

THE RECENT JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS ON EXTRADITION: A SIGNIFICANT CHANGE IN THE TREND

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SUMMARY: I. THE GRAND CHAMBER CASE OF *KHASANOV AND RAKHMANOV v. RUSSIA*. 1. The facts of the case. 2. Criteria applied by the Grand Chamber. The assessment of the risk of suffering inhuman or degrading treatment in the event of expulsion. 3. The general principles found in the jurisprudence of the ECHR on Article 3 in extradition cases. 4. Nature of the ECHR's assessment. 5. Application of these general principles on risk assessment in the case II. THE GRAND CHAMBER CASE OF *SANCHEZ-SANCHEZ v. THE UNITED KINGDOM*. 1. Key features of this ruling on Article 3 in the case of the applicant's extradition from the United Kingdom to the United States. 2. Article 3 of the Convention: Evaluation of life imprisonment in the context of extradition and the inapplicability of the principles established in *Vinter and Others*. 3. Application of that test to the case of *Sanchez-Sanchez v. the United Kingdom*. III. THE GRAND CHAMBER CASE OF *McCALLUM v. ITALY (INADMISSIBILITY DECISION)*. 1. The facts of the case. 2. Relevance of the Grand Chamber's decision on the importance of Diplomatic Notes and evidence required of the risk of receiving a life sentence without review. IV. CASE OF *HAFEEZ v. THE UNITED KINGDOM (INADMISSIBILITY DECISION)*. 1. Introduction. 2. Facts of the case. 3. Analysis carried out by the ECtHR. 4. Argument that extradition would be contrary to Article 3 of the Convention on account of the applicant's health. V. CASE OF *BIJAN BALAHAN v. SWEDEN (NO VIOLATION OF ARTICLE 3)*. 1. Introduction. 2. Facts of the case. 3. The question of age. 4. The applicant's arguments and the response of the ECHR. VI. CASE OF *CARVAJAL BARRIOS v. SPAIN (INADMISSIBILITY DECISION)*. 1. Introduction. 2. The main facts. 3. Reasons for the claim before the ECHR and procedure. 4. Decision of the ECHR. VII. THE CASE OF *COMPAORE v. FRANCE. JUDGMENT OF A VIOLATION OF ARTICLE 3 IF THE APPLICANT WERE EXTRADITED FROM FRANCE TO BURKINA-FASO BASED ON THE CURRENT SITUATION OF THE COUNTRY. NEED TO RE-EVALUATE DIPLOMATIC GUARANTEES*. VIII. CONCLUSION.

Abstract: This article is a commentary, first of all, on three cases decided by the Grand Chamber of the European Court of Human Rights ("the ECHR"), focusing on the controversial issue of extradition to third countries where respect for Article 3 of the European Convention on Human Rights is at stake, as well as other agreements and bilateral extradition treaties with countries that are not part of the Council of Europe so as to avoid the problem of criminal impunity. The objective of this contribution is to highlight the new doctrine established by the ECHR in these three Grand Chamber cases, *Khasanov and Rakhmanon v. Russia*¹, *Sanchez-Sanchez v. United Kingdom*² and *McCallum v. Italy*³. Four subsequent cases, *Hafeez v. the United Kingdom* (dec.)⁴, *Bijan Balahan v. Sweden*⁵, *Carvajal Barrios v. Spain* (dec.)⁶ and *Compaoré v. France*⁷ in which the Court applied the new criteria, are discussed.

¹ *Khasanov and Rakhmanon v. Russia* [GC] App nos 28492/15 and 49975/15 (ECHR, 29 April 2022)

² *Sanchez-Sanchez v. United Kingdom* [GC] App no 22854/20 (ECHR, 3 November 2022)

³ *McCallum v. Italy* [GC] App no. 20863/21 (ECHR, 3 November 2022)

⁴ *Hafeez v. the United Kingdom* (dec.) App no 14198/20 (ECHR, 28 March 2023)

⁵ *Bijan Balahan v. Sweden* App no 9839/22 (ECHR, 29 June 2023)

⁶ *Carvajal Barrios v. Spain* (dec.) App no 13869/22, (ECHR, 7 July 2023)

⁷ *Campaoré v. France* App no 37726/21 (ECHR, 7 September 2023)

I. THE GRAND CHAMBER CASE OF *KHASANOV AND RAKHMANOV v. RUSSIA*⁸

1. The facts of the case

In the case before the European Court of Human Rights (“the ECHR”)⁹, the applicants argued that, if extradited to Kyrgyzstan, they would face a real risk of ill-treatment contrary to Article 3 of the Convention, owing to their membership of the Uzbek ethnic minority. In the domestic proceedings before the Russian courts, which considered their extradition and asylum applications¹⁰, their claims that they were at risk of persecution and ill-treatment in Kyrgyzstan because they belonged to a vulnerable ethnic group were dismissed. Initially, the applicants' extradition was stayed on 16 June and 12 October 2015, respectively, on the basis of an injunction granted by the ECHR under Rule 39 of its Rules of Court, which directed the Russian government not to extradite or otherwise expel the applicants from Russia for the duration of the proceedings before it.¹¹ The applicants were initially released in 2014 and 2015 respectively.

The case of *Khasanov and Rakhmanov v. Russia* was initially examined by a Chamber of the Third Section of the ECHR, in which it was concluded, by five votes to two, that the extradition of the applicants from Russia to Kyrgyzstan would not constitute a violation of Article 3 of the Convention, that is, of possible risk of torture and/or ill-treatment. The applicants asked for the case to be referred to the Grand Chamber and a panel of five judges accepted that referral. On 15 April 2020, the case was transferred to the Grand Chamber at the request of the claimants. It was examined by the Grand Chamber, made up of seventeen judges, on 29 April 2022, which reached the same conclusion as the Chamber, this time unanimously. The Grand Chamber concluded that given the absence of a real individual risk of ill-treatment in the event of the extradition of ethnic Uzbeks to Kyrgyzstan, the extradition did not give rise to a violation of Article 3 of the Convention.

2. Criteria applied by the Grand Chamber. The assessment of the risk of suffering inhuman or degrading treatment in the event of expulsion

The criteria established in this case is not new, rather, it confirms the jurisprudential *iter* of the ECHR, according to which it is for the applicant to prove that, in her or his specific case, there is a risk of suffering ill-treatment in the event of being extradited. A crucial point is that of the risk assessment. Although the burden of proof is shared between the applicant and the government against which the applicant has filed

⁸ As a preliminary point, I must indicate that the information provided in this article is descriptive and that, given my duty of loyalty to the Court, no criticism is made of the doctrine established by the ECHR, that binds me as its judge. I also point out that I was not part of the composition of the Grand Chamber in any of these three cases. The purpose of this contribution is to disseminate the jurisprudence of the ECHR and to make an important change in its doctrine known. In turn, this work is inserted in the Criminal Studies Group of the Faculty of Law of the University of Zaragoza, of which I continue to be a part, being its PI Professor Miguel Ángel Boldova Pasamar, Professor of Criminal Law.

⁹ A Spanish version of this article will be published in the *Revista de Derecho Europeo*, in October 2023, with the title ‘La reciente jurisprudencia del Tribunal Europeo de Derechos Humanos en materia de extradición: un cambio de tendencia significativo’. The Journal allows authors to publish an article in other languages in a different Journal, referring to the previous publication.

¹⁰ Neither of the two applicants in this case had refugee or asylum status (see §§42-49 of the judgment), their requests having been denied. Contrast with the later case of *R v. France* (App no 49857/20 (ECHR, 30 August 2022)), in which a Chamber of the Fifth Section ruled that the extradition of a Russian national of Chechen origin from France to Russia would be in violation of Article 3. See the comment by Béatrice Pastre-Belda, ‘Conséquence attachée à la distinction entre “statut” et “qualité” de réfugié’, ECHR, 30 August 2022, n° 49857/20, R. v. France’ in *La Semaine juridique: édition générale (JCP)*, 96e année, n° 37 (Sept. 19, 2022), p. 1683. See also the case of *KI v. France* App no 5560/19 (ECHR, 15 April 2021), which states that the authorities must take refugee status into account when analysing risk (§ 144).

¹¹ On the importance of interim measures, see P. Leach, ‘Urgency at the European Court of Human Rights: new directions and future prospects for the interim measures mechanism?’ in Eva Rieter and Karin Zwann (eds), *Urgency and human rights: the protective potential and legitimacy of interim measures*, (The Hague: TCM Asser Press, Berlin: Springer, 2021, pp.197-222).

her or his claim before the ECHR, it reverts to the Government only after the applicant has provided some real evidence that she or he will suffer that risk.

In this case, two applicants of Uzbek ethnic minority, whose extradition had been requested from Russia by the Government of Kyrgyzstan, complained of a fear of ill-treatment or systematic torture for belonging to an ethnic minority, contrary to the Article 3 of the Convention. Crucially, according to the judgment of the Grand Chamber, which confirmed the view of the Chamber, the offences of which they had been accused were not of a political nature but were ordinary crimes. In addition, another key factor lay in the analysis of the evolution in the treatment received by this ethnic minority in recent years in Kyrgyzstan. If in previous years there had been a

danger of mistreatment of citizens belonging to the Uzbek ethnic group following the 2010 ethnic struggles between that minority and the Kyrgyz majority of Kyrgyzstan¹², the situation had improved or, at the least, it could not be said that discrimination was systematic. The problem that the ECHR faces in extradition cases is that of establishing the balance between the obligation to protect any human being from torture and ill-treatment under Article 3 of the Convention, and the right of victims to have States investigate crimes. The European Convention on Human Rights along with principles of international law and extradition treaties seek that balance between protecting against ill-treatment under Article 3 of the Convention and ensuring that crimes are prosecuted where the alleged perpetrator is in a country which does not have jurisdiction. Contracting States to the Convention must not become a 'safe haven' for people accused of committing crimes, and who rely on the rights protected by the Convention. Such a claim would constitute an abuse of rights. The reason behind extradition agreements and related international standards, is to allow for judicial investigations to be carried out into alleged crimes committed outside the jurisdiction of the member countries of the Convention, while the alleged perpetrators are in European territory¹³.

