

**IN THE WESTMINSTER MAGISTRATES COURT**

**The Government of Turkey**

V

**Aydin Rayyatzadeh a.k.a. Adrian Raymond**

**RULING**

**Issues**

s.82 (Passage of Time)  
Article 3 (Prison Conditions)  
Article 8 (Right to a Family / Private Life)

The Government of **Turkey (the Government / 'Turkey')** has submitted a request for the extradition of **Aydin Rayyatzadeh (the Defendant / 'AR')**.

The Request is governed by the provisions of Part 2 of the Extradition Act 2003 (**the 2003 Act**), the Extradition Act 2003 (Commencement and Savings) Order 2003 and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003.

Turkey is designated for the purposes of s.71(4), 74(5), 84(7) and 86(7) of the 2003 Act.

- 1) The Secretary of State has issued a certificate under s.70(8) of the Act certifying that the Request for Extradition is valid and that it has been made in the approved way.
- 2) At the full hearing, which began on **13<sup>th</sup> October 2020** the Government was represented by **Stuart Allen** of counsel, while **Ben Keith** of counsel appeared for the Defendant.
- 3) The release of my ruling was reserved to today.
- 4) The Extradition Request consists of the following material : s.78(2) of the 2003 Act places a duty on the Judge dealing with the

extradition request, at the extradition hearing, to decide a number of matters.

- 5) Did the documents sent to him by the Secretary of State include the following :
  - (i) the documents referred to in s.70(9) of the 2003 Act, i.e. the extradition request and the accompanying certificate issued by the Secretary of State.
  - (ii) particulars of the person whose extradition is requested.
  - (iii) particulars of the offence specified in the request.
  - (iv) in the case of a person alleged to be unlawfully at large after conviction, a certificate issued in the category 2 territory of the conviction and (if the person sought has been sentenced) of the sentence.
- 6) Having reviewed the documents received, I am satisfied to the necessary standard that the provisions of s.78(2) have been fully complied with.
- 7) I am next required to consider the provisions of s.78(4) of the 2003 Act.
- 8) s.78(4) of the 2003 Act requires me to be satisfied that :
  - (a) the person appearing before me is the person whose extradition is sought
  - (b) each offence specified in the request is an extradition offence and
  - (c) copies of the documents received from the Secretary of State have been served on the defendant.
- 9) Having reviewed the information and documentation received I am satisfied to the necessary standard that the provisions of s.78(4) have been fully complied with.
- 10) I am next required to proceed under s.79 of the 2003 Act which makes it necessary for me to consider whether this extradition is barred by reason of :
  - (a) The rule against double jeopardy (as defined in s.80 )
  - (b) Extraneous considerations (as defined by s.81)
  - (c) The passage of time (as defined by s.82)
  - (d) Hostage-taking considerations (as defined by s.83)I shall return shortly to the challenges raised by **AR**.

- 11) If I am satisfied that there are no bars to extradition within the meaning of s.79 then – as this is a request based on the assertion that **AR** is unlawfully at large after conviction – I am to proceed under s.85 of the 2003 Act ( per s.79(5)).
- 12) Proceeding under s.85 of the 2003 Act requires me to decide whether **AR** was convicted in his presence. If satisfied that he was so convicted, then I am to proceed under s.87 (per s.85(2)).
- 13) I am satisfied that **AR** was present at trial. He was found guilty after trial and was sentenced, in his presence, to **6 years 8 months** for importation of **27 kilograms** of **Opium gum**, (equivalent to 3 kilograms of Opium). He served **2 years 9 months** before being moved to an open prison. There remains a balance of **3 years 11 months** outstanding, less any period spent on remand in the UK, and any further period to which he may be entitled to in accordance with Turkish licence / early release provisions..
- 14) **AR** was born on **25<sup>th</sup> May 1986** and does not consent to extradition. He was arrested in the UK, by police executing the request, on **6<sup>th</sup> September 2019**. He appeared in court the same day. Preliminary matters were dealt with uncontroversially and he was remanded in custody. Several weeks later he was released on bail where he has remained to date.
- 15) AR has raised a number of challenges to the proposed extradition, as follows :
- 16) **s.82 (Passage of time) Challenge :**  
s.82 of the 2003 Act states that “ *A person’s extradition to a Category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be **unjust** or **oppressive** to extradite him by reason of the passage of time since he is alleged to have (a) committed the offence (where he is accused of its commission .... ”.*
- 17) In **Kakis v Government of Cyprus (1978)** **1 WLR** , Lord Diplock said: “ *Unjust* I regard as primarily directed to the risk of prejudice to the accused in the conduct of the trial itself, “ **oppressive** ” as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they cover all cases where to return him would not be fair”.

