



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

FOURTH SECTION

CASE OF AL-HABEEB v. DENMARK

(Application no. 14171/23)

JUDGMENT

Art 8 • Expulsion • Private and family life • Expulsion order with a twelve-year re-entry ban against settled migrant, lawfully residing in Denmark for more than twenty-one years, following conviction for serious offences • Domestic courts reduced permanent re-entry ban provided by the relevant domestic law to twelve-years, holding that otherwise the length would “for certain” be considered in breach of Art 8 • Re-entry ban’s length the decisive factor in expulsion decision • Prospect of re-entering Denmark on family reunification grounds for a foreigner, like the applicant, with a Danish spouse or long-term cohabiting partner, not purely theoretical • Time-limited nature of the re-entry ban was a factor capable of rendering the applicant’s expulsion compatible with Art 8 • 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

12 November 2024

FINAL

17/03/2025

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

In the case of Al-Habeeb v. Denmark,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Armen Harutyunyan,

Anja Seibert-Fohr,

Anne Louise Bormann,

Mateja Đurović, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 14171/23) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Iraqi national, Mr Hamza Azeem Thamer Al-Habeeb (“the applicant”), on 31 March 2023;

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

the parties’ observations;

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

Having deliberated in private on 8 and 22 October 2024,

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

INTRODUCTION

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

THE FACTS

2. The applicant was born in 1991 and currently lives in Sweden. He was represented by Mr Eddie Omar Rosenberg Khawaja, a lawyer practising in Copenhagen.

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

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

5. The applicant entered Denmark in 1998 at the age of seven. On 12 March 1999, he was granted residence in Denmark under section 7(2)

(subsidiary protection status) of the Aliens Act (*udlændingeloven*), and on 6 June 2002, he was granted permanent residence.

6. The applicant has a criminal record, having been convicted of the following offences:

(a) by a judgment of 22 September 2010, he was convicted of attempted robbery (committed when he was 17 years old) and sentenced to eight months' imprisonment;

(b) by a judgment of 10 January 2011, he was convicted of attempted aggravated violence and sentenced to three months' imprisonment; and

(c) by a judgment of 14 June 2019, he was convicted of repeated violence and sentenced to three months' imprisonment. He was also warned of the risk of expulsion.

7. On an unknown date, it appears in 2020, the applicant married a Danish national in a Muslim ceremony. The couple had a daughter in March 2021. In the meantime, on 15 December 2020, the applicant was arrested in his wife's apartment in Sweden and charged with the offence set out in paragraph 8 below.

8. By a judgment of the District Court (*Retten i Roskilde*) of 28 September 2021, the applicant was convicted – under Article 245 § 1, read with Article 247 § 1, of the Penal Code – of assault committed on 26 July 2020 of a particularly offensive, brutal or dangerous nature. It was found established that the applicant, jointly with three masked co-offenders, had stabbed the victim five times in the back, groin and lung, which could have proved fatal. The applicant was sentenced to two years and three months' imprisonment. Moreover, his expulsion was ordered, together with a twelve-year re-entry ban.

9. The District Court's reasoning regarding the sentence and the expulsion order was as follows:

“[The applicant] is sentenced to imprisonment for a term of two years and three months – see Article 245 § 1, read with Article 247 § 1, of the Penal Code.

In determining the sentence, the court has taken into account the serious nature and severity of the offence – given that the life of the victim could have been in danger had he not received the medical treatment that was administered – that the knife assault was carried out jointly by three unknown co-offenders, that they were masked and partly armed with impact weapons during the assault and that [the applicant] has previous convictions of offences directed against the physical integrity of others.

[The applicant] is an Iraqi national and has been sentenced to imprisonment for a term of two years and three months for assault of a particularly offensive, brutal or dangerous nature.

On this basis, the conditions for expulsion of [the applicant] in pursuance of section 22(1)(iii) and (vi) have been met, and the expulsion of [the applicant] should normally be combined with a permanent re-entry ban – see section 32(4)(vii) of the Aliens Act – unless expulsion would for certain be contrary to Denmark's international obligations – see section 26(2) of the Aliens Act.

