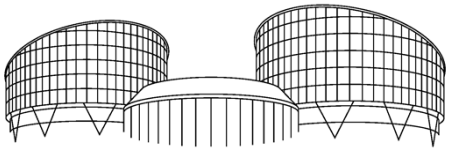

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MUNIR JOHANA v. DENMARK

(Application no. 56803/18)

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 most of his life in the host country and despite being sentenced only to six months' imprisonment • No minimum requirement as to sentence or seriousness of crime resulting in expulsion • Violent aggravated offence and history of serious criminality • Two prior suspended expulsion orders issued against applicant • Proportionality duly assessed by domestic courts in light of Court's case-law

STRASBOURG

12 January 2021

FINAL

12/04/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Munir Johana 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. 56803/18) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iraqi national, Mr Marsel Munir Johana ("the applicant"), on 28 November 2018;

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 an Iraqi national who was born in 1994 and entered Denmark at the age of four. As from the age of sixteen, he had a criminal history, which included three convictions for violent offences and one for a drugs offence. He twice had a suspended expulsion order issued against him.

2. By a final Supreme Court judgment of 19 September 2018, he was convicted of another violent offence, this time of an aggravated nature, committed during the probation period for the most recent suspended expulsion order and with three other offenders. He was sentenced to six months' imprisonment and his expulsion was ordered with a ban on re-entry for six years.

3. The applicant complained that the decision to expel him from Denmark had been in breach of Article 8 of the Convention.

THE FACTS

4. The applicant was born in 1994 and lives in Silkeborg. He was represented by Mr Gert Dyrn, a lawyer practising in Fredericia.

5. 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.

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

7. The applicant is an Iraqi national who entered Denmark in 1999 at the age of four. On 21 July 2000 he was granted residence under section 7(2) of the Aliens Act (*udlændingeloven*) and on 31 May 2004 he was granted permanent residence.

8. On 9 December 2011, when the applicant was sixteen years old, he was convicted by the District Court of two violent offences and sentenced to thirty days' imprisonment. The offences were committed on 23 September and 19 October 2011 respectively. The sentence was suspended on condition that he remained under the supervision of the local authority until his 18th birthday and under the supervision of the Prison and Probation Service (*Kriminalforsorgen*) thereafter.

9. The applicant reached the age of majority in 2012.

10. By a District Court judgment of 28 March 2014, he was convicted of a violent offence committed on 13 October 2013 with another person. He was sentenced to sixty days' imprisonment and issued with a suspended expulsion order with a probation period of two years, until 28 March 2016.

11. By a District Court judgment of 27 November 2015, he was convicted of being in possession of 93 grams of cocaine with another person for the purpose of resale. He was sentenced to six months' imprisonment and issued with another suspended expulsion order with a probation period of two years, until 27 November 2017. Four months of the sentence were suspended on condition that he performed community service. However, since the applicant failed to attend the appointments with the Prison and Probation Service concerning the community service, the District Court later decided that he had to serve the full sentence.

12. By a District Court judgment of 5 October 2016, he was convicted of insulting a prison officer and was sentenced to six day-fines of 500 Danish kroner (DKK).

13. In the meantime, the applicant had been charged under Article 245 § 1 of the Penal Code (*straffeloven*), with reference to Article 247 § 1, of a violent offence carried out in a particularly aggressive, brutal or dangerous manner in the form of repetitive offences, in that on 18 September 2016 he and three other men had punched a person several times in the head and repeatedly punched another person several times in the head. When that person had fallen to the ground, the applicant had kicked him in the head. As a result of the violence, the victim had suffered bruises to the face and a broken ankle.

14. For the purposes of the criminal proceedings, on 12 October 2016 the applicant was interviewed by the police about his personal circumstances. According to the police report, the applicant stated that he had completed the tenth grade of lower secondary school and had subsequently begun an apprenticeship as a mechanic, but had not completed it. He had been enrolled in single-subject courses of the higher preparatory examination (*HF*) and had

had a part-time job outside of his studies. He stated that his close family members were living in Denmark, but that he also had family in Sweden, Canada and Australia. As regards his ties with Iraq, he stated that his family had fled Iraq because they were Christians and that for this reason he could not survive if he had to return there. He had no ties with Iraq and had not been to the country on holiday. Lastly, he stated that he had no partner, wife or children.

