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ECtHR - Johansen v. Denmark (Decision)

The case concerns Danish authorities' decisions to deprive a dual national of his Danish citizenship and to deport him, following conviction for receiving training with ISIS. This was found to be compliant with Article 8 ECHR. The Court reasoned that deprivation of nationality was not arbitrary, that there had been sufficient opportunities to appeal, and that the crime in question, terrorism, was a serious one that endangered human rights. The punishment of deprivation of nationality was found to be proportionate. The Court also found that deprivation of nationality in this instance did not result in impermissible consequences as it did not render the applicant stateless.

Case name (in original language) : Johansen v. Denmark
Case status: Decided
Case number: 27801/19
Citation: European Court of Human Rights, Johansen v. Denmark (Application no. 27801/19), 1 February 2022
Date of decision: 03/03/2022
State: Denmark
Court / UN Treaty Body: European Court of Human Rights
Language(s) the decision is available in: English
Applicant's country of birth: Denmark
Applicant's country of residence: Denmark
Legal instruments: 1997 European Convention on Nationality
Key aspects: Deportation and removal, Deprivation of nationality, Determination/confirmation of nationality, Respect for private and family life
Relevant Legislative Provisions:

Sections 1 and 8b of The Act on Danish Nationality

Sections 22, 24, 26, 28 and 32 of The Danish Aliens Act

Article 6(1), 33, 34, and 39 of the *Code de la Nationalité Tunisienne* (the Tunisian Nationality Act) of 28 February 1963

Articles 114c and 114d of the Danish Penal Code

Articles 1, 4, 5, and 7 of The European Convention on Nationality

Article 8 of The European Convention on Human Rights

Facts

The applicant is a Danish and Tunisian dual national born and raised in Denmark. In 2016, the applicant was arrested and charged with participating in terrorist activities by accepting recruitment into ISIS while he was studying in Syria. In view of the seriousness of his offences, the Danish government was empowered by domestic law to deprive the applicant of his nationality with a permanent ban on his return. During the domestic proceedings, the Danish government found a Tunisian passport in the applicant's apartment and received word from a Tunisian embassy that the applicant was a Tunisian national. On this basis, the Danish courts determined that deprivation of nationality would not be disproportionate, as the applicant did, in fact, have ties to both Denmark and Tunisia. Therefore, the applicant was sentenced to five years imprisonment, at the end of which his Danish nationality would be revoked, and he would be expelled to Tunisia. The applicant has served his sentence and is currently in a pre-departure centre, awaiting expulsion.

The applicant brought the case to the ECtHR, claiming that his sentence violated his right to respect for private and family life under Article 8 of the ECHR.

Legal arguments by the applicant

The applicant argued that both the decision to strip him of his Danish nationality and the decision to expel him from Denmark violated his right to respect for private and family life. Regarding the decision to strip him of his citizenship, the applicant argues that the Tunisian government had never confirmed that he really held a Tunisian citizenship. As a result, depriving the applicant of his nationality would

make him stateless. Further, the applicant argued that Article 7 of the 1997 European Convention on Nationality included an exhaustive list of offenses for which nationality could be stripped, and crimes of a general nature were not included. The applicant maintained that his crime was of a general nature and not listed in the exhaustive list provided by the 1997 European Convention on Nationality. Third, the applicant maintained that since he had been born with Danish nationality, deprivation of Danish nationality should be less available than if he had been naturalized. Therefore, the applicant argued, depriving him of his Danish nationality was impermissible.

As to the expulsion order against him, the applicant argued *inter alia* that the trial courts had failed to consider that he had held several jobs, had no criminal record before being convicted in this case, that he had studied for two years after returning from Syria and that he had shown good behavior in the period after his arrest.

Legal arguments by the opposing party

The respondent argued that the deprivation of Danish nationality and expulsion was justified, both under domestic and European law. Consequently, the respondent argued that the application was manifestly ill founded and should be dismissed.

The respondent argued that in domestic proceedings, the applicant had never denied being a Tunisian national, which should weaken his current claim that he isn’t a Tunisian national. Further, the respondent argued that the applicant had been convicted of a very serious offense, which threatened democracy, human rights, and vital interests of the Danish state. These kinds of offenses, the respondent argued, are explicitly covered by the European Convention on Nationality as being permissible grounds for revocation of citizenship.

The respondent argued that there were no procedural issues during the judicial process which had ended in the applicant’s sentence. The decision had been swift, diligent, and subject to the relevant procedural safeguards, and the domestic judges had specifically considered the legal provisions under which the applicant brought his case to the ECtHR.

Decision & Reasoning

Deprivation of Nationality

In deciding whether the deprivation of nationality was warranted in this case, the Court examined two factors: the arbitrariness of the deprivation and the consequences for the applicant.

