



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 3083/07
by Ali AYASHI
against Turkey

The European Court of Human Rights (Second Section), sitting on 18 November 2008 as a Chamber composed of:

Françoise Tulkens, *President*,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 18 January 2007,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ali Ayashi, is an Iranian national who was born in 1978 and is currently detained in Greece. He was represented before the

Court by İ. Oklu, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

The circumstances of the case

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

On 4 February 2006 the Iranian authorities issued an arrest warrant against the applicant. According to the information given by the Interpol office in Iran to the Interpol office in Turkey, he was charged with fraud.

In February 2006 the applicant crossed the border into Turkey illegally and was caught by the Turkish security forces in possession of a forged passport. He was subsequently detained on remand. On 12 May 2006 the Istanbul Criminal Court of First Instance convicted the applicant of forgery of official documents and sentenced him to one year and eight months’ imprisonment.

On an unspecified date, extradition proceedings were brought before the Istanbul Assize Court. Before the court, the applicant and his lawyer maintained that the applicant was charged with political offences in Iran and that a decision had been taken to execute the applicant, a decision which had been published in the *Iranian Official Gazette* of 27 August 2005. They thus contended that, if returned to Iran, the applicant would be executed.

On 17 July 2006 the Istanbul Assize Court decided to extradite the applicant to Iran. In its judgment, the court noted that the applicant was charged with fraudulent acts, forgery and bribery in Iran, and that the offences with which the applicant was charged in Iran were not of a political or military nature. The assize court found that there were no circumstances hindering the extradition of the applicant according to Article 18 of Law no. 5237.

The applicant appealed against this decision.

On 12 February 2007 the Court of Cassation quashed the judgment of the first-instance court holding, *inter alia*, that the latter had failed to examine the applicant’s claim that he would be subjected to torture and executed if returned to Iran.

On 5 June 2007 the Istanbul Assize Court decided not to extradite the applicant to Iran, in the light of the Court of Cassation’s decision. This judgment became final on 13 June 2007.

In the meantime, the applicant requested asylum from the national authorities.

On 27 September 2006 the Ministry of the Interior rejected his request.

On an unspecified date the applicant brought proceedings before the Ankara Administrative Court for the annulment of the Ministry’s decision.

On 26 June 2007 the administrative court annulled the decision, holding that the administration had failed to examine the applicant's claim that he would be at risk if deported to Iran.

The Ministry of the Interior appealed.

The proceedings are currently pending before the Supreme Administrative Court.

On an unspecified date the applicant was released.

On 5 June 2007 the applicant was issued a temporary residence permit valid for three months.

PROCEDURE BEFORE THE COURT

On 18 January 2007 the applicant lodged his application with the Court. The applicant requested not to be extradited to Iran.

On 19 January 2007 the Acting President of the Chamber to which the case has been allocated decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Iran before midnight on 6 February 2007. The Government was requested to provide information concerning the applicant's extradition to Iran. Furthermore, both the Government and the applicant were requested to submit a copy of the *Iranian Official Gazette* of 27 August 2005 which allegedly contained the decision to execute the applicant and which was allegedly submitted to the case file before the Istanbul Assize Court.

On 2 February 2007 the Government submitted their observations together with supporting documents. They maintained, *inter alia*, that there was no decision to execute the applicant and that the applicant had been sentenced to seven years' imprisonment in Iran. The Government further submitted a Verbal Note prepared by the Embassy of Iran in Ankara, dated 2 August 2006, according to which the applicant had not been sentenced to death but to seven years' imprisonment in Iran as he had been convicted of fraud and forgery.

With a letter dated 2 February 2007, received by the Court on 12 February 2007, the applicant submitted copies of several newspaper articles. According to these articles, several public officials had told the press that the applicant was responsible for large scale fraud in Iran and that those who had been involved in organised financial crime could be sentenced to death. In one of these articles, published in *Iran Daily* on 29 May 2006, the Deputy Governor General of Khuzestan informed the press that the applicant was "one of the main elements of the network that funded terrorists in Khuzestan".

On 5 February 2007 the President of the Chamber decided to prolong until midnight on 22 February 2007 the interim measure indicated under Rule 39 of the Rules of Court.

On 20 February 2007 the President of the Chamber decided to prolong the interim measure indicated under Rule 39 pending the outcome of the proceedings before the Court.

On 10 January 2008 the applicant informed the Court that he was recognised as a refugee under the mandate of the Office of the United Nations High Commissioner for Refugees.

On 28 February 2008 the respondent Government informed the Court that the applicant's whereabouts was unknown.

On 6 June 2008 the Court received a letter from a certain Maria Arampatzi, an advocate in Greece. Mrs Arampatzi informed the Court that the applicant was detained in Komotini prison, Greece.

On 24 July 2008 the respondent Government confirmed that the applicant was in detention in Greece.

By a letter dated 5 September 2008 the applicant also informed the Court that he was in detention in Greece. He submitted that his deportation to Iran had been ordered by the Greek authorities.

COMPLAINTS

The applicant complained, without invoking any Article of the Convention, that if the Turkish authorities returned him to Iran he would face a real risk of execution.

The applicant further complained under Article 6 of the Convention that he did not have a fair trial as the Istanbul Assize Court's decision to extradite him was in violation of Article 18 of the Turkish Criminal Code and Protocol No. 6 to the Convention.

THE LAW

The Court notes that, in the present case, the applicant's complaints were related to his possible extradition from Turkey to Iran. The Court further observes that the Turkish Government complied with the interim measure indicated by the Court and halted the deportation. Furthermore they released the applicant from detention and issued him a temporary residence permit which he did not renew since he fled to Greece. The applicant is now detained in Greece. In these circumstances, the Court considers that the applicant can no longer claim to be a victim of a violation of the Convention, within the meaning of Article 34, in so far as his complaints

were brought against the Government of Turkey (see *Mohammedi v. Turkey* (dec.), no. 3373/06, 30 August 2007) .

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Sally Dollé
Registrar

Françoise Tulkens
President