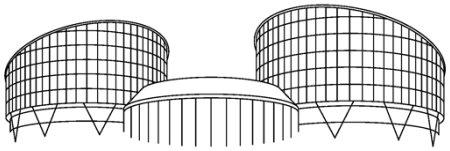

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KHAN v. DENMARK

(Application no. 26957/19)

JUDGMENT

Art 8 • Expulsion • Respect for private life • Expulsion order with a re-entry ban of six years • Existence of very serious reasons for expelling settled migrant who had spent whole life in the host country and despite being sentenced only to three months' imprisonment, in light notably of nature of offence and long history of serious and violent criminality • No minimum requirement as to sentence or seriousness of crime resulting in expulsion • Proportionality duly assessed by Supreme Court in light of Court's case-law

STRASBOURG

12 January 2021

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 Khan v. Denmark,

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

Marko Bošnjak, *President,*
Jon Fridrik Kjølbro,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 26957/19) 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 Pakistani national, Mr Shuaib Khan ("the applicant"), on 15 May 2019;

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

the parties' observations;

Having deliberated in private on 24 November 2020,

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

INTRODUCTION

1. The applicant is a Pakistani national who was born in Denmark in 1986. He has a criminal record and was once subject to a conditional expulsion order. By a final Supreme Court judgment of 20 November 2018, the applicant was convicted, *inter alia*, of threatening a police inspector on duty. He was sentenced to 3 months' imprisonment and an order for expulsion with a ban on re-entry for 6 years was imposed on him.

2. The applicant complained that the order expelling him from Denmark was in breach of Article 8 of the Convention.

THE FACTS

3. The applicant was born in 1986. His residence is unknown. He was represented by Michael Juul Eriksen, a lawyer practising in Aarhus.

4. The Government were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant was born in Denmark, where his parents and four siblings also live. He does not have a family of his own.

7. The applicant has had a criminal record since 2003. He has been convicted on thirteen occasions, as set out below. Moreover, he was the leader of a gang called Loyal to Familia (henceforth LTF). Subsequent to the events giving rise to the present case, by a judgment of 24 January 2020 the said gang was dissolved by a City Court, which found that it had an unlawful purpose and was functioning by means of violence. The appeal proceedings are currently pending before the High Court of Eastern Denmark (*Østre Landsret*).

8. By a judgment of the Copenhagen City Court of 19 June 2003, the applicant was sentenced to a fine of 3,000 Danish Kroner (DKK) for possession of an illegal knife in a public place.

9. By a judgment of the Copenhagen City Court of 13 October 2003, he was sentenced to 4 day fine units of DKK 125 for causing criminal damage.

10. The applicant reached the age of majority in 2004.

11. By a judgment of the Copenhagen City Court of 27 June 2006, he was convicted of driving without a valid driving licence on several occasions, illegal possession of weapons, attempted prevention of a third person's arrest by the police and calling the police "HIPO swine", and was sentenced to 20 days' imprisonment and a fine of DKK 35,000.

12. By a District Court judgment of 18 January 2007, he was convicted of violence, which occurred during outdoor exercise in the Western Prison (*Vestre Fængsel*) when he assaulted another inmate, and was sentenced to imprisonment for a term of 60 days.

13. On 14 May 2008 he accepted a penalty amounting to DKK 3,000 issued on 31 March 2008 for possession of 9.4 grams of marijuana for personal use.

14. By a District Court judgment of 8 October 2008, he was convicted of two counts of aggravated violence as a repeat violent offender, one of the counts relating to fatal violence. He was sentenced to 8 years' imprisonment. The request for expulsion was dismissed.

15. By a District Court judgment of 4 February 2010, he was convicted of unlawful possession of a mobile telephone in prison and was sentenced to 7 days' imprisonment.

16. By a District Court judgment of 9 February 2010, he was disqualified from driving for 3 years from the date of the final judgment. No supplementary penalty was imposed.

17. By a District Court judgment of 28 June 2011, he was convicted of unlawful possession of a mobile telephone in prison and was sentenced to 10 days' imprisonment.

18. By a District Court judgment of 3 October 2012, he was convicted of unlawful possession of a mobile telephone in prison and was sentenced to 14 days' imprisonment.

19. By a judgment of the Copenhagen City Court of 27 November 2013, he was convicted of possession of 1.25 grams of marijuana and of driving

without a valid driving licence on several occasions and was sentenced to 10 days' imprisonment and a fine of DKK 63,000. He was disqualified from driving for 3 years from the date of the final judgment.

20. By a District Court judgment of 21 December 2013, he was convicted of aggravated violence as a repeat violent offender, and theft, and was sentenced to 3 years and 6 months' imprisonment. The request for expulsion was dismissed.

21. By a judgment of the Copenhagen City Court of 20 March 2015, he was convicted of aggravated violence as a repeat violent offender for having assaulted a person jointly with six accomplices during outdoor exercise in prison. He was sentenced to 6 months' imprisonment and issued with a suspended order on expulsion from Denmark with a two-year probation period. Upon appeal the judgment was upheld by the High Court of Eastern Denmark on 23 September 2015.

22. The applicant was released in March 2017.

23. In July 2017, due to an ongoing violent conflict between LTF and another gang, which included the use of firearms, the police established stop-and-frisk zones, *inter alia,* at Blaagaard Square in Copenhagen, in order to guarantee the security and safety of local residents.

24. On 25 August 2017 the applicant was charged with a violation of Article 119(1) of the Penal Code (*straffeloven*) in that, in his capacity as a leading member of the LTF, at midnight on 31 July 2017, in the stop-and-frisk zone on Blaagaard Square, he had threatened a police inspector on duty with violence.

He was also charged with staying in Denmark without the requisite permit - see section 59(2) of the Danish Aliens Act (*udlændingeloven*) – because he had not applied for renewal of his residence permit on its expiry on 3 November 2010, only applying for it on 18 September 2015. The applicant's residence permit had been renewed on 10 April 2017 for a period ending on 10 April 2021.

25. On 24 August 2017, for the purposes of the court proceedings, the Danish Immigration Service (*Udlændingestyrelsen*) gathered information concerning the applicant's personal circumstances and drew up an assessment of whether the prosecution should refrain from submitting a request for expulsion in view of Denmark's international obligations. It stated, *inter alia*, the following:

> "... As regards the issue of whether a decision to expel the applicant may be considered with certainty to be contrary to Denmark's international obligations, the Danish Immigration Service refers to the police report of 17 May 2013.
>
> No new interview has been held with [the applicant] for the purpose of this case as [his] counsel has stated that [the applicant] does not find it necessary to give new information about his personal circumstances. Consent has been given to the presentation of the previous report in connection with this case.
>
> The police report of 17 May 2013 states, *inter alia*, the following:

[the applicant] was born in Denmark ... in 1986. He is a Pakistani national.

[the applicant] has stated that his parents and 4 of his siblings live in Denmark.

In addition, he has a sister who now lives in the United Kingdom and a sister who lives in Sweden.

[the applicant] has stated that he has no ties with Pakistan. He has stated that he speaks broken Pakistani Punjabi and that he cannot read the language.

[the applicant] has stated that he has visited Pakistan 2-3 times, most recently in 2007.

[the applicant] finished the ninth grade of the Danish primary and lower secondary school. He stated that he had subsequently started several education programmes, although he did not complete any of them. While serving previous sentences he took classes in Danish, English and social studies and completed the individual subject studies with good marks. ...

Opinion on the issue of expulsion

... Based on the information given by the Prosecution Service concerning the nature of the crime and concerning the circumstance that the person in question is expected to be sentenced to a prison term measured in months, read with the considerations mentioned in section 26(2) of the Aliens Act, the Danish Immigration Service concurs in the recommendation of the Prosecution Service regarding the issue of expulsion. The Danish Immigration Service observes that it concurs in the recommendation regardless of whether [the applicant] is sentenced to imprisonment for a term of up to 3 months or to imprisonment for a term exceeding 3 months but less than 1 year.

Simultaneously, the Danish Immigration Service specified that on 23 September 2015 the person in question was issued with a suspended expulsion order accompanied by a two-year probation period. Pursuant to section 24b(3) of the Aliens Act, an alien issued with a suspended expulsion order under section 24b(1) of the Aliens Act must be expelled unless it is ascertained that such expulsion would be contrary to Denmark's international obligations if, during the probation period of the suspended expulsion order, the person in question commits another offence that may give rise to expulsion under sections 22 to 24 and court proceedings are initiated before the expiry of the probation period. If it is not possible to issue an expulsion order, see section 26(2), the alien must be issued with a new suspended expulsion order. The probation period must be determined according to the rules in subsection (2). ..."

