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

SECOND SECTION

DECISION

Application no. 31572/19
Mir Zohaib Lopez Burgos HUSSAIN
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 23 May 2019,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mir Zohaib Lopez Burgos Hussain, is a Pakistani national who was born Denmark in 1992. He was represented before the Court by Mr Peter Kragh, a lawyer practising in Copenhagen.

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 has had a criminal record since 2009. He has been convicted on twelve occasions, once as a minor, notably for drug offences, making false accusations (thereby perverting the course of justice), traffic offences and once for threats of violence against a public servant.

4. Most recently, by a judgment of 24 May 2016 he was convicted of drug offences, making false accusations and violations of the Act on Weapons. He was sentenced to 30 days' imprisonment. Furthermore, by a judgment of 22 June 2016 he was convicted for aggravated violence, *inter alia* with the use of a bottle, for which he was sentenced to five months' imprisonment and issued a suspended expulsion order with two years' probation.

5. Moreover, since around May 2015 he has been a member of a gang called Loyal to Familia (LTF) which, subsequent to the events giving rise to the present case, was dissolved by the Danish courts since it had an unlawful purpose and functioned by means of violence.

6. By a District Court (*Københavns Byret*) judgment of 7 September 2017, the applicant was convicted on nine counts, principally for aggravated violence, committed with others, on 18 June 2015, against a prison officer who was on his way home from work. The victim was hit several times about the head with fists and a spanner, and was kicked and stabbed, resulting in permanent injuries and 20% loss of earning capacity. By the same judgment, the applicant was convicted, *inter alia*, of drug offences concerning more than 60 g of cocaine, for attempted handling of stolen goods relating to approximately 30,000 euros and for making false accusations. He was sentenced to three years and four months' imprisonment (as a consecutive sentence to those from May and June 2016) and issued a suspended expulsion order with two years' probation.

7. For the purposes of the criminal proceedings, the Immigration Service (*Udlændingestyrelsen*) had gathered information about the applicant's personal circumstances, which included the following. He was born in Denmark, where his parents and eight siblings lived. He had lived legally in Denmark for twenty-three years. He was unmarried and had no children. He had no education. He had only had a few jobs. He had been to Pakistan three times, most recently in 2009.

8. Before the District Court the applicant explained, among other things, that he had uncles and cousins in Pakistan.

9. On appeal to the High Court (*Østre Landsret*), the applicant was summoned, but did not appear. By a judgment of 10 April 2018, the High Court reduced the sentence to three years' imprisonment and upheld the suspended expulsion order with two years' probation.

10. On appeal, in a judgment of 6 February 2019, the Supreme Court (*Højesteret*) increased the sentence to three years and six months' imprisonment and ordered the applicant's expulsion with a permanent ban on his re-entry.

11. The Supreme 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, being a settled migrant who had been born in Denmark and lawfully spent his whole childhood and youth in the host country.

12. In respect of the nature and seriousness of the offences at issue, the Supreme Court noted that the assault on the prison officer had been very serious and dangerous, prepared in advance and committed only because of the victim's job, without any confrontation beforehand. The victim had been stabbed with a knife and beaten in the head with a heavy implement, leading to permanent injuries and the loss of 20% earning capacity. Furthermore, the applicant had been convicted, *inter alia,* of serious drug offences concerning

more than 60 g of cocaine and for attempted handling of stolen goods to a value of approximately 30,000 euros. The assault had been committed in June 2015, before the suspended expulsion order issued on 22 June 2016, but several of the offences, including the drug offences, had been committed only a few days after the suspended expulsion order, and thus within the two-year probation period.

13. In addition to the applicant's criminal past and his membership of LTF, the Supreme Court had regard to the fact that the applicant had been convicted anew by judgments of 17 November 2017, 14 February 2018 and 27 March 2018 for drug offences, mainly related to drugs for his own consumption, and for having driven a vehicle while under the influence of drugs and without a driving licence. By judgment of 4 June 2018 he was also convicted for being in possession of a flick knife and for threatening a police officer, saying that he thought that the police officer should have a bullet put through his head.

14. The Supreme Court therefore found that there was a significant risk that the applicant would continue to commit crimes in Denmark in the future, including violent crimes and drug offences.

15. The Supreme Court took into account the applicant's personal circumstances, including additional information from January 2019 that the applicant had recently married a woman in a Muslim ceremony, that they did not live together and that over the last five years his income had been very modest or non-existent, partly because he had been in prison. The Supreme Court found it established that the applicant's link with Denmark was stronger than his link with Pakistan, but that he had the prerequisites for establishing a life in Pakistan.

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

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

B. Relevant domestic law

18. 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

19. The applicant complained that the Supreme Court's decision of 6 February 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

20. 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 v. Denmark* (cited above, §§ 42-47).

B. Application of the principles to the present case

21. 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 v. Denmark*, cited above, § 61).

22. 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 been born in Denmark and had lawfully spent his childhood and youth in the host country (ibid., § 75).

23. The Supreme Court gave particular weight to the nature and seriousness of the crime committed and the sentence imposed, including the applicant's criminal past, the fact that he had previously been issued a suspended expulsion order and that he had continued to commit crimes (see paragraphs 12-14 above).

24. The Court finds reason to add that the crimes committed by the applicant, including the final ones leading to the unconditional expulsion order, were such as to have 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 v. Denmark*, cited above, § 66).

25. The Supreme 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" and found that expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on the applicant due to his ties with Denmark. However, having regard to his knowledge of the Pakistani language, customs and culture, the Supreme Court found that the applicant had the prerequisites for establishing a life in Pakistan.

26. It does not appear that the applicant relied before the Supreme Court on his "family life" when adding the information that he had recently married

a woman in a Muslim ceremony and that they did not live together. In any event, he could not legitimately have expected that his deportation order of 7 September 2017, the suspension of which was at stake in the appeal before the Supreme Court, would be revoked on the basis of a *fait accompli* due to the marriage (see, for example, *M.E. v. Denmark*, no. 58363/10, § 81, 8 July 2014 and *Udeh v. Switzerland*, no. 12020/09, § 50, 16 April 2013). Therefore, the Supreme Court could rightly assume that the applicant did not have a "family life" in Denmark, and deal only with the "private life" aspect (see also *Abdi v. Denmark*, no. 41643/19, § 31, 14 September 2021 [not final yet] and *Mohammad v. Denmark* (dec.), [Committee], no 16711/15, § 26, 20 November 2018).

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

28. 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 v. Denmark,* cited above, § 53).

29. 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 applicant's crimes leading to the expulsion order were 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, despite the fact that a suspended expulsion order had been issued against him in June 2016 (see, also, among others, *Khan v. Denmark,* cited above, § 73 and *Levakovic v. Denmark*, no. 7841/14, § 44, 23 October 2018).

30. 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 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, 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).

31. 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