



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

FOURTH SECTION

CASE OF RRAPO v. ALBANIA

(Application no. 58555/10)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

25/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rrapo v. Albania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 September 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58555/10) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Albanian and American national, Mr Almir Rrapo (“the applicant”), on 11 October 2010.

2. The applicant was represented by Messrs A. Visha and A. Ibro, lawyers practising in Tirana. The Albanian Government (“the Government”) were represented by their then Agent, Mrs E. Hajro and, subsequently, by Ms L. Mandia of the State Advocate’s Office.

3. The applicant alleged, in particular, a breach of Articles 2 and 3 of the Convention as a result of his extradition to the United States of America (“the United States”). He further argued that there had been a breach of Article 34 of the Convention, having regard to the authorities’ non-compliance with this Court’s interim measure.

4. On 16 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's arrest and detention

5. On 2 July 2010 the applicant applied for a renewal of his American passport at the United States Embassy in Tirana. In the afternoon of the same day he was arrested by the Albanian police at the request of the United States Embassy.

6. On the same day, the United States Embassy sent diplomatic note no. 55 by which it requested the provisional arrest of the applicant for the purpose of extradition in accordance with Article XI of the Extradition Treaty. According to the diplomatic note, a warrant for the applicant's arrest had been issued on 28 May 2010 by a United States judge.

The prosecutor requested the validation of the applicant's provisional detention with a view to his extradition to the United States.

7. On 4 July 2010 the Tirana District Court ("the District Court") authorised the applicant's detention for a period of forty days, relying on a wanted notice issued by the United States authorities, through Interpol, against the applicant. The applicant and the prosecutor appealed against the decision.

8. On 22 July 2010 the lawfulness of the applicant's detention was upheld by the Tirana Court of Appeal ("the Court of Appeal"), which extended the period of the applicant's detention to sixty days, that is from 2 July until 2 September 2010. In support of its decision, the Court of Appeal relied, *inter alia*, on Article XI of the Extradition Treaty between the United States and Albania.

9. The applicant appealed to the Supreme Court, which rejected the appeal on 12 November 2010.

10. Between August and November 2010, the applicant challenged his continued detention three times, namely in August, September and November 2010. Each time the domestic courts rejected the applicant's actions and they respectively extended his detention in accordance with Article 493 of the Code of Criminal Procedure ("CCP"), namely until 2 November 2010.

B. The extradition proceedings

11. On 30 August 2010 the United States Embassy addressed diplomatic note no. 071 to the Albanian Ministry of Foreign Affairs requesting the

applicant's extradition. According to the diplomatic note, the applicant had been charged, along with other co-defendants, with the following eight counts: 1) membership of an organised racketeering enterprise engaged in murder, kidnapping, drug distribution, arson, robbery, extortion and the interstate transportation of stolen goods; 2) conspiracy to engage in a racketeering enterprise; 3) conspiracy to distribute and possession with intent to distribute 100 kilograms and more of marijuana; 4) conspiracy to distribute and possession with intent to distribute controlled substances; 5) conspiracy to commit robbery; 6) the possession, use, carrying and brandishing of firearms, including a firearm equipped with a silencer, during, in relation to, and in furtherance of the narcotics offence; 7) kidnapping in aid of racketeering; 8) the possession, use, carrying and brandishing of firearms during, in relation to, and in furtherance of the kidnapping charged in count six; and 9) the murder of E.S in aid of racketeering.

The diplomatic note further stated that five charges carried a maximum sentence of life imprisonment (nos. 1-2 and 6-8); two charges carried a maximum penalty of forty years' imprisonment (nos. 3 and 4); one charge carried a maximum sentence of twenty years' imprisonment (no. 5); and another charge carried a penalty of either death or life imprisonment (no. 9). The diplomatic note further stated that an arrest warrant had been issued against the applicant on 19 August 2010 by the United States District Court for the Southern District of New York.

12. On 31 August 2010 the prosecutor's office requested the District Court to authorise the applicant's extradition to the United States.

13. On 30 September 2010 the District Court granted the prosecutor's request. The District Court rejected the applicant's objection that the United States authorities had not furnished any assurances against the imposition of the death penalty on the grounds that such assurances were not required by law.

14. On 13 October 2010 the State Advocate's Office informed the Court of Appeal of this Court's interim measure of 12 October 2010 (see paragraph 31 below).

15. On 27 October 2010 the United States Embassy sent diplomatic note no. 88 to the Albanian Ministry of Foreign Affairs, which read, in so far as relevant, as follows (extracted from the original in English):

"The United States understands that Rapo has been ruled extraditable and that decision has been appealed to an Albanian appellate court and a complaint has been lodged before the European Court of Human Rights. The United States requests that, as these proceedings continue, should the Government of Albania require additional information regarding possible future proceedings in the United States, such information should be requested via diplomatic note and should provide a reasonable timeframe for response, as well as instructions on the presentation of such information. The United States will respond to any such request within a reasonable time.

The Embassy also requests that, with regard to the Almir Rrapo extradition proceedings, the Government of Albania consider the potential flight risk of the defendant, and request that Rrapo continue to be detained pending the resolution of all proceedings relating to the request for extradition of Rrapo, including proceedings at the European Court of Human Rights and national court proceedings.”

16. On 1 November 2010 the Tirana Court of Appeal, following the applicant’s appeal, found in favour of the applicant’s extradition. The court ruled that there existed no legal obligation to seek assurances from the US authorities against the imposition of the death penalty.

17. On 1 November 2010 the Minister of Justice ordered that the applicant’s extradition should be effected by 16 November 2010.

18. On 3 November 2010 the Minister of Justice sent a *note verbale* to the United States Embassy asking whether the applicant would be subjected to capital punishment for the criminal offences with which he had been charged.