26. On 12 September 2017, the Prosecution Service asked the Danish Immigration Service for a supplementary opinion on the applicant's nationality. The opinion of 15 September 2017 states, *inter alia*, the following:

"... [the applicant] has previously held a Pakistani national passport. According to the information available to the Danish Immigration Service, [the applicant] was issued with re-entry permits on 25 September 2002 and 30 November 2004, respectively, and both permits were stamped in the national passport of the person in question. It was stated in the application that he was a Pakistani national. Furthermore, [the applicant] lodged an application for permanent residence on 30 November 2004. When lodging the application, [the applicant] presented his Pakistani national passport issued on 7 September 2001 at the Pakistani Embassy in Copenhagen, passport no. [xxx], valid until 6 September 2006. In the application form, [the applicant] stated himself that he is a Pakistani national and that his native language is Pakistani Punjabi. ..."

27. On 3 October 2017, the Danish Immigration Service sent a supplementary opinion to the Prosecution Service on the length of the applicant's lawful residence in Denmark. That opinion includes the following passage:

> "... Under section 27(5) of the Aliens Act, the time that an alien has spent in custody prior to subsequent conviction or served in prison or has been subject to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in imprisonment is not included in the period calculated under section 27(1) of the Aliens Act.
>
> According to the information provided by the Prosecution Service, [the applicant] has served a total of 3,644 days, which correspond to approx. 10 years (9 years, 11 months and 29 days).
>
> When the period calculated under section 27(5) has been deducted, [the applicant] has been lawfully resident in Denmark for approx. 20 years and 10 months. ..."

28. By a judgment of 9 October 2017, the Copenhagen City Court found the applicant guilty as charged and sentenced him to three months' imprisonment and a fine of DKK 12,200. In addition, the applicant was issued with a suspended expulsion order accompanied by a two-year probation period.

29. As regards the conviction under Article 119(1) of the Penal Code and the sentence, the City Court stated as follows:

> "It is uncontested and accepted as facts that [the applicant] is the leader of the Loyal to Familia (LTF) group and that [the applicant] and several other persons affiliated with the LTF were at the scene at the material time, where [the applicant] and the other persons were frisked by the police as they were in a stop-and-frisk zone. Based on [the applicant's] statement at the preliminary statutory hearing on 12 August 2017, compared with evidence given by police inspector [K.B.] and police constable [P.F.], it has been established that, in connection with or following his frisking, [the applicant] turned to police inspector [S.E.] and said that he had an attitude issue or something similar.
>
> Based on the evidence given by police inspectors [S.E.] and [K.B.] and police constables [M.O.] and [P.F.] as well as [V.M.], it has also been established that, surrounded by the other LTF affiliates, [the applicant] turned to police inspector [S.E.] and said to the other LTF affiliates, 'Remember his face' or something similar, after which [the applicant] said, again aimed at the police inspector, 'Watch out', 'Watch out carefully' and 'Watch your back' or something similar while at least one of the LTF affiliates present took a photo of the police inspector.
>
> Based on the testimonies, it has also been established that [the applicant's] voice and entire attitude were threatening, including pointing at the police inspector, and that there was a tense atmosphere between the police on the one hand and [the applicant] and the other LTF affiliates on the other.
>
> When determining the term of imprisonment for count 1, the Court attached importance to the comments that had been made against a police inspector doing his duty in a stop-and-frisk zone which had been established consequently to an ongoing armed conflict between two gangs, the defendant being the leader of one of the gangs. Furthermore, the Court attached importance to the implication of the comments as [the applicant], being the gang leader, encouraged the gang members to remember the police

inspector's face, thereby exposing the inspector to a particular risk also in relation to the other gang members. Finally, the Court attached importance to [the applicant's] several prior convictions for serious violent offences and the circumstance that the offence was committed shortly after the defendant's most recent release in March 2017."

30. As regards the expulsion claim, the City Court stated:

"[The applicant] is 30 years old and was born and raised in Denmark. The Danish Immigration Service considers him a Pakistani national, and he has been granted temporary residence in Denmark. According to the Danish Immigration Service, he has been lawfully resident in Denmark for approximately 20 years and 29 days.

[The applicant] has now been sentenced to imprisonment for a term of three months for violation of Article 119(1) of the Penal Code. The offence was committed during the probation period for the suspended expulsion order issued in connection with the judgment of 23 September 2015 in the appeal proceedings before the High Court of Eastern Denmark. Accordingly, it follows from section 22(1)(vi) and section 24b(3), cf. section 26(2), of the Aliens Act that the defendant must be expelled unless it is ascertained that it would be contrary to Denmark's international obligations.

[The applicant] is not married and has no live-in partner, and he has no children. As he was born and raised in Denmark, expulsion would interfere with his right to private life: see Article 8(1) of the European Convention on Human Rights. Such interference is justified only if the conditions of Article 8(2) have been met. Expulsion is in accordance with the law, is aimed at preventing disorder or crime, and it is decisive whether expulsion is considered necessary for this purpose. This is based on a proportionality test.

[The applicant] has several prior convictions, including for serious violent offences. In 2008 he was sentenced to eight years' imprisonment, *inter alia* for fatal aggravated violence. In 2013, he was sentenced to a concurrent sentence of three years and six months, *inter alia* for aggravated violence, and in 2015 he was sentenced to six months' imprisonment, also for aggravated violence. In all three cases, expulsion or suspended expulsion was requested, which was only allowed by the judgment in 2015 by which he was issued with a suspended order on expulsion.

Based on [the applicant's] statement, the Court accepts as facts that his parents and four of his siblings live in Denmark. His other two siblings live in the United Kingdom. His siblings and their children all have Danish nationality. His father and mother arrived in Denmark in the 1970s. All his family members live in Denmark or the United Kingdom. He attended kindergarten and school in Denmark and finished the ninth grade of the Danish primary and lower secondary school. When he turned 18, he was not granted permanent residence and could therefore not apply for Danish nationality.

Furthermore, based on [the applicant's] statement, the Court accepts as facts that he has no family or friends in Pakistan and that he only speaks broken Pakistani Punjabi. He has been to Pakistan twice on brief holidays together with his parents, most recently in 2007.

As [the applicant] was born and raised in Denmark, very serious reasons are required in order to expel him. The defendant has now been sentenced to imprisonment for a term measured in months for verbal threats against a police inspector. The offence arose spontaneously following a frisk and had been completely unplanned. According to the information received, his ties with Pakistan are limited. Against this background and based on an overall assessment, the Court finds that there is no basis for expulsion regardless of the prior criminal activities of which he has been found guilty.

> Accordingly, it follows from section 24b(1) of the Aliens Act that the defendant must be issued with a suspended expulsion order accompanied by a two-year probation period."

31. The applicant, who had been held in pre-trial detention since 11 August 2017, was released on 9 October 2017. It appears that he left Denmark shortly afterwards.

32. On appeal, on 5 March 2018 the High Court of Eastern Denmark upheld the judgment, although it reduced the prison sentence to 60 days. The High Court conducted a thorough examination of the Court's case-law, and stated, among other things:

> "...very serious reasons are required to justify expulsion of a settled alien who was born in the country ... [the applicant] has several prior convictions entailing long prison sentences. He has, *inter alia*, served approximately ten years in prison, in particular for violent crimes, and despite a prior suspended order on expulsion, he has committed criminal offences during the probation period. Based on his many convictions over the years and his personal circumstances, including his strong ties with the LTF ..., there is reason to assume that he will also commit criminal offences in Denmark in future if he is not expelled ...
>
> Regardless of the seriousness of the criminal offences recently and previously adjudicated, the High Court finds, based on an overall assessment, including [the applicant's] very limited ties with Pakistan, that expulsion and a six-year re-entry ban cannot be considered a proportionate sanction for the purpose of preventing crime and maintaining public order ..."

33. On appeal, the Supreme Court of Denmark (*Højesteret*) held in its judgment of 20 November 2018 that the sentence should be increased to three months' imprisonment, while the fine of DKK 12,200 should be upheld. In addition, the applicant was expelled unconditionally and banned from re-entry for a period of six years.

