

## **BGE 20250502\_23265\_23 vom 2. Mai 2025**

Bundesgericht (BGE), 2025-05-02, DE

Quelle: [https://mcp.opencaselaw.ch/entscheid/bge\\_20250502\\_23265\\_23](https://mcp.opencaselaw.ch/entscheid/bge_20250502_23265_23)

FR: BGE 20250502\_23265\_23 du 2 mai 2025

IT: BGE 20250502\_23265\_23 del 2 maggio 2025

### **Regeste**

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 8 CEDH. Renvoi du requérant au Kosovo suite à sa condamnation pour agression et complicité de vol notamment. Le requérant a vécu en Suisse depuis son enfance jusqu'à son expulsion à l'âge de 34 ans. Les infractions ont été commises alors qu'il était âgé de moins de 20 ans. Par la suite, l'intéressé s'est comporté de manière irréprochable. Le défaut d'intégration sur le marché du travail est dû à la révocation de son autorisation de séjour. Au vu de sa maladie cardiaque, il a toutefois bénéficié de l'assurance-maladie. Aucun élément ne permet d'étayer que le requérant dispose d'un réseau familial et social au Kosovo. Selon la Cour, les juridictions nationales n'ont pas mis en balance de manière satisfaisante les intérêts privés et publics en présence (ch. 13-20). Conclusion: violation de l'art. 8 CEDH. Inhaltsangabe des BJ (2. Quartalsbericht 2025) Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Verbot der Folter (Art. 3 EMRK); Wegweisung des Beschwerdeführers in den Kosovo. Die Beschwerde betrifft die Wegweisung des Beschwerdeführers in den Kosovo. Der Beschwerdeführer ist kosovarischer Staatsangehöriger, lebt seit seiner Kindheit in der Schweiz und leidet an schweren Herzproblemen. 2009 wurde er wegen tätlichen Angriffs, Beihilfe zum Diebstahl, Körperverletzung und anderer Straftaten zu einer Gefängnisstrafe von 26 Monaten verurteilt, 14 Monate davon bedingt. Infolge dieser Verurteilung haben ihm die kantonalen Behörden das Aufenthaltsrecht entzogen. Nach einer Reihe von Verfahren zur Erteilung eines neuen Aufenthaltsrechts verliess der Beschwerdeführer 2023 die Schweiz. Bis am 26. Juli 2026 darf er nicht mehr in den Schengenraum einreisen. Vor dem Gerichtshof machte der Beschwerdeführer eine Verletzung des Folterverbots nach Artikel 3 EMRK sowie des Rechts auf Achtung des Privat- und Familienlebens nach Artikel 8 EMRK geltend. Angesichts der Verwurzelung in der Schweiz, des einwandfreien Verhaltens während der letzten zehn Jahre und der fehlenden Hinweise auf soziale Kontakte des Beschwerdeführers im Kosovo befand der Gerichtshof, dass die Schweiz mit der Ausweisung des Beschwerdeführers die individuellen und öffentlichen Interessen nach Artikel 8 Absatz 2 EMRK nicht ausreichend gegeneinander abgewogen hatte, und stellte eine Verletzung dieses Artikels fest. Eine separate Prüfung der Beschwerde nach Artikel 3 EMRK sei daher nicht notwendig. Verletzung von Artikel 8 EMRK (einstimmig).

Regeste SUISSE: Art. 8 CEDH. Renvoi du requérant au Kosovo suite à sa condamnation pour agression et complicité de vol notamment. Le requérant a vécu en Suisse depuis son enfance jusqu'à son expulsion à l'âge de 34 ans. Les infractions ont été commises alors qu'il était âgé de moins de 20 ans. Par la suite, l'intéressé s'est comporté de manière irréprochable. Le défaut d'intégration sur le marché du travail est dû à la révocation de son autorisation de séjour. Au vu de sa maladie cardiaque, il a toutefois bénéficié de l'assurance-maladie. Aucun élément ne permet d'étayer que le requérant dispose d'un réseau familial et social au Kosovo. Selon la Cour, les juridictions nationales n'ont pas mis en balance de manière satisfaisante les intérêts privés et publics en présence (ch. 13-20).

