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

SECOND SECTION

DECISION

Application no. 33809/15
Faruk Rooma ALAM
against Denmark

The European Court of Human Rights (Second Section), sitting on 6 June 2017 as a Committee composed of:

Robert Spano, *President*,
Ledi Bianku,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges*,
and Stanley Naismith, *Section Registrar*,

Having regard to the above application lodged on 7 July 2015,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Faruk Rooma Alam, is a Pakistani national who was born in 1982 and lives in Denmark. She was represented before the Court by Ms Karoline Normann, a lawyer practising in Copenhagen.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant stated that she entered Denmark in 1984, when she was approximately 2 years old, to join her father, who already lived there. It is not known when her mother and siblings arrived.

4. The applicant was registered with the Danish National Register (*folkeregisteret*) as from 18 January 1986. On 2 February 2001 she was granted a permanent residence permit.

5. The applicant went to school and studied to be a data-mathematician.

6. In 1999, when the applicant was 16 years old, her parents arranged her marriage to F, a Pakistani national, in Pakistan.

7. In May 1999, F entered Denmark on a tourist visa. After 3 months, he returned to Pakistan. During the subsequent years they visited each other in Denmark and Pakistan.

8. On 27 November 2000, the applicant gave birth in Denmark to their son, M, a Pakistani national.

9. On 1 March 2004, the applicant gave birth in Denmark to their daughter, I, a Pakistani national.

10. The applicant maintained that F was violent and that in 2006, when she had been in Pakistan to attend her brother's wedding, she and the children had been locked up for days by F and his family, in order to keep her in Pakistan. She had managed to escape, but F had found them and kidnapped M. With assistance from the Danish Embassy, the applicant and I had returned to Denmark. After some time, F had agreed that M be returned to the applicant in Denmark. Thereafter the applicant did not return to Pakistan and the spouses had no contact. They divorced in 2006 or 2007. In 2008 the applicant was granted sole custody of M and I.

11. In Denmark the applicant lived with her children, her mother and a brother.

12. On 31 August 2011 she was convicted of social security fraud and given a six-month suspended sentence.

13. On 14 September 2012 the applicant was detained and charged with, *inter alia*, murder.

14. On 17 December 2013, she was convicted by a City Court (*retten i Roskilde*) of murder, attempted aggravated robbery and arson under Articles 237, 288 in conjunction with 21, and 180 of the Penal Code. She was sentenced to life imprisonment.

15. The City Court found it established, among other things, that the applicant had had a relationship with a Pakistani man who later married N, for which reason the applicant, who was 30 years old at the time, planned to murder N. With the help of her 19-year-old nephew and his 17-year-old friend, they watched the spouses' apartment and, when they were certain that N was alone, they entered, masked, armed with a meat tenderiser and carrying petrol. Then they searched in vain for valuables, poured petrol over N and set her alight. She burned to death, and the apartment burned out, thereby also endangering the lives of the other inhabitants of the residential building.

16. By the same judgment, the applicant was expelled from Denmark with a life-long ban on returning. Before the City Court, the Aliens Board

(*Udlændingestyrelsen*) gave a statement about the applicant's situation, including, *inter alia*, that she had stayed legally in Denmark for approximately 27 years, that she spoke Danish, English, German, Pashto, Urdu and Punjabi, and that her mother and five siblings lived in Denmark. Moreover, since the children's residence permits were dependent on the applicant living in Denmark, expulsion might have consequences for them.

17. Before the City Court, the applicant stated that most of her family in Denmark had obtained Danish nationality. Her father, who had died in 2003, had been married before, and she had half-siblings in Pakistan from that marriage. Her mother went often to Pakistan and owned a house there. Her children, at that time aged 9 and 13, had been placed with her sister and her husband since the applicant's arrest. She was afraid that their father, F, would kidnap them and take them to Pakistan. He had obtained a Spanish passport. The children spoke Danish, and M also spoke a little Pashto in order to be able to talk to his maternal grandmother.

