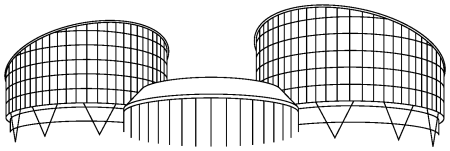

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF TATAR v. SWITZERLAND

*(Application no. 65692/12)*

JUDGMENT

STRASBOURG

14 April 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Tatar v. Switzerland,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Işıl Karakaş, *President,*
Nebojša Vučinić,
Helen Keller,
Paul Lemmens,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 17 March 2015,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 65692/12) against the Swiss Confederation 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 Mehmet Ali Tatar ("the applicant"), on 8 October 2012.

2. The applicant was represented by Mr P. Frei, a lawyer practising in Zürich. The Swiss Government ("the Government") were represented by their Agent, Mr F. Schürmann.

3. The applicant alleged that his proposed expulsion to Turkey placed him at risk of inhuman and degrading treatment, and threatened his physical and moral integrity. He also claimed that the decision of the Federal Tribunal violated his right to a fair trial. He relied on Articles 2, 3, 6 and 8 of the Convention. The applicant requested that Rule 39 of the Rules of Court be applied.

4. On 24 October 2012 the President of the Second Section, to which the case was allocated, decided to grant priority to the application under Rule 41 of the Rules of Court and to give notice of the application to the Government.

5. The Government of Turkey, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), did not avail themselves of this right.

6. On 30 October 2012 the President of the Second Section decided not to apply Rule 39 of the Rules of Court since the applicant's expulsion was not imminent.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The facts of the case, as submitted by the applicant, may be summarised as follows.

8. The applicant was born in 1950 and is a Turkish national, originating from the town of Nurhak. He arrived in Switzerland in June 1988.

9. He claimed to have been detained and tortured by the Turkish authorities in 1987/88, prior to fleeing to Switzerland, because he was a member of a Turkish Communist Party (hereinafter the TCP). Together with his two older sons, who had also been politically active in the TCP, the applicant was considered a refugee and granted asylum in 1994 by the Federal Office for Migration (hereinafter the Federal Office).

10. In 1995 the applicant received a residence permit issued by the Office for Migration of the Canton of Zurich. Following this, his wife and his other three children came to live in Switzerland.

11. In 1990 the applicant was severely hurt at work and was subsequently granted an invalidity pension.

12. His children and grandchildren are all Swiss nationals and the applicant remains in close contact with them. The applicant kept in contact with his family members in Turkey. At least two sisters are still living in Turkey. In one of the applicant's submissions it appears that the applicant's last remaining brother in Turkey has died while in a later submission it appears that one brother is still living there. The applicant has several nephews and nieces residing in Turkey and in the United Kingdom. The exact number is unknown. Some of them have even visited him in Switzerland.

13. In 2001 the applicant killed his wife during a dispute. He shot her three times in the head and once in the stomach. In 2003 the applicant was sentenced to eight years' imprisonment. During the proceedings a recurrent depressive disorder with psychotic symptoms was diagnosed, classified as schizophrenic disease syndrome. Due to his mental illness, a plea of diminished responsibility for the crime in question was accepted. Imprisonment was postponed, to allow him to benefit from treatment in a closed psychiatric facility.

14. By decision of 3 March 2009 the Federal Office revoked the asylum status granted to the applicant because he had been sentenced for a serious crime. Nevertheless, the Federal Office did not withdraw the applicant's status as a refugee under the 1951 Refugee Convention.

15. In April 2010 the applicant was paroled on the condition that he remain in a facility with psychiatric care for the following three years. He was released from the closed ward and admitted to an open residence facility where continuous psychiatric care and supervision were provided.

He suffered several relapses which led to temporary stays in a closed psychiatric hospital.

16. Despite the psychiatric treatment the applicant had received, expert reports indicated that he was, and would remain, unable to live on his own. He would have to continue to take psychotropic drugs on a regular basis and undergo therapy, failing which he would suffer relapses into hallucinations and psychotic delusions during which he might harm himself or other persons. Expulsion would lead to a deterioration of his condition; even more so if he were expelled to Turkey, where he felt persecuted. He was unable to distinguish his paranoid ideas from reality. The applicant was also appointed a legal guardian.

