



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

SECOND SECTION

CASE OF AVCI v. DENMARK

(Application no. 40240/19)

JUDGMENT

Art 8 • Expulsion • Private life • Expulsion order with a permanent re-entry ban • Existence of very serious reasons for expelling settled migrant, born in Denmark and living there for twenty-five years, following conviction and sentence for serious drug offences • Risk of reoffending • Prior convictions • Establishing life in country of destination possible • Proportionality duly assessed by domestic courts in light of Court's case-law

STRASBOURG

30 November 2021

FINAL

04/04/2022

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

In the case of Avci v. Denmark,

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

Carlo Ranzoni, *President*,

Jon Fridrik Kjølbro,

Aleš Pejchal,

Valeriu Grițco,

Branko Lubarda,

Marko Bošnjak,

Saadet Yüksel, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 40240/19) 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 Turkish national, Mr Cihan Avci (“the applicant”), on 4 July 2019;

the parties’ observations;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The application concerns the order for the expulsion of a settled migrant, issued in criminal proceedings.

THE FACTS

2. The applicant was born in Denmark in 1993. He lives in Turkey. He was represented before the Court by Ms Mette Grith Stage, a lawyer practising in Fredericia.

3. The Danish Government (“the Government”) were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

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

5. By a District Court judgment of 7 October 2013, the applicant was convicted of one count for having tried to free a detainee in August 2012, and another count for having, in February 2013, as a participant in a crowd, caused a sense of insecurity for the public. He was sentenced to 20 days’ imprisonment, suspended.

6. By a District Court (*Retten i Glostrup*) judgment of 12 September 2018 he was convicted of serious drug offences under section 191(2) read with section 191(1) of the Penal Code, committed in the period from January to April 2017, together with several other persons. Being part

of an organised network, he had received, possessed, and transferred a total of one kilogram of cocaine by making extensive sales and deliveries to identified and unidentified buyers. The applicant was sentenced to four years' imprisonment and given a warning about expulsion.

7. For the purposes of the criminal proceedings, the Immigration Service (*Udlændingestyrelsen*) gathered information about the applicant's personal circumstances, which included the following. The applicant was born in Denmark and lived with his parents and three siblings. He was unmarried and had no children. He had not completed the ninth grade or any subsequent education. After lower secondary school, he had worked in different jobs, for instance in a supermarket and as a waiter. He was in receipt of unemployment benefits when he was arrested. His maternal aunt and grandfather lived in Turkey. He spoke Turkish/Kurdish, but not as well as he spoke Danish. He had been on holiday in Turkey several times.

8. On appeal, before the High Court (*Østre Landsret*) the applicant explained, among other things, that his father's sister in Turkey had died, and that he had no maternal aunt in the country. His maternal grandfather in Turkey suffered from dementia, and he had no relationship with him. He spoke a little Kurdish, in particular with his father, but he mostly spoke Danish with his parents. He did not speak Turkish but for a few words. It was not correct, as stated in the above information about his personal circumstances, that he spoke both Kurdish and Turkish. He had only been to Turkey as a tourist on holidays. He had committed the offences due to a gambling debt.

9. In a judgment of 17 January 2019, the High Court, sitting with six judges, unanimously confirmed the conviction of the applicant and his sentence, but overturned the District Court's decision regarding expulsion. Thus, the High Court ordered the applicant's expulsion with a permanent ban on his re-entry, for the following reasons:

"... [the applicant] has been found guilty of serious drug offences under section 191(2), read with section 191(1), of the Penal Code committed in the period from January to April 2017 together with several other persons and as part of an organised network by having received, possessed and transferred a total of 1 kilogram of cocaine by way of extensive selling and delivery to identified and unidentified buyers.

Prior to committing the offences at issue, [the applicant] had, of relevance to the present case, previously been sentenced by judgment of 7 October 2013 to imprisonment for a term of 20 days for violation of section 124(2), read with section 21, of the Penal Code for having tried in August 2012 together with a large group of people to free a detainee by making a forward run towards the detainee and a police officer. Further, by that same judgment, he was sentenced for violation of the Executive Order on Police Measures to Maintain Law and Order (*ordensbekendtgørelsen*) by, as a participant in a crowd, having caused a sense of insecurity to the public in February 2013.

