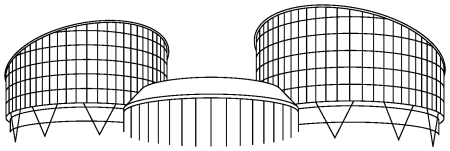

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF M.E. v. DENMARK

(Application no. 58363/10)

JUDGMENT

STRASBOURG

8 July 2014

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 M.E. v. Denmark,

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 17 June 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58363/10) 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, M.E. ("the applicant"), on 8 October 2010. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms Marianne Vølund, a lawyer practising in Copenhagen. The Danish Government ("the Government") were represented by their Agent, Mr Jonas Bering Liisberg, from the Ministry of Foreign Affairs, and their Co-Agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

3. The applicant alleged that his expulsion to Syria had been in breach of Articles 3 and 8 of the Convention.

4. On 6 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The proceedings before the national authorities

5. The applicant, M.E., is a stateless Palestinian. It appears that he was born in Syria in 1982. Currently he lives in Sweden.

6. The applicant entered Denmark with his stepmother and two siblings in February 1990, when he was seven years old. He was granted asylum in October 1993, the same year his father entered Denmark. The latter was granted a residence permit in 1994. The applicant's mother, two half-siblings and his paternal uncles live in Syria.

7. It appears that in 1997, when the applicant was fifteen years old, he returned to Syria for six months and worked as a painter. According to the Danish Central Office of Civil Registration, he stayed in Syria from 20 December 1998 to 22 February 1999, but that appears to be disputed by the applicant.

8. He returned to Syria for a month in November 2003.

9. In Denmark, the applicant married and divorced twice. From each marriage he had a child, a son born in August 2001 and a daughter born in March 2004.

10. The applicant has a criminal record. Among other things, in February 1998 he was convicted of assault, for which he was given a suspended sentence of twenty days' imprisonment. In August 1998 he was convicted of making threats against witnesses and possession of a weapon, for which he was given a suspended sentenced of five months' imprisonment. In 2002 he was sentenced to thirty days' imprisonment for theft and human trafficking.

11. On 17 December 2004 the applicant was arrested and charged with drugs offences, and by a judgment of 26 January 2006 the High Court of Eastern Denmark *(Østre Landsret*, henceforth "the High Court") convicted the applicant of twenty-six counts of drugs offences relating to 2.68 kg of heroin and cocaine, committed throughout 2004. The High Court considered that the applicant had a leading role and sentenced him to seven years' imprisonment. A profit of approximately 400,000 Danish kroner (DKK) (equal to approximately 53,700 euros (EUR)) was confiscated. In addition, he was expelled from Denmark with a ban on returning.

12. When issuing the expulsion order, the High Court had regard, *inter alia*, to an opinion which had been obtained from the Immigration Board (*Udlændingestyrelsen*). The latter had held an interview with the applicant about his personal situation and ties to Denmark and Syria, which included information about schooling, language skills, work, family etc. Before the Immigration Service the applicant stated that he speaks and understands Arabic. He does not read or write Arabic. He also stated that he speaks, reads and writes Danish well. However, an interpreter was used in connection with the interview regarding his personal circumstances which was held on 26 April 2005. The Immigration Board also considered the applicant's submission that he feared being returned to Syria because he had not sorted out the issue of compulsory military service and because he feared being punished by the Syrian authorities if they found out that he had been sentenced for drugs offences in Denmark. The Immigration Board

referred to a consultation response of 9 February 2004 from the Ministry of Foreign Affairs, which included an expert opinion of 6 January 2004 obtained by a named professor and former dean at the Faculty of Law of Damascus University, concerning the principle of *ne bis in idem* set out in Article 27 of the Syrian Penal Code. That provision stated that no Syrian or foreigner will be charged in Syria with an offence on Syrian territory, if he has been convicted and has served his sentence abroad or if the punishment has lapsed owing to the limitation legislation of the relevant country or if he has been pardoned. According to Article 28 of the Syrian Penal Code, a judgment delivered abroad did not prevent prosecution for an offence falling under Article 19, which applied to any Syrian or foreign national who breached the law or committed a serious offence outside Syrian territory harming national security or who forged Government stamps or forged or counterfeited Syrian or foreign bank notes or debt instruments, which were lawful means of payment or in general circulation in Syria.

