



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

FOURTH SECTION

CASE OF WANGTHAN v. DENMARK

(Application no. 51301/22)

JUDGMENT

Art 8 • Expulsion • Private and family life • Expulsion order with a re-entry ban of six years against applicant residing in Denmark for less than four years following conviction for serious offences • Relevant and sufficient reasons • Proportionality duly assessed by domestic courts in light of Court's case-law

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2024

FINAL

09/07/2024

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

In the case of Wangthan v. Denmark,

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

Gabriele Kucsko-Stadlmayer, *President*,

Faris Vehabović,

Branko Lubarda,

Anja Seibert-Fohr,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 51301/22) 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 Thai national, Ms Karnchana Wangthan (“the applicant”), on 24 October 2022;

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

the parties’ observations;

Having deliberated in private on 19 March 2024,

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

INTRODUCTION

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

THE FACTS

2. The applicant was born in 1980 and lived in Sakskøbing. She was represented by Mr Erbil G.E. Kaya, 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 June 2017, at the age of 37, the applicant entered Denmark, with her two children, then aged 6 and 8, and married a Danish national. On 22 December 2017 she was granted a residence permit in Denmark, on the ground of family reunification with her husband.

6. By a District Court (*Retten i Nykøbing Falster*) judgment of 13 December 2021, the applicant was convicted under, *inter alia*, Article 245 § 1 of the Penal Code (carrying a sentence of up to six years’ imprisonment), read with Article 21, for having, on 25 October 2021, attempted to stab her

husband while saying that she would kill him. She was also convicted of violence, namely for having kicked, beaten and scratched her son in various incidents over a period of two years. She was sentenced to six months' imprisonment and expelled from Denmark with a six-year re-entry ban.

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

"[The applicant] is found guilty of attempted aggravated violence under Article 245 § 1, read with Article 21 of the Penal Code, and threats falling under Article 266 of the Penal Code addressed against her spouse. She is also found guilty of violence committed against her son over a certain period of time. [The applicant] is sentenced to imprisonment for a term of six months for these offences. Accordingly, the conditions for expulsion under section 24(1)(i), read with section 22(1)(vi), and section 24(1)(ii) of the Aliens Act have been met.

Pursuant to section 26(2) of the Aliens Act, [the applicant] must be expelled unless expulsion would for certain be contrary to Denmark's international obligations, including Article 8 of the European Convention on Human Rights.

[The applicant], who is 41 years old, came to Denmark in 2017 and was granted a residence permit on 22 December 2017. [The applicant] has two children aged 10 and 12 who were also granted a residence permit in Denmark. [She] has no other family in Denmark except for her spouse, whom she is in the process of divorcing, and her two children.

[The applicant] has worked for two years in Denmark. [She] has taken language classes and has stated that she understands and speaks Danish to a certain extent. However, she was unable to make a statement at the proceedings without the assistance of an interpreter. [The applicant] was born and raised in Thailand and went to school there. She speaks and understands the language of her country of origin. She has family living in Thailand and has a house belonging to her ex-husband at her disposal.

On the basis of an overall assessment of the sentence of imprisonment for a term of six months now imposed on [the applicant] and the nature of the violence she has committed against her spouse and child coupled with her ties to Denmark and her ties to Thailand, the court finds that, in the circumstances, expulsion of [the applicant] combined with a re-entry ban for six years will not "for certain" be considered a disproportionate interference with her rights to respect for family life and, in consequence, be contrary to Article 8 of the European Convention on Human Rights. The court has taken into account in this connection the fact that [the applicant's] children have lived in Denmark for four years only and are therefore not found to have formed such independent ties with Denmark as to make expulsion of [the applicant] conclusively inappropriate.

Accordingly, [the applicant] is expelled from Denmark pursuant to section 24(1)(i), read with section 22(1)(vi) and section 24(1)(ii) [of the Aliens Act], and banned from re-entry for six years, pursuant to section 32(4)(iv) and (v) of [the same Act]."

8. The applicant appealed against that judgment to the High Court of Eastern Denmark (*Østre Landsret*), before which her submissions were summarised, *inter alia*, as follows:

"[S]he had worked in Denmark for three years. She had also had a job at the time of her arrest. She spoke English with her spouse. She spoke Danish with her friends, with her colleagues and at the language school. The children had been 6 and 8 years old,

respectively, when they arrived in Denmark. The older child had attended school in Thailand. The children were now in the 4th and 6th grade, respectively. She spoke Thai to her children, and they answered in Danish. The children had not seen their biological father since coming to Denmark. The children regarded [her Danish husband] as their father. If expelled, she would take her children with her, but the children wanted to stay in Denmark, as did she, as it would be difficult for the children to return to Thailand. She hoped that she could be together with [her Danish husband]. She did not know if she would be able to get treatment for her mental illness in Thailand. She had been admitted to a psychiatric hospital in Denmark because she had been under stress and had suffered from depression. She had not been diagnosed with bipolar disorder but had been prescribed medication for it. However, she did not take the medication. She had difficulty talking because of her facial paresis. The house in Thailand belonged to her former spouse, who had bought it before they had married. She had lived in this house with the children after she had divorced her spouse in Thailand. She had had the house at her disposal before moving to Thailand with the children. She did not know if she could live in this house if expelled to Thailand.”

