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

FIFTH SECTION

DECISION

Application no. 56102/12
Halit AKTAS
against Germany

The European Court of Human Rights (Fifth Section), sitting on 8 October 2013 as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 28 August 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Halit Aktas, is a Turkish national, who was born in 1960 and lives in Katzweiler. He was represented before the Court by Mr W. Körberer, a lawyer practising in Frankfurt am Main.

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

1. The extradition decisions

3. On 25 March 1999 the Antalya District Court issued an arrest warrant against the applicant. According to the arrest warrant and the bill of indictment of the Republican General Public Prosecutor of Antalya dated 5 April 1999 the applicant and his brother, A.A., were suspected of the instigation of murder of S.Y. and G.A., the wife of A.A., for adultery. They were accused of having ordered, *inter alia*, their brother Ö.A. to find the

couple and to have subsequently paid A.Y. and E.K. in order to kill them. On 18 March 1999 the applicant's sister in law G.A. and S.Y. were murdered.

4. On 8 August 1999 the applicant was arrested by the German police in the course of an international search.

5. On 18 August 1999 the Zweibrücken Court of Appeal preliminarily ordered the applicant's detention pending extradition.

6. On 17 September 1999 the Court of Appeal confirmed this decision after it had received the formal extradition request.

7. On 17 November 1999 it revoked its decision of 17 September 1999 and declared the applicant's extradition to be inadmissible. The Court of Appeal found that the crime the applicant had been accused of could be punished with the death penalty and that the Turkish authorities had failed to renounce its imposition and execution. The applicant was subsequently released.

8. On 7 February 2002 the Court of Appeal again ordered the applicant's detention pending extradition. It held that the Turkish authorities had submitted a new extradition request including a declaration not to impose the death penalty on the applicant. The arrest warrant could, however, not be executed.

2. The first request to declare the extradition inadmissible

9. On 21 May 2002 counsel applied to revoke the arrest order and to declare the applicant's extradition inadmissible. He submitted that the applicant would run a risk to be subjected to torture or inhuman treatment in case of extradition. Referring to a general risk of being subjected to torture during police custody, counsel argued that the authorities had used torture in the pending criminal proceedings. He relied on letters to and a statement before the Criminal Division of the Antalya Court from the co-accused E.K. in which he maintained to have been tortured by the police. He submitted a copy of E.K.'s letter as well as a part of the minutes of the hearing. Moreover, counsel referred to the testimony of the co-accused brother of the applicant, Ö.A., who claimed that duress had been exercised by the police.

10. On 11 June 2002 the Zweibrücken Court of Appeal dismissed the request for lack of concrete facts that the applicant would run a risk of being tortured in case of his extradition. Neither general sources of information nor the submitted testimonies of the applicant's co-accused disclosed sufficiently concrete information.

3. The second request to declare the extradition inadmissible

11. On 31 March 2011 new counsel submitted another request to revoke the arrest order and to declare the applicant's extradition to Turkey inadmissible. Counsel maintained that the applicant would be subjected to treatment contrary to the rule of law. He also argued that the applicant would face a cruel and degrading punishment. According to him the applicant would face a lifelong sentence under aggravated conditions. In addition, he submitted that the applicant's arrest order in Turkey was based on unlawfully obtained evidence.

12. Counsel informed the Court of Appeal about the progress of the criminal proceedings in Turkey. According to him the Antalya Court of Assizes had convicted A.Y. and E.K. of homicide and sentenced them to death. The applicant's brother, Ö.A., had been sentenced to imprisonment for participation in the crime, while the applicant's brother and husband of the victim, A.A., had been acquitted. On 24 April 2002, the Court of Cassation had quashed the judgment for failure to provide adequate reasoning, in particular, concerning the insufficient assessment of the content and the origin of the confessions of the accused.

13. Moreover counsel submitted several statements of witnesses and of the co-accused who all claimed the use of torture by the police during the investigation. He submitted, *inter alia*, the written testimony of A.Y. in which he had revoked his police testimony claiming that the police had put pressure on him and used torture to extract evidence. Furthermore, he submitted a statement of the applicant's brother, A.A., according to which the police in Sorgun and Antalya had tortured him to extract a confession. Moreover, he submitted a statement of the co-accused Z.Y. who had alleged that he had severely been tortured by the police in Sorgun and Antalya in order to make him confess. Counsel submitted also a witness statement of C. describing that the police had tortured him to extract evidence to the detriment of members of the A. family.

14. Having consulted the Zweibrücken Court of Appeal the Zweibrücken General Prosecutor decided to contact the Turkish authorities in order to obtain information about the arrest warrant, the criminal proceedings as well as about the expected sentence and its execution. The list of questions included, *inter alia*, the question whether any allegation of torture had been made during the criminal trial.