34. As regards the applicant's affiliation with the LTF, the Supreme Court made the following observations:

> "It is uncontested that [the applicant] is the leader of the Loyal to Familia (LTF) gang. The following appears from the description of the group by the police in a memorandum of 25 October 2017:
>
> *4. Distinctive features of the group members:*
>
> The members of the group often use clothing, insignia, signs, colours or tattoos to show their group affiliation or membership. ...
>
> The structure of the group is hierarchical, and the leader carries the designation El Presidente. Other leading members carry the designation National on their back patches; the remaining members carry the name of the town or district to which they belong.
>
> Since the setting up of the group in mid-January 2013, the LTF has done significant profiling in the form of frequent manifestations. ...
>
> *5. Information about the crimes of the group members*

Groups characterised by the police as perpetrators of organised crime are typically linked to certain types of criminal offences. Based on information from the Central Criminal Register (*Kriminalregistret*), members of this group are often linked to criminal offences with the following distinctive features:

Criminal offences:	*YES (mark with an X)*	*NO (mark with an X)*
Violence against witnesses, threats, etc. (article 123 of the Penal Code)	X	
Causing of explosions (article 183 of the Penal Code)		X
Homicide or attempted homicide (article 237 of the Penal Code)	X	
Violence (articles 244 to 246 of the Penal Code)	X	
Drug trafficking or drug dealing (article 191 of the Penal Code)	X	
Threats (article 266 of the Penal Code)	X	
Possession of firearms, etc., in particularly aggravating circumstances (article 192a of the Penal Code)	X	
Aggravated criminal damage (article 291 of the Penal Code) (for example targeted at another criminal group)		X
Arson (articles 180 to 181 of the Penal Code) (for example targeted at another criminal group)		X
Crime committed jointly in several instances	X	
Cross-district border crime in several instances	X	
Crime rooted at local level in several instances	X	

6. Information about relations to other groups

Since March 2017, the group has been involved in conflicts with the Brabrand Group in Aarhus, the Black Army in Odense and the Brothas in Copenhagen.

According to the police report of 16 August 2018, the police take the view that [the applicant] went to Spain at the end of November 2017, and that he continues to reside outside Denmark, but is still the acting leader of the LTF."

35. As regards the expulsion order, the majority of the Supreme Court judges (6 of 7 judges) stated as follows:

"...

Expulsion

[The applicant] has been sentenced to imprisonment for violating article 119(1) of the Penal Code, and section 22(1)(vi) of the Aliens Act provides the statutory basis for expulsion.

The violation of article 119(1) of the Penal Code occurred during the 2-year probation period for the suspended expulsion order with which he was issued by judgment of the High Court of Eastern Denmark on 23 September 2015. The charge was brought during the probation period, which has been running since the release on 21 March 2017. According to the provision then in force in section 24b(3), cf. section 22(1)(vi), cf. section 32(3), of the Aliens Act, [the applicant] must therefore be issued with an expulsion order with a six-year re-entry ban, unless it is ascertained that expulsion is contrary to Denmark's international obligations.

The expulsion of [the applicant], who has not founded a family of his own, would be an interference with his right to respect for his private life under Article 8(1) of the European Convention on Human Rights. Under Article 8(2), there shall be no such interference except such as is in accordance with the law and is necessary in a democratic society in the interests of, *inter alia*, the prevention of disorder or crime.

According to the case-law of the European Court of Human Rights, the decision on the issue of the necessity of the interference in the interests of its legitimate purpose must be made on the basis of a proportionality test that includes a number of criteria. The weight of each criterion depends on the specific circumstances of each case. If the alien is a man who has not yet founded a family of his own, particular weight should be attached to the nature and seriousness of the crime committed and his social, cultural and family ties with the host country and the country of nationality. If he was born and raised in the host country, there must in any case be very serious reasons to justify expulsion, see, *inter alia*, the Court's judgment on application No. 1638/02 (*Maslov v. Austria*) of 23 June 2008.

[The applicant] is 32 years old and a Pakistani national. He was born in Denmark and has lived in Denmark his entire life, and his parents and siblings also live in Denmark. He has no education or training except the Danish primary and lower secondary school, and he has never had a job. According to information held by the police, [the applicant] has resided outside of Denmark for a year or so, and his counsel for the defence has stated that he has no knowledge of [the applicant's] current place of residence.

As stated in the judgment of the High Court, [the applicant] has several convictions for, *inter alia*, crimes against persons, committed after he turned eighteen. ...

Thus, [the applicant] has been sentenced to imprisonment several times for serious violent offences, including one offence of aggravated fatal violence. In total, he has been imprisoned for approximately ten years. The current count of threatened violence against a police inspector on duty relates to an offence committed approximately four months after his release from the prison term served under the most recent judgment and during the probation period for the suspended expulsion order.

We find that although [the applicant] is poorly integrated into Danish society, his ties with Denmark are significantly stronger than his ties with Pakistan where, according to the information received, he has only stayed for holidays, most recently in 2007. However, he is not unqualified for managing in Pakistan. According to the information put forward for the High Court's consideration of this case, it is accepted as a fact that he speaks Pakistani Punjabi well and clearly intelligibly. In addition, he is familiar with Pakistani culture and customs, particularly because of his adolescence with his parents. His family owns, *inter alia*, a house in the village of Mirza Tahir in the Gujrat Province of Pakistan where Punjabi is the local language, and it must be presumed that his parents have maintained strong ties with Pakistan. In addition, according to [the applicant's] Pakistani ID card, which was found during a search on 18 September 2018, an address in Mirza Tahir was stated as his permanent address.

We find that, through his conduct for many years, [the applicant] has demonstrated an unwillingness to integrate into Danish society as, despite prior convictions for serious violent offences and a warning of the expulsion risk, he has continued his criminal conduct and is the leader of a gang that is known for serious violent offences. We also find that there is reason to assume that he will also commit violent offences in Denmark in future if he is not expelled. Therefore, even though the most recent offence, which concerns threats of violence against a police inspector on duty, only attracted a three-month prison term, it is necessary to expel him in the interests of public safety and for the prevention of disorder or crime.

For the proportionality test, we also attached importance to the circumstance that the expulsion of [the applicant] is combined with a six-year re-entry ban; see section 32(3) of the Aliens Act.

Against this background, we find that the expulsion of [the applicant] will not constitute an infringement of his right to respect for his private life according to Article 8 of the European Convention on Human Rights, and expulsion is therefore not contrary to Denmark's international obligations. We therefore vote in favour of the claim for expulsion combined with a six-year re-entry ban; see the provision, applicable at the time, in section 24b(3), cf. section 22(1)(vi), cf. section 32(3), of the Aliens Act."

36. A minority of one judge of the Supreme Court judges stated the following:

"*Expulsion*

[The applicant] has been sentenced to imprisonment for threats falling within Article 119(1) of the Penal Code.

As the majority have discussed in detail, it follows from the Aliens Act that [the applicant] must be issued with an expulsion order combined with a six-year re-entry ban unless expulsion is most certainly contrary to Denmark's international obligations under Article 8 of the European Convention on Human Rights.

As mentioned by the majority, the decisive issue is whether the expulsion of [the applicant] is necessary in a democratic society for the prevention of disorder or crime;

see Article 8(2) of the European Convention on Human Rights. Whether expulsion is 'necessary' is determined by a proportionality test.

In the judgment in *Maslov v. Austria* of 23 June 2008, the European Court of Human Rights established criteria for the purpose of such proportionality test. The test must include the societal need for expulsion, in particular considering the nature of the crime which the person in question has committed now and previously, as well as the length of his stay in Denmark and in the country of origin and the strength of the family, social and cultural ties with Denmark and the country to which he is to be expelled. As mentioned by the majority, there must be very serious reasons to justify the expulsion of a person who was born and raised in Denmark.

The reason why I disagree with the majority as to whether the expulsion of [the applicant] is contrary to Article 8 of the European Convention on Human Rights is that I believe that the crime most recently committed by him (the threats issued against a police inspector in connection with frisking) is not sufficiently serious to make his expulsion proportionate in the current circumstances.

My reasoning is therefore as follows:

[The applicant] is 32 years old and was born and raised in Denmark. According to information received, he passed the examinations in the individual subjects Danish, English and social studies (during imprisonment) after the ninth grade of the Danish primary and lower secondary school, but he has never had any connection with the general Danish labour market. His parents and several siblings (four of whom are Danish nationals) live in Denmark. It has not been accepted as a fact that he is not permanently resident in Denmark.

It is uncontested that [the applicant] has only been to Pakistan on holiday on very few occasions, most recently over ten years ago. He has no family members who live in Pakistan. He speaks Pakistani Punjabi, but according to his own information, he cannot read the language. According to a police report of 2013 (put forward in connection with these proceedings), his family living in Denmark own a house in a village in the Punjab region of Pakistan where Punjabi is a local language. The High Court considered it a fact that his father is a co-owner of at least one plot of land in that town.

