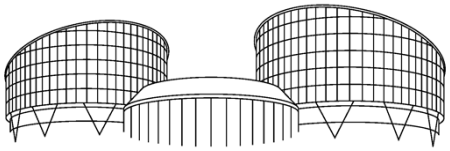

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 13869/22
Hugo Armando CARVAJAL BARRIOS
against Spain

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

Georges Ravarani*, President*,
Lado Chanturia,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 March 2022,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated in private on 20 June and 4 July 2023, decides as follows:

THE FACTS

1. The applicant was born in 1960 and, according to the latest information available to the Court, was detained in Estremera (Madrid). He was represented by Mr O. Peter, a lawyer practising in Geneva.

2. The Government were represented by their Agent, Mr A. Brezmes Martínez de Villareal, Agent of Spain before the European Court of Human Rights.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. First part of extradition proceedings

4. The applicant was a member of the Venezuelan intelligence agency. He entered the military in 1982. He was a member of the United Socialist Party of Venezuela, and reached high-ranking positions in the army under the mandate of former President H. Chávez, including Head of Counter-Espionage Services. In 2005 he was in charge of executing the Venezuelan government's decision to expel the United States Drug Enforcement Administration (DEA) from Venezuela.

5. In 2011 the United States District Court for the Southern District of New York issued an indictment against the applicant for offences related to drug importation into the United States.

6. The applicant was appointed Consul of Venezuela in Aruba in January 2014. In July 2014 he was arrested at Aruba Airport on the basis of an international arrest warrant issued by the United States Department of State. Following some diplomatic negotiations, the Ministry of Foreign Affairs of the Netherlands recognised his diplomatic immunity on the basis that he had immunity as Consul of Venezuela. It declared him *persona non grata* and expelled him from Aruba.

7. From 2016 to 2021 the applicant was also an elected member of the Venezuelan National Assembly. On 5 February 2019 he publicly supported Mr. J. Guaidó being recognised as the legitimate President of the Venezuelan National Assembly and interim President of Venezuela. The applicant was consequently expelled from the armed forces and accused of treason. He then left the country, going first to Trinidad and Tobago and later to the Dominican Republic.

8. On 18 March 2019 the applicant travelled from the Dominican Republic to Spain, entering the country using another identity.

9. The applicant was arrested in Spain on 12 April 2019, on the basis of an Interpol search order dated 3 August 2011. An arrest warrant dated 15 April 2019 was sent by the Spanish Ministry of Foreign Affairs to the United States embassy in Spain, in accordance with a bilateral treaty between Spain and the United States covering the exchange of information about such detention. A formal extradition request was sent by the United States embassy in Spain through a *note verbale* (*Note Verbale* no. 360) on 9 May 2019, and was received by central investigating judge no. 6 on 13 May 2019. Note Verbale no. 360 was accompanied by an affidavit from the assistant United States attorney for the Southern District of New York dated 29 April 2019, a superseding indictment in respect of the applicant dated 15 April 2019 from the United States District Court for the Southern District of New York, and

the applicant's arrest warrant issued by the same court. An affidavit by a DEA agent was also attached.

10. The applicant's extradition to the United States was requested so that he could face prosecution on charges of:

> "[Narco-terrorism conspiracy:] knowingly and intentionally conspiring to engage in narco-terrorism, that is, conspiring to engage in conduct punishable under Title 21, United States Code, Section 841(a), knowing or intending to provide anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity or terrorism, in violation of Title 21, United States Code, Section 960a, and Title 18, United States Code, Section 3238;
>
> [Conspiracy to import cocaine into the United States:] a conspiracy to: (i) import a controlled substance into the United States and into the customs territory of the United States from a place outside thereof a controlled substance; (ii) manufacture and distribute a controlled substance, intending and knowing that such substance would be unlawfully imported into the United States and into waters within a distance of 12 miles of the coast of the United States from a place outside thereof; and (iii) manufacture, distribute, and possess a controlled substance on board an aircraft registered in the United States, in violation of Title 21, United States Code, Sections 952(a), 959(a) & (c), 960(a)(l) & (a)(3), and 963, and Title 18, United States Code Section 3238;
>
> [Possession of machine guns and destructive devices in furtherance of a drug-trafficking crime:] using or carrying firearms in furtherance of, or possessing firearms during and in relation to, the controlled substance offenses charged in Counts One and Two of the indictment, and aiding and abetting the same, in violation of Title 18, United States Code, Sections 924(c)(1)(A) & (c)(1)(B)(ii), 3238, and 2; and
>
> [Conspiracy to possess machine guns and destructive devices in furtherance of a drug-trafficking crime:] participating in a conspiracy to use or carry firearms in furtherance of, or possess firearms during and in relation to, the controlled substance offenses charged in Counts One and Two of the indictment, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(i), (c)(l)(B)(ii) & (o) and 3238."

11. The alleged criminal conduct took place between 1999 and 2019. The extradition request alleged that the applicant, along with another individuals, had committed acts of narco-terrorism in order to import, produce and distribute controlled substances (notably cocaine), and had possessed or used weapons for those purposes. The indictment in respect of the applicant specifically stated as follows:

> **COUNT ONE**
> **(Narco-Terrorism Conspiracy)**
>
> "The Grand Jury charges:
>
> **Overview**
>
> 1. From at least in or about 1999, up to and including in or about 2019, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, was a member of a Venezuelan drug-trafficking organization comprised of high-ranking Venezuelan officials and others known as the *Cartel de Los Soles,* or "Cartel of the Suns."

2. The objectives of the *Cartel de Los Soles* included not only enriching its members, but also using cocaine as a weapon against the United States due to the adverse effects of the drug on individual users and the potential for broader societal harms arising from cocaine addiction.

3. From at least in or about 1999, up to and including in or about 2019, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles* worked with terrorist and other drug traffickers in South America and elsewhere to dispatch thousands of kilograms of cocaine from Venezuela for importation into the United States. CARVAJAL BARRIOS participated in, and caused others to participate in, the provision of heavily armed security to protect some of these drug shipments.

4. Between at least in or about 1999, up to and including in or about 2014, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles* worked with the leadership of the *Fuerzas Armadas Revolucionarias de Colombia* ('FARC' [the Revolutionary Armed Forces of Columbia]) to coordinate large-scale drug trafficking activities in Venezuela and Colombia, at times in exchange for military-grade weapons provided to the FARC. At all times relevant to Count One of this Superseding Indictment, the FARC was a terrorist organization dedicated to the violent overthrow of the democratically elected Government of Colombia, which also perpetrated acts of violence against United States nationals and interests and became one of the largest producers of cocaine in the world.

Hugo Armando Carvajal Barrios, a/k/a 'El Pollo'

5. HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, is a Venezuelan citizen.

6. In or about 2003, Venezuelan President Hugo Rafael Chávez Frías appointed HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, to be a deputy director in Venezuela's military intelligence agency, which was known at the time as the *División de Inteligencia Militar* ('DIM').

7. Between in or about 2004, up to and including in or about 2011, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo', the defendant, acted as the director of the DIM.

8. In or about April 2013, then-Venezuelan President Nicolás Maduro Moros ('Maduro') made HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, the director of the DIM for a second time. CARVAJAL BARRIOS acted as director of the DIM in the Maduro administration until in or about 2014.

9. Between in or about January 2014, up to and including in or about April 2014, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, acted as the Consul General of Venezuela in Aruba.

10. In or about January 2016, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, was elected to the Venezuelan National Assembly as a representative of the Monagas State of Venezuela.

Cartel de Los Soles

11. One of the express objectives of the *Cartel de Los Soles* was to 'flood' the United States with cocaine. In pursuit of this objective, beginning at least in or about 1999, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles* cultivated connections to large-scale drug

traffickers, including but not limited to FARC leaders, in order to obtain large quantities of cocaine, as well as logistical support and protection along cocaine-transportation routes within and between Venezuela and Colombia.

12. At various times between at least in or about 1999, up to and including in or about 2019, members of the *Cartel de Los Soles* helped cause the government of Venezuela to take official actions that enabled and facilitated drug trafficking. For example, in or about 2005, the Venezuelan government announced that it had expelled the U.S. Drug Enforcement Administration ('DEA') from Venezuela and largely ceased its participation in bilateral counter-narcotics operations with the DEA. As a result, and with the assistance of HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles*, drug traffickers were able to dispatch large shipments of cocaine on planes departing from airports and clandestine airstrips in places such as Apure, Venezuela, at an increasing rate. Subsequent to these official actions by Venezuela, in or about 2006, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles* worked together and with others to dispatch a 5.6-ton shipment of cocaine from Venezuela to Mexico on a DC-9 jet, which is an aircraft capable of transporting over 100 people.

