



April 2013

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.

Ill-treatment in the receiving country

[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.

[Hirsi Jamaa and Others v. Italy](#) 23/02/2012 (Grand Chamber): The case concerned Somali and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya. The Court found that **the applicants had fallen within the jurisdiction of Italy for the purposes of Article 1** of the Convention: in the period between boarding the ships and being handed over to the Libyan authorities, the applicants had been under the continuous and exclusive de jure and de facto control of the Italian authorities.

The Court held that there had been:

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).

two violations of Article 3 (prohibition of inhuman or degrading treatment) because the applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea. The Court found that by transferring the applicants to Libya the Italian authorities had, in full knowledge of the facts, exposed them to treatment proscribed by the Convention and that when the applicants were transferred to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin.

a **violation of Article 4 of Protocol No. 4** (prohibition of collective expulsions). The Court was required, for the first time, to examine whether Article 4 of Protocol No. 4 applied to a case involving the removal of aliens to a third State carried out outside national territory (see "[Collective Expulsions](#)" *Factsheet*)

a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** because the applicants had been unable to lodge their complaints with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.

a **violation of Article 13 taken in conjunction with Article 4 of Protocol No.4** because the remedy under the criminal law against the military personnel on board the ship did not satisfy the criterion of suspensive effect.

Political opponents, members of illegal organisations, persons accused of terrorism...

- [Chahal v. United Kingdom](#) 15/11/1996 (see above)
- [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.
- [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.
- [Omar Othman v United Kingdom](#) 17/01/2012: the applicant, Omar Othman (also known as Abu Qatada), challenged his removal to Jordan where he had been convicted in his absence on various terrorism charges. The Court found that the diplomatic assurances obtained by the UK Government from the Jordanian Government were sufficient to protect Mr Othman and that there would therefore be no risk of ill-treatment, and **no violation of Article 3**, if Mr Othman were deported to Jordan. The Court found however that there would be a **violation of Article 6 (right to a fair trial)**, given the real risk of the admission of evidence obtained by torture at his retrial in Jordan. It was the **first time** that the Court found that an expulsion would be in violation of Article 6, which reflected the international consensus that the use of evidence obtained through torture made a fair trial impossible.
The Court also concluded in this case that there would be no violation of Articles 13 (right to an effective remedy) and 5 (right to liberty and security) if the applicant were deported.
- [I.M. v. France](#) 02/02/2012: The case concerned the risks the applicant would face in the event of his deportation to Sudan – where he had been arrested by the police on account of his activities within a student movement and his alleged links with rebel groups in Darfur - and the effectiveness of the remedies available to him in France in view of the fact that his asylum application was dealt with under the fast-track procedure.
The Court rejected the applicant's complaint under Article 3 because he no longer faced deportation to Sudan and was certain to be able to remain in France since he had been granted refugee status.
Violation of Article 13 (right to an effective remedy): while the remedies of which the applicant had made use had been available in theory, their accessibility

in practice had been limited by the automatic registration of his application under the fast-track procedure, the short deadlines imposed and the practical and procedural difficulties, given that the applicant had been in detention and applying for asylum for the first time (concerning second examinations under a fast-track procedure, see [Sultani v. France](#), Judgment of 20.09.2007, § 65-66). The applicant's deportation had been prevented only by the **application of Rule 39** of the Rules of the European Court of Human Rights. In that connection the Court noted in particular that an appeal to the National Asylum Tribunal did not have suspensive effect when the fast-track procedure had been applied.

