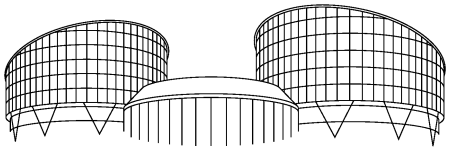

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SALEM v. DENMARK

(Application no. 77036/11)

JUDGMENT

STRASBOURG

1 December 2016

FINAL

24/04/2017

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

In the case of Salem v. Denmark,

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

Işıl Karakaş, *President,*
Julia Laffranque, ad hoc *judge,*
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 8 November 2016, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 77036/11) 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 stateless Palestinian from Lebanon, Mr Mahmoud Kalil Salem ("the applicant"), on 13 December 2011.

2. The applicant was represented by Mr Michael Juul Eriksen, a lawyer practising in Denmark. The Danish Government ("the Government") were represented by their former Agent, Mr Jonas Bering Liisberg, of the Ministry of Foreign Affairs, and their Co-agent Mrs Nina Holst-Christensen, of the Ministry of Justice.

3. The applicant alleged that it would be in breach of Article 8 of the Convention to expel him from Denmark.

4. On 2 October 2013 the complaint under Article 8 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 in Lebanon.

6. On 12 January 1993, at the age of 23, he entered Denmark and requested asylum, which was refused by a final decision of 31 October 1994.

7. On 17 November 1994 he applied for a residence permit based on his marriage to a Danish national of Lebanese origin. She had entered Denmark as a child in 1985. His request was granted temporarily, until August 1996. Subsequently it was granted permanently. In 2000 he was also granted asylum under section 7 of the Aliens Act (*Udlændingloven*).

8. The couple have eight children, all Danish nationals, who at the beginning of 2010 were 14, 13, 12, 10, 9, 7, 6 and 4 years old, respectively.

9. The applicant never went to school in Lebanon and he has never had a job, either in Lebanon or in Denmark. In Denmark he received social benefits until 16 November 2004, when he was granted an early retirement pension by the State due to his poor health: he suffered in particular from post-traumatic stress disorder. His wife was granted an early retirement pension due to back problems.

10. The applicant speaks and understands Danish but he cannot read or write the language. He also speaks and understands Arabic, but cannot read or write it. The same applies to his wife. They speak Arabic between themselves and with their children.

11. The applicant's wife has eighteen siblings living in Denmark.

12. The applicant has no other family in Denmark. His mother and sister live in Lebanon. He also has a sister in Syria.

13. The applicant has a criminal record which includes, *inter alia*, a conviction in 2000 for grave disturbance of public order and a suspended sentence of twenty days' imprisonment, a conviction in June 2005 sentencing him to twenty days for committing violence against a public servant in the performance of his office, and a conviction in February 2007 for the same kind of offence, for which he was sentenced to three months' imprisonment.

14. On 9 September 2009 the applicant was arrested and detained on remand charged with, *inter alia*, various counts of drug trafficking and dealing.

15. By a judgment of 10 June 2010 the City Court in Odense (*retten i Odense*) found him guilty, in part jointly with others, of 18 counts of offences including drug trafficking and drug dealing contrary to Article 191 of the Criminal Code with regard to a significant amount of hashish (more than 100 kg in total, in addition to an attempt to import a large supply from Holland) and an attempt to buy 200 g of cocaine, all committed in the period from 2006 until 9 September 2009. In addition he was convicted of coercion by violence and threats, blackmail, theft, handling stolen property, escaping while under arrest and possession of weapons.

16. When sentencing the applicant to five years' imprisonment the City Court took into account, in particular, the significant amount of hashish and cocaine; that the latter was a "hard drug"; the huge profit that the applicant had obtained from the resale; the long period concerned; the applicant's absolute leading role, notably in relation to the drug dealers under him,

whom he had subjected to violence and threats; and that as a member of a gang, he had delivered hashish for resale to various towns in the region. It was also noted that the applicant had previous convictions. Finally, the sentence was determined partially as a supplementary penalty because some of the offences had been committed before the applicant's previous conviction.

