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

FIRST SECTION

CASE OF AMROLLAHI v. DENMARK

(Application no. 56811/00)

JUDGMENT

STRASBOURG

11 July 2002

FINAL

11/10/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Amrollahi v. Denmark,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 27 June 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 56811/00) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iranian national, Davood Amrollahi ("the applicant"), on 3 March 2000.

2. The applicant, who had been granted legal aid, was represented by Mr Jørgen Lange, a lawyer practising in Copenhagen. The Danish Government ("the Government") were represented by their Agent, Mr Hans Klingenberg, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 8 of the Convention that, as a result of his expulsion from Denmark, he will be separated from his wife and children, who cannot be expected to follow him to Iran.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. The Court decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to expel the applicant pending the Court's decision.

6. By a decision of 28 June 2001 the Court declared the application partly admissible.

7. After consulting the parties, the Court decided that no hearing on the merits was required (Rule 59 § 2, *in fine*). The Government filed additional

observations concerning exhaustion of national remedies. The applicant filed supplementary information on his present situation.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Personal circumstances

9. The applicant is an Iranian citizen, born in 1966, and lives in Viborg, Denmark.

10. In 1986 the applicant commenced his military training in Iran. It is not clear whether he participated directly in the war between Iran and Iraq. On 25 April 1987 he deserted and fled to Turkey, where he arrived on 5 May 1987. It appears that the applicant stayed for some time in Turkey and then in Greece.

11. He arrived in Denmark on 20 August 1989 and applied for asylum. Pursuant to the practice of the Danish immigration authorities at that time, all asylum-seekers from Iran who, due to desertion from the army, had left their home country before the armistice between Iran and Iraq in the summer of 1988 were granted a residence permit. Accordingly, on 12 October 1990 the applicant was granted a residence and work permit. On 25 August 1994 the residence permit became permanent.

12. In 1992 the applicant met a Danish woman, A, with whom he cohabited. A daughter was born out of the relationship on 16 October 1996. The applicant and A got married on 23 September 1997 and had another child, a son, born on 20 April 2001. A also has a daughter born in 1989 from a previous relationship, who lives with A and the applicant, and with whom the applicant has a very close relationship. All three children have been raised pursuant to Danish traditions.

13. It appears that the applicant's family broke off all relations with him in 1987 due to his desertion from the army.

14. In Denmark the applicant had been making a living as the owner of a pizzeria until the end of 1996. Since May 2000 he had been receiving welfare benefits and was at the same time assigned job training by the municipalitywith the possibility of continuing employment. A works at a retirement home.

B. Proceedings before the domestic authorities

15. On 17 December 1996 the applicant was arrested and detained on remand, charged with drug trafficking allegedly committed during 1996. By judgment of 1 October 1997 the City Court of Hobro (*retten i Hobro*) found him guilty, *inter alia*, of drug trafficking with regard to at least 450 grams of heroine contrary to Article 191 of the Criminal Code. He was sentenced to three years' imprisonment and, pursuant to sections 22 and 26 of the Aliens Act, was expelled from Denmark with a life-long ban on his return.

The applicant appealed against the judgment but withdrew the appeal in November 1997, whereupon the City Court judgment acquired legal force.

16. On 14 July 1998, pursuant to section 50 of the Aliens Act, the applicant instituted proceedings in the City Court of Hobro claiming that material changes in his circumstances had occurred on account of which he requested the court to review the expulsion order. He referred to his family situation and alleged, with reference to information obtained from Amnesty International, that it could not be ruled out that he would risk severe punishment in Iran for having deserted from the army and also perhaps receive a life sentence for the narcotics crimes committed in Denmark.

On 11 September 1998 the City Court rejected the applicant's request, as it did not find that the applicant's situation had changed to such an extent that there was any reason to revoke the expulsion order. This decision was upheld by the High Court of Western Denmark (*Vestre Landsret*) on 9 October 1998.

