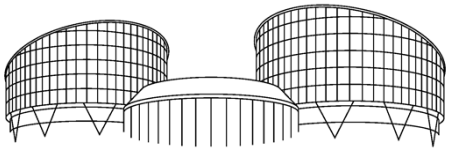

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF SAVRAN v. DENMARK

(*Application no. 57467/15)*

JUDGMENT

Art 3 (substantive) • Expulsion of foreign national with schizophrenia to his country of origin, without health risks reaching the high threshold for application of Art 3 • Confirmation of *Paposhvili v. Belgium* [GC] threshold test and its applicability to removal of mentally ill persons
Art 8 • Expulsion • Private life • Permanent exclusion order against long-term settled migrant with schizophrenia, despite progress after years of compulsory care, on account of violent offences • No consideration given to applicant's lack of criminal culpability on account of mental illness • Failure of authorities to take into account and balance interests at stake and all relevant factors

STRASBOURG

7 December 2021

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Savran v. Denmark,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President,*
Jon Fridrik Kjølbro,
Ksenija Turković,
Síofra O'Leary,
Yonko Grozev,
Dmitry Dedov,
Egidijus Kūris,
Branko Lubarda,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Tim Eicke,
Ivana Jelić,
Lorraine Schembri Orland,
Anja Seibert-Fohr, *judges,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 24 June 2020, 14 April and 8 September 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 57467/15) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Arıf Savran ("the applicant"), on 16 November 2015.

2. The applicant was represented by Mr Tyge Trier and Mr Anders Boelskifte, lawyers practising in Copenhagen. The Danish Government ("the Government") were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

3. The applicant complained that his removal to Turkey had constituted a breach of Article 3 of the Convention as he did not have a real possibility of receiving the appropriate and necessary psychiatric treatment, including follow-up and supervision, in connection with his paranoid schizophrenia, in the country of destination. He also alleged that the implementation of the expulsion order had been in breach of Article 8 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 20 June 2017 the Government were given notice of the application. On 1 October 2019 a Chamber of the Fourth Section, composed of Paul Lemmens, Jon Fridrik Kjølbro, Faris Vehabović, Iulia Antoanella Motoc, Carlo Ranzoni, Stéphanie Mourou-Vikström, Jolien Schukking, judges, and Andrea Tamietti, Deputy Section Registrar, delivered its judgment. It declared the application admissible and held, by four votes to three, that the applicant's expulsion to Turkey would give rise to a violation of Article 3 of the Convention and that it was not necessary to examine his complaint under Article 8 of the Convention. The joint dissenting opinion of Judges Kjølbro, Motoc and Mourou-Vikström and a separate dissenting opinion of Judge Mourou-Vikström were annexed to the judgment.

5. On 12 December 2019 the Government requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention, and the panel of the Grand Chamber accepted the request on 27 January 2020.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. Leave to intervene was granted to the Governments of France, Germany, the Netherlands, Norway, Russia, Switzerland and the United Kingdom, and to Amnesty International and the Centre for Research and Studies on Fundamental Rights of Paris Nanterre University (CREDOF), and they all submitted written comments (Article 36 § 2 of the Convention and Rule 44 § 3). The Government of Turkey did not avail themselves of their right to intervene under Article 36 § 1 of the Convention.

8. The applicant and the Government each filed observations (Rule 59 § 1) on the merits of the case.

9. A hearing took place in the Human Rights Building, Strasbourg, on 24 June 2020 (Rule 59 § 3); on account of the public-health crisis resulting from the Covid-19 pandemic, it was held via videoconference. The webcast of the hearing was made public on the Court's Internet site on the following day.

There appeared before the Court:

(a) *for the Government*

Mr M. BRAAD, Ministry of Foreign Affairs, *Agent*,
Ms N. HOLST-CHRISTENSEN, Ministry of Justice, *Co-Agent*,
Ms L. KUNNERUP, Head of Unit, Ministry of Immigration and Integration,
Ms A.-S. SAUGMANN-JENSEN, Deputy Head of Division, Ministry of Justice,
Ms Ø. AKAR, Head of Unit, Ministry of Immigration and Integration,

Mr C. WEGENER, Chief Adviser, Ministry of Foreign Affairs,
Ms S.L. VAABENGAARD, Head of Section, Ministry of Justice,
Ms C. ENGSIG SØRENSEN, Head of Section, Ministry of Justice,
Ms M. KORSGÅRD THOMSEN, Head of Section, Ministry of Immigration and Integration,
Ms S. BACH ANDERSEN, Head of Section, Ministry of Foreign Affairs, *Advisers.*

(b) *for the applicant*
Mr T. TRIER, lawyer, *Counsel*,
Mr A. BOELSKIFTE, lawyer, *Co-Counsel*,
Ms S. HUSSAIN, assistant lawyer,
Ms T. HUSUN, associate, *Advisers.*

The Court heard addresses by Mr Trier and Mr Braad, and the replies given by them and by Mr Boelskifte to the questions put by the judges. The President of the Grand Chamber authorised the Government to produce additional information on the case in writing. Their submissions in that regard were received on 7 July 2020. The applicant's comments on the information provided were received on 24 July 2020.

THE FACTS

10. The applicant was born in 1985 and now resides in the village of Kütükuşağı in Turkey.

11. In 1991, when he was six years old, the applicant entered Denmark together with his mother and four siblings to join his father. The latter died in 2000.

12. On 9 January 2001, by a judgment of the City Court of Copenhagen (*Københavns Byret*, hereinafter "the City Court"), the applicant was convicted of robbery and sentenced to imprisonment for one year and three months, nine months of which were suspended, and placed on probation for two years.

I. CRIMINAL PROCEEDINGS

13. On 29 May 2006 the applicant, as part of a group of several persons, attacked a man; several kicks or blows with cudgels or other blunt objects were administered to the latter's head and body, thereby inflicting serious traumatic brain injury that caused his death. It appears that the applicant was caught by the police on the spot, whereas all the others involved in the incident managed to escape.

A. First round of proceedings

14. In connection with the above-mentioned incident, criminal proceedings were brought against the applicant, who was charged with assault with highly aggravating circumstances.

1. Evidence examined by the courts

(a) Reports of the Immigration Service

15. In the context of those proceedings, on 17 September 2007 the Immigration Service (*Udlændingeservice*) issued a report on the applicant. It stated, in particular, that on 1 February 1991 the applicant had been granted residence, with a possibility of permanent residence under the Aliens Act, by reference to his father living in Denmark. On or before 11 May 2004 his residence permit had been made permanent. The report also stated that the applicant had been lawfully resident in Denmark for approximately fourteen years and eight months; that his mother and four siblings lived in Denmark; and that he had been to Turkey between five and ten times for periods of two months to visit his family. However, he had not been to Turkey since 2000. The report referred to the applicant's statements to the effect that he had no contact with persons living in Turkey, did not speak Turkish and only spoke a little Kurdish. Also, he had stated that he heard voices and suffered from a thought disorder and that he was being administered sedatives. In view of the information given by the prosecution on the nature of the crime in conjunction with the considerations mentioned in section 26(1) of the Aliens Act (*udlændingeloven*; see paragraph 76 below), the Immigration Service endorsed the prosecution's recommendation of expulsion.

16. In a supplementary report of 2 April 2008 the Immigration Service reaffirmed its recommendation of expulsion.

(b) Medical opinions

17. A report on the examination of the applicant's mental status dated 13 March 2008 which the Ministry of Justice (*Justitsministeriet*) obtained from the Department of Forensic Psychiatry (*Retspsykiatrisk Klinik*) concluded, in particular, that it was highly likely that the applicant had a slight mental impairment, but he was not found to be suffering from a mental disorder and could not be assumed to have been suffering from a mental disorder at the time when the crime had been committed.

18. The report furthermore stated that the applicant's childhood and adolescence had been significantly lacking in stimulation and characterised by non-existent parental care and poor social conditions, and that he and his siblings had been forcibly removed from home and placed in foster care. According to the report, from his early childhood the applicant had

displayed behavioural disturbance and a lack of social adaptation, and he had been attracted to criminal environments since his teens. Since that time, he had also smoked a lot of cannabis, which might have hampered his personality and intellectual development. Over the years, he had been placed in various socio-educational institutions but they had had difficulties accommodating his needs owing to his externalising behaviour, and the socio-educational support and therapy had not changed his condition and behaviour.

19. The report also mentioned that, in the context of his medical assessment, the applicant had insisted that he had experienced both visual and auditory hallucinations, but no objective findings of hallucinations had been made. He had made similar claims in the course of previous medical assessments but those complaints had apparently ceased when the applicant had no longer found it relevant to make them. The report added that the applicant's description of those symptoms did not correspond to the usual description of hallucinations, and it was thus found that his description had to be classified as simulation. The report stressed that the applicant needed long-term regular and well-structured therapy, and recommended that he should be committed to a secure unit of a residential institution for the severely mentally impaired.

20. In an opinion of 16 April 2008, the Medico-Legal Council (*Retslægerådet*) stated, among other things, that the applicant had had a disadvantaged childhood and adolescence, had presented a pronounced behavioural disturbance and had later become involved in criminal activities. It also stated that the applicant had a mental impairment, but otherwise showed no signs of organic brain injury; that he smoked a lot of cannabis; that he had previously been in contact with the mental health system several times, but no definite diagnosis of psychotic disorder had been made despite complaints of psychotic symptoms. In its assessment, the Medico-Legal Council found that the applicant's complaints of auditory hallucination could be characterised as simulation. He was also found to be mentally impaired with a mild to moderate level of functional disability and to be suffering from personality disorder characterised by immaturity, lack of empathy, emotional instability and impulsivity. He had a strong need for clear boundaries to give him structure and support.

2. Court decisions

21. On 9 October 2007, the High Court of Eastern Denmark (*Østre Landsret*, hereinafter "the High Court") convicted the applicant of assault with highly aggravating circumstances under Articles 246 and 245(1) of the Penal Code (*straffeloven*) (see paragraph 75 below) and sentenced him to seven years' imprisonment and expulsion from Denmark with a permanent ban on re-entry.

22. On appeal, on 22 May 2008 the Supreme Court (*Højesteret*) quashed the judgment and returned the case to the High Court for a fresh examination. With reference to the available medical evidence (see paragraphs 17-20 above), the court stated, in particular, that it had doubts that the sentence of imprisonment had been justified in the circumstances of the present case.

B. Second round of proceedings

23. Following the remittal of the case, the High Court examined the criminal case against the applicant anew.

1. Additional evidence examined by the courts

24. In a report of 18 June 2009 a psychiatric specialist pointed out that the applicant suffered from a condition of mental bewilderment which, by that time, had been obvious for more than four weeks; and that his recent development raised doubts as to whether he most likely suffered from a permanent mental disorder, or whether, owing to his intelligence level combined with his deviating distinctive personality traits, he was suffering from a permanent condition comparable to mental impairment.

25. On 14 July 2009 the Medico-Legal Council stated, with reference, in particular, to the report of 18 June 2009, that the applicant suffered from a more permanent mental disorder and that he had probably also been suffering from a similar mental condition at the time when the crime with which he had been charged had been committed. The report further reiterated the finding of the report of 16 April 2008 (see paragraph 20 above), and stated that subsequent observations made at a residential institution for the severely mentally impaired – where the applicant had been placed – had revealed his ongoing threatening and physically aggressive behaviour. For a long period, the applicant had been considered to have been obviously mentally ill and to be suffering from paranoid delusions and formal thought disorder. The report pointed out that those were symptoms most likely linked to schizophrenia; if that was the case, it was very likely that the applicant had been suffering from a mental disorder at the time when the crime with which he had been charged had been committed. The Medico-Legal Council recommended in its report that, if found guilty as charged, the applicant should be committed to forensic psychiatric care.

2. Court decisions

26. By a judgment of 17 October 2008 the High Court found that the applicant had violated Articles 245(1) and 246 of the Penal Code but was exempt from punishment by virtue of Articles 16(2) and 68 thereof (see

paragraph 75 below). In that connection it referred to the reports of 13 March and 16 April 2008 (see paragraphs 17-20 above). It thus sentenced him to committal to the secure unit of a residential institution for the severely mentally impaired for an indefinite period. The court also ordered the applicant's expulsion from Denmark with a permanent ban on his re-entry.

27. In respect of the expulsion order, the High Court referred to the reports of the Immigration Service dated 17 September 2007 and 2 April 2008 (see paragraphs 15-16 above) and emphasised that the applicant had moved to Denmark at the age of six when granted family reunification with his father, who lived in Denmark; that he had been lawfully resident in Denmark for about fourteen years and eight months; that he was not married and did not have any children; and that his entire family, comprising his mother and four siblings, lived in Denmark, the only exception being his maternal aunt, who lived in Turkey. It was also emphasised that he had attended elementary school in Denmark for seven years and had been attached to the Danish labour market for about five years, but that at the moment he received a disability pension; that he had been to Turkey between five and ten times for periods of two months to visit his family, but not since 2000, and that he did not speak Turkish, but only spoke a little Kurdish. On the other hand, it was emphasised that the applicant had been found guilty of a very serious offence against the person of another, which was a serious threat to the fundamental values of society. Against that background the High Court found, on the basis of an overall assessment, that expulsion would not be conclusively inappropriate under the relevant domestic law then in force, or in breach of Article 8 of the Convention.

28. The applicant appealed against the judgment to the Supreme Court.

29. In the meantime, on 11 March 2008, a supplementary interview was conducted with the applicant during which he stated, *inter alia*, that he had last visited Turkey in 2001, that he was fluent in Kurdish, and that his family in the village of Koduchar lived in a house owned by his mother.

30. By a judgment of 10 August 2009, the Supreme Court changed the applicant's sanction and sentenced him to committal to forensic psychiatric care, upholding the expulsion order. It took into account the medical reports of 18 June and 14 July 2009 (see paragraphs 24-25 above), and the applicant's statements made during his supplementary interview (see the previous paragraph). The Supreme Court stated as follows:

> "[The applicant], who is now 24 years old, moved to Denmark from Turkey at the age of six. He has attended school in Denmark, and his close family members comprising his mother and his four siblings live in Denmark. He is not married and has no children. He receives disability pension and is not otherwise integrated into Danish society. He speaks Kurdish, and during his childhood and adolescence in Denmark he went to Turkey between five and ten times for periods of two months to visit his family. He last visited Turkey in 2001, where his mother owns a property.

> Having regard to the nature and gravity of the offence, we find no circumstances making expulsion conclusively inappropriate – see section 26(2) of the Aliens Act – nor do we find expulsion to be contrary to Article 8 of the Convention."

31. The decision on expulsion was made by a majority of five judges out of six. The dissenting judge stated as follows:

> "[The applicant] came to Denmark at the age of six. Accordingly, he spent most of his childhood and adolescence and went to school in Denmark, which is also where his closest family (his mother and his four siblings) live. He visited Turkey several times until the death of his father, but he has not visited the country since 2001. He does not have any contact with relatives or other persons living in Turkey. He speaks Kurdish, but not Turkish.
>
> Accordingly, I find that [the applicant's] ties with Denmark are so strong and his ties with Turkey so modest that they constitute circumstances making expulsion conclusively inappropriate – see section 26(2) of the Aliens Act – despite the gravity of the offence. For this reason, I vote in favour of dismissing the claim for expulsion."

II. REVOCATION PROCEEDINGS UNDER SECTION 50A OF THE ALIENS ACT

32. On 3 January 2012 R.B., the applicant's guardian *ad litem*, requested that the prosecution review his sentence, and on 1 December 2013 the prosecution brought the applicant's case before the City Court in pursuance of Article 72(2) of the Penal Code (see paragraph 75 below), requesting that the sanction be changed from a sentence of forensic psychiatric care to treatment in a psychiatric department. Under section 50a of the Aliens Act (see paragraph 76 below), the prosecution also petitioned the court to decide simultaneously whether the order to expel the applicant was to be upheld. For its part, the prosecution argued that the expulsion order should be upheld.

A. Medical opinions

33. In that connection, on various dates medical statements were obtained from three psychiatrists (K.A., M.H.M. and P.L) who, at various times, had been responsible for the applicant's treatment at the Mental Health Centre of the Hospital of Saint John.

1. K.A.'s statement

34. On 5 April 2013 K.A. observed in a written statement, among other things, that the applicant had been in psychiatric care since 2008 owing to the diagnoses of paranoid schizophrenia, mild intellectual disability and cannabis dependence. However, it had been discovered during the relevant period that his intellectual capacity level was higher, for which reason he had not met the criteria for the diagnosis of mental impairment, and that diagnosis had been rejected. The initial three to four years of the relevant

period had been characterised by continuous cannabis abuse, incidental abuse of hard drugs and numerous instances of absconding, but the applicant had made progress in recent years. He had quit his abuse of hard drugs, with the result that there had been a considerable reduction in his externalising behaviour; no instances of absconding had been recorded since autumn 2012. During the past two months the applicant had not abused any cannabis, and he was making targeted efforts to stay clean in the open psychiatric unit. He had previously been complicit in smuggling cannabis to fellow patients, which had been his "old" way of living, but he had managed to resist doing so in the past six months. The applicant was prepared to cooperate, and he had agreed without any problems to undergo antipsychotic therapy. It was therefore recommended that the current sanction be modified from a sentence of forensic psychiatric care to treatment in a psychiatric department under supervision by both the Prison and Probation Service and the department following his discharge so that, in consultation with the consultant psychiatrist, the Prison and Probation Service could make a decision on readmission under Article 72(1) of the Penal Code.

2. M.H.M.'s statement

35. A letter from M.H.M. dated 18 July 2013 stated, in particular, that on 5 February 2013, the applicant had been transferred to an open ward (R3) for substance abuse treatment. Around March he had claimed to have progressive symptoms, and his doses of antipsychotics had been increased, having been lowered some months before. Since the patient's anger had been found to be increasing despite the increase in doses, it had been decided to transfer him to a closed ward on 5 April 2013; however, he had left the area and an alert had had to be circulated, but he had quickly returned again by himself. The applicant had absconded again briefly on 18 April 2013, but had returned and had not appeared to be under the influence of drugs. On 21 April 2013, the applicant had threatened a carer, whom he had then beaten in the head without any warning. The following day he had had to be immobilised with belts because of new threats. On 5 May 2013, he had attacked and beaten a carer without any warning, and he had been found in a severely psychotic state. Immobilisation with belts had been applied until 12 May 2013, and during that period his state had been severely fluctuating, being at times severely psychotic and aggressively threatening. He had willingly accepted a change in medication to Leponex tablets with the simultaneous scaling down of treatment with Cisordinol (antipsychotics). His condition had quickly improved, and he now appeared to have returned to his usual condition, being friendly, cooperative and motivated to continue therapy. The applicant's drug abuse was very limited and he only used cannabis, although he was unable to refrain from continuing to use that substance.

36. In his written statement M.H.M. further pointed out that the applicant was highly motivated to undergo psychiatric treatment, including treatment with psychoactive drugs. However, the applicant had expressed strong doubts as to whether he would be able to continue this treatment to an adequate extent if he was deported from Denmark and was offered treatment that did not comprise a fairly intensive psychiatric element. The applicant clearly feared that he would not have the resources to continue the necessary psychiatric therapy, including pharmacotherapy, if deported from Denmark. In this connection, there was deemed to be a high risk of pharmaceutical failure and resumed abuse, and consequently a worsening of his psychotic symptoms and a risk of aggressive behaviour. His current medication in the form of Leponex tablets was an antipsychotic that had to be administered on a daily basis. It was the overall assessment that a potential interruption of the treatment would give rise to a significantly higher risk of offences against the person of others due to a worsening of his psychotic symptoms.

37. In his letter M.H.M. stated lastly that the medication currently being administered to the applicant included 50 mg of Risperdal Consta (risperidone) every 2 weeks (prolonged-release antipsychotic suspension for injection), and 250 mg tablets of Leponex daily (antipsychotic medication with clozapine as the active pharmaceutical ingredient).

3. P.L.'s statements

38. In a written statement of 13 January 2014, P.L., who had been responsible for the treatment of the applicant since mid-July 2013, pointed out, in particular, that the applicant was still in a closed ward and that, for the past six months, his condition had been stable; he had abstained for long periods from smoking cannabis. Consequently, the applicant had been allowed leave to an increasing extent in accordance with the rights granted by the relevant regulations. On one occasion in autumn 2013, the applicant had absconded while on leave; on all other occasions of leave he had observed the agreement made.

39. The applicant was cooperative and did not appear productively psychotic in any way. He was generally forthcoming, but as previously, his behaviour continued to be characterised by some impulsivity and immaturity. The applicant had relapsed into smoking cannabis although he understood the importance of abstaining from such abuse. He had made a great effort not to engage in substance abuse; he was still aware that he had to take care not to allow such abuse to develop out of control.

40. The applicant had indicated to P.L. on numerous occasions that he sincerely regretted having committed the crime for which he had been sentenced. The applicant also said that he was doing well with the current antipsychotic treatment regime, which he was completely prepared to continue when he was ready for discharge at some point.

41. The letter further stated that the applicant had responded well to the combination therapy with Risperdal and Leponex. He denied having any psychotic symptoms such as delusions and hallucinations. Except for one single incident in which the applicant had been seriously provoked by a fellow patient and had kicked that person, he had not exhibited any externalising behaviour for the past six months.

42. On the basis of the course of the applicant's treatment, P.L. supported the recommendation of a variation of the sanction from a sentence of forensic psychiatric care to a sentence of forced psychiatric treatment. The health professional went on to note that the applicant's prospect of recovery was good if, when released, he could be reintegrated into society by being offered a suitable home and intensive outpatient therapy in the following years. The applicant was aware of his disease and clearly acknowledged his need for therapy. On the other hand, the applicant's prospect of recovery was bad if he were to be discharged without follow-up and supervision. P.L. agreed with M.H.M. (see paragraph 36 above) that the potential interruption of the treatment gave rise to a significantly higher risk of offences against the person of others because of the worsening of the applicant's psychotic symptoms.

43. When heard by the City Court on 7 October 2014, P.L. stated that, during the period that had elapsed since his medical statement of 13 January 2014, the applicant had been doing well in the safe environment at the department. The applicant had kept to the agreements made, and he had been able to have a job. In P.L.'s assessment, the applicant would lose focus if he did not have a solid framework. The applicant's personal history showed this. The applicant had demonstrated violent behaviour for a long time, including at school and while in forensic psychiatric care. The violent behaviour had diminished as a result of the treatment.

44. P.L. added that the medical treatment of the applicant was an expert task. He was being given complex treatment, and the treatment plan had to be carefully followed, including the taking of blood samples for somatic reasons on a weekly or monthly basis. The applicant needed to receive his medicine in order to avoid serious relapses. It was a condition for making a recommendation to amend the sanction that the applicant should be taken care of through a range of treatment initiatives, in addition to the correct administration of medicines and the necessary arrangements for blood sampling. Some of the other treatment initiatives consisted of a regular contact person for supervision of the applicant, a follow-up scheme to make sure that the applicant paid attention to the medical treatment administered, 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 an occupation. These elements of his treatment were essential to prevent relapses. These initiatives were designed as an element of his treatment in Denmark. In P.L.'s assessment, the same

offers of treatment would not be available to the applicant in Turkey. If he relapsed, this could have serious consequences for himself and his environment.