[The applicant], who is 30 years old, came to Denmark at the age of seven and has stayed in Denmark lawfully for twenty-one years and four months. On 6 June 2002 he was granted permanent residence. [The applicant] married a Danish national in a Muslim ceremony, and in March 2021 they became parents of a daughter, also a Danish national.

It follows from the case-law of the European Court of Justice that [the applicant], who is a third-country national parent, may exceptionally have acquired a right of residence under Article 20 TFEU [Treaty on the Functioning of the European Union] derived from his daughter, who is a Danish national and hence a Union citizen, for which reason expulsion may be incompatible with European Union rules.

On the basis that [the applicant's] daughter is not yet one year old and was born while [the applicant] was held in custody and, as also stated by [the applicant], that his wife and daughter will not go with him to Iraq in the event that he is expelled from Denmark, the court finds that there is no qualifying relationship of dependency between [the applicant] and his daughter of such a nature that his daughter would be compelled to leave the territory of the European Union together with [the applicant] if he were to be expelled from Denmark, for which reason [the applicant] is not found to have a derived right of residence under Article 20 TFEU.

The question is then whether expulsion of [the applicant] would for certain be contrary to Article 8 of the European Convention on Human Rights on the right to respect for private and family life.

[The applicant] has been found guilty of aggravated violence jointly with three masked co-offenders after stabbing the victim five times, with one of the stabs hitting the victim's right lung, which could have endangered his life had he not received the medical treatment required. Moreover, in 2010 [the applicant] was convicted of attempted robbery and sentenced to imprisonment for a term of eight months, and in 2011 he was convicted of aggravated violence and sentenced to imprisonment for a term of sixty days. Lastly, in 2019 [the applicant] was convicted of repeated assault and sentenced to imprisonment for a term of three months and was warned of the risk of expulsion.

Against that background, the court finds that there is a significant risk that [the applicant] will also commit serious offences directed against the physical integrity of others in future if he is not expelled.

As mentioned, [the applicant] is 30 years old, and at the age of seven he came to Denmark, where he has stayed lawfully for about twenty-one years and four months. He has been granted permanent residence and has married a Danish national in a Muslim ceremony, and together they have a daughter who is less than a year old, also a Danish national. [The applicant's] parents and siblings live in Denmark. He speaks, writes and reads Danish fluently. He has attended Danish primary and secondary school, commercial upper-secondary school and technical school. Furthermore, he has had various jobs, and most recently he worked for four years as an assistant social educator. According to the information available, he has no relatives in Iraq and speaks broken Arabic. He does not read or write Arabic.

The court finds that [the applicant's] ties with Denmark are stronger than those with Iraq, but that he also speaks fairly good Arabic, and that he is therefore not unequipped for leading a life in Iraq in the event of his expulsion from Denmark. However, there is no doubt that, owing to the nature of his ties with Denmark, expulsion combined with a permanent re-entry ban would be particularly burdensome for him.

Having regard to the nature and gravity of [the applicant's] current and prior criminal activity and given that [the applicant] was warned of the risk of expulsion only the year before the offence that has now been committed, the court finds, on the basis of an overall assessment, that the considerations in favour of expelling [the applicant], including the risk that he might commit serious offences against the physical integrity of others, are so compelling as to outweigh the considerations making expulsion inappropriate.

On the basis of an overall proportionality test, the court finds that expulsion of [the applicant] combined with a re-entry ban for twelve years would not be a disproportionate interference contrary to Article 8 of the European Convention on Human Rights. The court observes in this connection that [the applicant's] wife and daughter and his other family members will be able to maintain contact with him through visits to Iraq and by telephone or online communication.

Accordingly, the court allows the request for the expulsion of [the applicant] from Denmark combined with a re-entry ban for twelve years in pursuance of section 22(1)(iii) and (vi), read with section 32(5)(i), of the Aliens Act, as expulsion will not for certain be contrary to Denmark's international obligations."