The offences for which [the applicant] has been sentenced were committed after he turned 18.

Considering in particular the great seriousness of the offences at issue, which were in the nature of organised drug dealing committed together with others and over several months, the High Court finds that [the applicant's] personal behaviour represents a genuine and sufficiently serious threat affecting the fundamental interests of society. Further, considering in particular the nature and extent of the offences committed, including serious drug offences committed over a period of three months, the High Court finds that there is a risk that [the applicant] will continue to commit offences in Denmark in the future if not expelled. In that connection, [the applicant's] statement that he committed the offence due to his gambling debt cannot be taken into account.

As mentioned above, [the applicant] was born and raised in Denmark where his mother, father and siblings live. He has completed no training or education in Denmark except for passing his ninth' grade final exams while remanded in custody pending the present proceedings. He has been on the labour market on a regular basis, and there is no doubt that expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on him due to his ties with Denmark.

[The applicant] has been to Turkey on holiday several times during his childhood and youth. His maternal grandfather lives in Turkey, and he has stated that he speaks Kurdish, especially with his father. Against that background, he must be deemed to have certain ties with Turkey, including knowledge of the customs and culture of the country, despite his statement that he does not speak Turkish and the circumstance that his family belongs to the Kurdish part of the Turkish population. Accordingly, the High Court finds as a fact that [the applicant's] personal and cultural ties with Denmark are stronger than his ties with Turkey, but that he has the prerequisites for establishing a life in Turkey if expelled. Further, it is observed that the members of [the applicant's] family living in Denmark will be able to maintain contact with him by communicating with him on the phone, over the Internet etc.

Although [the applicant] was born and raised in Denmark, where his parents and siblings live, and although he has not previously been issued with a suspended expulsion order, the High Court finds, based on an overall assessment of the above, that the circumstances in favour of expelling [the applicant] are sufficiently compelling to carry greater weight than the circumstances that make expulsion inappropriate. Expulsion with a permanent re-entry ban would therefore not for certain be a disproportionate sanction contrary to Article 14(1) of the Association Agreement or Article 8 of the European Convention on Human Rights

Accordingly, the High Court changes the judgment of the District Court as regards [the applicant], expelling him with a permanent re-entry ban, see section 22(1)(i) and (iv), read with section 32(2)(v), of the Aliens Act then in force."

10. The applicant's request for permission to appeal against the expulsion order to the Supreme Court (*Højesteret*) was refused by the Appeals Permission Board (*Procesbevillingsnævnet*) on 8 March 2019.

11. The deportation order was enforced on 24 January 2020.

RELEVANT LEGAL FRAMEWORK

12. The relevant provisions of the Aliens Act (*Udlændingeloven*) relating to expulsion have been set out in detail, for example, in *Munir*

Johana v. Denmark (no. 56803/18, §§ 22-26, 12 January 2021) and *Salem v. Denmark*, (no. 77036/11, §§ 49-52, 1 December 2016).

13. At the time of the crime committed in the present case, section 32 of the Aliens Act set out the length of the re-entry ban to be imposed, which automatically followed the length of the imposed sentence. The re-entry ban was to be imposed permanently, if the alien was sentenced to imprisonment for more than two years.

14. Section 32 was amended by Act no. 469 of 14 May 2018, which came into force on 16 May 2018. Briefly explained, the amendment entailed that the re-entry ban was to be imposed permanently, if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)), but it gave the courts discretion to reduce the length of re-entry bans, whether limited in time or permanent, if the length would otherwise certainly be in breach of Denmark's international obligations, including Article 8 of the Convention. The Act applied to crimes committed after its entry into force (and thus not to the present case).

THE LAW

15. The applicant complained that the High Court's decision of 17 January 2019 to expel him from Denmark, which became final on 8 March 2019, 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.”