18. In respect of the expulsion order the City Court stated:

> "[The applicant] who is 30 years old, entered Denmark ... when she was one and a half years old. She has had all her upbringing, schooling and education in this country. Her mother and most of her siblings live in Denmark and are Danish citizens. Moreover, her children, who are 9 and 13 years old, live in Denmark. However, [the applicant] has maintained what must be considered a real attachment to Pakistan and Pakistani culture. With her mother she speaks only Pashto, and her family is integrated as a central part of her network. She has previously been to Pakistan, where she has two half-sisters, and her mother often goes to Pakistan, where she owns a house. Against this background, and having regard to the fact that [the applicant] is punished with life imprisonment for attempted aggravated robbery, murder and arson, and since the above-stated about the risk of double punishment and persecution and considerations for the applicant's children cannot lead to another decision, expulsion will not breach Article 8 of the Convention or Denmark's international obligations otherwise, see section 26, subsection 2, of the Aliens Act. Against this background there are 12 votes in favour of granting the expulsion request with a life-long ban on returning by virtue of section 49, subsection 1, in conjunction with section 22, no. 6 and section 32, subsection 2, no. 5."

19. The applicant appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*) before which she explained, among other things, that her children had visited her in prison once or twice a week. F had requested custody of the children and that case was pending before the City Court. He had attempted, in vain, to obtain a residence permit in Denmark.

20. By judgment of 4 September 2014, the High Court confirmed the conviction but reduced the sentence to 16 years' imprisonment. Adhering to the reasons set out by the City Court, it upheld the expulsion order.

21. Leave to appeal to the Supreme Court *(Højesteret*) was refused on 13 January 2015.

22. On 6 March 2015, the applicant married a Danish citizen.

23. By judgment of 29 June 2015, F's request for custody of M and I was refused. From that judgment it appeared that the applicant had consented to her children being officially placed with her sister and her husband. The children were well-adjusted. They had not seen F for seven years. In the period from 2007 to 2012 he had not contacted them at all. They wanted to live with their mother, together with their aunt and uncle (with whom they lived). They did not want to live with their father in Pakistan. Even if the father had the possibility to move to Denmark, they did not want to live with him. They did not want contact with him.

B. Relevant domestic law and practice

24. The relevant provisions of the Aliens Act (*udlændingeloven*) relating to expulsion were recently set out in detail in *Salem v. Denmark*, no. 77036/11, §§ 49-52, 1 December 2016.

25. Article 38 of the Penal Code sets out that release on parole may take place at the expiry of two-third of the term of imprisonment, or in special circumstances, take place earlier, provided that the prisoner has served at least half of the sentence, and this constitutes a period of at least two months. If a sentence of life imprisonment has been imposed, leave on parole can only take place after the prisoner has served at least twelve years (Article 41).

COMPLAINT

26. The applicant complained that her expulsion from Denmark would be in breach of Article 8 of the Convention as she would be separated from her children and her new husband.

THE LAW

27. The applicant relied on Article 8, which sets out as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

28. The Court reaffirms that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, an interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned. The relevant criteria to be applied in determining whether an interference is necessary in a democratic society were set out in, *inter alia*, *Üner v. the Netherlands* [GC], no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII; *Maslov v. Austria* [GC], no. 1638/03, §§ 72-73, ECHR 2008; *Balogun v. the United Kingdom*, no. 60286/09, § 46, 10 April 2012; and *Samsonnikov v. Estonia*, no. 52178/10, § 86, 3 July 2012. They are the following:

> "- the nature and seriousness of the offence committed by the applicant;
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> - the length of the applicant's stay in the country from which he or she is to be expelled;
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> - the time elapsed since the offence was committed and the applicant's conduct during that period;
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> - the nationalities of the various persons concerned;
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> - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;
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> - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
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> - whether there are children of the marriage, and if so, their age; and
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> - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;
>
> - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
>
> - the solidity of social, cultural and family ties with the host country and with the country of destination."

29. For a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (see *Maslov*, cited above, § 75).

30. Lastly, the Court has also consistently held that the Contracting States have a certain margin of appreciation in assessing the need for an

interference, but it goes hand in hand with European supervision. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 113, ECHR 2002-II (extracts), and *Boultif v. Switzerland*, no. 54273/00, § 47, ECHR 2001-IX).

