HØJESTERETS KENDELSE
afsagt onsdag den 2. februar 2022

Sag 87/2020

Anklagemyndigheden
mod
T
(advokat Stefan Reinel, beskikket)

I tidligere instanser er afsagt kendelse af Københavns Byret den 17. marts 2020 (SS 2-23915/2019) og af Østre Landsrets 19. afdeling den 19. maj 2020 (S-850-20).

I påkendelsen har deltaget fem dommere: Poul Dahl Jensen, Vibeke Rønne, Henrik Waaben, Jan Schans Christensen og Jørgen Steen Sørensen.

Påstande

Anklagemyndigheden har påstået stadfæstelse af byrettens kendelse.

T har påstået stadfæstelse af landsrettens kendelse.

Supplerende sagsfremstilling

Af retspsykiatrisk erklæring af 13. marts 2019 vedrørende mentalundersøgelse af T, der er udarbejdet til brug for Østre Landsrets dom af 28. maj 2019 i straffesagen mod ham, fremgår bl.a.:

> ”*Observandens egne oplysninger om sin psykiske udvikling og tilstand*
> …
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> Observandens humør er svingende, han har flere gange overvejet, om livet var værd at leve, specielt fordi han savner sine børn så meget og pga. sine fysiske gener og overbevisningen om at være forfulgt. Han angiver, at han har bedt en ven om at køre ham ud

på Øresundsbroen, så han kunne hoppe ud, men at vennen ikke ville åbne bilen, ligesom han har prøvet at hænge sig i sit hjem. Begge dele er dog flere år siden."

Af en erklæring af 8. april 2021 fra Psykiatrisk Center Amager om T fremgår bl.a.:

"Siden udskrivelsen d. 03.06.2020 har T været tilknyttet OP-team (nuværende F-ACT team 2), hvor ut. har været behandlingsansvarlig læge.

Diagnose
Paranoid Skizofreni (DF20.0)
…

Tidligere psykiatrisk
T blev tilknyttet OP-team i januar 2014, hvor han blev diagnosticeret med paranoid skizofreni (DF20.0) Han blev afsluttet fra OP-team d. 16 06.2015 pga. manglende fremmøde og var på dette tidspunkt ikke i medicinsk behandling. Herefter var der ingen kontakt til psykiatrien før han d. 08.03.2019 blev surrogatvaretægtsfængslet på Psykiatrisk Center Amager mhp. udfærdigelse af mentalobservation. T modtog sin dom til behandling d. 28.05.2019. Han blev behandlet og stabiliseret med depot injektion cisordinol 200mg hver 14. dag. Han blev udskrevet til opfølgning i OP-team (nuværende F-ACT team 2) d. 03.06.2020, hvor ut. overtog ham som behandlingsansvarlig læge.

Socialt
…

T bor i egen lejlighed og er selvhjulpen. Han er førtidspensionist siden 2010 grundet 9 diskusprolapser. I fritiden kommer han nogle gange i NABO Center Amager, men han har ikke været der i længere tid grundet frygt for Corona smitte. Patienten opholder sig for det meste i egen lejlighed. Han har ingen tætte venner. Hans sociale netværk er nærmest ikkeeksisterende.
…

Sygehistorie
T er primært præget af persekutoriske vrangforestillinger om at være forfulgt af systemet, i særdeleshed politiet. Han er sikker på at politiet følger ham nøje på daglig basis, skønt han ikke har kunnet få øje på dem. Han mener han er blevet fejlbehandlet af flere læger og at han flere gange er blevet forsøgt forgiftet af læger og medborgere. Han mener læger har fjernet 2 af hans ryghvirvler, som de går rundt med som trofæer. De har desuden indopereret en knap, hvormed det kan få T til pludselig at gå i stå. Han har også bedt om at samtaler skal foregå i mørket, da elektriciteten sender strøm igennem hovedet på ham. T er også overbevist om at nåle fra tidligere akupunkturbehandlinger er blevet gemt i ryggen på ham og fortsat stikker ham.

