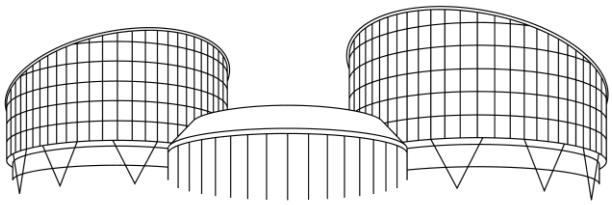

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ASWAT v. THE UNITED KINGDOM

(Application no. 17299/12)

JUDGMENT

STRASBOURG

16 April 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aswat v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

David Thór Björgvinsson, *President,*
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 26 March 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Haroon Aswat ("the applicant") and Mr Babar Ahmad on 10 June 2007. The applicant's nationality is not known.

2. The applicant was represented by Ms G. Peirce of Birnberg Peirce & Partners, a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr M. Kuzmicki of the Foreign and Commonwealth Office.

3. The applicant, who was the subject of an extradition request made by the United States of America, alleged that if extradited and convicted he would be at real risk of ill-treatment either as a result of conditions at ADX Florence or by the length of his possible sentence.

4. Interim measures under Rule 39 of the Rules of Court were granted on 12 June 2007 and on 26 June 2007 the application was granted priority status under Rule 41 of the Rules of Court.

5. The proceedings in the case of the applicant and Mr Babar Ahmad were originally conducted simultaneously with the cases of Mr Syed Tahla Ahsan (application no. 11949/08) and Mr Mustafa Kamal Mustafa (application no. 36742/08).

6. On 6 July 2010 the Court declared admissible the complaints of all four applicants concerning their possible detention at ADX Florence, the imposition of special administrative measures post-trial and the length of their possible sentences. The Court also decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it was desirable in

the interests of the proper conduct of the proceedings that the applicants should not be extradited until further notice.

7. On 3 September 2010 the President of the Chamber decided under Rule 54 § 2 (b) of the Rules of Court to give notice of the applications lodged by Mr Adel Abdul Bary (application no. 66911/09) and Mr Khaled Al-Fawwaz (application no. 67354/09) to the Government of the United Kingdom. Both of these applications raised the same issues regarding extradition to the United States of America, namely conditions of detention at ADX Florence and the length of possible sentences.

8. The six applicants and the Government each filed further written observations (Rule 59 § 1) on the merits.

9. On 10 April 2012 the Court delivered its judgment in the case of *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09. However, as the applicant suffered from mental health problems of sufficent severity to require his transfer from HMP Long Lartin to Broadmoor Hospital, the Court considered that it was not in a position to rule on the merits of his complaints without further submissions from the parties. It therefore decided to disjoin and adjourn the examination of the applicant's complaints and gave his application a new application number, no. 17299/12.

10. The Court asked the parties to address the following three questions:

> "1. In determining whether detention at ADX Florence would be compatible with Article 3, what relevance, if any, is to be attached to the fact that Mr Aswat's mental health has necessitated his transfer from HMP Long Lartin to Broadmoor Hospital?
>
> 2. Prior to Mr Aswat's surrender to the United States, would details of his mental health condition be provided to the United States' authorities?
>
> 3. After surrender, what steps would be taken by the United States' authorities:
>
> (i) to assess whether Mr Aswat would be fit to stand trial; and
>
> (ii) to ensure that, in the event of conviction, his mental health condition would properly be taken into account in determining where he would be detained?"

11. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The procedural background

12. The applicant was born in 1974 and is currently detained in Broadmoor High Security Psychiatric Hospital.

13. The applicant has been indicted in the United States of America as a co-conspirator in respect of a conspiracy to establish a *jihad* training camp in Bly, Oregon.

14. On 7 August 2005 the applicant was arrested in the United Kingdom on the basis of an arrest warrant issued under section 73 of the Extradition Act 2003 following a request for his provisional arrest by the United States.

15. The Senior District Judge gave his decision in the applicant's case on 5 January 2006. He concluded that none of the bars to extradition applied and sent the case to the Secretary of State for his decision as to whether the applicant should be extradited.