- [Mannai v. Italy](#) 27/03/2012: The case concerned the deportation to Tunisia of an Islamic fundamentalist. The Court held that his deportation to Tunisia after serving his sentence in Italy entailed a real risk that he would be subjected to torture: **violation of Article 3**.
In 2010 the Court had indicated under Rule 39 (interim measures) of the Rules of Court that the deportation order should not be enforced until further notice. It had also indicated to the Government that failure to comply with such a measure could give rise to a **violation of Article 34** (right of individual petition).
- [Babar Ahmad and Others v. the United Kingdom](#) 10/04/2012: This case concerned 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).
No violation of Article 3 as a result of conditions of detention at ADX Florence if Mr Ahmad, Mr Ahsan, Mr Abu Hamza, Mr Bary and Mr Al-Fawwaz were extradited to the USA.
No violation of Article 3 as a result of the length of their possible sentences if they were extradited.
The Court adjourned its examination of Mr Aswat's application as it required further submissions from the parties – judgment in the case of Aswat v. the United Kingdom delivered on 16/04/2013 (see infra, "Health")
See "[Terrorism](#)" Factsheet
- [Labsi v. Slovakia](#) 15/05/2012
Expulsion of an Algerian man, convicted in France of preparing a terrorist act, from Slovakia following his unsuccessful asylum request.
Violation of Article 3, Article 13 (right to an effective remedy) and **Article 34** (right of individual petition). The Court held in particular that terrorist suspects faced a serious risk of ill-treatment in Algeria at the relevant time and that the applicant's expulsion, in disregard of an interim measure issued by the Court, prevented it from properly examining his complaints.
- [S.F. and Others v. Sweden](#) 15/05/2012: Complaint by an Iranian family - who fled Iran in fear of persecution because of their involvement with a Kurdish-rights political party - that they would be tortured or otherwise ill-treated if deported to Iran. The Court found that the applicants were justified in fearing that they might be subjected to torture or inhuman or degrading treatment if deported to Iran, in particular given their political activities in Sweden, which included the reporting of human rights violations in their country of origin; deporting them, therefore, would breach their human rights, in **violation of Article 3**.
- In the case of [H.N. v. Sweden](#) (no. 30720/09, judgment of 15.05.2012), the Court found **no violation of Articles 2 and 3** concerning a Burundian national who alleged that, if deported to Burundi, he would risk being killed or ill-treated.

- [Zokhidov v. Russia](#) 05/02/2013: The case concerned the extradition of an Uzbek national from Russia to Uzbekistan, where he was wanted in connection with his presumed membership of the illegal religious organisation Hizb ut-Tahrir. The Court found that the applicant had been at real risk of ill-treatment in Uzbekistan. His removal there, in contravention of an interim measure indicated by the Court, had moreover removed him from Convention protection, making it impossible for this judgment to be effectively enforced.
Violation of Article 3 (prohibition of torture and of inhuman or degrading treatment);
Violations of Article 5 §§ 1, 2 and 4 (right to liberty and security); and,
Violation of Article 34 (right of individual petition)
- [Mo.M. v. France](#) (no. 18372/10), judgment of 18/04/2013: The case concerned the complaint of a Chadian national that deporting him to his country of origin would expose him to the risk of ill-treatment by the police there to punish him for allegedly siding with the rebels in Darfur.
Violation of Article 3 if the applicant, who had been denied asylum, were to be sent back to Chad. After noting that in spite of an improvement in relations between Chad and Sudan, threats to people's safety persisted in Chad, the Court found that the applicant had produced sufficient evidence that in view of his personal situation he would be exposed to a real risk of inhuman and degrading treatment if sent back to Chad.

Membership of a stigmatised ethnic minority group

- [Makhmudzhan Ergashev v. Russia](#) 16/10/2012: **violation of Article 3** if the decision to expel a Kyrgyzstani national of Uzbek ethnic origin to Kyrgyzstan were to be enforced. The Court held that the applicant had good reason to fear that he would be tortured or subjected to inhuman or degrading treatment, in particular in view of the widespread use of torture against members of the Uzbek minority in the southern part of Kyrgyzstan. This was the first time that the Court examined on the merits a complaint concerning an alleged risk of treatment contrary to Article 3 in Kyrgyzstan, which in 2010 was the scene of clashes between the Kyrgyz and Uzbek communities.

