Thematic factsheet[1]
Update: July 2018

DETENTION WITH A VIEW TO EXPEL, RETURN, TRANSFER OR EXTRADITE A PERSON TO ANOTHER COUNTRY

Member States have the right, as a matter of well-established international law, to control the entry, residence and removal of aliens. In addition, neither the European Convention on Human Rights nor its Protocols confer the right of political asylum. However, expulsion by a Contracting State may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport that person to the country in question.

For the European Court of Human Rights, it would hardly be compatible heritage of political traditions, ideals, fre the Convention refers, for a Contracting State to knowingly surrender a person to another State where he or she would be in danger of being subjected to torture or inhuman or degrading treatment or punishment.

Member States must also refrain from taking any measure – such as the transfer, extradition or expulsion of a person to another country –where substantial proof showed that the person in question would, in the receiving country, face a real risk of being subjected to a flagrant denial of justice or of being exposed to a serious, rapid and irreversible decline in his or her state of health on account of the absence of appropriate medical treatment, resulting in intense suffering or to a significant reduction in life expectancy.

CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS[2]

RISK OF ILL-TREATMENT

Applicants risking ill-treatment if extradited to Uzbekistan

Ismoilov and Others v. Russia - 2947/06
Judgment 24.4.2008

[1] This document presents a non-exhaustive selection of the ECtHR relevant case law. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of the European Convention of Human Rights. This information is not a legal assessment of the alerts and should not be treated or used as such.

[2] The case-law selected hereafter does not specifically refer to journalists. The principles developed by the Court apply nevertheless to every person falling under the jurisdiction of a member State.

The applicants, who are 12 Uzbek nationals and one Kyrgyz national, were arrested in June 2005 in Russia. They were the subject of an extradition request from the government of Uzbekistan, which claimed that they had financed the May 2005 unrest in the Uzbek city of Andijan. The Russian authorities refused to give them refugee status or asylum. Instead, a deputy prosecutor general ordered their extradition to Uzbekistan after noting that criminal offences and that the Russian authorities had received diplomatic assurances from the Uzbek government that they would not be tortured or sentenced to death upon their return. The extradition orders were upheld by the Russian courts, but the applicants were not extradited because of an interim measure indicated by the Court under Rule 39 of the Rules of Court.

The European Court of Human Rights noted that most of the applicants had left Uzbekistan in order to flee persecution on account of their religious beliefs or successful businesses. Some of them had experienced earlier ill-treatment at the hands of the Uzbek authorities, others had seen their relatives or business partners arrested and charged with participation in illegal extremist organisations. After the unrest in Andijan in May 2005 the applicants were arrested in Russia at the request of the Uzbek authorities, who suspected them of financing the insurgents.

Information from a number of objective sources demonstrated that problems in connection with the ill-treatment of detainees still persisted in Uzbekistan and no concrete evidence had been produced of any fundamental improvement in the protection against torture in recent years. Although the Uzbek government had adopted certain measures designed to combat the practice of torture, there was no proof that those measures had returned any positive results. The Court was therefore persuaded that ill-treatment of detainees was a pervasive and enduring problem in Uzbekistan. Moreover, as to the applicants' personal situation, given that the UN each had a well-founded fear of being persecuted and ill-treated if extradited to Uzbekistan and had granted them refugee status and taking into account the well-documented evidence of widespread torture in that country, the Court was persuaded that the applicants would be at a real risk of suffering ill-treatment if extradited. Finally, given that the practice of torture in Uzbekistan had been described by reputable international experts as systematic, the Court was not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.

Conclusion: deportation to Uzbekistan would constitute a violation of Article 3 of the Convention

Applicant risking ill-treatment if deported to Tunisia

Saadi v. Italy 37201/06
Judgment 28.2.2008

The applicant is a Tunisian national. In 2001 he was issued with an Italian residence permit. In 2002 he was arrested and placed in pre-trial detention on suspicion of international terrorism. In 2005 he was sentenced by an assize court in Italy to imprisonment for criminal conspiracy, forgery and receiving stolen goods. In August 2006 he was released from prison, having served his sentence in Italy. However, the Minister of the Interior ordered him to be deported to Tunisia under the legislation on combating international terrorism. The applicant's request Rules of Court (interim measures), the European Court of Human Rights asked the Italian Government to stay his expulsion until further notice.