13. At various times between at least in or about 1999, up to and including in or about 2019, HUGO ARMANDO CARVAJAL BARRIOS a/k/a 'El Pollo,' the defendant, and other members of the *Cartel de Los Soles* participated directly in multi-ton shipments of cocaine, provided sensitive intelligence and law enforcement information to drug traffickers to facilitate cocaine shipments and other drug-trafficking activities, interfered with drug-trafficking investigations and pending criminal cases in Venezuela and elsewhere, and sold large quantities of previously-seized cocaine to drug traffickers in exchange for millions of dollars.

Fuerzas Armadas Revolucionarias de Colombia

14. Beginning in or about 1964, the FARC operated as an international terrorist group based in Colombia and Venezuela dedicated to the violent overthrow of the democratically elected Government of Colombia. In October 1997, the United States Secretary of State designated the FARC as a foreign terrorist organization, and the FARC remains so designated as of the date of the filing of this Superseding Indictment.

...

STATUTORY ALLEGATIONS

18. From at least in or about 1999, up to and including in or about 2014, in an offense begun and committed out of the jurisdiction of any particular State or district of the United States, including in Venezuela, Colombia, Mexico, and elsewhere, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, at least one of whom will be first brought to and arrested in the Southern District of New York, intentionally and knowingly combined, conspired, confederated, and agreed together and with each other to violate Title 21, United States Code, Section 960a.

19. It was a part and an object of the conspiracy that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, would and did engage in conduct that would be punishable under Title 21, United States Code, Section 841(a) if committed within the jurisdiction of the United States, to wit, the distribution of, and possession with the intent to distribute, five

kilograms and more of mixtures and substances containing a detectable amount of cocaine, knowing and intending to provide, directly and indirectly, something of pecuniary value to a person and organization that has engaged and engages in terrorism and terrorist activity, to wit, the FARC (which has been designated by the United States Secretary of State as a foreign terrorist organization pursuant to Section 219 of the Immigration and Nationality Act and remains so designated) and its members, operatives, and associates, having knowledge that such organization and persons have engaged and engage in terrorism and terrorist activity, in violation of Title 21, United States Code, Section 960a.

(Title 21, United States Code, Section 960a; and Title 18, United States Code, Section 3238.)

COUNT TWO
(Cocaine Importation Conspiracy)

The Grand Jury further charges:

20. Paragraphs 1 through 17 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

21. From at least in or about 1999, up to and including in or about 2019, in an offense begun and committed out of the jurisdiction of any particular State or district of the United States, including in Venezuela, Colombia, Mexico, and elsewhere, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, at least one of whom will be first brought to and arrested in the Southern District of New York, intentionally and knowingly combined, conspired, confederated, and agreed together and with each other to violate provisions of Title 21, United States Code, Chapter 13, Subchapter II.

22. It was a part and an object of the conspiracy that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, would and did knowingly and intentionally import into the United States from a place outside thereof a controlled substance, in violation of Title 21, United States Code, Sections 952(a) and 960(a)(1).

23. It was further a part of and an object of the criminal conspiracy that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, would and did manufacture, distribute, and possess with intent to distribute a controlled substance, intending, knowing, and having reasonable cause to believe that such substance would be unlawfully imported into the United States and into waters within a distance of 12 miles of the coast of the United States, in violation of Title 21, United States Code, Sections 959(a) and 960(a)(3).

24. It was further a part and an object of the conspiracy that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, would and did, on board an aircraft registered in the United States, manufacture, distribute, and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Sections 959(c) and 960(a)(3).

25. The controlled substance that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, conspired to (i) import into the United States and into the customs territory of the United States from a place outside thereof, (ii) manufacture and distribute, intending, knowing, and having reasonable cause to believe that such substance would be unlawfully imported into the United States and into waters within a distance of 12 miles of the coast of the United States from a place outside thereof, and (iii) manufacture, distribute, and possess on board an aircraft registered in the United

States, was five kilograms and more of mixtures and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section (960)(b)(l)(B).

(Title 21, United States Code, Section 963; and Title 18, United States Code, Section 3238.)

COUNT THREE
(Possession of Machineguns and Destructive Devices)

The Grand Jury further charges:

26. Paragraphs 1 through 17 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

27. From at least in or about l999, up to and including in or about 2019, in an offense begun and committed out of the jurisdiction of any particular State or district of the United States, including in Venezuela, Colombia, Mexico, and elsewhere, and for which at least one of two or more joint offenders will be first brought to and arrested in the Southern District of New York, HUGO ARMANDO CARVAJAL BARRIOS a/k/a 'El Pollo,' the defendant, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, to wit, the controlled substance offenses charged in Counts One and Two of this Superseding Indictment, knowingly used and carried firearms, and, in furtherance of such crime, knowingly possessed firearms, and aided and abetted the use, carrying, and possession of firearms, to wit, machineguns that were capable of automatically shooting more than one shot, without manual reloading, by a single function of the trigger, as well as destructive devices.

(Title 18, United States Code, Sections 924(c)(1)(A), 924 (c)(1)(B)(ii), 3238 and 2.)

COUNT FOUR
(Conspiracy to Possess Machineguns and Destructive Devices)

The Grand Jury further charges:

28. Paragraphs 1 through 17 of this Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

29. From at least in or about 1999, up to and including in or about 2019, in an offense begun and committed out of the jurisdiction of any particular State or district of the United States, including in Venezuela, Colombia, Mexico, and elsewhere, HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, at least one of whom will be first brought to and arrested in the Southern District of New York, intentionally and knowingly combined, conspired, confederated, and agreed together and with each other to violate Title 18, United States Code, Section 924(c).

30. It was a part and an object of the conspiracy that HUGO ARMANDO CARVAJAL BARRIOS, a/k/a 'El Pollo,' the defendant, and others known and unknown, during and in relation to a drug trafficking crime for which they may be prosecuted in a court of the United States, to wit, the controlled substance offenses charged in Counts One and Two of this Superseding Indictment, knowingly use and carry firearms, and, in furtherance of such drug trafficking crime, knowingly possess firearms, including machineguns that were capable of automatically shooting more than one shot, without manual reloading, by a single function of the trigger, as well as destructive devices, in violation of Title 18, United States Code, Sections 924(c)(l)(A)(i) and 924(c)(l)(B)(ii).

(Title 18, United States Code, Sections 924(o) and 3238.)

...".

12. In respect of count 1, there was a mandatory minimum sentence of twenty years' imprisonment and a maximum sentence of life imprisonment under Sections 21 of the United States Code ("USC") 960a and 21 USC 841(b)(1)(A). In respect of count 2, there was a mandatory minimum sentence of ten years' imprisonment and a maximum sentence of life imprisonment as established under Section 21 USC 841(b)(1)(A). In respect of count 3, there was a mandatory minimum sentence of thirty years' imprisonment which could not run concurrently with any other term of imprisonment, and a maximum sentence of life imprisonment, under Section 18 USC 924(c)(1)(B)(ii). In respect of count 4, there was no mandatory minimum and the maximum sentence was life imprisonment, according to Section 18 USC 924(o). Under the federal system, life imprisonment did not include the possibility of parole following the Sentencing Reform Act of 1984.

13. The applicable United States statute of limitations did not bar the applicant's prosecution for the offences for which his extradition was sought. No information was submitted regarding the prison in which the applicant was likely to be detained if convicted. There was no record of his previous convictions.

14. According to the affidavit from the assistant United States attorney for the Southern District of New York (M.L.) dated 29 April 2019, the following elements would need to be proved at trial in order for the applicant to be convicted of each of the counts on the indictment:

"Count One: (i) [the applicant] came to an agreement with one or more persons to accomplish a common and unlawful plan, namely the distribution of narcotics; (ii) [the applicant] did so knowing or intending to provide something of pecuniary value, directly or indirectly, to the FARC; (iii) the FARC engages in terrorist activity or terrorism; and (iv) [the applicant] knew that the FARC engages in terrorism or terrorist activity;

Count Two: [the applicant] came to an agreement with one or more persons to accomplish a common and unlawful plan, namely the narcotics offenses referenced above, and that [the applicant] knowingly and wilfully became a member of such conspiracy;

Count Three: (i) [the applicant] committed the controlled substance offenses charged in Count One or in Count Two; (ii) [the applicant] knowingly used or carried a firearm during and in relation to the commission of, of knowingly possessed a firearm in furtherance of, the crimes charged in Count One or in Count Two, or aided and abetted the use and carrying of a firearm; and (iii) the firearm was a machine gun or destructive device.

Count Four: (i) [the applicant] came to an agreement with one or more persons to accomplish a common and unlawful plan, namely the firearms offense referenced above; and (ii) that [the applicant] knowingly and wilfully became a member of such conspiracy."

15. On 14 June 2019 the Council of Ministers approved the initiation of the extradition proceedings. The applicant lodged an administrative judicial appeal, which was dismissed by the Supreme Court's Administrative Chamber on 2 July 2020.

16. On 21 June 2019 central investigating judge no. 6 referred the extradition proceedings to the Criminal Chamber (Third Section) of the *Audiencia Nacional*.

