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This factsheet does not bind the Court and is not exhaustive

Extradition and life imprisonment

See also the factsheet on "Life imprisonment".

Article 3 of the European Convention on Human Rights:
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Nivette v. France

3 July 2001 (decision on the admissibility)

The applicant, an American national who was suspected of having murdered his girlfriend, submitted in particular that his extradition to the United States would be in breach of Article 3 of the European Convention on Human Rights if he were to be sentenced to life imprisonment without any possibility of early release.

The European Court of Human Rights declared the application **inadmissible** as manifestly ill-founded. Noting in particular that the Sacramento County District Attorney had given an undertaking under oath that, whatever the circumstances, the State of California would not charge one of the special circumstances which must be charged for the death penalty or a sentence of life imprisonment without any possibility of early release to be imposable and that her undertaking was binding on her successors and on the State of California, the Court found that the assurances obtained by the French Government were such as to avert the danger of the applicant's being sentenced to life imprisonment without any possibility of early release. His extradition therefore could not expose him to a serious risk of treatment or punishment prohibited by Article 3 of the Convention.

See also: ***Olaechea Cahuas v. Spain***, judgment of 10 August 2006.

Einhorn v. France

16 October 2001 (decision on the admissibility)

The applicant, an American national, left the United States after being accused of murdering his former partner. He was found guilty, in his absence, of murder and sentenced to life imprisonment. The French Government agreed to extradite him, on the ground that he would benefit from a new and fair trial if returned to Pennsylvania and that he would not face the death penalty. He appealed and the French *Conseil d'Etat* rejected his appeal. Before the Court, the applicant submitted that his extradition had been granted in breach of Article 3 of the Convention in that, in particular, he was likely to have to serve a life sentence without any real possibility of remission or parole.

The Court declared the application **inadmissible** as manifestly ill-founded. Reiterating that it cannot be ruled out that the imposition of an irreducible life sentence could raise an issue under Article 3 of the Convention and referring in this respect to Council of Europe's documents on the subject[1], it concluded from this that it was likewise not to be excluded that the extradition of an individual to a State in which he runs the risk of being sentenced to life imprisonment without any possibility of early release may raise an issue

[1]. See the general report on the treatment of long-term prisoners, drawn up by Sub-Committee no. XXV of the European Committee on Crime Problems (Council of Europe, 1977), and Resolution (76) 2 on the treatment of long-term prisoners, adopted by the Committee of Ministers of the Council of Europe in the context of the Sub-Committee's work.

under Article 3 of the Convention. In the instant case, however, the Court noted that the Governor of Pennsylvania could commute a life sentence to another one of a duration which afforded the possibility of parole. Consequently, although the possibility of parole for prisoners serving life sentences in Pennsylvania was limited, it could not be inferred from that that if the applicant was sentenced to life imprisonment after a new trial in Pennsylvania, he would not be able to be released on parole, and he did not adduce any evidence to warrant such an inference.

See also: ***Schuchter v. Italy***, decision on the admissibility of 11 October 2011; ***Segura Naranjo v. Poland***, decision on the admissibility of 6 December 2011.

Harkins and Edwards v. the United Kingdom

17 January 2012 (judgment)

Both applicants faced extradition from the United Kingdom to the United States where, they alleged, they risked the death penalty or life imprisonment without parole. The US authorities provided assurances that the death penalty would not be applied in their cases and that the maximum sentence they risked was life imprisonment.

Regarding the risk of life imprisonment without parole, the Court held that there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **if** one or the other applicant was **extradited** to the United States, finding that neither applicant had demonstrated that there would be a real risk of treatment reaching the Article 3 threshold as a result of his sentence. In the first applicant's case, the Court was not persuaded that it would be grossly disproportionate for him to be given a mandatory life sentence in the United States. He had been over 18 at the time of his alleged crime, had not been diagnosed with a psychiatric disorder, and the killing had been part of an armed robbery attempt – an aggravating factor. Further, he had not yet been convicted, and – even if he were convicted and given a mandatory life sentence – keeping him in prison might continue to be justified throughout his life time. And if that were not the case, the Governor of Florida and the Florida Board of Executive Clemency could, in principle, decide to reduce his sentence. As regards the second applicant, he faced – at most – a discretionary life sentence without parole. Given that it could only be imposed after consideration by the trial judge of all relevant factors and only if he were convicted for a pre-meditated murder, the Court concluded that such a sentence would not be grossly disproportionate.

Babar Ahmad and Others v. the United Kingdom

10 April 2012 (judgment)

The applicants were indicted on various charges of terrorism in the United States, which requested their extradition. They complained about the risk of serving their prison term in a super-max prison, where they would be subjected to special administrative measures, and of being sentenced to irreducible life sentences.

The Court held, as regards five of the applicants[2], that there would be **no violation of Article 3** of the Convention as a result of the length of their possible sentences if they were extradited to the United States. It noted in particular that it was not certain that, if extradited, the applicants would be convicted or that a discretionary life sentence would be imposed on them. However, even if such a sentence was imposed on the applicants, given the gravity of their charges, the Court did not consider that they would be grossly disproportionate. Moreover, since none of the applicants had yet been convicted or started serving their sentence, the Court considered that they had not shown that, upon extradition, their incarceration in the United States would not serve any legitimate penological purpose. It was further uncertain whether, should that point ever be reached, the US authorities would refuse to avail themselves of mechanisms available in their system to reduce the applicants' potential sentences.

[2]. The examination of the sixth applicant's complaints was adjourned and the Court decided to consider them under a new application number (no. 17299/12).