T har haft auditive hallucinationer igennem mange år, hvor stemmer taler til og om ham. Han oplever tidvise auditive hallucinationer om morgenen, hvor en stemme kan hviske i hans øre at han skal vågne. Han oplever også en høj hyletone, når han bliver stresset, f.eks. når han tænker på sine sønner, som han ikke må se.

T har også haft daglige visuelle hallucinationer. Han har fortalt om 144 væsener han kan se, føre samtaler med og røre ved. Specielt 4 kvinder har optaget T. Mest fremtrædende er Silviana, som har meget små katteører, røde øjne og hvide tænder. En anden kvinde er lysebrun med meget langt hår, en tredje er helt hvid og ligner en engel og en fjerde er vandfarvet, to meter høj med lystskinnede hår. T har ytret frygt for at disse kvinder vil give ham tæsk eller kvæle ham hvis han røber for meget om dem. Til tider ser T også en kæmpe lyskugle foran i synsfeltet, som han synes er meget smuk.

T har en dårlig hukommelse og det sker tit at han glemmer aftaler og glemmer hvor velkendte adresser ligger. Han fortæller at han bliver nervøs, anspændt, bange og vred når han oplever at ingen vil hjælpe ham. Da begynder han typisk at vibrere, ikke at kunne få luft og have smerter i brystet.

På det seneste har T været velmedicineret. Han fremstår dog fortsat paranoidtolkende, mistroisk og garderet. Det er således uvist i hvilken udstrækning alle de ovennævnte symptomer aktuelt manifesterer sig. Han taler dog fortsat gerne om sine vrangforestillinger om at være forfulgt af staten, politiet, læger, etc. Han indrømmer at han fortsat hører stemmer, men han fremstår mindre forpint end tidligere.

Vurdering af risiko for ny kriminalitet
T har igennem mange år haft stor modstand mod medicinsk behandling, som han mener på flere måder har forgiftet ham og skadet hans krop. Såfremt T ikke havde en dom til behandling ville der være en betydelig risiko for at han ville stoppe med at tage sin medicin. Erfaringsmæssigt ved vi at T fungerer meget dårligt uden medicin. Hans symptomer ved fremtidigt medicinsvigt, især hans paranoide forestillinger, ville med overvejende sandsynlighed blive forværrede, og dette ville medføre en øget risiko for ny kriminalitet.

Konklusion
Det kan af de ovennævnte grunde ikke for nuværende anbefales at T's dom til behandling bliver ophævet eller ændret."

Supplerende retsgrundlag

Den 7. december 2021 afsagde Den Europæiske Menneskerettighedsdomstol (Storkammeret) dom i sag 57467/15 (Savran mod Danmark). Domstolen fandt – i modsætning til i den tidligere dom af 1. oktober 2019 i samme sag – at der ikke forelå en krænkelse af Menneskerettighedskonventionens artikel 3 om forbud mod umenneskelig behandling. Derimod forelå der en krænkelse af konventionens artikel 8 om ret til respekt for privatliv.

Spørgsmålet for Menneskerettighedsdomstolen var bl.a., om der var grundlag for at opretholde det, der i dom af 13. december 2016 i sag 41739/10 (Paposhvili mod Belgien) er anført om anvendelsesområdet for artikel 3. Om dette spørgsmål udtaler Domstolen bl.a.:

> ”133. Having regard to the reasoning of the Chamber and the submissions of the parties and third parties before the Grand Chamber, the latter considers it useful with a view to its examination of the present case to confirm that the Paposhvili judgment (cited above) offered a comprehensive standard taking due account of all the considerations that are relevant for the purposes of Article 3 of the Convention. It maintained the Contracting States' general right to control the entry, residence and expulsion of aliens, whilst recognising the absolute nature of Article 3. The Grand Chamber thus reaffirms the standard and principles as established in Paposhvili (cited above).
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> 134. Firstly, the Court reiterates that the evidence adduced must be "capable of demonstrating that there are substantial grounds" for believing that as a "seriously ill person", the applicant "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" (ibid., § 183).
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> 135. Secondly, it is only after this threshold test has been met, and thus Article 3 is applicable, that the returning State's obligations listed in paragraphs 187-91 of the Paposhvili judgment (see paragraph 130 above) become of relevance.
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> 136. Thirdly, the Court emphasises the procedural nature of the Contracting States' obligations under Article 3 of the Convention in cases involving the expulsion of seriously ill aliens. It reiterates that it 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 (ibid., § 184)."

