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This factsheet does not bind the Court and is not exhaustive

Expulsions and extraditions

Soering v. United Kingdom (07/07/1989)

The Court [found for the 1st time](#) that the State's responsibility could be engaged if it decided to extradite a person who risked being subjected to ill-treatment in the requesting country¹.

In this case, the Court held that there would be a violation of Article 3 if the were to be extradited to the United States (real risk of being put on "death row", treatment going beyond the threshold set by Article 3).

A "real risk of ill-treatment"

The responsibility of the extraditing/expelling State is engaged whether or not the receiving country is a State Party to the Convention if there are substantial grounds for believing that the applicant faces a "real risk" of ill-treatment.

[Vilvarajah and Others v. United Kingdom](#) 30/10/1991: The Court found that there were no such grounds regarding the removal of the applicants – including a member of the Tamil community – to Sri Lanka in 1988, and accordingly that there had been **no violation of Article 3**².

[Chahal v. United Kingdom](#) 15/11/1996: the Court held that an advocate of the Sikh separatist cause who was served with a deportation order on grounds of national security faced a real risk of ill-treatment if he were to be deported to India (the Court was not satisfied by the assurances given by the Indian Government). **Violation of Article 3** if the deportation order to India were to be enforced.

Ill-treatment in the receiving country

Members of illegal organisations, persons accused of terrorism, political opponents...

- [Chahal v. United Kingdom](#) 15/11/1996 (see above)

¹ The European Convention on Human Rights does not govern "extradition, expulsion and asylum law". However, in the exercise of their right to "control the entry, residence and expulsion of aliens" (*Vilvarajah and Others v. the United Kingdom*), the Contracting States have an obligation not to undermine the rights guaranteed by the Convention.

² "the decision by a Contracting State to extradite a fugitive 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 concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country" (*Soering judgment, cited in the Cruz-Varas v. Sweden judgment 20/03/1991, § 70*).

- [Shamayev and Others v. Georgia and Russia](#) 12/04/2005: **violation of Article 3** if the decision to extradite Mr Gelogayev to Russia – on the ground that he was a terrorist rebel who had taken part in the conflict in Chechnya – were to be enforced.
- [Müslim v. Turkey](#) 26/04/2005: The applicant, who was pursued by the Iraqi secret services after his involvement in an altercation in which a powerful figure in the Baath Party and associate of Saddam Hussein received gunshot wounds, fled to Turkey in September 1998. **No violation of Article 3** if the decision to deport the applicant to Iraq were to be enforced.
- [Saadi v. Italy](#) 28/02/2008 (Grand Chamber): **violation of Article 3** if the applicant were to be deported to Tunisia (where he claimed to have been sentenced *in absentia* in 2005 to 20 years' imprisonment for membership of a terrorist organisation).
- [Baysakov and Others v. Ukraine](#) 18/02/2010: **violation of Article 3** if Kazakh opposition activists were to be extradited to their home country; the Court considered that the assurances given by the Kazakh authorities were unreliable and that it would be difficult to ensure that they were honoured given the lack of an effective system of torture prevention.
- [Klein v. Russia](#) 01/04/2010: the extradition from Russia to Colombia of an Israeli "mercenary" convicted in criminal proceedings would be **contrary to Article 3**. The Court took account of the reports on Colombia produced by international sources, statements made by the Colombian Vice-President in respect of the applicant and the vague nature of the assurances given by the Colombian authorities.
- [Khaydarov v. Russia](#) 20/05/2010: extradition of the applicant (wanted by the authorities on terrorist charges following the civil war) to Tajikistan would constitute a **violation of Article 3**. See also [Khodzhayev v. Russia](#) 12/05/2010.
- Cases concerning present or former members of illegal organisations having illegally entered Turkey.

[Abdolkhani and Karimnia v. Turkey](#) 22/09/2009: risk of ill-treatment of former members of the People's Mojahedin Organisation in the event of deportation to Iran or Iraq.

See [press release 13/04/2010](#): Charahili v. Turkey (deportation order to Tunisia) / Keshmiri v. Turkey, Ranjbar and Others v. Turkey, Tehrani and Others v. Turkey (deportation orders to Iran or Iraq).

