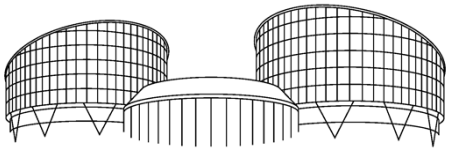

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LEVAKOVIC v. DENMARK

(Application no. 7841/14)

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 Levakovic 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,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and H. 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. 7841/14) 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 Croatian national, Mr Jura Levakovic ("the applicant"), on 13 January 2014.

2. The applicant was represented by Mr Gert Dyrn, a lawyer practising in Kolding. The Danish Government ("the Government") were represented by their Agent, Mr Tobias Elling Rehfeld, from the Ministry of Foreign Affairs, and their Co-Agent, Nina Holst-Christensen, from the Ministry of Justice.

3. The applicant alleged that his expulsion from Denmark constituted a breach of Article 8 of the Convention.

4. On 16 May 2017 the application was communicated to the Government.

5. Observations were also received from the European Roma Rights Centre (ERRC), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

6. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Court informed the Croatian Government of their right to submit written comments. They did not wish to avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1987 in the Netherlands and arrived in Denmark when he was approximately 9 months old. He remained in Denmark, together with his parents and three brothers.

8. The applicant has a criminal record. Before he turned 18 years old, he had been convicted four times by a City Court: on 8 May 2003 of, *inter alia*, drug offences, with a sentence of four months' imprisonment, suspended; on 1 October 2003 of armed robbery, with a sentence of one year and six months' imprisonment, of which one year was suspended; on 24 June 2004 of, *inter alia,* theft and possession of weapons, with a sentence of one year and four months' imprisonment; and on 12 May 2005 of, *inter alia,* robbery, and sentenced to nine months' imprisonment. He was released on 10 July 2006 with two hundred and fifty-five days remaining, suspended for two years.

9. After having reached the age of majority the applicant was convicted a number of times.

10. By a City Court judgment of 7 September 2006 he was convicted of handling stolen property and sentenced to eight months' imprisonment.

11. By a City Court judgment of 11 June 2008, he was convicted of robbery and sentenced to two years' imprisonment. Moreover, the City Court ordered the applicant's expulsion, suspended with two years' probation. He was released on 28 January 2010.

12. By a City Court judgment of 25 March 2010, he was convicted of theft and sentenced to thirty days' imprisonment.

13. By a judgment of the High Court, acting as an appeal instance, on 9 November 2010 he was convicted of robbery and sentenced to one year and three months' imprisonment. In addition, his expulsion was again ordered, suspended with two years' probation.

14. By a City Court judgment of 27 February 2012 the applicant was convicted of attempting to escape from prison. No additional sentence was imposed.

15. In the meantime, on 12 November 2011 the applicant was arrested and charged with offences under the Penal Code, *inter alia* two counts of robbery, the first committed in a private home on 4 October 2011, and the second in a bank on 24 October 2011. The applicant was also charged with possession of arms, threatening a witness, drug offences and handling stolen property.

16. The case was heard by the City Court of Copenhagen (*Københavns Byret*). Two co-accused from the applicant's family were also on trial. The applicant was heard and pleaded not guilty to the robberies. He explained that he was 25 years old. Except for eight months spent, as a baby, in the

Netherlands, he had lived all his life in Denmark, where all his family lived, including his parents, three brothers and 80 other family members. He had never been to Croatia or the former Yugoslavia. He had no family there and did not speak the language. He had been diagnosed with ADHD and took medication for that. He had had a girlfriend for 2 years and 3 months. They wanted to marry and have children.

17. For the purpose of the court proceedings, the Aliens Authority (*Udlændingestyrelsen*) issued a report on the applicant. It noted that since the applicant had turned 15, he had been convicted of similar criminal offences and served sentences totalling 1,755 days, equal to four years and ten months.

The applicant's mother had been granted a residence permit in 1987 on the grounds of her marriage with the applicant's father. She had left in June 1988, but returned in November 1988 with the applicant, who was 9 months old at the time, and who was granted a residence permit until March 2005, later extended to April 2012. The length of his legal stay in Denmark was therefore calculated at approximately sixteen years and two months. The conditions for ordering an expulsion were set out in the Aliens Act (*Udlændingeloven*), section 22 no. 6 or section 24 no. 1, read in conjunction with the former.