17. The amount of 404,500 Danish kroner (DKK), equivalent to approximately 54,000 euros (EUR), and gold jewellery found in the applicant's home during a search were confiscated as profit from the crimes. It was noted that the applicant and his wife, who both received State benefits and who, when calculating their expenses, apparently had a deficit in their household budget for 2007, 2008 and 2009 amounting to a total of at least DKK 2.5 million (approximately EUR 335,600) could not substantiate that they had obtained the goods legally. For example, the applicant's wife denied knowledge of a receipt dated 20 October 2008 for 255.6 g of gold jewellery bought in her name in Dubai for DKK 43,000.

18. Moreover, pursuant to section 24b of the Aliens Act, the City Court ordered the applicant's expulsion, suspended and with two years' probation. The City Court noted that the seriousness of the crimes spoke heavily for his expulsion without suspension, but having regard to his wife, who stated that she could not follow her husband to Lebanon, and his eight children in the country, the court did not find that there was sufficient basis for an unsuspended expulsion order.

19. On appeal, by a judgment of 30 March 2011 the conviction was upheld in part by the High Court of Eastern Denmark (*Østre Landsret*) and the sentence was increased to six years' imprisonment due notably to the nature and quantity of the drugs, the extent of the drug offences committed and the applicant's leading role. By three votes to three, with the more beneficial outcome in the applicant's favour, the expulsion order remained suspended.

20. The public prosecution appealed to the Supreme Court (*Højesteret*) against the judgment as regards the suspended expulsion order. New evidence was adduced in this respect, notably as regards the applicant's and his wife's ties to Denmark, Lebanon and Syria. They were both heard.

21. The applicant explained that he had been in Lebanon for thirty days during the summer of 2009. He had no contacts there but his mother and sister. His other sister lived with her husband and their five children in a refugee camp in Syria. He had stayed there for twenty or twenty-two days during the summer of 2007, for fourteen days during the summer of 2008 and for sixteen days in December 2008.

22. The applicant's wife and children had been to Syria two or three times in 2009 to visit the applicant's sister there. Since the applicant's arrest in September 2009, she and the children had spent one and a half months in

Syria in 2010, and two months in 2011. During the spring of 2011 she had gone alone to Syria for seven or ten days because the sister had fallen ill.

23. During the summer of 2009 the applicant began negotiations to buy an apartment in Syria because his wife and children went there quite often. He also wanted to buy a shop in the same building. Twice he transferred money via Western Union to his sister to buy the apartment, but it was given up when he was arrested.

24. The applicant's wife stated that she could not follow her husband if he were expelled to Lebanon or Syria. She and the children would not be able to stand living in either of those countries, and the children could not live outside Denmark.

25. Statements obtained from the Children's Department at the municipality and the children's schools and day-care institutions recounted that several of the eight children had serious problems, including of a psychological and educational nature. Four of the children received special education and several of the children needed extra support and supervision in their schools and institutions. Massive public support measures had been provided due to a significant need to teach them normal social behaviour. Finally, the placement of some of the sons in public care was under consideration.

26. According to a police report of 9 August 2011, based on interceptions carried out during the criminal proceedings against the applicant, it was established that in the period from 21 April 2009 to 10 September 2009, thus a period of less than 5 months, there had been nine hundred and sixty-seven calls to and from overseas numbers on the applicant's and his wife's home telephone. These concerned eighty different foreign telephone numbers, including thirty-eight in Lebanon and nine in Syria. To the numbers in Lebanon there had been in total four hundred and thirty-three calls, and to the numbers in Syria there had been three hundred and six calls. The applicant explained in this connection that the calls to Lebanon had mainly been to people from Denmark who had been on vacation in Lebanon and that the calls to Syria had been to his sister. The applicant's wife explained that she often talked to her sister-in-law in Syria. She also had family in Lebanon. Nevertheless she did have difficulties understanding why there had been calls to thirty-eight different numbers in Lebanon.

27. According to a police report of 18 August 2011, it appeared that in the period from 18 January 2006 to 15 June 2011 the applicant, his wife and their children had made various transfers of money to Syria and Lebanon. Sixteen of those concerned a total of DKK 71,471 and were made in the applicant's name. After the applicant's arrest in September 2009, his wife had transferred money to the applicant's sisters in Lebanon and Syria.

