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

SECOND SECTION

DECISION

Application no. 24379/20
Shpend BAJRAMI and Hannah BAJRAMI
against Denmark

The European Court of Human Rights (Second Section), sitting on 22 February 2022 as a Committee composed of:

Branko Lubarda, *President,*
Jovan Ilievski,
Diana Sârcu, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 June 2020,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Mr Shpend Bajrami, and the second applicant, his daughter, Hannah Bajrami, are respectively Albanian and Danish nationals, born in 1976 and 2005. They live in Denmark. They were represented before the Court by Mr Tyge Trier, a lawyer practising in Copenhagen.

A. The circumstances of the case

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

3. The first applicant entered Denmark in 1998, when he was twenty-two years old. He married in 1999. A daughter was born out of that marriage.

4. Having divorced in 2001, the first applicant remarried in 2005. Two children were born out of that marriage: a daughter, D (the second applicant) in 2005, and a son, S, in 2008. The first applicant and his second wife divorced in 2018.

5. On 23 November 2010, the first applicant was convicted of drug offences, for which he was sentenced to three years and six months'

imprisonment. In addition, a suspended expulsion order was issued against him with two years' probation.

6. By a District Court (*Retten i Kolding*) judgment of 14 May 2019, the applicant was convicted for six criminal offences, including two drug offences committed on, respectively, 7 November 2018 and 8 January 2019, notably concerning distribution of more than 1 kg of cocaine. The applicant was sentenced to five years' imprisonment and issued with an expulsion order with a permanent re-entry ban.

7. For the purposes of the criminal proceedings, the Immigration Service (*Udlændingestyrelsen*) had gathered information about the applicant's personal circumstances, which included the fact that he had been living in Denmark legally for 17 years.

8. Before the District Court the applicant explained that he had recently been in contact with his eldest daughter. Since his latest divorce, he had maintained contact with his two youngest children, D and S, who at the time were 13 and 11 years old. They lived with their mother. Since his detention in November 2018, their contact had been limited to prison visits. D had autism, ADHD, and motoric problems. The first applicant had worked as an electrician from 2013 until 2018, when he relapsed into drug addiction. He spoke and wrote Albanian. His parents had remained in Kosovo[1]. He had visited them every year. His minor children had also been on holiday there several times. The first applicant had siblings in Albania and Austria.

9. D's mother stated, among other things, that D would not be able to function without the first applicant, and that D would not be able to travel to Kosovo by herself. S also had difficulties with the fact that his father was in prison.

10. In respect of the nature and seriousness of the offences the District Court noted that the first applicant had anew been convicted of serious drug offences, and that he had previously been issued with a suspended expulsion order. Moreover, since the crimes had been committed in order to finance the first applicant's drug habit, the District Court found that there was a significant risk that he would continue to commit crimes in Denmark in the future.

11. The District Court took into account the first applicant's personal circumstances, on the one hand that he had entered Denmark as an adult, that he had three children there, one an adult, with whom he had very little contact, and two minors, who lived with their mother. Moreover, the applicant had worked as an electrician and could be considered well integrated. On the other hand, he continued to have ties with Kosovo, which he often visited, and where his parents lived. He spoke and wrote Albanian.

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[1] All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Council Resolution 1244 and without prejudice to the status of Kosovo.

12. Having made an overall assessment the District Court considered that unconditional expulsion with a permanent re-entry ban would not be in breach of Article 8 of the Convention.

13. On appeal, by a judgment of 13 August 2019, the High Court (*Vestre Landsret*) upheld the judgment, for the reasons set out in the District Court judgment. In addition, the High Court pointed out that the first applicant had only arrived in Denmark as an adult, that he continued to have significant ties with Kosovo, that he visited his parents every year, and that his children had joined him there for summer holidays several times.

14. Leave to appeal to the Supreme Court (*Højesteret*) was refused on 1 October 2019.

15. It does not appear that the deportation order has been enforced.

B. Relevant domestic law

16. 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

17. The applicants complained that the decision by the Danish courts, which became final on 1 October 2019, to expel the first applicant with a permanent re-entry ban was in breach of Article 8 of the Convention.

THE LAW

18. In a case like the present one, where the person to be expelled had founded a family of his own, the principles to be applied have been set out in, for example, *Salem v. Denmark*, no. 77036/11, § 64, 1 December 2016.

A. Application of the principles to the present case

19. The Court considers it established that there was an interference with the first applicant's right to respect for his private and family life and the second applicant's right to respect for her family 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 v. Denmark*, cited above, § 61).

20. 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).