The applicant had been to school for seven years, but had no other education, and at the relevant times had received social welfare. He had stated that, for the past two years, he had had a girlfriend, and that his father, three brothers and about 80 family members lived in Denmark. He had also stated that he had been diagnosed with ADHD, that he suffered from emotional stress and that he heard voices when smoking cannabis, to which he had been addicted for ten years. He had suffered three cannabis psychoses during the past four years, and been treated once in hospital for such psychosis.

In conclusion, the Aliens Authority endorsed the prosecution's recommendation of expulsion.

18. By a judgment of 12 December 2012, the City Court convicted the applicant *inter alia* of the two counts of robbery, and sentenced him to five years' imprisonment. It attached special weight to the fact that he was convicted of two robberies and had previously been convicted of similar crimes.

19. In addition, by virtue of section 22 no. 6 in conjunction with section 26, subsection 2, of the Aliens Act, the City Court ordered the applicant's expulsion, with a permanent ban on his return. In this respect the City Court stated:

> "As regards the issue of expulsion, the Court observes that it depends on an assessment of proportionality as established by the Supreme Court *(Højesteret)* in a judgment reproduced on page 225 of the Danish Weekly Law Reports for 2012 ((UfR) 2012.225H), whether an offender is to be expelled. The Supreme Court said

with reference, *inter alia,* to § 71 of the judgment delivered by the European Court of Human Rights on 23 June 2008 in *Maslov v. Austria* ([GC], no. 1638/03, ECHR 2008 application no. 1638/03) that, where the person to be expelled is a young adult who has not yet founded a family of his or her own, the relevant criteria for the assessment of proportionately, see Article 8 of the European Convention on Human Rights, are as follows:

(a) the nature and seriousness of the offence committed by that person,

(b) the length of the person's stay in the country from which he or she is to be expelled,

(c) the time elapsed since the offence was committed and the person's conduct during that period, and

(d) the solidity of social, cultural and family ties with the host country and with the country of destination.

According to §§ 72 and 73 of the judgment, the age of the relevant person can play a role when applying the said criteria. For instance, when an assessment is made of the nature and seriousness of an offence committed, it has to be taken into account whether the relevant person committed it as a juvenile or as an adult. When an assessment is made of the length of the person's stay in the host country and the solidity of the ties with the host country, it evidently makes a difference whether the person concerned had already come to the country during his or her childhood or youth, or was even born there, or whether he or she only came to the host country as an adult. Regard is to be had to the special situation of a person who has spent most, if not all of his or her childhood in the host country, was brought up there and received his or her education there (§ 74). According to § 75 of the judgment, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country.

In the case at hand, the defendant has been sentenced to imprisonment for a term of five years for two robberies: a robbery committed at a private home and a bank robbery. Both robberies were committed in October 2011.

[The applicant] is a national of Croatia and entered Denmark a few months after his birth. Accordingly, the defendant has spent all his childhood and youth in Denmark. All his family, including his parents and his three siblings, are Danish residents. He has no ties with Croatia, has no family or friends there and does not speak Croatian according to the information provided, but only Roma in addition to Danish. He has a Croatian passport.

[The applicant] has not yet founded a family of his own as he is neither married nor the father of any children. No significance should be attributed to the circumstance that the defendant has had a Danish girlfriend for about two years as this relationship was started at a time when his girlfriend, who is domiciled in Denmark, was or ought to have been aware of his criminal activities.

[The applicant] dropped out of school in the seventh grade. He has not started any vocational training or education, and he has never had a job, but has lived on social security benefits. He has been addicted to cannabis, and he has suffered a number of cannabis psychoses according to the information provided. Even though he has lived in Denmark all his life, he must be considered very poorly integrated into Danish society.

Considering the fact that he has spent all his childhood and youth in Denmark and has received all his schooling in this country, and since he has no ties with Croatia, strict requirements must be met for the crime to result in expulsion.

