



The extradition of an individual to a State in which he or she is liable to an irreducible life sentence is contrary to the Convention

In today's **Chamber** judgment¹ in the case of **Trabelsi v. Belgium** (application no. 140/10), which is not final, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 34 (right of individual application).

The case concerned the extradition, which has been effected despite the indication of an interim measure by the European Court of Human Rights (Rule 39 of the Rules of Court), of a Tunisian national from Belgium to the United States, where he is being prosecuted on charges of terrorist offences and is liable to life imprisonment.

The Court considered that the life sentence to which Mr Trabelsi was liable in the United States was irreducible inasmuch as US law provided for no adequate mechanism for reviewing this type of sentence, and that it was therefore contrary to the provisions of Article 3. It concluded that Mr Trabelsi's extradition to the United States entailed a violation of Article 3 of the Convention.

Furthermore, the failure of the Belgian State to observe the suspension of extradition indicated by the Court had irreversibly lowered the level of protection of the rights secured under Article 3, which Mr Trabelsi had attempted to uphold by lodging his application with the Court, and had interfered with his right of individual application.

Principal facts

The applicant, Nizar Trabelsi, is a Tunisian national who was born in 1970. He is currently incarcerated in the United States.

On 30 September 2003 he was sentenced by the Brussels Regional Court to ten years' imprisonment, upheld on appeal, for having, among other offences, attempted to blow up a Belgian military base and having instigated a criminal conspiracy.

On 26 January 2005 Mr Trabelsi was sentenced *in absentia* by a Tunisian military court to ten years' imprisonment for belonging to a terrorist organisation abroad in peacetime. In 2009 the Permanent Military Court in Tunis issued a warrant for the applicant to be brought before it, for which an application for enforcement was submitted to the Belgian authorities.

On 25 August 2005, meanwhile, the applicant submitted an asylum application in Belgium, which was dismissed in 2009.

On 8 April 2008 the US authorities transmitted to the Belgian authorities a request for Mr Trabelsi's extradition, based on an indictment issued by the District Court of the District of Columbia on

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

16 November 2007. The indictment included four charges against Mr Trabelsi for offences relating to Al-Qaeda-inspired acts of terrorism, specifying that for the first two charges he was liable to a sentence of life imprisonment and for the other two a fifteen-year term.

On 19 November 2008 the Nivelles Regional Court declared the arrest warrant issued by the US District Court enforceable *vis-à-vis* offences other than those of which Mr Trabelsi had already been convicted in Belgium. His subsequent appeals against that decision were dismissed.

On 10 June 2010 the Brussels Court of Appeal issued a favourable opinion on Mr Trabelsi's extradition, specifying a number of conditions, including the fact that the death penalty should not be imposed on him or, failing that, should not be enforced, that the life sentence should be accompanied by the possibility of commutation of sentence and that Mr Trabelsi should not be re-extradited to a third country without the agreement of Belgium. By a diplomatic note of 10 August 2010 the US authorities repeated their guarantees in this respect.

On 23 November 2011 the Minister for Justice, drawing on the assurances provided by the US authorities, adopted a ministerial decree granting the applicant's extradition to the US Government.

Meanwhile, on 6 December 2011 Mr Trabelsi lodged a request with the European Court of Human Rights for the indication of an interim measure pursuant to Rule 39 of the Rules of Court with a view to suspending his extradition. On the same day the Court acceded to his request and indicated to the Belgian Government that it should not extradite Mr Trabelsi to the United States. The Belgian Government submitted several requests for the lifting of this measure, which was nonetheless maintained for the duration of the proceedings before the Court.

On 3 October 2013 Mr Trabelsi was extradited to the United States, where he was immediately detained.

Complaints, procedure and composition of the Court

Mr Trabelsi complained that his extradition to the United States of America would expose him to treatment incompatible with Article 3 (prohibition of inhuman or degrading treatment). He contended that some of the offences for which his extradition had been granted carried a maximum life prison sentence which was irreducible *de facto*, and that if he were convicted he would have no prospect of ever being released. Still under Article 3 (prohibition of inhuman or degrading treatment), he also complained of his conditions of detention in Belgium, particularly the numerous transfers to which he had been subjected. Relying on Article 6 § 1 (right to a fair trial), he submitted that he had not had the benefit of a fair trial or the safeguards which should have accompanied criminal proceedings during the judicial procedure for enforcement of the US arrest warrant. He also alleged that his extradition entailed a violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice). Furthermore, he complained that his extradition to the United States constituted interference with his private and family life in Belgium, in breach of Article 8 (right to respect for private and family life). Lastly, under Article 34 (right of individual application), he complained that his extradition to the US had taken place in breach of the interim measure indicated by the Court by virtue of Rule 39 of the Rules of Court.