Domstolen anfører herefter i præmis 139, at den "standard", som fremgår af Paposhvili-dommen, er tilstrækkeligt fleksibel til at blive anvendt i alle tilfælde, der angår udsendelse af en alvorligt syg person, uanset karakteren af den pågældende sygdom.

Om anvendelsen af de relevante principper i det konkrete tilfælde anfører Domstolen herefter bl.a.:

> ”140. The Grand Chamber observes that in its judgment the Chamber did not assess the circumstances of the present case from the standpoint of the threshold test established in paragraph 183 of the Paposhvili judgment (cited above). As noted in paragraph 135 above, it is only after that test is met that any other questions, such as the availability and accessibility of appropriate treatment, become of relevance.

141. Whilst, admittedly, schizophrenia is a serious mental illness, the Court does not consider that that condition can in itself be regarded as sufficient to bring the applicant's complaint within the scope of Article 3 of the Convention.

142. The Court observes that the medical evidence submitted by the applicant showed, in particular, that he was aware of his disease, clearly acknowledged his need for therapy, and was cooperative. His treatment plan included medication with two antipsychotic drugs: Leponex (a medication with clozapine as the active pharmaceutical ingredient), in the form of tablets to be administered daily, and Risperdal Consta, in the form of injections to be administered fortnightly. The experts submitted that a relapse in the event of the interruption of the applicant's medication might "have serious consequences for himself and his environment" (see paragraph 44 above). In particular, there was said to be "a risk of aggressive behaviour" and of the applicant's becoming "very dangerous", which would give rise to "a significantly higher risk of offences against the person of others because of the worsening of the applicant's psychotic symptoms" (see paragraphs 36, 42 and 45 above). It was also stated that Leponex could cause immune deficiencies, and therefore the taking of blood samples for somatic reasons on a weekly or monthly basis was necessary (see paragraph 63 above).

143. While the Court finds it unnecessary to decide in the abstract whether a person suffering from a severe form of schizophrenia might be subjected to "intense suffering" within the meaning of the Paposhvili threshold test, it considers, having reviewed the evidence adduced by the parties before it and the evidence before the domestic courts, that it has not been demonstrated in the present case that the applicant's removal to Turkey 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. According to some of the relevant medical statements, a relapse was likely to result in "aggressive behaviour" and "a significantly higher risk of offences against the person of others" as a result of the worsening of psychotic symptoms. Whilst those would have been very serious and detrimental effects, they could not be described as "resulting in intense suffering" for the applicant himself.

144. It does not appear, in the absence of convincing evidence to that effect, that any risk has ever existed of the applicant harming himself (in this connection, compare Bensaid v. the United Kingdom, no. 44599/98, §§ 16 and 37, ECHR 2001-I, and Tatar v. Switzerland, no. 65692/12, § 16, 14 April 2015, both concerning applicants who were suffering from paranoid schizophrenia, where a risk of self-harm was a factor but where Article 3 was not engaged). Whilst one of the experts did mention "serious consequences" for the applicant "himself", those consequences, as explained further by the expert, concerned a high risk of harm to others.

145. As regards any risk to the applicant's physical health owing to immune defects that might be caused by Leponex, this appears to have been neither real not immediate in the applicant's case…

146. Even assuming 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 Paposhvili, cited above, § 186), the Court is not convinced that in the present case, the applicant has shown substantial grounds for believing that, in the absence of appro-

priate treatment in Turkey or the lack of access to such treatment, he would be exposed to a risk of bearing the consequences set out in paragraph 183 of the judgment in Paposhvili and paragraphs 129 and 134 above.

