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

SECOND SECTION

DECISION

Application no. 16711/15
Mahdi Mohammad Bin-Abeddal-Sala MOHAMMAD
against Denmark

The European Court of Human Rights (Second Section), sitting on 20 November 2018 as a Committee composed of:

Ledi Bianku, *President,*
Jon Fridrik Kjølbro,
Ivana Jelić, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 31 March 2015,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mahdi Mohammad Bin-Abeddal-Sala Mohammad, is an Algerian national who was born in 1994. He lives in Denmark. He was represented before the Court by Ms Lise Holten, a lawyer practising in Hellerup. The Danish Government ("the Government") were represented by their Agent, Mr Tobias Elling Rehfeld, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

A. The circumstances of the case

2. The applicant left Algeria after losing his family when he was between 8 and 10 years old. He entered Denmark in 2008, at the age of 14, and was granted a residence permit as an unaccompanied minor.

3. The applicant has had a criminal record since 2009. Most recently he was convicted of a number of offences as follows:

By a final High Court judgment of 25 April 2012, for offences against property, he was sentenced to six months' imprisonment;

By a district court judgment of 16 August 2012, among other acts, for assault and offences against property. He was given a three-month suspended sentence;

By a final High Court judgment of 8 March 2013, *inter alia*, for robbery, he was sentenced to eight months' imprisonment. In addition, his expulsion from Denmark was ordered, but suspended with two years' probation;

By a district court judgment of 3 May 2013, for offences against property. His expulsion was ordered anew, but suspended with two years' probation.

4. On 10 December 2013, a district court (*Retten på Frederiksberg*) convicted the applicant for violation of the penal code (*straffeloven*) for having absconded in October 2013 from the psychiatric ward in which he had been placed in custody on remand. At the same time, he was acquitted of robbery under article 288 of the penal code, committed against a private person on 22 August 2013. He was sentenced to 30 days' imprisonment.

5. For the purpose of the criminal proceedings, the Immigration Service (*Udlændingeservice*) gathered information about the applicant's personal circumstances and made an assessment of whether the prosecution should refrain from making a claim for expulsion in view of Denmark's international obligations. It set out as follows:

> "Personal circumstances (section 26(2) of the Aliens Act)
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> As regards the issue of whether the decision to expel [the applicant] might be considered contrary to Denmark's international obligations, the Immigration Service refers to the police report of 22 August 2013.
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> The police report says, *inter alia*:
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> [The applicant] entered Denmark on 1 December 2008 aged 14 years. He has stated that he fled Algeria at the age of 7 and that he stayed in Europe before entering Denmark. [He] has stated that he no longer had any ties with Algeria. [He] attends language classes and plays football in Denmark. Moreover, he works at a shop in Glostrup. [He] has a girlfriend who is resident in Denmark and they have a daughter together. [The latter] information does not appear from the Danish Civil Registration System (the CPR Register). He has also stated that an expulsion order would have immense consequences. [He] has stated that he was addicted to substances from the age of 7 until the age of 16 and that he has regular appointments with a psychiatrist specialising in substance abuse.
>
> Particularly as concerns the issue of whether, in cases other than those mentioned in section 7(1) and (2) [circumstances justifying asylum], [the applicant] risks ill-treatment in the country in which he can be expected to take up residence after his deportation, the Immigration Service observes that it finds, based on the information on file, that he does not risk being subjected to particularly burdensome criminal sanctions if he is returned to Algeria and that [he] does not risk being punished in Algeria for the same offence as the one that he may be convicted of in Denmark

(double punishment). The Immigration Service refers in this respect to a report on Algeria published by the British Home Office (the Immigration and Nationality Directorate) in April 2003, which says in Part 5.20 on double punishment that persons sentenced in another country for a criminal offence do not risk double punishment. An excerpt from the said report is appended for information purposes.

Opinion on the issue of expulsion

Initially, it is observed that it follows from section 26(2) of the Aliens Act that an alien must be expelled under sections 22 to 24 unless expulsion would be contrary to Denmark's international obligations. In view of the information given by the prosecution on the nature of the crime and on the expectation that he will be sentenced to imprisonment for a term of not less than 10 months, in conjunction with the considerations set out in section 26(2) of the Aliens Act, the Immigration Service endorses the prosecution's recommendation of expulsion. ..."