19. On 8 November 2010 the United States Embassy sent diplomatic note no. 91 to the Albanian Ministry of Foreign Affairs, which, in so far as relevant, read as follows (extracted from the original in English):

“The United States Department of Justice has authorised and directed the United States Attorney for the Southern District of New York not to seek the death penalty against Almir Rrapo. As a result, the Government of the United States hereby assures the Government of Albania that should Mr Rrapo be extradited to stand trial on the charges for which his extradition has been granted, the death penalty will not be sought or imposed against Almir Rrapo upon his extradition to the United States.”

20. On 9 November 2010 the applicant lodged an appeal with the Supreme Court. He argued, *inter alia*, that the United States authorities had given no assurances about the non-imposition of the death penalty in breach of Article 21 of the Constitution.

21. On 9 November 2010 the applicant lodged a further request with the Supreme Court seeking the suspension of his extradition, bringing to its attention this Court’s indication under Rule 39 of the Rules of Court.

22. On 10 November 2010 the State Advocate’s Office informed the Supreme Court of this Court’s interim measure of 2 November 2010 (see paragraph 32 below).

23. On 15 November 2010 the Minister of Justice extended to 1 December 2010 the time-limit within which the applicant’s extradition to the United States could take place.

24. On 24 November 2010 the applicant was extradited to the United States.

25. On 26 November 2010 the Supreme Court quashed both lower courts’ decisions and remitted the case to the District Court for rehearing. The Supreme Court found that the lower courts should not have granted the applicant’s extradition on two principal grounds. In the first place, the lower courts had not obtained any assurances from the United States authorities that the capital punishment would not be imposed on the applicant. This was

against a number of Albania's constitutional and other statutes' provisions. Secondly, the lower courts had not heard any evidence of the applicant's alleged guilt as required by the Extradition Treaty. The existence of an affidavit by a United States police officer could not be considered evidence within the meaning of domestic criminal procedure provisions.

26. In the rehearing proceedings, in response to the District Court's request of 16 February 2011 about the existence of assurances against the imposition of the death penalty on the applicant, on 17 February 2011 the Minister of Justice requested the United States Embassy to provide assurances that the applicant would not be subjected to capital punishment in respect of the charges for which he was extradited.

27. On 24 February 2011 the United States Embassy sent diplomatic note no. 22 to the Albanian Ministry of Foreign Affairs, which, in so far as relevant, read as follows (extracted from the original in English):

"... The United States further refers Albania to diplomatic note 91, dated November 8, 2010 in which the United States provided assurances that the death penalty will not be sought or imposed against Mr. Rrapo on the charges for which his extradition was granted. Such assurances are transmitted by the United States Government in the form of a diplomatic note, which is a formal communication between our governments. As reflected in diplomatic note no. 91, the assurances are provided based upon a decision by the United States Department of Justice not to seek or impose the death penalty against Mr. Rrapo, and these assurances are binding upon the United States Department of Justice."

28. In response to another District Court's request to have explanations on the position of the United States Government concerning the diplomatic notes and assurances already provided, on 18 May 2011 the United States Embassy sent diplomatic note no. 44 to the Albanian Ministry of Foreign Affairs, which, in so far as relevant, read as follows (extracted from the original in English):

"The United States values its relationship with the Republic of Albania and close cooperation in combating terrorism and other crime. It is in this spirit that the United States provides the following additional response with respect to the matters previously raised with respect to the extradition of Mr Rrapo [...]. With respect to the request for additional evidence of the guilt of Mr Rrapo, the United States notes that Mr Rrapo has already pled guilty to the charges.

...

As regards the nature and status of diplomatic notes, this diplomatic note (no. 44) explained that:

[...] The United States notes that the diplomatic note from the United States Embassy in Tirana is a formal communication by the United States Government to the Government of the Republic of Albania that sets forth the official and authoritative position of the entire United States Government regarding death penalty assurances in this case. Communication of such assurances via diplomatic note is the standard practice of the United States Government, and, indeed, governments throughout the world. Such assurances bind the entire government of the United States, including the

Department of Justice and prosecuting authorities. The Embassy speaks authoritatively for the United States on this and any other matter when it provides an official communication on behalf of the United States and is therefore the “competent organ” of the Requesting State to convey such assurances. These assurances as provided in diplomatic note 91, dated November 8, 2010, are entirely dispositive and authoritative.”

29. The Government have submitted that on 28 September 2011 the District Court ruled in favour of the applicant’s extradition, although no copy of that decision has been provided.

30. The applicant’s appeal appears to be pending before the Court of Appeal.

C. Proceedings before the Court

31. On 12 October 2010, while the extradition proceedings were pending before the Court of Appeal, the President of the Fourth Section of the Court to which the case had been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Albania, under Rule 39 of the Rules of Court, that the applicant should not be extradited to the United States. This measure was to remain in force “until the lapse of ten days following notification of the Court of Appeal’s decision to the Court.” The parties were informed of the decision on the same day by way of a facsimile and mail.

32. On 2 November 2010, following the Court of Appeal’s decision in favour of the applicant’s extradition as well as the applicant’s appeal against that decision to the Supreme Court, the President of the Fourth Section of the Court decided to prolong the interim measure initially indicated to the respondent Government under Rule 39 of the Rules of Court, “until the lapse of fifteen days following notification of the Supreme Court’s decision to the Court.” The parties were informed of this decision on the same day by way of a facsimile and by mail.

33. On 4 November 2010 the Registrar of the Fourth Section wrote to the State Advocate’s Office, in their position as the Government’s Agent before the Court, in *inter alia* the following terms.

“Under the terms of the interim measure, as decided and prolonged by the President of the Fourth Section, the applicant should not be extradited to the United States of America until fifteen days have elapsed from the date of the notification of the Supreme Court’s decision to this Court. This period is intended to allow the Court time to reflect further on the matter in the light of the domestic court’s findings.

In this connection, I can only repeat what I said at our meeting, namely that the failure of a Contracting State to comply with a Rule 39 measure may entail a breach of Article 34 of the Convention, which is binding upon your Government as a signatory thereto (see *Groni v. Albania*, no. 25336/04, §§ 172-195, 7 July 2009). You may wish to stress this point in your discussions with the competent authorities.”