15. For the purposes of the court proceedings, the Danish Immigration Service (*Udlændingestyrelsen*) gathered information about the applicant's personal circumstances and assessed whether the prosecution should refrain from making a request for expulsion in view of Denmark's international obligations. In a report of 17 March 2017, it stated, *inter alia*, as follows:

> "... [the applicant] has prior convictions for other criminal activities. As a result, he has previously served prison sentences totalling about [thirteen] months. ... As regards the issue of whether a decision to expel [the applicant] could be considered to be contrary to Denmark's international obligations, the Danish Immigration Service refers to the police report of 12 October 2016 [see paragraph 14 above]. ...
>
> Based on the information given by the Prosecution concerning the nature of the crime and the fact that [the applicant] is expected to be sentenced to imprisonment for a term of [four] to [five] months, having regard to section 26(2) of the Aliens Act, the Danish Immigration Service agrees with the Prosecution's recommendation regarding the issue of expulsion."

16. On 11 August 2017 the applicant was convicted of the charge against him by the Viborg District Court (*Retten i Viborg*). He was sentenced to four months' imprisonment and his expulsion was ordered with a re-entry ban of six years. As regards the expulsion order, the District Court stated as follows:

> "Under section 22(1)(vi) of the Aliens Act, [the applicant] can be expelled from Denmark unless expulsion is contrary to Denmark's international obligations. In assessing this issue, importance must be attached to [the applicant's] statement about his personal circumstances, including the fact that he has no family in Iraq and that he anticipates being killed if he appears in the country, as well as [his] very limited ties with Iraq compared with his ties with Denmark, where he has not yet started a family, and importance must be attached to the seriousness of the offence committed. Based on an overall assessment of the above, the Court finds that there are no particular reasons preventing the defendant from being expelled, as expulsion of [the applicant] cannot be considered with certainty to be contrary to Denmark's international obligations."

17. On appeal, on 25 October 2017, the Western Denmark High Court (*Vestre Landsret*) upheld the conviction and expulsion order and increased the sentence to six months' imprisonment. As regard the expulsion order, the court stated:

> "As stated by the District Court, the seriousness of the violent crime and [the applicant's] ties with Denmark and very limited ties with Iraq must be taken into account when deciding on the issue of expulsion. [The applicant], who is now 22 years old, has had a legal right to stay in Denmark for more than [fifteen] years, and [the applicant's] mother and three siblings live in Denmark. It should also be taken into account that [the applicant] has not started a family in Denmark. He has not completed

any education or training courses and has only had modest links with the job market. Furthermore, it should be taken into account that [the applicant] has twice been convicted of violent offences and ... twice been issued with a suspended expulsion order with a probation period of [two] years, most recently by a judgment of 27 November 2015 for a drug-related offence.

The High Court upholds, following an overall assessment, that the expulsion order against [the applicant] combined with a six-year re-entry ban must be considered a proportionate sanction and that expulsion is not contrary to Denmark's international obligations, see section 26(2) of the ... Aliens Act, read in conjunction with Article 8 of the European Convention on Human Rights."

18. The applicant appealed against the sentence and expulsion order to the Supreme Court (*Højesteret*). For the purposes of those proceedings, since the applicant claimed that he only spoke Assyrian and not Arabic, the Danish Immigration Service issued a supplementary opinion on 26 July 2018 concerning the Assyrian language, stating as follows:

"... Please be informed that the "Assyrian" language is referred to by different names: *Assyrian, Assyrianci, Lishana Aturaya, Neo-Syriac, Sooreth, Suret, Sureth* and *Suryaya Swadaya*. According to some of our sources, there are many dialects, Urmi being a dialect spoken in Baghdad, the USA and other places.