28. In its judgment of 12 October 2011, by a majority of six votes to one, the Supreme Court decided to expel the applicant with a life-long ban on his return.

29. It observed that the applicant had been convicted of drug trafficking offences under Article 191 of the Penal Code and attempt thereof on five counts for 59.5 kg of hashish for resale (count 53a); 23 kg for resale (count 56); not less than 15 kg for resale (count 58); entering a deal to buy 200 g of cocaine for resale, which failed (count 60); and an attempt to smuggle in a large amount of hashish from Holland, which failed (count 61). He had also been convicted of offences under the Stimulants Act for having possessed and transferred not less than 10.6 kg of hashish, which failed as to 6 kg (count 59); and for having possessed 1.632 kg of hashish for resale.

30. In addition he was convicted of coercion by use of violence or threats of violence (counts 54 and 57a); extortion (count 57); theft (count 64); six counts of handling stolen goods (counts 66, 67, 68, 69, 70 and 71); under the Act on Weapons (count 65); and under Article 124 of the Penal Code for having fled as a detainee (count 74).

31. The Supreme Court went on to analyse the case in the light of the Court's case-law, notably *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008 and took the following into account.

32. The applicant was a stateless Palestinian who had entered Denmark in 1993 at the age of 23. He had been sentenced to six years' imprisonment for comprehensive and organised resale of large amounts of hashish, for attempting to buy 200 g of cocaine, and for attempting to smuggle in hashish. Moreover, the drug trafficking had taken place over more than two and a half years and the applicant had had a leading and central role.

33. In addition he had committed coercion by use of violence or threat of violence against his drug dealers to maintain them as sellers and against clients who could not pay for the drugs. He claimed to have been among the top five members of the "Black Ghost" gang in Odense. He had also been convicted of extortion for having demanded so-called "protection-money" for "Black Ghost". Moreover, he had previously been convicted under Article 119 of the Penal Code for violence against a public servant and sentenced to three months' imprisonment.

34. The Supreme Court also emphasised that although the applicant had been in Denmark since 1993, he was not well integrated into Danish society and he had limited Danish language skills. He had no ties to Denmark via work or education. He had been receiving State early retirement pension since 2004.

35. The applicant's spouse was a Danish citizen. She was born a Palestinian national and had lived briefly in Lebanon, arriving in Denmark at the age of nine. The couple's children, who at the relevant time were

between five and sixteen years old, were also Danish citizens. They were born in Denmark and went to school and institutions in the country.

36. The applicant and his family spoke Arabic.

37. The Supreme Court further noted that the applicant still had ties to Lebanon, where his mother and sister lived and where the applicant had lived until he entered Denmark at the age of 23. He also had ties to Syria, where a sister and her family lived, and where the applicant had stayed for three weeks in 2007, for four weeks in 2008, and in 2009. Before his arrest, the applicant had set about buying an apartment in Syria for the family to use during stays there.

38. The applicant's spouse had family in Lebanon. Moreover, she had regular contact with the applicant's sister and family in Syria, and she had spent several vacations there, for instance in 2008 and 2009 as well as one and a half months in 2010 and two months in 2011. She had eighteen siblings in Denmark. She had stated that she would be unable to follow the applicant if he were deported from Denmark to Lebanon or Syria, and that the children would not manage outside Denmark.

39. The majority of six judges concluded: "[the applicant] has had a leading and central role in the commission of persistent, organised and aggravated drug crimes. Despite regard for his spouse and children in Denmark, we therefore find that he should be expelled with a permanent ban on his entry, see section 32, subsection 2 (V), of the Aliens Act."

40. The minority of one judge found "As found by the majority, [the applicant] is guilty of drug offences of particular gravity. However, I find that regard for his eight minor children makes expulsion conclusively inappropriate, see section 26, subsection 2, of the Aliens Act."

41. On 11 January 2012 the applicant was convicted for having possessed a mobile phone while in prison. He was sentenced to imprisonment for seven days.

42. It transpires from the Danish Civil Registration System that the applicant and his wife divorced with effect from 21 November 2012.

43. According to the Prison and Probation Service, the applicant had served two-thirds of his sentence on 22 September 2013.