17. The applicant opposed his extradition on 12 September 2019, on the grounds that the extradition was based on purely political reasons and the United States authorities only intended to obtain information about President N. Maduro from him, as he had been Head of the Military Intelligence Service in Venezuela. The applicant firstly submitted that the "statement of the facts" in the extradition request lacked specificity, contrary to the requirements of the bilateral treaty and the Spanish Law on Passive Extradition. He claimed that the indictment referred to only very generic conduct and did not mention any specific dates or places in relation to the commission of the offences. Secondly, he complained about the fact that the indictment did not refer to the specific provisions of the United States Code which established the offences and the respective possible sentences (especially the minimum applicable sentences), contrary to the bilateral treaty and the Spanish Law on Passive Extradition. Thirdly, he complained that there was no official translation of the extradition documents, and that was contrary to the treaty and the Spanish Law on Extradition. Fourthly, he argued that the indictment did not contain a clear statement about the offences not being time-barred under the law of the United States, and submitted that some of the offences or parts of them would already have become time-barred because no specific dates had been mentioned. Fifthly, he complained that the accusations were ill-founded because the alleged witness evidence was completely imprecise (such as the sworn statement by the DEA agent) and the extradition order and arrest warrant had been issued only three days after his detention. Sixthly, he argued that the District Court for the Southern District of New York was not competent to investigate these crimes. Moreover, the applicant submitted that he was being accused of military crimes, which would impede his extradition under the bilateral treaty and the Spanish Law on Extradition. He also claimed that the extradition request was purely politically motivated. Lastly, the applicant contended that there were no assurances that a sentence of life imprisonment without parole and without any review mechanism would not be imposed on him, which would violate Article 3 of the Convention. He mentioned that neither the prosecutor nor the judge in the United States would be bound by any diplomatic assurances, and that even in the event that a plea deal was signed with the prosecutor's office, there were no assurances that the district court would respect its terms. The prosecutor requested that the extradition be granted, in the light of the fact that the request complied with

the requirements of the bilateral extradition treaty between Spain and the United States.

18. On 17 September 2019 the Criminal Chamber of the *Audiencia Nacional* initially decided to reject the request by the United States for the applicant's extradition. The *Audiencia Nacional* addressed each of the applicant's complaints and concluded that the extradition request was formally in accordance with the bilateral treaty. Notwithstanding the above, the *Audiencia Nacional* considered that the extradition request referred to a very general and imprecise statement of facts which did not specifically describe the applicant's alleged criminal conduct, or the time or place of that conduct. According to the *Audiencia Nacional*, the DEA agent's sworn statement could not be considered a valid "statement of facts" to be detailed in the extradition request to justify the applicant's indictment for the relevant offences. Moreover, the court considered that the facts imputed to the applicant were of a "strictly military" nature, which implied that the extradition request had to be rejected under the extradition treaty between Spain and the United States. Lastly, the *Audiencia Nacional* concluded that the request was politically motivated, which was linked to the fact that the applicant had been Head of the Military Intelligence Service under the presidencies of H. Chávez and N. Maduro in Venezuela, and that also implied that the request should be rejected under the bilateral treaty. There was no mention of the possibility of the applicant being sentenced to life imprisonment without parole. As a result of that decision, the applicant was released from detention.

19. The public prosecutor's office lodged an appeal against the above decision and requested that the extradition request be granted. On 8 November 2019 the Plenary of the Criminal Chamber of the *Audiencia Nacional* allowed the appeal by the public prosecutor's office and granted the extradition request. It considered that the statement of facts of the extradition request and the accompanying documents were specific enough to be able to deduce that the applicant had participated in the commission of the alleged offences, which had taken place over a lengthy period of twenty years. The Plenary considered that the applicant had held military office when the offences had been committed, but this did not mean that he had committed the offences in his military capacity, and therefore in accordance with the bilateral treaty, he could be extradited for the alleged commission of the offences. As regards the possibility of the extradition request being politically motivated, the domestic court considered that this was for the Spanish government to decide (given that the Council of Ministers could, at its discretion, prevent the extradition at its final stage, after the judicial procedure had finished). That decision made no mention of the possibility of the applicant being sentenced to life imprisonment without parole.

20. On 4 December 2019 the applicant lodged an application to annul the decision of the Plenary on the grounds that his extradition had not been

decided with sufficient procedural guarantees or by an independent and impartial tribunal. He argued that at least some members of the Plenary had been pressured to grant the extradition request in respect of him for political reasons. He also insisted that the statement of facts contained in the extradition request lacked sufficient precision to sustain the allegation that he had committed the offences with which he was being charged, which had violated his right to fair proceedings and the principle of *nulla poena sine lege*. He also considered that his right to a reasoned decision which was not arbitrary had been violated, because there were plenty of contradictions and inconsistencies as regards the offences being considered non-military in nature. In that application, the applicant also raised the concern that there was a risk that he would be sentenced to life imprisonment without parole, and argued that this could violate his right not to be subjected to inhuman or degrading treatment. The applicant explained that he had already raised that issue at the extradition hearing on 13 September 2019, as a subsidiary reason to oppose his extradition, and that that point had not been addressed by the Criminal Chamber of the *Audiencia Nacional* or the Plenary.

21. On 24 January 2020 the application was dismissed by the Plenary of the Criminal Chamber of the *Audiencia Nacional*. However, the Plenary decided that a complementary decision was necessary in order to address the issue raised concerning the risk of the applicant being sentenced to life imprisonment without parole, which had not been addressed initially, given that the extradition had been rejected by the Criminal Chamber on other grounds.

22. Hence, in a separate decision of 24 January 2020, the Plenary stated:

> "It is agreed that the decision of the Plenary of the Criminal Chamber of the *Audiencia Nacional* of 8 November 2019 should be supplemented, in the sense that a condition to the surrender of [the applicant] to the United States judicial authorities should be added, [a condition stipulating] that within 45 days that State must provide assurances that its system incorporates the possibility of review of a sentence of life imprisonment or the application of measures of clemency of which the person [in question] may avail himself with a view to the sentence or measure not being executed."

23. The parties were not notified of that complementary decision until 22 October 2021 (see paragraphs 30 – 32 below). On that date the applicant's extradition was suspended until the necessary assurances were provided by the United States authorities and assessed by the domestic courts.

24. On 15 July 2020 the applicant lodged the first *amparo* appeal against the dismissal of his annulment application with the Constitutional Court, an appeal in which he again raised the fact that the domestic courts had not responded to his allegation that there was a risk that he would be subjected to inhuman or degrading treatment by being sentenced to life imprisonment without parole (despite the fact that the Plenary of the Criminal Chamber of the *Audiencia Nacional* had specifically stated that a complementary decision on that matter was required). The applicant had already referred to the

relevant case-law of the European Court of Human Rights concerning life imprisonment without parole in the context of the extradition proceedings. On 23 November 2020 the *amparo* appeal was declared inadmissible for lack of constitutional relevance.

25. Following the judicial proceedings on extradition, on 3 March 2020 the Council of Ministers confirmed the applicant's extradition to the United States. The execution of the decision was suspended because in the meantime the applicant had lodged a request for international protection, which was still pending (see paragraphs 39 - 45 below).

26. The applicant lodged an appeal against the Council of Ministers' decision, claiming, among other things, that the issue of whether the extradition request in respect of him was merely politically motivated had not been addressed. The appeal was dismissed by the Supreme Court on 22 November 2021.

27. The applicant lodged a second *amparo* appeal against the decision to dismiss his appeal against the Council of Ministers' decision, complaining of a violation of his right to fair proceedings – in particular, his right to have a justified and well-reasoned response to his allegations – and his right not to be subjected to inhuman or degrading treatment, taken together with his right to fair proceedings; he argued that the decision dismissing his complaint concerning this matter had not been reasoned.

28. The applicant, who had been free since his release from detention in September 2019, was arrested again at his home on 9 September 2021. The authorities had not known of his whereabouts during the period when he had been at liberty. From the moment of his arrest on 9 September 2021 he was detained pending his extradition, and was still in prison according to the latest information available to the Court.

29. On 20 October 2021 the Criminal Chamber of the *Audiencia Nacional* issued a notice for Interpol to proceed to surrender the applicant to the United States authorities.

2. Assurances provided by the United States authorities

30. On 24 January 2020 the Plenary of the Criminal Chamber of the *Audiencia Nacional* decided to complement the decision concerning the applicant's extradition with an assessment of the risk of him being subjected to inhuman or degrading treatment. It did so by a decision of the same date (24 January 2020), which established that the extradition was conditional upon the receipt of sufficient assurances from the United States authorities that there were mechanisms in place for reviewing a life sentence in the event that this was imposed on the applicant (see paragraph 22 above). The assurances were to be received from the United States authorities within forty-five days. However, owing to an alleged mistake, the Criminal Chamber of the *Audiencia Nacional* was not informed of that decision until 22 October

2021. At that point the domestic court also ordered the suspension of the extradition until the assurances had been received and assessed.

