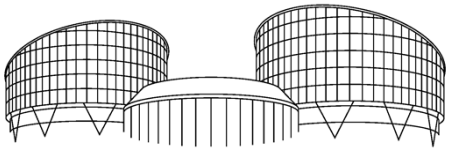

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SHARAFANE v. DENMARK

(Application no. 5199/23)

JUDGMENT

Art 8 • Expulsion • Private life • Disproportionate expulsion with a six-year re-entry ban against a settled migrant, an Iraqi national, lawfully residing in Denmark for twenty-three years, following conviction for serious offences • Domestic courts reduced permanent re-entry ban provided by the relevant domestic law to six years, holding that otherwise the length would "for certain" be considered in breach of Art 8 • After re-entry ban's expiry, prospect of entering Denmark for the applicant, belonging to visa group 5 (nationals of Afghanistan, Eritrea, Iraq, Pakistan, Russia, Somalia or Syria) without a spouse or a partner, were purely theoretical and not realistic • Six-year re-entry ban would *de facto* amount to a permanent re-entry ban in the present case • Limited re-entry ban could not be attributed decisive weight as a factor capable of rendering the applicant's expulsion compatible with Art 8

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 November 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sharafane v. Denmark,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Anne Louise Bormann,
Mateja Đurović*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 5199/23) 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 Zana Sharafane ("the applicant"), on 28 January 2023;

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

the parties' observations;

the comments submitted by a non-governmental organisation, the European Centre for Law and Justice (ECLJ), which had been granted leave to intervene by the President as a third party in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court);

Having deliberated in private on 8 and 22 October 2024,

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

INTRODUCTION

1. The application concerns an order made in criminal proceedings for the expulsion of a settled migrant. The applicant complained under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1997 and lived in Aalborg. He was represented by Mr Eddie Omar Rosenberg Khawaja, a lawyer practising in Copenhagen.

3. The Government were represented by their Agent, Ms Vibeke Pasternak Jørgensen, of the Ministry of Foreign Affairs, and their co-Agent, Ms Nina Holst-Christensen, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicant was born in Denmark. He had no previous criminal record.

6. By a judgment of the District Court (*Retten i Aalborg*) of 27 May 2021, the applicant was convicted under Article 191 of the Penal Code (which carries a sentence of imprisonment of up to ten years) and under the Controlled Substances Act (*bekendtgørelse om euforiserende stoffer*) of possession of a total of 57 kg of cannabis and 107 grams of cocaine, intended for resale, committed during the period from 24 April 2019 to 4 May 2020. The applicant was sentenced to two years and six months' imprisonment and issued with a warning of the risk of expulsion. The sum of 457,000 Danish kroner (approximately 61,300 euros (EUR)) was confiscated as proceeds from the offences. In determining the sentence, the court took into account the fact that the applicant had played a significant and active role as a dealer, and that he had been assisted by his own network of dealers.

7. The District Court's reasoning regarding the expulsion order was as follows:

> "[The applicant] is 23 years old and an Iraqi national. He was born and raised in Denmark. He has no prior convictions, and he has now been sentenced to imprisonment for a term of two years and six months for a violation of Article 191 of the Penal Code.
>
> Accordingly, it follows from section 22(1)(ii) and (iv), read with section 26(2), of the Aliens Act that [the applicant] must be expelled unless expulsion would for certain be contrary to Denmark's international obligations. The question is then whether expulsion would be contrary to, *inter alia*, Article 8 of the European Convention on Human Rights.
>
> It follows from the case-law of the European Court of Human Rights ... and of the Supreme Court that the decision as to whether the expulsion of a foreigner living in Denmark is compatible with the above-mentioned provision depends in particular on a proportionality test. The proportionality test also takes into account the societal needs for expulsion in view of the nature and seriousness of the previous offences and the offences under adjudication, the duration of the foreigner's stay in Denmark, and the strength of the foreigner's family, social and cultural ties with Denmark and his country of nationality. Under the case-law, there must be very compelling reasons to justify the expulsion of a settled foreigner who was born in the host country or who entered the host country as a child and has spent the major part of his or her childhood and adolescence in the host country.
>
> [The applicant] is now convicted of serious drug-related offences. This must be contrasted with his ties with Denmark, where he spent his childhood and adolescence, and the fact that his parents and siblings live in Denmark. He is not married and has no children. He speaks Danish and has completed an apprenticeship as a shop assistant. He has held various jobs but has been a jobseeker since November 2019. He speaks Kurdish, but according to the information provided, he has no ties with Iraq, and he has never been to that country.
>
> In these circumstances and on the basis of an overall assessment, the Court finds that expulsion of [the applicant] would constitute a violation of Article 8 of the European Convention on Human Rights. Accordingly, the court dismisses the claim for expulsion – see section 26(2) of the Aliens Act.
>
> Consequently, [the applicant] is given a warning of the risk of expulsion – see section 24b(1) of the Aliens Act."