44. In the meantime, on 13 August 2013, the National Police had submitted the applicant's case to the Danish Immigration Service (*Udlændingestyrelsen*) for a decision as to whether, upon return, the applicant would risk treatment as described in section 31 of the Aliens Act.

45. Having found, *inter alia*, that the applicant would not be at risk of being subjected to the death penalty, or to torture, or inhuman or degrading treatment or punishment upon return, on 11 July 2014 the Danish Immigration Service found that the applicant could be returned to Lebanon. That decision was upheld on appeal on 19 November 2014 by the Refugee Appeals Board (*Flygtningenævnet*).

46. The applicant's request that the Court apply Rule 39 of the Rules of Court was refused on 23 December 2014 by the Acting President of the Second Section.

47. It appears that the applicant was deported to Lebanon shortly thereafter.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. The relevant provisions of the Penal Code applicable at the time read as follows:

Section 191

"(1) Any person who, contrary to the legislation on controlled substances, delivers a controlled substance to multiple individuals or for significant value or in other particularly aggravating circumstances is sentenced to imprisonment for a term not exceeding ten years. If the substance delivered is a considerable quantity of a particularly dangerous or harmful substance, or if the delivery transaction has otherwise been of a particularly dangerous nature, the sentence may increase to imprisonment for a term not exceeding 16 years.

(2) The same penalty is imposed on any person who imports, exports, purchases, transfers, receives, produces, processes or possesses any such substance contrary to the legislation on controlled substances with intent to deliver the substance as referred to in subsection (I), produce light, heat, power or movement or for other economic purposes is comparable to tangible property."

49. The relevant provisions of the Aliens Act (*udlændingeloven)* applicable at the time and relating to the initial court decision on expulsion read as follows:

Section 49

"(1) When an alien is convicted of an offence, the court shall decide in its judgment, upon the public prosecutor's claim, whether the alien will be expelled pursuant to sections 22-24 or section 25c or be sentenced to suspended expulsion pursuant to section 24b. If the judgment stipulates expulsion, the judgment must state the period of the re-entry ban, see section 32(I) to (4).

(...)"

Section 22

"(1) An alien who has been lawfully resident in Denmark for more than the last 9 years and an alien issued with a residence permit under section 7 or section 8(1) or (2) who has been lawfully resident in Denmark for more than the last 8 years may be expelled if:

(...)

(iv) the alien is sentenced, pursuant to the Act on Controlled Substances or section 191 or 290 of the Penal Code, to imprisonment or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a

punishment of this nature, provided that the proceeds were obtained by violation of the Act on Controlled Substances or section 191 of the Penal Code;

(...)"

Section 24a

"(1) In deciding on expulsion by judgment, particularly under section 22 (1)(iv) to (vii), it must be emphasised whether expulsion is deemed particularly necessary because:

(i) of the gravity of the offence committed;

(ii) of the length of the custodial sentence imposed;

(iii) of the danger, damage, harm or infringement involved in the offence committed;

(iv) of prior criminal convictions."

Section 24b

"(1) An alien may be sentenced to suspended expulsion if the basis for expelling the alien under sections 22 to 24 is found not to be fully adequate because expulsion must be deemed to be particularly burdensome, see section 26(1). ..."

Section 26

"(1) In deciding on expulsion, regard must be had to the question of whether expulsion must be assumed to be particularly burdensome, in particular because of:

(i) the alien's ties with Danish society;

(ii) the alien's age, health and other personal circumstances;

(iii) the alien's ties with persons living in Denmark;

(iv) the consequences of the expulsion for the alien's close relatives living in Denmark, including the impact on family unity;

(v) the alien's slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and

(vi) the risk that, in cases other than those mentioned in section 7(1) and (2) and section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.

(2) An alien must be expelled under section 22(l)(iv) to (vii) and section 25 unless the circumstances mentioned in subsection (I) make it conclusively inappropriate."

Section 32

"(1) As a consequence of a court judgment, court order or decision expelling an alien, the alien's visa and residence permit will lapse, and the alien will not be allowed to re-enter Denmark and stay in this country without special permission (re-entry ban). A re-entry ban may be time-limited and is reckoned from the first day of the month following departure or return. The re-entry ban is valid from the time of the departure or return.

