

Savran v. Denmark: Denmark Distorts European Human Rights Protections, Deports Settled Migrant with Severe Mental Illness

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I. OVERVIEW

Arýf Savran was born in Turkey and immigrated to Denmark when he was six years old with his mother and four siblings.¹ Mr. Savran was expelled on criminal grounds after residing in Denmark for twenty-four years as a settled migrant.² The European Court of Human Rights (ECHR) clarified the protections for “settled migrants” facing expulsion several years ago by introducing a requirement for states to balance the severity of an offense with the extent of the offender’s integration into their country.³ The Court cited Recommendation 1504 (2001) by the Parliamentary Assembly of the Council of Europe, which encouraged member states to prohibit expulsion for long-term migrants under any circumstances.⁴ Although some member states have adopted policies to this effect—prohibiting expulsion for settled migrants on the basis of a criminal—it is not explicitly mandated by the Convention on Human

1. Savran v. Denmark, App. No. 57467/15, ¶ 1 (July 12, 2021), <https://hudoc.echr.coe.int/eng?i=001-214330>.

2. *Id.* ¶ 151.

3. *Id.* ¶ 168; Maslov v. Austria, App. No. 1638/03, ¶ 68 (June 23, 2008), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22002-2042%22%7D>.

4. Savran, App. No. 57467/15, ¶ 81.

Rights and Fundamental Freedoms.⁵ Member states maintain discretion in sentencing expulsion under statutory exceptions.⁶ Denmark erroneously exercised this discretion by expelling Mr. Savran in 2015 on criminal grounds despite his serious mental health diagnosis of paranoid schizophrenia, his residency in Denmark for twenty-four years, and his status as a highly-integrated, settled migrant.⁷

Prior to his expulsion, Mr. Savran lived in a psychiatric treatment institution where he received specific, complex, and intensive treatment for his paranoid schizophrenia.⁸ Mr. Savran's childhood was marked with behavioral disturbances that resulted in frequent placements in socio-educational institutions, ultimately leading to his involvement with crime.⁹ In 2007, Mr. Savran was convicted of assault with highly aggravating circumstances after being the only apprehended assailant in a group attack, which resulted in traumatic brain injury to and ultimately the death of the victim.¹⁰ The High Court of Eastern Denmark sentenced him to seven years of imprisonment, followed by expulsion with a permanent ban on re-entry.¹¹ In 2008, the High Court exempted Mr. Savran of punishment on an appeal after a finding of significant mental illness and impairment was made by the Medico-Legal Counsel.¹² The High Court alternatively committed Mr. Savran to a secure unit of a residential institution for the severely mentally impaired for an indefinite period, maintaining his subsequent expulsion and permanent ban on re-entry after this period of residential commitment.^{13,14}

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* ¶ 44.

9. *Id.* ¶ 18.

10. *Id.* ¶ 14, 15.

11. *Id.* ¶ 21.

12. *Id.* ¶¶ 23-26, 33-45. Three psychiatrists who maintained responsibility for Mr. Savran's care at some point provided observational reports regarding his mental health condition. They disclosed his diagnosis of paranoid schizophrenia and his complex treatment, including Leponex tablets administered daily and Risperdal Consta administered every two weeks, both of which are antipsychotic pharmaceuticals. These reports also indicate that Mr. Savran had this mental incapacitation at the time of his offense, as well as significant professional concern over his relapse if he did not continue his specific treatment plan.

13. *Id.*

14. *Id.* On a second appeal, the Supreme Court changed his sanction to committal to forensic psychiatric care but upheld his expulsion. In 2014, the City Court of Copenhagen amended Mr. Savran's sentence again from forensic psychiatric care to treatment in a psychiatric department and permitted his application for revocation of the expulsion order on the grounds that his health made expulsion conclusively inappropriate irrespective of the nature or gravity of his crime. The High Court reversed the City Court's decision and refused to revoke the expulsion

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Mr. Savran was consequently deported to the village of Kütükuşađý, Turkey, on June 23, 2015.¹⁵ Mr. Savran has no family in this village nor anywhere else in Turkey.¹⁶ He is occasionally seen by a physician, as opposed to a psychiatrist. Further, he receives the pharmaceuticals he was prescribed during his care in Denmark intermittently, depending on their fluctuating availability.¹⁷ Mr. Savran brought this case to the European Court of Human Rights against the Kingdom of Denmark, alleging violations of Article 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁸ The European Court of Human Rights *held* that Mr. Savran’s deportation to Turkey does not meet the threshold for a violation of Article 3 of the Convention based on the circumstances of the case, but does constitute a violation of the Article 8 protection of respect for private life. *Savran v. Denmark*, App. No. 57467/15, (July 12, 2021), at 1.

