CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

INDEX

Abbreviations used in the index

ACHR (American Convention on Human Rights (1969))
AU (African Union)
BORA (Bill of Rights Act (New Zealand))
CAT (UN Committee against Torture)
CC (Criminal Code) (Chicago Convention on International Civil Aviation (1944))
CJA (Criminal Justice Act)
CoE (Council of Europe)
CRF (Canadian Charter of Rights and Freedoms)
DPCI (Directorate for Priority Crime Investigation (South Africa))
DSO (Directorate of Special Operations (South Africa))
ECHR (European Convention on Human Rights (1950))
ECST (European Convention on the Suppression of Terrorism (1977))
ECtHR (European Court of Human Rights)
FRY (Federal Republic of Yugoslavia)
GC (Genocide Convention (1948))
HKSAR (Hong Kong Special Administrative Region)
HRA (Human Rights Act (UK) 1998)
ICC (International Criminal Court) (Statute of the International Criminal Court)
ICCPR (International Covenant on Civil and Political Rights (1966))
ICJ (International Court of Justice)/(Statute of the International Court of Justice)
ICRC (International Committee of the Red Cross)
MOU (Memorandum of Understanding)
NPA (National Prosecuting Authority Act 1998 (South Africa))
OECD (Organization for European Cooperation and Development)
PCIJ (Statute of the Permanent Court of International Justice)
PRECCA (Prevention and Combating of Corrupt Activities Act 2004 (South Africa))
RC (Convention Relating to the Status of Refugees (1951))
ROC (Rules of Court)
SADC (Southern African Development Community)SAPS (South African Police Service Act 1995)
SFRY (Socialist Federal Republic of Yugoslavia)
SIA (State Immunity Act)
SIAC (UK Special Immigration Appeals Commission)
TC (Torture Convention (1984))
UNC (United Nations Charter)
UNCAC (UN Convention against Corruption (2003))
UNGA (UN General Assembly)
UNHCR (UN High Commissioner for Refugees)
UNSCR (UN Security Council resolution)
VCLT (Vienna Convention on the Law of Treaties (1969))

***Abdelrazik* (right of Canadian citizen to enter or return to Canada)**: *see also* Sanctions Committee (1267 Committee), right to fair hearing

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***Abdelrazik* (right of Canadian citizen to enter or return to Canada)** (*cont.*)
alleged complicity of Canadian government in detention by Sudanese authorities
burden/standard of proof 404-5
Court's evaluation of applicant's evidence 405-6
Court's evaluation of respondents' evidence 401-3
parties' arguments
applicant 400, 401
respondents 401-3
alleged complicity of Canadian government in torture by Sudanese authorities 406
alleged violation of right to enter Canada (CRF 6(1))
abortive flight options
Canadian flights from Khartoum 412
Canadian government efforts to secure Lufthansa flight 407-9
Etihad Airlines flight reservation (15 September 2008 and 3 April 2009) 412-13, 416
private charter flight 409-10
Sudanese offer to fly applicant to Canada 411-12
bad faith/motivation, relevance 399-400
burden/standard of proof 399
Court's finding 416, 425-6
evidence of Canadian authorities' wish/decision to refuse emergency passport 409-10, 412-13, 416
as cause of denial of entry into Canada 421-2
CRF 6(1) obligation 422-5
judicial review, right to 417-21
summary of assurances to provide emergency passport 438-43
parties' arguments
applicant 398-400
respondents 399
UNSCR 1267 travel ban, applicability to transit through foreign airspace 413-16
Court's judgment 429
factual background 378-9, 383-91
issue 398
legal background
Canadian Charter of Rights and Freedoms 392
UNSCR 1267 393-8
remedy and costs 426-8
costs 428
Court's supervision of implementation 428
provision of escort 428
UNSCR 1822 provision for exemption "where necessary for the fulfilment of a judicial process" 427-8
summary of decision and reasons 381-3
rule of law/separation of powers issues 382
UNSCR vs constitutional obligations 382
admissibility (ECtHR)
complaints not included in application 126
jurisprudence
Ahmad 295-6
Ölmez and Ölmez 295
new arguments/bases of jurisdiction 295-6

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

admissibility of evidence obtained by torture/confession
burden/standard of proof, "real risk" test 768, 771-5
ECHR 6 and 769
independent, impartial and conscientious examination of "real risk" (*El Haski*), application in *Othman* 769
admissibility of evidence obtained by torture/confession, jurisprudence: *see Othman* (Court of Appeal) ("real risk of flagrant denial of justice")
***Ahmad* (deportation to country where risk of torture/inhumane treatment) (ECtHR/conditions at ADX Florence)**: *see also Hamza* (UK extradition proceedings)
alleged breach of ECHR 3 (conditions at ADX Florence)
admissibility (fifth and sixth applicants' complaints) 285, 310
admissibility (fourth applicant) 295-6
Court's assessment
benchmark/threshold 291-2
derogation in time of emergency (ECHR 15), exclusion 291
general principles 291-2
mental health care 295
recreation and outdoor exercise in prison 294-5
solitary confinement 292-4
Court's findings
due process 296-7
mental health care 299
solitary confinement 297-9
parties' submissions (applicants (first, third, fifth and sixth)) 287-9
parties' submissions (applicants (fourth)) 289-90
third-party interveners 290-1
parties' submissions (government) 285-6
alleged breach of ECHR 3 (conditions at ADX Florence) (second applicant's claim), adjournment pending further submissions from the parties 309-10
alleged breach of ECHR 3 (life imprisonment/long-term imprisonment)
admissibility 299
Court's assessment
"grossly disproportionate" sentences 302-3, 305
legitimate penological purpose 305
risk of mandatory life imprisonment 303
Court's findings 305-6, 311
"grossly disproportionate" sentence 306
"real risk" test 306
parties' submissions
applicants 301-2
government 299-301
alleged breaches of ECHR (fifth and sixth applicants)
applicants' complaints
denial of right to effective remedy (ECHR 13) 307
forum non conveniens 307-8
insufficiency of diplomatic assurances (ECHR 3, 5, 6 and 8) 306
interference with family life (ECHR 8) 307
risk of denial of justice (ECHR 6(1)) 307
risk of pre-trial "special administrative measures" (ECHR 3, 6, 8 and 14) 307, 310

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Ahmad (*cont.*)
risk of suicide 307
Court's decision 310-11
factual background
UK extradition proceedings 228-37
first applicant 228, 230
second applicant 230
third applicant 230-1
fourth applicant 230-1
fifth and sixth applicants 233-7
US indictments 226-8
first and third applicants 226-7
second and fourth applicants 227-8
fifth and sixth applicants 228
procedure (ECtHR) 224-6
joinder of applications 276-7, 310
relevant domestic and international law on ECHR 3 and extradition
Canadian jurisprudence 242-3
relevant international law on non-refoulement, TC 3(1)/TC 16(2) 244
UK jurisprudence 238-42
UK–US extradition arrangements 237-8
relevant domestic and international law and practice on life imprisonment/long-term imprisonment
CoE Member State practice 269
CoE Report ("Actual/Real Life Sentences" (27 June 2007)) 269-70
European arrest warrant and surrender procedures (Framework Decision 2002/584/JHA) 270
"grossly disproportionate" sentences, Eighth Amendment jurisprudence 267-9
HKSAR 276
ICC 77 and 110 270
State practice
Belize 275
Canada 274
Germany 273-4
Mauritius 275-6
Namibia 276
South Africa 274-5
UK 270-2
US (evidence of applicants) 267
US (evidence of US Department of Justice) 264-7
relevant international law on *non-refoulement*
CoE Guidelines on Human Rights and the Fight Against Terrorism, XII (Asylum) and XIII (Extradition) 244
EU Charter 19(2) 245
ICCPR 7 243-4
relevant international materials on solitary confinement
CoE Guidelines on Human Rights and the Fight against Terrorism XI (detention) 260
European Committee for the Prevention of Torture, 21st General Report (10 November 2011) 261-2

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

European Prison Rules 260-1
Inter-American system 262-3
UN practice 263-4
relevant law and practice on detention at ADX Florence, evidence
applicants 251-6
due process 256-8
Eighth Amendment (cruel and unusual punishment) 256-8
government
declarations 245-50
Department of Justice letters 250-1
litigation challenging conditions 258-9
Air Navigation Convention (1919) (Paris Convention), "territory" 414
Amnesty International, reports, Tunisia 180-4, 199-200
Anti-Corruption Convention (2003) (UNCAC)
implementation in municipal law 658, 664, 686-8: *see also* Anti-Corruption Convention (2003) (UNCAC); South Africa, anti-corruption laws (including NPA and SAPS)
Legislative Guide (2006) 656-7, 678
preventive anti-corruption body or bodies (UNCAC 6), "necessary independence in accordance with the fundamental principles of its legal system" (UNCAC 6(2)) 671, 672
specialized authorities (UNCAC 36), independence "in accordance with the fundamental principles of its legal system" 678
anti-corruption measures
importance of 684-8
jurisprudence: *see also Glenister*
Kwatsha 688
Sadler 688
Salcedo 688
Shaik 688
South African Association of Personal Injury Lawyers 688
treaties and other international instruments relating to
AU Anti-Corruption Convention (2004) 686, 693
European Criminal Law Convention on Corruption (1999) 693-4
SADC Corruption Protocol (2001) 686, 687, 693
SADC Drugs Protocol (1996) 692
Specialised Anti-Corruption Institutions: Review of Models (2008) (OECD) 669-70, 674, 676-7, 693-4
***Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996)**
admissibility of request
compliance with *all* Article 61 requirements, need for 8-9, 28
as preliminary stage (ICJ 61(2)) 8
decision of the Court, declaration, separate and dissenting opinions
decision of the Court 28-9
Dimitrijević J (dissenting opinion) 46-63
Koroma J (separate opinion) 29
Mahiou J (separate opinion) 63-9
Rezek J (declaration) 45-60
Vereshchetin J (dissenting opinion) 33-45
factual background (developments in Yugoslavia, 1990–2002) 10