[The applicant] has been convicted of robbery on several previous occasions. Two of those sentences were imposed for robberies committed before he attained the age of 18: a sentence for robbery at a post office in 2003 when the defendant was almost 16 years old and a sentence for two street robberies and other offences in 2004/2005 when the defendant was 17 years old. The proceeds of both robberies were of minor value.

[The applicant] has furthermore been convicted of robbery twice after he has attained the age of 18. The first of those sentences was imposed on 11 June 2008 when he was found guilty of a street robbery and a robbery at a shop contrary to section 288, subsection 1 (i) and (ii) of the Criminal Code and sentenced to imprisonment for a term of two years and suspended expulsion from Denmark. The second sentence was imposed on 9 November 2010 in appeal proceedings when he was found guilty of a street robbery and sentenced to imprisonment for a term of one year and three months and suspended expulsion from Denmark subject to a probation period of two years.

Moreover, several sentences have been imposed for other offences against property. Altogether, the defendant, who is 25 years old today, has been sentenced to and has served 1,755 days in prison, corresponding to four years and ten months, since his 15th birthday.

The offences for adjudication in connection with the case at hand were committed during the probation period of the most recent suspended expulsion order. The offence for adjudication in connection with the judgment of 9 November 2010 delivered in appeal proceedings was committed in the probation period of the first suspended expulsion order. The nature and seriousness of the offences in combination with the previous sentences for similar offences and the fact that the defendant has now failed to observe the conditions of two suspended expulsion orders is deemed by the Court to provide weighty reasons why the defendant should now be expelled. The fact that a number of the judgments relate to offences committed after the defendant has come of age also makes expulsion appropriate. Against this background, the Court finds that altogether such very serious reasons exist that the defendant must be expelled and permanently banned from re-entry as set out in section 22, subsection 1(vi), section 26, subsection 2) and section 32, subsection 2 (v) of the Aliens Act, in which connection it is observed that the expulsion order is deemed not to be contrary to Denmark's international obligations."

20. On appeal, by a judgment of 26 August 2013 the High Court of Eastern Denmark (*Østre Landsret* - henceforth "the High Court") upheld the conviction, the sentence and the expulsion order. A majority of five judges out of six stated:

"On the grounds given by the City Court, we concur that altogether such very serious reasons exist that [the applicant] must be expelled and permanently banned from re-entering despite his lack of ties with Croatia. We concur that an expulsion order is found not to be contrary to Denmark's international obligations, including section 38 and 39 of Executive Order no. 474 of 12 May 2011 on Residence in Denmark for Aliens Falling Within the Rules of the European Union (*bekendtgørelse om ophold i Danmark for udlændinge, der er omfattet af Dem Europæiske Unions regler)* [implementing EU Council Directive 2004/38/EC]."

One judge stated:

> "Since [the applicant] has lived his whole life in Denmark and has no ties to Croatia, I find it contrary to Denmark's international obligations to issue an expulsion order despite the serious crime committed."

21. Leave to appeal to the Supreme Court (*Højesteret*), was refused by the Appeals Permission Board (*Procesbevillingsnævnet*) on 12 December 2013.

22. In December 2013, pursuant to Council Framework Decision 2008-909-JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework decision 2009-299-JHA of 26 February 2009, the Ministry of Justice requested the Croatian authorities to take over the enforcement of the sentences imposed on the applicant by the High Court judgment of 9 November 2010 and the High Court judgment of 26 August 2013.

23. By a City Court judgment of 6 September 2016 the applicant was sentenced to imprisonment for three months and expulsion for violence against a fellow inmate. He appealed against the judgment to the High Court. It is unknown whether the appeal proceeding have ended.

24. It appears that the applicant was expelled from Denmark in December 2017, after having served his sentence, and that he re-entered Denmark shortly after, in breach of the ban.