II. BACKGROUND

The European Convention on Human Rights and Fundamental Freedoms was adopted from the United Nations’ Universal Declaration of Human Rights as the first task of the Council of Europe, founded after the second World War.¹⁹ Article 3 states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²⁰ Article 8 protects individuals’ right to privacy in their home and family life, permitting exceptions for when it is deemed necessary for national security, public safety, economic well-being of the country, prevention of disorder or crime, or for the protection of the rights and freedoms of others.²¹

Section 22 of the Kingdom of Denmark’s Aliens Act (hereinafter Aliens Act) permits the expulsion of noncitizens convicted of certain crimes under the Danish penal code, despite being settled migrants

order on January 13, 2015. The Appeals Permission Board refused a leave to appeal this decision to the Supreme Court a few months later.

15. *Id.* ¶¶ 68-70.

16. *Id.* ¶ 70.

17. *Id.* ¶ 71.

18. *Id.* ¶¶ 1-3.

19. *What is the European Convention on Human Rights?*, EQUAL HUM. RTS. COMM’N (Apr. 19, 2017), <https://www.equalityhumanrights.com/en/what-european-convention-human-rights#:~:text=Originally%20proposed%20by%20Winston%20Churchill,came%20into%20fore%20in%201953.>

20. European Convention on Human Rights and Fundamental Freedoms, art. 3, Nov. 4, 1950, 213 U.N.T.S. 221.

21. *Id.*

residing in the country for seven years or more.²² Section 26 requires courts to consider the severity and particularity of an expulsion order based on the noncitizen's ties with Danish society, their age, health, ties with people living in Denmark, limited or nonexistent ties with the receiving state, the consequence of their expulsion for their family, the risk of ill treatment in the receiving State, and other personal circumstances.²³ Expulsion may be ruled conclusively inappropriate after weighing these considerations.²⁴

A 2006 amendment to Section 22 clarified that expulsion is inappropriate in certain circumstances considered in Section 26 if it would contradict international obligations, namely Article 8 of the Convention.²⁵ A 2018 amendment to Section 32 of the Aliens Act, detailing bans on re-entry for expelled people, permits Danish courts to impose shorter re-entry bans.²⁶ The reported intention of this amendment is to aid domestic courts in adhering to Article 8 while still being able to issue expulsions at a significant rate; instead of reducing expulsions, Danish courts can simply impose shorter re-entry bans.²⁷

A. *History of Danish Immigration Policy*

Despite its global reputation as a leftist haven, Denmark has increasingly implemented strict, conservative, and controversial immigration policies.²⁸ In fact, Denmark boasts the strictest immigration policies in the European Union.²⁹ Deportation has been officially

22. Savran, App. No. 57467/15, ¶¶ 75-76 (citing pertinent articles from the Danish Penal Code namely article 245 stating “[a]ny 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 . . .” and Article 246, “[t]he 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.”).

23. *Id.* ¶ 76.

24. *Id.*

25. *Id.* ¶ 77.

26. *Id.* ¶ 78.

27. *Id.*

28. Erin Gallagher, *The Danish Aliens Act and Denmark's Regressive Attitude Towards Asylum Seekers*, HUM. RTS. PULSE (Sept. 15, 2021), <https://www.humanrightspulse.com/master-content/blog/the-danish-aliens-act-and-denmarks-regressive-attitude-towards-asylum-seekers>.

29. *Id.*

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proscribed in Danish law since 1866.³⁰ The twentieth century saw various amendments to the deportation protocol, including transferring the deportation power from the courts to the police, and bestowing the Ministry of Justice with the responsibility to hear appeals.³¹ Economic growth in the 1960's led to a demand for foreign workers, the first of which came from Turkey, Pakistan, and the former Yugoslavia, and by 1970, there were 20,000 of these foreign-born workers in Denmark.³² By the late 1970s, however, deportation began being implemented as an alternative to incarceration for drug offense convictions, as well as to appease growing concern over integration issues and the development of a "parallel society."³³ The first significant cases of criminal expulsions of noncitizens occurred in the late 1970s.³⁴ This stirred public discontentment with the social democratic government's handling of these matters and resulted in the 1977 establishment of a committee on immigration law.³⁵ The committee issued a report in 1982 suggesting a clarification on expulsions, specifically for humanitarian considerations, and that all expulsion matters be adjudicated by courts rather than border police.³⁶ This report encouraged Erik Ninn-Hansen, the former Minister of Justice of a center-right government, to put forward a new Aliens Act.³⁷

The Aliens Act of 1983 surpassed the demands of the UN Convention in the areas of family reunification and refugee admissions and was regarded as Europe's most liberal at the time.³⁸ Tens of thousands of immigrants, primarily from the Middle East, were admitted to Denmark in the following years.³⁹ By 1986, however, Ninn-Hansen, the center-right government, and many of the minority parties were in agreement that issues surrounding integration called for a stricter immigration policy.⁴⁰ These stricter policies included removing de facto refugee status, sending asylum seekers back to their country of origin if

30. V. Greve & B.G. Nielsen, *Deportation of Aliens on the Basis of Criminality—Denmark*, U.S. Dep't of Justice, (1979), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/deportation-aliens-basis-criminality-denmark>.