I. ADMISSIBILITY

16. The Government submitted that the application should be declared inadmissible for non-exhaustion of national remedies, since the applicant had not brought the matter of revocation of the expulsion order before the courts, by virtue of section 50 of the Aliens Act.

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

18. The applicant disagreed.

19. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those

allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

20. In the Danish context, in order to bring a complaint under Article 8 of the Convention about an expulsion order before the Court, an applicant must have exhausted domestic remedies by relying on the said Article either in the criminal proceedings against him, or, after having served his sentence, in revocation proceedings under section 50 of the Aliens Act. It is recalled that section 50 provides for a possibility to revoke the expulsion order if, subsequently, material changes in the expelled person's circumstances have occurred (see, for example, *Salem v. Denmark*, cited above, § 56). A request under section 50 of the Aliens Act may be submitted not earlier than 6 months and must be submitted not later than 2 months before the date when enforcement of the expulsion can be expected. The Court has accepted that this remedy is also adequate and effective (see *Amrollahi v. Denmark* (dec.), no. 56811/00, 28 June 2001).

21. In the present case the applicant chose to bring his complaint before the Court after he had exhausted domestic remedies by challenging the expulsion order in the criminal proceedings against him.

22. In the Court's view it is immaterial that the applicant can also at a later stage challenge the expulsion order under section 50 of the Aliens Act by arguing that material changes in his circumstances have occurred.

23. In these circumstances, the Court is satisfied that the applicant has exhausted domestic remedies in respect of the complaint lodged before the Court. It therefore dismisses the Government's preliminary objection.

24. Furthermore, 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.

II. MERITS

A. Submissions by the parties

25. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that he did not have a significant criminal past, that he had never been issued with a conditional expulsion order, and that he had strong ties to Denmark and few ties to Turkey. In his view, it had not been established that there were "very compelling reasons" to expel him.

26. The Government submitted that the expulsion order had been "in accordance with the law", had pursued the legitimate aim of preventing disorder and crime and had been "necessary in a democratic society". The Danish courts had struck a fair balance between the opposing interests and had carefully assessed the applicant's personal circumstances and 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.

B. The Court's assessment

1. General principles

27. In a case like the present one, where the person to be expelled is a settled migrant who has not yet founded a family of his own, the principles to be applied have recently been set out in, for example, *Munir Johana v. Denmark* (cited above, §§ 42-47).

2. Application of the principles to the present case

28. 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 pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, cited above, § 61).

29. 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 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 expulsion of the applicant, a settled migrant who had been born in Denmark and had lawfully spent his childhood and youth in the host country (see *Maslov v. Austria* [GC], no. 1638/03, § 75, ECHR 2008). The Court is therefore called upon to examine whether such "very serious reasons" were adequately adduced by the national authorities when assessing the applicant's case.

30. The High Court gave particular weight to the nature and seriousness of the crime committed and the sentence imposed. It noted that the offences concerned organised drug dealing committed together with others over several months and found that there was a risk that the applicant would continue to commit offences in Denmark if not expelled. The Court reiterates in this respect that it has held, on many previous occasions, that it understands - in view of the devastating effects drugs have on people's lives and on society as a whole - why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among others, *Amrollahi v. Denmark*, cited above, § 37; *Balogun v. the United Kingdom*, no. 60286/09, § 49, 10 April 2012; *Samsonnikov v. Estonia*, no. 52178/10, § 89, 3 July 2012; and *Salem v. Denmark*, cited above, § 66).

31. The High Court also took into account that the applicant had previously been convicted, as an adult, of two other offences (see paragraph 5 above).

32. 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 High Court duly took into account that the applicant had been born in Denmark and had lawfully resided there for approximately twenty-five years.

33. The criterion “the time elapsed since the offence was committed and the applicant’s conduct during that period” does not come into play in the present case since the applicant was deported immediately after having served his sentence.

34. As to the criterion “the solidity of social, cultural and family ties with the host country and with the country of destination”, the High Court properly took this into account, when stating that “expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on the applicant due to his ties with Denmark”. However, having regard to his knowledge of the Kurdish language, customs and culture, the High Court found that the applicant had the prerequisites for establishing a life in Turkey.

