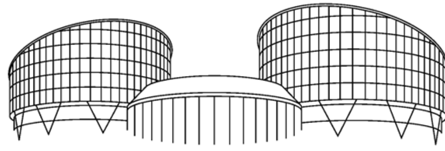

FOURTH SECTION

CASE OF GOMA v. DENMARK

(Application no. 18646/22)

JUDGMENT

Art 8 • Expulsion • Private life • Expulsion order with a permanent re-entry ban following conviction for a serious offence • Existence of very serious reasons for expelling settled migrant who had spent most of his childhood and youth in the host country • Prior convictions • Prior suspended expulsion order issued against the applicant • Proportionality duly assessed by domestic courts in light of Court's case-law

STRASBOURG

5 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Goma v. Denmark,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann, *judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 18646/22) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Congolese national, Mr William Hakeem Goma ("the applicant"), on 5 April 2022;

the decision to give notice to the Danish Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 27 June 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns an order for the expulsion of a settled migrant, issued in criminal proceedings. The applicant invokes Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1999 and lives in Copenhagen. He was represented by Mr Eddie Omar Rosenberg Khawaja, a lawyer practising in Copenhagen.

3. The Government were represented by their Agent, Ms Vibeke Pasternak Jørgensen, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice

4. The facts of the case may be summarised as follows.

5. The applicant was born in the Democratic Republic of the Congo. In August 2003, when the applicant was three years old, he was granted a residence permit in Denmark as a quota refugee. He entered the country in September 2003.

6. The applicant has a criminal record, having been convicted of the following offences:

(a) by a judgment of 8 May 2018, he was found guilty of rape (committed as an adult), and sentenced to two years and six months' imprisonment and issued with an expulsion order, suspended, with a probation period of two years (which expired on 22 November 2021); he was released on parole on 22 November 2019 with 306 days of the sentence remaining to be served; and

(b) by a judgment of 13 October 2020, he was fined for a violation of the Controlled Substances Act.

7. By a District Court (*Retten i Holstebro*) judgment of 8 December 2020, the applicant was convicted of robbery, committed on 6 July 2020, in violation of Article 288 of the Penal Code (carrying a sentence of imprisonment of up to six years, or ten years if it has been committed with aggravating circumstances), read partially with Article 21 (attempt). He was sentenced to two years' imprisonment, which included the unserved balance of 306 days at the time of his release on parole on 22 November 2019 (see paragraph 6 (a) above). The applicant was also expelled with a lifelong ban on returning to Denmark.

8. The District Court's reasoning regarding the expulsion order was as follows:

> "... [the applicant] has been lawfully resident in Denmark for seventeen years except for the periods in which he has been in custody.
>
> [The applicant] has not founded a family of his own in Denmark, and he has no children in Denmark. His parents and three siblings, as well as his grandmother, live in Denmark. He was born in a refugee camp in his country of origin. His parents originate from a different country. He has no family in his country of origin, and he has not been to his country of origin since he was three years old.
>
> He has no education except for elementary school, and he is unemployed. He is fluent in both oral and written Danish. He was raised speaking French. However, he is better at understanding than speaking the language. He is not able to write or read French.
>
> Against this background, and on the basis of the information provided, [the applicant] has no real ties with his country of origin, but given his knowledge of the French language, he would not be entirely lacking the skills to settle in his country of origin if expelled from Denmark.
>
> By a judgment of 8 May 2018, [the applicant] was sentenced to imprisonment for a term of two years and six months and issued with a suspended expulsion order for a violation of Article 216 § 1 (i) of the Penal Code. He was released on parole on 22 November 2019 with a probation period ending on 22 November 2021 and an unserved balance of 306 days of the sentence.
>
> The case at hand concerns robbery committed jointly by several persons at the victim's home. The offence was committed on 6 July 2020, that is, seven and a half months after [the applicant's] release on parole. [The applicant] has been sentenced to a concurrent sentence of imprisonment for a term of two years.
>
> Accordingly, [the applicant] has been found guilty today and was also found guilty by the judgment on 8 May 2018 of committing crimes aimed at jeopardising the physical integrity of others, a factor on which great weight is placed when the claim for expulsion is considered.

