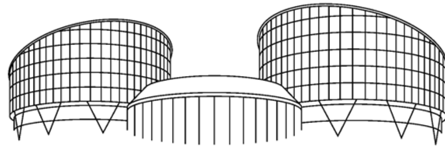

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 42517/15
Murat YURDAER
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 24 August 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 Murat Yurdaer, is a Turkish national who was born in 1973. He lives in Turkey. He was represented before the Court by Ms Sofie Luna Christensen, a legal adviser in Odense. 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 was born in Germany. In 1978, when he was 5 years old, he entered Denmark with his parents.

3. In 1995, he married a Turkish national. They had three children born around 1996, 1997 and 2003. They are also Turkish nationals.

4. The applicant has a criminal record.

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By a final district court judgment of 26 April 2007, he was convicted of drug offences and sentenced to eight years' imprisonment.

By district court judgments of 2 September 2009 and 17 December 2010, he was convicted for having escaped from prison and sentenced, respectively, to seven and fourteen days' imprisonment. He was released on parole on 20 April 2011 with 1,274 days of his sentence remaining.

5. On 28 March 2014, by a district court judgment, the applicant was convicted anew of drug offences, this time relating to the trafficking of approximately 505 g of heroin from Spain to Denmark, committed jointly with another person in February 2013, and delivery of approximately 154 g of a mixture of caffeine and paracetamol with traces of heroin. He was sentenced to eight years' imprisonment, which included the remainder of the sentence imposed on 26 April 2007.

6. For the purpose of the criminal proceedings, the Immigration Service (*Udlændingeservice*) had 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))
>
> (...) – [The applicant] was born in Flensburg, Germany, and has lived in Denmark since 1976 with his closest family, his parents and two siblings, who were both born in Denmark. He is married and has three children, who are all Turkish nationals. [The applicant] feels Danish, and he has spent his entire life in Denmark. He speaks and understands Turkish, but he is better at Danish. He has worked in his parents' [carpet] shop in a wage-subsidy job. He has a commercial-line high school diploma. As concerns his health, he has stated that he has suffered from compulsive gambling. He has stated that his family would not stand going with him to Turkey. He has no family or social network in Turkey. His Turkish spouse has been granted permanent residence in Denmark. His three children, who are minors, have been granted temporary residence, expiring when they reach the age of 18. His eldest child turns 18 on 18 April 2014. If [he] is expelled from Denmark and his children do not intend to leave Denmark, the Danish Immigration Service will assess whether to revoke or maintain the residence permits held by his children. He has only been to Turkey twice since his arrival in Denmark, and on both occasions the journeys were holiday trips.
>
> ...
>
> 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 the defendant will be sentenced to imprisonment for a term of eight to nine years, in conjunction with the considerations mentioned in section 26(2) of the Aliens Act, the Danish Immigration Service endorses the prosecution's recommendation of expulsion".

7. The applicant and several witnesses were heard, including the applicant's wife, who stated that she had attended school in Denmark but had to stop due to illness. Their three children, a daughter aged 17, a son aged 16 and a daughter aged 11, all attended school. They were affected by the applicant's detention on remand (since 4 July 2013).

8. The District Court found as follows:

> "As a result of the sentence imposed, the conditions for expulsion in pursuance of section 22(i) to (iv) of the Aliens Act are met. It follows from section 26(2) of the Aliens Act that an alien must be expelled under section 22 unless expulsion would be contrary to Denmark's international obligations. Accordingly, an assessment based on the principle of proportionality must be made in compliance with Article 8 of the European Convention on Human Rights. Such assessment based on the principle of proportionality includes, on the one side, the societal needs for expulsion, taking into account the nature and gravity of the previous and current crimes committed and, on the other side, the duration of the relevant person's stay in Denmark and the strength of his or her family, social and cultural ties with the country of residence and with the country in which he or she is a national. The [applicant] is a Turkish national. He came to Denmark at the age of 5 or 6 in 1978, together with his parents. He grew up in Denmark, living with his parents and his two siblings, who were born in Denmark. He has married a Turkish national, and together they have three children, who are all Turkish nationals. The defendant went to school in Denmark. He has not been on the Danish labour market to a notable extent. The defendant has stated that his family-in-law live in Turkey and that he has been on a number of holiday trips to Turkey, three of which were taken after his release in 2011. Despite the strong ties that the [applicant] and his family have with Denmark, the Court finds that the [applicant] must be expelled, given the fact that he has now been sentenced to imprisonment for eight years for drug trafficking, that he has previously been given a corresponding sentence for a similar crime and that he had been released on parole less than two years before the new crime was committed. The offences of which the [applicant] has been convicted and the crime previously committed demonstrate that the [applicant's] presence or behaviour constitute a real and sufficiently serious threat to fundamental societal values, and the Court accordingly finds that the Association Agreement does not bar the expulsion of the [applicant]. The expulsion order is combined with a permanent ban on re-entry fixed as set out in section 32(2)(v) of the Aliens Act."

