March 2024
This factsheet does not bind the Court and is not exhaustive

Death penalty abolition

"[T]he [European Court of Human Rights] in *Öcalan* did not exclude that Article 2 [of the European Convention on Human Rights, protecting the right to life,] had already been amended so as to remove the exception permitting the death penalty. Moreover, … the position has evolved since then. All but two of the Member States have now signed Protocol No. 13 [to the Convention, concerning the abolishment of the death penalty in all circumstances,] and all but three of the States which have signed have ratified it. These figures, together with consistent State practice in observing the moratorium on capital punishment, are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances. Against this background, the Court does not consider that the wording of the second sentence of Article 2 § 1 continues to act as a bar to its interpreting the words 'inhuman or degrading treatment or punishment' in Article 3 [of the Convention, prohibiting torture and inhuman or degrading treatment,] as including the death penalty …" (*Al-Saadoon and Mufdhi v. the United Kingdom* judgment of 2 March 2010, § 120).

Risk of exposure to the "death-row phenomenon"[1]

Soering v. the United Kingdom

7 July 1989

The applicant was a German national detained in a prison in England pending extradition to the United States of America to face charges of murder for the stabbing to death of his girlfriend's parents. He complained that, notwithstanding the assurances presented to the United Kingdom Government, there was a serious likelihood that he be sentenced to death if extradited to the United States. 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 the applicant's extradition to the United States would expose him to a real risk of treatment contrary to Article 3 of the Convention. 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 United States with an ever mounting anguish of waiting to be executed, as well as to the personal circumstances of the applicant, 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 United Kingdom **decision to extradite** the applicant to the United States **would**, **if implemented**, **breach Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

[1]. Concerning the conditions of detention on "death row", see in particular: *Poltoratski v. Ukraine*, *Kouznetsov v. Ukraine*, *Nazarenko v. Ukraine*, *Dankevitch v. Ukraine*, *Aliev v. Ukraine* and *Khokhlitch v. Ukraine*, judgments of 29 April 2003; *G.B. v. Bulgaria* (application no. 42346/98) and *Iorgov v. Bulgaria*, judgments of 11 March 2004.

Einhorn v. France

16 October 2001 (decision on the admissibility)

The applicant, an American national, left the United States after being accused of murdering his former partner. He was found guilty, in his absence, of murder and sentenced to life imprisonment. The French Government agreed to extradite him, on the ground that he would benefit from a new and fair trial if returned to Pennsylvania and that he would not face the death penalty. He appealed and the French *Conseil d'Etat* rejected his appeal. Before the Court, the applicant complained, among other things, that his extradition was agreed despite the risk of his facing the death penalty and being exposed to inhuman and degrading conditions on "death row".

The Court declared the application **inadmissible** (manifestly ill-founded). It reiterated that the fact, after being sentenced to death, prisoners are exposed to the "death-row phenomenon" can, in certain cases and having regard in particular to the time spent in extreme conditions, the ever-present and mounting anguish of awaiting execution, and the personal circumstances of the prisoner in question, be regarded as a form of treatment that goes beyond the threshold set by Article 3 (prohibition of inhuman or degrading treatment) of the Convention. The Court noted, however, that the circumstances of the case and the assurances obtained by the French Government were such as to remove the danger of the applicant's being sentenced to death in Pennsylvania. Since, in addition, the decree granting the applicant's extradition expressly provided that "the death penalty may not be sought, imposed or carried out in respect of [the applicant]", the Court considered that he was not exposed to a serious risk of treatment or punishment prohibited under Article 3 of the Convention on account of his extradition to the United States.

See also: *Nivette v. France*, partial decision on the admissibility of 14 December 2000 and final decision of 3 July 2001.

Demir v. Turkey

30 August 2005 (decision on the admissibility)

Relying on Article 3 (prohibition of inhuman or degrading punishment or treatment) of the Convention, the applicant complained of being subjected to "death row syndrome" on account of the discussions among the political authorities on resuming enforcement of the death penalty, following the conviction of the head of the PKK (the Workers' Party of Kurdistan, an illegal organisation).