31. On 29 October 2021 the Plenary of the Criminal Chamber of the *Audiencia Nacional* realised that that mistake meant that the parties did not know about the decision of 24 January 2020, and decided that they should be notified of it immediately.

32. As a consequence of the above-mentioned mistake, the Criminal Chamber of the *Audiencia Nacional* did not send the request for diplomatic assurances to the United States until 11 November 2021, twenty-two months after it had decided to make the applicant's extradition conditional upon those assurances.

33. The United States embassy sent *Note Verbale* no. 825 on 17 November 2021. They submitted that the following would apply, should the applicant be convicted of any of the counts carrying the potential penalty of life imprisonment for which his extradition was sought:

> "he would not be subject to an unalterable sentence of life imprisonment because, if a life sentence was imposed, the United States framework in place allows that he may seek review of his sentence on appeal and also seek relief from his sentence in the form of a petition for a pardon or commutation to a lesser sentence. If a pardon or commutation was granted pursuant to applicable United States procedures, that would result in a reduction of the sentence."

34. In the light of the content of the *note verbale*, the applicant argued that the assurances were not sufficient and asked the Criminal Chamber of the *Audiencia Nacional* not to grant his extradition to the United States. The public prosecutor's office submitted a report in which it claimed that the assurances were sufficient and the applicant should be extradited.

35. In a decision of 26 November 2021, the Criminal Chamber of the *Audiencia Nacional* considered that the diplomatic assurances provided by the United States embassy were sufficient, for the purposes of protection under Article 3 of the Convention, to confirm the applicant's extradition. It stated that, given that the applicant would be able to lodge an appeal against a conviction should he be sentenced to life imprisonment, and that he would be able to obtain a reduction of his sentence through a pardon or commutation, the potential penalty should not be considered irreducible under the applicable legal standards (including those of the European Court of Human Rights).

36. The applicant lodged a *súplica* appeal against that decision, claiming that the United States had not provided sufficient assurances. On 3 December 2021 that appeal was dismissed by the Criminal Chamber of the *Audiencia Nacional*, which reiterated the same grounds given in its previous decision.

37. On 13 December 2021 the applicant appealed against the decision of 3 December 2021 by lodging a third *amparo* appeal with the Constitutional Court. He claimed that his right to fair proceedings and his right not to be subjected to inhuman or degrading treatment had been violated, as the United

States authorities had not provided any assurances concerning the mechanisms for reviewing the potential sentence of life imprisonment which he could receive, and that notwithstanding that, the Spanish courts had granted the request for his extradition. He argued that there was no such review mechanism under United States law, and that a presidential pardon was a purely discretionary and extraordinary measure which, like the opportunity to lodge an appeal against a sentence of life imprisonment, did not fulfil the requirements of Article 3 of the Convention. The applicant also claimed that the possibility of having his sentence reduced on the basis of his cooperation with the judicial authorities, in particular with regard to President N. Maduro of Venezuela, would not satisfy the requirement of revision based on his conduct, and would instead be another form of inhuman or degrading treatment. He alleged that the assurances provided by the United States embassy were insufficient in the light of *Trabelsi v. Belgium* (no. 140/10, ECHR 2014 (extracts)) and also unreliable with regard to *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09, ECHR 2012 (extracts)). He asked for the execution of the extradition to be suspended while the *amparo* appeal was pending.

38. On 28 February 2022 the Constitutional Court dismissed the applicant's *amparo* appeal against the decision of the Criminal Chamber of the *Audiencia Nacional* to confirm the extradition order in the light of the sufficiency of the diplomatic assurances. According to the Constitutional Court, there was no appearance of a violation of any fundamental right protected by the Spanish Constitution, given that the judicial decisions which had been appealed against followed the constitutional case-law concerning the extradition of persons accused of offences punishable by life imprisonment. That was the final domestic decision concerning the extradition.

3. International protection proceedings

39. The applicant lodged an asylum request or, alternatively, a subsidiary protection request after his first period of detention, on 30 April 2019. He alleged that following his public criticism of the regime presided over by President N. Maduro and his public support for Mr. J. Guaidó, he had been subjected to political persecution in Venezuela. He claimed that he was being falsely accused of a number of criminal offences because of his opposition to President N. Maduro. He also claimed that his home had been broken into and that some of the people who worked for him had been arrested.

40. In another request made on 13 June 2019, the applicant requested international protection against the United States, a country where he was also being persecuted for political reasons because of his long-standing service in Venezuelan military intelligence.

41. The applicant's extradition was suspended on 14 September 2021, pending a decision on his asylum request.

42. The asylum request was dismissed on 23 September 2019. The administrative authorities considered that neither the allegations nor the documents submitted by the applicant proved the existence of any persecution or a well-founded fear of such persecution. The applicant's political opposition to the Venezuelan regime had been described vaguely, and no proof of any measures taken against him had been submitted. They considered it relevant that the applicant had requested international protection only after he had been arrested for the purposes of extradition, and not as soon as he had arrived in Spain.

43. The applicant, whose whereabouts were unknown from September 2019 until he was arrested again on 9 September 2021 (see paragraph 28 above), claimed that he had not been notified of the above-mentioned dismissal of his asylum request until 15 September 2021. He lodged an appeal the next day, and the Ministry of Internal Affairs confirmed the dismissal on 18 October 2021.

44. The suspension of the extradition was lifted on 20 October 2021, when the applicant was made available to Interpol so that it could proceed to surrender him (see paragraph 29 above).

45. On 21 October 2021 the applicant lodged a judicial appeal against the administrative decision not to grant him asylum, also requesting an interim measure to suspend the extradition in the meantime. The appeal was declared inadmissible on 19 January 2022. On 22 October 2021 the applicant's extradition was suspended by the Criminal Chamber of the *Audiencia Nacional* (see paragraph 23 above).

46. The applicant lodged another international protection request on 30 December 2021, on the grounds that new events had occurred since his first request. In particular, he alleged that some of his family members and relatives had been detained and charged with criminal offences, and other events had taken place concerning his assets in Venezuela. The applicant also insisted that he would face risks if extradited to the United States.

47. The Spanish Ministry of Internal Affairs dismissed the applicant's request on 20 March 2022. It stated that the new facts which constituted the grounds for his second asylum request were not actually new, or would already have been in existence when he had first requested asylum. It also noted that the applicant had requested asylum on the basis of threats which had allegedly been made against him in Venezuela, but the extradition request which had been granted involved his extradition to the United States. The ministry observed that the applicant had never requested asylum in Trinidad and Tobago or the Dominican Republic, and that despite the fact that he had arrived in Spain on 18 March 2019, allegedly fleeing persecution from the Venezuelan authorities, he had only requested asylum after being arrested in the country more than a month later. In the view of the ministry, this was inconsistent with his allegations that he feared persecution.

48. On 13 January 2022 a procedure for an administrative sanction was initiated against the applicant, who was already detained, on the basis that he did not have any legal grounds to reside in Spain. The proceedings could lead to an administrative sanction ranging from a fine to the applicant's expulsion from Spanish territory, with a ban on his re-entering that territory for a period up to five years. The applicant opposed that action.

4. Interim measures indicated by the Court

49. Following the applicant lodging a request for an interim measure on 17 March 2022, on 22 March 2022 the Court granted the request and indicated to the Spanish Government that the applicant's extradition should be suspended while the proceedings before the Court were pending. On 25 March 2022 the Criminal Chamber of the *Audiencia Nacional* confirmed the suspension of the applicant's extradition following the Court's interim measure.

50. The applicant remained imprisoned during that period.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Spain

Extradition Law no. 4/1985 of 21 March 1985

51. Under section 1 of Extradition Law no. 4/1985, extradition is only possible between Spain and foreign States under a treaty concluded on a mutual basis.

52. Under section 4(6), extradition may not be granted if the requesting State does not personally guarantee that the person will not be executed or subjected to a punishment amounting to inhuman and/or degrading treatment.

53. Under section 7, an extradition request must be lodged with the Ministry of Foreign Affairs by means of a diplomatic note or directly with the Ministry of Justice. The Ministry of Justice then issues its recommendation regarding the request and sends it to the government, which decides whether to continue with the proceedings (section 9).

54. Under section 12, if the government decides to continue with the proceedings, the request will be forwarded to the relevant judge.

Sections 14 and 15 provide that after an investigation and a hearing the judge shall decide whether to grant or refuse an extradition request. That decision shall be open to an appeal (*recurso de súplica*) to the Plenary of the Criminal Chamber of the *Audiencia Nacional*.

55. Section 18 provides that if the domestic courts grant an extradition request, the matter will then be referred to the government, which ultimately decides whether or not to hand the person in question over to the requesting State.