- 18) The learned Judge in **Kakis** added that the person **cannot** rely on the passage of time argument if he has been responsible for the delay either by fleeing the country, concealing his whereabouts and/or deliberately evading arrest.
- 19) The House of Lords in **Gomes & Goodyear v Governments of Trinidad & Tobago (2009)** UKHL gave further guidance on the principles to be considered.  
Paragraph 31 of the Judgement stated ...  
*“The other main question discussed at some length during the argument is what approach should be adopted to the concepts of injustice and oppression within the meaning of s.82. This is, of course, touched on in the first sentence of Diplock para 1(in **Kakis**) And so far as concerns oppression, it is worth noting too Lord Diplock’s statement (paragraph 284) that ‘the gravity of the offence is relevant to whether changes in the circumstances of the accused which have occurred during the relevant period are such as would render his return to stand trial oppressive’. That said, the test of oppression will not easily be satisfied: hardship, a comparatively commonplace consequence of an order for extradition, is not enough”.*
- 20) In **Wisniewski v Poland (2016)** EWHC 386(Admin), the High Court considered passage of time where the requested person was a fugitive in accordance with the dicta laid down in **Goodyear & Gomes** aforesaid. It stated that ...*fugitive status is where a person has knowingly placed himself beyond the reach of a legal process and accordingly cannot then rely upon the passage of time bar.* `
- 21) If a person is subject to certain restrictions and chooses to leave the jurisdiction in breach of those restrictions, he cannot later rely on the Passage of Time bar.
- 22) In **Kila v Governor of Brixton Prison (2004)** EWHC 2824(Admin) Mr Justice Collins stated that ...*‘the mere fact of delay is unlikely in most cases, indeed the vast majority of cases, to justify a decision that to return would be oppressive. There must be more than mere delay’.*
- 23) **Article 3 Challenge**  
Article 3 states :  
***“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.***  
It is necessary for the requested person to demonstrate that there are

strong grounds for believing that, if returned, he will face a **real risk** of being subjected to torture or to inhuman or degrading treatment or punishment.

- 24) **R v Special Adjudicator ex parte Ullah (2004) AC** is an important decision. Albeit this was an Immigration Appeal decision, it has equal relevance to extradition cases which establishes that the risk needs to be substantial, not merely fanciful.
- 25) To determine whether there is a real risk of ill-treatment, it is necessary to examine the foreseeable consequences of sending the person to the receiving country, taking into account the general situation as well as the requested person's personal circumstances.
- 26) In **Miklis** Lord Justice Latham stated .....  
*"The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the particular individual could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse".*
- 27) **Article 8 Challenge**  
The Divisional Court has confirmed that the concept of "*private life*" per Article 8 is to be broadly defined (see **Niemitz v Germany (1977) EHRR**).
- 28) In **Norris v Government of USA (2010) SC**, the Justices of the Supreme Court unanimously held that the public interest in upholding bilateral extradition treaties would be "**seriously damaged**" if those who faced **serious** (as opposed to **trivial**) offences and who had families akin to **Mr Norris** were to preclude extradition from taking place.
- 29) The court in **Norris** made clear that the requested person would have to demonstrate that the impact of extradition went beyond the normal and often unfortunate consequences of extradition.
- 30) It was accepted in **Norris** that the effect on close family members was relevant and could be a "*cogent consideration*" and Lord Phillips stated in paragraph 65 "... *if extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of*

*circumstances might well lead a judge to discharge per s.87 of the 2003 Act”.*

- 31) Article 8 challenges were subject to further scrutiny in 2012 by the Supreme Court in the decision of **HH v Italy (2012) UKSC 25**, which also gave important guidance in relation to the rights of dependent children.
- 32) Further guidance of considerable significance was provided by the Divisional Court in **Polish Judicial Authorities v Celinski & Others (2015) EWHC 1274**. That decision underlined the need for this court to embark upon a careful balancing exercise in weighing the matters raised in favour of as well as against ordering extradition, in an Article 8 context.
- 33) **Celinski** underscored the importance of this court bearing in mind that, as was set out in paragraph 9 of the Judgment of the Lord Chief Justice : ..... *‘the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice. We would expect a judge to address these factors expressly in the reasoned judgment.’*
- 34) That decision also stated at paragraph 10 *“the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect”*
- 35) In relation to conviction appeals, the court in **Celinski** stated ..... (paragraph 13) *“The prevalence and significance of certain types of offending are matters for the requesting state to decide..... it will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been”*.
- 36) At paragraph 39 of **Celinski**, the judgment of the court went on to say that a proper balancing act needs to be carried out with detailed reasons to be provided..... *“The important public interests in upholding extradition arrangements, and in preventing the UK being a safe haven for a fugitive as Celinski was found to be, would require very strong counter-balancing factors before extradition could be disproportionate”*.

- 37) Each case has to be considered on a fact-specific basis and our courts are required to carefully weigh the requested person's Article 8 rights (and those of his partner and any dependent children) against the important public interest in the UK abiding by its international extradition obligation.
- 38) It is important to bear in mind that there is no test of exceptionality to be applied.

39) **Evidence received during the course of the Full Hearing :**

- 40) **Prof Rod Morgan** ('Prof Morgan') :  
Prof Morgan adopted the contents of his two reports prepared for this case dated **5<sup>th</sup> December 2019 & 2<sup>nd</sup> March 2020**. He gave evidence by way of authorised video-link.
- 41) Prof. Morgan is a very experienced expert in the field of prison conditions in a number of countries throughout the world, and he has given evidence to courts in the UK on many occasions in recent years.
- 42) Save for a visit in **January 2017** in respect of the request for the return of Rosslee Charles to Turkey - to face allegations of male rape - the Turkish authorities have refused to allow Prof. Morgan access to any of their prisons since the failed coup d'etat in **July 2016**.
- 43) Prof. Morgan confirmed that Turkey signed and ratified the ECPT in early 1988 and that the terms of the Convention became law in Turkey the following year.
- 44) Turkey has received over 30 CPT visits which the Prof. Morgan asserted reflects the serious concerns that the Committee has had in respect of conditions within the Turkish prison estate. He added that the ECHR has found breaches of Article 3 in over 1,000 cases.
- 45) He added that albeit the CPT has found that incidents of torture have substantially decreased since the 1990's, unacceptable psychological techniques are said to be still being used by some Anti-Terror Units.
- 46) The size of the Turkish prison population increased from **112,000** in **2009** to circa **180/190,000** in **2017**. Prof. Morgan said that since **2010** it has been very difficult to try to ascertain the exact number and locations of all Turkish prisons. There is considerable overcrowding in

a number of prisons within the Turkish estate while, at the same time, some others are operating at under-capacity. The logic and reasoning behind this statistic appears to be somewhat unfathomable.