(2) A re-entry ban in connection with expulsion under sections 22 to 24 is imposed:-

(...)

(v) permanently if the alien is sentenced to imprisonment for more than 2 years or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration.

(...)"

50. The relevant provisions of the Aliens Act relating to the assessment of the risk of persecution upon return read as follows:

Section 49a

"(1) Prior to the return of an alien who has been issued with a residence permit under section 7 or section 8(1) or (2) and who has been expelled by judgment, see section 49(1), the Danish Immigration Service shall decide whether the alien can be returned, see section 31, unless the alien consents to the return. A decision to the effect that the alien cannot be returned, see section 31, must also include a decision on the issuance or refusal of a residence permit under section 7."

Section 53a

"(1) The Refugee Appeals Board (*Flygtningenævnet)* considers appeals against decisions made by the Danish Immigration Service regarding the following matters: (...)

(iv) return under sections 32b and 49a."

51. The relevant provisions of the Aliens Act relating to the courts' subsequent re-assessment of the expulsion read as follows:

Section 50

"(1) If expulsion under section 49(1) has not been enforced, an alien claiming that a material change in his circumstances has occurred, see section 26, may request that the public prosecutor lays before the court the question of revocation of the order for expulsion. Such request may be submitted not earlier than 6 months and must be submitted not later than 2 months before the date when enforcement of the expulsion can be expected. If the request is submitted at a later date, the court may decide to examine the case if it deems it excusable that the time-limit was exceeded.

(2) Section 59(2) of the Penal Code applies correspondingly. The request may be dismissed by the court if it is manifest that no material change has occurred in the alien's circumstances. If the request is not dismissed, counsel to defend the alien must be assigned on request. The court may order that the alien is to be deprived of his liberty if it is found necessary to ensure the alien's attendance during proceedings until any decision on expulsion can be enforced. Sections 34, 37(3) and (6) and 37a to 37e apply correspondingly.

(3) The court shall make its decision by court order, which is subject to interlocutory appeal under the rules of Part 85 of the Administration of Justice Act."

52. In respect of the procedure under section 50 of the Aliens Act, the following appears from Notice No. 5/2006 issued by the Director of Public Prosecutions on the Public Prosecutor's handling of cases against aliens involving expulsion on the basis of a criminal offence:

"(...)

2.8. Review of expulsion order under section 50 of the Aliens Act

2.8.1. General comments

Under section 50(1) of the Aliens Act, an alien who has been expelled by judgment, but whose expulsion has not been enforced, may request within specifically listed time-limits that the Public Prosecutor lay before the court the question of revocation of the order for expulsion. Revocation under section 50 of an order for expulsion presupposes that material changes in the alien's circumstances have occurred after the original order for expulsion, see section 26 of the Aliens Act. Only material changes in the alien's circumstances that were not foreseeable when the judgment was delivered may form the basis of a revocation of the expulsion.

The circumstances that the alien has managed, after the conviction, to keep in touch with spouse and children and that the family has become more integrated into Danish society during the same period, including becoming Danish nationals, thus cannot form the basis of revocation of the expulsion, see Danish Weekly Law Reports (UfR) 1995.66 Western High Court (V), 1997.1141 Supreme Court order (HKK) and Supreme Court order of 31 July 1997. For more recent case-law on the review under section 50, see Weekly Law Reports 2003.2500 Supreme Court order, 2004.1110 Supreme Court order, and 2005.3425 Supreme Court order."

When a request for a judicial review has been lodged under section 50 of the Aliens Act, the Public Prosecutor must obtain an opinion from the Danish Immigration Service (see section 57(1), second sentence, of the Aliens Act). The submission letter to the Danish Immigration Service must be accompanied by the following: the request for review under section 50, a police report on the circumstances mentioned in section 26 relative to the original proceedings, a police report with a fresh interview of the relevant alien and possibly others about the circumstances mentioned in section 26, and other relevant information of importance to the review. The access to review under section 50 was restricted by Act No. 473 of 1 July 1998 so that it is only possible to review an expulsion order of a judgment once. According to Report No. 1326/1997, the rationale of this restriction was to link the review time wise with the date of the alien's release for the purpose of expulsion so as to reduce the likelihood of material relevant changes in the alien's circumstances occurring during the period between the review and the enforcement of the expulsion. It is incumbent on the court, on its own initiative, to see to it that the conditions for review of an expulsion order of a judgment are satisfied, see Danish Weekly Law Reports 2000.2406, Supreme Court. The request may be dismissed by the court if it is manifest that no material change has occurred in the alien's circumstances.

