

Extradition of former head of Venezuelan counter-espionage to US on drug-smuggling charges can proceed

In its decision in the case of [Carvajal Barrios v. Spain](#) (application no. 13869/22) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned the extradition of Mr Carvajal Barrios to the United States, where he is wanted for drug-smuggling offences.

The Court ruled that Mr Carvajal Barrios had failed to demonstrate that he would be at real risk of being sentenced to life imprisonment without parole in breach of Article 3 if extradited and therefore found the application to be manifestly ill-founded.

Principal facts

The applicant, Hugo Armando Carvajal Barrios, is a Venezuelan national who was born in 1960 and is in detention in Estremera (Community of Madrid). He was a member of the Venezuelan intelligence agency, including head of counter-espionage under Venezuelan President Hugo Chávez.

In July 2014, while working as Venezuelan consul in Aruba (Kingdom of the Netherlands), he was arrested on that island pursuant to a United States Department of State arrest warrant. As a result of his diplomatic immunity, he was ultimately expelled from Aruba, rather than extradited to the United States.

In 2019, while serving as a member of the Venezuelan National Assembly, he was expelled from the armed forces and accused of treason for his support for Juan Guaidó as president. He fled the country for Trinidad and Tobago and later moved on to the Dominican Republic.

In March 2019 Mr Carvajal Barrios travelled to Spain under an assumed identity. He was arrested there in April of that year pursuant to an Interpol search order. The US authorities requested extradition on charges of, among other things, narco-terrorism conspiracy, conspiracy to import cocaine into the United States and possession of machine guns and destructive devices in furtherance of a drug-trafficking crime.

In September 2019 the *Audiencia Nacional* initially decided to reject the request. The prosecution lodged an appeal, which was allowed by the *Audiencia Nacional*. Mr Carvajal Barrios then had an appeal submitted by him dismissed by the *Audiencia Nacional*, but that court issued a separate decision to address the risk of a life sentence without parole for Mr Carvajal Barrios if extradited, holding that the US authorities had to provide guarantees that, in particular, there would be “the possibility of review of a sentence of life imprisonment” or “measures of clemency” available.

The United States embassy sent a *note verbale* in November 2021, stating that should the applicant be convicted:

“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.”

In October 2021, after a failed *amparo* appeal, the *Audiencia Nacional* issued a notice for Mr Carvajal Barrios to be surrendered to the US authorities. He remains in detention in Spain following the

indication of an interim measure by the Court to the Spanish Government that he not be extradited until the proceedings before the Court have been completed.

Mr Carvajal Barrios also applied for asylum and subsidiary protection in Spain unsuccessfully.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 March 2022.

Relying on Articles 3 (prohibition of inhuman or degrading treatment), Mr Carvajal Barrios complained that his extradition to the United States would put him at risk of a life sentence without parole.

On 22 March 2022 the Court indicated to the Spanish Government that the applicant's extradition should be suspended while the proceedings before the Court were pending (Rule 39).

The decision was given by a Chamber of seven judges, composed as follows:

Georges Ravarani (Luxembourg), *President*,
Lado Chanturia (Georgia),
Mārtiņš Mits (Latvia),
Stéphanie Mourou-Vikström (Monaco),
María Elósegui (Spain),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Martina Keller, *Deputy Section Registrar*.

Decision of the Court

In order for Mr Carvajal Barrios to make out his case, he would have to demonstrate a real risk that a sentence of life imprisonment without parole would be imposed on him in the United States. As he had not yet been tried, it was difficult to ascertain the outcome, but the Court was satisfied that he would be tried in a legal system respectful of the rule of law and principles of a fair trial, in which he would have full opportunity to mount a defence with the help of legal representation. There were many circumstances in which Mr Carvajal Barrios would not receive the heaviest penalty possible, including acquittal, pleading guilty, or a plea bargain. Furthermore, sentencing would not be automatic and would be based on a wide range of inputs including mitigating factors. Mr Carvajal Barrios had failed to provide any information that mitigating factors in his case would not be taken into account. He would also have the right of appeal. In all, such sentences were highly unusual in federal cases in the United States.

The Court reiterated that in the extradition context, in order to comply with Article 3, Spain was not required to examine the availability of procedural safeguards in the United States because scrutinising the relevant law and practice of that State would be unduly difficult for the national authorities deciding on extradition requests, and this would be an over-extensive interpretation of the responsibility of a Contracting State. It largely referred to the principles established in [Sanchez-Sanchez v. the United Kingdom](#) [GC] (no. 22854/20).

Mr Carvajal Barrios had failed to demonstrate that he would be at real risk of treatment in breach of Article 3 if extradited. The Court therefore found the application to be manifestly ill-founded and declared it inadmissible.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.