9. By a judgment of 22 February 2022, the High Court upheld the District Court’s judgment. In respect of the expulsion order the High Court stated as follows:

“[The applicant], who is a Thai national, has been lawfully resident in Denmark for about three years and ten months. Accordingly, the High Court upholds the finding that the conditions for expulsion under section 24(1)(i), read with section 22(1)(vi), and section 24(1)(ii) of the Aliens Act are met. The defendant must therefore be expelled unless expulsion would for certain be contrary to Denmark’s international obligations; see section 26(2) of the Aliens Act.

The question is thus whether [the applicant’s] expulsion would be contrary to Article 8 of the European Convention on Human Rights.

[The applicant] and her two children from a previous marriage entered Denmark in the summer of 2017, and she and the children were granted residence in Denmark in December 2017. [The applicant’s] spouse lives in Denmark. The spouse has access to the children. The spouse has now withdrawn his petition for divorce. Expulsion would thus amount to interference with the defendant’s right to respect for her private and family life under Article 8 § 1. Such interference is justified only if the conditions set out in Article 8 § 2 have been met.

It appears from the case-law of the European Court of Human Rights – see in this connection, *inter alia*, the judgment delivered on 23 June 2008 in *Maslov v. Austria* (application no. 1638/03) – that under Article 8 § 2, a proportionality test must be made taking into account ... the following criteria ...

There seem to be no decisions made by the European Court of Human Rights in which the factual circumstances (including the nature and seriousness of the offence, the length of the sentence, the alien’s ties with the country of origin and the host country, the alien’s family situation, and so on) correspond to the circumstances of the case at hand.

[The applicant], who is now 41 years old and who came to Denmark at the age of 37 in 2017, was born and raised in Thailand, where she had lived her entire life until she moved to Denmark with her two children, who were both born in Thailand. She attended school in Thailand, where she took, *inter alia*, a university degree in economics. She speaks, writes and understands the language of her country of origin. She has family living in Thailand. The defendant met her present spouse in Thailand,

and she and her own two children have been on holiday in Thailand together with her spouse. It must therefore be accepted as a fact that she has very strong ties with Thailand.

[The applicant] has lived lawfully in Denmark for about four years. She has worked in Denmark for three years and has also taken language classes. According to the information provided, she has Danish acquaintances. [The applicant] has made a statement in Danish before the High Court about her social background but has otherwise made statements with the assistance of an interpreter. It must therefore be accepted as a fact that she speaks Danish to a somewhat limited extent, in connection with which it is observed that she speaks English with her spouse and Thai to her two children, who reply in Danish. Against this background, it is accepted as a fact that [the applicant] has weaker ties with Denmark.

It is observed in this connection that [the applicant's] two children, who are now aged 10 and 12 and who entered Denmark at the age of 6 and 8, respectively, at least understand Thai. The older child attended school in Thailand, where they were both born. Considering the children's young age, they still have a number of formative years ahead, so it should be possible for them to reintegrate into Thai society. It must therefore be considered a fact that the children will not encounter serious difficulties in Thailand. However, in carrying out a proportionality test, it must be taken into account that the children speak and understand Danish, that they go to school in Denmark and that they have therefore formed certain ties with Denmark.

As regards the nature and scope of the offence, [the applicant] has no previous convictions, but in the case at hand she has been found guilty of having attempted to stab her spouse with a knife [while saying] in English that she would kill him. However, it must be taken into account in this connection that that was an emotional response related to the parties' discussion of their divorce and that [the applicant] was (only) found guilty of attempted aggravated violence against her spouse. [She] was also found guilty of violence against her son in that on several occasions she had beaten and scratched him, and kicked him off a chair.

Considering the nature and seriousness of the offences committed by [the applicant] – which [include] the attempted stabbing of her spouse with a knife [while saying] in English that she would kill him – combined with her very strong ties with Thailand and considerably weaker ties with Denmark, the High Court finds, on the basis of an overall assessment, that the societal considerations that speak in favour of expelling [the applicant] are so compelling as to outweigh the considerations against expulsion based on her private life and especially her family life. In that connection it is observed that [her] spouse, who lives in Denmark, would have the opportunity to maintain contact with her, including by communicating with her by phone and on the internet, and that he would have the possibility of visiting her in Thailand, where, incidentally, they met and where they have been on holiday together with [the applicant's] children.

Against this background, the High Court finds that the expulsion of [the applicant] combined with a re-entry ban for six years is not a disproportionate interference with [her] right to respect for her private and family life under Article 8 of the European Convention on Human Rights.”