10. The applicant appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*), which by a judgment of 19 May 2022 upheld the District Court judgment. With respect to the expulsion order, the High Court stated as follows:

"For the reasons given by the District Court, the High Court concurs in the finding that [the applicant] is to be expelled from Denmark and banned from re-entry for twelve years in pursuance of section 32(5)(i), read with section 22(1)(iii) and (vi) and with section 26(2), of the Aliens Act."

11. A request by the applicant for leave to appeal to the Supreme Court was refused on 20 December 2022 by the Appeals Permission Board (*Procesbevillingsnævnet*).

12. The applicant was expelled to Iraq on 5 July 2022. Subsequently, he moved to Sweden to live with his family. In about August 2023 his wife became pregnant with their second child.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Provisions of the Aliens Act relating to expulsion

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

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

16. Section 50 of the Aliens Act was amended by Law no. 919 of 21 June 2022. As a result of the amendment, when carrying out a subsequent review of whether an expulsion order should be set aside, the Danish courts are now able to impose a re-entry ban for a shorter period than that previously specified, irrespective of when the criminal offence was committed, if they find, at the time of the review, that a shortening of the period is required to ensure that the expulsion order falls within the scope of Denmark’s international obligations (see also, *inter alia*, *Noorzae v. Denmark*, no. 44810/20, §§ 14-15, 5 September 2023).

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

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

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

19. Statistics obtained by the Government in March 2024 show that the number of final judgments delivered between 2007 and 2022 by which a foreigner was expelled from Denmark and banned from re-entry for twelve

years or less or for an unknown period amounted to 22,840. The judgments by which a re-entry ban for twelve years or less was imposed concerned a total of 18,811 foreigners.

20. The data also show that in the period from 2007 to 2022, twenty-two foreigners who had previously been expelled by court orders and banned from re-entry for twelve years or less were subsequently granted a residence permit in Denmark (including nineteen on the basis of family reunification) between 1 January 2019 and 7 March 2024. Such cases concerned nationals from Ghana, Iran, Iraq, Jordan, Kosovo¹, Lebanon, Morocco, Nigeria, North Macedonia, Somalia, Syria, Türkiye and Uganda. During the same period, twenty-four such foreigners were refused a residence permit (including nineteen who had applied for family reunification).

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

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

22. Moreover, Denmark participates in the European Union cooperation scheme on uniform visas, under which it is determined which third-country nationals will need a visa when crossing the external European Union borders. Denmark is bound by the Schengen rules, including Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ 2009 L 243, p. 1 (hereinafter “the Visa Code” – see also paragraph 34 below).

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

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

25. The conditions that an applicant must fulfil to enter Denmark are set out in Chapter 4 of the Executive Order on Visas (see paragraph 23 above).

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

That chapter provides the basic considerations to be taken into account when examining and deciding on an application for a Schengen visa. Under section 8(1) of the Executive Order on Visas, a Schengen visa will be granted unless there are grounds for refusing the application under the rules of the Visa Code. Section 8(2) describes the situations in which an application for a Schengen visa will be refused, for example:

- “(1) If the alien presents a travel document which is false, counterfeit or forged.
- (2) If the alien does not provide justification for the purpose and conditions of the intended stay.
- (3) If the alien fails to provide proof that he or she has sufficient means of subsistence for the duration of the intended stay or for the return to his or her country of origin or residence, or for transit to a third country into which he or she is certain to be admitted.
- (4) If the alien fails to provide proof that he or she is in a position to lawfully acquire means of subsistence for the duration of the intended stay or for the return to his or her country of origin or residence, or for transit to a third country.
- (5) If the alien has already stayed in the Schengen countries for 90 days within the current period of 180 days on the basis of a Schengen visa or a visa with limited territorial validity.
- (6) If the alien has been reported in the Schengen Information System (SIS II) with a view to refusal of entry.
- (7) If the alien is considered to be a threat to public policy or the internal security of the Schengen countries, in particular where – on the same grounds – an alert has been issued about the person concerned in the Schengen countries’ national databases for the purpose of refusing entry.
- ...”