The Pakistani ID card referred to by the majority was issued to [the applicant] in November 2017. The residential address stated on the ID card is the address in Copenhagen recorded in the Central National Register, and an address in the above village in Pakistan is given as the 'permanent address'. In an opinion to the Prosecution regarding the ID card, the Danish Immigration Service stated that according to a letter of 26 April 2017 from the Pakistani Embassy to the Danish Immigration Service, [the applicant] had not been registered in the local register in Pakistan and therefore did not have a Pakistani ID card, which was the reason why a Pakistani nationality passport could not be issued to him. In my opinion, the information received does not provide any basis for presuming that the circumstance that a Pakistani national holds a Pakistani ID card and therefore must state a 'permanent address' in itself reflects genuine ties with Pakistan other than the wish to have a nationality passport issued.

In my opinion, there is no basis for presuming that [the applicant's] strong ties with Denmark and weak ties with Pakistan have changed significantly compared to the situation presumed to have been accepted as a fact in prior legal proceedings in which a claim for expulsion was filed on account of criminal offences. The fact that, according to information received, he must be presumed to speak a local language in the Punjab region better than 'brokenly', as previously stated by him to the immigration authorities, does not change that finding. The knowledge that he is the leader of the Loyal to Familia

group (according to information received since 2013) was also taken into account in the prior legal proceedings 2013 and 2015 concerning the issue of expulsion.

[The applicant] has now been convicted of one count of threats which were, in my opinion, in the form of a spontaneous - not previously planned - reaction to the specific way in which the frisking was being performed. Therefore, only a short sentence of imprisonment is fixed for that offence.

[The applicant] has several prior convictions for serious violent offences. The majority have given a detailed account of the previously committed crime. According to the description, I find part of that crime abominable. However, that does not change the fact that [the applicant's] most recently committed crime is of a less serious nature and only attracted a short term of imprisonment.

In my opinion, a 'minimum requirement' must be presumed also to apply to the seriousness of the most recently committed crime, to justify the expulsion of a person who was born and raised in Denmark and has only limited ties with the country to which he is to be expelled. Thus, the crime for adjudication is generally required to reflect a certain degree of seriousness regardless of the nature of the crime previously committed by the alien. I refer, *inter alia*, to para. 25 of the judgment delivered by the European Court of Human Rights on 27 April 2010 concerning application no. 53080/07, *Miah v. the United Kingdom*, which states, *inter alia*, that the alien's sentence of imprisonment for one year for the last in a series of offences was 'at the lower end of the scale to which a presumption in favour of deportation would apply'. The preparatory notes to the most recent amendment of the expulsion rules of the Aliens Act do in fact establish guidelines that are based on case-law of the European Court of Human Rights saying that aliens who were born and raised in Denmark can generally be expelled only if they have been sentenced to imprisonment for a term of at least one year and on the condition that they have certain minimum ties with the country to which they are to be expelled. According to the preparatory notes, it is generally a condition for expulsion in case of a sentence close to imprisonment for a term of one year that the person in question has previously been convicted and sentenced to imprisonment. It transpires clearly from the preparatory notes that a person's expulsion cannot necessarily be ruled out even if the conditions listed have not been met, but in my opinion, the said guidelines tally with my presumption that certain minimum conditions apply to the seriousness of the most recent crime.

One could ask why it is that important to maintain that the seriousness of the most recent offence must also be of a certain degree. In my opinion, that is, *inter alia*, because of the risk which would otherwise exist that in reality an expulsion order may appear as a reversal of an enforceable judgment (which might not have been appealed against) determining that the crime previously committed could not justify expulsion.

As the question of whether expulsion constitutes an infringement of Article 8 of the European Convention on Human Rights always depends on a specific proportionality test, the same minimum requirement cannot apply to the seriousness of the most recent crime committed in all cases. For example, the connection between the most recent crime and prior crime may play a role. In [the applicant's] case, I attached importance to the fact that the crime for which he has now been found guilty was a spontaneous and not previously planned reaction to an acute situation and, as already mentioned, only attracted a sentence of imprisonment for a short term. In my opinion, his most recent offence cannot be seen as a continuation of an established regular criminal pattern, nor is it a part of the conflict between the Loyal to Familia group and other groups.

There seems not to be any case-law of the European Court of Human Rights according to which the Court has accepted the expulsion of an alien who was born and raised in the country of residence and only has limited ties with the country to which he is to be expelled and where his most recent offence carried a sentence of imprisonment for a term as brief as in this case. Considering, *inter alia*, the theoretical risk that I have explained, I accept as a fact that the seriousness of [the applicant's] crime in the case under adjudication cannot be sufficient to justify his expulsion in the current circumstances, although it is combined with a re-entry ban for only six years.

Thus, I conclude that, within the meaning of the Aliens Act, it is most certainly contrary to Article 8 of the European Convention on Human Rights to issue [the applicant] with an expulsion order combined with a six-year re-entry ban."

37. Subsequently, by a judgment of 24 January 2020, the City Court of Copenhagen, dissolved Loyal to Familia, finding that it was an association with an unlawful purpose and functioning by means of violence. The following appears from the judgment:

"...

B. Is Loyal to Familia an association?

Based on the evidence produced, the Court accepts as a fact that an organisation chart and lists of names, civil registration numbers, etc., discovered during a search of [M.S.]'s place on 12 March 2013 prove that Loyal to Familia, which had been represented in the media by [the applicant] several times at that point, has had a regular and hierarchical structure as from early 2013. Accordingly, it appears from the organisation chart that the members were organised into general management and subgroups, which were confined, at least partly, to the geographic areas of Blaagaard Square, the Tingbjerg neighbourhood and the towns of Skovlunde and Kokkedal. It further appears from the organisation chart that "Shebi" was a central person to the general management of Loyal to Familia. The Court accepts as a fact that "Shebi" is identical with [the applicant], and it has not been disputed in these proceedings that [the applicant] is the leader of Loyal to Familia, as was also accepted as a fact by the Supreme Court in its judgment of 20 November 2018.

...

C. Does Loyal to Familia have an unlawful purpose, and does the association employ violence to pursue its objects: see section 78(1) and (2) of the Danish Constitution (*grundloven*)?

...

Based on the testimonies of, *inter alia*, an expert of forensic psychology [M.S.], a police constable [B.G.], another police constable [R.N.] and a former imam [A.I.], the Court accepts as a fact that the very purpose of founding Loyal to Familia in 2013 and of expanding it from 2013 to 2018 was to gain control of the criminal markets in the areas into which Loyal to Familia was expanding. Based on the evidence, including the testimonies of [H.M.], [T.G.] and [N.K.], and the contents of the witnesses' notes and reports of 4 September 2013, 20 June 2017, 8 September 2017 and 25 January 2018, it is also accepted as a fact that the armed conflicts between Loyal to Familia and the gangs of the Værebro Group, the Brothas, the Allerød Group, the Black Army and the Brabrand Group from 2013 to 2017, which caused several deaths and injuries, occurred in an armed battle to gain control of the marijuana markets in the districts of Nørrebro and Copenhagen Northwest around the social housing estate of Mjølnerparken and the

Tingbjerg neighbourhood and in the distressed neighbourhoods of Skovlunde, Køge, Hillerød, Allerød, Helsingør, Kokkedal, Nivå, Northern and Western Aarhus as well as other areas.

The issue to be determined by the Court is whether it can be accepted as a fact beyond any reasonable doubt that the Loyal to Familia association as such took part in this armed conflict and that the association's management initiated the expansion of Loyal to Familia as from 2013 to gain control of the criminal markets. For a clarification of this issue, reference is made to the above paragraph on the reason why Loyal to Familia constitutes an association falling within section 78 of the Constitution. In this respect, the Court attaches importance, *inter alia*, to the contents of the handwritten note under the headline of "LTF values" giving keywords such as "Group 2: Defence/Attack" and to the rules discovered on a telephone, which rules entered into force on 1 January 2017 and govern the conduct against the police, other Loyal to Familia members and the local community, the payment of membership fees, clothing and the hierarchical compliance policy. Importance is also attached to the fact that a portion of the membership fees paid by members to Loyal to Familia was distributed in support of Loyal to Familia members in prison.

