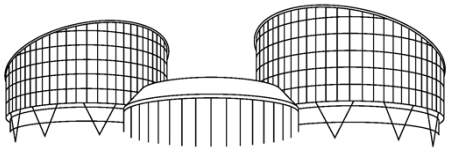

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ASSEM HASSAN ALI v. DENMARK

(Application no. 25593/14)

JUDGMENT

STRASBOURG

23 October 2018

FINAL

23/01/2019

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

In the case of Assem Hassan Ali v. Denmark,

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

Robert Spano, *President,*
Ledi Bianku,
Işıl Karakaş,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 11 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 25593/14) 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 Jordanian national of Palestinian origin, Mr Ahmad Assem Hassan Ali ("the applicant"), on 27 March 2014. He is represented before the Court by Mr Lars Thousig Jensen, a lawyer practising in Viborg. The Danish Government ("the Government") were represented by their Agent, Mr Tobias Elling Rehfeld, from the Ministry of Foreign Affairs, and their Co-Agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

2. The applicant alleged that it was in breach of Article 8 of the Convention to expel him from Denmark.

3. On 25 August 2016 the complaint under Article 8 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

5. The applicant was born on 7 February 1977. In July 1997, when the applicant was 20 years old, he requested a residence permit for Denmark,

via the Danish Embassy in Amman, on the grounds of his marriage in 1997 to a stateless Palestinian woman, X, from Lebanon, who lived in Denmark and had obtained Danish nationality. His request was granted and he was registered as a person legally residing in Denmark in November 1997.

6. Between 1997 and 2001, the couple had three children together. After they divorced, the applicant maintained contact with the children and his ex-wife.

7. In 2002, under Islamic law, the applicant married Y, an Iraqi woman of Kurdish origin. Between 2003 and 2009, the couple had three children together.

8. The applicant has a criminal record which includes, *inter alia,* a conviction in June 2006 for assault, threats and drug offences, for which he was sentenced to imprisonment for one year.

Criminal proceedings leading to the expulsion order

9. On 16 April 2008 the applicant was detained and charged with drug offences.

10. By a judgment of 11 March 2009 the District Court in Aarhus (*Retten i Aarhus*) found him guilty, jointly with others, of trafficking approximately 1 kg of cocaine from Holland to Denmark in the period from around 28 February 2008 to 4 March 2008, for the purpose of distribution, contrary to Article 191 of the Criminal Code. The applicant was sentenced to five years' imprisonment.

11. In addition, the District Court had to determine whether, as claimed by the prosecution, the applicant should be expelled.

12. In this decision, it took into account a statement of August 2008 by the Immigration Service (*Udlændingeservice*) about the applicant's personal circumstances. It set out, *inter alia,* that the applicant had resided in Denmark for more than nine years. He spoke Arabic and only a little Danish. An interpreter had been used during his interview with the Immigration Service. He had never had a job in Denmark. The applicant's parents and siblings remained in Jordan, where the applicant had visited them a couple of years before. The applicant saw his children from his first marriage.

13. The District Court also noted the applicant's statement before it, that before being detained he had seen his three children from his first marriage, who were aged six to ten, about every two days. In addition, he had three children under the age of six from his second marriage. He was still married. He had refused to receive visits from his children in the local prison because he feared that it would have a negative emotional impact on them. His wife had a Danish alien's passport. She originated from Iraq. He believed that she would not accompany him if he were deported.

14. Having regard thereto and to the seriousness of the crime, the District Court did not find that the circumstances mentioned in section 26, subsection 1, of the Aliens Act made expulsion inappropriate, or that this would be in breach of Article 8 of the Convention. It therefore ordered the applicant's expulsion with a permanent ban on his return.

15. On appeal to the High Court of Western Denmark (*Vestre Landsret*), henceforth the High Court, supplementary information was provided that the applicant had been fined on 10 December 2008 for a traffic offence, and on 3 April 2009 for a violation of the Executive Order on Controlled Substances (*Bekendtgørelse om euforiserende stoffer*). By judgment of 25 November 2009 the High Court upheld the conviction and sentence, although the latter was to include 22 days remaining from his conviction in 2006. It also found that expulsion would not be contrary to the principle of proportionality and upheld that order.

