

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

FOURTH SECTION

CASE OF SARAC v. DENMARK

(Application no. 19866/21)

JUDGMENT

Art 8 • Expulsion • Private life • Disproportionate expulsion of settled migrant combined with a lifelong re-entry ban following convictions for serious offences • Imposition of relatively lenient sentence • Prior convictions did not indicate that he posed a general threat to public order • No warnings of expulsion • Length of ban could have been reduced • Very strong ties with Denmark in contrast with his country of origin

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 Sarac 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 Răduleţu*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 19866/21) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of Bosnia and Herzegovina, Mr Safet Sarac ("the applicant"), on 8 April 2021;

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

the parties' observations;

the fact that the Government of Bosnia and Herzegovina did not express the wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court);

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 settled migrant. The applicant complained under Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1986 and lives in Bosnia and Herzegovina. He was represented by Mr Tyge Trier, a lawyer practising in Frederiksberg.

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 1993, when the applicant was around 7 years old, he entered Denmark, it appears together with his mother and brother. On 15 November 1995 they were granted residence permits as refugees under section 7(1) of the Aliens Act.

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

(a) by a judgment of 31 July 2012, he was convicted of a breach of the Controlled Substances Act, and sentenced to thirty days' imprisonment, suspended; and

(b) by a judgment of 9 August 2013, he was fined for breaches of the Controlled Substances Act and the Traffic Act.

7. By a District Court (*Retten i Randers*) judgment of 4 February 2020, the applicant was convicted under section 191 of the Penal Code (carrying a sentence of imprisonment of up to 10 years) of possession under aggravating circumstances of various drugs intended for distribution (642.82 grams of amphetamine, 49.13 grams of cocaine, 48 ecstasy pills, 333 grams of "skunk" cannabis and 24.8 grams of cannabis) and under section 10 of the Weapons and Explosives Act of possession of 10 shotgun cartridges without a police permit. He was sentenced to two years' imprisonment. He was also ordered to be deported from Denmark with a lifelong ban on re-entry.

8. Before the District Court the applicant stated, *inter alia,* that he had used cannabis for years, but had started to take amphetamines only later on. He had often had nightmares and used cannabis in order to sleep. Eight years ago, when he had visited his father in Bosnia and Herzegovina, they had had a fight. He had not seen him since then.

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

> "... [The applicant] was born in Bosnia and Herzegovina. He is 33 years old. He is unmarried and has neither a partner nor any children. He came to Denmark when he was about seven years old. Accordingly, he has been lawfully resident in Denmark for about 25 years and 10 months. He has worked with his brother as a vehicle fitter.
>
> [The applicant's] father lives in Bosnia and [the applicant] visited his father in Bosnia about eight years ago. [The applicant] speaks and writes Bosnian to a certain extent. [The applicant] has previously been convicted for breach of the Executive Order on Controlled Substances.
>
> On the basis of an overall assessment of the nature and seriousness of the offence, the court allows the application for expulsion under section 22(1)(iv), read with section 26(2), of the Aliens Act, as expulsion with a permanent re-entry ban will not "for certain" be contrary to Denmark's international obligations as set out in section 32(2)(iv) of the Aliens Act."

10. The applicant appealed against the judgment to the High Court of Western Denmark (*Vestre Landsret*), where he stated that, *inter alia,* after his release he would stop taking drugs and that he would continue to work for his brother as a vehicle fitter. He had no contact with his father, and he had no other family or friends in Bosnia and Herzegovina.

11. By judgment of 4 June 2020 the High Court upheld the District Court judgment. In respect of the expulsion order it stated as follows:

> "[The applicant] has been sentenced to imprisonment for a term of 2 years for violation of section 191(1) of the Penal Code for having been in possession of 642.82 grams of amphetamine and 49.13 grams of cocaine in aggravating circumstances and for the purpose of further distribution to a large number of people or for significant payment. Accordingly, the conditions for deportation under section 22(1)(iv) of the Aliens Act are met. [The applicant's] personal circumstances and the extent of his stay in Denmark are described in the judgment delivered by the District Court.
>
> Under section 26(2) of the Aliens Act, foreign nationals must be deported unless expulsion would unquestionably be contrary to Denmark's international obligations.
>
> A decision to deport will depend on whether expulsion would be contrary to the specific proportionality test which must be made in accordance with Article 8 of the European Convention on Human Rights on the right to respect for private and family life. The test must include the interests of society in expulsion, in particular considering the nature of the defendant's previous and present criminal activities as well as the duration of his stay in Denmark and in the country of origin and the strength of the family, social and cultural ties with Denmark and the country to which he is to be deported.
>
> [The applicant] has such ties with Denmark that expulsion would involve a significant interference with his right to respect for his private life. [The applicant] is not incapable of making a life in Bosnia and Herzegovina.
>
> On the basis of an overall assessment of the nature and seriousness of [the applicant's] recent criminal activities, the High Court finds that the reasons in favour of expulsion of [the applicant] are so compelling as to outweigh the reasons against expulsion. For that reason, the High Court concurs with the finding that [the applicant] should be deported with a permanent re-entry ban."

12. A request by the applicant for leave to appeal to the Supreme Court (*Højesteret*) was refused on 12 October 2020 by the Appeals Permission Board (*Procesbevillingsnævnet*).

13. The applicant was released on parole on 26 March 2021, and was subsequently remanded in custody until he was deported on 17 March 2022.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

14. 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).

15. 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 16 May 2018. The new provision introduced a warning scheme, which did not provide for a requirement to specify a particular probation period.

16. 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.

17. 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

18. The applicant complained that the High Court's decision of 4 June 2020 (see paragraph 11 above) to expel him from Denmark with a lifelong ban on re-entry, which had become final on 12 October 2020 (see paragraph 12 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

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

20. The applicant disagreed.

21. 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

22. The applicant submitted that the interference concerned his right to respect for his private and his family life, the latter because he had been diagnosed with a mental condition and had a very close bond with his family. The Danish courts had failed to take certain relevant circumstances into account in the balancing test, notably that he had an insignificant criminal past, that he had never received a warning that he might be deported, that he had strong ties to Denmark, and that he had no ties to Bosnia and Herzegovina. In his view, it had not been established that there were "very compelling reasons" to deport him with an entry ban for life.

23. The Government submitted that the Danish courts had carried out a thorough proportionality assessment, balancing the opposing interests and taking all the applicant's personal circumstances into account. The applicant had committed serious drug offences, he had a criminal past, and he posed a threat to public order. Lastly, 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

24. 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

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

26. The Court observes that the applicant did not rely on his right to respect for his family life, either in form or substance, during the criminal proceedings leading to the expulsion order at issue. The Court will therefore examine the case only under the private life aspect of Article 8 (see, *mutatis mutandis*, *Noorzae v. Denmark*, no. 44810/20, § 24, 5 September 2023).

27. 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 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 had been lawfully resident in the host country for most of his childhood and youth (see *Maslov,* cited above, § 75). The Court is therefore called upon to examine whether "very serious reasons" of that kind were adequately adduced and examined by the national authorities when assessing the applicant's case (see *Noorzae*, cited above, § 25 and *Sharifi v. Denmark*, no. 31434/21, § 25, 5 September 2023).

28. The High Court gave particular weight to the seriousness of the crime committed and the sentence imposed. The applicant was convicted under Article 191 of the Penal Code (carrying a sentence of up to ten years' imprisonment) of possession of 642.82 grams of amphetamine, 49.13 grams of cocaine, 48 ecstasy pills, 333 grams of "skunk" cannabis and 24.8 grams of cannabis intended for distribution. He was also convicted under section 10 of the Weapons and Explosives Act of possessing 10 shotgun cartridges without a police permit. He was sentenced to two years' imprisonment (see paragraphs 7 and 11 above).

29. The High Court, like the District Court, took into account that the applicant had previously been convicted in 2012 and 2013 of breaches of the Executive Order on Controlled Substances (see paragraphs 6, 9 and 11 above).

30. 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 High Court duly took into account that the applicant had been around seven years old when he had arrived in Denmark and that he had lawfully resided there for twenty-six years (see, *mutatis mutandis*, *Noorzae*, cited above, § 28, and *Sharifi*, cited above, § 28).

