



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

FOURTH SECTION

CASE OF SHARIFI v. DENMARK

(Application no. 31434/21)

JUDGMENT

Art 8 • Expulsion • Private life • Disproportionate expulsion of settled migrant combined with twelve-year re-entry ban following convictions for serious offences • Imposition of relatively lenient sentence • Lack of recent previous convictions and warnings of expulsion • Very strong ties with Denmark and virtually non-existent ties with country of origin • Possibility of imposing a shorter ban not explored

STRASBOURG

5 September 2023

FINAL

05/12/2023

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

In the case of Sharifi v. Denmark,

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

Gabriele Kucsko-Stadlmayer, *President*,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 31434/21) 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 Afghan national, Mr Amir Shah Sharifi (“the applicant”), on 16 June 2021;

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

the parties’ observations;

Having deliberated in private on 27 June 2023,

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

INTRODUCTION

1. The application concerns an order for the expulsion of a settled migrant, issued in criminal proceedings. The applicant invokes Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1992 and lives in Copenhagen. 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, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

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

5. In 2001, when the applicant was 9 years old, he entered Denmark together with his parents and siblings. On 10 February 2003 they were granted a residence permit under section 7(2) of the Aliens Act (see paragraph 13 below).

6. The applicant has a criminal past. When he was a minor (between 15 and 18 years old), he was convicted of the following offences:

(a) by a judgment of 28 February 2008, he was convicted of violence and witness tampering and sentenced to six months’ imprisonment, suspended;

(b) by a judgment of 17 April 2009, he was convicted of theft, use of a motor vehicle belonging to someone else and violations of the Weapons and Explosives Act and the Controlled Substances Act, for which he received a forty-day suspended sentence; and

(c) by a judgment of 24 September 2010, he was convicted of taking a motor vehicle without the owner's consent, with particularly aggravating circumstances, and was sentenced to twenty days' imprisonment, suspended.

As an adult, by a judgment of 14 February 2012, the applicant was convicted of repeated violence, and sentenced to thirty days' imprisonment, and by a judgment of 15 August 2012, he was fined for a violation of the Controlled Substances Act.

7. By a District Court (*Retten i Holbæk*) judgment of 27 September 2019 the applicant was convicted under Article 192a of the Penal Code of being in possession of two shotguns with particularly aggravating circumstances in a public place, with a view to their illegal sale, committed on 18 January 2019, which carried a sentence of up to eight years' imprisonment. He was also convicted of being in possession of 0.4 grams of cocaine. He was sentenced to two years and six months' imprisonment, and was expelled from Denmark with a twelve-year re-entry ban.

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

"The court has given particular weight to the nature and seriousness of the offence [relating to] the possession of two shotguns in a public place with a view to their illegal sale, which must be presumed to imply an imminent risk that the weapons might be used to harm others. ... The court allows the claim for expulsion pursuant to section 49(1), read with section 22(1)(viii), of the Aliens Act. The expulsion order should be combined with a re-entry ban which, based on the length of the sentence, should be permanent as a starting-point; see section 32(2)(v) of the Aliens Act. Since, however, on the basis of an overall assessment, an expulsion order combined with a permanent re-entry ban may be considered for certain (*med sikkerhed*) to be contrary to Denmark's international obligations, the re-entry ban is instead imposed for twelve years under the third sentence of section 32(5) of the Aliens Act as the court finds that expulsion would then not for certain be contrary to Denmark's international obligations. In this regard, the court has given weight to the fact that, according to the opinion submitted by the Danish Immigration Service, [the applicant] entered Denmark at age 10 [*sic*] and has been lawfully residence in Denmark for some fifteen years and ten months. He has attended school in Denmark and has completed grade 9. His mother and six siblings live in Denmark, and he has a girlfriend here, but has not otherwise started a family and has not formed any regular ties to the labour market. The court has been informed that he has a maternal grandmother in Afghanistan and that he speaks the Afghan language, although poorly. [The applicant] has stated that he speaks Danish with his siblings, and that he suffers from a chronic intestinal condition, which means that there are different kinds of food that he must avoid. [The applicant] has several prior convictions, including for violations of the Penal Code and the Weapons and Explosives Act, and has served short prison sentences, but he has not previously received a suspended expulsion order or been cautioned about the risk of expulsion. His ties with Denmark must be regarded as stronger than his ties with Afghanistan, but he will not be without prerequisites for making a life there if an expulsion order is imposed.