However, the ECHR takes into account the evidence presented by the applicant to determine the risk in her or his specific case, as well as considering other sources. It is up to the applicant to prove that owing to the special circumstances of her or his situation she or he may suffer inhuman or degrading treatment and/or torture if she or he is handed over to the country requesting extradition.

Another key point is that a country requesting extradition must present diplomatic assurances that it will respect procedural law when dealing with an extradited person. International law on extradition is also based on the principle of mutual trust between countries.

The applicants, both citizens of Kyrgyzstan, had alleged that if extradited to Kyrgyzstan, they risked ill-treatment because of their ethnic origin. However, in the proceedings before the Grand Chamber, in which the reasons for the extradition were further explored, it was confirmed that extradition had been sought, in the case of the first applicant, for him to face charges of aggravated embezzlement. In the case of the second applicant, the indictment centered on various counts of aggravated robbery, destruction of property, and murder.

3. The general principles found in the jurisprudence of the ECHR on Article 3 in extradition cases

The criteria extracted from the jurisprudence of the Court, can be summarised as follows:

First, a prohibition on exposing foreigners threatened with deportation to the risk of mistreatment. In extradition cases, the obligation of the Contracting States to cooperate in international criminal matters is subject to the obligation imposed on those same States to respect the absolute nature of the prohibition set forth in Article 3 of the Convention. Therefore, any allegation regarding the existence of a real risk of being subjected to treatment contrary to Article 3 in the event of extradition to another country must be subject to the same degree of control regardless of the legal basis for the expulsion.

¹² In 2021 Kyrgyzstan had 6,684 million inhabitants, of which there were about 800,000 Uzbeks, concentrated in Osh and Arslanbob.

¹³ , There is no absolute right not to be extradited under the ECHR case-law when the State where a person is does not have jurisdiction to judge him when the alleged crimes have been committed in another country. On the problems posed by this principle, see J Van Wijk (et al), 'Undesirable and unreturnable?: Prosecuting non-removable aliens suspected of serious crimes', *Journal of International Criminal Justice*, vol. 15, no. 1 (Mar. 2017), p. 51-131. Specifically on the jurisprudence of the ECHR, pp. 83-90.

Second, the scope of the Court's assessment takes into account both the general situation of the country requesting the extradition and the individual circumstances of the person whose deportation is sought. The risk assessment focuses on the foreseeable consequences of the return of the person concerned to the country of destination, taking into account the general situation there and the specific circumstances of the person concerned. If there are serious reasons, backed by evidence, to believe that the latter will, in the country of destination, face a real risk of being subjected to treatment contrary to Article 3, her or his return will necessarily imply a violation of Article 3, whether that risk emanates from a general situation of violence, a specific characteristic of the person in question, or a combination of the two¹⁴.

Taking these criteria into account, cases require a three-step analysis. First, it is necessary to look at the general situation of the country of destination and, where appropriate, the existence of a general situation of violence in that country. In principle, the latter situation will not by itself give rise to a violation of Article 3 in the case of expulsion to the country in question, unless the violence is of such intensity that any return to that country would necessarily entail such a violation.¹⁵

Second, a grievance based on systematic ill-treatment inflicted on a member of a group is not valued in the same way as a grievance based, on the one hand, on a general situation of violence in a particular country or, on the other hand, on individual circumstances. In such cases, the ECHR must consider whether the existence of a group systematically exposed to ill-treatment has been established, an issue that corresponds to the part of the risk analysis dedicated to the "general situation". Applicants belonging to a targeted vulnerable group should not refer to the general situation but to the existence of a practice or increased risk of ill-treatment directed at the group to which they claim to belong. The next step is for them to establish that they belong to the group in question, without the need to mention other individual circumstances or distinctive characteristics.¹⁶

Third, in cases where, despite the existence of a fear of persecution that may be founded on certain circumstances that aggravate the risks, it cannot be established that a group is systematically exposed to ill-treatment, applicants are required to demonstrate the existence of other particular distinctive characteristics that would expose them to a real risk of ill-treatment, otherwise the ECHR will hold that there has been no violation of Article 3 of the Convention. In connection with the above principles of case law, the Article 3 risk assessment should focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and his personal circumstances.¹⁷ A general situation in itself would only be strong enough to create such a risk "in the most extreme cases" where there was a real risk of ill-treatment simply by virtue of a person being exposed to such violence upon return (see below).¹⁸

4. Nature of the ECHR's assessment

Another crucial question that arises is the nature of the ECHR's assessment. If the applicant has not already been deported, the material point in time for the assessment must be that of the ECHR's consideration of the case.¹⁹ It may be that the situation has changed throughout the proceedings, namely from the moment the claim was initiated in domestic proceedings until the case was brought before the ECHR. In the event that there have been changes in the circumstances of the country subject to extradition, a complete and *ex nunc* evaluation is required, in which it is necessary to take into account the information that has emerged after the adoption of the final decision by the national authorities. The existence of the risk must be assessed primarily by reference to the circumstances of which the State in question knew or should have known at the time of the return.

¹⁴ A.B. Auner Auslieferung von Angehörigen der ethnisch usbekischen Minderheit nach Kirgisistan zulässig: Khasanov und Rakhmanov gg. Russia, Urteil vom 29.4.2022, Grosse Kammer, 28492/15, 49975/15, *NLMR Newsletter Menschenrechte*, Jahrg. 31, H. 2 (Mai 2022), p. 103-108.

¹⁵ *Khasanov and Rakhmanov v. Russia* [GC] App nos 28492/15 and 49975/15, §96, (ECHR, 29 April 2022)

¹⁶ *Ibid* §99

¹⁷ See *FG v. Sweden* [GC] App no 43611/11, § 114, (ECHR, 23 March 2016)

¹⁸ In the context of violent civil wars, see *Sufi and Elmi v. the United Kingdom* App nos 8319/07 and 11491/07 §§ 216 and 218, (ECHR, 28 June 2011) and *LM and Others v. Russia* App nos 40081/14 and 2 others, § 108, (ECHR, 15 October 2015)

¹⁹ *Khasanov and Rakhmanov v. Russia* [GC] App nos 28492/15 and 49975/15, §106, (ECHR, 29 April 2022)

This exception shows that the principle of appreciation *ex nunc* has as its main purpose to constitute a guarantee, where a significant time has elapsed between the adoption of the domestic decision and the examination by the ECHR of the complaint of a violation of Article 3 by the applicant, and therefore when the situation in the destination country may have changed in the sense that it has deteriorated or improved. In cases of this type, any conclusion regarding the general situation of a given country and its dynamics, as well as any conclusion regarding the existence of a vulnerable group, essentially proceeds from an *ex nunc* factual assessment that is carried out on the basis of the available items. Therefore, any examination aimed at determining whether the general situation in a certain country has improved or deteriorated is comparable to a factual analysis in which the ECHR is likely to reconsider depending on the evolution of circumstances. Therefore, there is nothing to prevent the ECHR, in a judgment ruling on an individual case, from carrying out such a review of the general situation.

5. Application of these general principles on risk assessment to the case

Between 2012 and 2016, the ECHR heard nine cases related to the extradition of ethnic Uzbeks from Russia to Kyrgyzstan, in which it concluded that they continued to be at real risk of ill-treatment²⁰. Without having judged the general human rights situation, although eminently problematic, to be such as to prevent any extradition, the ECHR pointed out that specific reports mentioned a selective and systematic practice of ill-treatment against people belonging to the Uzbek ethnic group, during the period considered.

In the case at hand, the Grand Chamber had to determine whether the information and documents available at that time still supported a similar conclusion in respect of the two claimants. In relation to the circumstances of the claimants' cases, almost six years having elapsed since the adoption of the final domestic judgments in the Russian courts, the Grand Chamber, in accordance with the *ex nunc* principle, assessed the existence of a real risk as at the date the case was examined.

As regards the general situation in Kyrgyzstan, at the time, the available reports produced by the United Nations human rights bodies, as well as by international, regional and national NGOs, describing the situation in Kyrgyzstan, continued to point out that cases of torture and ill-treatment, lack of effective investigations, and recurring impunity remained major sources of concern in relation to that country and that, despite the legal and institutional reforms that had been carried out there, the measures taken by the Kyrgyz authorities to prevent torture and other ill-treatment in practice were insufficient²¹. However, those elements did not allow it to conclude that the general situation in the country had deteriorated compared to the previous assessments which had led the ECHR to rule that the situation in the country was such that it precluded any return to Kyrgyzstan, or that a total ban on extradition to that country was necessary.

