ASSESSMENT OF RISK OF ILL-TREATMENT based on COUNTRY INFORMATION

JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

European Convention on Protection of Human Rights and Fundamental Freedoms:

“ **Article 3 – Prohibition of torture**

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

”

SOERING v. THE UNITED KINGDOM 1989

91. In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, **where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment** in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (art. 3) of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment.

AHMED v. AUSTRIA 1996

40. The Court further reiterates that Article 3 (art. 3), which enshrines one of the fundamental values of democratic societies (see the above- mentioned Soering judgment, p. 34, para. 88), **prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim’s conduct.** Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) m**akes no provision for exceptions and no derogation from it is permissible** under Article 15 (art. 15) **even in the event of a public emergency threatening the life of the nation** (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 163; the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 42, para. 115; and the above-mentioned Chahal judgment, p. 1855, para. 79).
41. The above principle is equally valid when issues under Article 3 (art. 3) arise in expulsion cases. **Accordingly, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.** The protection afforded by Article 3 (art. 3) is thus wider than that provided by Article 33 of the 1951 Convention relating to the Status of Refugees (see paragraph 24 above and the above-mentioned Chahal judgment, p.

1855, para. 80).

SAADI v. ITALY 2008

137. The Court notes first of all that States face immense difficulties in modern times **in protecting their communities from terrorist violence** (see Chahal, cited above, § 79, and Shamayev and Others, cited above, § 335). It cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3.

138. Accordingly, the Court cannot accept the argument of the United Kingdom Government, supported by the Government, that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole (see paragraphs 120 and 122 above). Since protection against the treatment prohibited by Article 3 is absolute, that provision imposes an obligation not to extradite or expel any person who, in the receiving country, would run the real risk of being subjected to such treatment. As the Court has repeatedly held, **there can be no derogation** from that rule (see the case-law cited in paragraph 127 above). It must therefore reaffirm the principle stated in Chahal (cited above, § 81) that **it is not possible to weigh the risk of ill- treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3, even where such treatment is inflicted by another State**. In that connection, the conduct of the person concerned, however undesirable or dangerous, cannot be taken into account, with the consequence that the protection afforded by Article 3 is broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see Chahal, cited above, § 80, and paragraph 63 above). Moreover, that conclusion is in line with points IV and XII of the guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism (see paragraph 64 above).

M.S.S. v. BELGIUM AND GREECE 2011

233. On the contrary, in the light of the available information on the conditions at the holding centre near Athens airport, the Court considers that the **conditions of detention experienced by the applicant were unacceptable**. It considers that, taken **together, the feeling of arbitrariness and the feeling of inferiority and anxiety** often associated with it, as well as the **profound effect such conditions of detention indubitably have on a person's dignity, constitute degrading treatment contrary to Article 3** of the Convention. In addition, the applicant's distress was accentuated by the vulnerability inherent in his situation as an asylum seeker.

367. Based on these conclusions and on the obligations incumbent on the States under Article 3 of the Convention in terms of expulsion, the Court considers that by transferring the applicant to Greece the Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment.

394. In addition, the Court notes that the parties appear to agree to consider that the **applicant's appeal had no chance of success in view of the constant case-law,** mentioned above, of the Aliens Appeals Board and the Conseil d'Etat, and of the impossibility for the applicant to demonstrate in concreto the irreparable nature of the damage done by the alleged potential violation. The Court reiterates that while the **effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant, the lack of any prospect of obtaining adequate redress raises an issue under Article 13** (see Kudla, cited above, § 157).

396. In view of the foregoing, the Court finds that there has been a violation of Article 13 taken in conjunction with Article 3. It follows that the applicant cannot be faulted for not having properly exhausted the domestic remedies and that the Belgian Government's preliminary objection of non-exhaustion (see paragraph 335 above) cannot be allowed.

