



Extradition of Paul François Compaoré to Burkina Faso: Court holds there would be violation of Article 3 of Convention failing reassessment of validity and reliability of diplomatic assurances given to France

In today's **Chamber judgment**¹ in the case of [Compaoré v. France](#) (application no. 37726/21) the European Court of Human Rights held, unanimously, that there would be:

a violation of the procedural limb of Article 3 of the European Convention on Human Rights if the applicant were to be extradited to Burkina Faso.

The case concerned the extradition, authorised by an order issued on 21 February 2020, of Paul François Compaoré to Burkina Faso, where he faced criminal prosecution for “incitement to murder” an investigative journalist and the three men accompanying him. Paul François Compaoré is the brother of Mr Blaise Compaoré and was one of his close advisers when his brother held the office of President of the Republic of Burkina Faso between 1991 and 31 October 2014, when he was forced to resign as a result of a popular uprising.

After reviewing the diplomatic assurances given by the State of Burkina Faso, which had requested the extradition, and examining the reliability of those assurances in the light of significant political upheavals following two military *coups d'état*, the Court found that those assurances had not been reiterated by the second transitional government set up by the new Burkinabè head of State who came to power on 30 September 2022, and that the Government, which had received the applicant's latest observations on that point on 19 October 2022, had not commented on them.

Consequently, the Court found that since, at the time of the present ruling, the domestic authorities had failed to take account of the new political and constitutional context in the State requesting extradition, and in particular to consider whether the assurances on which the decisions to grant extradition had been based remained binding on the Burkinabè State, it was not satisfied that the risk alleged by the applicant of being subjected to treatment contrary to Article 3 of the Convention had been ruled out in the extradition proceedings at present. This was true with regard both to the risk that the applicant might not be detained in the ward of Ouagadougou Prison reserved for public figures and to the risk that he might be sentenced to life imprisonment in Burkina Faso without any possibility of release.

The Court found that there would be a violation of Article 3 of the Convention under its procedural limb if the extradition order were to be enforced without a prior reassessment of the validity and reliability of the diplomatic assurances given by Burkina Faso.

Principal facts

Background and domestic extradition proceedings

The applicant, Paul François Compaoré, is a Burkinabè national who was born in 1954 and lives in Paris. He is the brother of the former President of the Republic of Burkina Faso, Mr Blaise Compaoré,

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.

and was one of his close advisers until the latter was forced to resign on 31 October 2014 as a result of a popular uprising.

Prior to those events, Mr Paul François Compaoré was investigated in the course of an inquiry into the 13 December 1998 murder of Norbert Zongo, an investigative journalist and director of the weekly newspaper *L'indépendant*, the latter's brother and two other associates, who had been killed by gunfire and by the burning of their vehicle. A Commission of Inquiry was set up in Burkina Faso in 1998. The applicant was interviewed twice as a witness. In its findings, delivered in May 1999, the Investigative Committee found that the journalist had been murdered "for purely political reasons" since he had been engaged in the defence of democratic ideals and the prevention of impunity. It identified "serious suspects" for the murders among the members of the Presidential Security Regiment and recommended that the findings of its inquiry give rise to court proceedings.

On 21 May 1999 a judicial investigation was opened against persons unknown, and a military commander was charged. On 18 July 2006 the investigating judge issued a discontinuance order, which was upheld on appeal. On 19 January 2007 the civil parties' request for the reopening of the judicial investigation was denied by the Ouagadougou prosecutor's office for want of new evidence.

On 11 December 2011 the beneficiaries of the victims applied to the African Court on Human and Peoples' Rights (ACHPR) alleging, in particular, a violation of Article 7 of the African Charter on Human and Peoples' Rights on the right to have one's cause heard by competent national courts.

In a judgment delivered on 28 March 2014 the ACHPR held that the length of the national criminal proceedings had not been reasonable and noted certain shortcomings in the steps taken. It acknowledged that there had been "failings on the part of the respondent State in identifying and trying Norbert Zongo's killers", in violation of Articles 7 and 1 of the Charter. On 30 March 2015 the Principal Public Prosecutor at the Ouagadougou Court of Appeal filed submissions with the investigating judge to reopen the proceedings in the light of new charges based on evidence submitted to the ACHPR by the beneficiaries of the murdered journalist. On 7 April 2015 the investigating judge ordered the reopening of the investigation. On 5 May 2017 he issued an international warrant for the applicant's arrest, on a charge of "incitement to murder". Relying on that warrant, the Burkinabè authorities issued a request for provisional arrest via Interpol.

