



## Extradition to the USA case declared inadmissible

The case [Harkins v. the United Kingdom](#) (application no. 71537/14) concerned the extradition of a British national to the United States of America (USA) to face trial for first-degree murder. Mr Harkins, the applicant, complained that his extradition to the USA would violate Articles 3 (inhuman or degrading treatment) and 6 (right to a fair trial) of the European Convention of Human Rights, because if convicted in Florida he would face a mandatory sentence of life in prison without the possibility of parole. In its decision in the case today the European Court of Human Rights has declared both complaints inadmissible. The decision is final. The Court also decided that the interim measure (under Rule 39 of the Rules of Court) indicating to the UK Government that it should stay Mr Harkins' extradition is to be lifted.

This is the second time Mr Harkins has applied to the European Court with regard to his extradition. In 2012, in the judgment [Harkins and Edwards v. the United Kingdom](#), the Court found that his extradition would not violate Article 3 of the European Convention. However, Mr Harkins was not extradited and following the subsequent ECtHR judgments in [Vinter and Others v. the UK](#)<sup>1</sup> and [Trabelsi v. Belgium](#)<sup>2</sup> he argued before the national courts that developments in the Court's Article 3 case-law on life sentences without the possibility of parole were such as to require the re-opening of the proceedings. The UK courts refused to re-open the proceedings and, in this second application to the Court, Mr Harkins, relying on the Court's recent case-law, once again complained that his extradition would breach his rights under Article 3 of the Convention.

The Court held that Mr Harkins' complaints under Article 3 should be declared inadmissible as they were "substantially the same" (within the meaning of Article 35 § 2 (b) of the Convention) as the Article 3 complaint considered by it in 2012. In reaching this conclusion, the Court rejected Mr Harkins' argument that the development of its case-law in the *Vinter* and *Trabelsi* cases could constitute "relevant new information" for the purposes of Article 35 § 2 (b). To find otherwise would undermine the principle of legal certainty and undermine the credibility and authority of the Court's judgments.

As concerned Mr Harkins' complaint under Article 6, the Court concluded that the facts of the case did not disclose any risk that Mr Harkins would suffer a flagrant denial of justice.

## Principal facts and complaints

The applicant, Phillip Harkins, is a British national who was born in 1978.

In 2000 Mr Harkins was indicted in Florida for first degree murder and attempted robbery with a firearm. He was arrested in the UK in 2003 and the US authorities sought his extradition. In a Diplomatic Note issued on 3 June 2005 the US Embassy assured the UK Government that the death penalty would not be sought. In June 2006 the British Secretary of State ordered Mr Harkins' extradition. Mr Harkins then complained unsuccessfully before the British courts that, if extradited, he risked the death penalty or a sentence of life imprisonment without the possibility of parole. In 2007 the High Court found that there would be no risk of the death penalty if Mr Harkins were to be extradited and, in 2011, it found that a life sentence without the possibility of parole would not

<sup>1</sup> In this judgment, the Court found that the domestic law concerning the Justice Secretary's power to release a whole life prisoner was unclear. It was therefore not persuaded that the applicants' life sentences were compatible with Article 3 and held that there had been a violation of Article 3 of the Convention.

<sup>2</sup> In this judgment, the Court found that Mr Trabelsi's extradition to the US had been in breach of Article 3 of the Convention as it exposed him to the risk of a life sentence without the possibility of parole.

violate Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

In the meantime, in 2007, Mr Harkins had applied to the European Court of Human Rights for the first time ([Harkins and Edwards v. the United Kingdom](#), application no. 9146/07). In January 2012, a Chamber of the Court found that Mr Harkin's extradition would not violate Article 3 of the European Convention. It rejected as inadmissible the complaint concerning the alleged risk of the death penalty, considering that the diplomatic assurances, provided by the US to the UK Government, were clear and sufficient to remove any risk of Mr Harkins being sentenced to death if extradited. The Court also found that the imposition of a mandatory life sentence in the US would not violate Article 3. 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. 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.

