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

SECOND SECTION

DECISION

Application no. 27801/19
Adam JOHANSEN
against Denmark

The European Court of Human Rights (Second Section), sitting on 1 February 2022 as a Chamber composed of:

Mr Carlo Ranzoni*, President*,
Jon Fridrik Kjølbro,
Egidijus Kūris,
Pauliine Koskelo,
Jovan Ilievski,
Branko Lubarda,
Diana Sârcu, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 May 2019,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the European Centre for Law and Justice (ECLJ), which was granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court);

Having deliberated, decides as follows:

INTRODUCTION

1. The application concerns the withdrawal of the applicant's Danish citizenship and an order to expel him following a criminal conviction for offences related to terrorism.

THE FACTS

2. The applicant, Mr Adam Johansen, has dual nationality, Tunisian and Danish. He was born in Denmark in 1990 and lives in Aarhus. He was

represented before the Court by Mr Tobias Stadarfeld Jensen, a lawyer practising in Aarhus.

3. The Danish Government ("the Government") were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

A. The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was born in Denmark to a Danish mother and a Tunisian father. He acquired Danish nationality at birth. The family always lived in Denmark, except for a period of 6 months when they lived in Tunisia, from December 2005 to June 2006. The applicant's father returned to Tunisia for about two years in 2009, returning there permanently in 2013/2014.

6. On 9 February 2009 the applicant married a Danish woman in an Islamic ceremony. They had a son in 2010. In 2015, the applicant changed his name, from X to his present name.

7. In spring 2016 the Danish Security and Intelligence Service received a list from Interpol with the names of persons believed to have been recruited by the terrorist organisation Islamic State and to have operated in Syria. The applicant's name was on the list.

8. On 7 April 2016 the applicant was arrested and provisionally charged on the basis of information that he had allegedly entered Syria and had accepted his recruitment by the terrorist organisation Islamic State in Iraq and the Levant (ISIL). The following day, by decision of a District Court, the applicant was remanded in custody.

9. On 16 October 2017, for the purposes of the criminal proceedings and at the request of the prosecution, the Ministry of Immigration and Integration (*Udlændinge- og Integrationsministeriet*) issued an opinion on the applicant's nationality status, stating, *inter alia*, as follows:

> " ... The Ministry of Immigration and Integration wants to point out that [the applicant] acquired Danish nationality (citizenship) at birth in pursuance of section 1(1) of Act No. 155 of 6 April 1978 on Danish Nationality (*indfødsretsloven*) as he was born on the Faroe Islands on ... 1990 to a Danish mother.
>
> ... It appears from the case file of the Ministry of Immigration and Integration relating to applications for Danish nationality and for residence permits for Denmark lodged by [S.A.], [the applicant's father], that, according to the information provided by him, he was born in ..., Tunisia, on ... 1966, and that he and his parents are all Tunisian nationals. It also appears from the Danish Civil Registration System (the CPR Register) that [S.A.] is registered as a Tunisian national.
>
> Moreover, the Ministry of Immigration and Integration has copies of [S.A.]'s three Tunisian nationality passports .... All passports have been issued by the Tunisian Embassy in the Hague.

Please note that the application for Danish nationality lodged by [S.A.] was refused on 3 February 2003.

Against this background, the Ministry of Immigration and Integration considers it a fact that [S.A.] was a Tunisian national in the period from [the applicant's] birth on ... 1990 until 3 July 2012.

According to Article 6(1) of the *Code de la Nationalité Tunisienne* (the Tunisian Nationality Act) of 28 February 1963 as amended, a person acquires Tunisian nationality at birth if the father is a Tunisian national. The Ministry of Immigration and Integration has two versions of this Code, both of which are appended to this letter.

It further appears from an email of 12 August 2016 from the Tunisian Embassy in the Hague to the Copenhagen Police that a child acquires Tunisian nationality if the father is Tunisian and that it is irrelevant whether the child has also acquired another nationality.

Against this background, the Ministry of Immigration and Integration considers it a fact that [the applicant] acquired Tunisian nationality at birth.

The Ministry of Immigration and Integration has tried in vain to contact the relevant Tunisian authorities to request information on [the applicant's nationality status in Tunisia, including whether [the applicant] has been deprived of or released from his Tunisian nationality.

However, the Ministry of Immigration and Integration observes that it follows from Article 33 of the *Code de la Nationalité Tunisienne* of 28 February 1963 as amended that a person having acquired Tunisian nationality can be deprived of his Tunisian nationality if he is convicted of an offence or crime against the internal and external national security, if he commits acts incompatible with and harmful to the interests of Tunisia on behalf of a foreign state, if he is convicted in Tunisia or abroad of an act that is a criminal offence under Tunisian law and is sentenced to imprisonment for a term of at least five years, or if he is convicted of draft evasion.

Under Article 34 of the same Code, a person's nationality will only lapse if the circumstances referred to in Article 33 occur within a 10-year period after Tunisian nationality has been awarded. The claim for lapse of nationality must be made within five years after the relevant act was committed.

As regards release, it appears from Article 39 of the *Code de la Nationalité Tunisienne* of 28 February 1963 as amended that a Tunisian national can request release from his Tunisian nationality. Such request must be registered with the Tunisian Ministry of Justice.

The Ministry of Immigration and Integration does not have any information indicating that [the applicant] has been deprived of or released from his Tunisian nationality.