THE LAW

53. The applicant complained that it was in breach of Article 8 of the Convention to expel him from Denmark as he was be separated from his eight children. The provision reads 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."

A. Admissibility

1. Submissions of the parties

54. The Government submitted that the applicant had not exhausted all available domestic remedies since he failed to request that the expulsion order be revoked under section 50, subsection 1, of the Aliens Act. He could thus have submitted that material changes in his circumstances had occurred after the original expulsion order and relied, for example, on the fact that time had passed since the Supreme Court judgment of 12 October 2011 and that he had divorced.

55. The applicant disagreed, and pointed out that he had exhausted domestic remedies by appealing against the original expulsion order to the High Court and the Supreme Court. In his opinion, no significant changes had occurred in his family relations since which could have justified bringing the case before the courts anew.

2. The Court's assessment

56. The Court notes that a similar issue was raised in *Amrollahi v. Denmark*, ((dec.), no. 56811/00, 28 June 2001). In that case, however, the applicant had failed to exhaust domestic remedies as regards the original expulsion order whereas he later obtained a full review under section 50 of the Aliens Act by claiming that a material change in his circumstances had occurred. At the relevant time, the Government submitted that the review under section 50 of the Aliens Act could not be considered an effective remedy within the meaning of Article 35 of the Convention. The Court "noted that pursuant to section 50 of the Aliens Act, by claiming that a material change had occurred in his circumstances the applicant was entitled to have the question of revocation of the order to deport him brought before the courts, which at the same time were empowered to rescind the expulsion decision entailed in the original judgment of 1 October 1997. Accordingly,

this remedy could provide redress for the applicant's complaint. Thus, the Court considers that the applicant has exhausted a remedy which is both adequate and effective." Accordingly, it declared the application partly admissible.

57. The question is therefore whether the applicant in the present case was obliged to exhaust the remedy under section 50 of the Aliens Act, when in his own view no material changes in his circumstances had occurred. The wording of section 50 and Notice No. 5/2006 issued by the Director of Public Prosecutions (see paragraphs 51 and 52 above), and general considerations for a proper administration of justice do not support such a finding.

58. On the other hand, if in the application to the Court, an applicant relies on circumstances which occurred subsequent to the deportation order, or it is obvious that a material change has occurred which was not foreseeable when the original expulsion order was delivered, the Court is ready to accept that the remedy under section 50 must be exhausted by the applicant before lodging an application before the Court.

59. In the case before it the Government have pointed to time having passed and the applicant having divorced. The former was foreseeable and there is no information about the impact of the latter on the applicant's family situation. In particular, the applicant has not submitted in support of his application before the Court that the divorce, which took place shortly after the deportation order, had any negative implications for his possibilities of maintaining contact with his children upon return to Lebanon (see, *a contrario*, *Udeh v. Switzerland*, no. 12020/09, § 52, 16 April 2013). In these circumstances, the Court is not convinced that a material change has occurred and that the applicant therefore should have availed himself of the remedy available to him under Section 50, subsection 1, of the Aliens Act.

60. The Court also notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

61. It is not in dispute between the parties 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 was "in accordance with the law", and that it pursued the legitimate aim of preventing disorder and crime. The Court sees no reason to find otherwise.

62. As to the question of whether the interference was "necessary in a democratic society", the Government emphasised that the Danish courts made a thorough assessment of the applicant's personal circumstances

following the general principles set out in, for example, *Üner v. the Netherlands* [GC], no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII and *Maslov v. Austria* [GC], cited above, §§ 72-73, ECHR 2008, and that they very carefully struck a fair balance between the opposing interests. Accordingly, in their view the complaint was manifestly ill-founded. In the alternative, they submitted that there had been no violation of Article 8 of the Convention.