35. Finally, the High Court found that the expulsion order combined with a permanent re-entry ban was a proportionate measure to prevent disorder and crime.

36. The Court notes in this context that the duration of a ban on re-entry is an element to which it has attached importance in its case-law. Thus in, for example, *Ezzouhdi v. France*, no. 47160/99, § 34 13 February 2001, *Keles v. Germany*, no. 32231/02, § 66, 27 October 2005, and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, given the specific circumstances in each case, the Court found the imposition of a definitive expulsion order in breach of Article 8 of the Convention. It is recalled that the Court has never set a minimum requirement as to the sentence or seriousness of the crime which ultimately results in expulsion, nor has it in the application of all the relevant criteria qualified the relative weight to be accorded to each criterion in the individual assessment. That must be decided on a case-by-case basis, in the first place by the national authorities, subject to European supervision (see, for example, *Munir Johana v. Denmark*, cited above, § 53).

37. In the three above-cited cases, the Court found that the persons in question did not pose a serious threat to public order. In the present case, however, the Court does not call into question that the applicant’s crime leading to the expulsion order was of such a nature that he posed a serious threat to public order (see also, *inter alia*, *Mutlag v Germany*, no. 40601/05, §§ 61-62, 25 March 2010, and *Balogun v. the United Kingdom*, cited above, § 53). In addition, it cannot be said that the applicant’s previous offences were insignificant in respect of posing a threat to public order. The present

case therefore resembles the situation in, for example, *Balogun v. the United Kingdom* (cited above).

38. Taking account of all of the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that "very serious reasons" were adequately adduced by the national authorities when assessing his case. It notes that all levels of jurisdiction explicitly and thoroughly assessed whether the expulsion order could be considered to be contrary to Denmark's international obligations. The Court points out in this connection that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see, among many others, *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017, *Levakovic v. Denmark*, no. 7841/14, § 45, 23 October 2018; see also, *mutatis mutandis*, *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 88, 7 February 2012).

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

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by four votes to three, that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 30 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Hasan Bakırcı
Deputy Registrar

Carlo Ranzoni
President

AVCI v. DENMARK JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Ranzoni, Pejchal and Yüksel is annexed to this judgment.

C.R.
H.B.

JOINT DISSENTING OPINION OF JUDGES PEJCHAL,
RANZONI AND YÜKSEL

1. In the present case, we are, with all due respect, unable to agree with the majority's conclusion that there has been no violation of Article 8. For the reasons set out below, we are of the opinion that there has indeed been a violation of Article 8.

2. At the outset, we should like to emphasise that we agree with the fundamentally subsidiary role of the Court within the Convention system. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility for securing the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. While the subsidiary role of the Court is fundamental to the Convention system, it does not mean, however, that the actions and conduct of national authorities are beyond the scrutiny of the Court (see *Abdi v. Denmark*, no. 41643/19, §§ 30-45, 14 September 2021 (not yet final)).

3. While bearing in mind the importance of this principle, we are of the opinion that the majority's reasoning in the present case is not consistent with the case-law on Article 8 concerning the expulsion of settled migrants combined with a permanent ban on their re-entry, for the following reasons.

4. Firstly, we are, respectfully, of the view that the majority have not properly applied the Court's case-law and not given sufficient weight to some of the criteria which the Court has found to be relevant. In particular, while we fully agree, as set out in paragraph 36 of the judgment, that "the duration of a ban on re-entry is an element to which it has attached importance in its case-law", the majority have failed to assess this element in practice. No mention is made in the subsequent parts of the judgment of the fact that the applicant was expelled from Denmark with exactly such a ban on re-entry, and not merely with a temporary re-entry ban, but with a permanent one.

