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La CEDU sulla violazione degli artt. 3 e 34 della Convenzione
(CEDU, sez. III, sent. 25 marzo 2025, ric. n. 4662/22)

Nel caso di specie, la Corte esamina la presunta violazione degli articoli 3 e 34 della Convenzione. Il procedimento trae origine dall'estradizione di un cittadino bahreinita, disposta dalla Serbia, a seguito del suo arresto in esecuzione di un mandato internazionale, emesso dopo una condanna in contumacia in Bahrein per reati di terrorismo.
Quanto all'articolo 3, già nel corso del procedimento di estradizione, il ricorrente aveva espresso le proprie preoccupazioni, temendo che, una volta rientrato in Bahrein, sarebbe stato sottoposto a tortura o a trattamenti inumani e degradanti, in quanto sciita e attivista politico e che la condanna lo avrebbe esposto a una pena detentiva perpetua, senza possibilità di rilascio in futuro.
La Corte, dal canto suo, rileva che i giudici interni non hanno affrontato in modo adeguato la questione del rischio di violazione dell'articolo 3 della Convenzione e che, in particolare, non hanno esaminato la situazione generale in Bahrein, né condotto un'analisi approfondita delle circostanze personali del ricorrente. Si sono, in altre parole, limitati ad un esame formale dei requisiti per l'estradizione, concentrandosi sulla natura dei reati contestati e sulla presenza illegale del ricorrente in Serbia, anziché valutare le sue doglianze ai sensi dell'articolo 3. Alla luce di quanto sopra, la Corte ritiene che vi sia stata una violazione procedurale dell'articolo 3 della Convenzione.
Quanto all'art. 34, la Corte rileva che la misura provvisoria ex art. 39 del Regolamento, che sospendeva l'estradizione del ricorrente e di cui il Governo era stato immediatamente informato, è stata disattesa, poiché l'estradizione è stata anticipata senza giustificazione. Il che permette di affermare la violazione dell'obbligo delle autorità serbe a non ostacolare il ricorso individuale presso la Corte, ai sensi dell'articolo 34 della Convenzione.

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

THIRD SECTION

CASE OF XXX v. SERBIA

(Application no. 4662/22)

JUDGMENT

STRASBOURG

25 March 2025

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

In the case of XXX v. Serbia,

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

Ioannis Ktistakis, *President*,
Peeter Roosma,
Darian Pavli,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović, *judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 4662/22) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bahraini national, Mr XXX ("the applicant"), on 21 January 2022;

the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the applicant's extradition to Bahrain and the risk of his being subjected to torture or to inhuman or degrading treatment there and an alleged lack of an effective domestic remedy in that regard, and to declare the remainder of the application inadmissible;

the decision of 21 January 2022 to indicate an interim measure to the Government under Rule 39 of the Rules of Court and to grant priority treatment to the case under Rule 41 of the Rules of Court;

the decision of 28 January 2022 to lift the interim measure indicated to the Government under Rule 39 of the Rules of Court;

the parties' observations;

Having deliberated in private on 4 March 2025,

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

INTRODUCTION

1. The present case mainly concerns the applicant's complaints under Article 3 of the Convention that at the time of his extradition there were substantial grounds for believing that, if extradited, he would face a real risk of being subjected to torture or to inhuman or degrading treatment; that his extradition would expose him to a sentence of life imprisonment with no prospect of ever being released; and that the domestic authorities did not take any of these issues into consideration when deciding about his extradition. It also concerns his extradition from Serbia to Bahrain in disregard of an interim measure granted by the Court under Rule 39 of the Rules of Court.

THE FACTS

2. The applicant was born in "omissis" and is currently in prison in Bahrain. He was represented by Mr M. Štambuk, a lawyer practising in Belgrade.

3. The Government were represented by their Agent, Ms. Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

I. The applicant's arrest and extradition proceedings

5. On 3 November 2021 the applicant was arrested in Serbia under an international arrest warrant issued by Interpol in Bahrain. He was assigned a State-appointed representative.

6. On the same day a High Court (*Viši sud*) preliminary proceedings (*prethodni postupak*) judge in Belgrade ordered his detention as there were circumstances indicating that he would flee or hide in order to avoid extradition following the issuing of an international arrest warrant by Interpol Bahrain. The detention order noted that on 7 October 2013, after a trial *in absentia,* the applicant had been convicted in Bahrain under terrorism legislation of the production, use and possession of explosive devices, endangering public safety, and damaging State and private property. He was sentenced to life imprisonment. The detention order recited that the applicant was a citizen of Bahrain, that he had no registered residence or address (*boravište*) or employment in Serbia, and that at the time of his arrest he was carrying a forged Serbian passport. The decision also recorded that the applicant had declined to answer any questions directed at establishing whether the criteria for extradition were met, including questions about his personal circumstances, his citizenship, his relationship to the requesting State and the extradition request.

7. On 12 November 2021 Bahrain requested the applicant's extradition in order to have him serve the term of life imprisonment he had been sentenced to on 7 October 2013 (see paragraph 6 above).

8. On the same day, 12 November 2021, the applicant's State-appointed representative appealed against the detention order. She submitted that the applicant was a political prisoner and as such eligible (*podoban*) to seek asylum, and that he had been convicted of the offences in relation to which his extradition had been requested as a means of "settling accounts" (*način obračuna*) with the religious minority to which the applicant belonged. She referred to Article 6 of the Asylum Act, which provided that nobody could be extradited or returned to a territory where their life or freedom would be endangered because of their religion (see paragraph 47

below). She also submitted that the applicant had been lawfully in Serbia for the purposes of education.

9. On 15 November 2021 the applicant wrote a letter to the High Court. He maintained that he had been falsely accused of being a terrorist in his home country, that he was a political activist and a Shiite, and that if extradited he would be first tortured and then killed, which was why he was seeking protection and asylum. He submitted that he had come to Serbia from Iraq, via Turkey. He also asked to be allowed to make a telephone call to his family so that he could get a "private" lawyer. The same day the High Court forwarded a copy of the applicant's letter to his State-appointed representative for information (*na upoznavanje*).

10. On 17 November 2021 the High Court dismissed the appeal of the applicant's representative (see paragraph 8 above), confirming its earlier findings (see paragraph 6 above). The court also found the submissions of the applicant's representative that the applicant was a political prisoner and that he could seek asylum irrelevant, given that in fact he had not sought asylum.

11. On 7 December 2021 the High Court established that all the statutory requirements for the applicant's extradition had been met. The court referred, in particular, to Articles 6-12 of the European Convention on Extradition (see paragraphs 61-67 below) and Article 7 paragraph 1 subparagraphs 1-3 and Article 16 of the International Legal Assistance in Criminal Matters Act (see paragraphs 51-52 below). In particular, the court observed that the applicant had been tried in his absence and that the relevant authority in Bahrain had given assurances (*data garancija*) that the applicant would be re-tried in his presence. It further found that the applicant was not a citizen of Serbia; that the criminal offences for which his extradition had been requested had not been committed in the territory of Serbia; that those offences had not been committed against Serbia or its citizens; that they constituted criminal offences in Serbia as well; that prosecution for the offences and the enforcement of the sentence had not been time-barred; that the offences had not been covered by an amnesty; and that the applicant had not been indicted for them or acquitted of them in Serbia. The High Court did not address whether the applicant faced a risk of torture or ill-treatment if extradited.