15. On 4 July 2011 the Rhineland-Palatinate Ministry of Justice and Consumer Protection informed the Zweibrücken General Prosecutor that the Federal Office of Justice (*Bundesamt für Justiz*) had expressed the opinion that the applicant would not receive a lifelong prison sentence under aggravated conditions. It therefore requested the Zweibrücken General Prosecutor to review the list that should be transmitted to the Turkish authorities. The General Prosecutor informed the Court of Appeal accordingly.

16. On 12 July 2011 the Court of Appeal informed the Zweibrücken General Prosecutor that its questions about the practice of pardoning were not upheld. At the same time it stressed that the remaining questions of the list still had not been answered.

17. On 14 July 2011 the Zweibrücken General Prosecutor sent an abridged list of questions to the Rhineland-Palatinate Ministry of Justice and Consumer Protection in order to forward them to the Turkish authorities. This list still contained the question whether any indications of torture had been alleged during the criminal trial.

18. On 22 August 2011 the Federal Office of Justice sent the list to the Foreign Ministry. It reported about the case and found that there was no need to request information about the alleged use of torture or the life-long prison sentence under aggravated conditions. Referring to a report of the Federal Foreign Office it stated that the situation concerning torture and ill-treatment in Turkey had significantly improved during the last years. Respective concerns did not arise in cases of non-political nature like the case at hand. The Federal Office of Justice found that the applicant's submissions did not disclose any details or concrete evidence in this regard. Further, a life-long prison sentence under aggravated conditions appeared unlikely as the crime the applicant had been accused of, was not related to the security of the State. Conditional release would thus be possible after having served 30 years of the sentence. The Federal Office of Justice thus proposed to submit solely questions about the progress of the proceedings in Turkey without any reference to possible torture allegations.

19. By verbal note of 8 December 2011 the Turkish embassy declared that the arrest warrant of the applicant was still in force and that the extradition request was upheld.

20. On 16 January 2012 counsel confirmed receipt of a copy of the verbal note and requested the Zweibrücken General Prosecutor to be informed about motions to the Court of Appeal in order to be able to submit comments.

21. On 19 January 2012 the Zweibrücken Court of Appeal dismissed the applicant's request to declare the extradition inadmissible. Referring to the acquittal of A.A. it held that the applicant was not in danger of facing a criminal trial contrary to the rule of law in Turkey. Being the victim's husband, A.A. had had a strong motivation for the crime. Despite incriminating testimonies he had been acquitted for lack of evidence. Moreover, the Court of Appeal found that the annulment of the first instance decision by the Court of Cassation also supported the expectation of a fair trial. Furthermore, the Court of Appeal rejected the alleged torture claims. It found no concrete evidence that persons involved in the criminal proceedings had been subjected to torture. The submitted written testimonies contained only general assertions of torture and pressure without a description of details and lacked any verifiable information.

Finally, the Court of Appeal found that the applicant would not be sentenced to a life-long prison sentence under aggravated conditions as this sentence was only imposed for offences related to the security of the State.

22. The applicant lodged a complaint with the Federal Constitutional Court. On 26 March 2012 the Federal Constitutional Court refused to admit the constitutional complaint for consideration without giving any reasons (no. 2 BvR 431/12).

COMPLAINTS

23. The applicant complained under Article 3 of the Convention about the planned extradition to Turkey despite concrete evidence that he would be subjected to torture. Moreover, he alleged that the execution of the expected lifelong prison sentence under aggravated conditions would amount to degrading treatment.

24. The applicant complained under Article 6 of the Convention of unfairness of the extradition proceedings in Germany, in particular that the Court of Appeal had failed to hear him before dismissing his request.

25. The applicant complained furthermore under Article 6 of the Convention that the criminal proceedings in Turkey had been unfair and would amount to a denial of justice, as his accusation had been based on testimonies obtained by the application of torture. He claimed that there was a real danger that respective evidence would be admitted at the criminal trial against him.

26. Finally, the applicant complained under Article 13 of the Convention that the Court of Appeal had failed to properly investigate his risk of being subjected to torture after his extradition.

THE LAW

A. Complaint under Article 3 of the Convention

27. The applicant complained under Article 3 of the Convention that he would be subjected to torture in order to extract a confession by the Turkish authorities after his extradition. Furthermore, he complained that in case of his conviction he would have to serve a life-long prison sentence under aggravated conditions which would amount to a degrading treatment.

Article 3 reads as follows:

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

28. It is the settled case-law of the Court that extradition 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 would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I).

29. In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see, among others, *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

30. As to the alleged risk of being subjected to torture, the Court notes the conclusion of the Court of Appeal that the testimonies of witnesses and the general allegations of the applicant's co-accused, as submitted by counsel, had lacked concrete facts allowing verification. Having had regard to these statements and all the material before it, the Court sees no reasons to come to a different conclusion. While all the testimonies alleged in general terms the use of torture or ill-treatment by the police during the criminal investigation in 1999, no more concrete details were given. The testimonies contain neither details about the kind of the reproached behaviour, the police officers involved or their number nor about the exact times and places. Moreover, the Court notes that more than 13 years have passed since the torture and ill-treatment had allegedly taken place.