- 47) He expressed concerns about the apparent lack of appropriate accountability mechanisms operating within the country. In his first report he stated that it seems that many Turkish prison governors appear to be unaware that Turkey was a signatory to OPCAT (The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment) ; a Treaty which supplements the 1984 UN Convention against Torture.
- 48) With specific reference to the Turkish Ombudsman and the Turkish Association of Human Rights and Equality, the National Preventative Body had been set up but Prof. Morgan stated that....` *All the evidence available to me suggests that this body is not operating*` .
- 49) Prof. Morgan referred to the large number of arrests made by the Turkish authorities after the failed coup in **July 2016** which, according to him, resulted in a general sense of intimidation and distrust in many segments of the population. Additionally thousands of judges, prosecutors and members of the police service were summarily either moved or dismissed in or about **July/ August 2016**.
- 50) According to the Turkish assurance document presented in the current case Yalvac prison is able to house 400 inmates but is currently operating under its capacity. In his initial report Prof. Morgan pointed out that the conditions of the prison have not been provided, nor has any information regarding leisure or other facilities available within that establishment.
- 51) He was unaware of any International visits having taken place in Yalvac. He had previously offered to inspect the establishment but his request was declined.
- 52) Until recently, the most recent released CPT report in respect of prisons in Turkey had been that dated **October 2017**. As at the date of the preparation of his reports, Turkey had not given a reason why they had not published the other reports. The protocol currently in place is that after a CPT report is received by the host country, it is for that country to decide whether, and when, to publish the document. The vast majority of countries are said to publish such reports with their comments as part of the document.

- 53) Prof. Morgan added that historically the Turkish prison estate has been the subject of repeated criticisms and complaints from a number of well-respected international bodies.
- 54) In evidence at the full hearing Prof. Morgan was able to provide this court with some updated information ; Turkey had recently released into the public domain the CPT reports in relation to visits in **April 2016, May 2017 and May 2019**, albeit they are yet to agree to the release of those in respect of visits in **August 2016 and August 2018**. The **April 2016** report was a discrete document relating exclusively to the prison where the PKK leader Abdullah Ocalan is currently detained as the sole occupant.
- 55) The **May 2017** and **May 2019** CPT reports are said to be critical of the levels of overcrowding, and to adversely comment on the shortage of some medical supplies and lack of sufficient staff. However none of these reports relate to Yalvac prison.
- 56) Prof. Morgan added that reports of ill-treatment (both in relation to State and Non-State agents) within the Turkish prison estate had reduced in recent years. Indeed in their 2017 and 2019 visits the CPT did not report evidence of inter-prisoner and / or staff violence. However sex offenders and those charged or convicted of politically-motivated / terrorist offences were said to be '**more vulnerable**' to such incidents.
- 57) **Prison Assurance :**  
Prof. Morgan was familiar with the written prison assurance provided by Turkey in the present case. While he did not suggest bad faith on the part of the Turkish authorities in respect of this document he expressed some reservations about it.
- 58) Prof. Morgan stated that he was not in a position to challenge the assurance by Turkey that AR will be held in Yalvac prison.
- 59) He acknowledged that Yalvac is a newly-built prison, having been opened in **January 2019**. However he believed that, in view of problems which have beset the Turkish prison estate in recent years, it is likely that there remains a real risk that AR will face treatment or conditions that would breach his Article rights 3 if he were to be extradited. This appears to be based on his knowledge of conditions within Turkish prisons which had previously given cause for concern.

He regards the assurance as being no more than a statement of intent rather than reflecting the actuality of the situation.

- 60) In my view, however, Prof. Morgan's reservations about prisons are somewhat hindered by the fact that he has not visited any prison in Turkey for just under 4 years, has not been to the Yalvac establishment and is therefore unable to pass any first-hand comment on the conditions said to presently exist there.
- 61) Prof. Morgan made reference to the case of Rosslee Charles whose return to Turkey was sought to serve a sentence of just over 7 years for the rape of a Turkish man in Turkey.
- 62) As previously mentioned, Prof. Morgan had been allowed to visit the Turkish prison estate in preparation of the Charles case before this court. He prepared a report which was considered in evidence. Senior District Judge Riddle sent the case to the Secretary of State but that decision was overturned on Appeal see **Charles v Turkey (2017) EWHC 952(Admin)**.
- 63) Mr Charles, a gay man who suffered from a number of mental health issues, was discharged by the Divisional Court as they found that there was a real risk of Article 3 abuse were he to be extradited. The court found that he was likely to be held in virtual solitary confinement for an unacceptable period of time.
- 64) Prof. Morgan agreed that the recent release of the **April 2016, May 2017** and **May 2019** CPT reports demonstrates a willingness by Turkey to 'open up' once again, albeit he added that there remain 3 reports unpublished.
- 65) Prof. Morgan also noted that the **May 2019** CPT stated that the committee had received '**very good cooperation from the Turkish authorities and that they had been provided with unfettered, quick and unannounced visits**'.
- 66) Prof. Morgan was unaware of any 'issues' being reported in respect of Yalvac, adding that the CPT generally focused their attention on 'problem' prisons and that there was nothing to suggest that Yalvac fell into that category.
- 67) He agreed that there was no evidence that Yalvac was overcrowded, nor that any extraditee who had been provided with an assurance that

he would be taken there, had either not been taken there or had been moved elsewhere within the Turkish prison estate against his will.