12. On 9 December 2021 the applicant submitted another letter to the High Court, denying the accusations against him. He submitted that he was a political activist in the field of workers' rights, and that he had documents and photographs to prove that. He maintained that when the revolution in Bahrain had begun he had been placed on the list of activists, which was when he had left for Iran. He asked to see a lawyer and a judge to explain his submissions in more detail and submit evidence in that regard, and to meet a UN officer, as he had come to Serbia to seek asylum.

13. On 13 December 2021 the applicant's State-appointed representative appealed on his behalf against the decision of 7 December 2021 (see paragraph 11 above). She submitted that he was a political prisoner and a Shiite and that he would be at risk of torture and ill-treatment and potentially the death sentence if he were to be extradited. She maintained that the High Court had not considered his submissions of 15 November 2021 (see paragraph 9 above), notably the point that, if extradited, he would be first tortured and then killed. She claimed that the requesting State did not respect even a minimum level of human rights, and that it persecuted,

tortured and ill-treated Shiites, political opponents, human rights activists and those who criticised the authorities. She referred to two newspaper articles about the sentencing to death of three Bahraini nationals and about the further deterioration of human rights in Bahrain. She also referred to Article 6 of the Asylum Act (see paragraph 47 below).

14. On 14 December 2021 the applicant wrote another letter to the High Court. He asked to be allowed to contact his family and to see his lawyer as he had been in detention for more than 40 days without contact with either his family or a lawyer. He maintained that he had proof that he was innocent.

15. On 21 December 2021 he wrote another letter to the High Court, asking to contact his family, as he had not been allowed to contact anyone since his arrest.

16. On 29 December 2021 a hearing was held in the Court of Appeal (*Apelacioni sud*) in Belgrade. The notes of the hearing recorded that the applicant's representative was not present because of the lawyers' strike (paragraph 37 below) and that the applicant, in reply to a question from the court, had stated that his representative had never visited him in detention nor had he had any contact with her. The hearing was then adjourned.

17. On 17 January 2022 the Court of Appeal held a further hearing. The applicant's representative repeated the grounds for appeal she had given earlier in her submissions (see paragraph 13 above). The applicant claimed that he had been a political activist since 1994, for which he had evidence, and that he had had no contact with his legal representative or his family in the preceding three months. He maintained that he had been sentenced to life imprisonment for something that he had not done; that it would be impossible for him to have his case re-heard and that every political activist in Bahrain was treated as a terrorist and tried without any right to present a defence. He was also a Shiite, and Shiites were politically segregated. He stated that he had previously written several letters and had recently written a further one, but had not received any reply. He stated that in that further letter he had asked to be allowed to contact a lawyer in order to submit the documentation he had to the court for examination. He also asked to be allowed to continue his studies and his life in Serbia, and to contact his family.

18. The same day the applicant submitted a letter to the Court of Appeal. He maintained that he had been a labour activist in Bahrain from 1994 to 2011, but the situation had become dangerous and in 2011 he had left for Iran, where he had spent the following ten years. He submitted that he had had the evidence to support his claims, but that he had not had any meeting with a lawyer in the preceding three months and he asked to be allowed to contact his family in order to hire a lawyer who could bring all the documents to court.

19. On 17 January 2022 the Court of Appeal upheld the High Court's decision, referring to its analysis and conclusions as to the fulfilment of the criteria for extradition as provided in the European Convention on Extradition and the International Legal Assistance in Criminal Matters Act (see paragraph 11 above). It dismissed the claim that the applicant could face the death sentence (see paragraph 13 above) if extradited, on the grounds that the relevant Bahraini statute did not provide for the death sentence for the criminal offence in relation to which the applicant's extradition had been requested. The court did not examine whether the applicant would be at risk of ill-treatment if he were to be extradited.

20. On 18 January 2022 the Minister of Justice granted the request for the applicant's extradition given that all the preconditions for it had been met, in particular, those provided for in Article 16 of the International Legal Assistance in Criminal Matters Act (see paragraph 52 below). The decision set out that the extradition was allowed under certain conditions. More specifically, without the consent of Serbia

(a) the applicant could not be prosecuted for other criminal offences committed before the extradition;

(b) no criminal sanction imposed on him for other criminal offences committed before the extradition could be executed; and

(c) he could not be extradited to a third State for prosecution for other criminal offences committed before the extradition.

The decision referred to the courts' findings in detail (see paragraphs 11 and 19 above) and specified that it would be carried out by the Ministry of the Interior. The decision did not address whether the applicant risked ill-treatment if extradited.

II. The EXTRADITION OF THE applicant

21. On 19 January 2022 the applicant's State-appointed representative sought assistance from the Belgrade Centre for Human Rights (hereinafter "the BCHR").

22. On 20 January 2022 the applicant's sister contacted the BCHR because his family did not know his whereabouts. She asked them to represent the applicant. She also authorised two lawyers to represent her and apparently her brother.

23. The same day, 20 January 2022, the BCHR wrote an e-mail to the Asylum Office, the Border Crossing Police, and the representatives of the UNHCR to inform them that the applicant, who was a Shiite, had been sentenced to life imprisonment in Bahrain and was awaiting extradition. They further informed them that the applicant wanted to apply for asylum and asked for him to be given access to the asylum process (*omogućite pristup postupku azila*). They specified that the applicant had indicated his intention to seek asylum before the courts during the extradition proceedings.

24. On 21 January 2022 the Border Crossing Police replied by e-mail that in order to engage the asylum process it would be necessary for the applicant to contact them personally or through a representative who should also produce the authority to act.

25. On the same day, 21 January 2022, the two lawyers and some of the employees from the BCHR (see paragraph 22 above) visited the applicant in detention. He told them that he had repeatedly stated that he wanted to apply for asylum in Serbia. He authorised five employees of BCHR and two lawyers to represent him, including in his asylum claim. At 3.21 p.m. the same day, one of the applicant's new representatives forwarded by mail the applicant's authority to act to the Border Crossing Police and the Asylum Office and again asked for the applicant to be given access to the asylum process. The Asylum Office closes at 3.30 p.m.

26. The same day a police officer informed the High Court preliminary proceedings judge by telephone that the applicant's extradition was planned for Tuesday 25 January 2022.

27. At 1.13 p.m. the same day, Friday 21 January 2022, the Court received a request from the applicant's representatives to indicate an interim measure to the Government under Rule 39 of the Rules of the Court preventing the applicant's extradition to Bahrain. At 7.57 p.m. the same day, the Court issued an interim measure, which specified that the applicant should not be extradited to Bahrain until 25 February 2022. The Government was informed about it immediately.

28. At 9.23 p.m. that evening the BCHR informed the Border Crossing Police and the Asylum Office of the interim measure by e-mail. The same evening, at 10.18 p.m., the Agent's Office informed the Ministry of the Interior and the Ministry of Justice about it by e-mail. The same information was also sent to these bodies by post on Monday, 24 January.

29. On 22 January 2022, a Saturday, Interpol Bahrain asked for the applicant to be extradited early in the morning of Monday 24 January.

30. The same day, a police officer informed the High Court preliminary proceedings judge by telephone that the applicant's extradition would take place on 24 January early in the morning. The judge instructed the District Prison Administration (*Uprava Okružnog zatvora*) by letter to allow two police officers to take the applicant from the prison during the night of 24 January in order to hand him over to Bahraini representatives at 4 a.m. on 24 January.

