



Extradition to China would expose the applicant to risk of ill-treatment and torture

In today's **Chamber** judgment¹ in the case of [Liu v. Poland](#) (application no. 37610/18) the European Court of Human Rights held, unanimously, that there would be:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the applicant were extradited to China, and

that there had been:

a violation of Article 5 § 1 (right to liberty and security).

The case concerned the extradition proceedings brought against the applicant, on conclusion of which (in 2020) the Polish courts had authorised his handover to the authorities of the People's Republic of China. He was wanted for trial there in connection with a vast international telecoms-fraud syndicate following a Sino-Spanish investigation. It also concerned his detention in Poland pending extradition.

The Court found in particular that the situation within the Chinese prison system could be equated to a "general situation of violence", and Mr Liu could thus be exposed to a real risk of ill-treatment if extradited to China. Furthermore, it held that the Polish Government had failed to act with the necessary expedition to ensure that the length of his detention had not been overly long.

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

Principal facts

The applicant, Hung Tao Liu, from Taiwan, was born in 1980 and is currently detained in the Warsaw-Białoleka Remand Centre.

Legal proceedings

In 2016 Interpol issued a Red Notice for Mr Liu in connection with a Sino-Spanish investigation into a vast international telecoms fraud syndicate. On 6 August 2017 he was arrested in Poland, following which the People's Republic of China requested his extradition. He was denied asylum later that year.

In February 2018 the Warsaw Regional Court held that the applicant's extradition to China would be in conformity with the law, referring to the investigation against Mr Liu and to extensive submissions by the Chinese Government, including on the human-rights protection system in China, and a promise that the applicant's human rights would be protected. That decision was upheld on appeal.

In August 2018 Mr Liu successfully applied to the European Court for an [interim measure \(Rule 39\)](#) to stop his extradition.

In 2019 a cassation appeal was lodged by the Commissioner for Human Rights, who argued that the risk to Mr Liu if extradited had not been properly examined. It was dismissed by the Supreme Court

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.

in October 2020. The court held, among other things, that the fact that life imprisonment was one of the penalties that could be imposed did not amount to a violation of Article 3 of the Convention.

Detention

Following his arrest in 2017, Mr Liu was detained. That detention was extended by the courts on several occasions, in the light of, among other things, his lack of ties to Poland and the severity of his potential sentence. He appealed against four of the extensions given by the Warsaw Court of Appeal, arguing that the reasoning was inadequate and referring to the toll the long detention had taken on him, in particular given the fact he did not speak Polish. The decisions to extend were all upheld.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture and of inhuman or degrading treatment), 5 § 1 (right to liberty and security), and 6 § 1 (right to a fair trial), Mr Liu complained that if extradited to China he would be at risk of torture or inhuman treatment, and he would not be able to secure a fair trial, and that his detention pending extradition had been arbitrary and unduly lengthy.

The application was lodged with the European Court of Human Rights on 9 August 2018.

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

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),
Ioannis **Ktistakis** (Greece),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court was not convinced that the domestic authorities had adequately assessed Mr Liu's arguments, in particular because they had not examined the latest reports by the United Nations and other international bodies regarding the situation within the Chinese prison system.

Concerning imprisonment in China, the Court noted, among other things, the following: that China had not ratified the International Covenant on Civil and Political Rights; that there was no international treaty guarantee of an individual complaint mechanism concerning torture or inhuman treatment; the United Nations Committee against Torture reported "routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings", furthermore stating that the practice of torture and ill-treatment was still deeply entrenched in the criminal justice system; Amnesty International had found that lawyers who had raised claims of torture and attempted to have them investigated had often faced torture themselves. The Court referred to reports by the United Nations and other international and national governmental and non-governmental organisations in reaching its conclusions.

Moreover, the guarantees secured from the Chinese Government had been merely informal assurances.

It found that the extent to which torture and other forms of ill-treatment were credibly and consistently reported to be used in Chinese detention facilities and prisons may be equated to the existence of a “general situation of violence”. The extradition of Mr Liu to China would therefore be in violation of his rights under Article 3 of the Convention.

Article 5 § 1

The Court noted that Mr Liu had been in detention since 6 August 2017. It was satisfied that the period until July 2018 could be explained by the simultaneous extradition and asylum proceedings taking place before the authorities. There did not seem to be an adequate explanation for the period since.

The Government argued that the interim measure issued by the Court had prevented it acting. However, the Court stated that an indication not to extradite an individual to a particular country had no bearing on the applicability of Article 5. Indeed, the Government asserted that the extradition proceedings were still ongoing.

As the domestic authorities had failed to act with the necessary expedition to ensure that the length of Mr Liu’s detention had not exceeded the time that could be reasonably required for extradition proceedings, the Court held that his detention had not been lawful, in violation of Article 5 § 1 (f).

Other articles

In view of its finding under Article 3, the Court held that there was no need to examine the complaint under Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Poland was to pay Mr Liu 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 in respect of costs and expenses.

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.