8. The applicant appealed against the judgment to the High Court of Western Denmark (*Vestre Landsret*), which by a judgment of 23 March 2022 upheld the conviction and sentence, but also expelled the applicant from Denmark with a six-year re-entry ban. With respect to the expulsion order, the High Court stated as follows:

> "The issue of expulsion is relevant to the defendants [the applicant], [S.S.] and [K.S.] only.
>
> The conditions set out in section 22 of the Aliens Act have been met in the case of all three defendants. Accordingly, they must be expelled from Denmark and issued with permanent re-entry bans unless this would for certain be contrary to Denmark's international obligations – see section 26(2) of the Aliens Act.
>
> Expulsion of the defendants would amount to interference with their right to respect for private and family life under Article 8 of the European Convention on Human Rights. As mentioned by the District Court, the justification of such interference must be based on a proportionality test, and according to the case-law of the European Court of Human Rights, very compelling reasons are required to justify expulsion of the defendants as they were either born in this country or arrived here as a child.
>
> ...
>
> [The applicant] was born in Denmark and spent his childhood and adolescence in Denmark. He lives with his parents. He still does not have a partner or children and is looking for a job. His personal circumstances are essentially as described in the District Court judgment.
>
> His expulsion would therefore interfere with his right to respect for his private and family life with his parents.
>
> [The applicant] has been sentenced to imprisonment for a term of two years and six months for a serious organised drug-related crime, and he has been involved in the delivery of several large quantities of drugs. He has played a significant and independent role in the Aalborg-based receiving organisation, including in respect of [P.A.], who stored various types of drugs for him. It must also be accepted as a fact that [the applicant] has made considerable financial gain from his participation in the organisation. Accordingly, the seriousness and nature of the offences committed by [the applicant] are deemed to be very weighty reasons for expelling [him].
>
> Given his long stay in Denmark, [the applicant's] ties with Denmark are far stronger than those with the Kurdish part of Iraq. He has stated that he speaks Kurdish. He was raised by his Kurdish parents and must therefore be assumed to have detailed knowledge of Kurdish culture. If he and his two brothers are expelled and subsequently deported, he will also have close relatives in that country. Accordingly, he has certain ties with Iraq and will not be unequipped to cope in the country.
>
> On the basis of a proportionality test, taking into account especially the circumstances mentioned, the High Court finds that the societal considerations that point in favour of expelling the defendant are so compelling as to outweigh the considerations against expulsion based on his private and family life. Accordingly, [the applicant] must be expelled from Denmark.
>
> Having regard to his long-term ties with Denmark, the High Court finds that it would for certain be contrary to Denmark's international obligations to expel [the applicant] and issue him with a permanent re-entry ban. By contrast, the High Court finds that it

would not for certain be contrary to Denmark's international obligations to expel him and issue him with a re-entry ban for six years.

Accordingly, [the applicant] is expelled from Denmark and issued with a re-entry ban for six years – see section 32(4)(vii), read with section 32(5)(i), of the Aliens Act."

9. A request by the applicant for leave to appeal to the Supreme Court was refused on 28 September 2022 by the Appeals Permission Board (*Procesbevillingsnævnet*).

10. The applicant was released from custody on 4 August 2021. He was summoned to serve the rest of his sentence on 30 May 2022, but failed to present himself to the relevant authorities. His subsequent whereabouts are unknown.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Provisions of the Aliens Act relating to expulsion

11. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail in, for example, *Munir Johana v. Denmark* (no. 56803/18, §§ 23-26, 12 January 2021) and *Salem v. Denmark* (no. 77036/11, §§ 49-52, 1 December 2016).

12. Section 24b of the Aliens Act on suspended probation orders, which provided for suspended expulsion orders with a probation period of two years, was amended by Law no. 469 of 14 May 2018, which came into force on 16 May 2018. The new provision introduced a warning scheme, which did not provide for a requirement to specify a particular probation period.

13. Section 32 of the Aliens Act was amended by Law no. 469 of 14 May 2018 and Law no. 821 of 9 June 2020. In brief, as a result of the amendments, a re-entry ban was to be imposed as follows: for six years if the alien was sentenced to imprisonment for between three months and one year (section 32(4)(iv)); for twelve years if the alien was sentenced to imprisonment for between one year and one year and six months (section 32(4)(vi)); and permanently if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)). However, the courts were given discretion to reduce the length of re-entry bans, whether permanent or limited in time (section 32(5)(i)), if the length would otherwise "for certain" be considered in breach of Denmark's international obligations, including Article 8 of the Convention.