On the basis of an overall assessment of the above-mentioned circumstances and the other information provided, particularly the fact that [the applicant] has now been found guilty of robbery and has previously been found guilty of rape and sentenced to a long prison term and issued with a suspended expulsion order, the Court finds that it is not a disproportionate interference with his right to a private life to expel [the applicant] and issue him with a permanent re-entry ban despite his lack of ties with his country of origin and his childhood and adolescence in Denmark, and that an expulsion order is therefore not contrary to Article 8 of the Convention."

9. The applicant appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*), before which the following was submitted on his behalf:

"As regards his social background, [the applicant] made the additional statement that he had come to Denmark together with his mother and brother in 2003. [The applicant] had been raised in Denmark together with his parents and his three siblings. They had spoken Danish at home. He was very bad at speaking and understanding French. He did not know anybody in Congo. He had contact with his family in Denmark. Around the age of 16, he had developed substance abuse problems. When serving his sentence for rape in 2018, he had been offered therapy for his abuse of controlled substances and sex therapy. He had been released on parole for good conduct and in view of the therapy programmes completed. Following his imprisonment, he had moved to a residential home in Viborg, where he had continued therapy for abuse of controlled substances. He had felt very bad because of the incident that had given rise to the 2018 judgment. Prior to the robbery that this case concerned, he had relapsed into abuse of cannabis. He had experienced group pressure that he had been unable to resist. During his pre-trial detention in this case, he had received tuition so as to be able to complete grade 9. He had also received and continued to receive therapy for his abuse of controlled substances. He had been clean for about one year. He still had contact with his family. He planned to train to become a carpenter. His psychological well-being was much higher now than on his release after having served his previous sentence. He was sure that he would be able to abstain from abuse of substances in future."

10. On 1 July 2021 the High Court upheld the judgment. In respect of the expulsion order the majority (four out of six judges) stated as follows:

"According to the court records of the District Court, [the applicant] stated before the District Court that he had been raised speaking French.

That statement is compatible with [the applicant's] statement that he grew up with his parents and siblings, as well as with the other details reproduced in the report on the interview on personal circumstances under section 26 of the Aliens Act.

We therefore find that [the applicant's] statement before the High Court that he hardly speaks or understands French cannot be accepted as a fact.

The circumstance that [the applicant], whose name was then E.N., stated before the District Court (*Retten i Kolding*) in connection with the case in which a judgment was delivered on 8 May 2018 that 'he does not speak French' cannot lead to a different outcome.

Having made these observations, and since the circumstance that [the applicant], according to the information now available, must be presumed to be a national of the Republic of Congo and not Gabon can also not lead to a different outcome, we accept, for the reasons given by the District Court, that it would not for certain be contrary to

> Denmark's international obligations to expel [the applicant] – see section 59(2) of the Danish Aliens Act.
>
> In the light of the length of the sentence, the expulsion must be combined with a permanent re-entry ban – see section 32(4)(vii) of the Aliens Act. There is no basis under section 32(5) of the Aliens Act to issue a re-entry ban applicable for a restricted number of years.
>
> For this reason, we vote in favour of upholding the District Court's expulsion order."

11. The minority of the High Court stated as follows:

> "[The applicant] came to Denmark at the age of three and has no ties with the Republic of Congo. He speaks Danish, and we consider him to be well integrated and, in reality, to be Danish.
>
> For those reasons, we find that it would for certain be contrary to Denmark's international obligations to expel him and accordingly, we vote in favour of dismissing the claim for expulsion."

12. A request by the applicant for leave to appeal to the Supreme Court (*Højesteret*) was refused on 18 November 2021 by the Appeals Permission Board (*Procesbevillingsnævnet*).

13. According to information provided by the Danish Return Agency (*Hjemrejsestyrelsen*) on 2 November 2022, the embassy of the Republic of Congo in Paris had been requested to provide assistance in issuing a travel document, but, at the time when the information was provided, the applicant's deportation had not yet been planned.