13. The High Court did not find that an expulsion order would contravene Article 8 of the Convention. It stated as follows:

> "When balancing the considerations mentioned in section 26, subsection 1 of the Aliens Act and the serious drugs offences committed by the applicant in the form of organizing the dealing in hard drugs of which the applicant has been found guilty, the High Court takes into account on the one hand that the applicant must be deemed poorly integrated in Danish society: he never completed lower secondary school and has not at all participated in the labour market. [The applicant] has also previously been convicted of assault, making threats against witnesses, human trafficking and theft. The High Court further emphasizes that [the applicant] speaks Arabic and has retained certain ties with Syria, where his mother, two half-siblings and other family members are living, and [the applicant] has also stayed in Syria several times, including a period of six months in 1997 when he worked as a painter.
>
> Factors weighing against expulsion are that [the applicant] entered Denmark at the age of seven and has now lawfully resided in Denmark for about fifteen years and has thus had his formative years and schooling here. It must also be taken into account that [the applicant] is married to and cohabits with a Danish national, a former stateless Palestinian, with whom he has a daughter of just under two years. In addition, [the applicant] has been married by an Islamic ceremony to another woman of Lebanese origin living in Denmark, now a Danish national, with whom he has a son of four and a half years. [The applicant] has visiting rights to his son, but in reality has only sporadic contact with his son.
>
> In view of the gravity of the offences committed and the sentence imposed, the High Court finds on an overall assessment that none of the considerations mentioned in section 26, subsection 1, of the Aliens Act constitutes a decisive argument against expulsion, nor can expulsion of [the applicant] be considered contrary to the considerations of proportionality following from Article 8 of the Convention..."

14. On appeal, on 25 August 2006, the judgment was upheld by the Supreme Court (*Højesteret*), referring to the reasoning by the High Court.

15. In February 2009, by virtue of section 31 of the Aliens Act, and since the applicant was nearing the end of his sentence, the police requested

the relevant immigration authorities to determine whether, and in the affirmative, to which country the applicant could be returned. The applicant was interviewed and anew he objected to the expulsion. He maintained, *inter alia*, that although originally he had stated that he was born in Syria, where he was also registered, in reality he was born in Lebanon. The applicant did not wish to return to Syria, as he did not wish to perform his military service there. He also feared being returned to Syria due to his father's political past there. Moreover, he was in conflict with a Syrian family, because he had had an affair with their daughter in 1999 and she had subsequently falsely accused him of rape. Finally, he was afraid of being sentenced again in Syria for the drugs crime he had committed in Denmark. He added that in December 2007 he had found a new girlfriend, who visited him in prison every week. The applicant said that he would agree to being sent to Germany, where he had an aunt. He had nine siblings in Denmark and two in Sweden.

16. By decision of 10 August 2009, the Aliens Service (*Udlændingeservice*), the former Immigration Board, found that the applicant could be expelled to either Syria or Lebanon. It took into account that the applicant had maintained all along that he was born in Syria, that in the public register in Syria he was recorded as a Palestinian from Homs in Syria, and that he had relied on his fear of being called up for military service there. The fact that, during an interview on 25 May 2009, he had stated that he was born in Lebanon and produced a copy of a birth certificate, could not lead to another assessment. The Aliens Service did not find the applicant's story about the girl in Syria credible. It noted that he had not provided any information in this respect until the interview held on 25 May 2009, and found it unlikely that the girl's family would persecute him since allegedly he had ended the relationship in 1999. In addition it found that a related document produced by the applicant, allegedly issued by the Syrian authorities, was not authentic. It did not find credible either the applicant's allegation that he could not return to Syria because of his father's political activities, notably since the applicant could not give any details about those activities. Finally, the Aliens Service did not find that the fact that the applicant had not performed compulsory military service in Syria or that he had been convicted for a drugs offence in Denmark could bar his expulsion. With regard to the latter, it referred to the consultation response from the Ministry of Foreign Affairs of 4 February 2004 (see paragraph 12).

17. The applicant appealed against the decision to the Refugee Appeals Board *(Flygtningenævnet*), before which he was represented by a lawyer, heard in person and able to submit observations. By decision of 2 December 2009, the Refugee Appeals Board upheld the Aliens Service's decision, but found that the applicant could be expelled only to Syria, the

country where he had lived at least from 1983 to 1988 and which he had visited from December 1998 to February 1999 and again in 2003.

18. In the meantime, on 16 August 2009, in accordance with the provisions of section 50 of the Aliens Act (*Udlændingeloven*), the applicant had instituted proceedings before the District Court in Svendborg (*Retten i Svendborg*) claiming that there had been material changes in his circumstances, for which reason he requested the court to review the expulsion order. The applicant relied on Article 8 of the Convention and referred in particular to his two children in Denmark and to his new girlfriend, who had a child from a previous relationship, born in June 2008. Before the District Court the latter stated that she would follow the applicant to Syria.

19. On 29 March 2010 the District Court rejected the applicant's request as it did not find that his situation had changed to such an extent that there was any reason to revoke the expulsion order. Upon appeal, the applicant submitted that he had married his girlfriend according to Arabic tradition, that she was expecting their child, and that she no longer wanted to follow him to Syria.

20. On 26 May 2010 the High Court upheld the District Court's decision and stated:

> "For the reasons stated by the District Court and because the [applicant's] present girlfriend, with whom he is married by an Islamic ceremony, no longer wants to accompany him to Syria [even though] she has recently become pregnant and is expecting the [applicant's] child, the outcome cannot be different. In this regard the High Court has emphasised that the parties' relationship commenced after the Supreme Court's judgment of 25 August 2006, for which reason the parties are considered not to have such justified expectations of being able to live together in Denmark that the expulsion can be revoked."