Based on an overall assessment of the information available, the Ministry of Immigration and Integration finds that [the applicant] is a Danish and a Tunisian national and accordingly has dual nationality. ..."

10. The applicant maintained that before the criminal trial against him, he had not known that he also held Tunisian nationality.

11. On 20 October 2017, for the purposes of the court proceedings, the Danish Immigration Service (*Udlændingestyrelsen*) gathered information concerning the applicant's personal circumstances and drew up an assessment of whether the prosecution should refrain from submitting a request for

expulsion in view of Denmark's international obligations. It stated, *inter alia*, the following:

> " ... It has been stated for the purposes of this case that the prosecution anticipates that the person in question will be sentenced to six years' imprisonment.
>
> Furthermore, it has been stated that, in the assessment of the prosecution, a claim should be made for an expulsion order combined with a permanent re-entry ban in the criminal case if the relevant person is deprived of his Danish nationality in pursuance of section 8b(1) of the Danish Nationality Act.
>
> The defendant has been in pre-trial detention since 7 April 2016.
>
> Provided that [the applicant] is deprived of his Danish nationality, the prosecution has requested the Danish Immigration Service to make an assessment of the issue of expulsion. ...
>
> **Personal circumstances (section 26(2) of the Aliens Act)**
>
> As regards the issue of whether a decision to expel [the applicant] may be considered to be contrary to Denmark's international obligations, the Danish Immigration Service refers to the police report of 20 April 2017. The following appears from the report:
>
> [The applicant] has changed names from X [to his present name]
>
> [The applicant's] mother originates from the Faroe Islands and his father from Tunisia
>
> [The applicant] was born in Torshavn on the Faroe Islands
>
> [The applicant] moved to Denmark with his parents at the age of 3 and has lived in Denmark ever since, except for a period from 2 December 2005 to 20 June 2006 when he lived in Tunisia together with his parents
>
> [The applicant] was confronted with the information from the Tunisian Embassy in the Netherlands that he was a Tunisian national
>
> [The applicant] has never considered himself a Tunisian national, nor has he been aware that he was a Tunisian national
>
> [The applicant] did not know that he had a Tunisian passport at his home
>
> [The applicant's] social network in Tunisia comprises his father and a few unnamed family members with whom he does not have any contact
>
> [The applicant] and his live-in partner, who is a Danish resident, have married in a Muslim ceremony, and they have a minor son
>
> [The applicant's] social network in Denmark further comprises his mother, one sister, one half-sister as well as friends and remote relatives
>
> [The applicant's] social network on the Faroe Islands comprises his maternal grandmother and grandfather and remote relatives
>
> [The applicant] speaks Danish, Faroese and a little Arabic
>
> [The applicant] suffers from a distorted vertebrae, asthma and obesity
>
> In the assessment of the Danish Immigration Service, it will have no consequences on the right of residence of [the applicant's] live-in partner or child if Adam Johansen were to be expelled from Denmark. ...

Opinion on the issue of expulsion

Initially, it is observed that it follows from section 26(2) of the Aliens Act that an alien must be expelled under sections 22 to 24 unless expulsion would be contrary to Denmark's international obligations.

In view of the information given by the prosecution on the nature of the crime and on the expectation that he will be sentenced to imprisonment for a term of six years, read in conjunction with the considerations set out in section 26(2) of the Aliens Act, the Danish Immigration Service concurs in the prosecution's recommendation of expulsion. ..."

12. On 26 October 2017 the applicant was convicted by the District Court of Frederiksberg (*Retten på Frederiksberg*) (hereafter the "District Court"), sitting with a jury, of a violation of Articles 114c(3) and 114d(3) of the Penal Code and sentenced to four years' imprisonment. It was deemed established that he had entered Syria on 9 September 2013 and accepted recruitment and training in the commission of terrorist acts falling under Articles 114 and 114a of the Penal Code. He had received training until 19 February 2014, when he had returned to Denmark. Relying on an overall assessment, the District Court, by a majority of ten out of twelve judges, found no basis for depriving the applicant of his Danish nationality, which meant that there was no basis for his expulsion.

13. The prosecution appealed against the judgment to the High Court of Eastern Denmark (*Vestre Landsret*) (hereafter "the High Court"), submitting that the applicant should be deprived of his Danish citizenship and expelled.

14. On 20 April 2018 the High Court, by a majority of four out of six judges, upheld the District Court judgment.

15. On 28 June 2018 the Appeals Permission Board (*Procesbevillingsnævne*t) granted the prosecution permission to appeal against the decision relating to the deprivation of Danish nationality and expulsion to the Supreme Court (*Højestere*t).

16. By judgment of 19 November 2018, the Supreme Court unanimously (all five judges) deprived the applicant of his Danish nationality and expelled him from Denmark with a permanent ban on his return. In its reasoning, the Supreme Court specifically relied on Article 8 of the Convention and, among others, *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008. As to the concrete assessment in the present case, it stated:

"As already mentioned, [the applicant], who has both Danish and Tunisian nationality, was sentenced to imprisonment for a term of four years for violation of Article 114c(3) and Article 114d(3) of the Penal Code. Accordingly, section 8b(1) of the Danish Nationality Act authorises the deprivation of his Danish nationality, and if he is deprived of his Danish nationality, section 22(1)(vi) of the Aliens Act provides the authority to expel him from Denmark.