RELEVANT LEGAL FRAMEWORK

14. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail in, for example, *Munir Johana v. Denmark* (no. 56803/18, §§ 23-26, 12 January 2021) and *Salem v. Denmark* (no. 77036/11, §§ 49-52, 1 December 2016).

15. Section 24b of the Aliens Act on suspended expulsion orders with a probation period of two years was amended by Act no. 469 of 14 May 2018, which came into force 16 May 2018. The new provision introduced a scheme of cautioning, which did not provide for a requirement to specify a particular probation period.

16. Section 32 of the Aliens Act was amended by Act no. 469 of 14 May 2018 and Act no. 821 of 9 June 2020. Briefly explained, as a result of the amendments, a re-entry ban was to be imposed for six years if the alien was sentenced to imprisonment for between three months and one year (section 32(4)(iv)); twelve years if the alien was sentenced to imprisonment for between one year and one year and six months (section 32(4)(vi)); and permanently, if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)). However, the courts were given discretion to reduce the length of re-entry bans, whether permanent or limited in time (section 32(5)(i)), if the length would otherwise for certain be

considered in breach of Denmark's international obligations, including Article 8 of the Convention.

17. Section 50 of the Aliens Act was amended by Act no. 919 of 21 June 2022. As a result of the amendment, when making a subsequent review of whether an expulsion order should be revoked, the Danish courts are now able to impose a re-entry ban for a shorter period than that previously specified, irrespective of when the criminal offence was committed, if they find, at the time of the review, that a shortening of the period is required to ensure that the expulsion order falls within the scope of Denmark's international obligations.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicant complained that the High Court's decision of 1 July 2021 to expel him from Denmark with a lifelong ban on returning, which had become final on 18 November 2021 (see paragraphs 10-12 above), was in breach of Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 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."

A. Admissibility

19. The Government submitted that the complaint should be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

20. The applicant disagreed.

21. In the Court's view, the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

22. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that his sentence was moderate and included 306 days from his previous conviction, that he had strong ties to Denmark, and that he had no ties to Congo. In his

view, it had not been established that there were “very compelling reasons” to expel him with an entry ban for life.

23. The Government submitted that the Danish courts had thoroughly carried out the proportionality test, balancing the opposing interests and taking all the applicant’s personal circumstances into account. The applicant had committed a serious and violent offence, less than eight months after being released and during the probation period for the suspended expulsion order of 8 May 2018, and he had a criminal past, which included rape. The applicant posed a serious threat to public order. He had been convicted twice of serious crimes jeopardising the physical integrity of others. Lastly, since the domestic courts had considered the case specifically in the light of Article 8 of the Convention and the Court’s pertinent case-law, the Court should be reluctant, having regard to the subsidiarity principle, to disregard the outcome of the assessment made by the national courts.

2. *The Court’s assessment*

(a) General principles

24. The relevant criteria to be applied have been set out in, among other authorities, *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 54-60, ECHR 2006-XII) and *Maslov v. Austria* ([GC], no. 1638/03, §§ 68-76, ECHR 2008).

(b) Application of those principles to the present case

25. The Court considers it established that there has been an interference with the applicant’s right to respect for his private life within the meaning of Article 8, that the expulsion order and the re-entry ban were “in accordance with the law” and that they pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, no. 77036/11, § 61, 1 December 2016).

26. As to the question of whether the interference was “necessary in a democratic society”, the Court notes that the Danish courts took as their legal starting-point the relevant sections of the Aliens Act and 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. The Court recognises that the domestic courts thoroughly examined each criterion and that very serious reasons were required to justify the expulsion of the applicant, a settled migrant who had entered Denmark at the age of three and had lawfully spent most of his childhood and youth in the host country (see *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether “very serious reasons” of that kind were adduced and examined by the national authorities when assessing the applicant’s case.

