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Interpol reform and extradition proceedings: building trust by fighting abuse

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Aleksander POCIEJ, Poland, Group of the European People's Party

Summary

International co-operation in the field of criminal law is of fundamental importance. When criminals take advantage of reduced border controls in Europe to escape justice in their own countries and transfer criminal assets abroad, States must react by co-operating with each other efficiently to uphold the rule of law.

A reasonable balance must be struck between the legitimate interest in preventing impunity for serious crimes, which themselves violate human rights, and the rights of the person targeted by an extradition request, who must not be exposed to a serious risk of flagrant denial of justice, cruel and inhuman punishment and/or discriminatory treatment on political, racial, ethnic or religious grounds.

International co-operation in the field of criminal law requires a high degree of mutual trust, based on common standards and practices. Trust is destroyed when international co-operation mechanisms are misused for political or corrupt purposes.

The Committee on Legal Affairs and Human Rights stresses Interpol's vital role in the fight against impunity. It welcomes the fact that Interpol has implemented many recommendations made by the Assembly in its 2017 report aimed at strengthening the Interpol system and fighting the abuse of Red Notices and Diffusions. However, further work needs to be done to improve the transparency of Interpol's work and to strengthen accountability for States who frequently abuse Interpol's instruments.

1. Reference to committee: Doc. 14315, Reference 4306 of 30 June 2017.

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A. Draft resolution[2]

1. The Parliamentary Assembly stresses the fundamental importance of international co-operation in the field of criminal law. When criminals take advantage of reduced border controls in Europe to escape justice in their own countries and transfer criminal assets abroad, States must react by co-operating with each other efficiently to uphold the rule of law.

2. The Council of Europe's main legal instrument in this field is the 1957 European Convention on Extradition updated by additional protocols in 1975, 1978, 2010 and 2012. Its practical functioning is aided by the Committee of Experts on the Operation of the European Convention on Co-Operation in Criminal Matters (PC-OC). The main objective of the Parties to the Convention is to facilitate extradition as much as possible to prevent impunity of criminals who abscond across boundaries.

3. A reasonable balance must be struck between the legitimate interest in preventing impunity for serious crimes, which themselves violate human rights, and the rights of the person targeted by an extradition request, who must not be exposed to a serious risk of flagrant denial of justice, cruel and inhuman punishment and/or discriminatory treatment on political, racial, ethnic or religious grounds.

4. International co-operation in the field of criminal law requires a high degree of mutual trust, based on common standards and practices. Trust is built over time and with difficulty, by competent colleagues from different countries getting to know each other, developing mutual respect, based on professionalism and integrity, finally building successes together. But trust can be destroyed quickly and easily, first and foremost when international co-operation mechanisms are misused for political or corrupt purposes.

5. The Assembly further notes that extradition proceedings are often triggered by an Interpol Red Notice or a Wanted Person Diffusion. In its Resolution 2161 (2017) on "Abusive use of the Interpol system: the need for more stringent legal safeguards", the Assembly recognised Interpol's vital role in the fight against impunity. At the same time, the Assembly found that Interpol's procedures had been frequently abused for political or corrupt reasons by certain countries. It therefore made concrete proposals for reforms aimed at strengthening the Interpol system.

6. The Assembly is now satisfied that many of its proposals have already been implemented, or are in the process of being implemented by Interpol, in particular:

6.1. new Red Notices and Wanted Person Diffusions are vetted by a dedicated, multi-disciplinary task force at Interpol's secretariat general, prior to their becoming visible to National Central Bureaus (NCB);

6.2. work on reviewing older Red Notices authorised before the compliance review was implemented in 2016 and still visible on Interpol's databases has begun;

6.3. a data protection officer was appointed within Interpol, reporting directly to the Secretary General;

6.4. the Committee for the Control of Files (CCF), to whom persons targeted by notices and diffusions can appeal, has been strengthened by its new Statute, which entered into force in March 2017. In particular, the CCF's

6.4.1. reactivity improved due to the strengthening of its resources;

6.4.2. decisions have become binding on Interpol; a finding of non-compliance of a Red Notice with Interpol's Constitution or rules will lead to the deletion of the notice by the general secretariat;

6.4.3. decisions are now reasoned and extracts permitting to better understand the interpretation given to relevant rules are published;

6.4.4. independence has been strengthened by a "firewall" set up between the general secretariat of Interpol and the secretariat of the CCF;

6.4.5. members have to withdraw from cases where they are nationals of the country which is the source of the data challenged by an applicant;

2. Draft resolution adopted unanimously by the committee on 27 June 2019.

6.5. a “Refugee Policy” was adopted and published by Interpol in September 2017, intended to prevent the publication of Red Notices and wanted person diffusions against persons who have refugee status under the Geneva Conventions;

6.6. a “Repository of Practice” on Article 3 of its Constitution (on political, military, religious and racial neutrality) has been published on Interpol’s website.

7. However the Assembly also notes with regret that a number of recommendations have not yet been implemented, in particular those intended to improve transparency of Interpol’s work and to strengthen accountability for States whose NCB’s abuse Interpol’s instruments.

8. Regarding the improvement of extradition proceedings in general, the Assembly calls on the member States of the Council of Europe to participate actively in the Council of Europe’s co-operation activities in the criminal law field, in particular the PC-OC; to implement good practices and avoid problems identified by the PC-OC, in particular:

8.1. as requested parties, by dealing with extradition requests in a timely, co-operative and result-oriented manner, and by swiftly requesting additional information or clarification where needed;

8.2. as requesting parties, by providing sufficiently detailed information on the person whose extradition is requested, the suspected crime and the elements of proof linking the targeted person to the alleged crime; and by swiftly providing informative, well-documented answers to any requests for further information or clarification by the requested party;

8.3. by keeping up-to date with relevant case law of the European Court of Human Rights, in particular by using the tools made available by the PC-OC;

8.4. by refusing any extraditions by which the extradited person would be exposed to a serious risk of flagrant denial of justice, cruel and inhuman punishment or discriminatory treatment on political, racial, ethnic or religious grounds;

8.5. by relying on diplomatic assurances by the requesting State only when they are specific, given by an authority having the power to enforce them, credible in view of the length and strength of bilateral relations between the requested and the requesting States and of the requesting State’s track record of abiding by similar assurances, when the requesting State has an effective system of protection against torture and when compliance with the assurances can be objectively verified through diplomatic or other monitoring channels;

8.6. by refraining from making extradition requests, including European Arrest Warrants (EAW), when extradition would be disproportionate in relation to the gravity of the alleged crime and the penalty incurred; this would normally be the case when pre-trial detention would be considered inappropriate in similar circumstances in either one of the States involved in the extradition proceedings.

