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BRIEFLY NOTED

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Judicial and Similar Proceedings

1. McCallum v. Italy (European Court of Human Rights, Grand Chamber – September 21, 2022)

<https://hudoc.echr.coe.int/eng?i=001-220616>

McCallum v. Italy involved the extradition of a U.S. national accused of murdering her husband and the burning of his corpse in Michigan. According to a press release from the Court, At the time she filed her case, she was being detained in Rome, but at the time of the judgment, she was in detention in the U.S. In denying her request to stay her extradition, the Italian authorities referred to the U.S. appeals process, the possibility of a pardon or a commutation of her sentence by the Michigan governor as reasons counseling in favor of extradition. They also felt that there were no reasons to believe that she would be subject to inhuman or degrading treatment there. Several months later, the U.S. authorities sent a diplomatic note to Italy indicating that McCallum would be tried for the lesser offense of second degree murder, which would carry with it the possibility of parole. A new extradition order was issued by Italy, but the Court ordered that it be stayed pending these proceedings. In ultimately holding that the extradition would not violate Article 3, the Court pointed out the importance of Michigan's diplomatic note, indicating that a lesser charge would be imposed. Citing prior case law, the Court noted that "Diplomatic Notes carry a presumption of good faith and that, in extradition cases, it was appropriate that that presumption be applied to a requesting State which has a long history of respect for democracy, human rights and the rule of law, and which has longstanding extradition arrangements with Contracting States" (¶ 51, citing *Harkins & Edwards v. UK*, nos. 9146/07 and 32650/07).

2. Liu v. Poland (European Court of Human Rights – October 6, 2022)

<https://hudoc.echr.coe.int/eng?i=001-219786>

On October 6, 2022, the European Court of Human Rights (ECtHR) issued its judgment in *Liu v. Poland*, in which it denied extradition of the applicant to China because there would be a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. It further held that there had already been a violation of the right to liberty and security in Article 5(1). The applicant, Liu Hong Tao, a Taiwanese man alleged to have committed online fraud as part of a large international telecoms fraud syndicate. After extradition proceedings in Poland (where he was arrested), his extradition to China was authorized in 2018. This followed the extradition to China by Spain of 208 Taiwanese members of the syndicate, which was condemned by the UN High Commissioner for Human Rights. The Warsaw Regional Court found that extradition to China would be in conformity with Polish law and found that China had provided sufficient evidence that his detention and trial would present no human rights concerns. This was upheld on appeal. Some months later, the applicant requested that the ECtHR issue an interim measure stopping his extradition. He also unsuccessfully appealed his extradition to the Polish Supreme Court. The Supreme Court examined the nature of the charges and their possible penalty under Chinese law. In concluding that extradition was permissible, the Court acknowledged that the applicant could potentially be subject to life imprisonment, but noted that such an outcome was not a given and, even if he were sentenced to life, the sentence could be reduced. Ultimately, the Supreme Court held that life imprisonment, on its own, does not amount to an Article 3 violation.

In holding that extradition would violate Article 3, the ECtHR relied on several documents, including UN Committee against Torture concluding observations from 2008 and 2016 underscoring that the UN Special Rapporteur on Article 3 had repeatedly been denied visits to China; a 2018 U.S. State Department report on China, torture, and forced confessions; and a 2015 Amnesty International report on torture of criminal suspects in China. It noted that the reports were from several years ago, but stated that the availability of more up to date information concerning China was limited. In that regard, the Court held that "where there are many

significant shortcomings in the domestic legislation in the country of destination and allegations of serious abuses identified in independent reports, coming from numerous sources, the benefit of the doubt should be granted to an individual seeking protection." Though the Polish courts referenced some of these materials, it was the Court's view that their review of the materials was "superficial." It then turned to an examination of whether the applicant would be exposed to a real risk of ill treatment in China. Though the Court noted that there had been "certain improvements in the Chinese domestic legislation regarding the prohibition and prevention of torture, several significant shortcomings remain in place" and "that serious allegations of widespread use of torture and inhuman and degrading treatment in Chinese detention centres continue to be raised." The Court was not swayed by Poland's claim that the applicant's basic rights would be safeguarded in China, and it specifically chastised Poland's failure to seek diplomatic assurances in relation to these concerns. The Court ultimately held that