16. The applicant did not request leave to appeal to the Supreme Court (*Højesteret*).

Asylum proceedings

17. While serving his sentence, the applicant requested asylum. During those proceedings he stated that he would lose contact with his three children from his first marriage, since they would not be able to afford to visit him more than once a year. Moreover, his oldest son, I, was mentally disabled and would need special assistance to travel.

18. The applicant's request for asylum was refused by the Immigration Service on 28 June 2011 and, on appeal, by the Refugee Appeal Board (*Flygtningenævne*t) on 31 October 2011.

Revocation proceedings

19. On 15 August 2012 the applicant had served two-thirds of his sentence and was due to be released on parole. Since he did not consent to the release on parole, he was brought before the District Court which, on 23 August 2012, by virtue of section 50, subsection 2, of the Aliens Act (*Udlændingeloven)* maintained his detention until a decision was taken on whether to revoke the deportation order. To this effect, relying on section 50, subsection 1, of the Aliens Act, the applicant claimed that material changes had occurred in his circumstances. He stated, among other things, that he had strong links to his six children, his wife and his ex-wife, that they had all visited him in prison, and that he would lose contact with them upon return. His wife and her family had stayed illegally as refugees in Jordan and had been fined therefor, so she would not be allowed entry. After his mother had died, he had not had much contact with his family in Jordan.

20. For the purpose of the case, the Immigration Service issued a statement of 24 October 2012, which read as follows.

> "The Immigration Service finds that no such changes have occurred in [the applicant's] circumstances as set out in section 26 [of the Aliens Act] that could justify the revocation of the expulsion order. Accordingly, we find that it cannot lead to a revocation of the expulsion order that [the applicant] and his spouse living in Denmark, whom he married in a Muslim ceremony, have three minor children from their marriage, that he has received visits from his spouse and children about once a week since his arrest and that his spouse cannot enter Jordan because of her debt to the former authorities. We have emphasised in this respect that the above information was known already at the time of the judgment delivered by the High Court on 25 November 2009 and that he could not subsequently have had a justified expectation that he would be able to exercise his right to a family life in Denmark. In our opinion, it cannot lead to a revocation of the expulsion order either that [the applicant's] former spouse and the three minor children from their marriage live in Denmark and that his eldest child is in respite care due to a disease. In this respect we have emphasised that the information about the children, including the disease of the eldest child, was known at the time of the judgment delivered by the High Court on 25 November 2009. The Immigration Service also finds that the unsubstantiated information provided by [the applicant's] counsel, that several of [the applicant's] children suffer from mental problems as a result of the separation from [the applicant] cannot lead to a revocation of the expulsion order either..."

21. In connection with the case, the applicant's ex-wife, X, gave statements to the police on 7 and 12 September 2012. Her statements, reproduced in two police reports, were read out in the District Court and stated, *inter alia*:

> "X stated that she and the applicant had been married from 1997 to 2001. X was now a Danish national, but was originally a stateless Palestinian from Lebanon. She and [the applicant] had three children from their marriage: a 14-year-old boy, a 12-year-old girl and an 11-year-old boy. The 14-year-old boy had a mental disability, but no physical disability. He wore a nappy and his speech and language were undeveloped. He attended a special school. Their two other children were normal and attended ordinary elementary school. X had sole custody of the three children. She and the three children visited [the applicant] about twice a month in prison – although sometimes only once a month. They had done so for the entire period that [the applicant] had been in prison. X was on a disability pension. [The applicant's] only contribution to her living costs was child support. She and her three children would not accompany [the applicant] to Jordan if he were returned to Jordan."

> ".... Her 14-year-old son had been in respite care with a family until two years before. Now he was in respite care in an institution ... For example, he would live with X from Monday to Wednesday and go to the special school from X's home. From Thursday to Sunday of the same week, he would live in the institution and go to the special school from there...."