9. Regarding the reform process at Interpol, the Assembly calls on:

9.1. Interpol to:

9.1.1. further improve transparency by disclosing data that would help to assess how effective its review mechanisms are, including yearly statistics on Red Notice requests received and refused, appeals to the CCF introduced and decided in favour or against the applicants, with a breakdown by countries; by publishing a “repository of practice” on the interpretation of Article 2 of Interpol’s Constitution;

9.1.2. further improve preventive and subsequent scrutiny of Red Notices and diffusions, by examining with particular care any repetitive requests, ones that have not given rise to extraditions or extradition requests within a reasonably period of time and those submitted by NCB’s having previously submitted a high number of abusive requests; and by charging the countries responsible for the extra cost involved;

9.1.3. ensure more effective control over the information which flows through its communication system by requiring NCBs to delete data from national databases following a CCF or General Secretariat decision to delete a notice or diffusion and to provide confirmation of the deletion within a prescribed time limit;

9.1.4. further strengthen the appeals procedure before the CCF by making it speedier, more interactive and more transparent;

9.1.5. consider setting up an independent appeals body against the decisions of the CCF, such as an Ombudsperson, who could also make recommendations for any further improvements of Interpol's working methods;

9.1.6. set up a compensation fund for victims of unjustified Red Notices and Wanted Persons Diffusions financed by member States in proportion to the number of such notices and diffusions emanating from their NCBs;

9.2. all member States of the Council of Europe to set an example of good co-operation by:

9.2.1. making available to Interpol the human and financial resources necessary to improve the quality and timeliness of both preventive compliance checks and the subsequent review by the CCF; in particular, to provide increased, ring-fenced, dedicated funding to the Notices and Diffusions Task Force and the CCF;

9.2.2. ensuring that Red Notice requests and diffusions they submit to Interpol fulfil high standards of clarity in terms of the identification of the targeted person, the description of the facts and their legal qualification and the elements of proof linking the targeted person to the alleged crime;

9.2.3. swiftly informing Interpol of any relevant facts concerning a targeted person, such as the granting of refugee status, provided the person concerned agrees;

9.2.4. following up Red Notices by extradition requests in due course and withdrawing Red Notices when extradition is not possible within a reasonable time;

9.2.5. respecting the decisions by the CCF by ensuring that all copies of Red Notices or diffusions found unjustified by the CCF are deleted also in their national databases;

9.2.6. by facilitating, in co-operation with the European Union, the development of a collection of best practices between member States on how to act on Red Notices and diffusions, including practical steps to conduct risk assessments and to apply consistent human rights standards;

9.2.7. making use of their influence within Interpol to support the implementation of further improvements so that Interpol fully respects human rights and the rule of law whilst remaining an effective tool for international police co-operation.

B. Explanatory report by Mr Aleksander Pociej, rapporteur

1. Introduction

1. The motion for a resolution underlying this report highlights the need to ensure that there is no abuse of process in extradition requests across Europe: "Reportedly, certain member States have issued extradition orders for sentences resulting from trials which were probably politically motivated. […] in light of adverse media reports on the application and apparent abuse of the European Arrest Warrant system and Interpol Red Notices by governments of some member States seeking to extradite alleged criminals."

2. The Assembly's Resolution 2161 (2017) on "Abusive use of the Interpol system: the need for more stringent legal safeguards"[3] has identified a pattern of misuse of the Red Notice system by certain States intent on persecuting political opponents beyond their borders, and addressed a number of concrete recommendations both to member States and to Interpol itself aimed at improving the flow of information and strengthening the filtering and appeals mechanisms at Interpol in order to ensure that abusive requests are less likely to cause damage to the rights of innocent persons in the future.

3. It should be noted from the outset that the reform process at Interpol, accompanied by the Assembly's earlier work, has indeed prompted the introduction of stronger compliance checks for Red Notice requests. Certain governments have reacted by using "Wanted Person Diffusions" instead. These involve the selective distribution, through Interpol's channels, of bilateral or multilateral requests for apprehending a targeted person. Whilst Resolution 2161 (2017) only referred to Red Notices, it is clear that such "Diffusions" must also be subjected to compliance checks. I was told that this is indeed the case now, although the sheer number and urgent nature of diffusions are challenging.

4. The link between the issuance of a Red Notice (or the distribution of a "wanted person diffusion") by Interpol and the arrest of the targeted person in another State and his or her extradition to the requesting State depends on national law and varies widely even among member States of the Council of Europe. But abusive Red Notices and Wanted Person Diffusions clearly increase the risk that abusive extraditions are granted, which is why the motion rightly includes the apparent abuse of Interpol's instruments in its scope.

5. The Council of Europe has been active in setting legal standards governing extradition requests among European States. The 1957 European Convention on Extradition (ETS No. 24) was updated by four additional protocols opened for signature in 1975, 1978, 2010 and 2012 (CETS Nos. 086, 098, 209 and 212). The Convention on Extradition has been very successful in terms of ratifications (50, including all Council of Europe member States and Israel, South Africa and South Korea). The European Union has nevertheless adopted its own conventions – the Convention of 27 September 1996 relating to extradition between the member States of the European Union, which was largely replaced since 1 January 2004 by the Council Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) providing for simplified surrender procedures between EU member States. As indicated in the motion underlying this report, the EAW system has also given rise to allegations of abuse.

6. It is apparent from the European Convention on Extradition, its Additional Protocols and the proceedings of the competent intergovernmental bodies (in particular, the Committee of Ministers itself and the Committee of Experts on the Operation of the European Conventions on Co-Operation in Criminal Matters, PC-OC) that the main objective of the parties to the convention was and remains to facilitate extradition as much as possible in order to prevent impunity of criminals who abscond across national boundaries. The Assembly has also repeatedly recognised that the fight against impunity is an important policy goal of international co-operation in the criminal field.[4]

7. But as shown by the violations found by the European Court of Human Rights in numerous extradition cases, a balance must be struck between the legitimate interest in preventing impunity for serious crimes, which themselves usually violate human rights, and the rights of the person targeted by an extradition request, who must not be exposed to a serious risk of flagrant denial of justice, cruel and inhuman punishment and/or discriminatory treatment on political, racial, ethnic or religious grounds. As Judge Johannes Silvis of the

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3. See report by the Committee on Legal Affairs and Human Rights, Doc. 14277 dated 29 March 2017 (rapporteur: Mr Bernd Fabritius, Germany, EPP/CD).

4. See, for example, the reports on "The state of human rights in Europe: the need to eradicate impunity", Doc. 11934 dated 3 June 2009 (rapporteur: Ms Herta Däubler-Gmelin, Germany, SOC), "Legal remedies for human rights violations in the North-Caucasus Region", Doc. 12276 dated 4 June 2010 (rapporteur: Mr Dick Marty, Switzerland, ALDE), "Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?", Doc. 14083 dated 8 June 2016 (rapporteur: Mr Michael McNamara, Ireland, SOC).

European Court of Human Rights notes, "The interface of human rights and extradition is therefore widely experienced as a domain of 'tension' between protective and co-operative functions of this form of international legal assistance."[5] It must also not be overlooked that there are also criminals who have the means to engage high-profile lawyers who use and sometimes abuse the Convention system by systematically challenging extradition request so as to escape justice.