34. On 10 November 2010 the Minister of Justice informed the General Prosecutor's Office and the National Interpol Office that the applicant should not be extradited to the United States in compliance with the Court's Rule 39 interim measure.

35. On 15 November 2010 the President of the Fourth Section of the Court decided that, even having regard to the diplomatic assurances given by the United States Embassy against the imposition of the death penalty, the Rule 39 indication would remain in force and continue to apply. The parties were informed of the decision on 18 November 2010 by way of a facsimile and mail.

36. On 24 November 2010 the applicant's lawyer informed the Court that the applicant had been extradited to the United States that morning, without any prior notice either to the applicant or his representative. By letter of the same day, this Court invited the Government to confirm this information.

37. On 25 November 2010 the Government confirmed, over the telephone, to the Registrar of the Fourth Section of the Court that the applicant had been extradited from Albania on 24 November 2010. Confirmation was received in writing on 26 November 2011.

38. On 25 November 2010 the Registrar of the Court sent the following letter to the Government:

"The President of the Court ... has instructed me to express on his behalf his profound regret at the decision taken by your authorities to extradite Mr Almir Rrapo to the United States of America in flagrant disrespect of the Court's interim measure adopted under Rule 39 of the Rules of Court.

The President has noted in this connection that on 3 November 2010 your authorities were reminded in clear terms by the Registrar of the Fourth Section that the Rule 39 measure, first applied on 12 October 2010, continued to remain in force. Your Government's attention was drawn to the fact that the failure of a Contracting State to comply with a Rule 39 measure may entail a breach of Article 34 of the Convention. Furthermore, in the Court's most recent letter of 18 November 2010, your Government were informed that the President of the Fourth Section had decided to continue to apply the interim measure. Nevertheless, your Government extradited the applicant to the United States of America on 24 November 2010.

The President has instructed me to request your Government to inform the Court of the circumstances in which the extradition was effected and of the reasons why the Rule 39 measure was not complied with. Your Government should submit copies of any relevant documentation.

The President is deeply disturbed at this development and is particularly concerned about its implications for the authority of the Court and the unfortunate message which it sends both to other Contracting States faced with a Rule 39 measure and to applicants and potential applicants liable to extradition or expulsion to countries where they may be exposed to the risk of violation of their rights under Articles 2 and 3 of the Convention. As an indication of the seriousness with which he views this turn of events, the President has asked that the Chairman of the Committee of Ministers,

the President of the Parliamentary Assembly, the Commissioner for Human Rights and the Secretary General of the Council of Europe be informed immediately”.

39. In a reply of 30 November 2010 the Government stated that the applicant’s extradition was prompted by the assurances given by the United States Embassy that the death penalty would neither be sought nor imposed. The letter further indicated that, as the applicant’s detention would have expired on 1 December 2010 and, upon release, his risk of absconding was imminent, the Albanian authorities proceeded with his extradition on 24 November 2010.

40. On 10 January 2011 the Albanian Permanent Representation to the Council of Europe forwarded to the Court a letter of the Albanian Minister of Justice dated 27 December 2010. In his letter, the Minister assured the Court that it was not the Government’s intention to breach a Rule 39 order. The complex and exceptional circumstances of the applicant’s case had prompted the Government to take a decision, which, in their view, offered a fair solution to the case. The Minister further stated that (extracted from the original in English):

“... I would like to clarify that if the European Court order [were to] be fully implemented, then ... Almir Rrapo, [whose appeal was] pending ... before the Supreme Court, would be released starting from 1 December 2010. This [is so] because, according to the Albanian legislation, a court decision takes judicial executive effects upon [the] termination of trial [before] the Appeal Court and not after the termination of trial [before] the High Court. On the date of trial from the latter, ... Almir Rrapo would be necessarily released pursuant to Article 499 § 1 of the CCP ...

Under these conditions, a person of high criminal risk not only for ... Albanian citizens but also for ... European and American citizens would [have] be[en] released.

Consequently, the Minister of Justice was under the objective conditions that made impossible to [fully] comply ... with the European Court order. Under these circumstances he decided to reschedule the date of extradition, until the [expiry of the] time-limit when ... Almir Rrapo could be held under the security measure “arrest in prison”, which was [on] ... 1 December 2010. The full implementation of the European Court’s [order] and, consequently, the extension of the extradition deadline after 1 December 2010, as ordered by the Court, would [have brought] the Albanian state under the situation of [the expiry] of the [30-day] time-limit as specified in the above legal provision. Therefore, the Albanian state would have [had] the legal obligation to release ... Almir Rrapo. Further, I would like to clarify that under Article 500 of the CCP, the Minister of Justice could not suspend the execution of the extradition decision of Almir Rrapo as a result of the European Court order, because that provision does not contain such a clause, and, therefore, it does not provide the regulation of relevant consequences.

Moreover, we would like to make clear that the Albanian legislation does not stipulate what happens to the security measure “arrest in prison”, if the Supreme Court decides to [remit] the case for retrial, which it happened. Consequently, as long as there is no legal provision which expressly stipulates the possibility of keeping in force this measure in such a case, the legal interpretation would have favoured the

position of ... Almir Rrapo. Thus, the latter should [have] be[en] released in this case. The scope of the Albanian party was to avoid the release of ... Almir Rrapo due to his high social risk, [the] serious charges brought against him and the evident opportunity to get away to an unknown direction. In this context, we add that on 27 October 2010 the American party had requested the Albanian party to undertake every legal measure to ensure that the citizen Almir Rrapo would not get away. In case of his leaving, the provisions of the Extradition Treaty would be violated. Hence, the Albanian state would not comply with the bilateral international obligations due to failure of good administration of justice.”