147. The foregoing considerations are sufficient to enable the Court to conclude that the circumstances of the present case do not reach the threshold set by Article 3 of the Convention to bring the applicant's complaint within its scope. As already indicated, that threshold should remain high for this type of case (ibid., § 183). Against this background, there is no call to address the question of the returning State's obligations under this Article in the circumstances of the present case.

148. There has accordingly been no violation of Article 3 of the Convention as a result of the applicant's removal to Turkey."

Som anført fandt Menneskerettighedsdomstolen, at der forelå en krænkelse af konventionens artikel 8. Om dette spørgsmål udtaler Domstolen indledningsvis bl.a.:

"190. In the present case, it appears that a balancing of the various interests at stake was performed in the light of the relevant Article 8 criteria by the national courts in the context of the criminal proceedings against the applicant, when his expulsion was first ordered. The Court further observes that a significant period elapsed between 10 August 2009 (the date on which the expulsion order became final) and 20 May 2015 (the date of the final decision in the revocation proceedings). Thus, it fell to the national authorities to consider the proportionality of the applicant's expulsion in the revocation proceedings, taking into account any relevant change in his circumstances, notably those pertaining to his conduct and health, that might have taken place during that period (see Maslov, cited above, §§ 90-93). The Court reiterates at this juncture that the crux of the present case is the compliance of the revocation proceedings with the relevant criteria under Article 8 of the Convention established by the Court's case-law (see paragraph 171 above).

191. The Court observes at the outset that, on account of his mental condition, the applicant was more vulnerable than an average "settled migrant" facing expulsion. The state of his health was required to be taken into account as one of the balancing factors (see paragraph 184 above). In this connection, the Court observes that, by virtue of section 50a of the Aliens Act (see paragraph 76 above), the national courts in the revocation proceedings proceeded to determine whether the applicant's state of health made it conclusively inappropriate to enforce the expulsion order. At two levels of jurisdiction, the domestic courts had regard to statements from various experts and relevant information from the country concerned. In particular, they examined 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. The courts were thus satisfied that the medication in issue was available in Turkey, including in the area where the applicant would most likely settle down.

192. The Court sees no reason to question that very thorough consideration was given to the medical aspects of the applicant's case at the domestic level. Indeed, the High Court carried out a careful examination of the applicant's state of health and the impact thereon, including the availability and accessibility of the necessary medical treatment, should the removal be implemented. It took into account the cost of medication and care, the distance to be travelled in order to have access to care and the availability of medical assistance in a language spoken by the applicant. However, medical aspects are only one among several factors to be taken into account where appropriate (see paragraph 184 above), as is the case here, in addition to the Maslov criteria outlined in paragraph 182 above."

Særligt om betydningen af, at Savran var frifundet for straf efter straffelovens § 16, stk. 2, anfører Domstolen:

"193. As regards the nature and seriousness of the criminal offence, the Court observes that, while still a minor, the applicant committed a robbery of which he was convicted in 2001 (see paragraph 12 above). In 2006, acting with a group of other people, he participated in an attack on a man which resulted in the latter's death (see paragraph 13 above). The Court notes that those were crimes of a violent nature, which cannot be regarded as mere acts of juvenile delinquency (compare and contrast Maslov, cited above, § 81). At the same time, the Court does not overlook the fact that, in the later criminal proceedings in which the applicant was found guilty of aggravated assault, the medical reports revealed that at the time when he had committed that offence, it was very likely that he had been suffering from a mental disorder, namely paranoid schizophrenia, threatening and physically aggressive behaviour being symptoms of that disorder in his case (see paragraph 25 above). In accordance with the Maslov criteria (see paragraph 182 above), it needs to be considered whether "very serious reasons" justified the applicant's expulsion and hence, for the purposes of the present case, the refusal to revoke the order in 2015 at the time its execution became feasible. A relevant issue for the purposes of the Article 8 analysis is whether the fact that the applicant, on account of his mental illness, was, in the national courts' view, exempt from punishment under Article 16 § 2 and Article 68 of the Danish Penal Code when convicted in 2009 had the impact of limiting the extent to which the respondent State could legitimately rely on the applicant's criminal acts as the basis for his expulsion and permanent ban on re-entry.