8. In theory, there is no conflict between the fight against impunity and the protection of the rights of the persons targeted by extradition requests: the fight against impunity requires neither the punishment of the innocent, nor the use of grossly unfair, discriminatory proceedings, even less the use of cruel and inhuman punishment, such as the death penalty – quite the contrary: the Assembly has noted on many occasions that such violations undermine rather than promote the fight against impunity.

9. But in practice, all depends on the facts of each case. It is often difficult for the competent authorities deciding on extraditions to fully understand the background of each request, its true motivations and the actual risk of grossly unfair proceedings. International co-operation in matters of criminal law generally relies on a minimum of trust between the actors in the different States. Trust is built over time and with difficulty, by colleagues getting to know each other, developing mutual respect, based on professionalism and integrity, finally building successes together. But trust is destroyed quickly and easily, first and foremost when international co-operation mechanisms are abused for political and corrupt purposes. This clearly applies also to the context of extradition.

10. In this report, I should like to recall existing Council of Europe standards governing extraditions and also comment on human rights aspects of the European Arrest Warrant, which is applicable among the member States of the European Union. Last but not least, I will briefly assess the reforms carried out by Interpol so far in order to stamp out the misuse of its Red Notice and diffusion procedures, in light of the proposals made by the Assembly in its Resolution 2161 (2017).

2. Existing Council of Europe standards governing extraditions

11. Council of Europe standards governing extradition can be found in the 1957 Convention and its additional protocols, in the Committee of Ministers' resolutions and recommendations on this topic and in the case law of the European Court of Human Rights.

2.1. 1957 Convention on Extradition

12. The 1957 Convention on Extradition lays down the rule that contracting parties have a duty to extradite suspects to each other provided certain conditions are fulfilled (Article 1). Article 3 specifies that extradition shall not be granted for "political offenses" in the following terms:

> *"Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.*
>
> *The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.*
>
> *The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention."*

13. According to the Explanatory Report, Article 3 allows the requested Party to decide whether the offence is political or not, which also applies to the "substantial grounds for believing" that a request has been made for discriminatory purposes.

14. Extradition for military and fiscal offences is also excluded, respectively subject to restrictions (Articles 4 and 5).

15. Regarding terrorist offences, Article 3 of the 1957 Convention is modified among the contracting parties by Article 20 of the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196). This convention lays down the general rule of "extradite or prosecute", obliging the Party in whose territory the

5. Johannes Silvis, Judge at the European Court of Human Rights, Extradition and Human Rights, Diplomatic assurances and Human Rights in the Extradition Context, Lecture presented on 20 May 2014 at the PC-OC meeting in Strasbourg, available at: https://rm.coe.int/168048bdaf

alleged offender is present to either extradite that person or, "without exception whatsoever and whether or not the offence was committed in its territory" to submit the case without undue delay to its competent authorities for the purpose of prosecution. Article 20 lays down an important qualification of Article 3 of the 1957 Convention on Extradition, by specifying that none of the terrorist offenses referred to in this convention shall be regarded, for the purposes of extradition or mutual legal assistance, "as a political offence, an offence connected with a political offence, or as an offence inspired by political motives."

16. The qualification of Article 3 of the Convention on Extradition by Article 20 of the Convention on the Prevention of Terrorism is in turn qualified by Article 21 of the latter convention – the "Discrimination Clause". According to Article 21 (1),

> *"nothing in this Convention shall be interpreted as imposing an obligation to extradite […] if the requested Party has substantial grounds for believing that the request for extradition […] has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to the person's position for any of these reasons."*

17. Furthermore, Article 21 (2) and (3) provides that "nothing in this Convention shall be interpreted as imposing an obligation to extradite if the person who is the subject of the extradition request risks being exposed to torture or to inhuman or degrading treatment or punishment", or to the death penalty or to life imprisonment without parole (where such punishment is not allowed for in the law of the requested party), unless under applicable extradition treaties the requested party is under an obligation to extradite if the requesting Party gives sufficient assurances that the person concerned will not be subjected to such punishment. Capital punishment is already recognised as a ground for refusal of extradition in the 1957 Convention (Article 11).

18. To sum up, parties to the relevant Council of Europe conventions are, as a rule, obliged to extradite suspects or persons wanted for the execution of a sentence or detention order (or, in the case of terrorist offences, to extradite or prosecute themselves) to each other, except for their own nationals. This rule does not apply to "political" offences, but terrorist offences do not qualify as "political". Nevertheless, extradition is not required when the request was made on discriminatory grounds, or when the subject of the request risks being subjected to the death penalty or life imprisonment with the possibility of parole.

19. The 1957 European Convention on Extradition has been updated and further clarified by four additional protocols in 1975, 1978, 2010 and 2012. The last three Additional Protocols concern technical issues that are not of particular concern from the point of view of possible abuses. The first protocol further limits the scope of "political offences" for which extradition may be refused. In addition to taking the life of a head of State, the first protocol also excludes war crimes and crimes against humanity from the scope of "political offences", thus maintaining the obligation to extradite for such crimes. Moreover, the first Protocol supplements the provisions of the convention that deal with the principle "*ne bis in idem*", namely its Article 9, by enlarging the number of instances in which the extradition of a person is barred where that person has already been tried for the offence in respect of which the extradition claim was made. The Second Protocol is designed to facilitate the application of the convention on several points and aims, in particular, to include fiscal offences among the category of offences for which a person may be extradited under the convention. This Protocol also contains additional provisions on judgments *in absentia* and amnesty. The Third Protocol supplements the convention in order to simplify and accelerate the extradition procedure when the person sought consents to extradition. Finally, the Fourth Protocol concerns, in particular, the issues of lapse of time, requests and supporting documents, rule of speciality, transit, re-extradition to a third State and channels and means of communication.

20. The practical functioning of the 1957 Convention on Extradition and related texts is supervised by the PC-OC, which held special sessions on extradition in May 2014[6] and June 2018.[7] In 2014, the agenda points most relevant to this report were the presentation by Mr Johannes Silvis, Judge at the European Court of Human Rights, on "Extradition and Human Rights – Diplomatic assurances and Human Rights in the Extradition Context",[8] and a workshop on "Refusal of extradition requests, grounds and possible solutions to avoid impunity (*aut dedere, aut judicare)"*. In June 2018, a thematic session devoted to the 60th anniversary of

6. See programme at https://www.coe.int/en/web/transnational-criminal-justice-pcoc/extradition-special-sessions.
7. See "Special session to celebrate the 60th anniversary of the European Convention on Extradition", 20 June 2018, Presentations and summaries of the panel discussions, Strasbourg 10 August 2018, PC-OC (2018)05 (English only).
8. Available at: http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048bdaf.

the Convention included presentations on recent trends in the case law of the ECHR, on the need for and drafting of diplomatic assurances and the consequences of such assurances for the length of extradition proceedings.