Mr Harkins was not extradited and following the ECtHR judgments in the cases of [Vinter and Others v. the United Kingdom](#) (nos. 66069/09, 130/10 and 3896/10, Grand Chamber) of July 2013 and [Trabelsi v. Belgium](#) (no. 140/10) of September 2014 he brought new proceedings before the domestic courts in which he argued that developments in the Court's Article 3 case-law on life sentences without the possibility of parole were such as to require the re-opening of the proceedings. However, in November 2014, the High Court refused to re-open the proceedings, finding that the ECtHR judgments in [Vinter and Others v. the United Kingdom](#) and [Trabelsi v. Belgium](#) had not recast Convention law to such an extent that his extradition would result in a violation of Article 3 of the Convention.

On 11 November 2014 Mr Harkins applied to the European Court a second time. Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 6 (right to a fair trial) of the Convention, Mr Harkins complained about his extradition to the USA, arguing that if convicted in Florida he would face a mandatory sentence of life in prison without the possibility of parole.

## Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 November 2014.

On 14 November 2014 the European Court of Human Rights granted an interim measure under Rule 39 of its Rules of Court, which indicated to the UK Government that it should stay Mr Harkins' extradition.

The case was [communicated](#)<sup>3</sup> to the UK Government, with questions from the Court, on 31 March 2015. At the same time, the Chamber decided to grant the case priority under Rule 41 of the Rules of the Court.

On 5 July 2016 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing was held in the case on 11 January 2017.

A decision was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,  
Angelika **Nußberger** (Germany),  
Ganna **Yudkivska** (Ukraine),

<sup>3</sup> In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

Helena Jäderblom (Sweden),  
Robert Spano (Iceland),  
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),  
Luis López Guerra (Spain),  
Ledi Bianku (Albania),  
İşıl Karakaş (Turkey),  
Kristina Pardalos (San Marino),  
Julia Laffranque (Estonia),  
André Potocki (France),  
Aleš Pejchal (the Czech Republic),  
Carlo Ranzoni (Liechtenstein),  
Pauliine Koskelo (Finland),  
Tim Eicke (the United Kingdom),  
Lətif Hüseynov (Azerbaijan),

and also Lawrence Early, *Jurisconsult*.

## Decision of the Court

### Article 3 (prohibition of inhuman or degrading treatment)

First, the Court recalled that Article 35 § 2 (b) of the Convention prevented it from considering an application which was substantially the same as a matter it had already decided. An application would generally fall foul of this admissibility criterion where an applicant had brought a previous application which related essentially to the same person, the same facts and raised the same complaints, unless he advanced new information not previously considered by the Court

In the case at hand, the Court noted that Mr Harkins' complaints under Article 3 were substantially the same as those raised in his previous application (*Harkins and Edwards v. the UK*) lodged in 2007. Furthermore, the facts upon which his original complaint had been based had not changed. He is facing the same charges in respect of the same criminal offences, and both the sentencing regime and clemency process in Florida are the same today as they were in 2012.

As to whether the development of the Court's case-law following its judgment in Mr Harkins' first application constituted "relevant new information" for the purposes of Article 35 § 2 (b), the Court declined to expand this notion beyond its ordinary meaning, i.e. new *factual* information (and not new legal argument). In this regard, the Court has adopted a rigorous approach in applying those admissibility criteria whose object and purpose, like that of the criterion in Article 35 § 2 (b), is to serve the interests of finality and legal certainty and to mark out the limits of its competence. The Court's case-law is constantly evolving and, if jurisprudential developments were to permit unsuccessful applicants to reintroduce their complaints, final judgments would continually be called into question by the lodging of a fresh application, which would undermine the credibility and authority of those judgments. Moreover, the principle of legal certainty would not apply equally to both applicant and Government parties, as only an applicant, on the basis of subsequent jurisprudential developments, would effectively be permitted to "reopen" previously examined cases.

Accordingly, the Court rejected, by a majority, Mr Harkins' complaints under Article 3 as inadmissible on the basis that they were "substantially the same" as the complaints already examined by the Court on 17 January 2012 in *Harkins and Edwards*, and its subsequent case-law did not constitute "relevant new information" for the purposes of Article 35 § 2 (b) of the Convention.

### Article 6 (right to a fair trial)

The Court concluded that the facts of the case did not disclose any risk that Mr Harkins would suffer a flagrant denial of justice. Nor indeed had Mr Harkins himself suggested that the trial process in the USA would be unfair. The Court therefore declared, unanimously, Mr Harkins' complaint under Article 6 inadmissible as manifestly ill-founded.

*The decision is available in both English and French.*

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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.