17. On 28 June 2010 the Migration Office of the Canton of Zurich revoked the applicant's residence permit on the basis of the Federal Office's decision and ordered the applicant to leave Switzerland within three months.

18. The applicant appealed unsuccessfully to all instances against the decision to expel him. In an appeal to the Federal Supreme Court he claimed that he had not been adequately heard during the court proceedings. He claimed that adequate consideration had not been given to the fact that he continued to benefit from the principle of *non-refoulement*. If he were removed to Turkey, his mental health would further deteriorate, to such an extent that his life would be in danger. In addition, he would be at risk of being harmed by his wife's relatives and being subjected to torture or inhuman treatment by the public authorities in Turkey. In the appeal to the Federal Supreme Court he also mentioned Article 8 of the Convention in a heading, but claimed neither directly nor in substance a violation of his right to respect for his private and family life.

19. On 2 August 2012 the Federal Supreme Court refused the applicant's appeal. It ruled that the applicant could be sent back to Turkey despite his recognition as a refugee under the 1951 Refugee Convention. It considered that he had been sentenced for a serious crime and concluded that it could not be established that, in the event of an expulsion, the applicant's mental health would deteriorate to such an extent as to become life-threatening. There were psychiatric facilities in Turkey where the applicant could receive treatment.

20. Regarding the risk of a blood feud with the relatives of the applicant's wife in Turkey, the Federal Supreme Court noted that the applicant had failed to substantiate his claim that the Turkish authorities would not be able to protect him from such acts. Moreover, he could relocate within Turkey. Also, after the applicant's wife's death, her relatives had been to Switzerland without there being any reported behaviour that could lead to the assumption that a serious danger for the applicant existed. They had simply avoided him.

21. With respect to the risk of being tortured for having been a member of the TCP, the Federal Supreme Court noted that the applicant's political

activities dated back more than 20 years, and the human rights situation in Turkey had changed significantly since then. The applicant's wife and several of the applicant's children had already renounced their refugee status and travelled back to Turkey for visits. They had not reported any difficulties when entering and staying in Turkey, despite the political activities of family members in the past.

22. On 21 August 2012 the Migration Office of the Canton of Zurich informed the applicant that he had to leave Switzerland by 30 November 2012. On 10 December 2012 this time-limit was extended until 31 January 2013.

23. By decision of 2 July 2013 the District Court of Zurich prolonged the applicant's probation regarding his criminal conviction until 1 July 2016 and ordered that, owing to the applicant's need for medical treatment, he continue to receive treatment in an institution providing psychiatric care until that date.

24. So far, no date for the removal of the applicant to Turkey has been set but the order of the Migration Office to leave the country remains in force.

## II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

### A. Federal Asylum Act of 26 June 1998, as in force at the relevant time

25. The relevant provisions of the Federal Asylum Act of 26 June 1998 read as follows:

**Article 5 Ban on refoulement**

"1. No person may be forced in any way to return to a country where their life, physical integrity or freedom are threatened on any of the grounds stated in Article 3, paragraph 1, or where they would be at risk of being forced to return to such a country.

2. The ban on refoulement may not be invoked if there are substantial grounds for the assumption that, because the person invoking it has a legally binding conviction for a particularly serious felony or misdemeanour, they represent a threat to Switzerland's security or are to be considered dangerous to the public."

**Article 63 Revocation**

"The Federal Office shall revoke asylum or deprive a person of refugee status:

a. if the foreign national concerned has fraudulently obtained asylum or refugee status by providing false information or by concealing essential facts;

b. if any of the grounds stated in Article 1, letter C, numbers 1-6 of the Convention of 28 July 1951[1] relating to the Status of Refugees apply.

The Federal Office shall revoke asylum if a refugee has violated or represents a threat to Switzerland's internal or external security, or has committed a particularly serious criminal offence."

**Article 65 Removal or expulsion**

"Refugees may be expelled only if they endanger Switzerland's internal or external security or have seriously violated public order; subject to Article 5 (...)."

## B. Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 18 May 2014)

26. The relevant provisions of the Federal Constitution of the Swiss Confederation of 18 April 1999 read as follows:

**Art. 25 Protection against expulsion, extradition and deportation**

"1. (...)