27. The domestic courts gave particular weight to the seriousness of the crime committed and the sentence imposed. The applicant was found guilty

of robbery, in violation of Article 288 of the Penal Code (carrying a sentence of imprisonment of up six years), read partially with Article 21 (attempt). The crime was committed less than eight months after his release on parole, and during the probation period for the suspended expulsion order of 8 May 2018. The crime was of such a nature that it could have had serious consequences for the lives of others (see, for example, *Avci v. Denmark,* no. 40240/19, § 30, 30 November 2021, and *Abdi v. Denmark*, no. 41643/19, § 33, 14 September 2021, and the cases cited therein). The applicant was sentenced to two years' imprisonment, which included an unserved balance of 306 days from his previous conviction (see paragraph 7 above).

28. The domestic courts also took into account the applicant's criminal past, which included a conviction for rape on 8 May 2018 and a fine for a violation of the Controlled Substances Act (see paragraph 6 above).

29. With regard to the criterion "the length of the applicant's stay in the country from which he or she is to be expelled", the District Court duly took into account that the applicant had been three years old when he had arrived in Denmark and had lawfully resided there for seventeen years (see paragraph 8 above).

30. Regarding the criterion "the time that has elapsed since the offence was committed [that is, 6 July 2020] and the applicant's conduct during that period", on the one hand, the High Court noted that the applicant had been convicted on 13 October 2020 of a violation of the Controlled Substances Act. On the other hand, the applicant submitted that he had completed a therapy programme, and had received tuition so as to be able to complete grade 9 of his school education (see paragraph 9 above).

31. As to the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination", the domestic courts properly took this into account. They accepted that the applicant's ties with Denmark were stronger than his ties with Congo, but found that he would not be lacking the basic requirements for establishing a life in his country of origin.

32. Lastly, regard will be had to the duration of the expulsion order, in particular whether the re-entry ban was of limited or unlimited duration. The Court has previously found such a ban to be disproportionate on account of its unlimited duration, whereas in other cases it has considered the limited duration of the exclusion order to be a factor weighing in favour of its proportionality (see, for example, *Savran v. Denmark* [GC], no. 57467/15, §§ 182 and 199, 7 December 2021, and the cases cited therein). One of the elements relied on in this respect has been whether the crime leading to the expulsion order was of such a nature that the person in question posed a serious threat to public order (see, among other authorities, *Ezzouhdi v. France*, no. 47160/99, § 34 13 February 2001; *Keles v. Germany*, no. 32231/02, § 59, 27 October 2005; and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, in which the Court found that the persons in

question did not pose a serious threat to public order; see also *Mutlag v. Germany*, no. 40601/05, §§ 61-62, 25 March 2010, and *Balogun v. the United Kingdom*, no. 60286/09, § 49, 10 April 2012, in which the Court found that the person in question did pose a serious threat to public order).

33. In the present case, by virtue of the amended section 32 of the Aliens Act (see paragraph 16 above) the Danish courts had discretion to reduce the duration of the ban which would otherwise have been imposed under section 32(4)(vii) of the Aliens Act (contrast *Savran*, cited above, § 200). In the specific circumstances of the case, notably on account of the fact that the crime had been committed during the probation period for a previous suspended expulsion order, they decided to make the ban on re-entry permanent. The Court does not call into question the finding that the applicant's crimes leading to the expulsion order were of such a nature that he posed a serious threat to public order at the time (see also, among other authorities, *Abdi*, cited above, § 39; *Mutlag*, cited above, §§ 61-62; and *Balogun*, cited above, § 53). Nor can it be overlooked that the applicant demonstrated a lack of willingness to comply with Danish law, despite the fact that a suspended expulsion order had been issued against him in May 2018 (see also, among other authorities, *Munir Johana v. Denmark*, no. 56803/18, § 58, 12 January 2021, and *Levakovic v. Denmark*, no. 7841/14, § 44, 23 October 2018).

34. Taking account of 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 national authorities when assessing his case. It notes that at all levels of jurisdiction there was an explicit and thorough assessment of whether the expulsion order could be considered to be contrary to Denmark's international obligations. The Court points out in this connection that where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (*Savran*, cited above, § 189). In the Court's, opinion, such strong reasons are absent in the present case.

35. It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 5 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Gabriele Kucsko-Stadlmayer
Deputy Registrar	President