31. *Id.*

32. Wium N. Olesen et al., *Danish Immigration Policy, 1970-1992*, AARHAUS UNIV., (Nov. 7, 2019), <https://nordics.info/show/artikel/danish-immigration-policy-1970-1992-1>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

that country had signed the UN convention on refugees, and shifting the responsibility of refugee transfer from the state to transportation companies.⁴¹ Increased concern and prejudice over non-Western immigrants arose in the late 1980's, primarily against those more visibly different in their appearance, culture, and behavior.⁴²

B. Modern Immigration Trends; Continuity in Anti-Non-Western Ideology

Today, winning elections in Denmark has become a competition for who can impose the toughest restrictions on refugees and migrants, taking political focus away from other issues despite the fact very few refugees have been admitted since 2016.⁴³ This push has impacted Danish nationals who marry noncitizens or who live abroad, and has even made it impossible for thousands of ethnic Danes to live in Denmark.⁴⁴ Some of the policies complicating family reunification that have arisen from this political trend are presently deemed illegal by the ECHR.⁴⁵

In 2019, a series of bills described as a “paradigm shift” were passed that emphasize the need for refugees to return to their country of origin when conditions improve.⁴⁶ However, the process for countries to become safe again takes an average of seventeen years, according to the United Nations High Commissioner for Refugees.⁴⁷ This means refugees must try to integrate into Danish society, especially by entering the workforce to support themselves.⁴⁸ The conflicting reality of this and the “return framework” has resulted in contradictory legislation.⁴⁹ Noncitizens are constantly losing their residence permits despite high levels of integration through residential longevity, schooling, and careers.⁵⁰ This lack of protection irrespective of integration into the Danish workforce even extends to occupations in high demand of employment, such as healthcare or low wage service jobs that do not typically attract ethnic Danes.⁵¹ Thus,

41. *Id.*

42. *Id.*

43. Michala Clante Bendixen, *Den.: Integration or Deportation—A Dilemma for the Government*, *European Commission*; EUR. COMM'N (July 17, 2021), https://ec.europa.eu/migrant-integration/news/denmark-integration-or-deportation-dilemma-government_en.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

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in this modern climate, all foreign-born residents of Denmark live in fear of being deported to their country of origin.⁵² The implications of this are cyclical issues of weakened integration and heightened prejudice of non-Western and nonwhite immigrants.⁵³

In 2021, Denmark passed a new Aliens Act amendment to offshore asylum seekers following a public announcement to limit “non-Western” immigration in disadvantaged neighborhoods, a designation so distinctly regarded in Danish society it is even codified in their law. This legislation solidifies Denmark’s position against asylum seekers in enabling their forced removal outside of Europe to countries with fewer resources, and abdicating Denmark of responsibility to them in the process.⁵⁴ Denmark has accepted very few refugees since 2016, with Prime Minister Mette Frederiksen admittedly working towards a goal of absolutely no asylum seekers in Denmark.⁵⁵ In fact, Denmark revoked the residence visas of ninety-four Syrian refugees in March, 2021, citing the improved situation in Damascus, the capital of Syria, as the justification.⁵⁶ Representatives from the United Nations question the compatibility of these laws with Denmark’s international obligations considering the European Union’s ban on external processing, a concern mirrored in Mr. Savran’s allegations in the noted case.⁵⁷

C. *Mental Health Matters, Matter in Deportation*

The average number of psychologists in countries within the Organization for Economic Cooperation and Development (OECD), of which Turkey is a member, is twenty-six per 100,000 people.⁵⁸ The number of psychologists in Turkey is only two per 100,000 people.⁵⁹ The average number of mental health nurses is fifty per 100,000 people in OECD countries, compared to only three per 100,000 people in Turkey.⁶⁰ Despite some efforts to improve access to mental healthcare, the number of beds available in psychiatric hospitals in Turkey has declined by nearly

52. Michelle Pace, *Denmark’s Immigrants Forced Out by Government Policies*, CHATHAM HOUSE (June 28, 2021), <https://www.chathamhouse.org/2021/06/denmarks-immigrants-forced-out-government-policies>.

53. *Id.*

54. Pace, *supra* note 52.

55. Bendixen, *supra* note 43.

56. Pace, *supra* note 52.

57. Merve K. Bilir & Fatih Artvinli, *The History of Mental Health Policy in Turkey: Tradition, Transition and Transformation*, 32 HIST. PSYCHIATRY 1, 3-19, (2021).

