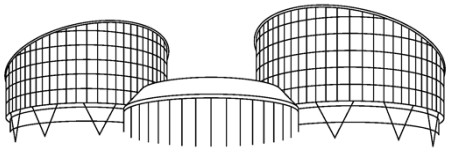

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NOORZAE v. DENMARK

(Application no. 44810/20)

JUDGMENT

Art 8 • Expulsion • Private life • Disproportionate expulsion of settled migrant combined with twelve-year re-entry ban following convictions for serious offences • Imposition of relatively lenient sentence • Lack of relevant prior convictions and warnings of expulsion • Applicant attempted to reintegrate into Danish society after serving sentence • Very strong ties with Denmark and virtually non-existent ties with country of origin

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.

In the case of Noorzae 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. 44810/20) 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 an Afghan national, Mr Omid Noorzae ("the applicant"), on 30 September 2020;

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 1995 and lives in Copenhagen. He was represented by Mr Anders Schønnemann Olesen, 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 Afghanistan in 1995. In 2000, when he was five years old, he entered Denmark and was granted a residence permit on the basis of family reunion.

6. The applicant has a criminal past. When he was a minor (between 15 and 18 years old), he was convicted of the following offences:

(a) by a judgment of 28 April 2011, he was convicted of violence and sentenced to thirty days' imprisonment, suspended; and

(b) by a judgment of 6 February 2013, he was convicted of offences including violence and sentenced to sixty days' imprisonment, suspended.

7. As an adult, the applicant was fined several times for theft and vandalism (2015 and 2016) and violations of the Controlled Substances Act and the Traffic Act.

8. By a judgment of 21 May 2019, the Lyngby District Court (*Retten i Lyngby*) convicted the applicant under Article 191 of the Penal Code (carrying a sentence of up to ten years' imprisonment) for being in possession of around 15.7 kg of cannabis intended for distribution. He was also convicted of violence against two individuals whom he had punched several times in the face and elsewhere, possession of a knife, having driven a vehicle without a driving licence and, under another count, being in possession of 54.3 grams of cannabis intended for distribution. The applicant was sentenced to one year and two months' imprisonment and cautioned about the risk of expulsion.

9. The applicant appealed to the High Court of Eastern Denmark (*Østre Landsret*), before which he stated, among other things, that after his release, that is some time after the District Court's judgment, he had undergone therapy and had also taken up his studies again to become a kindergarten teacher. By a judgment of 28 January 2020, the High Court found the applicant guilty of an additional count of attempted threats, and therefore increased the sentence to one year and three months' imprisonment. Moreover, it issued an expulsion order with a twelve-year re-entry ban, in respect of which it stated as follows:

> "[The applicant] is an Afghan national, and in this case he has been sentenced to imprisonment for a term of one year and three months for, *inter alia*, possession of a large quantity of cannabis intended for distribution, as well as for violence against two persons he believed had stolen the cannabis and for attempted threats using a knife.
>
> It follows from section 22(1)(iv) and (vi), read with section 22(1)(ii), read with section 26(2), of the Aliens Act that the defendant must be expelled unless expulsion would for certain be contrary to Denmark's international obligations. The question is, then, whether such expulsion would be contrary to Article 8 of the European Convention on Human Rights (ECHR) on the right to respect for private and family life.
>
> [The applicant] is 24 years old. He is not married or cohabiting, and has no children. He has been lawfully resident in Denmark for around eighteen years, and expulsion would therefore constitute an interference with his private life; see Article 8(1) of the ECHR. Such interference is justified only if the conditions of Article 8 § 2 are fulfilled. Under Article 8 § 2, it is crucial whether expulsion must be deemed to be necessary for the prevention of crime. A decision to expel will thus depend on an assessment of proportionality, and extensive case-law is available from the European Court of Human Rights on this issue.
>
> The criteria to be considered in the assessment are set out in, *inter alia*, *Maslov v. Austria* (judgment of the Court of 23 June 2008 in application no. 1638/03), § 68. The weight to be attached to the respective criteria will depend on the specific circumstances of the case at hand (§ 70). Very compelling grounds are required to justify expulsion in the case of a resident alien who was born in this country or arrived here as a child and spent most of his childhood and youth here (§ 75).

