UDSKRIFT

AF

ØSTRE LANDSRETS DOMBOG

(landsdommerne Lone Kerrn-Jespersen, Nikolaj Aarø-Hansen og Mette Damgaard (kst.)).

19. afd. nr. S-850-20:

Anklagemyndigheden

mod

T

…

(advokat Stefan Reinel, beskikket)

Københavns Byrets kendelse af 17. marts 2020 (SS 2-23915/2019) er kæret af T med påstand om, at bestemmelsen om udvisning ophæves.

Anklagemyndigheden har påstået stadfæstelse.

Kæremålet er behandlet mundtligt, jf. retsplejelovens § 972, stk. 2.

Kæremålet er tillagt opsættende virkning.

Supplerende oplysninger

Af Københavns Byrets dom af 28. september 2018 fremgår bl.a.:

> ”Tiltalte har om sine personlige forhold forklaret, at han er født i Tyrkiet, og han kom til Danmark i 1998. … Han har ikke en uddannelse i Tyrkiet, men han havde en restaurant i Alanya, som havde mange skandinaviske kunder. …

> Han har en stor familie i Tyrkiet. Han har mange søskende, så familien er enorm. Hans fader bor stadig i Tyrkiet."

Forklaring

T har supplerende forklaret bl.a., at han i Tyrkiet kun har sin far, som han sidst så for tre år siden. Faderen er meget syg med hjerte- og rygproblemer. Faderen vil ikke kunne hjælpe ham. Herudover har han nogen familie i Tyrkiet, men de ses ikke. Hans venner bor i København, ikke i Tyrkiet. Han er kurder fra det østlige Tyrkiet. Han stammer fra byen …, hvor der i dag er krig, idet militæret angriber civile kurdere.

Parternes anbringender

T har navnlig anført, at udvisning af ham vil være i strid med Den Europæiske Menneskerettighedskonventions artikel 3. Til støtte herfor har han navnlig henvist til Den Europæiske Menneskerettighedsdomstols dom af 1. oktober 2019 i sag nr. 57467/15, Savran mod Danmark, hvor domstolen fastslog, at udvisning af en skizofren tyrkisk borger til Tyrkiet var i strid med konventionens artikel 3, fordi den pågældende ikke var sikret tilstrækkelig behandling i Tyrkiet. Det forhold, at dommen af 1. oktober 2019 er indbragt for Menneskerettighedsdomstolens storkammer, ændrer – indtil storkammerets dom foreligger – ikke ved, at den fortolkning af konventionens artikel 3, som dommen er udtryk for, må lægges til grund ved denne sags afgørelse.

Det fremgår af dommens præmis 62-67, at Menneskerettighedsdomstolen lagde vægt på, at klagerens psykiske sygdom gjorde, at han havde brug for omfattende behandling og som minimum havde brug for en kontaktperson, der kunne hjælpe ham med at følge behandlingen. Ifølge Menneskerettighedsdomstolen burde de danske myndigheder have sikret sig, at klageren ville få tilbudt en kontaktperson af de tyrkiske myndigheder.

Faktum i Savran-sagen er ganske sammenligneligt med T's sag. T har ikke noget netværk i Tyrkiet, idet bemærkes, at hans far er 80 år og hjertesyg. Det bestrides ikke, at den medicin, han har brug for, kan skaffes i Tyrkiet, men det er ikke godtgjort, at det overhovedet er muligt for en skizofren person at få en kontaktperson, der kan påse, at han får den nødvendige behandling, idet Udlændingestyrelsens udtalelse herom af 5. februar 2019 vedrører en kontaktperson eller bistandsværge til en retarderet person. Dertil kommer, at de tyrkiske myndigheder ikke har bekræftet, at T konkret vil blive tildelt en kontaktperson eller

bistandsværge ved sin ankomst til landet. Det er således alene generelt oplyst, at det som udgangspunkt er retten, som tildeler og udnævner en værge til en retarderet person, hvilket ikke lever op til kravene i dommens præmis 66 og 67.

Anklagemyndigheden har navnlig gjort gældende, at T i Tyrkiet kan opnå den relevante behandling, at han fortsat har familiemæssig tilknytning til Tyrkiet, herunder sin far. Hans helbredsmæssige forhold er derfor ikke til hinder for udvisning. Endvidere har anklagemyndigheden henvist til, at T er dømt for alvorlige seksualforbrydelser i form af flere voldtægter efter henholdsvis straffelovens § 216, stk. 1, nr. 1 og 2, over for den samme forurettede under et længere tidsforløb.

