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Death penalty abolition

Death penalty as inhuman and degrading treatment

Death row

[Soering v. The United Kingdom \(application no. 14038/88\)](#)

07.07.1989

Mr Jens Soering, was a German national detained in a prison in England pending extradition to the United States of America (USA) to face charges of murder for the stabbing to death of his girlfriend's parents. He complained that, notwithstanding the assurances presented to the UK Government, there was a serious likelihood that he be sentenced to death if extradited to the USA. He maintained that, in particular because of the "death row phenomenon" where people spent several years in extreme stress and psychological trauma awaiting to be executed, if extradited, he would be subjected to inhuman and degrading treatment and punishment contrary to Article 3 of the European Convention on Human Rights.

The European Court of Human Rights found that Mr Soering's extradition to the USA would expose him to a real risk of treatment contrary to Article 3. In reaching that conclusion, the Court had regard to the very long period of time people usually spent on death row in extreme conditions in the USA with an ever mounting anguish of waiting to be executed, as well as to the personal circumstances of Mr Soering, especially his age and mental state at the time of the offence. The Court also noted that the legitimate purpose of the extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration. Accordingly, the UK decision to extradite Mr Soering to the USA would, if implemented, breach Article 3.

Risk of being sentenced to death

[Bader and Kanbor v. Sweden \(application no. 13284/04\)](#)

08.11.2005

The applicants are a family of four Syrian nationals who had had their asylum applications refused in Sweden and deportation orders to be returned to Syria served on them. They complained that as the father in the family had been convicted in his absence of complicity in a murder and sentenced to death in Syria, he ran a real risk of being executed if returned there.

The Court considered that Mr Bader had a justified and well-founded fear that the death sentence against him would be executed if he was forced to return to his home country. Since executions were carried out without any public scrutiny or accountability, the circumstances surrounding it would inevitably cause him considerable fear and anguish.

As regards the criminal proceedings which had led to the death sentence, the Court found that, because of their summary nature and the total disregard of the rights of the defence, they had been a flagrant denial of a fair trial. The Court concluded that the death sentence imposed on Mr Bader following an unfair trial would cause him and his family additional fear and anguish as to their future if they were forced to return to Syria. Accordingly, the applicants' deportation to Syria, if implemented, would give rise to violations of Articles 2 and 3.

Risk of being stoned to death

Jabari v. Turkey (application no. 40035/98)

11.10.2000

Ms Hoda Jabari, an Iranian national, fled Iran where she had been detained for having a relationship with a married man. Arrested in Istanbul for using a forged Canadian passport, she complained that she ran a real risk of death by stoning if returned to Iran. She was granted refugee status by the UNHCR which found that –if returned to Iran - she risked an inhuman punishment, in particular death by stoning.

The Court gave due weight to the UNHCR's conclusion in respect of the risk run by Ms Jabari if she were deported to Iran. Having further noted that punishment of adultery by stoning had remained on the statute book and might be used by the Iranian authorities, the Court concluded that there existed a real risk of Ms Jabari being subjected to treatment contrary to the Convention if she were to be returned to Iran. Accordingly, the order for her deportation to Iran would, if executed, give rise to a violation of Article 3.

Death penalty as a result of unfair trial

Öcalan v. Turkey (application no. 46221/99)

12.05.2005

Abdullah Öcalan is a Turkish national serving a life sentence in a Turkish prison. Prior to his arrest, he was the leader of the PKK (Workers' Party of Kurdistan). Apprehended in Kenya in disputed circumstances on the evening of 15 February 1999, he was flown to Turkey where he was sentenced to death in June 1999 for actions aimed at bringing about the separation of the Turkish territory. Following the August 2002 abolition in Turkish law of the death penalty in peace time, the Ankara State Security Court commuted - in October 2002 - Mr Öcalan's death sentence to life imprisonment. He complained about the imposition and/or execution of the death penalty in his regard.

Application of the death penalty: no violation of Articles 2, 3 or 14 as the death penalty had been abolished and Mr Öcalan's sentence commuted to life imprisonment.

Convention States' practice concerning the death penalty: the Court held that the death penalty in peacetime had come to be regarded in Europe as an unacceptable form of punishment which was no longer permissible under Article 2. However, no firm conclusion was reached in respect of whether the Convention States had established a practice of considering the execution of the death penalty as inhuman and degrading treatment contrary to Article 3. In any event, the Court held that it would be contrary to the Convention, even if Article 2 were to be interpreted as still permitting the death penalty, to implement a death sentence following an unfair trial.

Death penalty following an unfair trial: the Court noted that Article 2 precluded the execution of the death penalty in respect of a person who had not had a fair trial. The fear and uncertainty about the future generated by a death sentence, where there existed a real possibility that the sentence would be enforced, inevitably caused strong human anguish to people. Such anguish could not be dissociated from the unfairness of the proceedings underlying the sentence which, given that human life was at stake, became unlawful under the Convention.

In Mr Öcalan's case, a moratorium on the execution of the death penalty had been in force in Turkey since 1984 and the Turkish Government had stayed his execution in accordance with the Court's interim measure. Yet, given that Mr Öcalan had been Turkey's most wanted person, a real risk that his sentence might be implemented had existed for more than three years prior to the decision to abolish the death penalty. Consequently, the imposition of the death sentence following an unfair trial by a court whose independence and impartiality were open to doubt had amounted to inhuman treatment, in violation of Article 3.

Death penalty as such contrary to the Convention

Al-Saadoon and Mufdhi v UK (application no. 61498/08)

02.03.2010

The case concerned the complaint by the applicants, both Iraqi nationals and Sunny Muslims accused of involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003, that their transfer by the British authorities into Iraqi custody put them at real risk of execution by hanging.

The death penalty as inhuman and degrading treatment : the Court emphasised that although 60 years ago, when the Convention was drafted, the death penalty had not violated international standards, there had been a subsequent evolution towards its complete abolition, in law and in practice, within all 47 Council of Europe/Convention Member States. Two Protocols to the Convention had entered into force, abolishing the death penalty in time of peace (Protocol No 6) and in all circumstances (Protocol No 13), and the UK had ratified them both. All but two Convention States had signed Protocol 13 and all but three States which had signed it had ratified it. That demonstrated that Article 2 had been amended so as to prohibit the death penalty in all circumstances. Consequently, the Court held that the death penalty, which involved the deliberate and premeditated destruction of a human being by the State authorities causing physical pain and intense psychological suffering as a result of the foreknowledge of death, could be considered inhuman and degrading and, as such, contrary to Article 3 of the Convention.

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