



Diplomatic assurances will protect Abu Qatada from torture but he cannot be deported to Jordan while there remains a real risk that evidence obtained by torture will be used against him.

Today's Chamber judgment in the case **Othman (Abu Qatada) v. the United Kingdom** (application no. 8139/09), which is not final¹, concerned whether Omar Othman (also known as Abu Qatada) would be at real risk of ill-treatment or a grossly unfair trial if deported to Jordan, where he is wanted on terrorism charges.

The European Court of Human Rights held, unanimously, that, if Mr Othman were deported to Jordan:

There would be **no violation of Article 3 (prohibition of torture or inhuman or degrading treatment)** of the European Convention on Human Rights;

There would be **no violation of Article 5 (right to liberty and security)** of the Convention; but that

There would be **a violation of Article 6 (right to a fair trial)**, given the real risk of the admission of evidence obtained by torture at his retrial.

The Court also held, unanimously, that there had been **no violation of Article 13 (right to an effective remedy)**.

This is the first time that the Court has found that an expulsion would be in violation of Article 6, which reflects the international consensus that the use of evidence obtained through torture makes a fair trial impossible.

Principal facts

The applicant, Omar Othman (Abu Qatada), is a Jordanian national who was born in 1960 near Bethlehem, then part of Jordan. He is currently detained in Long Lartin prison, Worcestershire, England. He is suspected of having links with al-Qaeda.

Mr Othman arrived in the United Kingdom in September 1993 and made a successful application for asylum, in particular on the basis that he had been detained and tortured by the Jordanian authorities in 1988 and 1990-1. He was recognised as a refugee in 1994, being granted leave to remain until June 1998.

While his subsequent application for indefinite leave to remain was pending, he was detained in October 2002 under the Anti-Terrorism, Crime and Security Act. When that Act was repealed in March 2005, he was released on bail and made subject to a control order under the Prevention of Terrorism Act. While his appeal against the control order

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

was still pending, in August 2005 he was served with a notice of intention to deport him to Jordan.

Mr Othman appealed against that decision. He had been convicted in Jordan, in his absence, of involvement in two terrorist conspiracies in 1999 and 2000. It was alleged by the Jordanian authorities that Mr Othman had sent encouragement from the UK to his followers in Jordan and that that had incited them to plant the bombs. Mr Othman claimed that, if deported, he would be retried, which would put him at risk of torture, lengthy pre-trial detention and a grossly unfair trial based on evidence obtained by the torture of his co-defendants.

The UK Special Immigration Appeals Commission (SIAC) dismissed his appeal, holding in particular that Mr Othman would be protected against torture and ill-treatment by the agreement negotiated between the UK and Jordan, which set out a detailed series of assurances. SIAC also found that the retrial would not be in total denial of his right to a fair trial.

The Court of Appeal partially granted Mr Othman's appeal. It found that there was a risk that torture evidence would be used against him if he were returned to Jordan and that that would violate the international prohibition on torture and would result in a flagrant denial of justice in breach of Article 6 of the European Convention on Human Rights.

On 18 February 2009 the House of Lords upheld SIAC's findings. They found that the diplomatic assurances would protect Mr Othman from being tortured. They also found that the risk that evidence obtained by torture would be used in the criminal proceedings in Jordan would not amount to a flagrant denial of justice.

Complaints, procedure and composition of the Court

The applicant alleged, in particular, that he would be at real risk of ill-treatment and a flagrant denial of justice if deported to Jordan. He relied on Articles 3, 5, 6 and 13.

The application was lodged with the European Court of Human Rights on 11 February 2009. On 19 February 2009 an interim measure under Rule 39 of the Rules of Court was granted to the effect that Mr Othman should not be removed to Jordan pending the European Court's decision. A hearing took place in public in the Human Rights Building, Strasbourg, on 14 December 2010.

Third-party comments were received from the human rights organisations Amnesty International, Human Rights Watch and JUSTICE.

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

Lech **Garlicki** (Poland), *President*,
Nicolas **Bratza** (the United Kingdom),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Ledi **Bianku** (Albania),
Mihai **Poalelungi** (Moldova),
Vincent A. **de Gaetano** (Malta), *Judges*,

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

Decision of the Court

Article 3

The Court noted that, in accordance with its well-established case-law, Mr Othman could not be deported to Jordan if there were a real risk that he would be tortured or subjected to inhuman or degrading treatment.

The reports of United Nations bodies and human rights organisations showed that the Jordanian General Intelligence Directorate (GID) routinely used torture against suspected Islamist terrorists and that no protection against that was provided by the courts or any other body in Jordan. As a high-profile Islamist, Mr Othman belonged to a category of prisoners at risk of ill-treatment and he claimed already to have been tortured when he lived in Jordan.

The Court therefore had to decide whether the diplomatic assurances obtained by the UK Government from the Jordanian Government were sufficient to protect Mr Othman.

It found that the agreement between the two Governments was specific and comprehensive. The assurances were given in good faith by a Government whose bilateral relations with the United Kingdom had, historically, been strong. They had been approved at the highest levels of the Jordanian Government, with the express approval and support of the King himself. They also had the approval and support of senior GID officials. Mr Othman's high profile would make the Jordanian authorities careful to ensure he was properly treated; any ill-treatment would have serious consequences for Jordan's relationship with the UK. In addition, the assurances would be monitored by an independent human rights organisation in Jordan, which would have full access to Mr Othman in prison.

There would therefore be no risk of ill-treatment, and no violation of Article 3, if Mr Othman were deported to Jordan.

Article 13

The Court considered that SIAC's procedures satisfied the requirements of Article 13. There had therefore been no violation of Article 13.

Article 5

The Court noted that Jordan clearly intended to bring Mr Othman to trial and had to do so within 50 days of his detention. The Court held that 50 days' detention fell far short of the length of detention required for a flagrant breach of Article 5 and, consequently, that there would be no violation of Article 5 if he were deported to Jordan.

Article 6

The European Court agreed with the English Court of Appeal that the use of evidence obtained by torture during a criminal trial would amount to a flagrant denial of justice. Torture and the use of torture evidence were banned under international law. Allowing a criminal court to rely on torture evidence would legitimise the torture of witnesses and suspects pre-trial. Moreover, torture evidence was unreliable, because a person being tortured would say anything to make it stop.

The Court found that torture was widespread in Jordan, as was the use of torture evidence by the Jordanian courts. The Court also found that, in relation to each of the two terrorist conspiracies charged against Mr Othman, the evidence of his involvement had been obtained by torturing one of his co-defendants. When those two co-defendants stood trial, the Jordanian courts had not taken any action in relation to their complaints of torture. The Court agreed with SIAC that there was a high probability that the incriminating evidence would be admitted at Mr Othman's retrial and that it would be of considerable, perhaps decisive, importance.

In the absence of any assurance by Jordan that the torture evidence would not be used against Mr Othman, the Court therefore concluded that his deportation to Jordan to be retried would give rise to a flagrant denial of justice in violation of Article 6.

The Court did not consider it necessary to consider his other complaints under Article 6.

Article 41

The applicant did not submit a claim for just satisfaction.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.