5. In *Bousarra v. France* (no. 25672/07, § 53, 23 September 2010) the Court held that it could not reasonably be argued that, as a result of the offences committed, the applicant constituted an extremely serious threat to public order ("une menace d'une gravité extrême pour l'ordre public") which would have justified a measure of final expulsion from French territory (see, similarly, *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001; see also *Keles v. Germany*, no. 32231/02, § 66, 27 October 2005). While we can accept that the nature of the crime committed by the applicant and resulting in his expulsion was such as to pose a serious threat to public order (see paragraph 37 of the judgment), we cannot agree that it was of such "extreme gravity to public order" as to justify his permanent, that is, life-long, ban from the country where he was

born and has spent his entire life. In any event, the majority did not address this aspect and apparently attached no weight to the permanent re-entry ban.

6. Secondly, to our minds, the majority have not adequately compared the facts of the present case with previous cases, including cases where the Court found a violation of Article 8 and others where it found no violation. For example, the above-mentioned *Bousarra* case concerned a settled migrant who was sentenced to five years’ imprisonment for drug offences, extortion, kidnapping of a person and carrying a prohibited weapon (see *Bousarra*, cited above, § 9). It seems to us that the crimes committed by the applicant in the present case were of a similar nature and, therefore, applying the *Bousarra* logic, cannot be qualified as being “an extremely serious threat to public order” such as to justify a permanent re-entry ban.

7. In the very recent case of *Abdi v. Denmark* (cited above), the Court found a violation of Article 8 where the applicant had been sentenced to two years and six months’ imprisonment following his conviction on one count of illegally possessing a fully-loaded firearm and ammunition in a public place, jointly with three other persons, and on two counts of violating the Controlled Substances Act. The applicant had two prior convictions as a minor for robbery and burglary. After reaching the age of majority, the applicant was convicted and fined seven times for violations of the Act and for driving under the influence of psychedelic substances. He had arrived in Denmark from Somalia at the age of four and had lawfully resided there for approximately twenty years. He had no family in Somalia, but the Court noted that he did have knowledge of the Somali language, customs and culture, so that he would not be completely unqualified to manage in his country of origin.

8. We are of the view that the facts of the above case bear a striking similarity to those of the present case. As the majority rightly observe, when assessing the criterion of “the nature and seriousness of the offence” “the Court has never set a minimum requirement as to the sentence or seriousness of the crime which ultimately results in expulsion” (see paragraph 36 of the present judgment, citing *Munir Johana v. Denmark*, no. 85603/18, § 53, 12 January 2021). While we share the majority’s view that the seriousness of the offence must be examined on a case-by-case basis, the Court must nevertheless ensure consistency in its case-law when assessing similar cases. In our view, it is difficult to reconcile the Court’s finding of violations of Article 8 in *Abdi* and *Bousarra* with the majority’s finding of no violation in the present case, where the applicant was sentenced to four years’ imprisonment.

9. Likewise, with regard to other considerations, we do not see sufficient factual elements to distinguish the present case from, in particular, that of *Abdi*. In the latter case, the applicant also posed a serious threat to public order (see *Abdi*, cited above, § 39). Furthermore, in both cases the applicants were not previously warned about the possibility of expulsion or

had a conditional expulsion order imposed, an aspect to which the Court has attached importance in its case-law (ibid., § 41, with further references to *Keles v. Germany*, no. 32231/02, 27 October 2005; and *Munir Johana*, cited above). Against this background, we fail to understand how the majority in the present case could come to a different conclusion than in the *Abdi* case.

10. Moreover, at paragraph 37 of its reasoning, the majority observe that the present case resembles the situation in *Balogun v. the United Kingdom* (no. 60286/09, 10 April 2012), where the Court found no violation of Article 8 of the Convention. In our view, however, the present case is distinguishable from *Balogun* in several regards. In the latter case the applicant's ties to both the United Kingdom and Nigeria could be described as limited, even if, on balance, the applicant had stronger ties to the host country (see *Balogun*, cited above, § 52). In contrast, the applicant in the present case has very strong ties to the host country, where he was born and raised, but only "certain", extremely limited, ties to his country of origin (see paragraph 9). In our opinion, therefore, the assessment of the criterion of "the solidity of social, cultural and family ties with the host country and with the country of destination" must necessarily be different in the present case to what it was in the *Balogun* case.