16. On 1 March 2006 the Secretary of State ordered his extradition. The applicant appealed to the High Court on the ground that his extradition would not be compatible with Article 3 of the Convention because he could be detained in a maximum security facility such as ADX Florence and subject to special administrative measures, including solitary confinement.

17. The applicant's appeal was heard together with that of Mr Babar Ahmad. In its judgment of 30 November 2006 the High Court rejected the appeals. The High Court found that, according to the case-law of this Court, solitary confinement did not in itself constitute inhuman or degrading treatment. Applying that approach, the evidence before it – which included an affidavit from a United States' Department of Justice official outlining the operation of special administrative measures – did not "begin to establish a concrete case under Article 3".

18. The applicant and Mr Babar Ahmad applied for permission to appeal to the House of Lords. This was refused by the House of Lords on 6 June 2007.

B. The applicant's mental health

19. On 27 March 2008 the applicant was transferred to Broadmoor Hospital from HMP Long Lartin because he met the criteria for detention under the United Kingdom's mental health legislation.

20. On 11 November 2011 the First-Tier Tribunal (Health, Education and Social Care Chamber) Mental Health considered the applicant's case and concluded, having considered the evidence from the applicant's clinical

care team, that he was suffering from paranoid schizophrenia which made it appropriate for him to continue to be liable to detention in a medical hospital for his own health and safety.

21. In his statement to the Tribunal, Dr A. Payne, a Consultant Forensic Psychiatrist, indicated that:

> "[The applicant's] insight into his illness is limited and if returned to prison he would be exposed to significant stress given the conditions of his detention, the uncertainty of his case and his potential extradition and lengthy incarceration in conditions of solitary confinement. His compliance with medication would be uncertain, particularly in the medium to long term. These factors would be likely to lead to a relapse with deterioration in his mental health and the risk of a consequent deterioration in his physical health due to poor fluid and food intake. I am therefore of the opinion that his mental disorder is of a nature that requires his detention in hospital for medical treatment and that such treatment is necessary for his own health and safety. I do not believe that there is sufficient evidence available to justify his detention on the grounds of his risk to others."

22. Dr Claire Dillon, a Consultant Forensic Psychiatrist, indicated in a report dated 12 April 2012, that:

> "Mr Aswat suffers from an enduring mental disorder, namely paranoid schizophrenia, which has been characterised by auditory hallucinations, thought disorder, delusions of reference, grandeur and guarded and suspicious behaviour. Mr Aswat's condition is currently well controlled on amilsulpride (anti-psychotic medication). However, he has only partial insight into his illness and he would be likely to relapse if he ceased taking his medication.
>
> Mr Aswat has undertaken psychological work to enhance his understanding of his mental illness and he is able to recognise the need for professional support to manage this. In view of the lack of convictions for violent offences, Mr Aswat has not undertaken any offence-related work whilst at Broadmoor, as the decision of the European Court of Human Rights was awaited. Mr Aswat engages in occupational and vocational activities within the hospital and these, along with his attendance at the Mosque, have helped to prevent any significant deterioration in his mood."

C. Expected treatment on extradition

23. On 8 May 2012 the United States' Department of Justice indicated that upon his arrival in the United States, the applicant would have a full opportunity to argue that he lacked mental capacity to stand trial there. If he did so, the trial judge would have to assess his competency before the trial could proceed. In doing so, he would rely on the reports of medical professionals and on the applicant's full medical records, including – presumably – those relating to his transfer to Broadmoor.

24. A competency evaluation could be appealed to the United States' Court of Appeals for the Second Circuit. The Second Circuit would need to affirm the district court's competency determination before the trial could proceed.

25. Prior to and pending trial the applicant would not be housed in ADX Florence as this institution did not house inmates who were unsentenced and pending trial.

26. If the applicant were to stand trial and be convicted of an offence, then following sentencing the Federal Bureau of Prisons would be responsible for deciding which institution he should be housed in. Medical, psychological and psychiatric concerns would be considered by the designation team before a determination of housing could be made. If a hearing was warranted, it would be open to the applicant to present evidence and make oral statements as to why he should not be designated to ADX Florence in light of his mental health.