194. In its recent case-law dealing with the expulsion of settled migrants under Article 8 of the Convention (see, for example, paragraph 189 above), the Court has held that serious criminal offences can, assuming that the other Maslov criteria are adequately taken into account by the national courts in an overall balancing of interests, constitute a "very serious reason" such as to justify expulsion. However, the first Maslov criterion, with its reference to the "nature and seriousness" of the offence perpetrated by the applicant, presupposes that the competent criminal court has determined whether the settled migrant suffering from a mental illness has demonstrated by his or her actions the required level of criminal culpability. The fact that his or her criminal culpability was officially recognised at the relevant time as being excluded on account of mental illness at the point in time when the criminal act was perpetrated may have the effect of limiting the weight that can be attached to the first Maslov criterion in the overall balancing of interests required under Article 8 § 2 of the Convention.

> 195. The Court makes clear that in the present case it is not called upon to make general findings in this regard, but only to determine whether the manner in which the national courts assessed the "nature and seriousness" of the applicant's offence in the 2015 proceedings adequately took into account the fact that he was, according to the national authorities, suffering from a serious mental illness, namely paranoid schizophrenia, at the moment when he perpetrated the act in question."

Om betydningen af andre forhold – herunder at Savran kom til Danmark som 6-årig – anfører Domstolen:

> "196. In this connection, the Court observes that, in its decision of 13 January 2015 regarding the lifting of the expulsion order, the High Court only briefly referred to the serious nature and gravity of his criminal offence (the first Maslov criterion, see paragraphs 66 and 182 above). No account was taken of the fact that the applicant was, due to his mental illness, ultimately exempt from any punishment but instead sentenced to committal to forensic psychiatric care (see paragraphs 22, 26 and 30 above). The High Court also made only a limited attempt to consider whether there had been a change in the applicant's personal circumstances with a view to assessing the requirements of public order in the light of the information regarding his conduct during the intervening 7-year period (see paragraphs 34-36, 38-40, 43, 51, 54 and 62 above). Against this background, and given the immediate and long-term consequences for the applicant of the expulsion order being executed (see paragraph 200 below in relation to the permanent nature of the ban on re-entry), the Court considers that the national authorities did not give a sufficiently thorough and careful consideration to the Article 8 rights of the applicant, a settled migrant who had resided in Denmark since the age of six, and did not carry out an appropriate balancing exercise with a view to establishing whether those applicant's rights outweighed the public interest in his expulsion for the purpose of preventing disorder and crime (compare Ndidi, cited above, §§ 76 and 81).
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> 197. In that connection, as follows from the third of the Maslov criteria (see paragraph 182 above), the applicant's conduct during the period that elapsed between the offence of which he had been found guilty and the final decision in the revocation proceedings is particularly important. Thus, the relevant evidence demonstrates that although initially the applicant's aggressive behavioural patterns had persisted, he had made progress during those years (see paragraphs 34-36, 38-40, 43, 51, 54 and 62 above). However, the High Court did not consider these changes in the applicant's personal circumstances with a view to assessing the risk of his reoffending against the background of his mental state at the time of the commission of the offence, which had exempted him from punishment, and the apparent beneficial effects of his treatment, which had led to his being discharged from forensic psychiatric care.
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> 198. A further issue to be considered is the solidity of the applicant's social, cultural and family ties with the host country and the country of destination (the fourth Maslov criterion). Whilst the applicant's ties with Turkey seem to have been limited, it cannot be said that he was completely unfamiliar with that country (see paragraphs 30, 59 and 65 above). However, it appears that the High Court gave little consideration to the length of the applicant's stay in and his ties to his host country Denmark (the second and fourth Maslov criteria respectively; see paragraph 182 above), stressing as it did the fact that he had not founded his own family and had no children in