[Y.P and L.P. v. France](#) 01/09/2010: deportation of an opponent of the regime and his family to Belarus would amount to a **violation of Article 3**; the Court found that the passage of time did not automatically lessen the risks faced by the applicant and his family in Belarus, where, the Court noted, the situation remained unstable particularly on account of the ongoing harassment of opponents of the regime.

- **Pending case** [Omar Othman v United Kingdom](#) (applicant subject to deportation order to Jordan). [Hearing](#) on 14.12.2010.

- **Pending cases** concerning alleged international terrorists complaining that, if they were extradited to the United States, they would be at real risk of being held at a prison in the having the highest possible security level (the ADX Florence, a US "supermax" prison).

[Babar Ahmad and Others v. the United Kingdom](#) (Declared partially admissible on 06.07.2010)

[Adel Abdul Bary and Khaled Al-Fawwaz v. the United Kingdom](#) (Communicated to the Government in September 2010)

See "Terrorism" Factsheet

- **Hearing on 17 May 2011** in the case of [I.M. v. France](#). Concerns the refusal to grant asylum to a man from Darfur and the risks facing him if he is returned to Sudan.

Health

- [D. v. United Kingdom](#) 02/05/1997: **violation of Article 3** if an order for the deportation to Saint-Kitts of an Aids sufferer in the last stages of the disease were to be enforced³.
- [Aoulmi v. France](#) 17/01/2006: **no violation of Article 3** concerning the enforcement of a decision to deport the applicant, suffering from Hepatitis C, to Algeria. Whilst aware that the applicant was suffering from a serious illness, the Court did not find that there was a sufficiently real risk that his removal to Algeria would be contrary to Article 3.

Risks of ill treatment by third parties

- [N. v. Finland](#) 26/07/05: the applicant alleged that he would suffer inhuman treatment if he were deported to the Democratic Republic of Congo, given his background and in particular his close connections with former President Mobutu. **Violation of Article 3** if the deportation order were to be enforced.
- **Pending case**
- [Sufi and Elmi v. the United Kingdom](#): both cases concern the applicants' allegation that if returned to Somalia they would be at real risk of ill-treatment. Mr Sufi, a member of a minority clan, the Reer Hamar, alleges that he has been persecuted and seriously injured by the Hawiye militia, who have also killed his father and sister. Mr Elmi, who arrived in the United Kingdom at the age of 19, alleges that he would be seen as westernised and anti-Islamic and, if it were known that he was a drug addict with prior convictions for theft, would be at risk of being amputated or publicly flogged or killed.
- [Collins and Akaziebie v. Sweden](#): application **inadmissible** (decision of 08/03/200): the applicants did not substantiate their allegation that they would face a real and concrete risk of being subjected to female genital mutilation upon returning to Nigeria.

Pending cases on the same subject (risk of female genital mutilation in Nigeria):

³ Information about the enforcement of this judgment available [here](#). For further information about the enforcement of judgments of the Court, see www.coe.int/t/dghl/monitoring/execution.

-[Izevbekhai v. Ireland](#) (no. 43408/08), concerning a mother and her two daughters (Communicated to the Government in February 2009)

-[Omeredo v. Austria](#) (no. 8969/10) (Communicated to the Government in August 2010)

- [N. v. Sweden](#) 20/07/2010: **risk of domestic violence in particular** in the event of deportation to Afghanistan. The Court noted that, according to reports, around 80% of Afghani women were victims of domestic violence, acts which the authorities regarded as legitimate and therefore did not prosecute.

“Circumstances relating to a death sentence”⁴

- [Soering v. United Kingdom](#) (see above)
- [Jabari v. Turkey](#) 11/07/2000 : the applicant, an Iranian national, had fled Iran and gone to Turkey fearing a death sentence by stoning or flogging for adultery, an offence punishable under Islamic law. **Violation of Article 3** if the deportation order to Iran were to be enforced.

Life imprisonment without any possibility of early release

- [Nivette v. France](#): an international warrant was issued for the arrest of the applicant, who was suspected of murdering his girlfriend. Application **inadmissible** (decision of 03/07/2001); the assurances obtained from the State of California were such as to avert the danger of the applicant’s being sentenced to life imprisonment without any possibility of early release.

Risks of ill-treatment in the event of removal (*refoulement*) pursuant to the Dublin Regulation

The objective of the Dublin system is to determine which Member State is responsible for examining an asylum application lodged in the territory of one of the Member States of the European Union by a third-country national (Dublin Convention and [Dublin II Regulation](#)).

