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

SECOND SECTION

DECISION

Application no. 16588/20
Zohaib AHMED
against Denmark

The European Court of Human Rights (Second Section), sitting on 1 February 2022 as a Chamber composed of:

Carlo Ranzoni, *President,*
Jon Fridrik Kjølbro,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Saadet Yüksel, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 March 2020,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zohaib Ahmed, is a Pakistani national, who was born in 2002 and lives in Årslev. He was represented before the Court by Mr Ernst Berit, a lawyer practising in Aarhus.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was born in Pakistan. He entered Denmark in 2010 with his mother, when he was around eight years old, to join his father and brother, also Pakistani nationals. Shortly afterwards, a sister was born. In 2013 his parents divorced. In 2015 his father and brother moved to the United Kingdom.

4. In the summer of 2016, when he was fourteen years old, the applicant was expelled from school owing to his violence.

5. In March and April 2017, several charges against the applicant for, *inter alia*, robbery and violence were dropped since he was under fifteen years old (the age of criminal responsibility in Denmark). Around the same time, various crime prevention efforts were initiated by the social authorities to assist him.

6. By a judgment of 21 March 2018, he was convicted of four aggravated robberies, three of them committed with the use of a knife, in the period from August 2017 to February 2018. After committing the first two of these aggravated robberies, he was detained on remand for around forty-five days, and shortly after his release he committed the next two aggravated robberies. He was also convicted of assault for punching and kicking a seventeen-year-old young man, and of making threats against a witness. The applicant was sentenced to one year and six months' imprisonment, of which one year and four months were suspended with a probation period of two years. A request by the prosecution for his expulsion was dismissed.

7. By a District Court (*Retten i Lyngby*) judgment of 16 November 2018, the applicant was convicted of assault in a particularly offensive, brutal or dangerous manner, under Article 245, read with Article 247 of the Penal Code, in that on 18 May 2018 he had punched, hit with a stick, and kicked a fourteen-year-old boy together with several other offenders, after which the applicant had stabbed the victim three times with a knife in, among other places, the chest region. The victim's life was in danger. At the time of the assault, the applicant was almost sixteen years old. He was sentenced to two years and six months' imprisonment (including the suspended sentence from March 2018) and issued with a warning of expulsion.

8. For the purposes of the criminal proceedings, the Immigration Service (*Udlændingestyrelsen*) and the Youth Council (*Ungerådet*) had gathered information about the applicant's personal circumstances, which included the following. He had lived legally in Denmark for approximately eight years. He was living with his mother when he was arrested. He had uncles and aunts in Denmark. He also had family in Pakistan, but according to the applicant, he had no contact with them.

9. On an appeal to the High Court (*Østre Landsret*), the applicant explained that since his arrival in Denmark in 2010 he had been to Pakistan three times, most recently in 2017 for three weeks. During that visit he had communicated with his mother's siblings there by Skype. He understood Urdu and Punjabi but did not know all the vocabulary. By a judgment of 15 February 2019, the High Court upheld the conviction, increased the sentence to three years and six months' imprisonment, and ordered the applicant's expulsion with a permanent ban on his re-entry. In respect of the latter the High Court had regard to Article 8 of the Convention and pointed out that very serious reasons were required to justify the expulsion of the applicant. The court took

the applicant's age into account, but pointed out that he had been convicted of a very serious crime, committed less than two months after the judgment in March 2018, and thus within the probation period. The assault had been unmotivated, committed with the use of a knife, and put the victim's life in danger. The applicant had previously been convicted of four aggravated robberies, of which three had been committed with the use of a knife, and of one assault and one threat against a witness. Accordingly, there was a significant risk that the applicant would continue to commit offences of a violent and dangerous nature if he was not expelled. Moreover, he had lived half of his life in Pakistan, spoke the language, knew the customs and culture, and had family there. Thus, although his ties to Denmark were stronger than his ties to Pakistan, he had the prerequisites for establishing a life in Pakistan. He could maintain contact with his family in Denmark via the telephone and Internet. It was observed that the applicant would be more than eighteen years old when the expulsion order could be implemented. Having made an overall assessment, the High Court considered that unconditional expulsion with a permanent re-entry ban would not be in breach of Article 8 the Convention.

10. On an appeal to the Supreme Court (*Højesteret*), it was noted, *inter alia*, that the applicant had been to Pakistan for three months from May to August 2017. Moreover, on 13 March 2019 the prosecution had dropped charges against the applicant for nine offences, in particular thefts, committed before the High Court's judgment of 15 February 2019. By a judgment of 28 October 2019, the Supreme Court upheld the High Court's judgment.