On the arbitrariness point, the Court examined whether the judgment to deprive the applicant of his nationality had been undertaken in accordance with domestic law, with opportunities to appeal, in a way that was swift and diligent. It also considered whether the punishment was proportional to the crime the applicant had committed. The Court ruled that all four factors had been met.

The Court found that the decision to strip the applicant of his nationality was consistent with Danish nationality law. Then, it found that the applicant had had three opportunities to appeal the decision. Finally, it concluded that the judicial process had been swift and diligent and so the decision had not been procedurally arbitrary. As to the proportionality of the decision, the court ruled that the applicant had committed a very serious crime, the nature of which indicated that the applicant was divorced from Denmark and its values. On that basis, the Court held that the deprivation of nationality had not been arbitrary.

The Court also considered the consequences of depriving the applicant’s Danish nationality. To make this determination, the Court considered whether the revocation of nationality would render the applicant stateless, whether the revocation would make expulsion uncertain, and whether the revocation would impermissibly hinder the applicant’s ability to live his daily life.

Regarding the question of whether the decision would render the applicant stateless, the Court relied on the record from the Danish courts to determine that the applicant was unquestionably a Tunisian national. It concluded therefore, that revocation of Danish nationality would not render the applicant stateless. On the basis of this information the Court also concluded that the applicant could successfully be expelled to a country where he had ties without violation of Article 8 ECHR.

Next, the Court examined the question of whether the applicant’s daily life would be disrupted by the revocation. The Court relied on testimony that stated the applicant read and spoke Arabic, that his father lived in Tunisia, that he had testified that Islam meant everything to him, and that his wife and daughters were free to visit him in Tunisia. On the basis of this evidence, the Court ruled that depriving the applicant of his nationality would not affect his daily life impermissibly. The Court

explained that the nature of impermissibility, in this context, was proportionality. Since the applicant had committed such a serious crime, the Court felt that the significant effects on the applicant's daily life from living in Tunisia were acceptable.

Expulsion

To determine whether the applicant's expulsion was permissible the Court looked at the seriousness of the applicant's crime, the time elapsed since it had been committed, the consistency of the legal provisions used to convict and punish him, and the projected effects on the applicant's family life.

As in the previous segments, the Court ruled that the seriousness of the offense justified expulsion, relying on factors and applications from previously decided cases (*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)).

The Court also found that expulsion to Tunisia did not impermissibly violate the applicant's right to have his family life respected under Article 8 ECHR, considering that the applicant was a Tunisian national with ties to the country, family living there, and access to his wife and children should they choose to visit him.

On balance, the Court was satisfied that the Danish courts had appropriately balanced the applicant's individual circumstances, Danish national interest, and Danish international obligations when ordering the applicant's expulsion. Consequently, the Court ruled that the expulsion was a valid exercise of domestic authority and could not be challenged in the ECtHR.

Decision documents
JOHANSEN v. DENMARK.pdf
Outcome

Both the complaint about the stripping of the applicant's nationality and the complaint about his expulsion were found to be manifestly ill-founded and rejected.

Caselaw cited

Ndidi v. the United Kingdom, no. 41215/14, § 76, 14 September 2017

Alam v. Denmark (dec.), no. 33809/15, § 35, 6 June 2017

K2 v. the United Kingdom (dec.), no. 42387/13, § 49, 7 February 2017

Salem v. Denmark, no. 77036/11, § 82, 1 December 2016;

Hamesevic v. Denmark (dec.), no. 25748/15, § 43, 16 May 2017

Maslov v. Austria [GC], no. 1638/03, ECHR 2008

Ghoumid v. France, nos. 52273/16 and 4 others, 25 June 2020

Ramadan v. Malta, no. 76136/12, § 62, 21 June 2016,

Genovese v. Malta, no. 53124/09, § 30, 11 October 2011

Usmanov v. Russia, no. 43936/18, § 53, 22 December 2020

Ghoumid and Others v. France, no. 52273/16 and 4 others, §§ 43-44, 25 June 2020

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

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

K.I. v. France, no. 5560/19, § 123, 15 April 2021

Abdulaziz, Cabales and Balkandali v. the United Kingdom, 28 May 1985, § 67, Series A no. 94

Üner v. the Netherlands [GC] no. 46410/99, §§ 54-55 and 57-58, ECHR 2006-XII

Maslov v. Austria [GC] no. 1638/03, §§ 68-76, ECHR 2008

Levakovic v. Denmark, no. 7841/14, 23 October 2018

Balogun v. the United Kingdom, no. 60286/09, 10 April 2012

Mutlag v. Germany, no. 40601/05, 25 March 2010