21. Leave to appeal to the Supreme Court was refused on 19 August 2010.

22. The applicant was deported to Syria on 3 November 2010. According to a report procured by the Danish police, the applicant's father and uncle had travelled to Syria beforehand to meet the applicant upon arrival. Three police officers accompanied the applicant on the plane. They submitted the applicant's travel documents and a document translated into Arabic, stating that the applicant had fully served his sentence in Denmark, to the security staff on board and the immigration authorities at the airport in Damascus.

B. Subsequent events and proceedings before the Court

23. Before being deported, on 8 October 2010, the applicant lodged a complaint with the European Court of Human Rights and requested the application of an interim measure pursuant to Rule 39 of the Rules of Court.

Since he only relied on Article 8 of the Convention and invoked his separation from his two children, his new wife, her child from a previous marriage, and their future child, his request for a Rule 39 indication was not submitted to the President for a decision, of which fact he and his representative were informed in a letter from the Registry of 12 October 2010.

24. Subsequently, the applicant's representative informed the Court that upon arrival at Damascus airport, the applicant had allegedly been detained and placed in different prisons, interrogated, notably about his conviction in Denmark, whether he was addicted to drugs and whether there were persons involved in Syria. During this time, the applicant had regularly been subjected to torture.

25. On 4 December 2010, he was allegedly released in order to commence thirty months' military service in Homs, but he was exempted after one month because he suffered from heart problems.

26. Allegedly, he was also summoned to appear before the court in Homs to explain about his conviction in Denmark. It appears that that case has been discontinued.

27. The applicant's wife and their child went to Syria to visit him.

28. On 12 September 2011, the applicant's representative informed the Court that the applicant had fled Syria and entered Greece, where he was detained.

29. On 21 November 2011, the applicant's representative informed the Court that the applicant had entered Sweden and requested asylum there.

30. The applicant was granted asylum in Sweden some time during the summer of 2013.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. Section 191 of the Penal Code *(Straffeloven*) applicable at the time of the conviction read as follows:

Section 191

(1) Any person who, in contravention of the legislation on euphoriant drugs, supplies such drugs to a considerable number of persons, or in return for a large payment, or in any other particularly aggravating circumstances, shall be liable to imprisonment for any term not exceeding ten years. If the supply relates to a considerable quantity of a particularly dangerous or harmful drug, or if the supply of such drug has otherwise been of a particularly dangerous nature, the penalty may be increased to imprisonment for any term not exceeding 16 years.

(2) Similar punishment shall apply to any person who, in contravention of the legislation on euphoriant drugs, imports, exports, buys, distributes, receives, produces, manufactures or possesses such drugs with intention to supply them as mentioned in subsection (1).

32. The pertinent provisions of the Aliens Act (*Udlændingeloven)* applicable to the case at various relevant times read as follows:

Section 7

(1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention Relating to the Status of Refugees (28 July 1951).

(2) Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1).

(...)

Section 22

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

(...)

(iv) the alien is sentenced, pursuant to the Act on Euphoriant Drugs 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 Euphoriant Drugs or section 191 of the Penal Code;

(...)

Section 26

(1) In deciding on expulsion, regard must be had to the question 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 in relation to regard for 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) or 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(1)(iv) to (vii) and section 25 unless the circumstances mentioned in subsection (1) make it conclusively inappropriate.

Section 27

(1) The periods referred to in section 11(3), first sentence, section 11(4) and (5), section 17(1), third sentence, and sections 22, 23 and 25a are reckoned from the date of the alien's registration with the National Register Office or, if his application for a residence permit was submitted in Denmark, from the date of submission of that application or from the date when the conditions for the residence permit are satisfied if such date is after the date of application.

(2) Regarding aliens who have been issued with a residence permit under section 7(1) and (2), the periods mentioned in subsection (1) are reckoned from the date of the first residence permit.

(...)

(5) The time the alien has spent in custody prior to conviction or served in prison or been subject to other criminal sanction involving or allowing deprivation of liberty in respect of an offence that would have resulted in imprisonment is not included in the periods referred to in subsection (1).

Section 31

(1) An alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such country.

(2) An alien falling within section 7(1) may not be returned to a country where he will risk persecution on the grounds set out in Article 1 A of the Convention Relating to the Status of Refugees (28 July 1951), or where the alien will not be protected against being sent on to such country. This does not apply if the alien must reasonably be deemed a danger to national security or if, after final judgment in respect of a particularly dangerous crime, the alien must be deemed a danger to society, but cf. subsection (1).

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 given for:

(...)

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

(...)

Section 49

When an alien is convicted of an offence, the judgment shall determine, upon the prosecutor's claim, whether the alien will be expelled pursuant to sections 22-24. If

the judgment stipulates expulsion, the judgment must state the period of the re-entry ban, see section 32(1) to (3).

