BGE 20150414_65692_12 vom 14. April 2015

Bundesgericht (BGE), 2015-04-14, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20150414_65692_12

FR: BGE 20150414_65692_12 du 14 avril 2015

IT: BGE 20150414_65692_12 del 14 aprile 2015

Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 2 et 3 CEDH. Expulsion du requérant en Turquie suite à sa condamnation pour le meurtre de sa femme. L'intéressé, qui a obtenu l'asile puis un permis de séjour en Suisse, a été condamné à une peine de 8 ans d'emprisonnement suite au meurtre de son épouse. Un trouble dépressif récurrent associé à des symptômes psychotiques ayant été diagnostiqué chez lui, l'exécution de la peine fut repoussée pour lui permettre de suivre un traitement dans un établissement psychiatrique fermé. Par la suite, son droit d'asile fut révoqué au motif qu'il avait été condamné pour un crime grave et son permis de séjour retiré. La Cour constate que le requérant n'a pas démontré qu'il serait exposé à un risque réel de subir des traitements contraires à l'art. 2 ou 3 CEDH en cas d'expulsion en Turquie (ch. 39 - 54). Conclusion: non-violation de l'art. 2 ou 3 CEDH. Inhaltsangabe des BJ (2. Quartalsbericht 2015) Recht auf Leben (Art. 2 EMRK); Verbot der Folter (Art. 3 EMRK); Recht auf ein faires Verfahren (Art. 6 Abs. 1 EMRK); Recht auf Achtung des Privat- und Familienlebens (Art. 8 EMRK); Wegweisung in die Türkei. Der Fall betrifft die unmittelbar drohende Ausweisung des Beschwerdeführers, der wegen vorsätzlicher Tötung seiner Frau verurteilt worden war, in die Türkei. Der Beschwerdeführer machte namentlich geltend, dass ihn seine Ausweisung einer reellen Gefahr einer Art. 2 und 3 EMRK widersprechenden Behandlung aussetzen würde. Dies sei insbesondere deshalb der Fall, weil sich seine geistige Gesundheit schnell verschlechtern würde. Der Gerichtshof stellte fest, dass in der Türkei grundsätzlich medizinische Behandlungsmöglichkeiten für den Gesundheitszustand des Beschwerdeführers vorhanden sind. Er hielt fest, dass der Beschwerdeführer hinsichtlich der geltend gemachten Blutrache und seiner politischen Aktivitäten in der TCP in der Vergangenheit eine Art. 2 und 3 EMRK widersprechende Drohung nicht nachgewiesen habe. Keine Verletzung von Art. 2 und 3 EMRK für den Fall der Wegweisung des Beschwerdeführers in die Türkei (sechs gegen eine Stimme). Beschwerde im Übrigen unzulässig (einstimmig).

Regeste SUISSE: Art. 2 et 3 CEDH. Expulsion du requérant en Turquie suite à sa condamnation pour le meurtre de sa femme. L'intéressé, qui a obtenu l'asile puis un permis de séjour en Suisse, a été condamné à une peine de 8 ans d'emprisonnement suite au meurtre de son épouse. Un trouble dépressif récurrent associé à des symptômes psychotiques ayant été diagnostiqué chez lui, l'exécution de la peine fut repoussée pour lui permettre de suivre un traitement dans un établissement psychiatrique fermé. Par la suite, son droit d'asile fut révoqué au motif qu'il avait été condamné pour un crime grave et son permis de séjour retiré. La Cour constate que le requérant n'a pas démontré qu'il serait exposé à un risque réel de subir des traitements contraires à l'art. 2 ou 3 CEDH en cas d'expulsion en Turquie (ch. 39 - 54). Conclusion: non-violation de l'art. 2 ou 3 CEDH. Synthèse de l'OFJ (2ème rapport trimestriel 2015) Droit à la vie (art. 2 CEDH); interdiction de la torture (art. 3 CEDH); droit à un procès équitable (art. 6 § 1 CEDH); droit au respect de la vie privée et familiale (art. 8

CEDH); renvoi vers la Turquie. L'affaire concerne la menace d'expulsion imminente du requérant, condamné pour le meurtre de sa femme, vers la Turquie. Le requérant se plaignait en particulier que son expulsion l'exposerait à un risque réel de subir des traitements contraires à l'art. 2 et 3 CEDH, en particulier parce que sa santé mentale se détériorerait rapidement. La Cour a observé que le traitement médical nécessaire au requérant était en principe disponible en Turquie. En ce qui concerne les allégations du requérant relatives à une vendetta organisée contre lui ainsi qu'à ses activités politiques au sein du TCP par le passé, elle a retenu qu'elles n'étaient pas suffisamment fondées pour rendre crédible un traitement contraire aux art. 2 et 3 CEDH. Non-violation des art. 2 et 3 CEDH (six voix contre une) en cas du renvoi du requérant vers la Turquie. Requête irrecevable pour le surplus (unanimité).

Regesto Questo riassunto esiste solo in francese. SUISSE: Art. 2 et 3 CEDH. Expulsion du requérant en Turquie suite à sa condamnation pour le meurtre de sa femme. L'intéressé, qui a obtenu l'asile puis un permis de séjour en Suisse, a été condamné à une peine de 8 ans d'emprisonnement suite au meurtre de son épouse. Un trouble dépressif récurrent associé à des symptômes psychotiques ayant été diagnostiqué chez lui, l'exécution de la peine fut repoussée pour lui permettre de suivre un traitement dans un établissement psychiatrique fermé. Par la suite, son droit d'asile fut révoqué au motif qu'il avait été condamné pour un crime grave et son permis de séjour retiré. La Cour constate que le requérant n'a pas démontré qu'il serait exposé à un risque réel de subir des traitements contraires à l'art. 2 ou 3 CEDH en cas d'expulsion en Turquie (ch. 39 - 54). Conclusion: non-violation de l'art. 2 ou 3 CEDH. Sintesi dell'UFG (2° rapporto trimestriale 2015) Diritto alla vita (art. 2 CEDU); divieto di tortura (art. 3 CEDU); diritto a un processo equo (art. 6 par. 1 CEDU); diritto al rispetto della vita privata e familiare (art. 8 CEDU); rinvio verso la Turchia. Il caso riguarda la minaccia di espulsione imminente del ricorrente, condannato per l'omicidio intenzionale della moglie, verso la Turchia. Il ricorrente ha fatto valere in particolare che l'espulsione lo esporrebbe a un reale rischio di subire trattamenti contrari agli articoli 2 e 3 CEDU, soprattutto perché la sua salute mentale si deteriorerebbe rapidamente. La Corte ha osservato che il trattamento medico necessario al ricorrente era in linea di massima disponibile in Turchia. Non ha ritenuto sufficientemente fondate le allegazioni del ricorrente, relative a una vendetta organizzata contro di lui nonché alle sue passate attività politiche in seno al TCP, per rendere credibile un trattamento contrario agli articoli 2 e 3 CEDU. Nessuna violazione degli articoli 2 e 3 CEDU (6 voti contro 1) in caso di allontanamento del ricorrente verso la Turchia. Ricorso per il resto irricevibile (unanimità).

Erwägungen

E. 2

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

E. 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." Erwägungen 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. Entscheid 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 Registrar I■il Karaka■ 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 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, ■onka 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. 1. I have no problem with the conclusion that there would be no breach of Article 2. 2. I have no problem with the conclusion that there would be no breach of Article 2. For a (much) less serious case of mental illness (depression and anxiety disorders), see For a (much) less serious case of mental illness (depression and anxiety disorders), see S.B. v. Finland 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.