31. On 23 January 2022 a police officer informed the same judge by telephone that Interpol had been informed that the Court had issued an interim measure in effect staying the applicant's extradition, and asked if the judge could "finally resolve the issue". The judge told him that the Ministry of Justice was the only authority competent to decide in the case.

32. On 24 January 2022 at 4 a.m. the applicant was extradited to Bahrain.

33. On 25 January 2022 the BCHR made enquiries of the Border Crossing Police's Asylum Office about the applicant's asylum claim.

34. On 27 January 2022 the Border Crossing Police informed the BCHR that the applicant had neither been registered as having expressed an intention to seek asylum under Article 35 nor made an asylum claim under Article 36 of the Asylum Act (see paragraphs 49-50 below).

35. On 28 January 2022 the Court lifted the interim measure of 21 January 2022 (see paragraph 27 above).

36. On 18 February 2022 the applicant's representatives lodged a constitutional appeal against the decisions of 17 and 18 January 2022 of the Court of Appeal and the Ministry of Justice respectively (see paragraphs 19-20 above). They submitted that even though the applicant had stated on several occasions that he feared persecution if extradited, which was why he had wanted asylum, the domestic bodies had failed to consider both that issue and the question of whether there was a possibility of conditional release in the case of a sentence of life imprisonment. They also maintained that he had not been allowed access to the asylum process. Moreover, his State-appointed representative had not been carrying out her duties professionally and in a timely manner, as she had visited him in detention only immediately after he had been arrested: the second time she had seen him had been together with his new representatives. The applicant sought compensation of 1,000,000 Serbian dinars (approximately

8,500 euros (EUR)) for non-pecuniary damage. On 11 February 2025 the applicant's constitutional appeal was still pending.

III. Other relevant facts

37. Between 24 December 2021 and 18 January 2022 the lawyers in Serbia were on strike.

38. On 24 January 2022, the date on which the applicant was extradited, the Bahrain News Agency and the Bahraini Ministry of the Interior reported the applicant's extradition and that he had been sentenced to three terms of life imprisonment and a ten-year prison sentence for terrorism-related offences. On 29 January 2022 the Bahrain News Agency reported that the applicant had been sentenced to four life sentences.

39. On an unspecified date in 2022 the Ombudsman's office (*Zaštitnik građana*) initiated an examination procedure of its own motion, after having learnt from the media that the applicant had been extradited in disregard of the Court's interim measure. The Ombudsman found, *inter alia*, that in his submissions to the High Court of 9, 14 and 21 December 2021 the applicant had expressed his intention to claim asylum in Serbia, stating his reasons for leaving his country and why he had had a justified fear that he would be at risk of torture and ill-treatment if he were to be returned. He also found that the applicant had neither been registered in accordance with Article 35 nor applied for asylum in accordance with Article 36 of the Asylum Act. The Ombudsman further found that the applicant's letter to the High Court of 15 November 2021, in which he had expressed his intention to claim asylum in Serbia, had been passed to his representative for action. The Ombudsman further established that the Ministry of Justice had been officially notified about the Court's interim measure on 24 January 2022, and that, pursuant to Article 37 of International Legal Assistance in Criminal Matters Act (see paragraph 58 below), the extradition had been carried out by agreement between the Ministry of the Interior and the requesting State and that the Ministry of Justice had not participated in the practical arrangements. In view of all the facts established, the Ombudsman found in his report of 9 August 2022 that there had been no unlawfulness or irregularities either in the extradition procedure or in the asylum process in the applicant's case.

40. On 28 November 2022 the applicant's representatives asked the Court to issue another interim measure ordering the Government to attempt to have the applicant returned to Serbia. In support of that request the applicant's representatives submitted a written statement of 23 November 2022 by S.A.A., a Bahraini human rights advocate and a founding member of the London-based Bahrain Institute for Rights and Democracy. S.A.A. reported that after having been extradited the applicant had been held in solitary confinement, deprived of exercise, exposed to Covid-19, held in inadequate conditions, and denied medical assistance. In particular, the applicant had been permitted to leave his cell for the first time only ten days after the extradition, on 3 February 2022. On 21 February 2022 he had been assaulted by three prison guards, sustaining a chest injury. Nevertheless, it was the applicant who had been charged and sentenced to one year in prison, for having assaulted the three prison officers. S.A.A. submitted that the judgments had been delivered on the basis of the prison guards' statements and in disregard of the video footage, which had shown the contrary, and in disregard of the chest injury the applicant had sustained during the assault. The applicant's chest injury had been left unattended until November 2022, when he had been taken for an X-ray. At the time of S.A.A.'s

writing of his statement, no results of the applicant's X-ray were yet available. The applicant had been transferred to another part of the prison on the day of the assault and had therefore gone on hunger strike, which he had continued until 5 March 2022. S.A.A. also submitted that the applicant's appeals had been rejected following sham court proceedings, that in many instances he had had no lawyer and in many other instances he had been barred from attending hearings.

41. The request was refused the next day.

42. The applicant's representative before the Court submitted that after extradition the applicant had been held in Jau Prison, that he had had no access to a lawyer, that his family had not been permitted to visit him, and that he had only been allowed to make telephone calls to five numbers. In August 2023 several hundreds of Jau prisoners, including the applicant, had gone on hunger strike in protest at the harsh prison conditions. During the strike, the applicant had been pepper-sprayed and handcuffed and had had his legs tied, he had been laughed at and mocked, and he had been placed in solitary confinement, still in handcuffs. He had been also punched twice while he was being transferred to solitary confinement.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. relevant domestic law

A. Constitutional Court Act (*Zakon o Ustavnom sudu*, published in the Official Gazette of the Republic of Serbia – OG RS – nos. 109/2007, 99/2011, 18/2013, 103/2015 and 40/2015)

43. Articles 82-92 of the Constitutional Court Act set out the process for the adjudication of constitutional appeals in Serbia.

44. Article 86 provides that a constitutional appeal is not generally suspensive of the decision or action being appealed against. However, the Constitutional Court may stay (*odložiti*) the execution of the disputed decision or action, at the proposal of an appellant, where execution would cause irreparable harm to the appellant, if the stay is not contrary to the public interest and would not cause greater damage to a third party.

45. Article 89 provides that a constitutional appeal can be either accepted or dismissed as unfounded. When the Constitutional Court finds a violation of a human or minority right or a freedom guaranteed by the Constitution, it may quash (*poništiti*) the disputed decision, prohibit certain actions, or order that some action be undertaken in order to remedy the harmful consequences of the violation found, and it may rule on redress. When accepting a constitutional appeal, the Constitutional Court shall also give a decision on any claim by the appellant for compensation for pecuniary or non-pecuniary damage.

B. Asylum and Temporary Protection Act ("Asylum Act"; *Zakon o azilu i privremenoj zaštiti*, published in the OG RS no. 24/2018)

46. The Asylum Act sets out, *inter alia*, the rights and duties of asylum-seekers, and the conditions and process for the recognition and termination of the right to asylum.

47. Article 6 provides, *inter alia*, that persons cannot be returned to a territory where their life or freedom would be endangered because of their religion, because they belong to a particular

social group or because of their political beliefs. This does not apply to a person who has been found guilty of a criminal offence for which he or she can be sentenced in Serbia to a prison sentence of five years or more because such a person constitutes a danger to public order. Regardless of that, no one can be extradited or returned against his or her will to a territory where there is a risk of being subjected to torture or inhuman or degrading treatment or punishment.