58. *Id.*

59. *Id.*

60. *Id.*

twenty-five percent in the past couple decades.⁶¹ The inpatient component of mental healthcare is also disproportionately prioritized over outpatient and community-based approaches to mental healthcare.⁶² Finally, mental health specialists in Turkey are mainly located at the public hospitals in Ankara, Istanbul and Izmir—not Konya, the closest city to Mr. Savran, which is 140 kilometers from the village where he presently resides.⁶³ Conversely, mental healthcare in Denmark is notably widespread and accessible, it is predominantly publicly owned and operated, financed by taxes with free and equal access for all citizens, and it boasts international acclaim for its strong electronic data systems, with access to patients' healthcare data dating back more than forty years.⁶⁴

The ECHR previously ruled on Article 3 violation allegations regarding the deportation of seriously ill applicants in *Paposhvili v. Belgium*.⁶⁵ *Paposhvili* created the test for determining whether an applicant's health could be grounds to invoke an Article 3 violation, arguably loosening the restrictive approach adopted in earlier cases.⁶⁶ The court held that the threshold for an Article 3 violation may be met on medical grounds in exceptional cases where expulsion would cause a risk of serious, rapid, and irreversible decline in their health, resulting in intense suffering or a significant reduction in life expectancy, on account of their lack of access to appropriate treatment in the receiving country.⁶⁷ This softened approach fills a gap in the protection against inhumane treatment by acknowledging the complexity of suffering, namely that which may not result in death.⁶⁸

The *Paposhvili* court further clarified the duties of ECHR states to rigorously assess the risk of expulsion for ill applicants and to ensure that care in the receiving state is "sufficient and appropriate in practice" to prevent treatment that would constitute an Article 3 violation.⁶⁹ This

61. *Id.*

62. *Id.*

63. *Id.* Savran, App. No. 57467/15, ¶ 70.

64. *The Danish Approach to Mental Health*, HEALTHCAREDEN. (Sept. 2021), https://www.healthcaredenmark.dk/media/vbhmxkzk/triple-3i_mental-health_brochure_a5_low.pdf.

65. *Paposhvili v. Belgium*, App. No. 41738/10, ¶ 3 (Dec. 13, 2016), <https://hudoc.echr.coe.int/eng?i=001-175982>.

66. Mark Klaassen, *A New Chapter on the Deportation of Ill Persons and Article 3 ECHR: The European Court of Human Rights Judgment in Savran V. Denmark*, STRASBOURG OBSERVER (Oct. 17, 2019), <https://strasbourgoobservers.com/2019/10/17/a-new-chapter-on-the-deportation-of-ill-persons-and-article-3-echr-the-european-court-of-human-rights-judgment-in-savran-v-denmark/>.

67. *Paposhvili*, App. No. 41738/10, ¶ 183.

68. Klaassen, *supra* note 66.

69. *Paposhvili*, App. No. 41738/10, ¶ 189.

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means considering actual versus theoretical access to care, including costs, social and family networks, and the distance that must be traversed to access treatment.⁷⁰ The Chamber asserted that, as a precondition to expulsion, it is the responsibility of the deporting state to receive this assurance from the receiving state.⁷¹

III. THE COURT'S DECISION

The ECHR both sustained and deviated from the Kingdom of Denmark's political and judicial trend with respect to non-Western immigrants in holding that Mr. Savran's deportation to Turkey does not constitute a violation of Article 3 of the Convention but does constitute a violation of Article 8.⁷² In giving their holding, the court clarified that, pursuant to Article 1, their role in this matter is subsidiary to Denmark's primary responsibility to enforce their guaranteed rights and freedoms and to thoroughly examine applicants' complaints.⁷³

The court rejected Mr. Savran's allegation that his circumstances, namely the severity of his mental illness, the disparate psychiatric care he receives in Turkey, and the correlating likelihood of relapse into harmful behaviors, constitutes "torture and inhuman or degrading treatment or punishment," amounting to an Article 3 violation.⁷⁴ The court clarified that the issue of Article 3 in Mr. Savran's case is not in obliging Denmark to alleviate the disparities in treatment by allowing him, a noncitizen who lost his right of residence, to receive free and unlimited healthcare.⁷⁵ Rather, Article 3 concerns itself with whether the act of expulsion would lead the applicant to risk of exposure to the Article 3 prohibitions.⁷⁶ In regard to a seriously ill person, this risk is determined under the *Paposhvili* test, which asks whether the person is at risk of "serious, rapid and irreversible decline in his . . . health resulting in intense suffering or significant reduction in life expectancy."⁷⁷ The court reiterated the importance of the need to receive assurances from the returning state once this threshold has been met.⁷⁸

70. *Id.* ¶ 189.

71. *Id.* ¶ 171.

72. Savran, App. No. 57467/15, ¶ 216.

73. *Id.*

74. *Id.* ¶ 121, 216.

75. *Id.* ¶ 131.

