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Sanchez-Sanchez v. United Kingdom: Implications of Article 3 and Extradition to the USA for a sentence of life without parole

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Sian Priory

Extradition case of *Sanchez-Sanchez vs United Kingdom* (application no. 22854/20) is being heard today, on 23 February 2022, by the Grand Chamber of the European Court of Human Rights.

It is the first case featuring the UK to be considered by the Grand Chamber since Brexit and the first extradition case in over 5 years.

Barristers **David Josse Q.C.** and **Ben Keith** represent Mr Sanchez-Sanchez instructed by **Roger Sahota** of Berkeley Square Solicitors.

Read **Sian Priory**'s article and analysis on the case below, examining the implications of Article 3 and Extradition to the USA for a sentence of life without parole.

An update will follow with links to watch the hearing (recorded) and any additional press links. Click here to read eureporter's article on the case.

On 23 February 2022, the Grand Chamber of the ECtHR will hear arguments on the case of Ismael Sanchez-Sanchez, when the Applicant will argue that his extradition to the USA would breach his Article 3 rights by virtue of the real risk of the imposition of a sentence of life without parole.

Mr Sanchez-Sanchez's extradition is sought in relation to four offences of importing and supplying drugs, it being alleged that he, along with another, led a Mexico-based drugs trafficking operation. If extradited to the US, he will be tried and, if convicted, face a maximum sentence of life without parole. The case aims to resolve the discrepancy in approach to the question of whether a life sentence in the US breaches Article 3, as well as addressing the question of whether the European Convention of Human Rights can be applied equally to non-signatory states, such as the USA.

The Grand Chamber in *Vinter & others v United Kingdom* [GC] nos 660/09 determined that life sentences are incompatible with Article 3 if they are 'irreducible'. Life sentences where there are sufficient review mechanisms in place, which are clear and appreciable to the prisoner (a review at the 25-year mark being the normal expectation), are not incompatible with Article 3. As the Respondent to the case, the UK Government argues that the US provides two such possible review mechanisms which are sufficient for these purposes, the first being compassionate release pursuant to Title 18 of the US Code, and the second being the possibility of executive clemency.

The two authorities on this point are viewed by the UK courts as being in conflict. On the one hand, and followed by the High Court in S*anchez-Sanchez,* is *Harkins and Edwards v. The United Kingdom, nos* 9146/07 and 3265/07, which held that the test for whether a sentence was Article 3 compliant would depend on the determination of whether a prisoner's continued

detention performed any “legitimate penological purpose.” Article 3 arguments would only be engaged at a point when it could be shown that this ceased to be the case. It follows that arguments could not be advanced until such time at which the US authorities refused to avail themselves of the mechanisms available (realistically after the Applicant has served decades in prison.) *Harkins* further found that the possibility of compassionate release or clemency did constitute sufficient mechanisms for review such that the sentence was Article 3 compliant.

On the other hand, *Trablesi v Belgium no 140/10* held that the test ought to be whether a sentence is “irreducible”, confirming that the State should have mechanisms for review so that there remained the possibility, even if remote, that an offender would at some point be released from prison. The court further held that this information should be available to the offender *at the point of sentence*; the offender should be able to appreciate the options and know what he would need to do in order to be eligible for release. Further, and crucially, *Trablesi* found that the current mechanisms in the US – compassionate release and clemency – were insufficient for the purposes of review and the sentences were therefore incompatible with Article 3.

The High Court both in *Sanchez-Sanchez* and, shortly before, in *Hafeez v United States of America* [2020] EWHC 155, described *Trablesi* as an “unexplained departure” from the previous case law of the ECtHR, instead following *Harkins No2*. With permission to appeal to the Supreme Court refused, *Sanchez-Sanchez* appears before the Grand Chamber to resolve this discrepancy in approach and provide clarity to the UK courts. Specifically, the Applicant will argue that *Trablesi* formed no such departure from case law, but rather the Grand Chamber made a clear and unambiguous statement of the law in *Vinter,* in which the Court considered and modified the test in *Harkins No2*, and as such constitutes “clear and constant jurisprudence.”

Regarding the question of the applicability of European Convention law to non-signatory states, the Applicant will advance that *Vinter* grappled with the same question and found in favour of the Applicant. Further, the Convention is based on the UN Declaration of Human Rights and as such its principles ought not to be diluted. Of course there remains a margin of appreciation in removal cases but the fundamental essence of the convention should not be

derogated from. The UK Government take the opposing view and advance that European Convention standards cannot be imposed in the same way in removal cases, but that in any event the mechanisms in place comprise a sentence that is compatible with Article 3.

Both the legal and political implications of the case are significant with the potential for it to effect important shifts in the UK's approach to US extradition cases. Either way, the case ought to clarify the position in respect of irreducible life sentences in the extradition context once and for all.

Sian Priory practices in all areas of criminal and extradition law. She also accepts instructions in the areas of Public Law, Inquests & Inquiries as well as Regulatory & Professional Discipline.

David Josse Q.C. has been Head of Chambers at 5 St Andrew's Hill since 2015. He is a barrister specialising in extradition, human rights, international war crimes and serious crime, both nationally and internationally. David is ranked in The Legal 500 and Chambers and Partners as a silk in the field of extradition at the London Bar. He is Vice-Chair of the Bar Council International Committee.

Ben Keith is a leading specialist in Extradition and International Crime, as well as dealing with Immigration, Serious Fraud, and Public law. He has extensive experience of appellate proceedings before the Administrative and Divisional Courts, Criminal and Civil Court of Appeal as well as applications and appeals to the European Court of Human Rights (ECHR) and United Nations. Ben is ranked in The Legal 500 and Chambers and Partners in the field of extradition at the London Bar.