56. Section 18 refers to section 6, which establishes that the government cannot authorise an extradition if the final judicial decision in that regard is to not authorise it. However, the government is not bound to comply with a judicial decision authorising an extradition, and may decline to authorise it, exercising its powers of national sovereignty, in accordance with the principle of reciprocity, or for reasons of security, public order or any other essential national interest. The government's decision cannot be appealed against.

B. The United States

1. Executive clemency and compassionate release

57. The relevant legal framework and practice concerning executive clemency and compassionate release in United States federal law is set out in *Sanchez-Sanchez v. the United Kingdom* ([GC] 22854/20, §§ 58-62, 3 November 2022).

2. Sentencing principles

58. The core sentencing principles under US law are found in Title 18, United States Code ("U.S.C."), § 3553(a):

> "(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—
>
> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed—
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant; and
>
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
>
> (3) the kinds of sentences available;
>
> (4) the kinds of sentence and the sentencing range established for—
>
> (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
>
> (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
>
> (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense."

59. Under Title 18, United States Code, Section 3661, there is no limitation on the information about the background, character and conduct of a person convicted of an offense which courts can receive and consider for the purpose of imposing an appropriate sentence.

60. The applicant is charged of offences concerning drugs, such as narco-terrorism or drug importation, punished under Title 21 of the United States Code, together with offences punished under Title 18 of the United States Code (defined under Title 26 therein) related to possession of machineguns and destructive devices as well as the conspiracy to do so. Under Title 18 USC Section § 3584, multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. In the case of the applicant's charges, the imprisonment sentences for counts 1, 2 and 4 of his indictment could run concurrently, but the concurrence of penalties was explicitly excluded for count 3 under Title 18 United States Code, Section 924(c)(1)(D)(ii).

3. Report from the United States Sentencing Commission entitled "Life Sentences in the Federal System" (July 2022)

61. The relevant parts of this report by the United States Sentencing Commission stated:

"... sentences of life imprisonment are rare, accounting for only a small proportion of all federal offenders sentenced during the last six fiscal years. During fiscal years 2016 through 2021, federal judges imposed a sentence of life imprisonment ('life imprisonment sentence') on 709 offenders. Another 799 offenders received a sentence so long that it had the practical effect of a life sentence (i.e., 470 months or longer) ('*de facto* life sentence').

Together these two groups of offenders represent only 0.4 percent of the total federal offender population during the last six fiscal years. By comparison, other federally sentenced offenders during this time received a median sentence of imprisonment of 24 months.

...

Life sentences have remained a very small proportion of the federal offender population over the last 20 years (between 0.1% and 0.5%). The number of life sentences imposed has fallen steadily from a high of 358 in 2006 to a low of 60 in 2021. Comparatively, in the last 20 fiscal years, the population of federal offenders also reached a 20-year low in 2021.

...

For most federal crimes, the *Guidelines Manual* provides for a sentencing range based upon the seriousness of the instant offense and the offender's previous criminal history. Each guideline contains at least one base offense level, which serves as a starting point for the court to determine the guideline sentence. The court then uses the guideline's specific offense characteristics to raise or lower the offense level based on the offender's conduct during the crime. Further, the court then determines whether any additional adjustments, which address general aggravating and mitigating factors, may apply to raise or lower the offense level. After accounting for these factors, the court determines a final offense level which ranges from a low of one to a high of 43.

Once the final offense level is calculated, points are assigned for prior criminal convictions to determine the offender's Criminal History Category (CHC). The criminal history points indicate the seriousness of the prior crime or crimes of conviction. This criminal history score places the offender into one of six criminal history categories.

Using the final offense level and the CHC, the court consults the *Sentencing Table* to find the corresponding sentencing range. Under its authority to promulgate sentencing guidelines, the Commission has reserved the sentence of life imprisonment for only the most serious of offenses. As such, only 10.5 percent of guideline ranges provided in the Commission's sentencing table include a term of life imprisonment as part of the sentencing range. In 21 out of the 27 specified sentence ranges where life imprisonment is included, life is provided at the top of the range (*i.e.*, 360–life). For the remaining six sentencing ranges, for offenders with a final offense level of 43, the guidelines specify a sentence of life imprisonment irrespective of the offender's criminal history category.

While it is possible to reach a final offense level of 43 based on the application of sentencing enhancements, only three Chapter Two guidelines of the more than 150 sentencing guidelines—§2A1.1 (First Degree Murder), §2D1.1(a)(1) (Unlawful Manufacturing, Importing, Exporting or Trafficking), and §2M1.1(a)(1) (Treason)-specifically establish a base offense level of 43. A life imprisonment sentence is within the guideline range for a final offense level as low as 37, but only for the most serious criminal history category (CHC VI).

...

Generally, offenders who received a life imprisonment sentence had more extensive criminal histories of longer duration than offenders with sentences less than life imprisonment. ... The higher criminal history categories for offenders who received life imprisonment, not surprisingly, reflects the fact that they had a greater number of prior criminal convictions. The substantial majority (84.4%) of offenders who received life imprisonment had at least one previous criminal conviction. Offenders with criminal

history who received life imprisonment had a median of five previous criminal convictions compared to a median of four previous criminal convictions for offenders with criminal history who received a non-life sentence. ... Offenders who received a life sentence tended to have criminal histories that included more serious crimes. Nearly a quarter (24.0%) of repeat offenders sentenced to life imprisonment had a prior conviction for a federal offense.

...

The second most common crime type of offenders sentenced to life imprisonment is drug trafficking, which accounts for 22.9%. Racketeering accounts for 0.1%.

There was a 76.7% decrease in the number of drug trafficking offenders receiving a life imprisonment sentence between 2018 – 2021.

In fiscal year 2021, ten drug trafficking offenders were given a life imprisonment sentence, of which four had a statutory mandatory minimum of life imprisonment.

...

Federal drug trafficking offenders are primarily convicted of offenses under title 21 of the United States Code, which prohibits the distribution, manufacture, or importation of controlled substances, and possession with intent to distribute controlled substances. As specified drug quantity thresholds are met, a ten-year mandatory minimum penalty and a maximum term of life imprisonment is applied. These mandatory minimum penalties may be enhanced if a drug offender has a qualifying prior conviction or convictions and if prosecutors take affirmative steps for these higher penalties to apply.

Most drug trafficking offenders sentenced to life imprisonment committed offenses involving large quantities of drugs. Among those drug trafficking offenders who received a life sentence (22.9%), 22.2% of drug trafficking offenders received a heightened base offense level because their offense of conviction established that death or serious bodily injury resulted from use of the drugs. Most (86.1%) of the offenders who received the heightened base offense level had a statutory mandatory minimum of life imprisonment.

...

Offenders sentenced to life imprisonment were more often convicted after a trial. Of the 709 cases in which a life imprisonment sentence was imposed, the offender was convicted after a trial in 536 cases. This represents a trial rate of three-quarters (75.6%) for these cases, a rate that is over 30 times higher than the 2.3 percent trial rate for all other federal offenders during this period.

...

Although only a small number of federal offenders are sentenced to life imprisonment each year, additional federal offenders are sentenced to terms of imprisonment of sufficient length to presumably keep the offender in prison for the rest of his or her natural life. Such a sentence, for all practical purposes, is a life sentence. Within this report, any sentence of imprisonment 470 months or longer is considered a *de facto* life sentence. Between fiscal years 2016 and 2021, *de facto* life sentences ranged from 471 months (39.3 years) to 7,200 months—the equivalent of 600 years. The median *de facto* life sentence was 548 months (45.7 years).

During the most recent six fiscal years, the courts imposed *de facto* life sentences on 799 offenders.

...

Approximately one-quarter (27.8%) of offenders sentenced to *de facto* life imprisonment had a count of conviction with a statutory maximum of life imprisonment and an applicable guideline range that included life imprisonment. In these cases, the federal courts could have imposed a sentence of life imprisonment but decided to impose a sentence of at least 470 months. An additional one-in-five (20.9%) had a count of conviction with a statutory maximum of life imprisonment, but the applicable guideline calculation did not include a sentence of life imprisonment. Approximately half (51.3%) of offenders sentenced to *de facto* life imprisonment were sentenced under statutes that did not authorize a sentence of life imprisonment, to which the court typically imposed consecutive sentences for multiple counts of conviction to achieve the lengthy period of incarceration imposed.

...

Statutory mandatory minimum sentences were common with offenders who received *de facto* life imprisonment. Nine-in-ten (90.1%) offenders who received *de facto* life sentences were convicted under a statute that carried a mandatory minimum penalty. However, the sentences imposed were almost always well above the mandatory minimum. For example, of offenders who were subject to a mandatory minimum penalty other than life and received *de facto* life imprisonment, 61.1 percent had a statutory mandatory minimum of 15 years or less, while only 14.3 percent had a statutory minimum of at least 470 months imprisonment.

...