2. Refugees may not be deported or extradited to a state in which they will be persecuted.

3. No person may be deported to a state in which they face the threat of torture or any other form of cruel or inhumane treatment or punishment."

## C. 1951 Geneva Convention relating to the Status of Refugees ("1951 Refugee Convention")

27. Switzerland has ratified the 1951 Refugee Convention, which defines the situations in which a State must grant refugee status to persons who apply for it, and the rights and responsibilities of those persons. Articles 1, 32 and 33 of the 1951 Refugee Convention provide:

**Article 1**

"... For the purposes of the present Convention, the term 'refugee' shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

**Article 32**

"1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. (...)."

**Article 33**

"1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

28. The applicant complained that his removal from Switzerland would expose him to a real risk of being subjected to treatment in breach of Articles 2 and 3 of the Convention, which read as follows:

**Article 2**

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

**Article 3**

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

29. The Government contested that argument.

### A. Admissibility

30. The Court notes that the complaint under Articles 2 and 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The submissions of the parties*

31. The applicant claimed to be at risk of death or ill-treatment if expelled to Turkey because his mental health would deteriorate quickly and he would be at high risk of severely harming or killing himself or another

person. He would be unable to look after himself and his closest family members lived in Switzerland. He claimed that in Turkey, places in psychiatric facilities were scarce and treatment consisted merely of administering medication. In his town of origin, Nurhak, especially, adequate treatment was not available. With the invalidity pension he received from Switzerland he would not be able to afford treatment. Separation from his children and grandchildren who all reside in Switzerland would lead to a further deterioration of his mental health. His remaining siblings would not be able to assist him due to their advanced age and poor health. Thus, residing and obtaining treatment in another part of the country would not be feasible.

32. The applicant further claimed to be at risk of being murdered as an act of blood feud by his wife's relatives. He claims that towards his children some had stated that they would kill the applicant. The police in Nurhak would be unable and, due to his political activities in the past, unwilling to protect him. Since he was mentally ill and would need to remain in one place for treatment he would be at risk of being found and killed by members of his wife's family.

33. The applicant maintained that he was most likely still registered with the Turkish authorities as a member of the TCP and therefore he would be at risk of being arrested and tortured upon return.

34. The Government submitted that there were sufficient possibilities for the applicant to receive the necessary in- or outpatient treatment in Turkey. Five specialised psychiatric facilities existed and in the bigger cities there were hospitals with sections for persons with psychiatric problems. Health insurance would cover part of the psychiatric treatment. While in Nurhak itself no psychiatric facility existed, there were suitable institutions in Kahramanmaras, 152 km away, or in Gaziantep, 177 km away, where he could stay.

35. Moreover, the Government was of the view that the applicant could and would receive support from family members in Turkey. He could still count on their support even if he did not live in his hometown but relocated to another part of the country. It could also be assumed that family members residing in Switzerland and other European countries would be able to travel to Turkey to assist him, at least at the beginning.

36. The Government further outlined their common practice that, if the applicant does not leave the country on his own, a medical assessment of whether he is fit to travel will be carried out prior to his removal. If deemed necessary, the applicant will be accompanied by medical personnel. Moreover, the competent Turkish authorities will be informed of his state of health and a list of his required medical treatment sent to those Turkish authorities receiving him upon arrival.

37. Regarding the risk of a blood feud, the government was of the view that the applicant did not substantially describe the specific threat and why the Turkish authorities would not be able to protect him.

38. With respect to the risk of being tortured for having been a member of the TCP, the government pointed out that the human rights situation in Turkey had changed significantly and that there was no indication of an imminent danger of arrest and inhuman treatment in his specific case.

*2. The Court's assessment*

**(a) General principles**

39. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67; and *Boujlifa v. France*, judgment of 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008, and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 93, ECHR 2014).

40. The prohibition provided by Article 3 against ill-treatment is absolute. The activities of the individual in question, however undesirable or dangerous, cannot be a material consideration. The protection afforded by Article 3 is thus wider than that provided by Articles 32 and 33 of the 1951 Refugee Convention (*Chahal v. the United Kingdom*, 15 November 1996, § 80, *Reports* 1996-V).