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Application of the Genocide Convention (*cont.*)
acceptance of compulsory jurisdiction (25 April 1999) 16-17
admission of FRY to UN membership 19-20
Dayton Agreement (1995) (including undertaking to comply with Genocide Convention) 16
declarations of independence 10-11
establishment of FRY (19 September 1992)
declaration of 11
notification to UN Secretary-General 11
summary of events between 19 September 1992 and 1 November 2000 14-18
treaty succession including UN Secretariat practice 14-16, 20
UN membership dues and rates of assessment
Bosnia and Herzegovina, Croatia, Macedonia and Slovenia 18
FRY 18-19
SFRY (UNGA Resolutions 43/223 and 46/221) 18
UNGA Resolution 47/1 (status of FRY) 12-18
UNSCR 777 (1992) 12, 14-18
judge ad hoc
appointment 6
Bosnia and Herzegovina arguments 10
FRY arguments 9-10
resignation 6
jurisdiction (GC IX) ("dispute relating to the interpretation, application or fulfilment")/as treaty in force between the parties, FRY reservation 20-5
new facts requirement (ICJ 61(1)) 9
erroneous interpretation as ground for revision 37-9
"unknown . . . to the party claiming revision", "not due to negligence" 42-4
"unknown . . . when the judgment was given" 26-8, 29, 39-42
uncertainty relating to FRY's UN membership 26-8, 29, 33-7, 45-69
parties' submissions (general)
Bosnia and Herzegovina 7
FRY (Application) 6
FRY (submissions) 7
procedural background 5-10
recapitulation of provisional measures proceedings 22-4
recapitulation of decision on counter-claims 25-6
recapitulation of judgment of 11 July 1996 24-5
arrest or detention, right to take proceedings to establish lawfulness (ECHR 5(4) and ECHR 6(1)) (judicial review/appeal)
jurisprudence
Kafkaris 126
Stafford 144-5
arrest warrant (including extradition procedure requirement for), European arrest warrant and surrender procedures (Framework Decision 2002/584/JHA) 111, 270
asylum (other than under RC (1951)), right of, in absence of treaty provision 194

Belize, life imprisonment/long-term imprisonment 275
Bosnia and Herzegovina: *see Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996)

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Canada
Charter of Rights and Freedoms (CRF)
breach, bad faith/motivation, relevance 399-400
remedy for (including *restitutio in integrum* principle) 426-8
Charter of Rights and Freedoms (CRF) by section
1 (rights and freedoms subject to reasonable limits prescribed by law)
"reasonable limits prescribed by law . . . demonstrably justified in a free and democratic society" 379 n. 7
text 430
6(1) (right to enter, remain in and leave Canada)
burden/standard of proof 399
text 379 n. 6, 430
6(2) (right of residence/pursuit of livelihood in any province of Canada), text 430
6(3) (laws or practices applicable to s 6(2) rights), text 430
6(4) (law, program or activity in relation to the socially or economically disadvantaged), text 430
7 (right to life, liberty and security/fundamental justice)
obligation of government to assist entry 422-5
SIA/State immunity and 372-4
12 (cruel and unusual punishment), gross disproportionality test 549-50
24(1) (enforcement of guaranteed rights and freedoms), text 430
24(2) (exclusion of evidence obtained in manner infringing Charter rights and freedoms), text 430
extradition in case of death penalty, assurances that death penalty will not be carried out
Burns 242-3
failure to seek, whether reasonable and justifiable in a free and democratic society 242-3
extradition, deportation or expulsion to country where risk of torture or inhuman or degrading treatment (including ECHR 3/ICCPR 7), benchmark/threshold, "shocking to the conscience" test 242-3
legislation, constitutionality of legislation as such and constitutionality of implementation distinguished 416-17
life imprisonment/long-term imprisonment 274
native title, nature, *Attorney-General for Quebec* v. *Attorney-General for Canada*
passport
issue of, as discretionary/prerogative matter 417
refusal/withdrawal (including grounds for), judicial review/justiciability 417-21
right to 422-5
Passport Order by section
10.1 (refusal of passport: grounds: national security of Canada or another country) 416
conformity with CRF 416-17
text 379 n. 5
text (extracts) 438
rule of law, separation of powers and 382
sanctions (Al-Qaida/Taliban), Security Council resolutions relating to, implementing legislation, Immigration and Refugee Protection Act 2001 414-15

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Canada (*cont.*)
Sanctions Committee (1267 Committee): *see also Abdelrazik* (right of Canadian citizen to enter or return to Canada); Sanctions Committee (1267 Committee), consequences of listing by; Sanctions Committee (1267 Committee), right to fair hearing
UN Al-Qaida and Taliban Regulations 2006 388
Security Council resolutions, compliance obligation vs CRF obligations 382
separation of powers, rule of law and 382
State Immunity Act 1980 as amended by section
3 (immunity from jurisdiction), text 372
4(1) (waiver by submission), text 372
5 (commercial activity exception), text 372
torture as, cruel and unusual punishment 571
torture, State immunity and, *Arar* 370-6
Chicago Convention (1944), phrases, "territory of a State" (CC 2) 414
compensation for breach of ICCPR (ICCPR 2(3)): *see also* effective remedy for human rights breaches, relevant considerations
discretionary nature 603
international practice 581-6, 602-11
measure 534-8, 600-13, 626
elements for inclusion 609-10, 611-12
object and purpose 586-92
parallel causes of action, relevance 534, 601-2, 626
public law breach of human right vs private law wrong 534, 601, 602-3, 608-9, 621
compulsory jurisdiction (Optional Clause) (PCIJ 36/ICJ 36(2)), acceptance and implementation, by, FRY 16-17
Council of Europe (CoE)
Guidelines on Human Rights and the Fight Against Terrorism (2002) 179-80, 217, 218
Resolutions, (76) 2 of 17 February 1976 (treatment of long-term prisoners/conditional release) 106-7, 738-9
cruel, inhuman or degrading treatment (TC 16), torture distinguished 522, 594
cruel and unusual treatment or punishment, classification as, torture 571
Cyprus, Republic of: *see also Kafkaris* (ECtHR)
Constitution 1960 by article
7(2) (deprivation of life: sentence of competent court in prescribed cases), text 101
53 (prerogative of mercy), text 89
53(4) (prerogative of mercy: responsibility for exercise of) 89, 120-1
112 (independent judicial officers), text 102
113 (role of Attorney-General) 102-3
144 (Supreme Constitutional Court), text 102-3
Criminal Code by section
29 (life imprisonment: court's discretion to impose shorter sentence) 88
203(1) (premeditated murder), text 88
203(2) (premeditated murder: life imprisonment) 88, 125-6, 132-4
text 88
habeas corpus proceedings, *Kafkaris* 83-7
life imprisonment
extracts from Ombudsman's report on the penitentiary system of Cyprus (26 May 2004) 103-4

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

"life imprisonment" 132-4
mandatory sentence/possibility of remission 120-1, 143-5
Prison Discipline Law by section
4 (regulations for prison discipline), text 89
9(1) (Remission of sentence for good conduct), text 89
11(1) (Release on licence of persons serving imprisonment for life), text 90
Prison (General) (Amending) Regulations of 1987 (Regulatory Act 76/87)
2 ("imprisonment for life") 91, 132-4
43 (remission of sentence) 91
Prison (General) Regulations of 1981 (Regulatory Act 18/81)
7 (release of a prisoner), text 90
94 (Remission of sentence for good conduct), text 90
96(c) (Calculation of remission for life prisoners), text 90
97 (Date of expiration of sentence), text 90
99 (Prisoners serving a life sentence), text 90
Prison Law 1996 (Law 62(I)/96) as amended by section
9(1) (release of prisoners), text 100
12 (remission of sentence), text 100
14 (release of prisoners under conditions), text 100-1

Dayton Agreement (Bosnia and Herzegovina) (1995), Genocide Convention (1948), accession to and 16
***de Boucherville* (mandatory death penalty/life sentence)**
Board's analysis and decision 476-8
legislation relating to death penalty/life sentence 467-9
jurisprudence 469-74
parties' arguments
appellant 474
government 475-6
procedural history, Supreme Court proceedings 470-1
death penalty, jurisprudence
Pratt 533-4
Reyes 741-2
Soering 742
death row as inhuman or degrading treatment/torture (municipal law/general), detention conditions and 556-7
deportation/expulsion of alien, procedural safeguards (ECHR Protocol VII 1), *Saadi* 207-9
deportation/expulsion/refusal of admission of alien, State's discretionary right of
jurisprudence
Abdulaziz, Cabales and Balkandali 194
Ahmed 194
Boujlifa 194
Vilvarajah 194
derogation in time of emergency (ECHR 15)
balance of interests between public interest and rights of individual 198
jurisprudence
Ahmad 291
Al-Adsani 195
CR v. *UK* 130

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

derogation in time of emergency (ECHR 15) (*cont.*)
Indelicato 195
Ireland v. *UK* 195
Kafkaris 130
Ramirez Sanchez 195
Saadi 195, 197-8
Selmouni 195
Shamayev 195, 197-8
SW v. *UK* 130
detainees' rights (ICCPR 10)
humane treatment and respect for inherent dignity (ICCPR 10(1)): *see also Taunoa* (conditions of detention/effective remedy)
Note: "inhumane" treatment of detainees may be considered under either ECHR 3/ICCPR7 or ICCPR 10(1). Index entries correspond to the usage in a particular case. Reference should therefore also be made to "inhuman or degrading treatment (ECHR 3/ICCPR 7), detention conditions as".
correspondence, freedom from arbitrary or unlawful interference with 510
interrelationship with inhumane or degrading treatment (ICCPR 7) 491, 518-22, 523, 555-7, 593, 595, 598-9, 614-15, 620-1
solitary confinement/detention incommunicado and: *see* solitary confinement/detention incommunicado as cruel, inhuman or degrading treatment (including ACHR 5, ICCPR 7 and ICCPR 10)
differential treatment, justification/grounds (ECHR 14)
interrelationship with other ECHR articles/non-autonomous/independent nature of obligation 137
jurisprudence
Abdulaziz, Cabales and Balkandali 137-8
Belgian Linguistic Case 137
Gaygusuz 137-8
GMB and KM v. *Switzerland* 137-8
Inze 137-8
Kafkaris 135-9
Karlheinz Schmidt 137
Kjeldsen 137
Rasmussen 137-8
Thlimmenos 137
Willis 137-8
margin of appreciation 137-8
"reasonable and objective" requirement 137-8
due process/procedural fairness (general considerations)
detention conditions 256-8, 296-7, 495-6, 512-14, 525, 528-9, 531, 542, 544
determination of risk of torture 462-5
natural justice 490, 492, 513-14, 525, 529-32, 537, 539-40, 573-4, 599, 624-5, 627

ECtHR Grand Chamber, referral to (ECHR 43), justification/procedure (ECHR 43(2)) 332
ECtHR, procedural matters, judicial economy in case of decision on one issue rendering consideration of other issues unnecessary 204, 207, 209