> Denmark (see paragraph 66 above). As to the latter aspect, the Court reiterates its finding in paragraph 178 above that, even if he had no "family life", the applicant could still claim protection of his right to respect for his "private life" within the meaning of Article 8 (see Maslov, cited above, § 93). In this regard, the Court attaches particular weight to the fact, also noted by the domestic courts in the criminal proceedings and by the City Court in the revocation proceedings, that the applicant was a settled migrant who had been living in Denmark since the age of six (see paragraph 59 above). Although the applicant's child and young adulthood were clearly difficult, suggesting integration difficulties, he had received most of his education in Denmark and his close family members (mother and siblings) all live there. He had also been attached to the Danish labour market for about five years (see paragraphs 27 and 30 above).
> …
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> 201. In the light of the above, it appears that in the revocation proceedings, despite the significant period of time during which the applicant underwent medical treatment for his mental disorder, the High Court, apart from briefly referring to his lack of family ties in Denmark and to the serious nature and gravity of his criminal offence, did not consider the changes in the applicant's personal circumstances with a view to assessing the risk of his reoffending against the background of his mental state at the time of the commission of the offence and the apparent beneficial effects of his treatment. Nor did it have due regard to the strength of the applicant's ties to Denmark as compared to those to Turkey. The Court further notes that under the domestic law, the administrative and judicial authorities had no possibility of making an individual assessment of the duration of the applicant's exclusion from Danish territory, which was both irreducible and permanent. Therefore, and notwithstanding the respondent State's margin of appreciation, the Court considers that, in the particular circumstances of the present case, the domestic authorities failed to duly take into account and to properly balance the interests at stake (see paragraphs 182 and 183 above).
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> 202. Accordingly, there has been a violation of Article 8 of the Convention."

Supplerende anbringender

Anklagemyndigheden har supplerende anført bl.a., at Menneskerettighedsdomstolens dom af 7. december 2021 i Savran mod Danmark ikke indebærer, at der i den foreliggende sag er tale om en krænkelse af Menneskerettighedskonventionens artikel 3. Det fremgår af dommen, at skizofreni ikke i sig selv er en tilstrækkeligt alvorlig lidelse til at anse sygdomskriteriet i artikel 3 for opfyldt. Der foreligger endvidere ikke oplysninger om, at T aktuelt vil være selvmordstruet eller selvskadende, hvis han ikke får behandling for sin sygdom. Det må lægges til grund, at der alene er risiko for personfarlig kriminalitet over for andre.

Heller ikke konventionens artikel 8 er til hinder for udvisning. Der er forløbet mindre end tre år siden Østre Landsrets dom i straffesagen, hvor spørgsmålet om artikel 8 blev vurderet, og der foreligger ikke væsentlige nye oplysninger, som kan begrunde en ændret vurdering. T er

dømt for meget alvorlig kriminalitet i form af voldtægt begået over tre dage, og det kan ikke føre til andet resultat i forhold til artikel 8, at han er straffri i medfør af straffelovens § 16.

T har supplerende anført bl.a., at Menneskerettighedsdomstolens dom af 7. december 2021 indebærer, at Menneskerettighedskonventionens artikel 3 finder anvendelse, hvis der er risiko for, at udlændingen vil forsøge at begå selvmord på grund af sin psykiske sygdom. Han har flere gange haft selvmordstanker, og han har ingen sygdomsindsigt. Dette øger risikoen for selvmord ved udvisning til Tyrkiet, idet der er stor risiko for, at han ikke der vil få den nødvendige medicin, og at han hurtigt vil komme ud af psykisk balance.