17. On 17 December 1998 the applicant had served two-thirds of his sentence and was due to be released on parole. Since he did not consent to the deportation and refused to leave the country voluntarily, he was detained as from that date in accordance with the Aliens Act with a view to being repatriated. Also in accordance with the Aliens Act, the applicant availed himself of the possibility, prior to the enforcement of a deportation, to bring before the immigration authorities (*Udlændingestyrelsen*) the question whether he could be returned to Iran, since, pursuant to the Aliens Act, an alien must not be returned to a country in which he or she will risk persecution on the grounds set out in Article 1 A of the Convention of 28 July 1951 concerning the Status of Refugees. The immigration authorities found, on 13 January 1999, that the applicant would not risk persecution in Iran of a kind which could constitute a basis for his remaining in Denmark. The applicant appealed against this decision to the

Refugee Board (*Flygtningenævnet*), which on 16 April 1999 requested the Ministry of Foreign Affairs to provide more information on the situation in Iran.

Having obtained information from several different authorities, on 4 January 2000 the Refugee Board confirmed the immigration authorities' decision.

18. Subsequently, relying on section 50 of the Aliens Act for the second time, and claiming that material changes in his circumstances had occurred, the applicant requested the City Court of Hobro to reconsider the expulsion decision. The court had the same material at its disposal as the Refugee Board and a number of statements from doctors concerning the applicant's state of health. In addition, A was heard stating *inter alia* that her daughter from a previous relationship, refuses to move to Iran. By judgment of 14 February 2000 the City Court revoked the decision to expel the applicant.

On 3 March 2000 the High Court of Western Denmark quashed the above decision and dismissed the applicant's request for reconsideration of the expulsion order since, pursuant to section 50 of the Aliens Act, an expelled alien is entitled to only one judicial review of the question of expulsion. The applicant's application for leave to appeal against this decision was granted by the Leave to Appeal Board *(Procesbevillingsnævnet)* on 5 May 2000.

The applicant was released from his detention on 11 May 2000.

On 7 September 2000 the Supreme Court upheld the High Court's decision of 3 March 2000 as it agreed that a request for a review of an expulsion order pursuant to section 50 of the Aliens Act could only be examined once by the courts.

II. RELEVANT DOMESTIC LAW

19. The Aliens Act formerly provided in so far as relevant:

Section 22

"An alien who has lawfully lived in Denmark for more than the last seven years, and an alien issued with a residence permit under sections 7or 8 may be expelled only if:

...

(iv) the alien is sentenced to imprisonment or other custodial penalty pursuant to the Euphoriants Act or Articles 191 or 191a of the Criminal Code."

Section 26:

1. "In deciding whether or not to expel the alien, regard must be had not only to the alien's ties with the Danish community, including the duration of his stay in Denmark,

but also to the question whether expulsion must be assumed to be particularly burdensome on him, in particular because of:

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

(ii) the alien's personal or family ties with Danish or foreign nationals living in Denmark;

(iii) the alien's other ties with Denmark, including whether the alien came to Denmark in his childhood or tender years and therefore spent some or all of his formative years in Denmark;

(iv) 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;

(v) the risk that 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; and

(vi) exposure to outrages, misuse or other harm etc. in the present country causing an alien holding a residence permit pursuant to section 9, subsection 1 (ii) to no longer cohabit at a shared residence with the person permanently resident in Denmark, or the alien's otherwise particularly weak position.

2. An alien may be expelled pursuant to section 22(iv) unless factors mentioned in subsection 1 above constitute a decisive argument against doing so."

Section 50 (1) provides:

"If expulsion under section 49 (1) has not been enforced, an alien claiming that a material change in his circumstances has occurred, cf. section 26, may demand that the public prosecutor bring before the court the question of revocation of the expulsion order. Such a petition may be submitted not less than six months and no later than two months before the date when enforcement of the expulsion can be expected. If a petition is submitted at a later date, the court may decide to examine the case if it deems it to be excusable that the time-limit has been exceeded."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

20. The Government requested that the Court reconsider its decision of 28 June 2001 to declare the current complaint admissible, as in the Government's view the applicant failed to exhaust national remedies, notably by failing to request leave from the Leave to Appeal Board to appeal to the Supreme Court against the High Court's decision of 9 October 1998. Noting the Court's finding that a review pursuant to

section 50 of the Aliens Act may be regarded as an adequate and effective remedy, the Government pointed out that such a review can only be carried out once (see the Supreme Court's decision of 7 September 2000). The applicant availed himself of this remedy when the City Court and the High Court rejected his request on 11 September 1998 and 9 October 1998. However, he failed to seek leave to appeal against the latter decision and has therefore not exhausted domestic remedies.