A decision to deprive him of his Danish nationality must be based on a proportionality test. If he is to be deprived of his Danish nationality, he must also be expelled, unless the expulsion would be contrary to Denmark's international obligations, see section 26(2) of the Aliens Act then in force, read with Article 8 of the European Convention

on Human Rights. The purpose of expelling a person is to prevent disorder or crime, and a proportionality test is therefore also required under Article 8 to determine whether the relevant person can be expelled.

[The applicant] has committed serious terrorism offences, and those offences have been sanctioned with imprisonment for a term of four years. According to the *travaux préparatoires* of section 8b(1) of the Danish Nationality Act, the general rule is that he must be deprived of his Danish nationality, and there are also very compelling reasons for expelling him from Denmark.

[The applicant] was born in 1990 on the Faroe Islands to a Faroese mother and a Tunisian father. When he was nearly three years old, he moved to Denmark with his parents, and he was raised and had his schooling in Denmark, except for a 6½-month stay in Tunisia from December 2005 to June 2006 when he was 15 years old. He has married a Danish woman in an Islamic wedding ceremony, and they have lived together since 2009. They have a son who was born in January 2010. His mother and siblings also live in Denmark. He speaks, reads and writes Danish. Even though [the applicant] has no higher education, and never had a regular attachment to the Danish labour market, and has lived on public benefits since 2011, his ties with Denmark are strong.

[The applicant] was in Tunisia on holiday for one to two weeks about eight times prior to his 15th birthday and, as already mentioned, he lived in the country for six months together with his parents in 2005-2006. His father moved back to Tunisia in 2013 or 2014, but according to [the applicant's] statement, he does not know whether his father still lives in the country. He last saw his father in May 2016 when his father visited him in prison. He speaks and reads Arabic, but he has stated that it is sometimes hard for him to understand the Tunisian dialect. He had his schooling at a Muslim school in Copenhagen. He has stated that Islam means everything to him and that he practises Islam in his everyday life. Even though [the applicant] was raised in Denmark, the Supreme Court finds in view of the information provided that it must be assumed that his ties with Tunisia and his familiarity with Tunisian culture and lifestyle are not insignificant.

Based on an overall balancing test, the Supreme Court finds that neither the deprivation of [the applicant's] Danish nationality nor expulsion combined with a permanent re-entry ban would be a disproportionate sanction.

In this respect, the Supreme Court particularly takes into account the seriousness and the nature of the crime committed. Furthermore, the Supreme Court finds that regard for [the applicant's] family and private life in Denmark does not make the deprivation of his Danish nationality and expulsion conclusively inappropriate. It is observed in this respect that [the applicant] left his family in Denmark at his own initiative in connection with the crime committed in order to take up residence in a war zone in Syria. It is also observed that it is assumed that his live-in partner, who converted to Islam at the age of 18, and their now 8-year-old son, who has attended an Islamic school for a short period and is now home-schooled by his mother, are not entirely unprepared for accompanying him to Tunisia. If they do not want to settle in Tunisia, it is possible for them to visit him there and to communicate with him by telephone and on the Internet.

Conclusion

The Supreme Court changes the judgment of the High Court, depriving [the applicant] of his Danish nationality under section 8b(1) of the Danish Nationality Act and expelling him from Denmark with a permanent re-entry ban in pursuance of section 22(1)(vi), read in conjunction with section 32(2)(v), of the Aliens Act then in force."

17. Since the summer of 2019, the Danish authorities have tried in vain to obtain travel documents in order to execute the expulsion order and deport the applicant to Tunisia, notably by contacting the Tunisian Embassies in Stockholm and Oslo (there is no Tunisian Embassy in Denmark). The Danish authorities, including the Return Agency (*Hjemrejsestyrelsen*) and the Ministry of Foreign Affairs, were informed that the applicant, under the name X, had a Tunisian passport issued on 22 January 1997. It was valid until 21 January 2002, and prolonged until 9 May 2007. At the end of 2020, apparently the Tunisian authorities also informed the Ministry of Foreign Affairs that they had not been able to identify X as a Tunisian national.

18. Meanwhile, on 16 March 2020, the applicant was released on completion of his sentence. On the same day he was remanded in custody pursuant to section 35(1)(i) of the Aliens Act, where he remained until 5 November 2020, when the High Court found that an extension could no longer be considered proportionate.

19. Subsequently, the applicant has been placed in mandatory accommodation at a pre-departure centre (*Udrejsecenter Kærshovedgård*) where he is required to remain overnight and report regularly.

20. On 13 April 2021, alleging that he did not have Tunisian citizenship, the applicant requested that the Special Court of Revision reopen his case. The Prosecution Service requested that the request be refused. They noted that it had been undisputed during the criminal proceedings that the applicant also had Tunisian nationality. He was born to a Tunisian father and therefore automatically acquired Tunisian nationality at birth (see paragraph 9 above) and he had had a Tunisian passport (see paragraph 17 above). Moreover, most recently, on 14 September 2021, the Tunisian authorities had informed the Danish authorities that "there could be no doubt that the applicant had Tunisian citizenship" and that the "necessary judicial basis existed to allow the Tunisian Ambassy to issue travel documents with a view to deporting the applicant to Tunisia". On 20 December 2021 the Special Court of Revision refused to reopen the case.