The European Court of Human Rights acknowledged the considerable difficulties States were facing in protecting their communities from terrorist violence. However, the Court reaffirmed that a forcible expulsion would be in breach of the Convention if substantial grounds have been shown for believing that there was a risk that the applicant would be subjected to ill-treatment in the receiving country. The

Court referred to reports by Amnesty International and Human Rights Watch which described a disturbing situation in Tunisia and which were corroborated by a report from the US State Department. These reports mentioned numerous and regular cases of torture inflicted on persons accused of terrorism. The practices reported – said to be often inflicted on persons in police custody – included hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns. It was reported that allegations of torture and ill-treatment were not investigated by the competent Tunisian authorities and that the latter regularly used confessions obtained under duress to secure convictions. The Court did not doubt the reliability of those reports and noted that the Italian Government had not adduced any evidence capable of rebutting such assertions. Given the applicant's conviction of terrorism rel for believing that there was a real risk that he would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia.

Furthermore, the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government. The existence of domestic la relevant international treaties, referred to in the notes verbales from the Tunisian Ministry of Foreign Affairs, were not sufficient to ensure adequate protection against the risk of ill-treatment where, as in the applicant's case, reliable so to the principles of the report Convention.

Conclusion: deportation to Tunisia would constitute a violation of Article 3 of the Convention

RISK OF PERSECUTION FOR POLITICAL, ETHNIC OR RELIGIOUS REASONS

Applicants risking persecution for political reasons if returned to Belarus

Y.P. and L.P. v. France no. 32476/06
Judgment 1 September 2010

The first applicant, an opponent of the regime a detained and assaulted on a number of occasions by the Belarusian police. He fled with his family, passing through various European countries, and applied for asylum in France, but it was denied. The applicants alleged that if they were returned to Belarus they would risk imprisonment and ill-treatment.

The European Court of Human Rights considered Y.P.'s account to be cr confirming his political involvement and the persecution to which he had been subjected, in particular in the form of statements from the association "Vias Y.P.'s asyl– on the grounds that his statements contained few personal or other details – the French authorities had made no mention of any international report concerning the situation in Belarus. Furthermore, they had not regarded the alleged continuation of his political activities in France or the fate of other opponents of the regime as indications that Y.P. might be wanted by the authorities.

The passage of time did not automatically lessen the risks faced by Y.P. in Belarus. Although the Council of Europe had recently observed some positive developments with regard to democracy in Belarus, it also noted obstacles to restoration of the count which had been suspended in 1997 on account of the deteriorating human rights situation and in particular the ongoing harassment of opponents of the regime. The Court noted in that regard that an individual who had been engaged in political acti circumstances and that others were arrested on a regular basis.

The extent of Y.P.'s involvement in campaigning Mogilev. Furthermore, the likelihood that information about him and his family would be made available to the Belarus authorities should they return was reinforced by the brutality and intimidation to which their son had been subjected. Their application for asylum in France was also liable to be seen as "discrediting Belarus" an offence punishable by criminal code. The members of Y.P.'s family might also be at risk of him. Accordingly, the Court found that the applicant amount to a violation of Article 3.

The Court requested the French Government to refrain from deporting the applicants pending the outcome of the proceedings before it. The applica finding that the implementation of the deportation order against the applicants would give rise to a violation of Article 3 of the Convention became final.

Conclusion: deportation to Belarus would constitute a violation of Article 3 of the Convention

See also, for other examples of risk of **persecution,**

- **F.H. v. Sweden (no. 32621/06),** 20 January 2009. The applicant alleged that, if deported to **Iraq**, he would face a real risk of being killed or subjected to torture or inhuman treatment on account of his Christian faith and background as a member of the Republican Guard;

- **W.H. v. Sweden (no. 49341/10)** 8 April 2015. Risk of ill-treatment if expulsion from Sweden to **Iraq** of a single woman of Mandaean denomination, a vulnerable ethnic/religious minority;

- **F.G. v. Sweden (no. 43611/11)** 23 March 2016. Iranian national converted to Christianity in Sweden who alleged that, if expelled to **Iran**, he would be at a real risk of being persecuted and punished or sentenced to death.

RISK OF ILL-TREATMENT FOR SEXUAL ORIENTATION

Applicant risking ill-treatment related to his homosexuality if deported to Libya

M.E. v. Sweden - 71398/12
Judgment 26.6.2014

The applicant, a Libyan national who had been living in Sweden since 2010, applied for asylum stating that he was homosexual and had married a man. The Migration Board rejected his request and found no obstacle to his returning to Libya to apply for a residence permit in Sweden on account of his family ties and marriage. Before the European Court of Human Rights, the applicant complained that he would face a real risk of persecution if returned to Libya on account of his sexual orientation and marriage to a man.