76. *Id.*

77. Paposhvili, App. No. 41738/10, ¶ 183.

78. Savran, App. No. 57467/15, ¶ 135.

The court also acknowledged that the severity of schizophrenia, Mr. Savran's diagnosed illness, in itself does not automatically equate to meeting the Article 3 threshold in expulsion matters.⁷⁹ Further, while some of the relevant medical evidence indicated Mr. Savran's deportation is likely to cause a relapse of worsening psychotic symptoms leading to "aggressive behavior" and "a significantly higher risk of offenses against the persons of others," these detriments do not constitute intense suffering for Mr. Savran, nor a reduction in his life expectancy.⁸⁰ The court reiterated that the threshold for meeting an Article 3 violation must remain high.⁸¹ Therefore, it concluded that Mr. Savran's deportation to Turkey did not satisfy the test laid out in *Paposhvili*.⁸² In a vote of sixteen to one, the court held that there is no violation of Article 3 of the Convention.⁸³

Article 8 denotes the right to respect for one's private and family life, home, and correspondence free from interference by public authority.⁸⁴ There are exceptions to this protection "in accordance with the law" if it is deemed necessary for national security, public safety, economic well-being of the country, prevention of crime and disorder, and protection of health, morals, and the rights and freedoms of others.⁸⁵ The court examined Mr. Savran's Article 8 complaint relating solely to the Danish government's refusal to revoke the expulsion order and the permanent reentry ban in the implementation of that order, rather than examining the initial criminal proceedings and original expulsion order.⁸⁶ The court explained that failure to meet the threshold for an Article 3 violation does not preclude an Article 8 violation and that mental health must be included in the private life element of Article 8 regarding moral integrity.⁸⁷ The preservation of mental stability is, in that context, an indispensable precondition to effective enjoyment of the right to respect for private life.⁸⁸

The court determined that Mr. Savran's status as a "settled migrant" engages the "private life" component of Article 8.⁸⁹ The court held that the "family life" protection is not engaged, however, because Mr. Savran

79. *Id.* ¶ 141.

80. *Id.* ¶¶ 142-44.

81. *Id.* ¶ 147.

82. *Id.* ¶ 148.

83. *Id.* ¶ 216.

84. *Id.* ¶ 149.

85. *Id.*

86. *Id.* ¶ 150.

87. *Id.* ¶ 172.

88. *Id.*

89. *Id.* ¶¶ 173-75.

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spent the majority of his upbringing in socio-educational institutions and not with family.⁹⁰ The court further found that mental illness does not automatically translate to dependency and that the evidence did not support the contention that Mr. Savran's health incapacitation required his reliance on the support and care from family in daily life.⁹¹ Accordingly, the court found that the refusal to revoke his expulsion to Turkey, the only matter examined by this court, constituted an Article 8 violation with respect to his private life.⁹² This can only be overcome if the breach is permissible pursuant to Article 8 § 2, in a finding that Mr. Savran's expulsion was in accordance with law and served one of the legitimate aims deemed necessary in the function of a democratic society outlined in the statute.⁹³ The court emphasized that very serious reasoning must exist to justify Mr. Savran's expulsion as a settled migrant.⁹⁴ The court noted the need to consider his specific circumstances of vulnerability, namely his serious mental illness and his lack of knowledge of Turkish or social ties in the country, that surpass that of the average "settled migrant" facing expulsion.⁹⁵

It is not disputed that Mr. Savran's expulsion order is "in accordance with the law."⁹⁶ Specifically, Mr. Savran's expulsion is in compliance with Section 50a of the Aliens Act and is deemed a legitimate effort in satisfying the aim of disorder and crime prevention.⁹⁷ However, contention arises in the second element of Article 8 § 2 regarding whether breaching Mr. Savran's right to private life by expelling him is truly "necessary in a democratic society."⁹⁸ The court tackled this question by utilizing the test derived from *Maslov v. Austria*.⁹⁹ This test involves assessing the nature and seriousness of the expelled parties' offense, the length of stay in the country expelling them, the time since the offense was committed, their conduct since then, and the extent of their social, cultural and familial ties with both the country they are a settled migrant in, and the country they are being expelled to.¹⁰⁰

90. *Id.* ¶¶ 176, 77.

91. *Id.* ¶ 178.

92. *Id.* ¶¶ 201, 202.

93. *Id.* ¶ 179.

94. *Id.* ¶ 186.

95. *Id.* ¶ 191.

96. *Id.* ¶¶ 180, 191.

97. *Id.* ¶ 191.

98. *Id.*

99. *Id.* ¶ 173.

100. *Maslov*, App. No. 1638/03, ¶ 48.