In a case like the present one, where the alien is a young adult who has not yet founded a family of his own, the relevant criteria are the nature and seriousness of the offence committed, the length of the alien's stay in the host country, the time that has elapsed since the offence was committed and the alien's conduct during that period, as well as the solidity of social, cultural and family ties with the host country and with the country of destination (§ 71). [The applicant] has been found guilty of, *inter alia*, possession of a large quantity of cannabis for distribution, as well as violence committed in that connection. The offences were committed when he was 23 years old, and the drug offence was committed together with other perpetrators. For those offences, [the applicant] is given a non-suspended sentence of imprisonment for one year and three months. In 2011, before the offences at issue in these proceedings were committed, he received a suspended sentence of imprisonment for a term of thirty days for violence under Article 244 of the Penal Code, and in 2013 he received a suspended concurrent sentence of imprisonment for a term of sixty days for attempted violence under Articles 119 and 244 of the Penal Code. In 2015 and 2016 he was convicted of vandalism and other offences including theft.

On those grounds, the High Court finds that there is a considerable risk that, if not expelled, he will commit other offences directed against the physical integrity of others and other drug offences in Denmark. As mentioned, [the applicant] has been lawfully resident in this country for around eighteen years. He was five when he arrived in Denmark from Afghanistan. He has his mother, father and siblings in Denmark. He is not aware of any family of his in Afghanistan. He has a Turkish-Kurdish girlfriend with whom he does not cohabit, and lives together with his siblings. He was expelled from elementary school and a boarding school. He had to leave school at the upper secondary level and also had to leave the higher preparatory examination course programme because of bad behaviour, but he later graduated at the upper secondary level via the adult education programme (VUC).

He is studying to become a teacher and works at his father's shop in his spare time. There is no doubt that his ties with Denmark are so strong that an expulsion order combined with a twelve-year re-entry ban would constitute a considerable burden on him. The defendant was born in Afghanistan, but has spent most of his life in Denmark and has not been back to Afghanistan. Given his childhood, seen in conjunction with taped conversations between him and [another defendant] in which they speak a mix of Danish and Afghan, it must be accepted as a fact that he is fluent in Afghan, but does not read or write the language. In addition, he must be assumed to have some knowledge of Afghan customs and culture through his family here. The High Court accepts as a fact that the defendant's personal and cultural ties with Denmark are much stronger than his ties with Afghanistan, but he will not be entirely lacking the basic requirements for establishing a life there if an expulsion order is imposed.

As mentioned, [the applicant] has previous convictions for offences directed against the physical integrity of others and for the possession of controlled substances, which offences were committed before his eighteenth birthday. From an overall assessment, and given the nature and seriousness of his current offences in particular, the High Court finds that the considerations in favour of expelling [the applicant] are so compelling as to outweigh the considerations against expulsion. The fact that the re-entry ban is imposed for a limited period of twelve years has been taken into account in the assessment of proportionality. Furthermore, it is observed that his family will be able to maintain contact with him, including by communicating with him by telephone and via the Internet. On those grounds, the High Court finds that expulsion combined with a twelve-year re-entry ban is not a disproportionate interference contrary to Article 8 of the European Convention on Human Rights. Accordingly, the High Court allows the

claim for expulsion combined with a twelve-year re-entry ban, see section 32(2)(iii), read with section 22(1)(iv) and (vi), of the Aliens Act. Pursuant to section 32(1), the re-entry ban will take effect on the date of his return or deportation."

10. A request by the applicant for leave to appeal to the Supreme Court (*Højesteret*) was refused on 1 April 2020 by the Appeals Permission Board (*Procesbevillingsnævnet*).