45. P.L. believed that the applicant could become very dangerous if he relapsed, which was likely to happen if he was not given the right medication and support, such as that which he was currently receiving. According to P.L., there were highly skilled psychiatrists in cities in Turkey, but probably not in the small village in which the applicant was likely to settle, with the result that the applicant would not be taken care of in the same way as in Denmark.

B. Opinions of the Immigration Service

46. On 8 October 2013 the Immigration Service issued an opinion on the issue of the applicant's expulsion under section 50a of the Aliens Act. It stated, in particular:

> "Against this background, the Copenhagen Police (*Københavns Politi*) has requested an opinion on the treatment options in Turkey, and for the purpose of this case, we have been informed that the following medicinal products are currently being administered to [the applicant]:
>
> Risperdal Consta, which contains the active pharmaceutical ingredient risperidone, and Clozapine, which contains the active pharmaceutical ingredient clozapine.
>
> According to data from MedCOI [Medical Community of Interest], a database financed by the European Commission to provide information on the availability of medical treatment, the medicinal products Risperdal [risperidone] and Clozapine are available in Turkey, but their prices are not given.
>
> As regards the treatment options in Turkey, it also appears from data from MedCOI that all primary healthcare services are free and are provided by general practitioners, but that patients have to pay themselves if they are tested at a hospital laboratory in connection with primary healthcare services and in connection with prescriptions. ...
>
> ...
>
> According to data from MedCOI, in 2010 in Turkey there were 2.20 psychiatrists per 100,000 inhabitants and 1.85 psychologists per 100,000 inhabitants, and this is the lowest rate among the countries in the European part of the World Health Organisation ..."

47. On 4 July 2014 the Immigration Service issued a supplementary opinion which had been requested by the Copenhagen Police. The Immigration Service relied on a consultation response of 4 July 2014 from the Danish Ministry of Foreign Affairs, in which the latter had replied to the questions of the Immigration Service regarding treatment options in Konya, Turkey.

48. The opinion stated, in particular:

"...

It appears from the medical statement of 13 January 2014 that [the applicant's] recovery prospects are good if, when released, he can be reintegrated into society by being offered a suitable home and intensive outpatient therapy in the following years. On the other hand, his recovery prospects are bad if he is discharged without follow-up and supervision.

[The applicant] has pointed out that he has no social network in the village in Turkey in which he was born and lived with his family for the first years of his life, that he will be far away from psychiatric assistance in that village, and that he only understands a little Turkish because he is Kurdish-speaking.

Opinion

...

By letter of 1 May 2014, which relates to the return of a Turkish national, the Immigration Service asked the Ministry of Foreign Affairs for assistance in obtaining information on treatment options in Konya, Turkey. The patient has been diagnosed with '*paranoid schizophrenia, sentenced to psychiatric placement, cannabis dependence syndrome, abstinent, overweight without specification'* and receives Risperdal Consta injections and Clozapine tablets.

The Immigration Service asked for a reply to the following questions.

The Ministry of Foreign Affairs has obtained information from the SGK, the social security institution in Turkey, and a physician at a rehabilitation clinic in Konya under the auspices of the public hospital named '*Konya Egitim ve Arastirma Hastanesi*'. The public hospital in Konya named '*Numune Hastanesi*' has also been contacted and asked [the following] questions:

(1) Is it possible for the patient to receive intensive care in a psychiatric hospital matching the needs of a person with the stated diagnosis in the province of Konya?

Mentally ill patients are generally eligible for treatment at public hospitals and from private healthcare providers who have concluded an agreement with the Turkish Ministry of Health on an equal footing with other patients who apply to treatment facilities with a non-mental disease.

Turkish nationals living in Turkey who are not covered by health insurance in another country will be covered by the general healthcare scheme in Turkey upon application. In order to be covered, the citizen must register with the Turkish Civil Registry and subsequently enquire at the District Governor's office to lodge an application. The person has to pay a certain amount, depending on income, to be enrolled in the scheme. Examples of payment ...

Monthly income of 0 to 357 [Turkish liras (TRY)]: No contribution is payable as the citizen's contribution is paid by the Treasury

Monthly income of TRY 358 to TRY 1,071: TRY 42 (approximately 105 [Danish kroner (DKK)])

Monthly income of TRY 1,072 to TRY 2,142: TRY 128 (approximately DKK 320)

Monthly income exceeding TRY 2,143: TRY 257 (approximately DKK 645)

(2) Is the mentioned medication available in the province of Konya?

The physician has confirmed that Risperdal Consta 50mg (in packs containing solution for 1 injection, manufacturer Johnson & Johnson, retail price: TRY 352.52,

corresponding to [approximately] DKK 925) is generally available at pharmacies in Konya and is used for the treatment of patients suffering from paranoid schizophrenia. If a specific medication is sold out by one pharmacy, it is possible to enquire at another pharmacy or order the medication for later pick-up. It is a prescription drug.

Medication with clozapine as the active pharmaceutical ingredient is available in two forms:

Leponex 100mg, packs containing 50 tablets, manufacturer Novartis, retail price TRY 25.27 (corresponding to approximately DKK 66). Active pharmaceutical ingredient: Clozapine. Is generally available at pharmacies in Turkey. It is a prescription drug.

Clonex 100mg, packs containing 50 tablets. Manufacturer Adeka Ilac, retail price TRY 25.27 (corresponding to approximately DKK 66). Active pharmaceutical ingredient: Clozapine. Is generally available at pharmacies in Turkey. It is a prescription drug.

a. if yes, what [are] the costs for the patient?

As the relevant medicines are prescription drugs, the patient normally has to pay the full price unless he or she is covered by the general healthcare scheme. In that case, the patient has to pay 20% of the retail price, and the remaining 80% is covered by the general healthcare scheme. However, patients covered by the general healthcare scheme may be exempted from paying the 20% patient's share if the physician writes a special committee report which has been approved and signed by several physicians. Such a report will be issued if, in the assessment of the physician, the patient has an existing and real need for long-term treatment and it is deemed unreasonable that the patient has to pay the costs himself or herself. This assessment does not take into account the patient's financial situation.

(3) Do healthcare personnel in Konya speak Kurdish?

According to the physician, the hospitals employ Kurdish-speaking staff, who can offer language assistance should the need arise. The public hospital in Konya named '*Numune Hastanesi*' gave the same reply.

Conclusion

The medical report issued by the Mental Health Centre of the Hospital of Saint John does not give rise to any supplementary observations in addition to those made in our opinion of 8 October 2013 providing information on treatment options in Turkey.

Accordingly, we refer to our opinion of 8 October 2013 in general. ..."

C. The applicant's statements

49. The applicant was heard by the City Court on 6 February and 7 October 2014. He stated that he had no family in Turkey, as all his family members were in Denmark. He confirmed that, when he had been young, he had lived in a small village near Konya, and that the distance from that village to Konya was about 100 km. The applicant also stated that his mother no longer owned real property there, as it had been demolished; if expelled to Turkey, he would not know where to stay, as he was not familiar

with that country and was not able to find his way there. He could not speak Turkish, only Kurdish; he spoke better Danish than Turkish.

50. The applicant was worried that he would not be able to find a job and support himself because of his language difficulties, and that he would not be able to receive the necessary treatment in Turkey. He knew that there was a hospital in Konya, but it was for poor people and of a low standard; the hospitals in Ankara and Istanbul offered good treatment, but patients had to pay themselves, and he could not afford to pay. Since he took Leponex, he had an increased risk of blood clots and needed to be examined regularly by a doctor.

51. When presented with a document of 1 September 2014 which stated that the applicant had worked at the Garden of Saint John from mid-May until 31 August 2014, he confirmed that he had been enrolled in the relevant project at the Hospital of Saint John and that it had gone well. This had created an opening for a job at a supermarket or a similar workplace under the so-called KLAP scheme (a scheme for creative, long-term, work planning run by the national Association for the Welfare of the Mentally Disabled).

52. The applicant further stated that he needed to take his medicine to avoid becoming unstable. He expressed his fears that he might commit a serious crime if he did not receive his medicine. He therefore wanted someone to look after him and to help him take his medicine. The previous year, he had not received the right medicine, and had therefore become violent and threatened the staff. He wanted to find work. He wanted to live at his mother's home at the beginning to have someone to keep an eye on him. He feared that things would go wrong if he were to live in Turkey.

D. Other evidence

53. The City Court also had before it a letter of 3 January 2012 and an email of 11 June 2013 from R.B., the applicant's guardian *ad litem*.

54. In the letter of 3 January 2012 R.B. requested the court to change the applicant's sanction from forensic psychiatric care to a forced psychiatric treatment. The letter also stated that the applicant was a kind and forthcoming person; that he had matured over the years, and in that process he had broken off relations with the "bad" friends from his old life. In the letter R.B. also expressed the opinion that the applicant had come to the point where he needed the opportunities offered by a sentence of forced psychiatric treatment for maturing even further and training to live a life as a good citizen.

55. In the email of 11 June 2013 R.B. stated, among other things, that the applicant wished to stay in Denmark; that all his family lived in Copenhagen, and that he would have no one to care for him if he suffered a further relapse of his condition while living in Turkey. As regards the

applicant's treatment, R.B. stated that there was still quite a way to go before he would be free from cannabis. His current treatment would have the greatest potential of success if he were afforded the degree of freedom allowed by a measure of forced psychiatric treatment. At that point, the applicant was able to function within the strict framework of forensic psychiatric care (the sanction that had been applied to him until that moment in time); however, it was necessary to test the effect of the treatment within a more flexible framework.

56. The City Court also had regard to an email of 15 November 2013 from the Danish Ministry of Foreign Affairs to the Copenhagen Police and a letter of 25 November 2013 from the Police Section of the National Aliens Division (*Nationalt Udlændinge Center*).

E. The City Court's decision

57. By a decision of 14 October 2014, the City Court amended the sentence imposed on the applicant from a sentence of forensic psychiatric care to treatment in a psychiatric department. As regards the expulsion order, the City Court found, regardless of the nature and gravity of the crime committed, that the applicant's health made it conclusively inappropriate to enforce the expulsion order.

58. The City Court observed, in particular, that the applicant had been in psychiatric care since 2008 owing to the diagnosis of paranoid schizophrenia. It also took notice of the medical information available, and in particular the fact that the applicant was highly motivated to undergo psychiatric treatment, including treatment with psychoactive drugs, that he was aware of his disease and clearly acknowledged his need for therapy, and that his recovery prospects were good if he was subject to follow-up and supervision in connection with intensive outpatient therapy when discharged. On that basis the City Court found that it would suffice in order to prevent reoffending and to satisfy the applicant's need for treatment that the sanction be amended to treatment in a psychiatric department under supervision by both the Prison and Probation Service and the department in question following his discharge so that, in consultation with the consultant psychiatrist, the Prison and Probation Service could make a decision on readmission under section 72(1) of the Penal Code (see paragraph 75 below).

59. The City Court went on to observe that the applicant, a 29-year-old Turkish national, had moved to Denmark from Turkey at the age of six under the family reunification programme. In his submission, he had neither family nor a social network in Turkey; the village in which he had lived with his family for the first years of his life was located 100 km away from Konya, the closest city, and accordingly far away from psychiatric assistance, and he only understood a little Turkish because he was

Kurdish-speaking. On the basis of the medical information, the court further accepted as fact that there was a high risk of pharmaceutical failure and resumed abuse, and consequently the worsening of the applicant's psychotic symptoms, if he was not subject to follow-up and supervision in connection with intensive outpatient therapy when discharged and that this gave rise to a significantly higher risk that he would again commit offences against the person of others.

60. The City Court also considered it a fact that mentally ill patients were generally entitled to receive treatment in Turkey, that it was possible to apply for enrolment in the general healthcare scheme with contributions linked to income, and that the relevant medication was available, as was assistance from Kurdish-speaking staff at the hospitals. At the same time, the court stressed that what was crucial was that the applicant had access to appropriate treatment in his country of origin. The City Court noted that, on the basis of the information provided, it was not clear whether the applicant had a real possibility of receiving relevant psychiatric treatment, including the necessary follow-up and supervision in connection with intensive outpatient therapy, if returned to Turkey. It thus allowed the applicant's application for revocation of the expulsion order.

F. Proceedings before higher courts

61. The prosecution appealed to the High Court against the above-mentioned decision in so far as it concerned the revocation of the expulsion order.

62. The applicant and P.L. were heard before the High Court on 6 January 2015. The applicant made statements similar to those made before the City Court (see paragraphs 49-52 above). He also stated that he had not yet been able to get a job because of his criminal past, but he was in the process of looking for a job through the job search platform Jobbank. He also had the possibility of finding work and attending school through the relief organisation Kofoeds Skole. He was to visit the school next week, and he looked forward to activities there. He still had the opportunity to work at the Psychiatric Hospital of Saint John during the weekends, and he intended to take that opportunity.

63. P.L stated, among other things, that the applicant had complete awareness of his illness; however, it was important that he was supervised regularly in order to adhere to the treatment. It was also important that he was supervised somatically, since Leponex could have the side-effect of an immune deficiency developing in the patient. Blood samples were to be taken regularly to check that no such deficiency had emerged. The patient should consult a doctor if sudden fever occurred, since this could be a sign of the immune deficiency. If the applicant experienced this side-effect, he

should be followed closely, as in that case, he would have to be taken off Leponex, despite it having a positive effect on his aggressive behaviour.

64. On 13 January 2015 the High Court reversed the City Court's decision and refused to revoke the expulsion order.

65. The High Court observed that, according to the medical information, the applicant suffered from paranoid schizophrenia and had a constant need for antipsychotics, in particular Leponex, and follow-up support to avoid psychotic symptoms, as well as the resulting risk that he would again commit offences against the person of others. It further considered it a fact that the applicant would be removed to Turkey if the expulsion order remained in effect, and that it was to be assumed that he would take up residence in the village in which he had been born and lived for about the first six years of his life, and which was located about 100 km from Konya.

66. With reference to the information on access to medicines and specific treatment options in Turkey contained in the MedCOI database and the consultation response of 4 July 2014 (see paragraphs 47-48 above), the High Court further found that the applicant could continue the same medical treatment as he was being given in Denmark in the Konya area in Turkey, and that psychiatric treatment was available at public hospitals and from private healthcare providers who had concluded an agreement with the Turkish Ministry of Health. According to the information obtained, the applicant would be eligible to apply for free or subsidised treatment in Turkey if he had no or limited income, and in certain cases it was also possible to be exempted from paying the 20% patient's share of medicines; assistance from Kurdish-speaking staff at hospitals was also available. The court also noted that the applicant was aware of his disease and of the importance of adhering to his medical treatment and taking the drugs prescribed. In such circumstances, the High Court found that the applicant's health did not make his removal conclusively inappropriate. Finally, it emphasised the nature and gravity of the crime committed by the applicant, and the fact that he had not founded his own family and did not have any children in Denmark.

67. Leave to appeal to the Supreme Court against the High Court's decision was refused by the Appeals Permission Board (*Procesbevillingsnævnet*) on 20 May 2015. The relevant letter stated, in particular, that leave to appeal could only be granted if an appeal raised a question of principle or demonstrated particular reasons justifying a review; however, those conditions had not been met.

III. FURTHER DEVELOPMENTS

68. In the context of the proceedings before the Grand Chamber, the parties informed the Court that the applicant had in the meantime been deported to Turkey in 2015.

69. According to a police report submitted by the Government, the expulsion had taken place on 23 June 2015. The applicant was accompanied by his mother, who was issued with a return ticket to Turkey, the return flight to Denmark being one month later.

70. The information provided by the applicant indicates that he now lives in a village located 140 km from Konya. The village has around 1,900 inhabitants. The applicant has no family or relatives in that village or in other parts of Turkey and leads a very isolated life, as he does not speak Turkish. He stays indoors as he does not know the streets and is afraid of getting lost and not being able to find his way back on account of his diminished intellectual capacity. He only leaves the house to visit a grocery store and to pick up some medication every once a while when he can afford this.

71. According to the applicant, he found his way to the hospital for the first time six months after his arrival in Turkey. At present, he has to pay in order to be driven to Konya. There he visits a public hospital, which is a general healthcare institution rather than a specialised psychiatric one. His visit to a doctor, who is not a psychiatrist, usually lasts no more than ten minutes and does not include any health check; the applicant merely shows a list of the medication he needs to take and is given a prescription for some of the medication. As to which medicines are available and which ones he might be prescribed, this is to a very large extent random. The applicant gets the prescribed medicine from a pharmacy. There is no follow-up regarding his mental or somatic condition, which may deteriorate as a result of the side-effects of his medication; sometimes during his visits no doctor is available, and he can only speak to a secretary. In the applicant's submission, he cannot adduce any new medical evidence as he does not receive the necessary treatment and has no access to psychiatric consultation.

72. According to the Government, since his expulsion the applicant has continued to be in receipt of a monthly pension equivalent to 1,300 euros paid to him by the Danish authorities.

73. On 2 October 2019 the applicant's representative, on the applicant's behalf, requested the Danish authorities to allow the applicant's re-entry to Denmark. He referred to the Chamber's judgment of 1 October 2019 as the grounds for that request and stated that the applicant wished to live with his mother. No medical information on the applicant's state of health was provided.

74. In a letter of 11 November 2019, the Danish authorities informed the applicant's representative that no specific steps had been taken in respect of the applicant, as the judgment in question had not yet become final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Danish Penal Code

75. The relevant articles of the Penal Code read as follows:

Article 16

"(1) Persons of unsound mind due to a mental disorder or a comparable condition at the time of committing the act shall not be punished. The same shall apply to persons who are severely mentally impaired. If the offender was temporarily in a state of mental disorder or a comparable condition due to the consumption of alcohol or other intoxicants, he may be punished if this is justified by special circumstances.

(2) Persons who, at the time of the act, were slightly mentally deficient are not punishable, except in special circumstances. The same shall apply to persons in a state of affairs comparable to mental deficiency."

Article 68

"If an accused is exempt from punishment pursuant to Article 16, the court may decide on the use of other measures considered expedient to prevent further offences. If less radical measures such as supervision, decisions on place of residence or work, rehabilitation treatment, psychiatric treatment, and so on, are considered insufficient, it may be decided that the person in question must be committed to a hospital for the mentally ill or to an institution for the severely mentally impaired, or placed under supervision with the possibility of administrative placement or in a suitable home or institution offering special attention or care. A person may be committed to safe custody on the conditions referred to in Article 70."

Article 71

"(1) If the question arises of sentencing an accused to placement in an institution or to committal to safe custody in accordance with the provisions of Articles 68-70, the court may appoint a guardian *ad litem*, in so far as possible a person from his closest relatives, who together with counsel assigned for the defence shall assist the accused during the trial.

(2) If the accused has been sentenced to placement or committal as referred to in subsection (1), or if the decision makes such placement or commitment possible, a guardian *ad litem* must be appointed. The guardian must keep himself informed of the condition of the convicted person and ensure that the stay and other measures are not extended for longer than necessary. The appointment shall lapse when the measure is finally discontinued.

(3) The Minister of Justice shall lay down detailed rules on the appointment and remuneration of guardians *ad litem* and of such persons' tasks and specific powers."

Article 72

"(1) The Prosecution Service shall ensure that measures under Articles 68, 69 or 70 are not upheld for longer and to a greater extent than necessary.

(2) A decision to vary or finally discontinue a measure under Articles 68, 69 or 70 must be made by court order at the request of the convicted person, his guardian *ad litem*, the Prosecution Service, the management of the institution or the Prison and Probation Service (*Kriminalforsorgen*). Any request from the convicted person, the guardian *ad litem*, the management of the institution or the Prison and Probation Service must be made to the Prosecution Service, which must bring it before the court as soon as possible. Where a request from a convicted person or his guardian *ad litem* is not allowed, a new request cannot be made for the first six months following the date of the order.

..."

Article 245

"(1) Any person who commits an assault on the person of another in a particularly offensive, brutal or dangerous manner, or is guilty of mistreatment, shall be sentenced to imprisonment for a term not exceeding six years. It shall be considered a particularly aggravating circumstance if such assault causes serious harm to the body or health of another person.

..."

Article 246

"The sentence may increase to imprisonment for ten years if an assault on the person of another falling within Article 245 or Article 245a is considered to have been committed in highly aggravating circumstances because it was an act of a particularly aggravating nature or an act causing serious harm or death."

B. The Aliens Act

76. The relevant provisions of the Aliens Act concerning expulsion, as in force at the relevant time, read as follows:

Section 22

"(1) An alien who has been lawfully resident in Denmark for more than the last seven years and an alien issued with a residence permit under section 7 or section 8(1) or (2) may be expelled if –

...

(vi) the alien is sentenced, pursuant to the provisions of Parts 12 and 13 of the Penal Code or pursuant to Article 119(1) and (2), Article 180, Article 181, Article 183(1) and (2), Article 183a, Article 186(1), Article 187(1), Article 192a, Article 210(1), Article 210(3), read with Article 210(1), Article 215, Article 216, Article 222, Article 224 and 225, read with Articles 216 and 222, Article 237, Article 245, Article 245a, Article 246, Article 252(2), Article 261(2), Article 262a, Article 276, read with Article 286, Articles 278 to 283, read with Article 286, Article 288 or Article 290(2) of the Penal Code, to imprisonment or another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature;

..."

Section 26

"(1) In deciding on expulsion, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of –

(i) the alien's ties with Danish society;

(ii) the alien's age, health and other personal circumstances;

(iii) the alien's ties with persons living in Denmark;

(iv) the consequences of the expulsion for the alien's close relatives living in Denmark, including the impact on family unity;

(v) the alien's limited or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and

(vi) the risk that, in cases other than those mentioned in section 7(1) and (2) and section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.

(2) An alien must be expelled under section 22(1)(iv) to (vii) and section 25 unless the circumstances mentioned in subsection (1) make this conclusively inappropriate."

Section 27

"(1) The periods mentioned in section 11(4), section 17(1), third sentence, and sections 22, 23 and 25a shall be reckoned from the date of the alien's registration with the Central National Register or, if his application for a residence permit was submitted in Denmark, from the date of submission of that application or from the date when the conditions for the residence permit are satisfied if such date is after the date of application.

...

(5) The time the alien has spent in custody prior to conviction or has served in prison or been subject to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in imprisonment shall not be included in the periods mentioned in subsection (1)."

Section 32

"(1) As a consequence of a court judgment, court order or decision ordering an alien to be expelled, the alien's visa and residence permit shall lapse, and the alien shall not be allowed to re-enter and stay in Denmark without special permission (re-entry ban). A re-entry ban may be time-limited and shall be reckoned from the first day of the month following departure or return. The re-entry ban shall apply from the time of the departure or return.

(2) A re-entry ban in connection with expulsion under sections 22 to 24 shall be imposed –

...

(v) permanently, if the alien is sentenced to imprisonment for more than two years or another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration."

Section 49

"(1) When an alien is convicted of an offence, the court shall decide in its judgment, upon an application by the public prosecutor, whether the alien will be expelled pursuant to sections 22 to 24 or section 25c or be sentenced to suspended expulsion pursuant to section 24b. If the judgment specifies expulsion, the judgment must state the period of the re-entry ban: see section 32(1) to (4)."