In applying this test to the facts of Mr. Savran's case, the court first accepted the thoroughness of the lower court's consideration of his access to appropriate medical care as sufficient.¹⁰¹ The court then balanced this with an assessment of the nature and seriousness of his crime, considering his potentially reduced culpability due his paranoid schizophrenia, as well as his limited, though not completely absent, familiarity with Turkey.¹⁰² His right to "private life" and protection as a "settled migrant" with relation to his substantial integration were balanced next, specifically: the longevity of his residence in Denmark since he was six years old, most of his education occurring in Denmark, all of his close family ties residing in Denmark, and his integration in the Danish labor market for at least five years.¹⁰³ Lastly, the duration of Mr. Savran's re-entry ban is balanced in determining if the *Maslov* threshold for justifying an Article 8 violation has been met.¹⁰⁴ After balancing these considerations, the court held that Mr. Savran's permanent re-entry ban does violate his Article 8 protection for respect to "private life" in an eleven to six vote.¹⁰⁵

A. *Concurring and Dissenting Opinions*

Judge Jelic offered a concurring opinion that agreed with the conclusions reached by the Grand Chamber, but disagreed with the path taken to reach those conclusions.¹⁰⁶ He regarded the court's refusal to analyze the family life component of Article 8 as an insufficient assessment that failed to consider Mr. Savran's particular vulnerability.¹⁰⁷ Judge Jelic argued that the standard metric should not be applied in determining Mr. Savran's family ties in Denmark because his circumstances of serious mental illness and low intellectual capability led to emotional and social reliance on his existing family and prevented him from creating his own.¹⁰⁸ He attributed this in part to Mr. Savran's primary placement in socio-educational institutions during adolescence, which the

101. Savran, App. No. 57467/15, ¶ 192.

102. Maslov App. No. 1638/03, ¶¶ 194, 198.

103. *Id.* ¶ 198.

104. *Id.* ¶ 199.

105. *Id.* ¶¶ 202, 216. In a vote of fifteen to two, the Court holds that a finding a violation is itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant, and by eleven to six votes that the state is to pay the applicant twenty thousand euros within three months, with interest accruing after three months and before settlement equal to that of the European Central Bank during the default period, plus three percentage points. In a vote of fifteen to two, the Court dismisses the remainder of Mr. Savran's complaints for just satisfaction.

106. Savran, App. No. 57467/15, ¶ 1 (Jelic, J., concurring).

107. *Id.*

108. *Id.* ¶ 4.

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majority conversely argues as a factor discrediting the applicability of the family life component in the Article 8 complaint.¹⁰⁹ He further argued that Mr. Savran's particular relationship with his mother needs to be considered because, while his illness may have prevented him from creating his own nuclear family, his specific vulnerabilities resulted in an even stronger emotional bond with her.¹¹⁰

Judge Jelic cited a similar case decided by the UN Human Rights Committee in their holding that the concept of family is to be interpreted broadly.¹¹¹ Judge Jelic substantiated this point in reiterating Mr. Savran's absence of any social ties or integration in Turkey outside of his nationality, as well as his genuine integration with his existing family in Denmark evidenced by the consistent efforts to visit him or arrange for his visits during his institutionalizations by his mother, four siblings, niece and nephew, and that they regard him as a family member.¹¹² Judge Jelic asserts the erroneously restrictive assessment that excludes family life and the particularities of Mr. Savran's circumstance is illustrative of inconsistencies with the universal human rights jurisprudence.¹¹³

Judge Serghides partly concurred and partly dissented with the majority holding in being the only member to find an Article 3 violation.¹¹⁴ Judge Serghides also found that the majority's assessment of the Article 8 violation was insufficient in excluding the right to family life component.¹¹⁵ Judge Serghides's response focused on the lack of assurance given by Turkey regarding Mr. Savran's actual access to appropriate treatment, the primary reason the City Court revoked Mr. Savran's expulsion in 2014.¹¹⁶ Judge Serghides emphasized the medical findings revealing the complexity of Mr. Savran's treatment needs, namely the necessity of a contact person to ensure he is having blood samples on a weekly or monthly basis to monitor the risk of developing a serious immune disorder connected with his medication.¹¹⁷

Judge Serghides critiqued the *Paposhvili* test as proposing an extraordinarily high threshold for meeting an Article 3 violation on

109. *See id.* ¶ 177.

110. *See id.* ¶¶ 1-6.

111. *Id.* ¶ 7.

112. *Id.*

113. *Id.*

114. Savran, App. No. 57467/15, ¶ 1 (Serghides, J., concurring in part and dissenting in part).

115. *Id.*

116. *See id.* ¶¶ 11-13.