According to one source, Assyrian/Neo-Aramaic is spoken in the two Iraqi provinces of Dohuk and Nineveh, as well as in scattered areas of the provinces of Basra, Erbil, Baghdad and Kirkuk. The Modern Syriac language is also spoken in Iraq ...

Finally, it appears that Assyrians in Iraq speak their own language. According to our sources, Assyrian and Chaldean Christians in northern Iraq and Iran and south-east Turkey speak Modern Syriac. It also appears from information received from our sources that "followers of the Eastern church" also speak Assyrian dialects. Finally, our sources have provided information that the language is spoken not only by Christians, but also by a small group of Jews who have now immigrated to Israel."

19. In the proceedings before the Supreme Court, a substantial part of the argumentation concerned the criterion "the nature and seriousness of the offence committed by the applicant", notably in order to assess whether under Article 8 of the Convention there was a minimum requirement as to the seriousness of the crime leading to the expulsion order.

20. On 19 September 2018 the Supreme Court *(Højesteret)* upheld the sentence of six months' imprisonment and the expulsion order with a six-year re-entry ban. As regards the expulsion order, in so far as relevant, the Supreme Court found as follows:

"... [The applicant] is 23 years old. He is unmarried and has no partner [or] children. He has been lawfully resident in Denmark for approximately [seventeen] years, and expulsion would therefore interfere with his private life, see Article 8 § 1 of the Convention. Such interference is only justified if the conditions of Article 8 § 2 have been met.

Under Article 8 § 2, it is decisive whether expulsion is considered necessary for the prevention of crime. This is based on a proportionality test and extensive case-law concerning this issue from the European Court of Human Rights. The criteria included in the test are found, *inter alia*, in paragraph 68 of the Court's judgment of 23 June 2008

in application no. 1638/03 (*Maslov v. Austria*). The weight to be attached to the respective criteria will vary according to the specific circumstances of each case, see paragraph 70. Very compelling reasons are required to justify expulsion of a settled alien who was born in this country or who entered the country as a child and who has spent most of his or her childhood and adolescence in the country, see paragraph 75.

In cases like the present one, where the alien is a young man who has not yet started his own family, weight must be attached to the nature and seriousness of the offence committed, the length of the alien's stay in the host country, the time [that has] elapsed since the offence was committed and the alien's conduct during that period and the solidity of social, cultural and family ties with the host country and with the country of destination, see paragraph 71.

[The applicant] has been found guilty of a serious violent offence committed at the age of 21 in 2016. It was an act of senseless and aggravated violence committed by him with three accomplices. Some of the consequences of the violence were that one of the victims broke his ankle and suffered bruises to the face. For that [violent offence], [the applicant] was sentenced to [six] months' imprisonment.

Before this offence was committed, he had twice committed acts of violence under section 244 of the Penal Code in 2011. For that, he was sentenced to thirty days' suspended imprisonment. In 2013 he had committed an act of violence under section 244 of the Penal Code with another person. For that, he was sentenced to sixty days' imprisonment and issued with a suspended expulsion order. In 2014 he had had 93 grams of cocaine in his possession for resale. He was sentenced to [six] months' imprisonment for this, [four] months [of which were] suspended on condition that he performed community service, and issued with a suspended expulsion order. As he failed to comply with the conditions of the community service order, the District Court ruled that the prison sentence was to be served in full. The crimes for which [the applicant] was sentenced in 2014 and 2015 were committed after he had turned 18.

He also committed crimes, although of a less serious nature, after the violence in the present case as he was sentenced to a fine for, among other things, violating the Executive Order on Controlled Substances.

Against that background, the Supreme Court finds that there is a significant risk that he will also commit violent and drug-related [offences] in Denmark in the future if he is not expelled.

As mentioned, [the applicant] has been lawfully resident in this country for approximately [seventeen] years. He was 4 years old when he arrived in Denmark from Iraq. He has his mother, father and two [sic] siblings in Denmark. His remaining family lives in Denmark, Sweden and Canada. He has no family in Iraq. He has no partner and lives with his mother and stepfather. He has not managed to complete any training or education courses and has no links with the job market. Since he turned 18, his income has simply taken the form of State Educational Grants (SU) or social benefits. However, there is no doubt that he has such [close] ties with Denmark that an expulsion order and six-year re-entry ban would be considerably burdensome for him.