Section 49a

(1) Prior to the return of an alien who has been issued with a residence permit under section 7 or 8(1) or (2) and who has been expelled by judgment, see section 49(1), the Danish Immigration Service decides 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 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, can demand that the public prosecutor lays before the court the question of revocation of the order for expulsion. Petition to this end 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 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.

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

(3) The decision of the court is made by court order subject to interlocutory appeal under the provisions of Part 85 of the Administration of Justice Act.

Section 53a

(1) Appeals against a decision made by the Danish Immigration Service must be addressed to the Refugee Appeals Board, but see section 53b(l), if the subject matter of the decision is:

(...)

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

III. COUNCIL OF EUROPE RECOMMENDATION

33. Recommendation Rec(2000)15 of the Committee of Ministers of the Council of Europe to member States concerning the security of residence of long-term migrants states, *inter alia*:

"4. As regards the protection against expulsion

a. Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:

– the personal behaviour of the immigrant;

– the duration of residence;

– the consequences for both the immigrant and his or her family;

– existing links of the immigrant and his or her family to his or her country of origin.

b. In application of the principle of proportionality as stated in paragraph 4.a, member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled:

– after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension;

– after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years' imprisonment without suspension.

After twenty years of residence, a long-term immigrant should no longer be expellable.

c. Long-term immigrants born on the territory of the member state or admitted to the member state before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen.

Long-term immigrants who are minors may in principle not be expelled.

d. In any case, each member state should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

IV. RELEVANT INFORMATION ON SYRIA

34. At the time of deportation, namely on 3 November 2010, the Syrian uprising and the ongoing armed conflict in Syria between forces loyal to the Ba'ath Party government and those seeking to oust it, had not yet begun. It commenced around March 2011 with nationwide demonstrations as part of the wider protest movement known as the Arab Spring.

35. According to many reliable and objective sources, torture and other forms of ill-treatment have been used extensively and with impunity in police stations and security agencies' detention centres. The relevant part of the United States Department of State's 2010 Country Report on Human Rights Practices in Syria reads as follows:

"Under article 28 of the constitution, 'no one may be tortured physically or mentally or treated in a humiliating manner'. Nevertheless, security forces reportedly continued to use torture frequently. Local human rights organizations continued to cite numerous credible cases of security forces allegedly abusing and torturing prisoners and detainees and claimed that many instances of abuse went unreported. Individuals who suffered torture or beatings while detained refused to allow their names or details of their cases to be reported for fear of government reprisal.

Former prisoners, detainees, and reputable local human rights groups reported that methods of torture and abuse included electrical shocks; pulling out fingernails;

burning genitalia; forcing objects into the rectum; beatings while the victim is suspended from the ceiling and on the soles of the feet; alternately dousing victims with freezing water and beating them in extremely cold rooms; hyperextending the spine; bending the body into the frame of a wheel and whipping exposed body parts; using a backward-bending chair to asphyxiate the victim or fracture the spine; and stripping prisoners naked for public view. In previous years Amnesty International documented 38 types of torture and mistreatment used against detainees in the country. Amnesty International reported that torture was most likely to occur while detainees were held at one of the many detention centers operated by the various security services in the country, particularly while authorities attempted to extract a confession or information. Courts systematically used 'confessions' extracted under duress as evidence, and defendants' claims of torture were almost never investigated."

36. The relevant part of the concluding observations on Syria of the United Nations Committee against Torture reads as follows (document CAT/C/SYR/CO/1 of 25 May 2010, §§ 7 and 15):

"The Committee is deeply concerned about numerous, ongoing and consistent allegations concerning the routine use of torture by law enforcement and investigative officials, at their instigation or with their consent, in particular in detention facilities. It is also concerned at credible reports that such acts commonly occur before formal charges are laid, as well as during the pre-trial detention period, when the detainee is deprived of fundamental legal safeguards, in particular access to legal counsel."

"The Committee is also concerned at reports that the State has established secret detention facilities under the command of intelligence services, such as the Military Intelligence service, the Political Security Directorate, the Directorate General of Intelligence Services and the Directorate of Air Force Intelligence Services. The centres controlled by these services are not accessible by independent monitoring and inspection bodies, and are not subject to review by the authorities. The Committee is further concerned that detainees are deprived of fundamental legal safeguards, including an oversight mechanism in regard to their treatment and review procedures in respect to their detention. The Committee is also concerned at allegations that those detained in such facilities could be held for prolonged periods without any judicial review, in practice in *incommunicado* detention and subject to torture or cruel, inhuman or degrading treatment."

37. A report by Amnesty International published on 20 April 2010, "Briefing to the Committee Against Torture" (see above), stated, amongst other things:

...

2. Patterns of torture and other ill-treatment in Syria

Amnesty International has received information from a wide range of sources indicating that torture and other cruel, inhuman and degrading treatment or punishment (hereafter: ill-treatment) of prisoners remains common and widespread in Syria. Political suspects, in particular, are frequently subjected to prolonged *incommunicado* detention without charge or trial, secret detention or enforced disappearance, and a number have died in custody in suspicious circumstances, yet their deaths have not been independently investigated.