117. *Id.* ¶ 11.

medical grounds, even higher than other grounds.¹¹⁸ Specifically, Judge Serghides critiqued the “irreversible” qualifier of the element of “decline” for being inconsistent with a schizophrenia diagnosis, as it is characterized by fluctuations.¹¹⁹ Judge Serghides argued that “intense suffering” should be irrelevant to determining the presence of “inhuman treatment” constituting an Article 3 breach because it adds terminology that is absent from the actual statute, but that Mr. Savran’s expulsion could nonetheless amount to “intense suffering” in considering the disabling symptoms of Schizophrenia and his expulsion-induced isolation.¹²⁰ Judge Segihides stated that the distinction between risk of harm to self or others is artificial and immaterial, and that the test should be the risk of dangerous or harmful effects generally.¹²¹ Further, as Mr. Savran alleged, causing harm to others in moments of lost control is regretful and causes suffering.¹²² Finally, Judge Sergihides cited the disproportionate death rates in those with schizophrenia as potentially satisfying the significant reduction in life expectancy test.¹²³

Judges Kjolbro, Dedov, Lubarda, Harutyunyan, Kucksoko-Stadlmayer and Polackova joined in a partially dissenting opinion and similarly critiqued the application of precedent tests in determining if Mr. Savran’s expulsion met the threshold of an Article 3 or 8 violation.¹²⁴ However, their dissent conversely argued that the tests implemented are too lenient and may result in increased protections for individuals who have perpetrated serious offenses and have certain mental disorders, thus jeopardizing the interest and protection of society from crime and disorder.¹²⁵

IV. ANALYSIS

The noted case focuses on complex and contentious issues surrounding the balancing of national interest and security with international human rights obligations.¹²⁶ Formal parliamentary recommendations encourage the prohibition of crime-related expulsions

118. *Id.* ¶ 13.

119. *Id.* ¶ 19.

120. *Id.* ¶ 25.

121. *Id.* ¶ 28.

122. *Id.*

123. *Id.* ¶¶ 31-34.

124. Savran, App. No. 57467/15, ¶ 1 (Kjolbro, J., Dedov, J., Lubarda, J., Harutyunyan, J., Kucksoko-Stadlmayer, J., Polackova, J., dissenting in part).

125. *Id.* ¶ 20.

126. Savran, App. No. 57467/15, ¶ 78.

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for settled migrants, while Danish policy restricts the entrance of even Denmark-born, ethnic Danes.¹²⁷ Controversy in the interpretations of Article 3 and Article 8 of the Convention, the application of tests derived from precedential cases, and the inconsistencies between the Articles and these correlating tests, exist within the decision.¹²⁸ Implications of the noted case are no different, with predictions of greater protections for mentally ill expellees under Article 3; a prediction eliciting both concern and support.¹²⁹

The court's decision reflects a major inconsistency in the application of the *Paposhvili* test regarding the necessary component of assurance from the receiving country that an applicant alleging an Article 3 violation on medical grounds will have real, rather than theoretical, access to appropriate and adequate medical care.¹³⁰ The concern is not availability, but the reality of access for the applicant in question.¹³¹ Mr. Savran has limited and insufficient access to appropriate medical care due to his specific vulnerabilities, particularly his serious diagnosis, remote residence, the inconsistent services from a general practitioner as opposed to a psychiatrist, and his inability to speak Turkish.¹³² The potential negative implication of this is similarly insufficient or absent medical care overlooked for the purposes of assessing the legitimacy of an allegation of an Article 3 violation.¹³³

The perception of Mr. Savran's mental illness as a factor qualifying the nature of his offense is also a point of controversy and inconsistency in the noted case.¹³⁴ The court has asserted that the nature and extent of the crime should be considered in determining if a breach of the Article 8 protection to respect for private and family life is justified.¹³⁵ In earlier cases with similar facts, dissent arguments have been made regarding the lessened criminal culpability of an expellee with significant mental illness

127. *Id.* ¶ 81; Bendixen, *supra* note 43.

128. *See* Savran, App. No. 57467/15.

129. Savran, App. No. 57467/15, ¶ 28 (Serghides, J., concurring in part and dissenting in part); Savran, App. No. 57467/15, ¶ 20 (Kjolbro, J., Dedov, J., Lubarda, J., Harutyunyan, J., Kucksoko-Stadlmayer, J., Polackova, J., dissenting in part).

130. Savran, App. No. 57467/15, ¶ 28 (Serghides, J., concurring in part and dissenting in part).

131. *Id.*

132. *Id.*; Savran, App. No. 57467/15, ¶ 46.

133. *Id.* ¶ 70.