D. Events subsequent to the communication of the case to the Government

41. On 19 July 2011 the applicant’s lawyers before this Court, while alleging that the information had been extracted under coercion, submitted a record of the hearing of 11 April 2011 before a United States judge. The applicant, having received legal advice from his lawyer in the United States, willingly entered into a plea bargain with the United State Attorney’s Office, according to which he pleaded guilty of his own volition and waived his right to have the case presented to a Grand Jury so that there would be no trial and the remaining steps consisted of the pre-sentence report and sentencing by the trial judge. In the record, he also accepted that he would provide assistance to the United States Government as required.

42. The judge explained to the applicant that the total maximum sentence on all charges was life imprisonment and that the total mandatory minimum sentence on all charges was life imprisonment. He further informed the applicant that, since parole had been abolished, and, if sentenced, he would be required to serve the entire term. The record further mentioned the possibility of a supervised release in favour of the applicant. The judge also reminded him that, under certain circumstances, he had a right to appeal the sentence imposed.

43. The judge accepted the applicant’s plea of guilty and directed that a pre-sentence report be prepared in accordance with the federal sentencing guidelines, taking into account a number of factors including the actual conduct in which he had been engaged, any victims of the offence, the role that he had played in the offence, whether he had accepted responsibility for his acts, whether he had any criminal history and whether he had tried to obstruct justice. The trial judge retained discretion as to the actual penalty to be imposed.

44. On 26 July 2012 the applicant was convicted by the United States court as charged (see paragraph 11 above). He was sentenced to 80 months’ imprisonment. Upon release he would be on supervised release for a term of three years in accordance with the conditions and terms of the supervised release.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Albania

45. The Albanian Constitution, in its relevant parts, provides as follows.

Article 4

- “1. The law constitutes the basis and the limits of the activity of the State.
2. The Constitution is the supreme law in the Republic of Albania.
3. The provisions of the Constitution are directly applicable, save as otherwise provided by the Constitution.”

Article 5

“The Republic of Albania applies international law that is binding upon it.”

Article 17

- “1. The restriction of the rights and freedoms provided for in this Constitution may be laid down only by law in the public interest or for the protection of the rights of others. A restriction shall be proportionate to the situation that has dictated it.
2. These restrictions may not infringe the essence of the rights and freedoms and in no case should exceed the restrictions provided for in the European Convention on Human Rights.”

Article 21

“The life of a person is protected by law.”

Article 116

“1. The normative acts that apply in the Republic of Albania are:

- a) the Constitution;
- b) ratified international agreements;
- c) laws;
- ç) normative acts of the Council of Ministers.

(...)

Article 122

1. Any ratified international agreement is a constituent part of the domestic juridical system following its publication in the Official Journal of the Republic of Albania. It is directly applicable, except for cases when it is not self-executing and its implementation requires the adoption of a law. (...)”

Constitutional Court’s case-law

46. By a landmark decision no. 65 of 10 December 1999 the Constitutional Court, relying heavily on the Convention, decided to abolish the death penalty in times of peace in all the provisions of the Criminal Code and in two provisions of the Military Criminal Code.

B. Code of Criminal Procedure (“CCP”)

47. Articles 232-239 provide for the imposition of the following coercive security measures: a ban on leaving the territory of the country (Article 233); an obligation to report to the judicial police (Article 234); a ban and obligation on staying at a designated place (Article 235); bail (Article 236); house arrest (Article 237); detention on remand (Article 238); and detention in a psychiatric institution (Article 239).

48. Article 266 § 1 provides that, in the event of the expiry of the period of detention and, if there still exist the grounds for which detention was ordered, the court may impose another security measure if warranted by the circumstances of the case.

49. Articles 488-503 regulate the extradition procedure to a foreign country. According to Article 489 the extradition request should be addressed to the Ministry of Justice and be accompanied by supporting documents. The extradition request should include, *inter alia*, the applicable foreign legal provisions, stating whether the foreign law provides for the imposition of the death penalty concerning the criminal offence for which extradition is sought.

50. The Ministry of Justice forwards the request to the district prosecutor who, within three months from the submission of the extradition request by the requesting State, lodges an application with the District Court on the basis of Article 492.

51. Article 493 provides for the imposition of a coercive security order against the person to be extradited to avoid absconding from justice. A security order is imposed in accordance with the general provisions on security orders and shall be revoked within three months from its execution if the proceedings before the court are still pending. The period may be extended by one month at the request of the prosecutor (Article 493 §§ 2 and 4).

52. In accordance with Article 494, the District Court may impose a provisional security order at the request of the prosecutor in the absence of an extradition request. Such a security order may be imposed in the event that: a) the requesting State has issued an order on the deprivation of liberty or a sentence of imprisonment against the person concerned, provided that the requesting State intends to submit an extradition request thereafter; b) the requesting State has submitted detailed information about the criminal offence and provided sufficient elements for the identification of the person; c) there is a risk of absconding. A restraint order shall be revoked if, within eighteen days and, in any event, within a maximum period of forty days, no extradition request is deposited with the Ministry of Justice.

53. An arrest or detention should be validated by the District Court within forty-eight hours (Article 495 §§ 2 and 3).

54. The Ministry of Justice proceeds with the extradition within thirty days from the date on which the court decision becomes final. On the expiry of this time-limit, the person is released in the event that the Ministry does not proceed with the extradition (Article 499 § 1).

C. The jurisdiction in criminal matters Act (Law no. 10193 of 3 December 2009 on jurisdiction in criminal matters with foreign authorities)

55. Apart from the conditions provided for in the Criminal Code and the Code of Criminal Procedure, section 32 states that the extradition of a person to a foreign country is allowed, inter alia, when (d) the requesting State gives assurances that it would not impose the death penalty or, in the event of imposition of such sentence, the requesting State shall not execute it.

D. Treaty of Extradition between the United States and the Kingdom of Albania (“The Extradition Treaty”)

56. The bilateral Extradition Treaty between the United States and the then Kingdom of Albania was signed on 1 March 1933. It entered into force on 14 November 1935 and it is currently in force. Its relevant provisions read as follows.