B. Relevant domestic law

21. Section 8b of the Act on Danish Nationality (*Indfødsretloven*, no. 422 of 7 June 2004) reads as follows:

> "(1) A person convicted of violation of one or more provisions of Parts 12 and 13 of the Penal Code may be deprived of his or her Danish nationality by court order unless this will make the person concerned stateless.
>
> (2) Where a person is punished abroad for an act which may, under subsection (1) hereof, lead to deprivation of Danish nationality, such person can be deprived of his or her nationality pursuant to article 11 of the Penal Code."

22. According to the preparatory works to section 8b of the Act on Danish Nationality, a decision to deprive citizenship requires a proportionality test to be conducted, weighing the seriousness of the crime against the impact on the person of his or her loss of Danish citizenship. Such a determination involves

evaluating the person's ties to Denmark as compared with his or her ties to another country of which he or she is a citizen, including family ties in both countries. Moreover, a person who has been convicted of a serious crime punishable by more than two years' imprisonment, should, as a starting point, be stripped of Danish citizenship. However, even very serious crimes should not result in loss of citizenship if the person has no connection or very little connection to the other country.

23. The relevant sections of the Aliens Act provide:

Section 26

"(1) In deciding on expulsion under sections 25a to 25c, 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 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 sections 22 to 24 and 25 unless this would be contrary to Denmark's international obligations."

Section 32

"...

(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 two years or other criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration"

24. Section 32 was amended by Act no. 469 of 14 May 2018, which came into force on 16 May 2018. Briefly explained, the amendment entailed that the re-entry ban was to be imposed permanently, if the alien was sentenced to imprisonment for more than one year and six months (section 32(4)(vii)), but it gave the courts discretion to reduce the length of re-entry bans, whether limited in time or permanent, if the length would otherwise certainly be in breach of Denmark's international obligations, including Article 8 of the Convention. The Act applied to crimes committed after its entry into force (and thus not to the present case).

C. Council of Europe documents

25. The principal Council of Europe document concerning nationality is the European Convention on Nationality (ETS No. 166), which was adopted on 6 November 1997 and came into force on 1 March 2000. It has been ratified by twenty-one member States of the Council of Europe, including Denmark (on 24 July 2002, entering into force on 1 November 2002). The relevant provisions read as follows:

Article 1 – Object of the Convention

"This Convention establishes principles and rules relating to the nationality of natural persons and rules regulating military obligations in cases of multiple nationality, to which the internal law of States Parties shall conform."

Article 4 – Principles

"The rules on nationality of each State Party shall be based on the following principles:

a everyone has the right to a nationality;

b statelessness shall be avoided;

c no one shall be arbitrarily deprived of his or her nationality;

d neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse."

Article 5 – Non-discrimination

"1 The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

2 Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently."

Article 7 – Loss of nationality ex lege or at the initiative of a State Party

1. A State Party may not provide in its internal law for the loss of its nationality ex lege or at the initiative of the State Party except in the following cases:

...

d) conduct seriously prejudicial to the vital interests of the State Party;

...

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

26. The relevant part of the Explanatory report to the European Convention on Nationality reads as follows:

> "58. Article 7 consists of an exhaustive list of cases where nationality may be lost automatically by operation of law (*ex lege*) or at the initiative of a State Party. In these limited cases, and subject to certain conditions, a State Party may withdraw its nationality. The provision is formulated in a negative way in order to emphasise that the automatic loss of nationality or a loss of nationality at the initiative of a State Party cannot take place unless it concerns one of the cases provided for under this article. However, a State Party may allow persons to retain its nationality even in such cases. Article 7 does not refer to cases in which there have been administrative errors which are not considered in the country in question to constitute cases of loss of nationality.
>
> ...
>
> Sub-paragraph d
>
> 67. The wording "conduct seriously prejudicial to the vital interests of the State Party" is drawn from Article 8, paragraph 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.
>
> 68. Furthermore, the 1961 Convention stipulates that conduct seriously prejudicial to the vital interests of the State can constitute a ground for deprivation of nationality only if it is an existing ground for deprivation in the internal law of the State concerned, which, at the time of signature, ratification or accession, the State specifies it will retain."

27. In a report of 14 January 2003 on Conditions for the Acquisition and Loss of Nationality, the Committee of Experts on Nationality to the Council of Europe (CJ-NA (2002) 1) set out, *inter alia*, in paragraph 48:

> "...The Convention sets out in some detail the circumstances in which revocation should be allowed. These are: acquisition of nationality by means of fraudulent conduct, false information or concealment of any relevant fact (Article 7.1.b); voluntary service in a foreign military force (Article 7.1.c); conduct seriously prejudicial to the vital interests of the State (Article 7.1.d); where it is established during the minority of a child that the preconditions which led to the ex lege acquisition of nationality are no longer fulfilled (Article 7.1.f); and where upon adoption a child acquires a foreign nationality of one or both of the adoptive parents (Article 7.1.g). But many States have in their legislation other reasons for the deprivation of citizenship. These may include such matters as conviction for a serious criminal offence; public service without permission in a foreign State, especially if by doing so the individual acquires the foreign nationality; working for a foreign intelligence or security service or military organisation; performance of acts contrary to the interests of the State; where an individual fails his or her duty of fidelity and loyalty; and attempting to forcefully change the constitutional state system. These matters were rejected by the CJ-NA in drafting the Convention and it is unlikely that extra circumstances would be accepted for adding to the Convention."

28. The preamble to the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005, included the following:

> "...Recalling that acts of terrorism have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation; ..."