27. With regard to the system and standard of mental health care available within the institutions, the Department of Justice indicated that:

> "Mental health services range from inpatient psychiatric treatment, to residential treatment programs, to outpatient psychological and psychiatric services. As in the community, the vast majority of mental health care in the Bureau is provided on an outpatient basis at the local institution level by the Psychology Services Department working in collaboration with either a full-time or consultant psychiatrist.
>
> Mental health services in the Bureau are delivered by psychiatrists and doctoral-level psychologists. This hiring standard ensures mental health providers in the Bureau have a minimum of four years of graduate level, supervised training in the treatment of mental illnesses.
>
> ... ...
>
> All Bureau facilities are equipped to manage mentally ill inmates, including those with schizophrenia, as each institution employs doctoral-level psychologists and has access to psychiatric services. Many inmates with mental illnesses, including schizophrenia, are managed successfully in mainline institutions through the treatments of choice which include medication, clinical case management, and cognitive-behavioural interventions. While a diagnosis of schizophrenia would not preclude a designation to a maximum security facility, most inmates with this diagnosis are managed and treated in other facilities. Conditions of confinement are largely determined by security needs and would be modified based on mental illness only if the inmate's mental status warranted such a change (e.g., if his mental status deteriorated).
>
> The Bureau provides a structured living environment for inmates with significant staff oversight. This environment allows for prompt identification of mental health concerns, provides immediate access to mental health professionals, and facilitates compliance with mental health treatment. All inmates confined in the Bureau are evaluated by Health Services' staff within 24 hours of arrival. At that time, their medication regimens are reviewed and continued, as appropriate. Thus, any mental health medications the inmate may be taking would be noted and continued as appropriate, upon admission. Additionally, an inmate's mental health status is evaluated to determine whether there is any imminent risk of self-harm or suicide and whether he or she is stable and appropriate for placement in the designated setting. If Health Services' staff has any concerns at the time of admission, a doctoral level psychologist will be called to consult.

In all cases, regardless of the outcome of the initial evaluation performed by Health Services' staff, all new designees are seen within 14 days for evaluation by a doctoral level psychologist. This evaluation focuses on collecting a mental health history, as well as identifying any current symptoms and determining treatment needs. All inmates are classified based on their mental health treatment needs to ensure appropriate placement, treatment, and follow-up services to be provided.

Psychologists are a visible presence in the institution – in the cafeteria, on the compound, and in the housing units. In addition, a psychologist is on-call 24 hours a day, 7 days a week, with a prompt response to the institution in the event of a mental health crisis. All inmates have direct access to psychological services from doctoral level psychologists. Ordinarily, these services include: crisis intervention, ongoing clinical case management of mental illnesses, brief counselling focused on a specific issue or problem, individual psychotherapy, and psycho-educational and/or therapeutic groups. Inmates may access these services through self-referral or may be referred by institution staff. In addition, all inmates who need psychotropic medication are seen regularly by a psychiatrist.

On occasion, despite best efforts to work with mentally ill inmates at the local institution level, more intensive mental health services are required. In these cases, an acutely mentally ill inmate is typically referred to one of the Bureau's Psychiatric Referral Centres for acute psychiatric care. Under Bureau policy, acute psychiatric care is defined as care, including but not limited to, crisis intervention for inmates who are persistently suicidal, homicidal, or unable to function in the institution without creating a dangerous situation due to their mental illness. These inpatient services are generally brief, with the goal of returning the inmate to a level of functioning that would allow him or her to return to the designated institution.

Alternatively, seriously, but not acutely, mentally ill inmates may be placed in one of the Bureau's residential mental health treatment programs, which provide long-term, intensive mental health care. The Bureau is committed to providing high-quality, evidence-based residential treatment programs to all inmates in need of these services. The BOP's Psychology Treatment Programs (PTPs) are designed using the most recent research- and evidence-based practices. These practices lead to a reduction in inmate misconduct, mental illness and behavioural disorders; substance abuse, relapse, and recidivism; and criminal activity. These practices also lead to an increase in the level of the inmate's stake in societal norms and in standardized community transition treatment programs. Transition treatment increases the likelihood of treatment success and increases the public's health and safety. Inmates are referred to these programs based on need and appropriateness of the program to the inmate's security level.

