CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 72032/01
by Mario ARONICA
against Germany

The European Court of Human Rights (Third Section), sitting on 18 April 2002 as a Chamber composed of

Mr L. CAFLISCH, *President,*
Mr G. RESS,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 11 July 2001,

Having regard to the decision of the President of the Chamber not to apply Rule 39 of the Rules of Court,

Having regard to the information obtained from the respondent Government on a request by the rapporteur (Rule 49 § 2 (a) of the Rules of Court) and the comments in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mario Aronica, is an Italian national, who was born in 1962 and is currently detained in a prison in Saarbrücken (Germany) pending extradition to Italy. He is represented before the Court by Mrs Marianne Louise Neu, Mr Raoul Muhm and Mr Adelmo Manna, lawyers practising in Saarbrücken, Munich and Rome respectively.

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

The applicant is living in Germany with his wife and three children since 1994.

On 10 February 2001 the Palermo Prosecutor's Office issued a warrant of arrest against the applicant who was wanted in particular for serving the remainder of a prison sentence of five years, five months and 24 days by virtue of a judgment given by the Palermo Court of Appeal on 28 October 1999. The applicant was found guilty of having dealt, as a leading member of a criminal association, in stolen cars during the period from 1993 to 1995.

On 10 April 2001 the applicant was arrested in Saarlouis for extradition purposes following a report included in the Schengen Information System at the request of the Palermo Prosecutor's Office. Having been interrogated by a judge on 11 April 2001, the applicant was transferred to the Saarbrücken prison. On 18 April 2001 the Saarland Court of Appeal (*Saarländisches Oberlandesgericht*) ordered the applicant's provisional detention pending extradition and on 17 May 2001 his detention pending extradition.

On 31 May 2001 the Italian authorities submitted in addition to their request for the applicant's extradition a decision of the Palermo Prosecutor's Office of 27 April 2001 fixing the applicant's global sentence in the light of previous convictions at seven years', one month's and seven days' imprisonment and of six months' imprisonment.

On 27 June 2001 the Saarland Court of Appeal authorised the applicant's extradition to Italy. It found that there was no obstacle to extradition and that the extradition request of the Italian authorities complied with the requirements of Article 2 § 1 of the European Convention on Extradition.

On 5 July 2001 the applicant who claimed to be unfit for detention and travel, applied to be examined by a psychiatrist of his choice.

On 9 July 2001 the applicant lodged a constitutional complaint with the Federal Constitutional Court (*Bundesverfassungsgericht*). He submitted in particular that his extradition based on convictions for property offences appeared disproportionate in relation to his right to respect for his family life. He further submitted that the conditions of detention in Italian prisons

constituted inhuman and degrading treatment and that he was unfit for detention and travel.

On 10 July 2001 the applicant applied for an interim injunction (*einstweilige Anordnung*) staying the extradition proceedings pending the proceedings before the Federal Constitutional Court. He alleged in this respect that the proceedings before the Italian courts had been unfair.

On 10 July 2001 the applicant also applied to the Saarland Court of Appeal to grant him another hearing in accordance with the law, to revoke its decision of 27 June 2001 and to declare the extradition inadmissible, respectively to suspend the execution of the warrant of arrest pending extradition. He submitted that he was unfit for detention and travel and that his extradition would destroy his family life. He further stated that the disastrous conditions of detention in Italian prisons were contrary to the international and German *ordre public*.

The applicant obtained opinions from his psychiatrist as to the likely effect of being kept in detention and extradited to Italy. In reports dated 10 and 12 July 2001, Pr Dr Dr S. stated that the applicant suffered from depressions and anxiety, needed medical treatment and was unfit for detention. Moreover he suffered from claustrophobia which severely compromised his ability to travel. He was also at a very serious risk of suicide if he were to be extradited to Italy.

In an opinion dated 10 July 2001 sought by the Saarbrücken Prosecutor's Office, the doctor of the Saarbrücken prison certified the applicant as being fit for travel.

On 11 July 2001 the Saarland Court of Appeal rejected the applicant's request for judicial review of the decision of 27 June 2001 authorising his extradition. However, having regard to the contradictory medical opinions, the Court of Appeal ordered that an official examination be conducted by the health authorities as regards the applicant's ability to be detained and to travel.

In an opinion dated 18 July 2001 Dr D., a senior psychiatrist at the Sonnenberg Psychiatric Clinic in Saarbrücken, reported that the applicant showed signs of depression and anxiety, but was fit for detention and travel. In a further opinion the doctor of the Saarbrücken prison stated that the applicant suffered from a chronic liver disease and recurrent lumbar sciatica, but also confirmed that he was fit for detention and travel.

On 19 July 2001 the Federal Constitutional Court refused to accept the applicant's constitutional complaint for adjudication.

In the light of the medical reports submitted with regard to the applicant's state of health, the Saarbrücken Health Authorities (*Gesundheitsamt*) considered on 23 July 2001 the applicant as being fit for detention and travel.

The applicant submitted also opinions concerning the medical condition of his wife and his son Davide. Two psychiatric reports dated 27 July 2001

concluded that the applicant's wife who had been hospitalised from 9 to 10 July 2001 for drug intoxication, was the victim of a depressive development connected with an emotional dysfunction and misuse of drugs. A risk of her attempting to commit suicide could not be excluded in case of a separation from her husband. In a further opinion dated 19 July 2001, a logopedic reported that the applicant's son Davide, born in 1984, suffered from stuttering, that the separation from his father was likely to be an attributable factor to this symptom and that a stable family situation would be necessary to reduce this problem.