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

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

28. Statistics obtained by the Government in March 2024 show that in the five years preceding 7 March 2024, only fourteen aliens expelled by court order and banned from re-entry for a limited period of time between 2007 and 2022 applied for a Schengen visa for Denmark. Four of those applicants were

granted a visa (one of them twice), although none of them came from countries in visa group 5. Ten applications were refused (including two people from Pakistan, who thus fell within visa group 5).

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

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

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

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

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

to the prospects of the expelled person being granted re-entry into the country after the expiry of the ban. That assessment would depend on, among other things, the rules applicable at the relevant time.

E. European Union

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

- the Visa Code (see paragraph 22 above);
- Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification), OJ 2018 L 303, p. 39;
- the VIS Regulation (see paragraph 29 above); and
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), OJ 2016 L 77, p. 1 (hereinafter “the Schengen Borders Code”).

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

Article 21

Verification of entry conditions and risk assessment

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

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

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

- (a) that the travel document presented is not false, counterfeit or forged;
- (b) the applicant’s justification for the purpose and conditions of the intended stay, and that he has sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is in a position to acquire such means lawfully;
- (c) whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;
- (d) that the applicant is not considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the

international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;

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

..."

Article 32 Refusal of a visa

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

(a) if the applicant:

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

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

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

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

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

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

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

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

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

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicant complained that the High Court's decision of 19 May 2022 to order his expulsion with a twelve-year re-entry ban was in

breach of Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private 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

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

37. The applicant disagreed.

38. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

39. The applicant submitted that the Danish courts had failed to take the relevant circumstances into account in the balancing test, notably that he had no ties with Iraq, that he had strong ties with Denmark, and that he had a wife and a child, who could not and would not follow him to Iraq.

40. Moreover, although the re-entry ban was limited to twelve years, it amounted *de facto* to a permanent ban, since the prospect of his re-entering Denmark remained purely theoretical. Having married in a Muslim ceremony, and possibly being wanted in the Schengen area, he would have no prospects of being granted family reunification after the expiry of the re-entry ban. He was staying in Sweden only temporarily and he could not expect to be granted a permanent residence permit there. As to the option of applying for a short-term visa, he pointed out, as an Iraqi national, and consequently belonging to visa group 5, that visas to individuals in that group were granted only in very exceptional circumstances, for example if a close family member in Denmark was terminally ill or had died. The statistics provided by the Government (see paragraph 28 above) confirmed that no nationals of countries in visa group 5 had been granted a visa between 2019 and 2024.

41. The Government submitted that the Danish courts had carried out the proportionality test thoroughly, balancing the opposing interests and taking all the applicant’s personal circumstances into account. The applicant had

committed a very serious offence, which constituted a threat to public order and security.

42. Furthermore, they argued that the applicant had a criminal past and had been warned of the risk of expulsion in June 2019 (see paragraph 6 (c) above). In relation to an offence committed in July 2020, the applicant must therefore have been aware of the potential consequences for his private and family life. His child was born in March 2021 (see paragraph 7 above), and therefore must have been conceived shortly before or around the date of the offence which had resulted in the expulsion order. In the Government's view, family life had thus been created at a time when the persons involved had been aware that the immigration status of the applicant was such that the continuation of that family life within the host State would from the outset be precarious.

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

44. The Government contended that an expulsion order combined with a twelve-year re-entry ban was a less definitive and interfering sanction than an expulsion order with a permanent re-entry ban. The applicant would be able to apply for a residence permit on the basis of family reunification after the expiry of the re-entry ban. The fact that he had previously been expelled would not affect the assessment of an application for a new residence permit unless, at the time of the application, he posed a danger to national security or was considered a threat to public order, safety or health.

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

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

47. The Government also pointed out that an assessment by the courts at the time of issuing the expulsion order might lead to differential treatment based on nationality, notably in respect of nationals of countries in visa group 5 as set out in Annex 2 to the Executive Order on Visas (see paragraphs 23 and 26 above). They observed in that connection that the status of a country belonging to a specific visa group could also change over the years.

