



Extraditing two men, risking life imprisonment for murder, to the United States would not breach their human rights

In today's Chamber judgment in the case [Harkins and Edwards v. the United Kingdom](#) (application nos. 9146/07 and 32650/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the complaint of two men that, if the United Kingdom were to extradite them to the United States, they risked the death penalty or sentences of life imprisonment without parole.

Principal facts

The applicants, Phillip Harkins and Joshua Daniel Edwards, are respectively a British and a United States (US) national, born in 1978 and 1987.

They were indicted in the United States, in 2000 and in 2006 respectively, for murder, among other offences. Mr Harkins was accused of having killed a man during an armed robbery attempt together with an accomplice. Mr Edwards was accused of having intentionally shot two people, killing one of them and injuring the other, who had allegedly made fun of his small stature and feminine appearance.

Both applicants were arrested in the United Kingdom (UK), in 2003 and 2007 respectively. The US Government requested their extradition providing assurances that the death penalty would not be applied in their case and that the maximum sentence which they risked was life imprisonment.

In June 2006 and June 2007, the British Secretary of State ordered Mr Harkins' and Mr Edwards' extradition. They complained unsuccessfully before the British courts that, if extradited, they risked a sentence of life imprisonment without parole, in breach of Article 3 of the European Convention on Human Rights (prohibition of inhuman and degrading treatment).

Following their subsequent applications to the European Court of Human Rights, in which they asked it to prevent their extradition, the Court applied Rule 39 (Interim measures) of the Rules of Court, indicating that the UK Government should not extradite them until further notice.

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

Complaints, procedure and composition of the Court

Relying in particular on Article 3, both applicants complained that, if they were extradited to the United States, there would be a real risk that they would face the death penalty. They also complained about the possibility of receiving sentences of life imprisonment without parole.

The applications were lodged with the European Court of Human Rights respectively on 19 February 2007 and 1 August 2007.

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

Lech **Garlicki** (Poland), *President*,
David Thór **Björgvinsson** (Iceland),
Nicolas **Bratza** (the United Kingdom),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta), *Judges*,

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

Decision of the Court

Alleged risk of death penalty (Article 3)

The Court considered that the diplomatic assurances, provided by the US to the British Government - that the death penalty would not be sought in respect of Mr Harkins or Mr Edwards - were clear and sufficient to remove any risk that either of the applicants could be sentenced to death if extradited, particularly as the US had a long history of respect for democracy, human rights and the rule of law.

Therefore, the Court rejected the applicants' related complaints as inadmissible.

Life imprisonment without parole (Article 3)

In Mr Harkins' case, the Court was not persuaded that it would be grossly disproportionate for Mr Harkins to be given a mandatory life sentence in the US. He had been over 18 at the time of his alleged crime, had not been diagnosed with a psychiatric disorder, and the killing had been part of an armed robbery attempt - an aggravating factor. Further, he had not yet been convicted, and - even if he were convicted and given a mandatory life sentence - keeping him in prison might continue to be justified throughout his life time. And if that were not the case, the Governor of Florida and the Florida Board of Executive Clemency could, in principle, decide to reduce his sentence.

As regards Mr Edwards, he faced - at most - a discretionary life sentence without parole. Given that it could only be imposed after consideration by the trial judge of all relevant factors and only if Mr Edwards were convicted for a pre-meditated murder, the Court concluded that such a sentence would not be grossly disproportionate.

Consequently, there would be no violation of Article 3 if either Mr Harkins or Mr Edwards were extradited.

Other articles

The Court rejected Mr Edwards' related complaint under Article 5 as inadmissible.

Interim measures (Rule 39)

The Court held that the indication it had given to the British Government not to extradite the applicants until further notice had to remain in force until today's judgment became final or until the Court decided to accept a potential request by either or both parties for referral of the case to the Court's Grand Chamber.

Separate opinion

Judge Garlicki and judge Kalaydjieva expressed concurring opinions which are 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.