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

Press Release
issued by the Registrar of the Court

ECHR 379 (2021)
07.12.2021

Deportation of mentally ill Turkish national resident in Denmark following criminal convictions

The case of Savran v. Denmark (application no. 57467/15) concerned a Turkish national who had been resident in Denmark for most of his life. He was deported in 2015 following a 2008 expulsion order given for violent crimes he had committed in the 2000s.

In today's **Grand Chamber** judgment[1] in the case the European Court of Human Rights held that there had been:

by a majority of 16 votes to 1, **no violation of Article 3 (prohibition on inhuman and degrading treatment)** of the European Convention on Human Rights**.** It held that it had not been shown that the applicant would suffer a "serious, rapid and irreversible decline in his state of health resulting in intense suffering" as the risk posed by a reduction in treatment applied mainly to others, and that therefore his deportation did not engage the protections of that Article.

The Court also found, by a majority of 11 votes to 6, **a violation of Article 8 (right to respect for private life).** It found in particular that the domestic authorities had failed to examine the applicant's individual situation adequately, and the effective permanent re-entry ban had been disproportionate.

Principal facts

The applicant, Arıf Savran, is a Turkish national who was born in 1985 and lives in Kütükuşağı (Turkey).

In 1991, when he was six years old, the applicant lawfully entered Denmark to live with his father.

After being convicted of aggravated assault committed with other people, which had led to the victim's death, the applicant was in 2008 placed in the secure unit of a residential institution for the severely mentally impaired for an indefinite period. His expulsion with a permanent re-entry ban was ordered.

In January 2012 the applicant's guardian *ad litem* asked that the prosecution review his sentence and the prosecution brought the case before the City Court in December 2013. On the basis of medical reports, Immigration Service opinions and statements by the applicant, the City Court in October 2014 changed Mr Savran's sentence to treatment in a psychiatric department. It also held that despite the severity of his crime it would be inappropriate to enforce the expulsion order.

In particular, the medical experts stressed the need for continued treatment and follow-up in order to ensure his recovery, while the applicant highlighted that all his family were in Denmark, that he could not speak Turkish, only some Kurdish, and that he was worried about the availability of the necessary treatment in Turkey.

Following an appeal by the prosecution, the High Court overturned the City Court's judgment in January 2015. It cited in its conclusion information on access to medicines in Turkey in the European Commission's MedCOI medical database and a report from the Foreign Ministry, finding that

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Savran would be able to continue his treatment in Turkey. It also emphasised the nature and gravity of the crime.

Mr Savran was refused leave to appeal to the Supreme Court in May 2015.

In 2015 he was deported to Turkey. He alleges that he leads an isolated life there, with inadequate medical care.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private and family life), the applicant complained that, because of his mental health, his removal to Turkey had violated his rights. He also complained about the refusal to revoke the expulsion order, and the implementation of that order entailing as a consequence a permanent re-entry ban.

The application was lodged with the European Court of Human Rights on 16 November 2015. The Court delivered its judgment on 1 October 2019, finding by 4 votes to 3 that there had been a violation of Article 3 of the Convention and that there was no need to examine the applicant's complaint under Article 8 of the Convention. On 12 December 2019 the Danish Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 27 January 2020 the panel of the Grand Chamber accepted that request. A hearing was held by video conference in the Human Rights Building, Strasbourg on 24 June 2020.

Third-party comments were received from the Netherlands, French, German, Norwegian, Russian, Swiss and United Kingdom Governments, from Amnesty International, a non-governmental organisation, and from the Centre for Research and Studies on Fundamental Rights of Paris Nanterre University (CREDOF).

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Dmitry **Dedov** (Russia),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Tim **Eicke** (the United Kingdom),
Ivana **Jelić** (Montenegro),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

Article 3

The Court reiterated that the prohibition on inhuman and degrading treatment was fundamental to a democratic society. Such treatment had to be sufficiently severe, however, if it were to fall within the scope of that Article.