48. Article 20 provides that all proceedings for the recognition and termination of the right to asylum are entirely conducted by the Asylum Office, which is the organisational unit of the Ministry of the Interior in charge of asylum-related matters, and which also gives all decisions on the right to asylum.

49. Article 35, insofar as relevant, provides that a foreign national (*stranac*) may express an intention to claim asylum (*zahtev za azil*) orally or in writing to an authorised police officer of the Ministry of the Interior at a border crossing when entering the Republic of Serbia or on the territory of the Republic of Serbia. Exceptionally, a foreign national may express an intention to apply for asylum at an asylum centre, in another facility designated for the accommodation of asylum-seekers, or in a hostel for foreigners. An authorised police officer of the Ministry of the Interior must issue a certificate of registration ("registration certificate") to a foreign national who has expressed an intention to claim asylum.

50. Article 36 provides, *inter alia*, that the asylum process is initiated by making an asylum claim to an authorised officer of the Asylum Office within fifteen days from the day of registration. If an authorised officer of the Asylum Office does not allow a foreign national who has been issued a registration certificate to apply for asylum within the specified period, the asylum seeker may do so by filling out the asylum application form within eight days from the expiry of the fifteen-day period. The asylum procedure is treated as having been commenced when an application form is submitted to the Asylum Office. The application for asylum is made in person, except in cases provided for by statute. If the application for asylum is made through another person under the relevant provisions of the statute, the asylum-seeker must be present in person.

C. International Legal Assistance in Criminal Matters Act (*Zakon o međunarodnoj pravnoj pomoći u krivičnim stvarima*, published in the OG RS no. 20/09)

51. Article 7 paragraph 1 subparagraphs 1-3 set out the preconditions for international legal assistance. They include requirements that the criminal offence in respect of which international legal assistance is requested constitutes a criminal offence in Serbia; that no criminal proceedings in respect of the same criminal offence have been finally concluded before the domestic courts; that the sentence for the offence has not been fully executed; and that the prosecution or sentence has not been time-barred or excluded by an amnesty or pardon. Paragraph 1 subparagraphs 4-5 of this Article further provide that the extradition request must not relate to a political offence, an offence related to a political offence or an offence which consists only of a violation of military duties unless it is an offence under international humanitarian law; and that providing the international legal assistance would not violate the sovereignty, security, public order of Serbia or other interests of the greatest significance to the country.

The decision on whether the first three criteria are fulfilled is a matter for the courts, and on the other two for the Minister of Justice.

52. Article 16 sets out the preconditions for extradition, which are:

(1) that the person whose extradition is requested is not a citizen of Serbia;

(2) that the offence for which extradition is requested was not committed in the territory of Serbia, against Serbia or against a Serbian national;

(3) that no criminal proceedings are being conducted against the same person in Serbia for the criminal offence for which extradition is requested;

(4) that, under domestic law, it is possible to hold a re-trial for the criminal offence in respect of which extradition has been requested;

(5) that the identity of the person whose extradition is requested has been established;

(6) that there is a final court decision that the person whose extradition is requested has committed the criminal offence for which extradition is requested;

(7) that the requesting State provides guarantees that, in case of a conviction *in absentia*, the proceedings will be reopened (*postupak biti ponovljen*) in the presence of the extradited person;

(8) that if the death penalty is prescribed in the requesting State for the offence for which extradition is requested, the requesting State provides guarantees that it will not be imposed or executed.

53. Article 21, in so far as it is relevant, provides that an investigating judge must hear a person whose extradition has been requested on all the circumstances relevant for establishing the preconditions for extradition and, in particular, about the person's personal circumstances, citizenship and relations with the requesting State and about the extradition request.

54. Article 27 provides that the court shall either refuse extradition or decide that the preconditions for extradition have been met.

55. Article 29 provides that if the preconditions for extradition have been met the court shall issue a decision to that effect. An appeal may be filed within three days of service of that decision. After hearing the public prosecutor, the person whose extradition has been requested and his or her representative, the appellate court shall uphold, quash or vary the decision that the conditions for extradition have been met.

56. Article 31 requires a final decision that the preconditions for extradition have been met to be transmitted to the Minister of Justice, who then decides whether or not to grant the extradition request.

57. Article 33 provides that the Minister of Justice must refuse to extradite a person if the requirements set out in Article 7(1)(4-5) of this Act have not been met (see paragraph 51 above). The extradition will also be refused if, in the course of any trial *in absentia*, the person whose extradition is requested did not have a fair trial.

58. Article 37 provides that a decision to extradite will be executed by the Ministry of the Interior. In particular, the Ministry will agree the place, time and manner of the extradition with the appropriate authorities in the requesting State.

II. relevant domestic practice

59. On 30 October 2014 the Constitutional Court ruled in favour of an appellant from Somalia and quashed a judgment of the Administrative Court, which had upheld an Asylum Office decision to reject the appellant's asylum claim. The Constitutional Court said that the Administrative Court should consider the reports of international and relevant non-governmental organisations about the conditions in Somalia at the time - in particular, reports on security and the political situation - in fresh proceedings. The court rejected the appellant's application for a stay of the enforcement of the Ministry of the Interior decision ordering that he leave the country within 30 days as he had not lodged a constitutional appeal against that decision.

60. The applicant submitted that the proceedings before the Constitutional Court in that case had lasted for 1,046 days. The Government did not contest that.

III. international materials

A. European Convention on Extradition

61. Article 6 of the European Convention on Extradition provides that Contracting Parties have the right to refuse to extradite their nationals.

62. Article 7 provides that a requested Party may refuse to extradite a person for an offence which is treated under its own law as having been committed in whole or in part in its territory or in a place treated as its territory. When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside its territory or does not allow extradition for the offence concerned.

63. Article 8 provides that the requested Party may refuse to extradite a person if the authorities of that Party are proceeding against him in respect of the offence or offences for which extradition is requested.

64. Article 9 provides that extradition must not be granted if a final judgment has been given by the authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

65. Article 10 provides that extradition must not be granted when the person can no longer be prosecuted or punished under the law of either the requesting or the requested Party by reason of lapse of time.

66. Article 11 provides that if the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if under the law of the requested Party that offence does not carry the death penalty or the death penalty is not normally carried out,

extradition may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that the death penalty will not be carried out.

67. Article 12 sets out how to make an extradition request and the supporting documents required.

B. United Nations Committee Against Torture (UNCAT) Concluding Observations on the second and third periodic reports of Bahrain (adopted by the Committee at its sixtieth session (18 April - 12 May 2017))

68. In its 2017 Concluding Observations the UNCAT expressed its concern about the continued numerous and consistent allegations of widespread torture and ill-treatment of persons deprived of their liberty in all places of detention and elsewhere in order to extract confessions or as punishment. The UNCAT was further concerned at the climate of impunity which seemed to prevail as a result of the low number of convictions for torture and the sentences given to persons responsible for torture resulting in, *inter alia*, death, which were not commensurate with the gravity of the crimes. It was also concerned about the current use of prolonged periods of solitary confinement as a punishment in various detention centres, that overcrowding remained a problem in detention facilities, and about reports of poor material and hygiene conditions in places of detention, including inadequate bathing and toilet facilities, lack of access to adequate quantities of food or to food of sufficient quality, lack of access to health care, lack of outdoor activities and unnecessary restrictions on family visits.

