

Extradition to US for serious crimes would not breach accused's rights

In today's **Chamber** judgment¹ in the case of [Bijan Balahan v. Sweden](#) (application no. 9839/22) the European Court of Human Rights held, by 6 votes to 1, that there had been:

no violation of Article 3 (prohibition on inhuman and degrading treatment) of the European Convention on Human Rights.

The case concerned the authorities' decision to extradite Mr Bijan Balahan from Sweden to the US. He is wanted in California on suspicion of aggravated mayhem, torture, inducing false testimony, dissuading a witness after a prior conviction, and grand theft, all allegedly committed in 2020. The Swedish Supreme Court had found that extraditing the applicant would not be contrary to the Convention.

The Court found in particular that Mr Bijan Balahan had failed to make out his arguments that he would risk either a *de jure* or a *de facto* life sentence without parole if extradited, or that the sentence he might receive would be grossly disproportionate. The Court held that he at most risked a life sentence with parole and that he had not shown that there was a real risk that he, as he alleged, would have to serve a minimum term of 61 years before being eligible for parole. It also noted the seriousness of the accusations against Mr Bijan Balahan in dismissing the argument that the sentence would be grossly disproportionate.

The Court also indicated to the Government under Rule 39 of the Rules of Court that it was desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment became final or until further notice.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Patrick Bijan Balahan, is a dual national of Iran and the United States of America who was born in 1993. He is currently in detention in Sweden.

In May 2020 Mr Bijan Balahan was arrested in the US on suspicion of cutting a person over 30 times with a knife and other related crimes. He was released on bail pending his trial, but did not appear for his trial date, apparently having left the US.

In June 2021 the US Department of Justice requested his extradition from Sweden to the US for trial on one count each of aggravated mayhem, torture, inducing false testimony, dissuading a witness after a prior conviction, and grand theft, following a warrant issued in Los Angeles County. In December of that year the Supreme Court of Sweden held, among other findings, that Mr Bijan Balahan's extradition to the US would not be contrary to the Convention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The Swedish Government decided to extradite Mr Bijan Balahan for trial for torture and grand theft, and part of the charge of aggravated mayhem. The Court indicated an interim measure in the case, requesting that extradition be delayed..

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Bijan Balahan complained that, if extradited to the US, he risked life imprisonment without parole and harm from other prisoners in the US prison system.

The application was lodged with the European Court of Human Rights on 17 February 2022.

On 21 February 2022 the Court indicated an interim measure to the Government that Mr Bijan Balahan should not be extradited to Sweden.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Lətif **Hüseynov** (Azerbaijan),
Ivana **Jelić** (Montenegro),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

Article 3

Mr Bijan Balahan argued that if he were convicted, he would receive either a life sentence without parole or a de facto life sentence without parole, because he would have to serve a minimum term of 61 years before being eligible for parole, which would exceed his life expectancy. The Court however was satisfied that Mr Bijan Balahan would not risk a life sentence without parole if extradited to the US, since he at most faced the prospect of a life sentence with parole.

The Court was also not convinced by Mr Bijan Balahan's argument that he would have to wait so long to become eligible for parole. There was in fact significant uncertainty as to the length of the minimum term he might receive. In particular, prosecutors and judges had discretion in how the "Three Strikes Law" would be applied. Were it not applied, the minimum term would be 17 years. The Court concluded that Mr Bijan Balahan had not shown that there was a real risk that he would receive either a de jure or a de facto life sentence without parole if extradited.

Concerning Mr Bijan Balahan's argument that he would receive a grossly disproportionate sentence in the US, the Court reiterated that "gross disproportionality" is a strict test that will only be met on rare and unique occasions. It noted the seriousness of the allegations against the applicant and reiterated that the argument had not been made out that Mr Bijan Balahan risked life imprisonment without parole if extradited. It therefore dismissed the argument that the sentence would be grossly disproportionate.

In summary, the Court held that if Mr Bijan Balahan were extradited to the US, it would not be a violation of Article 3 of the Convention.

Rule 39

The Court indicated to the Government that it was desirable not to extradite the applicant until such time as the present judgment became final.

Separate opinion

Judge Wojtyczek expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.