22. Before the District Court, X confirmed the statements that she had given to the police. The children were then 14, 12 and 11 years old. Their eldest son had not been diagnosed, as such. He was still in respite care, as she had described to the police. The children and [the applicant] had a very close relationship. The children were very excited to spend time with him. Their

daughter was probably the one who was most strongly attached to [the applicant], but their two sons were also very attached to him. Their daughter was going through puberty and had a strong need for a father, whom she could present to her friends. However, the children found it difficult to understand why they always had to visit [the applicant] and not the other way around. The two youngest children had not been offered consultations with a school psychologist. She had not forced the issue either, as she had always believed that things would work themselves out. It would be a disaster if her children were separated permanently from their father. They had lived in a strong hope that they would be reunited with their father upon his release. She feared that her children would break down in case of [the applicant's] deportation. It would become very difficult to integrate them into Danish society. For the sake of her children, she really hoped that [the applicant] could be allowed another chance. In the case of [the applicant's] deportation, she and the children would remain in Denmark as the children and she had no chance of managing elsewhere.

23. Y also gave statements to the police on 7 and 12 September 2012. Her statements, reproduced in two police reports, were read out in the District Court and stated, *inter alia*:

> "Y stated that she was an Iraqi national, but a Kurd ... She stated that she spoke Arabic. She understood some Danish but found it difficult to speak Danish. She stated that she had been granted residence based on an application for asylum. She had entered Denmark in 2000. She was still married to [the applicant], although they had only married in a Muslim ceremony. They had never married under the Danish rules. They had three children together: a 9-year-old boy, an 8-year-old girl and a 7-year-old boy. All of them were healthy and attended school here in Denmark. Y and [the applicant] had joint custody of the three children, who were all Iraqi nationals. Before [the applicant's] arrest in the drug case, which resulted in him being sent to prison, Y and [the applicant], had lived together at Y's current home. After his arrest and during his imprisonment, Y had visited [the applicant] in prison once a week on average. Their three children had also accompanied her on the visits. If [the applicant] were released, the plan was for him to move in with Y again and live with her and their three children. Y indicated that she could not go to Jordan with him if he were deported to Jordan. She stated in that respect that she had lived in Jordan for five years with her parents. When leaving Jordan in 2000, she had been told at the airport in Jordan that she must pay some money for having lived in Jordan, and if she failed to pay she could not return to Jordan. Y could not pay the money; she did not recall the amount. When asked whether she was in possession of Jordanian documents in that respect, she replied that she was not. This was the reason why she could not return to Jordan. Furthermore, she did not want her children to grow up in Jordan. Accordingly she and her three children would not accompany [the applicant] if he were returned to Jordan. ... Her father was dead ... She subsisted on welfare benefits. [The applicant's] only contribution to Y's living costs was child support ..."

> ".... Her father had been granted asylum in Denmark. In Jordan, she and the rest of her family had had to pay to live there. When asked how and to whom her family had had to pay money, she replied that she had been very young at the time and had never learned the details about that. She had lived in Jordan for about three years and had not left the country during those three years. She had left Jordan in 2000 with her mother and her three siblings as they had been granted family reunion in Denmark. Y

and her family had therefore travelled to Denmark. She had not been to Jordan since. When Y and her family had left the airport in Amman, the airport authorities/police had demanded that the family pay money for the time that they had lived in Jordan. The applicant did not know how much money her family had been asked to pay. She stated that she had heard that the amount was ten Jordanian dinars, probably for each day's stay on each passport, but there may also have been a monthly payment. Their family had had three passports altogether. Her family had been unable to pay the amount demanded at the airport of Amman, and they had then been told that it would subsequently be impossible for them to enter Jordan in future. She did not know whether her family could enter if the amount due was paid in connection with a future journey to Jordan. When asked about her three children, Y replied that they were all in good health and attended school here in Denmark. In connection with parent consultations at the school, Y had been informed that her children were doing well at school. However, her eldest son isolated himself a little when in after-school care. None of the children suffered from diseases of any kind, whether physical or mental. When asked, Y replied that none of her children saw a doctor or a psychologist. However, her eldest son was often sad because he thought about his father."