Decisions concerning the appropriateness of transfer to a Psychiatric Referral Centre are based on the best judgment of the treating clinicians (i.e., psychologist, staff psychiatrist, or consulting psychiatrist) and are typically dependent upon such factors as the severity of the mental illness, the specific characteristics and resources of the institution, and relevant patient variables. Inmates who are disruptive to the orderly running of the institution, but who are not mentally ill, are not generally appropriate referrals to a Psychiatric Referral Centre.

In the case of schizophrenia, the treatment of choice is medication, clinical case management, and cognitive behavioural interventions, with inpatient admissions only as necessary to manage brief psychiatric emergencies, should they arise. The Bureau attempts to manage and treat the mental illnesses of all offenders in the least restrictive environment appropriate to their mental health and security needs.

Therefore, an inmate's security level would only be adjusted due to schizophrenia should behavioural issues or a psychiatric emergency warrant such an adjustment. The Bureau currently incarcerates many inmates diagnosed with schizophrenia, the majority of whom is managed and treated successfully in general population settings."

28. The Department of Justice further indicated that if the applicant were to be detained in ADX Florence, his detention would be subject to three types of review: classification, program review, and a progress report. The Department described these reviews as follows:

"Classification and Program Review refer to the procedure whereby an inmate's case is formally reviewed by the Unit Team. These meetings are generally referred to as "team" and the inmate is present. Team meetings are intended to give staff and inmates the opportunity to discuss issues in an open format. This is the inmate's opportunity for individual attention and he or she should be encouraged to ask questions and discuss concerns.

Classification is the initial team meeting whereby a careful review of the case and inmate's history are discussed and relevant programs are recommended. The purpose of the meeting is to define clearly for the inmate: (1) sentence information, including financial obligations; (2) educational programs; (3) security/custody levels; (4) release plans; and (5) work assignments. These programs reflect the needs of the inmate and are stated in measurable terms. Generally, initial classification occurs within four weeks of an inmate's arrival at his designated institution.

Subsequent team meetings are referred to as Program Reviews. These meetings are held at least once every six months (every three months for inmates with less than one year remaining to serve) and are conducted to monitor and evaluate the inmate's progress in all program areas. Program participation is discussed in relation to the schedule developed at initial classification. New and/or revised goals are developed as necessary. A progress report is the principal document used by the Unit Team to evaluate the behaviour and activities of inmates. The progress report is a detailed, comprehensive account of an inmate's case history, prepared by the Case Manager at prescribed intervals during the inmate's confinement. Generally, the Case Manager composes the progress report with input from other unit staff, work detail supervisors, and education instructors. The progress report reflects the inmate's past status, assesses his current status, and offers an indication of anticipated accomplishments. This could include the inmate's continued participation in a program; and what he plans to do at the completion of the program, or if he plans to use what he has learned upon his release. Information is also provided on the inmate's relationship with others (both staff and inmates), particularly with respect to attitude, punctuality, etc. A progress report is required, at a minimum, once every three years. At the ADX, the inmates are provided with a copy of the most current progress report. Upon request, an inmate may read and receive a copy of any progress report retained in the inmate's central file.

An ADX inmate's status is also reviewed under Institution Supplement FLM 5321.07(1), General Population and Step-Down Unit Operations. In addition, Mr. Aswat would have access to the Bureau's Administrative Remedy Program, which is set forth in Program Statement 1330.16, Administrative Remedy Program, and, as with any inmate of the ADX, he would be able to seek review of any issue relating to their confinement before the United States District Courts. All of these procedures have been described in detail before and are not repeated here."

29. The Department further indicated that if designated to ADX Florence the applicant's mental condition would be subject to regular review. Inmates designated to ADX Florence underwent a psychological intake evaluation upon arrival and could, at that time, be referred to the mental health chronic care clinic, which is an outpatient clinic with services provided by a psychiatrist. Such an inmate would be seen at least every six months by the psychiatrist, but could request to be seen more frequently. In addition, he or she could receive psychological services monthly, weekly or daily (inpatient) based upon their classification, and more frequently should a crisis situation arise.