14. Section 50 of the Aliens Act was amended by Law no. 919 of 21 June 2022. As a result of the amendment, when carrying out a subsequent review of whether an expulsion order should be set aside, the Danish courts are now able to impose a re-entry ban for a shorter period than that previously specified, irrespective of when the criminal offence was committed, if they find, at the time of the review, that a shortening of the period is required to ensure that the expulsion order falls within the scope of Denmark's

international obligations (see also, *inter alia*, *Noorzae v. Denmark*, no. 44810/20, §§ 14-15, 5 September 2023).

B. Circumstances under which foreigners issued with a time-limited re-entry ban may be granted a residence permit in Denmark

15. If a foreigner who has been expelled from Denmark with a time-limited re-entry ban wishes to resettle in Denmark after the re-entry ban has expired, an application may be lodged from abroad under the relevant provisions of the Aliens Act – for example, on the basis of family reunification (sections 9 and 9c(1) of the Aliens Act) or for work or study purposes (sections 9a and 9i of the Aliens Act). Under section 9 of the Aliens Act, family reunification can be granted to the spouse, long-term cohabiting partner or children under the age of 15 of a person who is resident in Denmark. A number of criteria concerning, *inter alia*, income and housing have to be fulfilled.

16. The fact that the foreigner was previously expelled with a time-limited re-entry ban is not as such taken into account, but section 10 of the Aliens Act lists various reasons for excluding a foreigner from being eligible for a residence permit in Denmark, notably if the foreigner is deemed to pose a danger to national security or to represent a threat affecting public policy or public health at the time of the application.

17. Statistics obtained by the Government in March 2024 show that the number of final judgments delivered between 2007 and 2022 by which a foreigner was expelled from Denmark and banned from re-entry for twelve years or less or for an unknown period amounted to 22,840. The judgments by which a re-entry ban for twelve years or less was imposed concerned a total of 18,811 foreigners.

18. The data also show that in the period from 2007 to 2022, twenty-two foreigners who had previously been expelled by court orders and banned from re-entry for twelve years or less were subsequently granted a residence permit in Denmark (including nineteen on the basis of family reunification) between 1 January 2019 and 7 March 2024. Such cases concerned nationals from Ghana, Iran, Iraq, Jordan, Kosovo[1], Lebanon, Morocco, Nigeria, North Macedonia, Somalia, Syria, Türkiye and Uganda. During the same period, twenty-four such foreigners were refused a residence permit (including nineteen who had applied for family reunification).

[1] All references to Kosovo, whether the territory, institutions or population, in this text is to be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

C. Circumstances under which foreigners issued with a time-limited re-entry ban may be granted a visa to re-enter Denmark

19. At the outset, it should be noted that foreigners who have been granted a residence permit in Denmark do not need a visa, since a residence permit automatically includes a right to enter the country.

20. Moreover, Denmark participates in the European Union cooperation scheme on uniform visas, under which it is determined which third-country nationals will need a visa when crossing the external European Union borders. Denmark is bound by the Schengen rules, including Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ 2009 L 243, p. 1 (hereinafter "the Visa Code" – see also paragraph 31 below).

21. Danish Executive Order no. 1454 of 25 November 2022 on foreigners' access to Denmark on the basis of a visa (*Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum* – hereinafter "the Executive Order on Visas") provides detailed rules on, *inter alia*, visa requirements and visa exemptions, the lodging of visa applications, the conditions for issuing visas, fundamental case-processing considerations, and the distribution of cases between the relevant authorities.

22. The visa authorities must make a specific and individual assessment of each application for a visa. In making that assessment, they are bound by Denmark's international obligations on the right to respect for family and private life as set out in, *inter alia*, Article 8 of the Convention and Article 7 of the Charter of Fundamental Rights of the European Union (OJ 2007/C 303/01).

23. The conditions that an applicant must fulfil to enter Denmark are set out in Chapter 4 of the Executive Order on Visas (see paragraph 21 above). That chapter provides the basic considerations to be taken into account when examining and deciding on an application for a Schengen visa. Under section 8(1) of the Executive Order on Visas, a Schengen visa will be granted unless there are grounds for refusing the application under the rules of the Visa Code. Section 8(2) describes the situations in which an application for a Schengen visa will be refused, for example:

> "(1) If the alien presents a travel document which is false, counterfeit or forged.
>
> (2) If the alien does not provide justification for the purpose and conditions of the intended stay.
>
> (3) If the alien fails to provide proof that he or she has sufficient means of subsistence for the duration of the intended stay or for the return to his or her country of origin or residence, or for transit to a third country into which he or she is certain to be admitted.
>
> (4) If the alien fails to provide proof that he or she is in a position to lawfully acquire means of subsistence for the duration of the intended stay or for the return to his or her country of origin or residence, or for transit to a third country.

(5) If the alien has already stayed in the Schengen countries for 90 days within the current period of 180 days on the basis of a Schengen visa or a visa with limited territorial validity.

(6) If the alien has been reported in the Schengen Information System (SIS II) with a view to refusal of entry.