41. The assessment of whether there are substantial grounds for believing that the applicant faces a real risk of ill-treatment inevitably requires that the Court assesses the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right

guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

42. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005).

43. The Court further reiterates that seriously ill aliens cannot, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that the applicant's life expectancy would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling (see *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008; *D. v. the United Kingdom*, 2 May 1997, § 54, *Reports* 1997-III, *Bensaid v. the United Kingdom*, no. 44599/98, § 40, ECHR 2001-I).

44. The above principles apply also in regard to Article 2 of the Convention (see, for example, *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009).

45. The Court has therefore examined whether there is a real risk that the applicant's removal would be contrary to the standard of Articles 2 and 3 in view of his medical condition and considered the claim of a threat of a blood feud and his claim that he would be at risk of inhuman treatment for his former membership of the TCP.

**(b) Application to the facts of the case**

46. In the present case, the Court notes that the applicant is suffering from a long-term mental illness. Deterioration of his already existing mental illness could involve a relapse resulting in self-harm and harm to others. The suffering associated with such a relapse and the possibility of self-harm could, in principle, fall within the scope of Article 3.

47. Having regard to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm, the Court does not find that in the present case there is a sufficient real risk that the applicant's removal in these

circumstances would be contrary to the standards of Article 3. The Court observes that medical treatment for his condition would in principle be available to the applicant in Turkey. The government has submitted information on the general availability of psychiatric treatment available in specialised wards in bigger cities in Turkey. While such treatment might not exist in the applicant's former hometown, Nurhak, it could in principle be provided within a distance of around 150 km and in other parts of Turkey. This assessment has not been contested by the applicant. The mere fact that the circumstances concerning treatment for his long-term illness in Turkey would be less favourable than those enjoyed by him in Switzerland is not decisive from the point of view of Article 3 of the Convention (see *Bensaid*, cited above, § 38).

48. Furthermore, the Court holds that if specialised facilities do not exist in his town of origin, the information submitted by the parties does not lead to the conclusion that his illness would effectively prevent relocation. Internal relocation inevitably entails a certain level of hardship.

49. The Court recalls that also the Federal Supreme Court had already established that psychiatric facilities existed in Turkey (see para. 19 above). Moreover, the Court takes note of the Government's submission that upon executing the expulsion the immigration authority will ensure that the applicant fulfils the medical condition to travel and that appropriate measures are taken with regard to the applicant's particular needs, in particular, that the competent Turkish authorities will be informed of the specifics of the applicant's health and be provided with a list of his required medical treatment. The Court further sees no reason to doubt the Government's assertion that they would make every effort to see to it that the applicant would not have to pause his treatment if expelled and that he would have access to the medical care he needs upon return to Turkey (see para. 36 above). The Court considers that in the special circumstances of the present case, where the applicant would suffer a significant deterioration of his mental health if his treatment were interrupted, the domestic authorities' readiness to assist the applicant and take other measures to ensure that the removal can be executed without jeopardizing his life upon return is particularly relevant to the Court's overall assessment.

50. The Court accepts the seriousness of the applicant's medical condition, including the risk of relapse. However, the Court considers that in the present case the humanitarian grounds against his removal are not compelling. The present case does not disclose the exceptional circumstances of *D. v. the United Kingdom* (cited above), where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support on expulsion to St Kitts.

51. The Court also notes that the applicant maintains his claim of a blood feud against him. While the applicant claimed that the Turkish police would not be able or willing to provide sufficient protection in Nurhak, he

did not substantiate the threat and how it applied for the whole country. The Court notes that the applicant has not disputed the Federal Supreme Court's statement that relatives of his wife have visited Switzerland without any reported incident. Moreover, as mentioned above, the Court considers that relocating to a different part of the country remains an option, taking into account that family members would be able to assist him. There is no indication that even if the Nurhak police could not protect the applicant he would be unable to find any other place to live in other parts of Turkey. Thus, the Court holds that, regarding this aspect, the applicant has not substantiated a threat concerning Article 2 or 3 of the Convention upon return to Turkey.

52. Furthermore, the Court notes that the applicant claimed to be at risk of torture or inhuman treatment by State agents upon return to Turkey because of his political activities in the TCP in the past. In this regard the Court considers that the applicant has not disputed that he has not been politically active for more than 20 years and that members of his family who reside in Switzerland have travelled to Turkey without any difficulties. Thus, the Court holds that, also concerning this aspect of the claim, the applicant has not substantiated that there remains against him a personal threat contrary to Article 2 or 3 of the Convention.

