

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

FIRST SECTION

DECISION

Application no. 40902/05
by Mohamad Abdel Rahman BILASI-ASHRI
against Austria

The European Court of Human Rights (First Section), sitting on 30 August 2011 as a Chamber composed of:

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 14 November 2005,

Having regard to the observations submitted by the parties and the factual information submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mohamed Abdel Rahman Bilasi-Ashri, is an Egyptian national, who was born in 1966 and lives in Götzendorf (Austria). Before the Court, he is represented by Ms M. Pitzlberger, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

In December 1994 criminal proceedings against the applicant and sixteen co-accused were opened in Egypt on suspicion of belonging to an illegal association whose aim was to threaten national order and security by means of violence and terror and of having committed serious criminal offences, which had been committed with the aim of financing their political activities. On 25 December 1995 the Egyptian State Security Emergency Court convicted the applicant *in absentia* of these offences and sentenced him to fifteen years' imprisonment and hard labour.

In the meantime the applicant arrived in Austria in April 1995 and requested asylum, submitting that he had been member of the Muslim Brotherhood and had been arrested and ill-treated by the Egyptian police on various occasions. On 26 April 1995 the Federal Asylum Office dismissed the asylum request and, on 11 May 1995, the Federal Minister for Internal Affairs dismissed the applicant's appeal against this decision. On 11 March 1998 the Administrative Court rejected the applicant's complaint against the Federal Minister's decision of 11 May 1995, as it found that according to the transitory provisions of the Asylum Act 1991 the Minister's decision had become null and void and the now competent authority, the Independent Asylum Panel, had to decide again on the applicant's appeal.

On the basis of the applicant's conviction by the Egyptian State Security Emergency Court the Egyptian Ministry of Justice, on 22 July 1998, filed a request for extradition. Extradition proceedings were instituted and, in July 1999 the Investigating Judge at the Krems Regional Court filed a report with the Vienna Court of Appeal proposing that the requests for extradition be allowed. On 21 December 1999 the Court of Appeal declared the extradition request inadmissible as regards acts which were deemed to be political offences under section 14 § 1 of the Extradition Act but granted the request in so far as it was based on counts of forgery, robbery and theft. The extradition was subject to the condition that the judgment of the State Security Emergency Court of 25 December 1995 would be declared null and void, and that the applicant would not be re-tried before a court with exclusive jurisdiction to deal with political criminal cases but before an ordinary court. In this regard, the Court of Appeal referred to section 10 of the Egyptian Code of Criminal Procedure, according to which a conviction *in absentia* must be annulled as soon as the person concerned is arrested, and a re-trial ordered.

Thereupon, on 10 January 2002, the Federal Minister of Justice granted extradition and informed the Egyptian Embassy in Vienna. In August 2002 the Federal Ministry of Justice was informed by the Egyptian authorities that they would not accept the conditions laid down in the extradition order. On 20 December 2004, however, the Egyptian Ministry for Foreign Affairs sent a letter to the Austrian Embassy in Egypt in which it accepted the

conditions put by the Austrian Federal Minister of Justice of 10 January 2002.

On 17 March 2005 the Federal Minister of Justice asked the Regional Court to re-open the proceedings on the applicant's extradition. The Minister asked the court to consider in particular whether the applicant's case was not one in which extradition was inadmissible as a disproportionate hardship for the person concerned (*Härtefall*) under Section 22 of the Extradition and Legal Assistance Act. Also the applicant requested the Regional Court to re-open the proceedings. On 24 June 2005 the Regional Court rejected the request for re-opening of the extradition proceedings and, on 13 September 2005, the Court of Appeal dismissed the applicant's appeal.

Meanwhile, in the asylum proceedings, the Independent Asylum Panel, on 31 July 2003, quashed the Federal Asylum Office's decision because it had failed to examine whether the non-refoulement clause under the Asylum Act applied in the applicant's case. In March 2005 the Federal Asylum Office decided again dismissing the applicant's request for asylum and holding that his removal to Egypt was allowed. The applicant appealed. On 26 March 2009 the Court of Asylum dismissed his appeal but, at the same time, granted protection against removal to Egypt under the Asylum Act. On 3 July 2009 the Constitutional Court rejected the applicant's request for legal aid for filing a complaint with the Constitutional Court. The applicant did not file such a complaint. The applicant is still in Austria.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that he will be subjected to ill-treatment if extradited to Egypt. He also submitted that prison conditions in Egypt are very bad, cells are overcrowded, conditions of hygiene appalling and medical treatment lacking. Such conditions amounted to inhuman treatment.

2. The applicant complained further under Article 6 that if he were returned to Egypt he would risk not receiving a fair trial, neither would he have access to appeal proceedings such as those guaranteed by Article 2 of Protocol No. 7. to the Convention

3. He also complained that extradition to Egypt would violate his rights under Articles 8, 9 and 10 of the Convention.

THE LAW

On 17 November 2005 the President of the First Section granted the applicant's request for an indication under Rule 39 of the Rules of the Court not to extradite him to Egypt. On 5 January 2006 the application was communicated to the respondent Government. On 2 May 2006 the Government submitted their observations and, on 1 June 2006, the applicant submitted his observations in reply.

Due to the subsequent developments of the applicant's case in Austria, on 6 April 2011, the parties were requested, under Rule 49 § 2 of the Rules of Court, to submit factual information on the state of the applicant's asylum proceedings before 20 April 2011. Subsequently the President of the First Section, upon a request by the Government, extended the time-limit for submitting the factual information to 6 May 2011. The applicant's representative was informed of the President's decision by letter of 19 April 2011. The Government submitted the information on 6 May 2011, but no such answer was received from the applicant.

By letter dated 16 May 2011, sent by registered post, the applicant's representative was notified that the period allowed for submission of the applicant's answer to the request for factual information had expired on 6 May 2011 and that no extension of time had been requested. The applicant's representative's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. However, no response has been received.

The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren Nielsen
Registrar

Nina Vajić
President