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Draft third Additional Protocol to the European Convention on Extradition

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Jordi XUCLÀ, Spain, Alliance of Liberals and Democrats for Europe

Summary

The Parliamentary Assembly has been invited by the Committee of Ministers to give its opinion on the draft Third Additional Protocol to the European Convention on Extradition. The Committee on Legal Affairs and Human Rights finds that the protocol makes a welcome contribution towards reducing the length of pretrial detention by speeding up uncontroversial extradition cases.

1. Reference to committee: [Doc. 12131](#), Reference 3638 of 25 January 2010.



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A. Draft opinion²

1. The Parliamentary Assembly fully supports the Draft third Additional Protocol to the European Convention on Extradition. It is satisfied that the Protocol concerns only extradition cases in which the person concerned has given his or her valid consent, as protected by appropriate procedural safeguards. By speeding up uncontroversial extradition cases, the Protocol makes a welcome contribution towards reducing the length of pre-trial detention in appropriate cases.

2. Draft opinion adopted unanimously by the committee on 16 March 2010.

B. Explanatory memorandum by Mr Xuclà i Costa, rapporteur

1. Following a request of the Committee of Ministers of 20 January 2010, the Parliamentary Assembly is called upon to give an opinion on the draft Third Additional Protocol to the European Convention on Extradition.³
2. The Assembly is aware of the sensitive nature of extradition cases and fully recognises the problems which may be encountered in dealing with such cases, which may involve the eventual removal of individuals to a foreign jurisdiction. Extradition cases therefore necessarily engage human rights considerations.
3. The Assembly has recently considered the issue of extradition in cases where a possible political motivation of the underlying criminal prosecution is alleged. It called on states to “refuse extradition whenever there are reasons to believe that the person concerned is unlikely, for political reasons, to be given a fair trial in the requesting state”.⁴
4. However, the European Convention on Extradition, along with the Additional and Second Additional Protocols⁵ and the draft Third Additional Protocol, expressly exclude from their remit offences regarded as political by the requested state.⁶ The European Convention on Extradition and the draft protocol provide solely for extradition in respect of offences punishable under the laws of the requesting party and of the requested party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.⁷
5. The European Court of Human Rights has confirmed that there exists no right under the European Convention on Human Rights (ECHR) for aliens admitted to a state not to be extradited.⁸ The Court has held that in general, extradition proceedings do not fall under the ambit of Article 6 of the ECHR: “... decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6(1) of the [ECHR].”⁹ However, the Court has also recognised that “an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country”.¹⁰
6. In terms of ECHR rights, it is the detention of persons with a view to extradition which is of particular relevance. Under Article 5(1)(f) of the ECHR, the lawful arrest or detention of a person against whom action is being taken with a view to extradition is permitted.¹¹ This sub-article does not impose an obligation on member states to establish a specific time limit for detention pending extradition. However, detention under Article 5(1)(f) should not be arbitrary, and in this respect the length of detention “should not exceed that reasonably required for the purpose pursued”.¹²
7. The Court has held that the principle of proportionality applies to detention under Article 5(1)(f) to the extent that the detention should not continue for an unreasonable length of time; thus, it held that “any deprivation of liberty under Article 5(1)(f) will be justified only for as long as deportation proceedings are in progress”.¹³ Otherwise, the duration of the detention will be considered excessive.
8. The principal aim of the draft third protocol is to increase efficiency in uncontroversial cases by introducing a simplified extradition procedure. The proposed simplified extradition procedure may be used in two types of cases: cases where the person sought is the subject of a request for provisional arrest, and

3. See Doc. 12131 and ETS No. 24 (1957) (<http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm>).

4. Resolution 1685 (2009) on allegations of politically motivated abuses of the criminal justice system in Council of Europe member states, paragraph 5.1.2 – report by Mrs Sabine Leutheusser-Schnarrenberger (Germany, ALDE), Doc. 11993.