As such, the ECHR analysed the situation of ethnic Uzbeks in Kyrgyzstan. The applicants' complaints combined aspects related to the general situation of the country in question and others related to individual circumstances. Since it had been accepted by all parties that the applicants were Kyrgyz citizens of ethnic

²⁰ *Makhmudzhan Ergashev v. Russia* App no 49747/11 (ECHR, 16 October 2012); *Gayratbek Saliyev v. Russia* App no [39093/13](#) (ECHR 17 April 2014); *Kadirzhanov and Mamashev v. Russia* App nos [42351/13](#) and [47823/13](#) (ECHR 17 July 2014); *Mamadaliyev v. Russia* App no [5614/13](#) (ECHR 24 July 2014); *Khamrakulov v. Russia* App no. [68894/13](#) (ECHR 16 April 2015); *Nabid Abdullayev v. Russia* App no [8474/14](#) (ECHR 15 October 2015); *Turgunov v. Russia* App no [15590/14](#) (ECHR 22 October 2015); *Tadzhibayev v. Russia*, App no [17724/14](#) (ECHR 1 December 2015); and *R. v. Russia* App no 11916/15 ([ECHR26](#) January 2016)

²¹ Both the judgment of the Chamber and that of the Grand Chamber referred to sources from the United Nations control bodies, such as a 2018 report from the UN Committee for the Elimination of Racial Discrimination (CERD); the Annual Reports of the European Union on Human Rights and Democratisation of 2014, 2016, 2017 and 2018; the 2016 OSCE Human Dimension Implementation Meeting; and also to international human rights non-governmental organizations, such as the 2015 Amnesty International report, which documented 79 cases of torture and other ill-treatment in the first half of 2015; and the 2016 Human Rights World Report Watch. To assess the probative value of this type of report, the Court has articulated certain principles (see *JK and Others v. Sweden* [GC] App no 59166/12, §§ 88-89, (ECHR 23 August 2016)): "In assessing the weight that should be granted to country material, the Court has found in its jurisprudence that the sources of such material must be considered, in particular their independence, reliability and objectivity. With respect to the reports, the authority and reputation of the author, the seriousness of the investigations by which they were compiled, the consistency of their conclusions, and their corroboration by other sources are all relevant considerations...The presence and ability of information of the author of the material in the country in question. The Court appreciates the many difficulties that governments and NGOs face in gathering information in dangerous and volatile situations. It accepts that it will not always be possible to carry out investigations in the immediate vicinity of a conflict and, in such cases, it may be necessary to rely on information provided by sources with first-hand knowledge of the situation."

Uzbek origin, the question was whether there was reliable and objective evidence that that group was systematically exposed to ill-treatment in Kyrgyzstan. As noted, the ECHR acknowledged that it had found in a series of judgments relating to the extradition of ethnic Uzbeks to Kyrgyzstan that there was a real risk of ill-treatment owing to their ethnic origin. However, in the applicants' case, the ECHR needed to update its information and focus its analysis on whether or not ethnic Uzbeks continued to face a higher risk of ill-treatment compared to others in Kyrgyzstan, which was the main issue between the parties.

In its assessment, the ECHR considered whether there were signs of improvement or deterioration in the human rights situation in general or with respect to a particular group or region that might have been relevant in relation to the individual circumstances of the applicants. Its earlier conclusion that ethnic Uzbeks in Kyrgyzstan constituted a vulnerable group for the purposes of Article 3 of the Convention had been based on specific reports documenting a selective and systematic pattern of ill-treatment against that group during the relevant period. In relation to the situation at the relevant time, the ECHR noted that the absence of specific reports on acts of torture to which ethnic Uzbeks were reportedly subjected due to their ethnic origin in the face of other risks linked to ethnic origin, such as insecurity, economic and security discrimination, ethnic profiles and political marginalisation. Although there had been concrete evidence following the ethnic clashes of June 2010 that ethnic Uzbeks were at increased risk of ill-treatment, recent reports no longer contained such evidence. Therefore, it could in no way be concluded that ethnic Uzbeks constituted a group that continued to be systematically exposed to ill-treatment.²²

The ECHR then proceeded to examine the individual circumstances of the applicants. By carefully and adequately examining the question of the existence of an individual risk likely to prevent the extradition of the applicants, the Russian courts had fulfilled their obligations under the Convention. The two applicants had not been able to demonstrate before the national courts, the Chamber or the Grand Chamber, the existence of an unacknowledged political or ethnic motive behind the charges that they faced in Kyrgyzstan or of any other particular distinctive characteristics that might expose them to a real risk of suffering ill-treatment. Having not been able to demonstrate the existence of substantial grounds to believe that they ran a real risk of being subjected to treatment contrary to Article 3, the applicants had not satisfied that criterion in their case. In view of the foregoing conclusions, the Court did not consider it necessary to rule on the assurances provided by the Kyrgyz authorities in the applicants' case and concluded, unanimously, that extradition would not lead to a violation of the Convention. Consequently, the provisional measures previously indicated to the government based on the precautionary measures applied under Article 39 of the Rules of the Rules of Court were suspended.

II. THE GRAND CHAMBER CASE OF *SANCHEZ-SANCHEZ v. THE UNITED KINGDOM*²³

1. Key features of this ruling on Article 3 in the case of the applicant's extradition from the United Kingdom to the United States.

The key features of this judgment on Article 3 can be summarised as follows: the Grand Chamber concluded that if the applicant were extradited from the United Kingdom to the United States ("the US"), there would be no violation of Article 3 of the Convention for the following reasons: (i) the absence of evidence demonstrating a real risk of a sentence of life imprisonment without parole in the event of extradition and conviction of the applicant in the US; (ii) contracting States were not liable under the Convention for deficiencies in a third-state system when compared to the full standard set out in *Vinter and Others v the United Kingdom*²⁴ which included both a substantive obligation and procedural safeguards; (iii) the decision of the Grand Chamber overturned the criteria previously established in the judgment of the Court in *Trabelsi v. Belgium*²⁵; (iv) a tailored two-stage approach was developed for extradition cases, firstly, the assessment of whether the applicant had proved that there were serious grounds to believe that, in case of conviction, there was a real risk of a life sentence without parole and secondly an assessment of whether, from the moment of sentencing, there was a review mechanism that allowed national authorities to consider

²² *Khansanov and Rakhamanov v. Russia* [GC] App nos 28492/15 and 49975/15, §§126 and 136 (ECHR, 29 April 2022)

²³ *Sanchez - Sanchez v. the United Kingdom* [GC] App no 22854/20 (ECHR, 3 November 2022)

²⁴ *Vinter v. UK* [GC] App no 66069/09 (ECHR 9 July 2013)

²⁵ *Trabelsi v. Belgium* App no 140/10 (ECHR 2014)

the prisoner's progress towards rehabilitation or any other reason for release based on her of his behaviour or other relevant personal circumstances; (v) the availability of procedural guarantees to review the sentence of "prisoners for life" in the Requesting State was not a prerequisite for compliance with Article 3 by the Contracting State sending the requested person; and (vi) in the specific case of the applicant in the case of *Sanchez-Sanchez*, he would not face a mandatory sentence of life imprisonment.

2. Article 3 of the Convention: Evaluation of life imprisonment in the context of extradition and the inapplicability of the principles established in *Vinter and Others*

The applicant in *Sanchez-Sanchez* was a Mexican citizen who was detained in the United Kingdom. He was facing extradition to the US, where he was wanted on federal charges of drug trafficking. According to the United States Sentencing Guide, those crimes carried a sentence range of up to life imprisonment. The applicant appealed, unsuccessfully, against his extradition to the domestic courts. Before the ECHR the applicant complained under Article 3 of the Convention and the Grand Chamber concluded that his extradition to the US would not breach that provision: the applicant had not produced evidence to show that he was at real risk of a sentence of life imprisonment without parole.

The Grand Chamber judgment is novel in that the ECHR clarifies that Convention compliance with a life sentence in a third country requesting extradition should not be assessed by reference to all the standards that apply to the service of life sentences in the contracting States. To the extent that they include procedural guarantees, the principles established in *Vinter and Others v. the United Kingdom* in the domestic context are not applicable in the context of extradition. Therefore, the Court developed an approach adapted for the latter context, comprising a two-stage test.

2.1. The doctrine of *Trabelsi v. Belgium* is reversed.

In *Trabelsi v. Belgium*, the ECHR applied the criteria established in the *Vinter* case²⁶ to an extradition context. It held that the extradition of the applicant would violate Article 3 because none of the procedures provided for in the requesting State amounted to a review mechanism focused on the rehabilitation of those sentenced to life imprisonment and that required the national authorities to determine, after the course of a certain period of time, that his continued detention could still be justified on legitimate penological grounds. That implied the possibility of being reviewed *de jure* and *de facto*. In *Sanchez-Sanchez*, the ECHR overruled the *Trabelsi* jurisprudence for the following reasons²⁷. First, the Grand Chamber emphasised that *Vinter and Others* was not an extradition case and that it was important to distinguish between extradition and the domestic context. In the latter, the applicant's legal position is known to the national authorities, having already been convicted and sentenced. However, the analysis of a future situation in which an applicant to be extradited might find himself is more complex, since the possible deportee has not yet been tried. Therefore, the risk assessment, especially when an applicant has not yet been convicted and the prognosis is inevitably tentative, will be characterised by a very different level of uncertainty.²⁸

2.2. The *Vinter* judgment was reaffirmed in relation to life sentences, but its application in extradition cases was qualified in terms of the prior requirement that life imprisonment be reviewable in the country to which the person must be extradited.²⁹

²⁶ *Vinter v. UK* [GC] App no 66069/09, § 107, (ECHR, 9 July 2013)

²⁷ *Trabelsi v. Belgium* App no 140/10, §98, (ECHR 2014); As pointed out in V. Peltier Peine 'incompressible et extradition', *Droit pénal: revue mensuelle du JurisClasseur*, 34e année, no. 12 (Dec. 2022), p. 39 : "The court indicative expressis Verbis que l'approche retenue dans l'affaire Trabelsi doit être écartée ». In other words, the Court indicates expressis Verbis that the approach taken in the *Trabelsi* case should be rejected.