2.2. Committee of Ministers decisions

21. The Committee of Ministers has to date adopted three recommendations and two resolutions with regard to the 1957 Convention on Extradition. As was the case of the Additional Protocol, the Committee of Ministers' decisions concern chiefly practical and technical issues of limited relevance to the present report, with the exception of Recommendation No. R(80)9 (para. 24 below). For completeness' sake, they are summed up briefly hereafter, in reverse chronological order:

22. Recommendation No. R(96)9 concerning the practical application of the European Convention on Extradition (adopted on 5 September 1996 at the 572nd meeting of the Ministers' Deputies) is intended to facilitate the hand-over of property in the context of extradition proceedings, and the procedure to be followed when extradition is requested concurrently by more than one State.

23. Recommendation No. R(86)13 concerning the practical application of the European Convention on Extradition in respect of detention pending extradition (adopted on 16 December 1986 at the 399th meeting of the Ministers' Deputies) is intended to ensure that time spent in custody pending extradition shall be deducted from the sentence in the same way as time spent in pre-trial detention. In addition, the Committee of Ministers encourages the requested party to consider the proportionality of detention pending extradition and recommends to all contracting parties to enable victims of unjustified detention pending extradition to be compensated, as in the case of unjustified pre-trial detention.

24. Recommendation No. R(80)9 concerning extradition to States not party to the European Convention on Human Rights (adopted on 27 June 1980 at the 321st meeting of the Ministers' Deputies) recommends to member States not to grant extradition "where a request emanates from a state not party to the ECHR and where there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person concerned on account of his race, religion, nationality or political opinion, or that his position may be prejudiced for any of these reasons", and "to comply with any interim measure which the European Commission of Human Rights might indicate […], as, for instance, a request to stay extradition proceedings pending a decision on the matter." The first recommendation repeats the formula already applicable among States Parties to the Convention on Extradition under its Article 3 (see para. 12 above). But whilst Article 3 merely gives the requested party the *right* to refuse extradition in case the request was discriminatory, the Committee of Ministers goes one step further and positively *recommends* States Parties not to grant such requests when they emanate from a State not Party to the ECHR. The second recommendation, whilst still referring to the European *Commission* on Human Rights, foreshadows the future case law of the European *Court* of Human Rights as to the binding character of its interim measures, which do indeed often involve the stay of extradition (or expulsion) proceedings pending the Court's decision on the merits.

25. Resolution (78)43 on reservations made to certain provisions of the European Convention on Extradition (adopted on 25 October 1978 at the 294th meeting of the Ministers' Deputies) recommends to the governments of the Contracting Parties to the Convention on Extradition that they "limit the scope of the reservations or withdraw them, bearing in mind the contribution of the Additional Protocols."

26. Finally, Resolution (75)12 on the practical application of the European Convention on Extradition (adopted on 21 May 1975 at the 245th meeting of the Ministers' Deputies) recommends to the Contracting Parties, in the case of a minor under 18, to take into consideration the interests of the minor and to seek an agreement on the most appropriate measures to avoid impairing his social rehabilitation. In addition, the resolution concerns issues covered by subsequent Additional Protocols (taking into account time spent in custody pending extradition and immunity from prosecution or punishment by reason of lapse of time).

2.3. Case law of the European Court of Human Rights

27. As we have seen, the focus of the conventions dealing specifically with extradition issues is to *allow* States Parties of these conventions to refuse extradition requests in certain cases;[9] whereas the European Convention on Human Rights, as interpreted by the Strasbourg Court, *obliges* States Parties to the ECHR to refuse extradition requests whenever core fundamental rights of the subject of a request are threatened. The

9. Articles 3, (4), 9, 10 of the Extradition Convention also contain grounds for compulsory refusal of Extradition.

Court has spelt out this obligation for several groups of cases, barring extradition on human rights grounds under Article 2 (risk of loss of life), Article 3 (when there are strong grounds for believing that the person, if extradited, faces a real risk of being subjected to torture or to cruel, inhuman or degrading treatment, Article 5 (if the person risks suffering a flagrant denial of his or her right to liberty), Article 6 (if there is a serious risk of the person suffering a flagrant denial of his or her right to a fair trial) and Article 8 (where the interference with the right to private and family life is exceptionally so serious that it outweighs the importance of the grounds for extradition).

28. It should be noted that the case law summed up in the following text includes both extradition and expulsion or deportation cases. The Court stated explicitly that its relevant case law "should be regarded as applying equally to extradition and other types of removal from the territory of a Contracting State", because "[t]he Court's own case-law has shown that, in practice, there may be little difference between extradition and other removals." (see *Babar and Others v. United Kingdom*, 10 April 2012, paras. 176 and 168)

29. Applications to the European Court of Human Rights against extraditions or expulsions often give rise to interim measures under Rule 39 of the Rules of the Court. In fact, most interim measures concern expulsion or extradition, and they usually consist in a suspension of the applicant's expulsion or extradition. Interim measures are granted when there is an imminent risk of irreparable harm, in connection with pending proceedings before the Court without prejudging any subsequent decisions on admissibility or merits of the case in question. Interim measures are usually set to cover the duration of proceedings before the Court, and they may be discontinued at any time by a decision of the Court.[10]

30. It should also be noted that according to established case law of the Court, the fair trial guarantees of Article 6 do *not* apply to the extradition proceedings themselves, as these do not relate to the merits of the criminal case and therefore do not involve the "determination […] of any criminal charge" within the meaning of Article 6.[11]

2.3.1. No extradition in case of risk of inhuman and degrading punishment or being subjected to the death penalty

31. The leading case in the Strasbourg Court's jurisprudence on extradition is *Soering v. United Kingdom* (7 July 1989). In this case, the Court found for the first time that a State Party's responsibility could be engaged if it extradited a person who risked being subjected to ill-treatment in the requesting country. Even when the death penalty as such was not yet outlawed by Protocol 6 to the Convention, the Court found that the real risk that Mr Soering would be sentenced to death and placed on the notorious "death row" (which violated Article 3 of the Convention) should preclude extradition. The reasoning of the Court refers to the founding values of the Convention:

> *"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, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed." (Soering, para. 88).*

32. The Court subsequently acknowledged that

> *"it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the state obliged to harbour the protected person but also tend to undermine the foundations of extradition." (para. 89).*

33. But in *Soering*, the Court clearly resolved the conflict between the absolute prohibition of torture and inhuman and degrading treatment and the public interest in efficient international co-operation in the criminal field in favour of the former – the absolute nature of the prohibition of torture and inhuman and degrading treatment clearly outweighs any other public interests.

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10. See the case law summed-up in the Factsheet on Interim Measures dated February 2018 published by the Court's Press Unit. The statistics referred to in this fact sheet are interesting, too: in 2017, 70% of the requests for interim measures granted concerned expulsion or immigration cases. In 2017, the total number of decisions on interim measures (1,669) was down 28% in comparison with 2016 (2,313). The Court granted requests in 117 cases (compared to 130 in 2016) and dismissed them in 533 cases (-52% in comparison with 2016).

11. See *Ketchum v. Romania* (decision of 11 June 2013, application no. 15594/11), *Vlas and others v. Romania* (decision of 10 October 2017, application no. 30541/12) and *Findikoglu v. Germany* (decision of 7 June 2016, application no. 20672/15).