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

ECtHR Rules of Court (pre-1998)
22, 9(2) (termination of presidency) 79
54(2)(b) (notice of application to respondent Government) 79
Mamatkulov 196-7
ECtHR Rules of Court (1998)
24 (composition of Chamber) 79, 166
25(2) (gender balance of Court) 161
39 (interim measures) 196-7, 199, 225-6, 310, 311
41 (order of dealing with cases) 79, 165
42(1) (joinder of actions) 276-7
44(2) (third-party intervention) 166, 226
44(5) (third-party interventions: parties' replies) 226
52(1) (allocation of cases) 79, 165
54A(2)(b) (joinder of merits and admissibility: parties' submissions) 225, 226
59(1) (parties' observations) 226
59(3) (public hearing) 166
72 (relinquishment to Grand Chamber) 79, 166
74(2) (separate opinions) 143, 212
80 (request for revision) 332
81 (request for correction) 332
effective remedy before national authority, need for (ICCPR 2(3)) 531-8, 599-613
damages/compensation: *see* compensation for breach of ICCPR (ICCPR 2(3))
declaration of breach 532, 533, 599-600, 622-3
discretionary nature 601
inquiry into impugned behaviour 531-2, 574-6
effective remedy before national authority, need for (jurisprudence), *Taunoa*: *see* *Taunoa* (conditions of detention/effective remedy)
effective remedy for human rights breaches, jurisprudence
Anufrijeva 534 n. 184, 582, 604-5
Baigent's Case 489, 532-3, 577-81, 584, 586, 592, 600, 621-2
Dunlea 534, 536-7, 580-1, 584, 592, 601
Facts Concert 609
Fose 583-4, 587, 600, 602-3, 609
Greenfield 534 n. 184, 534-5, 582, 605-6
Hawley v. *Bapoo* 583
Link Technology 2000 Ltd 601
Maharaj 577
Manga 535-6, 579-80, 591-2, 626
Martin v. *Tauranga District Court* 579, 622
Mathew 536-7, 572, 582
Merson 534-5, 585-6, 607-8
Ramanoop 534-5, 584, 606-7
Saman v. *Leeladasa* 609
Udompun 536-7, 581, 600-1
Wilding 578, 609-10
effective remedy for human rights breaches, relevant considerations 531-8, 599-613
defendant's response to breach 601-2
deterrence 609, 611, 622-3

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

effective remedy for human rights breaches, relevant considerations (*cont.*)
discretionary nature of compensation award 601, 603
duration of breach 536-7, 622-3
importance of the right 600-2
"just satisfaction" (ECHR 41) principle 534-5, 603-6
nature of breached right 601-2
parallel causes of action, effect 534, 601-2, 626
private law and public law remedies distinguished 534, 601, 602-3, 608-9, 621
punishment 609
seriousness of breach 536-7, 600-2, 622-3
seriousness of consequences of breach 601-2, 622-3
"vindication"/protection of right 532, 534-5, 536-7, 538, 578, 581, 582, 583-4, 585-6, 587-8, 599-600, 601-11, 613, 621-3
compensation vs vindication 605-9, 610-11, 623
European Prison Rules (CoE Recommendation REC (2006)2) 110, 260-1
text (extracts) 260-1
extradition, prosecution in requested State/possibility of, effect on extradition process
Ahsan 362
Bermingham 361, 362
McKinnon 362
extradition, deportation or expulsion in case of death penalty, assurances that death penalty will not be carried out, State practice, Canada 242-3
extradition, deportation or expulsion to country where risk of breach of human rights including torture/inhumane treatment and "flagrant breach of justice" ("foreign cases"), jurisprudence
Ahmed v. *Austria* 194-5
Al-Moayad 196
Burns 242-3, 304
Chahal 195-7, 198, 199, 201, 212-13, 216, 727-8, 734-5, 737, 738, 750
Drozd and Janousek 727
Einhorn 745-6
Fatgan Katani 196
Ferras 243
Hilal 195-7
HLR 195-7
Jabari 194-5, 199
Latty 243
Mamatkulov and Askarov 195, 196-7
MM v. *Switzerland* 196
Müslim 196
N v. *Finland* 196
Nivette 739, 745
Prabakar: *see Prabakar* (non-refoulement (TC 3/RC 33))
Saadi 241, 734-5, 738, 750: *see also Saadi* (ECtHR)
Said 196
Salah Sheekh 194-5, 196, 216-17
Soering 194-5, 240-1, 734-5, 737, 738
Teshome Goraga Bonger 216-17
Ullah 726, 745
Venkadajalasarma 196-7
Vilvarajah 194-5, 196

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Wellington 238-42: *see also Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))
extradition, deportation or expulsion to country where risk of human rights breaches, assurances/measures to guarantee protection
evaluation obligation, right/obligation of ECtHR 201
possible examples, legislative provisions in requesting State/State of destination 201
extradition, deportation or expulsion to country where risk of torture or inhuman or degrading treatment (including ECHR 3/ICCPR 7/TC 3)
benchmark/threshold, "shocking to the conscience" test 242-3
burden/standard of proof 195-7, 199-201, 212-15
evaluation of evidence (international human rights reports) 199-200
"real risk"/"substantial grounds for believing" test (including TC 3(1)) 199, 768-70
due process/procedural fairness requirement 457-65
relevant factors 460-1
required elements 459-60
freedom from torture as fundamental right (TC 3) 458, 463
RC 33(1) (*non-refoulement*) compared 451-2
reason for expulsion, relevance/absolute nature of obligation, balance of interests between public interest and rights of individual, relevance 198, 215-18
extradition, deportation or expulsion to non-ECHR country where risk of breach of ECHR rights (including "foreign" cases), "grossly disproportionate" sentence 302-3, 305
extradition, judicial review/appeal/judicial responsibility, jurisprudence, *Bugdaycay* 458
extradition procedure
burden/standard of proof, prima facie case, *Hamzi* 333-42
expedition, need for 319
US–UK Guidelines for handling criminal cases with concurrent jurisdiction (18 January 2007) 238

family life, respect for (ECHR 8), fair hearing requirement (ECHR 6(1)), *Saadi* 204-7

General Assembly resolutions in number/date order
43/223 (SFRY assessment) 18
46/221 (SFRY assessment) 18
47/1 (status of FRY) 12-18
47/229 (non-participation of FRY in ECOSOC) 13-14
48/223 (Macedonia assessment) 18
49/19 B (FRY assessment) 18-19
52/15 A (FRY assessment) 18-19
General Comments (CAT), 1 (implementation of TC 3 in context of TC 22) 460
General Comments (UNHRC), 20 (ICCPR 7) 521, 522, 523-4, 526-7, 620
Genocide Convention (1948): *see also Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996)
parties to, Federal Republic of Yugoslavia (FRY) 20-5
reservations including in particular to GC IX (dispute settlement), jurisprudence, *Application of the Genocide Convention* 20-5

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Germany, Federal Republic (FRG), life imprisonment/long-term imprisonment (including ECHR 3/ICCPR 7 provisions) 273-4
Glenister
alleged failure by Parliament to facilitate public involvement in legislative process (Constitution 59(1) and 72(1)) 640-5
admissibility
joinder of National Assembly/National Council of Regions, need for 642
time-limits 641-2
burden/standard of proof 649
Court's findings 644
merits
in case of non-compliance with admissibility requirements 642
review of jurisprudence 642-3
alleged failure to establish independent anti-corruption unit 657-82, 688-711
amicus' arguments 658, 665
Constitution 7(2) obligations 665-8, 682
court's conclusions 677-82
definition and reasons for "independent" body 668-82
amicus' arguments 668-9
constitutional provisions as governing factor 670-4, 700-1
"full independence" distinguished 669-70
Specialised Anti-Corruption Institutions: Review of Models (2008) 668-82, 693-4
UNCAC 6(2) 671, 672
SAPS Ch 6A (DPCI) 671-82: *see also* South Africa, anti-corruption laws (including NPA and SAPS), SAPS Ch 6A (DPCI) by section
State's right to choose means of meeting anti-corruption obligations 657-8
UNCAC/international obligations 659-64, 690
binding/non-binding instruments 690
effect of legislative approval of UNCAC (Constitution 231(2)) 660-3, 690-2, 695-7
incorporation requirement (Constitution 231(4)) 658, 662-4, 686-8
alleged irrationality (Constitution 44(4)) of impugned laws (NPA/SAPS) 649-53
constitutional provisions (Constitution 44(4)) 649
fight against corruption and high-priority crimes as legitimate government objective 649-50
nature of "rationality" requirement 649
parties' arguments
applicant 650
respondents 650
political nature of decision, relevance 651-3
Khampepe Report, role 635-6, 650, 652
Polokwane Resolution, role 650, 651
rationality of replacement of DSO with the DPCI 650-3
alleged violation of Constitution 179 (prosecuting authority) 653-7
alleged breach of Constitution 179(2) and 179(4) 655-7
UNCAC Legislative Guide (2006) 656-7
alleged failure to secure concurrence of NDPP to disbandment of DSO (Constitution 179(5)) 654-5
alleged undermining of independence of NPA (Constitution 179(4)) 654
applicant's arguments 653-4

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

condonation applications
amicus' late filing of written submissions 648
application for leave to appeal 648
late filing of applicant's application for leave to appeal 645-7
non-compliance with requirements, effect 647
relevant factors 645
respondents' late filing of response to amicus' written submissions 648
costs 683
legislative background 635-7
limitation of rights (Constitution 36) 698-700
opinions
Moseneke DCJ and Cameron J (Froneman J, Nkabinde J and Skweyiya J concurring) 683-711
Nbcobo CJ (Brand AJ, Mogoeng and Yacoob J concurring) 634-83
Order 683, 711
procedural background 635
Constitutional Court's jurisdiction 639
High Court proceedings 637
parties' submissions
amicus curiae 638
applicant 638
respondents 638-9

***Hamza* (UK extradition proceedings)**: *see also Ahmad* (deportation to country where risk of torture/inhumane treatment) (ECtHR/conditions at ADX Florence)
alleged breach of ECHR 3 rights (extradition as unjust or onerous on grounds of claimant's mental condition) (Abu Hamza)
Abu Hamza's psychiatric history 346-9
allegations against Abu Hamza 344
application to stay extradition 345-6
Court's conclusions 349-50
ECtHR application/stay of extradition (ROC 39) 345
extradition proceedings 345
request for extradition 344
Secretary of State's decision 349
timeliness of complaint 349
UK trial 345
alleged breach of ECHR 3 (risk of suicide consequent on ADX Florence conditions) (Abdel Bary)
Court's conclusion 343-4
evidence of psychiatric condition 342-3
alleged breach of ECHR 8 (disproportionate interference with family and private life/refusal to prosecute in UK) (Babar Ahmad and Talha Ahsan)
Court's conclusion 362-3
private prosecution request 363-6
extradition proceedings (Babar Ahmad)
appeals/application to ECtHR 354-5
commencement 353-4
review of police papers 354
extradition proceedings (Talha Ahsan) 355
extradition hearing, appeals and application to ECtHR 356