While torture and other ill-treatment of criminal suspects by the police is reported to be common, Amnesty International's information refers primarily to persons arrested or detained for expressing dissent or criticizing the government or its policies and who

are perceived by the authorities as opponents of the government. They include human rights defenders (HRDs), including leading human rights lawyers; advocates of political reform and democracy, members of the Kurdish minority campaigning against discrimination and advocating greater respect for the rights of the Kurdish minority; independent journalists and bloggers; suspected Islamists; and people suspected of involvement in terrorism. As well, some Syrian nationals who returned to the country after living abroad have also been arbitrarily detained on arrival or shortly after their return; to seek asylum abroad is perceived as a manifestation of opposition to the Syrian government, so returned asylum seekers face the likelihood of arrest.

In a number of cases reported to Amnesty International, family members of persons wanted for arrest by the authorities have been detained to induce them to surrender themselves.

Over the years, Amnesty International has documented a wide variety of methods used by Syrian security officials to torture and otherwise ill-treat both untried detainees and sentenced prisoners in their custody, many of which reportedly remain prevalent (see below).

Those at particular risk are political detainees who are generally held *incommunicado* at detention centres run by the main security and intelligence agencies (including the Military Intelligence Palestine Branch and centres run by Political and State Security) and who are subject to interrogation, often for long periods during which they have no access to legal counsel, contact with their families or independent inspection of their conditions. Compounding this, the Supreme State Security Court (SSSC) and military courts, as well as the criminal courts, continue to rely heavily on "confessions", and to admit as evidence and convict defendants on the basis of "confessions" which defendants allege they were forced to make under torture or other duress while they were held incommunicado. The SSSC and other courts routinely accept such questionable "confessions" as evidence of guilt and do so without undertaking adequate, or any, independent investigations into defendants' allegations of torture.

In addition, on a number of occasions sentenced political prisoners are reported to have been assaulted by prison guards. The most serious incident reported in recent years occurred at Sednaya Military Prison in July 2008 when a number of prisoners and others were reported to have been killed and others injured as a result of a major confrontation between prisoners and prison guards. Almost two years later, what precisely occurred at Sednaya Military Prison has yet to be fully clarified, and the identities of the prisoners who were killed and the circumstances of their deaths have yet to be disclosed by the Syrian authorities. No independent investigation has been carried out and a number of families of prisoners still do not know whether their relative is alive and still held at the prison or elsewhere, or whether he is dead.

38. Following a fact-finding mission to Syria, Lebanon and the Kurdistan Region of Iraq, the Austrian Red Cross and the Danish Immigration Service published a report on human rights issues concerning Kurds in Syria in May 2010. Its general remarks about punishment for draft evasion (p. 65) read as follows:

"A Western diplomatic source found it likely that if a person has been drafted for military service while residing abroad, he would be identified by the immigration authorities upon return to Syria as his name will then appear on a list of wanted persons. The immigration authorities will instruct him to report to the military usually within two weeks or up to one month. However, if he does not report to the military

within the specified time, he will be called to the Military Court and he will be charged with draft evasion. Any prison sentence issued in absentia by a Military Court will be commuted to an additional three months of service in the army. It was added that in reality nobody goes to prison for draft evasion.

Based on information from a Syrian lawyer, the Swedish embassy reported in 2004 that: 'Military courts decide penalty for matters related to the defence forces. The punishment for not showing up to service varies between 2-6 months. However, due to the issuance of amnesty decrees regularly and annually by the President it is not applied in practice. In addition, since these sentences are issued in absence, they are subject to objection and then cancellation. In this way, a person would be free within one day of arrest or surrender. Later the trial is repeated at the time when a person is free. The verdict would be either found innocent or the crime is covered by the amnesty law. ...'

According to Amnesty International, men who evade compulsory military service (21 months' duration) reportedly face different levels of penalty according to the circumstances of the case:

Persons who were abroad and failed to report when summoned for military service face arrest by the military police immediately upon return to Syria and sentence of two to three months of imprisonment (usually at Tadmur Prison);

Persons, who fail to report for military service while in Syria face arrest and a prison term of three months, then further imprisonment for six months if they fail to undertake military service after completing the first term of imprisonment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. On 2 December 2010, approximately two months after the original complaint to the Court and one month after the deportation, the applicant complained that his deportation had been in violation of Article 3 of the Convention in that he had been tortured upon return by the Syrian authorities, and that the Danish authorities should have been aware of that risk before deporting him.

40. Article 3 of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

41. The Government contested that argument.

A. Admissibility

42. The Court notes that this part of 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

43. The applicant submitted that the Danish authorities should have known that he was at risk of being subjected to treatment in breach of Article 3 upon return to Syria, because he had been convicted of drugs offences in Denmark. Such a conviction would by itself suffice for the Syrian authorities to detain him. The decision by the Danish Immigration Service that he was not at risk of double punishment had been based on the consultation response of 9 February 2004 from the Ministry of Foreign Affairs and the expert opinion obtained by a named professor at the Faculty of Law at Damascus University. However, the response had been general and did not take the special circumstances of the present case into consideration, such as the facts that the applicant was Palestinian and not Syrian, that it concerned Syrian law but not Syrian practice, and that it was obtained more than five years before the applicant was expelled *de facto*.