The Court also accepts as a fact that the said rules and directions as well as the decision to support association members in prison and the decision to purchase clothing with LTF insignia originate from and have been made by the Loyal to Familia management, including [the applicant], who is the leader of Loyal to Familia, which fact has not been disputed by his counsel. Reference is also made to the appeal judgment delivered by the High Court of Eastern Denmark on 7 August 2014 concerning the assault in the street of Raadvadsvej by which [the applicant] and 9 other members of Loyal to Familia were sentenced for violence of a particularly dangerous nature, the City Court having accepted as a fact in its first-instance judgment that [the applicant] had shouted "stop" in connection with the violent assault. Against this background, the Court is satisfied that [the applicant] and the other persons of his management group were the persons who decided in 2013 to found Loyal to Familia for the purpose of gaining control of the criminal and illegal markets through the use of violence and threats of violence. ..."

38. On 12 November 2020, the High Court of Eastern Denmark upheld the judgment. It is currently unknown whether an appeal will be brought before the Supreme Court.

RELEVANT LEGAL FRAMEWORK

39. The relevant provision of the Penal Code (*straffeloven*) in force at the material time read as follows:

Article 119

"(1) Any person who commits violence, threatens to commit violence or publicly, or with the intent of dissemination among a wide group of people, issues threats of violence against someone with a duty to act by virtue of a public function or office during the exercise of his function or office or on the occasion of such exercise of his function or office, or who similarly attempts to prevent such person from carrying out a lawful duty or to coerce him to carry out a duty, is sentenced to a fine or imprisonment for a term not exceeding 8 years. When determining the sentence, it must be considered an aggravating circumstance if the act was committed during or directly after a serious

breach of the peace in a public place in the area or if the act was committed against the relevant person during his leisure time."

40. The relevant provisions of the Aliens Act (*udlændingeloven*) on expulsion, applicable at the time of the offence, read as follows:

Section 22

"(1) An alien who has been lawfully resident in Denmark for more than the last 9 years and an alien issued with a residence permit under section 7 or section 8(1) or (2) who has been lawfully resident in Denmark for more than the last 8 years may be expelled if:

...

(vi) the alien is sentenced under provisions of Parts 12 and 13 of the Penal Code or under section 119(1) or (2) or the second sentence of section 119(3) read with the first sentence of the same subsection, section 123, section 136, section 180, section 181, section 183(1) or (2), section 183a, section 184(1), section 186(1), section 187(1), section 193(1), section 208(1), section 210(1) or section 210(3) read with section 210(1), section 215, section 216, section 222, section 225 read with sections 216 and 222, section 226, section 235, section 237, section 244, section 245, section 245a, section 246, section 250, section 252(1) or (2), section 261(2), section 262a, section 276 read with section 286, sections 278 to 283 read with section 286, section 279 read with section 285 if the offence is social fraud, section 288, section 289, section 289a, section 290(2), section 291(1) read with section 291(4), or section 291(2) of the Penal Code to imprisonment or another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a penalty of this nature;

..."

Section 24a

"(1) In deciding on expulsion by judgment, particularly under section 22(1)(iv) to (vii), it must be emphasised whether expulsion is deemed particularly necessary because:

(i) of the gravity of the offence committed;

(ii) of the length of the custodial sentence imposed;

(iii) of the danger, damage, harm or infringement involved in the offence committed;

(iv) of prior criminal convictions."

Section 24b

"(1) An alien can be issued with a suspended expulsion order if there is no basis for expelling the alien under sections 22 to 24 because it would with certainty be contrary to Denmark's international obligations, see section 26(2). This does not apply if the alien falls within section 2 [the EU rules].

(2) In case of a suspended expulsion order, a probation period must be fixed. The probation period is reckoned from the date of the final judgment in the case or, if the alien was not present when judgment was passed, from the service of the judgment and expires 2 years after the date of release or discharge from hospital or safe custody or from termination of a stay in a security unit at a residential institution for children and young people. If the suspended expulsion order was made in connection with a

suspended sentence of imprisonment or a sentence of outpatient treatment allowing deprivation of liberty, the probation period expires 2 years after the date of the final judgment in the case or, if the alien was not present when judgment was passed, 2 years after the service of the judgment.

(3) An alien issued with a suspended expulsion order under subsection (1) must be expelled unless such expulsion would with certainty be contrary to Denmark's international obligations if, during the probation period of the suspended expulsion order, he commits another offence that may give rise to expulsion under sections 22 to 24 and court proceedings are initiated before the expiry of the probation period. If expulsion cannot be effected, see section 26(2), the alien must again be sentenced to suspended expulsion. The probation period is determined according to the rules of subsection (2).

(4) If an alien is issued with a suspended expulsion order, the court shall guide the alien on the importance thereof when passing the judgment."

Section 26

"(1) When a decision on expulsion is made under sections 25a to 25c, it must be taken into account whether expulsion must be assumed to be particularly burdensome, in particular because of:

(i) the alien's ties with Danish society;

(ii) the alien's age, health and other personal circumstances;

(iii) the alien's ties with persons living in Denmark;

(iv) the consequences of the expulsion for the alien's close relatives living in Denmark, including the impact on family unity;

(v) the alien's slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and

(vi) the risk that, in cases other than those mentioned in section 7(1) and (2) and section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.

(2) An alien must be expelled under sections 22 to 24 or 25 unless it would with certainty be contrary to Denmark's international obligations, but see section 26b."

Section 32

"(1) As a consequence of a court judgment, court order or decision expelling an alien, the alien's visa and residence permit will lapse, and the alien will not be allowed to re-enter Denmark and stay in this country without special permission (re-entry ban). A re-entry ban may be time-limited and is reckoned from the first day of the month following departure or return. The re-entry ban is valid from the time of the departure or return.

(2) A re-entry ban in connection with expulsion under sections 22 to 24 is imposed:

...

(ii) for 6 years if the alien is sentenced to imprisonment for a term exceeding 3 months, but not more than 1 year or another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a sentence of this duration.

(3) A re-entry ban in connection with expulsion under section 22(1)(iv)-(viii), section 23(1)(i), read with section 22(1)(iv)-(viii), or section 24(1)(i) read with section 22(1)(iv)-(viii), and expulsion by judgment of an alien who has not been lawfully resident in Denmark for longer than the last 6 months must, however, be imposed for at least 6 years.

..."

Section 49

"(1) When an alien is convicted of an offence, the court shall decide in its judgment, upon the public prosecutor's claim, whether the alien will be expelled pursuant to sections 22-24 or section 25c or be sentenced to suspended expulsion pursuant to section 24b. If the judgment stipulates expulsion, the judgment must state the period of the re-entry ban, see section 32(1) to (5).

..."

41. A provision on suspended expulsion had been inserted as section 24b of the Aliens Act by Act. No. 429 of 5 October 2006. Subsection (1) and (3) of the said provision and subsection 2 of section 26 had subsequently been amended by Act No. 1744 of 27 December 2016, by inserting the wording "unless it would with certainty be contrary to Denmark's international obligations".

42. The Aliens Act was amended anew by Act No. 469 of 14 May 2018. The preparatory notes to those amendments (Bill No. L 156 of 28 February 2018) provided guidelines regarding expulsion of aliens. The guidelines contained four categories, distinguishing between aliens who were born and raised in the host country and aliens who arrived as adults, and furthermore aliens who had founded a family and those who had not.

In respect of aliens who were born or raised in the host country or arrived in the country as minors and who had not founded a family the following appeared, *inter alia,* from the guidelines (chapter 2.4.2.1):

"According to paragraph 2.1.2.5.2 above, the European Court of Human Rights has, in certain cases, accepted the expulsion of criminal aliens who were born or raised in the host country or had arrived in the country as minors and who had not founded a family if the most recent sentence was imprisonment for a term not exceeding one year. The Danish Supreme Court has also expelled criminal aliens in this category sentenced to imprisonment for a term of less than one year.

On the other hand, if cases involving juvenile delinquents are disregarded, that is, cases involving persons under the age of 18, there are, as mentioned above in paragraph 2.1.2.5.2, only very few examples of cases in which the European Court of Human Rights has found that rights have been infringed upon when an expelled alien has been sentenced to imprisonment for a term exceeding one year in connection with the most recent conviction, and in those cases, the infringement is assumed to be attributable to exceptional circumstances.

Notwithstanding the relatively severe sentence, the *Ezzouhdi* case only concerned drugs for personal use and was therefore not a crime considered by the European Court of Human Rights to be a serious matter. Furthermore, it concerned a re-entry ban for life.

In the *Bousarra* case, it must be assumed that it was in particular the circumstance that the re-entry ban had been issued for life that made the European Court of Human Rights find that rights had been infringed upon.