(7) If the alien is considered to be a threat to public policy or the internal security of the Schengen countries, in particular where – on the same grounds – an alert has been issued about the person concerned in the Schengen countries' national databases for the purpose of refusing entry.

..."

24. Moreover, in accordance with the provisions of Article 21(1) and Article 31(1)(b) of the Visa Code on, *inter alia*, the risk of illegal immigration, Denmark has divided countries whose nationals are subject to visa requirement into five "main" groups, which are listed in Annex 2 to the Executive Order on Visas.

25. Visa group 5 encompasses countries and regions (Afghanistan, Eritrea, Iraq, Pakistan, Russia, Somalia and Syria) whose nationals, as a starting-point, are assessed as posing a particularly high immigration risk in Denmark and the other Schengen countries, and where difficulties may arise in returning those nationals. Therefore, unless an individual assessment of an application for a visa from a national of the countries and regions concerned clearly indicates that the applicant intends to leave Denmark before the visa expires, a visa will only be granted in "extraordinary circumstances", such as the death or terminal illness of a family member living in Denmark.

26. Statistics obtained by the Government in March 2024 show that in the five years preceding 7 March 2024, only fourteen aliens expelled by court order and banned from re-entry for a limited period of time between 2007 and 2022 applied for a Schengen visa for Denmark. Four of those applicants were granted a visa (one of them twice), although none of them came from countries in visa group 5. Ten applications were refused (including two people from Pakistan, who thus fell within visa group 5).

27. The data related to the period of five years preceding 7 March 2024, given that Article 23 of Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ 2008 L 218, p. 60 (hereinafter "the VIS Regulation") provides that application files may be kept in the VIS for a maximum of five years.

D. Domestic case-law on expulsion orders issued in criminal proceedings with a time-limited re-entry ban, and the circumstances under which expelled individuals may re-enter Denmark

28. It appears that in general the Danish courts, when issuing an expulsion order in criminal proceedings with a time-limited re-entry ban, do not take into account whether in the future – that is, after the expiry of the time-limited re-entry ban – it would be possible for the expelled person to re-enter the country.

29. Thus, for example, in a judgment of 20 April 2022 (see Weekly Law Reports 2022, U2022.2604Ø), the High Court of Eastern Denmark convicted a 20-year-old Iranian national, born in Denmark, of serious offences, including rape, and sentenced him to five years' imprisonment. He was expelled with a six-year re-entry ban. The majority of four judges found that a re-entry ban of more than six years would be disproportionate btu did not expressly consider whether there would be any likelihood that the defendant would be readmitted to Denmark after those six years. Two dissenting judges found, among other things, that the fact that the re-entry ban was time-limited could not be given weight in the proportionality assessment in the case before it, since in their view the six-year re-entry ban amounted *de facto* to a permanent ban, given the fact that it was unlikely that the expelled person would, in the future, be regranted a residence permit in Denmark.

30. Moreover, a judgment by the Supreme Court of 3 October 2022 (U 2023.1) concerned a 26-year-old Iraqi national who had arrived in Denmark at the age of two. He had been convicted of robbery and assault with aggravating circumstances but had been exempted from punishment owing to his mental illness. His expulsion had been ordered together with a six-year re-entry ban. The Supreme Court noted that the Court, for example in *Savran v. Denmark* ([GC], no. 57467/15, § 199, 7 December 2021), had attached weight, in the proportionality test, to the duration of the re-entry ban, and whether it was permanent or time-limited, but that the Court's case-law did not provide a basis for giving distinct weight, in the proportionality test, to the prospects of the expelled person being granted re-entry into the country after the expiry of the ban. That assessment would depend on, among other things, the rules applicable at the relevant time.

E. European Union

31. Denmark participates in the Schengen Agreement, and a number of European visa rules apply, including:

– the Visa Code (see paragraph 20 above);

– Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals

must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification), OJ 2018 L 303, p. 39;

– the VIS Regulation (see paragraph 27 above); and

– Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), OJ 2016 L 77, p. 1 (hereinafter "the Schengen Borders Code").

32. The Visa Code, as amended, provides, in so far as relevant:

Article 21
Verification of entry conditions and risk assessment

"1. In the examination of an application for a uniform visa, it shall be ascertained whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code, and particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

2. In respect of each application, the VIS shall be consulted in accordance with Articles 8(2) and 15 of the VIS Regulation. Member States shall ensure that full use is made of all search criteria pursuant to Article 15 of the VIS Regulation in order to avoid false rejections and identifications.

3. While checking whether the applicant fulfils the entry conditions, the consulate or the central authorities shall verify:

(a) that the travel document presented is not false, counterfeit or forged;

(b) the applicant's justification for the purpose and conditions of the intended stay, and that he has sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is in a position to acquire such means lawfully;

(c) whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;

(d) that the applicant is not considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;

(e) that the applicant is in possession of adequate and valid travel medical insurance, where applicable, covering the period of the intended stay, or, if a multiple-entry visa is applied for, the period of the first intended visit.