63. The applicant disagreed. He submitted that he had had a central role in the family and that, if expelled, several of his children would feel it necessary to leave Denmark to join him, which would significantly worsen their situation and living conditions. Moreover, if the children remained in Denmark, it should carry decisive weight that they would lose daily contact with their father, regardless of the character of the crime committed. He also pointed out that both the City Court and the High Court found basis for expelling him only conditionally, due to his family situation.

64. The Court reaffirms at the outset 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, was set out, *inter alia*, in *Üner v. the Netherlands* [GC], cited above, §§ 54-55 and 57-58; *Maslov v. Austria* [GC], cited above, §§ 72-73; *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;
>
> - the length of the applicant's stay in the country from which he or she is to be expelled;
>
> - the time elapsed since the offence was committed and the applicant's conduct during that period;
>
> - the nationalities of the various persons concerned;
>
> - the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

- whether the spouse knew about the offence at the time when he or she entered into a family relationship;

- whether there are children of the marriage, and if so, their age; and

- 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."

65 The Supreme Court's 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.

66. The Supreme Court found that the applicant had a leading and central role in the commission of persistent, organised and aggravated drug crimes. More concretely, he was convicted of 18 criminal offences, including notably drug trafficking and drug dealing with regard to a significant amount of hashish (more than 100 kg in total, in addition to an attempt to import a large supply from Holland) and an attempt to buy 200 g of cocaine, all committed in the period from 2006 until 9 September 2009. The Court has held on previous occasions that it understands - in view of the devastating effects drugs have on people's lives - why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, among others, *Savasci v. Germany* (dec.), 45971/08, § 27, 19 March 2013; *Samsonnikov v. Estonia*, cited above, § 49; *A.W. Khan v. the United Kingdom*, no. 47486/06, § 40; 12 January 2010; *Sezen v. the Netherlands*, no. 50252/99, § 43, 31 January 2006; and *Amrollahi v. Denmark*, no. 56811/00, § 37, 11 July 2002).

67. The Supreme Court also took into account that the applicant was a member of a gang and had a leading role in relation to the drug dealers under him, whom he had subjected to violence and threats, and that he had previous convictions from 2000, 2005 and 2007.

68. The applicant was 23 years old when he entered Denmark in 1993 and he had stayed in Denmark for approximately 18 years when the deportation order became final by the Supreme Court judgment of 12 October 2011.

69. The applicant was arrested on 9 September 2009 and remained imprisoned until the deportation order was implemented at the end of 2014. During his imprisonment, on 11 January 2012 he was sentenced to a further seven days' imprisonment for having possessed a mobile phone in prison.

70. The applicant is a stateless Palestinian, born in Lebanon, where he stayed until the age of 23. The applicant's ex-wife is a Danish citizen. She was born a Palestinian national and lived briefly in Lebanon, until she

arrived in Denmark at the age of nine. The couple's children were Danish citizens and born in Denmark.

71. As to the applicant's ties with Denmark, the Supreme Court observed that he was not well integrated into Danish society and he had limited Danish language skills. He had no ties to Denmark via work or education. He had been receiving State early retirement pension since 2004. The applicant and his family spoke Arabic.

72. As to the applicant's connections with his country of origin, the Supreme Court noted that the applicant still had ties to Lebanon, where his mother and sister lived and where the applicant had lived until he entered Denmark. He also had ties to Syria, where a sister and her family lived, and where the applicant had stayed for three weeks in 2007, for four weeks in 2008, and in 2009. Before his arrest, the applicant had set about buying an apartment in Syria for the family to use during stays there. The applicant's now ex-spouse had family in Lebanon. Moreover, she had regular contact with the applicant's sister and family in Syria, and she had spent several vacations there, for instance in 2008 and 2009 as well as one and a half months in 2010 and two months in 2011. She had eighteen siblings in Denmark. At the relevant time, she had stated that she would not follow the applicant if he were deported from Denmark to Lebanon or Syria, and that the children would not live outside Denmark.

