

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

GRAND CHAMBER

DECISION

Application no. 20863/21
Beverly Ann McCALLUM
against Italy

The European Court of Human Rights, sitting on 21 September 2022 as a Grand Chamber composed of:

Jon Fridrik Kjølbro, *President*,
Robert Spano,
Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Krzysztof Wojtyczek,
Yonko Grozev,
Alena Poláčková,
Tim Eicke,
Arnfinn Bårdsen,
Erik Wennerström,
Raffaele Sabato,
Saadet Yüksel,
Anja Seibert-Fohr,
Peeter Roosma,
Ana Maria Guerra Martins,
Ioannis Ktistakis, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 22 April 2021,

Having deliberated on 24 February and 21 September 2022, decides as follows:

PROCEDURE

1. The case originated in an application (no. 20863/21) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")

by a United States national, Ms Beverly McCallum ("the applicant"), on 22 April 2021.

2. The applicant was represented by Mr W. De Agostino and Ms M.S. Mori, lawyers practising in Rome and Milan respectively. The Italian Government ("the Government") were represented by their Agent, Mr L. D'Ascia, and by Mr E. Cucchiara, *Procuratore dello Stato*.

3. On the same date that the applicant lodged her application, she also requested an interim measure under Rule 39 of the Rules of Court. The duty judge accepted the request and indicated to the Government that the applicant's extradition should be stayed until 7 May 2021. On that date the duty judge extended the interim measure until 28 May 2021.

4. The case was allocated to the First Section of the Court, pursuant to Rule 52 § 1. A Chamber of that Section decided on 25 May 2021 to maintain the interim measure in force for the duration of the proceedings before the Court.

5. The President of the First Section granted leave to intervene as third parties in the proceedings to Prof. D. Galliani, Prof. D. van Zyl Smit and Prof. P. Reingold (jointly), and also to the Government of the United Kingdom (Rule 44 § 3(a)). Written submissions were received from both interveners.

6. On 7 September 2021 the Chamber decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention).

7. The above-mentioned interveners filed new submissions. Submissions were also received from the association Hands Off Cain, which had been granted leave to intervene as a third party by the President of the Grand Chamber.

8. On 4 November 2021 the Government requested the lifting of the interim measure, arguing that the maximum period of detention permitted by domestic law would expire on 8 December 2021, at which point the Italian authorities would not be able to prevent the applicant from fleeing and evading extradition. The Grand Chamber decided to maintain the interim measure.

9. The Government again requested the lifting of the interim measure, on 7 December 2021, having regard to a new development in the extradition proceedings (see paragraphs 28-29 below). In the light of the parties' submissions on this development, the Grand Chamber decided on 21 January 2022 to lift the interim measure.

10. For her part the applicant requested, on 7 December 2021, an interim measure preventing her extradition on account of the state of her health. This was rejected by the President of the Grand Chamber on 21 January 2022. The applicant again filed a request for an interim measure on health grounds on 30 June 2022, which the President of the Grand Chamber rejected on 4 July 2022.

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 23 February 2022.

There appeared before the Court:

(a) *for the Government*

Mr L. D'ASCIA, *Agent*,
Mr E. CUCCHIARA, *Counsel*;

(b) *for the applicant*

Mr W. DE AGOSTINO,
Ms M.S. MORI, *Counsel*,
Ms M. AMITRANO,
Ms E. KIRANMOYE CHADHURI,
Ms V. SIRELLO, *Advisers*.

12. The Court heard addresses by Mr D'Ascia, Mr De Agostino and Ms Mori. It also heard their replies to questions from judges.

THE FACTS

A. The circumstances of the case

13. The applicant, Ms Beverly Ann McCallum, is a national of the United States of America, born in 1960. At the time she applied to the Court she was being held in custody in Rome, pending extradition as requested by the United States authorities.

1. The murder of the applicant's husband and the investigation

14. In May 2002 the applicant's husband, Mr Roberto Caraballo, was killed at his home in the town of Charlotte, Eaton County, Michigan, United States. He died from severe head injuries. Following the killing, the body of the victim was transported to a field ninety minutes' drive away, where it was incinerated inside a metal trunk. Although the victim's remains were discovered shortly afterwards, they were so badly burned that his identity could not be established until police were contacted in 2015 by a witness to the killing.