24. Before the District Court, Y confirmed the statements that she had made to the police. The children were then 9, 8 and 7 years old. The eldest son's relationship with [the applicant] remained unchanged. He was still waiting and looking very much forward to [the applicant's] release. Her eldest son had a support person. The reason was that he isolated himself. The reason why he isolated himself was that he missed being part of a whole family. It would help if he could be with [the applicant]. No support had been granted to the two younger children. They were doing well. Her siblings also lived in Aarhus. However, she did have one sister living in the Netherlands. A few years before, this sister had tried to return to Jordan after she was expelled from the Netherlands. However, Jordan had refused to accept her sister because there was an unpaid bill or fine linked to the family's stay in Jordan. If [the applicant] were deported to Jordan, she would have to remain in Denmark with the children, primarily for the sake of the children. She did not want them to grow up elsewhere. It would also have a very negative impact on the children if their father were deported.

25. By decision of 3 June 2013 the District Court refused to revoke the expulsion order, finding as follows:

"[The applicant] was sentenced to expulsion when found guilty of trafficking approximately 1 kg of cocaine into Denmark and sentenced to imprisonment for five years. His involvement in the case was neither random nor insignificant. On the contrary, the crime was categorised as organised and consequently also characterised by professionalism. Due to its nature, the crime accordingly constitutes a major problem for Danish society. Against this background, it is a strict requirement that [the applicant's] personal circumstances change to such extent that the changes can be considered material so as to justify the revocation of the expulsion order, see section 50(1) of the Aliens Act. As material changes in his circumstances, [the applicant] has referred to the circumstances that the health of his children has deteriorated, that his wife's possibility of accompanying him to Jordan following his deportation has been reduced, and that during the period since the High Court judgment of 25 November

> 2009 the risk has increased that he will also be punished in Jordan for the drug offence for which he has served a sentence in Denmark.
>
> Since the High Court delivered its judgment, [the applicant] has maintained contact with his wife and his children. However, that circumstance cannot independently lead to the conclusion that there have been material changes in circumstances. In the assessment of the Court, the information available does not provide any basis on which to conclude that there have been material changes in the health of his children. His wife has stated that she left Jordan in 2000, and there is nothing to suggest that her possibilities of returning to Jordan have changed since then.
>
> With reference to that, and based on the information on the risk of double punishment, the Court finds that there have been no such material changes in the applicant's] personal circumstances as to satisfy the conditions for revoking the expulsion order. As Article 8 of the European Convention on Human Rights has accordingly not been violated either, the Court cannot allow his claim that the expulsion order be revoked."

26. The applicant filed an appeal against the decision with the High Court, before which the applicant and X were heard, and the Ministry of Foreign Affairs was consulted anew. The latter had consulted a new legal source, which had confirmed the information obtained during the asylum procedure.

27. Supplementary information was provided that the applicant and his ex-wife, X, now had joint custody of their three children and planned to re-marry. Moreover, the eldest son, who was now 15 years old, lived in a residential institution. He had been diagnosed with von Recklinghausen's disease, type 1, and his stage of development corresponded to that of a four to six-year-old child.

28. The applicant submitted that in May 2013, thus before the District Court's decision of 3 June 2013 to refuse to revoke the expulsion order, he had divorced his wife, Y, according to Islamic law. He and his ex-wife, X, had talked about marrying again but they would await the outcome of the case at issue. It had not been decided whether she would follow him to Jordan in case of expulsion. There would be no help in Jordan for his disabled son. He had broken off contact with his father and his eight siblings in Jordan in 2005. He maintained contact with all his children.

29. The applicant's ex-wife, X, stated that it would not be possible for her to follow the applicant to Jordan due to the son's disability.