31. In respect of the criterion of "the time that has elapsed since the offence was committed and the applicant's conduct during that period", the applicant stated to the High Court that after his release he would not resume taking drugs and would resume work as a vehicle fitter for his brother (see paragraph 10 above). The Court notes that the applicant remained in detention until the expulsion order was implemented on 17 March 2022 (see paragraph 13 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.

32. As to the criterion of "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. It accepted that the applicant's ties with Denmark were stronger than his ties with Bosnia and Herzegovina, but found

that he was not incapable of making a life in his country of origin (see paragraph 11 above).

33. Lastly, regard will be 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 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).

34. 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 at the time (see also, among other authorities and *mutatis mutandis*, *Abdi*, cited above, § 39; *Mutlag,* cited above, §§ 61-62; *Balogun*, cited above, § 53; *Noorzae*, cited above, § 32; and *Sharifi*, cited above, § 33).

35. It notes, however, that, prior to the case at hand, the offences committed by the applicant as an adult concerned breaches of the legislation on controlled substances in 2012 and 2013 (see paragraph 6 above), which resulted in, respectively, a suspended sentence of thirty days' imprisonment and a fine, neither of which indicated that in general he posed a threat to public order. In this respect the present case resembles the situation in, for example, *Ezzouhdi* (cited above, § 34), *Abdi* (cited above, § 40), *Noorzae* (cited above, § 33), and *Sharifi* (cited above, § 34).

36. The Court also observes that the applicant had not previously been warned about the risk of expulsion or given a conditional expulsion order (see, for example, *Abdi*, cited above, § 41, *Noorzae*, cited above, § 34, and *Sharifi*, cited above, § 35).

37. Nevertheless, despite the facts that the applicant's previous convictions did not indicate that he posed a general threat to public order and that he had not received any previous warnings as to the risk of expulsion, and although a relatively lenient sentence was imposed in the present case (compare *Abdi*, cited above, § 42), the High Court decided to combine the expulsion of the applicant with a lifelong ban on his return to Denmark,

although it could have reduced the length of the ban on re-entry (see paragraph 16 above, and contrast *Savran*, cited above, § 200).

38. The above observation should also be seen in the light of the fact that the applicant had arrived in Denmark at a very young age and had lawfully resided there for approximately twenty-six years. He thus had very strong ties with Denmark, as opposed to his ties with Bosnia and Herzegovina.

39. The Court is therefore of the view, given all the circumstances of the case, that the expulsion of the applicant combined with a lifelong ban on his return was disproportionate (see, in particular and *mutatis mutandis*, *Ezzouhdi,* cited above, §§ 34-35; *Keles*, cited above, § 66; *Bousarra*, cited above, §§ 53-54; and *Abdi*, cited above § 44, all concerning permanent re-entry bans).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

42. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government submitted that the claim was excessive and that the finding of a violation would constitute adequate just satisfaction in itself.

44. The Court considers that, having regard to the circumstances of the case, the conclusion it has reached under Article 8 of the Convention constitutes sufficient just satisfaction in respect of any non-pecuniary damage that may have been sustained by the applicant. It therefore makes no award under this head (see, for example, *Savran*, cited above, § 208, and the case-law cited therein, as well as *Noorzae*, cited above, § 43).

B. Costs and expenses

45. The applicant claimed 2,500 Danish kroner (DKK) for costs and expenses incurred in the domestic courts, and EUR 12,800 plus VAT for those incurred before the Court, corresponding to legal fees for a total of 21.5 hours of work carried out by his representative.

46. The Government noted that the applicant had failed to submit any documentation in respect of the sums claimed. Moreover, they noted that the applicant could apply for legal aid under the Danish Legal Aid Act (*Lov*

1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner).

47. In the present case, it is uncertain whether the applicant will be granted legal aid under the Danish Legal Aid Act. Therefore, the Court finds it necessary to assess and decide the applicant's claim in respect of costs and expenses (see, *mutatis mutandis, Noorzae*, cited above, § 46).

48. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, and awards made in comparable cases against Denmark (see, notably, *Noorzae*, cited above, § 47), the Court considers it reasonable to award the sum of EUR 5,400, covering the costs for the proceedings before it in so far as these have not already been granted under the Danish Legal Aid Act.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,400 (five thousand four hundred euros), in respect of costs and expenses, to be converted into the currency of the respondent State at the date of settlement, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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