..."

Article 32
Refusal of a visa

"1. Without prejudice to Article 25(1), a visa shall be refused:

(a) if the applicant:

(i) presents a travel document which is false, counterfeit or forged;

(ii) does not provide justification for the purpose and conditions of the intended stay;

(iia) does not provide justification for the purpose and conditions of the intended airport transit;

(iii) does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;

(iv) has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

(v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

(vi) is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds; or

(vii) does not provide proof of holding adequate and valid travel medical insurance, where applicable;

or

(b) if there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the High Court's decision of 23 March 2022 to order his expulsion with a six-year re-entry ban was in breach of Article 8 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for his private...life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

35. The applicant disagreed.

36. The Court notes that the application 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. Arguments by the parties

37. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that he was born in Denmark, had no criminal past, had never received a warning of the risk of expulsion, and had never been to Iraq.

38. Moreover, although the re-entry ban was limited to six years, it amounted *de facto* to a permanent ban, since the prospect of his re-entering Denmark remained purely theoretical. He had no partner or children or relevant education which could justify an application for a residence permit. Moreover, in respect of applying for a short-term visa, as an Iraqi national – and consequently belonging to visa group 5 (see paragraph 25 above) – he pointed out that visas to individuals in that group were granted only in very exceptional circumstances, for example if a close family member in Denmark was terminally ill or had died. This means that the exceptional circumstances where a visa can be granted are in reality the same as for a person who is still covered by a re-entry ban. The statistics provided by the Government (see paragraph 26 above) confirmed that no nationals of countries in visa group 5 had been granted a visa between 2019 and 2024.

39. The Government submitted that the Danish courts had carried out the proportionality test thoroughly, balancing the opposing interests and taking all the applicant's personal circumstances into account. The applicant had committed serious offences, which constituted a threat to public order and security.

40. Moreover, they argued that since the domestic courts had considered the case specifically in the light of Article 8 of the Convention and the Court's pertinent case-law, the Court should be reluctant, having regard to the subsidiarity principle, to disregard the outcome of the assessment made by the national courts.

41. The Government pointed out that the High Court had used its discretion under section 32(5) of the Aliens Act (see paragraph 13 above) to reduce the re-entry ban to six years. An expulsion order combined with a six-year re-entry ban was a less definitive and interfering sanction than an

expulsion order with a long-term or permanent re-entry ban. The applicant would be able to apply for a residence permit after the expiry of the re-entry ban. The fact that he had previously been expelled would not affect the assessment of an application for a new residence permit unless, at the time of the application, he posed a danger to national security or was considered a threat to public order, safety or health.

42. As to whether the prospect of a foreigner who had been expelled with a time-limited re-entry ban being readmitted to the country after the expiry of the re-entry ban should be part of the proportionality test at all, the Government emphasised that the Danish courts, when deciding on an expulsion order in criminal proceedings, could not take a stand on whether in the future the expelled person might fulfil the conditions to be eligible for a residence permit or a Schengen visa for Denmark.

43. Only the immigration authorities could decide on those matters, and only at the time of the application, when the relevant information would be available – including in relation to travel documents, the purpose and conditions of the intended stay, and the financial circumstances.

44. The Government also pointed out that an assessment by the courts at the time of issuing the expulsion order might lead to differential treatment based on nationality, notably in respect of nationals of countries in visa group 5 as set out in Annex 2 to the Executive Order on Visas (see paragraphs 21 and 24 above). They observed in that connection that the status of a country belonging to a specific visa group could also change over the years.

45. Lastly, they emphasised that the division of countries into main groups in the Executive Order on Visas (see paragraph 24 above) merely reflected a general assessment of whether applicants for a visa from the countries and regions concerned presented an immigration risk and whether applicants intended to leave the Schengen area before the expiry of their visas. The main groups were only one of the factors taken into account by the authorities under section 16(4) of the Executive Order on Visas.

2. Comments submitted by the third-party intervener, the ECLJ

46. The ECLJ submitted its general assessment on the issue of expulsion of foreign nationals committing offences in a host State, in the light of the Court's case-law under Article 8 of the Convention. It invited the Court to take two further criteria into account, namely the host country's ability to integrate foreign nationals, and its difficulties in keeping foreign nationals away from environments which had contributed to their committing offences. It also found that the limited length of a re-entry ban was an important factor to be taken into account in the proportionality test.