In the European Court of Human Rights' view, the applicant had failed to give a coherent and credible account on which to base the examination of his claims. Even though there was little information about the situation of homosexuals in Libya, there appeared to be no public record of anyone actually having been prosecuted or convicted for homosexual acts since the end of the Gadhafi regime in 2011. There were thus insufficient elements to conclude that the Libyan authorities actively persecuted homosexuals. Moreover, the applicant was not being permanently expelled from Sweden. Although required to return to Libya in order to apply for family reunion, he could make the application online thereby reducing the waiting time to approximately four months. Even though he would need to be discreet about his private life during the waiting period, that would not require him to conceal or

suppress an important part of his identity permanently or for a longer period of time. While it was true that he would have to travel to Egypt, Tunisia or Algeria for interview, since there was no Swedish Embassy in Libya, that could be done in a few days and did not put the applicant at risk of ill-treatment in those countries. In sum, there were no substantial grounds for believing the applicant would be subjected to ill-treatment on account of his sexual orientation if he was returned to Libya in order to apply for family reunion from there.

Conclusion: deportation to Libya would not constitute a violation of Article 3 of the Convention. Following a referral of the case to the Grand Chamber, the Court noted that the applicant was in the meantime granted a residence permit in Sweden. The Court considered that the potential violation of Article 3 of the Convention had now been removed and that the case had thus been resolved at national level. It therefore decided to strike the applica

See also, among others:

- **A.S.B. v. the Netherlands (no. 4854/12)**, decision of 10 July 2012;
- **A.E. v. Finland (no. 30953/11)**, decision of 22 September 2015.

RISK OF SERIOUS DECLINE AND OF PREMATURE DEATH

Applicant suffering from leukemia and tuberculosis risking premature death if expelled to Georgia

Paposhvili v. Belgium 41738/10
Judgment 13 December 2016

This case concerned an order for the applicant together with a ban on re-entering Belgium. The applicant, who suffered from a number of serious medical conditions, including chronic lymphocytic leukaemia and tuberculosis, alleged in particular that substantial grounds had been shown for believing that if he had been expelled to Georgia he would have faced a real risk there of inhuman and degrading treatment and of a premature death. He died in June 2016. His relatives subsequently pursued his case before the Court.

In July 2010, the European Court of Human Rights requested the Belgian Government not to remove the applicant pending the outcome of the proceedings before the Aliens Appeals Board.

The Court found in this present case that Article 3 should be understood to refer to exceptional situations involving the removal of a seriously ill person in which substantial grounds had been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. These situations corresponded to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.

The domestic authorities must consider the extent to which the individual in question would actually have access to that care and those facilities in the receiving State. Where, after the relevant information had been examined, serious doubts persisted regarding the impact of removal on the persons concerned, it was for the returning State to obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment would be available and accessible to the persons concerned so that they did not find themselves in a situation contrary to Article 3. In the present case, neither the treatment the applicant had been receiving in Belgium nor the

donor transplant had been available in Georgia. As to the other forms of leukemia treatment available in that country, there was no guarantee that the applicant would have had access to them.

Conclusion: The application to Georgia would have entailed a violation of Article 3

See also,

- **D. v. the United Kingdom (no. 30240/96)** 2 May 1997 (judgment) : applicant, diagnosed as HIV-positive and as suffering from AIDS, maintained that his removal to St Kitts would expose him to inhuman and degrading treatment: no violation

- **N. v. the United Kingdom (no. 26565/05)** 27 May 2008 (judgment) : The applicant, who was HIV-positive, claimed that her return to Uganda would cause her suffering and lead to her early death: no violation

RISK OF BEING SENTENCED TO DEATH OR TO IREDUCIBLE LIFE IMPRISONMENT

Extradition to United States where applicants faced trial on charges carrying death penalty or whole life sentences without parole

Harkins and Edwards v. the United Kingdom - 9146/07
Judgment 17.1.2012

Both applicants faced extradition from the United Kingdom to the United States where they allegedly risked the death penalty or life imprisonment without parole.

(a) **Death penalty** – The Court reiterated that in extradition matters it was appropriate for a presumption of good faith to be applied to a requesting State which had a long history of respect for democracy, human rights and the rule of law, and which had longstanding extradition arrangements with Contracting States. The Court also attached particular importance to prosecutorial assurances concerning the death penalty. In both applicants given by the United States Government and the prosecuting authorities. These were sufficient to remove any risk that either applicant would be sentenced to death if extradited.

Conclusion: inadmissible

(b) **Life imprisonment without parole** – The Court noted that, unless the sentence was grossly disproportionate, an Article 3 issue would arise for a sentence of life imprisonment without the possibility of parole only when it could be shown no longer be justified on any legitimate penological grounds and (ii) that the sentence was irreducible de facto and de iure. The Court noted, however, that while not per se incompatible with the Convention, a mandatory sentence of life imprisonment without the possibility of parole was much more likely to be grossly disproportionate than any other type of life sentence, especially if the sentencing court was required to disregard mitigating factors which were generally understood as indicating a significantly lower level of culpability on the part of the defendant, such as youth or severe mental health problems.