53. The Court further emphasises that, since Turkey is a signatory State of the Convention, claims concerning specific forthcoming violations of guarantees of the Convention could be addressed in a complaint against it.

54. Thus the Court concludes that substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention if deported to Turkey have not been shown in the present case. Accordingly, the implementation of the decision to remove the applicant to Turkey would not give rise to a violation of these provisions.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

55. The applicant further complained that his deportation would breach Article 8 of the Convention.

### A. The parties' submissions

56. The Government submitted that the applicant had failed to exhaust domestic remedies. The applicant could have argued that his right to family and private life would be violated and raised Article 8 of the Convention in the context of his application for judicial review but did not do so, relying instead only upon Articles 2, 3 and 6.

57. In the initial submissions before the Court the applicant noted that, for procedural reasons, he had not claimed a violation of the right for family

and private life before the domestic courts. The applicant later claimed that a violation of Article 8 had indeed been raised before the Cantonal and Federal Supreme Court. Furthermore, he stated that the Swiss Courts themselves had the obligation to take the applicant's right to family and private life into account.

### B. The Court's assessment

58. The Court notes that the applicant did not claim before the Federal Supreme Court that the expulsion decision was unlawful for being a violation of his right to respect for his private and family life. The Court considers that the violation of the right to family and private life can be claimed before the Swiss Federal Supreme Court in cases of forthcoming expulsion. The Court reiterates its finding in *NA. v. the United Kingdom* (no. 25904/07, § 90, 17 July 2008) that, in expulsion cases, judicial review is in principle an effective remedy which applicants should be required to exhaust before applying to this Court. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Van Oosterwijck*, judgment of 6 November 1980, §§ 33-34, Series A no. 40, and *Azinas*, cited above, § 38).

59. Consequently, the Court finds the applicant's complaint under Article 8 to be inadmissible for failure to exhaust available domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

60. The applicant complained under Article 6 § 1 of the Convention that the refusal of the domestic courts to allow public hearings amounted to a violation of the guarantee of a fair hearing.

61. The Court has previously concluded that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (see, *Maaouia v. France* [GC], no. 39652/98, §§ 38-40, ECHR 2000-X). In particular, the fact that the expulsion might have repercussions on the applicant's private and family life cannot suffice to bring those proceedings within the scope of civil rights protected by Article 6 § 1 of the Convention. Hence, the Court considers that Article 6 § 1 is not applicable in the instant case. It follows that this complaint is incompatible *ratione materiae* with the provisions of

the Convention. This part of the application is inadmissible under Article 35 § 3(a) and must be rejected pursuant to Article 35 § 4 of the Convention.

## FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Articles 2 and 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that the expulsion of the applicant to Turkey would not give rise to a violation of Article 2 or 3 of the Convention.

Done in English, and notified in writing on 14 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stanley Naismith | Işil Karakaş |
| Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Lemmens is annexed to this judgment.

A.I.K.
S.H.N.

# PARTLY DISSENTING OPINION OF JUDGE LEMMENS

1. To my regret, I am unable to subscribe to the majority's conclusion that Article 3 of the Convention would not be violated if the applicant were to be expelled to Turkey.[1]

My disagreement is based on a different understanding of the risk arising from his long-term mental illness (see paragraphs 46-50 of the judgment).

2. I am aware that the Court applies a very high threshold in cases where the risk incurred stems "from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country" (see *N. v. the United Kingdom* [GC], no. 26565/05, § 43, ECHR 2008). As the majority points out, in such situations an issue may arise under Article 3 "only in a very exceptional case, where the humanitarian grounds against the removal are compelling" (see paragraph 43 of the judgment, referring to *D. v. the United Kingdom*, 2 May 1997, § 54, *Reports of Judgments and Decisions* 1997-III; *Bensaid v. the United Kingdom*, no. 44599/98, § 40, ECHR 2001-I; and *N. v. the United Kingdom*, cited above, § 42).

The question is whether such compelling humanitarian grounds are present. The majority answers this question in the negative (see paragraph 50 of the judgment); I respectfully disagree.