The Court furthermore reiterated that States had a right to control entry to and residence in their territories, subject to the limits of Article 3 set out in its case-law. As regards the expulsion of seriously ill aliens, the Court reaffirmed the principles established in the *Paposhvili v. Belgium* case, including the "threshold" test that had to be met for Article 3 to come into play. Whilst further reaffirming that the said "threshold" should remain high, it also considered that the standard in question was sufficiently flexible to be applied in all situations involving the removal of a seriously ill person, irrespective of the nature of the illness. It observed that the Chamber had not examined the current case from that standpoint.

On the facts, the Court considered that it had not been demonstrated that the applicant's expulsion to Turkey had exposed him to a "serious, rapid and irreversible decline in his state of health resulting in intense suffering", let alone to a "significant reduction in life expectancy". Indeed, the risk posed by the reduction in treatment seemed to apply mainly to others rather than to the applicant himself. As a result, expulsion had not exposed him to a risk sufficient to engage Article 3.

There had accordingly been no violation of that Article.

Article 8

The Court reiterated that, in conformity with its normal practice, it would re-examine all aspects of the original application, including the parts under Article 8 which the Chamber had not found inadmissible.

It noted that the applicant had arrived in Denmark at the age of six and had been issued with a residence permit. It noted the applicant's family relationships in Denmark, and his arguments that he had been dependent on them, because of his condition, a dependence which, in his view, had constituted "family life". That had been interrupted by his expulsion. It was however unconvinced that there was sufficient evidence of dependence, and his background did not indicate a consistent family relationship. It thus considered that the interference with the applicant's life should be examined as a question of "private" rather than "family" life. Given this, the Court found that the applicant's removal from the State had been an interference with his private life. That interference had been in accordance with the law and had pursued the legitimate aim of preventing disorder and crime.

Turning to the question of the necessity of the removal, the Court reiterated the criteria in its case-law, in particular *Maslov v. Austria*. Applying those to the case at hand, the Court found that the applicant was more vulnerable than the average person to be expelled, and that the state of his health had had to be taken into account as one of the balancing factors. It further accepted that the medical aspects of the case had been thoroughly considered by the domestic courts.

The Court was not on the other hand satisfied that the domestic authorities had sufficiently taken into consideration other balancing factors. In particular, whilst the applicant's criminal offence – violent in nature – had undoubtedly been a serious one, no account had been taken of the fact that at the time he had committed the crime he had been, very likely, suffering from a mental disorder, with physically aggressive behaviour one of its symptoms, and that, owing to that mental illness, he had been ultimately exempt from any punishment but instead had been committed to psychiatric care. In the Court's view, these facts had limited the extent to which the respondent State could legitimately rely on the seriousness of the criminal offence to justify his expulsion. Moreover, the

applicant's conduct during the period that elapsed between the offence of which he had been found guilty and his expulsion had been particularly important for the assessment of his risk of re-offending. In that connection, the Court noted that although initially the applicant's aggressive behavioural patterns had persisted, he had made progress during those years. It also noted his ties to Denmark and limited ties with Turkey. Lastly, the Court found, in line with its previous judgments, that the effective permanent re-entry ban imposed on the applicant had been disproportionate.

Overall, the domestic authorities had failed to take account of the individual circumstances of the applicant and to balance the issues at stake. There had thus been a violation of his right to respect for private life.

Just satisfaction (Article 41)

The Court considered that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It held that Denmark was to pay the applicant 20,000 euros in respect of costs and expenses.

Separate opinions

Judge Jelić expressed a concurring opinion. Judges Serghides expressed a partly concurring and partly dissenting opinion. Judges Kjølbro, Dedov, Lubarda, Harutyunyan, Kucsko-Stadlmayer and Poláčková expressed a joint partly dissenting opinion. Those opinions are annexed to the judgment.

The judgment is available in English and French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Neil Connolly (tel : + 33 3 90 21 48 05)
Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)
Denis Lambert (tel : + 33 3 90 21 41 09)
Inci Ertekin (tel : + 33 3 90 21 55 30)
Jane Swift (tel : + 33 3 88 41 29 04)