The sentences faced by the two applicants were not grossly disproportionate. Although the first applicant's prospective sentence was mandatory an life sentence, the Court noted that he was over eighteen at the time of the alleged crime and had not been diagnosed with a psychiatric disorder; moreover, the killing had taken place in the course of an armed robbery, which was a most serious aggravating factor. As to the second applicant, he faced, at

most, a discretionary sentence of life imprisonment without parole that would be imposed only after consideration by the trial judge of all relevant aggravating and mitigating factors. Further, since the applicants had not yet been convicted, still less begun serving a sentence, they had not shown that, upon extradition, their incarceration in the United States would not serve any legitimate penological purpose. Only if and when they were in a position to show that their continued detention no longer served such a purpose could an Article 3 issue arise and, even then, it was by no means certain that the United States authorities would refuse to use their powers to commute the sentence and order release on parole.

Accordingly, neither applicant had demonstrated that there would be a real risk of treatment reaching the Article 3 threshold as a result of his sentence if he was extradited to the United States.

Conclusion: extradition to the United States would not constitute a violation

See also,

- **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: inadmissible

- **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: no violation

RISK OF A FLAGRANT DENIAL OF JUSTICE

Real risk of evidence obtained by torture being adduced in Jordan

Othman (Abu Qatada) v. the United Kingdom - 8139/09
Judgment 17.1.2012

The applicant, a Jordanian national, arrived in the United Kingdom in 1993 and was granted asylum. He was detained from 2002 until 2005 under the Anti-terrorism, Crime and Security Act 2001. Following his release, the Secretary of State served the applicant with a notice of intention to deport. Meanwhile, in 1999 and 2000 the applicant was convicted in absentia in Jordan of offences of conspiracy to carry out bombings and explosions.

Before the European Court of Human Rights, the applicant complained that, if returned to Jordan, his retrial would amount to a flagrant denial of justice because, inter alia, of the admission of evidence obtained by torture.

The Court observed that a flagrant denial of justice went beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What was required was a breach of the principles of fair trial which was so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article. In that connection, it noted that admission of torture evidence would be manifestly contrary not only to Article 6 of the Convention, but also to the basic international-law standards of fair trial. It would render a trial immoral, illegal and entirely unreliable in its outcome. The admission of torture evidence in a criminal trial would therefore amount to a flagrant denial of justice.

The incriminating statements in the applicant's c
whom had been exposed to beating of the soles of their feet commonly known as falaka, the purpose of which could have only been to obtain information. The Court had previously examined this form of ill-treatment and had no hesitation in characterising it as torture. Furthermore, the use of torture evidence in Jordan was widespread and the legal guarantees contained under Jordanian law seemed to have little practical value. While it would be open for the applicant to challenge the admissibility of the statements against him that had been obtained through torture, he would encounter substantial difficulties in trying to do that many years after the events and before the same court which routinely rejected such claims. Having provided concrete and compelling evidence that his co-defendants had been tortured into providing the case against him, and that such evidence would most likely be used in his retrial, the applicant had met the high burden of proof required to demonstrate a real risk of a flagrant denial of justice if he were deported to Jordan.

Conclusion: deportation to Jordan would constitute a violation

Failure of the Russian authorities to respect the presumption of innocence in their decision to extradite applicants to Uzbekistan

Ismoilov and Others v. Russia - 2947/06
Judgment 24.4.2008

The applicants, who are 12 Uzbek nationals and one Kyrgyz national, were arrested in June 2005 in Russia. They were the subject of an extradition request from the government of Uzbekistan, which claimed that they had financed the May 2005 unrest in the Uzbek city of Andijan. The Russian authorities refused to give them refugee status or asylum. Instead, a deputy prosecutor general ordered their extradition to Uzbekistan after noting tha
criminal offences and that the Russian authorities had received diplomatic assurances from the Uzbek government that they would not be tortured or sentenced to death upon their return. The extradition orders were upheld by the Russian courts, but the applicants were not extradited because of an interim measure indicated by the Court under Rule 39 of the Rules of Court.

The European Court of Human Rights found that an extradition decision might raise an issue under Article 6 § 2 if supporting reasoning, which could not be dissociated from the operative provisions, amounted in substance to the determination of th
present case declared that the applicants should
terrorism and other criminal offences in Uzbekistan. That statement was not limited to describing a "state of suspicion" against the applicants, it
qualification or reservation, that they had been involved in the commission of the offences, without even mentioning that they denied their involvement. The wording of the extradition decisions amounted to a declaration of the applicants' gui
guilty and which prejudged the assessment of the facts by the judicial authority in Uzbekistan.

Conclusion: violation of Article 6 § 2 (presumption of innocence)