- 68) **Dr Matthew Hartley MBBS BSc (Hons) MRCPsych** ('Dr Hartley') was the next witness to give live evidence. He adopted the contents of his two reports prepared for use in these proceedings dated **6<sup>th</sup> December 2019** and **12<sup>th</sup> October 2020** respectively.
- 69) Dr Hartley is a Specialist Registrar in Forensic Psychiatry based at the Crofton Clinic, Bracton Centre, London. He qualified as a medical practitioner in 2013 and became a full member of the Royal College of Psychiatrists in 2018. He holds a Bachelor of Science degree in Medical Ethics and Law. His reports were written under the supervision of nominated Consultants. He has not previously given evidence in any court.
- 70) Dr Hartley had been seconded to work at HMP Wandsworth from **August 2019** through to **February 2020**. Albeit AR had been detained from **6<sup>th</sup> September 2019** until his release on bail on **1<sup>st</sup> November 2019** their paths never crossed.
- 71) Dr Hartley stated that the Wandsworth prison records showed that AR had been kept on normal location (i.e. he had not been taken to or held in the prison hospital wing, nor had he had occasion to be taken to any outside hospital for treatment or assessment). Furthermore it did not appear that AR had been prescribed any medication during his period of some 7 weeks detention in Wandsworth.
- 72) Additionally there was no evidence of any attempts at self-harm while detained at Wandsworth. Moreover AR had not been placed on an open ACCT (applicable to those considered to be at risk of self-harm or suicide) whilst on remand in Wandsworth prison.
- 73) Dr Hartley expressed the opinion that AR was suffering from PTSD and that his symptoms are likely to be being exacerbated by the stress of these ongoing extradition proceedings. He found that there had been little change in AR's symptoms and demeanour in the 2 meetings that he had, several months apart. Dr Hartley added that he has not seen evidence of malingering or fabrication of symptoms by AR.
- 74) He expressed concerns that ARs mental health may suffer adversely were he to be extradited, particularly were he to be returned to either of the prisons where he is said to have been abused. He would not

have ready access to the support of his family that he currently enjoys and which the doctor believes is important for his continued wellbeing.

- 75) Dr Hartley had been made aware of a self-harming incident said to have occurred in the Netherlands in 2014 when AR was detained there but no independent evidence in support had been provided to him so as to enable this witness to comment further.
- 76) Dr Hartley has not visited any Turkish prison and agreed that he has no first-hand knowledge of the treatment (professional or medicinal) that may be available to AR within the Turkish prison estate.
- 77) He was not aware of AR either taking any prescribed medication or being under the care of any psychiatrist or psychologist as of the date of the full hearing.
- 78) **Dr Julia Cohen MA MBBS DipRACOG MRCGP EFFFLM** ('Dr Cohen') was the next witness called by the defence. She adopted the contents of her report dated **9<sup>th</sup> December 2019**, prepared for use in these proceedings.
- 79) Dr Cohen is a qualified medical practitioner who has written well in excess of 1,000 medico-legal reports on evidence of torture, domestic violence and trafficking. She is head of Doctors for the Medical Foundation Medico-Legal Report Service (part of Freedom from Torture). She is a Fellow of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians. She has previously given evidence in courts in the UK on numerous occasions.
- 80) Dr Cohen interviewed AR for 2 hours at the Manor Hospital, Oxford on **25<sup>th</sup> November 2019**, some 11 months before the date of the full hearing.
- 81) Dr Cohen said that AR had revealed to her that he had been anally raped on 3 separate occasions while in prison in Turkey. He reported to her that he had felt unable to report the incidents to the prison authorities in Turkey for fear of repercussions. He was said to have been diagnosed as suffering from PTSD in 2014 after his return to the UK. She confirmed this diagnosis.
- 82) Dr Cohen also found AR to be suffering from low mood, low energy, loss of enjoyment and sleep disturbance. Albeit he also has suicidality thoughts, he is not currently believed to be at high risk of ending his

life. She found no evidence of malingering or fabrication in what AR had told her.

- 83) AR has described to Dr Cohen his concerns were he to be returned to a prison environment within the Turkish prison estate. He also made reference to having apparently made an attempt on his life when detained in the Netherlands prior to coming to the UK in 2014. It is correct to add, however, that no corroborative evidence in relation to that incident has been provided to Dr Cohen.
- 84) In Dr Cohen's opinion there is a real risk of an exacerbation in his PTSD and depression were extradition to be ordered, noting also the removal of the important protective factor of the current family support that he receives.
- 85) Dr Cohen has not visited any Turkish prison and is unaware of the medical treatment available therein for those suffering from symptoms similar to AR. She is unaware of the staffing levels or the material conditions prevailing in Yalvac.
- 86) In her opinion, any prison establishment is likely to exacerbate any feelings of depression / PTSD from which an inmate may suffer. She was aware that AR had been held in Wandsworth for several weeks on remand.
- 87) Dr Cohen said that she had advised AR to give serious consideration to seeking further assistance and support from his GP but is unaware as to whether he chose to do so.
- 88) The final witness called was AR's older sister **Dr Azalea Raad** ('Dr Raad'). She adopted the contents of her written statement dated **20<sup>th</sup> December 2019**.
- 89) Dr Raad said that she had visited AR in prison in Turkey shortly after his arrest and detention.
- 90) She confirmed that the family had later arranged to pay the sum (in Turkish Lira) of the equivalent of circa £3,000 which she acknowledged was part of the original prison sentence imposed on AR.
- 91) Dr Raad added that after this payment was made, his passport was released to him by the relevant Turkish authorities. According to Dr

Raad, she and her family thought that he had been released without conditions rather than for a very short period. (Turkey says his temporary release on licence was only for 7 days, and on condition that he remained at a designated hotel in the country) .