On 29 October 2017 the applicant was arrested at Roissy-Charles de Gaulle Airport under the aforementioned arrest warrant. The next day an extradition request was sent to the French authorities under the Judicial Co-operation Agreement of 24 April 1961 between France and Burkina Faso. That extradition request was accompanied by a letter in which the Minister of Justice of Burkina Faso undertook not to seek the death penalty for the applicant and, in the event that such a penalty was ordered by the independent trial judge, not to enforce it. On 30 October 2017 the applicant was released from custody, placed under court supervision and barred from leaving France.

At the hearing before the Court of Appeal, the applicant refused his surrender to the Burkinabè authorities, alleging political motives for the extradition request, the purpose of which, he claimed, was to harm the "Compaoré clan" and its party, the CDP, with a view to the upcoming 2020 elections in Burkina Faso. Relying on Article 3 of the Convention, he argued that his extradition would have exceptionally grave consequences for his safety and his physical welfare. In a judgment delivered on 13 June 2018 the Court of Appeal's Investigation Division ordered further inquiries to be conducted.

On 23 August 2018 the Burkinabè authorities presented fresh assurances through diplomatic channels.

In a judgment delivered on 5 December 2018 the Investigation Division issued an opinion in favour of the extradition request. It considered that, notwithstanding the applicant's involvement in the country's political life as brother to its former president, the request had not been submitted to political ends, but as part of an investigation into acts of a criminal nature.

The applicant lodged an appeal on points of law. In an initial judgment delivered on 4 June 2019 the Criminal Division of the Court of Cassation dismissed his request for a preliminary ruling on constitutionality (*question prioritaire de constitutionnalité* – QPC) from the Constitutional Council and in a second ruling delivered on the same day the Court of Cassation dismissed the appeal as to the applicant's complaint of a violation of Article 3 of the Convention.

On 16 December 2019 the Minister of Justice of Burkina Faso acceded to a request for additional information issued by the French Minister of Justice with a view to updating the assurances previously given to the Investigation Division by the Burkinabè authorities.

By an order issued on 21 February 2020 the French Prime Minister, having noted the absence of political motives for the extradition request, authorised the applicant's extradition to Burkina Faso in view of the latest diplomatic assurances received.

The applicant applied to the *Conseil d'État* for judicial review of the order. In an initial judgment delivered on 31 December 2020 the *Conseil d'État* dismissed the applicant's request for a QPC. It decided, moreover, that further investigative steps should be taken. It asked the French Minister of Justice to seek additional guarantees from the Burkinabè authorities through diplomatic channels. On 2 April 2021 the Burkinabè Minister of Justice issued a reply in which the requested assurances were given.

In a judgment delivered on 30 July 2021 the *Conseil d'État* dismissed the application for judicial review.

On 6 August 2021 the Court, from which the applicant had requested an interim measure under Rule 39 of the Rules of Court to suspend his extradition to Burkina Faso, decided to indicate to the French Government that the applicant was not to be extradited for the duration of the proceedings before it.

Recent developments in the political situation in Burkina Faso and their impact on the domestic constitutional order

Since 2015 Burkina Faso has been subject to violent attacks by Islamist terrorist groups against the army and the civilian population throughout an area covering roughly 40% of the country, which has caused a major humanitarian crisis and serious domestic security issues. To date, such attacks have caused the death of more than 10,000 civilians and members of the military and the displacement of approximately two million people. In that context, on 24 January 2022, an officer of the Burkinabè army, Lieutenant Colonel Paul-Henri Damiba, seized political power by force, toppling the president, Mr Roch Marc Christian Kaboré, who had been elected to the presidency of the Republic of Burkina Faso in 2015, and re-elected in 2020.