30. On 27 January 2014, the High Court upheld the decision not to revoke the expulsion order. It concluded as follows:

> "for the reasons given by the District Court, it is found on the basis of the evidence produced before the High Court, that there have been no such material changes in the applicant's circumstances as set out in section 50, subsection 1, cf. section 26 of the Aliens Act that would justify the revocation of his expulsion order. The information presented to the High Court on the risk of double punishment upon return to Jordan and on the intention of the applicant and his ex-wife to remarry cannot lead to a different outcome".

31. The applicant's request for leave to appeal to the Supreme Court was refused on 20 March 2014 by the Appeals Permission Board (*Procesbevillingsnævnet*).

32. The applicant was deported from Denmark on 8 April 2014.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. The relevant provisions of the Penal Code applicable at the time read as follows:

Section 191

"(1) Any person who, contrary to the legislation on controlled substances, delivers a controlled substance to multiple individuals or for significant value or in other particularly aggravating circumstances is sentenced to imprisonment for a term not exceeding ten years. If the substance delivered is a considerable quantity of a particularly dangerous or harmful substance, or if the delivery transaction has otherwise been of a particularly dangerous nature, the sentence may increase to imprisonment for a term not exceeding 16 years.

(2) The same penalty is imposed on any person who imports, exports, purchases, transfers, receives, produces, processes or possesses any such substance contrary to the legislation on controlled substances with intent to deliver the substance as referred to in subsection (1)".

34. The relevant provisions of the Aliens Act (*udlændingeloven*) applicable at the time and relating to the initial court decision on expulsion read as follows:

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 (4).

(...)"

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:

(...)

(iv) the alien is sentenced, pursuant to the Act on Controlled Substances or section 191 or 290 of the Penal Code, to imprisonment or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature, provided that the proceeds were obtained by violation of the Act on Controlled Substances or section 191 of the Penal Code;

(...)"

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 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 expulsion must be deemed to be particularly burdensome, see section 26(1). ..."

Section 26

"(1) In deciding on expulsion, regard must be had to the question of 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 weak 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 section 22(l)(iv) to (vii) and section 25 unless the circumstances mentioned in subsection (I) make it conclusively inappropriate."

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:-

(...)

(v) permanently if the alien is sentenced to imprisonment for more than 2 years or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration.

(...)"

35. The relevant provisions of the Aliens Act relating to the courts' subsequent re-assessment of the expulsion read as follows:

Section 50

"(1) If expulsion under section 49(1) has not been enforced, an alien claiming that a material change in his circumstances has occurred, see section 26, may request that the public prosecutor lays before the court the question of revocation of the order for expulsion. Such request 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. If the request is submitted at a later date, the court may decide to examine the case if it deems it excusable that the time-limit was exceeded.

(2) Section 59(2) of the Penal Code applies correspondingly. The request may be dismissed by the court if it is manifest that no material change has occurred in the alien's circumstances. If the request is not dismissed, counsel to defend the alien must be assigned on request. The court may order that the alien is to be deprived of his liberty if it is found necessary to ensure the alien's attendance during proceedings until any decision on expulsion can be enforced. Sections 34, 37(3) and (6) and 37a to 37e apply correspondingly.

(3) The court shall make its decision by court order, which is subject to interlocutory appeal under the rules of Part 85 of the Administration of Justice Act."

36. In respect of the procedure under section 50 of the Aliens Act, the following appears from Notice No. 5/2006 issued by the Director of Public Prosecutions on the public prosecutor's handling of cases against aliens involving expulsion on the basis of a criminal offence:

"(...)

2.8. Review of expulsion order under section 50 of the Aliens Act

2.8.1. General comments

Under section 50(1) of the Aliens Act, an alien who has been expelled by judgment, but whose expulsion has not been enforced, may request within specifically listed time-limits that the public prosecutor lay before the court the question of revocation of the order for expulsion. Revocation under section 50 of an order for expulsion presupposes that material changes in the alien's circumstances have occurred after the original order for expulsion, see section 26 of the Aliens Act. Only material changes in the alien's circumstances that were not foreseeable when the judgment was delivered may form the basis of a revocation of the expulsion.