30. In *Babar Ahmad v. the United Kingdom* the Court found that if convicted the applicant would face a maximum penalty of thirty-five years' imprisonment. None of the counts imposed a mandatory minimum sentence.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

31. For a general summary of the relevant domestic and international law and practice regarding extradition, detention at ADX Florence, solitary confinement and sentences, see the Court's judgment in *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, §§ 62 - 165, 10 April 2012.

III. THE COURT'S FINDINGS IN *BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM* (CITED ABOVE)

32. In *Babar Ahmad* the Court began by re-affirming its statement in *Chahal v. the United Kingdom*, 15 November 1996, § 81, *Reports of Judgments and Decisions* 1996-V that there was no room under Article 3 for any balancing of the risk of ill-treatment on return against the danger that an applicant posed in the Contracting State. Moreover, it found that this conclusion applied equally to extradition and to all other types of removal from the territory of a Contracting State and should apply without distinction between the various forms of ill-treatment prescribed by Article 3 (§§ 166 – 176). However, the Court underlined that the absolute nature of Article 3 did not mean that any form of ill-treatment would act as a bar to removal from a Contracting State; on the contrary, treatment which might violate Article 3 because of an act or omission of a Contracting State might not attain the minimum level of severity required for there to be a violation of Article 3 in an expulsion or extradition case (§ 177).

33. With regard to the facts of the case, the Government accepted that there was a real risk that the first, third, fifth and sixth applicants would be detained at ADX Florence if convicted and the Court proceeded on that

basis. It found that the physical conditions there – that is, the size of the cells, the availability of lighting and appropriate sanitary facilities and so on – met the requirements of Article 3 (§ 219). Moreover, the Court did not accept that the applicants would be detained at ADX Florence simply on account of their conviction for terrorism offences. Instead, it was clear to the Court that the Federal Bureau of Prisons would apply accessible and rational criteria, and placement was accompanied by a high degree of involvement of senior officials within the Bureau who were external to the inmate's current institution. Both this fact and the requirement that a hearing be held prior to transfer provided an appropriate measure of procedural protection. Even if the transfer process were unsatisfactory, there would be recourse to the Bureau's administrative remedy programme and the federal courts to cure any defects in the process (§ 220).

34. Moreover, the Court further held that if the applicants were convicted the United States' authorities would be justified in considering them to pose a significant security risk and strictly limiting their ability to communicate with the outside world. In any case, the Court found that while the regime in the General Population Unit and the Special Security Unit at ADX Florence were highly restrictive and aimed to prevent all physical contact between an inmate and others, that did not mean that inmates were kept in complete sensory isolation or total social isolation. Although confined to their cells for much of the time, a great deal of in-cell stimulation was provided through television and radio, newspapers, books, crafts and educational programming. Inmates were also permitted regular telephone calls and social visits and even those under special administrative measures were permitted to correspond with their families. Furthermore, the Court found that applicants could talk to each other through the ventilation system and during recreation periods they could communicate without impediment. In any case, the Court observed that the figures showed that there would be a real possibility for the applicants to gain entry to step down or special security unit programs. Consequently, the Court concluded that the isolation experienced by ADX inmates was partial and relative (§§ 221 – 223).

35. With regard to sentencing the Court held that an extradition would only violate Article 3 if the applicant faced a grossly disproportionate sentence in the receiving State. However, it would only be in very exceptional circumstances that the applicant would be able to demonstrate that a sentence faced in a non-Contracting State would be grossly disproportionate (§ 238). In this regard, the Court noted that an Article 3 issue would only arise in respect of a mandatory life sentence without parole and a discretionary life sentence when it could be shown that the applicant's imprisonment could no longer be justified on any legitimate penological grounds and that the sentence was irreducible *de facto* and *de jure* (§ 242).