6. The applicant and several witnesses were heard.

7. In addition, a forensic psychiatric opinion of 31 May 2010 (issued in connection with a previous criminal trial against the applicant in 2010) was submitted, from which it followed, *inter alia*, that:

"Accordingly, it cannot be determined with certainty whether [the applicant] suffers from a mental disorder or might have suffered from a mental disorder at the time when the crime of which he has been convicted was committed. However, it is considered likely that he is developing a more serious mental condition such as schizophrenia. He has a normal intellectual capacity, and epilepsy or other organic brain disease is not suspected. ...

The examinee has stated that he has smoked cannabis, taken cocaine, consumed alcohol and taken sedatives since the age of 12. He has been a daily consumer of sedatives and cannabis for at least the past two years. The examinee was under the influence of intoxicants when the offences were committed, but in any case there was no basis for assuming it to be an abnormal condition of intoxication.

In connection with today's examination, the examinee was found to have poor emotional contact. He seemed slow, despondent and joyless. For the last couple of years, he has heard whispers and mumbling as well as sounds during occasional periods, and he has been afraid of things like looking at himself in a mirror because of the perception that someone else was standing in front of him. Altogether, it is considered likely that he is in a psychotic or near-psychosis condition consistent with the onset of schizophrenia.

It is not possible to establish to what extent the examinee's substance abuse has contributed to the development of his current condition. ..."

8. The District Court also had access to a previous "pre-sentence report", which appears to be from 2012, and which in so far as relevant, read as follows:

" ... A prior pre-sentence report on the examination of [the applicant] was made on 19 March 2010. In summary, the report says that the 18-year-old [the applicant] is the youngest of four siblings. He has a brother, who is a little older than him, but they have no contact. The family used to live in Algeria. His mother did factory work and supported the family. It was a poor home. Most of his family members died in dramatic circumstances in 1997. [The applicant] was subsequently raised by his grandmother until the age of 12 or 13. Around 2008, [the applicant] travelled through Italy, France and Germany to Denmark, arriving in Denmark at the age of 14½ and

living on the streets as a street child. [The applicant] is not a Danish national. He has a Geneva Convention Passport. He was illiterate until he started attending a language school in ... in 2012. For the major part of the first six months of 2012, he was given individual tuition. His teacher has written a very positive letter of recommendation, see item 7. [The applicant] is enrolled in a programme run by the Social Development Fund (*Den Sociale Udviklingsfond*). Under this programme he is working on an hourly basis for a removal company, which has given him a positive testimonial as described in item 7. According to MM, he had a girlfriend from Copenhagen for 1½ years, and for the past two months he has been dating a girl in Western Jutland. [The applicant] has lived in his current 40 m^2 flat with one bedroom, a kitchen and a bathroom since February 2011. He likes his flat. About his financial situation ...In his leisure time, [the applicant] plays football at a football club and works out. According to [the applicant] he has 10 to 15 close friends and five more distant friends.

As regards his somatic condition, [the applicant] has stated that he is in good health. He is good at working and good at playing football. He has stated that his physical wellbeing has improved through his appointments with R, a psychiatrist.

As regards his mental well-being, [the applicant] also characterises himself as being in good health. According to [the applicant] he has not benefited from his periodic contact with the Centre of Forensic Psychiatry in Glostrup (*Retspsykiatrisk Center Glostrup*) since 23 September 2010. He rather finds that the close contact that he has had every Wednesday since March 2012 with R, Psychiatrist and Abuse Counsellor, has helped him a lot.

According to R, [the applicant] has understood the "writing on the wall" since the High Court delivered its judgment on 25 April 2012. Considering that he is stateless, he has to abstain from taking drugs and committing crime. [The applicant] has started to understand the seriousness of committing crime. Previously, material goods were [the applicant's] only quality of life. Now his opportunities are defined by the financial assistance he receives. [The applicant] has always been mindful of his personal hygiene and the importance of being well-dressed. That has made life meaningful for him. R has great expectations of a positive therapeutic outcome of the sessions with [the applicant], see item 7.

As regards alcohol, [the applicant] has stated that he meets with his friends once or twice a month to have a good time and that he may have up to 10 drinks at parties. He does not otherwise drink alcohol in his daily life.

[The applicant] has previously been a heavy user of multiple substances. By his own account, he has not touched drugs for a month now. In the summer of 2012, he shared two joints with others. We have been informed by the Social Development Fund that [the applicant] was enrolled in a rehabilitation programme from 26 March to 20 April 2012 in consultation with the Drug Advisory Clinic and that he was drug-free when he came home, see item 7. R believes that [the applicant] no longer takes drugs.