The circumstances that the alien has managed, after the conviction, to keep in touch with spouse and children and that the family has become more integrated into Danish society during the same period, including becoming Danish nationals, thus cannot form the basis of revocation of the expulsion, see Danish Weekly Law Reports (UfR) 1995.66 Western High Court (V), 1997.1141 Supreme Court order (HKK) and Supreme Court order of 31 July 1997. For more recent case-law on the review under section 50, see Weekly Law Reports 2003.2500 Supreme Court order, 2004.1110 Supreme Court order, and 2005.3425 Supreme Court order.

When a request for a judicial review has been lodged under section 50 of the Aliens Act, the public prosecutor must obtain an opinion from the Danish Immigration

Service (see section 57(1), second sentence, of the Aliens Act). The submission letter to the Danish Immigration Service must be accompanied by the following: the request for review under section 50, a police report on the circumstances mentioned in section 26 relative to the original proceedings, a police report with a fresh interview of the relevant alien and possibly others about the circumstances mentioned in section 26, and other relevant information of importance to the review. The access to review under section 50 was restricted by Act No. 473 of 1 July 1998 so that it is only possible to review an expulsion order of a judgment once. According to Report No. 1326/1997, the rationale of this restriction was to link the review time-wise with the date of the alien's release for the purpose of expulsion so as to reduce the likelihood of material relevant changes in the alien's circumstances occurring during the period between the review and the enforcement of the expulsion. It is incumbent on the court, on its own initiative, to see to it that the conditions for review of an expulsion order of a judgment are satisfied, see Danish Weekly Law Reports 2000.2406, Supreme Court. The request may be dismissed by the court if it is manifest that no material change has occurred in the alien's circumstances."

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that it was in breach of Article 8 of the Convention to expel him from Denmark as he was thus separated from his six children. Article 8 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."

38. The Government contested that argument.

A. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

40. The Government submitted that the interference with the applicant's right to respect for his private and family life within the meaning of Article 8 had been "in accordance with the law", pursued the legitimate aim of preventing disorder and crime, and was "necessary in a democratic society.

41. They pointed out that both in the criminal proceedings, when the expulsion order was issued, and in the proceedings concerning the applicant's request that the expulsion order be revoked, the Danish courts made a thorough assessment under Article 8 in full accordance with the general principles set out in, for example, *Maslov v. Austria* [GC], no. 1638/03, §§ 72-73, ECHR 2008, and that they carefully struck a fair balance between the opposing interests. Accordingly, having regard to the principles on the supervisory function of the Court, the latter should be reluctant to substitute its view for that of the domestic courts.

42. The applicant disagreed.

43. The Court reaffirms at the outset 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, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, an interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

44. It is not in dispute between the parties that there was an interference with the applicant's right to respect for his private and family 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.

45. The relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, were set out in, *inter alia*, *Üner v. the Netherlands* [GC], no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII; *Maslov v. Austria* [GC], cited above, §§ 72-73; *Balogun v. the United Kingdom*, no. 60286/09, § 46, 10 April 2012; *Samsonnikov v. Estonia*, no. 52178/10, § 86, 3 July 2012; and *Salem v. Denmark*, no. 77036/11, § 64, 1 December 2016. They are the following:

> "- 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 the 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 of the marriage, and if so, their age; and

- 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. The domestic courts attached significant weight to the fact that the applicant had committed a serious drugs crime. As an adult (31 years old), working jointly with others, he had trafficked approximately 1 kg of cocaine from Holland to Denmark in the period from around 28 February 2008 to 4 March 2008, for the purpose of distribution. He was sentenced to five years' imprisonment. As stated, for example, by the District Court in its judgment of 3 June 2013, "his involvement in the case was neither random nor insignificant. On the contrary, the crime was categorised as organised and consequently also characterised by professionalism. Due to its nature, the crime accordingly constitutes a major problem to Danish society" (see paragraph 24 above).