34. In *Cruz Varas v. Sweden* (20 March 1991), the Court laid down a number of principles guiding the assessment of the risk of ill-treatment in another State: the Court will assess in light of all the material placed before it (or even obtained on its own initiative) whether there are "substantial grounds" for believing in the existence of a "real risk" of treatment contrary to Article 3; the existence of such a risk must be assessed primarily with reference to the facts which were known or should have been known to the respondent State at the time of the expulsion or extradition; and the ill-treatment feared must attain a minimum level of severity. In *Ismailov v. Russia* (2014),[12] the Court clarified the standard of evidence when proving the existence of a real risk of ill-treatment. According to the Court, the applicant is not required to provide "indisputable" evidence but only to prove a "high likelihood".

35. In *Chahal v. United Kingdom* (15 November 1996) – a Sikh separatist suspect whose expulsion was ordered on national security grounds – the Court found that Article 3 did not only protect against torture ordered by the State, but also prevented expulsion where the State had limited control over the day-to-day practices of its security forces (as was notoriously the case in the Punjab region of India vis-à-vis Sikh separatists).This principle was subsequently extended to cover situations where the person to be removed has reasons to fear ill-treatment at the hands of non-State actors. For example, in *J.K. and Others v. Sweden* (23 August 2016, GC) the applicant, a former employee of the U.S. troops in Iraq, continued to be at risk from ISIS or al-Qaeda, as the Iraqi authorities' capacity to protect persons at risk must be regarded as diminished, especially as regards the applicant, who belonged to a group specifically targeted by violent non-State actors.

36. In *Saadi v. Italy* (28 February 2008, GC), the Court found that it was not possible to weigh the risk that a person might be subjected to ill-treatment against his dangerousness to the community if he were allowed to stay. The Court found such "balancing" incompatible with the absolute nature of Article 3. Diplomatic assurances of fair treatment by Colombia in *Klein v. Russia* (1 April 2010) were also found insufficient. Interestingly, in this case, the applicant was arrested in Moscow on the basis of an Interpol Red Notice, with a view to extradition to Colombia.

37. The Court found numerous violations in cases of extraditions and expulsions to Central Asian countries such as Kazakhstan, Uzbekistan and Tajikistan. It took into account the notorious lack, in these countries, of legal safeguards for the prevention of torture, in particular as regards members of "risk groups" whose extradition is requested on the basis of alleged crimes with typical political undertones. This said, the Court does not rely merely on the say-so of the applicant, but requires concrete, verifiable facts linking the applicant to such a "risk group".[13]

38. The question arises whether the situation of human rights and the rule of law in certain States is so bad that extradition is always excluded. With regard to Kazakhstan, the Court found in its 2014 *Oshlakov* judgment[14] that the situation, although problematic, does not warrant a total ban on extradition. In its 2014 *Zarmayev* judgment,[15] the Court even found that former Chechen combatants were not in general at risk in Russia. By contrast, in the 2017 *Allanazarova* judgment,[16] the Court confirmed the existence of a total ban on extradition to Turkmenistan, as any person detained there on criminal charges runs a real risk of being subject to torture or inhuman and degrading treatment within the meaning of Article 3.

39. Since the 2008 Grand Chamber judgment in *Kafkaris v. Cyprus*,[17] the Court has also recognised life imprisonment without parole as inhuman punishment and thus as a possible obstacle to extradition. The Court found that for a life sentence to be compatible with Article 3, it must be reducible not only *de iure*, but also *de facto*. In the 2014 *Trabelsi v. Belgium* judgement,[18] the Court specified that a review mechanism must require "the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds."

40. The trend, in light of recent case law both in the national context and in an extradition context, appears to be towards a more and more demanding examination of de facto reducibility, especially where life sentence without parole is mandatory.[19]

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12. Application no. 20110/13, judgment of 17 April 2014
13. See the impressive collection of case law (summaries of facts, of the main complaints of the applicant, and of the assessment by the Court) available of the website of the PC-OC.
14. *Oshlakov v. Russia*, judgment of 3 April 2014, application no. 56662/09.
15. *Zarmayev v. Belgium*, judgment of 27 February 2014, application no. 35/10.
16. *Allanazarova v. Russia*, judgment of 14 February 2017, application no. 46721/15.
17. *Kafkaris v. Cyprus*, judgment (GC) of 12 February 2008, application no. 21906/04.
18. *Trabelsi v. Belgium*, judgment of 4 September 2014, application no. 140/10.

2.3.2. No extradition in case of risk of an unfair trial amounting to a flagrant denial of justice

41. In *Othman (Abu Qatada) v. the United Kingdom* (17 January 2012), the Court found a violation of Article 6, despite the existence of an exemplary set of "diplomatic assurances" against ill-treatment (see below, para. 47), because the applicant had reasons to fear that the Jordanian courts would admit evidence obtained by torturing his alleged accessories. The Court stressed that "mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring with the Contracting State itself" was not sufficient for a violation of Article 6 in an extradition case. "What was required was a breach of the principles of fair trial which was so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article." In the Court's opinion, the admission of evidence obtained by torture would amount to such a flagrant denial of justice, as it would render a trial immoral, illegal and its outcome entirely unreliable. As the use of evidence obtained by torture was widespread in Jordan and the legal safeguards under Jordanian law seemed to have little practical value, the Court found that the deportation of Abu Qatada would entail a particularly grave violation of Article 6 amounting to flagrant denial of justice.

42. The threshold for finding a "real risk of a flagrant denial of justice" is far higher than that for a simple violation of Article 6. The applicant must prove the "flagrant" nature of the denial of justice he or she fears (*Einhorn v. France*, 2001). In the 2017 *Harkins v. the United Kingdom* Grand Chamber inadmissibility decision, the Court gave further examples of what would constitute a "flagrant" denial of justice, including denial of legal representation, disregard to the rights of defence, and use of evidence obtained by torture. In the case of *in absentia* convictions, a flagrant denial of justice does not exist when the requesting State provides for the possibility of a retrial on the request of the person concerned.[20]

43. In the context of the European Arrest Warrant (EAW), the question has arisen whether the situation of the rule of law in Poland has deteriorated to the point that extraditions to Poland should be halted (see below paragraph 58).

44. Following a careful balancing of the interests of society in preventing impunity and of the person whose extradition is sought to respect for his or her fundamental rights, the threatened violation of other non-absolute rights can also be recognised as obstacles to extradition. For example, the real risk of a flagrant violation of Article 5 may be an obstacle to extradition, when the requesting State arbitrarily detained the person concerned for many years without bringing him to trial; or the person's right to private or family life may, in "exceptional circumstances", outweigh the legitimate aim pursued by the extradition.[21]

2.3.3. Relevance of "diplomatic assurances"

45. "Diplomatic assurances" are formal commitments made by the requesting State to the requested State, which the latter may ask for as a condition for co-operation in a specific case. They should ensure that the person will be treated after surrender to the requesting State according to relevant international human rights standards. Such assurances are usually submitted in the form of a diplomatic note and must be binding on all relevant domestic authorities of the requesting State. It is common practice that the diplomatic note is accompanied by a statement of the competent authority itself (usually the Ministry of Justice or the General Prosecutor).