AHMED v. AUSTRIA 1996

43. However, in order to assess the risks in the case of an expulsion that has not yet taken place, **the material point in time must be that of the Court's consideration of the case.** Although the **historical position is of interest in so far as it may shed light on the current situation and its likely evolution,** it is the present conditions which are decisive (see the above-mentioned Chahal judgment, p. 1856, para. 86).

CHAHAL v. UNITED KINGDOM 1996

86. It follows from the considerations in paragraph 74 above that, as far as the applicant's complaint under Article 3 (art. 3) is concerned, the crucial question is whether it has been substantiated that there is a real risk that Mr Chahal, if expelled, would be subjected to treatment prohibited by that Article (art. 3). Since he has not yet been deported, the material point in time must be that of the Court's consideration of the case. It follows that, although the **historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive.**

91. On the basis of the material before it, the Commission accepted that there had been an improvement in the conditions prevailing in India and, more specifically, in Punjab. However, it **was unable to find in the recent material provided by the Government any solid evidence that the Punjab police were now under democratic control or that the judiciary had been able fully to reassert its own independent authority in the region.**

SALAH SHEEKH v THE NETHERLANDS 2007

136. The establishment of any responsibility of the expelling State under Article 3 inevitably involves an **assessment of conditions in the receiving country against the standards of Article 3** of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, ECHR 2005-I, § 67). In determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu*, **in particular where the applicant** – or a third party within the meaning of Article 36 of the Convention – p**rovides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government.** In respect of materials obtained *proprio motu*, the Court considers that, given the absolute nature of the protection afforded by Article 3, it must be satisfied that the **assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources** such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. In its supervisory task under Article 19 of the Convention, it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned, **without comparing these with materials from other reliable and objective sources.** This further implies that, in assessing an alleged risk of treatment contrary to Article 3 in respect of aliens facing expulsion or extradition, **a full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time.** Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those **facts which were known or ought to have been known to the Contracting State at the time of the expulsion** (see *Vilvarajah and Others*, cited above, p. 36, § 107). In the present case, given that the applicant has not yet been expelled, the material point in time is that of the Court's consideration of the case. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see *Chahal v. the United Kingdom*, judgment of 15 November

1996, pp. 1856 and 1859, §§ 86 and 97, *Reports*1996-V; *H.L.R. v. France*, 9 April 1997, *Reports* 1997-III, p. 758, § 37; and *Mamatkulov and Askarov*, cited above, § 69).

MAMATKULOV AND ASKAROV v. TURKEY 2005

67. It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an **assessment of conditions in the requesting country against the standards of Article 3 of the Convention.** Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91).

72. The Court has noted the applicants' representatives' observations on the information in the reports of international human rights organisations denouncing an administrative practice of torture and other forms of ill- treatment of political dissidents, and the Uzbek regime's repressive policy towards such dissidents. It notes that Amnesty International stated in its report for 2001: “Reports of ill-treatment and torture by law enforcement officials of alleged supporters of banned Islamist opposition parties and movements ... continued ...” (see paragraph 55 above).

73. However, **although these findings describe the general situation in Uzbekistan, they do not support the specific allegations made by the applicants in the instant case and require corroboration by other evidence.**

VENDAKADAJALASARMA v. THE NETHERLANDS 2004

63. In determining whether it has been shown that the applicant runs a real risk, if expelled to Sri Lanka, of suffering treatment proscribed by Article 3, the Court will a**ssess the issue in the light of all the material placed before it, or, if necessary, material obtained proprio motu**. Further, since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill- treatment, the existence of the risk must be **assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion** (see Vilvarajah and Others v. the United Kingdom, 30 October 1991, Series A no. 215, p. 36, § 107, and H.L.R. v. France, 29 April 1997, Reports 1997-III, p. 758, § 37). In the present case, given that the applicant has not yet been expelled, the material point in time is that of the C**ourt's consideration of the case.** Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see Chahal v. the United Kingdom, judgment of 15 November 1996, pp. 1856 and 1859, §§ 86 and 97, Reports 1996-V, and H.L.R. v. France, cited above).