Section 50a

"(1) Where expulsion has been decided by a judgment sentencing an alien to safe custody or committal under the rules of Articles 68 to 70 of the Criminal Code, the court shall, in connection with a decision under Article 72 of the Criminal Code on varying the measure that involves discharge from hospital or safe custody, decide at the same time to revoke the expulsion if the alien's state of health makes it conclusively inappropriate to enforce the expulsion.

(2) If an expelled alien is subject to a criminal sanction involving deprivation of liberty under the rules of Articles 68 to 70 of the Criminal Code in cases other than those mentioned in subsection (1), the public prosecutor shall, in connection with discharge from hospital, bring the matter of revocation of the expulsion before the court. Where the alien's state of health makes it conclusively inappropriate to enforce the expulsion, the court shall revoke the expulsion. The court shall assign counsel to defend the alien. The court shall make its decision by court order, which is subject to interlocutory appeal under the rules of Part 85 of the Administration of Justice Act. The court may decide that the alien is to be remanded in custody when on conclusive grounds this is found to be necessary to ensure the alien's presence."

77. Concerning the application of section 22 of the Aliens Act, the preparatory work on Act no. 429 of 10 May 2006 amending the Aliens Act indicates that expulsion will be inappropriate in the circumstances mentioned in section 26(1) of the Aliens Act if it would be contrary to international obligations, including Article 8 of the Convention, to expel the alien.

78. In the proceedings before the Grand Chamber, the Government pointed out that the wording of section 32 relating to the ban on re-entry and its duration had been changed by Act no. 469 of 14 May 2018, which had come into force on 16 May 2018. According to the preparatory work on the latter Act, the reasoning behind the amendment had been the political will of the Danish legislature to ensure that the domestic courts ordered the expulsion of criminal aliens more often than had previously been the case while taking account of the Court's Article 8 case-law. Under the amended legislation, the domestic courts could impose an entry ban for a shorter period if they found that a permanent ban would conflict with Denmark's international obligations. Accordingly, rather than refraining from expelling a criminal alien, the courts could choose to impose a shorter ban on re-entry. The new version was subjected to further, merely textual, amendments on 9 June 2020, and currently reads as follows:

"(1) A re-entry ban shall be imposed to prevent the alien in question from entering and staying in the area specified in the decision without permission – but see subsections (2) and (3) – in the following situations:

(i) The alien has been expelled.

(ii) The alien has been ordered to leave Denmark immediately or fails to leave the country in accordance with the time limit determined under section 33(2).

(iii) The alien is subject to restrictive measures intended to prevent entry and transit as decided by the United Nations or the European Union.

(iv) The alien is included in the list referred to in section 29c(1).

(v) The alien's residence permit or right of residence has lapsed under section 21b(1).

(2) A re-entry ban shall be imposed on an alien falling within the scope of the EU rules only if the alien in question has been expelled to maintain public policy, public safety or public health.

(3) In particular cases, including in respect of family unity, no re-entry ban shall be imposed if the alien is expelled under section 25a(2) or section 25b, or if the alien falls within the scope of subsection (1)(ii).

(4) The duration of re-entry bans shall be as follows, but see subsection (5):

(i) A period of two years, if the alien is expelled under section 25a or section 25b, or if the alien has been issued with a re-entry ban under subsection (1)(ii), but see paragraph (iii).

(ii) A period of four years, if the alien is expelled under section 22, section 23 or section 24 and is issued with a suspended prison sentence or is sentenced to imprisonment for a term not exceeding three months or to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this nature or duration, but see paragraph (v), or if the alien is expelled under section 25c.

(iii) A period of five years, if the alien is expelled under section 25(2), provided that the alien is deemed a serious threat to public health, or if the alien is a third-country national and has been issued with a re-entry ban under subsection (1)(ii) or in connection with expulsion under section 25a(2) or section 25b and has entered Denmark in violation of a previous re-entry ban issued under subsection (1)(ii) or in connection with expulsion under section 25a(2) or section 25b or has entered Denmark in violation of a re-entry ban issued by another member State and entered in SIS II.

(iv) A period of six years, if the alien is expelled under section 22, section 23 or section 24 and is sentenced to imprisonment for a term of more than three months but not exceeding one year or to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration.

(v) A period of at least six years, if the alien is expelled under section 22(1)(iv) to (viii), section 23(1)(i), cf. section 22(1)(iv) to (viii), or section 24(1)(i), cf. section 22(1)(iv) to (viii), or if the alien is expelled by judgment and has not been lawfully resident in Denmark for more than the last six months.

(vi) A period of twelve years, if the alien is expelled under section 22, section 23 or section 24 and is sentenced to imprisonment for a term of more than one year but not

exceeding one year and six months or to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration.

(vii) Permanently, if the alien is expelled under section 22, section 23 or section 24 and is sentenced to imprisonment for more than one year and six months or to another criminal sanction involving or allowing deprivation of liberty for an offence that would have resulted in a punishment of this duration.

(viii) Permanently, if the alien is expelled under section 25(1)(i) or section 25(1)(ii), provided that the alien is deemed a serious threat to public policy or public safety.

(ix) Permanently, if the re-entry ban is imposed under subsection (1)(v).

(x) For such time as the alien is subject to the restrictive measures referred to in subsection (1)(iii) or is included in the list mentioned in subsection (1)(iv).

(5) A re-entry ban of a shorter duration may be imposed in the following cases:

(i) The alien is expelled under section 22, section 23 or section 24, and the imposition of a re-entry ban of the duration referred to in subsection (4) will mean that expulsion would for certain be contrary to Denmark's international obligations.

(ii) The alien has been issued with a re-entry ban under subsection (1)(ii) or in connection with expulsion under section 25a(2), section 25b or section 25(1)(ii), provided that the alien is deemed a serious threat to public health, and exceptional reasons, including regard for family and social ties, make it appropriate to impose a re-entry ban of a shorter duration than the periods set out in subsection (4)(i) and (iii).

(iii) A permanent re-entry ban under subsection (4)(viii) or (ix) would be contrary to Denmark's international obligations.

(6) A re-entry ban shall be reckoned from the date of the departure or deportation from the area to which the re-entry ban applies. A re-entry ban under subsection (1)(iii) or (iv) shall be reckoned from the date when the alien in question satisfies the conditions for being issued with a re-entry ban under those provisions. A re-entry ban under subsection (1)(v) shall be reckoned from the date when it is found that the alien in question satisfies the conditions for being issued with a re-entry ban if the alien is staying outside Denmark.

(7) A re-entry ban imposed on an alien falling within the scope of the EU rules shall be revoked upon application if the alien's personal conduct is deemed no longer to represent a genuine, present and sufficiently serious threat affecting public policy, public safety or public health. The assessment must take into account any change in the circumstances initially justifying the re-entry ban. An application for the revocation of a re-entry ban must be determined within six months of the submission of the application. In cases other than those provided for in the first sentence hereof, a re-entry ban under subsection (1)(ii) or in connection with expulsion under section 25a(2) or section 25b may be revoked if exceptional reasons, including regard for family unity, make this appropriate. Moreover, a re-entry ban imposed under subsection (1)(ii) may be revoked if the alien has left Denmark by the relevant time-limit for departure.

(8) A re-entry ban shall lapse in the following cases:

(i) The alien in question is granted residence under sections 7 to 9f, sections 9i to 9n, section 9p or section 9q on the conditions set out in section 10(3) to (6).

(ii) The alien in question is issued with a registration certificate or a residence card (see section 6) following an assessment corresponding to the assessment referred to in the first and second sentences of subsection (7).

(iii) The alien in question ceases to be subject to the restrictive measures referred to in subsection (1)(iii).

(iv) The alien in question ceases to be included in the list referred to in section 29c(1)."

II. OTHER RELEVANT MATERIALS

A. Instruments of the Council of Europe

79. With regard to the various texts adopted by the Council of Europe in the field of immigration, mention should be made of the Committee of Ministers Recommendations Rec(2000)15 concerning the security of residence of long-term migrants and Rec(2002)4 on the legal status of persons admitted for family reunification, and of Parliamentary Assembly Recommendation 1504 (2001) on the non-expulsion of long-term immigrants.

80. Recommendation Rec(2000)15 states, *inter alia*:

"4. As regards the protection against expulsion

(a) Any decision on expulsion of a long-term immigrant should take account, having due regard to the principle of proportionality and in the light of the European Court of Human Rights' constant case-law, of the following criteria:

– the personal behaviour of the immigrant;

– the duration of residence;

– the consequences for both the immigrant and his or her family;

– existing links of the immigrant and his or her family to his or her country of origin.

(b) In application of the principle of proportionality as stated in paragraph 4 (a), member States should duly take into consideration the length or type of residence in relation to the seriousness of the crime committed by the long-term immigrant. More particularly, member States may provide that a long-term immigrant should not be expelled:

– after five years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of two years' imprisonment without suspension;

– after ten years of residence, except in the case of a conviction for a criminal offence where sentenced to in excess of five years of imprisonment without suspension.

After twenty years of residence, a long-term immigrant should no longer be expellable.

(c) Long-term immigrants born on the territory of the member State or admitted to the member State before the age of ten, who have been lawfully and habitually resident, should not be expellable once they have reached the age of eighteen.

Long-term immigrants who are minors may in principle not be expelled.

(d) In any case, each member State should have the option to provide in its internal law that a long-term immigrant may be expelled if he or she constitutes a serious threat to national security or public safety."

81. In Recommendation 1504 (2001) the Parliamentary Assembly recommended that the Committee of Ministers invite the governments of member States, *inter alia*:

"11. ...

(ii) ...

(c) to undertake to ensure that the ordinary-law procedures and penalties applied to nationals are also applicable to long-term immigrants who have committed the same offence;

...

(g) to take the necessary steps to ensure that in the case of long-term migrants the sanction of expulsion is applied only to particularly serious offences affecting State security of which they have been found guilty;

(h) to guarantee that migrants who were born or raised in the host country and their under-age children cannot be expelled under any circumstances;

..."

The Committee of Ministers replied to the Assembly on the matter of non-expulsion of certain migrants on 6 December 2002. It considered that Recommendation Rec(2000)15 addressed many of the concerns of the Assembly and it was thus not minded to devise any new standards.

82. Under the heading "Effective protection against expulsion of family members", the Committee of Ministers recommended to governments in Recommendation Rec(2002)4 that, where the withdrawal of or refusal to renew a residence permit, or the expulsion of a family member, was being considered:

"...member States should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and well-being of children."

B. Relevant practice of the European Union

83. In the case of *C.K. v. Slovenia* (C- 578/16 PPU), at issue was the return to Croatia from Slovenia of an asylum seeker and her husband and newborn child, nationals of third States, Croatia being the appropriate Member State for the processing of her claim. The applicant had had a difficult pregnancy and had been diagnosed with postnatal depression and periodic suicidal tendencies since giving birth. In its judgment of

16 February 2017, the Court of Justice of the European Union (CJEU) held, in particular:

> "68. It follows from the case-law of the European Court of Human Rights relating to Article 3 of the ECHR ... that the suffering which flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 of the ECHR if 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, provided that the resulting suffering attains the minimum level of severity required by that article (see, to that effect, ECtHR, 13 December 2016, *Paposhvili v. Belgium*, CE:ECHR:2016:1213JUD004173810, § 174 and 175).
>
> ...
>
> 70. In that regard, it must be stated, as regards the reception conditions and the care available in the Member State responsible, that the Member States ... are required ... to provide asylum seekers with the necessary health care and medical assistance including, at least, emergency care and essential treatment of illnesses and of serious mental disorders. In those circumstances, and in accordance with the mutual confidence between Member States, there is a strong presumption that the medical treatments offered to asylum seekers in the Member States will be adequate...
>
> 71. In the present case, neither the decision to refer nor the material in the case file shows that there are substantial grounds for believing that there are systemic flaws in the asylum procedure and the conditions for the reception of asylum seekers in Croatia, with regard to access to health care in particular, which is, moreover, not alleged by the appellants in the main proceedings. On the contrary, it is apparent from that decision that the Republic of Croatia has, in, *inter alia*, the town of Kutina, a reception centre designed specifically for vulnerable persons, where they have access to medical care provided by a doctor and, in urgent cases, by the local hospital or even by the hospital in Zagreb. Furthermore, it appears that the Slovenian authorities have obtained from the Croatian authorities an assurance that the appellants in the main proceedings would receive any necessary medical treatment.
>
> 72. Moreover, while it is possible that, for certain acute and specific medical illnesses, appropriate medical treatment is available only in certain Member States ... the appellants in the main proceedings have not alleged that this is the case as far as they are concerned.
>
> 73. That said, it cannot be ruled out that the transfer of an asylum seeker whose state of health is particularly serious may, in itself, result, for the person concerned, in a real risk of inhuman or degrading treatment ... irrespective of the quality of the reception and the care available in the Member State responsible for examining his application.
>
> 74. In that context, it must be held that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment, within the meaning of that article.
>
> 75. Consequently, where an asylum seeker provides ... objective evidence, such as medical certificates concerning his person, capable of showing the particular seriousness of his state of health and the significant and irreversible consequences to which his transfer might lead, the authorities of the Member State concerned, including its courts, cannot ignore that evidence. They are, on the contrary, under an

obligation to assess the risk that such consequences could occur when they decide to transfer the person concerned or, in the case of a court, the legality of a decision to transfer, since the execution of that decision may lead to inhuman or degrading treatment of that person...

76. It is, therefore, for those authorities to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned. In this regard, in particular in the case of a serious psychiatric illness, it is not sufficient to consider only the consequences of physically transporting the person concerned from one Member State to another, but all the significant and permanent consequences that might arise from the transfer must be taken into consideration."

84. The case of *MP v. Secretary of State for the Home Department* (C-353/16) involved a Sri Lankan national who had been given leave to remain on United Kingdom territory for the period of his studies and who, after that period expired, had applied for asylum, stating that he had been tortured by the Sri Lankan authorities because he was a member of an illegal organisation. Medical evidence was adduced to the relevant domestic court that the applicant was suffering the after-effects of torture, severe post-traumatic stress disorder and serious depression, showed marked suicidal tendencies, and appeared to be particularly determined to kill himself if he had to return to Sri Lanka. In the judgment of 24 April 2018, the CJEU stated, in so far as relevant:

"40. As regards ... the threshold of severity for finding a violation of Article 3 of the ECHR, it follows from the most recent case-law of the European Court of Human Rights that that provision precludes the removal of a seriously ill person where he is at risk of imminent death or where substantial grounds have been shown for believing that, although not at imminent risk of dying, he 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 suffering a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy (see, to that effect, ECtHR, 13 December 2016, *Paposhvili v. Belgium*, CE:ECHR:2016:1213JUD004173810, § 178 and 183).

...

42. In that regard, the Court has held that, particularly in the case of a serious psychiatric illness, it is not sufficient to consider only the consequences of physically transporting the person concerned from a Member State to a third country; rather, it is necessary to consider all the significant and permanent consequences that might arise from the removal ... Moreover, given the fundamental importance of the prohibition of torture and inhuman or degrading treatment ..., particular attention must be paid to the specific vulnerabilities of persons whose psychological suffering, which is likely to be exacerbated in the event of their removal, is a consequence of torture or inhuman or degrading treatment in their country of origin.

43. It follows that Article 4 and Article 19(2) of the Charter, as interpreted in the light of Article 3 of the ECHR, preclude a Member State from expelling a third country national where such expulsion would, in essence, result in significant and permanent deterioration of that person's mental health disorders, particularly where, as in the present case, such deterioration would endanger his life."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

85. The applicant complained that, on account of the state of his mental health, his removal to Turkey had breached Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The Chamber judgment

86. The Chamber reiterated the principles set out in the case of *Paposhvili v. Belgium* ([GC], no. 41738/10, 13 December 2016). Whilst accepting that the medication in issue was generally available in Turkey, including in the area where the applicant would most likely settle down, the Chamber observed that, in the present case, the applicant's follow-up and supervision in connection with intensive outpatient treatment had been an additional important element. Medical evidence showed that the applicant's current medication should be administered on a daily basis and that a failure to take his medication entailed a risk of worsening his psychotic symptoms and a greater risk of aggressive behaviour. Moreover, the provision of medical treatment to the applicant was an expert task. In particular, in order to prevent a relapse, it was essential that besides medication, the applicant had a regular contact person for supervision, and that a follow-up scheme was in place to make sure that the applicant paid attention to the medical treatment administered. In addition, 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.

87. The Chamber pointed out that the High Court had not addressed those elements, but had stated, more generally, that the fact that the applicant was aware of his disease and of the importance of adhering to his medical treatment and of taking the drugs prescribed would not make his removal conclusively inappropriate. The Chamber observed, however, that, according to one of the medical experts, 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. The Chamber found it noteworthy that, in contrast to the City Court, the High Court had not elaborated on that issue.

88. The Chamber considered that returning the applicant to Turkey, where, as he had stated, he had no family or any other social network, would unavoidably cause him additional hardship. This made it even more crucial that, upon his return, he should be provided with the follow-up and supervision necessary for his psychiatric outpatient therapy, as well as for

the prevention of the degeneration of his immune system, and, at the very least, with assistance in the form of a regular and personal contact person. It further shared the City Court's concern that it was unclear whether, if returned to Turkey, the applicant had a real possibility of receiving the relevant psychiatric treatment, including the necessary follow-up and supervision in connection with intensive outpatient therapy. That uncertainty raised serious doubts as to the impact of the removal on the applicant. Accordingly, the Danish authorities should have assured themselves that upon the applicant's return to Turkey, a regular and personal contact person would be available, offered by the Turkish authorities and suitable to the applicant's needs. The Chamber concluded that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Turkey without the Danish authorities' having obtained such assurances.

B. The parties' submissions before the Grand Chamber

1. The applicant

89. The applicant maintained that the facts of the case disclosed a violation of his rights secured by Article 3 of the Convention. He argued that he suffered from paranoid schizophrenia, a very serious and long-term illness, recognised internationally, including by the World Health Organisation. It had been medically established that this mental illness could be so severe that inadequate treatment could result in a serious, rapid and irreversible decline in patients' health that was associated with intense suffering, or in a significant reduction in life expectancy, and could pose a threat to such patients' own safety and to the safety of others.

90. As for the concerns regarding the difficulties in assessing a particular mental condition as being more subjective owing to the risk of symptoms being simulated, the applicant stressed that he had adduced a solid body of medical evidence covering a very long period of his medical history. At various times, three consultant psychiatrists had confirmed his diagnosis, the development of his illness and the evolution of his behaviour, as well as the crucial importance of the follow-up and supervision of the treatment and of other treatment initiatives for the prevention of a relapse. Moreover, the applicant referred to the health professionals' attempt to reduce his medication at the beginning of 2013, which had destabilised him, with the result that he had displayed psychotic symptoms and had to be immobilised with a belt for a week. In the applicant's view, that incident had shown how fragile his mental health was and had made it clear that even after years of targeted therapy in a specialist hospital he still needed supervision and medical intervention, and that, at the time of his removal to Turkey, he had not been ready to pursue outpatient treatment independently.

91. The applicant thus argued that he had established a prima facie case by submitting medical evidence which had clearly demonstrated substantial grounds to believe that he would be exposed to a real risk of being subjected to treatment that fell within the scope of Article 3. With reference to the judgment of the City Court dated 14 October 2014, the applicant argued that the Danish authorities were fully aware of the serious risks he would be exposed to in the event of his expulsion.

92. Yet in its decision of 13 January 2015 the High Court had done no more than rely on the general information obtained from MedCOI on the availability of treatment and medication in Turkey (see paragraph 66 above). In relation to the latter, the applicant contended that a wide range of sources had criticised the methods and results of MedCOI's work. In particular, it was unclear how the information had been obtained; moreover, the information provided was always anonymised, which raised doubts as regards the transparency, accuracy and reliability of the relevant sources. More specifically, in the applicant's case that information was clearly insufficient to counterbalance the very serious medical evidence submitted by him.

93. Furthermore, even the general availability of psychiatric treatment in Turkey was open to doubt. The applicant referred to the World Health Organisation Mental Health Atlas of 2017, which indicated that there were 1.64 psychiatrists per 100,000 inhabitants in Turkey, the lowest rate of psychiatrists in relation to the country's population among the countries in the World Health Organisation. Against that background, it was particularly important that the Danish authorities should have examined the question whether the appropriate treatment would actually be accessible to the applicant; however, the High Court had not addressed that issue.

94. The applicant further referred to his current situation, stating that appropriate treatment in his particular case was absent or *de facto* unavailable to him owing to the lack of essential health services, facilities, resources and/or medicines. He further relied on the fact that he was only able to obtain certain tablets infrequently, as well as the high cost of treatment. The applicant thus stressed that it had been of particular importance for individual assurances to be obtained in his case prior to his expulsion. Given that the foreseeable consequences of the lack of appropriate treatment had been clearly described by the psychiatrists in their statements in the domestic proceedings, it had fallen to the Danish authorities to satisfy themselves that the applicant's treatment would not be interrupted. That had not been an insurmountable task for them as Denmark had a large embassy in Turkey and could have made efforts to ensure that the applicant's medical treatment would not be interrupted in the event of his removal. In the absence of such assurances, however, the returning State should have refrained from deporting the applicant.

95. The applicant also disputed the Government's argument that a contact person was a social measure rather than an element of his medical treatment. He pointed to the psychiatrists' reports in his case, which had made it clear that a contact person was an integral part of his medical treatment. Such a person had been necessary to ensure that he adhered to his treatment with a view to preventing the risk of relapse, and thereby the risk of self-harm or harm to others; and to maintain awareness of the potentially dangerous side-effects of the treatment. He stressed that he had never requested the same quality of healthcare in Turkey as he had received in Denmark, but had merely asserted the need for essential treatment measures, including a personal contact person, as indicated by the psychiatrists in his case.

96. Although the authorities had obtained information that psychiatric treatment in general was available in Turkey, and even covered by the national healthcare system, a follow-up and supervision scheme by means of a daily contact person to prevent relapse had been essential but was not available; nor had the Danish authorities received any assurances from Turkey that such outpatient therapeutic assistance would be available to him upon his arrival.

97. The applicant further stressed his deplorable situation after expulsion (see paragraphs 70-71 above). He thus contended that the existing case-law in the field and the particular facts of his case strongly supported the Chamber's finding of a violation of Article 3 of the Convention.

2. The Government

98. The Government insisted that the implementation of the order for the applicant's expulsion had not breached Article 3 of the Convention. They extensively cited the Court's case-law in the field of removal of seriously ill aliens and, in particular, relied on the applicable standards established in the *Paposhvili* judgment (cited above). They argued, however, that it had not been explicitly stated in that judgment whether the standard established in its paragraph 183 also applied to cases concerning the removal of mentally ill aliens.

99. In their view, the standard set out in that paragraph of *Paposhvili* could not be applied in an identical manner in the latter context. In this regard, they submitted that owing to its nature, symptoms and possible treatment, a mental illness was not comparable with a terminal or other serious physical illness that required continued intensive treatment. A physical illness was based on elements that were objectively visible or measurable to a greater extent than a mental illness, which, owing to its nature, had to be assessed on the basis of psychological factors, such as observations of a person's behaviour and/or accounts given by the person showing symptoms of such an illness.