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.
- [N. v. the United Kingdom](#) (no. 26565/05), 27/05/2008 (Grand Chamber): The applicant, a Ugandan national, was admitted to hospital days after she arrived in the UK as she was seriously ill and suffering from AIDS-related illnesses. Her application for asylum was unsuccessful. She claimed that she would be subjected

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.

to inhuman or degrading treatment if made to return to Uganda because she would not be able to get the necessary medical treatment there.

The Court noted that the UK authorities had provided the applicant with medical treatment during the nine years it had taken for her asylum application and claims to be determined by the UK courts and the European Court of Human Rights. The Convention did not place an obligation on States parties to account for disparities in medical treatment in States not parties to the Convention by providing free and unlimited medical treatment to all aliens without a right to stay within their jurisdiction. Therefore, the UK did not have the duty to continue to provide for the applicant. **If she were removed to Uganda, therefore, there would not be a violation of Article 3.**

- [Aswat v. the United Kingdom](#), 16/04/2013: Concerned the complaint by Mr Aswat, who is detained in the United Kingdom, that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a "supermax" prison) were likely to exacerbate his condition of paranoid schizophrenia. The Court held that Mr Aswat's **extradition would amount to a violation of Article 3** (prohibition of inhuman and degrading treatment) solely on account of the current severity of his mental illness. The Court further decided to continue to indicate to the Government of the United Kingdom under Rule 39 of its Rules of Court (interim measures) not to extradite Mr Aswat until the judgment became final or until further order.

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.
- [Sufi and Elmi v. the United Kingdom](#) 28/06/2011: 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. **Violation of Article 3** in case of expulsion to Somalia.
- [Collins and Akaziebie v. Sweden](#) (decision of 08/03/2007): application **inadmissible**. 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.
- [Omeredo v. Austria](#) (decision of 20/09/2011): application **inadmissible**. While it might be difficult to live in Nigeria as an unmarried woman without support of her family, the Court reiterates that the fact that the applicants' circumstances in Nigeria would be less favourable than those enjoyed by her in Austria cannot be regarded as decisive from the point of view of Article 3.

- [Izevbekhai and Others v. Ireland](#) (decision of 17/05/2011): application **inadmissible**. Concerning a mother and her two daughters. The Court considers that the mother and her husband could protect their daughters from FGM if returned to Nigeria.
- [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. **Violation of Article 3.**
- [A.A. and Others v. Sweden](#) (no. 14499/09) 28.06.2012: the case concerned Yemeni nationals (a mother and her five children) living in Sweden pending enforcement of a deportation order. They alleged that, if deported to Yemen, they would face a real risk of being the victims of an honour crime as they had disobeyed their husband/father and had left their country without his permission. The Swedish courts considered that the applicant family's problems mainly concerned the personal sphere and had been related to financial matters, rather than to honour. The Court found **no violation of Article 2** and **no violation of Article 3**. The Court also decided to continue its indication to the Swedish Government (made under Rule 39 of the Rules of Court) – not to deport the applicants until the judgment became final or until further order.

"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.
- [Harkins and Edwards v. the United Kingdom](#) 17/01/2012: the case concerned the complaint of two men that, if the United Kingdom were to extradite them to the United States, they risked the death penalty or sentences of life imprisonment without parole. The Court rejected as inadmissible the applicants' complaints concerning the alleged risk of death penalty, considering that the diplomatic assurances, provided by the US to the British Government - that the death penalty would not be sought in respect of Mr Harkins or Mr Edwards - were clear and sufficient to remove any risk that the applicants could be sentenced to death if extradited, particularly as the US had a long history of respect for democracy, human rights and the rule of law. The Court also found that it would not be grossly disproportionate even if the US courts decided to give the applicants life sentences without parole in the US. Consequently there would be **no violation of Article 3** if they were extradited.