Supplerende retsgrundlag

Af Menneskerettighedsdomstolens dom i sag 41738/10 af 13. december 2016, Paposhvili mod Belgien (storkammeret), fremgår bl.a.:

> "**D. The Court's assessment**
> *1. General principles*
> 172. The Court reiterates that Contracting States have the right as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *N. v. the United Kingdom*, cited above, § 30). In the context of Article 3, this line of authority began with the case of *Vilvarajah and Others v. the United Kingdom* (30 October 1991, § 102, Series A no. 215).
>
> 173. Nevertheless, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3 of the Convention where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country (see *Saadi*, cited above, § 125; *M.S.S. v. Belgium and Greece*, cited above, § 365; *Tarakhel*, cited above, § 93; and *F.G. v. Sweden*, cited above, § 111).
>
> 174. The prohibition under Article 3 of the Convention does not relate to all instances of ill-treatment. Such treatment has to attain a minimum level of severity if it is to fall within the scope of that Article. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *N. v. the United Kingdom*, cited above, § 29; see also *M.S.S. v. Belgium and Greece*, cited above, § 219; *Tarakhel*, cited above, § 94; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

175. The Court further observes that it has held that the suffering which flows from naturally occurring illness may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (see *Pretty*, cited above, § 52). However, it is not prevented from scrutinising an applicant's claim under Article 3 where the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country (see *D. v. the United Kingdom*, cited above, § 49).

176. In two cases concerning the expulsion by the United Kingdom of aliens who were seriously ill, the Court based its findings on the general principles outlined above (see paragraphs 172-74 above). In both cases the Court proceeded on the premise that aliens who were subject to expulsion could not in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the returning State (see *D. v. the United Kingdom*, cited above, § 54, and *N. v. the United Kingdom*, cited above, § 42).

177. In *D. v. the United Kingdom* (cited above), which concerned the decision taken by the United Kingdom authorities to expel to St Kitts an alien who was suffering from Aids, the Court considered that the applicant's removal would expose him to a real risk of dying under most distressing circumstances and would amount to inhuman treatment (see *D. v. the United Kingdom*, cited above, § 53). It found that the case was characterised by "very exceptional circumstances", owing to the fact that the applicant suffered from an incurable illness and was in the terminal stages, that there was no guarantee that he would be able to obtain any nursing or medical care in St Kitts or that he had family there willing or able to care for him, or that he had any other form of moral or social support (ibid., §§ 52-53). Taking the view that, in those circumstances, his suffering would attain the minimum level of severity required by Article 3, the Court held that compelling humanitarian considerations weighed against the applicant's expulsion (ibid., § 54).

178. In the case of *N. v. the United Kingdom*, which concerned the removal of a Ugandan national who was suffering from Aids to her country of origin, the Court, in examining whether the circumstances of the case attained the level of severity required by Article 3 of the Convention, observed that neither the decision to remove an alien who was suffering from a serious illness to a country where the facilities for the treatment of that illness were inferior to those available in the Contracting State, nor the fact that the individual's circumstances, including his or her life expectancy, would be significantly reduced, constituted in themselves "exceptional" circumstances sufficient to give rise to a breach of Article 3 (see *N. v. the United Kingdom*, cited above, § 42). In the Court's view, it was important to avoid upsetting the fair balance inherent in the whole of the Convention between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. A finding to the contrary would place too great a burden on States by obliging them to alleviate the disparities between their health-care system and the level of treatment available in the third country concerned through the provision of free and

unlimited health care to all aliens without a right to stay within their jurisdiction (ibid., § 44). Rather, regard should be had to the fact that the applicant's condition was not critical and was stable as a result of the antiretroviral treatment she had received in the United Kingdom, that she was fit to travel and that her condition was not expected to deteriorate as long as she continued to take the treatment she needed (ibid., § 47). The Court also deemed it necessary to take account of the fact that the rapidity of the deterioration which the applicant would suffer in the receiving country, and the extent to which she would be able to obtain access to medical treatment, support and care there, including help from relatives, necessarily involved a certain degree of speculation, particularly in view of the constantly evolving situation with regard to the treatment of Aids worldwide (ibid., § 50). The Court concluded that the implementation of the decision to remove the applicant would not give rise to a violation of Article 3 of the Convention (ibid., § 51). Nevertheless, it specified that, in addition to situations of the kind addressed in *D. v. the United Kingdom* in which death was imminent, there might be other very exceptional cases where the humanitarian considerations weighing against removal were equally compelling (see *D. v. the United Kingdom*, cited above, § 43). An examination of the case-law subsequent to *N. v. the United Kingdom* has not revealed any such examples.