5. ETS Nos. 86 and 98, see <http://conventions.coe.int/Treaty/EN/Treaties/Html/086.htm> and <http://conventions.coe.int/Treaty/EN/Treaties/Html/098.htm>.

6. European Convention on Extradition, Article 3.

7. European Convention on Extradition, Article 2.

8. *Chahal v. the United Kingdom*, Application No. 22414/93, judgment of 15 November 1996; *X v. Belgium*, Application No. 7256/76, decision of 10 December 1976, p. 165. However, extradition of a person where there is a serious risk that they will be subjected to torture or inhuman or degrading treatment would be a violation of Article 3 according to *Soering v. the United Kingdom*, Application No. 14038/88, judgment of 7 July 1989, paragraph 31.

9. *Mamatkulov and Askarov v. Turkey*, Applications Nos. 46827/99 and 46951/99, judgment of 4 February 2005, paragraph 82. See also *Maaouia v. France*, Application No. 39652/98, 5 October 2000.

10. *Soering v. the United Kingdom*, paragraph 113.

11. *Chahal v. the United Kingdom*, paragraph 112.

12. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment of 29 January 2008, paragraphs 73 and 74.

13. *Chahal v. the United Kingdom*, paragraph 113.

cases where there has been a request for extradition under Article 12 of the European Convention on Extradition. The simplified procedure will only be initiated and is contingent on the consent of both the person sought and the requested state.

9. The procedure is mainly targeted at cases where a state requests provisional arrest of the person sought, which is permitted in cases of urgency under Article 16 of the European Convention on Extradition. In these cases, Article 2(1) states that it is no longer necessary to submit a request for extradition as well as to provide the supporting documents required by Article 12 of the European Convention on Extradition. Instead, the provision of the information laid out in Article 2(1)(a)-(h) will be regarded as adequate by the requested party to take its final decision on extradition under the simplified procedure. As a result, delays of surrender should be reduced significantly.

10. Furthermore, the protocol establishes a series of time limits in order to ensure prompt co-operation between the requesting and requested parties.¹⁴ The Assembly expects these time limits to contribute to reducing delays in the proceedings when persons do not wish to oppose their extradition. Improved procedural expediency should reduce the time suspects spend in detention on remand. Minimising the length of pretrial detention in cross-border cases is an important objective from the human rights point of view.

11. When devising a simplified procedure designed to improve efficiency, it is important to ensure that human rights will still be fully protected under the revised mechanism. In this regard, it is important to highlight that the simplified procedure will be contingent on the consent of the person sought.¹⁵ The consent must be expressed voluntarily and in full awareness of the legal consequences of the decision, and the person sought will have the right to legal counsel and an interpreter if necessary. The person must also be informed that, in consenting to the simplified procedure, he/she may be renouncing the benefit of the rule of speciality under Article 5.¹⁶ Consent must be established before the competent judicial authority of the requested party and it must be recorded, thus allowing for subsequent verification of its validity. Furthermore, parties may elect to provide for the possibility of revocation of consent until a final decision has been made on the simplified extradition.

12. The Assembly therefore considers that the consent requirement and procedural safeguards foreseen provide adequate protection against possible breaches of individual rights.

13. The Committee on Legal Affairs and Human Rights believes that the protocol can contribute to increasing the efficiency and speed of extradition mechanisms, whilst respecting individual rights.

14. Article 6 provides that the requested party must notify the requesting party if a person consents to the simplified procedure as soon as possible and no later than ten days after the date of provisional arrest. Article 7 provides that the requested party must notify the requesting party of its decision on the extradition under the simplified procedure within twenty days of the date the person consented. Article 9 states that surrender should take place as soon as possible, and preferably within ten days of the date of notification of the extradition decision.

15. Third draft protocol, Article 4.

16. The rule of speciality, as provided for in Article 14 of the European Convention on Extradition, means that the person may not be proceeded against, sentenced or detained for offences committed prior to his surrender other than those for which the person is being extradited.