Article II

“Persons shall be delivered up according to the provisions of the present Treaty, who shall have been charged with or convicted of any of the following crimes of offences:

1. murder (including crimes designated by the terms parricide, poisoning, and infanticide); manslaughter when voluntary;

(...)”

Article VIII

“Under the stipulations of this Treaty, neither of the High Contracting Parties shall be bound to deliver up its own citizens, except in cases where such citizenship has been obtained after the perpetration of the crime for which extradition is sought. The State appealed to shall decide whether the person claimed is its own citizen.”

Article XI

“ (...)

The arrest of the fugitive shall be brought about in accordance with the laws of the respective countries (...).

The person provisionally arrested, shall be released, unless within two months from the date of arrest in Albania, or from the date of commitment in the United States, the formal requisition for surrender with the documentary proofs hereinafter prescribed be made as aforesaid by the diplomatic agent of the demanding Government, or, in his absence, by a consular officer thereof. (...)

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

The law and practice of the State of New York

57. The Government submitted that section 400.27 of the New York’s Criminal Procedure Law (“CPL”) stipulated the procedure for determining sentence upon conviction for the offence of murder in the first degree. Paragraph 10 of the above section, referred to as the jury deadlock instruction, read as follows:

“At the conclusion of all the evidence, the people and the defendant may present argument in summation for or against the sentence sought by the people. The people may deliver the first summation and the defendant may then deliver the last summation. Thereafter, the court shall deliver a charge to the jury on any matters appropriate in the circumstances. In its charge, the court must instruct the jury that with respect to each count of murder in the first degree the jury should consider whether or not a sentence of death should be imposed and whether or not a sentence of life imprisonment without parole should be imposed, and that the jury must be unanimous with respect to either sentence. The court must also instruct the jury that in the event the jury fails to reach unanimous agreement with respect to the sentence, the court will sentence the defendant to a term of imprisonment with a minimum term of between twenty and twenty-five years and a maximum term of life. Following the court’s charge, the jury shall retire to consider the sentence to be imposed. (...)”

58. In *People v. LaValle* [3 NY3d88 (2004)] the New York Court of Appeals set aside the death penalty sentencing statute (section 400.27 (10) above) by declaring the jury deadlock instruction unconstitutional with the

State Constitution. The court struck down the deadlock instruction because “it creates the substantial risk of coercing jurors into sentencing a defendant to death in violation of ... [the] Due Process Clause”.

59. In *People v. Taylor* [9 NYrd 129 (2007)] the New York Court of Appeals reconfirmed that the death penalty sentencing statute was unconstitutional as decided in *LaValle*. It stated, *inter alia*, that:

“Like *LaValle*, our holding here is grounded in the irrevocable nature of capital punishment as well as ‘the concomitant need for greater certainty in the outcome of capital jury sentences’ (reference omitted). We do not agree that the Court erred in *LaValle*, or that our holdings were dicta, and thus we are ultimately left exactly where we were three years ago: the death penalty sentencing statute is unconstitutional on its face and it is not within our power to save the statute. *LaValle* is thus entitled to full precedential value. The Legislature, mindful of our State’s due process protections, may re-enact a sentencing statute that is free of coercion and cognizant of a jury’s need to know the consequences of its choice”.

60. To date, it would appear that the State legislature has not re-enacted any statute on the imposition of the death penalty. It would further appear that the capital penalty has not been imposed on any defendant.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 13 ARISING FROM THE RISK OF THE IMPOSITION OF THE DEATH PENALTY

61. The applicant complained that his extradition to the United States, and the risk of being subjected to the death penalty, gave rise to a breach of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13, which read as follows:

“Article 2: Right to life

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3: Prohibition of torture

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 1 of Protocol 13: Abolition of the death penalty

“The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”

A. Admissibility

62. The Government submitted that the applicant could not claim to be a victim of a violation of the Convention having regard to the Supreme Court’s decision of 26 November 2010 which had quashed the lower courts’ decision and had remitted the case for reconsideration to the District Court.

63. The Court reiterates that a decision or measure favourable to an applicant is not, in principle, sufficient to deprive the individual of his or her status as “victim”, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *mutatis mutandis*, *Mishgjoni v. Albania*, no. 18381/05, § 42, 7 December 2010).

64. In the present case, the Court notes that the Supreme Court’s decision was adopted subsequent to the applicant’s extradition. While it acknowledged breaches of a number of legal provisions by the lower courts and remitted the case for reconsideration, it was not capable of reversing the applicant’s extradition which had already taken place. In such circumstances, the applicant can continue to claim to be a “victim” of a violation of his Convention rights as regards that extradition. The Court therefore rejects this objection.

65. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

66. The applicant maintained that, on the basis of the documents submitted by the United States authorities, there existed the risk that a capital sentence would be imposed on him. He argued that this consideration was entirely overlooked by the District Court and the Court of Appeal which authorised his extradition. This was further reinforced by the Supreme Court's decision of 26 November 2010. He also questioned the quality of the assurances given by the United States authorities by way of diplomatic notes: the only responsible authority for giving such assurances should have been the Attorney General. The applicant invited the Court to disregard the New York Court of Appeals' judgments since the crimes with which he was charged were federal crimes and that case-law did not therefore apply. The applicant's lawyer asked the Court to disregard the hearing record of 19 July 2011 as having been extracted under violence and ill-treatment (see paragraph 41 above).

67. The Government submitted that the domestic courts had reasonably considered and rejected the applicant's arguments about the death penalty. The United States authorities, by way of diplomatic notes no. 91 of 8 November 2010 and no. 22 of 24 February 2011, had given assurances to the Albanian authorities that the death penalty would neither be sought nor imposed on the applicant. The Government further relied on the New York Court of Appeals' case-law which declared the death penalty to be unconstitutional. Moreover, according to the Government, the death penalty has not been applied in New York since 1977.

68. The Government also relied on the waiver of indictment that the applicant had signed of his own volition, with the assistance of his lawyer (see paragraph 41 above). According to the Government, the possibility of being subjected to the death penalty was not mentioned at that hearing and there existed no risk of the death penalty being imposed in this case.