Udvisning vil også være i strid med konventionens artikel 8. Det skal indgå i vurderingen efter denne bestemmelse, at han på grund af paranoid skizofreni er frifundet for straf, og at der er sket ændringer i positiv retning i hans sygdom. Hans kulturelle og personlige bånd til Danmark er betydeligt stærkere end til Tyrkiet, og han har opholdt sig i Danmark i 24 år.

Højesterets begrundelse og resultat

Sagens baggrund og problemstilling
T blev ved Østre Landsrets dom af 28. maj 2019 fundet skyldig efter den dagældende bestemmelse i straffelovens § 216, stk. 1, nr. 1 og 2, i tre tilfælde af voldtægt begået mod den samme kvinde. Han blev frifundet for straf, jf. straffelovens § 16, stk. 1, og efter lovens § 68 dømt til behandling på psykiatrisk afdeling. Han blev endvidere udvist af Danmark med indrejseforbud for bestandig.

Sagen angår, om der er grundlag for efter udlændingelovens § 50 a, stk. 2, at ophæve udvisningen. Efter denne bestemmelse skal der ske ophævelse, hvis Ts helbredsmæssige tilstand afgørende taler imod, at udsendelse finder sted. Det er i den forbindelse et spørgsmål, om udsendelse vil være i strid med Den Europæiske Menneskerettighedskonventions artikel 3 og 8 som fortolket af Den Europæiske Menneskerettighedsdomstol senest i dom af 7. december 2021 i sag 57467/15 (Savran mod Danmark).

Den Europæiske Menneskerettighedskonventions artikel 3

Efter artikel 3 i Menneskerettighedskonventionen må ingen underkastes tortur og ej heller umenneskelig eller nedværdigende behandling eller straf.

I præmis 133 i Menneskerettighedsdomstolens dom af 7. december 2021 bekræfter Domstolen, at de standarder og principper, der er fastslået i dom af 13. december 2016 i sag 41739/10 (Paposhvili mod Belgien), fortsat gælder. Af præmis 141 fremgår, at selv om skizofreni er en alvorlig psykisk sygdom, kan den ikke i sig selv begrunde, at artikel 3 finder anvendelse.

I den foreliggende sag er der fremlagt en række oplysninger om T, senest ved Psykiatrisk Center Amagers erklæring af 8. april 2021. T er diagnosticeret med paranoid skizofreni. Han er uden sygdomsindsigt og fungerer dårligt uden medicin. Samtidig fremgår det, at han i juni 2020 blev udskrevet fra behandling, og at han bor i egen lejlighed og er selvhjulpen. Det fremgår også, at hans symptomer, især hans paranoide forestillinger, ved medicinsvigt med overvejende sandsynlighed vil blive forværret, og at dette vil medføre øget risiko for ny kriminalitet. Spørgsmålet om selvmordstanker er omtalt i mentalundersøgelsen af 13. marts 2019, hvor det fremgår, at disse tanker lå flere år tilbage. Der foreligger ikke aktuelle oplysninger om, at han er selvmordstruet.

På den baggrund finder Højesteret, at udsendelse af T til Tyrkiet ikke vil indebære en krænkelse af Menneskerettighedskonventionens artikel 3. Det kan således ikke i sig selv begrunde anvendelse af denne bestemmelse, at T er skizofren, og der er ikke herudover grundlag for at antage, at han uden behandling vil blive udsat for lidelse som nævnt i dommens præmis 134 (”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”). Som anført af landsretten er det i øvrigt oplyst, at relevant medicin er tilgængelig på et privat apotek i Ankara, og at det på et offentligt hospital i Ankara er muligt at blive fulgt af en psykiater og at konsultere en psykolog.

Den Europæiske Menneskerettighedskonventions artikel 8
Ved Østre Landsrets dom af 28. maj 2019 blev T som anført udvist med indrejseforbud for bestandig. Landsretten vurderede i den forbindelse, om udvisning ville være i strid med Menneskerettighedskonventionens artikel 8 om ret til respekt for privatliv og familieliv,

herunder i lyset af de kriterier, der fremgår af Menneskerettighedsdomstolens dom af 23. juni 2008 i sag 1638/03 (Maslov mod Østrig).