179. The Court has applied the case-law established in *N. v. the United Kingdom* in declaring inadmissible, as being manifestly ill-founded, numerous applications raising similar issues, concerning aliens who were HIV positive (see, among other authorities, *E.O. v. Italy* (dec.), no. 34724/10, 10 May 2012) or who suffered from other serious physical illnesses (see, among other authorities, *V.S. and Others v. France* (dec.), no. 35226/11, 25 November 2014) or mental illnesses (see, among other authorities, *Kochieva and Others v. Sweden* (dec.), no. 75203/12, 30 April 2013, and *Khachatryan v. Belgium* (dec.), no. 72597/10, 7 April 2015). Several judgments have applied this case-law to the removal of seriously ill persons whose condition was under control as the result of medication administered in the Contracting State concerned, and who were fit to travel (see *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, 20 December 2011; *S.H.H. v. the United Kingdom*, no. 60367/10, 29 January 2013; *Tatar*, cited above; and *A.S. v. Switzerland*, no. 39350/13, 30 June 2015).

180. However, in its judgment in *Aswat v. the United Kingdom* (no. 17299/12, § 49, 16 April 2013), the Court reached a different conclusion, finding that the applicant's extradition to the United States, where he was being prosecuted for terrorist activities, would entail ill-treatment, in particular because the conditions of detention in the maximum security prison where he would be placed were liable to aggravate his paranoid schizophrenia. The Court held that the risk of significant deterioration in the applicant's mental and physical health was sufficient to give rise to a breach of Article 3 of the Convention (ibid., § 57).

181. The Court concludes from this recapitulation of the case-law that the application of Article 3 of the Convention only in cases where the person facing expulsion is close to death, which has been its practice since the judgment in *N. v. the United Kingdom*, has deprived aliens who are seriously ill, but whose condition is less critical, of the benefit of that provision. As a corollary to this, the case-law subsequent to *N. v. the United Kingdom* has not provided more detailed

guidance regarding the "very exceptional cases" referred to in *N. v. the United Kingdom*, other than the case contemplated in *D. v. the United Kingdom*.

182. In the light of the foregoing, and reiterating that it is essential that the Convention is interpreted and applied in a manner which renders its rights practical and effective and not theoretical and illusory (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 121, ECHR 2005-I; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 175, ECHR 2012), the Court is of the view that the approach adopted hitherto should be clarified.

183. The Court considers that the "other very exceptional cases" within the meaning of the judgment in *N. v. the United Kingdom* (§ 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.

184. As to whether the above conditions are satisfied in a given situation, the Court observes that in cases involving the expulsion of aliens, the Court does not itself examine the applications for international protection or verify how States control the entry, residence and expulsion of aliens. By virtue of Article 1 of the Convention the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities, who are thus required to examine the applicants' fears and to assess the risks they would face if removed to the receiving country, from the standpoint of Article 3. The machinery of complaint to the Court is subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Article 13 and Article 35 § 1 of the Convention (see *M.S.S. v. Belgium and Greece*, cited above, §§ 286-87, and *F.G. v. Sweden*, cited above, §§ 117-18).

185. Accordingly, in cases of this kind, the authorities' obligation under Article 3 to protect the integrity of the persons concerned is fulfilled primarily through appropriate procedures allowing such examination to be carried out (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012; *Tarakhel*, cited above, § 104; and *F.G. v. Sweden*, cited above, § 117).

186. In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive

purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see, in particular, *Trabelsi v. Belgium*, no. 140/10, § 130, ECHR 2014 (extracts)).

187. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). The risk alleged must be subjected to close scrutiny (see *Saadi*, cited above, § 128; *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 214, 28 June 2011; *Hirsi Jamaa and Others*, cited above, § 116; and *Tarakhel*, cited above, § 104) in the course of which the authorities in the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual's personal circumstances (see *Vilvarajah and Others*, cited above, § 108; *El-Masri*, cited above, § 213; and *Tarakhel*, cited above, § 105). The assessment of the risk as defined above (see paragraphs 183-84) must therefore take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question.

188. As the Court has observed above (see paragraph 173), what is in issue here is the negative obligation not to expose persons to a risk of ill-treatment proscribed by Article 3. It follows that the impact of removal on the person concerned must be assessed by comparing his or her state of health prior to removal and how it would evolve after transfer to the receiving State.

189. As regards the factors to be taken into consideration, the authorities in the returning State must verify on a case-by-case basis whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3 (see paragraph 183 above). The benchmark is not the level of care existing in the returning State; it is not a question of ascertaining whether the care in the receiving State would be equivalent or inferior to that provided by the health-care system in the returning State. Nor is it possible to derive from Article 3 a right to receive specific treatment in the receiving State which is not available to the rest of the population.

190. The authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving State. The Court observes in that regard that it has previously questioned the accessibility of care (see *Aswat*, cited above, § 55, and *Tatar*, cited above, §§ 47-49) and referred to the need to consider the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care (see *Karagoz v. France* (dec.), no. 47531/99, 15 November 2001; *N. v. the United Kingdom*, cited above, §§ 34-41, and the references cited therein; and *E.O. v. Italy* (dec.), cited above).

191. Where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the persons concerned – on account of

the general situation in the receiving country and/or their individual situation – the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 (on the subject of individual assurances, see *Tarakhel*, cited above, § 120).

192. The Court emphasises that, in cases concerning the removal of seriously ill persons, the event which triggers the inhuman and degrading treatment, and which engages the responsibility of the returning State under Article 3, is not the lack of medical infrastructure in the receiving State. Likewise, the issue is not one of any obligation for the returning State to alleviate the disparities between its health-care system and the level of treatment existing in the receiving State through the provision of free and unlimited health care to all aliens without a right to stay within its jurisdiction. The responsibility that is engaged under the Convention in cases of this type is that of the returning State, on account of an act – in this instance, expulsion – which would result in an individual being exposed to a risk of treatment prohibited by Article 3.

193. Lastly, the fact that the third country concerned is a Contracting Party to the Convention is not decisive. While the Court agrees with the Government that the possibility for the applicant to initiate proceedings on his return to Georgia was, in principle, the most natural remedy under the Convention system, it observes that the authorities in the returning State are not exempted on that account from their duty of prevention under Article 3 of the Convention (see, among other authorities, *M.S.S. v. Belgium and Greece*, cited above, §§ 357-59, and *Tarakhel*, cited above, §§ 104-05)."

I Menneskerettighedsdomstolens dom af 1. oktober 2019 i sag 57467/15, Savran mod Danmark, udtalte domstolen bl.a.:

"*The Court's assessment*
…

b) Application of the general principles to the present case
50. Applying these principles to the present case, the Court notes from the outset that the City Court passed its decision on 14 October 2014, the High Court passed it appeal decision on 13 January 2015, and that the Appeals Permission Board refused leave to appeal on 20 May 2015, all before the delivery of the Court's judgment in *Paposhvili* on 13 December 2016.

51. Nevertheless, the Court observes that both judicial instances scrutinised whether the applicant's medical treatment was available in Turkey and whether the applicant would *de facto* have access to such treatment, taking into account the cost of medication and care, the distance to be travelled in order to have access to care as well as the availability of medical help in the applicant's language, an assessment which reflects the criteria set out in *Paposhvili*.

52. The national courts had regard to statements from various experts, and relevant information from the country concerned, including the information from the social security institution in Turkey, a physician at a rehabilitation clinic in Konya under the auspices of the public hospital, and a public hospital in Konya, which confirmed that it was possible for a patient to receive intensive care in a psychiatric hospital matching the applicant's needs (see paragraph 24 above). The national courts were satisfied that the medication at issue was available in Turkey, including in the area where the applicant would most likely settle down.

53. The Court notes that neither in the application nor in the observations have the applicant or the Government referred to or relied on any subsequent factual information about the availability of medical and psychiatric treatment in Turkey or about a deterioration or change in the applicant's medical condition or situation in general. Therefore, the Court will proceed with an assessment of the case in light of the information that was also available when the final decision of the domestic authorities was taken.