2. The Court's assessment

(a) General principles

69. The Court refers to the general principles as laid down in its judgment in the case of *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, §§ 115-127, ECHR 2010 (extracts), particularly:

"118. (...) in respect of those States which are bound by it, the right under Article 1 of Protocol No. 13 not to be subjected to the death penalty, which admits of no derogation and applies in all circumstances, ranks along with the rights in Articles 2 and 3 as a fundamental right, enshrining one of the basic values of the democratic

societies making up the Council of Europe. As such, its provisions must be strictly construed (references omitted).

...

120. (...) These figures, together with consistent State practice in observing the moratorium on capital punishment, are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances. Against this background, the Court does not consider that the wording of the second sentence of Article 2 § 1 continues to act as a bar to its interpreting the words “inhuman or degrading treatment or punishment” in Article 3 as including the death penalty (reference omitted).

...

122. Article 3, which prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. It makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation. As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim’s conduct, the nature of any offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (reference omitted).

123. The Court further reiterates that expulsion by a Contracting State may give rise to an issue under Article 3, 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 the person in question to that country (reference omitted). Similarly, Article 2 of the Convention and Article 1 of Protocol No. 13 prohibit the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (references omitted).

124. In this type of case the Court is therefore called upon to assess the situation in the receiving country in the light of the requirements of the above Articles. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the Contracting State, by reason of its having taken action which has as a direct consequence the exposure of an individual to the risk of proscribed ill-treatment (reference omitted).

...

127. The Court must in addition have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms. Its approach must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (references omitted).

128. It has been accepted that a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. Article 1 makes no distinction as to the type of rule or measure concerned and does not exclude any part of a Contracting Party's "jurisdiction" from scrutiny under the Convention (reference omitted). The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention (reference omitted). For example, in *Soering* (reference omitted) ... the obligation under Article 3 of the Convention not to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment was held to override the United Kingdom's obligations under the Extradition Treaty it had concluded with the United States in 1972".

(b) Application of the above principles to the present case

70. In the instant case, the applicant was arrested with a view to his extradition to the United States. On 30 August 2010 the United States authorities officially requested his extradition on, *inter alia*, a capital charge. On 30 September 2010 and 1 November 2010 the District Court and the Court of Appeal, respectively, ruled in favour of the applicant's extradition. It is a matter of profound regret that the lower courts were willing to allow the applicant's extradition without examining the reality of the risk alleged by the applicant. It is striking that the lower courts never sought assurances from the requesting Government that the death penalty would not be imposed in the event of the applicant's conviction (see paragraphs 13 and 16 above). This matter only became a live issue in the proceedings before the Supreme Court, by which stage, regrettably, the applicant had already been extradited (see paragraphs 24 and 25 above). In this connection, the Court recalls that Protocol No. 13, which came into force in respect of Albania on 1 June 2007, taken together with the respondent State's obligations under Articles 1, 2 and 3 of the Convention, dictated that, for whatever reason, it should not detain individuals with a view to extraditing them to stand trial on capital charges or in any other way subjecting individuals within its jurisdiction to a real risk of being sentenced to the death penalty and executed (see, *mutatis mutandis*, *Al-Saadoon and Mufdhi*, cited above, § 137), unless sufficient and binding assurances were sought and obtained from the responsible authorities of the requesting State.

71. However, prior to the applicant's extradition on 24 November 2010, and, in response to the Albanian Minister of Justice's request for assurances against the imposition of the death penalty, on 8 November 2001 the United States Embassy, by way of a diplomatic note, stated that "the death penalty will not be sought or imposed against [the applicant] upon his extradition to the United States."

72. The Court recognises that, in extradition matters, diplomatic notes are a standard means for the requesting State to provide any assurances

which the requested State considers necessary for its consent to extradition. It also recognises that, in international relations, diplomatic notes carry a presumption of good faith. The Court considers that, in extradition cases, it is appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy, human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States (see *Babar Ahmad and Others v. the United Kingdom* (dec.) nos. 24027/07, 11949/08 and 36742/08, § 105, 6 July 2010). Consequently, the Court will assess the quality of assurances given and whether in light of the requesting State's practices they can be relied upon.

73. The Court finds nothing in the materials before it that could cast doubts as to the credibility of the assurances that capital punishment would not be sought or imposed in respect of the applicant by the requesting State. The assurances given by the United States Government were specific, clear and unequivocal. As was later confirmed in another diplomatic note of the United States Embassy on 24 February 2011, "these assurances are binding upon the United States Department of Justice." The Court must further attach importance to the fact that, in the context of an extradition request, there have been no reported breaches of an assurance given by the United States Government to a Contracting State. The United States long-term interest in honouring its extradition commitments alone would be sufficient to give rise to a presumption of good faith against any risk of a breach of those assurances (see *Babar Ahmad and Others* (dec.), cited above, §§ 107-8). Lastly, as is evidenced by the record of the hearing of 19 July 2011, in which the applicant pleaded guilty to the charges, no mention was made by the United States judge of any risk for the applicant of facing the death penalty.

74. In the light of the above circumstances, the Court finds that the applicant's extradition to the United States did not give rise to a breach of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13 on account of a risk of the death penalty being imposed.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

75. The applicant complained that his extradition to the US, in breach of the Court's indication under Rule 39 of the Rules of Court, gave rise to a violation of Article 34 of the Convention, which provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Admissibility

76. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

77. The applicant maintained that there had been a breach of Article 34 of the Convention as a result of the non-compliance by the Albanian authorities with the Court's interim measure. He argued that compliance with the wishes of a foreign embassy is against the spirit of the Convention's supremacy in the domestic legal order.

78. As to any objective obstacles for compliance with the Rule 39 interim measure, the applicant argued that, in accordance with Article 266 § 1 of the CCP, measures other than detention were available to the authorities. Furthermore, the Government did not attempt to inform the Court of the existence of any objective obstacles prior to the applicant's extradition.