As with offenders who received life imprisonment, offenders who received *de facto* life sentences were more likely to be sentenced following a trial compared to the rest of the federal offender population. Almost four-in-ten (39.4%) were convicted at trial; the remaining portion (60.6%) pleaded guilty (Figure 13). Of the 484 offenders who received *de facto* life sentences and pleaded guilty, nearly all (93.0%) received an adjustment for acceptance of responsibility.

Federal courts rarely impose life imprisonment sentences or *de facto* life sentences of at least 470 months. Just 0.4 percent of offenders sentenced during the six-year period examined in this report received life imprisonment or *de facto* life sentences. In any one fiscal year between 2016 and 2021, the highest number of offenders sentenced to life imprisonment was 156. Comparatively, the highest number of offenders receiving a *de facto* life sentence during the same timeframe was 150. Offenders sentenced by federal courts to life imprisonment or *de facto* life commit serious crimes that are usually violent, such as murder and sexual abuse. Offenders sentenced to life imprisonment and *de facto* life frequently have aggravating role adjustments and are more likely than the remaining federal offender population to receive a weapons enhancement at sentencing. Offenders sentenced to life imprisonment and *de facto* life were also more likely to target vulnerable victims or receive a hate crime enhancement, and target official victims, compared to federal offenders with shorter sentences.

Offenders receiving life imprisonment or *de facto* life sentences often had long criminal careers, with some starting as juveniles and spanning decades. A majority of both offenders sentenced to life imprisonment and *de facto* life had a history of violent offenses. Numerous offenders had histories of repeat and dangerous sexual offending. While life imprisonment and *de facto* life sentences affect only a small proportion of the federal offender population, these sentences set them apart from all other offenders in federal cases."

COMPLAINT

62. The applicant complained that his extradition to the United States would violate his rights under Article 3 of the Convention, owing to the risk that he would be sentenced to life imprisonment without parole.

THE LAW

63. In *Sanchez-Sanchez v. the United Kingdom* ([GC] 22854/20, §§ 95-97 and 100, 3 November 2022) the Court indicated that a two-stage approach was called for when assessing the risk, upon extradition, of a violation of Article 3 of the Convention by virtue of the imposition of an irreducible life sentence. First of all, a preliminary question has to be asked: namely, whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, in the event of conviction, there is a real risk of a sentence of life imprisonment without parole. It is for the applicant to demonstrate that such a penalty would be imposed without due consideration of all the relevant mitigating and aggravating factors, and such a risk will more readily be established if he faces a mandatory – as opposed to a discretionary – sentence of life imprisonment. In the case of *McCallum v. Italy* (dec.) [GC], no. 20863/21, § 53, 21 September 2022, the Court reiterated that an applicant who alleges that their extradition would expose them to a risk of a sentence that would constitute inhuman or degrading punishment bears the burden of proving the reality of that risk. The second stage will only come into play if the applicant establishes such a risk; only then will it be necessary to consider whether, as from the moment of sentencing, there would be a review mechanism in place allowing the domestic authorities to consider a prisoner's progress towards rehabilitation or any other ground for release based on his behaviour or other relevant personal circumstances.

1. The parties' submissions on the existence of a "real risk"

(a) The applicant

64. The applicant submitted that if he were convicted of the offences with which he had been charged, he was likely to receive a discretionary life sentence. The applicant submitted an affidavit from Z.M.O., an attorney admitted to practise law in the State of New York who had rights of audience in all four federal courts in New York State, the United States Court of Appeals for the Second Circuit, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court. The document, requested by the applicant, consisted of an expert's analysis of the potential penalties that the applicant would face if convicted of a crime in the case pending

against him in the United States District Court for the Southern District of New York.

65. In the light of the applicant's indictment, Z.M.O. considered that if convicted of all counts against him, the applicant would be sentenced to a minimum of fifty years' incarceration. He further submitted that if he were convicted of any of the four charges in the indictment, he could receive the maximum sentence of life imprisonment without the possibility of parole.

66. The applicant also submitted that should he receive the minimum sentence applicable for each of those counts, the United States Code rules concerning the concurrence of offences would have to be applied. He claimed that in accordance with United States legislation, the minimum sentences for counts 1, 2 and 4 could run concurrently, resulting in a sentence of twenty years' imprisonment. However, count 3 was explicitly excluded from the concurrence of penalties under United States Code, Section 924(c)(1)(D)(ii), and the minimum sentence for this count was thirty years. Hence, the sum of the minimum sentences, in accordance with United States legislation, would be fifty years' imprisonment, which could be considered a *de facto* sentence of life imprisonment.

67. However, the applicant calculated that on the basis of the nature of his indictment, there was more likelihood of him receiving a sentence longer than fifty years' imprisonment; on the basis of the seriousness of the charges, the scale of the operation, his alleged leadership position, the quantity of drugs involved, the length of the period of the alleged criminal conduct, and the media and political impact of the prosecution, his total "offence level" (see paragraph 61) would probably be no less than 43 (the maximum), at which level the guideline sentence was life imprisonment. More specifically:

i. In relation to the first count (narco-terrorism conspiracy), he considered that this would have an offence level of 43, the highest possible level under the guidelines, which would lead to life imprisonment;

ii. In relation to the second count (cocaine importation conspiracy), he calculated that the base level would be 38, with the possibility of an increase of 12 levels on the basis of the different aggravating factors included in his indictment, which would take the level to level 43 of the sentencing guidelines, which was the maximum and would also imply a sentence of life imprisonment;

iii. In relation to the third count (possession of machine guns and destructive devices), the guidelines automatically suggested that a minimum sentence of thirty years' imprisonment should be imposed;

iv. In relation to the fourth count (conspiracy to possess machine guns and destructive devices), the guidelines recommended imposing the same sentence as that imposed for the main offence, which equated to another thirty years' imprisonment.

68. The applicant pointed out that 32% of the sentences pronounced in 2020 within the jurisdiction of the United States Court of Appeals for the Second Circuit (which included the United States District Court for the Southern District of New York, which would try him if he were extradited) were equivalent to or more severe than those recommended by the sentencing guidelines.

69. The applicant also referred to the report by the United States Sentencing Commission entitled "Life Sentences in the Federal System" (July 2022) (the previous version of which was published in 2015 and was relied on heavily in the case of *Sanchez-Sanchez*, cited above, § 63). He pointed out that according to the general statistics: 56% of the people sentenced to life imprisonment in the United States federal system between 2016 and 2021 (a total of 1,508) could have received lower sentences in accordance with the law; 95.2% of those facing life imprisonment had received sentences of life imprisonment; over half of those sentenced to life imprisonment had been convicted for possessing a weapon in relation to the main offence in question, under United States Code, Section 924(c)18, which was one of the counts on his indictment; the average amount of cocaine in the possession of the persons sentenced to life imprisonment for trafficking narcotics had been 240 kilograms, while the applicant was being charged with participating in the trafficking of 250,000 kilograms of cocaine per year over a period of more than twenty years (which amounted to 5,000,000 kilograms); the aggravating factor of being in a leadership position had not even featured in the cases of two thirds of the persons sentenced to life imprisonment, but would most likely feature in his case; and one in seven convicted persons in the United States was serving a *de jure* or *de facto* sentence of life imprisonment. On the basis of the above data, the applicant submitted that it was statistically confirmed that there was a very significant risk that he would be sentenced to *de jure* or *de facto* life imprisonment.

70. Lastly, the applicant made the point that, unlike in the case of *Sanchez-Sanchez* (cited above), in his case, there were no co-conspirators or co-accused who had already received lower sentences than life imprisonment without parole in the United States, or in fact any sentences other than life imprisonment without parole. He noted that out of the five other Venezuelan individuals mentioned in his indictment, one had already died and the rest were outside the territory of the United States, with one exception, a former general in the Venezuelan army. The applicant informed the Court that his co-accused was imprisoned in the State of New York and had rejected the possibility of entering into a plea deal, and that proceedings against him were still pending. According to the information provided by the applicant, the judge in charge of that case had stated in March 2022 "We are not dealing with ordinary criminal conduct. We're dealing with criminal conduct at the highest levels of government". The applicant also mentioned other

well-known persons who had received sentences of life imprisonment in the United States for narco-terrorism offences.

71. For the above reasons, the applicant submitted that there were sufficient elements to prove that there was a real risk that he would be sentenced to life imprisonment in the event that he was extradited.

(b) The Government

72. The Government did not accept that there was a "real risk" that the applicant would receive a sentence of life imprisonment without parole if convicted of the offences with which he had been charged. They submitted that the case of *López Elorza* (cited above) constituted a valid precedent in the present case because both the facts and the applicable law were very similar in both cases. In the Government's view, the conclusions reached in that case could be applied, *mutatis mutandis*, to the present application.

73. Moreover, statistical information suggested that life sentences were still extremely rare, and between 2016 and 2021 only 0.4% of the sentences imposed by federal judges had been sentences of life imprisonment.