48. Lastly, they emphasised that the division of countries into main groups in the Executive Order on Visas (see paragraph 26 above) merely reflected a general assessment of whether applicants for a visa from the countries and regions concerned, presented an immigration risk and whether applicants intended to leave the Schengen area before the expiry of their visas. The main groups were only one of the factors taken into account by the authorities under section 16(4) of the Executive Order on Visas.

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

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

3. The Court's assessment

(a) General principles

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

“182. In *Maslov* ... the Court ... set out the following criteria as relevant to the expulsion of young adults, who have not yet founded a family of their own:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant's stay in the country from which he or she is to be expelled;
- the time that has elapsed since the offence was committed and the applicant's conduct during that period; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

In addition, the Court will have regard to the duration of the exclusion order (*ibid.*, § 98; see also *Külekcı v. Austria*, no. 30441/09, § 39, 1 June 2017, and *Azerkane v. the Netherlands*, no. 3138/16, § 70, 2 June 2020). Indeed, the Court notes in this context that the duration of a ban on re-entry, in particular whether such a ban is of limited or unlimited duration, is an element to which it has attached importance in its case-law (see, for example, *Yilmaz v. Germany*, no. 52853/99, §§ 47-49, 17 April 2003; *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; *Keles v. Germany*, no. 32231/02, §§ 65-66, 27 October 2005; *Külekcı*, cited above, § 51; *Veljkovic-Jukic*

v. *Switzerland*, no. 59534/14, § 57, 21 July 2020; and *Khan v. Denmark*, no. 26957/19, § 79, 12 January 2021).”

(b) Application of those principles to the present case

51. The Court finds it established that there was an interference with the applicant’s right to respect for his private 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).

52. As to whether the interference was “necessary in a democratic society”, the Court notes that the Danish courts took as their legal starting-point the relevant provisions of the Aliens Act and the Penal Code, as well as the criteria to be applied in making a proportionality assessment under Article 8 of the Convention and the Court’s case-law. The Court recognises that the domestic courts examined the relevant criteria thoroughly, given that very serious reasons were required to justify the expulsion of the applicant, a settled migrant who had entered Denmark at the age of seven and who had been lawfully resident in the host country for more than twenty-one years when the offences were committed (see paragraph 5 above; see also *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether “very serious reasons” of that kind were adequately adduced and examined by the national authorities when they assessed the applicant’s case (see also *Sarac v. Denmark*, no. 19866/21, § 27, 9 April 2024; *Nguyen v. Denmark*, no. 2116/21, § 28, 9 April 2024; *Noorzae v. Denmark*, no. 44810/20, § 25, 5 September 2023; and *Sharifi v. Denmark*, no. 31434/21, § 25, 5 September 2023).

53. The domestic courts gave particular weight to the seriousness of the offence committed and the sentence imposed. The applicant was convicted of assault of a particularly offensive, brutal or dangerous nature under Article 245 § 1, read with Article 247 § 1, of the Penal Code, having, jointly with three masked co-offenders, stabbed the victim five times, which could have proved fatal. The applicant was sentenced to two years and three months’ imprisonment (see paragraph 8 above).

54. The domestic courts also took into account the fact that the applicant had a criminal past, with similar violent offences, namely attempted robbery (committed as a minor), attempted aggravated violence and, more recently, by a judgment of 14 June 2019, repeated violence, for which he had been sentenced to three months’ imprisonment and warned of the risk of expulsion (see paragraph 6 above).

55. With regard to the criterion of “the length of the applicant’s stay in the country from which he or she is to be expelled”, the courts duly took into account the fact that the applicant had entered Denmark at a young age and that he had lawfully resided there for twenty-one years (see, *mutatis*

mutandis, *Sarac*, § 30; *Nguyen*, § 30; *Noorzae*, § 28; and *Sharifi*, § 28, all cited above).