67. The Court would agree with the applicant that the **situation in Sri Lanka is not yet stable, as is illustrated by the recent developments on the political front** (see paragraph 53 above). Nevertheless, bearing in mind that the main parties to the conflict have emphasised their commitment to the peace process in spite of these developments, the **Court cannot ignore the very real progress that has been made which has led to a substantial relaxation of the previously precarious situation of Tamils arriving or staying in Colombo, as confirmed by the most recent country report compiled on Sri Lanka by the Netherlands Ministry of Foreign Affairs** (see paragraphs 42 and 45 above). As pointed out above (paragraph 63), **the Court has to assess whether at the present time and in the present situation there exists a real risk** of the applicant being subjected to treatment proscribed by Article 3 if he was returned to his country of origin.

Whilst stability and certainty are factors to be taken into account in the Court's assessment of the situation in the receiving country, the fact that peace negotiations have not yet been successfully concluded does not preclude the Court from examining the individual circumstances of the applicant in the light of the current general situation (see *Vilvarajah and Others*, cited above, § 108).

MUMINOV v. RUSSIA 2009
96. In view of the above, the Court considers that substantial grounds have been shown for believing that the applicant faced a real risk of treatment proscribed by Article 3. That **risk cannot be ruled out on the basis of other material available to the Court.** The Court takes note of the Government's reference to the relevant provisions of Uzbek law and their indication of certain improvements in the protection of human rights in Uzbekistan which, in the Government's opinion, negated the risk of ill-treatment. The Court reiterates, however, that **the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention** (see *Saadi*, cited above, § 147 *in fine*). No concrete evidence has been produced of any fundamental improvement in the protection against torture inUzbekistan (see, by contrast, a recent UN report cited in paragraph 71 above).

GAFOROV v. RUSSIA 2011
122. Having regard to the applicant's submissions to the courts in extradition and asylum proceedings, the Court is satisfied that **he consistently raised before the domestic authorities the issue of the risk that he would be subjected to** treatment in breach of Article 3 of the Convention, advancing a number of specific and detailed arguments. Among other things, **he referred to his alleged previous ill-treatment, the systematic practice of ill-treatment inflicted on detainees in Tajikistan and the fact that the authorities had persecuted him on religious grounds.** The applicant substantiated his allegations by **reference to reports by international organisations on the human rights situation in Tajikistan,** in particular as regards the risk of persons being detained and persecuted for their religious beliefs (see paragraphs 26, 29, 36, 39-43, 46, 48 and 51 above). However, the Court is **not persuaded that the domestic authorities made an adequate assessment of the risk** of torture or ill-treatment if the applicant were to be extradited to Tajikistan.

NA. v THE UNITED KINGDOM 2008
120. In assessing such material, **consideration must be given to its source, in particular its independence, reliability and objectivity.** In respect of reports, **the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations** (see *Saadi v. Italy*, cited above, § 143).

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342. Although in **the T. I. case** the **Court rejected** the argument that **the fact that Germany was a party to the Convention absolved the United Kingdom from verifying the fate that awaited an asylum seeker it was about to transfer** to that country, the fact that the asylum procedure in Germany apparently complied with the Convention, and in particular Article 3, enabled the Court to reject the allegation that the applicant's removal to Germany would make him run a real and serious risk of treatment contrary to that Article. The Court considered that there was no reason in that particular case to believe that Germany would have failed to honour its obligations under Article 3 of the Convention and protect the applicant from removal to Sri Lanka **if he submitted credible arguments demonstrating that he risked ill-treatment in that country.**
343. That approach was **confirmed and developed in the K.R.S. decision** (cited above). The case