[The applicant] was born in Iraq, but has spent most of his life in Denmark and has never been back to Iraq. He has stated that he speaks Assyrian, which is spoken in several places in Iraq. His father has told the police that [the applicant] speaks a little Arabic and understands the language. In addition, it must be assumed that he has some knowledge of Iraqi customs and culture through his family living in Denmark.

The Supreme Court accepts as fact that [the applicant's] personal and cultural ties with Denmark are far stronger than his ties with Iraq, but that he would not be entirely incapable of establishing a life in that country if expelled.

As mentioned, [the applicant] has previously been convicted of violent offences, and by judgments of 28 March 2014 and 27 November 2015 of the Viborg District Court he was issued with a suspended expulsion order and thus warned that the continuation of his criminal career could lead to expulsion. The aggravated violence in the present case was committed during the probation period for the most recent suspended expulsion order.

Due to the nature and seriousness of his current and previous crimes, the Supreme Court finds, following an overall assessment, that the considerations in favour of expulsion of [the applicant] are so compelling that they carry more weight than the considerations against expulsion based on his strong ties with Denmark and weak ties with Iraq. The fact that the re-entry ban only applies for [six] years was included in the proportionality test. In addition, it is observed that his family would be able to maintain contact with him, including by communicating with him by telephone and on the Internet.

Based on the above, the Supreme Court finds that an expulsion order combined with a six-year re-entry ban is not a disproportionate interference with his rights under Article 8 of the European Convention on Human Rights."

21. In the meantime, by a District Court judgment of 15 January 2018, the applicant had been convicted of possession of 0.1 grams of cocaine for personal use and fined DKK 6,000.

RELEVANT LEGAL FRAMEWORK

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

Article 244

"(1) Any person who commits an act of violence against, or otherwise assaults the person of another, shall be sentenced to a fine or imprisonment for a term of up to three years.

..."

Article 245

"(1) Any person who assaults the person of another in a particularly aggressive, brutal or dangerous manner, or is guilty of cruelty, shall be sentenced to imprisonment for a term of up to six years. If such an assault has caused serious harm to the body or health of another person, it shall be considered a particularly aggravating circumstance.

..."

Article 247

"(1) If any of the offences referred to in Articles 244 to 246 are committed by a person previously convicted of intentional assault on the person of another or of an offence associated with intentional violence, the penalty may be increased by up to a half.

...”

23. The relevant provisions of the Aliens Act (*udlændingeloven*) on expulsion, in force when the offences in question was committed, read as follows:

Section 22

“(1) An alien who has been lawfully resident in Denmark for more than the last nine 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 eight years may be expelled if:

...

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

...”

Section 24a

“(1) In deciding on expulsion by judgment, particularly under section 22(1)(iv) to (vii), emphasis shall be placed on whether expulsion is considered to be particularly necessary because of:

(i) the seriousness of the offence committed;

(ii) the length of the custodial sentence imposed;

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

(iv) previous criminal convictions.”

Section 24b

“(1) An alien may be sentenced to suspended expulsion if the basis for expelling the alien under sections 22 to 24 is found not to be fully adequate because it would 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 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.

(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 particular burdensome, especially due to:

(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 expulsion for the alien's close relatives living in Denmark, including the impact on the family unit;

(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 be contrary to Denmark's international obligations."

Section 27

"(1) The periods referred to in section 11(3)(i), section 11(5), the third sentence of section 17(1), and sections 22, 23 and 25a are reckoned from the date of the alien's registration with the Central National Register or, if his application for residence was submitted in Denmark, from the date of submission of that application or from the date when the conditions for residence were met if that date is after the date of application.

(2) As regards aliens granted residence under section 7(1) to (3), the periods mentioned in subsection (1) are reckoned from the date of the first residence permit.

...