46. The practice of granting extraditions that might otherwise not be permissible on the strength of "diplomatic assurances" has been criticised on principled grounds by a number of NGOs and the UN Committee Against Torture.[22] The European Court of Human Rights has ruled on different occasions that extraditions or expulsions may be possible with sufficient guarantees. In the 2014 *Zarmayev v. Belgium* judgment, the Court found that such assurances must be real, tangible and effective. The Court requires States to prove that assurances are not taken as a mere formality – by either side. Assurances must be "tailor-made" for each specific case, which is why a "model wording" for assurances might even be counterproductive.

47. The Court has set strict conditions for the validity of such guarantees. In the *Othman (Abu Qatada) v. United Kingdom* case, the Court laid down a series of principles (the "*Othman criteria*") to assess the validity of diplomatic assurances for dissipating fears of ill-treatment or unfair trials in order to allow for the deportation of persons considered to be a threat to national security. The Court indicated that it would consider both the general human rights situation in the country concerned and the particular characteristics of the applicant.

19. See PC-OC (2018)05, op.cit., page 28.
20. Ibid., pages 50 and 53.
21. Ibid., page 19 (with case law references).
22. Ibid., page 46.

Noting that "it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances" (para. 188), the Court indicated that it would assess the quality of assurances given and whether in light of the requesting State's practices, they can be relied upon, having regard to a number of factors, including

– whether the assurances are specific or vague,

– whether they were given by an authority having the power to enforce them,

– whether they were given by a contracting State of the ECHR,

– the length and strength of bilateral relations between the sending and requesting States,

– the requesting State's track record in abiding by similar assurances,

– whether the requesting State has an effective system of protection against torture and, importantly,

– whether compliance with the assurances can be objectively verified through diplomatic or other monitoring channels.

48. In the *Abu Qatada* case, the Court was satisfied that the UK and Jordanian Governments had provided transparent and detailed assurances that the applicant would not be ill-treated upon his return to Jordan and found no breach of Article 3. But it found a breach of Article 6 (see above, para. 41).

49. In *Baysakov and Others v. Ukraine* (18 February 2010), the Court found that the assurances given by the Kazakh authorities that the applicant would not be subjected to treatment contrary to Article 3 were unreliable and that it would be difficult to ensure that they were honoured as Kazakhstan lacked an effective system of torture prevention.

50. An area where assurances can play an important role is that of detention conditions. Should all extradition requests from a country, which has many overcrowded or otherwise inhuman and degrading places of detention be refused? Or can a real risk of inhuman and degrading treatment in the individual case at hand be avoided by an assurance that the surrendered person will be placed in a prison with acceptable conditions of detention? This may well solve the extradition issue, but it could raise equality issues for other prisoners.[23]

51. In sum, given the Court's strong reliance on the circumstances of each individual case, it has been said that the outcome of each case is quite unpredictable. This is understandably frustrating for the Government Agents defending their authorities before the Court. But it is difficult to see how else the Court can deal with such cases without jeopardizing the right of individual petition in such cases, which are often about life and death.

3. The European Arrest Warrant (EAW) from a human rights perspective

3.1. The specificity of the EAW

52. The European Arrest Warrant (EAW), which has been operational since 1 January 2004, has largely replaced the Convention of 27 September 1996 relating to extradition between the member States of the European Union.[24] The EAW is a simplified cross-border judicial surrender procedure, based on the principle of mutual recognition: a warrant issued by one EU member State's judicial authority is valid throughout the EU. The EAW is intended to accompany the free movement of persons within the EU by providing a more efficient mechanism to ensure that open borders in the EU are not exploited by criminals seeking to evade justice. Mutual recognition is founded on the mutual trust of member States that their national legal systems provide equivalent and effective protection of the fundamental rights recognised at EU level. This justifies that the EAW system operates directly between judicial authorities, has limited grounds for refusal and provides for short time limits for the decision and actual surrender of the requested person. The swift execution of an EAW thus constitutes the rule, whereas the refusal to execute is intended to be a strictly interpreted exception.

53. The EAW was successful in that it succeeded in speeding up average surrender time (for targeted persons who did not consent), which is now 48 days, compared to a one-year average for the extradition of requested persons before the launch of the EAW.[25] This said, recent statistical data published on the European e-Justice Portal[26] seems to indicate that while European Arrest Warrants are issued more and

23. See PC-OC (2018)05, op.cit., page 23.
24. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14015b.

more frequently (an increase from 6,894 in 2005 to 16,144 in 2015), less than a third are actually executed. This may well be linked to a lack of trust in the equivalence of protections and reliability of decisions in different States, even within the EU. The European Commission has therefore adopted a strategy to ensure respect for the EU Charter of Fundamental Rights and is implementing a "roadmap" for strengthening the procedural rights of suspected or accused persons in criminal proceedings. Interestingly, this "roadmap" recognises in recital 10 that "a lot of progress has been made in the area of judicial and police co-operation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual."[27]

3.2. Human rights considerations limiting automatic implementation

54. From the perspective of the European Convention on Human Rights, which also applies to EU member States implementing the EAW, the Court's case law as summed up above remains fully applicable. This means that the Council of Europe Framework Decision on the EAW, which provides in its Article 1(3) that member States must respect fundamental rights and fundamental legal principles, including Article 3 ECHR, does not require surrender of a person where an executing judicial authority is satisfied that such surrender would result in a breach of a requested person's fundamental rights, arising, for example, from unacceptable detention conditions in the requesting country.[28]

55. The Court of Justice of the European Union has recognised this explicitly in its *Aranyosi and Căldărăru* judgment of 5 April 2016.[29] In order to uphold the EAW principle that the list of grounds for refusal in the Framework Decision is limitative, the Luxembourg Court does not allow the requested State to *refuse* extradition in such cases, but it must *postpone* its decision until it obtains – within a reasonable time – information that allows it to discount the existence of such a risk. Meanwhile, the requested person may be held in custody, but only as long as the duration of his or her detention is not excessive. It should be noted that the European Court of Human Rights, in its *Bosphorus v. Ireland* and *Avotiņš v. Latvia* judgments,[30] has established a presumption that EU law affords a level of protection equivalent to the protection afforded by the European Convention on Human Rights.

56. Besides detention conditions in the requesting country, the main human rights issue posed by the EAW is that of proportionality. According to the Commission's 2011 report to the European Parliament, confidence in the EAW has been "undermined by the systematic issue of EAW's for the surrender of persons sought in respect of sometimes very minor offences". There was general agreement in the European Council that a proportionality check is necessary, on the side of the issuing State, which should cover the seriousness of the offence, the length of the sentence expected, the existence of an alternative approach that would be less onerous for both the person sought and the executing authority, and a cost/benefit analysis of the execution of the EAW. The issuing of EAW's in cases for which pre-trial detention would otherwise be considered inappropriate clearly has a disproportionately (and therefore unjustified) negative effect on the right to liberty and security (Article 5 ECHR) of the requested persons.