36. Finally, the Court considered the position of persons with mental health problems. It noted that insofar as the applicants' complaints concerned the conditions of pre-trial detention, those complaints were manifestly ill-founded because it had not been suggested that prior to extradition the United Kingdom authorities would not inform their United States' counterparts of the applicants' mental health conditions or that, upon extradition, the United States' authorities would fail to provide appropriate psychiatric care to them. The Court also noted that it had not been argued that psychiatric care in the United States' federal prisons was substantially different to that available at HMP Long Lartin. Moreover, there was no reason to believe that the United States' authorities would ignore any changes in the applicants' conditions or refuse to alter the conditions of their detention to alleviate any risk to them. The Court further found that no separate issue arose with regard to post-trial detention (§ 249).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. The applicant submitted that his extradition to the United States would not be compatible with Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

38. The Government contested that argument.

A. The parties' submissions

1. The applicant

39. The applicant submitted that his uprooting for placement in an as yet unknown and unidentified future environment of which no detail had been provided to the Court, with a risk of placement in conditions of isolation, would not be compatible with Article 3 of the Convention.

40. The applicant submitted that his detention in Broadmoor Hospital was essential for his personal safety and treatment. In particular, he relied on the decision of the Mental Health Tribunal of 11 November 2011, which found that it was appropriate for the applicant to remain at Broadmoor rather than be returned to HMP Long Lartin despite the fact that HMP Long Lartin had an experienced healthcare department.

41. The applicant also contended that if extradited he could remain in pre-trial detention for a number of years and no information had been

submitted by the Government or by the United States' Department of Justice concerning the conditions of that detention.

42. The applicant further submitted that there was evidence to suggest that mentally ill patients were detained at ADX Florence and that this was not disputed by the Government. It was therefore likely that if convicted and sentenced he would be housed at ADX Florence in a single cell, where at best he would spend a significant part of each day alone. If this were the case, he submitted that the conditions of isolation were likely to exacerbate his pre-existing mental illness. The applicant had a history of not eating and drinking while under stress and immediately after his transfer from HMP Long Lartin to Broadmoor he had experienced florid psychiatric episodes and a continuing refusal to take food and drink. He therefore submitted that there was a real risk that this behaviour would resume were he to be extradited to a different and potentially more adverse environment in a different country. Moreover, there was evidence to suggest that force-feeding was employed at ADX Florence when inmates went on hunger strike and if used on the applicant it would likely cause him significant pain and distress.

43. Therefore, although the Court had found in *Babar Ahmad* that the conditions in ADX Florence would not violate Article 3 in respect of the applicants in that case, the applicant submitted that they were likely to have a much greater impact on him on account of his mental illness.

44. Finally, the applicant submitted that prosecution in the United Kingdom could be contemplated and achieved without the accompanying risks outlined above.

2. The Government

45. The Government submitted that if the applicant consented to the communication of his confidential medical records to the United States' authorities in advance of his surrender, they would ensure that the records were so communicated. Consequently, if surrendered to the United States' authorities his mental health would be relevant to every decision taken regarding his placement within the prison system, both while on remand and, if convicted, following conviction and sentencing. It could also be raised as an issue in respect of his fitness to plead or competency to stand trial. All relevant decisions would be taken in circumstances where the applicant would have a full right of access to the United States' courts and the full panoply of protections afforded to him by the United States' criminal justice system.

46. With regard to the possible conditions of detention, the Government principally relied on the information provided by the United States' Department of Justice. In particular, they reiterated that while a diagnosis of schizophrenia would not preclude designation to a maximum security

facility such as ADX Florence, in practice most inmates with this diagnosis were managed and treated in other facilities.

47. The Government therefore submitted that the applicant's extradition to the United States would not be incompatible with his Article 3 rights by virtue of his mental health concerns.

B. The Court's assessment

48. With regard to the applicant's submission as to the appropriate forum for prosecution, the Court notes that the Government have not disputed that the offences for which his extradition is sought could be tried in the United Kingdom. In such a case it would be for the competent domestic court to determine whether or not he was fit to stand trial. It observes, however, that in their submissions in *Babar Ahmad* the Government stated that they do not intend to prosecute the applicant for any of the offences at issue (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, § 166, 10 April 2012). Consequently, the Court does not consider that the question of the appropriate forum for prosecution, and the relevance of this question to the Court's assessment under Article 3, arises for examination in the present case (cf. *Soering v. the United Kingdom*, 7 July 1989, § 16, Series A no. 161).