(5) The time an alien has been remanded in custody prior to conviction or served a sentence of imprisonment or been subject to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a sentence of imprisonment is not included in the periods mentioned in subsection (1)."

Section 32

(1) A court judgment, order or decision expelling an alien shall mean that the alien's visa and residence permit will lapse and that the alien will not be allowed to re-enter Denmark and stay in the country without special permission (re-entry ban). A re-entry ban may be time-limited and is counted 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 shall be 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.

..."

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 sentenced to suspended expulsion pursuant to section 24b. If the judgment stipulates expulsion, the judgment shall state the duration of the re-entry ban, see section 32(1) to (5).

..."

24. A provision on suspended expulsion had been inserted as section 24b of the Aliens Act by Act. No. 429 of 5 October 2006.

25. Subsequent to the date of the offence in the present case, by Act No. 1744 of 27 December 2016, section 24b, subsection (1) and (3), and section 26, subsection 2 were amended, by inserting the wording "unless it would with certainty be contrary to Denmark's international obligations".

26. By Act No. 469 of 14 May 2018 the Aliens Act was amended anew. The preparatory notes to those amendments (Bill No. L 156 of 28 February 2018) provided guidelines regarding expulsion of aliens. The guidelines distinguished between aliens who were born and raised in the host country and aliens who arrived as adults, and 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

27. The applicant complained that the decision to expel him from Denmark had been 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

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

29. The applicant disagreed.

2. The Court's assessment

30. 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

31. The applicant submitted that the Danish courts had failed to take relevant circumstances into account in the balancing test, notably that the crime he had committed had not been particularly serious, and that he had strong ties to Denmark and no ties to Iraq. In his view, it had not been established there were "very compelling reasons" to expel him.

32. The applicant maintained that he had committed "ordinary" violence and accordingly had been sentenced "only" to six months' imprisonment. There had been no aggravating circumstances involved. Otherwise the sentence would have been more severe.

33. He also submitted that in general, in order to justify an expulsion, the crime in question should carry a sentence of at least one year's imprisonment. He referred in this respect to the guidelines set out in the preparatory notes to Act No. 469 of 14 May 2018 (see paragraph 23 above) in which the Ministry of Immigration and Integration found "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".

34. In the case at hand, the Danish courts had significantly tightened the Court's case-law, which according to the preparatory notes mentioned above, had not been the intention or the recommendation of the legislators.

35. 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".

36. The Danish courts had considered the case specifically in the light of Article 8 of the Convention and the Court's pertinent case-law. Having regard to the subsidiarity principle, the Court should therefore be reluctant to disregard the outcome of the assessment made by the national courts.

37. As to the proportionality test, the national courts had been fully aware that only very serious reasons could justify expulsion of the applicant, since he had entered Denmark at the age of four. They had also been aware that the case 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 sentence for the most recent crime might not be considered very severe.

38. The Government referred to the reasoning of the Supreme Court, which found, following an overall assessment, that the considerations in favour of expulsion of the applicant were so compelling that they should carry more weight than the considerations against expulsion based on the applicant's strong ties with Denmark and weak ties with Iraq. The Supreme Court had emphasised that the applicant had a criminal history, which included three convictions for assault and one for a drugs offence, and that he had twice been issued with a suspended expulsion order with a probation period of two years, most recently on 27 November 2015. He had thus been warned twice that he would be expelled if he continued his criminal conduct. The latest crime had been yet another assault, this time of an aggravated nature, committed during the probation period for the most recent suspended expulsion order, and with three other offenders. The Government acknowledged that expulsion based on a sentence of six months' imprisonment was at the lower end of the scale, but maintained that the Danish courts had rightfully also attached weight to the applicant's criminal

history and the fact that he had not changed his behaviour despite two specific warnings of expulsion.

39. Moreover, the 25-year-old applicant had not started a family in Denmark, and since he had only been expelled with a re-entry ban of six years, 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 residence permit.

40. The Government thus contended that the Supreme Court had struck a fair balance between the opposing interests and had carefully assessed the applicant's personal circumstances.