47. The Court reiterates in this respect that it has held, on many previous occasions, that it understands - in view of the devastating effects drugs have on people's lives - why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among others, *Amrollahi v. Denmark,* no. 56811/00, § 37, 11 July 2002; *Sezen v. the Netherlands*, no. 50252/99, § 43, 31 January 2006; *A.W. Khan v. the United Kingdom*, no. 47486/06, § 40; 12 January 2010; *Samsonnikov v. Estonia*, cited above, § 89; *Savasci v. Germany* (dec.), 45971/08, § 27, 19 March 2013; and *Salem v. Denmark,* cited above, § 66).

48. The applicant entered Denmark in 1997 when he 20 years old. By a final High Court judgment of 21 June 2006 he was convicted of, *inter alia*, drug offences and sentenced to one year's imprisonment. Moreover, subsequent to the serious drug crime committed in 2008, the applicant was fined twice including, on 3 April 2009, for a violation of the Executive Order on Controlled Substances.

49. As to the solidity of social, cultural and family ties with the host country and with the country of destination, the Court observes that during the criminal proceedings leading to the expulsion order, in August 2008 the Immigration Service (*Udlændingeservice*) stated that the applicant spoke Arabic and only a little Danish. An interpreter had been used during his interview with the Immigration Service. The applicant had never had a job in Denmark. The applicant's parents and siblings remained in Jordan, where the applicant had visited them a couple of years before. However, in the

revocation proceedings leading to the High Court's decision of 27 January 2014, the applicant stated that he had broken off contact with his father and his eight siblings in Jordan in 2005. He did not develop this statement further and the Court does not attach any particular weight to this assertion.

50. As to the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life, the Court notes that the applicant's first wife, X, from his marriage in 1997, was a stateless Palestinian woman from Lebanon who had obtained Danish nationality. She and the applicant had three children together, born between 1997 and 2001. They had Danish nationality and their legal status was not affected by the applicant's expulsion order. After the divorce in 2001, the applicant maintained contact with X and his children. During the revocation proceedings in 2013, before the High Court, the applicant submitted that he and X planned to re-marry, but that it had not been decided whether she would follow him to Jordan in case of expulsion. At the relevant time, however, the applicant was serving his prison sentence and facing the implementation of the expulsion order. Thus, he could not have had a justified expectation that he would be able to exercise his right to a family life in Denmark with X. Moreover, there is no indication that they did remarry either before the applicant was deported on 14 April 2014 or thereafter. Accordingly, the criterion relating to the seriousness of the difficulties which spouse X is likely to encounter in the country to which the applicant is to be expelled does not apply.

51. The applicant's second wife, Y, from his marriage under Islamic law in 2002, was an Iraqi woman of Kurdish origin. They married before the offences at issue were committed. Thus, the criterion of whether the spouse knew about the offence at the time when he or she entered into a family relationship does not come into play in the present case. In respect of their marriage it is noteworthy, though, that they divorced in May 2013, before the District Court's decision of 3 June 2013 to refuse to revoke the expulsion order. Accordingly, the criterion relating to the seriousness of the difficulties which spouse Y is likely to encounter in the country to which the applicant is to be expelled does not apply. Y and the applicant had three children together, born between 2003 and 2009. The children had Danish nationality and their legal status was not affected by the applicant's expulsion order.

52. When in 2009 the applicant was convicted of a serious drug crime, sentenced to five years' imprisonment, and his expulsion ordered, it was a known fact that he had six children. In their judgments of 11 March 2009 and 25 November 2009, respectively, the District Court and the High Court did not expressly state whether they found that the applicant's then wife, Y, and their three children could follow him to Jordan or whether, in any event, a separation of the applicant from his then wife and children could not

outweigh the other counterbalancing factors, notably that the applicant had committed a serious drugs crime (see paragraphs 14 and 15 above).