21. The Court points out that under Rule 55 of the Rules of Court any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the Government in its observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

22. The Government's objection was not raised, as it could have been, when the admissibility of the application was being considered by the Court. Thus, in the Court's view there is estoppel (see, *inter alia,Nikolova v. Bulgaria* [GC], no. 31195/96, § 44, ECHR 1999-II and *Rehbock v. Slovenia*, no. 29462/95, 28 November 2000).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that if deported he would lose contact with his wife, children and stepdaughter as they cannot be expected to follow him to Iran. He invoked Article 8 of the Convention, which states:

> "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. Parties' submissions

24. The applicant submitted that his wife, his children and the daughter from his wife's previous relationship cannot be expected to go to Iran. His wife is not a Muslim and the daughter from his wife's previous relationship refuses to follow him to Iran. Accordingly, an expulsion would result in the break up of his family life.

25. The Government submitted that even if the expulsion order interferes with the applicant's family life, it discloses no violation of Article 8 of the Convention. Given the seriousness of the offence which the applicant committed in Denmark the measure of expulsion was called for in the interest of public safety, for the prevention of disorder or crime, and for

the protection of the rights and freedoms of others, and was necessary in a democratic society within the meaning of Article 8 § 2 of the Convention. The Government drew attention to the fact that the applicant has very strong ties with his country of origin since he was already an adult when he left Iran and had his entire school education in Iran. He masters the local language, he served part of his compulsory military service and he has family there. In comparison, the applicant does not have strong ties with Denmark. At the time the expulsion order was made he had resided for only eight years in Denmark. Moreover, in the Government's view, there is no evidence to prove that the applicant's spouse, the children of the marriage, and the spouse's child of another relationship will not be able to accompany the applicant to Iran.

B. The Court's assessment

1. Whether there was an interference with the applicant's right under Article 8 of the Convention

26. The Court recalls that no right for an alien to enter or to reside in a particular country is as such guaranteed by the Convention. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see the Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, p. 18, § 16).

27. In the present case, the applicant, an Iranian citizen, is married to a Danish citizen with whom at the time when the expulsion order became final he had one child, also holding Danish citizenship. Accordingly, the expulsion order interfered with the applicant's right to respect for his family life within the meaning of Article 8 § 1 of the Convention.

28. Such interference will infringe the Convention if it does not meet the requirements of paragraph 2 of Article 8. It is therefore necessary to determine whether it was "in accordance with the law", motivated by one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society".

2. Whether the interference was "in accordance with the law"

29. The Court observes, and this was not in dispute between the parties, that the Danish authorities, when expelling the applicant relied on various provisions of the Aliens Act, especially sections 22 and 26.

30. The Court is satisfied that the interference was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

3. Whether the interference pursued a legitimate aim

31. When ordering the expulsion of the applicant, the Danish authorities, notably the City Court of Hobro in its judgment of 1 October 1997, considered that the applicant should be expelled on the basis of the serious offence which he had committed and in the interests of public order and security.

32. The Court is therefore satisfied that the measure was ordered "for the prevention of disorder (and) crime" within the meaning of Article 8 § 2 of the Convention.

4. Whether the interference was "necessary in a democratic society"

33. The Court recalls that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport aliens convicted of criminal offences. However, their decisions in this field must, insofar as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see the Dalia v. France judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 91, § 52 and the Mehemi v. France judgment of 26 September 1997, *Reports* 1997-VI, p. 1971, § 34).

34. Accordingly, the Court's task consists in ascertaining whether the decision to expel the applicant in the circumstances struck a fair balance between the relevant interests, namely the applicant's right to respect for his family life, on the one hand, and the prevention of disorder and crime, on the other.

35. In cases where the main obstacle to expulsion is the difficulties for the spouses to stay together and in particular for a spouse and/or children to live in the country of origin of the person to be expelled, the guiding principles in order to examine whether the measure was necessary in a democratic society have been established by the Court as follows (see *Boultif v. Switzerland*, no. 54273/00, § 48, to be published in ECHR-2001).