... According to the specific notes on the amendment of the third sentence of section 32(5) of the Aliens Act (Bill No. 2018 156), a re-entry ban of a shorter duration than under section 32(2) and (3) of the Aliens Act may be imposed if ... the expulsion order would otherwise for certain be contrary to Denmark's international obligations, [and] if the court is of the opinion that the length of the re-entry ban has an independent and crucial bearing on whether an expulsion order would be contrary to Denmark's international obligations.

The court finds that if the re-entry ban is imposed for twelve years instead of a permanent ban, an expulsion order would not for certain be contrary to Denmark's international obligations and that the length of the re-entry ban in this case may be deemed to have an independent and crucial bearing on the outcome of this assessment. In so finding, the court has given particular weight to the judgment of the European Court of Human Rights of 15 November 2012, *Shala v. Switzerland*, and the judgment of 23 September 2010, *Bousarra v. France*, which are mentioned in para. 2.1.2.5.2 of Bill 2018 156. On those grounds and accordingly, the re-entry ban is imposed for twelve years."

9. The applicant appealed against the expulsion order to the High Court of Eastern Denmark (*Østre Landsret*), before which he also explained that he and his girlfriend had known each other since the end of 2017. They lived together. The applicant's girlfriend was pregnant, and the baby was due in August 2020. His own parents had divorced in 2008. His father had died in 2018 in Afghanistan.

10. By a judgment of 1 July 2020, the High Court upheld the judgment of the District Court and stated as follows in respect of the expulsion order:

"As regards [the applicant], who is an Afghan national, the appeal only concerns the issue of expulsion. In this case, [the applicant] has been sentenced to imprisonment for a term of two years and six months for a violation of section 192a of the Penal Code, and the conditions for expulsion under section 22(1)(viii) of the Aliens Act have therefore been met. It follows from section 26(2) of the Aliens Act that an alien must be expelled, *inter alia* pursuant to section 22, unless expulsion would for certain be contrary to Denmark's international obligations, including Article 8 of the Convention ...

Under Article 8 § 2, it is crucial whether expulsion must be deemed to be necessary for the prevention of crime. A decision to expel will thus depend on an assessment of proportionality, and extensive case-law is available from the European Court of Human Rights on this issue. The criteria to be considered in the assessment are set out in, *inter alia*, *Maslov v. Austria* (judgment of the Court of 23 June 2008 in application no. 1638/03). The weight to be attributed to the individual criteria depends on the circumstances and facts of the case in question, and very compelling grounds are required to justify expulsion in the case of a resident alien who was born in this country or arrived here as a child and spent most of his childhood and youth here.

On the basis of an overall assessment of the nature and seriousness of the offences committed, coupled with the personal circumstances listed by the District Court, the High Court finds that the considerations in favour of expelling [the applicant] are so compelling as to outweigh the considerations against expulsion. The fact that the re-entry ban is imposed for a limited period of twelve years has been taken into account in the assessment of proportionality. Thus, the High Court agrees that expulsion as decided by the District Court is not a disproportionate interference contrary to Article 8 of the European Convention on Human Rights.

The information submitted before the High Court to the effect that [the applicant's] girlfriend, who is a Danish national and has been registered as living at the same address as [the applicant] since 10 January 2019, is now pregnant with a child from their relationship cannot lead to any other result before the High Court. It is noted in this connection that the defendant has been in pre-trial detention in this case since 18 January 2019 and that the child was conceived after the date of the District Court judgment."

11. A request by the applicant for leave to appeal to the Supreme Court (*Højesteret*) was refused on 7 December 2020 by the Appeals Permission Board (*Procesbevillingsnævnet*).

12. By a final decision of 17 March 2022, the Refugee Appeals Board found that it would not be contrary to the prohibition of *refoulement*, including under Article 3 of the Convention, to return the applicant to Afghanistan. According to information provided by the Danish Return Agency (*Hjemrejsestyrelsen*) on 13 July 2022, on that date the applicant's deportation had not yet been planned.

RELEVANT LEGAL FRAMEWORK

13. 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).