11. It is also to be noted that the *Balogun* case concerned an applicant who had several previous convictions for, *inter alia*, drug-related offences, most of which had been committed at an adult age (see *Balogun*, cited above, § 49). What is more, *Balogun* did not even concern a permanent entry ban.

12. Thirdly, we are of the view that the majority's finding at paragraph 34 of the judgment exhibits a misreading of the High Court of Denmark's reasoning in respect of the criterion "the solidity of social, cultural and family ties with the host country and with the country of destination". The High Court referred to the applicant's knowledge of the Kurdish language to show that he had ties to the culture and customs of Turkey. However, the majority has transposed this reasoning into the judgment as evidence that the applicant had the prerequisites for establishing a life in Turkey (see paragraph 34).

13. Fourthly, so far as the High Court's proportionality assessment is concerned, the majority hold "that 'very serious reasons' were adduced by the national authorities when assessing [the applicant's] case" (see paragraph 38 of the judgment). However, while the High Court observed that "there is no doubt that expulsion from Denmark combined with a permanent re-entry ban would be a particular burden on him due to his ties with Denmark" (see paragraph 9), it did not undertake any assessment of whether the permanent nature of the applicant's ban on re-entry was proportionate. In fact, with the exception of the seriousness of the offences at issue, it did not advance any element constituting "very serious reasons". Rather, it simply stated that expulsion with a permanent re-entry ban would

“not for certain be a disproportionate sanction” (ibid.). Such a test, however, does not meet the Convention requirements as regards settled migrants who have lawfully spent all or the major part of their childhood and youth in the host country. The Court has found that very serious reasons are required to justify expulsion of such migrants (see, *inter alia*, *Maslov v. Austria* [GC], no. 1638/03, § 75, ECHR 2008). Neither the High Court nor the Chamber majority have actually adduced and properly assessed such “very serious reasons”. They have also failed to establish that exceptional circumstances existed within the meaning of the *Bousarra* case-law (see paragraph 5 above), namely whether the applicant constituted “an extremely serious threat to public order” justifying a permanent re-entry ban.

14. In this context, the majority state that “all levels of jurisdiction explicitly and thoroughly assessed” whether the expulsion, with a permanent re-entry ban, was contrary to Denmark’s international obligations (see paragraph 38 of the judgment). It is, however, interesting to note that the “thorough assessment” also applies to the District Court, which issued the applicant only with a warning about expulsion (see paragraph 6) and thereby refrained from imposing an unconditional or even permanent re-entry ban on a settled migrant.

15. Furthermore, in the literal sense, the applicant cannot even be described as a “migrant” because, having been born and raised in Denmark, he never moved from a country of “origin” to a “host” country, but has been part of the Danish community since birth. We are of course aware that in the Court’s case-law the term “migrant” has been applied also to persons of foreign nationality who have lawfully spent all of their childhood and youth in a host country (see paragraph 12 above). However, as already argued elsewhere (see, *inter alia*, Judge Ranzoni’s dissenting opinion in *Pormes v. the Netherlands*, no. 25402/14, 28 July 2020, paragraph 18 with further references), if such a person has never lived in a country other than the “host” country, or done so for only a short part of his or her early childhood, it is this “host” country which should bear responsibility for the person’s upbringing and his or her criminal behaviour. It should keep both nationals who have committed serious crimes and so-called “settled migrants” who have committed similar crimes. That would be more just, and compatible with the spirit of the Preamble to the Convention, notably the member States’ “profound belief in those fundamental freedoms which are the foundation of justice and peace”.

16. In sum, when viewing the facts of this case, we are unable to conclude that the national authorities undertook a thorough examination of all the circumstances, adequately adduced “very serious reasons” and struck an appropriate balance. Likewise, we cannot share the majority’s assessment, which is likely to threaten the consistency of the Court’s established case-law under Article 8 concerning the expulsion of settled

AVCI v. DENMARK JUDGMENT – SEPARATE OPINION

migrants combined with a permanent ban on re-entry. For these reasons, we have voted for finding a violation of Article 8.