92) Dr Raad added that the family had been unaware of his obligation to return to prison to serve the balance of his sentence.

93) Dr Raad said that albeit she and her husband had moved to Germany in July 2017, they have recently returned to live in the UK. She was able to confirm that her brother AR speaks fluent Turkish.

**94) s. 82 Challenge :**

Put shortly, this challenge is promoted on the assertion that AR should not be regarded as a fugitive from justice and that it would be s.82 oppressive in all the circumstances to order his return.

**95) s.82 Ruling :**

Having considered the evidence in this case, I am entirely satisfied to the necessary standard that the Turkish authorities have demonstrated that AR is clearly a fugitive from Turkish justice. I shall endeavour to explain my reasons for this finding of fugitivity.

96) AR had maintained for some considerable time, in representations made to this court, that this request was made in entirely in error. Indeed he told the police on arrest in the UK that he had served the entirety of the sentence. I am satisfied that such an assertion was untrue.

97) During the course of the early part of these proceedings, it was asserted repeatedly on his behalf - doubtless on his instructions - that he had served the entirety of the sentence, having paid a sum to the Turkish authorities in lieu of the remaining part of the outstanding prison term, and that he had been allowed to leave Turkey and make his way back to the UK.

I have no difficulty in rejecting these assertions.

98) I accept the evidence from Turkey that AR had been only temporarily released from serving his prison sentence and I am entirely satisfied that AR had been made aware that his licence period was only for 7 days with an obligation to reside at a nominated hotel address for the entire period whereafter he had a duty to return to custody to serve the balance of his sentence.

- 99) The further information dated **7<sup>th</sup> October 2020** from the Turkish authorities states – and I accept - that AR was granted '*special leave*' from **14<sup>th</sup> March 2014** at 07.00 hours to reside at the Oslo Hotel at Cengiz Topel Cad. Yuksekova/Hakkari and that he '*was expected to return to the penal institution on 21<sup>st</sup> March 2014 at 07.00*,' but that he failed to do so.
- 100) As mentioned above, it was confirmed by his sister Dr Raad in evidence to this court, that the Turkish Lira equivalent of the £3,000 paid was part of the original sentence imposed.
- 101) According to his untested proof of evidence, AR says that after being released and leaving Turkey, he initially travelled to Iran where he stayed for several weeks as his father was unwell. He then states that he returned to the UK.
- 102) His proof adds that in November 2014 he travelled to the Netherlands for a holiday (where he was arrested, but later released, under the terms of a similar extradition request made to the Dutch authorities).
- 103) In his proof of evidence, AR stated that he had decided to change his name shortly after returning to the UK in late 2014 as the mention of his birth surname brought back bitter memories of the dreadful experiences that he says he suffered when in prison in Turkey. However as he chose not to give evidence, this explanation could not be tested in cross-examination.
- 104) It is also noted that no statement has been forthcoming from AR's Turkish lawyer who is said to have assisted AR and the family at the relevant time. This lawyer, **Mustafa Konyar**, is said not to have responded to enquiries made of him. Dr Raad said that he is believed to have given up practice to become a member of the Turkish parliament.
- 105) I am further entirely satisfied that when AR chose not to abide by the terms of the 7 day temporary release deciding instead to leave the country he clothed himself with fugitive status.
- 106) Having assessed all evidence relied upon and submissions ably made, I am satisfied that AR is unable to avail himself of the protection afforded by s.82 of the 2003 Act.

107) I am also satisfied that there are no exceptional circumstances that arise in relation to this challenge and accordingly this challenge must fail.

108) **Article 3 Challenge :**

This challenge is based on the submission that there are real risks that AR, if extradited will face breaches of his Article 3 rights and that, accordingly, extradition should be refused.

109) **Article 3 Ruling :**

**Turkey v Osgur Tanis :**

I note that Mr Keith relies, in part, on the recent decision of this court when I had refused the request by Turkey for the extradition of **Ozgur Tanis**. Whilst I do not propose engaging in a detailed analysis of my decision in that case, I am able to state that I was satisfied that in Tanis, there were real risks of Article 3 breaches in the event of return. I will, however, deal with Mr Keith's specific submissions on the Tanis decision.

110) Mr Keith points out that this court's decision in Tanis is the first case where the Turkish assurance in relation to prison conditions in respect of Yalvac prison has not been accepted. That may be so. However, put shortly, the cases of **Tanis** and AR are easily distinguishable, and it is very important to do so.

111) As is set out in my Judgment in **Tanis**, extradition was refused on the following grounds :

(i) **s.81(b)** by reason of his Kurdish ethnicity and his espoused political views (as a PKK supporter)

(ii) **Article 3 :**

(a) prison conditions - by reason of his Kurdish ethnicity linked to his support for the PKK.

(b) anticipated unacceptable periods of solitary confinement by reason of his ethnicity and linked political beliefs. He faces a very lengthy term of imprisonment if convicted of the he faces.

(c) anticipated life sentence, upon conviction, without appropriate review.

(iii) **Article 6 :** by reason of his Kurdish ethnicity linked to his support for the PKK.