100. With regard to the specific criteria listed in paragraph 183 of the *Paposhvili* judgment (cited above), the Government submitted that the elements of "rapid and irreversible" and to some extent also that of "intense suffering" could not be meaningfully transposed from an assessment of an alien suffering from a very serious physical illness to that of an alien suffering from a very serious mental illness. Accordingly, the interruption of treatment for mental illness could not be assumed to have the same predictable consequences as the interruption of treatment for physical diseases like cancer, renal failure and cardiac diseases. Moreover, people suffering from a mental illness could retain their ability to function well in their everyday life. That made it a very complex task to assess whether a person's condition had seriously declined, and what criteria should be applied to determine whether the relevant person's state of health would result in intense suffering.

101. In so far as the standard in question referred to an "irreversible" decline in health, this criterion could not be applied directly to mental illness unless there was a proven risk of consequences such as a substantially increased risk of suicide or self-harm in the event of interruption of treatment. The treatment of a mentally ill person could be interrupted by the person himself or herself if the person lacked insight into his or her own illness, but in the vast majority of cases it was possible to resume the treatment later and to stabilise the person's condition.

102. With reference to the Court's case-law concerning the removal of applicants suffering from schizophrenia, the Government further contended that in such cases a thorough analysis had to be made of an individual's personal situation, and in that context the nature of the illness and the individual's insight into the illness, including the current need for treatment, were essential elements for determining whether it would be contrary to Article 3 to remove the individual in question. Accordingly, a psychiatric diagnosis, in itself, was insufficient to bring a particular application within the scope of Article 3 of the Convention. The threshold in such cases had to be very high.

103. The Government went on to state that, even assuming that the *Paposhvili* criteria were applicable in an identical manner in the context of the removal of mentally ill aliens, the threshold for application of Article 3 had not been reached in the present case. They stressed that the threshold criteria had to be fulfilled before the question of the availability of and access to appropriate and sufficient medical treatment became of relevance. In the present case, the Chamber had made no such assessment. In their view, the Court's assessment should be made on the basis of the factual findings made in the proceedings before the Danish courts, who had carefully assessed the impact of the applicant's removal on his health in the light of the information adduced by the competent authorities and experts. The medical evidence adduced had not demonstrated, nor had any findings

to that effect been made by the domestic courts, that in the event of his removal to Turkey the applicant would be exposed to consequences amounting to "a serious, rapid and irreversible decline in his state of health resulting in intense suffering", as defined in paragraph 183 of the *Paposhvili* judgment (cited above).

104. More specifically, the medical evidence before the courts had demonstrated that the applicant had a complete awareness of his illness, was highly motivated to undergo psychiatric treatment, including treatment with psychoactive drugs, and had clearly acknowledged his need for therapy, and that he had good prospects of recovery if subject to follow-up and supervision in connection with intensive outpatient therapy when discharged. No psychiatric evaluation had ever shown that the applicant would endure "intense suffering" in the event of removal to Turkey on account of the lack of access to medical treatment or of assistance in the form of a regular and personal contact person.

105. There was also no evidence to suggest that the applicant's illness would become "irreversible" if left untreated. Initially, the applicant had not been diagnosed with a mental illness but had only been found to be mentally impaired with a mild to moderate level of functional disability and to be suffering from a personality disorder characterised by immaturity, lack of empathy, emotional instability and impulsivity. The applicant had for the first time been diagnosed with schizophrenia in 2008. However, appropriate treatment had stabilised and eventually improved his condition. His medical history showed that although he had not been treated for schizophrenia for several years, it had been possible for him to commence treatment, with the result that his psychotic symptoms had been relieved and had, at times, disappeared entirely.

106. Since the applicant suffered from a long-term illness that required treatment, a relapse could occur irrespective of whether he had been removed to Turkey or remained resident in Denmark. In any event, even assuming that his treatment would be interrupted in Turkey, the consequences of such interruption would not meet the high threshold of Article 3.

107. The Government went on to argue that the care generally available in Turkey and the extent to which the applicant could actually have access to that care were sufficient and appropriate to treat his illness. On the basis of the available information and evidence, the Danish authorities, and, in particular, the High Court of Eastern Denmark, had considered the care available in Turkey and the extent to which the applicant would have access to it, including with reference to 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. The Danish courts had therefore carried out a thorough and individual assessment of the impact of the removal on the applicant's state of health. Accordingly, there had

been no "serious doubts" regarding the consequences for the applicant's removal to Turkey, with the result that there had been no need for the Danish authorities to obtain individual assurances in respect of him.

108. The Chamber had concluded that the Danish authorities should have obtained assurances from the Turkish authorities that the applicant, upon his return, would continue to have access to assistance in the form of a regular and personal contact person. However, this was a social measure and the Chamber's conclusion had gone further than what followed from the *Paposhvili* judgment (cited above), which referred to an assurance that a specific type of treatment would be available for a seriously ill man suffering from leukaemia. The Chamber had thus lowered the threshold for when a returning State should obtain an assurance and had thus "invalidated" the well-established case-law, according to which the benchmark was not the level of care existing in the returning State.

109. Lastly, the Government referred to the applicant's current situation, stating that no evidence had been submitted that he had experienced any relapses or any worsening of his psychotic symptoms after his expulsion to Turkey. In their view, the hardship he had to bear in Turkey – staying indoors and not speaking Turkish – clearly did not amount to a violation of Article 3. They further argued that, in fact, the applicant lived in a Kurdish village, that he spoke Kurdish fluently, and that he still received his Danish disability pension of approximately 1,300 euros (EUR) monthly.

3. Third-party interveners

110. The Dutch, French, German, Norwegian, Russian, Swiss and United Kingdom Governments were granted leave to intervene, as were Amnesty International, a non-governmental organisation, and the Centre for Research and Studies on Fundamental Rights of Paris Nanterre University (CREDOF).

(a) Intervening Governments

111. The intervening Governments submitted somewhat similar arguments focusing primarily on the following aspects.

112. Firstly, they argued that the Chamber judgment in the present case had erred in its interpretation of the existing case-law in the field, including the *Paposhvili* judgment (cited above), and had broadened the scope of Article 3 of the Convention in the context of the expulsion of seriously ill aliens. With reference to the Court's relevant case-law, the Governments all stressed that the threshold of severity for Article 3 to come into play in cases involving the removal of seriously ill aliens had always been very high. The *Paposhvili* judgment had been a clarification, not a departure, from that approach. They insisted that the threshold should remain very high and that successful cases under the *Paposhvili* test should be truly "very

exceptional", given in particular the "prevailing notions" and "present-day conditions" and the need not to impose an excessive burden on the limited resources of Contracting States, as this might seriously impair their ability to maintain economically viable healthcare systems sufficient to care for those who were lawfully resident there. That truth had been apparent even before the COVID-19 crisis but it was all the clearer now. The Governments argued that lowering that threshold would in fact amount to imposing on them a heavy burden of alleviating disparities between their healthcare systems and those of third countries. The protection against expulsion should serve to ensure that the person concerned was not exposed to treatment proscribed by Article 3 of the Convention rather than to provide the best treatment for an existing illness or to increase the chances of recovery.

113. Secondly, the Governments made extensive comments on various aspects of the standard established in the *Paposhvili* judgment (cited above). They mostly agreed that the *Paposhvili* test required no adjustment for mentally ill patients and should be applied as it stood, although some interpretation might be useful to make it more suited to mental conditions. The United Kingdom Government argued, in particular, that a serious and rapid decline in mental health, which could be reversed with treatment, would not satisfy the test. They also warned the Court about the possibility of individuals simulating mental conditions which might lead to abuses. In so far as the standard at hand referred to "a significant reduction in life expectancy", the United Kingdom Government contended that it should exclude cases of possible suicide as those resulted from a deliberate act. More generally, the United Kingdom Government expressed a concern that the wording in question was too vague and broad. They insisted that all the elements of the relevant test should be read together and be regarded as indispensable for the passing of this threshold. In their view, under no circumstances could "a significant reduction in life expectancy" be used as the only element for reaching the above-mentioned threshold. That element was not enough to demonstrate a breach of Article 3 unless it followed from a "serious, rapid and irreversible decline in [one's] state of health".

114. The Governments stressed that, in any event, the standard established in the *Paposhvili* judgment (cited above), which had already expanded the scope of Article 3 for cases concerning the removal of seriously ill aliens, should not be extended further. Several Governments pointed out that they had integrated that standard into their domestic law to comply with their obligations under the Convention.

115. The Governments then invited the Grand Chamber to reaffirm the necessity of first examining the question of whether the requisite threshold had been reached in a particular case – that is, that an 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" (referring to *Paposhvili*, cited above, § 183) – before addressing any other questions such as the availability and accessibility of treatment. This was particularly important in situations involving the expulsion of aliens with mental conditions as those were more subjective than somatic illnesses. In that connection, the Governments criticised the Chamber judgment, stressing that, by omitting that necessary step, the Chamber had, in fact, lowered the requisite Article 3 threshold, which had not been reasonable or justified.

116. The Governments further stressed that it had been for the applicant to demonstrate that, in the absence of appropriate treatment or access to such treatment in the receiving country, he would suffer consequences as established in paragraph 183 of the *Paposhvili* judgment (cited above). As regards the rules on the burden of proof, the United Kingdom Government also submitted that the relevant parts of the *Paposhvili* judgment should be interpreted realistically, meaning that Contracting States could not be expected to instruct medical experts to examine every applicant who had applied for leave to remain on medical grounds, or to gather evidence as regards the applicants' relatives in their country of origin. States could – in suitable cases – gather evidence on the treatment available in a receiving State, but they could not reasonably be expected to gather evidence as to the particular medical needs of individual applicants.

117. The Governments also reflected on the notion of "sufficient and appropriate" treatment in the receiving State, stating that it called for a broad and non-partisan assessment based on objectively verifiable evidence, including independent expertise; and that the domestic courts were better placed than the European Court to make such an assessment in each particular case. In their view, "sufficient and appropriate" treatment should not be regarded as including any social measures. They reiterated that the benchmark was not the level of care existing in the returning State.

118. As regards the accessibility of medical treatment in the receiving country, the Governments argued that there should be no general presumption that because a person was mentally ill, he or she lacked capacity to make decisions about his or her own treatment. Also, whilst a social or family network might be relevant in that context, the lack of any such network would not rule out the possibility for a mentally ill applicant to have actual access to the necessary medical treatment. Contracting States should not be obliged to provide indefinite free healthcare to foreign nationals who had the necessary mental capacity to take decisions on their health care and who were able to access appropriate treatment on return to the receiving State, but who would or might fail to do so.

(b) Amnesty International

119. Amnesty International underlined the connection between the right to health, including mental health care and treatment, and the prohibition against torture and other ill-treatment. They pointed to a number of international law instruments highlighting this link and also argued in favour of a rights-based approach to mental-health care and treatment which should emphasise a holistic and multisectoral process involving community support networks and a range of service providers.

(c) CREDOF

120. The CREDOF argued in favour of a heightened level of protection for mentally ill patients in removal cases under Article 3 of the Convention. The assessment of whether the available treatment in the receiving country was adequate should include an evaluation of the therapeutic consequences of the treatment in question, the availability of an adequate caring environment and follow-up, as well as the need to view the treatment as a continuing process. With reference to various international cases, the CREDOF especially pointed to the latter two criteria as the key ones, since abruptly interrupting the treatment of certain mental disorders could, by the very nature of such illnesses, have a damaging effect on a patient such as to engage Article 3. It further submitted that, in contrast to patients with physical disorders, mentally ill patients were generally viewed as sometimes being capable of simulating their illness. This situation frequently led to challenges to their condition and also created additional difficulties in making a diagnosis and carrying out the relevant legal assessments. In view of the above, the CREDOF emphasised that the Court should be particularly careful in setting up the relevant standards so as not to dilute the protection of Article 3 in respect of mentally ill aliens. Lastly, it referred to the link between family support and the chances of improvement of mentally ill patients, and also to statistical data to the effect that the group in question ran a considerable risk of suicide.

C. The Court's assessment

1. Article 3: general principles

121. It is the Court's settled case-law that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment and its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question (see, among many other authorities, *Aswat v. the United Kingdom*, no. 17299/12, § 49, 16 April 2013).

122. The prohibition under Article 3 of the Convention does not, however, 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* [GC], no. 26565/05, § 29, ECHR 2008; *Paposhvili*, cited above, § 174; and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

123. An examination of the Court's case-law shows that Article 3 has been most commonly applied in contexts in which the risk of being subjected to a proscribed form of treatment has emanated from intentionally inflicted acts of State agents or public authorities. However, in view of the fundamental importance of Article 3, the Court has reserved to itself sufficient flexibility to address its application in other situations (see *Pretty v. the United Kingdom*, no. 2346/02, § 50, ECHR 2002-III, and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 111, ECHR 2012 (extracts)). In particular, it has held that suffering which flows from a naturally occurring illness may be covered by Article 3 where it is, or risks being, exacerbated by treatment stemming from measures for which the authorities can be held responsible (see *N. v. the United Kingdom*, cited above, § 29). Moreover, 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 *Paposhvili*, cited above, § 175).

2. Article 3: expulsion of seriously ill aliens

124. In its case-law concerning the extradition, expulsion or deportation of individuals to third countries, the Court has consistently held that as a matter of well-established international law and subject to their treaty obligations, States Parties have the right to control the entry, residence and expulsion of aliens. Nevertheless, the expulsion of an alien by a State Party 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 to inhuman or degrading treatment or punishment in the receiving country (ibid., §§ 172-73, and the authorities cited therein).

125. In its judgment in the case of *Paposhvili* (cited above), the Court reviewed the applicable principles, starting with the case of *D. v. the United Kingdom* (2 May 1997, *Reports of Judgments and Decisions* 1997-III).

126. The Court observed that the *D. v. the United Kingdom* case concerned the intended expulsion to St Kitts of an alien who was suffering from AIDS which had reached its terminal stages. It had found that the applicant's removal would expose him to a real risk of dying under most

distressing circumstances and would amount to inhuman treatment (ibid., § 53). 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).

127. It further observed that since the subsequent case of *N. v. the United Kingdom* (cited above), in which it had concluded that the applicant's removal would not give rise to a violation of Article 3, it had declared inadmissible as being manifestly ill-founded numerous applications raising similar issues lodged by aliens who were HIV positive or suffered from other serious physical or mental illnesses. Several judgments had also been adopted; in all of them – with the exception of the case of *Aswat* (cited above, which concerned the extradition to the United States of a detainee suffering from paranoid schizophrenia) – it had been found that the applicants' removal would not breach Article 3 of the Convention (see *Paposhvili*, cited above, § 179).

128. The Court concluded from that recapitulation of the case-law that the application of Article 3 of the Convention only in cases where the person facing expulsion was close to death, which had been its practice since the judgment in *N. v. the United Kingdom* (cited above), had deprived aliens who were seriously ill, but whose condition was less critical, of the benefit of that provision. Moreover, the case-law subsequent to *N. v. the United Kingdom* had not provided any more detailed guidance regarding the "very exceptional cases" referred to in *N. v. the United Kingdom*, other than the circumstances contemplated in *D. v. the United Kingdom* (see *Paposhvili*, cited above, § 181).

129. In that connection, the Court went on to elucidate what "other very exceptional cases" could be so contemplated, while reiterating that it was essential that the Convention was interpreted and applied in a manner which rendered its rights practical and effective and not theoretical and illusory (ibid., § 182):

> "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."

130. As to whether those conditions were satisfied in a given situation, the Court stressed that the national authorities were under an obligation under Article 3 to establish appropriate procedures allowing an examination of the applicants' fears to be carried out, as well as an assessment of the risks they would face if removed to the receiving country (ibid., §§ 184-85). In the context of those procedures,

(a) 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 (ibid., § 186);

(b) where such evidence is adduced, it is for the returning State to dispel any doubts raised by it, and to subject the alleged risk to close scrutiny by considering 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; such an assessment must 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 (ibid., § 187); the impact of removal must be assessed by comparing the applicant's state of health prior to removal and how it would evolve after transfer to the receiving State (ibid., § 188);

(c) 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 (ibid., § 189);

(d) the returning State must also consider the extent to which the applicant will actually have access to the treatment, including with reference to its cost, the existence of a social and family network, and the distance to be travelled in order to have access to the required care (ibid., § 190);

(e) where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the applicant – 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 (ibid., § 191).

131. The Court stressed in the above connection that the benchmark was not the level of care existing in the returning State; it was not a question of ascertaining whether the care in the receiving State would be equivalent or inferior to that provided by the healthcare system in the returning State. Nor was it possible to derive from Article 3 a right to receive specific treatment

in the receiving State which was not available to the rest of the population (ibid., § 189). In cases concerning the removal of seriously ill persons, the event which triggered the inhuman and degrading treatment, and which engaged the responsibility of the returning State under Article 3, was not the lack of medical infrastructure in the receiving State. Likewise, the issue was not one of any obligation for the returning State to alleviate the disparities between its healthcare system and the level of treatment existing in the receiving State through the provision of free and unlimited healthcare to all aliens without a right to stay within its jurisdiction. The responsibility that was engaged under the Convention in cases of this type was 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 (ibid., § 192). Lastly, the Court pointed out that whether the receiving State was a Contracting Party to the Convention was not decisive.

132. There has been no further development in the relevant case-law since the *Paposhvili* judgment (cited above).

3. *General considerations on the criteria laid down in the* Paposhvili *judgment*

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).

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).

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.

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).

4. Relevance of the Paposhvili *threshold test in the context of the removal of mentally ill aliens*

137. The Court has consistently applied the same principles in cases concerning the expulsion of seriously ill applicants, irrespective of what particular type of medical issue – somatic or mental – underlay their health condition. In the *Paposhvili* judgment (cited above), before it proceeded to formulate the new standard, the Court had regard to case-law relating to applicants suffering from both physical and mental illnesses (see paragraph 127 above and the range of authorities cited in *Paposhvili*, cited above, § 179). In the wording of paragraph 183 of the *Paposhvili* judgment, the standard refers to "a seriously ill person", without specifying the type of illness. Thus, it is not limited to any specific category of illness, let alone physical ones, but may extend to any category, including mental illnesses, provided that the situation of the ill person concerned is covered by the *Paposhvili* criteria taken as a whole.

138. In particular, in its relevant part, the threshold test established in paragraph 183 of the *Paposhvili* judgment (cited above), rather than mentioning any particular disease, broadly refers to the "irreversibility" of the "decline in [a person's] state of health", a wider concept that is capable of encompassing a multitude of factors, including the direct effects of an illness as well as its more remote consequences. Moreover, it would be wrong to dissociate the various fragments of the test from each other, given that, as noted in paragraph 134 above, a "decline in health" is linked to "intense suffering". It is on the basis of all those elements taken together and viewed as a whole that the assessment of a particular case should be made.

139. In the light of the foregoing, the Court considers that the standard in question is sufficiently flexible to be applied in all situations involving the removal of a seriously ill person which would constitute treatment proscribed by Article 3 of the Convention, irrespective of the nature of the illness.

5. Application of the relevant principles in the present case

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 nor immediate in the applicant's case. It is noteworthy that the applicant was prescribed Leponex in May 2013 (see paragraph 35 above) and that during the period of two years that elapsed until the final decision in the revocation proceedings on 20 May 2015 (see paragraph 67 above) he had shown no symptoms of any deterioration of his physical health on account of his treatment with that drug. In any event, the relevant evidence does not indicate that such immune deficiencies, should they occur, would be "irreversible" and would result in the "intense suffering" or "significant reduction in life expectancy" necessary to satisfy the *Paposhvili* test. The medical expert simply suggested that the applicant should stop taking that drug if such deficiencies emerged (see paragraph 63 above).

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 appropriate 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.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

149. The applicant further complained that the authorities' refusal to revoke the expulsion order, and the implementation of that order entailing as a consequence a permanent re-entry ban, had breached his right to respect for his private and family life. He relied on Article 8 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The Chamber judgment

150. The Chamber observed that the complaint under Article 8 relating to the original expulsion order had been lodged out of time and had to be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. It then declared admissible the complaint relating to the revocation proceedings and, having regard to its findings under Article 3, considered that there was no need to examine separately the applicant's complaint under Article 8 of the Convention.

B. The parties' submissions before the Grand Chamber

1. The applicant

151. The applicant argued that the outcome of the revocation proceedings and his eventual expulsion had constituted a violation of his right to respect for his private and family life secured by Article 8 of the Convention. Given that he had lived in Denmark from the age of six until the age of almost thirty, he had been a "settled migrant", and therefore "serious reasons" had been required to justify his expulsion, as established in the case of *Maslov v. Austria* ([GC], no. 1638/03, ECHR 2008). Moreover, his enduring mental disorder – paranoid schizophrenia – and his low intellectual capacity made him particularly vulnerable.

152. Prior to his expulsion, the applicant had had very close ties with his mother, his four siblings and his niece and nephew, all of them living in Denmark. They had frequently visited him at the Hospital of Saint John, and he had visited them either alone, or in the company of health workers from the hospital. He had had a family life with them and, in view of his diagnosis, had been particularly dependent on them and had relied on their assistance and support in his efforts to overcome his mental illness; those were additional elements of his dependence on his mother and siblings, which demonstrated his particular need for a family unit. In the latter connection, the applicant relied on the case of *Nasri v. France* (13 July 1995, Series A no. 320-B). In addition, he stressed that he had no family or friends in Turkey and was currently living in isolation in a village in Turkey, given his very limited ability to communicate because of his lack of command of Turkish. The applicant argued that his family in Denmark was the only family he had, and that his removal had been both disproportionate and inhuman.

153. The applicant further contended that the Grand Chamber's task in the present case was to review the revocation proceedings, which, in his view, had not met the relevant standards of Article 8 of the Convention. With reference to the cases of *I.M. v. Switzerland* (no. 23887/16, 9 April 2019) and *Saber and Boughassal v. Spain* (nos. 76550/13 and 45938/14, 18 December 2018), the applicant argued that, similarly to those cases, in its decision of 13 January 2015 the High Court had failed to make a thorough assessment of all the relevant elements, and especially his particular dependence on his family; to carry out a proper balancing exercise, in accordance with the criteria established in the Court's case-law; and to provide sufficient grounds for his expulsion. The High Court's reasoning regarding the applicant's rights protected by Article 8 of the Convention had been given in a summary and superficial manner.

154. The applicant also argued that the permanent ban on his re-entry had breached the relevant requirements of Article 8. As regards the 2018 amendments introduced in section 32(5) of the Aliens Act (see paragraph 78 above), this new provision had enabled the Danish courts to impose a ban on re-entry for a shorter duration than those fixed in section 32(4) of the Aliens Act. His legal representatives had, however, not been able to find any practice of the Danish courts on the application of that provision. In particular, a search of Danish legal commentaries and legal databases, as well as enquiries to a number of Danish public authorities involved in this field, had not led to the identification of any legal precedent. Against this background, the Government's argument that the amended provision would not have led to a different outcome in the applicant's case (see paragraph 166 below) seemed rather speculative.