79. The Government submitted that it was not the authorities' intention to disregard the obligations arising from the Court's Rule 39 interim measure. Having regard to the highly complex nature of the applicant's case, the societal risk he posed and the obligations stemming from other international commitments, the authorities attempted to find the best solution. The Government requested the Court, in view of the exceptional circumstances of the case, to be flexible in the assessment of the facts which prompted the applicant's extradition.

80. The Government argued that the applicant's extradition was ordered by the Court of Appeal's decision of 1 November 2010, which was final and had acquired the force of *res judicata*. In their view, Article 499 § 1 of the CCP provided for the applicant's release if the Ministry of Justice did not order the applicant's extradition within a month from the date of the Court of Appeal's decision, despite the fact that the applicant's appeal was pending before the Supreme Court. The Government further clarified that domestic law did not envisage the continuation of detention in the event of a remittal of a case by the Supreme Court. Consequently, in so far as the law did not stipulate the continuation of a defendant's arrest, the legal interpretation was to be in favour of the defendant, which would result in his subsequent release. In the present case, had the authorities released the applicant, the Government would have been in breach of the Extradition Treaty provisions. If the authorities had not extradited the applicant by

1 December 2010, they would have had to release him in accordance with Article 499 § 1 of the CCP. Consequently, the Minister of Justice was faced with an objective impediment to compliance with the Court's interim measure.

2. The Court's assessment

(a) General principles

81. Interim measures under Rule 39 of the Rules of Court are indicated only in limited spheres. In practice, the Court will make such an indication only if there is an imminent risk of irreparable damage. While there is no specific provision in the Convention concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or other rights guaranteed by the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 104, ECHR 2005-I). Under the Convention system, interim measures play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention (*Mamatkulov*, cited above, § 125).

82. Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the interim measure indicated by the Court (*Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, the Court will not re-examine whether its decision to apply interim measures was correct. It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (*Paladi*, cited above, § 92; *Groni v. Albania*, no. 25336/04, § 184, 7 July 2009; and *Al-Saadoon and Mufdhi*, cited above, § 161).

(b) Application of the above principles to the present case

83. The Court notes that the respondent Government were initially informed, by way of a facsimile and mail, of the interim measure under

Rule 39 on 12 October 2010, according to which the applicant was not to be extradited “until the lapse of ten days following notification of the Court of Appeal’s decision to the Court”. The prolongation of the application of the interim measure, “until the lapse of fifteen days following notification of the Supreme Court’s decision to the Court”, was communicated, by way of a facsimile and mail, to the respondent Government on 2 November 2010. Despite the diplomatic assurances given by the United States Government, on 18 November 2010 the Government were informed that the interim measure continued to apply. However, the applicant was extradited on 24 November 2010. The interim measure was evidently not complied with.

84. The Court will therefore determine whether there were objective impediments which prevented the Government’s compliance and whether they took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Groni*, cited above, § 188).

85. In the first place, the Court does not accept the Government’s argument that, in extraditing the applicant, they complied with the final Court of Appeal’s judgment of 1 November 2010. For the purposes of the Convention, a final judgment which has become *res judicata* is a judgment which may not be subject to control by a higher instance court and, eventually, quashed (see, *mutatis mutandis*, *Gjyli v. Albania*, no. 32907/07, §§ 33-34, 29 September 2009), whereas the present Court of Appeal’s judgment was lawfully quashed by the Supreme Court’s judgment of 26 November 2010 and those proceedings are still pending.

86. The Court cannot accept the Government’s argument that the failure to extradite the applicant would have interfered with Albania’s international obligations under the 1935 Extradition Treaty. In this respect the Court refers to its case-law as summarised in the *Al-Saadoon and Mufdhi* judgment to the effect that the Convention is intended to safeguard rights that are “practical and effective” and that a respondent State is considered to retain Convention liability in respect of treaty commitment prior to or subsequent to the entry into force of the Convention (see, for example, paragraph 69 above). Moreover, in the *Al-Saadoon and Mufdhi* judgment the Court further held that “it is not open to a Contracting State to enter into an agreement with another State which conflicts with its obligations under the Convention. This principle carries all the more force ... given the absolute and fundamental nature of the right not to be subjected to the death penalty and the grave and irreversible harm” risked by the applicant (see paragraph 138 of the said judgment). The fact that the harm which an interim measure was designed to prevent subsequently does not materialise, despite a State’s failure to act in full compliance with the interim measure, is equally irrelevant for the assessment of whether the respondent State has fulfilled its obligations under Article 34 (see *Groni*, cited above, § 194; and, *Paladi*, cited above, § 89).

87. Finally, the Court rejects the Government's argument that the applicant's extradition was unavoidable given the imminent expiry of his period of detention and the absence of any alternative to his release. In the first place, there was no legal basis for the applicant's extradition after the Supreme Court's judgment of 26 November 2010. Furthermore, the Court notes that although the time-limit for the applicant's extradition was extended to 1 December 2010 (see paragraph 23 above), he was physically removed on 24 November 2010, that is just two days prior to the Supreme Court's decision. Secondly, neither the existing state of national law expounded by the Government, notably the alleged legal vacuum concerning the continuation of detention beyond the time-limit provided for in Article 499 of the CCP, nor deficiencies in the national judicial system and the difficulties encountered by the authorities in seeking to achieve their legislative and regulatory objectives, can be relied upon to the applicant's detriment, in the absence of a final domestic court judgment authorising his extradition, or avoid or negate the respondent State's obligations under the Convention (see, *mutatis mutandis*, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 321, ECHR 2011; *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, §§ 113-117, 22 September 2009; *Čonka v. Belgium*, no. 51564/99, § 84, ECHR 2002-I; *Jabari v. Turkey*, no. 40035/98, §§ 49-50, ECHR 2000-VIII). Thirdly, there is no indication that the authorities considered the possibility of taking any steps to remove the risk of the applicant's flight in the event of his release, by, for example, the imposition of other coercive forms of security measures provided for under the CCP (see paragraphs 47 and 48 above). Fourthly, the authorities did not inform the Court, prior to the extradition, of the difficulties encountered by them in complying with the interim measure.