53. In the revocation proceedings, when examining whether material changes had occurred in the applicants' circumstances within the meaning of section 50, subsection 1, of the Aliens Act, the District Court, in its decision of 3 June 2013 stated, among other things, that "as material changes in his circumstances, the applicant has referred to the circumstances that the health of his children has deteriorated .... Since the High Court delivered its judgment [in 2009], the applicant has maintained contact with his wife and his children. However, that circumstance cannot independently lead to the conclusion that there have been material changes in circumstances. In the assessment of the court, the information available does not provide any basis on which to conclude that there have been material changes in the health of his children. ...". The High Court concurred with this finding and added, in its decision of 27 January 2014 "that the information presented to the High Court ... on the intention of the applicant and his ex-wife to remarry cannot lead to a different outcome".

54. The remaining criterion in the case to be examined is "the best interests and well-being of the children, in particular the seriousness of the difficulties which any of the applicant's children are likely to encounter in the country to which the applicant is to be expelled".

55. In its judgment *Jeunesse v. the Netherlands* [GC], (no. 12738/10, § 109, 3 October 2014), which concerned family reunion, the Court reiterated "that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance ... Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it."

56. Whilst this principle applies to all decisions concerning children, the Court notes that in the context of the removal of a non-national parent as a consequence of a criminal conviction, the decision first and foremost concerns the offender. Furthermore, as case-law has shown, in such cases the nature and seriousness of the offence committed or the offending history may outweigh the other criteria to take into account (see, for example, *Cömert v. Denmark* (dec.), 14474/03, 10 April 2006; *Üner v. the Netherlands* [GC], cited above, §§ 62-64; and *Salem v Denmark*, cited above, § 76).

57. In the present case, when the revocation proceedings were pending before the District Court in 2013, the applicant's children were approximately 14, 12, 11, 9, 8 and 7 years old. They would all remain in

Denmark, so no question arose as to "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". The issue was rather which difficulties they would encounter in Denmark due to the separation from their father. The three eldest children would live with their mother, X, as they had done since their parents divorced in 2001. The eldest son was living part-time in an institution. The three youngest children would live with their mother, Y, as they had done since the applicant was detained in April 2008.

58. Both the District Court and the High Court found unsubstantiated the applicant's allegation that the children's health had deteriorated since the expulsion order was issued in 2009. The applicant's eldest son's medical condition was also known in 2009.

59. The domestic courts also stated that the fact that, while imprisoned, the applicant has maintained contact with his children since 2009, could not independently lead to the conclusion that there have been "material changes in [the applicant's] circumstances" (see section 50 of the Aliens Act).

60. The domestic courts did not as such comment on X's allegation that "It would be a disaster if her children were separated permanently from their father. They had lived in a strong hope that they would reunite with their father upon his release. She feared that her children would break down if [the applicant] were to be deported. It would become very difficult to integrate them into Danish society". Nor did they take a stand on Y's allegation that "her eldest son had a support person. The reason was that he isolated himself. The reason why he isolated himself was that he missed being part of a whole family. It would help if he could be with [the applicant] ... It would also have a very negative impact on the children if their father were deported."

61. Apart from observing that such statements cannot be considered established facts, on the basis of the other material before it, the Court is not convinced that the applicant's children's best interests were adversely affected by the applicant's deportation to such an extent that those should outweigh the other criteria to take into account (see, for example, *A.H. Khan v. the United Kingdom*, no. 6222/10, § 40, 20 December 2011).

62. The Court also notes that apart from financial restraints (see paragraph 17 above), the applicant has not pointed to any obstacles, at least for the five younger children to visit him in Jordan, or for them all to maintain contact with him in other ways.

63. In the light of the above, the Court recognises that the District Court and the High Court carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law, including the applicant's family situation. Moreover, having regard to the gravity of the drugs crime committed by the applicant, the Court finds that the interference was supported by relevant and sufficient reasons, and was proportionate in

that a fair balance was struck between the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other hand (see, among many others, *Salem v. Denmark*, cited above, § 82; *Hamesevic v. Denmark* (dec.), no. 25748/15, § 43, 16 May 2017; *Alam v. Denmark* (dec.), no. 33809/15, § 35, 6 June 2017; and *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017).

64. Accordingly, 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 23 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President