²⁸ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §92, (ECHR, 3 November 2022)

²⁹ Ibid §95; Several of the academic commentators have highlighted this new "approche modulée". See, B. Pastre-Belda 'Extradition et peine d'emprisonnement à perpétuité: ECHR, gde ch., 3 nov. 2022, no. 22854/20, *Sanchez-Sanchez v. Royaume-Uni*', *La Semaine juridique: édition générale (JCP)*, 96e année, n° 46 (21 Nov. 2022), p. 2103 . Also, V. Peltier Comb 'incompressible et extradition', *ibid* 27., p. 39.

Second, the ECHR distinguished between two components of the standard laid down in *Vinter*: the substantive obligation (ensuring that a life sentence does not become a sentence incompatible with Article 3 over time) and the procedural guarantees (the time frame, criteria and conditions for the required review, as well as its nature and scope). The procedural guarantees are not ends in themselves but serve, in their observance by the Contracting States, to avoid a violation of the former. Furthermore, while a State is familiar with its national system, it may be exceedingly difficult for national authorities deciding on extradition requests to examine the relevant law and practice of a third State to assess its degree of compliance with these procedural guarantees. In fact, this would be an excessively broad interpretation of the responsibility of a Contracting State in such a context.³⁰

Lastly, the finding of a violation of Article 3 (as a result of the lack of a review mechanism in accordance with the Convention in the requesting State) may imply the risk that a person facing very serious charges will never be tried. However, an identical finding in the domestic context would not undermine the legitimate penological purposes of imprisonment, since it would not lead to the early release of the life sentence in question. The Court concluded that the availability of procedural guarantees provided for “life prisoners” in the legal system of the requesting State was not a prerequisite for compliance with Article 3 by the Contracting State complying with the request for an extradition. In fact, Contracting States should not be held liable under the Convention for deficiencies in the safeguards of a third State's system. Although procedural guarantees were better adapted to a national context, the substantive guarantee, the essence of *Vinter's* jurisprudence, was easily transposable to the context of extradition.

2. 3. There are two steps to take in the examination of a case in the context of the extradition: First step: evidence from the applicant to show that if she or he is extradited she or he will receive a life sentence with no possibility of ever being reviewed. Second step: if the applicant has demonstrated the above, the extraditing State must ensure that there is a life sentence review mechanism in the receiving State.

The ECHR went on to develop an approach tailored to the extradition context, which included two steps. In the first step, the ECHR addressed a question that had not been examined in the *Trabelsi* judgment: in particular, it had to be established whether the applicant had provided evidence capable of demonstrating that there were reasonable grounds to believe that, in the event of being extradited and sentenced, there was a real risk of a life sentence without parole.³¹ In that sense, the burden of demonstrating that such a sanction would be imposed, fell on the applicant. Such risk would be more easily established if the applicant were facing a mandatory sentence of life in prison.

If said risk was established under the first part of the investigation, the second part would focus on the material guarantee of the *Vinter* case standard: the competent authorities of the extraditing State had to establish, before authorising the extradition, that there existed in the requesting State, a sentencing review mechanism that allowed the competent authorities to consider whether the changes in the life sentence were so significant, and whether such progress had been made towards rehabilitation since sentencing, as to mean that continued detention could no longer be justified on legitimate or penological grounds.³² In other words, it had to be verified whether, from the moment of sentencing, there was a review mechanism that allowed the consideration of the inmate's progress towards rehabilitation, or any other cause for release, based on her or his behaviour or other relevant aspects or personal circumstances. The ECHR emphasised that the prohibition of ill-treatment in Article 3 remained absolute, even in the context of extradition, and no distinction could be drawn between the domestic and extraterritorial contexts with respect to the minimum level of severity required to meet the threshold of Article 3.

3. Application of that test to the case of *Sanchez-Sanchez v. the United Kingdom*

The *Sanchez-Sanchez* judgment is also interesting in terms of the way in which the ECHR applied the first part of the above test to a situation where the applicant was not facing a mandatory sentence of life imprisonment. In the ECHR's opinion, the applicant had to show that, if convicted, there was a real risk that

³⁰ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §95, (ECHR, 3 November 2022)

³¹ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §96, (ECHR, 3 November 2022)

³² *Ibid* §96

he would be sentenced to life imprisonment without parole without due consideration of all relevant mitigating and aggravating factors. Although the ECHR took as its point of departure the assessment made by the national courts, it examined the evidence submitted in that regard, having found the findings of the domestic courts to be inconclusive. The Court based its assessment on the probable sentence the applicant would receive if he pleaded guilty. However, it considered relevant the following factors: sentencing statistics, the extent of the sentencing judge's discretion, the applicant's opportunity to offer evidence on any mitigating factors, benefits granted to the applicant's accomplices, as well as the applicant's right to appeal against any award imposed. The ECHR reiterated that there were many factors that could contribute to the imposition of a sentence and that, prior to extradition, it was impossible to address every conceivable scenario that might arise.

On the facts of the case, the applicant had not adduced evidence of any defendant with a background similar to his own who had been convicted of similar conduct and had been sentenced to life without parole. Therefore, there had therefore been no need for the ECHR to proceed to the second stage of the new test.

III. THE GRAND CHAMBER CASE OF *McCALLUM v. ITALY* (INADMISSIBILITY DECISION)³³

1. The facts of the case

The inadmissibility decision *McCallum v. Italy* was given on the same day as the judgment in *Sanchez-Sanchez v. the United Kingdom* and the doctrine created in *Sanchez-Sanchez* on Article 3 of the Convention, regarding the risk of life imprisonment in the context of extradition was applied, as well as consideration given to the reliability of the guarantees expressed in diplomatic notes.

The applicant was a citizen of the United States who had been a fugitive for several years and was wanted by the US authorities in connection with the murder of her husband, in the State of Michigan. In 2020, she was arrested in Italy and the US authorities requested her extradition. The Italian courts accepted the request and rejected the applicant's argument that her extradition would be contrary to Article 3 of the Convention. The applicant claimed that, if convicted, she would face life in prison without parole, which was the prescribed sentence for First-Degree Murder under Michigan law. She had also argued that the State Governor's power to grant her early release was not sufficient to eliminate the risk, as that power was purely discretionary. The applicant brought a case against Italy before the ECHR, arguing that her extradition would violate Article 3, raising the same arguments that she had made before the Italian courts.

The Court indicated to the Italian Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited during the proceedings before it. Subsequently, the US Embassy in Rome informed the Italian authorities that the Michigan Prosecutor had promised to try the applicant for the lesser charge of Second-Degree Murder. The Diplomatic Note clarified that, if convicted of that charge, the applicable penalty would not be life imprisonment, and that in any case the applicant would be eligible for parole. The ECHR consequently lifted the Rule 39 provisional measure, and the applicant was extradited to US. The Grand Chamber therefore rejected the application as manifestly unfounded. There was no real risk that the applicant would receive an irreducible life sentence should she be found guilty of the charges that would now be brought against her.

2. Relevance of the Grand Chamber's decision on the importance of Diplomatic Notes and evidence required of the risk of receiving a life sentence without review

The decision of the Grand Chamber is relevant in two respects. First, the ECHR confirmed its position on Diplomatic Notes set out in *Harkins and Edwards v. the United Kingdom*.³⁴ Second, the ECHR proceeded on the basis of the distinction between the substantive obligation and the corresponding procedural guarantees deriving from Article 3 when dealing with the issue of life imprisonment in the context of extradition, in accordance with the approach adopted in *Sánchez-Sánchez*.

³³ *McCallum v. Italy* [GC] (dec.) App no 20863/21 (ECHR, 3 November 2022)

³⁴ *Harkins and Edwards v. the United Kingdom* App nos 9146/07 and 32650/07 (ECHR, 17 January 2012)

2.1. Diplomatic Notes

The ECHR reiterated that Diplomatic Notes carried a presumption of good faith, and, in extradition cases, it was appropriate for that presumption to apply to a requesting State that had a long history of respect for democracy, human rights and the rule of law, and long-standing extradition arrangements with the Contracting States³⁵. Therefore, the Court found it justified to proceed on the basis that the applicant would now only be tried for the charges indicated in the Diplomatic Note issued by the US embassy to Italy and specified in the new extradition decree issued by the Italian Minister of Justice. Furthermore, referring to Article 26 of the Vienna Convention on the Law of Treaties, the Court observed that if, after her extradition, the original charges against the applicant were revived, that would not be compatible with the duty to perform in good faith the obligations established in the Extradition Treaty. It also took note of the Italian Government's position that, under the applicable bilateral treaty, the US was bound to honor its commitment.