134. Savran, App. No. 57467/15, ¶ 28 (Serghides, J., concurring in part and dissenting in part).

135. Savran, App. No. 57467/15, ¶ 181.

at the time of the offense.¹³⁶ This dissent argued that lessened culpability should be factored into the balancing of interests under Article 8.¹³⁷ Although concern of this is mentioned in a dissenting opinion, Mr. Savran's reduced culpability due to his severe mental illness is generally overlooked, as is the fact his offense was committed in a group, and that he was not the sole perpetrator.¹³⁸

The court's refusal to consider the family life element of Article 8 in determining whether Mr. Savran's right to protection from interference may have negative implications in its perpetuation of a rigid and exclusive metric for family.¹³⁹ As discussed in Judge Jelic's dissenting opinion, the United Nations Human Rights Committee held that family must be interpreted broadly, citing both a case with similar facts, as well as comments by the Committee illustrating the well-founded acceptance of this.¹⁴⁰

The majority's holding that Mr. Savran's mental illness needed to be accounted for in considering his particular and heightened vulnerability could result in positive implications for the special consideration and compassion afforded to mentally ill applicants, however, the dissenting judges' contention regarding this as a "regrettable development" and an alleged diversion from previous holdings may result in more prejudicial rulings in lower courts that maintain the same position.¹⁴¹ The dissenting opinion, which may be shared by a sizable portion of the public, regarded the judgment as disproportionately and erroneously concerned with "the protection of an individual at the expense of the general interest of society in the protection of public order and prevention of crime."¹⁴² This dissenting opinion also complained of the lack of guidance for the specific handling of mentally ill applicants, which may result in the continuation of varying and confused interpretations of statutory intentions and the application of pertinent tests, as seen in the noted case.¹⁴³

136. *Id.* ¶ 194.

137. *Id.*

138. *Id.* ¶ 195; Savran, App. No. 57467/15, ¶ 51 (Serghides, J., concurring in part and dissenting in part).

139. *See* Savran, App. No. 57467/15, ¶ 1 (Jelic, J., concurring).

140. Maslov, App. No. 1638/03, ¶ 7.

141. Savran, App. No. 57467/15, ¶ 20 (Kjolbro, J., Dedov, J., Lubarda, J., Harutyunyan, J., Kucksoko-Stadlmayer, J., Polackova, J., concurring in part and dissenting in part).

142. *Id.* ¶¶ 35, 51.

143. Cain Burdeau, *Rights Court Slams Den. for Banishing Mentally Ill Turkish Convict*, COURTHOUSE NEWS SERV., (Dec. 7, 2021), <https://www.courthousenews.com/rights-court-slams-denmark-for-banishing-mentally-ill-turkish-convict/>.

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V. CONCLUSION

The unique vulnerabilities Mr. Savran endures are mentioned throughout the majority opinion.¹⁴⁴ However, their acknowledgment never transcends to actual consideration of how these intersecting vulnerabilities ultimately define his allegation of inhuman treatment pursuant to Article 3, and breach of his protection to respect of “private life” and “family life,” pursuant to Article 8.¹⁴⁵ Further, the court’s assessment of Mr. Savran’s suffering to determine whether his expulsion meets the threshold of severity under the *Paposhvili* test to constitute an Article 3 violation is woefully deficient.¹⁴⁶ Judge Serghides’s opinion dissected the *Paposhvili* test to identify and critically analyze each element and subtest, like, for instance, the qualifier “intense” preceding “suffering,” to demonstrate the impossibly high and deeply subjective standard it produces.¹⁴⁷ The acknowledgment of mental illness as a medical grounds for protection against expulsion is undercut when the actual nature of that mental illness is not compatible with the legal tests implemented, namely an “irreversible decline,” when schizophrenia fluctuates by definition.¹⁴⁸

The majority’s opinion on the likelihood of Mr. Savran’s relapse constitutes degrading and inhuman treatment in itself in reducing the scope of suffering.¹⁴⁹ In expelling Mr. Sevrán, the court ignored Recommendation 1504 (2001) by the Parliamentary Assembly of the Council of Europe to evade expelling settled migrants, even on criminal grounds, and failed to uphold their international obligations.¹⁵⁰ This will likely produce contradictory public perceptions, policy, and future case law mirroring the broader immigration integration paradox, by considering mental illness grounds for informed and particular protection, then failing to provide it.¹⁵¹ Although the specific considerations for mental health discussed were not enforced or provided for in Mr. Savran’s

144. See Savran, App. No. 57467/15, ¶ 84.

145. *Id.*

146. See Charlotte Gilmartin, *Article 3 in Expulsion of Mentally Ill Individuals: Risk of Harm to Others Insufficient to Engage Protection*, UK HUM. RTS. BLOG (Dec. 20, 2021), <https://ukhumanrightsblog.com/2021/12/20/article-3-in-expulsion-of-mentally-ill-individuals-risk-of-harm-to-others-insufficient-to-engage-protection/>.

147. Savran, App. No. 57467/15, ¶ 25 (Serghides, J., concurring in part and dissenting in part).

148. *Id.*

149. *Id.*

150. See generally Savran, App. No. 57467/15, ¶ 81.

151. See generally Michala Clante Bendixen, *supra* note 43.

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case, it may lead to further analysis and enforcement of more just, consistent and humane treatment of mentally ill settled migrants facing deportation.

Kayla Ogden*

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