II. RELEVANT DOMESTIC LAW

25. 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 22

> "(1) An alien who has been lawfully resident in Denmark for more than the last 9 years and an alien issued with a residence permit under section 7 or section 8(1) or (2) who has been lawfully resident in Denmark for more than the last 8 years may be expelled if:
>
> (...)
>
> (vi) the alien is sentenced, pursuant to provisions of Parts 12 and 13 of the Criminal Code or pursuant to section 119(1) or (2), section 119(3), second sentence, cf. the first sentence thereof, section 123,136,180 or 181, section 183(1) or (2), section 183a, 184(1), 186(1), 187(1), 193(1), 208(1) or 210(1), section 210(3), cf. subsection (1) thereof, section 215, 216 or 222, section 224 or 225, cf. section 216 or 222, section 230, 235, 237, 244, 245, 245a, 246 or 250, section 252(1) or (2) , section 261(2) or 262a, section 276, cf. section 28G, sections 278 to 283, cf. section 286, section 279, cf. section 285, if the offence is social fraud, section 288, 289, 2B9a or 290(2), section 291(1), cf. subsection (4) thereof, or section 291(2) of the Criminal 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;

(...)"

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 slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and

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

(2) An alien must be expelled under 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.

(...)"

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(I) to (4).

(...)"

III. EUROPEAN UNION LAW

26. The relevant part of Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States, provides as follows:

Article 27 – General principles

"1. Subject to the provisions of this chapter, member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

..."

Article 28 – Protection against expulsion

"1. Before taking an expulsion decision on grounds of public policy or public security, the host member State shall take account of considerations such as how long the individual concerned has resided in its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member State and the extent of his/her links with the country of origin.

2. The host member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by member States, if they:

(a) have resided in the host member State for the previous ten years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant maintained that his expulsion was in breach of Article 8 of the Convention, which reads as follows:

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

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

28. The Government contested that argument.

A. Admissibility

29. The Court notes that the application 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

30. The applicant submitted that the Danish court had failed to take relevant circumstances into account in the balancing test, notably that he only had ties to Denmark. He had his whole family and his girlfriend there. He had had jobs and he was equally well integrated as lots of other Danish nationals with convictions. Moreover, the crimes committed were not particularly serious. The courts had also failed to take relevant EU legislation into account.

31. The Government submitted that the expulsion order was "in accordance with the law" and pursued the legitimate aim of preventing disorder and crime. As to the question of whether the interference was

"necessary in a democratic society", the Government emphasised that the Danish courts had struck a fair balance between the opposing interests and carefully assessed the applicant's personal circumstances in accordance with Article 8 and the Court's case-law, including *Maslov v. Austria*, cited above. In making an overall assessment, they had attached significant weight to the two robberies committed, one in a private home and one a bank robbery, and to the circumstance that the applicant had prior convictions for robberies, including two convictions after he had attained the age of 18 (see also *Boujlifa v. France,* 21 October 1997, *Reports of Judgments and Decisions* 1997-VI). Having regard to the subsidiarity principle, the Court should therefore be reluctant to disregard the outcome of the assessment made by the national courts.

32. The third party intervener, the European Roma Rights Centre (ERRC), submitted that national courts have to carry out the test in Articlesf9 27 and 28 of EU Directive 2004/38, which offers more protection than Article 8 of the Convention, and that it would require a very intensive level of EU law analysis to determine that an EU citizen, especially one with long residence and family ties in the host member State, did not have any EU law protection from expulsion. They also referred to so-called anti-gypsyism in Denmark in recent years and its link to the entry, stay, and expulsion of Roma, and found it crucial for the Court to be particularly alert to stereotypes about Roma, notably if domestic authorities and courts have failed to recognise the right of a Roma as an EU citizen.

33. The Court reaffirms that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, cited above, § 42). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, 19 February 1998, § 52, *Reports* 1998-I; *Mehemi v. France*, 26 September 1997, § 34, *Reports* 1997-VI; *Boultif v. Switzerland*, no. 54273/00, § 46, ECHR 2001-IX; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).

34. Article 8 protects the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III) and can sometimes embrace aspects of an individual's social identity (see *Mikulić v. Croatia*,

no. 53176/99, § 53, ECHR 2002-I). It must therefore be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Indeed, it will be a rare case where a settled migrant is unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah v. the United Kingdom* (dec.), no. 53080/07, § 17, 27 April 2010).