15. The law-enforcement authorities then commenced an investigation, leading to the arrest of the applicant's daughter, D.D., and a friend of hers, C.M. Police also searched for the applicant but were unable to locate her. D.D. and C.M. were charged with first-degree murder, conspiracy to commit murder, and disinterment and mutilation of a dead body.

16. As for the applicant, the authorities believed that she had left the United States and moved to Pakistan, living there with her current husband.

17. On 7 November 2018 the Eaton County District Court issued a warrant for the applicant's arrest on the charges referred to above.

18. In relation to C.M., the prosecution agreed not to proceed with the original charges in return for his pleading guilty to second-degree murder and cooperating with the authorities. His plea was accepted in October 2019, and in May 2020 he was sentenced to between fifteen and thirty-one years in prison. D.D. was tried on the above charges and found guilty in December 2021. In February 2022 she was sentenced to life imprisonment. Under the law of Michigan, she is not eligible for parole.

2. Arrest of the applicant and request for her extradition

19. In February 2020 the applicant was arrested in a hotel in Rome.

20. The US government, acting on behalf of the Michigan authorities, requested her extradition in accordance with the terms of a 1983 extradition treaty between the two countries. The applicant was placed in detention with a view to extradition.

21. The Rome Court of Appeal examined the extradition request (Article 701 of the Code of Criminal Procedure). In a judgment of 23 June 2020 (no. 74/2020) it ruled that the request could be granted. It specifically considered the applicant's argument regarding the risk of a life sentence without parole in the event of conviction for first-degree murder. It referred to the information provided by the US authorities regarding the possibility of appeal against the conviction and sentence, and also to the possibility of seeking a pardon or commutation of sentence from the Governor of Michigan. It made reference to the case-law of the Court of Cassation (its *Hernandez* judgment of 25 January 2019) to the effect that, in the context of extradition to the United States, the risk of an exceedingly long sentence was not sufficient to refuse an extradition request. This was on account of the possibility of early release for prisoners serving life sentences, which could take into account the prisoner's conduct, albeit on the basis of discretionary assessments by various public authorities. Regarding the system in Michigan, the Court of Appeal noted that the extradition request contained extensive information on the possibility for reducing sentences, including life sentences.

22. The applicant appealed to the Court of Cassation. In so far as relevant to the present application, she argued that it would be contrary to Article 3 of the Convention to agree to her extradition in view of the risk of her spending the remainder of her life in prison without eligibility for parole.

23. The Court of Cassation dismissed the appeal on 24 February 2021 (decision no. 7262/2021). Regarding the complaint of a possible life sentence, it found that the Court of Appeal had adequately addressed the applicant's argument. Referring to its *Hernandez* judgment, it stated that it had been established that the US system was generally compatible with the general principles of the Italian system. In the US system there were "correctives"

(*correttivi*) that applied even to life sentences. The applicant's submissions in this respect were no more than a "generic bundling" (*affastellamento generico*) of arguments and precedents that had no relevance to the actual case.

24. The extradition order signed by the Minister of Justice was issued on 8 March 2021. It stated, *inter alia*, that there were no reasons to believe that the applicant would be subjected to cruel, inhuman or degrading punishment or treatment or to acts violating her fundamental rights. It further noted that the possibility of the death penalty did not arise, since for the offences in question the sentence provided for was life imprisonment with the possibility of early release.

B. Further developments

25. The applicant took further steps at the domestic level, instituting proceedings in the Lazio Regional Administrative Court on 4 May 2021 to seek the annulment of the extradition order. On 27 May 2021 that court suspended the implementation of the order until 9 June 2021. It directed the Ministry of Justice to file a detailed report on the matter, accompanied by all relevant documentation, with particular reference to the penalty provided for in the law of the requesting State and, in the event of a life sentence, the possibility of a convicted person obtaining early release.

26. On 9 June 2021 the administrative court extended the suspension of the order until 7 July 2021. The following day, noting that the order could not in any event be executed on account of the interim measure indicated by the Court (see paragraphs 3-4 above), the administrative court decided to reject the applicant's request for a similar measure.