- [T.I. v. United Kingdom](#): the applicant feared that once in Germany he would be summarily removed to Sri Lanka⁵ where he claimed to have suffered ill-treatment at the hands of the security forces as a suspected Tamil Tiger. Application **inadmissible** (decision of 07/03/2000): the Court found that it was not established that there was a real risk that Germany would expel the applicant to Sri Lanka contrary to Article 3⁶.
- [K.R.S v. United Kingdom](#): Iranian arriving in the United Kingdom via Greece. In accordance with the [Dublin II Regulation](#), the United Kingdom requested Greece to accept responsibility for examining the applicant’s asylum claim and Greece

⁴ § 104 [Soering v. United Kingdom](#)

⁵ The UK Government had requested Germany to accept responsibility for examining the Sri Lankan applicant’s asylum request under the Dublin Convention.

⁶ The Court stated in this decision that the applicant’s removal to an intermediary country did not affect the responsibility of the United Kingdom to ensure that the applicant was not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention.

accepted. The applicant alleged that his expulsion from the United Kingdom to Greece would be contrary to Article 3 on account of the situation of asylum seekers in Greece. Application **inadmissible** (decision of 02/12/2008): "In the absence of any proof to the contrary, it must be presumed that Greece will comply with [its] obligation in respect of returnees."⁷.

- **Pending cases**: a large number of cases concerning removal (*refoulement*) under the "Dublin system" are currently pending before the Court, mainly against Belgium (see Grand Chamber judgment in the case of [M.S.S v. Belgium and Greece](#) on 21/01/2011), the Netherlands, Finland, Belgium, the UK and France.

See "[Dublin cases](#)" Factsheet

Interim measures (Rule 39 of the Rules of Court)

The Court applies interim measures in a large number of cases relating to expulsions/extraditions. These are measures taken in the course of the **proceedings** before the Court and do not indicate how the Court will subsequently rule on the admissibility/merits of the cases in question. They usually consist of staying the expulsion of the applicant pending examination of the application. Example: in November 2008 the Court [granted a request for interim measures](#) lodged by 11 Afghans.

In the case of [Mamatkulov and Askarov v. Turkey](#), the Court found that there had been no violation of Article 3; Turkey's failure to comply with the interim measures (for which the Court found a violation of Article 34) had prevented the Court from assessing whether a real risk existed in the manner it considered appropriate regarding the applicants extradited from Turkey to Uzbekistan.

Example of pending cases in which the Court has applied interim measures: [D.H. v. Finland](#). Communicated to the Government in June 2010.

The applicant, who arrived in Europe by boat from Libya, alleged that his deportation to Italy would expose him to inhuman and degrading treatment, in particular because he was a minor. The Court indicated to the Finnish Government that the applicant should not be sent to Italy until further notice.

Faced with an alarming rise in the number of requests for interim measures in extradition/expulsion cases and its implications for an already overburdened Court, the President of the Court issued a [statement](#) in February 2011 reminding both Governments and applicants of the Court's proper but limited role in immigration matters and emphasising their respective responsibilities to co-operate fully with the Court (see [press release](#)).

⁷ The Court also noted that Greece did not deport anyone to Iran.

Other risks

“Denial of a fair trial” (Article 6, right to a fair trial within a reasonable time)

“The Court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country.” (*Soering* judgment, § 113).

[Stapleton v. Ireland](#): the applicant, who was prosecuted for fraud, alleged that his surrender to the United Kingdom, ordered by the Irish courts in accordance with a European arrest warrant, would be contrary to Article 6 and would constitute, in particular, denial of a fair trial. Application **inadmissible** (decision of 04/05/2010): the applicant could have applied to the UK courts, and subsequently to the Court if necessary, as the United Kingdom was a State Party to the Convention. See also [Mamatkulov and Askarov v. Turkey](#).