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

36. In order to assess whether an expulsion order and the refusal of a residence permit were necessary in a democratic society and proportionate to the legitimate aim pursued under Article 8 of the Convention, the Court has laid down the relevant criteria in its case-law (see *Üner*, cited above, §§ 57-58, and *Maslov v. Austria,* cited above*,* §§ 68-76). In *Üner*, the Court summarised those criteria as follows:

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

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

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

– the nationalities of the various persons concerned;

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

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

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

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

– the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

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

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

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

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

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

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

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

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

40. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts' legal point of departure was the relevant sections of the Aliens Act, the Penal Code, and notably the criteria to be applied in the proportionality assessment by virtue of Article 8 of the Convention and the Court's case-law.

41. As flows from the Court's case-law (see paragraph 33), the point of departure for the Court's analysis under Article 8 of the Convention in the present case is the fact that an alien does not have a Convention right to reside in a particular country, a rule which applies to settled migrants like the applicant. However, if a Member State's decision to expel a settled migrant, lawfully residing in the State in question, interferes with his or her family or privacy rights, protected by paragraph 1 of Article 8, the national authorities are under a duty, provided by paragraph 2 of the same provision, to evaluate the individual situation of the migrant in accordance with the criteria set out in the Court's case-law (see paragraph 36 above). In the application of these criteria, the Court has not qualified the relative weight to be accorded to each criteria in the individual assessment, as this analysis is, in the first place, for the national authorities subject to European supervision. However, in *Maslov* (cited above, § 75), the Court made clear that when a case concerns a settled migrant, who has lawfully spent all or major part of his or her childhood and youth in the host country, "very serious reasons are required to justify expulsion". It is clear that in the light of the facts in the present case, the Court is called upon to examine whether such "very serious reasons" were adequately adduced by the national

authorities when assessing the applicant's case and, if so, whether the Court considers itself in a position to substitute its view for that of the domestic courts.

42. The Court recognises that the City Court made a thorough assessment of the applicant's personal circumstances, carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law (see paragraph 19 above). It was fully aware that very strong reasons are required to justify the deportation of settled migrants (see *Maslov*, cited above, § 75). It found, making an overall assessment, that although the applicant had no ties to Croatia, due to his criminal past, which included two convictions for three robberies committed when he was an adult, the nature and seriousness of the crimes committed, namely a robbery in a private home and an armed bank robbery, both committed during the probation period for the most recent suspended expulsion order, and the fact that the applicant had twice violated the conditions for suspended expulsion orders, there were such very serious reasons justifying expulsion.

43. That balancing and proportionality test was approved by the High Court in its judgment of 26 August 2013.

44. Thus assessing whether the national authorities adduced relevant and sufficient reasons for expelling the applicant, the Court observes that after entering adulthood, the applicant has been convicted twice for robbery which by the very nature of the crime in question is a serious act including elements of violence or the threat of violence. He has also been convicted of other offences against property. In the Court's view, when assessing the "nature and seriousness" of the offences committed by the applicant, the national authorities were thus entitled to take the view that they attained a level of gravity warranting expulsion unless other counterbalancing criteria militated against imposing that measure in the light of the Court's case-law. In this regard, the Court attaches particular weight to the fact that the expulsion of the applicant did not interfere with his family rights as he is an adult and has not made any arguments to the effect that there are additional elements of dependence between himself and his parents or siblings (see paragraph 35 above). Therefore, the interference with the applicant's Article 8 rights was limited to his right to privacy. Furthermore, the applicant has no children, thus obviating the need to take into account weighty reasons directed at protecting a child's best interests. Moreover, and importantly, the Court recalls that under its case-law, the evaluation of the applicant's "social" and "cultural ties" with the host country, here Denmark, is a criteria to be included in the analysis (see paragraph 36 above). On this basis, the Court considers it of importance that the City Court examined the particular situation of the applicant and found that although he has lived most of his life in Denmark he "must be considered very poorly integrated into Danish society". In fact, it can be readily deduced from the file that the applicant has primarily lived a life of crime

and consistently demonstrated a lack of will to comply with Danish law. The Court makes clear that unlike in *Maslov* (cited above), the national authorities based their decision to expel the applicant not on crimes perpetrated when the applicant was a juvenile.