The Court declared the application **inadmissible** (manifestly ill-founded). It pointed out that the death penalty had been abolished in Turkey and that the Turkish Constitutional Court, in its judgment of 27 December 2002, had upheld the validity of the legislation abolishing it. Accordingly, the death sentences already imposed had automatically been commuted to life imprisonment. Furthermore, Turkey had ratified Protocol No. 6 to the Convention of 28 April 1983 concerning abolition of the death penalty. The Court also took note of the applicant's fears that enforcement of the death penalty would resume following the conviction of the head of the PKK. In that connection it noted that a moratorium on enforcement of the death penalty had been in place in Turkey since 1984. It further observed that the discussions among the political authorities on resuming enforcement of the death penalty had related solely to the head of the PKK. Moreover, the situation of the head of the PKK could not readily be transposed to that of the applicant, in view of the former's political past. In the circumstances, the Court considered that the enforcement of the death sentence against the applicant had been purely hypothetical and that he could not be said to have suffered the ever-present and mounting anguish of awaiting execution, thereby subjecting him to treatment exceeding the threshold set by Article 3 of the Convention.

Risk of being stoned to death

Jabari v. Turkey

11 October 2000

The applicant, 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 Office of the United Nations High Commissioner for Refugees (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 the applicant 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 the applicant 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** (prohibition of torture) of the Convention. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention in the instant case.

Razaghi v. Sweden

25 January 2005 (striking out judgment)

The applicant, an Iranian national, had applied for asylum in Sweden in November 1998. The National Immigration Board had rejected the application and ordered that the applicant be expelled to Iran. The applicant claimed that, if expelled to Iran, he would risk, among other things, facing death by stoning for having had a relationship with a mullah's wife. He relied on Article 2 (right to life) and Article 3 (prohibition of inhuman treatment) of the Convention and Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention.

The Court observed that in September 2004 the Swedish Aliens Board had revoked the expulsion order against the applicant and granted him a permanent residence permit. Finding that the applicant no longer faced expulsion to Iran or any risk of a violation of the articles of the Convention invoked, the Court concluded that the matter had been resolved and accordingly **struck out the case** pursuant to Article 37 of the Convention.

Risk of being sentenced to death

Bader and Kanbor v. Sweden

8 November 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 the first applicant 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 the applicant 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 Court held that the applicants' **deportation** to Syria, **if**

implemented, **would give rise to a violation of Articles 2** (right to life) **and 3** (prohibition of inhuman or degrading treatment) of the Convention.

Salem v. Portugal

9 May 2006

This case concerned the extradition to India of a terrorist suspect. The Minister of External Affairs of India had made a request for the applicant's extradition, saying that the applicant was suspected of having played a key role in the major terrorist attacks carried out in Bombay in 1993. Under the relevant Indian legislation, the offences were punishable by the death sentence or life imprisonment. In response to a request for further information made by the Portuguese authorities, the Deputy Prime Minister of India gave solemn assurances that the applicant, if extradited to India, would not face the death penalty or a prison sentence exceeding 25 years.

The Court declared the application **inadmissible** (manifestly ill-founded). It its view, the Portuguese courts had rightly considered the legal, political and diplomatic assurances given by the Indian Government in the present case to be adequate and convincing. In the absence of any evidence to the contrary, the Court could not reverse the findings of the domestic courts, which had examined the extradition request in adversarial proceedings and had been able to hear evidence directly from the parties, who, among other things, had attached to the case file a large number of opinions from experts in Indian law. The Portuguese Government's good faith could not be called into question in this case, seeing that what was in issue was compliance with international law by India, a State which could not be said not to be based on the rule of law.

Boumediene and Others v. Bosnia and Herzegovina

18 November 2008 (decision on the admissibility)

This case concerned the failure to enforce Human Rights Chamber decisions ordering Bosnia and Herzegovina to protect the well-being and obtain the return of terrorist suspects detained in Guantánamo Bay (Cuba).

The Court declared the application **inadmissible** (manifestly ill-founded). Taking into consideration, in particular, the assurances obtained by the Bosnia-Herzegovina authorities that the applicants would not be subjected to the death penalty, torture, violence or other forms of inhuman or degrading treatment or punishment, it concluded that Bosnia-Herzegovina could be considered to have been taking all possible steps to protect the basic rights of the applicants, as required by the domestic decisions in issue.