3. The Court's assessment

(a) General principles

47. The relevant criteria to be applied have been set out in, among other authorities, *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 54-60, ECHR 2006-XII) and *Maslov v. Austria* ([GC], no. 1638/03, §§ 68-76, ECHR 2008). In *Savran v. Denmark* ([GC], no. 57467/15, § 182, 7 December 2021) the Court summed up the criteria which are relevant for the analysis whether the expulsion order was necessary in a democratic society:

> "182. In *Maslov* ... the Court ... set out the following criteria as relevant to the expulsion of young adults, who have not yet founded a family of their own:
>
> – 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, the Court will have regard to the duration of the exclusion order (ibid., § 98; see also *Külekci v. Austria*, no. 30441/09, § 39, 1 June 2017, and *Azerkane v. the Netherlands*, no. 3138/16, § 70, 2 June 2020). Indeed, the Court notes in this context that the duration of a ban on re-entry, in particular whether such a ban is of limited or unlimited duration, is an element to which it has attached importance 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*, cited above, § 51; *Veljkovic-Jukic v. Switzerland*, no. 59534/14, § 57, 21 July 2020; and *Khan v. Denmark*, no. 26957/19, § 79, 12 January 2021)."

(b) Application of those principles to the present case

48. The Court finds it established that there was an interference with the applicant's right to respect for his private life within the meaning of Article 8, that the expulsion order and the re-entry ban were "in accordance with the law", and that they pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, no. 77036/11, § 61, 1 December 2016).

49. As to whether the interference was "necessary in a democratic society", the Court notes that the Danish courts took as their legal starting-point the relevant provisions of the Aliens Act and the Penal Code, as well as the criteria to be applied in making a proportionality assessment under Article 8 of the Convention and the Court's case-law. The Court recognises that the domestic courts examined the relevant criteria thoroughly, given that very serious reasons were required to justify the expulsion of the applicant, a settled migrant who had been born in Denmark (see

paragraph 5 above) and who had been lawfully resident in the host country for twenty-three years when the offences were committed (see *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether "very serious reasons" of that kind were adequately adduced and examined by the national authorities when they assessed the applicant's case (see, also, *Sarac v. Denmark*, no. 19866/21, § 27, 9 April 2024; *Nguyen v. Denmark*, no. 2116/21, § 28, 9 April 2024; *Noorzae v. Denmark*, no. 44810/20, § 25, 5 September 2023; and *Sharifi v. Denmark*, no. 31434/21, § 25, 5 September 2023).

50. The domestic courts gave particular weight to the seriousness of the offence committed and the sentence imposed. The applicant was convicted, in particular, under Article 191 of the Penal Code (which carried a sentence of up to ten years' imprisonment) of possession of, in total, 57 kg of cannabis and 107 grams of cocaine, intended for resale, committed during the period from 24 April 2019 to 4 May 2020 – that is, over more than one year. The applicant had played a significant and active role as a dealer, and had been assisted by his own network of dealers. He was sentenced to two years and six months' imprisonment (see paragraphs 6 to 8 above).

51. The High Court, like the District Court, took into account the fact that the applicant had no criminal past.

52. With regard to the criterion of "the length of the applicant's stay in the country from which he or she is to be expelled", the courts duly took into account the fact that the applicant had been born in Denmark and that he had lawfully resided there for twenty-three years (see, *mutatis mutandis*, *Sarac*, § 30; *Nguyen*, § 30; *Noorzae*, § 28; and *Sharifi*, § 28, all cited above).

53. With respect to the criterion of "the time that has elapsed since the offence was committed and the applicant's conduct during that period", the Court notes that the applicant was released from custody on 4 August 2021. He was summoned to serve the rest of his sentence on 30 May 2022, but failed to present himself to the authorities. Thereafter his whereabouts were unknown (see paragraph 10 above).

54. As to the criterion of "the solidity of social, cultural and family ties with the host country and with the country of destination", the courts properly took this into account. The High Court found that the applicant had certain ties with Iraq and that he would not be unequipped to cope in the country (see paragraph 8 above).

55. Regard has also been had to the duration of the expulsion order, in particular whether the re-entry ban was of limited or unlimited duration. The Court has previously found such a ban to be disproportionate on account of its unlimited duration, whereas in other cases it has considered the limited duration of an exclusion order to be a factor weighing in favour of its being proportionate (see, for example, *Savran*, cited above, §§ 182 and 199, and the cases cited therein). One of the elements relied on in this connection has been whether the offence leading to the expulsion order was of such a nature that

the person in question posed a serious threat to public order (see, among other authorities, *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001 and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, in which the Court found that the individuals in question did not pose a serious threat to public order; see also *Mutlag v. Germany*, no. 40601/05, §§ 61-62, 25 March 2010, in which the Court found that the person in question did pose a serious threat to public order).

56. In the present case, the Court does not call into question the finding that the applicant's offence leading to the expulsion order was of such a nature that he posed a serious threat to public order at the time (see, among other authorities, *Abdi v. Denmark*, no. 41643/19, § 39, 14 September 2021; *Mutlag*, cited above, §§ 61-62; see also, *mutatis mutandis*, *Sarac*, § 34; *Nguyen*, § 35; *Noorzae*, § 32; and *Sharifi*, § 33, all cited above).