Against that background, the Ministry of Immigration and Integration finds that expulsion orders should generally be issued against aliens who were born and raised in Denmark or arrived in the country as minors and who have not founded a family when such aliens are sentenced to imprisonment for one year (or another penal sanction involving or allowing deprivation of liberty) or a more severe sentence for the types of crime regarded as serious by the European Court of Human Rights, including drug dealing, homicide, violent assaults, the use of firearms, robbery, rape, sexual abuse of children and any other types of crime targeting other persons' physical integrity, including threats. However, it is a condition that it is not a criminal offence committed by a juvenile (for further details see paragraph 2.1.2.4.3 above) and that the alien has certain minimum ties with the country in which he or she is expected to take up residence (for further details see paragraph 2.1.2.4.4 above). For sentences close to imprisonment for one year, it is also generally a condition that the person in question has previously been convicted and sentenced to imprisonment. If the conditions mentioned have not been met, it is not necessarily the case that the person cannot be expelled.

Even though the defendant was a minor when the act was committed, the crime may thus be of such nature that the person in question can be expelled nonetheless, in particular due to the violent nature of the crime, see paragraph 2.1.2.4.3 above and, for example, *Külekci v. Austria*, judgment of 1 June 2017, in which the European Court of Human Rights accepted the expulsion of a minor criminal alien who had most recently been sentenced to imprisonment for two years and six months for aggravated robbery and theft.

The above basis of reference must be viewed together with the proposed changes to the rules on the term of re-entry bans, see paragraph 4.4 below. Thus, there may be situations in which it is a condition according to the guidelines that an expulsion order is combined with the imposition of a short-term re-entry ban to ensure compliance with Denmark's international obligations.

It is always a specific assessment as to whether an alien convicted of a criminal act can be expelled. Accordingly, there may be a basis for expulsion in cases where the offender is sentenced to imprisonment for a shorter term than the above-mentioned basis of reference, and it may become relevant to deviate from the guidelines and thus not expel an offender even though a more severe sentence is imposed. For example, expulsion may be relevant in cases where a brief prison sentence is imposed even though the alien entered the country as a minor, although at a relatively late age, see for example the Supreme Court judgments printed on page 2064 of the Danish weekly law reports for 2015, in which the alien had entered the country at the age of 12, and page 2793 of the Danish law reports for 2016, in which the alien had entered the country at the age of 15. As mentioned above in paragraph 2.4.1, it must be stated in the judgment that a test has been performed based on the *Maslov* criteria."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

43. The applicant complained that the order expelling him from Denmark was in breach of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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

1. Submissions by the parties

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

45. The applicant disagreed.

2. The Court's assessment

46. The Court notes that 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

47. The applicant submitted that the Danish courts had failed to take relevant circumstances into account in the balancing test, in particular that the crime he had committed had not been very serious. It had been a spontaneous, unplanned reaction to an acute and provocative and degrading situation, and it had nothing to do with his affiliation with LTF.

48. Moreover, the crime had only led to a sentence of three months' imprisonment. He noted that in general, the Court had considered that a sentence of imprisonment for twelve months, for the last in a series of offences, was "at the lower end of the scale to which a presumption in favour of deportation would apply" (see *Miah v. United Kingdom* (dec.), no. 53080/07, 27 April 2010).

49. In the applicant's view, the expulsion order should not have been based on an overall assessment of the applicant's criminal conduct, notably

because the crimes committed previously could not by themselves have justified an unconditional expulsion order. The expulsion order at hand therefore became a reversal of the previous final judgments. In this respect the applicant referred to the opinion expressed by the minority of the Supreme Court.

50. Finally, the applicant maintained that even though the expulsion order had been imposed with a re-entry ban limited to 6 years, it had still been disproportionate in relation to a sentence of three months' imprisonment.

51. The Government submitted that the expulsion order was in "accordance with the law", pursued the legitimate aim of preventing disorder and crime, and was "necessary in a democratic society".

52. The Danish courts had expressly considered the case in the light of Article 8 of the Convention and the relevant case-law of the Court. Having regard to the subsidiarity principle, therefore, the Court should be wary of disregarding the outcome of the assessment conducted by the national courts.

53. As to the proportionality test, the national courts had been fully aware that only very serious reasons could justify the expulsion of the applicant, since he had been born in Denmark. They had also realised that the case before them raised an important question in relation to the criterion "the nature and seriousness of the offence committed by the applicant" in that, seen in isolation, the most recent crime could not be considered very serious.

54. The Government referred to the reasoning of the Supreme Court, which had found that, even though the offence in question only led to a three-month prison sentence, it was necessary to expel the applicant in the interests of public safety and for the prevention of disorder or crime. The applicant had a long criminal record, including several serious convictions for assault, one of which had been fatal. In total, he had been imprisoned for approximately ten years. The threat against the police inspector on duty had been committed four months after the applicant's latest release, and during the probation period for a suspended expulsion order. In addition, he was the leader of a gang known for committing serious violent offences. The Supreme Court had therefore found that the applicant had demonstrated an unwillingness to integrate into Danish society, that despite prior convictions for serious offences and a warning of the expulsion risk he had continued his criminal conduct, and that he would continue his violent behaviour in the future if not expelled.

55. The Government contended that the Supreme Court had struck a fair balance between the opposing interests and carefully assessed the applicant's personal circumstances. Based on an overall consideration, considerable weight should be attached to the fact that the 33-year-old applicant had spent one third of his life in Denmark in prison, had not founded a family in Denmark and had only been expelled with a six-year ban on re-entry. Finally, he was not prevented from resuming his private life in Denmark, which he

could do as from 2024, for example on a visa stay or by obtaining a new residency basis.

2. The Court's assessment

(a) General principles

56. The Court reaffirms that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 100, 3 October 2014). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit of their task of maintaining public order, the Contracting States have the power to expel an alien convicted of criminal offences (see, for example, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012). However, their decisions in this field must, in so far as they may interfere with a right protected under Article 8 § 1, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued *Dalia v. France*, 19 February 1998, § 52, *Reports of Judgments and Decisions* 1998-I; *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).

57. Article 8 protects the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III) and can sometimes embrace aspects of an individual's social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). It must therefore be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Indeed, it will be a rare case where a settled migrant is unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah v. the United Kingdom* (dec.), cited above, § 17).

58. The Court has previously held that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence (*Slivenko v. Latvia* [GC], cited above, § 97; *Kwakye-Nti and Dufie v. the Netherlands* (dec.), no. 31519/96, 7 November 2000). It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect (see *Üner v. the Netherlands* [GC], no. 46410/99, § 59, 5 July 2005).

59. In order to assess whether an expulsion order and the refusal of a residence permit were necessary in a democratic society and proportionate to the legitimate aim pursued under Article 8 of the Convention, the Court has

laid down the relevant criteria in its case-law (see *Üner*, cited above, §§ 57-58, and *Maslov v. Austria* [GC], no. 1638/03, §§ 68-76, ECHR 2008.

In *Üner,* the Court summarised those criteria as follows:

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

– the time elapsed since the offence was committed and the applicant's conduct during that period;

– the nationalities of the various persons concerned;

– the applicant's family situation, such as the length of a marriage, and other factors expressing the effectiveness of a couple's family life;

– whether the spouse knew about the offence at the time when he or she entered into a family relationship;

– whether there are children from the marriage and, if so, their age;

– the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;

– the best interests and well-being of the children, in particular 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; and

– the solidity of social, cultural and family ties with the host country and with the country of destination.

60. In a case like the present one, where the person to be expelled has not yet founded a family of his own, the relevant criteria are

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

- the time elapsed since the offence was committed and the applicant's conduct during that period; and

– the solidity of social, cultural and family ties with the host country and with the country of destination (see *Maslov v. Austria*, cited above, § 71). Moreover, for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (ibid., § 75).

61. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an interference, but it goes hand in hand with European supervision. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Slivenko and Others*, cited above, § 113, and *Boultif*, cited above, § 47).

(b) Application of the principles to the present case

62. It is not in dispute between the parties 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 was "in accordance with the law", and that it pursued the legitimate aim of preventing disorder and crime. The Court sees no reason to find otherwise (see also, for example, *Salem v. Denmark*, no. 77036/11, § 61, 1 December 2016, and *Levakovic v. Denmark*, no. 7841/14, § 39, 23 October 2018).

63. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts' legal point of departure was the relevant sections of the Aliens Act, the Penal Code, and notably the relevant 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 they were fully aware 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 (see *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether such "very serious reasons" were adequately adduced by the national authorities when assessing the applicant's case.

64. The City Court and the High Court found that the applicant should only be issued with a conditional expulsion order with a probation period of 2 years.