Babar Ahmad and Others v. the United Kingdom

8 July 2010 (admissibility decision)[2]

Between 2004 and 2006 all four applicants were indicted on various terrorism charges in the United States of America. The United States Government requested the applicants' extradition from the United Kingdom. As a result, all four of them were arrested in the United Kingdom and detained pending extradition. The applicants complained that, as non-citizens of the United States suspected of membership of Al-Qaeda or of having aided and abetted acts of international terrorism, they were at risk of being designated as an "enemy combatant" under Section 2 of United States Military Order No. 1 issued in November 2001 and, as such, could be detained, tried by a military commission and sentenced to death. The United States Embassy gave diplomatic assurances that the applicants would be prosecuted before a federal court rather than a military commission and would not be treated as "enemy combatants".

In its decision on admissibility, the Court considered that there was no reason to believe that the United States Government would breach the terms of its diplomatic assurances. There was therefore no real risk that the applicants would be designated as enemy combatants with the consequence which that entailed, namely the death penalty. Accordingly, the Court declared that part of the applicants' complaints **inadmissible** (manifestly ill-founded).

[2]. The Court delivered its judgment in this case on 10 April 2012.

Rrapo v. Albania

25 September 2012

The applicant, an Albanian and American national, was detained in a prison in the United States following his extradition from Albania to stand trial in the United States on numerous serious criminal charges, one of which carried the death penalty. While still detained in Albania, the applicant complained that his Convention rights would be breached as a result of his extradition to the United States given the risk of the death penalty if he were tried and convicted.

Concerning the alleged risk of the death penalty being imposed, the Court found that the applicant's **extradition** to the United States had **not given rise to a breach of Articles** (right to life) **2 and 3** (prohibition of inhuman or degrading treatment) of the Convention **and Article 1** (abolition of the death penalty) **of Protocol No. 13** to the Convention. There was nothing in the materials before the Court that could cast doubts as to the credibility of the assurances that capital punishment would not be sought or imposed in respect of the applicant by the United States. In this case the Court further held that there had been a **violation of Article 34** (right to individual application) of the Convention, because the applicant had been extradited to the United States in breach of the Court's indication to the Albanian Government, under Rule 39 (interim measures) of the Rules of Court, not to extradite him.

Harkins and Edwards v. the United Kingdom

17 January 2012

Both applicants faced extradition from the United Kingdom to the United States where, they alleged, they risked the death penalty or life imprisonment without parole. The first applicant was accused of killing a man during an attempted armed robbery, while the second applicant was accused of intentionally shooting two people, killing one and injuring the other, after they had allegedly made fun of him. The United States authorities provided assurances that the death penalty would not be applied in their cases and that the maximum sentence they risked was life imprisonment.

The Court declared **inadmissible** (manifestly ill-founded) the applicants' complaints regarding the alleged risk of death penalty. It reiterated that in extradition matters it was appropriate for a presumption of good faith to be applied to a requesting State which had a long history of respect for democracy, human rights and the rule of law, and which had longstanding extradition arrangements with Contracting States. The Court also attached particular importance to prosecutorial assurances concerning the death penalty. In both applicants' cases, clear and unequivocal assurances had been given by the United States Government and the prosecuting authorities. These were sufficient to remove any risk that either applicant would be sentenced to death if extradited. Further, regarding the risk of life imprisonment without parole, the Court found that in the instant case there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **if** one or the other applicant was **extradited**.

Al Nashiri v. Poland

24 July 2014

This case concerned allegations of torture, ill-treatment and secret detention of a Saudi Arabian national of Yemeni descent – who is currently detained in the United States Guantanamo Bay Naval Base in Cuba – suspected of terrorist acts. The applicant submitted that he had been held at a Central Intelligence Agency (CIA) "black site" in Poland. He invoked in particular Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, and Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention as regards his transfer from Poland, alleging that there had been substantial grounds for believing that there was a real and serious risk that he would be subjected to the death penalty.