In the night from 9 to 10 December 2001 the applicant attempted to commit suicide in the Saarbrücken prison while being placed under a 15 minute watch. He slit his wrists and took sleeping pills.

His requests to be transferred to a hospital in Merzig for psychiatric treatment were refused.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention that the German authorities refuse to take adequate measures to protect his life since his detention and the envisaged extradition to Italy placed him at a very serious risk of suicide. He complains in this connection that the official medical reports did not take into account this risk. Furthermore these reports were based on superficial examinations and in conditions which give rise to doubts as to the quality and seriousness of these reports.

Invoking Article 8 of the Convention, the applicant complains that his extradition would have a severely damaging effect on his private and family life. He has been living in Germany with his wife and two minor sons for seven years. The whole family has fully integrated into German society. His two younger sons attend school in Germany. Moreover, his wife is suffering from serious psychiatric problems and she was at a very serious risk of suicide as well. On 9 July 2001 she had to be committed to hospital for having made such an attempt. Under these circumstances, it cannot be expected from the members of his family to follow him to Italy. His extradition would put an end to his family life. He maintains that the measure complained of was disproportionate to the seriousness of the property offences committed by him in Italy. He refers in this context to a judgment of 1 November 1996 ATF [judgments of the Swiss Federal Court] 122 II 485) where the Swiss Federal Court had given particular weight to the interest of an Italian citizen in continuing his family life with a pregnant woman and her two children in Switzerland, having regard to her bad health and her unstable psychological state and the young age of the children. In that case the Swiss Federal Court had concluded that the extradition of the

Italian citizen to Germany with a view to serve the remainder of a prison sentence in that country following a conviction for property offences would constitute a breach of Article 8 of the Convention.

The applicant also complains of a violation of Article 6 of the Convention.

THE LAW

1. The applicant claims that his extradition to Italy would violate Articles 2 and 3 of the Convention. He alleges that the authorities failed in their responsibilities by not properly assessing his unfitness for detention.

Article 2 of the Convention provides in its first sentence:

> "1. Everyone's right to life shall be protected by law. ..."

Article 3 of the Convention provides:

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

The Court recalls that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see the L.C.B. v. the United Kingdom judgment of 9 June 1998, *Reports of judgments and decisions* 1998-III, p. 1403, § 36).

In the context of prisoners, the Court has had previous occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent where that individual dies (see e.g. *Salman v. Turkey* [GC] no. 21986/93, ECHR 2000-VII, § 99).

As to Article 3 of the Convention, the Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of this provision. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, amongst other authorities, the Tekin v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, § 52).

In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will also have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see e.g. the Raninen v. Finland judgment of 16 December 1997, *Reports* 1997-VIII, p. 2821-22, § 55).

It is relevant in the context of the present application to recall also that the authorities are under an obligation to protect the health of persons deprived of liberty (Hurtado v. Switzerland, Comm. Report 8 July 1993, Series A no. 280, p. 16, § 79). The lack of appropriate medical treatment may amount to treatment contrary to Article 3 (see *Ilhan v. Turkey* [GC] no. 22277/93, ECHR 2000-VII, § 87).

As to the decision to extradite the applicant to Italy, the Court recalls 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. However in exercising their right to expel such aliens Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. It is precisely for this reason that the Court has repeatedly stressed in its line of authorities involving extradition, expulsion or deportation of individuals to third countries that Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment (e.g. the Ahmed v. Austria judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 38; and the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports* 1996-V, §§ 73-74).

The Court has examined all the evidence made available in relation to the question of the applicant's health and his ability to be detained and to travel. It considers that in the present case nothing suggests that the authorities failed in their responsibility by not properly assessing the applicant's state of health. Furthermore there is no indication that the German authorities have disregarded the applicant's physical and mental condition, or failed to provide necessary medical care. The Court also notes that in the present case the extradition is to a State Party to the Convention.

In these circumstances, the Court finds no appearance of a failure to protect the applicant's life nor that the applicant by reason of his detention was subject to torture or inhuman or degrading treatment or punishment.

It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to article 35 §§ 3 and 4 of the Convention.

2. The applicant further complains that the extradition would violate his right to respect for his private and family life guaranteed under Article 8 of the Convention.

Article 8 of the Convention provides as relevant:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, ..."

The Court has no doubt that the decision to extradite the applicant to Italy amounts to an interference with his right to respect for both his private and his family life. However, the Court considers that such interference may be regarded as complying with the requirements of the second paragraph of Article 8, namely as a measure "in accordance with the law", pursuing the aims of the prevention of disorder and crime, as well as being "necessary in a democratic society" for those aims. Although the applicant's removal from Germany would involve considerable hardship, the Court considers, taking into account the margin of appreciation left to the Contracting States in such circumstances (see the Boughanemi v. France judgment of 24 April 1996, *Reports* 1996 II, p. 610, § 41), that the decision to extradite the applicant was not disproportionate to the legitimate aims pursued. There is therefore no appearance of a violation of Article 8.

It follows that this part of the application must also be rejected as being manifestly ill-founded pursuant to article 35 §§ 3 and 4 of the Convention.

3. The applicant complains that he was denied a fair hearing by the German courts, contrary to Article 6 § 1 of the Convention, the relevant part of which provides:

> "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..."

However, the Court recalls 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, as the most recent authority, the *Maaouia v. France* judgment of 5 October 2000 [GC], n° 39652/98, to be published in the official reports of selected judgments and decisions of the Court).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Lucius CAFLISCH
President