88. In these circumstances, the Court concludes that the domestic authorities' non-compliance with the interim measure at issue, in the absence of any objective justification, constitutes a violation of Article 34 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. The applicant complained of a breach of Article 3 of the Convention on account of the imposition of a life sentence without parole by the United States courts. The Government contended that the applicant had not raised this complaint before domestic courts.

90. The Court recalls that the imposition of a life sentence on an adult offender is not, in itself, prohibited by Article 3 or any other provision of the Convention or incompatible therewith (see, among many other authorities, *Bamber v. the United Kingdom*, no. 13183/87, Commission decision of 14 December 1988, and *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI). It is only in very exceptional cases that an

applicant will be able to demonstrate that the sentence he or she would face in a non-Contracting State would be grossly disproportionate and thus contrary to Article 3 at the moment of its imposition (see *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, § 134, 17 January 2012). In the absence of any such gross disproportionality, an Article 3 issue will arise for a mandatory sentence of life imprisonment without the possibility of parole in the same way as for a discretionary life sentence, when it can be shown: (i) that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds; and (ii) that the sentence is irreducible *de facto* and *de iure* (see *Harkins and Edwards*, cited above, § 138; and, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 98, ECHR 2008).

91. In the circumstances of the present case, the Court considers that it is not necessary to examine the question of exhaustion of domestic remedies by the applicant, because this complaint is in any event manifestly ill-founded for the following reasons. At the time of the submission of this complaint, the applicant had not yet been convicted, still less begun to serve his sentence. Had the applicant been sentenced, the Court does not find that the likely sentence to be imposed would have been grossly disproportionate, having regard to the counts with which he was charged and the plea bargain he has voluntarily and knowingly made. Moreover, the applicant did not show that, upon extradition, his incarceration in the United States would not serve any legitimate penological purpose. Indeed, if he had been given a mandatory life sentence, it may well have been that the point at which his continued incarceration would no longer serve any purpose would never have arisen. Lastly, the Court notes that the applicant was, in fact, sentenced by the United States court to 80 months' imprisonment (see paragraph 44 above). The Court therefore considers that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

92. The applicant further complained that his initial arrest and continued detention were in breach of Article 5 § 1 of the Convention. The Government submitted that there was a legal basis under domestic law for the applicant's initial custody and his continued detention.

93. The Court notes that the applicant was detained as a person "against whom action is being taken with a view to ... extradition" and this detention fell under Article 5 § 1 (f). The parties dispute, however, whether this detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

94. Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Compliance with national law is not, however, sufficient. Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting

the individual from arbitrariness (see, for example, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

95. In the instant case, the applicant was remanded in custody on 2 July 2010. His custody was validated in accordance with the law by the domestic courts, which relied on an international wanted notice and Article XI of the Extradition Treaty. The Court notes that the Extradition Treaty allows for a two-month custodial detention pending receipt of the official request for extradition from the requesting State. The period that elapsed between the date of the applicant's arrest and the date of the United States request for extradition (2 July and 30 August 2010), amounts to less than two months. The Court has no grounds upon which to conclude that the applicant's detention, prior to receipt of the United States official request for his extradition, was "unlawful" merely because of the lack of an official request for extradition (see *Khodzhayev v. Russia*, no. 52466/08, § 137, 12 May 2010).

96. As to the compliance of the applicant's continued detention with national law, the Court observes that the domestic courts, in extending his detention, acted in accordance with Article 493 of the CCP. The extension of his detention was based on judicial decisions. Furthermore, the length of the overall detention, that is four months and twenty-two days, was not excessively long and was justified by the conduct of the extradition proceedings. Moreover, the Court does not consider that the domestic courts lacked any due diligence in examining the applicant's case (see *Quinn v. France*, 22 March 1995, § 48, Series A no. 311).

97. The Court therefore considers that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

99. The applicant submitted that, while it was difficult to calculate his precise pecuniary damage, it should not be less than 18,000 euros (EUR). This included his salary, his education fees and the amount concerning the alleged unjust deprivation of liberty. He further claimed EUR 30,000 in respect of non-pecuniary damage.

100. The Government objected to the applicant's claims arguing that they were excessive and unreasonable.

101. In the present case, the Court has found a violation of Article 34 of the Convention. The Court does not discern any causal link between the violations found and the pecuniary damage alleged. As regards the award for non-pecuniary damage, the Court considers that the finding that there was a breach of Article 34 of the Convention constitutes of itself sufficient just satisfaction (see, for example, *Al-Saadoon and Mufdhi*, cited above, § 174).

B. Costs and expenses

102. The applicant also claimed 2,465,743 Albanian leks (ALL) for the costs and expenses incurred before the domestic courts and those incurred before this Court. He further claimed 238,498.1 United States Dollars (USD) for the costs and expenses incurred before the United States courts. He submitted detailed invoices.

103. The Government rejected the applicant's claims.

104. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred (in the case of domestic proceedings, in seeking redress for the violations of the Convention found or preventing a violation occurring) and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 28, ECHR 1999-VI; and *Roche v. the United Kingdom* [GC], no. 32555/96, § 182, ECHR 2005-X).

105. The Court considers that the applicant's lawyers' fees incurred in the domestic proceedings do not constitute expenses incurred in seeking redress for the violations of the Convention found in the present case. However, having regard to the detailed supporting documents submitted and, making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 in respect of the Strasbourg proceedings.

C. Default interest

106. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13 arising from the risk of the imposition of the death penalty and the complaint under Article 34 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13 on account of the applicant's extradition to the United States;
3. *Holds* that there has been a violation of Article 34 of the Convention;
4. *Holds*
 - (a) that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage suffered by the applicant;
 - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into the national currency at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President