3. The present case involves the removal of a person who is suffering from severe schizophrenia. It was on account of this illness that his prison sentence, for the murder of his wife, was stayed and he was sent to a closed psychiatric facility. The sentencing court explicitly accepted a plea of diminished responsibility (see paragraph 13 of the judgment). The applicant was later paroled on condition that he remain in a facility providing psychiatric care (paragraph 15 of the judgment).

Furthermore, the majority accepts that, according to expert reports, the applicant is unable to live on his own. He must continue to take psychotropic drugs on a regular basis and to undergo therapy, failing which he will suffer a relapse into hallucinations and psychotic delusions, in the course of which he may harm himself or other persons. Expulsion would lead to a deterioration of his condition, especially were he to be expelled to Turkey, where he feels persecuted. He is unable to distinguish his paranoid ideas from reality (see paragraphs 16 and 46 of the judgment).

The applicant's situation is similar to that of the applicant in the *Bensaid* case (cited above).[2] However, there are two striking elements in the present case that distinguish it from the former case: the applicant left Turkey in 1988, that is, no less than 26 years ago (whereas Mr Bensaid had arrived in the United Kingdom some 11 years before the Court handed down its

[1] I have no problem with the conclusion that there would be no breach of Article 2.

[2] For a (much) less serious case of mental illness (depression and anxiety disorders), see *S.B. v. Finland* (dec.), no. 17200/11, 24 June 2014.

judgment), and he is unable to live on his own. The combination of these two factors gives reason to believe that, once back in his country of origin, the applicant will be completely helpless and unable to seek the necessary medical assistance on his own behalf. At first sight, the chances are therefore high that he will suffer a relapse into hallucinations and psychotic delusions, during which he may harm himself or other persons.

4. The majority considers that the circumstances in this case are not particularly exceptional, having regard to the fact that medical treatment for the applicant's condition is generally available in specialised wards in the larger Turkish cities (see paragraph 47 of the judgment). This was also the ground relied upon by the Swiss Federal Court in rejecting the argument based on Article 3 (see paragraph 19).

I am afraid that this is a very theoretical assessment of the situation. On the basis of the description of the applicant's condition, I consider it somewhat probable that the applicant will not be in a position to take advantage of any available medical treatment. What he needs is assistance, even supervision, so that he can be provided with (continuous) psychiatric care (compare paragraph 15 of the judgment).

In this respect, the respondent Government indicate that the competent Turkish authorities will be informed of the applicant's state of health and that a list of the required medical treatment will be sent to these authorities (see paragraph 36 of the judgment). The majority is satisfied with this undertaking by the respondent Government (see paragraph 49).

In my opinion, such an undertaking is insufficient to remove the risk of ill-treatment in Turkey.

Although I am hesitant to use the term, I believe that the applicant, as a person suffering from severe schizophrenia and unable to live on his own, must be considered extremely vulnerable (see, *mutatis mutandis*, *G. v. France*, no. 27244/09, § 77, 23 February 2012). The applicant thus belongs to a category of persons requiring "special protection" (compare *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 147, ECHR 2010; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 251, ECHR 2011; and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 118, ECHR 2014 (extracts)). With respect to such a person, I find it incumbent on the Swiss authorities to obtain some sort of assurances from the Turkish authorities that, on arrival in Turkey, the applicant will receive the special protection required by his condition (compare *Tarakhel*, cited above, § 120).

There is no indication, however, that the Turkish authorities – or anyone else – will take the applicant into their care (compare *D. v. the United Kingdom*, cited above, § 52). There is no guarantee that the applicant will receive treatment compatible with Article 3, not even through a statement of intent by the Turkish authorities or the putting in place of practical arrangements with them (compare, albeit in a very different context, *Čonka v. Belgium*, no. 51564/99, § 83, ECHR 2002-I).

5. Having regard, on the one hand, to the applicant's condition and his extended absence from his country of origin and, on the other, to the minimal concern by the Swiss authorities for the medical assistance to be effectively received by the applicant upon arrival in Turkey, I consider that the expulsion of the applicant would expose him to a real risk of being subjected to inhuman treatment. Accordingly, in the given circumstances, his expulsion would in my opinion amount to a violation of Article 3.