



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 28 August 2019

THIRD SECTION

Application no. 889/19
B and C
against Switzerland
lodged on 31 December 2018

SUBJECT MATTER OF THE CASE

The first applicant, a national of Gambia, is the same as in application no. 43987/16. In that application, which is still pending before the Court, notice of the complaint concerning Article 3 of the Convention was given to the respondent Government on 29 March 2017.

The present application concerns the refusal of a residence permit for the first applicant – on the ground of his registered same-sex partnership with the second applicant, a Swiss national –, owing to the first applicant's criminal conviction and his conduct in Switzerland, as well as the order of the first applicant's expulsion.

QUESTIONS TO THE PARTIES

1. If the expulsion order against the first applicant were enforced, would it be possible, in practical terms, that he be deported to a country other than Gambia, notably Mali? If so, would he face a risk of being subjected to treatment in breach of Article 3 of the Convention in that country?

2. In the light of the claims and the documents which have been submitted, would the first applicant face a risk of being subjected to treatment in breach of Article 3 of the Convention if he were deported to Gambia? In particular, having regard to the Court's finding in *I.K. v. Switzerland* ((dec.), no. 21417/17, § 24, 19 December 2017), is there a real risk that the first applicant would face ill-treatment at the hands of the Gambian authorities? Is there a real risk that he would be criminally prosecuted? Is there a real risk that he would face ill-treatment at the hands of non-state actors and, if so, would the Gambian authorities be willing and able to provide protection to him (see, in particular, *J.K. and Others v. Sweden* [GC], no. 59166/12, § 98, 23 August 2016)?

3. Has the refusal of a residence permit to the first applicant been, and would the enforcement of the expulsion order against him be, in violation of the applicants' right to respect for their private and family life, contrary to Article 8 of the Convention? In particular, was the refusal of a residence permit to the first applicant, and would his removal be, proportionate in view of the finding that the applicants could continue to live their relationship, *inter alia*, through regular visits of the first applicant to Switzerland? In the event that the only country to which the first applicant could be deported were Gambia, did the criminalisation of homosexual acts in that country, irrespective of whether such acts are prosecuted at present, and the Court's findings in *Dudgeon v. the United Kingdom* (22 October 1981, Series A no. 45) and *Norris v. Ireland* (26 October 1988, Series A no. 142) have to be taken into account in the balancing exercise in the present case? In the event of the determination that the first applicant would not face a real risk of being subjected to treatment in breach of Article 3 of the Convention based on his sexual orientation if he were deported to Gambia, would any foreseeable difficulties which he may encounter there on the ground of his sexual orientation have to be taken into account in the balancing exercise, again having regard to the Court's finding in *I.K. v. Switzerland* (cited above, § 24)? Have the domestic courts engaged in a thorough balancing of the interests in issue, taken into account all relevant circumstances of the case and attached adequate weight to them, and is this reflected in the reasoning of their decisions (see, in particular, *I.M. v. Switzerland*, no. 23887/16, 9 April 2019)?