44. On that basis, and since extensive background information on Syria at the relevant time pointed to the risk of detainees being subjected to torture, there had been substantial grounds for believing that the applicant would be subjected to the same treatment upon arrival in Syria.

45. The Government maintained that at the relevant time there were no substantial grounds to believe that the applicant would be at a real risk of being subjected to torture or other inhuman or degrading treatment upon his arrival in Syria, whether in respect of the applicant's allegations as to the compulsory military service, the accusations of rape, his father's political activities, or the risk of double jeopardy.

46. Notably as to the issue of *ne bis in idem*, the Government pointed out that there is no case-law supporting the assertion that such punishment by itself is prohibited under Article 3 of the Convention (see, for example, *R.R. v. Italy* (dec.), 32642/96, 1 December 1997 and *H.P.L. v. Austria* (dec.), 24132/94, 5 July 1994). A return to face prosecution or enforcement of a sentence falls under Article 3 only if there are substantial grounds for believing that the implementation of such measures will entail a real risk of torture or inhuman or degrading treatment. In the present case it followed from the background information concerning Syrian criminal law that the risk of double jeopardy only existed in relation to offences committed outside Syrian territory when it was a serious crime harming national security, or the perpetrator forged Government stamps or forged or counterfeited Syrian or foreign bank notes or debt instruments which were lawful means of payment or in general circulation in Syria. Moreover, the background information available at the time did not give any specific basis for assuming that upon arrival in Syria, the applicant would be at risk of

arbitrary deprivation of liberty justifying asylum. They noted for example that the report of 20 April 2010 by Amnesty International, referred to by the applicant, did not discuss the situation of persons forcibly returned to Syria. It was a general status report to the United Nations Committee Against Torture on Syria's implementation of the United Nation's Convention Against Torture and dealt mainly with conditions in prisons, methods of torture and *refoulement* of third country nationals from Syria. Thus, the report could have given reason to suspect a risk of ill-treatment of prisoners, but it did not substantiate that the applicant would be imprisoned upon his arrival in Syria.

1. The Court's assessment

(a) General principles

47. The Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, § 67, Series A no. 94; *Boujlifa v. France*, judgment of 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII).

48. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008).

49. The mere possibility of ill-treatment on account of an unsettled situation in the requesting country does not in itself give rise to a breach of Article 3 (see, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 111, Series A no. 215). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I), except in the most extreme cases where the general situation of violence in the country of destination is of such intensity as to create a real risk that any removal to that country would necessarily violate Article 3 (see *N.A. v. the United Kingdom*, no. 25904/07, §§ 115-16, 17 July 2008; *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 217, 28 June 2011; and *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 153, ECHR 2013 (extracts)).

50. The standards of Article 3 imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it

is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no.45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, § 40, *Reports* 1997-III).

51. Finally, in cases concerning the expulsion of asylum seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see, *NA. v. the United Kingdom*, cited above, § 119).

(b) The general situation in Syria

52. It is not in dispute between the parties that at the relevant time the general situation in Syria was not so serious that the return of the applicant thereto would constitute, in itself, a violation of Article 3 of the Convention. The Court agrees, and recalls that at the time of deportation on 3 November 2010, the Syrian uprising and the ongoing armed conflict in Syria between forces loyal to the Ba'ath Party government and those seeking to oust it, had not yet begun. It commenced around March 2011 with nationwide demonstrations as part of the wider protest movement known as the Arab Spring.

(c) The applicant's case

53. The Government have not challenged the applicant's allegation that he was subjected to treatment contrary to Article 3 upon return to Syria, and the Court will therefore continue on the assumption that this was indeed the case. The crucial question therefore remains whether, at the time of the implementation of the deportation order, the Danish authorities were aware or should have been aware that the applicant would face a real and concrete risk of being subjected to such treatment upon return to Syria.

54. In this respect, the Court notes that the applicant did not rely on Article 3 of the Convention until 2 December 2010, that is approximately one month after his deportation, which could indicate that at the time of the implementation of the deportation order, the applicant was not of the

opinion either, that he was at real risk of being subjected to torture upon return.

55. When the applicant had been subjected to ill-treatment in Syria, he maintained, in particular, that the Danish authorities should have known that he would be at risk thereof, because he had been convicted of drugs offences in Denmark, which in his view by itself sufficed for the Syrian authorities to detain him upon return.