3.3. The EAW and Article 7 of the Treaty on European Union (TEU)

57. An interesting new EAW issue has arisen after the European Commission adopted in December 2017 a "reasoned proposal" under Article 7(1) of the Treaty on European Union (TEU) regarding threats to the rule of law in Poland (in particular, absence of a legitimate constitutional review and threats to the independence of the ordinary judiciary).

58. An Irish court having to decide on several EAWs submitted by Poland requested a preliminary ruling from the Court of Justice of the European Union as to whether extraditions to Poland should be suspended in view of the findings of the Commission. The Luxembourg Court stresses the importance of the rule of law, which requires the independence and impartiality of the courts. But it also notes that under Article 7(2) TEU it is for the Council of the European Union to adopt a decision determining that there is a serious and persistent

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25. See Report from the European Commission to the European Parliament and the Council on the Implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member States, Brussels, 11 April 2011, COM(2011)175 final.
26. https://e-justice.europa.eu/content_european _arrest_warrant-90--maximize-en.do, 28/02/2018.
27. Resolution of the Council of 30 November 2009, Official Journal C 295, 4.12.2009, page 1.
28. See Report from the European Commission to the European Parliament and the Council, COM(2011)175 final, op.cit., page 7.
29. CJEU Joined Cases C-404/15 and C-659/15 PPU.
30. *Bosphorus Hava Yollari Turizm ve Ticaret Anomi Şirketi v. Ireland* (GC), no. 45036/98, 30 June 2005 and *Avotiņš v. Latvia* (GC) no. 17502/07, 23 May 2016.

breach in the issuing member State of the principles set out in Article 2 TEU (rule of law). Only in such a case, the executing authority would be required to refuse automatically to execute an EAW issued by such a State. As long as such a decision has not been adopted by the Council of the European Union, the executing authority may refrain to give effect to an EAW issued by a member State, which is subject of a "reasoned proposal" under Article 7(1) only in exceptional circumstances where that authority finds, after carrying out a specific and precise assessment of the particular case, that there are substantial grounds for believing that the person concerned would run a real risk of his fundamental right to an independent tribunal and therefore of the essence of his fundamental right to a fair trial.[31]

3.4. The failed attempts by Spain to obtain extradition of exiled Catalan leaders

59. An interesting group of cases of – attempted – extradition in Europe is that of a several exiled Catalan politicians sought by Spain: Carles Puigdemont (Germany), Meritxell Serret, Antoni Comin and Lluis Puig (Belgium), Marta Rovira and Anna Gabriel (Switzerland) and Clara Ponsati (Scotland). In all cases, the extraditions failed, on different grounds.

60. The competent German authorities were ready to execute the EAW launched by Spain, but only for the lesser charge of misuse of public funds; extradition on the far more serious charge of rebellion was refused because the equivalent provision in the German criminal code (*Landfriedensbruch*/breach of the peace) requires that the perpetrators commit violence – as does the crime of rebellion in Spanish law. The competent court of appeals in Germany found that the Spanish authorities did not provide sufficient proof for violence, at least not violence for which Mr Puigdemont could be held responsible. After the decision of the German court, Spain withdrew the EAW against Mr Puigdemont. Pursuing Mr Puigdemont only for misuse of public funds, as Spain would have been obliged to under the speciality rule in extradition law, would have complicated the ongoing prosecutions of other Catalan leaders who stayed in the country for the crime of rebellion.[32]

61. In the cases of the three former Catalan ministers decided by Belgium, the competent court refused the execution of the EAW on formal grounds – the EAW was not accompanied, as it should have been, by a copy of the national arrest warrant.[33]

62. Switzerland, which is not concerned by the EAW, could only be seized of extradition requests under the normal (Council of Europe Convention) rules. Regarding Ms Gabriel, a former member of the Catalan parliament, the spokesperson of the Swiss Federal Justice Office announced on 20 February 2018 that Switzerland would refuse an extradition request by Spain because the Swiss Penal Code and the European Convention on Human Rights did not allow extradition or any other form of judicial assistance for a political offence. Similarly, in the case of Ms Rovira, the Secretary General of the ERC (Republican Left of Catalonia) party, the Swiss National Council's external affairs committee reportedly took note on 17 April 2018 of the international arrest warrant and announced that Switzerland would refuse an extradition based purely on political grounds.[34]

63. Regarding Ms Clara Ponsati, a former Catalan education minister and now a professor at St. Andrews University, the EAW was withdrawn by the Spanish authorities after the rejection of similar requests by Germany and Belgium. It should be noted that the national arrest warrants against all these exiled Catalan politicians remain in force. They are likely to be taken into custody as soon as they set foot in Spain.

4. Interpol reform: assessing the progress achieved in implementing the Assembly's commendations

64. In the hearing before our committee on 13 December 2018 in Paris, with the participation of Interpol's General Counsel, Ms Rodriguez, the representative of Fair Trials International, Mr Min, who had prepared a detailed study on Interpol's reform efforts, and Mr Verbert, Chair of the Council of Europe's PC-OC, we were informed by Ms Rodriguez that Interpol has already implemented a large part of the reform measures recommended by the Assembly. Mr Min agreed with her on many points, although he thought that it was still

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31. Case C-216/18 PPU, Judgment of the Court (GC) of 25 July 2018, paras. 72-73.
32. See « Katalonien – Spanische Justiz verzichtet auf Auslieferung von Carles Puigdemont », *Zeit.de*, 19 July 2018 (in German); press release of the Court of Appeal of Schleswig Holstein (in English): https://www.schleswig-holstein.de/DE/Justiz/OLG/Presse/PI/201806Puigdemontenglisch.html
33. See *L'Express* of 16 May 2018, « Catalogne : la Belgique refuse la remise de trois ex-dirigeants indépendantistes » ; rtbf.be, 18 April 2018, « Crise en Catalogne : les ex-ministres catalans en exil devant la chambre du conseil le 18 avril ».
34. See Antoine Harari, « La Suisse n'expulsera pas l'indépendantiste catalane Anna Gabriel », *Le Temps*, 20 February 2018 ; *Le Nouvelliste*, 17 April 2018, « Catalogne : la Suisse n'accordera pas l'extradition de Marta Rovira pour des motifs purement politiques ».

too early to draw conclusions on the practical outcome of some measures, especially as regards the effectiveness of the vetting procedures for Red Notices and diffusions and the appeals procedures before the CCF. These required considerable additional resources in order to be effective in the face of the sheer volume of notice requests and diffusions. Mr Verbert also noted that Interpol made a lot of progress in regaining trust although the weight attached to a notice or diffusion still varies considerably among member States.

65. A recent study requested by the European Parliament's DROI committee[35] has reached similar conclusions as our experts: "Recent Interpol reforms have made significant impact on safeguarding individuals both substantially and procedurally. Nevertheless, and especially considering the significant increase in the number of Notices and Diffusions in the Interpol system, reforms remain to be fully implemented and transparency and enforcement mechanisms continue to leave room for improvement."