155. The applicant further contended that the nature and seriousness of his criminal offence could not have been decisive in the assessment of the necessity of his expulsion, in accordance with the requirements of Article 8, given that he had been convicted of an attack in which several other persons had taken part, and that his individual role in the attack had not been determined in the course of the criminal proceedings against him. Also, in the revocation proceedings the Danish courts should have taken into account the permanent nature of the removal measure, as well as the fact that the applicant had committed no further offences since May 2006.

156. The applicant agreed with the Government that the new version of section 32 of the Aliens Act could not be applied retroactively, but argued that, since the amended provision had afforded the Danish courts more flexibility in dealing with expulsion issues in criminal cases, it could not be ruled out that, if applied at the time of his criminal trial, that provision could have altered the outcome of his case with the result that he would have had a chance to return to his family in Denmark after spending a period of several years in Turkey.

2. The Government

157. The Government submitted that there had been no violation of Article 8 in the present case. With reference to the Court's relevant case-law, and, in particular, its judgment in *Üner v. the Netherlands* ([GC], no. 46410/99, ECHR 2006-XII), they pointed out that an absolute right not to be expelled – even for a long-term immigrant who had been born in the host State or who had arrived there during early childhood – could not be derived from Article 8 of the Convention (ibid., §§ 55-57).

158. Whilst conceding that the contested measure had interfered with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, the Government pointed out that at the time when the applicant's expulsion order had been upheld by the Supreme Court in 2009 (see paragraph 30 above) and had thus become final, he had been a 24-year-old unmarried adult who had not founded a family.

159. They further argued that the interference in question had been justified under Article 8 § 2 of the Convention. The expulsion order had been "in accordance with the law", had pursued the legitimate aim of "the prevention of disorder or crime" and had been "necessary in a democratic society".

160. As regards the last-mentioned aspect, the Government argued that in the criminal proceedings against the applicant, when deciding on the issue of expulsion, the domestic courts at two levels of jurisdiction had expressly considered Article 8 and the Court's case-law, including the criteria established in *Üner* and *Maslov* (both cited above), in their assessment of the proportionality of the interference with the applicant's relevant rights. The courts had taken into account the available information on the applicant's personal circumstances.

161. The Government adduced detailed arguments regarding the domestic courts' findings in the context of the criminal proceedings against the applicant, and insisted that, in their assessment of the issue of expulsion, the High Court and the Supreme Court had carried out a thorough assessment of the applicant's personal circumstances in accordance with the general principles set out by the Court and had carefully struck a fair balance between the opposing interests. In the light of the principle of subsidiarity, the Court ought to be reluctant to disregard the assessment made by the Danish courts. In that connection, referring to the relevant considerations in *Ndidi v. the United Kingdom* (no. 41215/14, §§ 75-76, 14 September 2017), they argued that the Court should decline to substitute its own conclusions for those of the domestic courts.

162. The Government also pointed out that under the Danish courts' case-law, a visitor's visa could be issued in very extraordinary cases to aliens who had been expelled and permanently banned from re-entry. For the first two years following expulsion, a visa could be issued only where there was an urgent need for a deportee's presence in Denmark, for instance

if the deportee was to give evidence as a witness in legal proceedings and a court deemed the deportee's presence to be of material importance to the completion of the proceedings; or in the event of acute serious illness of a spouse or a child living in Denmark where regard for the person living in Denmark made such a visit appropriate. After the first two years following deportation, a visa could be issued only where exceptional reasons made it appropriate, for instance, serious illness or death of a family member living in Denmark.

163. At the hearing before the Grand Chamber, the Government stated that the applicant had never lost his legal capacity.

164. As regards the indefinite duration of the ban on re-entry imposed on the applicant, the Government pointed out that at the time when the applicant's expulsion had been ordered, the domestic courts had had no discretion to impose a ban on re-entry of a limited duration. The relevant provision – section 32 of the Aliens Act – had only recently been amended (see paragraph 78 above) in order to make it more nuanced and flexible based on a differentiation of the criteria for the imposition of a ban on re-entry.

165. The reasoning behind the amendment had been the political will of the Danish legislature to ensure that the domestic courts ordered the expulsion of criminal aliens more often than had previously been the case while taking account of the Court's Article 8 case-law. Under the amended legislation, the domestic courts could impose an entry ban for a shorter period if they found that a permanent ban would conflict with Denmark's international obligations. Accordingly, rather than refraining from expelling a criminal alien, the courts could choose to impose a shorter ban on re-entry.

166. However, the Government pointed out that the amended provision had no retroactive effect, and thus was inapplicable in the applicant's case. Nor did it allow for a reconsideration of a permanent ban that had already been imposed. Even if that new provision had been applicable, a permanent ban would still have been imposed on the applicant regardless, because of the nature and seriousness of his crime.

3. Third-party intervener

167. The Norwegian Government, who were the only intervening Government to make comments under Article 8, invited the Grand Chamber to develop the principles regarding the expulsion of "settled migrants" established under Article 8 of the Convention in *Üner* and *Maslov* (both cited above). Since those cases had been examined from the standpoint of the "family life" aspect of Article 8, the principles established therein were not easily applicable in situations where only the "private life" of the person concerned was involved. The subsequent case-law had relied on factors that presupposed the severance of family ties upon removal, whilst factors more

typically associated with "private life", including the question of adequate medical treatment in the receiving State, had not been included.

168. More specifically, the Norwegian Government invited the Grand Chamber to elaborate on the *Üner* and *Maslov* criteria, having regard to the approach taken in the case of *Levakovic v. Denmark* (no. 7841/14, 23 October 2018). In their view, in paragraph 44 of the latter judgment the Court had shown sensitivity towards the inadequacy of several of the *Üner* criteria in cases where only the "private life" aspects of Article 8 came into play. As the Court had stated in paragraph 45 of that judgment, "[a]scertaining whether 'very weighty reasons' justif[ied] the expulsion of a settled migrant ... must inevitably require a delicate and holistic assessment ... that must be carried out by the national authorities under the final supervision of the Court", and the Court should require "strong reasons to substitute its view for that of the domestic courts" where "a balancing exercise ha[d] been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law".

C. The Court's assessment

1. The scope of the case

169. According to the Court's settled case-law, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment. The "case" referred to the Grand Chamber is the application as it has been declared admissible, as well as the complaints that have not been declared inadmissible (see *S.M. v. Croatia* [GC], no. 60561/14, § 216, 25 June 2020, and the authorities cited therein). This means that the Grand Chamber must examine the case in its entirety in so far as it has been declared admissible; it cannot, however, examine those parts of the application which have been declared inadmissible by the Chamber (see, for instance, *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 234-35, ECHR 2012 (extracts), and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 87, 6 November 2018). The Court sees no reason to depart from this principle in the present case.

170. The Court further observes that the Grand Chamber has previously decided in some cases, in view of the importance of the issues at stake, to consider certain complaints which the Chamber had not deemed necessary to examine, even where the outcome was detrimental to the party that had requested referral to it (see, for example, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 141 and 149, ECHR 2004-XII; *Kurić and Others*, cited above, § 382; and *Ramos Nunes de Carvalho e Sá*, cited above, § 88).

171. In the present case, the Chamber declared inadmissible the applicant's complaint under Article 8 relating to the original expulsion order as having been lodged out of time. It declared admissible the complaint

relating to the revocation proceedings but decided that it was not necessary to examine that complaint under Article 8 (see paragraph 150 above). In the light of the above-mentioned principles, the Court will examine the complaint under Article 8 only in so far as it relates to the authorities' refusal to revoke the expulsion order, and the implementation of that order, entailing as a consequence a permanent re-entry ban. Its task therefore is not to assess, from the standpoint of Article 8 of the Convention, the original expulsion order and the criminal proceedings in the context of which it was issued, but rather to review whether the revocation proceedings complied with the relevant criteria established by the Court's case-law (compare *T.C.E. v. Germany*, no. 58681/12, § 54, 1 March 2018).

2. Whether there was interference with the applicant's right to respect for his private and family life

172. From the outset, and notwithstanding the conclusion above under Article 3 of the Convention, it should be recalled that in the case of *Bensaid* (cited above) the Court held:

> "46. Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Article 8. However, the Court's case-law does not exclude that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, pp. 60-61, § 36).
>
> 47. ... Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world (see, for example, *Burghartz*, cited above, opinion of the Commission, p. 37, § 47, and *Friedl v. Austria*, judgment of 31 January 1995, Series A no. 305-B, p. 20, § 45). The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

173. Furthermore, as regards the position of settled migrants the Court held as follows in the case of *Maslov* (cited above):

> "61. The Court considers that the imposition and enforcement of the exclusion order against the applicant constituted an interference with his right to respect for his 'private and family life'. It reiterates that the question whether the applicant had a family life within the meaning of Article 8 must be determined in the light of the position when the exclusion order became final (see *El Boujaïdi v. France*, 26 September 1997, § 33, *Reports of Judgments and Decisions* 1997-VI; *Ezzouhdi v. France*, no. 47160/99, § 25, 13 February 2001; *Yildiz v. Austria*, no. 37295/97, § 34, 31 October 2002; *Mokrani v. France*, no. 52206/99, § 34, 15 July 2003; and *Kaya*, cited above, § 57).
>
> 62. The applicant was a minor when the exclusion order was imposed. He had reached the age of majority, namely 18 years, when the exclusion order became final in November 2002 following the Constitutional Court's decision, but he was still

> living with his parents. In any case, the Court has accepted in a number of cases concerning young adults who had not yet founded a family of their own that their relationship with their parents and other close family members also constituted 'family life' (see *Bouchelkia v. France*, 29 January 1997, § 41, *Reports* 1997-I; *El Boujaïdi*, cited above, § 33; and *Ezzouhdi*, cited above, § 26).
>
> 63. Furthermore, the Court observes that not all settled migrants, no matter how long they have been residing in the country from which they are to be expelled, necessarily enjoy 'family life' there within the meaning of Article 8. However, as Article 8 also protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of 'private life' within the meaning of Article 8. Regardless of the existence or otherwise of a 'family life', the expulsion of a settled migrant therefore constitutes an interference with his or her right to respect for private life. It will depend on the circumstances of the particular case whether it is appropriate for the Court to focus on the 'family life' rather than the 'private life' aspect (see *Üner*, cited above, § 59)."

174. Whilst in some cases the Court has held that there will be no family life between parents and adult children or between adult siblings unless they can demonstrate additional elements of dependence (see, for instance, *A.W. Khan v. the United Kingdom*, no. 47486/06, § 32, 12 January 2010, and *Narjis v. Italy*, no. 57433/15, § 37, 14 February 2019), in a number of other cases it has not insisted on such further elements of dependence with respect to young adults who were still living with their parents and had not yet started a family of their own (see *Bouchelkia v. France*, 29 January 1997, § 41, *Reports* 1997-I; *Ezzouhdi v. France*, no. 47160/99, § 26, 13 February 2001; *Maslov*, cited above, §§ 62 and 64; and *Yesthla v. the Netherlands* (dec.), no. 37115/11, § 32, 15 January 2019). As already stated above, whether it is appropriate for the Court to focus on the "family life" rather than the "private life" aspect will depend on the circumstances of the particular case.

175. In the present case, the applicant arrived in Denmark at the age of six; he was educated and spent his formative years there; he was issued with a residence permit and remained lawfully resident in the country for fourteen years and eight months (see paragraphs 27 and 30 above). The Court thus accepts that he was a "settled migrant" and therefore Article 8 under its "private life" aspect is engaged.

176. The applicant also alleged that, prior to his expulsion, he had had a close relationship with his mother, his four siblings and their children, who all lived in Denmark. In particular, while he had remained in forensic psychiatric care, they had visited him and he had visited them. The applicant also stressed his particular vulnerability on account of his mental condition, which, in his view, was an additional element of his dependence on them, and argued that he had had a "family life" with them, which had been interrupted by his expulsion (see paragraph 152 above).

177. The Court observes that, at the time when the applicant's expulsion order became final, he was 24 years old (see paragraph 30 above). Even if the Court may be prepared to accept that a person of this age can still be considered a "young adult" (see paragraph 174 above), the facts of the case reveal that from his childhood the applicant was removed from home and placed in foster care, and that, at various times over the years, he lived in socio-educational institutions (see paragraph 18 above). It is thus clear that from his early years the applicant was not living full time with his family (compare *Pormes v. the Netherlands*, no. 25402/14, § 48, 28 July 2020, and compare and contrast *Nasri*, cited above, § 44).

178. The Court is further not convinced that the applicant's mental illness, albeit serious, can in itself be regarded as a sufficient evidence of his dependence on his family members to bring the relationship between them within the sphere of "family life" under Article 8 of the Convention. In particular, it has not been demonstrated that the applicant's health condition incapacitated him to the extent that he was compelled to rely on their care and support in his daily life (compare and contrast *Emonet and Others v. Switzerland*, no. 39051/03, § 35, 13 December 2007; *Belli and Arquier-Martinez v. Switzerland*, no. 65550/13, § 65, 11 December 2018; and *I.M. v. Switzerland*, cited above, § 62). Moreover, it has not been argued that the applicant was dependent on any of his relatives financially (compare and contrast *I.M. v. Switzerland*, cited above, § 62); it is noteworthy in this connection that the applicant has been and remains in receipt of a disability pension from the Danish authorities (see paragraphs 27, 30 and 72 above). Moreover, there is no indication that there were any further elements of dependence between the applicant and his family members. In these circumstances**,** whilst the Court sees no reason to doubt that the applicant's relationship with his mother and siblings involved normal ties of affection, it considers that it would be appropriate to focus its review on the "private life" rather than the "family life" aspect under Article 8.

179. The Court further finds that the refusal to revoke the applicant's expulsion order in the revocation proceedings and his expulsion to Turkey constituted an interference with his right to respect for his private life (see *Hamesevic v. Denmark* (dec.), no. 25748/15, §§ 31 and 46, 16 May 2017). Such interference will be in breach of Article 8 of the Convention unless it can be justified under Article 8 § 2 as being "in accordance with the law", as pursuing one or more of the legitimate aims listed and as being "necessary in a democratic society" in order to achieve the aim or aims concerned (see, among many other authorities, *Maslov*, cited above, § 65).

3. Lawfulness and legitimate aim

180. It was not disputed that the impugned interference was "in accordance with the law", namely section 50a of the Aliens Act, and pursued the legitimate aim of preventing disorder and crime. However, the

parties disagreed as to whether the interference was "necessary in a democratic society".

4. "Necessary in a democratic society"

(a) General principles

181. The Court first reiterates the following fundamental principles established in its case-law as summarised in *Üner* (cited above, § 54) and quoted in *Maslov* (cited above, § 68):

> "54. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, 19 February 1998, § 52, *Reports* 1998-I; *Mehemi v. France*, 26 September 1997, § 34, *Reports* 1997-VI; *Boultif*, cited above, § 46; and *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).
>
> 55. The Court considers that these principles apply regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there. In this context the Court refers to Recommendation 1504 (2001) on the non-expulsion of long-term immigrants, in which the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers invite member States, *inter alia*, to guarantee that long-term migrants who were born or raised in the host country cannot be expelled under any circumstances (see paragraph 37 above). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record (see paragraph 39 above), such an absolute right not to be expelled cannot, however, be derived from Article 8 of the Convention, couched, as paragraph 2 of that provision is, in terms which clearly allow for exceptions to be made to the general rights guaranteed in the first paragraph."

182. In *Maslov* (cited above, § 71) the Court further set out the following criteria as relevant to the expulsion of young adults, who have not yet founded a family of their own:

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

– the time that has elapsed since the offence was committed and the applicant's conduct during that period; and

– the solidity of social, cultural and family ties with the host country and with the country of destination.

In addition, the Court will have regard to the duration of the exclusion order (ibid., § 98; see also *Külekci v. Austria*, no. 30441/09, § 39, 1 June 2017, and *Azerkane v. the Netherlands*, no. 3138/16, § 70, 2 June 2020). Indeed, the Court notes in this context that the duration of a ban on re-entry, in particular whether such a ban is of limited or unlimited duration, is an element to which it has attached importance in its case-law (see, for example, *Yilmaz v. Germany*, no. 52853/99, §§ 47-49, 17 April 2003; *Radovanovic v. Austria*, no. 42703/98, § 37, 22 April 2004; *Keles v. Germany*, no. 32231/02, §§ 65-66, 27 October 2005; *Külekci v. Austria*, cited above, § 51; *Veljkovic-Jukic v. Switzerland*, no. 59534/14, § 57, 21 July 2020; and *Khan v. Denmark*, no. 26957/19, § 79, 12 January 2021).

183. All of the relevant criteria established in the Court's case-law should be taken into account by the domestic courts, from the standpoint of either "family life" or "private life" as appropriate, in all cases concerning settled migrants who are to be expelled and/or excluded from the territory following a criminal conviction (see *Üner*, cited above, § 60, and *Saber and Boughassal*, cited above, § 47).

184. Where appropriate, other elements relevant to the case, such as, for instance, its medical aspects, should also be taken into account (see *Shala v. Switzerland*, no. 52873/09, § 46, 15 November 2012; *I.M. v. Switzerland*, cited above, § 70; and *K.A. v. Switzerland*, no. 62130/15, § 41, 7 July 2020).

185. The weight to be attached to the respective criteria will inevitably vary according to the specific circumstances of each case; where the aim is the "prevention of disorder or crime", they are designed to help domestic courts evaluate the extent to which the applicant can be expected to cause disorder or to engage in criminal activities (see *Maslov*, cited above, § 70).

186. Moreover, for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (ibid., § 75).

187. National authorities enjoy a certain margin of appreciation when assessing whether an interference with a right protected by Article 8 was necessary in a democratic society and proportionate to the legitimate aim pursued. However, the Court has consistently held that its task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other. Thus, the State's margin of appreciation goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether an expulsion measure is reconcilable with Article 8 (ibid., § 76, and the cases cited therein).

188. Domestic courts must put forward specific reasons in the light of the circumstances of the case, not least to enable the Court to carry out the European supervision entrusted to it. Where the reasoning of domestic

decisions is insufficient, without any real balancing of the interests in issue, this would be contrary to the requirements of Article 8 of the Convention. In such a scenario, the Court will find that the domestic courts failed to demonstrate convincingly that the respective interference with a right under the Convention was proportionate to the aim pursued and thus met a "pressing social need" (see *El Ghatet v. Switzerland*, no. 56971/10, § 47, 8 November 2016).

189. At the same time, where independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *Ndidi*, cited above, § 76; *Levakovic*, cited above, § 45; *Saber and Boughassal*, cited above, § 42; and *Narjis*, cited above, § 43).

(b) Application of those principles in the present case

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.

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.

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).

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.

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).

199. Lastly, in order to assess the proportionality of the impugned measure, the duration of the entry ban also needs to be taken into account (see paragraph 182 above). The Court has previously found such a ban to be disproportionate on account of its unlimited duration, whilst in other cases, it has considered the limited duration of the exclusion measure to be a factor weighing in favour of its proportionality (see the authorities cited in paragraph 182 above). The Court has also accepted an expulsion measure as proportionate in a situation where, in spite of the indefinite duration of that measure, possibilities remained for the applicants to enter the returning State (see, for instance, *Vasquez v. Switzerland*, no. 1785/08, § 50, 26 November 2013, where the applicant could apply for authorisation to enter Switzerland as a tourist), and, even more so, where it was open to the

applicants to request the authorities to reconsider the duration of the entry ban (ibid.; see also *Kaya v. Germany*, no. 31753/02, §§ 68-69, 28 June 2007).

200. In the present case, the Danish courts, in the revocation proceedings, had no discretion under the domestic law to review and to limit the duration of the ban imposed on the applicant; nor was it open to him to have the exclusion order reconsidered in any other procedure. As a result of the refusal to lift that measure in the revocation proceedings, he was subjected to a permanent re-entry ban. The Court notes the very intrusive nature of that measure for the applicant. In the light of the Government's submissions regarding the very limited basis on which a visitor's visa may be issued to aliens who have been expelled and permanently banned from re-entry (see paragraph 162 above), it is clear that the possibility of the applicant re-entering Denmark, even for a short period, remains purely theoretical. As a result, he has been left without any realistic prospect of entering, let alone returning to, Denmark.

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).

202. Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

203. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

204. Before the Chamber, the applicant claimed 40,000 euros (EUR) as compensation for non-pecuniary damage relating to the alleged violation of Articles 3 and 8 of the Convention. The Government contested that claim as excessive.

205. The Chamber decided that a finding of a violation of Article 3 constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

206. In the proceedings before the Grand Chamber, the applicant claimed EUR 30,000 in respect of non-pecuniary damage. He argued, in particular, that he had suffered distress, frustration and feelings of injustice resulting from the legal proceedings in Denmark and his subsequent removal to Turkey, which had interrupted his medical treatment as well as his private and family life in Denmark. In his view, his suffering could not be compensated for by a mere finding of a violation.

207. The Government submitted that, in the absence of a violation of the applicant's rights secured by Articles 3 or 8, there was no call to make any award under Article 41 of the Convention.

208. The Court considers that, having regard to the circumstances of the case, the conclusion it has reached under Article 8 of the Convention constitutes sufficient just satisfaction in respect of any non-pecuniary damage that may have been sustained by the applicant. It therefore makes no award under this head (see *Mehemi v. France*, 26 September 1997, § 41, *Reports* 1997-VI; *Yildiz v. Austria*, no. 37295/97, § 51, 31 October 2002; and *Radovanovic v. Austria* (just satisfaction), no. 42703/98, § 11, 16 December 2004).

B. Costs and expenses

209. Before the Chamber, the applicant claimed costs and expenses incurred in the proceedings before the Court in the amount of 103,560 Danish kroner (DKK – approximately EUR 14,000), corresponding to legal fees for a total of eighty-six hours of work performed by his representatives and their legal team. The Government disputed that amount as being excessive and pointed out that the applicant had applied for and had been provisionally granted legal aid in the amount of DKK 40,000 (approximately EUR 5,400) under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettigheds-konventioner*).

210. Bearing in mind the amount of legal aid that had been granted to the applicant at the domestic level, the Chamber considered it reasonable to award him EUR 2,000, covering costs for the proceedings before the Court.

211. In the proceedings before the Grand Chamber, in his observations of 28 May 2020 the applicant sought reimbursement of DKK 322,700 (approximately EUR 45,000) for legal costs and expenses incurred in the proceedings before the Chamber and Grand Chamber. He submitted a detailed invoice, which indicated the estimate of the total number of hours spent by each of two legal representatives and their legal team members on working on the case, as well as hourly rates of their fees. He also pointed out that, as of that date, he had only received DKK 20,230.63 (approximately EUR 2,700) under the Danish Legal Aid Act. In an additional claim submitted on 24 June 2020, after the hearing before the Grand Chamber, the applicant specified that, in view of the complexity of the case and, in particular, the significant number of third-party interveners who had submitted observations, the actual time spent by the representatives and their team had exceeded the above-mentioned estimate and ranged from 104 hours for Mr Trier to thirty-two hours for Mr Boelskifte and from eight to fifty-four hours for various members of their legal team. He claimed the reimbursement of an amount totalling DKK 372,420 (approximately EUR 50,000).