In relation to diplomatic guarantees, the Court usually asks the authorities of the Contracting Parties for guarantees in each specific case that they will ensure respect for the rights of the Convention and that they will not transfer people to countries where there are real risks of wrongdoing without first asking for diplomatic guarantees. The criteria of the ECHR on diplomatic guarantees were established in the case of *Othman (Abu Qatada) v. United Kingdom*³⁶:

“In general, the Court will first assess the quality of the guarantees given and, secondly, whether, in the light of the practices of the receiving State, it can be trusted. In its analysis, the Court has previously taken into account various factors, including among many others the following: (a) whether the guarantees are specific or are general and vague; (b) who has given the guarantees and whether that person can bind the receiving State; (c) if the guarantees have been issued by the central government of the receiving State, whether the local authorities can be expected to honor them; (d) the length and strength of bilateral relations between sending and receiving States, including the record of the receiving State in honoring similar guarantees; (e) whether compliance with the guarantees can be objectively verified through diplomatic or other control mechanisms, including unrestricted access to the applicant's lawyers; (f) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and punish those responsible; and (g) whether the reliability of the guarantees has been examined by the national courts of the Sending/Contracting State (see *Othman (Abu Qatada)*, cited above, § 189, with additional references).³⁷”

2.2. The absence of the risk of receiving a life sentence without review

The ECHR noted that the applicant faced, at most, the prospect of life imprisonment with the right to parole, if found guilty of the reduced charges. However, she had argued that such a sentence should be considered “irreducible” in the sense of ECHR jurisprudence, due to the role of the Governor of Michigan in the state's probation system, which she argued was decisive. The ECHR noted that this argument related to the question of procedural guarantees, and not to the substantive obligation, which was the essence of the *Vinter* standard. However, as stipulated in *Sanchez-Sanchez*, the availability of procedural guarantees for “prisoners for life” in the legal system of the requesting State was not a prerequisite for compliance by the requested Contracting State with Article 3 of the Convention.

³⁵ *Harkin and Edwards v. the United Kingdom* also involved the US; For a critical vision of the uses of diplomatic guarantees in some cases, see G. Thuan Dit Dieudonné *Extraditions, médiations et coopérations internationales: le point de vue de Strasbourg*, in *Justice et droits de l'homme: les enjeux de la médiation internationale* / sous la direction de Philippe Gréciano, Paris, Mare & Martin, 2015, p. 143-159. Specifically on p. 148 includes the reaction that the specific case of *Omar Othman v. United Kingdom*, no. 8139/09, January 17, 2012, due to the fact that the ECHR accepted those granted by Jordan as diplomatic guarantees. In any case, as the same author highlights, diplomatic guarantees are a third additional factor that the ECtHR takes into account after the general situation of the country requesting the extradition and the specific characteristics of the applicant (see *idem*, p. 147).

³⁶ *Othman (Abu Qatada) v. the United Kingdom* App no 8139/09 (ECHR, 17 January 2012)

³⁷ *Ibid* § 189

In any event, having taken note of the relevant statutory provisions, the ECHR was not satisfied that the claimant's understanding of the Michigan system was correct. Under Michigan's compiled laws, the parole of an inmate was at the discretion of the parole board.

Although the Governor of Michigan enjoyed broad executive clemency powers, she or he was not involved in the parole proceedings. The relevant legal provisions did not empower the Governor to annul the granting of parole to a prisoner. The appeal against the granting of parole rested with the competent circuit court. The ECHR further reiterated that an applicant who claimed that her or his extradition would expose her or him to the risk of a sentence that would constitute inhuman or degrading punishment had the burden of proving the reality of that risk.³⁸ In the present case, the applicant had failed to meet that burden.

IV. THE CASE OF *HAFEEZ v. THE UNITED KINGDOM* (INADMISSIBILITY DECISION)

1. Introduction

The *Sanchez-Sanchez* case was communicated on 12 June 2020. On 19 October 2020 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber and the case was given priority under Rule 41 of the Rules of Court. A hearing was held on 23 February 2022. For that reason, the *Hafeez* case,³⁹ which was communicated on 24 March 2020, awaited the judgment of the Grand Chamber in *Sanchez-Sanchez*. This *iter* can perhaps satisfy some of the questions asked about the chronology of the two cases⁴⁰.

The case of *Hafeez* was allocated to the relevant Chamber of the Fourth Section on the basis of the *Sánchez-Sánchez* precedent in the light of the “remarkably similar situation” between the two cases.⁴¹ In neither of the two cases had the domestic courts made an adequate assessment of risk, so the ECHR did so in both *ex nunc* and *motu proprio* in the light of the time at which the extradition judgment had to be made⁴². The domestic courts had expressly refused to rule on that issue, that is, on the risk assessment in the event of extradition.

In *Sánchez-Sánchez*, the conclusion of the Grand Chamber was based, at least in part, on the assumption that the question of the probability of the imposition of the sanction of life imprisonment without parole was negative, “in view of the evidence presented by the Government, they observed that life sentences were rare in drug trafficking cases”.⁴³

In the *Hafeez* case, the domestic authorities ordered the surrender of the applicant on 5 March 2019 following a judgment of Westminster Magistrates’ Court, upheld on appeal by the High Court. In the meantime, however, the applicant's lawyers had applied, and obtained, under Rule 39 of the Rules of Court, an injunction suspending the extradition.

2. Facts of the case

The applicant, Mr. Muhammad Asif Hafeez, was a Pakistani citizen who was born in 1958 and was detained in London at the relevant time. He suffered from a number of health conditions, including type 2 diabetes and asthma. He was arrested in London on 25 August 2017, pursuant to an extradition request from the Government of the US.⁴⁴

The charges for which his extradition had been requested were the following: (i) conspiracy to import heroin into the US; (ii) conspiracy to import methamphetamine and hashish into the US; and (iii) aiding and abetting in the manufacture/distribution of heroin knowing and with intent to import it into the US.

³⁸ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §87, (ECHR, 3 November 2022)

³⁹ *Hafeez v. the United Kingdom* (dec.) App no 14198/20 (ECHR, 28 March 2023)

⁴⁰ Matteo Zamboni, 7 April, 2023:

<https://www.extradando.com/post/hafeez-v-the-united-kingdom-and-the-operation-of-article-3-in-the-extradition-context>

⁴¹ *Hafeez v. the United Kingdom* (dec.) App no 14198/20 (ECHR, 28 March 2023)

⁴² Therefore, Zamboni's comment according to which *Sanchez-Sanchez* acted under the principle of subsidiarity (the Grand Chamber was based on the evaluation of the internal jurisdictions regarding the improbability of the imposition of the sentence of life imprisonment without parole), and that, however, in *Hafeez*, the Fourth Section was the first jurisdiction to conduct the relevant test is not sustainable, *Ibid.*

⁴³ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20 (ECHR, 3 November 2022)

⁴⁴ *Hafeez v. the United Kingdom* (dec.) App no 14198/20, §1 (ECHR, 28 March 2023)

According to the Government, those charges concerned the planned movement of drugs and their constituent ingredients in very significant quantities into Asia, Africa, Europe and North and South America. As such, they involved the transnational movement of drugs on an extremely large scale. Within that operation, the applicant had been identified as a figure known as the ‘big boss’, ‘the sultan’ and the ‘world number one’ in heroin and hashish.⁴⁵

During the domestic proceedings, the judge considered the possibility that the applicant could be sentenced to life imprisonment without parole. The applicant relied on *Trabelsi*; however, the judge rejected his Article 3 challenge on that ground, as he considered that, if the applicant were sentenced to life imprisonment, he would be able to make an application for compassionate release if there were ‘extraordinary and compelling circumstances’ warranting a reduction of his sentence.

In relation to the risk of the imposition of irreducible life imprisonment that would be contrary to Article 3 of the Convention, the ECHR referred to the criteria established in *Sanchez-Sanchez* and stated:

‘The Court indicated that a two-stage approach is called for when assessing risk, upon extradition, of a violation of Article 3 of the Convention by virtue of the imposition of an irreducible life sentence. First of all, a preliminary question must be asked: namely, whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, in case of conviction, there is a real risk of a sentence of life imprisonment without parole. It is up to the applicant to demonstrate that such a penalty would be imposed without due consideration of all relevant mitigating and aggravating factors, and such risk will be more easily established if he faces a mandatory - as opposed to a discretionary - sentence of life imprisonment. The second stage will only come into play if the applicant establishes such a risk; only then will it be necessary to consider whether, as from the moment of sentencing, there would be a review mechanism in place allowing the domestic authorities to consider a prisoner’s progress towards rehabilitation or any other grounds for release based on his behavior or other relevant personal aspects or circumstances.’⁴⁶

3. Analysis carried out by the ECHR

Applying the new jurisprudence to the facts of this case, the ECHR concluded that the applicant had not proven the existence of a real risk of an unreviewable life imprisonment being imposed (without the possibility of parole) in the event of being extradited to the United States. In its reasoning the ECHR took the following steps:

Since the applicant had not yet been convicted and the offenses of which he had been charged did not carry a mandatory sentence of life imprisonment, he had first to demonstrate that, if convicted, there was a real risk of a sentence of life imprisonment without parole and that it would be imposed without due consideration of all relevant mitigating and aggravating factors.⁴⁷ In that regard, two aspects could be observed, which would be applicable: first, the real risk of life imprisonment and second, in the event of that risk being realised, that it would be imposed without due consideration of the relevant mitigating and aggravating factors. This has also been applied to the *Carvajal* case.⁴⁸

In order to carry out this exercise, which, since the extradition had not yet taken place, it would be *ex nunc*, the ECHR would normally take as its starting point the evaluation of the national courts.⁴⁹ However, as in *Sanchez-Sanchez*, the conclusions of the national courts for the purposes of the ‘real risk’ assessment were inconclusive.⁵⁰ The district judge had not addressed the issue directly. On appeal, the High Court had stated that ‘evidence before the district judge established that there was a real risk that Mr. Hafeez, if found guilty of the charges for which his extradition was sought, would receive a prison life sentence’. However, that court then went on to say that ‘this was by no means the certain outcome’. The High Court referred to evidence from the United States Sentencing Commission showing that life sentences were rare in the Federal