11. It is not known whether the deportation order has been enforced.

B. Relevant domestic law

12. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail, for example in *Munir Johana v. Denmark* (no. 56803/18, §§ 22-26, 12 January 2021) and *Salem v. Denmark* (no. 77036/11, §§ 49-52, 1 December 2016).

COMPLAINT

13. The applicant complained that the High Court's decision of 15 February 2019, which became final by the Supreme Court's decision of 28 October 2019, to expel him with a permanent ban on his return was in breach of Article 8 of the Convention.

THE LAW

A. General principles

14. In a case like the present one, where the person to be expelled is a settled migrant who has not yet founded a family of his own, the principles to be applied have recently been set out in, for example, Munir Johana (cited above, §§ 42-47).

B. Application of the principles to the present case

15. 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 and that the expulsion order and the re-entry ban were "in accordance with the law" and pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem*, cited above, § 61).

16. As to the question of whether the interference was "necessary in a democratic society", the Court recognises that the domestic courts thoroughly examined each relevant criterion set out, for example, in *Maslov v. Austria* ([GC], no. 1638/03, §§ 72-73, ECHR 2008) and were fully aware that very serious reasons were required to justify expulsion of the applicant, a settled migrant who had lawfully spent eight years of his youth in the host country (ibid., § 75).

17. The High Court and the Supreme Court gave particular weight to the nature and seriousness of the crime committed and the sentence imposed, including that the crime had been committed less than two months after the applicant's previous conviction in March 2018, and within the probation period. In view of the applicant's criminal past it was noted that he had continued to commit crimes of a violent nature (see, in particular, paragraph 9 above). The High Court and the Supreme Court both took into account the fact that the applicant had been convicted for crimes which he had committed as an adolescent. As noted, however (see, *inter alia*, *Külekci v. Austria*, no. 30441/09, § 45, 1 June 2017) the applicant's criminal offence leading to the expulsion order was of such a serious and violent nature that it could not be regarded as a mere act of juvenile delinquency. Moreover, it had serious consequences for the lives of others (see, for example, *Khan v. Denmark*, no. 26957/19, § 72, 12 January 2021; *Samsonnikov v. Estonia*, no. 52178/10, § 89, 3 July 2012; and *Salem*, cited above, § 66).

18. The High Court and the Supreme Court properly took into account the criterion of "the solidity of social, cultural and family ties with the host country and with the country of destination" and found that expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on the applicant owing to his ties with Denmark. However, having regard to his having spent half of his life in Pakistan, family members being

present there, and his knowledge of Pakistan's language, customs and culture, they found that the applicant had the prerequisites for establishing a life in Pakistan.

19. Lastly, the High Court and the Supreme Court found that the expulsion order, combined with a permanent re-entry ban, was a proportionate measure to prevent disorder and crime.

20. The Court notes in this context that the duration of a ban on re-entry is an element to which it has attached importance in its case-law. Thus in, for example, *Ezzouhdi v. France* (no. 47160/99, § 34 13 February 2001), *Keles v. Germany* (no. 32231/02, § 66, 27 October 2005) and *Bousarra v. France* (no. 25672/07, § 53, 23 September 2010), given the specific circumstances in each case, the Court found the imposition of a definitive expulsion order to be in breach of Article 8 of the Convention. It will be recalled that the Court has never set a minimum requirement as to the sentence or seriousness of the crime which ultimately results in expulsion, nor has it, in the application of all the relevant criteria, qualified the relative weight to be accorded to each criterion in the individual assessment. That must be decided on a case-by-case basis, in the first place by the national authorities, subject to European supervision (see, for example, *Munir Johana*, cited above, § 53).

21. In the three above-cited cases, the Court found that the persons in question did not pose a serious threat to public order. In the present case, however, the Court does not call into question the fact that the applicant's crime leading to the expulsion order was of such a nature that he posed a serious threat to public order (see also, *inter alia*, *Mutlag v Germany,* no. 40601/05, §§ 61-62, 25 March 2010, and *Balogun v. the United Kingdom*, no. 60286/09, § 53, 10 April 2012). In addition, he had consistently demonstrated a lack of will to comply with Danish law (see also, among other authorities, *Khan,* cited above*,* § 73, and *Levakovic v. Denmark*, no. 7841/14, § 44, 23 October 2018).

22. Having regard to all of the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that "very serious reasons" were adequately adduced by the Supreme Court when assessing the applicant's case, and that his expulsion was not disproportionate in the light of all the circumstances of the case. It notes that the High Court and the Supreme Court explicitly and thoroughly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. The Court points out in that regard that, in accordance with the principle of subsidiarity, 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 *Levakovic*, cited above, § 45; *Ndidi v. the United Kingdom,* no. 41215/14, § 76, 14 September 2017; and, *mutatis 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).

23. 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, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2022.

Hasan Bakırcı Deputy Registrar	Carlo Ranzoni President