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

Press Release
issued by the Registrar of the Court

ECHR 340 (2022)
03.11.2022

Extradition of the applicant would not be in violation of the European Convention

The case of Sanchez-Sanchez v. the United Kingdom (application no. 22854/20) concerned the requested extradition of Mr Sanchez-Sanchez, a Mexican national, to the United States of America (USA) to face trial for drug dealing and trafficking, where he alleged that there was a possibility that he might, if convicted, be sentenced to life imprisonment without parole.

In today's **Grand Chamber** judgment[1], the European Court of Human Rights held, unanimously, that Mr Sanchez-Sanchez's extradition to the United States **would not be in violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights.

The Court found that, while the principles set out in the Court's previous case-law must be applied in domestic cases, an adapted approach was called for in an extradition case such as this, where the applicant has been neither convicted nor sentenced, and where the finding of a violation could prevent him from standing trial. It subsequently overruled the case-law in *Trabelsi v. Belgium* for this non-domestic case, underlining, however, that that in no way undermined its position that the extradition of a person by a Contracting State raised problems where there were serious grounds to believe that he would run a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting State.

In extradition cases, the Court held that, first, it was up to the applicant to demonstrate that there was a real risk that, if convicted, he would be given a sentence of life imprisonment without parole. Then, in keeping with the essence of the case-law in *Vinter and Others v. the UK*, the sending State must ascertain, prior to authorising extradition, that a mechanism of sentence review existed in the requesting State which would allow the domestic authorities to consider the prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other circumstances.

In the case of Mr Sanchez-Sanchez, the Court held that he had not shown that, in the event of his conviction in the United States of the offences charged, there would be a real risk that he would be given a sentence of life imprisonment without parole. There was therefore no need to carry out the second stage of the analysis.

The judgment 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 Sanchez-Sanchez's extradition is to be lifted.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicant, Ismail Sanchez-Sanchez, is a Mexican national who was born in 1968. He is detained in Wandsworth Prison in the United Kingdom (UK). He was arrested at Heathrow Airport (UK) on 19 April 2018 in response to a request from the United States (US) for his provisional arrest.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Sanchez-Sanchez faces extradition to the United States, where he is wanted on charges of drug dealing and trafficking.

At the extradition hearing the parties agreed that if Mr Sanchez-Sanchez were convicted of the offences charged, his sentencing would be Level 43 in the US Sentencing Guidelines, which has a sentence range of life imprisonment. The District Judge considered that there was a "real possibility" that, if convicted, he would receive a sentence of life imprisonment.

Mr Sanchez-Sanchez's appeal against extradition was heard by the High Court. Invoking Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, he argued that there was a real risk that if he were convicted of the offences charged, he would receive an "irreducible" sentence of life imprisonment without the possibility of release on parole. In dismissing his appeal, the High Court declined to take into account the European Court's judgment in *Trabelsi v. Belgium* of 2014, in which it had been found that the applicant's extradition to the USA violated the Convention because he had been at risk of receiving a life sentence which, by reference to the standards applicable in Contracting States, was irreducible. The High Court considered itself bound by the judgment of the House of Lords in *R (Wellington) v. Secretary of State for the Home Department* [2009] 1 AC 335, which held that to extradite a claimant to the United States of America to face, if convicted, a life sentence without parole would not breach Article 3 of the Convention because the sentence would not be irreducible. The High Court was similarly satisfied that any life sentence imposed on the applicant could be reduced since there were two routes by which a prisoner could seek a reduction in sentence under the US system: compassionate release, pursuant to Title 18 of the US Code, and executive clemency.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention of Human Rights, Mr Sanchez-Sanchez submitted that, if extradited, he would be at risk of an irreducible life sentence without the possibility of parole.

The application was lodged with the European Court of Human Rights on 11 June 2020.

On 12 June 2020 the Court granted an interim measure to stay Mr Sanchez-Sanchez's extradition to the USA. The UK Government were given notice[2] of the application, with a question being put to the parties as to whether his extradition would be consistent with the requirements of Article 3 of the Convention – see the statement of facts.

At the same time, the Chamber decided to grant the case priority under Rule 41 of the Rules of the Court.

On 19 October 2021 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber[3]. A Grand Chamber hearing was held in the case on 23 February 2022.

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

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Síofra **O'Leary** (Ireland),
Georges **Ravarani** (Luxembourg),

[2] 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 notified to a Government can be found in the Rules of Court.

[3] Under Article 30 of the European Convention of Human Rights "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber."

Marko **Bošnjak** (Slovenia),
Krzysztof **Wojtyczek** (Poland),
Yonko **Grozev** (Bulgaria),
Alena **Poláčková** (Slovakia),
Tim **Eicke** (the United Kingdom),
Arnfinn **Bårdsen** (Norway),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Saadet **Yüksel** (Türkiye),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Ana Maria **Guerra Martins** (Portugal),
Ioannis **Ktistakis** (Greece),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar.*

Decision of the Court

First, the Court reviewed its relevant case-law concerning whole life imprisonment in the extradition context. Prior to *Vinter and Others v. the UK*, in cases where the alleged risk was a sentence of imprisonment of life without parole, the Court had held that an Article 3 issue would arise only when it could be shown either that the applicant risked receiving a grossly disproportionate sentence, or that, if a time came when his or her imprisonment could no longer be justified on legitimate disciplinary grounds, there would be no possibility of parole (see *Harkins and Edwards v. the United Kingdom*). In *Vinter and Others*, the Court had established a number of requirements to ensure that a life sentence did not over time become a penalty incompatible with the Convention, including a requirement for a review after a certain period of time to determine whether continued detention was justified. Subsequently, in *Trabelsi v. Belgium*, the Court had applied the *Vinter and Others* criteria to the extradition context, and found that the applicant's extradition would violate Article 3 of the Convention because the US penal system did not satisfy the *Vinter and Others* criteria.