Conclusion: violation de l'art. 8 CEDH. Synthèse de l'OFJ (2ème rapport trimestriel 2025) Droit au respect de la vie privée et familiale (art. 8 CEDH) ; interdiction de la torture (art. 3 CEDH) ; renvoi du requérant vers le Kosovo. La requête concerne le renvoi du requérant vers le Kosovo. Le requérant est un ressortissant kosovar, qui a vécu depuis son enfance en Suisse. Souffrant de graves problèmes cardiaques, il a été condamné pénalement en 2009 à 26 mois d'emprisonnement, dont 14 avec sursis, pour agression, complicité de vol, lésions corporelles et autres. Suite à cette condamnation, les autorités cantonales ont révoqué son permis de résidence. Après de nombreuses procédures visant l'obtention d'un nouveau droit de séjour, le requérant a quitté la Suisse en 2023. Il a été interdit d'entrée dans l'espace Schengen jusqu'au 26 juillet 2026. Devant la Cour, le requérant a fait valoir une violation de l'interdiction de la torture (art. 3 CEDH) et du droit au respect de la vie privée et familiale (art. 8 CEDH). Vu l'enracinement en Suisse du requérant, sa bonne conduite durant les dix dernières années et l'absence de preuve de liens sociaux au Kosovo, la Cour a estimé qu'en expulsant le requérant, la Suisse n'avait pas ménagé un juste équilibre entre les intérêts individuels et publics en application de l'article 8 alinéa 2 CEDH et a constaté une violation de cet article. Compte tenu de ce constat, elle a estimé qu'un examen séparé du grief soulevé au titre de l'article 3 CEDH n'était pas nécessaire. Violation de l'article 8 de la Convention (unanimité).

Regesto Questo riassunto esiste solo in francese. SUISSE: Art. 8 CEDH. Renvoi du requérant au Kosovo suite à sa condamnation pour agression et complicité de vol notamment. Le requérant a vécu en Suisse depuis son enfance jusqu'à son expulsion à l'âge de 34 ans. Les infractions ont été commises alors qu'il était âgé de moins de 20 ans. Par la suite, l'intéressé s'est comporté de manière irréprochable. Le défaut d'intégration sur le marché du travail est dû à la révocation de son autorisation de séjour. Au vu de sa maladie cardiaque, il a toutefois bénéficié de l'assurance-maladie. Aucun élément ne permet d'étayer que le requérant dispose d'un réseau familial et social au Kosovo. Selon la Cour, les juridictions nationales n'ont pas mis en balance de manière satisfaisante les intérêts privés et publics en présence (ch. 13-20). Conclusion: violation de l'art. 8 CEDH. Sintesi dell'UFG (2° rapporto trimestriale 2025) Diritto al rispetto della vita privata e familiare (art. 8 CEDU); divieto di tortura (art. 3 CEDU); rinvio del ricorrente in Kosovo. Il ricorso riguarda il rinvio di un cittadino kosovaro nel suo Paese. Il ricorrente, che soffre di gravi problemi cardiaci, ha vissuto fin da piccolo in Svizzera. Nel 2009 è stato condannato a 26 mesi di detenzione, 14 dei quali con la condizionale, tra le altre cose per aggressione, complicità in furto e lesioni personali. In seguito alla condanna, le autorità cantonali gli hanno revocato il permesso di soggiorno. Dopo numerosi tentativi di riottenere un diritto di soggiorno, il ricorrente ha lasciato la Svizzera nel 2023, e fino al 26 luglio 2026 non potrà entrare nello spazio Schengen. Davanti alla Corte il ricorrente lamenta una violazione del divieto di tortura (art. 3 CEDU) e del diritto al rispetto della vita privata e familiare (art. 8 CEDU). Considerati il radicamento del ricorrente in Svizzera, la sua buona condotta negli ultimi dieci anni e l'assenza di comprovati legami sociali in Kosovo, la Corte ha ritenuto che, espellendolo, la Svizzera non abbia garantito il giusto equilibrio tra gli interessi individuali e quelli pubblici in applicazione dell'articolo 8 paragrafo 2 CEDU, violando pertanto tale articolo. Ciò considerato, non ha ritenuto necessario esaminare anche la censura di violazione dell'articolo 3 CEDU. Violazione dell'articolo 8 CEDU (unanimità).

## **Erwägungen**

### **E. 1**

The applicant, a Kosovar national who has lived in Switzerland all his life and suffers from a heart condition, alleged that his three-year expulsion to Kosovo[2] following his criminal conviction violated Articles 8 and 3 of the Convention.

### **E. 2**

Upon his arrival in Switzerland as an infant in 1989, the applicant, along with his parents and siblings, received permanent residency. Born with a heart defect, he underwent life-saving valve implantation in 2009, requiring biannual check-ups to monitor complications.

### **E. 3**

In June 2009 the applicant was convicted of aggravated assault, theft, threats and insults, and a weapons violation, all committed between 2007 and 2008. His sentence comprised twenty-six months of imprisonment, fourteen of which were suspended, and a probationary period of four years. In 2010 the applicant committed a traffic offence and in 2011 he was convicted of threatening a public official.