21. The District Court and the High Court gave particular weight to the nature and seriousness of the crimes committed and the sentence imposed, notably in respect of the offence concerning distribution of more than 1 kg of cocaine. Having noted that the crimes had been committed in order to finance the first applicant's own drug habit, both courts found that there was a significant risk that he would continue to commit offences in Denmark if not expelled.

22. 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 and on society as a whole - why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among others, *Salem v. Denmark*, cited above, § 66 and *Assem Hassan Ali v. Denmark*, no. 25593/14, § 47, 23 October 2018).

23. The two court instances also took into account that the applicant had previously been convicted, as an adult, of similar offences (see paragraph 5 above), for which he was sentenced to three years and six months' imprisonment and had been issued a suspended expulsion order.

24. The District Court and the High Court properly took into account the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination". They observed on the one hand that the first applicant had entered Denmark as an adult, had lawfully resided there for approximately seventeen years, that he had three children there, one an adult with whom he had very little contact and two minors, who lived with their mother. The first applicant had worked as an electrician and could be considered well integrated. On the other hand, he continued to have significant ties with Kosovo. He visited his parents every year, and his children had joined him there for summer holidays several times. He spoke and wrote Albanian.

25. The domestic courts found that the expulsion order combined with a permanent re-entry ban was a proportionate measure to prevent disorder and crime.

26. 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 the cases, 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 in breach of Article 8 of the Convention. It is 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 v. Denmark,* cited above, § 53).

27. 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 that the first 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, it cannot be said that the first applicant's previous offences were insignificant in respect of posing a threat to public order. The present case therefore resembles the situation in, for example, the cases of *Balogun v. the United Kingdom* (cited above) and *Assem Hassan Ali v. Denmark* (cited above).

28. The remaining criterion in the case to be examined is "the best interests and well-being of the children, in particular the seriousness of the difficulties which any of the applicant's children are likely to encounter in the country to which the applicant is to be expelled".

29. In its judgment in the case of *Jeunesse v. the Netherlands* [GC], (no. 12738/10, § 109, 3 October 2014), which concerned family reunion, the Court reiterated "that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance ... Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it."

30. Whilst this principle applies to all decisions concerning children, the Court notes that in the context of the removal of a non-national parent as a consequence of a criminal conviction, the decision first and foremost concerns the offender. Furthermore, as case-law has shown, in such cases the nature and seriousness of the offence committed or the offending history may outweigh the other criteria to take into account (see, for example, *Üner v. the Netherlands* [GC], no. 46410/99, §§ 62-64, ECHR 2006-XII and *Salem v Denmark*, cited above, § 76).

31. In the present case, the Court notes from the outset that the second applicant was not part of the criminal proceedings leading to the first applicant's expulsion. Nevertheless, when the criminal proceedings against the first applicant were pending before the courts in 2019, his children were approximately 13 and 11 years old. They would remain in Denmark, so no question arose as to "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". The issue was rather which difficulties they would encounter in Denmark due to the separation from their father. The children would continue to live with their mother, as they had done since their parents divorced in 2018. Their contact with the first applicant had been limited to prison visits since he was detained on remand in November 2018. In principle, when he has served his sentence, D and S will have almost reached the ages of 18 and 16 years old.

32. The domestic courts did not as such comment on D's mother's allegation that "D would not be able to function without the first applicant, and that D would not be able to travel to Kosovo by herself" or that "S also had difficulties with the fact that his father was in prison" (see paragraph 9 above). However, apart from observing that such statements cannot be considered established facts, on the basis of the other material before it, the Court is not convinced that the first applicant's children's best interests were adversely affected by his deportation to such an extent that those should outweigh the other criteria to be taken into account (see, for example, *A.H. Khan v. the United Kingdom*, no. 6222/10, § 40, 20 December 2011; *Salem v Denmark*, cited above, § 78; and As*sem Hassan Ali v. Denmark*, cited above § 61).

33. The Court also notes that the applicants have not pointed to any obstacles to the children visiting the first applicant in Kosovo, if need be with assistance, or for them to meet elsewhere, or to maintain contact in other ways, for example via the telephone or the Internet.

34. In the light of the above, the Court recognises that the Danish courts carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law, including the applicants' family situation. Moreover, having regard to the gravity of the drug crimes committed by the first 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 applicants' right to respect for their family life, on the one hand, and the prevention of disorder or crime, on the other hand.

35. Finally, the Court notes that the domestic courts explicitly and thoroughly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. The Court points out in this connection 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, among many others, *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017 and *Levakovic v. Denmark*, no. 7841/14, § 45, 23 October 2018).

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 17 March 2022.

Hasan Bakırcı Deputy Registrar	Branko Lubarda President