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***Hamza* (UK extradition proceedings)** (*cont.*)
parties' submissions
claimants 359
UK/US governments 359-62
private prosecution, possibility of 357-8
request as abuse of process 358, 366-7
UK investigation including decision not to prosecute 352-3, 355, 356-7
US allegations 351-2
alleged ECtHR error in conclusions on ADX Florence conditions in relation to ECHR 3
appeal to Grand Chamber, refusal 329
claimants' submissions 321
Court's conclusions on
alleged error 330
compliance with ECtHR decision (HRA 2) 333
consequences of Grand Chamber refusal to allow referral (ECHR 43(2)) 332
ECtHR handling of evidence submitted by claimants 330-1
ECtHR refusal to accept further evidence from claimants 331-2
Court's finding 333
ECHR position on solitary confinement 321-3
ECtHR decision 327-9
evidence submitted by claimants 324-5
evidence submitted by UK government 323
evidence submitted by UK government (additional) and ECtHR questions 325-6
evidence submitted by UK government, claimants' response and ECtHR decision on response 327
alleged wrongful refusal to withdraw extradition order following submission of new evidence (Abdel Bary)
Court's conclusion 342
prima facie case, challenge to 339-42
alleged wrongful refusal to withdraw extradition order following submission of new evidence (Al Fawaz)
claimant's arguments 335-6
delisting of Al Faqih 337
inclusion of name on Consolidated List 336-7
Kherchtou debriefing 337-8
Court's conclusion 339
disclosure application 339
prima facie case, challenge to 333-9
statutory framework/test for exercise of discretion 334-5
claimants' challenges
Abdel Bary (prima facie case) 318
Abu Hamza (re-opening of statutory appeal) 318
Al Fawaz (conditions at ADX Florence as breach of ECHR 3) 318
Al Fawaz (Secretary of State's refusal to withdraw extradition order) 333-4
Babar Ahmad and Talha Ahsan 318
Watkins' private prosecution 319
Court's conclusion 366

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Court's observations (general)
claimants' long-running efforts to prevent extradition 319
consequences of refusal of stay of extradition or for judicial review 320
extradition procedures, need for expedition 319
finality of judicial proceedings principle 319-20
oral judgment, reasons for 320
statutory appeals, re-opening of appeal and judicial review, interrelationship 320
timely presentation of points for consideration 320
procedural background
Abu Hamza 316
Al Fawaz and Abdel Bary 315-16
Babar Ahmad 316-17
ECtHR proceedings 317-18
Talha Ahsan 317
Hong Kong Special Administrative Region (HKSAR)
deportation: *see* Immigration Ordinance by section *below*
due process/procedural fairness (general considerations), determination of risk of torture 462-5
Immigration Ordinance by section
20(1) (deportation following conviction for offence punishable with more than two years' imprisonment) 453-5
20(5) (deportation order: requirement to leave Hong Kong) 453-4
life imprisonment/long-term imprisonment 276
non-refoulement (RC 33)
jurisprudence: *see Prabakar* (*non-refoulement* (TC 3/RC 33))
TC 3 (*non-refoulement*) compared 451-2
non-refoulement to country of origin or any other country where risk of torture (TC 3)
China's "policy" on Torture Convention (1984) 448-9
China's report to CAT (1999) 450
due process/procedural fairness requirement 457-65
relevant factors 460-1
required elements 459-60
jurisprudence: *see Prabakar* (non-refoulement (TC 3/RC 33))
RC 33 (*non-refoulement*) compared 451-2
responsibility for determining risk/judicial review 458
reliance on UNHCR decision, sufficiency 458-9
refugee status, determination/verification
burden/standard of proof (UNHCR *Handbook*) 452-3
parallel application under RC and Torture Convention 461-2
Refugees Convention (1951), applicability in HKSAR law 452
treaties, extension/non-extension to, Refugees Convention (1951) 452
human dignity, right to (municipal law/general), UNHRC General Comment 20 (torture) 521
Human Rights Act 1998 (HRA), ECtHR compliance obligation (ECHR 46 [53 and 54])/"must take into account" (HRA 2(1)(a)), *Hamzi* 333
Human Rights Act 1998 (HRA) by section
8(3) (damages: just satisfaction basis) 603
8(4) (damages: applicability of ECtHR jurisprudence) 603

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

human rights legislation, breach
breaches of other legislation not amounting to 570-1
burden/standard of proof 561
Human Rights Watch reports, Tunisia 184-5, 199-200

ICCPR (1966)
applicability of higher than minimum standards 560
implementing legislation, need for: *see* New Zealand, Bill of Rights Act (BORA) 1990
ICJ judgment, request for revision (ICJ 61)
admissibility of request
compliance with *all* Article 61 requirements, need for 8-9, 28
as preliminary stage (ICJ 61(2)) 8
erroneous interpretation as ground for 37-9
new facts requirement (ICJ 61(1)) 9
"unknown . . . to the party claiming revision", "not due to negligence" 42-4
"unknown . . . when the judgment was given" 26-8, 29, 39-42
uncertainty relating to FRY's UN membership 26-8, 29, 33-7, 45-69
ICJ Rules of Court (1978 as variously amended)
99(2) 5
99(3) 6
inhuman or degrading treatment (ECHR 3/ICCPR 7)
benchmark/threshold 118-20, 121, 197, 291-2, 620-1
absolute vs relativist approach 239-41, 291, 725-8, 730, 750-1
as evolving standard 527, 531, 550-1, 552-4
derogation, exclusion 195, 197-8, 291
detention conditions as 291-2
cell conditions 508-9, 530-7, 540-1, 563-5, 616-17, 618
denigration of prisoners 510-11
deprivation of stimulation 512
failure to provide medical assistance/mental health care 295, 299, 541, 568-9, 616, 618
failure to provide rehabilitation programmes 511-12, 529, 540-1, 542, 565
failure to provide safeguards to ensure fair and safe treatment 512-14, 529
inadequate recreation and outdoor exercise facilities in prison 294-5, 509-10, 529, 542, 564, 565, 616, 618
strip-searching 511, 530-7, 542, 546, 565-8, 570, 571, 573, 576, 595-6, 616, 617-18
UN Standard Minimum Rules for the Treatment of Prisoners (1957/77) 501-2, 510, 514, 524, 560-1
factors of possible relevance
actual harm 528
duration of impugned treatment 492, 573, 594, 595-6, 618-19, 620-1
intention to inflict suffering 491, 515, 517-18, 597-8, 619-20
as fundamental/non-derogable right 520-1
"grossly disproportionate" sentence as: *see* life imprisonment/long-term imprisonment (including ECHR 3 provisions), "grossly disproportionate" sentences
"grossly disproportionate" sentence/"disproportionately severe" treatment as 515, 516-18, 519-20, 549-50, 558, 595-7, 729-30

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

"inhuman" and "degrading" distinguished 551
"inhuman" and "inhumane", distinguishability 515, 521-2
interrelationship with humane treatment (ICCPR 10(1)) 491, 518-22, 523, 555-7, 593, 595, 598-9, 614-15, 620-1
as positive duty/proactive obligation 552-4
torture, distinguishability 522, 594
inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence relating in particular to detention/detention conditions 294: *see also* life imprisonment/long-term imprisonment (including ECHR 3/ICCPR 7 provisions), jurisprudence
AB v. *Russia* 291-2
Achour 119, 121
Alver 292
Bamber 119
Battle v. *Anderson* 524
Campos 524, 556
Cenbauer 291-2
Ciorap 292
Csüllög 297-8
Dougoz 292
Dybeku 295
Einhorn 119, 147
Enea 291-2
Estelle v. *Gamble* 519-20, 524, 527
Fisher 519-20
Furman 519-20, 526-7
Gäfgen 291
Gladkiy 294
Gregg 519-20, 526-7
Higgs 496 n. 22, 519-20, 524, 526, 527
Hill 119, 147
Holt v. *Sarver* 524
Hoptowit v. *Ray* 524, 550-1
Hutto v. *Finney* 524, 527
Ireland v. *UK* 118, 291, 551-2
Kafkaris 118-20
Kalashnikov 525-6, 552-3
Konechny 526-7
Kotälla 119
Kudła 118-19, 291-2, 519-20, 526-7, 552
Labita 118, 291, 526-7, 552
McCann (Canadian Bill of Rights) 571
McFeeley 524, 552
Mandić and Jović 294-5
Miller 523, 525-7
Moiseyev 294-5
Napier 240, 561, 726
Nivette 119
Ostrovar 292
Pratt 526-7

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence (*cont.*)
Pugh v. *Locke* 524
Rhodes 525-7
Sawoniuk 119, 147
Skachkov 294
Slawomir Musiał 295
Smith (Edward Dewey) 523, 524-5, 526-7, 531, 559-60
Soering 120-2, 239-40
Stanford 119, 147
Thomas v. *Baptiste* 524, 525, 526-7
V v. *UK* 120-2
Valasinas 524
Van der Ven 524, 567-8
Wiles 519-20
Wilson 525-6, 527, 550-1
Wynne 119, 147
Yevgeniy Alekseyenko 294
inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence relating in particular to qualification as/threshold
Becciev 552-3, 597-8
Deidrick 556-7
DeShaney 550
Edwards 556-7, 618-19
Everitt 568
Farmer v. *Brennan* 550-1
Furman v. *Georgia* 519
Goltz 549-50
Griffin 557
Helling v. *McKinney* 550
Hurtado 552-3
Jalloh 197
Jordan v. *Gardner* 550-1
Kafkaris 241, 734, 739
dissenting opinion 145-9, 159-60
Keenan 520-1, 551-3
Kudła 551-2
Labita 197, 598, 620
Limbuela 750-1
Luxton 549-50
Mouisel 197
Patchette v. *Nix* 550
Peers 551-2
Price 197
Puli'uvea 559-60
R v. *P* 559-60
Raninen 552
Reyes 519
Saadi 197, 751, 752
Selmouni 552-4
Sevtap Veznedaroglu 598