C. European Parliament resolution of 11 March 2021 on the human rights situation in the Kingdom of Bahrain, in particular the cases of death row inmates and human rights defenders (2021/2578(RSP))

69. In its Resolution of 11 March 2021 the European Parliament expressed its deep concern that ten years after the Bahraini "Arab Spring" uprising the human rights situation in the country was continuing to worsen. It expressed particular concern about the misuse of anti-terrorism laws in Bahrain. It also condemned the continuing use of torture, the denial of medical care, and other cruel and degrading treatment or punishment of detainees, including peaceful protesters and civilians. It also called for thorough and informed investigations into all torture allegations in order to hold those responsible to account. They reported, *inter alia*, that no political opposition was tolerated, and that human rights lawyers, journalists and political activists faced ongoing systematic targeting, harassment, detention, torture, intimidation, travel bans and revocation of citizenship. The report also deplored the dire prison conditions in the country. It noted that health and hygiene conditions in Bahrain's overcrowded prisons remained extremely serious, and that prisoners were denied urgent medical attention.

IV. OTHER MATERIALS

A. Human Rights Watch Reports

1. Human Rights Watch report "Torture Redux – The Revival of Physical Coercion during Interrogations in Bahrain", February 2010

70. A report of February 2010 by the non-governmental organisation Human Rights Watch concluded that from the end of 2007 Bahraini officials had resumed torturing those suspected of

endangering security. Based on interviews and a review of documentary records, Human Rights Watch concluded that there was credible evidence that since December 2007 Bahraini security forces had been using electric shock devices against detainees; had suspended them in painful positions; had beaten their feet with rubber hoses and/or batons; had slapped, punched, and kicked them and beaten them with implements; had forced them to stand for prolonged periods of time; and had threatened them with death and rape. Many of those detained were young men from the majority Shiite Muslim community whose street protests about alleged discrimination against them by the Sunni-dominated government had regularly led to confrontations with security forces.

71. The report recounted interviews with a number of people, including the applicant. In his interview, which had been conducted in June 2009, the applicant alleged that he had been arrested in December 2007 and taken to the Criminal Investigation Department. He had been blindfolded, fully suspended in the air at least twice, hit with what felt like a rubber hose and kicked. Ministry of Health doctors who had subsequently examined him on the order of a court following the applicant's reports of abuse had found healed wounds on his wrist that they had concluded could have resulted from pressure applied by handcuffs. The applicant also stated that he had been threatened with a black device that looked like an electric shaver, and that an officer had threatened to rape him.

2. *The Human Rights Watch Report of January 2012 on Bahrain*

72. In January 2012 Human Rights Watch reported that Bahraini forces had used lethal force to suppress peaceful anti-government and pro-democracy protests in mid-February 2011, leading to the deaths of more than 40 people, including four who had died in custody in April 2011 from torture or medical neglect. They further reported that this had been followed by a systematic campaign of retribution in which thousands of demonstrators or individuals who supported or were suspected of supporting the protests had been arrested. Dozens of detainees, including doctors, nurses and paramedics who had been arrested in March and April 2011, alleged after being released that they had been abused or tortured during their detention, often to force them to confess. Some of the opposition leaders and activists who had been arrested for alleged terrorist offences in 2010 and released in February 2011 also stated that they had been subjected to both physical and psychological abuse, some of which had amounted to torture. The abuse had included threats; humiliation; solitary confinement; beatings to the head, chest, and other sensitive areas; beatings on the soles of feet with sticks or hoses; sleep deprivation; being denied access to the toilet; and electric shocks. Some said they were sexually harassed or assaulted. Human Rights Watch also reported that clashes with security forces had regularly broken out when protesters held demonstrations in Shia villages.

3. *The Human Rights Watch Report of May 2014*

73. In May 2014 Human Rights Watch reported on the Bahrain Independent Commission of Inquiry, which had been established in June 2011 by the King of Bahrein to investigate allegations of human rights abuses in connection with the government's suppression of pro-democracy demonstrations that erupted in February 2011. The Commission had released its extensive report the end of 2011, concluding, *inter alia*, that security personnel had committed abuses against individuals in custody constituting "a deliberate practice of mistreatment" that

in some cases "was aimed at extracting confessions and statements by duress, while in other cases ... [was] intended for the purposes of retribution and punishment". The Commission recommended that "all allegations of torture and similar treatment be investigated by an independent and impartial body" and that "[t]he investigation ... be capable of leading to the prosecution of the implicated individuals, both direct and at all levels of responsibility...".

4. *The Human Rights Watch Report of December 2021*

74. A Human Rights Watch Report of December 2021 concluded that the authorities had failed to properly investigate and prosecute officials and police officers who had allegedly committed serious violations, including torture, since the 2011 protests. It also reported that at least three prisoners had died allegedly from lack of medical attention in 2021, and that the health and hygiene conditions in Bahrain's overcrowded prisons remained serious. It also reported that the prison authorities had violently suppressed a peaceful sit-in at Jau Prison.

B. Amnesty International Annual Reports

1. *Amnesty International Report on Bahrain of 2012*

75. Amnesty International reported in 2012 that Bahrain had experienced an acute human rights crisis in which at least 47 people were killed, including five members of the security forces and five people who had died in custody as a result of torture. It further reported that security forces had used excessive force against peaceful protesters and that hundreds of people had been detained in connection with the protests, the vast majority of them being Shia Muslims. Many detainees had alleged that they had been beaten, made to stand for long periods, given electric shocks, deprived of sleep and threatened with rape, and the authorities had failed to conduct independent investigations into most of these allegations or to adequately investigate allegations of torture in pre-trial detention and had accepted disputed "confessions" as evidence of guilt. Hundreds of civilian detainees were subjected to unfair trials before military courts and leading opposition activists were given sentences up to life imprisonment. People who had demonstrated against the government, including students, were dismissed from their jobs and universities.

76. The report referred to the findings of the Bahrain Independent Commission of Inquiry (see paragraph 73 above) and noted, *inter alia*, that the Commission had confirmed that many detainees had been tortured by security officials who believed they could act with impunity.

2. *Amnesty International Report 2020/2021*

77. The Amnesty International Report of 2020/2021 claimed that detainees in Bahrain had been ill-treated and in some cases tortured, and that prison conditions had been poor. Prosecutors failed to effectively address complaints of torture made to them, despite widespread reports of it at specific sites, with detainees often identifying the agency and sometimes the name and rank of the alleged torturers. There was no known record of a successful prosecution for torture to force a confession in the preceding four years. Prison conditions, especially in Jau central prison in south-eastern Bahrain, were poor, with a lack of sanitation and frequent ill-treatment, including the arbitrary confiscation of personal items, reprisals for speaking out, and denial of adequate medical care.

THE LAW

I. ALLEGED VIOLATION OF ARTICLEs 3 and 13 OF THE CONVENTION

78. The applicant complained under Article 3 of the Convention that there had been substantial grounds for believing at the time of his extradition that, if extradited, he would face a real risk of being subjected to torture or to inhuman or degrading treatment, and that the domestic authorities had not taken those risks into consideration when deciding on his extradition. He further complained that his extradition had exposed him to a sentence of life imprisonment with no prospect of ever being released, and that the domestic authorities had also not taken that risk into consideration when deciding on his extradition.

79. The applicant also complained under Article 13 of the Convention that he had not had an effective domestic remedy for his complaints under Article 3, and, in particular, that the domestic authorities had not allowed him to make an asylum claim.