In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the length of the applicant's stay in the country from which he is going 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; and whether there are children in the

marriage, and if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse is likely to encounter in the country of origin, though the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself exclude an expulsion.

36. The Court has first considered the nature and seriousness of the offence committed. It notes that the applicant arrived in Denmark in 1989 and was subsequently convicted for drug trafficking committed during 1996. In its judgment of 1 October 1997 the City Court of Hobro found the applicant guilty, *inter alia*, of drug trafficking with regard to at least 450 grams of heroine contrary to Article 191 of the Criminal Code. The expulsion order was therefore based on a serious offence.

37. In view of the devastating effects drugs have on people's lives, the Court understands why the authorities show great firmness to those who actively contribute to the spread of this scourge (see, *inter alia*, the Dalia v. France judgment of 19 February 1998, *Reports* 1998-I, p. 92, §54). In the Court's view, even if the applicant had not previously been convicted, this does not detract from the seriousness and gravity of such a crime (see the Bouchelkia v. France judgment of 29 January 1997, *Reports*, 1997-I, p. 65, § 51 and *Nwosu v. Denmark* (dec.), no. 50359/99, 10 July 2001).

38. As to the applicant's connections with his country of origin, the Court recalls that he left Iran in 1987 when he was twenty-one years old. His mother tongue is Farsi and he had received all his schooling in Iran. Thus, undoubtedly he has ties with Iran. However, on the material before the Court, nothing suggests that the applicant has maintained strong links, if any, with Iran, notably since he lost contact with his family there in 1987.

39. As to the applicant's ties with Denmark, these are mainly connected with his wife, children and stepdaughter, who are all Danish citizens. The applicant and A got married in September 1997, one week before his conviction by the City Court. However, noting that their relationship commenced in 1992 and that they had their first child in October 1996 the Court has no doubt as to the "effectiveness" of the couple's family life and it considers that the applicant must be considered to have strong ties with Denmark.

40. The Court has next examined the possibility of the applicant, his wife and his children establishing family life elsewhere. The Court has considered, first, whether the applicant and his wife and their children could live together in Iran.

41. The applicant's wife, A, is a Danish national. She has never been to Iran, she does not know Farsi and she is not a Muslim. Besides being married to an Iranian man, she has no ties with the country. In these circumstances the Court accepts even if it is not impossible for the spouse and the applicant's children to live in Iran that it would, nevertheless, cause them obvious and serious difficulties. In addition, the Court recalls thatA's

daughter from a previous relationship, who has lived with A since her birth in 1989, refuses to move to Iran. Taking this fact into account as well, A cannot, in the Court's opinion, be expected to follow the applicant to Iran.

42. The question of establishing family life elsewhere must also be examined. In this connection the Court notes that during the period from April 1987 until August 1989 the applicant stayed in Turkey and Greece respectively. Nevertheless, the applicant was apparently residing there illegally and it has not been established that he or A has any attachment to either of those countries. In the Court's opinion there is therefore no indication that both spouses can obtain authorisation to reside lawfully in either of the said countries or in any other country but Iran.

43. Accordingly, as a consequence of the applicant's permanent exclusion from Denmark the family will be separated, since it is *de facto* impossible for them to continue their family life outside Denmark.

44. In the light of the above elements, the Court considers that the expulsion of the applicant to Iran would be disproportionate to the aims pursued. The implementation of the expulsion would accordingly be in breach of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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."

46. Following the decision of the Court declaring the application admissible, the Court requested the applicant to submit his claims for just satisfaction. Although the applicant had claimed just satisfaction in his original application, no claims were submitted in response to the Court's invitation.

47. The Court recalls that it is not required to examine such matters of its own motion and, consequently, finds that it is unnecessary to apply Article 41 in this case (the Huvig v. France judgment of 24 April 1990, Series A no. 176-B, p. 57, §§ 37-38).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's preliminary objection as to the exhaustion of domestic remedies;
2. *Holds* unanimously that the implementation of the decision to expel the applicant to Iran would be a violation of Article 8 of the Convention;

3. *Holds* that it is not required to apply Article 41 of the Convention in this case.

Done in English, and notified in writing on 11 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

ErikFRIBERGH Registrar	Christos ROZAKIS President