56. The Court recalls that in 2006, when the High Court ordered the applicant's expulsion, it was aware of the general response from the Ministry of Foreign Affairs, which included the expert opinion of 6 January 2004 by a named professor and former dean at the Faculty of Law of Damascus University, concerning the principle of *ne bis in idem*. The latter stated that in Syrian criminal law the risk of double jeopardy only existed in relation to offences committed outside Syrian territory when the offence was a serious crime harming national security, or the perpetrator forged Government stamps or forged or counterfeited Syrian or foreign bank notes or debt instruments which were lawful means of payment or in general circulation in Syria. His statement did not contain any details in case of double punishment, but it did enumerate various types of offences which could give rise to double punishment. Those did not include drugs offences.

57. Subsequently, by virtue of section 31 of the Aliens Act, the Aliens Service and, on appeal, the Refugee Appeals Board, determined whether, and in the affirmative, to which country the applicant could be returned (see paragraphs 15-17, above). By a final decision of 2 December 2009, the latter found that there were no impediments to the applicant's deportation to Syria.

58. The Court notes, in particular, that neither before the Danish authorities, nor before the Court, has the applicant pointed to any source of information, which could indicate that at the relevant time aliens having been convicted of drug offences and served their sentence abroad, would risk detention or double persecution upon return to Syria.

59. The Court is therefore not convinced that the Danish authorities, before implementing the expulsion order, should have been aware that the applicant would risk detention and double persecution upon return to Syria, and that such could or would raise an issue under Article 3 of the Convention. The Court finds reason to point out in this respect that the principle of *ne bis in idem* does not by itself raise an issue under Article 3, and that even Article 4 of Protocol No. 7 to the Convention is limited to double punishment within the same State (see, for example *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, ECHR 2009 and *Buzunis v. Greece* (dec.), 22997/93, 2 December 1994).

60. As rightly pointed out by the applicant, though, at the time of the deportation various international sources were reporting ill-treatment of detainees and prisoners (see paragraphs 35 to 37), in particular of political

prisoners, human rights defenders, members of the Kurdish minority, independent journalists and bloggers, suspected Islamists and people suspected of involvement in terrorism.

61. The applicant did not belong to a threatened minority, though, and he was never politically active or in conflict with the regime. Nor could he be perceived as an opponent to the Syrian government due to his stay abroad. In that connection, it may be recalled that the applicant left Syria when he was seven years old, and returned voluntarily twice, in 1997 and 2003.

62. In these circumstances, the Court is not convinced that the Danish authorities, before implementing the expulsion order, should have been aware that the applicant would risk being detained upon return to Syria following his conviction for drug-related offences in Denmark, and that his detention would fall under Article 3 of the Convention.

63. Before the national authorities, the applicant also maintained that he feared being persecuted upon return to Syria because he had not performed his military service there. Furthermore, he relied on his father's political past there. Moreover, he feared being persecuted by a Syrian family, because he had had an affair with their daughter in 1999 and she had subsequently falsely accused him of rape. Finally, in 2009 he alleged that in reality he was born in Lebanon. In their decisions of 10 August 2009 and 2 December 2009 the Aliens Service and the Refugee Appeals Board rejected these allegations. The Court observes that before these instances, the applicant was represented by a lawyer and he was given the opportunity to submit written observations and documents. His arguments were duly considered and the authorities' assessment in this regard must be considered adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources. In addition the Court notes that while in Denmark, the applicant was never summoned for military service in Syria. Thus, there were no indications that he would face arrest by the military police upon return on account of having failed to report (see paragraph 38). Moreover, as to his father's political past, the Court notes that apparently that did not prevent his father from returning to Syria in November 2010 in order to receive the applicant upon arrival (see paragraph 22).

64. Having regard to the above, the Court concludes that when the applicant was deported on 3 November 2010, there were no substantial grounds to believe that he was at risk of being subjected to treatment in breach of Article 3 upon return to Syria.

65. There has accordingly been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant also complained that his deportation to Syria had been in violation of Article 8 of the Convention, which reads:

> "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."

67. The Government contested that argument.

A. Admissibility

68. The Court notes that this part of 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

69. The applicant pointed out that he had lived in Denmark for more than twenty years and was twenty-eight years old when expelled. He may have had limited contact with his son from his first marriage, but that was due to disagreements with his ex-wife and because it was difficult to maintain his visiting rights in prison. Moreover, upon return to Syria, he lost contact with his daughter from the second marriage, since her mother (the applicant's second ex-wife) did not wish to bring her to Syria. Finally, the applicant's new wife had not wished to follow him to Syria and the applicant did not have any contact with her or his third child until he entered Sweden.

70. The Government attached crucial importance to the judgment by the Supreme Court of 25 August 2006 convicting the applicant of twenty-six counts of drugs-related offences involving 2.68 kg of heroin and cocaine, for which he was sentenced to seven years' imprisonment. Hence the offences were extremely serious, a fact which had led the Court in numerous cases to find an expulsion justified by weighty interests of public order (see, *inter alia*, *Lagergren v. Denmark* (dec.), no. 18668/03, 16 October 2006, and *Mccalla v the United Kingdom* (dec.), no. 30673/04, 31 May 2005).

71. Moreover, the applicant must be considered poorly integrated in Danish Society and he never participated in the labour market.