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

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

of California were such as to avert the danger of the applicant's being sentenced to life imprisonment without any possibility of early release.

- Also see [Harkins and Edwards v. the United Kingdom](#) 17/01/2012: **No violation of Article 3** as it would not be grossly disproportionate even if the US courts decided to give the applicants life sentences without parole in the US.

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 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.
- [M.S.S v. Belgium and Greece](#) 21/01/2011 (Grand Chamber): An Afghan national who arrived in Belgium via Greece. In accordance with the Dublin II Regulation, Belgium requested the Greek authorities to examine the applicant's asylum application, which they agreed to do. After leaving Belgium for Greece as ordered by the Aliens Office, the applicant alleged that his transfer had been in breach of Article 3 (prohibition of inhuman or degrading treatment) on account of the situation of asylum seekers in Greece. In the light of, among other things, a number of reports by national and international bodies and non-governmental organisations, the Court held that there had been **a violation of Article 3 by Greece** because of the applicant's conditions of detention and living conditions in Greece. The Court also found **a violation by Greece of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** on account of deficiencies in the asylum procedure applied in the applicant's case. Taking the view that the deficiencies in the asylum procedure and the conditions of detention and living conditions of asylum seekers in Greece must have been known to the Belgian authorities at the time of the applicant's expulsion, the Court also found **a violation of Article 3 by Belgium** because of having exposed the applicant to

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.

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

risks linked to the aforementioned deficiencies and detention and living conditions.

In a [Grand Chamber judgment of 21 December 2011](#), the Court of Justice of the European Union (CJEU) adopted a similar position to that of the European Court of Human Rights, referring explicitly to the judgment in *M.S.S v. Belgium and Greece* (see, in particular, paragraphs 88 to 91 of the CJEU judgment).

- Several cases concerning removal (*refoulement*) under the “Dublin system” are currently **pending** before the Court, mainly against Belgium, 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.

Examples:

-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.

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](#)).

Further information:

[Interim measures statistics 2008-2011](#)

[Statistics on interim measures by respondent State and country of destination.](#)

Interim measures: [definition and practice](#)

See [“Interim Measures” Factsheet](#)

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](#).

- [Omar Othman v United Kingdom](#) 17/01/2012. See page 2 of this document.

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

Before removal

- [Garabayev v. Russia](#) 07.06.07: **violation of Article 3** on account of the applicant's extradition to Turkmenistan; **violation of Article 5 § 1 (f)** (right to liberty and security) in respect of the applicant's detention prior to extradition; **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) in respect of the availability of judicial review of detention pending extradition; **violation of Article 5 § 3** (right to be brought promptly before a judge) in respect of the failure to bring the applicant promptly before a judge after his return from Turkmenistan; **violation of Article 13** (right to an effective remedy).
- [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.
- [Popov v. France](#) 19.01.2012
The case concerned the administrative detention of a family for two weeks at the Rouen-Oissel in France centre pending their removal to Kazakhstan.
-in respect of the administrative detention of the children:
Violation of Article 3. The Court found that the authorities had not measured the inevitably harmful effects on the children (aged five months and three years) of being held in a detention centre in conditions that exceeded the minimum level of severity required to fall within the scope of Article 3.
Violation of Article 5 §§ 1 and 4 (right to liberty and security): while the parents had had the possibility to have the lawfulness of their detention examined by the courts, the Court noted that children accompanying their parents found themselves in a legal void, unable to avail themselves of such a remedy.
-in respect of the administrative detention of the parents: **no violation of Article 3**
-in respect of the whole family: **violation of Article 8 (right to respect for private and family life)**
In the *Muskhadzhiyeva and Others v. Belgium* case ([Judgment of 19 January 2010](#)) the Court had rejected a complaint similar to the applicants'. However, considering the recent case-law developments concerning "the child's best interests" in the context of the detention of child migrants, the Court considered

that the child's best interests called not only for families to be kept together but also for the detention of families with young children to be limited.

