[T.B v. Swtizerland](http://www.prisonlitigation.org/?email_id=116&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTkyNzY4&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)(no. 1760/15)

*Facts* – In 2011, the applicant was sentenced to four years’ imprisonment for premeditated murder, aggravated rape and aggravated sexual constraint. The Juvenile Court supplemented his sentence with a protection measure, in the form of placement in a specialized closed center with treatment for mental disorders. In June 2012 the district office ordered T.B.’s placement with medical treatment in accordance with the first paragraph of Article 397a of the Civil Code in security wing II of Lenzburg prison. In September 2012 the Federal Court dismissed at last instance the applicant’s appeal against that decision and in November 2013 the Federal Court confirmed that new Article 426 of the Civil Code constituted a sufficient legal basis for his placement “for assistance purposes”. T.B. again applied for his release. In a judgment of 8 July 2014, the Federal Court pointed out that it had ruled in its leading decision that the conditions of former Article 397a of the Civil Code were met in the present case and took the view that T.B. represented a high risk for others. Moreover, the Federal Court decided that it could not depart from its judgment of 22 November 2013 in which it had ruled that new Article 426 of the Civil Code provided a sufficient legal basis for placement “for assistance purposes”.

*Law* – The Court observed that T.B. had been placed “for assistance purposes”, namely psychiatric treatment, in the security wing of the prison for the sole reason that he represented a danger for others. It noted that, according to the case-law of the Federal Court, the conditions of placement “for assistance purposes” were governed by the Civil Code. Under Article 426 of that Code – as under former Article 397a – such placement was pronounced when the person suffered from mental disorders that required personal assistance or treatment that could only be provided in a specialised institution. The Court observed that the concerns about personal assistance and security considerations were somehow intertwined in the second paragraph of Article 426 of the Civil Code, which required the authority to take into account the burden that the person concerned represented for his or her relatives or for third parties, while ensuring the protection of others. In this connection, the Court noted that the Federal Council had clarified the scope of the relevant provision in that the protection of third parties could now constitute an additional element in the assessment of the situation but that it was “not decisive on its own”. The mere need to protect society from the person concerned could not justify placement “for assistance purposes”. The Court also noted that the Federal Court had expressly emphasised in its leading decision that deprivation of liberty “for assistance purposes” solely on the grounds of endangering others was not prescribed by law and did not constitute a valid reason for such placement. It followed that the second paragraph of Article 426 of the Civil Code could not justify the applicant’s detention by way of legal basis. These elements sufficed for the Court to find that the applicant had been held in the prison without a legal basis and purely by way of preventive detention. In conclusion, the Court took the view that the applicant’s placement “for assistance purposes” during the period from April 2014 to April 2015 in the prison’s security wing had not been implemented lawfully. It followed that there was no need to address the question whether the institution where he had been held was suitable. (Press release)

Conclusion: violation of Article 5 § 1, e) (unanimously).