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Shaw 556-7
Spain v. *Procunier* 519, 524, 525-6, 527, 550
Toussaint v. *McCarthy* 550
Trop 550
Wellington 239-41
Wiles 549-50
interim measures (ECtHR) (ROC 39), non-removal of applicant out of jurisdiction until completion of case 196-7
Italy
Criminal Procedure Code 1988 by article, 593(2) (appeal against acquittal: new evidence requirement) 170
deportation to country where risk of torture or inhuman or degrading treatment (including ECHR 3/ICCPR 7/TC 3): *see Saadi* (ECtHR)

judge ad hoc (ICJ 31(2) and (3))/PCIJ 31 and ROC 71
appointment, *Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996) 6
replacement following resignation, *Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996) 6
judicial economy, ECtHR 204, 207, 209
just satisfaction obligation (ECHR 41 [50])
default interest 142, 211
instruments of, finding of breach 139-40, 210
requirements
attribution 210
causal link 141, 210
just satisfaction obligation (ECHR 41 [50]), costs and expenses
"actually, necessarily and reasonably incurred" 210
legal costs
domestic costs 141
ECtHR proceedings 141, 210
just satisfaction obligation (ECHR 41 [50]), jurisprudence, *Kafkaris* 139-42

***Kafkaris* (ECtHR)**
alleged violation of ECHR 3 (punitive nature of life detention/reversal of legitimate expectations for release)
Court's assessment
application of general principles to *Kafkaris* 120-2
compatibility of life imprisonment with ECHR 3, general principles 118-20
early release policy as matter within Member State competence 121, 134-5, 150-2
legitimate expectations of early release 121
mandatory sentence/possibility of remission 120-1, 241
Court's finding 125-6
dissenting opinion 159-60
mandatory sentence/possibility of remission 120-1, 143-5
parties' arguments
applicant 113-15
government 115-18

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***Kafkaris* (ECtHR)** (*cont.*)
alleged violation of ECHR 5(1) (lawful detention after conviction by a competent court)
Court's assessment
application of general principles to *Kafkaris* 125-6
lawfulness of detention, general principles 124-5
Court's finding 125
dissenting opinion 160
parties' arguments
applicant 122
government 123-4
alleged violation of ECHR 5(4) (arrest or detention, right to take proceedings to establish lawfulness: delays)
admissibility 126, 144-5
parties' arguments, government 126
alleged violation of ECHR 7 (*nullum crimen nulla poena sine lege*/non-retroactivity): *see also nullum crimen nulla poena sine lege*/non-retroactivity (ECHR 7)
Court's assessment
application of general principles to *Kafkaris* 132-5
general principles 130-2
legal certainty/foreseeability 130-1, 134-5, 152-4
"life imprisonment" 132-4
retroactivity of Cypriot law 134-5
Court's findings 135
dissenting opinion 157-9
parties' submissions
applicant 127
government 127-9
alleged violation of ECHR 14 (differential treatment/margin of appreciation): *see also* differential treatment, justification/grounds (ECHR 14)
Court's assessment
application of general principles to *Kafkaris* 138-9
general principles 137-8
Court's finding 139
dissenting opinion 160-1
parties' arguments
applicant 135
government 136-7
applicant's complaints
alleged violation of ECHR 3 112-13
alleged violation of ECHR 5(1)(a) 122
alleged violation of ECHR 5(4) (supplementary complaint) 126
alleged violation of ECHR 7 126-7
alleged violation of ECHR 14 135
decisions and opinions
Borrego Borrego J (partly dissenting) 154-61
Bratza J (concurring) 143-5
Court's decision 143
Loucaides and Jočienė JJ (partly dissenting) 149-54

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Tulkens, Cabral Barreto, Fura-Sandström, Spielmann and Jebens JJ (partly dissenting) 145-9
factual background (general summary) 71-2
just satisfaction (ECHR 41)
compensation for non-pecuniary damage 139-40
costs and expenses 140-1
default interest 142
procedure (ECtHR) 78-80
proceedings in domestic courts
Assize Court 80-3
habeas corpus proceedings (Supreme Court) (appeal proceedings) 85-7
habeas corpus proceedings (Supreme Court) (first instance) 83-5
relevant domestic law and practice
constitutional provisions relating to
Attorney-General's status and role 102-3
fundamental rights and liberties 101
Supreme Constitutional Court 101-2
life imprisonment
CC 29 88
CC 203(1) 88
CC 203(2) 88
extracts from Ombudsman's report on the penitentiary system of Cyprus (26 May 2004) 103-4
Politis 88
release of prisoners
Constitution 53 89
domestic jurisprudence and practice 91-100
operation of Regulations of 1981 and 1987 104-5
Prison Discipline Law (Cap. 286) 89-90
Prison (General) (Amending) Regulations 1987 (Regulatory Act 76/87) 91
Prison Law 1996 (Law 62(I)/96) as amended 100-1
relevant international materials
CoE Commissioner for Human Rights' reports
DH 2004 2 (12 February 2004) 110
DH 2006 12 (Cyprus (2003–5)) 110-11
CoE Recommendation R(99)(22) of 30 September 1999 (prison overcrowding) 107
CoE Recommendation REC (2003)22 of 24 September 2003 (conditional release of prisoners) 107-8
CoE Recommendation REC (2003)22 of 24 September 2003 (conditional release of prisoners) (Appendix)
discretionary release 109
general principles 108
mandatory release system 109
procedural safeguards 109-10
CoE Recommendation REC (2006)2 of 11 January 2006 (European Prison Rules), objective of regime for sentenced prisoners 110
CoE Resolution (76) 2 of 17 February 1976 (treatment of long-term prisoners/conditional release) 106-7

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***Kafkaris* (ECtHR)** (*cont.*)
European arrest warrant and surrender procedures (Framework Decision 2002/584/JHA) 111
European Convention on the Suppression of Terrorism (1977) (ECST 21(3): extradition obligations) 105-6
ICC Statute
penalties (ICC 77) 111-12
reduction of sentence (ICC 110) 112

legislation, constitutionality, constitutionality of legislation as such and constitutionality of implementation distinguished 416-17
legislation, interpretation, conformity with international obligations, in case of conflict [with customary international law], constitutional provision for 662, 665-6, 690-1
liberty and security of person, right to (ECHR 5), exceptions
"in accordance with procedure prescribed by law" (ECHR 5(1)) requirement/ "lawful detention"
jurisprudence
Bozano 124
Kafkaris 122-6
Stafford 124
Van Droogenbroeck 124
Weeks 124
Winterwerp 124
lawfulness under domestic law 124-5
compliance with Convention requirements 124
lawful detention following conviction by a competent court (ECHR 5(1)(a)) 122-6, 160
life imprisonment/long-term imprisonment (including ECHR 3/ICCPR 7 provisions): *see also Kafkaris* (ECtHR)
CoE Resolution (76) 2 of 17 February 1976 (treatment of long-term prisoners/ conditional release) 106-7, 738-9
critical date for determination of violation of ECHR 3 749-50
early release policy as matter within Member State competence 121, 134-5, 150-2
"grossly disproportionate" sentences 273-4, 302-3, 305, 729-30, 739-41: *see also* inhuman or degrading treatment (ECHR 3/ICCPR 7), "grossly disproportionate" sentence as deportation to country where risk of as breach
Eighth Amendment 267-9, 519-20
as inhuman or degrading treatment (ECHR 3) 118-20, 145-9, 159-60, 242, 273-4, 720-4, 734-41, 748
legitimate expectations of early release 121
legitimate penological purpose requirement 305
"life imprisonment"/reducibility 132-4, 746-8
mandatory sentence/possibility of remission 120-1, 143-5, 303, 720-4, 742
CoE Report ("Actual/Real Life Sentences" (27 June 2007)) 269-70
mandatory death sentence distinguished 749-50
reducibility de jure vs reducibility de facto 728-9, 740-1
State practice
Belize 275

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Canada 274
CoE Member States 269
Germany 273-4
HKSAR 276
Mauritius 275-6
Namibia 276
South Africa 274-5
UK 270-2
USA 264-7
life imprisonment/long-term imprisonment (including ECHR 3/ICCPR 7 provisions), jurisprudence: *see also Ahmad* (deportation to country where risk of torture/inhumane treatment) (ECtHR/conditions at ADX Florence); inhuman or degrading treatment (ECHR 3/ICCPR 7), jurisprudence relating in particular to detention/detention conditions; *Kafkaris* (ECtHR); *Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))
Anderson (UK) 271, 749-50
Bieber 271-2, 303-4, 723, 746-8, 749
Burns 304
Coker 268
de Boucherville 275-6, 304, 467-78, 721-2, 739, 743-4, 749: *see also de Boucherville* (mandatory death penalty/life sentence)
Dodo 274
Einhorn 739, 745-6
Ewing 268
FRG Constitutional Court decision of 16 January 2010 ("aggravated life imprisonment until death") 273
Graham 267-8
Harmelin 268
Hindley 271
Hussain 304
Hutto v. *Davis* 268
Iorgov 305
Jeetun 469-70, 471-2
Kafkaris 305, 476-7, 722-3, 728-9, 744-6, 747-8
Latimer 274, 303
Lau Cheong 276
Léger 305, 739, 746
Lichniak 270-1, 475-6, 729-30, 739, 743-4
Life Imprisonment case (FRG) 273
Likuwa 475
Luxton 274
Niemand 274-5
Philibert 276, 472-4, 475, 478
Reyes 275, 304, 519-20, 729-30
Roper v. *Simmons* 268
Rummell v. *Estelle* 268
Smith (Edward Dewey) 274, 475, 519-20, 549-50, 728, 729-30
Solem 268
Tcoeib 276

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

life imprisonment/long-term imprisonment (*cont.*)
Vries 475
War Criminals case (FRG) 273
Wellington 303-4, 475: *see also Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))
Woodson 741, 749

Mauritius
Constitution 1968 by section
7(1) (torture or inhuman treatment) 473
10(1) (fair hearing) 473
17(2) (protection orders in absence of alternative remedy) 477
Criminal Code by section
221(1) (murder: mandatory death sentence) (prior to Abolition of Death Penalty Act 1995) 467-8
amendment (Criminal Procedure (Amendment) Act 2007) 468-9
amendment/repeal (Abolition of Death Penalty Act 1995) 468
Criminal Procedure (Amendment) Act 2007 by section
4(1)(b)(i) (life imprisonment/fixed term) 468-9
5 (transitional provisions) 468-9
Death Penalty, Abolition Act 1995 by section
2(1) (abolition of death penalty) 468
2(2) (penal servitude for life as substitute for death penalty) 468
2(3) (unexecuted death sentence: deemed sentence to penal servitude for life) 468
5(1) (amendment/repeal of CC 222) 468
finality of judgment/*functus officio* principle and 473, 477-8
life imprisonment/long-term imprisonment 275-6, 467-78

