

## Human Rights Standards in European Courts and Legal Obstacles in Extradition under EU Law

Abhinav kumar<sup>1</sup>

<sup>1</sup>PhD Research Scholar, DNLU Jabalpur, [abhinavphd@mpdnlu.ac.in](mailto:abhinavphd@mpdnlu.ac.in)

### Abstract

This document discusses the impact of the human rights standards on the extradition in the framework of the European Union (EU) law with particular focus on the ongoing shift in the interrelation between the aspects of judicial cooperation and the protection of fundamental rights. Based on the European Convention on Human Rights (ECHR), and, in particular, Articles 3, 5, and 6 of the same, the paper examines the transformation of the legal scope of extradition by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union, respectively (CJEU) to ensure that efficiency is not at the expense of human dignity and the right to a fair trial. The article reviews the major transformations in the European Arrest Warrant (EAW) mechanism to the doctrine of non-refoulement, with some of the landmark cases e.g. the *Soering v. case*, *Aranyosi and Caldaraaru and United Kingdom*. It establishes unresolved legal conflicts between mutual recognition, sovereignty and human rights observance, especially in states with rule-of-law or detention issues. Moreover, it discusses the extraterritorial scope of the EU human rights requirements and recent cases in Ukraine and countries of the Eastern Partnership, where the conflict and the absence of stability become obstacles on the way of the fair judicial procedure. The paper concludes that the European extradition law is drifting towards a rights-based approach whereby judicial cooperation and the primacy of human rights are balanced.

**Keywords:** European Arrest Warrant (EAW); European Court of Human Rights (ECtHR); Court of Justice of the European Union (CJEU); extradition law.

### 1. Introduction

The extradition process within the European Union (EU) has experienced a major change in the last twenty years and it is mostly due to the creation of the European Arrest Warrant (EAW) and the growing case law of the European Court of Human Rights (ECtHR)<sup>1</sup>. The EAW, which substitutes the traditional politically mediated extradition, was conceived at the Tampere European Council in (1999)<sup>2</sup> and formalized through the Council Framework Decision of 2002/584/JHA in which the cornerstone of judicial cooperation in criminal matters, mutual recognition, replaces the traditional politically mediated extradition. Although such an innovation was intended to facilitate efficiency and confidence among the Member States, there were also deeply rooted contradictions between mutual trust and the safeguarding of the primary rights, which are established in the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights.

#### 1.1 From Extradition to Mutual Recognition

Historically, bilateral treaties and political discretion had been used to guide extradition in Europe with the 1957 European Convention on Extradition being an example. Such arrangements were usually based on a state sovereignty rather than the common principles of the judiciary. The EAW Framework Decision (2002) changed this situation and transferred the political control to judicial collaboration on the basis of equal respect to the principles of human rights and fair trials<sup>3</sup>. The assumption of equality under legal protection has however, turned out to be problematic particularly in the wake of increasing backsliding of the rule of law and some apprehensions about prison conditions and judicial independence in certain Member States.

---

<sup>1</sup> Riegel, R., & Wahl, T. (2024). Twenty Years of the European Arrest Warrant from a German Viewpoint: Experiences, Challenges, Perspectives. *Transnat'l Crim. L. Rev.*, 3, 38.

<sup>2</sup> Willems, A. (2016, December). Extradition on the Two Sides of the Atlantic: The US Model as Blueprint for the European Arrest Warrant?. In *Criminal Law Forum* (Vol. 27, No. 4, pp. 443-493). Dordrecht: Springer Netherlands.

<sup>3</sup> Novakovic, F. (2025). Harmonizing Justice: Unraveling the Complexities of the European Arrest Warrant in the Pursuit of Cross-Border Security and Human Rights Protection. *Ind. Int'l & Compar. L. Rev.*, 35, 411.

## 1.2 ECtHR Influence and the Human Rights Dimension

The ECtHR has been very instrumental in establishing human rights boundaries on extradition and surrender. In *Soering v. Othman (Abu Qatada) v. United Kingdom* (1989). In the United Kingdom (2012)<sup>4</sup>, the Court believed that the surrender would be contrary to Article 3 ECHR when the person had a real danger of torture or inhuman treatment. These cases, together with the ruling of CJEU in *Aranyosi and Căldăraru* (2016), made it clear that mutual trust is not absolute. According to Mitsilegas (2015)<sup>5</sup>, this case law resulted in the establishment of what is known as the conditional trust, whereby cooperation has to give way to the protection of human rights in instances of systemic deficiency.

## 1.3 The Duality of Legal Obligations

The EU Member States have to balance two sets of responsibility the responsibility to issue EAWs according to the EU law and the responsibility to avoid the human rights violations according to the ECHR. CJEU focuses on integration and mutual recognition, whereas the ECtHR focuses on the individual safeguards.<sup>6</sup> This tension is a conflict between an integrationist logic and a human rights ethos, whereas<sup>7</sup> describes it as a justice-trust dichotomy, when courts practice collective cooperation and individualize fairness.