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

15. Section 32 of the Aliens Act was amended by Act no. 469 of 14 May 2018 and Act no. 821 of 9 June 2020. Briefly explained, as a result of the amendments, a re-entry ban was to be imposed for six years if the alien was sentenced to imprisonment for between three months and one year (section 32(4)(iv)); 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.

16. Section 50 of the Aliens Act was amended by Act no. 919 of 21 June 2022. As a result of the amendment, when making a subsequent review of whether an expulsion order should be revoked, 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained that the High Court's decision of 1 July 2020, to expel him from Denmark, which had become final on 7 December 2020 (see paragraphs 10 and 11 above), 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 and family 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

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

19. The applicant disagreed.

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

B. Merits

1. Submissions by the parties

21. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that he had never been issued with a conditional expulsion order, that he had strong ties to Denmark, including a partner and a child, and that he had no ties to Afghanistan. In his view, it had not been established that there were "very compelling reasons" to expel him. Moreover, the re-entry ban issued for twelve years implied very limited opportunities for him to maintain contact with his closest family, and his chances of re-entering Denmark remained purely theoretical.

22. The Government submitted that the Danish courts had thoroughly carried out the proportionality test, balancing the opposing interests and taking all the applicant's personal circumstances into account. They emphasised the High Court's observation that his girlfriend had been

registered at the applicant's address only one week before the applicant had been detained pending trial, and that his child had been conceived after the delivery of the District Court's judgment. Furthermore, the applicant had committed a serious crime, the nature of which could have had serious consequences for the lives of others, and he had a criminal past. The domestic courts had expressly considered the significance of the duration of the re-entry ban in the proportionality test, and had consequently imposed a re-entry ban for twelve years instead of a permanent ban. They had considered the case specifically in the light of Article 8 of the Convention and the Court's pertinent case-law. Having regard to the subsidiarity principle, the Court should therefore be reluctant to disregard the outcome of the assessment made by the national courts.

2. *The Court's assessment*

(a) **General principles**

23. 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).

(b) **Application of those principles to the present case**

24. The Court considers it established that there was an interference with the applicant's right to respect for his private life within the meaning of Article 8, that the expulsion order and the re-entry ban were "in accordance with the law" and 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).

25. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts took as their legal starting-point the relevant sections of the Aliens Act, the Penal Code and the criteria to be applied in the proportionality assessment, by virtue of Article 8 of the Convention and the Court's case-law. The Court recognises that the domestic courts thoroughly examined each criterion and that very serious reasons were required to justify the expulsion of the applicant, a settled migrant who had entered Denmark at the age of nine and had lawfully spent most of his childhood and youth in the host country (see *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether "very serious reasons" of that kind were adequately adduced and examined by the national authorities when assessing the applicant's case.

26. The domestic courts gave particular weight to the seriousness of the crime committed and the sentence imposed. The applicant was found guilty under Article 192a of the Penal Code of being in possession of two shotguns with particularly aggravating circumstances in a public place, with a view to their illegal sale, an offence which carried a sentence of up to eight years'

imprisonment. The offence was of such a nature that it could have had serious consequences for the lives of others (see, for example, *Abdi v. Denmark*, no. 41643/19, § 33, 14 September 2021, and the cases cited therein). In addition, the applicant was convicted of being in possession of 0.4 grams of cocaine. He was sentenced to two years and six months' imprisonment (see paragraph 7 above).

27. The domestic courts also took into account that the applicant had several prior convictions, including for violations of the Penal Code and the Weapons and Explosives Act, and had served short prison sentences, but that he had not previously received a suspended expulsion order.

28. With regard to the criterion "the length of the applicant's stay in the country from which he or she is to be expelled", the District Court duly took into account that the applicant had been nine years old when he had arrived in Denmark and had lawfully resided there for almost sixteen years (see paragraph 8 above).

29. The applicant has been in pre-trial detention or serving his sentence since the offence was committed, and the criterion "the time that has elapsed since the offence was committed and the applicant's conduct during that period" does not therefore come into play.

30. As to the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination", the domestic courts properly took this into account. They accepted that his ties with Denmark were stronger than his ties with Afghanistan, but found that he would not be lacking the basic requirements for establishing a life in his country of origin.