54. Regarding the applicant's concrete possibility of having access to medical treatment required, the City Court accepted as fact, based on the medical information, that there was a high risk of pharmaceutical failure and resumed abuse and consequently a worsening of his psychotic symptoms if he were not subjected to follow-up and control in connection with intensive outpatient therapy when discharged, and that this would give rise to a significantly higher risk that he would again commit offences against the person of others. It had doubts, notably as to whether the applicant had a real possibility of receiving the necessary follow-up and control in connection with intensive outpatient therapy, if returned to Turkey. The City Court therefore found it conclusively inappropriate to enforce the expulsion order.

55. On appeal, however, the High Court concluded that the applicant would have access to the medical treatment required upon return to Turkey.

56. From the outset, it noted that according to the data of the MedCOI database and the information provided by the Ministry of Foreign Affairs, the applicant could continue the same medical treatment in the Konya area in Turkey as he received in Denmark, and that psychiatric treatment would be available at public hospitals, and from private healthcare providers who have concluded an agreement with the Turkish Ministry of Health. Moreover, according to the information obtained, the applicant would be eligible to apply for free or subsidised treatment in Turkey if he has no income or limited income, and in certain cases it is also possible to be exempted from paying the 20% patient's share for medicines. Kurdish-speaking staff would also be available to assist at hospitals.
The High Court was thus convinced that the cost of medication and treatment in Turkey would not be an obstacle for the applicant to obtain actual access to the medical treatment required.

57. Before the national courts it was assumed that upon return to Turkey the applicant would settle down in the village where the applicant's mother came from, in a Kurdish-speaking region, located 100 km away from Konya (see

paragraph 27 above). It thus appears that the High Court considered that such a distance to medical treatment would not in itself be an obstacle for the applicant to obtain actual access to the medical treatment required, which is in line with the Court's finding in, for example, *Bensaid v. the United Kingdom* (cited above, §§ 36 and 39) and *Tatar v. Switzerland* (no. 65692/12, §§ 47-48, 14 April 2015).

58. The Court notes that in the present case, the applicant's possibility of receiving follow-up and control in connection with intensive outpatient treatment was an additional important element. The High Court had before it, *inter alia*, the statement of 5 April 2013 by Consultant Psychiatrist, K.A., pointing out that the applicant's current medication in the form of Leponex should be administered on a daily basis, which was deemed to constitute a risk of pharmaceutical failure and consequently the worsening of his psychotic symptoms and a greater risk of aggressive behaviour. The High Court also had before it the statement of 13 January 2014 by Consultant Psychiatrist P.L., setting out that the applicant's recovery prospects were good if he could be reintegrated into society by being offered a suitable home and intensive outpatient therapy in the following years, whereas his recovery prospects were bad if he were to be discharged without follow-up and control. Before the City Court on 7 October 2014 Consultant Psychiatrist P.L. added that the medical treatment of the applicant was an expert task. Moreover, in his opinion, besides medication, in order to prevent a relapse, it was essential that the applicant had a regular contact person for supervision, that a follow-up scheme was in place to make sure that the applicant pays attention to the medical treatment administered, that he had assistance from a social worker to deal with any dependence and other problems, and assistance for making sure that he was in the right environment and was offered occupation. Those initiatives were part of the applicant's treatment in Denmark. In addition, on 6 January 2015, before the High Court, P.L. pointed out that the applicant needed to undergo blood tests regularly in order to verify that he had not developed an immune disorder, which could be a side-effect of Leponex.

59. The High Court did not address those statements. It stated more generally that the fact that the applicant was aware of his disease and, according to his own statement, was aware of the importance of adhering to his medical treatment and taking the drugs prescribed, would not make removal conclusively inappropriate. Furthermore, the applicant could continue the same medical treatment in the Konya area in Turkey as he received in Denmark, psychiatric treatment was available in Turkey, and the said treatment would be accessible in practice to the applicant. The Court observes, however, that according to P.L., in the circumstances of the present case, the applicant's awareness of his illness would not suffice to avoid a relapse; it was essential that he also had a regular contact person for supervision.