### **E. 4**

Following the conviction in 2009, the immigration authorities issued a decision revoking the applicant's residency permit ("the revocation"). Upon the applicant's appeal, in which he stated that his expulsion to Kosovo would deprive him of regular complex medical check-ups necessary to monitor his heart condition, in May 2011 the Federal Supreme Court (the FSC), ordered a re-evaluation of his situation. In 2012 the authorities reaffirmed the revocation, which was upheld by the FSC in September 2014.

### **E. 5**

In March 2015, citing a deterioration of his health, the applicant requested a new review of the revocation, which was rejected by the authorities in January 2017. Then in March 2018, upon the applicant's appeal, the FSC ordered a re-evaluation of the situation of the medical care in Kosovo again, as a result of which the revocation was reaffirmed in March 2009, and a three-year re-entry ban was imposed.

### **E. 6**

In January 2022 the applicant lodged another appeal before the FSC. He contended that the lower courts had disregarded medical evidence indicating that facilities in Kosovo were incapable of performing complex cardiac check-ups and surgery and that they arbitrarily concluded that his condition was stable. He enclosed two medical reports from the University Hospital of Zurich, and an expert opinion by a specialist from Kosovo.

### **E. 7**

The applicant stressed that he was prohibited from engaging in employment since 2009 while his appeals against the revocation were pending. As a result he had no savings to cover medical costs in Switzerland following his expulsion or fund urgent medical care upon his return from Kosovo. In case of a medical emergency, he would be unable to travel to Switzerland or elsewhere in time to receive life-saving treatment. His expulsion would result in the loss of Swiss health insurance, and the re-entry ban could be lifted only upon submission of medical documentation proving the urgency of his treatment, accompanied by an advance payment for medical costs.

## **E. 8**

His criminal convictions had taken place many years ago, and he had been on good behaviour ever since. He had lived in Switzerland all his life and was well integrated; he had a close relationship with his family, all of whom lived there; and he was financially dependent on them due to the lack of authorisation to work. Although he travelled to Kosovo regularly for holidays, he had no family or social ties there.

## **E. 9**

On 8 May 2023 the FSC dismissed the appeal after reassessing updated medical documentation and expert opinions. It concluded that the applicant's medical condition remained stable, and that adequate basic medical care was available in Kosovo. Although hospitals there could not perform emergency cardiac surgery, the statistical likelihood of the applicant requiring such a procedure was deemed low (0.7%-1% annually). Despite a decline in his health, no acute or life-threatening condition was identified. The FSC determined that his treatment could be managed effectively in Kosovo, where necessary medication was available or could be imported. If surgical intervention became necessary, short-term medical permits could allow treatment in Switzerland. The applicant was in good health overall, without daily life limitations. Despite medical advice against excessive physical exertion, he engaged in intensive physical training several times per week.

## **E. 10**

The FSC further observed that, despite his long-term residence in Switzerland, the applicant lacked social and financial integration. He was not financially self-sufficient, had never been gainfully employed, and his criminal record demonstrated a disregard for the Swiss legal order. His annual travel to Kosovo implied the presence of a functioning social or familial network in the country which would facilitate his re-integration.

## **E. 11**

On 7 July 2023 the applicant submitted a new request for review, arguing that the likelihood of a cardiological emergency had increased. However, on 13 July 2023 the authorities, referencing the FSC's judgment, maintained that his condition was essentially unchanged and denied his request, noting that it lacked suspensive effect.

## **E. 12**

On 26 July 2023 the applicant departed from Switzerland. His details were entered into the Schengen Information System and he has been prohibited from re-entering the Schengen Area until 26 July 2026. THE COURT'S ASSESSMENT I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

## **E. 13**

The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

## **E. 14**

The relevant general principles have been summarized in *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-60, ECHR 2006-XII, and *Savran v. Denmark* [GC], no. 57467/15, §§ 174-189, 7 December 2021.

### **E. 15**

The applicant contended that his expulsion was a disproportionate and unnecessary sanction. He argued that as a settled migrant, the offences leading to his expulsion had been committed years ago when he was a young adult. Having lived with his parents and siblings in Switzerland, his relationships with them formed his family life. The revocation of his residence permit directly caused his unemployment, rendering him financially dependent on his family. His regular physical training, which the Government viewed as evidence of good health, served as a means of social interaction and integration into the local community.