56. The criterion of “the time that has 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 serving his sentence (see paragraph 12 above).

57. As to the criterion of “the solidity of social, cultural and family ties with the host country and with the country of destination”, the courts properly took this into account. The High Court found that the applicant had certain ties with Iraq and that he would not be unequipped to cope in the country (see paragraph 9 above).

58. The domestic court also took the applicant’s family situation into account, including the criterion of “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”. It noted that the applicant had married in a Muslim ceremony, and that the couple had become parents of a daughter in March 2021, by which time the applicant was already detained on remand. The applicant’s wife and the child were Danish nationals. His wife had stated that she was not willing to accompany him to Iraq.

59. The Court notes that subsequent to his deportation, the applicant moved to Sweden, where he lives with his wife and child. The couple are expecting a second child (see paragraph 12 above).

60. Regard has also been had to the duration of the expulsion order, in particular whether the re-entry ban was of limited or unlimited duration. The Court has previously found such a ban to be disproportionate on account of its unlimited duration, whereas in other cases it has considered the limited duration of an exclusion order to be a factor weighing in favour of its being proportionate (see, for example, *Savran*, cited above, §§ 182 and 199, and the cases cited therein). One of the elements relied on in this connection has been whether the offence leading to the expulsion order was of such a nature that the person in question posed a serious threat to public order (see, among other authorities, *Ezzouhdi v. France*, no. 47160/99, § 34, 13 February 2001; and *Bousarra v. France*, no. 25672/07, § 53, 23 September 2010, in which the Court found that the individuals in question did not pose a serious threat to public order; see also *Mutlag v. Germany*, no. 40601/05, §§ 61-62, 25 March 2010, in which the Court found that the person in question did pose a serious threat to public order).

61. In the present case, the Court does not call into question the finding that the applicant’s offence leading to the expulsion order was of such a nature that he posed a serious threat to public order (see, among other authorities and *mutatis mutandis*, *Abdi v. Denmark*, no. 41643/19, § 39, 14 September 2021; *Mutlag*, cited above, §§ 61-62; see also, *mutatis mutandis*, *Sarac*, § 34; *Nguyen*, § 35; *Noorzae*, § 32; and *Sharifi*, § 33, all cited above). Nor can it be

overlooked that the applicant demonstrated a lack of willingness to comply with Danish law, despite the fact that he had been warned of the risk of expulsion in June 2019 (see paragraph 6 (c) above), approximately one year before the offence giving rise to the expulsion order in the present case (see, for example, *Goma v. Denmark*, no. 18646/22, § 33, 5 September 2023; *Munir Johana v. Denmark*, no. 56803/18, § 58, 12 January 2021; and *Levakovic v. Denmark*, no. 7841/14, § 44, 23 October 2018).

62. The length of the re-entry ban is only one of many factors in assessing whether an expulsion order is compatible with Article 8. Normally it cannot be said that this factor or any other factor is in itself decisive for the outcome of this assessment. In the Danish context this is different due to the Danish law that allows the courts to reduce the length of the re-entry ban if and only if a longer duration would “for certain be contrary to Denmark’s international obligations”. This means that in some borderline cases the length of the re-entry ban becomes decisive in the assessment made by the Danish courts.

63. In the present case the applicant was issued with an expulsion order together with a twelve-year re-entry ban. Despite the serious nature of the crimes, the applicant’s significant criminal past and the previous warning of the risk of expulsion, the District Court noted that, owing to the nature of the applicant’s ties with Denmark, it would be particularly burdensome to expel him with a permanent re-entry ban, which, under section 32(4)(vii) of the Aliens Act, would normally be the consequence, as he was being sentenced to imprisonment for more than one year and six months. By virtue of section 32(5)(i) of the Aliens Act, the re-entry ban was therefore reduced to twelve years (see paragraph 9 above). As the District Court could only reduce the length of the re-entry ban, if the court found that a permanent re-entry ban “for certain” would be a violation of Denmark’s international obligations, this means that the length of the re-entry ban was in fact the deciding factor in the decision to expel the applicant.

