



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

SECOND SECTION

CASE OF ABDI v. DENMARK

(Application no. 41643/19)

JUDGMENT

Art 8 • Expulsion • Private life • Disproportionate expulsion combined with life-long re-entry ban • Lack of relevant prior convictions and warnings of expulsions • Imposition of relatively lenient sentence • Very strong ties with Denmark and virtually non-existent ties with country of origin

STRASBOURG

14 September 2021

Request for referral to the Grand Chamber pending

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 Abdi v. Denmark,

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

Carlo Ranzoni, *President*,

Jon Fridrik Kjølbro,

Aleš Pejchal,

Egidijus Kūris,

Pauliine Koskelo,

Marko Bošnjak,

Saadet Yüksel, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 41643/19) 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 Somali national, Mr Mohamed Hassan Abdi (“the applicant”), on 30 July 2019;

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

the parties’ observations;

Having deliberated in private on 24 August 2021,

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

INTRODUCTION

1. The application concerns the order for the expulsion of a settled migrant, issued in criminal proceedings.

THE FACTS

2. The applicant was born in 1993 and lives in Ringe. He was represented by Mr Eddie Omar Rosenberg Khawaja, a lawyer practising in Copenhagen.

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

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

5. In 1997, when the applicant was four years old, he entered Denmark together with his mother. They were granted asylum on 11 December 1997. A younger brother was born in Denmark. The applicant’s father and a sister came to Denmark in 2000.

6. The applicant has a criminal past.

By a judgment of 20 May 2010, he was convicted of robbery, committed when he was a minor (15 years old). He received a three-month suspended prison sentence.

By a judgment of 31 January 2012, he was convicted of burglary, committed as a minor (17 years old). He was sentenced to four months' imprisonment, of which three months were suspended.

After he had reached the age of majority, the applicant was convicted and fined seven times for violations of the Act on Controlled Substances (*lov om euforiserende stoffer*) and for driving under the influence of psychedelic substances, most recently by a judgment of 7 December 2016.

7. By a District Court (*Retten i Viborg*) judgment of 18 May 2018 the applicant was convicted of illegal possession of a fully-loaded 9 mm firearm with ammunition in a public place, committed around midnight on 5 November 2017, jointly with three others, and of two counts of violation of the Act on Controlled Substances (one count relating to possession of 1.2 grams of cannabis for his own consumption and another count relating to 7.4 grams which he tried to hand over to a prison inmate).

Under article 192a of the Penal Code, illegal possession of firearms, in particularly aggravating circumstances, carried a sentence of imprisonment for a term of between two and eight years. It was found established that the applicant had brought the loaded firearm with him in a car, parked 200 m from the clubhouse of a motorcycle gang called S, and that the applicant and the co-accused were either affiliated to or were peripheral persons meeting with another gang, called R. Moreover, although it had not been proved that S and R were involved in an ongoing conflict, two police officers had testified that S had been on high alert during the days prior to 5 November 2017. In these circumstances, the District Court found all the defendants guilty of joint possession of the fully-loaded handgun and ammunition in a public place in particularly aggravating circumstances. The applicant was sentenced to two years and nine months' imprisonment.

8. For the purposes of the criminal proceedings, the Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*) gathered information about the applicant's personal circumstances, which included the following. The applicant had been lawfully resident in Denmark for approximately twenty years and two months. His parents and two siblings lived in Denmark. The applicant lived together with his sister and brother. He had no family in his country of origin. He was not married and had no children. He had no girlfriend in Denmark. He had attended primary school and completed the basic commercial programme (HG). While remanded in custody, he was enrolled in vocational upper secondary education (EUX). He spoke Danish. He also spoke elementary Somali. He had not been to Somalia since his family moved to Denmark.

9. The District Court (by a majority of two out of three judges) decided to expel the applicant, conditionally, with a probation period of two years. It stated, among other things:

“[the applicant], who originates from Somalia, entered Denmark in 1997 and has lived in the country ever since. [He] has no girlfriend and no children, but his parents and siblings live in Denmark and he has no family in his country of origin. He went to school in Denmark, he speaks Danish and has now started an education. He has not been to Somalia since his arrival in Denmark, and since they speak Danish in his family, he only has basic Somali language skills. Prior to the case at hand, [the applicant] had several prior convictions, but no claim for expulsion or a suspended order of expulsion has been made in any of the previous criminal proceedings, which mainly concerned traffic offences and violations of the legislation on controlled substances and, in one case, robbery.