Recent related cases: conditions of detention of persons removed or pending their removal

Before removal

- [Muskhadzhieva and Others v. Belgium](#) 19.01.2010: detention of Chechen children pending their removal was unlawful and their conditions of detention unacceptable.
- [Babar Ahmad and Others v. United Kingdom](#) (**pending**): applications – declared partly admissible – by alleged international terrorists detained in the United Kingdom pending their extradition to the United States. The Court found that there was no reason to doubt the diplomatic assurances given by the US Government. However, as concerned post-trial detention three of the applicants were at real risk of being held at a prison in the United States having the highest possible security level (the ADX Florence, a US “supermax” prison). The Court further declared admissible the complaints concerning the length of possible sentence, three of the applicants facing life sentences without parole.
- [Abdolkhani and Karimnia v. Turkey \(no. 2\)](#) 27.07.2010: violation of Article 3 on account of the detention of refugees for three months in the basement of police headquarters.
- [A.A. v. Greece](#) 22.07.2010: violation of Article 3 on account of the detention of an asylum seeker in squalid conditions in a Greek detention centre. The Court observed that it had already identified shortcomings in Greek law regarding judicial review of placement in detention with a view to expulsion.

During removal

- [Shchukin and Others v. Cyprus](#) 29.07.2010: **violation of Article 3 on grounds of the lack of an investigation** by the Cypriot authorities into allegations of ill-treatment of an Ukrainian ship crew member during his deportation.

After removal

- [Garabayev v. Russia](#) 07.06.07: **violation of Article 3** on grounds of the conditions of detention in Turkmenistan after extradition of the applicant, charged with withdrawing and failing to return financial assets, to Russia.
- [Iskandarov v. Russia](#) 23.09.2010: the applicant, one of the ex-leaders of the Tajik political opposition, complained that he had been unlawfully detained and removed to Tajikistan, as a result of which he had been ill-treated and persecuted for his political views. **Violation of Article 3:** even though it had not been possible to establish whether the applicant had actually been ill-treated in Tajikistan, the special distinguishing features of his profile and situation should have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan.

Other Articles of the Convention concerned in expulsion cases

Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens)

See, for example, [Conka v. Belgium](#) 05/02/2002 (violation: the expulsion procedure followed did not afford sufficient guarantees demonstrating that the personal circumstances of each of the persons concerned had been genuinely and individually taken into account) or [Sultani v. France](#) 20/09/2007 (no violation: in their decision refusing the asylum applications the authorities took account of both the overall situation in Afghanistan and the applicant's statements).

See "*Collective expulsions*" Factsheet

Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens)

See for example:

[Kaushal and Others v. Bulgaria](#): **violation of Article 1 of Protocol No. 7** because Bulgaria had not examined the arguments advanced against expulsion, ordered on national security grounds.

[Gelerie v. Romania](#) 15.02.2011: expulsion of a political refugee on the grounds of national security: **violation of Article 1 of Protocol No. 7:** the expulsion order was not accompanied by guarantees against arbitrariness.

Other Articles

-Article 5 (right to liberty and security) and Article 13 (right to an effective remedy). This aspect is also dealt with under the procedural limb of Article 3.

See for example [Gebremedhin v. France](#) 26/04/2007 (the applicant complained that under French law there was no remedy with suspensive effect against decisions refusing leave to enter the country or directing removal. **Violation of Article 13 taken in conjunction with Article 3**); [Bolat v. Russia](#) 05/10/2006; [Adamov v. Switzerland](#), 21.06.2011: concerned the detention in Switzerland of a former Russian energy minister, who was arrested with a view to his extradition to the United States where criminal proceedings had been brought against him on a charge of misappropriating funds that had been provided to Russia by the United States. **No violation of Article 5 § 1:** Mr Adamov's detention, which had been based on a valid arrest order

issued for the purposes of inter-State cooperation to combat cross-border crime, had not infringed the safe-conduct clause or contravened the principle of good faith.

-Article 8 (right to respect for private and family life).

In a large number of judgments the Court has found a violation of Article 8 in cases involving the expulsion of aliens: [Boultif v. Switzerland](#) 02/08/2001; [Benhebba v. France](#) 10/07/2003; [Maslov v. Austria](#) 23/06/2008 (Grand Chamber); [Kaushal and Others v. Bulgaria](#) of 02/09/2010, [Gelerie v. Romania](#) 15/02/2011.

Example of pending case: [Eric Efeosaosere Okuonghae v. the UK](#): the applicant is an American national who arrived in the United Kingdom when he was 5 years old. He was deported to the United States for the offence of the possession of a false passport. He complains in particular that his deportation after having spent 24 years, and almost all of his childhood in the United Kingdom, was a disproportionate interference with his right to respect for his private and family life. (Communicated to the Government in January 2011)

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