31. Concerning the applicant's fear of a life-long prison sentence under aggravated conditions, the Court notes that the Court of Appeal found that the applicant would not have to face this sentence as the charges against him concerned a crime not related to the security of the State. The Court observes that the applicant confined his complaint to the allegation that a life-long prison sentence under aggravated conditions as such would amount to degrading treatment, without giving a further reasoning. In particular, the applicant did not comment on the Court of Appeal's conclusion that he would not face a life-long prison sentence under aggravated conditions.

32. In the light of these considerations, the Court finds that the applicant has failed to substantiate that he faced a real risk of being subjected to treatment contrary to Article 3 in case of his extradition to Turkey (compare also *Kaplan v. Germany* (dec.), no. 43212/05, 15 December 2009).

33. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to Article 35 § 4.

B. Complaint under Article 6 of the Convention

34. Invoking Article 6 the applicant alleged to face unfair criminal proceedings in Turkey after his extradition. He claims in particular the admission of torture evidence in the criminal trial against him.

35. Further, he complained of not having been heard by the Court of Appeal in the extradition proceedings in Germany before his request to revoke the arrest warrant had been dismissed.

Article 6, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

36. The Court reiterates 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, § 40, ECHR 2000-X; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I). Consequently, Article 6 § 1 is not applicable to the extradition proceedings in Germany.

37. However, it is established in the Court's case-law that an issue might exceptionally raise under Article 6 by an expulsion or extradition decision in circumstances where the fugitive risked suffering a flagrant denial of justice in the requesting country. The Court has held that the admission of torture evidence can amount to such a flagrant denial of justice (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 258 and 267, ECHR 2012 (extracts)).

38. As to a possible admission of evidence obtained by torture the Court observes, firstly, that the Turkish Court of Cassation had quashed the judgment of the Antalya Court of Assizes. It found in particular that the first instance decision lacked a proper reasoning, especially concerning the assessment of the confessions of the applicant's co-accused. Secondly, as established above, the applicant has failed to substantiate that torture had been used in the criminal proceedings in Turkey. Under these circumstances the Court agrees with the findings of the Court of Appeal that there were no indications that the applicant would face a flagrant denial of justice in Turkey.

39. Accordingly, there is no appearance of a violation of Article 6.

40. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to its Article 35 § 4.

C. Complaint under Article 13 of the Convention

41. Invoking Article 13 of the Convention the applicant complained that the Court of Appeal had failed to properly investigate the risk of him being subjected to torture in case of his extradition. The applicant maintained that the Court of Appeal had also violated his obligation to clarify a possible torture risk by failing to request more information from the Turkish authorities, despite its initial intention to do so.

Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

42. The Court reaffirms that Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of an "arguable" complaint under the Convention and to grant appropriate relief (see, among other authorities, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2286, § 95). The Court reaffirms in this context the importance it attaches to an effective remedy that independently scrutinizes a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 given the irreversible nature of the harm that might occur if the risk of ill-treatment materialised (*Chahal v. the United Kingdom*, 15 November 1996, § 151, *Reports* 1996-V).

43. The Court has doubts if the applicant could rely on an arguable complaint in the meaning of Article 13 as the Court declared his claims of substantive violations manifestly ill-founded (see above, paragraphs 34, 40). Having regard to the fact that Articles 13 and 35 § 1 are both concerned with the availability of remedies for the enforcement of the same Convention rights and freedoms, it would appear rather incoherent to apply a different standard for declaring claims under substantive provisions of the Convention "manifestly ill-founded" under Article 35 § 1, but at the same time "arguable" under Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 54, Series A no. 131; *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 33, Series A no. 172).

44. However, the Court of Appeal reviewed upon the applicant's request its decision of 2002 to declare the extradition admissible. Neither the decision's reasoning nor other documents disclose any indication that the Court of Appeal had failed to scrutinize the applicant's allegations of a violation of Article 3 or 6 on the merits. While it is true that the Court of Appeal had initially requested to contact the Turkish authorities for more information about possible torture claims, it is for the domestic courts to

decide on the extent to which evidence is to be taken. The Court notes in this context that later in the proceedings the Federal Office of Justice, relying, *inter alia*, on a country report by the Foreign Office, had found it unlikely that the applicant would risk being subjected to torture after return.

45. Moreover, the applicant could challenge the decision of the Court of Appeal before the Federal Constitutional Court relying on his constitutional vested right to freedom from torture, inhuman or degrading treatment caused by the extradition decision.

46. In view of these circumstances, the Court finds that the applicant had benefitted from domestic remedies that effectively examined the applicant's complaints on the merits, including those raising possible issues under the Convention.

47. Accordingly, there is no appearance of a violation of Article 13.

48. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected pursuant to its Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President