



## Bulgarian authorities should not extradite Georgian national to Iran because of the risk of his being flogged

The case [G.S. v. Bulgaria](#) (application no. 36538/17) concerned a Georgian national's complaint that if extradited to Iran, where he faced theft charges, he would be at risk of being flogged.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, unanimously, that there would be a **violation of Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights if the applicant were extradited to Iran because of the possible punishment that awaited him there.

The Court found in particular that the Bulgarian courts had simply assumed that the only penalty for the applicant in Iran would be imprisonment.

However, the offence of which he stood accused, namely theft, was also punishable by flogging. Indeed, there was a risk that he would be sentenced to up to 74 lashes, taking into account international reports and other information showing that flogging was commonplace in Iran, and considered by the Iranian authorities as a legitimate form of punishment.

Moreover, unlike the Bulgarian authorities, the Court had profound misgivings about trusting assurances against torture given by a State where such treatment was endemic or persistent.

### Principal facts

The applicant, Mr G.S., is a Georgian national who was born in 1951. He is currently being detained in Sofia Prison pending his extradition to Iran on theft charges.

In December 2016, when arriving in Bulgaria from Georgia, Mr G.S. was arrested at Sofia Airport on the basis of an Interpol red notice. According to the red notice, he had stolen 50,000 euros in 2016 from a foreign-exchange office in Teheran, an offence punishable with imprisonment under Article 656 of the Iranian Penal Code.

He was detained pending receipt of a formal extradition request from the Iranian authorities. The request arrived in January 2017, specifying that according to the text of Article 656 § 4 of the Iranian Penal Code, the punishment envisaged was imprisonment.

In April 2017 the Sofia City Court allowed the extradition request, finding that it met all the formal requirements and that it was permissible to proceed on the basis of the *de facto* reciprocity between Bulgaria and Iran. It also noted that the Iranian authorities had given assurances that the applicant would not face torture or inhuman treatment and that Iranian law only envisaged imprisonment for the alleged offence. The decision was upheld on appeal.

The applicant's extradition was, however, stayed in May 2017 on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Bulgarian Government that the applicant should not be extradited for the duration of the proceedings before it.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr G.S. alleged in particular that the Bulgarian authorities had not assessed the risk of his being ill-treated if extradited to Iran, even though it was well-known that the punishment for theft in that country was up to 74 lashes.

The application was lodged with the European Court of Human Rights on 22 May 2017.

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

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

It was scarcely in doubt that the corporal punishment alleged to await the applicant in Iran, up to 74 lashes, was contrary to Article 3 of the European Convention.

First, the Court noted that the alleged offence of which the applicant stood accused in Iran was also punishable with flogging. Although neither the red notice nor the extradition request had referred to flogging as a form of punishment, websites ran by the Iranian legislature and judiciary confirmed that Article 656 § 4 of the Iranian Penal Code, under which the applicant was being prosecuted, did provide for a punishment of up to 74 lashes. Other publicly available sources also confirmed this.

The Bulgarian courts’ decisions were of no assistance in assessing whether the applicant was at a real risk of being given such a sentence or of having it carried out because they had simply assumed that the only penalty awaiting the applicant in Iran was imprisonment.

The Court, on the other hand, found there was a real risk of flogging. It took into account various international reports that flogging sentences were commonplace in Iran. It also examined reasonably recent information showing that sentences of flogging had been imposed and carried out in a number of cases concerning theft.

Moreover, it had profound misgivings about the Iranian authorities’ assurances. First, the extradition request had omitted to specify that Article 656 § 4 of the Iranian Penal Code had envisaged not only imprisonment but also flogging. Secondly, the Iran authorities had recently publicly stated in response to a United Nations report that they considered flogging a legitimate form of punishment, which had been “interpreted wrongfully, by the West, as ... degrading”. Indeed, Iran apparently regarded flogging and other forms of corporal punishment as an important aspect of its sovereignty and legal tradition.

More importantly, assurances against torture by a State in which it was endemic or persistent were to be treated with caution.

It was clear that the decision to extradite the applicant to Iran would, if implemented, give rise to a breach of Article 3 of the Convention owing to the possible punishment of flogging that awaited him there.

### Other complaints

The Court further held that it was not necessary to examine whether the applicant's extradition to Iran would give rise to other issues under Article 3, such as poor detention conditions or ill-treatment in detention. Nor was it necessary to rule on his complaints that if extradited to Iran, he would risk a flagrant denial of justice and suffer discrimination because he was a Christian.

### Just satisfaction (Article 41)

The Court held that the finding of a potential breach of Article 3 constituted in itself sufficient just satisfaction.

### Rule 39

The Court also decided to continue to indicate to the Bulgarian Government under Rule 39 not to extradite the applicant until such time as this judgment became final or until further order.

*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.