Namibia, life imprisonment/long-term imprisonment 276
nationals, right of entry/re-entry/residence/abode, jurisprudence, *Cotroni/El Zein* 392
natural justice, detention conditions: *see Taunoa* (conditions of detention/effective remedy), alleged breach of BORA 27(1) (natural justice)
New Zealand
Bill of Rights Act (BORA) 1990
breach, burden/standard of proof 561
damages/compensation for breach, measure 534-8
as implementation of ICCPR 500-2, 555
applicability of higher than minimum standards 560
reports to UN 500-2
Bill of Rights Act (BORA) 1990 by section
9 (right not to be subjected to torture or cruel treatment) 522-31: *see also* detention conditions *below*
actual harm, relevance 528
"cruel" and "disproportionately severe", distinguishability 523, 594-5
"disproportionately severe" ("grossly disproportionate") 515, 516-18, 519-20, 528-31, 558, 595-7
effective remedy for breach 492-3, 599-613
as fundamental/non-derogable right 520-1

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

as generally recognized principle in municipal law and human rights treaty practice 518-21, 549-60, 593
intention to inflict suffering, relevance 491, 515, 517-18, 531, 597-8, 619-20
interrelationship with BORA 23(5) 491, 518-22, 523, 555-7, 593, 595, 598-9, 614-15, 620-1
text 480 n. 4, 518
"torture" and "cruel, degrading or disproportionately severe treatment" distinguished 522, 594
23(5) (treatment of persons deprived of liberty with humanity and respect for human dignity), text 480 n. 5, 518, 539, 544-5
27(1) (right to natural justice) 490, 492, 513-14, 525, 529-32, 537, 539-40, 573-4, 599, 624-5, 627
text 481 n. 9, 539 n. 202, 624
Crimes Act 1961 by section, 17 (solitary confinement: judicial powers relating to) 561-2
detention conditions
BMR (Behaviour Management Regime)
administrative segregation/solitary confinement under (compliance with Penal Institutions Act s 7(1A)) 493, 494, 495-7, 502-6, 523-4, 530, 545, 561-3, 616-17
as breach of BORA 9/ICCPR 7 489, 491-2, 500, 514-18, 528-31, 546-9, 558-73, 593-9, 614-21
as breach of Penal Institutions Act 1954 494, 500
cell conditions (Reg. 50) 508-9, 530-7, 540-1, 563-5, 616-17, 618
denigration of prisoners 510-11
deprivation of stimulation 512
description and purpose 494-7, 540-1
due process/procedural fairness 495-6, 512-14, 525, 528-9, 531, 542, 544
fair and safe treatment (Reg. 149) 512-14
medical supervision (Reg. 149(4)) 514, 516, 541, 568-9, 616, 618
minimum entitlements (Reg. 42) 507
operation of system 497-9, 506-18
physical exercise entitlement (Reg. 49) 509-10, 529, 542, 564, 565, 616, 618
rehabilitation programmes 511-12, 529, 540-1, 542, 565
restrictions on telephone use 510
strip-searching 511, 530-7, 542, 546, 565-8, 570, 571, 573, 576, 595-6, 616, 617-18
Corrections Act 2004 493, 546
incorporation of UN Standard Minimum Rules for the Treatment of Prisoners 560-1
Penal Institutions Act 1954, s 7(1A) (administrative segregation): *see* administrative segregation/solitary confinement under (compliance with Penal Institutions Act s 7(1A)) *above*
Penal Institutions Regulations 2000 493
Reg. 155 (treatment of confined inmates) 506
summary of provisions and comparison with 1961 Regulations 493 n. 13
UN Standard Minimum Rules for the Treatment of Prisoners (1957/77) 501-2, 510, 514, 524, 560-1

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***non-refoulement* (RC 33)**, TC 3 (*non-refoulement*) compared 451-2
***nullum crimen nulla poena sine lege*/non-retroactivity (ECHR 7)**: *see also Kafkaris* (ECtHR), alleged violation of ECHR 7 (*nullum crimen nulla poena sine lege*/non-retroactivity)
construction of law to accused's detriment, avoidance 130
derogation (ECHR 15), exclusion 130
"law" 130
legal certainty/foreseeability and 130-1, 134-5, 152-4, 157-9
"penalty" 131-2
rule of law and 130-1
***nullum crimen nulla poena sine lege*/non-retroactivity, jurisprudence**
Achour 130-1, 134-5
Cantoni 130-1
Casado Coca 130
Coëme 130-1
De Wilde, Ooms and Versyp 130
Grava 131-2, 151
Hogben 131-2, 150-1
Hosein 131-2
Jamil 131-2
Kafkaris 126-35, 149-54
Kokkinakis 130, 131
Kruslin 130
Leyla Şahin 130
Streletz, Kessler and Krenz 131
Sunday Times Case 130
SW v. *UK* 131
Uttley 131-2
Welch 131-2

OECD (general)
Specialised Anti-Corruption Institutions: Review of Models (2008) 669-70, 674, 676-7, 693-4
as subsequent practice in application of treaty (VCLT 31(3)(b)) 693
***Othman* (Court of Appeal) ("real risk of flagrant denial of justice")**
Court's overall conclusion 775-6
first ground of appeal (burden/standard of proof) 768-71
admissibility of evidence (*El Haski* test) 769
challenge to SIAC's assessment of the facts and application of the law distinguished 770-1, 776
"real risk" test 768-70
procedural background 758
ECtHR judgment ("flagrant denial of justice" test) 760-2
MOU (10 August 2005) 760
SIAC decision under appeal 763-8
scope of appeal 758-9, 770-1, 776
second ground of appeal (SIAC's failure to consider risk "in the round") 768, 771-5

***pacta sunt servanda*/good faith observance of treaties (VCLT 26)**, choice of means 667-8

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

passport
issue of, as discretionary/prerogative matter 417
jurisprudence, *Abdelrazik*: *see also Abdelrazik* (right of Canadian citizen to enter or return to Canada), alleged violation of right to enter Canada (CRF 6(1))
refusal/withdrawal (including grounds for)
judicial review/justiciability 417-21
national security 416: *see also* Canada, Passport Order by section, 10.1 (refusal of passport: grounds: national security of Canada or another country)
right to 422-5
***Prabakar* (*non-refoulement* (TC 3/RC 33))**
factual background 444-6, 453-7
conviction 453
deportation decision 453-5
decision not to rescind 457
recognition as refugee
agreement to 456-7
request for 455-6
legal background
China's "policy" on Torture Convention (1984) ("policy"), obligations of HKSAR Secretary for Security 448-9
China's report to CAT (1999) (extract) 450
deportation powers 453-4
RC 33 450-1
RC 33 and TC 3 compared 451-2
TC 3 449-50
UNHCR *Handbook* 452-3
UNHCR, role 452
opinions
Bokhary PJ 462-5
Li CJ 448-62
procedural matters
costs 462
judicial review proceedings/applicant's resettlement in Canada 457
leave to appeal 457
refugee status, determination/verification 457-65
burden/standard of proof (UNHCR *Handbook*), refugee status, determination/verification 452-3
parallel application under RC and Torture Convention 461-2
relevant factors 460-1
reliance on UNHCR's decision on risk of torture, sufficiency 458-9
standards of fairness in applying "policy", required elements 459-60
prison rules: *see* European Prison Rules (CoE Recommendation REC (2006)2); UN Standard Minimum Rules for the Treatment of Prisoners (1957/77)
prisoners: *see* European Prison Rules (CoE Recommendation REC (2006)2); *Kafkaris* (ECtHR)

refugee status, determination/verification
burden/standard of proof (UNHCR *Handbook*) 452-3
parallel application under RC and Torture Convention 461-2

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Refugees Convention (1951), *non-refoulement* (RC 33): *see non-refoulement* (RC 33)
Refugees Convention (1951), applicability/accession to, Hong Kong (HKSAR) 452
rule of law, separation of powers and 382, 698-9

***Saadi* (ECtHR)**
alleged breach of ECHR 3 (deportation to country where risk of torture or inhuman or degrading treatment)
Court's assessment
application of general principles to *Saadi* 197-201
balance of interests between public interest and rights of individual, relevance 198, 215-18
benchmark/threshold 197
burden/standard of proof 195-7, 199-201, 212-15
derogation in time of emergency (ECHR 15), exclusion 195, 197-8
diplomatic assurances 201
diplomatic assurances, Court's obligation to investigate 201
evaluation of evidence 199-200
inhumane or degrading treatment and torture distinguished 197
responsibility of Contracting States in the event of expulsion 194-5
Court's findings 200-1
parties' arguments
government 189-92
third-party intervener (UK) 192-4
alleged violation of ECHR 6(1) (fair hearing by an independent and impartial tribunal) ("flagrant denial of justice" test)
Court's assessment and finding (judicial economy) 204
parties' arguments
applicant 202-3
government 203-4
alleged violation of ECHR 8 (family and private life)
Court's assessment and finding (judicial economy) 207
parties' arguments
applicant 205-6
government 206
alleged violation of ECHR Protocol VII 1 (procedural safeguards)
Court's assessment and finding (judicial economy) 209
parties' arguments
applicant 208
government 208-9
applicant's complaints
alleged breach of ECHR 3 165
alleged breach of ECHR 6(1) 202
alleged breach of ECHR 8 204-5
alleged breach of ECHR Protocol VII 1 207
decisions and opinions
Court's decision 211-12
Myjer and Zagrebelsky JJ (concurring) 215-18
Zupančič J (concurring) 212-15

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

just satisfaction (ECHR 41) 209-12
compensation for non-pecuniary damage 210
costs and expenses 210
default interest 211
procedure (ECtHR) 165-6
proceedings (domestic)
applicant's family situation 176
criminal proceedings (Italy) 167-70
deportation order 171-4
stay (ROC 39) 172
request for diplomatic assurances 174-6
request for residence permit 173
relevant domestic law
Italy (appeals against deportation order) 176-7
Tunisia (Code of Criminal Procedure (reopening of trial conducted in absentia)) 177-8
relevant international materials
Amnesty International Report (2006) 180-4, 199-200
Association internationale de soutien aux prisonniers politiques report 187-8
EU–Tunisia Association Agreement (1995) 178-9
Human Rights Watch Report (2007) 184-5, 199-200
ICRC activities 185-6, 199-200
Italy–Tunisia Cooperation Agreement (2003) 178
Refugees Convention (1951) 179
US State Department Report on human rights in Tunisia (2006) 186-7, 199-200
sanctions (Al-Qaida/Taliban), Security Council resolutions relating to
1333 (2000) 393
1455 (2003) 393
1526 (2004) 393
1617 (2005) 378 n. 3, 393
text (para. 2) 380 n. 8
1735 (2006) (Sanctions Committee: list/delisting) 393
1822 (2008) 393
asset freeze (para. 1(a)) 397
"associated with" (para. 2) 394
summary of provisions 396-8
text 431-4
travel ban (para. 1(b)): *see* Sanctions Committee (1267 Committee), consequences of listing by, travel ban (UNSCR 1822, para. 1(b)) (obligation to prevent the entry into or transit through their territories)
implementing legislation 388, 414-15
Sanctions Committee (1267 Committee), consequences of listing by
implementing legislation 388
travel ban (UNSCR 1822, para. 1(b)) (obligation to prevent the entry into or transit through their territories)
air space as "territory" 413-16
Air Navigation Convention (1919) 414
Chicago Civil Aviation Convention (1944) 414