Landsretten bemærkede, at T i 1998 kom til Danmark som 23-årig, og lagde herefter bl.a. vægt på, at han levede alene som førtidspensionist uden tilknytning til arbejdsmarkedet, at han ikke havde kontakt til sine børn, som han efter det oplyste sidst så i 2010, og at han efter sin forklaring havde en stor familie i Tyrkiet. Landsretten lagde til grund, at T kunne klare sig på tyrkisk, og at han ikke var uden forudsætninger for at etablere en tilværelse i Tyrkiet, hvor han var født og opvokset. På den baggrund og henset til, at han nu var dømt for alvorlig personfarlig kriminalitet, fandt landsretten, at udvisning ikke ville være i strid med Menneskerettighedskonventionens artikel 8, heller ikke med indrejseforbud for bestandig.

Det følger af Menneskerettighedsdomstolens dom af 7. december 2021, at det i et tilfælde som det foreliggende skal vurderes, om der siden landsrettens dom er indtruffet omstændigheder, herunder vedrørende domfældtes adfærd og helbredstilstand, som kan begrunde en anden vurdering af forholdet til konventionens artikel 8 (præmis 190). Det fremgår (præmis 192), at behandlingsmæssige aspekter kun er én blandt flere faktorer, der skal tages hensyn til, og at den samlede vurdering af, om en udvisning kan opretholdes, også skal foretages i lyset af de kriterier, der er fastlagt i Maslov-dommen. Det følger også (præmis 193), at det ved vurderingen af grovheden af det pådømte forhold skal tillægges betydning, hvis gerningsmanden er frifundet for straf som følge af utilregnelighed på grund af sindssygdom.

Menneskerettighedsdomstolens dom indebærer, at der under en efterprøvelse efter udlændingelovens § 50 a skal foretages en ny og selvstændig prøvelse af forholdet til artikel 8 på grundlag af de faktiske omstændigheder, som de foreligger på tidspunktet for efterprøvelsen.

T har, siden han blev udskrevet i juni 2020, boet i egen lejlighed og modtaget ambulant psykiatrisk behandling i form af depotmedicin hver anden uge. Højesteret lægger efter oplysningerne i sagen til grund, at han i Tyrkiet vil kunne få nødvendig medicinsk behandling.

For så vidt angår Maslov-kriterierne i øvrigt har landsretten på grundlag af forholdene på tidspunktet for ankedommen i straffesagen som nævnt vurderet, at en udvisning med indrejse-

forbud for bestandig ikke ville være i strid med artikel 8. Der er på nuværende tidspunkt forløbet mindre end tre år siden landsrettens dom, og Højesteret finder, at der ikke foreligger oplysninger, som kan begrunde, at der nu anlægges en anden vurdering. Det bemærkes herved, at T er dømt for tre tilfælde af voldtægt begået mod samme kvinde, at han er født og opvokset i Tyrkiet og først kom til Danmark i 1998 som 23-årig, og at han stadig bor alene og er uden tilknytning til arbejdsmarkedet, ligesom han i mange år ikke har haft kontakt til sine børn i Danmark. Det forhold, at T blev frifundet for straf som følge af utilregnelighed på grund af sindssygdom, kan under disse omstændigheder ikke føre til et andet resultat af den samlede afvejning, der skal foretages ved vurderingen efter artikel 8.

Konklusion

Højesteret finder, at Ts helbredsmæssige tilstand og behandlingsmæssige hensyn ikke afgørende taler imod, at han udsendes til Tyrkiet, jf. udlændingelovens § 50 a, stk. 2, og at udsendelse ikke vil være i strid med Den Europæiske Menneskerettighedskonventions artikel 3 og 8.

Højesteret stadfæster derfor byrettens kendelse, således at udvisningen af T ikke ophæves.

Thi bestemmes:

Byrettens kendelse stadfæstes.

Statskassen skal betale sagens omkostninger for Højesteret.