⁴⁵ Ibid §5

⁴⁶ *Hafeez v. the United Kingdom* (dec.) App no 14198/20 §37 (ECHR, 28 March 2023)

⁴⁷ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §100 (ECHR, 3 November 2022)

⁴⁸ *Hafeez v. the United Kingdom* (dec.) App no 14198/20 §49 (ECHR, 28 March 2023)

⁴⁹ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §101 (ECHR, 3 November 2022)

⁵⁰ *Sanchez-Sanchez v. the United Kingdom* [GC] App no 22854/20, §103 (ECHR, 3 November 2022)

System, even in serious drug trafficking cases, before concluding that '[i]t is not appropriate for us to consider whether the evidence established a real risk of a life sentence. We were not invited to do so'.⁵¹

Consequently, the ECHR had to examine the evidence before it at the time the application was lodged. In that regard, it noted that the facts presented by the parties suggested that the applicant was in all material respects in a remarkably similar situation to that of Mr. Sanchez- Sanchez. Both had been charged with felony drug trafficking with a maximum sentence of life imprisonment, and both were believed to have held positions of leadership in their respective criminal enterprises. In particular, Mr. Sanchez-Sanchez was believed to have been the joint head of a Mexico-based drug trafficking operation that oversaw the work of the based distributors, while the applicant in the case at hand had been identified as the 'big boss' in an operation responsible for the transnational movement of drugs on an extremely large scale. Both applicants had been charged in a jurisdiction where prison sentences were generally below the recommended range; the applicant also had no (known) prior convictions; and both had accomplices who had also faced maximum sentences of life in prison but had received lesser sentences after pleading guilty.⁵²

Consequently, the 'risk' of life imprisonment being imposed appeared, at least from the point of view of the ECHR, to be similar in both cases.⁵³ In *Sanchez-Sanchez*, the ECHR had recognised that a life sentence, though rare, could be imposed in drug cases involving large amounts of drugs, or where a court applied other related sentence enhancement provisions with drug trafficking. Furthermore, the ECHR acknowledged that Mr. Sanchez-Sanchez's co-conspirators had perhaps not been in a fully comparable position to the applicant's, despite having a similar base offence levels, since they did not appear to have been suspected of leading any criminal organisation and, perhaps more importantly, they would have been entitled to a reduced sentence as a result of their guilty pleas. However, the ECHR could not ignore the fact that Mr. Sanchez-Sanchez had not produced evidence of any defendant with a record similar to his who had been found guilty of similar conduct and sentenced to life without parole. Furthermore, while it had not based its assessment on the probable sentence that Mr. Sanchez-Sanchez would receive if he pleaded guilty, the ECHR recognised that the length of the applicant's prison sentence could be affected by pre-trial factors, such as agreeing to cooperate with the US government. Finally, it took into account the fact that, if Mr. Sanchez-Sanchez had been to plead guilty or be convicted at trial, the judge would have had broad discretion to determine the appropriate sentence after a process of determination of the facts in which the applicant would have had the opportunity to offer evidence regarding mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines. The sentencing judge would have been obliged to take into account the sentences handed down to the accomplices, even if their situation had not been identical to that of Mr. Sanchez-Sanchez, and the latter would have the right to appeal against any sentence imposed.⁵⁴

All of those factors applied with equal force to the case at hand. Although the applicant's situation might not have been fully comparable to that of his co-conspirators, and although those co-conspirators would have been entitled to a sentence reduction due to their guilty pleas, the applicant had not produced evidence of any defendants with similar records to him who had been convicted of similar conduct and sentenced to life without parole. If convicted, the length of the sentence could also be affected by pre-trial factors, such as agreeing to cooperate with the US government.⁵⁵

In the light of the above, the applicant could not be said to have presented evidence capable of demonstrating that his extradition to the US would expose him to a real risk of receiving treatment that meet the Article 3 threshold owing to the risk of being sentenced to life in prison without parole. That being the case, it was unnecessary for the Court to proceed in the circumstances of the case to the second stage of analysis.⁵⁶

4. Argument that extradition would be contrary to Article 3 of the Convention on account of the applicant's health

⁵¹ Ibid §50

⁵² *Hafeez v. the United Kingdom* (dec.) App no 14198/20 §51 (ECHR, 28 March 2023)

⁵³ Ibid §52

⁵⁴ Ibid §53

⁵⁵ Ibid §54

⁵⁶ Ibid §55

A relevant element in this case, and one which was also raised in *Bijan Balahan v. Sweden* (see below), was the applicant's argument that his extradition would be in breach of Article 3 on account of his health. The applicant also complained that the conditions of detention would be inhuman both in pre-trial and post-conviction detention. Although the applicant argued that he had a series of health conditions, such as diabetes, the ECHR agreed with the finding of the domestic courts that those circumstances were not remarkable for a man of his age (sixty-four years old at the relevant time), nor did they constitute a reason not to extradite him. For his part, the applicant had not provided any real evidence or concrete information to show a possible lack of medical care in the United States prisons to which he could be transferred. Rather, the evidence available to the Strasbourg Court in the light of the data provided by the United Kingdom Government and previous ECHR jurisprudence was the opposite, with proof that the US prisons met the standards required by Article 3. of the Convention, as well as the actual existence of medical services available. In *Sanchez-Sanchez* the ECHR made clear that there was a difference in the way Article 3 is applied in the extradition context as opposed to the domestic context.

V. CASE OF BIJAN BALAHAN v. SWEDEN (NO VIOLATION OF ARTICLE 3)⁵⁷

1. Introduction

The case essentially concerned an alleged possible violation of Article 3 of the Convention in the event that the applicant be extradited from Sweden to the US. The ECHR found no evidence to demonstrate a real risk that the applicant would receive either a sentence of life imprisonment without parole or a sentence with a minimum period of sixty-one years prior to eligibility for parole if he were extradited to the US and convicted. Furthermore, it found that the applicant had not shown that there was a real *de jure* or *de facto* risk of life without parole. The length of the possible minimum period depended on a number of unknown factors and might be significantly shorter. Therefore, the first stage of the test established in *Sanchez-Sanchez v. the United Kingdom* had not been met. In relation to the applicant's allegation that a disproportionately severe sentence might be imposed upon him, he had also failed to provide any evidence to support that claim and, furthermore, few applicants had ever proven that they would receive a grossly disproportionate sentence. Only very rarely had that type of penalty been imposed. The ECHR added that a sentence should not be considered grossly disproportionate simply because it was more severe than that which would be imposed in another State.

2. Facts of the case

The case concerned the decision of the Swedish government to extradite the applicant to the US. The applicant complained, in particular, that his extradition would violate Article 3 of the Convention because, if convicted of the charges against him, he risked receiving an irreducible sentence of life imprisonment without parole, or a minimum sentence of sixty-one years' imprisonment, which would amount to a *de facto irreducible sentence* of life in prison without parole. He also argued that such a sentence would be grossly disproportionate. The ECHR granted him an interim measure on 21 February 2022, which was renewed on 7 March 2023.

The case bears certain similarities to the *McCallum* case, in that it deals with state, not federal, law in the US and because there was, in fact, no risk that the applicant would receive a sentence of life imprisonment without conditional freedom. As in *McCallum*, the applicant faced at most the prospect of life in prison with eligibility for parole. Also, as in *McCallum*, there was a parole system in the form of a Parole Board.⁵⁸ The probation system was not challenged by the applicant. Rather, he argued that that parole system would not be relevant to him because of the length of the minimum period he would have to serve before he became eligible for parole. The *crux* of the matter was, therefore, whether the applicant's claim related to a matter that could be considered to be more in the nature of a procedural guarantee, the availability of which was

⁵⁷ *Bijan Balahan v. Sweden* App no 9839/22 (ECHR, 29 June 2023)

⁵⁸ *Bijan Balahan v. Sweden* App no 9839/22, §§ 27-31 (ECHR, 29 June 2023); and *McCallum v. Italy* [GC] App no. 20863/21, § 53 (ECHR, 3 November 2022)

not a prerequisite for compliance with Article 3 of the Convention in the context of extradition,⁵⁹ or whether it should be considered a substantive guarantee, which had been the essence in the case of *Vinter and Others*, and, in that case, had to be answered by the authorities of the sending State before authorising the extradition.⁶⁰ In the case of *de facto* life imprisonment without parole, the ECHR was not satisfied that the applicant had shown that there was a real risk of him receiving such a long minimum term.