- Concerning the detention of child migrants, please also see [Rahimi v. Greece](#), judgment of 5 April 2011.

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.

Other Articles of the Convention concerned in expulsion cases

Article 2 of Protocol No. 4 (Freedom of movement)

[Stamose v. Bulgaria](#) (27/11/2012): Having entered the United States on a student visa to then abandon his studies to take up paid employment, the applicant, a Bulgarian applicant, was deported to Bulgaria. He complained that the Bulgarian border police subsequently had imposed a two-year travel ban on him for breaching the United States immigration laws. He alleged that the ban had been unjustified and disproportionate, and that it had prevented him from travelling to the United States, where his mother and brother had lived. He further complained that the Bulgarian courts had not reviewed the proportionality of the measure. Violation of Article 2 of Protocol No. 4 and violation of Article 13 (right to an effective remedy).

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](#) 02/09/2010: **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 had not been accompanied by guarantees against arbitrariness.

[Takush v. Greece](#) 17/01/2012: Albanian national arrested by the police and immediately committed for trial before the Criminal Court on a charge of aiding and abetting the unlawful entry of aliens into Greece. Pending an order for his deportation, the authorities ordered his detention on the grounds that he presented a danger to public order an

safety and was liable to abscond. The deportation order also stipulated that Mr Takush's name was to be entered in the national register of undesirable persons and in the Schengen Information System. **Violation of Article 1 of Protocol No. 7:** the applicant's case had not been actually examined.

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

[Garabayev v. Russia](#) (page 9 of this document)

[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**).

[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.

[Mathloom v. Greece](#) 24/04/2012: concerned an Iraqi national who was kept in detention for over two years and three months with a view to his deportation, although an order had been made for his conditional release. **Violation of Articles 5 § 1 f) and 5 § 4:** the Greek legislation governing the detention of persons whose expulsion had been ordered by the courts did not lay down a maximum period and therefore did not satisfy the foreseeability requirement under Article 5 § 1.

- **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.

In the case of [K.A.B. v. Spain](#) (10.04.2012), the Court found a **violation of Article 8** concerning the adoption – despite the father's opposition – of a child who was declared abandoned after his mother's deportation.

The Court found, in particular, that the authorities' inaction, the deportation of the mother without prior verification, the failure to assist the applicant with his formalities, in spite of his precarious situation, and the exclusive attribution of responsibility to the applicant for the child's abandonment, had decisively contributed to preventing any possibility of reunion between father and son, in breach of the applicant's right to respect for his private life.

[Balogun v. United Kingdom](#) 10/04/2012: **no violation of Article 8**. A Nigerian national complained that his deportation would breach his right not to be ill-treated as well as his right to private life. The Court found that, although the applicant was a settled migrant, the seriousness of the multiple drugs-related offences he had committed as an adult,

coupled with the carefully considered preventive steps of the UK authorities to mitigate any risk of suicide, were sufficient to justify his deportation.

[De Souza Ribeiro v. France](#) (13/12/2012 – Grand Chamber judgment): The case concerned the expulsion of a Brazilian national living in French Guiana (an overseas region and département of France) with no possibility for him to challenge the lawfulness of the removal measure before it was enforced. The Court considered that the manner in which the applicant's removal was effected had been extremely rapid, even perfunctory, leaving him no chance, before he was deported, of having the lawfulness of the removal order examined sufficiently thoroughly by a national authority offering the requisite procedural guarantees and without the urgent-applications judge having ruled on his application to have enforcement of the removal order suspended. It pointed out that while States were given some discretion as to the manner in which they conformed to their obligations under Article 13, that should not result in people being denied access to the minimum procedural safeguards needed to protect them against arbitrary expulsion. **Violation of Article 13** (right to an effective remedy) **in conjunction with Article 8** (right to respect for private and family life).

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