41. Finally, the Government recalled that according to the guidelines set out in the preparatory notes to Act No. 469 of 14 May 2018, enacted after the crime in question had been committed, the legislators had pointed out that it was always a specific assessment as to whether an alien convicted of a criminal act could be expelled. There might be a basis for expulsion in cases where the offender was sentenced to imprisonment for a shorter term than one year's imprisonment just as there might not be a basis for expulsion in cases where the offender was sentenced a more severe sentence.

2. The Court's assessment

(a) General principles

42. 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).

43. 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.), no. 53080/07, § 17, 27 April 2010).

44. 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 (see *Slivenko*, cited above, § 97, and *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).

45. 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 that has 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 of 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.

46. In cases like the present one, where the person to be expelled has not yet started a family of his own, the relevant criteria (see *Maslov*, cited above, § 71) 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 that has 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.

In addition, 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).

47. 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 that 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*, § 113, and *Boultif*, § 47, both cited above).

(b) Application of the principles to the present case

48. 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).

49. 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 were fully aware 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*, 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.

50. All three levels of court found that the applicant should be issued with an expulsion order with a re-entry ban of six years.

51. In the proceedings before the Supreme Court, a substantial part of the argumentation concerned the criterion "the nature and seriousness of the offence committed by the applicant". The Supreme Court found, after an overall assessment of all the relevant criteria that it was necessary to expel the applicant unconditionally in the interests of public safety and for the prevention of disorder or crime, with a re-entry ban of six years. More specifically, the Supreme Court emphasised that the applicant had been found guilty of a serious violent offence committed at the age of 21 in 2016, during the probation period for the most recent suspended expulsion order, that it

had been an act of senseless and aggravated violence, committed by him with three accomplices, and that one of the victims had sustained a broken ankle and bruises to the face. Furthermore, the applicant had previously been convicted of violent offences. In 2011, when he was 16 years old, he had twice been convicted of violent offences, and in 2013, as an adult, he had been convicted of a violent offence committed with another person. That time, he had been sentenced to sixty days' imprisonment and issued with a suspended expulsion order. In 2014 he had been convicted of a drugs offence relating to 93 grams of cocaine for resale, for which he had been sentenced to six months' imprisonment and again issued with a suspended expulsion order. Against that background, the Supreme Court found that there was a significant risk that he would also commit violent offences and drug-related crime in Denmark in the future if he was not expelled.

52. As to the length of the sentence in question, the Court acknowledges that in, for example, *Miah* (cited above, § 25), it stated that:

> "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."

In that case, the applicant had entered the host country when he was 11 years old. His mother and extended family remained in Bangladesh. The applicant was a drug addict and had a criminal history of over 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 had been entitled to take the view that further efforts to facilitate his reintegration would be inappropriate. The Court therefore found that the ten-year duration of the deportation imposed did not exclude him from the host country for as much time as he had spent there and did not concern a decisive period in his life (as opposed to the situation in *Maslov*, 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.

53. 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.

54. Thus, by way of example, in the following cases, albeit not concerning 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 a criminal history of over five years for offences against property and robbery. He was twice issued with a suspended expulsion order with two years' probation. By a final High Court judgment, he was again convicted of robbery, committed during the probation period for the suspended expulsion order. He was sentenced to nine months' imprisonment, and expelled with a re-entry ban of six years.

In *Shala v. Switzerland* (no. 52873/09, 15 November 2012), the applicant had entered Switzerland when he was 7 years old. As an adult, he had a criminal history spanning over five years, which included serious traffic offences and repeated threats for several months against his ex-girlfriend. He had been warned of expulsion twice. His expulsion, with a re-entry ban of six years, was based on a number of sentences, including fines, and partly suspended sentences of imprisonment for terms of between thirty days and three months.

In *Muradeli v. Russia* (no. 72780/12, 9 April 2015) the applicant had entered Russia as an adult and started a family there. Having repeatedly violated Russian immigration regulations, he 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 deported administratively. The Court found no violation of Article 8, and stated (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."

55. 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 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.