The new president established a "transitional" regime for 36 months before the next legislative and presidential elections were to be held. In a letter dated 28 March 2022 the new Minister of Justice "reiterated ... in the name of the Burkinabè government all previous undertakings made by Burkina Faso in the context of the extradition process in respect of" the applicant. In a second letter to the French Minister of Justice dated 19 April 2022 he provided further information on the conditions of detention in the "rehabilitation ward" (*quartier d'amendement*) at Ouagadougou Prison (*maison d'arrêt et de correction de Ouagadougou* – MACO).

On 30 September 2022, during a second military *coup d'état*, Captain Ibrahim Traoré, an officer of the Burkinabè army belonging to a unit of the anti-jihadist special forces, took hold of the presidency of Burkina Faso by force on the occasion of a new popular uprising.

In a press release issued on 30 September 2022, and as reiterated on 2 October 2022, the Commission of the Economic Community of West African States (ECOWAS) strongly condemned the second seizure of power in Burkina Faso by "unconstitutional means" and demanded "strict compliance with the [timeline] already decided with the transitional authorities for a return to

constitutional order by 1 July 2024 at the latest". The current situation, wherein constitutional order has been suspended, was also mentioned by the President of the Commission of the African Union in a press release issued on 30 September 2022 to condemn the second seizure of power by force in Burkina Faso.

Complaints, procedure and composition of the Court

The applicant submitted that his extradition to Burkina Faso would expose him to a real risk of torture or of treatment contrary to Article 3 of the Convention.

The application was lodged with the European Court of Human Rights on 30 July 2021.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveyitchik**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted at the outset that since the first *coup d'état* on 24 January 2022 major changes had taken place in Burkina Faso's domestic politics with regard to its State institutions and more specifically its judicial system.

The Court's role consisted in taking into consideration all the material placed before it to ensure compliance with Article 3 of the Convention in the event of a return to the State that had requested the extradition. In particular, it had to review the diplomatic assurances given by that State, the quality and reliability of which had to be sufficient.

The Court noted that the domestic legal framework applicable to the request for the applicant's extradition had provided for several levels of review which, following a rigorous, adversarial examination that had resulted in reasoned decisions, had enabled the French authorities to satisfy themselves that, once surrendered to the Burkinabè authorities, the applicant would not be at risk of treatment prohibited by Article 3 of the Convention. To that end, the respondent State had received sufficiently detailed information, the reliability of which had not been called into question to date. As to the more favourable detention conditions in the MACO's "amendment ward", they had been confirmed by the successive reports published by the US State Department in 2016 and 2021. Those conditions were thus distinguished therein from those that had been observed during prison inspections in the country, in particular in other prison wards of the MACO that did not accommodate high-ranking public figures. The conditions imposed on the Burkinabè State by the extradition order had therefore been such as to address the applicant's fears in that respect, and likewise had appeared to make up for the lack of instances of reduced life sentences granted by the Burkinabè authorities in respect of other prisoners.

The Court therefore found that the domestic courts and authorities had, throughout the extradition proceedings, undertaken a serious and conscientious examination of the assurances given by the Burkinabè State. It nevertheless took the view that, regardless, the necessary conditions for relying

on those assurances were no longer satisfied at the present time based on a review of the reliability of the assurances given in the light of significant political upheavals in Burkina Faso, even if the material in its possession did not show that the regime in power in Burkina Faso had called into question the unlawfulness of treatment contrary to Article 3 of the Convention, in particular in the context of detention. Indeed, on the level of principles and officially, the position of the new Burkinabè governmental authorities did not appear to be such as to raise concerns which were sufficient in themselves to justify dismissing the reliance on any diplomatic assurance whatsoever.

Nor had the Court any reason to call into question the Government's observations when they put forward long-standing diplomatic relations with Burkina Faso – which constituted an important criterion for the reliability of the assurances given – irrespective of the successive political changes since the country had achieved independence in 1960. It nevertheless noted that the diplomatic relations between the two countries had undeniably deteriorated in recent months, especially since the second *coup d'état* on 30 September 2022.