49. With regard to the substance of the applicant's complaint, it is now well-established that Contracting States have the right to control the entry, residence and expulsion of aliens. However, in exercising their right to expel aliens, Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. It is precisely for this reason that the Court has repeatedly stressed in its line of authorities involving extradition, expulsion or deportation of individuals to third countries that Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment and that its guarantees apply irrespective of the reprehensible nature of the conduct of the person in question (see, for example, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2206, § 38, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V, p. 1853, §§ 73-74).

50. On many occasions the Court has held that the detention of a person who is ill may raise issues under Article 3 of the Convention and that the lack of appropriate medical care may amount to treatment contrary to that provision (see *Sławomir Musiał v. Poland*, no. 28300/06, § 87, 20 January 2009 with further references therein). In particular, the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to

complain coherently or at all about how they are being affected by any particular treatment. The feeling of inferiority and powerlessness which is typical of persons who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has (or will be) complied with. There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (ibid. and *Dybeku v. Albania*, no. 41153/06, § 41, 18 December 2007).

51. The medical evidence in the present case indicates that the applicant is suffering from an enduring mental disorder, namely paranoid schizophrenia, which has been characterised by auditory hallucinations, thought disorder, delusions of reference, grandeur and guarded and suspicious behaviour (paragraph 22 above). The last forensic psychiatrist report submitted to the Court indicated that his condition was well controlled on anti-psychotic medication and that participation in occupational and vocational activities at Broadmoor, including attendance at the Mosque, had helped prevent any significant deterioration in his mood. However, the applicant had only limited insight into his illness and would be likely to relapse if he ceased taking his medication. In giving evidence to the First-Tier Tribunal (Health, Education and Social Care Chamber) Mental Health a Consultant Forensic Psychiatrist stated that if he were to be returned to prison, his compliance with medication would be uncertain, particularly in the medium to long term, and this would likely lead to a relapse. The Tribunal subsequently concluded that detention and treatment in a medical hospital were necessary for the applicant's own health and safety.

52. Whether or not the applicant's extradition to the United States would breach Article 3 of the Convention very much depends upon the conditions in which he would be detained and the medical services that would be made available to him there. However, any assessment of those detention conditions is hindered by the fact that it cannot be said with any certainty in which detention facility or facilities the applicant would be housed, either before or after trial. This is particularly the case with respect to the pre-trial period, about which very little information has been provided. The United States' Department of Justice has given no indication of where the applicant would or could be held, although it has advised that if he consents to his medical records being provided to the United States' authorities on extradition, those authorities would be able to take his mental health concerns into account in deciding where to house him while on remand. It is also unclear how long the applicant might expect to remain on remand pending trial. If extradited the applicant's representatives would be entitled to contend that he was not fit to stand trial in the United States on account

of his mental disorder. A District Judge would then have to assess his competency and, if the applicant was found to be competent, he could appeal to the Court of Appeals. There is no information before the Court concerning the potential length of a competency assessment or any subsequent appeals procedure, but it is reasonable to assume that the length of pre-trial detention might be prolonged if the applicant were to assert these rights. Finally, the Court notes with concern the complete absence of any information about the consequences for the applicant if the District Judge were to find that he was not fit to stand trial.

53. The Court has given its fullest consideration to the submissions of the Government and the Department of Justice concerning the treatment of mentally ill prisoners in the United States of America. In particular, it notes that with regard to detention following a possible conviction, the Department of Justice has informed the Court that after sentencing the Federal Bureau of Prisons would decide which institution the applicant should be housed in. The Bureau would assess the applicant within the first twenty-four hours and if there were concerns about his mental health at that time a doctoral level psychologist would be consulted. In any case, he would be referred to a doctoral level psychologist after fourteen days for an evaluation. If the Bureau held a hearing, the applicant could present evidence and make an oral statement to the panel. In deciding which institution he should be housed in, the Bureau would consider any medical, psychiatric or psychological concerns that had been identified. While his mental disorder would not by itself preclude his designation to ADX Florence, the evidence suggested that most inmates with paranoid schizophrenia were not housed in maximum security facilities (see paragraph 27 above).