On this basis, two judges vote as follows on the issue of expulsion: since [the applicant] has lived most of his life in Denmark, since he has no ties with Somalia and, in reality, no qualifications for returning to that country, and since he has not been issued with a suspended order of expulsion on a previous occasion, the court finds that it would be a disproportionate sanction to expel [the applicant] despite the seriousness of the crime under adjudication.”

The dissenting judge found that the applicant should be expelled unconditionally, with a permanent re-entry ban.

10. On appeal, on 31 October 2018 the Western Denmark High Court (*Vestre Landsret*, henceforth the High Court), upheld the conviction and reduced the sentence to two years and six months’ imprisonment.

11. The High Court (by a majority of five out of six judges) ordered the applicant’s expulsion with a permanent ban on his re-entry, for the following reasons:

“[The applicant] has been found guilty of a serious offence due to his possession of a loaded firearm in a car jointly with three accomplices shortly before midnight. It is a very serious offence resulting in a prison sentence of two years and six months, which sentence has also been imposed for handing over a small quantity of cannabis to a prison inmate and for the possession of a small quantity of cannabis for own use.

Due to the nature and seriousness of the offence of possessing a weapon, there are very compelling reasons for expelling [the applicant].

[He] has previously been sentenced to suspended imprisonment for a term of three months for robbery committed at the age of 15 and a partly suspended sentence of imprisonment for a term of four months for burglary committed at the age of 17. Since his 18th birthday, he has been sentenced seven times to a fine and other penalties for violations of the Act on Controlled Substances and for driving under the influence of psychedelic substances.

[The applicant] is a Somali national, but has not been to Somalia since he came to Denmark at the age of four. Accordingly, he has spent most of his childhood and adolescence in Denmark, and this is also where his parents and siblings live. According to [the applicant], he has no family in Somalia. Therefore, there is no doubt that expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on him due to his ties with Denmark. This applies even though he has neither a spouse nor children and even though he has not completed a training or

education programme despite being previously enrolled in the basic commercial programme (HG) and has not formed any regular ties with the Danish labour market.

[The applicant] speaks and understands basic words and sentences in Somali. Moreover, it must be assumed that he has obtained a certain knowledge of Somali customs and the Somali culture through his family living in Denmark. For that reason, Somalia is not a country to which he has no ties, and he is not completely unqualified for managing in Somalia on his return.

Based on an overall assessment, we find that the expulsion of [the applicant] combined with a permanent re-entry ban is a proportionate measure to prevent disorder and crime. An expulsion is therefore not contrary to Denmark's international obligations."

The dissenting judge found that the expulsion of the applicant should have been conditional.

12. The applicant's request for permission to appeal against the expulsion order to the Supreme Court was refused by the Appeals Permission Board (*Procesbevillingsnævnet*) on 31 January 2019.

13. By a judgment of 27 August 2019 the applicant was convicted of violating, *inter alia*, the Executive Order on Controlled Substances and the Order on Weapons and Ammunition, committed before the judgment of 31 October 2018. Therefore, no additional sentence was imposed on him.

RELEVANT LEGAL FRAMEWORK

14. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail, for example, in *Munir Johana v. Denmark* (no. 56803/18, §§ 22-26, 12 January 2021) and *Salem v. Denmark*, (no. 77036/11, §§ 49-52, 1 December 2016).

15. At the time of the crime committed in the present case, section 32 of the Aliens Act set out the length of the re-entry ban to be imposed, which automatically followed the length of the imposed sentence. The re-entry ban was to be imposed permanently, if the alien was sentenced to imprisonment for more than two years.

16. Section 32 was amended by Act no. 469 of 14 May 2018, which came into force on 16 May 2018. Briefly explained, the amendment entailed that the re-entry ban was to be imposed permanently, if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)), but it gave the courts discretion to reduce the length of re-entry bans, whether limited in time or permanent, if the length would otherwise certainly be in breach of Denmark's international obligations, including Article 8 of the Convention. The Act applied to crimes committed after the entry into force of it (and thus not to the present case).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained that the High Court's decision of 31 October 2018 to expel him from Denmark, which became final on 31 January 2019, 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

18. The Government submitted that the application should be declared inadmissible for non-exhaustion of national remedies, since the applicant had not brought the matter of revocation of the expulsion order before the courts, by virtue of section 50 of the Aliens Act.

