

Extradition under the Case-Law of the European Court of Human Rights

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While the European Convention on Human Rights (1950) does not expressly mention the term “extradition”, the European Court and the Commission have established rules with regard to extradition. Georgia, which became a party to the European Convention on Human Rights on 20 May 1999, must take into account the case-law of the European Court and bring its national practice into line forthwith.

The basis for the development of a practice with regard to extradition by the European Court of Human Rights is served by Article 3 of the European Convention. This provides that “no one shall be subject to torture or inhuman or degrading treatment or punishment”. Even though the European Court’s case-law does not prohibit extradition, it sets out certain requirements that should be met in the case of extradition. Under the case-law of the European Court, a fugitive shall not be extradited to another state if as a result of extradition Article 3 of the Human Rights Convention is likely to be violated.

In this respect it is important to examine the requirements relating to extradition set by the European Court of Human Rights with a specific case study.

The European Court of Human Rights considered the case of *Soering v. UK*.¹ Mr. Soering who was a German national, on 30 March 1985 murdered his girlfriend’s parents in the State of Virginia. Subsequently, Mr. Soering and his girlfriend disappeared. They were arrested in England. After his arrest, the Government of the United States requested his extradition under the terms of the Treaty concluded between these states. However, difficulties with respect to extradition were raised when Mr. Soering being the main executor of the crime was threatened with the death penalty in the US. In the United Kingdom such a penalty had been abolished. In 1987 the accomplice of the murder – the daughter of the victims was surrendered for extradition to the United States. She was sentenced to 90 years imprisonment (45 years on each count of murder).²

Mr. Soering lodged an application with the Commission³ where he stated that there was a serious likelihood that he would be sentenced to death if he was extradited to the United States. He maintained that in the case of his extradition he would suffer from “death row phenomenon” and thereby would be subjected to inhumane and degrading treatment and

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¹ Judgement of 7 July 1989, Series A, No. 161.

² *Lillich*, Towards the Harmonisation of International Human Rights Law, in: *Recht zwischen Umbruch und Bewahrung: Festschrift für Rudolf Bernhardt*, 1995, 466.

³ Before the reform of European Convention’s supervisory system (1998) the admissibility of the application was examined by the European Commission of Human Rights.

punishment contrary to Article 3 of the Convention. "Death row phenomenon" may be described as consisting of a combination of circumstances to which the applicant would be exposed while awaiting the death sentence. Mr. Soering would be exposed to such circumstances after having been extradited to Virginia to face the murder charge.

Significantly, Mr. Soering did not require the annulment of the order on extradition as long as the death sentence would likely be made against him. Article 3 of the European Convention does not regard the death penalty as torture or inhumane treatment. Rather he argued that if he was sentenced to death it would take a long time to be carried out and thus he would suffer from "death row phenomenon", thereby being subjected to inhumane and degrading treatment and punishment which is contrary to Article 3 of the European Convention.

The United Kingdom Government, being the defendant in this case, contended that Article 3 should not be interpreted to impose responsibility on a contracting state for acts that occur outside its jurisdiction. In particular, the United Kingdom took the view that extradition does not involve the responsibility of the extraditing state for inhumane or degrading treatment or punishment which the extradited person may suffer outside its jurisdiction.

However, the European Court held the following:

"The question remains whether the extradition of a fugitive to another state where he would be subjected or be likely to be subjected to torture or to inhumane or degrading treatment or punishment would itself engage the responsibility of a contracting state under Article 3. [...] It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, where a contracting state knowingly surrenders a fugitive to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intent of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving state by a real risk of exposure to inhumane or degrading treatment or punishment proscribed by that Article.⁴

This judgement of the European Court shows that parties to the European Convention (including Georgia) must not extradite a fugitive to other states if there are substantial grounds for believing that this person might be subject to torture or inhumane or degrading treatment or punishment.⁵

At the same time, it is important to consider the Georgian legislation with respect to extradition. According to Article 6 (3) of the Criminal Code of Georgia: "It shall be inadmissible to extradite a person under asylum who has committed a crime and who is

⁴ Judgement of 7 July, 1989, Series A, No. 161.

⁵ *Frowein*, The European Convention on Human Rights as the Public Order of Europe, in: *Collected Courses of the Academy of European law*, 1990, vol. I(2) 1992, 316-317; see also: *O'Boyle*, Extradition and Expulsion under the European Convention on Human Rights: Reflection on the Soering Case, in: *Human Rights and Constitutional Law, Essays in Honour of Brian Walsh, O'Reilly* (ed.), 1992, 93.

regarded as crime under Georgian legislation or for this crime capital punishment is prescribed in the state seeking extradition.

Apart from that, paragraph 2 of Article 6 of the Criminal Code provides that “a citizen of a foreign state as well as a stateless person being on the territory of Georgia who has committed a crime may be extradited to another state for criminal prosecution or for serving a sentence in compliance with international treaty signed by Georgia”. This provision indicates that extradition shall be carried out only if the extradition is envisaged by an international treaty to which Georgia is a party.

This short overview of Article 6 (3) of the Criminal Code of Georgia and Article 3 of the European Convention makes clear that the Criminal Code stipulates different grounds for the refusal to extradite a person. Unlike the case of the European Court, this provision of the Code reveals that Georgian legislation does not prohibit extradition of a person to another state if there are substantial grounds for believing that this person might be subjected to torture or inhumane or degrading treatment or punishment.

Thus, in applying the mentioned article of the Criminal Code of Georgia, it is necessary to take into account Article 3 of the European Convention on Human Rights and the case-law of the European Court on the basis of which the Criminal Code should be interpreted.