80. The relevant Articles read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Article 3 of the Convention

1. Admissibility

(a) The parties' submissions

(i) The Government

81. The Government submitted that the applicant had failed to make a proper constitutional appeal or avail himself of the asylum process. They also submitted that neither a constitutional appeal nor an asylum claim had automatic suspensive effect on the extradition but maintained, however, that the Constitutional Court could stay the execution of a decision at the request of a claimant if it would cause irreparable harm (see paragraph 44 above). They referred to the Constitutional Court decision of 30 October 2014 (see paragraph 59 above) in which, they submitted, the court had considered an asylum claim by a person subject to an extradition request, similar to the present case. The Government also submitted that those who expressed an intention to claim asylum did not have the same status as those who claimed asylum.

82. The Government further argued that the complaints relating to Article 3 were examined in the extradition proceedings. They referred in particular to Articles 7, 16 and 21 of the International Legal Assistance in Criminal Matters Act (see paragraphs 51-53 above). The Government maintained that during the extradition proceedings the applicant had first chosen to remain silent and that the first time he had addressed the court had been two weeks after his arrest. His subsequent letters had been sent in January 2022, when the lawyers in Serbia had

been on strike (see paragraph 37 above), which must have affected his contact with his State-appointed representative. In any event, his State-appointed representative could not be blamed given that the applicant had chosen to remain silent and it was unclear what kind of instructions he had given her.

(ii) The applicant

83. The applicant contested the Government's submissions. In particular, since a constitutional appeal did not have automatic suspensive effect it could not be considered an effective domestic remedy, as shown by the decision of the Constitutional Court referred to by the Government and the length of the proceedings in that case (see paragraphs 59 and 60 above). The applicant also maintained that, after having initially used his right to remain silent, he had explicitly said to the courts that if he were to be extradited he would face a real risk of being subjected to treatment contrary to Article 3. He had never been given an opportunity to thoroughly document his claims in court as his State-appointed lawyer had never visited him in detention and he had not been allowed to contact his family or hire a lawyer of his own choosing.

(b) The Court's assessment

(i) General principles

84. The relevant general principles as regards the non-exhaustion of domestic remedies are set out in, for example, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC] (no. 21881/20, §§ 138-44, 27 November 2023). In particular, there is no obligation to have recourse to remedies which are inadequate or ineffective (ibid., § 141). The Court reiterates that where an applicant seeks to prevent his or her removal from a Contracting State, alleging that such a removal would place him or her at risk of treatment contrary to Article 3 of the Convention, a remedy will only be effective if it has automatic suspensive effect (see *D.A. and Others v. Poland*, no. 51246/17, § 38, 8 July 2021, and the authorities cited therein). Where a remedy does have automatic suspensive effect, the applicant will normally be required to use that remedy. Judicial review, where it is available and where the lodging of an application for judicial review will operate as a bar to removal, must be regarded as an effective remedy which, in principle, applicants will be required to exhaust before lodging an application with the Court or indeed requesting interim measures under Rule 39 of the Rules of Court to delay a removal (see *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 100, 15 October 2015, and the authorities cited therein). In cases where the decision ordering an applicant's removal from the territory in extradition or administrative expulsion proceedings remained valid despite the lodging of an application for refugee status and/or temporary protection, the Court, in reviewing complaints under Article 3, has focused primarily on these proceedings as constituting the basis for the complaint brought under Article 3. The Court has found that while ruling on the question of the possibility of removal, the scope of review by the domestic authorities, including the courts, should include relevant arguments of ill-treatment raised by the applicants, in view of the absolute nature of Article 3 (ibid., § 102).

(ii) Application of the above principles to the present case

(α) The alleged risk of being subjected to torture or to inhuman or degrading treatment and the alleged failure of the national authorities to assess that risk

85. The Court observes that neither lodging a constitutional appeal nor applying for asylum has an automatic suspensive effect in relation to extradition, as was acknowledged by the Government (see paragraph 81 above). While the Government maintained that the Constitutional Court could stay the execution of judgments at a claimant's request, the Court observes that they did not submit any case-law supporting such a submission. The Court observes that in the only case referred to by the Government the Constitutional Court had given its decision after nearly three years of proceedings (see paragraph 60 above) and that it did not stay an imminent expulsion order. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 139). The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (ibid.). The Court observes that the Government did not refer to any case-law which would indicate that the Constitutional Court dealt urgently with constitutional appeals relating to, such as in the present case, imminent extraditions or issued interim measures in that regard in practice, which is what would have been required to show that the process was effective in the extradition context.

86. The Court also takes note of the Government's assertion that those who expressed an intention to claim asylum do not have the same status as those who did claim asylum (see paragraph 81 *in fine* above). However, given the applicable rules (see paragraphs 46-50 above) and the absence of any example of domestic practice, it observes that the lodging of an application for asylum, simultaneously or subsequently to the extradition proceedings, has no effect on an extradition order which remains valid.

87. In view of the above, the Court considers that neither lodging a constitutional appeal nor applying for asylum or expressing an intention to claim asylum can be considered effective remedies against an extradition order in Serbia.

88. The Court further observes that the domestic legislation sets out that the personal circumstances and the relations of the person whose extradition has been requested with the requesting State are examined in the course of the extradition proceedings. In particular, it is up to the domestic courts to examine whether the preconditions for extradition, including those previously mentioned, are satisfied (see paragraphs 53 above). If the court finds that they have been met it will issue a decision to that effect (see paragraph 55 above). However, a person concerned may file an appeal against it, after which the court above may quash or vary that decision (ibid.). The Minister of Justice decides whether or not to grant the extradition request, but only once he or she receives a final decision that the preconditions for extradition have been met (see paragraph 56 above). In other words, a judicial procedure is a precondition for extradition in Serbia, that is, it operates as a bar to removal. It must therefore be regarded as an effective remedy in Serbia in respect of a removal of an alien, which, in principle, applicants are required to exhaust before lodging an application with the Court or indeed requesting interim measures under Rule 39 of the Rules of Court to delay a removal (see paragraph 84 above).

89. The Court observes that during the extradition proceedings the applicant expressed on several occasions his fear of ill-treatment if extradited. In particular, during the extradition proceedings before the High Court and the Court of Appeal, he explicitly submitted that he was a Shiite, a political and labour activist since 1994, and that, if extradited, he would be first tortured and then killed (see paragraphs 9, 12 and 17 above). He also maintained that when the revolution in Bahrain had begun he had been placed on the list of activists, which was why he had had to flee Bahrain (see paragraphs 12 and 18 above). The applicant's State-appointed representative also submitted that the applicant was a political prisoner who, as a Shiite, feared persecution, in particular torture and ill-treatment, if extradited (see paragraphs 8 and 13 above). She referred to the relevant domestic legislation, the applicant's submissions in that regard, and newspaper articles (ibid.). Those allegations clearly fall within the ambit of Article 3 of the Convention, which, as submitted by the Government, should have been examined in the impugned extradition proceedings (see paragraph 82 above).

90. In view of the above, the Court does not find the Government's arguments convincing (see paragraph 82 above) and considers that in the course of the extradition proceedings the applicant sufficiently raised his complaint that there was a risk of ill-treatment contrary to Article 3 of the Convention if he were to be extradited.

91. Accordingly, the Court dismisses the Government's objection of non-exhaustion in respect of that complaint.

(β) The alleged risk of life imprisonment without parole and the alleged failure of the national authorities to assess that risk

92. The Court observes that neither the applicant nor his representative ever asserted in the course of the extradition proceedings that the applicant would be at risk of a sentence of life imprisonment without parole if extradited (see paragraphs 8-9 and 12-18 above). At this juncture, the Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 142).