[The applicant] seemed more open and co-operative at this interview as compared with the examination in March 2010. He was positive and friendly. [The applicant] appeared well-groomed, well-dressed and made good eye contact. [The applicant] seemed to be a person whose maturity and intelligence corresponded more or less to his age. He was slightly on alert about his surroundings. [The applicant] seemed tired and stated that he had not slept well the night before the examination. It was quite easy to establish contact with [the applicant]."

9. R, the psychiatrist and abuse counsellor in question, submitted a medical opinion of 10 September 2012, which in so far as relevant set out:

"... [The applicant] comes to every appointment, and he comes on his own. He has said that he no longer has any substance abuse problems and that he no longer wants to take drugs. ...

When asked whether it is expected that [the applicant] will observe the conditions of a sentence of supervision, R was not in doubt that [the applicant] would do everything to abide by the rules. R mentioned that he already had good and close contact with [the applicant] and that he would be pleased to collaborate with the Prison and Probation Service about any such sentence of supervision.

R added that he was assigned this task for six-month periods and that he had been re-assigned the task every time so far. An agreement had been concluded between the Social Development Fund and the Drug Advisory Clinic.

As regards intelligence, it was the estimate of R that [the applicant] fell within the normal spectrum of intelligence variation, although this estimate was subject to the reservation that [the applicant] had never lived a life in which he had experienced normal social and emotional conditions. Otherwise, [the applicant] could not have survived his tough life. Regarding [the applicant's future, R mentioned that [the applicant] was determined to live in Danish society. Whether he could be integrated would depend on the way he was supported in avoiding temptation and conflicts. ...".

10. Finally, the Social Development Fund issued an opinion on 5 December 2013, which read:

"... [the applicant] continues to be enrolled in the Social Development Fund ... , a social work project, and he lives in a flat owned by the Social Development Fund at ... His enrolment in the Social Development Fund project has been granted by the Immigration Service for the period until his 23rd birthday as he is undergoing a kind of post-precaution therapy that aims in all essentials at making him able to manage on his own without any support from social workers after he turns 23. His therapy comprises the following elements: Skills to live on his own; classes targeted at teaching Danish language skills and social skills to enable him to maintain relations with other young people; attachment to the Drug Advisory Clinic in relation to his previous addiction; psychiatric therapy to deal with traumatic experiences as a street child earlier in his life; leisure time activities in the form of active membership of a football club; talks and activities related to Danish culture, interaction with socio-educational staff every day of the week. [the applicant] has shown very positive development. He plays football and attends language classes, and he has four to five hours of activity work experience every day at our second-hand shop and the attached workshop, where he learns to perform manual tasks related to the renovation of old furniture, etc. The purposes of this initiative are: attendance structure; a positive work discipline; and work-like activities."

11. In its judgment of 10 December 2013, the District Court dismissed the request for the applicant's immediate expulsion. Instead, once again, the expulsion order was suspended, with two years' probation for the following reasons:

"... Based on an overall assessment of the crime committed compared with the [applicant's] social circumstances, including [his] mental condition, age and lack of ties with his country of origin, the Court finds that it would be contrary to Denmark's international obligations to return him to Algeria, see section 26(2) of the Aliens Act. ..."

12. The prosecution appealed against the above judgment to the High Court of Eastern Denmark (*Østre Landsret*) before which, *inter alia*, the applicant and R were heard anew. The latter verified the correctness of his opinion of 10 September 2012 and made a statement about the state of [the applicant's] social circumstances after the date of the opinion. He found that [the applicant] had suffered mental harm due to his life as a street child since the age of 12. He believed that the defendant must now have realised that to continue his criminal career would do him no good. It was his impression that [the applicant's] substance abuse had been reduced considerably and that his criminal activities had been reduced in consequence. Due to his background, [the applicant] was very focused on making enough money, particularly for buying clothes. It meant a lot to the defendant that he now had his own flat.

13. By judgment of 19 May 2014 the High Court found it established that the applicant had committed the robbery with which he had been charged. He was sentenced to nine months' imprisonment.

14. Moreover, the High Court ordered the applicant's expulsion from Denmark, unsuspended, and banned his re-entry for six years. The High Court took into account the fact that the crime was serious and committed while on probation for the suspended expulsion order imposed by the High Court on 8 March 2013 and by the District Court on 3 May 2013. Regardless of the information available on the applicant's social and mental health circumstances, based on an overall assessment, it found that an expulsion order would not be contrary to Denmark's international obligations.

15. The applicant's request for permission to appeal against the expulsion order to the Supreme Court was refused by the Appeals Permission Board (*Procesbevillingsnævnet*) on 10 October 2014.