45. In the light of the above, the Court reiterates that in the interpretation and application of Article 8 of the Convention in cases of the kind in question, emphasis must be placed on securing a fair balance between the public interest and the Article 8 rights of aliens residing in the Member States. Ascertaining whether "very weighty reasons" justify the expulsion of a settled migrant, like the applicant, who has lived almost all his life in the host country, must inevitably require a delicate and holistic assessment of all the criteria flowing from the Court's case-law, an assessment that must be carried out by the national authorities under the final supervision of the Court. Taking account of all of the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. There are no indications whatsoever that the domestic authorities may have based their decisions on stereotypes about Roma, as it appears to be alleged by the third party intervener, and the applicant never made such a complaint. The Court is also satisfied that the applicant's expulsion was not disproportionate given all the circumstances of the case. It notes that the City Court and the High Court explicitly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. The Court points out in this respect that, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see, *Ndidi v.* the United Kingdom (no. 41215/14, § 76, 14 September 2017; and, *mutatis mutandis*, *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012 and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 88, 7 February 2012).

46. 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

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint concurring opinion of Judges Bianku and Lemmens is annexed to this judgment.

R.S.
H.B.

JOINT CONCURRING OPINION OF JUDGES BIANKU AND LEMMENS

1. We agree with the conclusion that there has been no violation of Article 8 of the Convention. We must admit, however, that we have done so with some hesitation. We would like to express the reasons for our hesitation as well as to explain why we finally joined the majority.

2. We first of all agree with the reasons, given by the domestic authorities and highlighted by the majority, which militate in favour of expulsion and a ban on re-entry. In particular, we agree with the characterisation of the applicant as a person who "has primarily lived a life of crime and consistently demonstrated a lack of will to comply with Danish law" (see paragraph 44 of the judgment). We could add that by his conduct he has broken the "social contract" which linked him to Denmark.

We acknowledge that the applicant's identity has been formed in Denmark (compare *Benhebba v. France*, no. 53441/99, § 33, 10 July 2003, and *Emre v. Switzerland*, no. 42034/04, § 70, 22 May 2008). We also acknowledge that Denmark as the host country had obligations towards the applicant, as it has *vis-à-vis* any other person residing on its territory. However, the fact that the applicant spent almost all his life in Denmark does not mean that Denmark bears responsibility for his behaviour. To the contrary, Denmark is fully entitled to take measures in relation to persons who have been convicted of criminal offences, in order to protect society (see *Üner v. the Netherlands* [GC], no. 46410/99, § 56, ECHR 2006-XII). The applicant, who is responsible for his own acts (see, in the same vein, *Balogun v. the United Kingdom*, no. 60286/09, § 52, 10 April 2012), should bear the consequences of those acts.

Like the majority, we are of the opinion that "very serious reasons" (see *Maslov v. Austria* [GC], no. 1638/03, § 75, ECHR 2008) existed, such as to justify the applicant's expulsion.

3. The next question is, as the majority put it, whether or not there were any "other counterbalancing criteria [militating] against imposing that measure, in the light of the Court's case-law" (see paragraph 44 of the judgment).

One of the *Üner* and *Maslov* criteria that is relevant in the present case is "the solidity of social, cultural and family ties with the host country and with the country of destination" (see paragraphs 36 and 37 of the judgment, referring to *Üner*, cited above, § 58, and *Maslov*, cited above, § 71)[1].

While the majority underline that although the applicant lived most of his life in the host country, he "must be considered very poorly integrated into Danish society" (see paragraph 44 of the judgment), they do not go into an analysis of the applicant's ties with any country of destination (except for the brief reference to the City Court's finding that "the applicant had no ties to Croatia", see paragraph 42 of the judgment).

It is the issue of ties with a country of destination that made us hesitate about the outcome to be given to this case.

4. The applicant's expulsion was not initially ordered to any given country. However, when the domestic authorities assessed the applicant's ties with a country of destination, they considered Croatia to be that country.