93. Accordingly, that complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(iii) The Court's conclusion

94. The Court notes that the applicant's complaint about the domestic courts not examining whether he faced a risk of ill-treatment if extradited is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

(i) The applicant

95. The applicant submitted that he had been tortured in Bahrain because he had participated in the protests in 2007 (see paragraph 71 above), and that he had also participated in the

protests in 2011 (see paragraphs 72-73 and 75-76 above) in which he had been injured when the police had broken the protests. He maintained that even though he had explicitly stated in the extradition proceedings that, if extradited, he would face a real risk of being subjected to treatment contrary to Article 3, the domestic courts had not examined his claims in that regard, which constituted a violation of Articles 3 and 13. He also maintained that obtaining diplomatic assurances that he would be re-tried had not absolved the respondent State from its obligation to examine whether he would be at risk of ill-treatment. He also submitted that the Government had not addressed what had happened to him after the extradition (see paragraphs 40 and 42 above).

(ii) The Government

96. The Government submitted that the applicant's submissions before the domestic courts had been totally unsubstantiated, even though he had had enough time to submit relevant evidence given that by then he had been in detention for more than two months, during which he had been able to communicate freely with his lawyer. They maintained that the domestic bodies had considered the applicant's submissions in the context of the other evidence, in particular, that there had been a final court judgment against him for criminal offences which were equivalent to terrorism; that his presence in Serbia had been illegal; that he had had a forged passport; that it remained unclear when the applicant had entered Serbia; how he had obtained a forged passport; what he had been doing in Serbia; and what his intentions about staying in or leaving Serbia had been; and that he had provided no evidence for his claim that he had come to Serbia to study at the age of 48. His presence in Serbia had posed a security risk for all the citizens of Serbia and all those present in the country. In view of such circumstances it was understandable that the courts had had reservations about his later statements about allegedly being at risk of political persecution and had not found them convincing.

97. The Government further maintained that the Bahraini extradition request had fully complied with the European Convention on Extradition, and that the extradition proceedings had been conducted lawfully, as confirmed by the Ombudsman (see paragraph 39 above), and in accordance with the relevant international conventions and domestic legislation, all of which had been thoroughly examined by the domestic courts.

98. The Government also maintained that the allegations about the applicant's situation after the extradition (see paragraphs 40 and 42 above) had been based on a statement made by a third party whose authenticity and credibility could not be confirmed by the respondent State. In any event, the applicant's circumstances after the extradition were within the jurisdiction of another State and the respondent State had had no influence on them.

(b) The Court's assessment

(i) General principles

99. The relevant general principles have been summarised in *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016, concerning the expulsion of asylum-seekers) and, more recently, *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, §§ 93-116, 29 April 2022, in the context of the applicants' extradition).

100. In particular, the Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens (see *Saadi v. Italy* [GC], no. 37201/06, § 124, ECHR 2008, and the authorities cited therein). However, the expulsion by a Contracting State may give rise to an issue under Article 3 and therefore engage the responsibility of that State under the Convention where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country (ibid., § 125). In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (ibid.; see, also, *F.G. v. Sweden* [GC], no. 43611/11, § 111, 23 March 2016, and the authorities cited therein).

101. In view of the fact that Article 3 enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment, it is imperative that the assessment of the existence of a real risk that is to be carried out by the domestic authorities must necessarily be a rigorous one (see *A.M.A. v. the Netherlands*, no. 23048/19, § 68, 24 October 2023, and the authorities cited therein). The domestic authorities are obliged to take into account not only the evidence submitted by the applicant but also all other facts which are relevant in the case under examination (ibid.). The Court must be satisfied that the assessment made by the authorities of the Contracting State was adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see *F.G. v. Sweden*, cited above, § 117 *in fine*; and *Mamazhonov v. Russia*, no. 17239/13, § 135, 23 October 2014, and the authorities cited therein).

102. Since in cases of this kind the nature of the Contracting States' responsibility under Article 3 lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known by the Contracting State at the time of the expulsion (see *M.S. v. Slovakia and Ukraine*, no. 17189/11, § 116, 11 June 2020). The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see, for example, *F.G. v. Sweden*, cited above, § 115 *in fine*, and the authorities cited therein). The Court is not precluded, however, from having regard to information which comes to light after the extradition. This may be of value in confirming or refuting the assessment that has been made by the Contracting Party of the well-foundedness or otherwise of an applicant's fears (see *M.S. v. Slovakia and Ukraine*, cited above, § 117, and the authorities cited therein).

103. In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against a risk of ill-treatment. There is an obligation to examine whether the assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 111, 3 October 2013, and the authorities cited therein).

(ii) Application of the above principles to the present case

104. The Court notes at the outset that in the circumstances of the present case its examination will be focussed on ascertaining whether the State authorities fulfilled their procedural obligations under Article 3 of the Convention (see *M.S. v. Slovakia and Ukraine*, cited above, § 121).

105. The Court observes that when deciding whether the applicant should be extradited, the courts dismissed his representative's argument that the applicant might face the death penalty if extradited, on the grounds that the relevant Bahraini statute did not provide for the death sentence for the criminal offence in relation to which the applicant's extradition had been requested (see paragraph 19 above). That appears to have been the only attempt at analysing whether the applicant was at any risk. The domestic courts did not discuss the question of whether the applicant would face a risk of treatment contrary to Article 3 if extradited to Bahrain, which is the only pertinent question the authorities were expected to ask under the Convention, regardless of the applicants' status under the domestic law (see *A.D. and Others v. Turkey*, no. 22681/09, § 99 *in fine*, 22 July 2014). They did not examine the situation in Bahrain in general nor did they carry out any, let alone an adequate, scrutiny of his personal circumstances (see paragraphs 11 and 19 above). They failed to obtain any international report relevant to the situation in Bahrain (see paragraphs 68-77 above), one of which specifically indicated that the applicant had been subjected to ill-treatment in the past (see paragraph 71 above), and they failed to allow the applicant to substantiate his claims. Notably, the Court considers that it cannot be held against the applicant that he did not provide any evidence in support of his claims given that he was in detention and that it appears that, apart from the first initial contact with his State-appointed lawyer when he was arrested, he had no subsequent contact with her even though he repeatedly said that he had documents and photographs to prove his submissions and asked to see a lawyer so that he could have them produced in court (see paragraphs 12, 14-15 and 17-18).

106. Instead of making a substantive analysis of the applicant's alleged fear of persecution, the domestic bodies confined themselves to a formal examination of the statutory requirements for the applicant's extradition, that is, whether the criteria for extradition in the European Convention on Extradition and the International Legal Assistance in Criminal Matters Act had been fulfilled (see paragraphs 11 and 19 above). They have failed to examine his submissions as regards the risk of ill-treatment, notwithstanding their competence to examine "the personal circumstances [of the applicant] and the relations of the person whose extradition has been requested with the requesting State" (see paragraph 53 above). The courts focused on the nature of the offences committed and the applicant's presence in Serbia being illegal rather than on an evaluation of his claims under Article 3 (see paragraphs 11 and 19 above). The requesting State's assurances concerned re-trial in the applicant's presence and the domestic courts did not assess whether they provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention, even though it was incumbent on them to do so (see *Nizomkhon Dzhurayev*, cited above, § 119). The Court further observes that the Ministry of Justice did not engage in any examination of the applicant's submissions under this head either (see paragraph 20 above). Accordingly, the Court cannot accept the Government's submission that the applicant's arguments had been

assessed in the light of the other circumstances of the case and ultimately considered not convincing enough (see paragraph 96 above).