10. A request by the applicant for leave to appeal to the Supreme Court (*Højesteret*) was refused on 5 August 2022 by the Appeals Permission Board (*Procesbevillingsnævnet*).

11. It is unknown whether the expulsion order has been implemented.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

12. 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).

13. 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 warning scheme, which did not provide for a requirement to specify a particular probation period.

14. 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)); for twelve years if the alien was sentenced to imprisonment for between one year and one year and six months (section 32(4)(vi)); and permanently if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)). However, the courts were given discretion to reduce the length of re-entry bans, whether permanent or limited in time (section 32(5)(i)), if the length would otherwise for certain be considered in breach of Denmark's international obligations, including Article 8 of the Convention.

15. 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 (see also, *inter alia*, *Noorzae v. Denmark*, no. 44810/20, §§ 13-15, 5 September 2023).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained that the High Court's decision of 22 February 2022 (see paragraph 9 above) to expel her from Denmark with a re-entry ban for six years, which had become final on 5 August 2022 (see paragraph 10 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

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

18. The applicant disagreed.

19. 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. Arguments by the parties

20. The applicant submitted that the Danish courts had failed to take all the relevant circumstances into account in the balancing test, notably the fact that the crime had been committed in a family context, that she had no criminal record, and that she and her children had integrated well into Danish society.

21. The Government submitted that the Danish courts had carried out the proportionality test thoroughly, balancing the opposing interests and taking all the applicant’s personal circumstances into account. The applicant had entered Denmark as an adult and lived there lawfully for less than four years before committing serious offences. Her ties with Thailand were much stronger than her ties with Denmark. The applicant’s family life and the best interests of her children had been taken into account. Since the domestic courts had considered the case specifically in the light of Article 8 of the Convention and the Court’s pertinent case-law, the Court should be reluctant, having regard to the subsidiarity principle, to disregard the outcome of the assessment made by the national courts.

2. The Court’s assessment

(a) General principles

22. 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

23. The Court finds it established that there was an interference with the applicant's right to respect for her private life and family 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).

24. 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 all the relevant criteria. In the examination below, the Court will focus on the High Court's reasoning.

25. The High Court gave particular weight to the nature and the seriousness of the crime committed, namely that the applicant had been convicted of attempted aggravated violence by having attempted to stab her spouse with a knife while saying that she would kill him, and of several incidents of violence against her son over a period of two years. However, the High Court also took into account that the attempted aggravated violence had been committed as an emotional response related to the parties' discussion of their divorce, and that the applicant had no previous convictions (see paragraph 9 above).

26. 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 entered Denmark as a 37-year-old adult, and that she had resided there lawfully for less than four years when the offences were committed (see, *mutatis mutandis*, *Noorzae v. Denmark*, no. 44810/20, § 28, 5 September 2023, and *Sharifi*, cited above, § 28).

27. It is not known when the applicant was released from prison and whether the expulsion order has been implemented (see paragraph 11 above). Accordingly, the criterion "the time that has elapsed since the offence was committed and the applicant's conduct during that period" does not as such apply.

28. 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 into account the fact that the applicant's ties with Thailand were much stronger than her ties with Denmark.

29. The High Court also took into account the fact that the applicant's husband had withdrawn his petition for divorce, so that they still had a family life. It found, however, that the spouses could stay in contact by phone and on the internet, and that the husband could visit the applicant in Thailand, where they had first met and where they had been on holiday together with the applicant's children from her previous marriage.

30. As regards the criterion “the best interests and well-being of the children, in particular the seriousness of the difficulties which they are likely to encounter in the country to which the applicant is to be expelled”, the High Court noted that the applicant’s two children (at the time aged 10 and 12), both Thai nationals, had formed certain ties with Denmark in that they spoke and understood Danish and had attended school in Denmark. However, considering their young age, and that they still had formative years ahead of them, the High Court found that it was possible for the children to reintegrate into Thai society, and that they would not encounter serious difficulties in Thailand.

31. 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 an exclusion order to be a factor weighing in favour of its being proportionate (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 connection has been whether the offence leading to the expulsion order was of such a nature that the person in question posed a serious threat to public order (see, among other authorities, *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001; *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).

32. In the present case, however, by virtue of section 32(4)(iv) of the Aliens Act (see paragraph 14 above), having regard notably to the relatively lenient sentence, the re-entry ban was limited to six years.

33. Taking account all of the elements described above, the Court concludes that the interference with the applicant’s private and family life was supported by relevant and sufficient reasons. It notes that at all levels of jurisdiction there was an explicit and thorough assessment of whether the expulsion order could be considered contrary to Denmark’s international obligations. The Court points out in this connection that where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately weighed up the applicant’s personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *Savran*, cited above, § 189, with further

references). In the Court's opinion, such strong reasons are absent in the present case (see also, *mutatis mutandis*, *Al-Masudi v. Denmark*, no. 35740/21, § 35, 5 September 2023, and *Goma v. Denmark*, no. 18646/22, § 34, 5 September 2023).

34. It follows that 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 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President