72. In the Government's view, the fact that the applicant had two children, who were six and eight years old at the time of his deportation, and with whom he had limited contact, could not render the expulsion contrary to Article 8. Likewise, as regards the applicant's new girlfriend, with whom the applicant was married in an Islamic ceremony and had a child, their relationship only started after the Supreme Court judgment of 25 August 2006, so none of them could have had a justified expectation of being able to continue family life in Denmark. Moreover, the fact that the girlfriend recanted her wish to join the applicant in Syria did not entail that they were effectively prohibited from establishing and maintaining a family life in Syria at the relevant time. Finally, the applicant had retained certain ties with Syria, where his mother, two half-siblings and other family were living. The applicant had several stays in Syria, for example for six months in 1997 during which he worked as a painter, and he speaks and understands Arabic.

1. The Court's assessment

(a) Whether there has been an interference with the applicant's right to respect for his private and family life

73. The applicant entered Denmark in 1990 when he was seven years old, and he was granted asylum there in February 1993. At the time of the deportation he had two children from previous marriages in Denmark and a wife with whom he was expecting a child. Accordingly, the deportation order interfered with his private and family life in Denmark

74. Such an 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".

(b) "In accordance with the law" and "legitimate aim"

75. The parties did not dispute that the applicant's expulsion was in accordance with the law, namely section 22 and section 26 of the Aliens Act, and that the applicant's expulsion served a legitimate aim for the purposes of the second paragraph of Article 8, namely "the prevention of disorder and crime". The Court sees no reason to hold otherwise.

(c) "Necessary in a democratic society"

(i) General principles

76. The Grand Chamber has summarised the relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, at paragraphs 57 to 58 of *Üner*, cited above:

"Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, the judgments in *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Boultif v. Switzerland*, cited above; see also *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Yılmaz v. Germany*, no.52853/99, 17 April 2003; *and Keles v. Germany*, 32231/02, 27 October 2005). In the case of *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria 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.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in the *Boultif* judgment:

- 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."

(ii) Application of the above principles in the instant case

77. The Court notes, on the one hand, that the applicant had a criminal record which included convictions for, *inter alia*, making threats against witnesses and human trafficking. Subsequently, by the High Court's judgment of January 2006 the applicant was convicted of twenty counts of drugs offences relating to 2.68 kg of heroin and cocaine, committed throughout 2004, when he was twenty-two years old. The High Court considered that the applicant had had a leading role and sentenced him to seven years' imprisonment. In addition, it confiscated his estimated profit, equal to approximately EUR 53,700. In these circumstances, there can be no doubt that the expulsion order was based on very serious offences.

78. The Court also notes that the applicant has ties with Syria, where his mother, two half-siblings and other family members are living, and where

he spent six months in 1997 working as a painter, perhaps one month at the beginning of 1999 (it appears that the applicant disputed this and at the same time alleged that during this period he had an affair with a girl who later falsely accused him of rape) and one month in 2003. The applicant speaks and understands Arabic.

79. The Court notes, on the other hand, that the applicant entered Denmark in 1990, when he was seven years old and had stayed there legally for about fifteen years when the expulsion order was issued in 2006. He speaks and understands Danish. Nevertheless, as the High Court stated in its judgment of 26 January 2006 (see paragraph 13) the applicant "must be deemed poorly integrated in Danish society: he never completed lower secondary school and has not at all participated in the labour market". Moreover, the applicant served his sentence until the deportation order was implemented on 3 November 2010.

80. The Court also takes into account that the applicant has a son born in August 2001 and a daughter born in March 2004. It cannot overlook the fact, though, that for various reasons the applicant had very limited contact with his son, and that he was detained nine months after the birth of his daughter, and thus also had limited contact with her.

81. Finally, the applicant met a new girlfriend in December 2007, while imprisoned, and married her according to Arabic tradition, it appears at the beginning of 2010. As emphasized by the High Court in its decision of 26 May 2010, the applicant's relationship with his third wife-to-be thus commenced after the expulsion order had become final by the Supreme Court's judgment of 25 August 2006. The applicant and his new wife therefore knew that their family life in Denmark would from the outset be precarious and they could not legitimately expect the applicant's deportation order to be revoked on the basis of a *fait accompli* due to their marriage or their having a child together (see, for example *Udeh v. Switzerland*, no. 12020/09, § 50, 16 April 2013 and *Onur v. the United Kingdom*, no. 27319/07, § 59, 17 February 2009. Nevertheless, even assuming that the applicant can rely on this relationship in the context of the present case, the Court notes that the applicant's wife-to-be claimed that she could and would follow the applicant to Syria (as opposed to, for example, *Amrollahi v. Denmark*, cited above, § 40-41), but that for reasons unknown to the Court, she changed her mind after the District Court had refused to revoke the applicant's expulsion order on 29 March 2010.

82. In the light of the above elements, the Court considers that it cannot be said that the Danish courts failed to strike a fair balance between the applicant's interests 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 3 of the Convention;

3. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 8 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President