107. In view of the above, the Court finds that the domestic authorities in the extradition proceedings did not carry out any, let alone a rigorous scrutiny of the applicant's allegations concerning the risk of ill-treatment contrary to Article 3 in Bahrain.

108. There has, therefore, been a procedural violation of Article 3 of the Convention on account of the Serbian authorities' failure to examine, in a manner compatible with the requirements of the Court's case-law, the applicant's claim that he feared ill-treatment in Bahrain before returning him there (ibid., § 130; see, also, *A.M.A. v. the Netherlands*, cited above, §§ 79-80).

B. Article 13 of the Convention

109. Having regard to its conclusions under Article 3 of the Convention (see paragraphs 92-93 and 108 above), the Court does not consider it necessary to examine separately either the admissibility or the merits of the applicant's complaints under this head.

II. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

110. The applicant complained that his extradition to Bahrain in spite of the Court's indication under Rule 39 of the Rules of Court had given rise to a violation of Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

111. Rule 39 of the Rules of Court, insofar as relevant, provided at the material time as follows:

"1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

...

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated..."

A. The parties' submissions

112. The Government acknowledged that the respondent State had not complied with the Court's interim measure. They submitted that that had been because the interim measure had been issued on a Friday outside the working hours of the Serbian State bodies, and when the information about it could be transmitted onwards only by e-mail, and the applicant had been extradited on the Monday at 4 a.m., that is, before the beginning of the working day.

113. The applicant submitted that the national authorities had been well aware of the Court's interim measure before he had been extradited and that the High Court could have complied with the interim measure by not approving his collection from the detention unit by the police officers (see paragraph 30 above).

B. The Court's assessment

114. The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, which has been consistently reaffirmed as a cornerstone of the Convention system. A State's failure to comply with an interim measure entails a violation of that right (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 128-29, ECHR 2005-I). The Court does not find it necessary to elaborate once again on the importance of interim measures in the Convention system or on their exceptional nature, which calls for the greatest cooperation from the State concerned, since these principles are very well-established (see *O.O. v. Russia*, no. 36321/16, § 56 *in fine*, 21 May 2019; *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, §§ 231-32, 23 July 2020, and the authorities cited therein).

115. Turning to the present case, the Court observes, and it is not disputed by the parties, that an interim measure under Rule 39 of the Rules of Court staying the removal of the applicant was indicated on Friday, 21 January 2022, at 7.57 p.m., and that the Government's Agent was immediately notified about it (see paragraph 27 above). The Court also notes that at the time when the interim measure was indicated, the applicant's extradition was planned for Tuesday, 25 January 2022 (see paragraph 26 above), that is, the national authorities were to have at least one working day before the extradition to ensure that all the relevant bodies were informed of the interim measure. It was only after the interim measure was indicated and transmitted to the respondent Government that the extradition was brought forward to Monday, 24 January 2022 at 4 a.m., and for unknown reasons (see paragraphs 26-27 and 29 above). The Court acknowledged that the practicalities of various agencies sharing information might present difficulties for the immediate implementation of an interim measure indicated by the Court (see *O.O. v. Russia*, cited above, § 62 *in limine*). It observes, however, that the Government did not argue that the relevant domestic bodies had not been aware of the interim measure but rather that, in view of the fact that it had been issued on Friday outside working hours, it could be transmitted onwards only by e-mail (see paragraph 112 above). The Court observes that, regardless of that, all the relevant authorities, including the Ministry of the Interior, which was in charge of carrying out the extradition (see paragraph 58 above), were clearly notified and aware of the interim measure well before the applicant's extradition took place (see paragraphs 28 and 31 above) on Monday, 24 January 2022 at 4 a.m., that is, more than two days after the indication of the interim measure (see paragraph 32 above).

116. The Court also cannot but note that Bahrain's request that the applicant's extradition be brought forward was also received outside working hours, more specifically on Saturday 22 January 2022, and, regardless of that, it was promptly dealt with by the same domestic bodies during the same weekend (see paragraphs 29-30 and 32 above).

117. In view of the above, in particular in view of the specific circumstances of the case and the unclear reasons for the applicant's extradition being brought forward, the Court does not find

the explanation advanced by the Government compatible with the nature of urgent request aimed at preventing a person's imminent removal. By definition, these decisions are not complex to implement, since all that is needed is to inform the local authorities responsible for carrying out the expulsion and/or the administration of the detention centre about the temporary ban on the person's removal from the territory of the contracting State, which was duly done in the present case. In view of all the information in its possession, the Court is not satisfied that the Government in the present case took all reasonable steps to comply with the Court's ruling (see *Kamaliyevy v. Russia*, no. 52812/07, § 78, 3 June 2010).

118. The above considerations allow the Court to conclude that nothing objectively impeded compliance with the measure indicated by the Court under Rule 39 of the Rules of Court (ibid., § 79; see also *O.M. and D.S. v. Ukraine*, no. 18603/12, § 127 *in limine*, 15 September 2022).

119. Consequently, the Court concludes that the Serbian authorities have failed to comply with the interim measures ordered by the Court under Rule 39, in breach of their obligation under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

120. The relevant part of Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

121. The applicant asked the Court, under Article 46 of the Convention, to indicate to the Government to take tangible and effective measures to seek his return from Bahrain to Serbia. He referred to *Savriddin Dzhurayev v. Russia* (no. 71386/10, §§ 252-54, ECHR 2013 (extracts)), and *Garabayev v. Russia* (no. 38411/02, §§ 34-35, 7 June 2007).

122. The Government contested the applicant's request as "unrealistic" in view of all the circumstances and of the nature of the criminal offence of which he had been found guilty.

123. The general principles regarding a State's obligations under Article 46 of the Convention in the context of the execution of judgments in which the Court has found a breach of the Convention have been laid down in, *inter alia*, *Oleksandr Volkov v. Ukraine* (no. 21722/11, §§ 193-95, ECHR 2013).

In view of the scope of its jurisdiction and the nature and scope of the violation found, the Court does not consider it appropriate to exceptionally indicate any measures that may be taken to put an end to the violation in question. It will be for the respondent State to implement, under the supervision of the Committee of Ministers, such measures as it considers appropriate to secure the rights of the applicant (see *A.M.A. v. the Netherlands*, cited above, § 87).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 41 of the Convention provides:

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

A. Damage

125. The applicant claimed "at least" 15,000 euros (EUR) in respect of non-pecuniary damage, but he left the exact amount of the award to the discretion of the Court.

126. The Government contested the applicant's claim as excessive and entirely unfounded.

127. The Court reiterates that Article 41 empowers it to afford the injured party such just satisfaction as appears to be appropriate. It observes that it has found two violations of the Convention in the present case, including of Article 3. As a result, the applicant must have suffered non-pecuniary damage which cannot be remedied by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

128. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention about the domestic courts' failure to examine whether the applicant would face a risk of ill-treatment if extradited admissible;
2. *Declares* the complaint under Article 3 of the Convention about the domestic courts' failure to examine his complaint that, if extradited, he would risk a life-sentence without the possibility of parole inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicant's complaint about the domestic courts' failure to examine his complaint that he would face a risk of ill-treatment if extradited;
4. *Holds* that there is no need to examine separately the admissibility or the merits of the complaint under Article 13 of the Convention;
5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar

Ioannis Ktistakis President