112) It is perhaps trite to state that each case is to be dealt with on its own facts. Merely because I was not persuaded that the written assurance

provided in Tanis would be able to sufficiently assuage concerns raised in respect of challenges raised - such as Article 3 prison conditions - in no way means that I am constrained to reject the written assurance provided in the present case.

113) For example, there are no political overtones to AR's request. It is not suggested that these proceedings have been brought for any improper (political or other) motive or that he will suffer s.81 prejudice upon return. The current proceedings arise from a serious drug-smuggling case in respect of which AR was convicted.

114) As mentioned elsewhere, the expert evidence of Prof. Morgan in **Tanis** was unchallenged as he was not subject to any cross-examination. I was persuaded by his expert evidence with particular reference to the real risk anticipated to be faced by Mr Tanis as a result of his Kurdish ethnicity and linked long-standing PKK support, in relation to the s.81(b), Article 3 and Article 6 challenges. The parties are respectfully referred to the entirety of my Judgment in **Tanis** for its full terms and effect.

115) It is also right to point out that this court has been informed that Turkey has given notice of its intention to seek permission to appeal against my decision to order discharge in the Tanis case.

116) The defence, understandably, rely heavily on the expert evidence that they have called during these proceedings. It is asserted that the sexual torture meted out to AR when he was previously detained within the Turkish prison estate, coupled with the PTSD and depression from which he is said to suffer as a result, provide a clear basis for this court being able to find that there is a real risk of Article 3 breaches occurring in the event of return to any Turkish prison.

117) I would refer the parties to the foregoing paragraphs 40 to 87 where I have sought to distil the evidence provided by the experts in question. Dr Hartley and Dr Cohen are of the opinion that AR is suffering from PTSD and depression and each expresses concerns that extradition may well result in a deterioration of his mental health. There is mention of an episode said to have taken place whilst AR was in custody in the Netherlands where he is said to have self-harmed, but, again absent AR giving evidence to this court, that cannot be further investigated. No independent evidence to support that allegation has been provided, so as to assist this court make an assessment of the veracity of this claim.

118) As mentioned heretofore, it remains unclear what did actually occur in the Netherlands in relation to AR's arrest under the terms of a similar extradition request made there by Turkey in 2014 (while it is said that he was on holiday there en route back to the UK). He was initially held but released when a request for a remand in custody was rejected. No statement from AR's Dutch lawyer has been provided to assist this court.

119) From the scant information available it appears that there may only have been the one court hearing in the Netherlands. There appears to be no suggestion that those proceedings remain ongoing.

120) In any event, the fact of his arrest and detention in the Netherlands will have alerted AR – if he was unaware – that the firm assertion being made by Turkey was that he was being sought to serve the outstanding balance of his sentence. It is noted that shortly after his return to the UK he chose to change his name. Once again it has not been possible to ask him about that as he has chosen – as is his right – not to give evidence during the course of the full hearing.

121) During the several weeks that AR was detained in Wandsworth prison, it is noted that, notwithstanding he was held in a custodial environment, he was not :

- (i) placed on an open ACCT,
- (ii) seen by the mental health team(s) there (Dr Hartley did not come across him),
- (iii) prescribed any medication or treatment.
- (iv) said to have attempted to either end his life or self-harm.

This is notwithstanding the concerns expressed by Dr Cohen as to how he may react to being detained in such surroundings.

122) He remained on normal prison location throughout that period (i.e. he was not held in the hospital wing) nor was he taken to any outside hospital for assessment or treatment.

123) Albeit Dr Cohen advised him to consider reverting to his GP for further assistance from which he may have derived benefit, it is not known whether he decided to do so.

124) There is no suggestion that AR is presently receiving any medication and / or that he is under the care of any treating psychologist or psychiatrist for any of his symptoms and.

125) AR derives much support from his family and it is appreciated that this may well be lacking or reduced if extradition were to be ordered. It is also borne in mind that Dr Hartley and Dr Cohen express clear concerns that the trigger for a deterioration in his mental health is likely to be the return to the Turkish prison estate (Dr Hartley highlighted a return to either of the 2 prisons where the sexual abuse is said to have occurred).

126) The Turkish authorities were asked to comment on the assertions made in ARs untested proof of evidence that albeit he is said to have suffered from episodes of rape, pneumonia and a toothache whilst in prison, they had been able to check their records and noted that there was no mention of any of these health issues / concerns having been reported.

127) According to ARs sister, Dr Raad, AR speaks Turkish, so there would not have been a language problem for him, and while it may be understandable (as he states in his proof) that he chose not to complain about the episodes of sexual abuse for fear of either retribution or being placed in isolation, it appears more than strange that he would not have raised the other(uncontrovertial) health issues (pneumonia and toothache).

128) The present position appears to be that, as is set out in his proof of evidence, AR is able to maintain full-time gainful employment as a gas engineer (earning circa £35,000 per annum) and he resides with family members in a property that he has been able to purchase with the assistance of the 'help to buy' UK government scheme.

129) Prof. Morgan - correctly in my view - is unable to challenge the assertion from Turkey that, if extradited, AR will be housed in the recently built prison in Yalvac. There is no evidence that this establishment is operating over capacity (or that it has done so since opening in January 2019).

130) Further Information Provided by Turkey.

The Turkish authorities have readily and repeatedly engaged with these proceedings. They have provided a number of documents by way of further information. These include the following :

- (i) a detailed **19 page** document dated **5<sup>th</sup> June 2020** and
- (ii) another thorough document comprising **11 pages**, dated **11<sup>th</sup>**

**December 2019**, which sets out full details of the prison conditions available in Yalvac and the parties are referred thereto.