In the present case, it was thus a question of verifying whether the “receiving State” in question was indeed the one that would be bound to honour, on the date the applicant was surrendered by the respondent State, the assurances given. The Court observed that, as the Government had submitted in their observations, the first transitional government had initially appeared to maintain a form of “stability” as to the undertakings of the Burkinabè State since the assurances had been reiterated on 28 March 2022 by the new Justice Minister, who was a civilian. On 19 April 2022 he had also confirmed and clarified the more favourable detention conditions that would, if necessary, be applied to the applicant in the MACO if he were surrendered to the Burkinabè authorities. However, the Court observed that those assurances had not been confirmed by the second transitional government set up by the new head of State, who had come to power on 30 September 2022, and that the Government, which had received the applicant's latest observations on that point on 19 October 2022, had not commented on them. No subsequent letters from the Burkinabè authorities had thus been produced relating to the current validity of the previous diplomatic assurances given to the French State. The Court concluded from this that, in the present case, there was no longer the same evidence to ensure, at the time of the present ruling, the reliability of the assurances given by Burkina Faso in the past, on which the domestic authorities had relied exclusively in the reasoning of their decisions to grant the applicant's extradition.

The situation was therefore such as to call into question whether other criteria for assessing the reliability of the assurances given had been satisfied; namely whether, in actual fact, “the reliability of the assurances [had] been examined by the domestic courts of the sending/Contracting State [in this case, France]”, whether compliance with those assurances could be objectively verified by that State “through diplomatic or other monitoring mechanisms”, or whether the receiving State was “willing to cooperate with international monitoring mechanisms”. In the context of an extradition request from a State that was not a party to the Convention (since being a Contracting State was also one of the reliability criteria for the assurances given), those other criteria were undoubtedly important.

In the present case, the Court found that, despite having undertaken to do so prior to any enforcement of the extradition order, the French government had thus far refrained from automatically reassessing the situation in the receiving State and the risk that the applicant might be subjected to treatment contrary to Article 3 of the Convention given the major political upheavals described previously, which had created uncertainties as to the current validity of the diplomatic assurances that had been relied on by the extradition order of 21 February 2020.

The Court noted that the parties had not mentioned the possibility of their using available legal avenues for the purposes of an up-to-date assessment of the potential impact that the two successive *coups d'états* might have had on the risk to the applicant of being subjected to treatment contrary to Article 3 of the Convention. The Government had not clarified the reasons for which it

had failed to reach out to the “transitional” Burkinabè authorities to obtain fresh assurances as to the upholding of the Burkinabè State’s undertakings. For his part, the applicant, who was represented by a lawyer, had not indicated to the Court the reasons for which he had failed to seek the extradition order’s revocation on the same grounds, thereby waiving his right to apply for judicial review of any refusal by the respondent State, even a tacit refusal. In the Court’s view, although it had jurisdiction to indicate to the respondent State, if necessary, not to extradite an applicant for the duration of the proceedings before it pursuant to Rule 39 of its Rules, that State’s discretion as to the assessment of the merits of the extradition it had granted remained intact so long as the measure had not been enforced. In addition, the fact that the applicant had failed to lodge a request for revocation of the impugned order on the basis of new circumstances subsequent to its enactment did not exempt the respondent State from carrying out a fresh and up-to-date assessment of the complaint under Article 3 of the Convention.

Consequently, the Court found that, at the time of the present ruling, the domestic authorities’ failure to take account of the new political and constitutional context in the receiving country, in particular as to the question whether the assurances on which the decisions to grant extradition had been based remained binding on the Burkinabè State, did not enable it to consider that the risk alleged by the applicant of being subjected to treatment contrary to Article 3 of the Convention had been ruled out in the extradition proceedings at present. This was true with regard both to the risk that the applicant might not be detained in the ward of the MACO reserved for public figures and to the risk that he might be sentenced to life imprisonment in Burkina Faso without any possibility of release.

The Court found that there would be a violation under the procedural limb of Article 3 of the Convention if the extradition order of 21 February 2020 were to be enforced.

Rule 39 of the Rules of Court

The Court took the view that the indications made to the Government under Rule 39 of the Rules of Court had to remain in force until its judgment became final or until it took a further decision in that connection.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and that France was to pay the applicant 15,000 euros (EUR) in respect of costs and expenses.

The judgment is available only in 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.