27. On 1 December 2021 the Rome Court of Appeal ordered the release of the applicant from detention in view of her poor health. She had by then been receiving treatment in hospital for several weeks. In place of detention, the court ordered that the applicant remain in Rome and respect a night-time curfew.

28. On 3 December 2021 the United States embassy in Rome sent a diplomatic note to the Italian authorities informing them that the Eaton County Prosecuting Attorney had given an undertaking to try the applicant on the lesser charge of second-degree murder, the maximum penalty for this offence being a life sentence with eligibility for parole. The note further stated that she would not be tried on the original charge of conspiracy, but that the charge of disinterment and mutilation of a dead body would be pursued. The US authorities amended their original extradition request accordingly.

29. On 7 December 2021 the Minister of Justice signed a new order for the extradition of the applicant on the amended charges. In the light of that order, the Court of Appeal issued a fresh detention order against her. As indicated above (see paragraph 9), the Grand Chamber decided, in view of

that development, to lift the interim measure preventing the applicant's extradition. On the date of the hearing, the applicant was still in Italy awaiting extradition to the United States. According to the applicant's legal representatives, they brought proceedings against the new extradition order in the Lazio Administrative Court.

30. The applicant's extradition to the United States took place on 8 July 2022.

RELEVANT DOMESTIC LAW

A. The Constitution

31. Article 26 of the Italian Constitution provides:

> "Extradition of a citizen may be granted only if it is expressly provided for by international conventions.
>
> In no case shall extradition be permitted for political offences."

Pursuant to Article 27 § 3 of the Constitution, punishments may not be inhuman and must be aimed at the rehabilitation of the convicted person.

B. Code of Criminal Procedure

32. Extradition proceedings are governed by Articles 697-713 of the Code of Criminal Procedure.

33. Article 698 § 1 prohibits extradition, *inter alia*, when there are reasons to believe that the accused will be subjected to cruel, inhuman or degrading punishment or treatment or to acts which amount to a violation of a fundamental human right. Article 705 § 2 provides, at sub-paragraph (c), that the Court of Appeal must rule against extradition where it has reason to believe that the person will be subjected, *inter alia*, to cruel, inhuman or degrading punishment or treatment or to acts which amount to a violation of a fundamental human right.

34. The decision to extradite a person is taken by the Minister of Justice (Article 708). It may be challenged in the administrative courts.

C. Extradition treaty between Italy and the United States of America

35. Extradition between Italy and the United States is governed by a treaty of 13 October 1983, as amended in the light of the extradition treaty between the European Union and the United States of 25 June 2003. It makes specific reference to capital punishment at its Article IX, which provides that the requested State may make extradition conditional on the non-imposition, or at least the non-execution, of the death penalty.

36. Article XVI of the treaty sets out the rule of "specialty":

"1. A person extradited under this Treaty may not be detained, tried or punished in the Requesting Party except for:

(a) the offense for which extradition has been granted or when the same facts for which extradition was granted constitute a differently denominated offense which is extraditable;

...

(c) an offense for which the Executive Authority of the United States or the competent authorities of Italy consent to the person's detention, trial or punishment."

D. Relevant law of the State of Michigan

37. The Michigan Penal Code provides at section 750.317:

"Second degree murder—All other kinds of murder shall be murder of the second degree, and shall be punished by imprisonment in the state prison for life, or any term of years, in the discretion of the court trying the same."

A person sentenced to life imprisonment under this provision is eligible for parole.

38. The regulations that apply to prisoners serving life sentences are contained in section 791.234 of the Michigan Compiled Laws.

39. Subsection 7 provides that a prisoner sentenced to life imprisonment (except for those convicted of first-degree murder) is subject to the jurisdiction of the parole board and is eligible for parole after serving at least fifteen years.

40. Subsection 11 provides that the question of release is at the discretion of the parole board. The grant of parole can be appealed to the circuit court by the prosecutor or the victim of the crime.

41. The Constitution of Michigan confers a power of clemency on the Governor (Article V, § 14):

"The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations prescribed by law. He shall inform the legislature annually of each reprieve, commutation and pardon granted, stating reasons therefor."