### **E. 16**

The Government maintained that the interference with the applicant's rights was lawful, proportionate, and necessary, aimed at ensuring public safety and preventing disorder or crime, in line with the criteria established in *Üner*. Despite the time that had elapsed since the applicant's criminal offences, this was not considered decisive in his expulsion. The applicant repeatedly requested reviews of the revocation and failed to comply with orders to leave Switzerland, potentially encouraging other foreign nationals to challenge the authorities' decisions in the hope of regularising their status. Furthermore, the applicant had not achieved financial independence or integrated into the labour market. He had no children or partner in Switzerland and resided with his parents and siblings before his expulsion. As an adult his relationship with them did not constitute "family life" under Article 8. He also did not claim any exceptional ties to Switzerland. He was familiar with the language and customs of Kosovo, maintained a connection to his home country, and was capable of reintegration.

### **E. 17**

The Court finds that the expulsion order imposed on the applicant constitutes an interference with his right to respect for "private and family life" under Article 8 of the Convention. Whether the applicant had a family life within the meaning of Article 8 must be assessed on the basis of the circumstances at the time when the expulsion order became final (*Savran*, cited above, § 173). Financial dependence alone does not establish a family life between adult relatives (see *Senchishak v Finland*, no. 5049/12, § 57, 18 November 2014, and *Martinez Alvarado v. the Netherlands*, no. 4470/21, § 42, 10 December 2024 [not yet final]), unless additional elements of dependency other than normal emotional ties are established. In view of the fact that the applicant arrived in Switzerland as an infant, was granted a residence permit and remained lawfully in the country until his expulsion, the Court accepts that he was a "settled migrant" and that Article 8 is therefore applicable under its "private life" aspect.

### **E. 18**

The applicant lived in Switzerland from infancy until his expulsion at the age of 34, with all his social and family ties rooted there. The offences that led to his expulsion took place when he was less than twenty years old, and he has shown good behaviour since and therefore did not pose a threat to public safety. His lack of employment and integration into the labour market was due to the revocation of his residence permit, which prohibited him from working between 2009 and 2023. Nonetheless, he benefited from the health insurance which is necessary given his congenial heart condition. While the FSC suggested that the applicant had a social or family network in Kosovo, there was no evidence to support this

conclusion. Finally, the Government's concern that such situations might encourage foreign nationals to prolong their stay in order to regularise their status stemmed from decisions taken by domestic authorities. The applicant cannot be held responsible for exercising the available legal remedies.

**E. 19**

In the light of the foregoing, the Court finds that, in imposing and upholding the applicant's expulsion, the domestic courts did not satisfactorily apply the Court's case-law mandating a careful balancing of the individual and public interests.

**E. 20**

There has accordingly been a violation of Article 8 of the Convention. II. OTHER COMPLAINTS

**E. 21**

The applicant also complained that on account of the state of his health, his expulsion from Switzerland had breached Article 3 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal question raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014). APPLICATION OF ARTICLE 41 OF THE CONVENTION

**E. 22**

The applicant claimed 500,000 Swiss francs (CHF) (about 530,000 euros (EUR)) in respect of pecuniary damage caused by his lack of employment between 2009 and 2023, during which he would have earned CHF 3,000 per month. He also claimed CHF 30,000 (about EUR 31,700) in respect of non-pecuniary damage and CHF 35,000 (about EUR 37,000) for the costs and expenses incurred before the domestic courts between 2010 and 2023 and CHF 5,000 (about EUR 5,300) for the cost and expenses before the Court.

**E. 23**

The Government contested the claim submitting that the applicant's claim for pecuniary damage was based on conjecture and there was no causal link between the alleged loss of income and the applicant's expulsion. As for non-pecuniary damage, they submitted that the finding of a violation of Article 8 of the Convention would comprise an adequate compensation. As regards the claim for costs and expenses, the amount claimed by the applicant was unreasonable and lacked due substantiation and the adequate amount would comprise EUR 15,000 for all sets of proceedings.

**E. 24**

The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant 4,000 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

**E. 25**

According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the

documents in its possession and the above criteria, the Court considers it appropriate to award the applicant the sum of EUR 15,000 for the costs and expenses under all heads. **Entscheid FOR THESE REASONS, THE COURT, UNANIMOUSLY, Declares the application admissible; Holds that there has been a violation of Article 8 of the Convention; Holds that there is no need to examine the admissibility and merits of the complaints under Article 3 of the Convention; Holds (a) that the respondent State is to pay the applicant, within three months, the following amounts , to be converted into the currency of the respondent State at the rate applicable at the date of settlement: (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses; (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points; Dismisses the remainder of the applicant's claim for just satisfaction. Done in English, and notified in writing on 2 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Sophie Acting Deputy Registrar Piquet Stéphanie Mourou-Vikström President 2. All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with the United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.**

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