COMPLAINT

29. The applicant complained that the order to withdraw his Danish citizenship and to expel him from Denmark was in violation of Article 8 of the Convention.

THE LAW

30. The applicant relied on Article 8 of the Convention, which reads as follows:

> "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. The parties' submissions

31. The Government submitted that the application should be declared inadmissible as being manifestly ill-founded.

32. They maintained that the Supreme Court had made a careful assessment of all the relevant elements, including the fact that the applicant had acquired Danish nationality at birth in Denmark, and specifically taken Article 8 of the Convention and the pertinent case-law into account.

33. The Government pointed out that before the domestic courts the applicant had not disputed his Tunisian nationality: he had only stated before the District Court that he had not been aware before the criminal proceedings against him that he also had Tunisian nationality.

34. The deprivation of the applicant's Danish citizenship was the consequence of his conviction for a very serious terrorist offence, which by its very nature had been highly detrimental to the country's vital interests. The Government disagreed with the applicant's view that Article 7 of the European Convention on Nationality did not authorise deprivation of nationality for an act of terrorism. They referred, *inter alia*, to the preamble to the Council of Europe Convention on Prevention of Terrorism (see paragraph 25 above) and pointed out that terrorism constituted a threat to democracy, the enjoyment of human rights and the social and economic

development. It was common in the legislation of European States that acts of terrorism were perceived to be against the vital interest of the State and could lead to deprivation of nationality.

35. In the present case, the decision had been in accordance with the law and the applicant had been afforded the relevant procedural safeguards. The authorities had acted diligently and swiftly. The decision had been necessary in a democratic society and did not amount to a disproportionate interference with the applicant's private and family life.

36. In respect of both the decision to deprive the applicant of his Danish nationality and the expulsion order, the Supreme Court had thoroughly assessed the applicant's personal circumstances in accordance with the principles set out by the Court, and had been very careful to strike a fair balance between the competing interests.

37. The applicant maintained that both the decision to strip him of his Danish citizenship and the expulsion order from Denmark were in violation of Article 8.

38. As to the deprivation of his Danish citizenship, he submitted that the Tunisian authorities had at no point during the criminal proceedings, or after his release, confirmed that he actually held Tunisian citizenship. On the contrary, they had not been able to identify the applicant as a Tunisian national (see paragraph 17 above). Depriving him of his Danish citizenship would thus make him stateless.

39. He also maintained that Article 7 of the European Convention on Nationality set out an exhaustive list of reasons for deprivation of nationality, and that the notion of "vital interests of the State" did not include criminal offences of a "general nature, however serious they might be".

40. He further pointed out that this was the first time the Court was called upon to assess the deprivation of the citizenship of someone who, like him, had acquired it at birth. In his opinion, the present case should thus be distinguished from previous case-law on deprivation of nationality, including *Ghoumid v. France*, nos. 52273/16 and 4 others, 25 June 2020.

41. With regard to the expulsion order against him, the applicant considered that the Supreme Court had failed to take into account that he had had several jobs until 2011, that he had had no criminal record before the crime at issue, that he had studied for more than two years, from the time of his return from Syria in February 2014 until he was arrested in June 2016, and that he had showed good behaviour during the ensuing period until 19 November 2018, when the Supreme Court passed judgment, and subsequently to his release. He also pointed out that although his crime had been serious, he had not been convicted of planning or performing any terrorist attack or actions.

42. The European Centre for Law and Justice (ECLJ), adhering to the arguments put forward by the Government, found that the decision to revoke the applicant's citizenship and to expel him were compliant with Article 8 of

the Convention. It added, *inter alia*, with reference to Article 5 of the European Convention on Nationality, that persons born with a specific nationality should be treated on an equal footing with persons who acquired such nationality later in life. Accordingly, the applicant should not enjoy preferential treatment because he was born a Danish citizen.

43. The ECLJ also invited the Court to add the following two criteria to its assessment under Article 8 of the Convention: 1) the stability of society in the host country, in particular its capacity to incorporate the applicant into its social, economic and cultural life, and 2) the degree of difficulty which the host country is likely to encounter in removing the applicant from the environment which had led him to commit the crimes in question.

B. The Court's assessment

1. Deprivation of citizenship

44. The Court reiterates that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see, for example, *Ramadan v. Malta*, no. 76136/12, § 62, 21 June 2016, and *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011).

45. The Court has considered that the same principles must apply to the revocation of citizenship that has already been obtained. Moreover, it has confirmed that nationality is an element of a person's identity (see, *inter alia*, *Usmanov v. Russia*, no. 43936/18, § 53, 22 December 2020 and *Ghoumid and Others v. France,* no. 52273/16 and 4 others, §§ 43-44, 25 June 2020). In determining whether a revocation of citizenship is in breach of Article 8, the Court addresses two separate issues: whether the revocation was arbitrary, and what the consequences of revocation were for the applicant (see, for example, *Ahmadov v. Azerbaijan*, no. 32538/10, § 43, 30 January 2020; *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 108, 12 June 2018; *Mansour Said Abdul Salam Mubarak v. Denmark* (dec.), no. 74411/16, § 62, 22 January 2019; and *K2 v. the United Kingdom* (dec.), no. 42387/13, § 49, 7 February 2017).

(a) Arbitrariness

46. In determining arbitrariness, the Court should examine whether the impugned measure was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the

authorities acted diligently and swiftly (see, among others, *Usmanov v. Russia,* cited above, § 54).