The Court held that there had been a **violation** by Poland **of Articles 2 and 3** of the Convention **taken together with Article 1 of Protocol No. 6** to the Convention by having enabled the CIA to transfer the applicant to the jurisdiction of the military

commission and thus exposing him to a foreseeable serious risk that he could be subjected to the death penalty following his trial. Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further decided that Poland, in order to comply with its obligations under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention, was required to seek to remove, as soon as possible, the risk that the applicant could be subjected to the death penalty by seeking assurances from the United States authorities that such penalty would not be imposed on him.
The Court also found in this case that Poland had **failed to comply with** its obligation under **Article 38** (obligation to furnish all necessary facilities for the effective conduct of an investigation) of the Convention. It further held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, in both its substantive and procedural aspects, a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and family life), a **violation of Article 13** (right to an effective remedy) and a **violation of Article 6 § 1** (right to a fair trial) of the Convention.

A.L. (X.W.) v. Russia (no. 44095/14)[3]

29 October 2015

This case concerned, in particular, the complaint by a man residing in Russia and wanted as a criminal suspect in China that if forcibly returned to China, he would be at risk of being convicted and sentenced to death.
The Court held that that the applicant's forcible return to China would give rise to a **violation of Article 2** (right to life) **and Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered in particular that, given that the exclusion order against the applicant mentioned explicitly that he would be deported if he did no leave Russia before the stated deadline and that his Russian passport had been seized, he was at imminent risk of deportation to China where he might be sentenced to death. Russia was bound by an obligation, under the Convention, not to expose him to such risk. In this case the Court also held that there had been **a violation of Article 3** of the Convention on account of the conditions of the applicant's detention in a detention centre for aliens and on account of the conditions of his detention at a police station.

Al Nashiri v. Romania

31 May 2018

The applicant in this case was facing capital charges in the US for his alleged role in terrorist attacks. The case concerned his allegations that Romania had let the United States Central Intelligence Agency (CIA) transport him under the secret extraordinary rendition programme onto its territory and had allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention "black site". He also complained that Romania had failed to carry out an effective investigation into his allegations.
In this case the Court had no access to the applicant as he was still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate report on CIA torture which was released in December 2014. It also heard expert witness testimony.
The Court held that in the applicant's case there had been **violations of Article 3** (prohibition of torture) of the Convention, because of the Romanian Government's failure to effectively investigate the applicant's allegations and because of its complicity in the CIA's actions that had led to ill-treatment. The Court also held that there had been **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), **and Article 13** (right to an effective remedy) **in conjunction with Articles 3, 5 and 8**. Lastly, it held that there had been **violations of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, **and Articles 2** (right to life) **and 3** of the Convention **taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention because Romania had assisted in the

[3]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

applicant's transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty. The Court noted in particular that Romania had hosted a secret CIA prison, which had the code name, Detention Site Black, between September 2003 and November 2005, that the applicant had been detained there for about 18 months, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Romania had also permitted him to be moved to another CIA detention site located either in Afghanistan (Detention Site Brown) or in Lithuania (Detention Site Violet), thus exposing him to further ill-treatment. The Court therefore found that the applicant had been within Romania's jurisdiction and that the country had been responsible for the violation of his rights under the Convention. It further recommended that Romania conclude a full investigation into the applicant's case as quickly as possible and, if necessary, punish any officials responsible. The Court lastly held that the country should also seek assurances from the United States that the applicant would not suffer the death penalty.

al-Hawsawi v. Lithuania

16 January 2024[4]

This case concerned a national of Saudi Arabia who was on trial before a US military commission in Guantánamo Bay on suspicion of being a facilitator and financial manager of al-Qaeda. The applicant raised multiple complaints of torture, ill-treatment and unacknowledged detention in 2005-06 when he was held at a secret facility in Lithuania run by the US Central Intelligence Agency (CIA). Those alleged events took place against the background of the so-called "War on Terror".