60. On the one hand, the Court reiterates that, when verifying whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3, the benchmark is not the level of care existing in the returning State. It is not a question of ascertaining whether the care in the receiving State would be equivalent or inferior to that provided by the health-care system in the returning State (see paragraph 46 above). Rather, the

question is whether the applicant, if he were not be able to receive "appropriate" treatment in Turkey, would be exposed to a serious, rapid and irreversible decline in his state of health, resulting in intense suffering (see paragraph 45 above).

61. On the other hand, in the light of the above statements by Consultant Psychiatrists K.A. and P.L., insisting on the necessity of follow-up and control in connection with intensive outpatient therapy, the Court finds it noteworthy that the High Court, in contrast to the City Court, did not develop on this issue.

62. The Court reiterates that the existence of a social and family network is also one of the important elements to take into account when assessing whether an individual has access to medical treatment in practice (see *Paposhvili*, cited above, § 190). In the present case, the applicant maintained that he had no family or other social network in Turkey. On this particular point the present case has similarities with *Aswat v. the United Kingdom* (no. 17299/12, § 57, 16 April 2013), and can be distinguished from, for example, *Bensaid* (cited above § 20) and *Tatar* (cited above, § 12).

63. Although recognising that there is no medical information in the present case pointing to the importance of a family network as part of the applicant's treatment, the Court cannot ignore that the applicant is suffering from a serious and long-term mental illness, paranoid schizophrenia, and permanently needs medical and psychiatric treatment. Returning him to Turkey, where he has no family or other social network, will unavoidably cause him additional hardship, and make it even more crucial, in the Court's view, that he will be provided with the necessary follow-up and control in connection with intensive outpatient therapy upon return. It reiterates in this respect, *inter alia*, that according to the psychiatric reports (see, in particular, paragraphs 19, 22, and 58 above) the applicant has been prescribed complex treatment and the treatment plan has to be carefully followed. Antipsychotic medication must be administered on a daily basis, which was deemed to constitute a risk of pharmaceutical failure and consequently the worsening of the applicant's psychotic symptoms and a greater risk of aggressive behaviour.

64. Therefore, a follow-up and control scheme is essential for the applicant's psychological outpatient therapy and for the prevention of a degeneration of his immune system. For that purpose he would need, at least, assistance in the form of a regular and personal contact person. Accordingly, in the Court's view, the Danish authorities should have assured themselves that upon return to Turkey, a regular and personal contact person would be available, offered by the Turkish authorities, suitable to the applicant's needs.

65. Accordingly, although the threshold for the application of Article 3 of the Convention is high in cases concerning the removal of aliens suffering from serious illness, the Court shares the concern expressed by the City Court, that it is unclear whether the applicant has a real possibility of receiving relevant psychiatric treatment, including the necessary follow-up and control in connection with intensive outpatient therapy, if returned to Turkey (see paragraph 27 above).

> 66. In the Court's view, this uncertainty raises serious doubts as to the impact of removal on the applicant. When such serious doubts persist, the returning State must either dispel such doubts or obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 (see *Paposhvili*, cited above, §§ 187 and 191).
>
> 67. It follows that if the applicant were to be removed to Turkey without the Danish authorities having obtained such individual and sufficient assurances, there would be a violation of Article 3 of the Convention."

Dommen, der er afsagt med dommerstemmerne 4-3, er den 27. januar 2020 indbragt for domstolens storkammer.

Landsrettens begrundelse og resultat

T er ved Østre Landsrets ankedom af 28. maj 2019 dømt for tre tilfælde af voldtægt efter straffelovens § 216, stk. 1, nr. 1 og 2, begået over tre dage mod den samme person. Han blev dømt til at undergive sig behandling på psykiatrisk afdeling med tilsyn af Kriminalforsorgen i forbindelse med afdelingen under udskrivning, således at Kriminalforsorgen sammen med overlægen kan træffe bestemmelse om genindlæggelse. Der blev ikke fastsat længstetid for foranstaltningen. Han blev endvidere udvist af Danmark med indrejseforbud for bestandigt.

Idet Psykiatrisk Center Amager, hvor T er indlagt, ønsker at udskrive ham, har anklagemyndigheden indbragt sagen for retten efter udlændingelovens § 50 a, stk. 2.

Retten skal derfor under denne sag i første række tage stilling til, om udvisningen af T skal opretholdes eller ophæves, jf. udlændingelovens § 50 a.