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

20. The applicant disagreed.

21. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

22. In the Danish context, in order to bring a complaint under Article 8 of the Convention about an expulsion order before the Court, an applicant must have exhausted domestic remedies by relying on the said Article either in the criminal proceedings against him, or, after having served his sentence, in revocation proceedings under section 50 of the Aliens Act. It will be recalled that section 50 provides for a possibility to revoke the expulsion order if, subsequently, material changes in the expelled person's circumstances have occurred (see, for example, *Salem v. Denmark*, cited above, § 56). A request under section 50 of the Aliens Act may be submitted not earlier than 6 months and must be submitted not later than 2 months before the date when enforcement of the expulsion can be expected. The Court has accepted that this remedy is also adequate and effective (see *Amrollahi v. Denmark* (dec.), no. 56811/00, 28 June 2001).

23. In the present case the applicant chose to bring his complaint before the Court after he had exhausted domestic remedies by challenging the expulsion order in the criminal proceedings against him.

24. In the Court's view it is immaterial that the applicant can also at a later stage challenge the expulsion order under section 50 of the Aliens Act by arguing that material changes in his circumstances have occurred.

25. In these circumstances, the Court is satisfied that the applicant has exhausted domestic remedies in respect of the complaint lodged before the Court. It therefore dismisses the Government's preliminary objection.

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

B. Merits

1. Submissions by the parties

27. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that he did not have a significant criminal past, that he had never been issued with a conditional expulsion order, that the crime committed had not been particularly serious and that he had strong ties to Denmark and no ties to Somalia. In his view, it had not been established there were "very compelling reasons" to expel him. Moreover, referring to the amendments of section 32 of the Aliens Act (see paragraph 16 above) and the Court's case-law, he found that the permanent re-entry ban had been disproportionate.

28. The Government submitted that the expulsion order had been "in accordance with the law", had pursued the legitimate aim of preventing disorder and crime and had been "necessary in a democratic society". The Danish courts had struck a fair balance between the opposing interests and had carefully assessed the applicant's personal circumstances and considered the case specifically in the light of Article 8 of the Convention and the Court's pertinent case-law. Having regard to the subsidiarity principle, the Court should therefore be reluctant to disregard the outcome of the assessment made by the national courts.

2. The Court's assessment

(a) General principles

29. In a case like the present one, where the person to be expelled is a settled migrant who has not yet founded a family of his own, the principles to be applied have recently been set out in, for example, *Munir Johana v. Denmark* (cited above, §§ 42-47).

(b) Application of the principles to the present case

30. The Court considers it established that there was an interference with the applicant's right to respect for his private life within the meaning of Article 8, that the expulsion order and the re-entry ban were "in accordance with the law" and pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, cited above, § 61).

31. Before the Court, the applicant submitted that he has had a girlfriend in Denmark since March 2015. The Court notes that, during the criminal proceedings leading to the expulsion order at issue, the applicant did not rely on having created a family life or raise, either in form or substance, a complaint that his expulsion would be in breach of Article 8 because he would be separated from his girlfriend in Denmark. Therefore, the Court will examine the case only under the private life aspect of Article 8.

32. 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 the criteria to be applied in the proportionality assessment, by virtue of Article 8 of the Convention and the Court's case-law. The Court recognises that the domestic courts thoroughly examined each criterion and that very serious reasons were required to justify expulsion of the applicant, a settled migrant who had entered Denmark at the age of four and had lawfully spent most of his childhood and youth in the host country (see *Maslov v. Austria* [GC], no. 1638/03, § 75, ECHR 2008). 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.