64. The applicant contended that although the re-entry ban was limited to twelve years, it amounted *de facto* to a permanent ban, since the prospects of his being readmitted to Denmark remained purely theoretical. He would never qualify for a residence permit, or – as an Iraqi national and therefore belonging to visa group 5 – a visa (see paragraph 40 above).

65. The Government disputed the applicant’s argument (see paragraphs 44-48 above). In their view, the applicant had prospects of being readmitted to Denmark by means of either a new residence permit or a visa.

66. In accordance with Danish case-law (see paragraphs 30-32 above), the domestic courts did not take a stand on whether in the future, after the expiry of the time-limited re-entry ban, the applicant would have prospects of being readmitted to Denmark.

67. In the Court’s view, though, in the Danish context, when by virtue of section 32(5)(i) of the Aliens Act, in the proportionality test, the domestic courts reduce the length of a re-entry ban, since otherwise the length would

“for certain” be considered in breach of Denmark’s international obligations, including Article 8 of the Convention (see paragraph 15 above), the time-limited nature of the re-entry ban can only be considered a factor capable of rendering the applicant’s expulsion compatible with Article 8, if the expelled person has some prospect of one day returning at least for a visit. Thus, if at the time of expulsion, in view of the rules on re-entry in place at that time, the national courts find that the prospect of the expelled person being readmitted to the country in any legal manner, whether on a residence permit or on a short-term visa, is purely theoretical, it would in the Court’s opinion not be justified to attribute significant weight to the length of the re-entry ban as factor capable of rendering the expulsion compatible with Article 8. A time-limited re-entry ban would in such circumstances amount *de facto* to a permanent ban (see, *mutatis mutandis*, *Savran*, cited above, §§ 182, 199-200, where the possibility of the applicant’s re-entering Denmark on a visitor’s visa despite a permanent re-entry ban was found to be purely theoretical, owing to the very limited basis on which such a visa could be issued).

68. Further, in the Danish context, a foreigner who has been expelled with a time-limited re-entry ban, and who wishes to resettle in Denmark after the re-entry ban has expired, may lodge an application for a residence permit under the relevant provisions of the Aliens Act – for example, on the basis of family reunification or for work or study purposes (see paragraphs 17 and 18 above). Family unification can – if certain conditions are met – be granted to the spouse or long-term cohabiting partner of a person resident in Denmark.

69. Statistics provided by the Government show that between 2007 and 2022 a total of 18,811 foreigners were expelled from Denmark with a time-limited re-entry ban (twelve years or less – see paragraph 19 above).

70. The data also show (see paragraph 20 above) that twenty-two foreigners previously expelled by court orders and banned from re-entry for twelve years or less in the period from 2007 to 2022 were subsequently granted a residence permit in Denmark (including nineteen on the basis of family reunification) between 1 January 2019 and 7 March 2024. The foreigners concerned were nationals of Ghana, Iran, Iraq, Jordan, Kosovo, Lebanon, Morocco, Nigeria, North Macedonia, Somalia, Syria, Türkiye and Uganda. During the same period, twenty-four foreigners were refused a residence permit (including nineteen who had applied for family reunification).

71. It is unclear why, among the 18,811 foreigners expelled from Denmark with a time-limited re-entry ban, so few have applied to be readmitted on the basis of a residence permit in the last five years. The figures seem to indicate, however, that for a person who, like the applicant, has a Danish spouse or long-term cohabiting partner, the prospect of re-entering Denmark on the grounds of family reunification does not remain purely theoretical.

72. The Court thus finds no reason to question the finding of the domestic courts that the time-limited nature of the re-entry ban was a factor capable of rendering the applicant's expulsion compatible with Article 8 (see paragraph 63 above).

(c) Conclusion

73. Taking account of all the factors described above, the Court concludes that the interference with the applicant's private and family 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 at all levels of jurisdiction there was an explicit and thorough assessment of whether the expulsion order could be considered to be 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.

74. 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 12 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President