65. The Supreme Court devoted a substantial part of its reasoning to the criterion "the nature and seriousness of the offence committed by the applicant", notably in order to assess whether there was a minimum requirement as to the seriousness of the crime committed leading to the expulsion order. The majority of the Supreme Court found, having conducted an overall assessment of the relevant criteria, that even though the offence in question only led to a three-month prison sentence, it was necessary to expel the applicant unconditionally in the interests of public safety and for the prevention of disorder or crime, with a ban on his re-entry for six years.

66. The dissenting Supreme Court judge referred, *inter alia*, to the Court's statement in *Miah v. the United Kingdom* (cited above, § 25) about a one-year prison sentence being "at the lower end of the scale to which a presumption in favour of deportation would apply", and found that the applicant's crime had not been sufficiently serious to justify his expulsion.

67. The Court recalls that in *Miah v. the United Kingdom* (cited above) the applicant had entered the host country at the age of eleven. His mother and extended family had remained in Bangladesh. The applicant was a drug abuser and had had a criminal record for seven years for theft and burglary, committed when he was an adult. The Court accepted that by the time of the final offence, namely theft, the authorities were entitled to take the view that further efforts to facilitate his reintegration would be inappropriate. Accordingly, the Court stated: "while the applicant is correct to observe that his final sentence of twelve months' imprisonment was at the lower end of the scale to which a presumption in favour of deportation would apply, the

domestic authorities were entitled to take into account that this was the last in a series of offences and that the applicant had failed to respond to other, less severe sentences" (ibid., § 25). The Court further found that the ten-year duration of the deportation imposed did not exclude him from the host country for as much time as he spent there and did not do so for a decisive period in his life (as opposed to the situation in *Maslov v. Austria*, cited above). Accordingly, the Court found that a fair balance had been struck and that the expulsion order had been proportionate to the legitimate aim pursued.

68. The Court points out that it 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.

69. Thus, for example, in the following cases, even though they did not concern settled migrants, the Court found no violation of Article 8 of the Convention, despite the fact that the sentence for the crime(s) leading to the expulsion could not be considered severe.

In *Mohammad v. Denmark* ((dec.), no. 16711/15, 20 November 2018), the applicant had entered Denmark at the age of 14 as an unaccompanied minor. He had had a criminal record for five years for offences against property and a robbery. Twice he was issued with a suspended expulsion order with two years' probation. By a final High Court judgment, he was once again convicted of a robbery, committed during the probation period of the suspended expulsion order. He was sentenced to nine months' imprisonment, and expelled with a six-year ban on re-entry.

In *Shala v. Switzerland* (no. 52873/09, 15 November 2012), the applicant had entered Switzerland when he was seven years old. As an adult, he had had a criminal record for over five years, which included serious traffic offences and repeated threats over some months against his ex-girlfriend. He had been threatened with expulsion twice. His expulsion, with a ban on his re-entry for six years, was based on a number of sentences, including fines and partly suspended prison sentences of between 30 days and 3 months.

In *Muradeli v. Russia* (no. 72780/12, 9 April 2015) the applicant had entered Russia as an adult and created a family there. Having repeatedly violated Russian immigration regulations, he had left Russia voluntarily, but re-entered illegally. In the course of a police identity check, he failed to present any documents authorising his stay in Russia, and was consequently fined and made subject to administrative removal. The Court found no violation of Article 8, and stated, *inter alia*, (ibid., § 81): "Taking into account the above numerous breaches of immigration rules and other administrative offences, the Court considers that the applicant's conduct demonstrated consistent disregard of the laws, regulations and public order of the host country".

70. The Court cannot exclude that it may raise an issue under Article 8 and militate against ordering expulsion if the crime that triggered the expulsion order viewed in isolation cannot be deemed very serious, in particular if the sentence imposed is lenient. Nevertheless, it will be recalled that the assessment of proportionality must be based on a concrete examination of each case, taking into account all the criteria of relevance as established by the Court's case-law, including the totality of the applicant's criminal history. It should also be taken into account in this connection that member States have different legislations, not only in respect of criminal sanctions to be imposed for various criminal offences, but also as regards issuing expulsion orders. In some member States, like Denmark, the expulsion order is decided on by the courts in connection with the criminal proceedings relating to the most recent criminal offence, whereas in other member States, for example, such a decision is taken administratively, having regard to the overall criminal behaviour of the alien in question.

71. In the present case, the Supreme Court observed that the applicant had a long criminal record, including several serious violent offences, one of them having proved fatal. In total, he had been imprisoned for almost ten years, which amounted to one third of his life spent in Denmark. The threat against the police inspector on duty had been committed four months after the applicant's latest release, and during the probation period for the conditional expulsion order issued by the High Court on 23 September 2015. In addition, at the relevant time, he was the leader of a gang known for committing serious violent offences. The Supreme Court therefore found that the applicant had demonstrated an unwillingness to integrate into Danish society, that despite prior convictions for serious offences and a warning of the expulsion risk, he had continued his criminal conduct, and that he would continue his violent behaviour in the future, if not expelled.

72. Moreover, the crimes committed by the applicant, including the final one leading to the expulsion order, were such as to have serious consequences for the lives of others. In respect of the offence under article 119(1) of the Penal Code, it is noteworthy that the applicant threatened a police inspector, who on the relevant day was discharging his duties in one of the stop-and-frisk zones established to protect citizens in the area from the ongoing violent conflict between two gangs, of one of which the applicant was the leader.

73. Finally, as also found by the Supreme Court, the applicant had consistently demonstrated a lack of will to comply with Danish law (see also, for example, *Levakovic v. Denmark*, cited above, § 44; *Muradeli v. Russia,* cited above § 81; and *Miah v. the United Kingdom,* cited above, § 25).

74. Consequently, observing that the offence in question was specifically listed in section 22(vi) of the Aliens Act, and accordingly was considered sufficiently serious by the legislator to justify expulsion, and that it carried a maximum sentence of 8 years' imprisonment, the Court can accept that, despite the relative leniency of the sentence, the nature and seriousness of the

crime, as well as the applicant's criminal past, weighed heavily in the Supreme Court's overall assessment.

75. It is true, as stated by the City Court in its judgment of 9 October 2017, that twice previously the prosecution's request that the applicant be issued with an order of expulsion or suspended expulsion had been dismissed. The first time had been in 2008 when the applicant had been convicted of fatal aggravated violence and sentenced to eight years' imprisonment, and the second time in 2013, when he had been sentenced to a concurrent sentence of three years and six months for aggravated violence, *inter alia*. The Court observes in this respect, however, that the relative weight of the different criteria to be taken into account may change over time, and that the fact that expulsion was not regarded justified in the past does not preclude it being justified later in the light of changed circumstances. It thus accepts that, as in the case of *Miah,* the Supreme Court was entitled to take into account that the offence was the last in a series of offences.

76. In respect of the criterion "the length of the applicant's stay in the country from which he or she is to be expelled", the Supreme Court duly took this into consideration. It emphasised that the applicant was born in Denmark, that he was 32 years old, that his parents and siblings also lived in Denmark, that he had no education, and that he had never had a job.

77. Regarding the criterion "the time elapsed since the offence was committed and the applicant's conduct during that period", it is observed that the offence justifying expulsion was committed on 31 July 2017, and that the criminal proceedings were completed by November 2018. Moreover, it appears that the applicant had left the country in November 2017 and that his current place of residence is unknown.

78. As to the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination" the Supreme Court properly took this into account, and stated:

> "We find that although the applicant is poorly integrated into Danish society, his ties with Denmark are significantly stronger than his ties with Pakistan where, according to information received, he has only stayed in the framework of holidays, most recently in 2007. However, he is not unqualified for managing in Pakistan. According to the information submitted before the High Court's consideration of this case, it is accepted as a fact that he speaks Pakistani Punjabi well and in a clearly intelligible manner. In addition, he is familiar with the Pakistani culture and customs, particularly because of his adolescence with his parents. His family owns, *inter alia*, a house in the village of Mirza Tahir in the Gujrat Province in Pakistan where Punjabi is the local language, and it must be presumed that his parents have maintained strong ties with Pakistan. In addition, according to the applicant's Pakistani ID card, which was found during a search on 18 September 2018, an address in Mirza Tahir was stated as his permanent address."

79. The expulsion order in the present case was issued with a re-entry ban of six years. The Government pointed out that the applicant was therefore not prevented from resuming his private life in Denmark, which he could do as

from 2024, for example on a visa stay or by obtaining a new residence permit. The Court notes in this context that the duration of a ban on re-entry, in particular the fact that such a ban is limited, is an element that it has attached importance to in its case-law (see, for example, *Yilmaz v. Germany*, no. 52853/99, §§ 47-49, 17 April 2003, *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004, *Keles v. Germany*, no. 32231/02, §§ 65-66, 27 October 2005; and *Külekci v. Austria*, 30441/09, § 51, 1 June 2017).