54. Moreover, according to the information provided by the Department of Justice, mental health services were available in all prisons, including ADX Florence, and both inpatient, residential and outpatient care was available. Conditions of confinement could also be modified if an inmate's mental health was to deteriorate and acutely mentally ill inmates could be referred to a Psychiatric Referral Centre for acute, in-patient psychiatric care (see paragraph 27 above).

55. The Court therefore accepts that if convicted the applicant would have access to medical facilities and, more importantly, mental health services, regardless of which institution he was detained in. Indeed, it recalls that in *Babar Ahmad* it was not argued that psychiatric care in the United States' federal prisons was substantially different from that which was available at HMP Long Lartin (*Babar Ahmad*, cited above, § 249). However, the mental disorder suffered by the present applicant was of sufficient severity to necessitate his transfer from HMP Long Lartin to a high-security psychiatric hospital and the medical evidence, which was

accepted by the First-Tier Tribunal, clearly indicated that it continued to be appropriate for him to remain there "for his own health and safety".

56. The question in the present case is not whether the applicant can be returned to HMP Long Lartin but whether he can be extradited to the United States of America, a country where he has no ties and where he will face an uncertain future in an as yet undetermined institution. Moreover, there is no guarantee that if tried and convicted he would not be detained in ADX Florence, where he would be exposed to a "highly restrictive" regime with long periods of social isolation. In this regard, the Court notes that the applicant's case can be distinguished from that of Mustafa Kamal Mustafa (Abu Hamza). While no "diplomatic assurances" were given that Abu Hamza would not be detained in ADX Florence, the High Court found on the evidence before it that his medical condition was such that, at most, he would only spend a short period of time there (*Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09 (dec.), §§ 144 – 145, 6 July 2010). The Court notes, however, that there is no evidence to indicate the length of time that the present applicant would spend in ADX Florence.

57. While the Court in *Babar Ahmad* did not accept that the conditions in ADX Florence would reach the Article 3 threshold for persons in good health or with less serious mental health problems, the applicant's case can be distinguished on account of the severity of his mental condition. The applicant's case can also be distinguished from that of *Bensaid v. the United Kingdom*, no. 44599/98, (ECHR 2001-I) as he is facing not expulsion but extradition to a country where he has no ties, where he will be detained and where he will not have the support of family and friends. Therefore, in light of the current medical evidence, the Court finds that there is a real risk that the applicant's extradition to a different country and to a different, and potentially more hostile, prison environment would result in a significant deterioration in his mental and physical health and that such a deterioration would be capable of reaching the Article 3 threshold (see *Bensaid v. the United Kingdom*, cited above, § 37).

58. Insofar as the applicant's complaints concern the length of his possible detention, and leaving aside his present mental condition, the Court finds that he has not demonstrated that any sentence imposed would be grossly disproportionate. It has previously held that while, in principle, matters of appropriate sentencing largely fall outside the scope of Convention, a grossly disproportionate sentence could amount to ill-treatment contrary to Article 3 at the moment of its imposition. However, it has also stated that "gross disproportionality" is a strict test which will only be met on "rare and unique occasions" (*Babar Ahmad*, cited above, §§ 235 – 237; see also *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, § 133 17 January 2012). In the present case the evidence suggested that the applicant could be sentenced to anything up to

thirty-five years' imprisonment. There was no minimum sentencing requirement. In view of the nature of the alleged offences, which included terrorism offences, and the high threshold required to demonstrate that a sentence would be grossly disproportionate, the Court does not accept that the applicant's extradition would give rise to a real risk of treatment contrary to Article 3 of the Convention as a result of the length of any sentence imposed.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

60. The applicant did not submit a claim for just satisfaction.

III. RULE 39 OF THE RULES OF COURT

61. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

62. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there would be a violation of Article 3 of the Convention in the event of the applicant's extradition solely on account of the current severity of his mental condition;

2. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 16 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	David Thór Björgvinsson President