11. According to information provided by the Danish Return Agency (*Hjemrejsestyrelsen*) on 2 November 2022 and 22 February 2023, the applicant has disappeared. Therefore, at the date of those information, his deportation had not yet been planned.

RELEVANT LEGAL FRAMEWORK

12. 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).

13. 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 on 16 May 2018. The new provision introduced a scheme of cautioning, which did not provide for a requirement to specify a particular probation period.

14. 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, the 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.

15. Section 50 of the Aliens Act was amended by Act no. 919 of 21 June 2022. As a result of the amendment, when carrying out 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

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained that the High Court's decision of 28 January 2020 to expel him from Denmark, which had become final on 1 April 2020 (see paragraphs 9 and 10 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 and family 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

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

18. The applicant disagreed.

19. 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. The parties' submissions

20. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that his criminal record related to offences committed as a minor, that he had never been issued with a conditional expulsion order, that he had strong ties to Denmark, including a girlfriend, and that he had no ties to Afghanistan. In his view, it had not been established that there were "very compelling reasons" to expel him. Moreover, although the re-entry ban had been issued for twelve years, his chances of re-entering Denmark remained practically excluded.

21. 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. They emphasised that the applicant had committed a serious crime, the nature of which could have had serious consequences for the lives of others, and that he had a criminal past. The domestic courts had taken into account in the proportionality test that the re-entry ban was of limited duration, namely twelve years. They had considered the case specifically in the light of

Article 8 of the Convention and the Court's pertinent case-law. Having regard to the subsidiarity principle, the Court should therefore be reluctant to disregard the outcome of the assessment made by the national courts.

2. The Court's assessment

(a) General principles

22. 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], cited above, §§ 68-76, ECHR 2008).

(b) Application of those principles to the present case

23. 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, 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).

24. Before the Court, the applicant submitted that he had a girlfriend in Denmark (see paragraph 20 above). The Court notes that, during the criminal proceedings leading to the expulsion order at issue, the applicant did not rely on having established a family life or raise, either in form or substance, a complaint that his expulsion would be in breach of Article 8 because he would be separated from his girlfriend in Denmark. Therefore, the Court will examine the case only under the private life aspect of Article 8.

25. 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, 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 five 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 adequately adduced and examined by the national authorities when assessing the applicant's case.

26. The High Court gave particular weight to the seriousness of the crime committed and the sentence imposed. The applicant was convicted under Article 191 of the Penal Code (carrying a sentence of up to ten years' imprisonment) for being in possession of around 15.7 kg of cannabis intended for distribution. He was also convicted of violence against two individuals, possession of a knife, having driven a vehicle without a driving licence and,

under another count, being in possession of 54.3 grams of cannabis intended for distribution. The crimes were of such a nature that they 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). He was sentenced to one year and three months' imprisonment (see paragraphs 8 and 9 above).

27. The High Court also took into account that the applicant had been convicted twice as a minor of violence in 2011 and 2013, and that as an adult, in 2015 and 2016, he had been convicted of vandalism and theft (see paragraph 9 above).

28. 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 High Court duly took into account that the applicant had been five years old when he had arrived in Denmark and had lawfully resided there for approximately eighteen years.

29. In respect of the criterion "the time that has elapsed since the offence was committed and the applicant's conduct during that period", the applicant stated to the High Court that after his release, he had undergone therapy and had also taken up his studies again to become a kindergarten teacher (see paragraph 9 above). However, the High Court did not address these specific points in its judgment of 28 January 2020.

30. As to the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination", the High Court properly took this into account. It accepted that his ties with Denmark were stronger than his ties with Afghanistan, but found that he would not be lacking the basic requirements for establishing a life in his country of origin.

31. 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 connection has been whether the offence 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).

32. In the present case, the Court does not call into question the finding that the applicant's offence leading to the expulsion order was of such a nature that he posed a serious threat to public order at the time (see also, among other authorities and *mutatis mutandis*, *Abdi*, cited above, § 39; *Mutlag*, cited above, §§ 61-62; and *Balogun*, cited above, § 53).