The application was lodged with the European Court of Human Rights on 23 December 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Ann Power-Forde (Ireland),
Ganna Yudkivska (Ukraine),
André Potocki (France),
Paul Lemmens (Belgium),
Helena Jäderblom (Sweden),

Aleš Pejchal (the Czech Republic),
and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 3 (with regard to the applicant's extradition to the United States)

The Court firstly reiterated that the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by any Article of the Convention, provided that it was not disproportionate. On the other hand, if it was to be compatible with Article 3 such a sentence should not be irreducible *de jure* and *de facto*. In order to assess this requirement the Court had to ascertain whether a life prisoner could be said to have any "prospect of release" and whether national law afforded the "possibility of review" of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner². Moreover, the prisoner had to be informed of the terms and conditions of this review possibility at the outset of his sentence³.

The Court then observed that Article 3 implied an obligation on Contracting States not to remove a person to a State where he or she would run the real risk of being subjected to prohibited ill-treatment. In matters of removal of aliens, the Court affirmed that, in accordance with the preventive aim of Article 3, this risk had to be assessed before the persons concerned actually suffered a penalty or treatment of a level of severity proscribed by this provision, which meant, in the present case, before Mr Trabelsi's possible conviction in the United States.

In the present case the Court considered that in view of the gravity of the terrorist offences with which Mr Trabelsi stood charged and the fact that a sentence could only be imposed after the trial court had taken into consideration all relevant mitigating and aggravating factors, a discretionary⁴ life sentence would not be grossly disproportionate.

The Court held, however, that the US authorities had at no point provided any concrete assurance that Mr Trabelsi would be spared an irreducible life sentence. It also noted that, over and above the assurances provided, while US legislation provided various possibilities for reducing life sentences (including the Presidential pardon system), which gave Mr Trabelsi some "prospect of release", it did not lay down any procedure amounting to a mechanism for reviewing such sentences for the purposes of Article 3.

Therefore, the life imprisonment to which Mr Trabelsi might be sentenced could not be described as reducible, which meant that his extradition to the United States had amounted to a violation of Article 3.

Article 34

The Court mentioned the crucial importance of and the vital role played by interim measures under the Convention system.

It noted that by acting in breach of the interim measure indicated by the Court pursuant to Rule 39, the respondent State had deliberately and irreversibly lowered the level of protection of the rights set out in Article 3 of the Convention which Mr Trabelsi had endeavoured to uphold by lodging his application with the Court. The extradition had, at the very least, rendered any finding of a violation of the Convention otiose, as Mr Trabelsi had been removed to a country which was not a Party to

² *Kafkaris v. Cyprus*, no. 21906/04 (GC), § 98, 12 February 2008.

³ *Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10 (GC), § 122, 9 July 2013.

⁴ "Discretionary" in the sense that the judge can impose a less severe sentence, ordering a set number of years' imprisonment.

that instrument, where he alleged that he would be exposed to treatment contrary to the Convention.

The Court also considered that the actions of the Belgian Government had made it more difficult for Mr Trabelsi, who was being held in solitary confinement with limited contact with the outside world, to exercise his right of petition.

Consequently, Belgium had failed to honour the obligations incumbent on it under Article 34.

[Article 3 \(as regards the applicant's conditions of detention in Belgium\)](#)

The Court dismissed the complaints under Article 3 concerning the applicant's conditions of detention in Belgium, on account of non-exhaustion of domestic remedies.

[Other articles](#)

The Court dismissed the complaint under Article 6 § 1 as being incompatible with the provisions of the Convention, as well as the complaints under Article 8 and Article 4 of Protocol No. 7 as being manifestly ill-founded.

[Just satisfaction \(Article 41\)](#)

The Court held that Belgium was to pay the applicant 60,000 euros (EUR) in respect of non-pecuniary damage and EUR 30,000 in respect of costs and expenses.

Separate opinion

Judge Yudkivska expressed a concurring opinion. This opinion is annexed to the judgment.

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.