In May 2020, the applicant had been arrested in the US. He was alleged to have inflicted around thirty knife cuts on a person. In addition to requiring more than forty stitches, the alleged victim also had chemical burns. It was further alleged that the applicant had transferred 2,500 US dollars from the victim's account without the victim's knowledge and had offered money to a security guard who had come to the scene in exchange for not notifying the emergency services. The applicant was released on bail pending trial, after which he left the US and did not appear in court on the trial date.⁶¹

On 10 June 2021, the US Department of Justice requested the applicant's extradition from Sweden for prosecution purposes. In support of the application, an arrest warrant issued by the Superior Court of the State of California for Los Angeles County was submitted to the Swedish authorities on 5 May 2021. According to the arrest warrant, the applicant had been charged with five charges, namely (1) aggravated mutilation, (2) torture, (3) inducing false testimony, (4) dissuading a witness after a prior conviction, and (5) grand larceny, all of which had allegedly been committed on 18 May 2020 in Los Angeles, California.⁶²

On 23 December 2021, the Supreme Court of Sweden issued a decision regarding the permissibility of the applicant's extradition. Pursuant to the Law on Extradition of Criminal Offenses (Lag om utlämning för brott, 1957:668), the Supreme Court found no obstacles to the applicant's extradition in respect of the second and fifth counts. Regarding the first charge, the Supreme Court found that there were obstacles to extradition to the extent that the charge alleged the infliction of permanent disability and the loss of a limb or organ, since it considered that there was no support for that element in the material provided. However, insofar as one of the charges was that he had caused disfigurement, there was no bar to extradition. With respect to the third and fourth counts, the Swedish Supreme Court found that there were obstacles to extradition as the alleged acts did not constitute criminal offenses under Swedish law. In addition, it considered that the extradition of the applicant would not be contrary to the Convention.⁶³

On 3 February 2022, the Government decided to extradite the applicant to the US for the second and fifth counts, as well as for part of the first count, in accordance with the Supreme Court decision.⁶⁴ On 24 February 2022, the Government decided to suspend the execution of the extradition decision until further notice, following the decision of the ECHR to indicate an interim measure in that regard.⁶⁵ At the time of the judgment, the applicant had been in custody pending extradition since 24 May 2021.⁶⁶

Swedish extradition legislation prescribes certain grounds for refusal of extradition. Extradition must not be granted if the person subject to the extradition order risks persecution in the country to which she or he is being extradited for reasons of his origin, his membership of a particular social group or for his religious views or political circumstances⁶⁷, or risks being persecuted by way of directly violating the person's freedom or other serious reason. As part of the procedure, if the person concerned does not consent to being extradited, she or he can appeal to the Supreme Court, which will examine whether the extradition can be legally granted or if there was any legal impediment, which would lead to denying said extradition.⁶⁸ In its examination, the Swedish Supreme Court assessed whether the extradition met the requirements of the European Convention on Human Rights.⁶⁹

3. The question of age

⁵⁹ See *Sanchez-Sanchez v. United Kingdom* [GC] App no 22854/20, §§ 93 and 95-97, (ECHR, 3 November 2022); and *McCallum v. Italy* [GC] App no. 20863/21, § 53 (ECHR, 3 November 2022)

⁶⁰ See *Sanchez-Sanchez v. United Kingdom* [GC] App no 22854/20, § 96, (ECHR, 3 November 2022);

⁶¹ *Ibid* §5

⁶² *Ibid* §6

⁶³ *Ibid* §7

⁶⁴ *Ibid* §8

⁶⁵ *Ibid* §9

⁶⁶ *Ibid* §10

⁶⁷ *Ibid* §12

⁶⁸ *Ibid* § 15

⁶⁹ *Ibid* § 16

A novelty in this case was the applicant's argument that, owing to his age – 29 years old at the relevant time – if, as he feared, he received a sentence of sixty-one years' imprisonment, that sentence would effectively become a life sentence in fact, because, if served in its entirety, in practice he would probably end his days in prison. This would have the effect of turning a sentence that was not in theory a life sentence in practice into a sentence without the possibility of parole.

This argument is of interest because it was also raised, in a certain way, by the applicant Carvajal Barrios (see below). The ECHR did not accept this argument. First, because the assumption that the sentence imposed would be sixty-one years' imprisonment was not a foregone conclusion, and second, the argument of age by itself had never been a reason not to carry out an extradition. In addition, the ECHR did not examine the question of whether it would affect a substantive guarantee because the first test of the risk of conviction without parole had not been met.

A refusal to order extradition for humanitarian law reasons for reasons of health of the applicant or inadequate conditions of the prisons of the country to which the person concerned was going to be extradited was another possibility. Although not relevant to the applicant in this case, sometimes the arrest of a person subject to an INTERPOL notice for being involved in transnational crimes of drug and arms trafficking, occurs after many years of searching for them, as they are professional criminals expert at fleeing from justice. It does not seem consistent with the rules of the right to extradition, which are based on the idea that certain crimes should not go unpunished and that there should be no safe havens outside the law. It cannot be right that advanced age should become a new argument against extradition. The ECHR could, when considering the substantive guarantee in cases where a real risk of a life sentence without parole had already been proven also examine if there was a *de facto* life sentence due to *age* of the applicant.

4. The applicant's arguments and the response of the ECHR

With reference to the first part of the test established in *Sanchez-Sanchez*, the applicant argued that he had demonstrated that there was a real risk that he would receive a sentence of life imprisonment without parole or a *de facto* sentence of life imprisonment without parole, consisting of a minimum sentence of sixty-one years in prison. He had prior convictions for two crimes that fell into the felony category. A sentence of sixty-one years' imprisonment would *de facto* become a life sentence.⁷⁰ He also alleged that the US sentencing review mechanisms were rarely applied and did not provide realistic protection against life imprisonment⁷¹, owing to review conditions in California.

The Swedish government, for its part, argued in reply, firstly, that the applicant had not demonstrated the existence of a real risk that he would be subjected to life imprisonment without parole⁷², and secondly that in the event of the consideration of the second step of the *Sanchez-Sanchez* test, both probation procedures and the possibility of commuting sentences were real mechanisms for review of sentences⁷³. In addition, the Swedish Government argued that, the fact that the applicant had been accused of particularly violent crimes (having stabbed a person thirty times in order to obtain the access code to their bank accounts), but that those crimes did not entail a life sentence, there was, therefore, no risk that he would be sentenced to life imprisonment without parole or that the sentence would be seriously disproportionate⁷⁴. Furthermore, the Government emphasised the risk of impunity should the extradition not be carried out.

In its judgment, the ECHR repeated the arguments set out in its previous case-law, which it can be seen earlier in this article.⁷⁵

VI. CASE OF CARVAJAL BARRIOS v. SPAIN (INADMISSIBILITY DECISION)

⁷⁰ Ibid § 43

⁷¹ Ibid §44

⁷² Ibid §46

⁷³ Ibid §47

⁷⁴ Ibid §48

⁷⁵ Ibid §§ 55-64

1. Introduction

In its decision in *Carvajal Barrios v. Spain*,⁷⁶ the ECHR, by a majority, declared the application inadmissible. That decision is final and on 19 July 2023, Spain extradited the applicant to the United States.⁷⁷

The case concerned the extradition of Mr. Carvajal Barrios to the US, where he was wanted for drug trafficking offences. The ECHR ruled that Mr. Barrios had not shown that he would run a real risk of being sentenced to life imprisonment without parole in violation of Article 3 if he were to be extradited and therefore found the request manifestly without merit. Consequently, it was determined that the application against the extradition of the applicant – the former Head of the Venezuelan Counter-Espionage Services – to the US on drug trafficking charges was inadmissible.

2. The main facts

Mr. Carvajal Barrios is a Venezuelan national, who was born in 1960 and who was detained in Estremera (Autonomous Community of Madrid) at the relevant time. He was a member of the Venezuelan intelligence agency, and specifically, the Head of Counter-Espionage services for the Venezuelan President, Hugo Chávez.

In July 2014, while serving as Venezuelan consul in Aruba (Kingdom of the Netherlands), he was arrested on that island pursuant to a US State Department arrest warrant. As a result of his diplomatic immunity, he was ultimately expelled from Aruba, rather than extradited to the United States.

In 2019, while a member of the Venezuelan National Assembly, he was expelled from the armed forces and accused of treason for his support of Juan Guaidó as president. He fled the country for Trinidad and Tobago and later moved to the Dominican Republic.

In March 2019, Mr. Carvajal Barrios traveled to Spain under a false identity. He was arrested there in April of that year pursuant to an Interpol search warrant. The US authorities requested his extradition on charges, among others, of conspiracy for narcoterrorism, conspiracy to import cocaine into the United States, and possession of machine guns and destructive devices in furtherance of a drug trafficking crime.

In September 2019, the National Court initially decided to reject the request. The prosecution filed an appeal, which was admitted by the National Court. An appeal brought by Mr. Carvajal Barrios was subsequently dismissed by the National Court, but that court issued a separate decision, examining whether there was a risk of life imprisonment without parole if he were extradited, holding that US authorities had to provide guarantees that, in particular, ‘the possibility of reviewing a life sentence’ or ‘leniency measures’ would be available.

The United States embassy sent a note verbale in November 2021, stating that if the applicant were convicted: ‘[he] would not be subject to an unalterable sentence of life imprisonment because, if a sentence of life imprisonment were imposed, the United States framework in place allows that he may seek review of his sentence on appeal and also seek relief from his sentence in the form of a petition for a pardon or commutation to a lesser sentence. If a pardon or commutation was granted pursuant to applicable United States procedures, that would result in a reduction of the sentence’.

In October 2021, following a failed amparo appeal, the National Court issued an order for Mr. Carvajal Barrios to be handed over to the US authorities. Mr. Carvajal Barrios also applied for asylum and subsidiary protection in Spain without success.

3. Reasons for the claim before the ECHR and procedure

The applicant lodged his application with the European Court of Human Rights on 17 March 2022, claiming that his extradition would be in breach of Article 3 of the Convention, owing to the risk that he would be sentenced to life imprisonment without parole. He also requested an interim measure. On 22 March

⁷⁶ *Carvajal Barrios v. Spain* (dec.) App no 13869/22, (ECHR, 7 July 2023)

⁷⁷ See for further information ECHR Factsheet on Extradition and life imprisonment: https://www.echr.coe.int/documents/d/echr/FS_Extradition_life_sentence_ENG accessed 5 October 2023

2022, the Court indicated to the Spanish Government, under Rule 39 of the Rules of Court, that the applicant's extradition should be suspended while the proceeding before the Court were pending, and that the Spanish government should not extradite him until the proceedings before the ECHR had been concluded.