> having regard to the parties' submissions and to the above-mentioned reports issued by various United Nations bodies as well as by international and national governmental and non-governmental organisations, to which the Court attaches considerable weight . . . it considers that the extent to which torture and other forms of ill-treatment are credibly and consistently reported to be used in Chinese detention facilities and penitentiaries . . . may be equated to the existence of a general situation of violence. Thereby the applicant is relieved from showing specific personal grounds of fear, it being enough that it is established that, upon extradition, he will be placed in a detention centre or penitentiary. . . . Since it is uncontested that the applicant would be detained in China if the extradition order was implemented, the Court finds it established that the applicant would face a real risk of ill-treatment if extradited to that State.

In view of his detention since August 2017, the applicant also complained that the extradition proceedings, and his detention during that time, had been arbitrary and unduly lengthy in violation of Article 5(1). His claim was successful with respect to one period of his detention, from July 26, 2018 to the date of the judgment.

3. Sanchez-Sanchez v. U.K. (European Court of Human Rights, Grand Chamber – November 3, 2022)

<https://hudoc.echr.coe.int/eng?i=001-220484>

On November 3, 2022, the European Court of Human Rights issued two judgments on whether extradition from a Council of Europe member state to the United States would be in violation of the European Convention on Human Rights. *Sanchez-Sanchez v. U.K.* concerned an extradition request from the Northern District of Georgia for the trial of Sanchez-Sanchez (a Mexican national) on drug importation and conspiracy charges. Sanchez-Sanchez argued that his extradition to the U.S. would be in violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment) because he would be at risk of a life sentence without possibility of parole. According to a press release from the Court, the Court imposed an adapted approach to its case law on domestic extradition. The Court noted:

> . . . in the domestic context, in the event of a finding of a violation of Article 3 of the Convention, the applicant would remain in detention pending the application or introduction of a Convention-compliant review mechanism which could – but would not necessarily – lead to his release earlier than initially intended. Thus, the legitimate penological purposes of incarceration would not be undermined. In contrast, in the extradition context the effect of finding a violation of Article 3 would be that a person against whom serious charges have been brought would never stand trial, unless he or she could be prosecuted in the requested State, or the requesting State could provide the assurances necessary to facilitate extradition (¶ 94).

The Court noted that, in line with its case law, the applicant must demonstrate that there is a real risk that he or she would be given a sentence of life without parole if convicted. If that is the case, the sending state must ascertain whether there is a sentence review process that would take into account whether any grounds for release might apply, e.g., the applicant's level of rehabilitation. According to the Court, Sanchez-Sanchez had failed to meet this initial burden of proof and because of this, there was no need for the Court to evaluate the existence of sentence review procedures in the U.S. jurisdiction at issue. The Court consequently indicated to the U.K. that it should lift the stay of extradition.

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RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Amendments to the Code of Sports-Related Arbitration (Court of Arbitration for Sport – November 1, 2022)

<https://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2022_amendments__01.11.22_.pdf>

The International Council of Arbitration for Sport (ICAS), which governs the Court of Arbitration for Sport (CAS), has adopted amendments to the CAS Code, with effect from November 1, 2022. According to a press release from the CAS, the amendments address the "significant increase" in football arbitrations by increasing the number of ICAS members from 20 to 22 so that more stakeholders are represented on the Council. In addition, the amendments reflect that the ICAS Legal Aid Commission will manage a new, dedicated Football Legal Aid Fund. Finally, a number of smaller amendments have been made to "tighten up existing language" and bring the Code in line with current practice.

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