

Press release issued by the Registrar

Decision on admissibility

[Babar Ahmad and Others v. the United Kingdom](#)
(application nos. 24027/07, 11949/08 and 36742/08)

**APPLICATIONS FROM ALLEGED INTERNATIONAL TERRORISTS DETAINED IN THE UK
PENDING EXTRADITION TO THE USA PARTLY ADMISSIBLE**

The applicants in the first case are two British nationals, Babar Ahmad and Haroon Rashid Aswat, both born in 1974. The applicant in the second case is Seyla Talha Ahsan, also a British national, who was born in 1979. The applicant in the third case is Mustafa Kamal Mustafa, known more commonly as Abu Hamza. He was born in 1958 and claims that he was deprived of his Egyptian nationality in the 1980s; the United Kingdom Government maintain, however, that he still has Egyptian nationality. The applicants are all currently detained in the UK pending extradition to the USA: Mr Ahmad and Mr Ahsan at HMP Long Lartin; Mr Aswat at Broadmoor Hospital; and, Abu Hamza at HMP Belmarsh.

Declared admissible

- complaints by Mr Ahmad, Mr Aswat and Mr Ahsan (but not by Abu Hamza) under Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights about possible post-trial detention in a United States of America prison with the highest possible of security levels (a “supermax” prison); and,
- all four applicants’ complaints under Article 3 of the Convention concerning the length of their possible sentences in the USA.

Questions requiring further written observations from the parties

- Given the length of the sentences faced by Mr Ahmad, Mr Aswat and Mr Ahsan if convicted, would the time spent at a “supermax” prison, the US Penitentiary, Administrative Maximum, Florence, Colorado (“ADX Florence”), amount to a violation of Article 3? Would they have any real prospect of entering the “step-down programme” whereby they would move through different levels of contact with others until they would be suitable for transfer to a normal prison?
- Does the Eighth Amendment to the United States Constitution (prohibition on “cruel and unusual punishment”), as interpreted by the federal courts, provide protection equivalent to Article 3 of the Convention?
- If convicted, would the applicants’ sentences be *de facto* reducible?

Continuation of interim measures

The Court decided to prolong, until further notice, the interim measures (Rule 39) it had adopted indicating to the United Kingdom Government that it was in the interests of the proper conduct of the proceedings that the applicants should not be extradited while the cases were being examined by the Court.

Principal facts

Between 2004 and 2006 all four applicants were indicted on various terrorism charges in the United States of America. Mr Ahmad and Mr Ahsan are accused of various felonies including providing support to terrorists and conspiracy to kill, kidnap maim or injure persons or damage property in a foreign country. Abu Hamza has been charged with 11 different counts of criminal conduct related to the taking of 16 hostages in Yemen in 1998, advocating violent *jihad* in Afghanistan in 2001 and conspiring to establish a *jihad* training camp in Bly, Oregon (the USA) between June 2000 and December 2001. Mr Aswat was indicted as Abu Hamza's co-conspirator in respect of the latter charges.

On the basis of those indictments, the US Government requested each applicant's extradition from the United Kingdom. As a result, all four applicants were arrested in the UK and placed in detention pending extradition. They then contested their extradition in separate proceedings in the English courts, without success, their requests for leave to appeal to the House of Lords ultimately being rejected in 2007 and 2008.

In those extradition proceedings, the applicants argued in particular that, as non-citizens of the US suspected of membership of Al-Qaeda or of having aided and abetted acts of international terrorism, they were at risk of being designated as an "enemy combatant" under Section 2 of United States Military Order No. 1 issued in November 2001 and, as such, could be detained, tried by a military commission and sentenced to life imprisonment or death. They also claimed that they would be at substantial risk of extraordinary rendition to a third country and of being subjected to special administrative measures – including solitary confinement and restrictions on communication with their legal representatives – whilst in pre-trial detention in a federal prison. They also argued that the extradition requests were based on evidence directly or indirectly obtained through torture and that it was inevitable that that evidence would be used against them in the course of any trial in the United States. Abu Hamza, blind in one eye, amputated of both forearms and suffering from high blood pressure and diabetes, further argued that, if extradited, he would most likely be detained in ADX Florence despite his poor health.

During those proceedings the United States Embassy issued diplomatic notes giving assurances that the applicants would be prosecuted before a federal court rather than a military commission and would not be treated as "enemy combatants".

Complaints, procedure and composition of the Court

The applicants alleged in particular that, despite the diplomatic assurances provided by the United States, they were at risk, if extradited, of being subjected to an unfair trial – due to the use of evidence obtained through torture and/or of coercive plea bargaining – at the conclusion of which they could be designated as enemy combatants. They also alleged that, once extradited, they were at risk of extraordinary rendition and life imprisonment without parole and/or extremely long sentences in a "supermax" prison such as ADX Florence where special administrative measures would be applied to them. They relied on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination).

The applications were lodged, respectively, on 10 June 2007, 5 March 2008 and 1 August 2008.

The decision on admissibility was given on 8 July 2010 by a Chamber composed as follows:

Lech **Garlicki** (Poland), **President**,
Nicolas **Bratza** (United Kingdom),
Giovanni **Bonello** (Malta),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David **Thór Björgvinsson** (Iceland),
Ledi **Bianku** (Albania),
Mihai **Poalelungi** (Moldova), **judges**,
Ján **Šikuta** (Slovak Republic),
Päivi **Hirvelä** (Finland),
Nebojša **Vučinić** (Montenegro), **substitute judges**,

and also Lawrence **Early**, **Section Registrar**,

Decision of the Court

The Court considered that there was no reason to believe that the United States Government would breach the terms of its diplomatic assurances. There was therefore no real risk that the applicants would either be designated as enemy combatants (with the consequences that that entailed, such as the death penalty) or subjected to extraordinary rendition. Nor did it consider that any of the applicants' claims in respect of their trials in the US Federal Courts, taken either individually or cumulatively, would amount to a flagrant denial of justice. Accordingly, those parts of the applicants' complaints were declared inadmissible.

However, as concerned post-trial detention the Court considered that Mr Ahmad, Mr Aswat and Mr Ahsan were at real risk of being held at ADX Florence if convicted and that their complaints under Article 3 concerning the stringency of conditions there for what could be the rest of their lives, raised serious questions of fact and law which were of such complexity that the Court had to examine them on the merits. For those reasons, the Court declared that part of the applicants' complaints admissible. To the extent that the applicants' conditions of detention might be made even stricter by the imposition of special administrative measures in ADX Florence, it considered that that aspect of their complaint should also be declared admissible. It declared Abu Hamza's complaint about ADX Florence inadmissible, as he would at most risk spending a short period of time there and only until such time as his state of health was assessed.

The Court further declared all four applicants' complaints under Article 3 concerning the length of their possible sentences admissible for further examination of the merits, Mr Ahmad, Mr Ahsan and Abu Hamza facing life sentences without parole and Mr Aswat a maximum of 50 years' imprisonment (meaning he would be nearly 78 before becoming eligible for release).

The remainder of each application was further declared inadmissible.

Future Procedure

On the basis of its decision, the Court decided to invite the parties to submit further written observations on the three questions set out above. The Government have been asked to submit their observations by 2 September 2010. The applicants will then be given an opportunity to respond to those observations after which the Government will be invited to submit its final observations in reply. The Court will then give its judgment.

The decision is available in English. This press release is a document produced by the Registry; the summary it contains does not bind the Court. The decision is accessible on its internet site (<http://www.echr.coe.int>). Judgment will be delivered at a later date.

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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.*