concerned the transfer by the United Kingdom authorities, in application of the Dublin Regulation, of an Iranian asylum seeker to Greece, through which country he had passed before arriving in the United Kingdom in 2006. Relying on Article 3 of the Convention, the applicant **complained of the deficiencies in the asylum procedure in Greece and the risk of being sent back to Iran without the merits of his asylum application being examined, as well as the reception reserved for asylum seekers in Greece.** After having confirmed the applicability of the T.I. case-law to the Dublin Regulation (see also on this point Stapleton v. Ireland (dec.), no. 56588/07, § 30, ECHR 2010-...), the Court considered that **in the absence of proof to the contrary it must assume that Greece complied with the obligations imposed on it by the Community directives** laying down minimum standards for asylum procedures and the reception of asylum seekers, which had been transposed into Greek law, and that it would comply with Article 3 of the Convention. In the Court's opinion, **in view of the information available at the time** to the United Kingdom Government and the Court, it **was possible to assume that Greece was complying with its obligations and not sending anybody back to Iran,** the applicant's country of origin. Nor was there any reason to believe that persons sent back to Greece under the Dublin Regulation, including those whose applications for asylum had been rejected by a final decision of the Greek authorities, had been or could be prevented from applying to the Court for an interim measure under Rule 39 of the Rules of Court.

347. The Court observes first of all that **numerous reports and materials have been added to the information available to it when it adopted its K.R.S. decision** in 2008. These reports and materials, based on field surveys, all agree as to the **practical difficulties involved in the application of the Dublin system in Greece, the deficiencies of the asylum procedure and the practice of direct or indirect refoulement** on an individual or a collective basis.

348. The authors of these documents are the UNHCR and the Council of Europe Commissioner for Human Rights, international non-governmental organisations like Amnesty International, Human Rights Watch, Pro-Asyl and the European Council on Refugees and Exiles, and non-governmental organisations present in Greece such as Greek Helsinki Monitor and the Greek National Commission for Human Rights (see paragraph 160 above). The Court observes that such documents have been **published at regular intervals since 2006 and with greater frequency in 2008 and 2009**, and that most of them had already been published when the expulsion order against the applicant was issued.

349. The Court also attaches critical importance to the letter sent by the UNHCR in April 2009 to the Belgian Minister in charge of immigration. The letter, which states that a copy was also being sent to the Aliens Office, contained an unequivocal plea for the suspension of transfers to Greece (see paragraphs 194 and 195 above).

352. In these conditions the Court considers that the **general situation was known to the Belgian authorities and that the applicant should not be expected to bear the entire burden of proof**. On the contrary, it considers it established that in spite of the few examples of application of the sovereignty clause produced by the Government, which, incidentally, do not concern Greece, the Aliens Office systematically applied the Dublin Regulation to transfer people to Greece without so much as considering the possibility of making an exception.

353. The Belgian Government argued that in any event they had sought sufficient assurances from the Greek authorities that the applicant faced no risk of treatment contrary to the Convention in Greece. In that connection, the Court observes that **the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention** (see, mutatis mutandis, Saadi v. Italy [GC], no. 37201/06, § 147, ECHR 2008-...).

358. In the light of the foregoing, the Court considers that **at the time of the applicant's expulsion the Belgian authorities knew or ought to have known that he had no guarantee** that his asylum application would be seriously examined by the Greek authorities. They also had the means of

refusing to transfer him.

359. The Government argued that the applicant had not sufficiently individualised, before the Belgian authorities, the risk of having no access to the asylum procedure and being sent back by the Greek authorities. The **Court considers, however, that it was in fact up to the Belgian authorities,** faced with the situation described above, **not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the Greek authorities applied their legislation on asylum in practice. Had they done this, they would have seen that the risks the applicant faced were real and individual enough to fall within the scope of Article 3.** The fact that a **large number of asylum seekers in Greece find themselves in the same situation as the applicant does not make the risk concerned any less individual where it is sufficiently real and probable** (see, mutatis mutandis, Saadi, cited above, § 132).