74. Following the Court giving the Spanish Government notice of the present case, the United States authorities were invited to submit further information concerning the proceedings against the applicant. The Government submitted letters from the assistant United States attorney for the Southern District of New York dated 8 June and 19 December 2022. According to those letters, should the applicant be extradited, he would have the opportunity to seek leniency at sentencing. The Government insisted that none of the charges imputed to the applicant required a mandatory sentence of life imprisonment. This had been a relevant factor for the Grand Chamber in the case of *Sanchez-Sanchez* (cited above, § 95). It was also important to note that the applicant could plead guilty to only some of the charges in the indictment, or even to lesser charges. He could also try to reach a plea agreement, including by providing substantial assistance in the investigation or prosecution of another person, to obtain a sentence below the mandatory minimum otherwise required under the applicable statutes. In addition, if he proceeded to trial, he might not be convicted of all charges.

75. On the basis of the assistant United States attorney's letter of 8 June 2022, the Government observed that within the jurisdiction of the United States Court of Appeals for the Second Circuit (which included the Southern District of New York, where the applicant had been charged), approximately 68% of the 2,439 sentences imposed in the Second Circuit in 2020 had been below the range recommended by the United States Sentencing Guidelines. In the event that the applicant was found guilty of any of the charges, the sentencing judge would consider relevant information concerning his background in determining the proper sentence to impose, including information gathered by court personnel, as well as evidence and arguments presented by the applicant and his attorneys. The letter pointed out that the

applicant's attorney would also be able to address the court at the sentencing hearing.

76. The same letter also explained how, following the imposition of any sentence, the applicant would have the right to appeal against his conviction and sentence, which could result in the reversal of his conviction or the lowering of his sentence. In addition, it emphasised that United States law provided for certain post-appeal avenues by which a defendant could challenge the legality of his detention, as well as other legal mechanisms by which he could seek a reduction of his sentence. In particular, the applicant could seek: judicial review of any sentence by means of a direct appeal and post-conviction review; reduction of any sentence under Federal Rule of Criminal Procedure 35; compassionate release from the Bureau of Prisons and the courts; and reduction of any sentence through executive clemency. Lastly, the letter enclosed a list of the commutations of sentences of individuals convicted of narcotics offences who had received lengthy sentences and sentences of life imprisonment.

77. The Government noted that in the letter of 19 December 2022 the assistant United States attorney had stated "According to estimates of the United States Sentencing Guidelines calculated by the prosecutors assigned to this matter, based on an analysis of the United States Sentencing Guidelines factors viewed as being applicable based on information known to the prosecutors at this time, if [the applicant] is found guilty of all charges, the advisory sentencing range is life imprisonment". While the United States judicial authorities admitted that each of the four counts which the applicant was facing carried a maximum penalty of life imprisonment, they pointed out that only count three required any term of imprisonment to be imposed consecutively; that meant that the remaining counts could each be imposed concurrently, at the sentencing judge's discretion. They also considered it particularly relevant that none of the charges required a mandatory sentence of life imprisonment. Moreover, the letter reiterated that the applicant could seek an agreement to provide substantial assistance to the United States in the investigation or prosecution of another person who had committed a crime, in order to be able to ask the court to impose a sentence below the mandatory minimum otherwise required under the applicable statutes. It also pointed out that if he decided to proceed to trial, the applicant might be convicted of only some of the four charges, which would therefore affect his "sentencing exposure". The letter stated that the United States Sentencing Guidelines were merely a sentencing court's starting point and initial benchmark, and that courts frequently imposed sentences below the recommended ranges. Lastly, the letter reiterated that life sentences remained extremely rare.

78. The same letter dated 19 December 2019 repeated that there was an established *de jure* framework in the United States federal system containing multiple mechanisms by which sentences, including life sentences, might be reduced, and which actually resulted in sentences being reduced in

appropriate situations: direct appeal and post-conviction reviews; compassionate release; and executive clemency. The letter included a list of commutations of sentences for narcotics offences that had been issued between June and December 2022.

2. The Court's assessment

79. The applicant must first demonstrate that, in the event of his conviction, there exists a real risk that a sentence of life imprisonment without parole would be imposed without due consideration of all the relevant mitigating and aggravating factors (see *Sanchez-Sanchez*, cited above, § 100, and *Hafeez v. the United Kingdom* (dec.), no. 14198/20, § 49, 28 March 2023).

80. In carrying out its assessment, which is *ex nunc*, as the extradition has not yet taken place, the Court would normally take that of the national courts as its starting point (see *Sanchez-Sanchez*, cited above, § 101; see also *Hafeez*, cited above, § 50). However, as in *Sanchez-Sanchez* and *Hafeez*, in the present case, the domestic findings were inconclusive for the purposes of the "real risk" assessment (see *Sanchez-Sanchez*, § 103; see also *Hafeez*, § 50, both cited above). The *Audiencia Nacional* did not address the likelihood of the applicant being sentenced to life imprisonment without parole. It merely indicated that, given that he would be able to lodge an appeal against a sentence of life imprisonment, and that he would be able to obtain a reduction of his sentence through a pardon or commutation, the potential penalty should not be considered irreducible under the applicable legal standards.

81. Consequently, the Court must examine the evidence before it. It must assess, in the first place, whether the applicant has adduced evidence capable of showing that his extradition to the US would expose him to a real risk of being sentenced to life imprisonment without parole.

82. In this regard, it notes that the applicant has not yet been tried and that it is difficult to speculate as to whether he will be convicted on any or all charges, and what the possible consequences may be of the factual and legal findings that the trial court might adopt (see paragraph 14 above). It is not in dispute that in the event of his extradition the applicant will be tried in a legal system respectful of the rule of law and principles of a fair trial, in which he will have full opportunity to mount a defence with the help of legal representation.

83. Further, as the Court recognised in *Sanchez-Sanchez*, there are many factors which can contribute to the imposition of a sentence and, prior to extradition, it is impossible to address every conceivable permutation that could occur or every possible scenario that might arise (see *Sanchez-Sanchez*, cited above, § 108). Firstly, it is particularly relevant (as the Court noted in the case of *Sanchez-Sanchez*, cited above, § 95) that none of the charges imputed to the applicant required a mandatory sentence of life imprisonment (see paragraph 12 above). Secondly, the applicant could, in case of pleading

guilty, upon the advice of his attorneys, make use of the procedures available under the relevant US federal law regarding plea bargains or pleading guilty to lesser charges. In particular, the applicant's plea agreement could include, *inter alia*, an agreement to cooperate with United States authorities. If he could provide substantial assistance to the United States in the investigation or prosecution of another person who had committed a crime, a plea agreement might include a promise by the government attorneys, in exchange for his guilty plea, to file a motion with the Court asking that his cooperation be taken into account and permitting the Court to impose a sentence below the mandatory minimums otherwise required under the applicable statutes (see paragraph 74 above). In addition, if he proceeded to trial, he might be acquitted or convicted on some of the charges only: the applicant is presumed innocent until proved guilty according to law, and many elements of the indictment would need to be proved in adversarial proceedings at trial in order for the applicant to be convicted of each of the counts against him (see paragraph 14 above).

84. The Court accepts that – in accordance with the relevant provisions of the United States Code, and on the basis of the information provided by both the US authorities and the applicant and his expert Z.M.O. – if the applicant is convicted on all charges, he faces a potential sentence of life imprisonment with a minimum term of fifty years.

85. However, there are a number of factors that can have an influence in the sentence dictated by the judge (as established under Title 18, United States Code, Section 3553(a); see paragraph 58 above): the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to promote respect for the law, punishment for the offense, deter the defendant or others from committing similar criminal conduct, and the need to protect the public; the kinds of sentences available; the applicable guideline range; the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment; the need to avoid unwarranted sentence disparities; and the need to provide restitution to the victims of the offense(s). The applicant's defence counsel would also be able to assist the judge's consideration of the above-listed factors, by presenting any mitigating factors relating to his background and circumstances, including: his family environment and relationships, including the environment in which he was raised; his work history, germane socioeconomic factors including educational opportunities or lack thereof; his physical and psychological well-being and any past or current treatment, and prior criminal conduct, if any; and any resultant rehabilitative programs and periods of probation, incarceration, and parole, as well as his long-term educational, vocational, and sociological goals. Under United States law, no limitation shall be placed in the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive

and consider for the purpose of imposing an appropriate sentence (see paragraph 59 above). The United States' courts also regularly consider the potential for rehabilitation when imposing an initial sentence under Title 18, United States Code, Section 3553(a).

86. The applicant has not submitted any evidence for the Court to conclude that, should he face trial in the United States, the sentence would be set without due consideration of those aggravating and, particularly, of those mitigating factors.