47. The decision to deprive the applicant of his Danish citizenship was based on section 8b of the Act on Danish Nationality (see paragraph 20 above). The Court notes that the applicant has called into question whether this provision is compatible with Article 7 of the European Convention on Nationality (see paragraph 39 above). However, the Court does not consider it necessary to examine this question. The Court recalls in this context that it is competent to apply only the European Convention on Human Rights, and that it is not its task to interpret or review compliance with other international conventions as such (see, *inter alia*, *Somogyi v. Italy*, no. 67972/01, § 62, ECHR 2004-IV; *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, § 113, 16 February 2021; and *K.I. v. France*, no. 5560/19, § 123, 15 April 2021). Therefore, Court is satisfied by the clarity of the domestic law and can therefore conclude that the decision was "in accordance with the law" (see also, *Mansour Said Abdul Salam Mubarak v. Denmark* (dec.), cited above, § 64).

48. The applicant had an opportunity to contest the prosecuting authorities' request to strip him of his Danish citizenship before the domestic courts at three levels of jurisdiction, and he has not alleged any procedural shortcomings in this regard. Accordingly, the applicant was afforded the procedural safeguards required by Article 8 of the Convention (see, *a contrario, Usmanov*, cited above § 66).

49. The Court is also satisfied that the authorities acted diligently and swiftly. It observes that in spring 2016 the Danish Security and Intelligence Service received information from Interpol, leading to the applicant's arrest on 7 April 2016. On 26 October 2017 the applicant was convicted by the District Court. The judgment was upheld by the High Court on 20 April 2018. On 19 November 2018, the Supreme Court overturned the decision by the District Court and the High Court.

50. Finally, the revocation of the applicant's Danish citizenship was the consequence of his conviction of a very serious terrorist crime under articles 114c(3) and 114d(3) of the Penal Code. The deprivation of his Danish nationality complained of was thus to a large extent a result of the applicant's own choices and actions (see, *inter alia*, *Ramadan v. Malta*, cited above, § 89). Moreover, as the Court has underlined on numerous occasions, terrorist violence, in itself, constitutes a grave threat to human rights. Accordingly, the Court considers it legitimate for Contracting States to take a firm stand against those who contribute to terrorist acts, which it cannot condone in any circumstances (see, for example, *Ghoumid,* cited above, § 50, and the references mentioned therein).

51. The Court therefore concludes that the decision of the Supreme Court to deprive the applicant of his Danish citizenship was not arbitrary.

(b) Consequences of the revocation

52. In determining the consequences of the revocation, the Court has never stipulated a list of elements that have to be taken into account. Nor has it applied a proportionality test similar to the test to be applied in expulsion cases (compare § 75 below). Instead, referring to its previous case-law, when making a concrete assessment of the consequences, the Court has taken a number of elements into account.

53. Thus, the Court has assessed whether the revocation of nationality rendered the applicant stateless (*Alpeyeva*, cited above, § 112; *Ghoumid*, cited above, § 50; *Ramadan*, cited above, § 92; *K2*, cited above, § 62; and *Mansour Said Abdul Salam Mubarak*, cited above, § 69); or deprived the applicant of any legal status (*Alpeyeva*, § 112; and *Usmanov*, cited above, § 59); or whether it left the applicant without any valid documents (*Alpeyeva*, § 113 and *Usmanov*, § 60).

54. The Court has also taken into account whether the revocation led to expulsion or made continued stay in the country uncertain (*Ghoumid* § 49 and *Ramadan* § 90). However, in respect of expulsion or risk of expulsion, the Court has never found that such, in itself, rendered a revocation of nationality in violation of Article 8 of the Convention. Furthermore, when assessing expulsion or risk of expulsion, the Court has had regard to the nature and seriousness of the offence and the risk posed to society (*Ghoumid*, § 50), when nationality was acquired (ibid.), whether the applicant has left the country voluntarily (*K2*, § 62) and whether revocation is a consequence of the applicant's own actions or choices (*Ramadan*, § 89).

55. Finally, the Court has considered whether the revocation of nationality had considerable consequences for the applicant's daily life (*Alpeyeva*, § 115) or consequences for spouse or children (*Ramadan,* § 90 and *K2,* § 62).

56. In the present case, the applicant submitted before the Court that the Tunisian authorities had never confirmed that he held a Tunisian citizenship and that therefore the deprivation of his Danish citizenship made him stateless.

57. The Government pointed out that the applicant had not disputed his Tunisian nationality before the domestic courts, and that it had been confirmed by the facts of the case, including the discovery of a Tunisian passport at his home.

58. The Court notes that the applicant's nationality status was carefully examined by the domestic authorities before the criminal proceedings against the applicant commenced, and by the courts in three instances during the criminal proceedings. It was found established that the applicant's father and paternal grandparents had all been Tunisian nationals, born in Tunisia, and that according to Article 6(1) of the Tunisian Nationality Act, a person acquires Tunisian nationality at birth if the father is a Tunisian national. Moreover, it transpired from an email of 12 August 2016 from the Tunisian Embassy in the Hague to the Copenhagen Police that a child acquires

Tunisian nationality if the father is Tunisian and that it is irrelevant whether the child has also acquired another nationality. Against that background, the Ministry of Immigration and Integration considered it a fact that the applicant had acquired Tunisian nationality at birth, and therefore had dual nationality. Moreover, a Tunisian passport was found in the applicant's home (see paragraphs 11 and 17 above). Accordingly, the domestic courts at three levels found it established that the applicant held dual nationality. The applicant has not provided any evidence for the Court to reach a different outcome.

