



Doc. 12905

24 April 2012

Draft fourth additional protocol to the European Convention on Extradition

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Tudor PANȚIRU, Romania, Socialist Group

Summary

The Parliamentary Assembly was invited by the Committee of Ministers to give its opinion on the draft fourth additional protocol to the European Convention on Extradition (ETS No. 24). The Committee on Legal Affairs and Human Rights finds that the draft protocol serves the purpose of streamlining and modernising the 1957 convention and thus welcomes it entirely.

1. Reference to committee: [Doc. 12818](#), Reference 3830 of 23 January 2012.



A. Draft opinion²

The Parliamentary Assembly fully supports the draft fourth additional protocol to the European Convention on Extradition (ETS No. 24) and sees no need to propose any changes.

2. Draft opinion adopted by the committee on 12 March 2012.

B. Explanatory memorandum by Mr Panțiru, rapporteur

1. On 20 December 2011, the Committee of Ministers invited the Parliamentary Assembly to present an opinion on the draft fourth additional protocol to the European Convention on Extradition (ETS No. 24).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 these cases that involve the eventual removal of individuals to a foreign jurisdiction. Extradition cases may therefore raise human rights issues.
3. The Assembly has already dealt with extradition issues, in particular in cases where a possible political motivation of the underlying criminal prosecution was 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 In its recent [Resolution 1840 \(2011\)](#) on human rights and the fight against terrorism, it also stressed the importance of the *non-refoulement* principle, in particular in the context of interim measures under Rule 39 of the Rules of the European Court of Human Rights, and expressed its concern about reliance on diplomatic assurances.
4. Moreover, the European Court of Human Rights has confirmed that, under the European Convention on Human Rights (ETS No. 5, “the Convention”), aliens admitted to a State have no right not to be extradited.⁵ The Court has held that, in general, extradition proceedings do not fall under the ambit of Article 6 of the Convention: “... 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 Convention.”⁶ 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.”⁷ The recent judgment of the European Court of Human Rights in the *Abu Qatada* case concerns such a situation and, once again, highlights the intrinsic link between human rights and extradition.⁸
5. Otherwise, it is the detention of persons with a view to extradition which is of particular relevance. Under Article 5.1.f of the European Convention on Human Rights, the lawful arrest or detention of a person against whom action is being taken with a view to extradition is permitted.⁹ This sub-paragraph 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”.¹⁰ 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 and, thus, “any deprivation of liberty under Article 5.1.f will be justified only for as long as deportation proceedings are in progress”.¹¹ Otherwise, the duration of the detention will be considered excessive.
6. The European Convention on Extradition dates from 1957 and is one of the oldest European conventions in the field of criminal law. It was recently supplemented by a third additional protocol, providing a treaty basis for simplified extradition procedures. This protocol was received favourably by the Assembly.¹²
7. The underlying rationale to extradition procedures is that extradition relations between States having comparable legal systems and sharing the same values should be closer and more flexible, with less need for exceptions and safeguards.¹³ To this effect, within the European Union, the European arrest warrant, adopted in 2002 in the form of a Framework Decision which had to be transposed by European Union member States by 31 December 2003, replaced, within its area of application, the traditional extradition system by requiring

3. See <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.

5. *Chahal v. the United Kingdom*, Application No. 22414/93, judgment of 15 November 1996; *X. v. Belgium*, Application No. 7256/75, judgment of 10 December 1976, p. 1.65. 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.

6. *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.

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

8. *Othman (Abu Qatada) v. the United Kingdom*, Application No. 8139/09, judgment of 17 January 2012.

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

10. *Saadi v. the United Kingdom*, Application No. 13229/03, judgment of 29 January 2008.

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

12. See [Opinion 278 \(2010\)](#).

the executing national judicial authorities to recognise, *ipso facto* and with a minimum of formalities, requests for the surrender of a person made by the issuing judicial authority of another European Union member State.¹⁴ The draft fourth protocol takes these developments into account.

8. The principal aim of the draft fourth protocol is to modernise a number of provisions of the European Convention on Extradition, taking into account the evolution of international co-operation in criminal matters since the entry into force of the convention and its earlier additional protocols. To this end, it replaces the current provisions on lapse of time (Article 10), on request and supporting documents (Article 12), on the rule of speciality (Article 14) and on transit (Article 21). It adds supplementary rules to the provisions on re-extradition to a third State (Article 15), on channels and means of communication and on friendly settlement. Finally, it defines the protocol's relationship with the convention and other international instruments.

9. Overall, the proposed changes have been carefully drafted by the European Committee on Crime Problems under the authority of the Committee of Ministers and are well reasoned. They should indeed serve the purpose of streamlining and modernising the 1957 convention and thus be welcomed entirely.

13. See Stein T, "Extradition", *Max Planck Encyclopedia of Public International Law* 2012, paragraph 60: www.mpepil.com/subscriber_article?script=yes&id=/epil/entries/law-9780199231690-e797&recno=2&author=SteinTorsten.

14. See 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJEU L 190, 18 July 2002, pp. 1-20: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:HTML>.