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Sanctions Committee (1267 Committee), consequences of listing by (*cont.*)
"Travel Ban: Explanation of Terms" (1267 Committee) 415-16
text 436-8
application for exemption from entry or transit ban, requirements 397-8
"except where necessary for the fulfilment of a judicial process" 427-8
exemptions (text) 434-5
text 397
Sanctions Committee (1267 Committee), right to fair hearing: *see also Abdelrazik* (right of Canadian citizen to enter or return to Canada)
amendments to procedures 395-6
mechanism for re-examination of individual cases, Guidelines for conduct of Sanctions Committee's work 395-6
reasons for inclusion on list, right to information relating to 395
Security Council *Update Report*, No 4, 21 April 2008 396
Targeted Sanctions and Due Process (2006) 394-5
Security Council resolutions, as international legally binding obligation/compliance obligation (UNC 25), constitutional obligations and 382
Security Council resolutions by number and year
777 (1992) (Yugoslavia) 14-18, 45-6
text 12
separation of powers, rule of law and 382, 698-9
solitary confinement/detention incommunicado as cruel, inhuman or degrading treatment (including ACHR 5, ICCPR 7 and ICCPR 10) 292-4, 523-4
administrative segregation, legitimacy 257, 493, 494, 502-6, 530, 545, 561-3, 616-17
CAT recommendations 263
1991 General Report 505-6
5 August 2011 264
UN Special Rapporteur for Torture's Interim Reports, 28 July 2008 263-4
European Committee for the Prevention of Torture, 21st General Report (10 November 2011) 261-2, 292
jurisprudence
AB v. *Russia* 292, 293
Ahmad 297-9
Alboreo 292-3
Baader and Raspe 553
Campos 263
Csüllög 293, 297-8
Dickson 297-8
Hosie 553
Hutto v. *Finney* 523-4
Iorgov 292
Keenan 523-4
Khider 293
McFeeley 553
Madonia 292-3
Manera Johnson 557
Messina 292-3
Montero Aranguren 262-3
Öcalan 292-3

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Onoufriou 293-4
Ramirez Sanchez 292-4, 298-9
Rasch 553
Rezaq 298-9
Rohde 293, 526, 553-4, 562
Rosario Congo 262
Taunoa: *see Taunoa* (conditions of detention/effective remedy)
Thomas v. *Baptiste* 523-4
Van der Ven 292
South Africa
anti-corruption laws (including NPA and SAPS): *see also Glenister*
effective mechanisms
independent body as 657-82
State's right to choose 657-8
"independent" anti-corruption body, definition and relevant factors 668-82, 703
accountability and oversight by Ministerial Committee 674, 705-8, 711
accountability and oversight by parliamentary committee 677, 708-9
appearance of independence 699-700
complaints mechanism 680, 703-4, 710
constitutional provisions as governing factor 670-4, 700-1
"full independence" distinguished 669-70
judicial independence distinguished 671
oath of office 702
safeguards in relation to DPCI structure and appointments 675, 699, 700-1
security of tenure and remuneration 701, 711
Specialised Anti-Corruption Institutions: Review of Models (2008) (OECD) 669-70, 674, 676-7, 693-4
UNCAC 6(2) 671, 672
"independent" anti-corruption body, obligation to establish and maintain 688
interrelationship between Constitution and international obligations 690
NPA by section (text)
20 654 n. 58
32(1)(a) 654 n. 58
32(2)(a) 702
NPA and SAPS provisions compared 704
PRECCA
as incorporation of UNCAC vs recognition of principles 658, 664, 686-8
preamble (including text) 686-8
SAPS Ch 4 (Commissioners) by section, 7(2) (renewability of appointment of SAPS National Commissioner) 703
SAPS Ch 6A (DPCI) by section 671-82
17B (independence of DPCI) 674-6, 677-82
17B(b)(ii) (independence of DPCI, obligation to ensure) 690, 707, 710-11
17C(2)(a) (appointment of DPCI head) 702
17C(2)(b) (appointment of DPCI members) 702
17C(2)(c) (DPCI legal officers) 702
17C(2)(d) (DPCI seconded officials) 702
17C(3) (report to Parliament on appointment of DPCI head) 702
17D (text) 705 n. 90
17D(1)(a) (responsibility for deciding on priority offences) 675-6

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

South Africa (*cont.*)
17D(1)(b) (responsibility for deciding on priority offences: policy guidelines) 675-6
17D(3) (designation of Director of Public Prosecutions to investigate national priority offence) 676-7
17F(4) (dedicated component of prosecutors) 676-7, 681, 709
17H (administration and financing of DPCI) 674, 675
17K (parliamentary oversight) 677, 708-9
17K(4) (policy guidelines: approval by Parliament) 675-6, 677
17L(1) (investigation of complaints by retired judge) 680, 703-4, 710
17L(4)(b) ("complaints") 680, 703-4, 710
17L(5) (judge's right to investigate or refer to another investigatory body) 710
17L(7) (right of judge to request information) 710
17L(10) (complaints relating to investigations) 680
34 (security of tenure) 702-3
67 (obstruction of member of police force) 680
171 (coordination by Cabinet) 704
173 (guidelines for Ministerial Committee supervision) (including text) 706-7
treaties and international instruments binding on South Africa
AU Anti-Corruption Convention (2004) 686, 693
SADC Corruption Protocol (2001) 686, 687, 693
SADC Drugs Protocol (2001) 692
UNCAC, *Legislative Guide* (2006) 656-7, 678
Constitution Act 108 of 1996, Chapter 1 (Founding Provisions) by section, 1(c) (supremacy of the Constitution and rule of law), separation of powers and 698-9
Constitution Act 108 of 1996 (including amendments), Chapter 2 (Bill of Rights) by section
7(2) (obligation to respect, protect, promote and fulfil Bill of Rights) 682, 701
choice of means 695
international law obligations, effect 665-8, 690
7(2) (obligation to respect, protect, promote and fulfil Bill of Rights), jurisprudence
Carmichele 695
Rail Commuters Action Group 695
8(1) (application to State organs), s 7(2) obligations and 695
36(1) (reasonable and just restrictions based on human dignity, equality and freedom) 698-700
37(4)(b)(i) (derogation: consistency with international law requirement) 662
39(1)(b) (interpretation: "must consider international law") 662, 665-6, 690-1, 695-6, 698
Constitution Act 108 of 1996 (including amendments), Chapter 4 (Parliament) by section
44(1) (legislative powers) 649
44(4) (legislative powers: constitutional constraints) 649, 691-2
burden/standard of proof 649
reasonable/appropriate test, relevance 649
text 691 n. 37

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

59(1) (public access to and involvement in National Assembly), text 640 n. 16
72(1) (public access to and involvement in National Council), text 640 n. 17
jurisprudence relating to public access obligations
Doctors for Life 642-3
Matatiele II 643
jurisprudence relating to rationality/legitimate government objective requirement: *see also Glenister*
Bel Porto 651-2, 679
New National Party 649
Pharmaceutical Manufacturers Association 649
Prinsloo 652-3
Constitution Act 108 of 1996 (including amendments), Chapter 5 (President and National Executive) by section
85(2)(b) (executive authority of President: developing and implementing national policy) 652
85(2)(d) (executive authority of President: preparing and initiating legislation) 651-2
Constitution Act 108 of 1996 (including amendments), Chapter 8 (Courts and Administration of Justice) by section
165(2) (independence of the courts) 673-4
167(4) (Constitutional Court: exclusive jurisdiction), text 641 n. 21
167(4)(e) (Constitutional Court: exclusive jurisdiction: failure of Parliament or President to fulfil constitutional obligation) 639, 640-1
text 637 n. 8
167(6) (right of direct access to Constitutional Court), text 641 n. 20
173 (inherent right of court to regulate own procedures) 646-7
text 646 n. 36
179 (prosecuting authority), alleged violation: *see Glenister*
179(1) (national prosecuting authority: composition) 655
text 655 n. 59
179(2) (institution of criminal proceedings: prosecuting authority's powers) 651, 655-7
text 653
179(4) (prosecuting authority: national legislation, requirements for) 655-7, 673-4
text 653
179(5)(a) (National Director of Prosecutions: responsibility for determining prosecution policy), text 653
179(6) (determination of Judicial Procedure Commission) 677, 678-9
179(7) (national prosecuting authority: residual matters) 655
text 655 n. 60
Constitution Act 108 of 1996 (including amendments), Chapter 11 (Security Services) by section
205 (police service), text 666 n. 90
205(2) (powers and functions) 666-7, 682
205(3) (police service: objects) 651, 652-3, 654, 656, 668, 672
206(1) (political responsibility: Cabinet member) 673, 677, 678-9, 701
206(8) (political responsibility: establishment of committee) 673
207(1) (control of police service: appointment of National Commissioner) 673

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

South Africa (*cont.*)
207(2) (control of police service: in accordance with the national policing policy and under directions of responsible Cabinet member) 673
independence of police services, absence of reference to 673-4
Constitution Act 108 of 1996 (including amendments), Chapter 14 (general provisions) by section
231 (international agreements), text 659, 690 n. 30
231(1) (negotiation and signing of treaties as responsibility of national executive) 690-1
231(2) (international agreements: approval by legislature)
effect of approval 660-3, 690-2
as undertaking to take steps to comply with treaty 660, 695-7
231(3) (international agreements: executive agreements: tabling in Parliament, need for) 690-2
231(4) (international agreements: need for legislation/self-executing agreement) 662-4
233 (interpretation of law: consistency with international law) 662, 690-1
Constitution (general), implementation of rights, choice of means 665, 666-7
Constitutional Court
joinder of parties (cases involving National Assembly/National Council of Provinces) 642
jurisdiction, issues connected with decisions on constitutional matters 637 n. 8
jurisdiction/admissibility, jurisprudence
Doctors for Life 639, 640, 641-2
Matatiele II 640, 641-2
Merafong 640
Poverty Alleviation 639, 640, 641
Tongoane 639
Women's Legal Centre Trust 639
procedural requirements, justification for departure from 642
time-limits 641-2
Constitutional Court Rules: *see also* South Africa, Uniform Rules of Court
r 11 (default procedure) 641, 645-7
r 19(2) (appeal: time limits), text 645
pacta sunt servanda/good faith observance of treaties (VCLT 26), choice of means 667-8
treaties: *see also* Constitution Act 108 of 1996 (including amendments), Chapter 14 (general provisions) by section, 231 (international agreements) *above*
treaties, conclusion (VCLT 6–18), means of expressing consent to be bound (VCLT 11) 660
treaties and municipal law (including implementing legislation/incorporation)
approval of treaty [in accordance with constitutional requirements], sufficiency to give effect to treaty provisions 660, 695-7
"as part of the law of", creation of constitutional rights distinguished 663
need for/examples, UNCAC (2003) 659-64
procedure 659-60
separation of powers principle and 659-60
unincorporated treaty, as aid to legislative interpretation 661-2
treaties and municipal law, primacy in case of inconsistency/conflict
Constitution provision for treaty supremacy 663