The Court held that there had been **violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under its substantive and material limbs, because of Lithuania's failure to effectively investigate the applicant's allegations and because of its complicity in the CIA secret detainee programme. It also held that there had been **violations of Article 6 § 1** (right to a fair trial within a reasonable time), and **Articles 2** (right to life) **and 3** of the Convention **taken together with Article 1 of Protocol No. 6** (abolition of the death penalty) to the Convention, because Lithuania had assisted in the applicant's transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty. The Court further held that there had been **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), and **Article 13** (right to an effective remedy) **in conjunction with Articles 3, 5 and 8** of the Convention. The Court noted in particular that the applicant had been subject to a virtual ban on his communication with the outside world since his capture in 2003 so it had had to establish the facts from various other sources. In particular, it had gained key information from one of the most credible sources available, a US Senate Committee report on CIA torture released in December 2014. That report had specifically named the applicant as having been detained at the CIA secret detainee site codenamed "Detention Site Violet". That site, in light of evidence gathered by the Court, was located in Lithuania. The Court went on to find that although he had probably not been subjected to the harshest interrogation techniques there, he had to have experienced blindfolding or hooding, solitary confinement, the continuous use of leg shackles, and exposure to noise and light, which had been standard CIA practice under the secret detainee programme at the time. The Lithuanian authorities had to have been aware that the CIA would subject him to such treatment at the secret prison located on their territory, given the information widely available at the time on torture, ill-treatment and abuse inflicted on terrorist-suspects in US custody. They had also permitted him to be moved to another secret CIA detention site (in Afghanistan), exposing him to further ill-treatment, and to the USA where he faced the risk of a flagrant denial of justice and the death penalty. In the present case, the Court found that the applicant had been within Lithuania's jurisdiction and that the country had been responsible for the violations of his rights under the Convention. Lastly, under

[4]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Article 46 (binding force and implementation of judgments) of the Convention, it repeated the recommendations made in some previous rulings that the respondent State undertake a full criminal investigation as quickly as possible and, if necessary, punish any officials responsible. Lithuania also had to make further representations to the United States to remove or limit the effects of the violations of the applicant's rights.

K.J. and Others v. Russia (nos. 27584/20 and 39768/20)

19 March 2024[5]

This case concerned in particular the Russian authorities' removal orders in respect of three North Korean citizens to the Democratic People's Republic of Korea (DPRK). The applicants complained, inter alia, that if removed to the DPRK they would face torture and death.

The Court held that there had been a **violation of Article 2** (right to life) and **Article 3** (prohibition of torture) of the Convention in respect of one of the applicants, a missing student, as he would be at real risk of torture or death, and the Russian authorities were accountable for his transfer to the DPRK officials. The Court noted in particular that the applicant in question faced an extremely high risk of the death penalty – commonly applied to returnees – and of torture – in reprisal for applying for asylum – if returned to the DPRK. This situation was confirmed by reports by reputable international organisations and was not disputed by the Government. No meaningful steps had been taken by the Russian authorities to examine the risks for the applicant if returned. The Institute for Human Rights (IHR), a non-governmental organisation representing the applicant before the Court, submitted in that connection that as he was missing, North Korean officials must have either returned him to North Korea, kept him incommunicado in the consulate or had him murdered.

Pending application

Al-Nashiri v. Lithuania (no. 31908/22)[6]

Application communicated to the Lithuanian Government on 21 February 2024

The case concerns a national of Saudi Arabia of Yemeni descent, currently detained in Guantánamo Bay and facing capital charges before a United States (US) military commission on suspicion of, among other things, the bombing of the US Navy ship USS Cole in 2000. The US authorities consider him to have been one of the most senior figures in al-Qaeda. Before the Court, the applicant raises multiple complaints of torture, ill-treatment and unacknowledged detention when he was held for five months in 2005-2006 at a secret facility in Lithuania run by the US Central Intelligence Agency (CIA).

The Court gave notice of the application to the Lithuanian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention and Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention.

Death penalty as a result of unfair trial

Öcalan v. Turkey

12 May 2005 (Grand Chamber)

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 (the Workers' Party of Kurdistan, an illegal organisation). 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

[5]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

[6]. The Court has ruled in two other cases concerning the applicant's detention at CIA secret facilities, in Poland and Romania: see judgments handed down in 2014 *Al Nashiri v. Poland* and 2018 *Al Nashiri v. Romania*, summarised above.