Trabelsi v. Belgium

4 September 2014 (judgment)

This case concerned the extradition, which had been effected despite the indication of an interim measure by the Court, under Rule 39 of the Rules of Court[3], of a Tunisian national from Belgium to the United States, where he is being prosecuted on charges of terrorist offences and is liable to life imprisonment. The applicant complained in particular that his extradition to the United States of America would expose him to treatment incompatible with Article 3 of the Convention. He contended in this regard that some of the offences for which his extradition had been granted carried a maximum life prison sentence which was irreducible *de facto*, and that if he were convicted he would have no prospect of ever being released.

The Court considered that the life sentence to which the applicant was liable in the United States was irreducible inasmuch as US law provided for no adequate mechanism for reviewing this type of sentence, which meant that his extradition to the United States had amounted to a **violation of Article 3** of the Convention.

The Court reiterated in particular that the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by any provision of the Convention, provided that it was not disproportionate. On the other hand, if it was to be compatible with Article 3 such a sentence should not be irreducible *de jure* and *de facto*. In order to assess this requirement the Court had to ascertain whether a life prisoner could be said to have any prospect of release and whether national law afforded the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner. Moreover, the prisoner had to be informed of the terms and conditions of this review possibility at the outset of his sentence. The Court also reiterated that Article 3 implied an obligation on Contracting States not to remove a person to a State where he or she would run the real risk of being subjected to prohibited ill-treatment. In the present case, the Court considered that in view of the gravity of the terrorist offences with which the applicant stood charged and the fact that a sentence could only be imposed after the trial court had taken into consideration all relevant mitigating and aggravating factors, a discretionary[4] life sentence would not be grossly disproportionate. It held, however, that the US authorities had at no point provided any concrete assurance that the applicant would be spared an irreducible life sentence. The Court also noted that, over and above the assurances provided, while US legislation provided various possibilities for reducing life sentences (including the Presidential pardon system), which gave the applicant some prospect of release, it did not lay down any procedure amounting to a mechanism for reviewing such sentences for the purposes of Article 3 of the Convention.

Findikoglu v. Germany

7 June 2016 (decision on the admissibility)

In 2015 the applicant was extradited to the United States of America where he was wanted in connection with an international conspiracy he was alleged to have led to attack the computer networks of financial service providers for financial gain. The applicant complained that the range of offences for which he had been extradited carried a maximum prison sentence of 247.5 years, which meant that, if convicted, he would have no prospect of being released.

The Court held in particular that, in the applicant's case, the existence of a risk of a prison sentence amounting to life imprisonment could not be assumed and the problem of whether or not the applicant would have any chance of being released if convicted was not relevant. It therefore declared the application **inadmissible** as being manifestly

[3]. Interim measures are measures taken as part of the procedure before the Court which are binding on the State concerned. They do not prejudge the Court's subsequent decisions on the admissibility or merits of the cases concerned. If the Court allows the request for an interim measure the applicant's expulsion is suspended while the Court examines the application (however, the Court follows the applicant's situation, and can lift the measure during its examination of the case). See also the factsheet on "Interim measures".

[4]. "Discretionary" in the sense that the judge can impose a less severe sentence, ordering a set number of years' imprisonment.

ill-founded, finding that the applicant had not demonstrated that his extradition to the United States exposed him to a real risk of treatment reaching the Article 3 of the Convention's threshold as a result of the likely sentence.

Harkins v. the United Kingdom

10 July 2017 (Grand Chamber – decision on the admissibility)

This case concerned the extradition of a British national to the United States of America to face trial for first-degree murder. The applicant complained that his extradition to the United States would violate Articles 3 and 6 (right to a fair trial) of the Convention, because if convicted in Florida he would face a mandatory sentence of life in prison without the possibility of parole. This is the second time the applicant has applied to the European Court with regard to his extradition. In 2012, in the judgment *Harkins and Edwards* (see page 1 above), the Court found that his extradition would not violate Article 3 of the Convention. However, the applicant was not extradited, and following the subsequent judgments of the Court in *Vinter and Others* and *Trabelsi* he argued before the national courts that developments in the Court's Article 3 case-law on life sentences without the possibility of parole were such as to require the re-opening of the proceedings. The UK courts refused to re-open the proceedings and, in this second application to the Court, the applicant, relying on the recent case-law, once again complained that his extradition would breach his rights under Article 3.

The Grand Chamber declared both complaints **inadmissible**. It first held that the applicant's complaints under Article 3 of the Convention should be declared inadmissible as they were "substantially the same" (within the meaning of Article 35 § 2 (b) of the Convention) as the Article 3 complaint considered by the Court in 2012. In reaching this conclusion, the Grand Chamber rejected the applicant's argument that the development of its case-law in the *Vinter and Others* and *Trabelsi* cases could constitute "relevant new information" for the purposes of Article 35 § 2 (b). To find otherwise would undermine the principle of legal certainty and undermine the credibility and authority of the Court's judgments. As further concerned the applicant's complaint under Article 6 of the Convention, the Grand Chamber concluded that the facts of the case did not disclose any risk that the applicant would suffer a flagrant denial of justice. Lastly, the Grand Chamber also decided that the interim measure (under Rule 39 of the Rules of Court) indicating to the UK Government that it should stay the applicant's extradition was to be lifted.

Pending applications

López Elorza v. Spain (no. 30614/15)

Application communicated to the Spanish Government on 12 November 2015

The applicant, a Venezuelan and Colombian national detained in Madrid, faces extradition to the United States where, he alleges, he risks life imprisonment without parole.

The Court gave notice of the application to the Spanish Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment) and 35 (admissibility criteria) of the Convention.

Romagnoli v. Montenegro (no. 11200/15)

Application communicated to the Government of Montenegro on 19 October 2017

The applicant, an Italian national, complains about his extradition to the United States in view of the criminal sanction he is facing there.

The Court gave notice of the application to the Government of Montenegro and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment) of the Convention.

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