9. The applicant appealed against the above judgment to the High Court of Eastern Denmark *(Østre Landsret)*, which upheld the finding of guilt but reduced the sentence to seven years' imprisonment.

10. As regards the expulsion order, the applicant stated that his children were completely integrated into Danish society. They could not become Danish nationals until they reached the age of 18. The eldest child had now reached the age of 18 and had applied for Danish nationality. His children spoke Turkish, but would still face language difficulties if they were to attend a Turkish high school. As a very young child, the applicant had been to Turkey twice, and he had been to Turkey three times after his release on parole on 20 April 2011. When reminded that, during the proceedings leading to the judgment of 9 August 2007, he had stated that he had been to

Turkey five times, the applicant responded that his memory might be mistaken today.

11. The High Court upheld the expulsion order and stated:

> "By the District Court judgment of 26 April 2007, [the applicant] ... was sentenced to imprisonment for eight years for violation of ...article 191 of the Penal Code ... and by the District Court judgment of 9 August 2007 ... the prosecution's claim for expulsion of [the applicant] was dismissed. The [latter] judgment quoted an opinion of 7 March 2007 from the Immigration Service, from which it appeared that [the applicant] had stated that he had been to Turkey three times prior to 2000. In 2000, he had been there for 10 to 12 days. Moreover, he had been to Turkey again in 2004; that time together with his mother. The reasoning and decision in the judgment delivered by the District Court of Odense was worded as follows:
>
> '[The applicant], who has no relevant prior convictions, has been sentenced to eight years' imprisonment for violation of article 191 of the Penal Code. The offender came to Denmark at the age of 5 and has stayed in Denmark lawfully for 27 years and 10 months. Accordingly, he has completed his entire schooling in Denmark. His parents and two siblings live in Denmark. He married in January 1995, and he lives with his wife and their three children. He has visited Turkey five times: most recently in 2000 and in 2004, together with his mother. The [applicant] only has very modest ties with Turkey given that he only has contact with his maternal grandmother, who lives in Turkey. He has no contact with the siblings of his father or mother. Irrespective of the gravity of the crime, the Court accordingly finds that the circumstances listed in section 26(1)(i) and (iii) to (v) of the Aliens Act make expulsion conclusively inappropriate based on an overall assessment, see subsection (2). The claim for expulsion of the offender is therefore dismissed.'
>
> Based on the sentence now given, the High Court finds that the conditions for expelling [the applicant] under section 22(i) to (iv) of the Aliens Act have been met. [The applicant], who is a Turkish national, came to Denmark at the age of 5 in 1978. His spouse and three children, who are also Turkish nationals, as well as his parents and two siblings live in Denmark, too. He has only been on the Danish labour market to a limited extent. He speaks Turkish, and his family-in-law still live in Turkey, where he has taken several holidays, including three times after his release on parole in 2011. Taking into account primarily the nature and gravity of the crimes of which he has now been convicted, in conjunction with the fact that the crimes were committed in the probation period following his release on parole in April 2011 after he had served an eight-year prison sentence for similar offences, and generally for the reasons given by the District Court, the High Court finds that the expulsion of [the applicant] will not be contrary to Denmark's international obligations, including Article 8 of the European Convention on Human Rights and the Association Agreement between the European Union and Turkey. Based on these observations, the High Court upholds the order expelling [the applicant] from Denmark and banning him permanently from re-entry."

12. The applicant's request for leave to appeal to the Supreme Court (*Højesteret*) was refused on 14 April 2015.

13. The expulsion order has been implemented in 2017.

B. Relevant domestic law

14. 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

15. Relying on Article 1 of Protocol No. 7 to the Convention, the applicant complained about his expulsion from Denmark, notably since he had all his family there, and had been brought up there.

THE LAW

16. Being the master of the characterisation to be given in law to the facts of the case, the Court will examine the applicant's complaint under Article 8 of the Convention, 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."

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

18. The applicant disagreed. In his observations of 19 February 2018, he added that his family could not follow him to Turkey due to the financial uncertainty and the difficulties for them to find employment. Moreover, if they stayed in Denmark, they could not afford to visit him very often.

19. The Court reaffirms at the outset 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 pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, an interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more

of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

20. It is not in dispute between the parties that there was an interference with the applicant's right to respect for his private and family 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. The Court sees no reason to find otherwise.

21. The relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, were set out in, *inter alia*, *Üner v. the Netherlands* [GC], no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII; *Maslov v. Austria* [GC], cited above, §§ 72-73; *Balogun v. the United Kingdom*, no. 60286/09, § 46, 10 April 2012; *Samsonnikov v. Estonia*, no. 52178/10, § 86, 3 July 2012; and *Salem v. Denmark*, no. 77036/11, § 64, 1 December 2016. They are the following:

> "- the nature and seriousness of the offence committed by the applicant;
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> - the length of the applicant's stay in the country from which he or she is to be expelled;
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> - the time elapsed since the offence was committed and the applicant's conduct during that period;
>
> - the nationalities of the various persons concerned;
>
> - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
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> - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
>
> - whether there are children of the marriage, and if so, their age; and
>
> - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.
>
> - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
>
> - the solidity of social, cultural and family ties with the host country and with the country of destination."