212. The Government argued that the number of hours spent on the case as claimed by the applicant's representatives had exceeded the normal and necessary time spent by lawyers in similar cases, with the result that the amount claimed was excessive. They also pointed out that under the Danish Legal Aid Act, the applicant had already been granted legal aid in the amount of DKK 20,230.63 (approximately EUR 2,700) by a decision of 8 April 2020, and in the amount of DKK 18,597.50 (approximately EUR 2,500) by a decision of 23 June 2020.

213. The Court notes that the applicant has provisionally been granted DKK 38,828.13 under the Danish Legal Aid Act. However, it is uncertain whether the applicant will subsequently be granted additional legal aid by the Ministry of Justice and how the dispute between the parties about the applicant's outstanding claim for legal aid will be decided. Therefore, the Court finds it necessary to assess and decide the applicant's claim for costs and expenses.

214. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for instance, *Osman v. Denmark*, no. 38058/09, § 88, 14 June 2011). In the present case, regard being had to the documents in its possession and the above criteria, the Court is satisfied that the applicant's claim was substantiated. It further notes that this case has been relatively complex and has required a certain amount of work. On the other hand, the Court doubts whether, in the proceedings before the Grand Chamber, the case required the amount of work claimed by the applicant, given that a

significant part of it had been carried out in the proceedings before the Chamber.

215. In these circumstances, having regard to the details of the claims submitted by the applicant, the Court considers it reasonable to award the reduced amount of EUR 20,000, together with any tax that may be chargeable to the applicant.

C. Default interest

216. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, by sixteen votes to one, that there has been no violation of Article 3 of the Convention;

2. *Holds*, by eleven votes to six, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by fifteen votes to two, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*, by eleven votes to six,
   (a) that the respondent State is to pay the applicant, within three months, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, by fifteen votes to two, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing on 7 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Robert Spano
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Jelić;
(b) partly concurring and partly dissenting opinion of Judge Serghides;
(c) joint partly dissenting opinion of Judges Kjølbro, Dedov, Lubarda, Harutyunyan, Kucsko-Stadlmayer and Poláčková.

R.S.O.
S.C.P.

CONCURRING OPINION OF JUDGE JELIĆ

1. I am in agreement with the conclusions reached by the Grand Chamber in this important judgment. However, I have certain reservations in respect of the assessment/reasoning in the part of the judgment regarding Article 8. In my view, the avoidance of an analysis of the aspect of family life in the instant case entails a failure to adopt a comprehensive approach with an emphasis on the applicant's specific vulnerability and, to a certain extent, reveals an inconsistency with the universal human rights jurisprudence.

2. Therefore, I find it useful to express myself through a separate opinion, because I genuinely believe that the Grand Chamber's decision to analyse this particular case from the standpoint of protection of the applicant's private life, rather than his family life, is not fully appropriate or sufficient.

3. I consider that it would actually have been more appropriate for the Grand Chamber's analysis in respect of Article 8 as to whether there was interference with the applicant's right to respect for his private and family life (see paragraphs 172-79 of the judgment) not to rule out the recognition of the important specific circumstances characterising the applicant's family life in the present case, notably in the light of his serious enduring mental disorder and low intellectual capacity, as well as the age since when he had been under special care, which consequently not only impacted on his inability to establish his own family, but also led to emotional and social reliance on his only existing family members – his mother, siblings and niece and nephew.

4. In addition, although there were no conditions enabling the Court to find that there was *de facto* family life between the applicant and all of his family members (in particular, bearing in mind the time he had spent in foster care or forensic psychiatric care), his genuine ties with his mother assume special importance in the instant case, having regard to the applicant's vulnerability caused by his serious mental illness, which in such situations may result in even stronger emotional bonds with the parents than in regular circumstances not characterised by vulnerability. On that account, the specific meaning of the family in respect of vulnerable persons should be taken into consideration, since they are unable to establish their own nuclear families, a factor which consequently has an impact on the meaning of their right to respect for family life. In the instant case, the standard metric should not have been applied to the applicant when assessing whether he had family ties in Denmark. In the concrete circumstances of the case, the extended notion of family and family life should have been accepted.

5. The applicant's status as an unmarried settled migrant who has been raised and educated in Denmark as his country of residence since he was six

should have been understood in this particular case with an emphasis on all aspects of his particular vulnerability – as a seriously mentally ill alien who had been diagnosed with paranoid schizophrenia, who was unable to establish a nuclear family, who did not have family or private ties with Turkey as his country of origin, who was actually a person belonging to the Kurdish ethnic minority and did not speak, read or write Turkish, the official language in which he was supposed to communicate in relation to his medical treatment there, and whose only family and private ties were in Denmark. All this contributed to his emotional and social dependence on those whom he understood as his family (his mother, four siblings and niece and nephew) and who considered him a family member, also proving this by regularly visiting him while he remained in the special care institutions, and arranging for him to pay them visits (alone or in the company of health workers).

6. The authorities' refusal to revoke the expulsion order, and the implementation of that order, entailed as a consequence for the applicant a permanent ban on re-entry to Denmark, where all his family lives. In the light of the specific circumstances of the instant case, such a refusal underlines the need for pertinent consideration of the aspect of the vulnerable applicant's family life, which is situated in Denmark and not the country to which he was expelled. In addition, the aspect of having family support during the applicant's recovery process is no less important.

7. The definition of "family" and the notion of family life have been established by the United Nations Human Rights Committee on the basis of a broad interpretation, having regard to the connection with the meaning of "home" and the understanding of the specific society in question. The following references are relevant in this connection:

General comment No. 16: Article 17 (Right to privacy)
Paragraph 5

> "Regarding the term 'family', the objectives of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned. The term 'home' in English, 'manzel' in Arabic, 'zhùzhái' in Chinese, 'domicile' in French, 'zhilische' in Russian and 'domicilio' in Spanish, as used in article 17 of the Covenant, is to be understood to indicate the place where a person resides or carries out his usual occupation. In this connection, the Committee invites States to indicate in their reports the meaning given in their society to the terms 'family' and 'home'."

General comment No. 19: Article 23 (The family)
Paragraph 2

> "The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in

article 23. Consequently, States parties should report on how the concept and scope of the family is construed or defined in their own society and legal system. Where diverse concepts of the family, 'nuclear' and 'extended', exist within a State, this should be indicated with an explanation of the degree of protection afforded to each. In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, States parties should also indicate whether and to what extent such types of family and their members are recognized and protected by domestic law and practice."

Relevant extracts from the universal jurisprudence:

In a similar case decided by the UN Human Rights Committee, *Dauphin v. Canada* (Views of 28 July 2009, CCPR/C/96/D/1792/2008), it is stated that the concept of family is to be interpreted broadly. The Committee found that the deportation of the author was disproportionate to the legitimate aims pursued and thus in violation of his family life (see paragraph 8.3. below, emphasis added):

Case of *Dauphin v. Canada* (Views of 28 July 2009)

"8.2 In this instance, the author has lived in the State party's territory since the age of two and was educated there. His parents and three brothers and sisters live in Canada and have Canadian nationality. The author is to be deported after having been sentenced to 33 months' imprisonment for robbery with violence. The Committee notes the author's claim that his entire family is in Canada, that he lived with his family before his arrest and that he has no family in Haiti. The Committee also notes the State party's arguments referring to a rather casual link between the author and his family, since he had lived mainly in youth centres and foster homes and received no help from his family when he turned to a life of crime and drug abuse.

8.3 The Committee recalls its general comments Nos. 16 (1988) and 19 (1990), whereby the concept of the family is to be interpreted broadly. In this case, it is not disputed that the author has no family in Haiti and that all his family live in the territory of the State party. Given that this is a young man who has not yet started a family of his own, the Committee considers that his parents, brothers and sisters constitute his family under the Covenant. It finds that the State party's decision to deport the author, who has spent all his life since his earliest years in the State party's territory, was unaware that he was not a Canadian national and has no family ties whatsoever in Haiti, constitutes interference in the author's family life. The Committee notes that it is not disputed that this interference had a legitimate purpose, namely the prevention of criminal offences. It must therefore determine whether this interference was arbitrary and a violation of articles 17 and 23, paragraph 1, of the Covenant.

8.4 The Committee notes that the author considered himself to be a Canadian citizen and it was only on his arrest that he discovered that he did not have Canadian nationality. He has lived all his conscious life in the territory of the State party and all his close relatives and his girlfriend live there, and he has no ties to his country of origin and no family there. The Committee also notes that the author has only a single previous conviction, incurred just after he turned 18. The Committee finds that the interference, with drastic effects for the author given his very close ties to Canada and the fact that he appears to have no link with Haiti other than his nationality, is disproportionate to the legitimate aims pursued by the State party. The author's

deportation therefore constitutes a violation by the State party of articles 17 and 23, paragraph 1, of the Covenant."

8. To conclude, while being fully convinced by the Grand Chamber's reasoning in reaching the conclusion that in the instant case the impugned measures amounted to an interference with the applicant's "private life" (see paragraphs 190-202 of the judgment), I nevertheless find that there is also a strong aspect of interference with the applicant's "family life" in the concrete case, bearing in mind his specific vulnerability, his very close family ties to Denmark and his lack of links with Turkey other than his nationality.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

CONTENTS

I. Introduction

1. The applicant, of Turkish nationality, was born in 1985. In 1991, when he was six years old, he moved to Denmark from Turkey together with his mother and four siblings to join his father, who eventually died in 2000. In connection with an offence he had committed, an order was issued for his expulsion to Turkey, which was revoked by the City Court, but was eventually upheld by the High Court on 13 January 2015.

2. The applicant suffered from paranoid schizophrenia, a very serious and long-term illness recognised internationally, including by the World Health Organization, as well as by the Court. As the Court explained in *Bensaid v. the United Kingdom* (no. 44599/98, § 7, ECHR 2001-I):

> "Schizophrenia is an illness or group of illnesses affecting language, planning, emotion, perceptions and movement. 'Positive symptoms' often accompany acute psychotic episodes (including delusions, hallucinations, disordered or fragmented thinking and catatonic movements). 'Negative symptoms', associated with long-term illness, include feelings of emotional numbness, difficulty in communicating with others, lack of motivation and inability to care about or cope with everyday tasks."

The judgment in the present case also notes that schizophrenia is a serious mental illness (see paragraph 141 of the judgment). One serious effect schizophrenia had on the applicant is the high risk he had of harming others (see paragraph 144 of the judgment). The applicant attacked a man as part of a group (see paragraph 13 of the judgment), which resulted in a serious traumatic brain injury that caused the man's death.

3. The applicant complained that on account of his illness, his removal to Turkey by the Danish authorities constituted a breach of Article 3 of the Convention. In particular, he complained that in Turkey, where he had been expelled, he did not have a real possibility of receiving the appropriate and necessary psychiatric treatment, including follow-up and supervision. As he argued, it had been medically established that schizophrenia could be so severe that inadequate treatment could result in a serious, rapid and irreversible decline in patients' health that was associated with intense suffering, or in a significant reduction in life expectancy, and could pose a threat to such patients' own safety and to the safety of others (see paragraph 89 of the judgment).

4. I voted in favour of points 2 and 4 and against points 1, 3 and 5 of the operative part of the judgment. Regrettably, I disagree with my eminent colleagues in the majority that there has been no violation of Article 3 of the Convention and I was alone in the minority in finding that there had been a

violation of that provision. Though I agree that there has been a violation of Article 8, I disagree with the judgment that there has only been a violation of the applicant's right to respect for his private life and not also his right to respect for his family life. The emphasis of my opinion will nonetheless be on my disagreement with the finding of no violation of Article 3.

5. Before explaining the reasons for my disagreement with the majority regarding the Article 3 complaint, it is useful to refer to the relevant medical evidence, the domestic courts' decisions and the Court's Chamber and Grand Chamber judgments, and at the same time to comment on them.

II. Medical evidence, domestic courts' decisions and the Chamber and Grand Chamber judgments – criticism

6. It is evident from the medical statements obtained at the time of the proceedings for revocation of the applicant's expulsion, in particular from the psychiatrists who at various times had been responsible for his treatment at the Mental Health Centre of the Hospital of Saint John, that the applicant needed specific and complex treatment, such treatment being the task of an expert (see M.H.M.'s and P.L.'s statements, referred to in paragraphs 36 and 42-45 of the judgment respectively). The treatment involved the presence of a contact person, the taking of blood samples for somatic reasons on a weekly or monthly basis, and the follow-up and supervision of the applicant to ensure that the treatment plan was followed so as to avoid a relapse of his condition. Failing that, the applicant's prospects of recovery would be bad; there would be a high risk of pharmaceutical failure and resumed abuse, a significantly higher risk of offences against the person of others because of the worsening of his psychotic symptoms, and a risk of the applicant developing an immune disorder as a side-effect of Leponex, his antipsychotic medication. The applicant disputed the Government's argument that a contact person was a social measure rather than an element of his medical treatment. Such a person had been necessary to ensure that he adhered to his treatment with a view to preventing the risk of relapse, and thereby the risk of self-harm or harm to others, and to maintain awareness of the potentially dangerous side-effects of the treatment (see paragraph 95 of the judgment).

7. The City Court and High Court reached opposite findings.

8. It is clear from the City Court's decision of 14 October 2014 that the crucial point on which it relied in deciding to revoke the expulsion order was the lack of assurances from the destination country as to whether there existed a real possibility for the applicant to actually receive the relevant psychiatric treatment, including the necessary follow-up and supervision in connection with intensive outpatient therapy (appropriate treatment), in the event of his return to Turkey.

9. However, the High Court, in its judgment of 13 January 2015 reversing the decision of the City Court, took into account the fact that the

applicant was aware of his illness and of the importance of adhering to his medical treatment and taking the drugs prescribed, the information provided in the Medical Community of Interest database (MedCOI) and the consultation response of 4 July 2014.

10. Whereas P.L. had stated that the applicant was aware of his illness and that it was important that he was supervised regularly in order to adhere to the treatment, the High Court took note of P.L.'s statement but did not address or elaborate on it. It then went on to emphasise the nature and gravity of the crime committed by the applicant and found no circumstances making his removal conclusively inappropriate.

11. Contrary to the City Court, the High Court disregarded the fact, or failed to elaborate on the issue, that no assurances had been obtained with regard to the possibility of the applicant receiving the relevant psychiatric treatment, including the necessary follow-up and supervision in connection with intensive outpatient therapy, rendering the treatment that would be received in the destination country inappropriate for him. It ultimately relied on the information provided in MedCOI which did not address this concern, that is to say, whether the applicant would receive appropriate treatment in the form of a contact person, supervision and follow-up. It did not fully take into account the medical opinions expressing concerns for the applicant's health in the event that he did not receive appropriate treatment in the destination country, or the circumstances that would make his expulsion burdensome, namely language difficulties and the fact that his whole family lived in Denmark and he would have no one to take care of him in Turkey; instead, it emphasised the nature and gravity of the crime committed by the applicant.

12. I believe that the national authorities failed to fulfil their obligations under Article 3 to put in place appropriate procedures allowing an examination of the applicant's fears to be carried out, as well as an assessment of the risks he would face if removed to the receiving country. In the context of such procedures, the judgment refers to four such obligations of the national authorities (see paragraph 130 (b)-(e) of the judgment), which, I would submit, were not fulfilled in the applicant's case. Most importantly, however, the national authorities did not substantively examine the applicant's fears and assess the risks that he would face if expelled to Turkey. The applicant adduced medical evidence to demonstrate the seriousness of his health condition, expressed his fears and informed the Danish authorities of the circumstances which made his expulsion burdensome and inappropriate, but those authorities did not take any substantial steps to rebut them, in particular by obtaining assurances from the Turkish authorities.

13. The Grand Chamber in the present case found that the applicant was aware of his disease, and that he clearly acknowledged his need for therapy and was cooperative (see paragraph 142 of the judgment). It also noted that

a relapse of the applicant's condition might have "serious consequences for himself and his environment" (see paragraphs 44 and 142), but nevertheless it concluded that there was no convincing evidence to the effect that any risk existed of the applicant harming himself (see paragraph 144). It inferred that there was neither a real nor an immediate risk to the applicant's physical health as a result of his use of Leponex, owing to the fact that he had not shown any symptoms of deterioration of his health between May 2013 and 20 May 2015 on account of his treatment with that drug (see paragraph 145), although it ignored, in my humble submission, the composition of the applicant's treatment, which consisted of the medication taken but also the necessary follow-up and treatment which helped to reduce such risks to his health.

14. I am not convinced by the judgment's position, which is along the same lines of the High Court's decision, that the applicant's expulsion would not be conclusively inappropriate because he was aware of his illness and the need to take his medicines. For me, what would weigh more is the fact that the medical statements emphasised that the lack of a regular contact person, follow-up and supervision could cause a relapse of the applicant's condition.

15. In my view, the Chamber rightly concluded in the present case that the applicant's expulsion violated Article 3 of the Convention, stating that although the medication in question was generally available in Turkey, it was unclear whether the applicant would have a real possibility of receiving relevant psychiatric treatment, including the necessary follow-up and supervision in connection with intensive outpatient therapy, if returned to Turkey. Consequently, the Chamber rightly found there were serious doubts as to whether appropriate treatment would be available, since the necessary assurances had not been obtained from the destination country (see *Savran v. Denmark*, no. 57467/15, §§ 65-67, 1 October 2019).

III. An effective and not a restrictive interpretation and application of Article 3 of the Convention

16. From paragraphs 140-48 of the judgment, under the sub-heading "Application of the relevant principles in the present case", it is apparent to me that the Court concluded that there had been no violation of Article 3 by following, as I respectfully submit, an overly restrictive interpretation and application of Article 3 and of the facts of the case. However, such an interpretation does not render the right under Article 3 practical and effective. As has been insightfully said, "the principle of effectiveness inherently contradicts the notion of restrictive interpretation of treaties, which is not part of international law" (see Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law*, Oxford, 2008, repr. 2013, at p. 414; see also Hersch Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of

Treaties", *BYBIL* (1949), XXVI, 48 at pp. 67-69). A restrictive interpretation is, in my view, incompatible with the principle of effectiveness not only as a method of interpretation but also as a norm of international law inherent in the Convention provisions securing human rights. The principle of effectiveness as a norm of international law in Article 3 commands that the right not to be subjected to inhuman treatment under Article 3 should be effective and treated as such. On the other hand, the principle of effectiveness as a method of interpretation assists in achieving this effectiveness of the norm in Article 3, without allowing any restrictive interpretation to prevent the right in question from being practical and effective. I would describe this defensive operation of the principle of effectiveness as the "immune system" of the Convention preventing anything which is against it.

IV. Inhuman treatment as a basis of the complaint

17. Indeed, the applicant did not specify in his pleadings which of his three rights secured by Article 3, namely his rights not to be subjected to torture, inhumanity or degradation, had been violated in the present case. It seems, however, from the way in which the applicant presented his complaint before the Court and the manner in which the judgment dealt with it, that the complaint was centred upon an alleged violation of his right not to be subjected to inhuman treatment. Hence, my opinion will examine the complaint on this basis too.

V. Nature of the prohibited act under Article 3

18. When a member State (in the present case, Denmark) orders the expulsion of an alien to a country (in the present case, Turkey) where his or her medical condition may seriously deteriorate and an issue of inhuman treatment may arise, the State in question has a "*non-refoulement* duty". If the State nonetheless does expel the alien (in the present case, the applicant), it is its negative obligation which is not fulfilled (see *Paposhvili v. Belgium* [GC], no. 41738/10, 13 December 2016; see also Natasa Mavronicola, *Torture, Inhumanity and Degradation under Article 3 of the ECHR – Absolute Rights and Absolute Wrongs* (Hart, Oxford/London/New York/New Delhi/Sydney, 2021, at pp. 178-79). In such cases, the prohibited act under Article 3 (wrongful act) would be the act of expulsion with the member State's indifference to (or even knowledge of) the fact that the applicant, on account of his or her medical condition, might be subjected to inhuman treatment in the country where he or she is being expelled (ibid.), as I would submit happened to the applicant in the present case.

VI. Analysis and criticism of the test adopted in *Paposhvili* and in the present judgment

19. The present judgment follows the *Paposhvili* test regarding the *non-refoulement* duty, namely that the applicant's removal to the destination country must have exposed him "to a *serious*, *rapid* and *irreversible* decline in his state of health resulting in *intense* suffering or to a *significant* reduction in life expectancy" (emphasis added) (see paragraphs 134-43 of the present judgment, and *Paposhvili*, cited above, § 183). This is a multiple test with multiple sub-tests. The elements underlined in the above statement, thus "decline" and "suffering" or "reduction in life expectancy", are the main components of the test; the last one is an alternative to the first two. The first three elements in italics, namely "serious", "rapid" and "irreversible", are adjectives qualifying "decline" very restrictively. The other two elements in italics, namely "intense" and "significant", are adjectives qualifying "suffering" and "reduction in life expectancy" respectively, likewise very restrictively.

20. I will examine each component with its adjective(s) separately, with the aim of showing that the multiple test, with its multiple sub-tests, proposed by *Paposhvili* and the present judgment may lead to an absolute restriction extinguishing an absolute right. This is different, however, from arguing that the threshold of Article 3 should be high.

A. The component of "decline" with its three qualifications: "serious", "rapid" and "irreversible"

1. Should the qualification of "decline" as being "rapid" and "irreversible" have to be met on account of the applicant's expulsion?

21. As applied by *Paposhvili* and the present judgment, the component of "decline" must have three qualifications which must apply cumulatively: "serious", "rapid" and "irreversible". These actually function or operate in the judgment, as I understand it, as sub-components of the right not to be subjected to inhuman treatment under Article 3. In my submission, the mandatory requirement of these qualifications imposes an extraordinarily high – even impossible to achieve – threshold, higher than the high threshold Article 3 requires in any case of *non-refoulement* on grounds other than medical ones. I could accept the qualification of "serious" but not the other two qualifications of "rapid" and "irreversible". These last two qualifications are overly restrictive and are not compatible with the absolute character of the right under Article 3. Also, their absence does not *per se* make a "serious" decline caused by schizophrenia any less serious. Furthermore, the requirement of an "irreversible" "decline" as a result of schizophrenia is not consistent with the nature of this illness, which is

characterised by fluctuations, and by the fact that any attempt to stabilise it depends on regular supervision of the patient. However, respectfully, the consideration of regular supervision was not properly assessed by the High Court or the Court in the present case.

2. Could the applicant possibly have been exposed to a decline that was "serious", "rapid" and "irreversible" as a result of being expelled?

22. Even assuming that all three qualifications of a "decline" in the applicant's state of health should be met in order to bring Article 3 into play in the present case, I submit that they could possibly have been satisfied in the present case, considering that the necessary follow-up and supervision in Konya, Turkey, were found to be lacking. In this connection, it is worth noting that in Konya there was only one public general healthcare provider and not a specialised psychiatric one as well (see paragraph 71 of the judgment). Furthermore, and, in more general terms, according to the World Health Organization 2017 Mental Health Atlas, Turkey has the lowest rate of psychiatrists among that organisation's member States, and more precisely 1.64 psychiatrists per 100,000 inhabitants (see paragraph 93 of the judgment). On the basis of the above, the applicant will probably not be receiving the appropriate supervision in Turkey, and considering his medical record, such supervision is an important element for his state of health. So, the first qualification of a decline, that of being "serious", is met.