Det fremgår af udlændingelovens § 50 a, stk. 2, at retten ophæver udvisning, hvis udlændingens helbredsmæssige forhold afgørende taler imod, at udsendelse finder sted. Af forarbejderne til denne bestemmelse (de specielle bemærkninger til § 1, nr. 42, i lovforslag nr. 59 af 16. april 1998 og betænkning nr. 1326/1997, side 782-783) fremgår, at der ved afgørelsen blandt andet kan lægges vægt på, om udlændingen er i en tilstand, hvor det efter de lægefaglige oplysninger i sagen kan befrygtes, at den pågældende vil begå personfarlig kriminalitet, og på karakteren og grovheden af den kriminalitet, der begrundede udvisningen. Der vil endvidere skulle lægges vægt på de lægefaglige erklæringer om den pågældendes

helbredsmæssige tilstand, herunder om det hidtidige behandlingsforløb og om karakteren af og behovet for fortsat behandling, om konsekvenserne af at behandlingsforløbet afbrydes, samt om muligheden for i hjemlandet at kunne opnå fortsat behandling. Domstolene skal endvidere på sædvanlig vis påse, at en gennemførelse af udvisningen er i overensstemmelse mod Danmarks internationale forpligtelser, herunder Den Europæiske Menneskerettighedskonventions artikel 3.

Udsendelse af en udlænding med et fortsat behandlingsbehov vil kun i helt særlige tilfælde rejse spørgsmål i forhold til artikel 3, jf. navnlig Den Europæiske Menneskerettighedsdomstols dom i sag 41738/10 af 13. december 2016, Paposhvili mod Belgien, præmis 183.

Det er ikke afgørende for vurderingen efter udlændingelovens § 50 a, stk. 2, om en person ved udsendelse kan opnå den samme behandling i hjemlandet som i Danmark, men det har betydning, om domfældte har reel mulighed for relevant behandling i hjemlandet.

Det fremgår af de lægelige oplysninger, at T er velbehandlet for paranoid skizofreni med Cisordinol 40 mg daglig. Efter en periode at være blevet tvangsbehandlet tager han aktuelt sin medicin uden problemer. Han tilhører den ca. fjerdedel af patienter med skizofreni, som trods langvarig behandling med en høj dosis potent antipsykotisk medicin ikke bliver helt uden psykotiske symptomer, men han er ikke længere åbenlyst psykotisk, fremstår relativt psykisk stabil, og han vurderes ikke at være til fare for sig selv eller andre. Det er oplyst, at den omhandlede medicin er tilgængelig i Tyrkiet på et privat apotek i Ankara, at det er muligt at blive fulgt af en psykiater på et offentligt hospital i Ankara, og at det på samme hospital er muligt at konsultere en psykolog.

T er som nævnt dømt for flere tilfælde af voldtægt efter straffelovens § 216, stk. 1, nr. 1 og 2. Efter udtalelsen fra Retslægerådet af 28. marts 2019 må det lægges til grund, at der i hvert fald er en vis risiko for, at T vil begå ny personfarlig sædelighedskriminalitet, hvis behandlingen afbrydes.

Ved vurderingen af, om han reelt vil kunne få en behandling for sin sindssygdom, lægger landsretten vægt på, at T efter de lægelige oplysninger absolut ingen sygdomsindsigt eller

oplevelse af skyld har, at T stammer fra byen … i det østlige Tyrkiet og har arbejdet i Alanya, og at han derfor i mangel af andre oplysninger må antages atter at ville slå sig ned der, såfremt han udvises til Tyrkiet. Henset til den betydelige afstand mellem … hhv. Alanya og Ankara må det på det grundlag, der er forelagt landsretten, herefter anses for uvist, om han vil have en reel mulighed for at få den nødvendige medicin, hvis han udvises til Tyrkiet.

På den baggrund finder landsretten, at domfældtes helbredsmæssige tilstand afgørende taler imod, at udsendelse finder sted.

Landsretten tager herefter T's påstand om ophævelse af bestemmelsen om udvisning til følge.

T h i b e s t e m m e s:

Byrettens kendelse i sagen mod T ændres, således at bestemmelsen i landsrettens dom af 28. maj 2019 om udvisning ophæves.

Statskassen skal betale sagens omkostninger for landsretten.

(Sign.)

— — —

Udskriftens rigtighed bekræftes. Østre Landsret, den