However, *Vinter and Others* was not an extradition case. Within the domestic context, the person's conviction and sentence is known, as is the system of review of the sentence. In the extradition context, where the person has not yet been convicted, a complex risk assessment is required, which calls for caution in applying the principles from *Vinter and Others* to the full. The Court recognised that requiring a Contracting State to scrutinise the relevant law and practice of a third State with a view to assessing its degree of compliance with these procedural safeguards may prove unduly difficult for domestic authorities deciding on extradition requests.

The Court pointed out that, in an extradition context, finding a violation of Article 3 meant that a person against whom serious charges had been brought would never stand trial, unless he or she could be prosecuted in the requested State, or unless the requesting State was able to provide assurances facilitating extradition. That went against society's general interest in ensuring that criminals were brought to justice and was difficult to reconcile with Contracting States' compliance with international treaty obligations, which aimed to prevent the creation of safe havens for criminals. Therefore, while the principles set out in *Vinter and Others* must be applied in domestic cases, an adapted approach was called for in the extradition context.

The Court held that, first of all, it was up to the applicant to demonstrate that there was a real risk that he would be given a sentence of life imprisonment without parole. Then, in keeping with the essence of the *Vinter and Others* case-law, the sending State must ascertain, prior to authorising extradition, that a mechanism of sentence review existed in the requesting state which would allow

the domestic authorities to consider the prisoner's progress towards rehabilitation or any other ground for release based on his or her behaviour or other relevant personal circumstances.

In *Trabelsi* the Court had not first addressed the question of whether there was a real risk that the applicant would be sentenced to life without parole, and it had only examined whether the *Vinter and Other* criteria were satisfied in their entirety. Therefore, the Court considered that *Trabelsi* should be overruled.

In this case, Mr Sanchez-Sanchez contended that a sentence of life imprisonment would violate Article 3 of the Convention as there would be no possibility of parole. It was therefore up to him to demonstrate that there was a real risk that he would face a sentence of life imprisonment without parole. If that were the case, it would have to be ascertained whether a mechanism for review of the sentence existed which would allow the authorities of the requesting State to consider his progress towards rehabilitation or any other ground for release.

For the purposes of the first stage of the two-stage test, the Court reviewed the detailed assessment that had been carried out during the domestic proceedings. Considering that the findings of the District Judge were inconclusive, it went on to examine the evidence submitted to the Court.

It noted that the February 2015 report of the US Sentencing Commission, "Life Sentences in the Federal System", stated that life sentences had been imposed in less than one-third of one percent of all drug trafficking cases in 2013. Nevertheless, according to the same report, the drug trafficking guidelines specifically provided for a sentence of life imprisonment for drug trafficking offences where death or serious bodily injury had resulted from the use of the drug and the defendant had been convicted previously of a drug trafficking offence. A sentence of life imprisonment could also be imposed in drug trafficking cases in which large quantities of drugs were involved. The Court found that, although one of the applicant's co-conspirators had died from a fentanyl overdose, it seemed that Mr Sanchez-Sanchez had no prior convictions. Moreover, according to the US Sentencing Commission's Interactive Sourcebook, in 2019, in the Northern District of Georgia, where Mr Sanchez-Sanchez had been charged, approximately 65% of 507 sentences were below the range recommended by the US Sentencing Guidelines.

Nevertheless, the charges against Mr Sanchez-Sanchez were undoubtedly serious, and the US Department of Justice believed that he was the joint head of a Mexico-based drug trafficking operation who supervised the work of US-based distributors. However, the US Department of Justice had provided information on four of Mr Sanchez-Sanchez's co-conspirators, whose sentences ranged from seven to 20 years' imprisonment. The two who had received the highest sentences had been charged with the same drug importation and conspiracy charges as Mr Sanchez-Sanchez, and had also been convicted of additional charges, including money laundering. According to the US Department of Justice, if Mr Sanchez-Sanchez pleaded guilty or was convicted at trial, he would be sentenced by the same judge who had sentenced his four co-conspirators. The judge would need to avoid unwarranted sentence disparities among defendants with similar records who had been found guilty of similar conduct.

While the Court could not base its assessment on the likely sentence Mr Sanchez-Sanchez would receive if he were to plead guilty, it recognised that he would have the opportunity to offer evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines, and the judge would be required to take into account the sentences given to the co-conspirators, even if their situation was not identical. Mr Sanchez-Sanchez would also have the right to appeal against any sentence imposed.

Therefore, the Court held that Mr Sanchez-Sanchez had not shown that his extradition to the United States would expose him to a real risk of treatment reaching the Article 3 threshold. That being so, it was unnecessary for the Court to proceed to the second stage of the analysis.

The Court concluded that, if Mr Sanchez-Sanchez were to be extradited, that would not violate Article 3 of the Convention.

The judgment is available in English and in French.

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