16. Subsequently, by a District Court judgment of 9 July 2015, the applicant was convicted of assault and offences against property, and sentenced to six months' imprisonment. His expulsion was again ordered, with a ban on his re-entry for six years. By a district court judgment of 13 November 2015 the applicant was convicted of, *inter alia*, offences against property and violations of the Act on Euphoriant Drugs.

17. The applicant requested asylum, which was refused by the Refugee Board on 17 February 2016.

18. It appears that the applicant is currently in prison and that the expulsion order has not yet been implemented.

B. Relevant domestic law and practice

19. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion were set out in detail, for example, in *Salem v. Denmark*, no. 77036/11, §§ 49-52, 1 December 2016.

COMPLAINT

20. The applicant complained that the High Court's decision of 19 May 2014 to expel him from Denmark, which became final on 10 October 2014, was in breach of Article 8 of the Convention.

THE LAW

21. The applicant relied on Article 8, which provides:

> "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."

22. The Government submitted that the application should be declared inadmissible as being manifestly ill-founded.

23. The applicant disagreed.

24. The Court reaffirms 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). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit 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 paragraph 1 of Article 8, 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; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).

25. Article 8 protects the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III) and can sometimes embrace aspects of an individual's social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). It must therefore be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the

meaning of Article 8. Indeed, it will be a rare case where a settled migrant is unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010).

26. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Üner v. the Netherlands* [GC], no. 46410/99, § 59, 5 July 2005). In the present case, however, although the applicant stated before the police on 22 August 2013 that he had a girlfriend and a daughter (see paragraph 5 above), the latter information did not appear on the Danish Civil Registration System, nor did the applicant rely on his "family life" before the domestic courts or this Court. Therefore, assuming that the applicant does not have a "family life" in Denmark, the Court will deal only with the "private life" aspect.

27. In order to assess whether an expulsion order and the refusal of a residence permit were necessary in a democratic society and proportionate to the legitimate aim pursued under Article 8 of the Convention, the Court has laid down the relevant criteria in its case-law (see *Üner*, cited above, §§ 57-58, and *Maslov v. Austria, Maslov v. Austria* [GC], no. 1638/03, §§ 68-76, ECHR 2008).

28. In a case like the present one, where the person to be expelled has not yet founded a family of his own, the relevant criteria are:

– 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; and

– the solidity of social, cultural and family ties with the host country and with the country of destination (see, *Maslov v. Austria*, cited above, § 71). Moreover, 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 (ibid., § 75).

29. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but 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 *Slivenko and Others*, cited above, § 113, and *Boultif,* cited above, § 47).

30. The Court considers it established that there was an interference with the applicant's right to respect for his private life within the meaning of Article 8, that the expulsion order was "in accordance with the law", and

that it pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, no. 77036/11, § 61, 1 December 2016).

31. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts' legal point of departure was the relevant sections of the Aliens Act, the Penal Code, and the criteria to be applied in the proportionality assessment, by virtue of Article 8 of the Convention and the Court's case-law.

32. The district court, in its judgment of 10 December 2013, acquitted the applicant of robbery and found that it would be contrary to Denmark's international obligations to hand down an unsuspended expulsion order. Instead, making an overall assessment of the crime committed compared with the applicant's personal circumstances, including his mental health, age and lack of ties with his country of origin, for the third time the expulsion order was suspended, with two years' probation.

33. The High Court, in its judgment of 19 May 2014, convicted the applicant of robbery and ordered his expulsion with a ban on his re-entry for six years. It took into account that the crime was serious, and committed while on probation for two suspended expulsion orders. Thus, regardless of the information available on the applicant's social and mental health circumstances, based on an overall assessment, it found that an expulsion order would not be contrary to Denmark's international obligations.

34. The Court points out, in addition, that the applicant arrived in Denmark in 2008 at the age of 14. He had had a criminal record since 2009, and had been in Denmark for only five years when in 2013, as an adult, he committed the crimes leading to his expulsion order. Finally, subsequent to the expulsion order, the applicant continued to commit crimes.

35. The Court is satisfied that the domestic courts made a thorough assessment of the applicant's personal circumstances, carefully balanced the competing interests, took into account the criteria set out in the Court's case-law and explicitly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. Moreover, the interference with the applicant's private life was supported by relevant and sufficient reasons, and cannot be said to be disproportionate given all the circumstances of the case. The Court points out in this respect that, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see, *Ndidi v. the United Kingdom* (no. 41215/14, § 76, 14 September 2017; and, mu*tatis mutandis*, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012 and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 88, 7 February 2012).

36. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 December 2018.

Hasan Bakırcı Deputy Registrar	Ledi Bianku President