According to the domestic courts, the applicant "is a national of Croatia" and "he has a Croatian passport". However, "he has no ties with Croatia, has no family or friends there and does not speak Croatian according to the information provided, but only Roma in addition to Danish" (judgment of the City Court, quoted in paragraph 19 of the present judgment). Both the City Court and the High Court concluded that the applicant had no ties with Croatia (judgment of the City Court, ibid., and judgment of the High Court, quoted in paragraph 20 of the present judgment), except for his nationality.

In general, nationality is the illustration of the existence of a strong tie with the State conferring it. In that sense the International Court of Justice (see the *Nottebohm Case (Liechtenstein v. Guatemala) (second phase)*, judgment of 6 April 1955, *ICJ Reports* 1955, p. 4, at p. 23; and for a reference to this statement in the Court's case-law, see *Petropavlovskis v. Latvia*, no. 44230/06, § 80, 13 January 2015) has described nationality as follows:

> "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State."

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1. See also, in the context of the European Union, among others, the judgment of the Court of Justice of the European Union of 22 May 2012 in *P. I. v. Oberbürgermeisterin der Stadt Remscheid* (C-348/09, EU:C:2012:300, paragraph 34) and the references to the relevant recitals and Articles of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Obviously, this description does not fit the present applicant's situation. In practice, as acknowledged by the domestic courts, there are "no ties" with Croatia. It therefore does not seem very probable that the applicant will continue his life in Croatia, a country of which he does not even speak the language.

It seems more probable that the applicant will try to stay in a country near to Denmark, so as to be closer to the country where he developed his relationships with his family and others. It would seem that this probability finds some confirmation in the fact that he has already re-entered Denmark shortly after his expulsion (see paragraph 24 of the judgment). We would be surprised if this would be his last attempt to return, given the existence of ties with Denmark and the inexistence of ties with any other country.

Whatever the country or countries of destination, the fact is that Denmark has expelled the applicant from its territory, with the necessary consequence that he is supposed to stay in another country.

5. If Denmark is not responsible for the applicant's acts, even if he lived there for nearly his whole life, the same is all the more true for any other State, with which the applicant would have no ties at all. Thus the question seems to arise whether the expulsion is compatible with Denmark's international obligations. That is to say, can other States be made to bear the consequences of Denmark's reaction to things that happened in Denmark?

This question has been raised in dissenting opinions in some of the older cases concerning the expulsion of settled migrants. We limit ourselves to quoting two of them.

The concurring opinion of H.G. Schermers, joined by G.H. Thune, in *Beldjoudi v. France* (6 September 1990, opinion of the Commission, Series A no. 234-A, at pp. 48-49) read as follows:

> "From the point of view of international relations, it is also difficult to accept that Algeria should take care of, assist and promote the social reintegration of a criminal who has never lived in its territory. If there is one country responsible for the upbringing and the criminal behaviour of the first applicant, that country must be considered to be France rather than Algeria. Though not legally, it is in any case morally wrong to send back to Algeria those of the many immigrants who become criminals, while allowing those who contribute to the prosperity of the country to remain in France. In my view, it would be more just for France to keep both the good and the bad immigrants".

The dissenting opinion of Judge Morenilla in *Boujlifa v. France* (21 October 1997, *Reports of Judgments and Decisions* 1997-VI, at p. 2266) expressed the following view:

> "Lastly, it is unjust for the country which has to take in the deported alien, which is not responsible for its national's antisocial behaviour."

While we do share the concerns expressed by these former colleagues, in the end we do not think that they should preclude us from joining the majority in the present case. Indeed, as can be deduced from the statement of H.G. Schermers, the argument of the third States being confronted with Denmark's reaction to its internal problems is more a moral than a legal argument, and it has more to do with international relations than with international law.

Ultimately it is a matter of policy. As a matter of international law, Denmark is entitled to adopt the policy it sees fit to adopt (see paragraph 33 of the judgment). Whether that policy is "good" or "bad" is not our Court's business. We do not have to pass judgment on the policy as such (compare *Beldjoudi*, opinion of the Commission, cited above, § 63). Our review is limited to the legal question whether the decision taken is compatible with Article 8 of the Convention.

And that is where our involvement in the case ends.