59. The Court notes in addition, that during the proceedings before the Special Court of Revision (see paragraph 20 above) it transpired that most recently, on 14 September 2021, the Tunisian authorities had informed the Danish authorities that "there could be no doubt that the applicant had Tunisian citizenship" and that the "necessary judicial basis existed to allow the Tunisian Ambassy to issue travel documents with a view to deporting the applicant to Tunisia".

60. In these circumstances, it must be concluded that the applicant was not rendered stateless by the decision to deprive him of his Danish citizenship (see also, among others, *K2 v. United Kingdom*, cited above, § 62).

61. The preparatory work on section 8b of the Act on Danish Nationality set out that the assessment of whether to withdraw a person's citizenship should be based on a weighing of the seriousness of the offence and the impact on the person concerned. Accordingly, the domestic courts carefully assessed the consequences for the applicant of a revocation of his Danish citizenship in the light of his ties with Denmark and Tunisia. The considerations set out below will focus on the Supreme Court's decision depriving the applicant of his Danish citizenship.

62. The Supreme Court took account of the fact that the applicant was born in Denmark, to a Danish mother and a Tunisian father, and that he had acquired dual nationality by birth.

63. The Supreme Court found that the applicant had strong ties with Denmark. He was raised and educated there. He spoke, read and wrote Danish. He had lived on public benefits since 2011, that is, since the age of twenty-one. He had never had a regular attachment to the Danish labour market. His mother and siblings also lived in Denmark. He had married a Danish woman in an Islamic wedding ceremony, and they had lived together since 2009. They had a son who was born in January 2010.

64. The Supreme Court also considered that the applicant had ties with Tunisia, and that his familiarity with Tunisian culture and lifestyle were not insignificant. It noted that the applicant had been on holiday there for one to two weeks about eight times prior to his 15th birthday and had lived there from December 2005 to June 2006 when he was 15 years old. His father had moved back to Tunisia in 2013 or 2014, although the applicant alleged that he did not know whether his father still lived in the country. He last saw his father in May 2016 when the latter visited him in prison. The applicant spoke

and read Arabic, but he stated that it was sometimes hard for him to understand the Tunisian dialect. He had attended a Muslim school in Copenhagen. He stated that Islam meant everything to him and that he practised Islam in his everyday life.

65. The Supreme Court further noted that if the applicant were to be deprived of his Danish nationality, in general he would also be expelled, unless the expulsion would be contrary to Denmark's international obligations (section 26(2) of the Aliens Act then in force, read in conjunction with Article 8 of the Convention).

66. In conclusion, based on an overall balancing test, the Supreme Court found that the deprivation of the applicant's Danish nationality would not be a disproportionate sanction.

67. The applicant submitted that the Supreme Court should have attached decisive weight to the fact that he had acquired Danish nationality at birth and that therefore the present case should be distinguished from previous case-law on deprivation of nationality, including *Ghoumid and Others v. France,* (cited above), in which two of the applicants were born in France, but only acquired French citizenship later in life.

68. In this respect the Court finds reason to emphasise that as opposed to section 8b of the Act on Danish Nationality, and, for example, the compatibility of an expulsion order with Article 8 of the Convention, the compatibility of a withdrawal of a person's citizenship is not based on a balancing test of specific criteria, but on the requirement that two separate issues have been addressed: whether the revocation was arbitrary, and what the consequences of revocation were for the applicant (see paragraph 44 above).

69. In the present case, the Court is satisfied that the Supreme Court diligently addressed the consequences of depriving the applicant of his Danish citizenship.

70. Moreover, in the Court's view, taking into account that the applicant was convicted of serious terrorist offences, which themselves constituted a serious threat to human rights, and which to a large extent showed his lack of attachment to Denmark and its values (see, *mutatis mutandis*, *Ghoumid and Others v. France,* cited above, § 50), the fact that the applicant in the present case had obtained Danish nationality by birth does not significantly alter or add to the consequences for the applicant.

(c) Conclusion

71. In view of the above, the Court is satisfied that the Supreme Court's assessment of the decision to revoke the applicant's nationality was adequate and sufficient, and does not disclose any appearance of arbitrariness or omission with regard to the applicant's arguments. Consequently, this part of the application must be rejected as manifestly ill-founded within the meaning pursuant to Article 35 § 3(a) and 4 of the Convention (see also *Ghoumid and*

Others v. France, §§ 51-52, *K2 v. United Kingdom* (dec.), cited above, § 64; and *Mansour Said Abdul Salam Mubarak v. Denmark* (dec.), cited above, § 71).

2. The order to expel the applicant from Denmark

72. The Court notes at the outset that the applicant was a Danish citizen and could not as such be expelled (see also Article 3 § 1 of Protocol No. 4 to the Convention). However, once he had been deprived of his nationality, it became possible under domestic law to order the applicant's expulsion, provided that the conditions in domestic law was fulfilled and such order would be compatible with Article 8 § 2 of the Convention.

73. The Court reaffirms that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, an interference with a person's private or family life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being "in accordance with the law", as pursuing one or more of the legitimate aims listed therein, and as being "necessary in a democratic society" in order to achieve the aim or aims concerned.