33. The High Court gave particular weight to the seriousness of the crime committed and the sentence imposed. The applicant was found guilty of illegal possession of a fully-loaded firearm with ammunition in a public place under particularly aggravating circumstances, under article 192a of the Penal Code, which carried a sentence of up to 8 years' imprisonment. The crime was of such a nature that it could have had serious consequences for the lives of others (see, for example, *Salem*, cited above, § 66, 1 December 2016, and *Hamesevic v. Denmark* (dec.), no. 25748/15, § 32, 16 May 2017). In addition, the applicant was convicted of two counts of violation of the Act on Controlled Substances. He was sentenced to two years and six months' imprisonment.

34. The High Court also took into account that the applicant had been convicted twice as a minor for, respectively, robbery and burglary, and seven times as an adult, for violations of the Act on Controlled Substances and for driving under the influence of psychedelic drugs (see paragraph 6 above).

35. With regard to the criterion "the length of the applicant's stay in the country from which he or she is to be expelled", the High Court duly took

into account that the applicant had been four years old when he arrived in Denmark and had lawfully resided there for approximately twenty years.

36. Although the applicant was convicted anew on 27 August 2019 (see paragraph 13 above), the criterion “the time elapsed since the offence was committed and the applicant’s conduct during that period” does not come into play since the crimes were committed before the High Court judgment of 31 October 2018.

37. As to the criterion “the solidity of social, cultural and family ties with the host country and with the country of destination”, the High Court properly took this into account, when stating that “expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on the applicant due to his ties with Denmark”. However, having regard to his knowledge of the Somali language, customs and culture, the High Court did not find the applicant completely unqualified to manage in his country of origin.

38. Finally, the High Court found that the expulsion order combined with a permanent re-entry ban was a proportionate measure to prevent disorder and crime. The Court notes in this context that the duration of a ban on re-entry is an element to which it has attached importance in its case-law. Thus in, for example, *Ezzouhdi v. France*, no. 47160/99, § 34 13 February 2001, *Keles v. Germany*, no. 32231/02, § 66, 27 October 2005, and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, given the specific circumstances in each case, the Court found the imposition of a definitive expulsion order in breach of Article 8 of the Convention. It will be recalled that the Court has never set a minimum requirement as to the sentence or seriousness of the crime which ultimately results in expulsion, nor has it in the application of all the relevant criteria qualified the relative weight to be accorded to each criterion in the individual assessment. That must be decided on a case-by-case basis, in the first place by the national authorities, subject to European supervision (see, for example, *Munir Johana v. Denmark*, cited above, § 53).

39. In the three above-cited cases, the Court found that the persons in question did not pose a serious threat to public order. In the present case, the Court does not call into question that the applicant’s crime leading to the expulsion order was of such a nature that he posed a serious threat to public order at the time (see also, *inter alia*, *Mutlag v Germany*, no. 40601/05, §§ 61-62, 25 March 2010, and *Balogun v. the United Kingdom*, no. 60286/09, § 53, 10 April 2012).

40. It notes, however, like the District Court (see paragraph 9 above) that, prior to the case at hand, apart from the crimes committed as a minor, the offences committed mainly concerned traffic offences and violations of the legislation on controlled substances, none of which indicated that in general the applicant posed a threat to public order. In this respect the

present case resembles the situation in, for example, *Ezzouhdi v. France* (cited above).

41. The Court also observes that the applicant had not previously been warned of expulsion or had a conditional expulsion order imposed (see, *a contrario*, for example, *Keles v. Germany*, cited above, and *Munir Johana v. Denmark*, cited above).

42. Nevertheless, despite the lack of relevant prior convictions and warnings of expulsion, and although a relatively lenient sentence was imposed in the present case, the Danish courts decided, in accordance with the applicable legislation, to combine the expulsion of the applicant with a permanent re-entry ban.

43. This observation should also be seen in the light that the applicant arrived in Denmark at a very young age and had lawfully resided there for approximately twenty years. He thus had very strong ties with Denmark, whereas his ties with Somalia were virtually non-existing.

44. The Court is therefore of the view, given all the circumstances of the case, that the expulsion of the applicant combined with a life-long ban on returning was disproportionate (see, notably, *Ezzouhdi v. France*, cited above, §§ 34-35; *Keles v. Germany*, cited above, § 66, and *Bousarra v. France*, cited above, §§ 53-54).

45. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. The applicant did not claim any compensation under Article 41 of the Convention. In these circumstances, the Court is not called upon to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

Done in English, and notified in writing on 14 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Carlo Ranzoni
President