4. Decision of the ECHR

In order for the applicant to be successful, he had to demonstrate a real risk of being sentenced to life without parole in the United States. Since he had not yet been tried, it was difficult to determine the outcome, but the Court was convinced that he would be tried in a legal system respectful of the rule of law and the principles of a fair trial, in which he would have full opportunity to mount a defence with the help of a legal representative.

The Court ruled that he had not shown that he would run a real risk of being sentenced to life imprisonment without the possibility of parole if extradited and therefore found the request manifestly without merit.

In its reasoning in support of its decision, the ECHR referred to its previous case-law in *Sanchez-Sanchez, McCallum, Hafeez and Bijan Balahan*.⁷⁸

VII. THE CASE OF *COMPAORÉ v. FRANCE*. JUDGMENT OF A VIOLATION OF ARTICLE 3 IF THE APPLICANT WERE EXTRADITED FROM FRANCE TO BURKINA-FASO BASED ON THE CURRENT SITUATION OF THE COUNTRY. NEED TO RE-EVALUATE DIPLOMATIC GUARANTEES

On 7 September 2023, the Judgment of a Chamber of the Fifth Section V in *Compaoré v. France*⁷⁹- on the extradition of Paul François Compaoré to Burkina Faso, was made public. The applicant argued that his extradition to Burkina Faso would expose him to a real risk of torture or ill-treatment contrary to Article 3 of the Convention. The application was lodged before the ECHR on 30 July 2021. The ruling was handed down by a chamber of seven judges, unanimously, concluding that there would be a procedural violation of Article 3 if the applicant were extradited at that time to Burkina Faso, owing to the current situation in the country and if the validity and reliability of the diplomatic assurances provided to France by Burkina Faso were not re-examined. This ruling is not yet final, and the parties have three months from the date of the judgment to request its referral to the Grand Chamber.

The case concerned the extradition, authorised by decree of 21 February 2020, of Paul François Compaoré to Burkina Faso, a country in which he was the subject of criminal proceedings for acts of 'incitement to the murder' of an investigated journalist and the three men who accompanied him. Paul François Compaoré is the brother of Mr. Blaise Compaoré and was one of his closest advisors when he served as President of the Republic of Burkina Faso between 1991 and 31 October 2014, when he was forced to resign due to a popular uprising. The ECHR distinguished between the time before the 2022 coup d'état and the time after. The ECHR accepted that in that first period the diplomatic guarantees from Burkina Faso accepted by the French authorities had been sufficient. However, the ECHR carried out an analysis of the political situation in the country following the 2022 coup d'état.

After examining the diplomatic guarantees provided by the State of Burkina Faso that had requested the extradition, and having examined the criteria of reliability of those guarantees in the light of a political context radically renewed after two military coups d'état, the ECHR observed that those guarantees had not been reiterated by the second transitional government established by the new Burkinabe Head of State who came to power on 30 September 2022, and that the French Government, having communicated the applicant's latest observations on that point, on 19 October 2022, had not commented on the new situation in the country. Therefore, the Court considered that on the date on which it ruled, that is, in September 2023, the lack of consideration by the French authorities of the new political and constitutional context of the country requesting extradition, in particular with regard to the question of whether or not the assurances on which the decisions granting extradition had been based continued to bind the Burkinabe State. The ECHR

⁷⁸ *Carvajal Barrios v. Spain* (dec.) App no 13869/22, §§ 80-90, (ECHR, 7 July 2023)

⁷⁹ *Compaoré v. France* App no 37726/21 (ECHR, 7 September 2023)

concluded that the current conditions in the country did not allow it to accept that the risk alleged by the applicant of being subjected to treatment contrary to Article 3 of the Convention had been excluded in the current state of the extradition procedure. That applies both to the risk that the applicant ran of not being detained in the area of the Ouagadougou penitentiary, reserved for well-known or important persons (“the MACO” –and of being sentenced to an irreducible life sentence in Burkina Faso. The ECHR concluded that a violation of Article 3 of the Convention in its procedural aspect would occur in the event of execution of the extradition decree without prior control of the validity and reliability of the diplomatic assurances provided by Burkina Faso.

The ECHR observed that there had been big changes in the internal politics of Burkina Faso with regard to the institutions of the State and, more particularly, the judicial system since the first coup d'état of 24 January 2022. The role of the ECHR consisted of taking into consideration all the elements at its disposal to evaluate the conditions of compliance with Article 3 of the Convention in the event of return to the State that requested the extradition. The ECHR had previously accepted that the diplomatic guarantees provided by Burkina Faso had been sufficient. However, diplomatic relations between the two countries had undoubtedly deteriorated in recent months, in particular since the second coup d'état of 30 September 2022. In that case, it was therefore a matter of verifying that the ‘receiving State’ in question was indeed the one that would be required to respect the assurances given on the day of the delivery of the applicant by the respondent State. The ECHR observed that, initially, and as the Government had maintained in its observations, the first transitional government seemed to maintain a form of ‘stability’ of the commitments of the Burkinabe State due to the reiteration of assurances on 28 March 2022 by the new Minister of Justice from civil society. On 19 April 2022, the latter had also confirmed and specified the most favourable conditions of detention that, in his case, would apply to the applicant in the MACO in the event of his surrender to the authorities of Burkina Faso. However, the ECHR observed that those guarantees had not been confirmed by the second transitional government established by the new Head of State which came to power on 30 September 2022, and that the Government had not commented on the applicant’s latest observations, of which it had been informed on 19 October 2022.

The French government had not informed the ECHR of any subsequent correspondence from the Burkina Faso authorities regarding the maintenance of previous diplomatic assurances provided to the French State. In the present case, the ECHR observed that, although it had undertaken to do so before the execution of the extradition decree, the French government had, to date, refrained from officially proceeding to re-examine the situation in the host country and the risks for the applicant of being subjected to treatment contrary to Article 3 of the Convention in the light of the significant political upheavals described above. That raised uncertainties about the current validity of the diplomatic guarantees accompanying the extradition decree of 21 February 2020. The ECHR noted that the parties had not mentioned the possibility of using the legal remedies available to carry out an updated examination of the possible impact of the two successive coups d'état on the applicant's risk of being subjected to treatment contrary to Article 3 of the Convention. The Government had not specified why it had not contacted the ‘transitional’ authorities of Burkina Faso to obtain new guarantees on the maintenance of the commitments of the Burkinabe State. For his part, the applicant, represented by a lawyer, had not indicated to the Court why he had not requested the repeal of the extradition decree for the same reasons, thus renouncing, in the event of refusal, even implicit, of the defendant State, to exercise an action for abuse of power against that refusal. In the ECHR’s view, it had jurisdiction to indicate, where appropriate, to the respondent State not to extradite an applicant during the duration of the proceedings before it in application of Article 39 of its Rules. At the same time, that State maintained its power to evaluate the merits of the case and the extradition measure that had been granted. Furthermore, the fact that the applicant had not submitted a request for repeal of the challenged decree invoking new circumstances subsequent to its promulgation did not exempt the respondent State from such *ex nunc* re-examination of the complaint based on Article 3 of the Convention. Therefore, the ECHR noted that at the time its ruling, the lack of consideration by the domestic authorities of the new political and constitutional context in the host country, in particular as to the question of whether the assurances about which the extradition decisions were founded and continued to bind the Burkinabe State, and did not allow it to consider that the risk alleged by the applicant of being subjected to treatment contrary to Article 3 of the Convention had been avoided by the current state of the extradition procedure. That applied both to the risk that the applicant ran of not being detained in the MACO section reserved for well-known or important persons and of being sentenced to an irreducible life sentence in Burkina Faso. The ECHR concluded that

there would be a violation of Article 3 of the Convention in its procedural aspect in the event of execution of the extradition decree of 21 February 2020. The ECHR concluded that the precautionary measure of non-extradition of Article 39 of the ECHR Regulations would continue in force until a new decision had been adopted on the matter and continued to apply. Regarding the demand for just satisfaction, the ECHR considered that the finding of violation constituted just satisfaction.

VIII. CONCLUSION

It can be seen from the jurisprudence analysed that the application of the change in doctrine made in *Sanchez-Sanchez* and *McCallum* is visible in the first three cases subsequently decided. Although, it was not in fact necessary, in any of those cases, to consider the second part of the test established in *Sanchez-Sanchez* as the applicants had not demonstrated that there was a risk of life imprisonment without parole in the country to which they were going to be expelled. However, the judgment *Compaoré v. France* serves as a contrast to see how the ECHR ensures that there are sufficient diplomatic guarantees that the extradited person will not suffer ill-treatment, torture or life imprisonment without parole in the country of destination. This shows how, even if there has been a change in the case-law, the ECHR as can be seen in the *Compaoré* case and in other previous case-law, will continue to apply these criteria and it is possible that in certain circumstances it may find that there could be a violation of Article 3 in extradition cases.

In any case, this case-law will serve to reinforce the necessity of national courts carrying out their own analysis on the existence of a possible risk of ill-treatment or life imprisonment without parole in the context of extraditions. It would be desirable for domestic authorities to set out the relevant evidence and arguments in their rulings. This would facilitate compliance with the principle of subsidiarity that corresponds to the ECHR and would also allow the margin of appreciation of the States parties to the Convention to be respected.