33. It notes, however, that, prior to the case at hand, apart from the two offences committed as a minor, which involved violence (see paragraph 6 above), the offences committed by the applicant as an adult concerned vandalism, theft, traffic offences and violations of the legislation on controlled substances (see paragraph 7 above), all of which resulted in fines, and none of which indicated that in general he posed a threat to public order. In this respect the present case resembles the situation in, for example, *Ezzouhdi* (cited above, § 34) and *Abdi* (cited above, § 40).

34. The Court also observes that the applicant had not previously been cautioned about the risk of expulsion or given a conditional expulsion order (see, for example, *Abdi*, cited above, § 41).

35. The Court also notes that the applicant had undergone therapy and taken up his studies again upon being released after serving his sentence (see paragraphs 9 and 29). The High Court appears not to have taken this fact into consideration in its reasoning.

36. Nevertheless, despite the fact that the applicant's previous convictions did not indicate that he in general posed a threat to public order, that he had not received any previous warnings as to the risk of expulsion, that he had attempted to reintegrate himself into Danish society after serving his sentence, and although a relatively lenient sentence was imposed in the present case (compare *Abdi,* cited above, § 42), the High Court decided, in accordance with the applicable legislation, to combine the expulsion of the applicant with a re-entry ban for twelve years, although it had discretion to reduce the duration of the ban (see paragraph 14 above, and contrast *Savran*, cited above, § 200).

37. This observation should also be seen in the light of the fact that the applicant had arrived in Denmark at a very young age and had lawfully resided there for approximately eighteen years. He thus had very strong ties with Denmark (see paragraph 30 above), whereas his ties with Afghanistan were virtually non-existent.

38. The Court is therefore of the view, given all the circumstances of the case, that the expulsion of the applicant combined with a re-entry ban for twelve years was disproportionate (see, in particular and *mutatis mutandis*, *Ezzouhdi*, cited above, §§ 34-35; *Keles*, cited above, § 66; *Bousarra*, cited above, §§ 53-54; and *Abdi*, cited above § 44, although all the cases cited concerned permanent re-entry bans).

39. It follows that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

41. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage relating to the alleged violation of Article 8 of the Convention.

42. The Government submitted that the claim was excessive and that the finding of a violation in itself would constitute adequate just satisfaction.

43. The Court notes that the applicant disappeared after being released. Accordingly, the expulsion order has not been enforced (see paragraph 11 above). In these circumstances, the Court considers that the finding of a violation in the present judgment (see paragraph 39 above) constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see also, for example, *I.M. v. Switzerland*, no. 23887/16, § 85, 9 April 2019).

B. Costs and expenses

44. The applicant claimed costs and expenses incurred in the Convention proceedings in the amount of 40,420 Danish kroner (equal to approximately EUR 5,400), corresponding to legal fees for a total of 21.5 hours of work carried out by his representative.

45. The Government noted that the applicant had applied for legal aid under the Danish Legal Aid Act (Lov 1999-12-20 nr. 940 *om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*) and found that the applicant should not be awarded costs in so far as they were covered by that Act.

46. The Court notes that it is uncertain whether the applicant will be granted legal aid under the Danish Legal Aid Act. Therefore, it finds it necessary to assess and decide the applicant's claim for costs and expenses.

47. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, awards made in comparable cases against Denmark (see, among other authorities, *Aggerholm v. Denmark*, no. 45439/18, § 127, 15 September 2020, and the cases cited therein), the Court considers it reasonable to award the sum of EUR 5,400, covering costs

for the proceedings before the Court, in so far as these have not already been granted under the Danish Legal Aid Act.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that in respect of costs and expenses, the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,400 (five thousand four hundred euros), to be converted into the currency of the respondent State at the date of settlement, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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 Deputy Registrar	Gabriele Kucsko-Stadlmayer President