31. The Court considers it established that there was an interference with the applicant's right to respect for her private and family life within the meaning of Article 8, that the expulsion order was "in accordance with the law", and that it pursued the legitimate aim of preventing disorder and crime (see also, for example, *Salem v. Denmark*, cited above, § 61).

32. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts' legal point of departure was the relevant sections of the Aliens Act, the Penal Code, and notably the criteria to be applied in the proportionality assessment by virtue of Article 8 of the Convention and the Court's case-law.

33. The Court recognises that the City Court made a thorough assessment of the applicant's personal circumstances, carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law (see paragraph 18 above**)**. It specifically noted the children's age, which had significant importance when compared with the sentence imposed (see paragraphs 25 above and 34 below), and found that considerations for the applicant's children could not lead to another decision. It made an overall assessment, taking into account especially that the applicant had had all her upbringing, schooling and education in Denmark, that she had maintained a real attachment to Pakistan and Pakistani culture, that she had two children in Denmark, and that she had been convicted of very serious crimes. That balancing and proportionality test was approved by the High Court in its judgment of 4 September 2014 (see paragraph 20 above).

34. With regard to the applicant's two children, the Court observes that during the proceedings the Aliens Board stated that since the children's residence permits were dependent on the applicant living in Denmark, an expulsion order might have consequences for them (see paragraph 16 above). The Court also observes, though, that the expulsion order in dispute did not include the children, and that no decisions to the contrary have been taken while the applicant has been serving her sentence. On the contrary, the children have been officially placed with the applicant's sister and her husband and, in other separate proceedings, the Danish courts refused to grant F custody.

In addition, the children will be of age in respectively 2018 and 2022 whereas the applicant will have served her sentence in 2028. She may be released on parole (see paragraph 25 above). If this happens after two-third

of the term of imprisonment, thus in 2022, both children will be of age. If this happens after her having served at least half of the sentence, thus, in 2020, the oldest child will be of age and the youngest will be 16 years and 6 months old. It is recalled in this respect that relations between parents and adult children do not constitute family life for the purpose of Article 8 unless the applicant can demonstrate additional elements of dependence (see, for example, *A.S. v. Switzerland*, no. 39350/13, § 49, 30 June 2015 and *F.N. v. the United Kingdom* (dec.), no. 3202/09, § 36, 17 September 2013).

In any event, the Court is satisfied that, should the children's residence permit in Denmark at some stage be at stake due to the applicant's expulsion, the children may bring such a decision before the domestic courts for a judicial review, including its compliance with Article 8 of the Convention.

35. Having regard to the above, the Court has no reason to call into question the conclusions reached by the domestic courts on the basis of the balancing exercise which they carried out. Those conclusions were neither arbitrary nor manifestly unreasonable. The Court is thus satisfied that the interference with the applicant's private and family life was supported by relevant and sufficient reasons and that her expulsion would not be disproportionate given all the circumstances of the case. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

36. The applicant married a Danish citizen on 6 March 2015, thus after the expulsion order had become final on 13 January 2015, when leave to appeal to the Supreme Court was refused. The Court reiterates in this respect that if family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of family life within the host State would be precarious from the outset, it is likely to be only in the most exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8 (see, among others, *Rodrigues da Silva and Hoogkamer v. the Netherlands*, no. 50435/99, § 39, ECHR 2006-I). Moreover, the applicant did not, during the criminal proceedings leading to the expulsion order at issue, rely on having created a family life with the said husband-to-be, or raise, either in form or substance, a complaint that her expulsion would be in breach of Article 8 because she would be separated from him. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

37. The Court notes finally that the applicant has the possibility, at a later stage, to request the revocation of the expulsion order under section 50, subsection 1, of the Aliens Act due to material changes in her circumstances (see, for example, *Salem v. Denmark*, cited above, § 56).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 June 2017.

Stanley Naismith
Registrar

Robert Spano
President