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

FOURTH SECTION

DECISION

Application no. 56700/15
Egídio Pedro SANCHES PINA
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 6 September 2022 as a Committee composed of:

Armen Harutyunyan*, President,*
Jolien Schukking*,*
Ana Maria Guerra Martins*, Judges,*
and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 56700/15) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 November 2015 by a Cape Verdean national, Mr Egídio Pedro Sanches Pina ("the applicant"), who was born in 1966 and currently lives in Cape Verde, and was represented by Ms A.C. Domingues, a lawyer practising in Lisbon;

the decision to give notice of the complaints concerning the expulsion of the applicant to Cape Verde to the Portuguese Government ("the Government"), represented by their Agent, Ms Maria de Fátima da Graça Carvalho, Deputy Attorney General, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns a judicial decision to expel the applicant, a Cape Verdean national who was at that time lawfully residing in Portugal, and ban his re-entry for five years subsequent to his criminal conviction for drug trafficking and possession of illegal weapons, upheld by the Lisbon Court of Appeal on 6 May 2015.

2. On 27 November 2019 that decision was enforced. The applicant was therefore expelled to Cape Verde.

3. Under Article 8 of the Convention and Article 1 of Protocol No. 7 to the Convention, the applicant complained that his expulsion to Cape Verde and the ban on his re-entering Portugal for five years amounted to a breach of his right to respect for his family life, in particular regarding his minor children.

THE COURT'S ASSESSMENT

4. The Court being the master of the characterisation to be given in law to the facts of the case (*Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) will examine the applicant's complaints under Article 8 of the Convention alone.

5. The relevant criteria that should be taken into account in assessing compatibility with Article 8 of the Convention in all cases concerning settled migrants who are to be expelled following a criminal conviction have been summarised in *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 54-60, ECHR 2006-XII); and *Boultif v. Switzerland* (no. 54273/00, § 48, ECHR 2001-IX).

6. Turning to the present case, the Court considers 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, since he was in fact expelled from Portugal (see paragraphs 1 and 2 above).

7. The Court rejects the applicant's argument that the expulsion order and re-entry ban (see paragraph 1 above) were unlawful. In this connection, it notes that the impugned measures were taken pursuant to section 134 of Law no. 23/2007 of 4 July 2007 and that the domestic courts found that the applicant did not meet the conditions to benefit from any of the exceptions to expulsion provided for in section 135(1) of Law no. 23/2007 of 4 July 2007. It thus concludes that the impugned measures were "in accordance with the law".

8. In view of the well-established case-law of the Court, it is indisputable that the interference pursued the legitimate aim of preventing disorder and crime (see, for example, *Salem v. Denmark*, no. 77036/11, § 61, 1 December 2016).

9. As to the question of whether the interference was "necessary in a democratic society", the Court recognises that the domestic courts thoroughly examined each of the relevant criteria set out, for example, in *Üner* (cited above, § 57) and *Maslov v. Austria* ([GC], no. 1638/03, § 73, ECHR 2008) and were fully aware that very serious reasons were required to justify the expulsion of the applicant, a settled migrant who had arrived in Portugal at the age of 29 and had since lawfully lived in the country.

10. Indeed, in its judgment of 6 May 2015, the Lisbon Court of Appeal gave weight to the seriousness of the crimes committed by the applicant (see paragraph 1 above) and the sentence imposed, namely seven years and three months of imprisonment. It also considered his personality, in particular, his lack of critical consciousness regarding facts of illicit nature. Finally, the court of appeal took into account the applicant's criminal past, more precisely his previous conviction, also for aggravated drug trafficking with a sentence of six years and four months of imprisonment which became final on 29 May 2008.

11. His family situation was also scrutinised, in particular his four years' non-marital relationship with a student and the fact that no children had been born from that relationship. In its judgment of 6 May 2015 (paragraph 1 above), the Lisbon Court of Appeal further observed that the applicant had six children from three different relationships and that they were all in the sole custody of their respective mothers in Portugal, Switzerland and Cape Verde.

12. Regarding in particular his son living in Portugal, born on 9 November 2004, the Court notes that he was 15 years old at the time of the decision. The applicant did not submit any relevant details concerning his relationship with this son and did not argue before the domestic courts or the Court that his expulsion and re-entry ban were contrary to his children's best interests and well-being (see, *Üner*, cited above, § 58; and compare *A.H. Khan v. the United Kingdom*, no. 6222/10, § 40, 20 December 2011; and *Bajrami v. Denmark* (dec.), no. 24379/20, §§ 28-33, 20 February 2022).

13. In accordance with the principle of subsidiarity, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts" (see *Ndidi v. the United Kingdom* (no. 41215/14, § 76, 14 September 2017; and *Levakovic v. Denmark*, no. 7841/14, § 45, 23 October 2018).

14. In the present case, having regard to all the elements described above, the Court concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons and that his expulsion was not disproportionate in the light of all the circumstances of the case.

15. Having regard to the above considerations, the Court finds that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Ilse Freiwirth Deputy Registrar	Armen Harutyunyan President