87. Moreover, the Court observes that the latest report from the United States Sentencing Commission (see paragraph 61 above) and other materials in the case (namely the letters submitted by the United States authorities, see paragraphs 74-78 above) also show that District Courts can and do exercise discretion in the application of the Sentencing Guidelines in order to determine the appropriate sentence, and, where not explicitly prohibited by law, they can also discretionarily decide whether to sentence a person convicted of multiple counts concurrently or consecutively (see paragraph 60 above). Furthermore, the applicant would have the right to appeal against any sentence imposed (see paragraphs 76 and 78 above).

88. As a result, the Court finds that the length of the minimum term will depend on a number of unknown factors and may be significantly shorter. It finds relevant that life sentences are extremely rare in the United States' federal system, and that between 2016 and 2021 only 0.4% of the sentences imposed by federal judges had been sentences of life imprisonment (see paragraph 72 above). Also, that approximately 68% of the 2,439 sentences imposed in the Second Circuit in 2020 had been below the range recommended by the United States Sentencing Guidelines. The Court cannot speculate about every possible scenario that might arise should he decide not to plead guilty and to proceed to trial ([ibid., § 61]; see also *López Elorza*, cited above, § 118).

89. The above reasoning applies equally to the applicant's submission that, even in the event of being sentenced to the minimum sentence in each of the four counts he faced, he would be sentenced to a minimum of fifty years' incarceration, which would amount to a *de facto* life sentence without parole. It is true that the Court has accepted that, in the domestic context, when whole-life prisoners could only be considered for release on parole after they had served forty years of their life sentences, those life sentences could not be regarded as reducible for the purposes of Article 3 of the Convention (see, for example, *T.P. and A.T. v. Hungary*, nos. 37871/14 and 73986/14, §§ 45 and 48, 4 October 2016; *Sándor Varga and Others v. Hungary*, nos. 39734/15 and 2 others, §§ 48 and 49, 17 June 2021; and *Bancsók and László Magyar v. Hungary (no. 2)*, nos. 52374/15 and 53364/15, §§ 45 and 47, 28 October 2021).In the extradition context, however, in order to comply with Article 3, the sending Contracting State is not required to examine the availability of procedural safeguards in the requesting State because, among

other reasons, scrutinising the relevant law and practice of the requesting State with a view to assessing its degree of compliance with those procedural safeguards may prove unduly difficult for the domestic authorities deciding on extradition requests, and this would be an over-extensive interpretation of the responsibility of a Contracting State (see *Sanchez-Sanchez*, cited above, §§ 92-93 and §§ 96-98).

90. Thus, for example, in *McCallum v. Italy* (dec.) [GC], no. 20863/21, § 53, 21 September 2022) the Court dismissed the applicant's argument that her life sentence with eligibility for parole could be regarded as *de facto* life imprisonment without parole on account of the Governor of Michigan's role in the parole system, since that argument related to a matter that was more in the nature of a procedural guarantee as opposed to a substantive guarantee (see *Bijan Balahan v. Sweden*, no. 9839/22, § 59, 29 June 2023, not yet final).

91. In the present case, the Court finds that it is not necessary to determine whether the applicant's argument in this respect relates to a matter that should be regarded as a substantive guarantee or is more in the nature of a procedural guarantee, since he has in any event not adduced evidence capable of showing that there is a real risk that he will receive such a lengthy minimum term (see *Bijan Balahan v. Sweden*, cited above, § 60, not yet final). It is the applicant who had the burden of proof on this point, which he has not carried. In the Court's view, for the reasons already stated above (see paragraphs 81-96 above), the applicant's argument as to the length of the minimum term is subject to significant uncertainty.

92. Furthermore, in the Court's view, the facts as submitted by the parties would suggest that in many respects the applicant is in a similar situation to those of Mr Sanchez-Sanchez and Mr Hafeez, in both of which the Court concluded that the applicants had not sufficiently adduced evidence capable of showing that their extradition to the US would expose them to a real risk of treatment reaching the Article 3 threshold. All three of them (Mr Sanchez-Sanchez, Mr Hafeez and the applicant) were charged with serious drug-trafficking offences carrying a maximum sentence of life imprisonment (see paragraphs 10 - 11 above; *Sanchez-Sanchez*, cited above, § §8; and *Hafeez*, cited above, §§ 5 and 9), and all three of them were believed to have leadership roles in their respective criminal enterprises. The three of them (Mr Sanchez-Sanchez, Mr Hafeez and the applicant) were charged of federal offenses in the United States in districts where sentences of imprisonment were generally below the recommended range (see paragraph 74 above; *Sanchez-Sanchez*, § 104; *Hafeez*, § 51); none of them had any (known) previous convictions (see paragraph 13 above; *Sanchez-Sanchez*, § 105; *Hafeez*, § 51).

93. The Court notes the applicant's argument that there is a difference between the two other cases and the one at hand, as regards the existence of other individuals in comparable situations – something which could in principle be relevant to the assessment of the risk of life imprisonment. In

particular, Mr Sanchez-Sanchez's co-conspirators, who had also faced maximum sentences of life imprisonment, had received lesser sentences after pleading guilty and the Court had relied on this fact as indication of a lesser risk (see *Sanchez-Sanchez*, cited above, § 106), and Mr Hafeez's co-conspirators had been entitled to a reduction in sentence on account of their guilty pleas (see *Hafeez*, cited above, § 54). However, in the applicant's case no such developments exist (see paragraph 70 above). The Court considers, however, that in the particular circumstances, the above mentioned factual difference cannot be interpreted, *a contrario*, as an indicator that the applicant faces a higher risk compared to Mr Sanchez-Sanchez. Hence, the fact that none of the other individuals mentioned in the applicant's indictment has been tried or sentenced yet in the United States is therefore neutral in this regard.

94. In the case of *Sanchez-Sanchez*, the Court acknowledged that Mr Sanchez-Sanchez's co-conspirators were perhaps not in an entirely comparable position to him, despite having similar base offence levels, as they did not appear to have been suspected of being at the head of any criminal organisation and, perhaps more importantly, would have been entitled to a reduction in sentence on account of their guilty pleas. Nonetheless, the Court could not ignore the fact that Mr Sanchez-Sanchez had not adduced evidence of any defendants with similar records to himself being found guilty of similar conduct and sentenced to life imprisonment without parole. Moreover, while it did not base its assessment on the likely sentence which Mr Sanchez-Sanchez would receive if he were to plead guilty, the Court nevertheless recognised that the length of the applicant's prison sentence might be affected by pre-trial factors, such as agreeing to cooperate with the United States Government (ibid., § 108; see also *Findikoglu v. Germany* (dec.), no. 20672/15, § 39, 7 June 2016). Lastly, it took into account the fact that if Mr Sanchez-Sanchez were to plead guilty or be convicted at trial, the judge would have a broad discretion to determine the appropriate sentence after a fact-finding process in which the applicant would have the opportunity to offer evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines (see *Sanchez-Sanchez*, cited above, § 108).

95. In the case of Mr Hafeez, the Court also acknowledged that his situation was perhaps not entirely comparable to that of his co-conspirators, but similarly to what it had concluded in the case of *Sanchez-Sanchez*, it considered that Mr Hafeez had not adduced evidence of any defendants with similar records to himself who had been found guilty of similar conduct and had been sentenced to life imprisonment without parole (see Hafeez, cited above, § 54). The Court also took into account the fact that if convicted, the length of Mr Hafeez's sentence might also be affected by pre-trial factors, such as agreeing to cooperate with the US Government, and he would enjoy the same procedural safeguards relied on by the Court

in *Sanchez-Sanchez* (ibid., § 54; see also *Sanchez-Sanchez*, cited above, § 108).

96. The above factors apply with equal force to the case at hand. As mentioned in paragraphs 82 and 85 - 88 above, if convicted, the length of the applicant's sentence might also be affected by pre-trial factors, such as agreeing to cooperate with the United States Government, and he would enjoy the same procedural safeguards which the Court considered in *Sanchez-Sanchez* and *Hafeez* (see *Sanchez-Sanchez*, § 108; see also *Hafeez*, § 54, both cited above).

97. In the light of the foregoing, the applicant cannot be said to have adduced evidence capable of showing that his extradition to the United States would expose him to a real risk of treatment reaching the Article 3 threshold on account of the alleged risk that he would be sentenced to life imprisonment without parole, either *de jure* or *de facto*, without due consideration of all the relevant mitigating and aggravating factors. That being so, it is unnecessary for the Court to proceed to the second stage of the analysis in this case (see paragraph 63 above; *Sanchez-Sanchez*, cited above, § 109; *Hafeez*, cited above, § 55; [and *Bijan Balahan*, cited above, § 64,not yet final]).

98. The Court concludes, therefore that the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 3(a) of the Convention. In view of this conclusion, it is appropriate to discontinue the application of Rule 39 of the Rules of Court (see paragraph 49 above).

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 13 July 2023.

Martina Keller Deputy Registrar	Georges Ravarani President