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 – the applicant'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: The Court held that there had been **no violation of Articles 2** (right to life), **3** (prohibition of inhuman or degrading treatment) **or 14** (prohibition of discrimination) of the Convention, as the death penalty had been abolished and the applicant'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 of the Convention. However, no firm conclusion was reached in respect of whether the States Parties to the Convention had established a practice of considering the execution of the death penalty as inhuman and degrading treatment contrary to Article 3 of the Convention. 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 of the Convention 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 the applicant'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 the applicant 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** of the Convention.

M.A. and Others v. Bulgaria (no. 5115/18)

20 February 2020

The applicants in this case were five Chinese nationals, Uighur Muslims from the Xinjiang Uighur Autonomous Region in China. The case concerned their intended expulsion on national security grounds to China, where they would allegedly be at risk of death or ill-treatment. The applicants submitted that if returned to China they would face persecution, ill-treatment and arbitrary detention and could even be executed.

The Court held that the deportation to China of three of the applicants would constitute a **violation of Article 2** (right to life) and a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention. It noted in particular that the governmental repression against Uighurs was being justified by the Chinese authorities by the need to combat terrorism and extremism, and that suspicions of separatism or endangering State security could lead to long prison terms or the death penalty without due process. The Court further observed that, according to the Bulgarian authorities, prior to arriving in Bulgaria, the applicants had undergone training for the East Turkistan Islamic Movement, a separatist organisation active in Western China, which was considered to be a terrorist organisation. In the present case, the Court found that there were substantial grounds for believing that the applicants would be at real risk of arbitrary detention and imprisonment, as well as ill-treatment and even death, if they were removed to their country of origin. Moreover, there were no effective guarantees, in the process of implementation of the repatriation or the expulsion decisions against the applicants, that they would not be sent back to China.

Death penalty as such contrary to the European Convention on Human Rights

Al-Saadoon and Mufdhi v the United Kingdom

2 March 2010

This 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 European Convention on Human Rights 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 Member States / States Parties to the Convention. 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 United Kingdom had ratified them both. All but two Convention States had signed Protocol No. 13 and all but three States which had signed it had ratified it. That demonstrated that Article 2 of the Convention 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.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further observed in this case that the UK Government were required to seek to put an end to the suffering the fear of execution caused the applicants as soon as possible, by taking all possible steps to obtain an assurance from the Iraqi authorities that they would not be subjected to the death penalty.

Pending applications

Saadoune v. Russia and Ukraine (no. 28944/22)[7]

Pending application – Interim measures[8] indicated on 16 June 2022

This case concerns a Moroccan national, member of the Armed Forces of Ukraine who surrendered to the Russian forces during recent hostilities and has since been sentenced to death in the so-called "Donetsk People's Republic". On 14 June 2022 the applicant's representative made a request to the Court under Rule 39 (interim measures) of the Rules of Court to ensure his Convention rights.

The Court indicated in particular to the Government of the Russian Federation, under Rule 39 (interim measures) of the Rules of Court, that they should ensure that the death penalty imposed on the applicant was not carried out, ensure appropriate conditions of his detention, and provide him with any necessary medical assistance and medication. The Court also indicated to the Government of Ukraine to ensure, in so far as it was possible to do so, respect for the Convention rights of the applicant.

Pinner v. Russia and Ukraine (no. 31217/22) and Aslin v. Russia and Ukraine (no. 31233/22)[9]

Pending applications – Interim measures[10] indicated on 16 June 2022

These applications concern two British nationals who are members of the Armed Forces of Ukraine who surrendered to the Russian forces during recent hostilities and have since been sentenced to death in the so-called "Donetsk People's Republic". On 27 June 2022

7. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
8. See the factsheet on "Interim measures".
9. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
10. See the factsheet on "Interim measures".

the applicants' representatives made their requests to the Court under Rule 39 (interim measures) of the Rules of Court to ensure their Convention rights.
The Court indicated in particular to the Government of the Russian Federation, under Rule 39 (interim measures) of the Rules of Court, that they should ensure that the death penalty imposed on the applicants was not carried out; ensure appropriate conditions of their detention; and provide them with any necessary medical assistance and medication. The Court also indicated to the Government of Ukraine to ensure, in so far as it was possible to do so, respect for the Convention rights of the applicants.

Further readings

See in particular:

- ECHR Knowledge Sharing platform (ECHR-KS), Article 2 - Right to life

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