131) These important pieces of further information also include, inter alia, details of the medical assistance available as well as the opportunity for recreational and educational activities, the provision of 'nutritional values' and the like. It confirms a commitment of 'zero tolerance' in respect of any acts of violence or torture. It provides details of the availability of the inmates to receive visits (legal and social), receive and send letters and make telephone calls and receive medical treatment.

132) The Turkish authorities also confirm that foreign nationals may request diplomatic representations or consular visits which shall be granted 'without delay' para (i) page 14 of FI dated **5<sup>th</sup> June 2020**). There is no reason to think that this would not be available to AR. He is the holder of dual Iranian and British citizenship.

**133)** Turkey has provided another piece of further information dated **17<sup>th</sup> June 2020**. In my opinion, this is also an important document wherein they dealt comprehensively with a number of specific questions, by providing the important detailed information, *inter alia*, as follows :

- (i) They were informed that AR is believed to suffer from PTSD, depression and anxiety and they are asked what psychiatric facilities, services and medical personnel are available to him at Yalvac prison. Their reply states that Yalvac prison is ...`*a prison with a psycho-social unit with sufficient number of psychologists and an infirmary with medical personnel, and these units provides (sic) the necessary service and support to the convicts and detainees when requested. Moreover in the case of sudden psychological traumas, the prison psychologist may refer to the person (sic) to hospitals where the specialists provide service.*'

(ii) They were informed that AR has an increased suicide risk and they are asked to provide information as to the suicide watch procedures that are available in Yalvac prison. Their reply states `*In the mentioned prison, the persons with a high suicide risk are applied suicide risk individual intervention program (sic) and mental intervention program configured in two levels, within the scope of short and long term intervention which are provided to the psycho-social unit*'

*by our Directorate General. Short and long term intervention is planned personally according to the needs and risk status of the person. In long term intervention therapies, the person with high suicide risk are applied cognitive reconfiguration, developing self-trust, acquiring problem solving abilities, cathartic practice, as well as therapeutic methods. 3 psychologists, including one psychologist with a master degree on Family and Marriage counselling, working in Yalvac T Type closed prison.*

*3 health officers and one primary care physician assigned in the health unit provide psychological and health services to all detainees and convicts in the prison.*

*The prisoners with suicide risk or possible suicide risk are referred to Yalvac State hospital, Isparta Hospital and Mental Health Hospitals in line with the recommendation of the primary care physician and in the framework of the national legislation, and they can receive psychiatric and pharmacological support.``*

- 134) The above detailed information demonstrates, in this court's view, not only that the Turkish authorities are aware of AR's particular health issues, but that they are in a position to deal with them appropriately.
- 135) In this document the Turkish authorities also confirm that Yalvac prison has been recently built and opened and is an establishment that does not suffer from overcrowding
- 136) . It is also noted that Turkey has recently released 3 CPT reports and that according to the Committee, in 2019 the Turkish authorities are said to have co-operated appropriately with them.

**137) ARs Family Support :**

AR benefits from a close and supportive family. His father **Muhammed Rayyatzadeh** has filed a statement with this court. He describes himself as 'self-employed' who lives in Iran. When AR was arrested in Turkey, his father engaged a lawyer for him.

- 138) ARs father added that the lawyer said that were AR to pay a sum he could be released early from his prison term. He added that he made the arrangements to pay the sum in question (in Turkish Lira) and that shortly thereafter AR was released unconditionally. The father was not available to give evidence during the course of the full hearing. As

mentioned elsewhere, it is not conceded by the Turkish authorities that payment of the sum in question expunged the outstanding term of imprisonment to be served (an assertion that I accept).

- 139) This court has received into evidence a statement from Sam White, a Senior Parliamentary Researcher who is married to AR's younger sister Dr Alalea Kia. Mr White states that he and Dr Kia travelled to the Netherlands in 2014 when they learned of ARs arrest and detention there. The purpose of the visit was to '*provide all possible assistance to Aydin...*'
- 140) AR's sister Dr Alalea Kia has also filed a statement, confirming the visit to the Netherlands as referred to by her husband, Mr White. She is a Postdoctoral Researcher and is ARs younger sister. In her statement dated **13<sup>th</sup> December 2019** she stated that she was planning to move to the USA for work purposes, but it is not known whether she has, in fact, yet moved there. She provides details of her mother's health issues, fibromyalgia, osteoarthritis and attendant depression. Dr Kia added that she would not be able to bring her mother to the USA.
- 141) Dr Kia visited her brother in prison in Turkey in late 2013 / early 2014. She travelled with her mother, father and aunt. She said that she had become aware of a self-harm episode said to have taken place while her brother was briefly in custody in the Netherlands. She confirmed that she and her husband supported the family financially while AR was resolving a number of issues and completing his qualifications (to become a gas engineer).
- 142) Further evidence of the willingness of the family to come to ARs assistance is shown by the court record which reveals that the substantial bail cash security of £50,000 was paid by Dr Kia.
- 143) There is no reason to think that this caring family will not continue to maintain contact with AR and provide such support as they are able, in the event of extradition being ordered.
- 144) Furthermore, were he to be returned, the Turkish (as well as the UK) authorities will be aware that extradition will have been ordered under the terms of written assurances given to this court. AR will also be able to avail himself of appropriate consular visits and assistance throughout the period of his detention within the Turkish prison estate.