73. The applicant and his wife married in 1994, long before the offences at issue were committed. Thus, the criterion of whether the spouse knew about the offence at the time when he or she entered into a family relationship does not come into play in the present case. In respect of their marriage, it is noteworthy, though, that the spouses divorced with effect from 21 November 2012, less than two months after the deportation order became final. Moreover, in the domestic proceedings an amount of DKK 404,500 and gold jewellery were found in the applicant's home and confiscated as profit from the crimes, and it was observed that the applicant and his wife, who both received State benefits and who, when calculating their expenses, apparently had a deficit in their household budget for 2007, 2008 and 2009 amounting to a total of at least DKK 2.5 million, could not substantiate that they had obtained the goods legally. For example, the applicant's wife denied knowledge of a receipt dated 20 October 2008 for gold jewellery bought in her name in Dubai for DKK 43,000. Moreover, documents were presented before the Supreme Court showing that over a period of less than 5 months, up until the applicant was arrested, there had been nine hundred and sixty-seven calls to and from overseas numbers on the applicant's and his wife's home telephone. In addition, from January 2006 to June 2011 the applicant, his wife and their children had made various transfers of money to Syria and Lebanon.

74. The remaining criteria in the case to be examined are "whether there are children of the marriage, and if so, their age" and "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".

75. In its judgment, *Jeunesse v. the Netherlands* [GC], (no. 12738/10, § 109, 3 October 2014), which concerned family reunion, the Court reiterated "that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance ... Whilst alone they cannot be decisive, such interests certainly must be afforded significant weight. Accordingly, national decision-making bodies should, in principle, advert to and assess evidence in respect of the practicality, feasibility and proportionality of any removal of a non-national parent in order to give effective protection and sufficient weight to the best interests of the children directly affected by it."

76. Whilst this principle applies to all decisions concerning children, the Court notes that in the context of a removal of a non-national parent as a consequence of a criminal conviction, the decision first and foremost concerns the offender. Furthermore, as case-law has shown, in such cases the nature and seriousness of the offence committed or the offending history may outweigh the other criteria to take into account (see, for example, *Üner v. the Netherlands* [GC], cited above, §§ 62-64 and *Cömert v. Denmark* (dec.), 14474/03, 10 April 2006).

77. In the present case, the applicant's eight children were between 5 and 16 years old when the deportation order became final. Before the Supreme Court the applicant's then wife stated that she would be unable to follow the applicant if he were deported from Denmark, and that the children would not manage outside Denmark. During the domestic proceedings, statements were obtained from the Children's Department at the municipality and the children's schools and day-care institutions, which recounted that several of the eight children had serious problems, including of a psychological and educational nature (see paragraph 25 above). Four of the children received special education and several of the children needed extra support and supervision in their schools and institutions. Massive public support measures had been provided due to a significant need to teach them normal social behaviour. Finally, the placement of some of the sons in public care was under consideration.

78. In the Court's view it is doubtful whether, on the basis of those statements, or on the material before it, the applicant has substantiated that he had a central role in the family (see paragraph 63 above) and that his children's best interests were adversely affected by his deportation (see, for example, *A.W. Khan v. the United Kingdom*, cited above, § 40).

79. The Supreme Court did not expressly state whether it found that there were no insurmountable obstacles for the applicant's wife and children to follow him. It rather appears that the majority found that in any event the

separation of the applicant from his wife and children could not outweigh the other counterbalancing factors, notably that the applicant had a leading and central role in the commission of persistent, organised and aggravated drug crimes (see paragraph 39 above).

80. The Court notes in addition that it transpired from the statements mentioned above (see paragraphs 25 and 77) that several of the applicant's eight children had serious problems and therefore were being supported by various Danish authorities.

81. Finally, the Court notes that the applicant has not pointed to any obstacles for the children to visit him in Lebanon or for the family to maintain contact via the telephone or the internet.

82. In the light of the above, the Court recognises that the Supreme Court carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law, including the applicant's family situation. Moreover, having regard to the gravity of the drug crimes committed by the applicant, and considering the sovereignty of member States to control and regulate the residence of aliens on their territory, the Court finds that the interference was supported by relevant and sufficient reasons, and was proportionate in that a fair balance was struck between the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other hand.

83. Accordingly, 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 1 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Işıl Karakaş
Deputy Registrar	President