57. The length of the re-entry ban is only one of many factors in assessing whether an expulsion order is compatible with Article 8. Normally it cannot be said that this factor or any other factor is in itself decisive for the outcome of this assessment. In the Danish context this is different due to the Danish law that allows the courts to reduce the length of the re-entry ban if and only if a longer duration would "for certain be contrary to Denmark's international obligations". This means that in some borderline cases the length of the re-entry ban becomes decisive in the assessment made by the Danish courts. In the present case the District Court issued a warning of the risk of expulsion (see paragraph 6 above), whereas the High Court issued the expulsion order together with a six-year re-entry ban. It noted that it would "for certain be contrary to Denmark's international obligations to expel [the applicant] and issue him with a permanent re-entry ban", which, under section 32(4)(vii) of the Aliens Act, would normally be the consequence as he was sentenced to imprisonment for more than one year and six months. By virtue of section 32(5)(i) of the Aliens Act, the High Court therefore reduced the re-entry ban to six years (see paragraphs 8 and 13 above). This means that the length of the re-entry ban was the deciding factor in the decision to expel the applicant.

58. The applicant contended that although the re-entry ban was limited to six years, it amounted *de facto* to a permanent ban, since the prospects of his being readmitted to Denmark remained purely theoretical. He would never qualify for a residence permit or – as an Iraqi national and therefore belonging to visa group 5 – a visa (see paragraph 38 above).

59. The Government disputed the applicant's argument (see paragraphs 41-45 above). In their view, the applicant had prospects of being readmitted to Denmark by means of either a new residence permit or a visa.

60. In accordance with Danish case-law (see paragraphs 28-30 above), the domestic courts did not take a stand on whether in the future, after the expiry of the time-limited re-entry ban, the applicant would have prospects of being readmitted to Denmark.

61. In the Court's view, though, in the Danish context, when by virtue of section 32(5)(i) of the Aliens Act, in the proportionality test, the domestic courts reduce the length of a re-entry ban, since otherwise the length would "for certain" be considered in breach of Denmark's international obligations, including Article 8 of the Convention (see paragraph 13 above), the time-limited nature of the re-entry ban can only be considered a factor capable of rendering the applicant's expulsion compatible with Article 8, if the expelled person has some prospect of one day returning at least for a visit. Thus, if at the time of expulsion, in view of the rules on re-entry in place at that time, the national courts find that the prospect of the expelled person being readmitted to the country in any legal manner, whether on a residence permit or on a short-term visa, is purely theoretical, it would in the Court's opinion not be justified to attribute significant weight to the length of the re-entry ban as factor capable of rendering the expulsion compatible with Article 8. A time-limited re-entry ban would in such circumstances amount *de facto* to a permanent ban (see, *mutatis mutandis*, *Savran*, cited above, §§ 182, 199-200, where the possibility of the applicant's re-entering Denmark on a visitor's visa despite a permanent re-entry ban was found to be purely theoretical, owing to the very limited basis on which such a visa could be issued).

62. Further, in the Danish context, a foreigner who has been expelled with a time-limited re-entry ban, and who wishes to resettle in Denmark after the re-entry ban has expired, may lodge an application for a residence permit under the relevant provisions of the Aliens Act – for example, on the basis of family reunification or for work or study purposes (see paragraphs 15 and 16 above).

63. Statistics provided by the Government show that between 2007 and 2022, a total of 18,811 foreigners were expelled from Denmark with a time-limited re-entry ban (twelve years or less – see paragraph 17 above).

64. The data also show (see paragraph 18 above) that twenty-two foreigners previously expelled by court orders and banned from re-entry for twelve years or less in the period from 2007 to 2022 were subsequently granted a residence permit in Denmark (including nineteen on the basis of family reunification) between 1 January 2019 and 7 March 2024. The foreigners concerned were nationals of Ghana, Iran, Iraq, Jordan, Kosovo, Lebanon, Morocco, Nigeria, North Macedonia, Somalia, Syria, Türkiye and Uganda. During the same period, twenty-four such foreigners were refused a residence permit (including nineteen who had applied for family reunification).

65. It is unclear why, among the 18,811 foreigners expelled from Denmark with a time-limited re-entry ban, so few have applied to be readmitted on the basis of a residence permit in the last five years. The figures seem to indicate, however, that for a person who has a spouse or a partner,

the prospect of re-entering Denmark on the grounds of family reunification does not remain purely theoretical.

66. For an Iraqi national without a partner, such as the applicant, the situation is quite different. As there is no indication that he would be eligible for a residence permit on other grounds, for example work or education, his only option is to apply for a visa to re-enter Denmark for a visit.