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

determination in accordance with rules of legislative interpretation 663
primacy of constitutional provisions 664, 665-7, 690-1
Uniform Rules of Court
r 49(1)(b) (time-limits for appeal) 646-7
text 646 n. 35
Special Immigration Appeals Commission (SIAC): *see also Othman* (Court of Appeal)
appeal from, limitation to point of law 758-9, 776
jurisprudence relating to
AH (Sudan) 758-9
MA (Somalia) 758-9
Special Immigration Appeals Commission (SIAC) Act 1997 (with 2002 amendments) by section, 7 (appeal to Court of Appeal on material question of law) 758-9, 770-1, 776

***Taunoa* (conditions of detention/effective remedy)**
alleged breach of BORA 9/ICCPR 7 (torture or cruel treatment) 522-31, 558-73, 593-9, 614-21, 624: *see also* New Zealand, detention conditions
actual harm, relevance 491, 518-22, 523, 528
detainees' right to be treated with humanity and respect for human dignity (BORA 23(5)/ICCPR 10(1)), interrelationship 491, 518-22, 523, 555-7, 593, 595, 598-9, 614-15, 620-1
"disproportionately severe" ("grossly disproportionate") 515, 516-18, 519-20, 528-31, 558, 595-7
duration of impugned treatment, relevance 492, 573, 594, 595-6, 618-19, 620-1
as fundamental/non-derogable right 520-1
High Court/Court of Appeal findings 514-18
intention to inflict suffering, relevance 491, 515, 517-18, 531, 597-8, 619-20
municipal law and human rights treaty practice 518-21, 549-60, 593
alleged breach of BORA 23(5)/ICCPR 10(1) (detainees' right to be treated with humanity and respect for human dignity) 539, 544-5, 620-1
as positive duty/proactive obligation 491-2
alleged breach of BORA 27(1) (natural justice) 490, 492, 513-14, 525, 529-32, 537, 539-40, 573-4, 599, 614, 624-5, 627
burden/standard of proof 561
effective remedy, need for (ICCPR 2(3)): *see also* compensation for breach of ICCPR (ICCPR 2(3)); effective remedy for human rights breaches, relevant considerations
damages 532-8, 576-92, 600-13, 614, 626
awards to individual claimants 611-13
international practice 581-6, 602-11
measure 534-8, 600-13, 622-4
object and purpose 586-92
declaration of breach 532, 533, 599-600, 622-3
inquiry into impugned behaviour 531-2, 574-6
relevant considerations 531-8, 599-613
opinions
Blanchard J 539-92
Elias CJ 489-539

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

***Taunoa* (conditions of detention/effective remedy)** (*cont.*)
Henry J 625, 627
McGrath J 613-25
Tipping J 593, 613
parties' positions
appeals 489-90
cross-appeals 490-1
procedural history 613-14
Court of Appeal proceedings 489
High Court proceedings 489
terrorism, treaties and other international instruments relating to
CoE Guidelines on Human Rights and the Fight Against Terrorism (2002) 179-80, 217, 218, 244, 260
European Convention on the Suppression of Terrorism (1978), extradition obligations (ECST 21) 105-6
torture as, cruel and unusual punishment 571
Torture Convention (1984) (TC), text (extracts) 449-50
torture, definition/classification as
extraction of confession
Aydin 197
Saadi 197
Selmouni 197
inhuman or degrading treatment, distinguishability 522, 551, 594
torture, definition/classification as, jurisprudence, *Salman* 558
torture (ECHR 3/ICCPR 7), intention to inflict suffering, relevance 491, 515, 517-18, 531
torture, State immunity and
jurisprudence
Arar 370-6
Bouzari 371-2, 373
torture/inhuman treatment as *jus cogens*/peremptory norm
jurisprudence
Higgs 519
S v. *Macwanyane* 519
Whittaker v. *Roos* 519
treaties, conclusion (VCLT 6–18), means of expressing consent to be bound (VCLT 11) 660
treaties and municipal law (including implementing legislation/incorporation)
"as part of the law of", creation of constitutional rights distinguished 663
implementing legislation/incorporation, examples of treaties requiring, UNCAC (2003) 659-64
legislative approval of treaty [in accordance with constitutional requirements], sufficiency to give effect to treaty provisions 660, 695-7
separation of powers principle and 659-60
unincorporated treaty, as aid to legislative interpretation 661-2
treaties and municipal law (including implementing legislation/incorporation/unincorporated treaties), jurisprudence
Ashby 661
AZAPO 660-1
Baker 661

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Brind 660-1, 662
Capital Cities Communications 660-1
Glenister 659-64
Kavanagh 661
Makwanyane 661-2, 690
PanAm 660-1
Teoh 661-2
treaties and municipal law, primacy in case of inconsistency/conflict
constitutional provision for treaty supremacy 663
determination in accordance with rules of legislative interpretation 663
primacy of constitutional provisions 664, 665-7, 690-1
treaty interpretation (VCLT 31(3)) (points to be taken into account together with context), subsequent practice in application of treaty establishing agreement between the parties regarding its interpretation (VCLT 31(3)(b)), OECD *Specialised Anti-Corruption Institutions: Review of Models* (2008) 693
treaty succession: *see Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996); Yugoslavia, Federal Republic (FRY) (1992–2003), succession to SFRY, treaty succession
Tunisia (1956–)
Criminal Procedure Code by article
175 (trial in absentia), text 177
176 (judgment not served in person or known to defendant), text 177
180 (appeal) (as amended 2000), text 177
213 (appeal: time-limits), text 178
human rights in: *see also Saadi* (ECtHR)
Amnesty International Report (2006) 180-4, 199-200
Association internationale de soutien aux prisonniers politiques report 187-8
Human Rights Watch reports 184-5, 199-200
ICRC activities 185-6, 199-200
US State Department Report on human rights in Tunisia (2006) 186-7, 199-200

UN Standard Minimum Rules for the Treatment of Prisoners (1957/77), inhuman or degrading treatment (ECHR 3/ICCPR 7) and 501-2, 510, 514, 524, 560-1
UNCAC: *see* Anti-Corruption Convention (2003) (UNCAC)
UNHCR (UN High Commissioner for Refugees)
Handbook on Procedures and Criteria for Determining Refugee Status (1979) 452-3
role 452
United Kingdom
admissibility of evidence obtained by torture/confession
burden/standard of proof 768-71
"real risk" test 768-70, 771-5
Crime (Sentences) Act 1997 by section, 30(1) (release from life sentence on compassionate grounds) 723
Criminal Justice Act 2003 by section, 269(4) (imprisonment for life without eligibility for parole) 723, 729-30
extradition: *see also Hamza* (UK extradition proceedings)

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

United Kingdom (*cont.*)
Extradition Act 1989 by section, Schedule 1, para. 8(2) (discretionary power of Secretary of State to withdraw extradition order/refuse extradition), requirements 334-5
extradition, deportation or expulsion to country where risk of torture or inhuman or degrading treatment (including ECHR 3/ICCPR 7/TC 3): *see Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))
extradition procedure
burden/standard of proof, prima facie case 333-42
expedition, need for 319
Human Rights Act 1998 (HRA): *see* Human Rights Act 1998 (HRA) *entries*
life imprisonment/long-term imprisonment (including ECHR 3/ICCPR 7 provisions) 270-2: *see also Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))
CJA 269(4) 723, 729-30
Crime (Sentences) Act, s 30(1) 723
United States of America (USA)
Constitution, Amendments
Eighth (cruel and unusual punishment): *see also Ahmad* (deportation to country where risk of torture/inhumane treatment) (ECtHR/conditions at ADX Florence)
benchmark/threshold 527, 550-1
conditions at ADX Florence 256-8
"grossly disproportionate" sentences 267-9, 519-20
life imprisonment/long-term imprisonment 264-7

***Wellington* (extradition to country where risk of inhumane or degrading treatment (ECHR 3))**
background 719-20
benchmark/threshold (absolute vs relativist approach) 239-41, 291, 725-8, 730, 750-1
critical date for determining breach of ECHR 3 749-50
mandatory life sentence (general principles)
compatibility with ECHR 3 720-4, 734-41, 742, 748
"life sentence"/reducibility 746-8
mandatory life sentence (Missouri)
"disproportionate" sentence, whether 729-30, 739-40
reducibility 728-9, 736, 740-1, 743, 748, 751-2
opinions
Brown LJ 741-53
Carswell LJ 736-41
Hale LJ 734-6
Hoffmann LJ 719-30
Scott LJ 730-4
relevant law
review of jurisprudence relating to life imprisonment as breach of ECHR 3 720-4
review of jurisprudence (extradition to country where risk of death sentence/life imprisonment) 724-8, 743-6
UK law 723, 729-30

© in this web service Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-1-107-03673-4 - International Law Reports: Volume 155
Edited by Sir Elihu Lauterpacht, Sir Christopher Greenwood and Karen Lee
Index
More information

Yugoslavia, Federal Republic (FRY) (1992–2003)
establishment
declaration of (27 April 1992) 11
notification to UN Secretary-General (27 April 1992) 11
Genocide Convention (1948), reservation to compulsory jurisdiction clause (GC IX) 20-5
ICJ and, acceptance of compulsory jurisdiction 16-17
succession to SFRY 14-18 *see also* UN membership *below*
treaty succession, UN Secretariat practice (1996–7) 14-16, 20
UNGA Resolution 47/1 12-18
UN membership 26-8, 29, 33-7, 45-69
Yugoslavia, Socialist Federal Republic (SFRY), succession issues: *see Application of the Genocide Convention (Yugoslavia* v. *Bosnia and Herzegovina)* (Request for revision of judgment of 11 July 1996), factual background (developments in Yugoslavia, 1990–2002)

© in this web service Cambridge University Press www.cambridge.org