



Expulsion of two convicted Moroccan nationals without adequate appraisal of their situations breached their right to respect for their private lives

In today's **Chamber judgment**¹ in the case of **Saber and Boughassal v. Spain** (applications no. 76550/13 and no. 45938/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned expulsion orders against two Moroccan nationals following their convictions for criminal offences in Spain.

The Court found in particular that the national authorities had failed to examine the nature and seriousness of the criminal convictions in question, as well as all the other criteria established by the case-law of the Court, in order to assess the necessity of the expulsion and exclusion orders. It found that the authorities had failed to balance all the competing interests in order to ascertain, in compliance with the criteria laid down in its case-law, whether the impugned measures had been proportionate to the legitimate aims pursued and therefore necessary in a democratic society.

Principal facts

The applicants, Aziz Saber and Hamza Boughassal, are Moroccan nationals who were born in Morocco in 1985 and 1987 respectively.

In June 2008 in respect of Aziz Saber, and on an unspecified date in respect of Hamza Boughassal, the former was given a suspended sentence of one year's imprisonment and the latter was sentenced to three years and one day's imprisonment for drug trafficking. The Directorate General of Police and the Guardia Civil instigated expulsion proceedings on account of these criminal convictions.

On 11 November 2010 and 1 August 2011 the sub-delegations of the central government ordered the applicants' expulsions, combined with a four-year ban on entering the country for Aziz Saber and a ten-year ban for Hamza Boughassal.

The applicants challenged their expulsions.

On 22 June 2011 the administrative court dismissed Aziz Saber's appeal and upheld the expulsion order. On 9 July 2012 the administrative court granted Hamza Boughassal's appeal in part and reduced the ban on entering the territory to three years. In October 2012 and May 2013 the High Court of Catalonia dismissed further appeals lodged by the applicants. The court noted that the expulsion orders issued against them in application of section 57 § 2 of the Law on Rights and Freedoms of Aliens did not represent a sanction, but were the legal consequence of the custodial sentence imposed by the criminal court. It also followed that section 57 § 5 of the same law was not

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

applicable and that it was not necessary to examine the applicants' ties to Spain. The High Court added that Aziz Saber's residence permit was not relevant in this situation, given that the expulsion automatically resulted in the cancellation of any right of residence. Lastly, the court considered that his criminal conviction demonstrated that he had not respected the rules on living together in society and that he consequently could not be considered as having roots in Spain.

The applicants each lodged an *amparo* appeal before the Constitutional Court. That court declared the appeals inadmissible on the grounds that the applicants had not honoured the obligation to demonstrate that their appeals were of particular constitutional importance.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained that their expulsion to Morocco had infringed their right to respect for private and family life.

The applications were lodged with the European Court of Human Rights on 29 November 2013 and 10 June 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. De Gaetano (Malta), *President*,
Branko Lubarda (Serbia),
Helen Keller (Switzerland),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
María Elósegui (Spain),

and also Fatoş Aracı, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court observed that Aziz Saber had been a bachelor at the time of the impugned order and that his relations with his mother, brother and sisters in Spain did not qualify as "family life" within the meaning of Article 8 of the Convention. Hamza Boughassal had married a Moroccan national, who had entered Spain in the framework of family reunion, which enabled the Court to find that "family life" existed in his case. Both of them had obtained temporary residence permits pending receipt of a long-term residence permit. In view of the length of their stay in Spain and given their relations with their close family, the Court considered therefore that the impugned measures covered by the present applications amounted to an interference with their right to respect for their "private lives".

The Court could not accept the argument that the exercise of balancing, on the one hand, the right to respect for private and family life, and on the other, respect for public order, had already been conducted by the legislature when enacting section 57 § 2 of the Law on Rights and Freedoms of Aliens, which provides for the expulsion of foreign nationals who have been convicted of a deliberate offence punishable by more than one year's imprisonment. The Court pointed out that the nature and seriousness of the offence committed by the foreign national was only one of the criteria to be balanced by the national authorities when assessing the necessity of an expulsion order, having regard to the rights secured under Article 8. In the present case, the national authorities had balanced the competing interests solely in the light of the duration of the exclusion order issued against the two applicants (four and three years respectively). The Higher Court of Justice of Catalonia had explicitly refused to examine the proportionality of the impugned measures,

arguing that section 57 § 5 (b) of the Law on Rights and Freedoms of Aliens, which laid down an obligation to balance the different personal and family circumstances in ordering the expulsion of long-term residents, was not applicable to the applicants' situation. The Higher Court held that Aziz Saber's conviction highlighted the fact that he could not be considered as having roots in Spain, since he did not comply with the rules on living together in the host society.

Similarly, the national authorities had failed to examine the nature and seriousness of the criminal convictions in question, as well as all the other criteria established by the case-law of the Court, in order to assess the necessity of the expulsion and exclusions orders. Thus, the Higher Court had not taken into consideration the length of the applicants' residence in Spain, Hamza Boughassal's family situation or the solidity of the applicants' social, cultural and family ties to their host country, Spain, and the country of destination, Morocco.

The Court found that the authorities had failed to balance all the competing interests in order to ascertain, in compliance with the criteria laid down in its case-law, whether the impugned measures had been proportionate to the legitimate aims pursued, and therefore been necessary in a democratic society.

Just satisfaction (Article 41)

The applicants had not lodged any claims in respect of pecuniary or non-pecuniary damage. They requested the setting aside of their expulsion orders and the issue of a new Spanish residence permit.

The Court pointed out that the respondent State was at liberty, under the supervision of the Committee of Ministers of the Council of Europe, to choose the means of fulfilling its obligation to comply with the Court judgment, provided those means were compatible with the findings of the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.