67. The Court notes that by virtue of the Danish legislation on visa requirements for entering the country (see, notably, Executive Order no. 1454 of 25 November 2022 – *Bekendtgørelse om udlændinges adgang til Danmark på grundlag af visum* (see paragraph 21 above) and the Visa Code (see paragraph 32 above)), the requirements for obtaining a visa depend on the citizenship of the person applying (see paragraphs 20-32 above).

68. A person from a country designated as belonging to visa group 5 – that is, a national of Afghanistan, Eritrea, Iraq, Pakistan, Russia, Somalia or Syria (see paragraph 25 above) – generally only qualifies for a visa to enter Denmark if there are "extraordinary circumstances", such as the death or terminal illness of a family member living in Denmark. A visa will be refused if the person poses a risk to public order and security. The Court notes that the "extraordinary circumstances" mentioned in the rules are the same as those where a visa can exceptionally be granted to a person with a re-entry ban that has not expired. In *Savran*, cited above § 200, the Court found that such a limited basis for issuing a visitor's visa meant that the possibility of the applicant re-entering Denmark even for a short period remained purely theoretical.

69. The Government has pointed out that the division of countries into main groups in the Executive Order on Visas merely reflects a general assessment as to whether applicants for a visa from the countries and regions concerned present an immigration risk and whether they intend to leave the Schengen area before the expiry of their visas. Other factors are taken into account (see paragraph 45 above).

70. Given the very narrow grounds for granting a visa described in paragraph 68 above, the Court finds that it must be up to the Government to show that there is nonetheless a realistic prospect for the applicant of re-entering Denmark. The statistics provided (see paragraph 26 above) do not support the Governments argument as no foreigner from visa group 5 has been granted a visa in the last five years.

71. Having regard to the above, in particular the very limited basis on which a visa may be issued to a person belonging to visa group 5, and the statistics which support this understanding, the Court is of the view that for nationals belonging to visa group 5 without a spouse or a partner, the Government has failed to show that the possibility of entering Denmark, even for a short-term visit, is not purely theoretical.

72. More concretely, the applicant's prospects of being readmitted to Denmark after the expiry of the six-year re-entry ban remain purely

theoretical. He has been left without any realistic prospect of entering, let alone returning to, Denmark (see also *Savran*, cited above, § 200). For him, the six-year re-entry ban would *de facto* amount to a permanent ban.

73. Accordingly, in the present case, the fact that the re-entry ban was limited to six years cannot be attributed decisive weight as a factor capable of rendering the applicant's expulsion compatible with Article 8.

74. The Court is aware, as pointed out by the Government (see paragraph 44 above), that this finding may be perceived as differential treatment based on nationality. The Court points out, however, that such differential treatment is based on the legitimate ground that the expulsion of the applicant for six years, with no realistic prospect of ever returning to Denmark, would have a much more serious and negative impact on his private life than an expulsion with a six-year re-entry ban would have for other nationals who do have the possibility to return at least for a visit after their re-entry ban has expired. The Court also notes that the assessment of the applicant's prospects of returning after the expiry of the re-entry ban only becomes relevant in those few borderline cases where the length of the re-entry ban becomes decisive in the assessment of the compatibility of the expulsion order with Article 8, as provided for under Danish law.

(c) Conclusion

75. In line with the High Court's finding (see paragraph 8 above) that it would "for certain be contrary to Denmark's international obligations to expel [the applicant] and issue him with a permanent re-entry ban", with which the Court has no reason to disagree, and the conclusion in paragraph 72 above that the six-year re-entry ban in the present case would *de facto* amount to a permanent ban, the Court considers that the expulsion of the applicant combined with a re-entry ban for six years was disproportionate (see, in particular and *mutatis mutandis*, *Ezzouhdi*, cited above, §§ 34-35; *Bousarra*, cited above, §§ 53-54; and *Abdi*, cited above, § 44, all concerning permanent re-entry bans).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

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

A. Damage

78. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

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

80. The Court considers that, having regard to the circumstances of the case, the conclusion it has reached under Article 8 of the Convention constitutes sufficient just satisfaction in respect of any non-pecuniary damage that may have been sustained by the applicant. It therefore makes no award under this head (see, for example, *Savran*, cited above, § 208, and the case-law cited therein, and also *Noorzae*, cited above, § 43).

B. Costs and expenses

81. The applicant claimed EUR 5,400 for the costs and expenses incurred before the Court in respect of lawyers' fees.

82. The Government noted that the applicant had been granted legal aid under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*) and that the Department of Civil Affairs had notified him of a provisional grant of legal aid of up to 40,000 Danish kroner (approximately EUR 5,400). In the Government's view, that sum was sufficient to cover the legal costs related to the case before the Court.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the applicant has not specified his claim or submitted any supporting documents. The Court therefore rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

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

Done in English, and notified in writing on 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President