23. In addition, referring to the second qualification (that of a decline being "rapid"), it is to be noted that the applicant's removal could also have given rise to a rapid decline in his state of health, since in the village where he was about to live, he would be isolated and would not have any of his close family with him (see paragraph 70 of the judgment). This would most likely result in depression and in the acceleration of the onset of episodes of schizophrenia.

24. Finally, the third qualification (that of a decline being "irreversible") could also have been satisfied, since without the correct supervision and as he was already using the medication Leponex, it was possible for him to develop an immune disorder, one of the most serious side-effects of that medication.

B. The component of "suffering" with its qualification of being "intense"

1. Should "intense suffering" be an indispensable element of "inhuman treatment"?

25. Contrary to the judgment, I respectfully argue that intense suffering should not be an element or component of the right not to be subjected to inhuman treatment under Article 3, for the following basic reasons:

(a) "Intense suffering" does not appear anywhere as a term in Article 3.

(b) "Inhuman treatment" literally means "of actions, conduct, etc.: Brutal, savage, barbarous, cruel", (James A.H. Murray, Henry Bradley, W.A. Craigie, C.T. Onions and R.W. Burchfield (eds.), *The Oxford English Dictionary*, 2nd edition, Clarendon Press, Oxford, 1989, vol. VII, at p. 973 under "inhuman"). No mention is made in this definition of "intense suffering", but "suffering" is included in "cruel treatment", which means inflicting suffering or pain on someone, with a lack of human qualities of compassion or mercy, irrespective of whether this lack of human qualities is based on pleasure at the suffering of the other or on indifference to his or her suffering. This is the meaning of "cruel treatment" used by authoritative dictionaries (see, for instance, for the meaning of "cruel" as far as persons are concerned: J.A. Simpson and E.S.C. Weiner (eds.), *The Oxford English Dictionary*, 2nd edition, Clarendon Press, Oxford, 1989, vol. IV, at p. 78; and C. Soanes and A. Stevenson (eds.), *Concise Oxford English Dictionary,* 11th edition, OUP, Oxford 2004, at p. 344).

(c) In *Bouyid v. Belgium* ([GC], no. 23380/09, § 87, ECHR 2015), the Court clarified that "[i]ll-treatment that attains ... a minimum level of severity *usually* involves actual bodily injury or intense physical or mental suffering" (emphasis added). Ill-treatment covers any "torture", "inhuman treatment" and "degrading treatment" under Article 3. The term "usually" in the above statement shows that for the Court, "intense suffering" is not an indispensable element for all three kinds of ill-treatment. It is clear from what follows the statement in question ("even in the absence of these aspects, where treatment humiliates or debases an individual ...") that "suffering" is not a component of "degrading treatment". "Suffering" is, however, a component of both "torture" and "inhuman treatment", but suffering which is "intense" is only a component of "torture" and not "inhuman treatment".

(d) Adding words to the ordinary meaning of Convention terms, such as "inhuman treatment" in the present case, and qualifying them by adding more elements to their ordinary meaning, definitely amounts to a restrictive interpretation of a provision which, after all, guarantees an absolute right. Its nature and character as an absolute right would be distorted if any qualifications were imposed on it. The qualification of "intense" as regards suffering becomes even stronger if one accepts the view of the judgment that the decline which leads to the suffering should be "rapid" and "irreversible".

(e) By raising the level of severity of the intensity of suffering so high, the unavoidable result is that any treatment which is below that level, and which causes suffering and at the same time satisfaction at or disregard for such suffering, would automatically be left outside the scope of Article 3. This would mean that the victim of such behaviour would have no protection under the Convention by the Court, and the perpetrator of such behaviour would have no responsibility under the Convention. Such a

consequence may negatively affect the rule of law, as the member States' agents could use it to their advantage and make people suffer up to a certain degree without breaching their negative obligation under Article 3. On the other hand, if the complaint relates to "degrading treatment", the "treatment's severity pertain[s] to its character and not merely to its consequence" (see Natasa Mavronicola, *op. cit.*, at p. 92). In *Bouyid* there was only one slap to the applicant's face by the police, without any intensity of suffering or any duration, and nevertheless, this was considered by the Grand Chamber to amount to "degrading treatment". "*Bouyid* potentially illustrates that 'severity' does not stem straightforwardly from the degree of harm or suffering inflicted, but relates rather to the character of the treatment at issue" (ibid.). The comparison of "inhuman treatment" with "degrading treatment" is made merely to show the inconsistency of the severity threshold. Like the severity of "degrading treatment", the severity of "inhuman treatment" also concerns the character of the treatment at issue, which usually, as in the present case, relates to disregard for the suffering caused by the treatment which is inhuman. Hence, to require the severity of suffering in "inhuman treatment" to be "intense" would be too restrictive and therefore outside the scope of Article 3.

(f) The judgment in the present case adopted the term "intense suffering" from a passage in *Paposhvili* (cited above, § 183) and gave it such extraordinary significance as if it were a term from the Convention which had to be interpreted. At the same time, it disregarded the fact that this passage from *Paposhvili* was taken from a subsection headed "general principles", where the Court was simply exercising its discretion by giving, *obiter*, an instance of "other very exceptional cases", and, of course, without intending to be exhaustive in relation to all instances of ill-treatment. The Court, in giving this example, used as its basis the facts of the case before it, in which the applicant was suffering from chronic lymphocytic leukaemia, a disease which no doubt entails intense suffering. Thus, the Court did not hold that intense suffering was an indispensable element for every kind of ill-treatment falling under Article 3. What the Court in the present case should have adopted from *Paposhvili* was the reasoning it provided in that case. The Court in *Paposhvili* decided that if the applicant had been returned to Georgia there would have been a violation of Article 3 (ibid., § 206). And this was so because "in the absence of any assessment by the domestic authorities of the risk facing the applicant in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities was insufficient for them to conclude that the applicant, if returned to Georgia, would not have run a real and concrete risk of treatment contrary to Article 3 of the Convention" (ibid., §§ 205 and 183). Though it was part of the applicant's complaint in the present case that the domestic authorities did not conduct a risk assessment of ill-treatment in the event that he were to be returned to

the destination country, the Court did not examine this argument at all, despite the fact that this was, as explained above, the sole reason why the Court found a violation in *Paposhvili*. The Court in the present case omitted to explain why it did not follow *Paposhvili* in that respect, which was the *ratio decidendi* of the latter case. With all due respect, unlike the approach taken in this opinion, the judgment's approach does not take into account Article 19 of the Convention, which provides that the Court is to "ensure the observance of the engagements undertaken by the High Contracting Parties".

2. What makes the level of the threshold for inhuman treatment high?

26. In my humble view, what makes the level of the threshold for "inhuman treatment" under Article 3 high is not the intensity of the suffering, but the combination of the suffering (not necessarily "intense") with the indifference of the domestic authorities about it.

3. Could the applicant possibly have been exposed to "intense suffering" as a result of being expelled?

27. Now, even assuming that "intense suffering" is an indispensable element of inhuman treatment, I would suggest that the applicant could possibly have undergone intense suffering as a result of the decision to expel him to Turkey. From the definition given in *Bensaid* (cited above, quoted in paragraph 2 of this opinion), it is clear that the symptoms of paranoid schizophrenia include adverse effects on language, planning, emotion, perceptions and movement, acute psychotic episodes including delusions, hallucinations, disordered or fragmented thinking and catatonic movements, feelings of emotional numbness, difficulty in communicating with others, lack of motivation and inability to care about or cope with everyday tasks.

28. These symptoms, objectively and subjectively, could possibly have caused the applicant to endure intense suffering as a result of being expelled and not having constant and proper supervision. That was also the allegation made by the applicant (see paragraph 89 of the judgment). The applicant had a high risk of harming others on the basis of the actual facts. For me, the distinction between harming other people and harming oneself is artificial and superficial. The core of the matter should be the seriousness of an illness which, among other symptoms, may lead to dangerous or catastrophic effects irrespective of who is the victim of these effects. In addition, if the applicant harms another person at a moment when he does not have control of his actions, once he does have such control how can one be sure that he will not endure intense suffering for what he did? As the applicant alleges, he regretted having harmed other people (see paragraph 40 of the judgment), which in itself may entail some suffering.

29. Hence, in my humble opinion, the objective and subjective tests of suffering in the event of the applicant's expulsion to Turkey would both have been satisfied, taking into account the nature of the applicant's disease and the fact that no assessment was made by the Danish authorities of how his condition would develop if he did not have the necessary follow-up and supervision in Turkey. In this connection, it is pertinent to say that, according to reports from the Immigration Service, the applicant has no ties with the country of Turkey, such as contact with persons living there, and he speaks no Turkish and only a little Kurdish (see paragraph 15 of the judgment). A police report submitted by the Government also indicates that the applicant is currently living in a small village of 1,900 inhabitants, located 140 km away from Konya (see paragraph 70 of the judgment). The aforementioned circumstances have resulted in a very isolated life for the applicant. Even the City Court in its reasoning considered it necessary to refer to the applicant's allegations that he had no family in Turkey, that he had no social network, and that the village in which he lived with his family for the first years of his life was located 100 km away from Konya, the closest city, and accordingly far away from psychiatric assistance, and that he only understood a little Turkish because he was Kurdish-speaking.

30. Point 2 of the operative part of the judgment finds that there has been a violation of Article 8, a finding with which I agree. However, in its main body (see paragraphs 178 and 198), the judgment confines the violation only to the applicant's right to respect for his private life and – wrongly, in my view – does not extend it also to the applicant's right to respect for his family life. The judgment (see paragraph 191) rightly observes that the applicant was more vulnerable than an average "settled migrant" facing expulsion and that the state of his health was required to be taken into account as one of the balancing factors. Elsewhere (see paragraphs 195-96 and 201), the judgment also rightly finds that the domestic authorities failed to duly take into account and to properly balance the interests at stake, that is to say, the applicant's state of health with the community interest based on the "nature and seriousness" of his offence. That was the reason for the Court's finding of a violation of Article 8. This finding, based on the lack of a proper proportionality test regarding the Article 8 complaint, should not be different from that which ought to be reached regarding the Article 3 complaint. The domestic authorities adopted the same superficial approach in failing to balance the applicant's state of health with the communal interest regarding his right to respect for his private life under Article 8 as they did in addressing the risk of the applicant suffering inhuman treatment as a result of his expulsion in the absence of any assurances by the country of destination and in failing to carry out a proper assessment of this risk on the basis of the required threshold under Article 3. This argument would be even stronger if one were also to find a violation of the applicant's right to respect for his family life. And this is

because without his family with him in Turkey, his isolated life, taking into account his state of health, would cause him more suffering.

C. The alternative component to "decline resulting in intense suffering": "reduction in life expectancy" with its qualification of being "significant"

1. Is the component of "significant reduction in life expectancy" justified?

31. "Reduction in life expectancy" is used both in *Paposhvili* (cited above, § 183; see the term "or") and in the present judgment (see the term "let alone" in paragraph 143 of the judgment) as an (*a fortiori*) alternative component to "serious, rapid and irreversible decline in health resulting in intense suffering". In my view, such a component, with the qualification that it must be "significant", is not justified at all. It is again overly restrictive and not compatible with the scope of Article 3 and the nature of an absolute right.

2. Could the applicant possibly have been exposed to a reduction in his life expectancy as a result of being expelled?

32. In paragraph 144 of the judgment, it is argued that, contrary to two other cases (namely *Bensaid*, cited above, and *Tatar v. Switzerland*, no. 65692/12, 14 April 2015), it does not appear, in the absence of convincing evidence, that any risk has ever existed of the applicant harming himself. This statement not only overlooks the applicant's allegation of a risk of self-harm (see paragraph 95 of the judgment), but also does not consider that in the other two cases from which the judgment distinguishes itself, there likewise does not appear to have been any evidence of suicide attempts on the part of the applicants but only an opinion of an expert that suicide was possible on account of their medical condition.

33. Even if there is no clear indication that there is a chance of the applicant committing suicide, the risk of suicide occurring cannot be ruled out in his case, taking into account the seriousness of his illness, his personal circumstances, his lonely and isolated life in conjunction with the use of Leponex, the risk of his developing an immune disorder, and the fact that he has already committed an act of assault with highly aggravating circumstances.

34. This likelihood of the applicant committing suicide may be supported by statistics. A World Health Organization report (see Angelo Barbato, *Schizophrenia and Public Health*, World Health Organization, Geneva, 1998, https://www.who.int/mental_health/media/en/55.pdf?ua=1 at p. 12) dealing with consequences of schizophrenia and, in particular, on mortality, states the following:

"**4.1 Mortality**

Although schizophrenia is not in itself a fatal disease, death rates of people with schizophrenia *are at least twice as high as those in the general population*. The excess mortality has been related in the past to poor conditions of prolonged institutional care, leading to high occurrence of tuberculosis and other communicable diseases (Allebeck, 1989). This may still be an important problem wherever large numbers of patients spend a long time in crowded asylum-like institutions.

However, recent studies of people with schizophrenia living in the community showed suicide and other accidents as leading causes of death in both developing and developed countries (Jablensky et al., 1992). Suicide, particularly, has emerged as a growing matter of concern, since lifetime risk of suicide in schizophrenic disorders has been estimated at above 10%, which is about 12 times that of the general population (Caldwell and Gottesman, 1990). There seems to be an increased mortality for cardiovascular disorders as well (Allebeck, 1989), possibly related to unhealthy lifestyles, restricted access to health care or the side-effects of antipsychotic drugs."

D. The *intension* and *extension* of "inhuman treatment" and the principle of effectiveness

35. Similarly to what I did in my concurring opinion in *S.M. v. Croatia* ([GC], no. 60561/14, 25 June 2020) with the term "forced or compulsory labour" under Article 4 § 2 of the Convention, in the present case, in interpreting another Convention provision, namely the term "inhuman treatment", I wish to employ an examination of its *intension* (that is, its depth, consisting of its characteristics or essential qualities; the genus and unity) and its *extension* (that is, its breadth, consisting of the specific instances it covers; the species and variety of kinds), as used in logic. To avoid repetition, I would refer here to paragraphs 14-24 of my opinion in that case for literature on these two dimensions of logic. What I disagree with in the present judgment is that it takes the most extreme instances which fall within the *extension* of the term "inhuman treatment" and endeavours to determine or define the *intension* of this term on that basis. This methodology suffers from serious flaws: it erroneously treats the *extension* and the *intension* of the term "inhuman treatment" as being the same thing; it does not take into account the fact that the relationship between these two dimensions of logic is an inverse relationship; in other words, when the *extension* diminishes, the *intension* increases and vice versa (see paragraph 20 of the above-mentioned concurring opinion (ibid.)).

36. The principle of effectiveness as a method of interpretation and a norm of international law inherent in the relevant Convention provision serves to make a Convention term broader, within, of course, the limits of the text and the object of the Convention provision. In doing so, it requires, in my view, the *intension* of the term to be as narrow as possible, and its *extension* to be as broad as possible. This can be achieved either by decreasing its intension or increasing its extension. By doing either, the result will be the same, namely the widening of the meaning of the term.

The most appropriate way to widen the meaning of a term is first to decrease its intension, by taking out some of its characteristics. This is because the intension is associated with the object of the Convention, which the principle of effectiveness seeks, as its primary aim, to serve. In the present case, the *intension* of the term "inhuman treatment" is treatment which causes suffering and has the characteristic of being cruel, thus lacking human qualities of compassion and mercy, while its *extension* consists of a broad variety of instances of such treatment which are considered inhuman, without being limited to very exceptional cases of inhuman treatment. What the judgment does is take extreme instances of the *extension* of the term "inhuman treatment" and add them to the *intension* of the term as additional characteristics of the latter, with the result of making both the *intension* and the protection of the right narrower. With all due respect, this approach contravenes the principle of effectiveness, whereas the approach proposed here gives a broader scope to the right and makes it more practical and effective.

VII. Why should the *non-refoulement* duty be limited only to "*very* exceptional cases"? Discrimination against aliens suffering from serious illness

37. The question arises as to why the threshold for the *non-refoulement* duty regarding aliens suffering from serious illness should be so high as to be limited only to very exceptional cases.

38. Preceding *Paposhvili*, there have been other cases raising the issue of the *non-refoulement* duty in a medical context under Article 3 (see *D. v. the United Kingdom*, 2 May 1997, *Reports of Judgments and Decisions* 1997-III) and *N. v. the United Kingdom* [GC], no. 26565/05, ECHR 2008), in which the Court found that that duty applied in "very exceptional circumstances" or in cases concerning humanitarian law.

39. The case of *Paposhvili* gave a slightly more relaxed interpretation, by giving examples of what might contribute to a "very exceptional case". In *Paposhvili* (cited above, § 183), the Court indicated that a real risk of intense suffering or significant reduction in life expectancy, on account of the absence of appropriate treatment, could amount to a violation of Article 3.

40. The above-mentioned case-law, requiring the *non-refoulement* duty to apply to only "very exceptional circumstances" could with all due respect be criticised on the following grounds:

(a) Like every other Convention provision, Article 3 should be interpreted and applied in a coherent manner and not by using double standards depending each time on whether the case concerns the expulsion of an alien at risk of facing inhuman treatment if expelled or any other instances of inhuman treatment. In any event, such an interpretation would be contrary to the principle of equality and non-discrimination which is

reflected by the term "no one" in Article 3, as well as being enshrined in Article 14 of the Convention and Protocol No. 12 to the Convention. In my view, an interpretation cannot be considered to be in accordance with the principle of effectiveness if it does not respect the principle of equality and non-discrimination. Furthermore, as insightfully stated by Natasa Mavronicola (*op. cit.*, at p. 182):

> "There is an exclusionary dynamic to the setting apart of 'aliens suffering from serious illness': a heightened threshold whose rationale attaches to one's status as 'alien' entails a readiness to refuse 'aliens' a certain degree of protection under Article 3. Such othering can be viewed as fundamentally distorting and potentially partly displacing the protection of the right, and accordingly as running counter to the right's absolute character."

(b) It would be irrelevant to the determination of the threshold of severity under Article 3 whether the inhuman treatment was inflicted directly by the authorities of the State where the applicant lives or by the State to which the applicant is expelled. After all, as explained above, it is the act of expulsion which is the cause of inhuman treatment. In this connection, the Court in *Saadi v. Italy* ([GC], no. 37201/06, § 138, ECHR 2008), stressed that it

> "cannot accept the argument ... that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole."

(c) The source of the risk would not alter the level of protection guaranteed by the Convention. As the Court held in *Tarakhel v. Switzerland* (no. 29217/12, § 104, ECHR 2014):

> "The source of the risk does nothing to alter the level of protection guaranteed by the Convention or the Convention obligations of the State ordering the person's removal. It does not exempt that State from carrying out a thorough and individualised examination of the situation of the person concerned and from suspending enforcement of the removal order should the risk of inhuman or degrading treatment be established."

VIII. In case of doubt as to whether the required high threshold is reached, the maxim *in dubio in favorem pro jure/libertate/persona* should apply

41. It has already been submitted that the high threshold required by Article 3 was reached in the present case. However, if we assume that there was some uncertainty as to whether this high threshold was indeed reached, I would apply the legal maxims *in dubio in favorem pro jure/libertate/persona* and *ut res magis valeat quam pereat* and come to the same conclusion, thus deciding in favour of the right. These legal maxims are aspects or functions of the principle of effectiveness, to which I have already referred above, and which requires that the right concerned must be interpreted and applied broadly and in a practical and effective way and not

in a theoretical or illusory or restrictive or formalistic way. In this connection, Phillimore argued that "[w]hen the same provision or sentence expresses two meanings, that one which most conduces to carry into effect the end and object of the Convention, should be adopted" (see Robert Phillimore, *Commentaries upon International Law*, vol. II, Philadelphia, 1855, at p. 77). In the same vein, Sir Hersch Lauterpacht, referring to the practice of the International Court of Justice, pertinently said that "[t]he preponderant practice of the Court itself has ... been based on principles of interpretation which render the treaty effective rather than ineffective" (see Sir Hersch Lauterpacht, *The Development of International Law by the International Court*, London, 1958, at p. 305).

42. This dimension of the principle of effectiveness should apply in every case, irrespective of which Convention provision is in issue and irrespective of how high a threshold is required by the provision in question. It applies at every step of the ladder of the threshold degree of severity.

IX. Applicability or merits?

43. Since the judgment found that the threshold of Article 3 was not reached, it should have dismissed the complaint as inapplicable and, in particular, inadmissible *ratione materiae*, instead of finding no violation. My view is that Article 3 is applicable and that there has been a violation of it.

X. Conclusion

44. In conclusion, there has been, in my view, a violation of Article 3 of the Convention in addition, of course, to a violation of Article 8 (as regards both the right to respect for private life and the right to respect for family life).

45. Having found that there has been a violation of both Article 3 and Article 8, I would have awarded the applicant an amount in respect of non-pecuniary damage by way of just satisfaction under Article 41 of the Convention. However, since I am in the minority, it is not necessary for me to determine the extent of the amount for such damage. I respectfully disagree with the majority that the finding of a violation of Article 8 constitutes sufficient just satisfaction in respect of any non-pecuniary damage that might have been sustained by the applicant. Article 41 of the Convention, on "just satisfaction", as worded, cannot be interpreted in the sense that "the finding of a violation of a Convention provision" could constitute in itself sufficient "just satisfaction to the injured party", because the former is a prerequisite of the latter and one cannot take them to be the same. Not making an award in respect of non-pecuniary damage to the applicant for the violation of his Article 8 and Article 3 rights would amount, in my view, to rendering the protection of these rights illusory and

fictitious. And this would be contrary to the case-law of the Court to the effect that the protection of human rights must be practical and effective and not theoretical and illusory.

JOINT PARTLY DISSENTING OPINION OF JUDGES KJØLBRO, DEDOV, LUBARDA, HARUTYUNYAN, KUCSKO-STADLMAYER AND POLÁČKOVÁ

1. In the present case, we voted for the finding of no violation of Article 3 of the Convention, fully subscribing to the reasoning and the outcome of this part of the Court's judgment. But to our regret and for the reasons explained below, we cannot subscribe to the view of our colleagues that there has been a violation of Article 8 of the Convention.

Removal of a foreigner suffering from an illness (Article 3 of the Convention)

2. We welcome this part of the Court's judgment. We find it important that the Grand Chamber has confirmed the Court's case-law on removal of foreigners suffering from an illness as clarified in the Court's landmark judgment in *Paposhvili* v. Belgium ([GC], no. 41738/10, 13 December 2016), which was adopted unanimously.

3. In the present case, the Chamber failed to apply – and even to engage with – the important "threshold criteria" established in *Paposhvili* (ibid., § 183; see paragraph 140 of the judgment). Instead, it found it crucial that the applicant's return to Turkey would cause him "additional hardship", and held that the Danish authorities should have assured themselves that upon his return, a "regular and personal contact person ... suitable to the applicant's needs" would be available (see paragraphs 63 and 64 of the Chamber judgment). This disregarded the fact that there was no imminent risk of the applicant's death and that the medical treatment that he needed, including medicine and psychiatric treatment, was available and accessible to him in Turkey.