66. The study attaches considerable weight to the Assembly's earlier report prepared by Bernd Fabritius. It supports and further develops the Assembly's main findings and recommendations. I found the following additional proposals especially relevant and included them in the draft resolution:

– to provide access to independent review of CCF decisions, by an ombudsperson or equivalent oversight body to review any complaints against the CCF and to recommend further reforms based on monitoring of compliance;

– to ensure that Interpol has more effective control over the information which flows through its communication system by requiring NCBs to delete data from national databases following a CCF or General Secretariat decision to delete a notice or diffusion and to provide confirmation of the deletion within a prescribed time limit;

– for the EU (and the Council of Europe) to facilitate the development of a collection of best practices between member States on how to act on Red Notices and diffusions, including practical steps to conduct risk assessment and the application of consistent human rights standards.

67. The draft resolution sums up the measures already taken, and lists those which Interpol is still invited to adopt or to implement more effectively.

68. The measures already taken mainly require increases in the resources available for prior vetting and subsequent review procedures. According to the most recent available Interpol Annual Report (2017), 13 048 Red Notices were newly issued and 52 103 in circulation. The number of new diffusions issued stood at 26 645 in 2016, with a total of 85 918 in circulation. These numbers have practically doubled since 2010.[36] It is clear that the "Notices and Diffusions Task Force" set up in 2016, a multidisciplinary team of 30-40 individuals, needs to grow in line with the increase in numbers of notices and diffusions. Similarly, the CCF is likely to face a heavier workload as numbers increase and lawyers become more and more familiar with the CCF's work and Interpol's Rules. As pointed out by Mr Min at our hearing, it is somewhat disappointing that the CCF's budget was *reduced* by € 130 000 between 2018 and 2019.[37]

69. It therefore does not come as a surprise that Fair Trials International and other relevant NGOs[38] continue to come across cases that show that Interpol's review procedures are far from perfect, and that certain countries have continued to succeed in getting notices and diffusions distributed against political activists, human rights defenders and recognised refugees.

70. The measures which Interpol is still invited to adopt include in particular those intended to improve transparency of Interpol's work and to strengthen accountability for States whose NCB's misuse Interpol's instruments, by sanctions against repetitive abusers.

71. More transparency of Interpol's work would increase trust, by improving the predictability of outcomes and the ability to assess the effectiveness of corrective measures. The publication of a "repository of practice" for the interpretation of Article 3 of Interpol's Constitution (on Interpol's duty of neutrality) was useful, as would be the long-overdue publication of a similar "repository" on Article 2 (on Interpol's duty to work "in the spirit of the Universal Declaration of Human Rights"). The availability of (extracts of) written CCF decisions is a step in the right direction, but lawyers question the quality of these decisions, which do not contain sufficient

35. Misuse of Interpol's Red Notices and impact on human rights – recent developments, Study requested by the DROI committee, Policy Department for External relations, DG for External Policies of the Union, PE 603.472, January 2019 (European Parliament Study)
36. Source: Interpol Annual Reports and Fact Sheet on International Notice System.
37. Interpol GA Resolution GA-2018-87-RES-13, compared with GA Resolution GA-2017-86-Res-15.
38. The following are listed in the above mentioned EP Study as having particular experience in this field: Open Dialogue Foundation, Stockholm Center for Freedom, Human Rights Watch (pages 17-18).

reasoning and do not always make it clear how a decision was reached. More detailed statistics not only on numbers of Red Notice requests and wanted person diffusions, but also on requests rejected in the prior vetting process and notices found in violation by the CCF, broken down by member States, would help "naming and shaming" notorious violators and permit evaluating the success of measures taken to combat misuse of Interpol's instruments. Such statistics would also provide precious guidance to member States as to the intensity of checks needed before acting on a notice or diffusion; they would allow Interpol to allocate its own vetting resources more efficiently; and last but not least, they would allow the implementation of the "polluter pays" principle advocated by the Assembly, by charging notorious violators for the cost of more intensive vetting and review. This would be an effective way of strengthening the accountability of NCBs for abusive Red Notice requests and diffusions.

72. The draft resolution also notes that the successful implementation of these measures depends to a large extent on the co-operation of Interpol's member States. It therefore addresses not only Interpol, but also its member States, in particular those which are also members of the Council of Europe. These are urged to put the necessary resources at the disposal of Interpol and to set an example in terms of the quality and swiftness of the information provided to Interpol and of respect for the limitations placed on Interpol's activities by its Constitution.

5. Conclusions

73. Extradition law is first and foremost national law, and I am neither able to, nor would it be particularly useful, to analyse the laws relating to extradition in the Council of Europe's 47 member States. As the European Arrest Warrant is based on European Union law and applicable only between member States of the European Union, I also did not wish to go into much detail in this regard. For the Assembly, the focus must be on human rights aspects, i.e. the compatibility with the European Convention on Human Rights of the relevant national laws and their implementation, and of the EAW as applied in practice.

74. As we have seen, the Council of Europe has set clear standards governing extradition: the 1957 Convention and its four additional protocols, several resolutions and recommendations of the Committee of Ministers and, last but not least, the case law of the European Court of Human Rights focusing on the prohibition of extradition in cases where the suspect is threatened by the death penalty, torture or other inhuman and degrading treatment, including imprisonment for life without the possibility of parole, or where the suspect is likely to be subjected severe procedural violations amounting to a real risk of a flagrant denial of justice.

75. We have also seen that in a number of member States, the very existence of an Interpol Red Notice has strong effects on related extradition proceedings. Suspects may well be placed in detention pending extradition on the strength of a Red Notice. Abusive extradition requests and abusive Red Notices are often linked. As mentioned before, the Assembly has already addressed a number of recommendations to Interpol with a view to improving the quality and reliability of Red Notices. As the main purpose of this instrument is to prepare and secure extradition requests, it clearly made sense to critically assess the implementation of the Assembly's recommendations to Interpol and its member States regarding Red Notices.

76. The result of this assessment is that Interpol has made much progress in filtering out abusive Red Notices and wanted persons diffusions. The CCF's role as an appeals body has been strengthened by the adoption of its new statute and an increase of the resources at its disposal. Transparency and predictability have been improved by the publication of a "refugee policy", of a "repository of practice" on the interpretation of Article 3 of Interpol's Constitution and of extracts of selected decisions of the CCF. There is nevertheless still much room for improvement. The draft resolution lists a number of additional steps that Interpol and its member States, including all member States of the Council of Europe, should take in order to ensure the effectiveness of Interpol's instruments.

77. The effectiveness of Interpol's instruments, as well as that of Council of Europe and EU tools designed to facilitate extradition, strongly depends on mutual trust. Such trust is severely undermined by the actions of a small number of States misusing these instruments in order to violate fundamental rights and freedoms. Fighting misuse of the instruments of international co-operation in the criminal field is thus clearly in the interest of the large majority of States wishing to co-operate effectively in the fight against impunity. The draft resolution provides some proposals in this sense.