80. Finally, the Court observes that the expulsion of the applicant did not interfere with his family rights. He did not have a family of his own (see paragraph 58 above), and he has not put forward any arguments to the effect that there should be additional aspects of dependence between himself and his parents or siblings. In any event, nothing prevents the applicant from maintaining contact with his parents and siblings, for example by telephone or other electronic means of communication, or by visits in countries other than Denmark (see, *mutatis mutandis*, *Salem v. Denmark*, cited above, § 81 and *Hamesevic v. Denmark* (dec.), no. 25748/15, § 44, 16 May 2017).

81. 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, *Levakovic v. Denmark*, 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).

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

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 12 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Marko Bošnjak
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pejchal is annexed to this judgment.

M.B.
S.H.N.

DISSENTING OPINION OF JUDGE PEJCHAL

To my regret, I deeply disagree with the majority's finding of the applicability of Article 8 of the Convention in this particular case.

First of all, questions might be asked about whether it was fair to the community of free citizens living in the Council of Europe member States that an international court was involved in deliberations in this case, on which it expended considerable financial resources entrusted to it by the High Contracting Parties in the pursuit of justice.

I would like to begin by quoting a Grand Chamber judgment in the case of *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, 17 November 2016, for that judgment raises a similar issue to the one giving rise to my objections in the present case:

> "§ 35: "The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *Sharifi and Others v. Italy and Greece,* no. 16643/09https://hudoc.echr.coe.int/eng -{"appno":["16643/09"]}, § 124, 21 October 2014, and, *mutatis mutandis*, *Ali v. Switzerland*, 5 August 1998, § 32, Reports of Judgments and Decisions 1998-V)."
>
> § 37: "Whilst it is true that the applicants' representative has power to represent them throughout the entire proceedings before the Court, that power does not by itself justify pursuing the examination of the case (see *Ali*, cited above, § 32, and *Ramzy v. the Netherlands* (striking out), no. 35424/05, § 64, 20 July 2010)."

In this respect I shall further quote paragraph 2 of my Concurring Opinion to the Grand Chamber judgment in the case of *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, 13 February 2020, which is also relevant to this particular case:

> "There is no reason not to accept Rawls's postulate that justice is first and foremost fairness and that in establishing the criteria for justice it is necessary to begin with fairness. This idea is neither new nor revolutionary. Long ago, it was Cicero who, in his "*De officiis*", stated: "*Fundamentum autem est iustitiae fides, id est dictorum conventorumque constantia et veritas*".
>
> In the quest for justice Rawls's theory holds much more true in the field of international law than in domestic law, which has substantially more possibilities than international law to enforce the observance of the law. The Vienna Convention on the Law of Treaties, which provides guidelines for the interpretation of international treaties including the Convention, is rightly based on the principle of fairness in international relations.
>
> It is useful to bear in mind that any individual application in which the applicant claims a violation of the Convention by a High Contracting Party not only impacts upon the life of the community of free citizens living on the territory of that particular High Contracting Party, but also affects, either directly or indirectly, the life of the community of free citizens in all the member States of the Council of Europe.

> In my opinion, every applicant is thus duty-bound to submit his or her application on genuine and truly substantial grounds. In the course of the ongoing proceedings applicants are further duty-bound to make clear to the Court, not only via their representatives but also through their personal attitude to the case in progress, that they are genuinely convinced that the High Contracting Party has breached their fundamental freedoms or that they were actually unable to exercise their rights guaranteed by the Convention. An applicant may certainly be wrong in his or her interpretation of the Convention, but in any event, it must be evident that the application is motivated by a serious intention and that the applicant is committed to pursuing it. If that is not the case, it is the Court's duty to consider such a situation carefully and, if there are no exceptional circumstances in the applicant's case (such as illness, mental immaturity, and the like), then it is certainly not appropriate, from the point of view of universal justice, for the Court to deal with the application, not even as regards the question whether the application was justified or not. To my mind, it is therefore necessary to interpret the last sentence of paragraph 1 of Article 37 of the Convention ("However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires") exclusively in relation to the applicant and his or her specific problem and not generally in relation to the issue raised by the applicant, which might possibly entail a violation of the Convention in general rather than concrete terms.
>
> Should the circumstances of the case clearly indicate that the applicant exhibits no real interest in the case at any stage of proceedings before the Court, then in the prospective examination of the case it is impossible to comply with the requirement of adversarial proceedings for the purposes of Article 38 of the Convention ("The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities"). The aim must always be the resolution of the case at hand, which must have a serious intention behind it, and not the academic interpretation of an issue raised by the applicant which, as the circumstances of the case may reveal, was not seriously intended by the applicant and does not disclose any serious problem on his or her part. Ours is an international court which must take meticulous care to ensure that it deals with serious cases only."

With regard to the foregoing considerations, my concern relates to the following facts of this case. The application against the Kingdom of Denmark was lodged by the applicant's legal representative on 15 May 2019. The legal representative complained on behalf of the applicant that the order expelling the applicant from Denmark was in breach of Article 8 of the Convention. In the application form, allegedly signed by the applicant on 30 March 2019, the legal representative provided a c/o address of the applicant´s parents in Denmark. According to paragraph 31 of the judgment in the present case, "The applicant, who had been held in pre-trial detention since 11 August 2017, was released on 9 October 2017. It appears that he left Denmark shortly afterwards." This is all the information the Court have had at their disposal concerning the whereabouts of the applicant since October 2017. After the applicant's "apparent" departure from Denmark, the Danish courts continued to consider the possibility of expelling him from Denmark. The High Court of Eastern Denmark upheld the judgment of the Copenhagen City Court and reduced the prison sentence to 60 days. On appeal, the Supreme Court of

Denmark held, in its judgment of 20 November 2018, that the sentence was to be increased to three months' imprisonment, and upheld the fine of 12,200 Denmark kroner (DKK). The applicant was unconditionally expelled and banned from re-entry for a period of six years.

I have the following objections to the opinion of the majority, and I consider them to be serious.

My first objection is that although the Chamber had the very clear task of considering whether the applicant's expulsion from Denmark had been a violation of his right to respect for private and family life, home and correspondence, no member of the Chamber (including myself) had any knowledge whatsoever of the situation as regards the applicant's private and family life, home and correspondence since October 2017. The legal representative provided no information in this respect of his own motion, nor did the Court take the initiative of asking the legal representative about this important fact. In my opinion, it is impossible to decide on the admissibility and merits of this case without first clarifying the facts concerning the applicant's private and family life and his home from October 2017 up to the present. That is why I voted against the admissibility of the application.

My second objection concerns the consideration of the case under Article 37 1(a) of the Convention. From a formal perspective, it is necessary to take account of the requirement set out in Rule 47 (7) of the Rules of Court that "applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application". Neither the applicant nor his legal representative complied with that requirement. This is one of the few obligations which applicants have *vis-à-vis* the Court. It cannot be satisfied by a simple declaration by the legal representative that he is in contact with his client, who does not have a permanent address (or whose permanent address is not known to the legal representative). From this situation alone – the absence of the applicant's permanent address (a situation which has, moreover, lasted for over a year) – the Court can, and should, infer that the circumstances of the case lead to the conclusion that the applicant does not intend to pursue his application. This is particularly so because the application concerns an alleged violation of Article 8 of the Convention.

My third objection concerns the assessment of the case under Article 37 1 (c) of the Convention. As I have already mentioned, there is not the slightest doubt that in order to be able to consider an alleged violation of Article 8 of the Convention the judges must have satisfactory information concerning the private and family life and home of the applicant. In the absence of such information, the Court, before considering whether the application concerning the applicant's private and family life and his home was admissible or not under Article 8 to the Convention, should have dealt with the question whether the concrete situation gave rise to the application of Article 37 1(c) of the Convention. In other words, it should have assessed whether the application should be struck out of the list of cases where the

circumstances of the case led to the conclusion that the continued examination of the application was no longer justified. It follows that, given the absence of information on the applicant's private and family life and home, there was no factual basis for the Court to examine the application under Article 8 of the Convention.

With reference to the aforementioned observations, I am convinced that this case deserved a far more detailed examination under Article 37 of the Convention. I am of the opinion that the application should have been struck out of the list of cases, even before the Chamber commenced the deliberation on the admissibility and the merits, on the grounds that its further examination was no longer justified. However, the majority did not share my opinion. I had no other choice but to vote against the opinion of the majority.