31. The Court considers it doubtful that there has been an interference with the applicant's right to respect for family life. It notes that it was only during the proceedings before the High Court that the applicant relied on having created a family life, to which the High Court observed that the applicant's girlfriend had only been registered as living at the same address as the applicant since 10 January 2019, one week before he had been placed in pre-trial detention, and that their child had been conceived after the date of the District Court's judgment of 27 September 2019. Accordingly, that information did not have any impact on the High Court's decision to uphold the expulsion order (see paragraph 10 above). In any event, the Court finds it appropriate to add that even if the applicant and his girlfriend had been living together for one week before he was detained – and assuming that this would be sufficient for establishing a "family life" within the meaning of Article 8 – the disruption of that family life would not have the same impact as it would have had if they had been living together as a family for a much longer time (see, for example, *Üner*, cited above, § 62). Moreover, the applicant has never lived with his child, who was conceived while the applicant was imprisoned. Family life was thus created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious. In such a situation, it is likely only to be in exceptional circumstances that the

removal of the non-national family member will constitute a violation of Article 8 (see, among many other authorities, *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 108, 3 October 2014). In addition, the applicant has not pointed to any obstacles of maintaining contact, for example via the telephone or the internet (see, among other authorities, *Salem*, cited above, § 81) or by meeting elsewhere.

32. Lastly, regard will be had to the duration of the expulsion order, and 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 such an exclusion measure to be a factor weighing in favour of its proportionality (see, for example, *Savran v. Denmark* [GC], no. 57467/15, §§ 182 and 199, 7 December 2021, and the cases cited therein). One of the elements relied on in this respect 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; *Keles v. Germany*, no. 32231/02, § 59, 27 October 2005; and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, in which the Court found that the persons in question did not pose a serious threat to public order; see also *Mutlag v. Germany*, no. 40601/05, §§ 61-62, 25 March 2010, and *Balogun v. the United Kingdom*, no. 60286/09, § 49, 10 April 2012, in which the Court found that the person in question did pose a serious threat to public order).

33. In the present case, the Court does not call into question the finding that the applicant's crime leading to the expulsion order was of such a nature that he posed a serious threat to public order at the time (see also, among other authorities and *mutatis mutandis*, *Abdi*, cited above, § 39; *Mutlag*, cited above, §§ 61-62; and *Balogun*, cited above, § 53).

34. The Court notes, however, that, prior to the case at hand, apart from the three offences committed as a minor, as an adult the applicant was convicted on two occasions, both in 2012 (see paragraph 6 above), but that during the following six years he had no further convictions. Accordingly, it cannot be said that in general during this period he posed a threat to public order. In this respect the present case resembles the situation in, for example, *Ezzouhdi* (cited above, § 34) and *Abdi* (cited above, § 40).

35. The Court also observes that the applicant had not previously been cautioned about the risk of expulsion or given a conditional expulsion order (see, for example, *Abdi*, cited above, § 41).

36. Nevertheless, despite his lack of recent previous convictions and the absence of any warnings as to the risk of expulsion, and although a relatively lenient sentence was imposed in the present case (compare *Abdi*, cited above, § 42), the High Court decided, in accordance with the applicable legislation, to combine the expulsion of the applicant with a re-entry ban for twelve years, although it had discretion to reduce the duration of the ban even further (see paragraph 16 above, and contrast *Savran*, cited above, § 200), and although

it could have explored whether a shorter ban would have been pertinent in the circumstances of the present case.

37. This observation should also be seen in the light of the fact that the applicant had arrived in Denmark at a young age and had lawfully resided there for approximately sixteen years. He thus had very strong ties with Denmark (see paragraphs 29-30 above), whereas his ties with Afghanistan were virtually non-existent.

38. The Court is therefore of the view, given all the circumstances of the case, that the expulsion of the applicant, in particular combined with a re-entry ban for twelve years was disproportionate (see, in particular and *mutatis mutandis*, *Ezzouhdi*, cited above, §§ 34-35; *Keles*, cited above, § 66; *Bousarra*, cited above, §§ 53-54; and *Abdi*, cited above § 44, although all the cases cited concerned permanent re-entry bans).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

Done in English, and notified in writing on 5 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President