COMPLAINT

42. The applicant complained that if the respondent State were to extradite her to the United States it would expose her to the risk of a sentence of life imprisonment without parole, in violation of Article 3 of the Convention. She maintained her complaint following the reduction of the charges against her, arguing that she would still be at risk of receiving a sentence that did not comply with the relevant Convention principles on the reducibility of life sentences.

THE LAW

43. Article 3 of the Convention provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

44. Only the parties' arguments made in the light of the reduced charges against the applicant are summarised here. Their written and oral submissions to the Court were made before the applicant was extradited and so were framed in terms of a potential violation of Article 3 should the extradition occur. The Court finds it convenient to summarise the parties' arguments in the same terms.

1. The Government

45. The Government argued that the complaint should be rejected as out of time. They pointed to the fact that in the applicant's initial submissions, set out in the application form lodged in May 2021, she had directed her complaint solely at the mandatory sentence provided for in the law of Michigan for first-degree murder, that is, life imprisonment without eligibility for parole. Yet even at that point in time, that is to say before the charges were reduced, it was possible that the applicant might not have been given the maximum sentence (for example, if convicted by the jury of second-degree murder only, or if the trial court accepted a guilty plea to such charge). She had expressly recognised that the applicable sentence in such circumstances (the most serious sentence being life with eligibility for parole) would not give rise to any issue under Article 3 of the Convention. As she had explicitly excluded this eventuality from her initial complaint, it was not open to her to seek to include it after the expiry of the time-limit provided for in Article 35 § 1. That time-limit did not start to run again from the date on which the basis for the applicant's extradition had changed.

46. The Government further argued that there could be no doubting the reliability of the undertaking spelled out in the diplomatic note of 3 December 2021, which had been duly presented to the Italian authorities by the US federal authorities. They regarded this as being more than a standard diplomatic assurance; it was the formal notification of a reduction of the charges against the applicant. On that basis the Minister of Justice had issued a new order, meaning that the United States was bound to ensure that the applicant would be tried only for the lesser offences specified in it. It would be a violation of the United States' international obligations if the applicant were to be tried on the original charges. There was no reason to think that the Michigan authorities would act in an unlawful manner that would undermine trust between the two States. Thus, as the applicant could not now be tried on

the original, more serious charges, she was not at risk of receiving an irreducible sentence, that is, life imprisonment without eligibility for parole. In that light, the Government submitted that the complaint was unfounded and that it would therefore be justified to strike the application out under Article 37 of the Convention.

2. The applicant

47. For her part the applicant submitted that the risk initially complained of had not been eliminated, since the prosecutor had not given a binding undertaking to pursue the lesser charge against her. She argued that the content of the diplomatic note had not been sufficient to exclude the risk of the more serious charges being brought against her following her extradition. She therefore contended that the assurance received was legally dubious and indicative of the unreliable and unpredictable nature of the judicial system in the United States. The extradition treaty between the two States would not prevent the Michigan prosecutor from reverting to the more serious charges, in the light of the wording of its Article XVI, and she doubted that the Italian authorities would protest if that happened. Therefore, having regard to the test set by the Court in its case-law on diplomatic assurances in the context of Article 3 (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 189, ECHR 2012), no sufficient guarantee had been received to eliminate the risk of an irreducible life sentence being imposed on her if convicted.

48. Moreover, even if tried and convicted on the reduced charge, she submitted that her eventual release on parole would still depend on the decision of the Governor of Michigan, having regard to the very broad power of executive clemency conferred on him or her by the Michigan Constitution. The Governor's power of commutation was not limited to prisoners excluded from parole. As shown by the available official statistics, clemency had been granted to prisoners convicted of second-degree murder (and many other types of offences). The discretionary and opaque nature of that process was clearly incompatible with the relevant Convention standards. Moreover, no assurances had been given in relation to how the Governor would deal with a petition for clemency from the applicant.

B. The Court's assessment

49. The Court does not need to address the Government's argument that the applicant's complaint is out of time as in any event her complaint is inadmissible for the following reason.