56. In the present case, it was deemed of significant importance that the applicant had already twice been issued with a suspended expulsion order with a probation period of two years, and that he had committed a violent offence in aggravating circumstances during the probation period for the most recent conditional expulsion order issued by the District Court on

27 November 2015 (see, among other authorities, *Joseph Grant v. United Kingdom*, no. 10606/07, § 39, 8 January 2009; *Shala*, cited above, § 52; and *Ndidi v. the United Kingdom*, no. 41215/14, § 81, 14 September 2017).

57. Moreover, the crimes committed by the applicant, including the last one leading to the expulsion order, were of such a nature that they 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).

58. Lastly, it cannot be overlooked that the applicant consistently demonstrated a lack of will to comply with Danish law (see, for example, *Levakovic*, § 44; *Muradeli*, § 81; and *Miah*, § 25, all cited above).

59. Consequently, the Court can accept the assessment of the Supreme Court according to which, despite the relative leniency of the sentence, the offence was a serious one of a violent nature and that there were, contrary to what the applicant maintained, aggravating circumstances. Moreover, it also accepts that, as in the case of *Miah*, the courts were entitled to take into account that the offence was the last in a series of crimes.

60. 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 Supreme Court duly took into account that the applicant had been four years old when he had arrived in Denmark and had lawfully resided there for approximately seventeen years. Moreover, on that basis it acknowledged that expulsion would be "considerably burdensome" for the applicant.

61. Regarding the criterion "the time [that has] 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 18 September 2016, and that the applicant was convicted less than one year later, in August 2017, with the final decision of the Supreme Court being given in September 2018. Moreover, subsequently, on 15 January 2018, the applicant was convicted for possession of 0.1 grams of cocaine for which he was fined DKK 6,000. Even though this last conviction may be regarded as less serious, in particular having regard to the penalty imposed, it nevertheless demonstrates a continuation of the applicant's criminal conduct and is as such relevant for the assessment. Accordingly, the Supreme Court was justified in taking this new conviction into account.

62. 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, when stating:

> "... As mentioned, [the applicant] ... has his mother, father and [two] siblings in Denmark. His remaining family lives in Denmark, Sweden and Canada. He has no family in Iraq. He has no partner and lives with his mother and stepfather. He has not managed to complete any training or education courses and has no links with the job market. Since he turned 18, his income has simply taken the form of State Educational Grants (SU) or social benefits. However, there is no doubt that he has such [close] ties

> with Denmark that an expulsion order and six-year re-entry ban would be considerably burdensome for him.
>
> [The applicant] was born in Iraq, but has spent most of his life in Denmark and has never been back to Iraq. He has stated that he speaks Assyrian, which is spoken in several places in Iraq. His father has told the police that the applicant speaks a little Arabic and understands the language. In addition, it must be assumed that he has some knowledge of Iraqi customs and culture through his family living in Denmark.
>
> The Supreme Court accepts as a fact that [the applicant's] personal and cultural ties with Denmark are far stronger than his ties with Iraq, but that he would not be entirely incapable of establishing a life in that country if expelled."

63. 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 not therefore 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; *Külekci v. Austria*, 30441/09, § 51, 1 June 2017).

64. Lastly, the Court observes that the applicant's expulsion did not interfere with his family rights. He had no family of his own (see paragraph 44 above), and he made no arguments to the effect that there were additional elements of dependence between himself and his parents or siblings. In any event, there is nothing to prevent the applicant from maintaining contact with his parents and siblings, for example by telephone or other electronic means of communication, or by meeting in places other than Denmark (see, *mutatis mutandis, Salem*, § 81, and *Hamesevic*, § 44, both cited above).

65. Taking account of all of the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that "very serious reasons" were adequately adduced by the national authorities when assessing his case, and that his expulsion was not disproportionate given all the circumstances of the case. It notes that all levels of court, including the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be considered to be contrary to Denmark's international obligations. The Court points out in this connection 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*, § 45, and *Ndidi*, § 76, both cited above; see also, *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).

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

Stanley Naismith	Marko Bošnjak
Registrar	President