74. The Court has no doubt 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.

75. The relevant criteria to be applied, in determining whether an interference is necessary in a democratic society, were set out in, *inter alia*, *Üner v. the Netherlands* [GC] (no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII) and *Maslov v. Austria* [GC] (no. 1638/03, §§ 68-76, ECHR 2008). 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."

76. As to the question of whether the interference was "necessary in a democratic society", the Court notes that the Danish courts' legal point of departure was the relevant sections of the Aliens Act, the Penal Code, and notably the appropriate criteria to be applied in the proportionality assessment under Article 8 of the Convention and the Court's case-law. The Court recognises that the domestic courts thoroughly examined each criterion and that they were fully aware that very serious reasons were required to justify the expulsion of the applicant, being a settled migrant, who had been born in Denmark and had lawfully spent his whole childhood and youth in the host country (see *Maslov*, cited above, § 75). The Court is therefore called upon to examine whether such "very serious reasons" were adequately adduced by the Supreme Court when assessing the applicant's case.

77. In respect of the applicant's right to respect for his private and family life, the Supreme Court took the same factors into account as when assessing the impact on the applicant of a revocation of his Danish citizenship.

78. That included the nature and seriousness of the offence committed by the applicant, the length of the applicant's stay in the country from which he was going to be expelled, the nationalities of the various persons concerned, and the solidity of his social, cultural and family ties with the host country and with the country of destination. Thus, the Supreme Court took into account, among other things, that the applicant was born in Denmark and had been sentenced to four years' imprisonment for serious offences committed as an adult (see, also for example, *Levakovic v. Denmark*, no. 7841/14, 23 October 2018; *Balogun v. the United Kingdom*, no. 60286/09, 10 April 2012; and *Mutlag v. Germany*, no. 40601/05, 25 March 2010, although the applicants' family life were not at stake in those cases).

79. Regarding the criterion "the time elapsed since the offence was committed and the applicant's conduct during that period", the applicant maintained that the Supreme Court had failed to take into account the fact that he had studied for more than two years, from the time of his return from Syria in February 2014 until he was arrested in June 2016, and that he had showed good behaviour until 19 November 2018, when the Supreme Court passed its judgment. In the Court's opinion, however, it cannot and should not be ignored that the applicant was convicted of having accepted recruitment and training by a terrorist organisation in the commission of terrorist acts. Accordingly, it does not find any reason to criticise the fact that the Supreme Court did not mention or give the applicant credit for not having

pursued his criminal activity in this respect after his return to Denmark in February 2014, up until his arrest in June 2016. The Court also notes that the applicant was remanded in custody from June 2016 until the Supreme Court passed its judgment on 19 November 2018, and that subsequently, he was placed in mandatory accommodation at a pre-departure centre, pending expulsion (see paragraph 19 above).

80. The expulsion order in the present case was issued together with a lifelong ban on re-entry. The Court notes in this context that the duration of a ban on re-entry is an element to which it has attached importance in its case-law. In the present case, the Court is convinced that the applicant's crime leading to the expulsion order was of such a nature that he posed a serious threat to public order (see also, *inter alia*, *Mutlag v Germany,* cited above, §§ 61-62 and *Balogun v. the United Kingdom*, cited above, § 53).

81. As regards the applicant's right to respect for his family life, the Supreme Court observed that the applicant had married a Danish woman in a religious ceremony in 2009. That was six years before the applicant left for Syria and committed the offences at issue. 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. With regard to their relationship, however, it is noteworthy, as observed by the Supreme Court, that the applicant left his family in Denmark at his own initiative, in connection with the crime committed, in order to take up residence in a war zone in Syria.

82. The Supreme Court also took into account the fact that the applicant had a son, born in 2010. Regarding the criteria "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 seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled", the Supreme Court emphasised that the applicant's partner, who had converted to Islam at the age of 18, and their 8-year-old son, who had attended an Islamic school for a short period and had subsequently been home-schooled by his mother, were not entirely unprepared for accompanying the applicant to Tunisia. Moreover, if they did not wish to settle in Tunisia, they could visit him there and communicate with him by telephone and on the Internet.

83. In conclusion, the Supreme Court found that there were compelling reasons to expel the applicant, and that respect for the applicant's private and family life in Denmark did not make the deprivation of his Danish nationality and expulsion conclusively inappropriate.

84. Having regard to the foregoing considerations, the Court is satisfied that the Supreme Court made a thorough assessment of the applicant's personal circumstances, carefully balanced the competing interests, took into account the criteria set out in the Court's case-law and explicitly assessed

whether the expulsion order could be deemed contrary to Denmark's international obligations. "Very serious reasons" were adequately adduced by the national authorities when assessing his case, and the expulsion order cannot be said to be disproportionate to the legitimate aim pursued, namely, the protection of the public from the threat of terrorism (see, *inter alia*, *K2 v. United Kingdom*, cited above, § 66; *Salem v. Denmark*, no. 77036/11, § 82, 1 December 2016; *Hamesevic v. Denmark* (dec.), no. 25748/15, § 43, 16 May 2017; *Alam v. Denmark* (dec.), no. 33809/15, § 35, 6 June 2017; and *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017).

85. Consequently, this part of the application must also be rejected as manifestly ill-founded within the meaning pursuant to Article 35 § 3(a) and 4 of the Convention.

For the reasons above, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2022.

Hasan Bakırcı Deputy Registrar	Carlo Ranzoni President