50. The factual basis of the case changed with the commitment given by the Michigan prosecutor to reduce the principal charge against the applicant to one of "homicide murder – second degree". This development was notified to the Italian authorities in the form of a diplomatic note from the United States embassy in Rome. The diplomatic note clarified that if convicted on

this charge, the applicable penalty would be imprisonment for life, or any term of years at the court's discretion, and that the applicant would be eligible for parole. On this basis, the United States amended its original extradition request, the Minister of Justice issued a new extradition order reflecting that change (see paragraphs 28-29 above) and the applicant was eventually extradited.

51. While the applicant has questioned the reliability of the diplomatic note, the Court refers to what it said on this matter in *Harkins and Edwards v. the United Kingdom* (nos. 9146/07 and 32650/07, 17 January 2012):

> "85. ... Diplomatic Notes are a standard means for the requesting State to provide any assurances which the requested State considers necessary for its consent to extradition. ... [T]he Court also recognised that, in international relations, Diplomatic Notes carry a presumption of good faith and that, in extradition cases, it was appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy, human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States. ..."

The above considerations are fully applicable to the present case, the requesting State here being the same as in the *Harkins and Edwards* case.

52. Moreover, it seems to the Court that if, following her extradition, the original charges against the applicant were to be revived, that would not be compatible with the duty of good faith performance of treaty obligations (see Article 26 of the Vienna Convention on the Law of Treaties, adopted on 23 May 1969, 1155 UNTS 331). Accordingly, the Court considers it justified to proceed on the basis that the applicant can now only be tried on the charges indicated in the diplomatic note of 3 December 2021 and specified in the new extradition order issued on 7 December 2021. Consequently, if convicted on these charges, she faces at most the prospect of life imprisonment with eligibility for parole (see paragraphs 37 and 39 above). The Court further notes the statement of the Italian Government at the hearing that, as the other party to the extradition treaty between the two States, it regards the note as a binding representation on the part of the government of the United States.

53. The applicant has submitted that such a sentence must be regarded as "irreducible" within the meaning of the Court's case-law, on account of the role of the Governor of Michigan in the parole system in that state, which she argues is a decisive one. The Court observes, however, that this argument relates to a matter that cannot be regarded as pertaining to the essence of the *Vinter* safeguard (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013), but rather is more in the nature of a procedural guarantee. It refers to the distinction between the substantive obligation and the related procedural safeguards that derive from Article 3 in so far as the issue of life sentences in the extradition context are concerned (see *Sanchez-Sanchez v. the United Kingdom* [GC], no. 22854/20, § 93, 3 November 2022, judgment adopted on the same date as the present decision). The availability of procedural safeguards for "whole-life

prisoners" in the legal system of the requesting State is not a prerequisite for compliance by the requested Contracting State with Article 3 (ibid., § 96).

54. In any event, having taken note of the relevant legislative provisions, the Court is not persuaded that the applicant's understanding of the Michigan system is correct. It observes that, as provided in section 791.234(11) of the Michigan Compiled Laws, a prisoner's release on parole is at the discretion of the parole board (see paragraph 40 above). While the Governor of Michigan indeed enjoys a broad power of executive clemency, he or she is not involved in the parole procedure. Nor do the relevant legal provisions empower the Governor to overrule the grant of parole to a prisoner. As indicated above, appeal against the grant of parole lies to the competent circuit court.

55. An applicant who alleges that his or her extradition would expose him or her to a risk of a sentence that would constitute inhuman or degrading punishment bears the burden of proving the reality of that risk (as most recently reiterated in *Sanchez-Sanchez*, cited above, § 87, with further references). In the light of all the above-mentioned factors, the Court considers that the applicant has not discharged that burden. Contrary to her claim, it appears that there is no real risk that the applicant will receive an irreducible life sentence, that is, life imprisonment without eligibility for parole, in the event of her conviction on the charges now pending against her in Michigan.

56. In the light of the foregoing, the Court concludes that this complaint is manifestly ill-founded, within the meaning of Article 35 § 3, and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and in French and notified in writing on 3 November 2022.

Johan Callewaert Deputy to the Registrar	Jon Fridrik Kjølbro President