4. In general, it is important that the Court does not depart from precedents laid down in previous judgments unless there are good reasons for doing so (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I); and when the Court does decide to depart from precedent, it should do so in a transparent manner.

5. In the present judgment, the Court has confirmed its case-law in the area of removal from national territory of foreigners suffering from illnesses (see paragraphs 124-32 of the judgment), confirming that the criteria established apply equally to mental illnesses (see paragraphs 137-39 of the judgment), and thereby underlining that it will only be in "very exceptional circumstances" that a physical or mental illness can serve as an obstacle to removal of a foreigner from the territory of a member State.

6. The Court has also made it clear that schizophrenia, even though it may be characterised as a serious mental illness, cannot, in general, prevent the removal of a foreigner from national territory and does not, in itself,

fulfil the criteria set out in *Paposhvili* (cited above, § 183; see paragraph 143 of the judgment). That is also confirmed in the present case, where the specific circumstances of the applicant's situation did not reach the required threshold (see paragraphs 144-148 of the judgment).

7. The Court's judgment is an important confirmation of existing case-law and we fully subscribe to the reasoning and the outcome in respect of this part of the applicant's complaint.

Expulsion of a foreigner suffering from a mental illness, following a criminal conviction (Article 8 of the Convention)

8. We agree with the general principles as set out in the present judgment (see paragraphs 181-89 of the judgment). But we respectfully disagree with the Court's application of these principles to the specific circumstances of the present case (see paragraphs 190-201 of the judgment), and consequently, we voted in favour of finding no violation of Article 8 of the Convention.

9. The applicant is a "settled immigrant" and therefore there have to be "very serious reasons" for his expulsion to be justified under Article 8 § 2 of the Convention (see paragraph 193 of the judgment). In our view such reasons did exist in the present case.

10. On the basis of the existing case-law, the answer to the question whether expulsion of the applicant constitutes a violation of Article 8 of the Convention should be rather clear and straightforward. The expulsion of "settled immigrants" without "family life" is justified provided that the criminal offence and sanction are sufficiently serious and the foreigner has retained some ties with the country of origin, even though the ties may be much weaker than the ties with the host country. This position is so well supported in Court's case-law that it is unnecessary to cite precedents as examples of this. It was established in detail by the Grand Chamber in the cases of *Üner v. the Netherlands* ([GC], no. 46410/99, ECHR 2006-XII) and *Maslov v. Austria* ([GC], no. 1638/03, ECHR 2008).

11. The cases in which the Court has found a violation of Article 8 of the Convention have involved particular features, including: (i) the criminal offence was less serious or the punishment less severe (see, for example, *Moustaquim v. Belgium*, 18 February 1991, Series A no. 193 (a sentence of two years' imprisonment); *Ezzouhdi v. France*, no. 47160/99, 13 February 2001 (a sentence of two years' imprisonment); and *Emre v. Switzerland*, no. 42034/04, 22 May 2008 (a total of one and a half years' imprisonment)); (ii) there were very special circumstances (see, for example, *Nasri v. France*, 13 July 1995, Series A no. 320-B (a deaf and dumb applicant totally dependent on his family, with whom he had always lived)), (iii) the applicant was still a minor at the time of the decision on expulsion (see, for example, *Jakupovic v. Austria*, no. 36757/97, 6 February 2003), (iv) the applicant was a minor when the crimes were committed and they were of a

less serious nature typical of "juvenile delinquency" (see, for example, *Maslov*, cited above), or (v) the applicant had retained no ties with the country of origin (see, for example, *Bousarra v. France*, no. 25672/07, 23 September 2010).

12. The applicant in the present case is a "settled immigrant" without a "family life" within the meaning of the Court's case-law. He had, as an adult, committed a very serious criminal offence, assault with highly aggravating circumstances committed as part of a group of persons resulting in the death of the victim. The applicant had spent most of his life in Denmark, but he was not very well integrated and at the same time he had retained social and cultural ties with his country of origin. This would normally, under the Court's case-law, be sufficient to justify expulsion. In this respect, we refer to the dissenting opinion of Judges Kjølbro, Motoc and Mourou-Vikström appended to the Chamber judgment.

13. The only aspect which makes this case of interest in the light of Article 8 of the Convention is the fact that the applicant is suffering from a mental illness, paranoid schizophrenia, and was exempted from punishment by virtue of Article 16 § 2 of the Danish Penal Code but was committed to forensic psychiatric care.

14. This is not the first time that the Court has had to assess the removal or expulsion of a foreigner suffering from physical or mental illnesses. Such cases have often been assessed under Article 3 and Article 8 of the Convention.

15. In none of the previous judgments where the Court has found no violation of Article 3 of the Convention or declared the complaint under Article 3 manifestly ill-founded has it found that expulsion would constitute a violation of Article 8 of the Convention (see, for example, *Aoulmi v. France*, no. 50278/99, ECHR 2006-I (extracts); *Ndangoya v. Sweden* (dec.), no. 17868/03, 22 June 2004; and *Bensaid v. the United Kingdom*, no. 44599/98, ECHR 2001-I). It was only in *Paposhvili* (cited above), where the Court had found a violation of Article 3 of the Convention, that it also found a violation of Article 8. But the applicant in that case had family life in Belgium, and his condition was life-threatening: he suffered from a very serious illness and died before the publication of the judgment. In other words, the present case is the first time the Court has found that the expulsion of a foreigner suffering from a mental illness constitutes a violation of Article 8 of the Convention on account of an interference with private life alone, even though the expulsion does not raise an issue under Article 3 of the Convention.

16. In our view, when the main argument against expulsion is an applicant's physical or mental illness, the core provision has been and should continue to be Article 3 of the Convention. In general, Article 8 of the Convention does not – and should not – provide better protection against the expulsion of a foreigner suffering from physical or mental illness

compared to the protection provided by Article 3; otherwise, there is a risk of disregarding and undermining the Court's case-law under Article 3 of the Convention, a practice that raises a number of complex and very sensitive issues.

17. In the past, the Court has had to decide a number of cases concerning the expulsion of foreigners following criminal convictions where one of the aspects of the case related to health issues. It transpires from such precedents that an applicant's personal situation, including physical or mental illness, may and will be taken into account in the proportionality assessment under Article 8 of the Convention (see, for example, *Nasri*, cited above (deaf and dumb applicant); *Bensaid*, cited above (applicant suffering from schizophrenia); *Ndangoya*, cited above (applicant suffering from HIV); *Emre*, cited above (applicant with personality problems and emotional problems); and *Khan v. Germany*, no. 38030/12, 23 April 2015 (mentally ill applicant; the Chamber's judgment was referred to the Grand Chamber, which, however, did not decide the case on the merits (see *Khan v. Germany* (striking out) [GC], no. 38030/12, 21 September 2016)).

18. In most of the cases dealing with health issues, the Court has found no violation of Article 8 of the Convention and has found the expulsion to be justified, provided that the *Maslov* criteria (see *Maslov*, cited above, § 71) were met in the specific case. The Court has even found no violation in a case where the applicant had committed a very serious crime but was assessed as criminally irresponsible, but that judgment did not become final as the case was referred to the Grand Chamber and subsequently struck out (see *Khan*, cited above).

19. It is only in very exceptional circumstances that health issues have been found to be important and decisive for the finding of a violation of Article 8 of the Convention in a case of deportation (see, for example, relating to the applicant's family life, *Nasri*, cited above).

20. Having in mind the Court's case-law as presented above, it is pertinent to ask on what grounds exactly the Court, in the present case, has found no interference with family life and nevertheless a violation of Article 8 of the Convention, after having found no violation of Article 3. In the following paragraphs, we will briefly outline on what basis the Court found a violation of Article 8 and also why we distance ourselves from this reasoning, which, in our view, reflects a regrettable development in the Court's case-law.

The Court's arguments for finding a violation of Article 8 of the Convention

21. The Court relies on several arguments in support of the finding of a violation of Article 8 of the Convention, without, however, identifying any of them as decisive (see paragraphs 190-202 of the judgment).

22. Firstly, the Court criticises the High Court for not having carried out a thorough and appropriate assessment of all the relevant factors, thereby finding the High Court's balancing of interests insufficient (see paragraphs 196 and 199 of the judgment).

23. In our view, this is not a fair reflection of the domestic courts' assessment of the applicant's case. The question of expulsion was assessed thoroughly in the context of the criminal proceedings in the light of the criteria following from the Court's case-law (see paragraphs 30, 31 and 190 of the judgment), proceedings that ended with a final and binding ruling on expulsion. The applicant could have lodged a complaint with the Court in relation to the 2009 expulsion order, but he failed to do so, and therefore the criminal proceedings fall outside the scope of the present case (see paragraph 171 and 190 of the judgment). The focus of the Court's assessment is, however, the final ruling in the revocation proceedings that ended in 2015. In those proceedings, the domestic courts were not called upon to reassess the expulsion order as such, as that question was decided with final effect by the Supreme Court in 2009. The issue to be decided by domestic courts in the revocation proceedings under section 50a of the Aliens Act was whether the applicant's "state of health" in 2015 made it "conclusively inappropriate" to enforce the 2009 expulsion order. The domestic courts made an assessment of the applicant's "state of health" on the basis of updated medical assessments, witness statements, statements from the applicant and other evidence obtained, including information about the availability of and access to medicine and medical treatment in the country of origin (see paragraphs 32-67 of the judgment).

24. It may very well be that the majority do not agree with the assessment performed by the domestic courts in the revocation proceedings, but it is quite another issue to criticise the assessment as insufficient. The Court does this by highlighting a number of aspects that in its view did not receive sufficient attention from the High Court, but in our view, this is an unfounded critique, for the reason that it was not what the domestic courts were called upon to assess in the revocation proceedings. Furthermore, there is no support in the file for assuming that the applicant, in the context of the revocation proceedings, put forward and relied on arguments that were not assessed and addressed by the domestic courts. On the contrary, he raised the question concerning the permanency of the re-entry ban for the first time at the end of the oral hearing before the Grand Chamber, in response to a question put by a judge.

25. Therefore, the practical implication of this part of the Court's reasoning seems to be that Danish courts, when deciding on a request for the lifting of an expulsion order under section 50a of the Aliens Act, may have to perform an assessment of the case that goes beyond the question of health issues and subsequent changes in the applicant's situation.

26. Secondly, the Court addresses in quite some detail the first *Maslov* criterion, namely the "nature and seriousness of the offence committed" (see paragraphs 193-96 of the judgment). The Court emphasises that the applicant was suffering from a mental illness, paranoid schizophrenia, when he perpetrated the offence in question and that he was exempted by the domestic courts from punishment and sentenced to committal to forensic psychiatric care, something which in the view of the Court may have the effect of "limiting the weight that can be attached" to the first *Maslov* criterion (see paragraph 194 of the judgment).

27. In this context, we would point out that the present application is not about the expulsion proceedings which ended in 2009 and in which the domestic courts determined with final effect the seriousness of the offence committed by the applicant, taking into account, among other elements, his mental illness, and which had become *res judicata*, but the revocation proceedings that ended in 2015 (see paragraphs 171 and 190 of the judgment).

28. In many cases, the Court has emphasised the nature and seriousness of certain types of criminal offences and found that they may justify a firm response, including drug-related offences, murder, robbery, rape, violent assaults, use of firearms and terrorism. The Court has also emphasised previous criminal convictions and the severity of a sentence as elements that may justify a firm response.

29. In previous cases, the focus of the criterion "nature and seriousness of the offence committed" has been the nature of the offence, the severity of the punishment and whether the offence was committed as a minor or as an adult. In some cases, the Court has emphasised that the criminal offences committed amounted to "juvenile delinquency", being less serious, predominantly of a non-violent nature and committed as a minor (see *Maslov*, cited above, §§ 72 and 77-83). But these criteria were based on the best interests of the child, which included the State's specific positive obligations of reintegration.

30. In the present case, there can be no doubt that the criminal offence committed by the applicant as an adult was by any standard very serious (assault with highly aggravating circumstances committed as part of a group of persons resulting in the death of the victim). We fail to see why the question of a change of the applicant's sentence should have such a significant bearing on the "nature and the seriousness of the offence committed". The State's right to take measures for the prevention of disorder or crime is not diminished by the accused's mental illness.

31. This is the first time where the Court has found that the fact that an applicant was exempted from punishment but sentenced to committal to forensic psychiatric care has "the effect of limiting the weight that can be attached" to the "nature and seriousness of the offence" in the overall balancing of interests (see paragraph 194 of the judgment).

32. Moreover, by saying that "the first *Maslov* criterion, with its reference to the 'nature and seriousness' of the offence perpetrated ... presupposes that the competent criminal court [in revocation proceedings] has determined whether the settled migrant ... has demonstrated by his or her actions the required level of criminal culpability" (ibid.), the majority have introduced a further layer to the assessment of the first *Maslov* criterion. The novelty is that it is of a subjective character. Until now the Court, when evaluating the first *Maslov* criterion, "the nature and seriousness of the offence", has focused on the objective constituent elements of the offences. This objective approach is based on the legitimate aims, the kind of interests which the State may legitimately protect under the second paragraph of Article 8 of the Convention falling broadly under the notion of "public order", as is referred to in the quotation from *Maslov* (cited above, § 68) in paragraph 181 of the judgment. In this sense, the Court made clear that very serious violent offences could justify expulsion even if they were committed by a minor (ibid., § 85). It was the *objective* seriousness of such offences that could, in the Court's view, outweigh a perpetrator's young age and even the best interests of the child. A consequence of the elaboration upon the first *Maslov* criterion in the present case is that it would require a more detailed examination at both national and European levels.

33. In adding this subjective element, without any explanation of why this particular one should be taken into account if there are others, such as, for instance, exonerating circumstances, the majority went very far, not only because, as mentioned earlier, the determination of the applicant's criminal culpability formed an integral part of the criminal proceedings, but also because that issue was determined by the domestic courts with final effect in 2009 in criminal proceedings which have not been examined by the Court in the present case.

34. That being said, we note that the majority refrain from qualifying to what extent the fact that the applicant was exempted from punishment should carry weight in the overall assessment of all the relevant criteria; nor does the Court state that expulsion cannot take place in cases where the accused is found to be exempted from punishment on account of the fact that his criminal culpability was officially recognised at the relevant time as being excluded. In other words, the lack of or degree of criminal culpability is a relevant element that has to be taken into account and it must carry some weight in the overall assessment.

35. Thirdly, the Court also relies on the domestic courts' insufficient assessment of relevant changes in the applicant's personal circumstances, in particular his conduct and health and the risk of his reoffending (see paragraphs 190, 197, 198, 201 of the judgment).

36. We find this criticism striking and surprising. There had been a thorough and comprehensive assessment of the applicant's health, based on

up-to-date and complete information and evidence (see paragraphs 32-50 of the judgment).

37. Furthermore, unlike what the Court seems to be suggesting, there had been an assessment of the risk of reoffending. The applicant was sentenced to committal to forensic psychiatric care in order to "prevent further offences" (Article 68 of the Danish Penal Code; see paragraph 75 of the judgment), and the domestic authorities were under an obligation to ensure that the measure was not "upheld for longer and to a greater extent than necessary" (Article 72 of the Danish Penal Code; see paragraph 75 of the judgment). Thus, when the City Court in 2014 decided to amend the measure imposed (see paragraph 57 of the judgment), it did so on the basis of the provisions just mentioned. In other words, the risk of reoffending was part of the assessment in the revocation proceedings. It was exactly because of the positive effects of the treatment and care provided in the period after the final decision in the criminal proceedings and the decision in the revocation proceedings that the measure was amended.

38. To the extent that the Court's reasoning on this point may be understood to imply that it is important or decisive for the assessment of the proportionality of an expulsion whether there is a persistence of a risk of reoffending, we respectfully disagree. The expulsion of a foreigner following a criminal conviction may be for the purpose of "prevention of crime", but it may also and will in most cases also serve the purpose of "prevention of disorder" (see *Ndidi v. the United Kingdom*, no. 41215/14, § 74, 14 September 2017). In other words, a criminal offence may justify expulsion even though there is no risk of reoffending, provided that the *Maslov* criteria are met, including that of the "nature and seriousness of the offence".

39. Fourthly, the majority rely on the length of the applicant's stay in and his ties with Denmark (see paragraph 198 of the judgment).

40. The duration of the applicant's stay in and his ties with Denmark were clearly taken into account in the criminal proceedings that ended in 2009. Admittedly, the duration of his stay and the strength of his ties were not expressly taken into account in the revocation proceedings that ended in 2015, where the focus was on whether there had been any significant changes in the applicant's situation after the expulsion order in 2009, in particular as regards his health.

41. That being said, there had been no significant changes between 2009 and 2015 as to the length of the applicant's stay and the strength of his ties. The only thing that had changed was the passing of time, more specifically six years, during which the applicant, on the basis of the measure imposed in the criminal proceedings in 2009, had been deprived of his liberty and undergone treatment. Nor did the applicant, before the domestic authorities or the Court, assert that there had been any significant changes between 2009 and 2015 in this respect.

42. Fifthly and finally, the majority rely on the duration of the re-entry ban and the insufficient assessment of its duration (see paragraph 199, 200 and 201 of the judgment).

43. We do not question the importance of the duration of the re-entry ban for the overall assessment of the proportionality of the expulsion (see paragraph 182 of the judgment). In some cases the Court has found that an expulsion order, in principle, was justified but that the measure was disproportionate owing to the duration of the re-entry ban (see, for example, *Yilmaz v. Germany*, no. 52853/99, §§ 42-49, 17 April 2003; *Radovanovic v. Austria*, no. 42703/98, §§ 28-38, 22 April 2004; and *Keles v. Germany*, no. 32231/02, §§ 59-66, 27 October 2005). In other cases, the Court has emphasised that the expulsion order was a disproportionate measure, irrespective of the limitation on the re-entry ban (see, for example, *Maslov*, cited above, §§ 98-99).

44. In the present case, the expulsion order issued in 2009 was combined with a permanent ban on re-entry in accordance with the then applicable legislation, pursuant to which the duration of the re-entry ban was set out in the Aliens Act. The majority emphasise that the domestic courts, in the context of the revocation proceedings, had no discretion under domestic law to review and to limit the duration of the ban imposed (see paragraph 200 of the judgment). This seems to be incontestable, but it is worth mentioning that the domestic courts still do not have such a discretion in the context of revocation proceedings under section 50 or 50a of the Aliens Act.

45. In Denmark, the duration of the re-entry ban is decided in the context of the criminal proceedings (sections 49 and 32 of the Aliens Act; see paragraph 76 of the judgment), and prior to the 2018 amendment of the Aliens Act, the domestic courts did not have any discretion as to the duration of the re-entry ban. In 2018 the Aliens Act was amended, granting domestic courts the possibility of shortening the duration of the re-entry ban (see paragraph 78 of the judgment). It follows from the transitory provisions that the 2018 Act does not apply in cases where the crime was committed prior to the entry into force of the new legislation, but, more importantly, the amendment to section 32 of the Aliens Act, providing that the duration of the re-entry ban may be shortened in certain situations, only applies in the context of criminal proceedings where the domestic courts have to rule on an expulsion order (sections 49 and 32 of the Aliens Act). In revocation proceedings, whether under section 50 or section 50a of the Aliens Act, the domestic courts can "revoke the expulsion" in certain situations, but domestic courts do not have any express competence to shorten or reduce the duration of a ban on re-entry.

How should the Court's judgment be read and what does it imply in practice?

46. As mentioned above, the Court relies on several arguments in support of the finding of a violation of Article 8 of the Convention, without, however, identifying any of them as being decisive for its finding.

47. It is important to note that the Court does not find that the expulsion, or rather the refusal to lift the expulsion order, in itself constituted a violation of Article 8 of the Convention, or that the permanent ban on re-entry in itself rendered the measure disproportionate. In other words, the Court has not found a substantive violation of Article 8.

48. Rather, the Court has highlighted a number of elements that in its view were insufficiently assessed by the domestic courts in examining the proportionality of the interference consisting in the refusal to lift the expulsion order with the effect that the permanent ban on re-entry was enforced. In other words, the finding of a violation of Article 8 is of a procedural nature. Consequently, the Court has refrained from taking a stand on how the applicant's case, should he decide to request reopening of the domestic proceedings following the Court's finding, is to be decided on the merits.

49. It is also important to note that the Court has refrained from indicating individual measures in the present case, something that it may decide to do in order to assist the respondent State in complying with the Court's judgment (compare *Mehemi v. France* (no. 2), no. 53470/99, §§ 46-47, ECHR 2003-IV). Thus, the Court has not indicated that the expulsion order should be lifted and that the immediate return of the applicant should be ensured. Nor has the Court indicated that there should be a shortening of the re-entry ban or a lifting of the ban with *ex nunc* effect. Nor has it indicated that the revocation proceedings should be reopened. On the contrary, the Court is silent on these issues, thus leaving it to the initiative of the applicant to decide whether he will request reopening of the revocation proceedings and, in the event of such a request, to the domestic courts to rule on it. Ultimately, it will be for the respondent State, under the supervision of the Committee of Ministers under Article 46 § 2 of the Convention, to adopt the necessary individual and general measures to abide by the Court's judgment.

50. In our view, the Court's judgment provides limited guidance to the domestic courts in the event that the revocation proceedings are reopened. The domestic courts may have to make an assessment including more elements than appear to follow from the wording of section 50a of the Aliens Act (see also paragraph 25 above). They may have to assess a request for the lifting of the expulsion order in the light of all the aspects addressed in the Court's reasoning, but it is not clear what weight the different elements should carry in the reassessment. Consequently, the applicant has no guarantee that the expulsion order will be lifted. And even

if the domestic authorities find it necessary to redress the applicant's situation, one way of providing such redress may be to shorten the re-entry ban or to lift it with effect for the future (*ex tunc*), provided that domestic legislation or an interpretation thereof will allow for such a solution. Furthermore, much time has passed since the expulsion order was enforced in 2015, and therefore the domestic courts, on the basis of an up-to-date and overall assessment, cannot disregard the fact that the applicant has been living in Turkey since 2015 and must be assumed to have developed even stronger ties with that country both socially, culturally and linguistically. In addition, the applicant will not necessarily be authorised to enter Denmark while a possible request for lifting of the expulsion order is being processed.

Concluding remarks

51. In our view, the Court's judgment is a regrettable development of its case-law, providing increased protection to individuals who have perpetrated very serious criminal offences and emphasising the reduction of criminal culpability, thereby increasing the protection of the individual at the expense of the general interest of society in the protection of public order and the prevention of crime.

52. The practical implications of the Court's judgment for the applicant's concrete situation are uncertain, but in cases concerning expulsion following a criminal conviction, the Court's judgment may in practice and in general lead to (i) a more comprehensive assessment of all the *Maslov* criteria in revocation proceedings, (ii) an increased focus on the question of diminished criminal culpability due to mental illness in the assessment of the nature and seriousness of the criminal offence committed, and (iii) an increased focus on the duration of a re-entry ban for the purpose of the assessment of the proportionality of an expulsion order following a criminal conviction.