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 (*Maslov v. Austria* [GC], cited above, § 75).

22. The domestic courts attached significant weight to the fact that the applicant had committed a serious drugs crime. As an adult (40 years old), jointly with others, he had trafficked approximately 505 g of heroin from Spain to Denmark, and delivered approximately 154 g of a mixture of caffeine and paracetamol with traces of heroin. Furthermore, he had previously been convicted for a similar crime, namely by the final district

court judgment of 26 April 2007, and he had been released on parole less than two years before the new crime was committed.

23. The Court reiterates in this respect that it has held, on many previous occasions, that it understands - in view of the devastating effects drugs have on people's lives - why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among others, *Amrollahi v. Denmark,* no. 56811/00, § 37, 11 July 2002; *Sezen v. the Netherlands*, no. 50252/99, § 43, 31 January 2006; *A.W. Khan v. the United Kingdom*, no. 47486/06, § 40; 12 January 2010; *Samsonnikov v. Estonia*, cited above, § 89; *Savasci v. Germany* (dec.), 45971/08, § 27, 19 March 2013; and *Salem v. Denmark,* cited above, § 66).

24. As to the solidity of social, cultural and family ties with the host country, the Court observes that the applicant entered Denmark when he was 5 years old. He had lawfully spent the major part of his childhood and youth there, and very serious reasons were thus required to justify his expulsion. He grew up with his parents and two siblings in Denmark. He spoke Danish. He had not been on the Danish labour market to a notable extent.

25. The applicant also had ties with Turkey. He spoke Turkish, his family-in-law lived there, and he visited Turkey regularly, thus at least five times before his conviction in 2007; and at least three times in the period between his release in April 2011 and his detention on remand in July 2013.

26. The applicant married a Turkish national in 1995, long before the offences at issue were committed. Thus, the criterion of whether the spouse knew about the offence at the time when he or she entered into a family relationship does not come into play in the present case. The spouses have three children, who are also Turkish nationals. They were born around 1996, 1997 and 2003 and were approximately 19, 18 and 12 years old when the applicant's expulsion became final on 14 April 2015. They were not formally concerned by the applicant's expulsion order and two of them were already of age. Accordingly, the Court will examine the question of the seriousness of the difficulties which the family is likely to encounter in the country to which the applicant was expelled, only in respect of the spouse and the child, born in 2003 (who is now approximately 15 years old).

27. During the domestic proceedings, the applicant submitted that his family could not follow him to Turkey mainly, it appears, because "the children were completely integrated in Danish society" and "although they spoke Turkish, they would still face language difficulties if they were to attend a Turkish high school". Neither he, nor his wife, gave any explanation as to why she, a Turkish national with family in Turkey, could not follow her husband to Turkey. It thus appears that the domestic courts assumed that it would be possible for the wife and the youngest child to continue family life with the applicant in Turkey when the expulsion order was implemented. The Court also observes that in his observations before it,

the alleged obstacle is limited to financial uncertainty and the difficulties of their obtaining employment in Turkey.

28. Finally, as to "the best interests and well-being of the 12-year-old child (see, *inter alia*, *Salem v Denmark*, cited above, §§ 74-76 and *Hamesevic v. Denmark* (dec.), no. 25748/15, §§ 38-40, 16 May 2017), notably regarding the difficulties he would encounter in Denmark due to the separation from his father, the applicant did not point to any particular problems, and the domestic courts did not as such comment on this issue. In any event, the Court observes that the child had already been separated from his father in Denmark, from 2007 to April 2011, due to the first drug crime, and anew from April 2011 until the implementation of the expulsion order due to the second drug crime. The Court is therefore not convinced that the child's best interests were adversely affected by the applicant's deportation to such an extent that those should outweigh the other criteria to take into account (see, for example, *A.H. Khan v. the United Kingdom*, no. 6222/10, § 40, 20 December 2011).

29. The Court also notes that, apart from financial constraints (see paragraph 18 above), the applicant has not pointed to any obstacles to the family visiting him in Turkey, nor to their remaining in contact via the telephone or internet.

30. In the light of the above, the Court recognises that the district court and the High Court carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law, including the applicant's family situation. Moreover, having regard to the gravity of the drugs crime committed by the applicant, and considering the sovereignty of member States to control and regulate the residence of aliens on their territory, the Court finds that the interference was supported by relevant and sufficient reasons, and was proportionate in that a fair balance was struck between the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other hand (see, among many others, *Salem v. Denmark*, cited above, § 82; *Hamesevic v. Denmark*, cited above, § 43; *Alam v. Denmark* (dec.), no. 33809/15, § 35, 6 June 2017; and *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President