- 145) There is no evidence before this court as to whether any of the alleged perpetrators of the earlier sexual assaults remain within any part of the Turkish prison estate (bearing in mind that the allegations go back a number of years). The prison in Yalvac is located in the Isparta Province in South / West Turkey.
- 146) The 2 prisons where the abuse is said to have occurred, are located several hundreds of miles away from Yalvac. The prison in Dogubeyazit is situate in the Eastern most district of the country, in Agri province, while Erzurum prison is located in Eastern Anatolya.
- 147) Even if any of those individuals do remain in custody, there is no information to suggest that they are in the recently-opened Yalvac establishment, bearing in mind its relatively low capacity of 400 places.
- 148) Having given this challenge very careful consideration I am entirely satisfied that not only are the Turkish authorities well aware of their Article 3 obligations so far as they relate to AR, but that they will abide by them.
- 149) They have been repeatedly informed of his health issues and I am entirely satisfied that they have appropriate measures in place in Yalvac prison to deal with such matters satisfactorily.

150) Accordingly I am not satisfied that there is a real risk of Article 3 breaches occurring in the event of return and therefore this challenge must **fail**.

**151) Article 8 Balancing Exercise :**

**(a) Factors said to be in Favour of Granting Extradition :**

- (i) There is a strong and continuing important public interest in the UK abiding by its international extradition obligations.
- (ii) The seriousness of the offence in respect of which he has been convicted and sentenced. There is said to be a term of circa 3 years 11 months imprisonment outstanding, less any period of time spent on remand by order of this court.
- (iii) The assertion by the Judicial Authority and the finding by this court that the Requested Person is a fugitive from Justice.

**152) (b) Factors said to be in Favour of Refusing Extradition**

- (i) AR states in his uncontested proof of evidence that he was born in Iran and has been settled in the UK since 2002. He says that he was granted

asylum here after a few months, based on his orthodox Christian beliefs.

(ii) His proof adds that he has led a law-abiding life since settling in the UK and that he is in employment as a gas engineer and lives in fixed accommodation with his mother and younger sister Alalea and her husband.

(v) AR asserts in his untested proof of evidence that he is not a classic fugitive from justice and that, when he was released from prison in Turkey he believed that he had served the entirety of his sentence.

(vi) He adds that the experiences within the Turkish prison estate have left him suffering from Post Traumatic Stress Disorder, flashbacks and, on occasions suicidal ideation. Concerns are expressed as to the adverse effects that extradition will have on his health as, for example, he will be deprived of the important ongoing support of his family.

(vii) AR points out that, even on the figures submitted by Turkey, he has served a large part of the sentence imposed and that, in all the circumstances it would amount to a disproportionate interference with his Article 8 rights were he to be returned to serve the balance.

### **153) Article 8 Findings and Ruling :**

I find that it will **not** be a disproportionate interference with the Article 8 Rights of the requested person for extradition to be ordered.

My reasons and findings are as follows :

(i) It is very important for the UK to be seen to be upholding its international extradition obligations. The UK is not to be considered a 'safe haven' for those sought by other Convention countries either to stand trial or to serve a prison sentence.

(ii) In my opinion, the offence set out in the EAW is very serious and, in the event of a conviction in the UK for like criminal conduct, a prison sentence of some length is likely to be imposed.

(iii) This court finds that the requested person is unlawfully at large. The reasons for this finding are set out heretofore. Put shortly, I am entirely satisfied that the Turkish authorities made it known to AR that he was being released only for a 7 day period (with an obligation to reside at a nominated hotel throughout that period) whereafter he was to return to prison. Instead he chose to flee the country.

(iv) It is appreciated that there will be hardship caused to AR and potentially to his mother to whom he is said to provide financial and practical support but that of itself is insufficient to prevent an order for extradition from being made. This is not a case involving any dependent children. There are other family members who may well have to step in to assist AR's mother with her needs (as the family

appear to have done satisfactorily during the several weeks that he had been remanded into custody by this court)

(vi) The parties are to be aware that this court has given very careful to AR's health issues and the trauma that he is said to suffer as a result of serious abuse to which he states he was subjected when previously housed within the Turkish prison estate.

(vii) As this court has found as a fact that AR is a fugitive from justice, this finding brings paragraph 39 of the decision in Celinski above into consideration. I do **not** find that, in accordance with that decision, there are such strong counter-balancing factors as would render extradition Article 8 disproportionate in this case.

154) **Conclusion :**

I have listened very carefully to the submissions impressively and eloquently made by counsel for both parties. I have also given consideration to the live evidence that I have heard as well as to all of the documentary evidence placed before me.

155) I find that **Aydin Rayyatzadeh**'s extradition to **Turkey** to serve the balance of the prison sentence of imprisonment previously referred to, complies with his Convention Rights within the meaning of the Human Rights Act 1998.

156) I also find that there are no bars to this extradition as would intervene to prevent extradition and in accordance with the provisions of s.87(3) of the 2003 Act I am sending this case to the Secretary of State for a decision as to whether extradited is to be ordered.

157) In accordance with the provisions of s. 92(2)(a) and (b) of the 2003 Act I hereby notify **Aydin Rayyatzadeh** of his right to seek permission to appeal to the High Court against my decision (to send this case to the Secretary of State) and that if he exercises this right of appeal, the said application for permission to appeal will not be heard until the Secretary of State has made her decision.

158) The application for permission to appeal can be on a point of law or fact or both (see s.103(4) of the 2003 Act).

159) Notice of Appeal under s.92(a) must be given in accordance with the rules of court before the end of 14 days starting with the day on which the Secretary of State informs him under s100(1) or (4) of the order that she has made.

**John Zani**

**District Judge (M.Ct)**

**Appropriate Judge**

**12<sup>th</sup> November 2020**