraph00013 \h 13 and REF paragraph00015 \h 15 above). In the meantime, he had maintained links with Tunisia by making annual visits and owning a house there (see paragraph REF paragraph00010 \h 10 above). While in Switzerland, in 2005 he was remarried to a Tunisian national and had three children with her. The children were 13, 10 and 4 years old when the decision to expel the applicant was upheld with final effect by the Swiss Federal Supreme Court.

E. 50

The domestic courts did not question the nature or closeness of the applicant's ties with his children. They found that, although leaving Switzerland and moving to Tunisia with their parents might pose potential problems for the eldest daughter and son (aged 13 and 10 respectively), the children would be able to cope. The Federal Supreme Court questioned

the validity of the applicant's daughter's diagnosis of ADHD and his reference to the other aspects that could have a potentially negative impact on her life in Tunisia if she moved there (see paragraphs REF paragraph00017 \h 17 and REF paragraph00018 \h 18 above). With reference to relevant documentation (see paragraph REF paragraph00017 \h 17 above), the Federal Supreme Court concluded that her and the other children's move to Tunisia would not have such a negative impact on their family life with the applicant as to render his expulsion impracticable. 51. The Court notes that in the present case the domestic courts considered the relevant criteria (see Üner , cited above, §§ 57-58), as well as the risk of parents exploiting the situation of their children to avoid removal. The domestic authorities took into account the best interest of the children and enabled them to remain in Switzerland (see paragraph 21 above). 52. Having regard to the considerations set out above, the Court concludes that the interference with the applicant's family life was supported by relevant and sufficient reasons. The domestic courts carefully examined the facts, applied the relevant human rights standards in accordance with the Convention and its case-law, and appropriately balanced the applicant's personal interests against the broader public interest in the case. It is therefore not for the Court to substitute its own assessment of the merits of the present case for that of the competent national authorities, in the absence of compelling reasons for doing so. 53. The Court therefore considers 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 26 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Milan Blaško Jolien Schukking Registrar President

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