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Help

Perhaps the most widely discussed deportation case concerned Omar Mahmoud Mohamed Othman, better known as Abu Qatada. A Jordanian national, Abu Qatada arrived in the United Kingdom in 1993 and was granted asylum. He was detained from 2002 until 2005 under the Anti-terrorism, Crime and Security Act 2001. Following his release, the UK authorities intended to deport him to Jordan. Meanwhile however, the applicant had been convicted in absentia in Jordan of offences of conspiracy to carry out bombings and explosions, in 1999 and 2000. The crucial evidence against the applicant in each of the trials that led to those convictions were the incriminating statements of two co-defendants, who had subsequently complained of torture. In 2005 the United Kingdom and Jordanian Governments signed a Memorandum of Understanding (MOU) which set out a series of assurances of compliance with international human rights standards to be adhered to when an individual was returned to one State from the other. The MOU stipulates that each State will comply with their human rights obligations under international law regarding a person returned under the MOU. When someone has been accepted under the terms of the MOU, the following conditions will apply, together with any further specific assurances provided by the receiving state:

1. If arrested, detained or imprisoned following his return, a returned person will be afforded adequate accommodation, nourishment, and medical treatment and will be treated in a humane and proper manner, in accordance with internationally accepted standards.
2. A returned person who is arrested or detained will be brought promptly before a judge or other officer authorised by law to exercise judicial power in order that the lawfulness of his detention may be decided.
3. A returned person who is arrested or detained will be informed promptly by the authorities of the receiving state of the reasons for his arrest or detention, and of any charge against him.
4. If the returned person is arrested, detained or imprisoned within 3 years of the date of his return, he will be entitled to contact, and then have prompt and regular visits from the representative of an independent body nominated jointly by the UK and Jordanian authorities. Such visits will be permitted at least once a fortnight, and whether or not the returned person has been convicted, and will include the opportunity for private interviews with the returned person. The nominated body will give a report of its visits to the authorities of the sending state.
5. Except where the returned person is arrested, detained or imprisoned, the receiving state will not impede, limit, restrict or otherwise prevent access by a returned person to the consular posts of the sending state during normal working hours. However, the receiving state is not obliged to facilitate such access by providing transport free of charge or at discounted rates.

Moreover, paragraph 6 guarantees the right to religious observance in detention and paragraph 7 provides for the right to a fair trial for a returned person in terms similar to Article 6(1) of the European Convention on Human Rights.

omitting references to paragraphs (a) and (e) of that Article (which respectively guarantee the right of the accused "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him", and his right "to have the free assistance of an interpreter if he cannot understand or speak the language used in court").

In the case of Abu Qatada, the organisation tasked to act as the 'independent body' referred to in para. 4 was the Adaleh Centre for Human Rights Studies. The Adaleh Centre was proposed by Jordan, and chosen because considered to be operationally and financially independent of the receiving State and able to produce reliable reports. The terms of reference for such independent supervisory bodies state that the body in question must have capacity for the task, with experts (called 'Monitors') trained in detecting physical and psychological signs of torture and ill-treatment and access to other independent experts as necessary. A Monitor should accompany every person returned under the MOU throughout their journey from the sending State to the receiving State, and should go with them to their home or to any other place where they may be sent. The MOU also provides that the Monitor should be permanently accessible to the returned person and to his/her next of kin and should report to the sending State on any concerns raised about the person's treatment or if the person disappears. It is also provided that for the first year after the person returns, a Monitor should contact him or her, either by telephone or in person, on a weekly basis. Adaleh intended to delegate the Monitor's tasks to the National Team to Combat Torture (NTCT), a subsidiary organisation.

May the United Kingdom expel Abu Qatada to Jordan, under the terms of the MOU between the two countries, without violating its obligations under the ECHR, as such obligations were initially outlined by the European Court of Human Rights in the case of *Chahal v the United Kingdom*? Abu Qatada invoked the prohibition of torture and of inhuman or degrading treatment or punishment (Article 3 ECHR), the right to liberty and security (Article 5 ECHR), and the right to a fair trial (Article 6 ECHR): his argument, under this last provision, was that his rights of defence would be breached by the use in the criminal trial against him (in fact a retrial, as he had been convicted *in absentia* ten years earlier) of confessions obtained under torture. What do you think should be the position of the European Court of Human Rights in this case?

Try to come up with your own answer before turning to the answer of the Court (/c4x/LouvainX/Louv2.01x/asset/_Materials__Diplomatic_Assurances_-_AbuQatada_Othman___Final_.pdf).


INSTRUCTIONS: In responding to the above questions, **DO NOT click on 'New Post'**. Click on '**Show discussion**', and then, in the first discussion thread, called '**[3.2.4] The Abu Qatada Case - Discussion**', click on '**View discussion**' and then on '**Add a response**' to propose your views to the community. If you want to comment on a peer's opinions in that thread then click on '**Add a comment**' in his response. You can also watch the tutorial (<http://youtu.be/SINSJKdez6g>) (see also, the updated (<http://youtu.be/TNoOB8q19kQ>) version) in order to make the best use of the interface.

Show Discussion

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I have thought about the question, compared it to the Court's reasoning, contributed to the debate and am ready to move on. 

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