## 1.4 Doctrinal Shifts and Judicial Resistance

The initial cases of constitutional courts like the 2005 ruling at the German Federal Constitutional court showed a reserved attitude towards compatibility of the EAW with domestic rights protection. Later jurisprudence has tried to find a compromise in a proportionality-based policy so that the efficiency of a surrender is consistent with the basic rights norms.<sup>8</sup> Terms such an evolution as a so-called rights-based proportionality doctrine, which is judicial opposition to automaticity.

## 1.5 Beyond the EU and the Contemporary Debate

The EAW now applies beyond EU borders and it has an impact on extradition with third countries due to the Petruhhin line of cases. In the meantime, there are constant crises, such as Brexit, erosion of the rule of law, or mass surveillance, which Satzger (2018)<sup>9</sup> calls mutual recognition in crisis.<sup>10</sup> EAW has ceased to be a procedural instrument and has become a constitutional yardstick on how Europe has been dedicated towards justice, integration, and safeguarding human rights. The modern EAW framework, in a way, is a blend of an integrative and a reflective mechanism that connotes the cooperation of the European states and at the same time questions the limits of sovereignty, legalism, and human dignity.

## 2. literature Review

Recent scholarship evidences an apparent change of the European extradition law in the efficiency-oriented cooperation to the stronger human-rights focus.<sup>11</sup> illustrate that post-Brexit extradition under the UK Trade and Cooperation Agreement between the European Union and the United Kingdom lacks the principle of mutual trust in which the European Arrest Warrant was based, and the courts, including the German one, declined to extradite on the basis of prison-conditions. This

---

<sup>4</sup> Giuffré, M. (2013). An appraisal of diplomatic assurances one year after *Othman (Abu Qatada) v United Kingdom* (2012). *International Human Rights Law Review*, 2(2), 266-293.

<sup>5</sup> Mitsilegas, V. (2015). The symbiotic relationship between mutual trust and fundamental rights in Europe's area of criminal justice. *New Journal of European Criminal Law*, 6(4), 457-480.

<sup>6</sup> Daminova, N. (2022). The ECHR Preamble vs. the European Arrest Warrant: balancing Human Rights protection and the principle of mutual trust in EU Criminal Law?. *Rev. Eur. & Comp. L.*, 49, 97.

<sup>7</sup> Christou, T. (2013). *Justice and Trust: The European Arrest Warrant and Human Rights* (Doctoral dissertation, Queen Mary University of London).

<sup>8</sup> Xanthopoulou, E. (2015). The Quest for Proportionality for the European Arrest Warrant: Fundamental Rights Protection in a Mutual Recognition Environment. *New Journal of European Criminal Law*, 6(1), 32-52.

<sup>9</sup> Satzger, H. (2018). Mutual Recognition in Times of Crisis-Mutual Recognition in Crisis? An Analysis of the New Jurisprudence on the European Arrest Warrant. *Eur. Crim. L. Rev.*, 8, 317.

<sup>10</sup> Marin, L. (2008). The European arrest warrant and domestic legal orders. Tensions between mutual recognition and fundamental rights: the Italian case. *Maastricht Journal of European and Comparative Law*, 15(4), 473-492.

<sup>11</sup> van Zyl Smit, D. (2024). Human Rights Standards as a Bar to Extradition from the European Union to the United Kingdom. *European Journal of Crime, Criminal Law and Criminal Justice*, 32(1), 15-31.

weakening of automatic trust echoes in the general issues in extradition law.<sup>12</sup> extradition judgments have to conform the national criminal procedure to the standards of the European Court of Human Rights, especially concerning the detention, the reasons of arrest, and the guarding of the rights of suspects. Similar statements can be made by<sup>13</sup> who claim that the extradition systems vary in different jurisdictions; nonetheless, there are binding human-rights requirements that demand states to adjust domestic law in response to unfavorable decisions regarding human rights. The human dignity is its normative heart, and<sup>14</sup> follow the idea of human dignity as an ideology that influenced the boundaries to detention, coercion, and life imprisonment in criminal justice. Empirical research conducted<sup>15</sup> also<sup>16</sup> shows that the results of extradition depend on the perception of human-rights compliance, and it is difficult to assume that there is unconditional mutual trust.<sup>17</sup> conclude that rebuttal of trust is increasingly accepted by European courts where there are risks of Article 3 and indicates a shift towards a shift in cooperation and fundamental rights in extradition law<sup>18</sup>.

### 3. Human Rights Foundations in Extradition Law

The European convention on human rights forms the basis of extradition practice in Europe, specifically the Articles of the European Convention on human rights (ECHR), namely, Articles 3, 5 and 6, which provide fundamental safeguards against torture, arbitrary detention and trial by tribunal. These norms serve as the non-negotiable guidelines in the extradition process which makes states deny the surrender when it would expose individuals to unpalatable risks of infringement of human rights. These standards have been most articulated and implemented by the European Court of Human Rights (ECtHR) most notably in its *Soering v. Jurisprudence* and developments in the United Kingdom (1989)<sup>19</sup>.

Article 3 of the ECHR states that, no one is to be subjected to torture or inhuman or degrading treatment or punishment, it is a non-derogable right, which has no exceptions, even in the event of a grave crime or even in national security issues. In *Soering v. The ECtHR*, which was the United Kingdom, determined that extradition would contravene Article 3 in the event that the applicant was exposed to a real risk of inhuman or a degrading treatment upon surrender- in that case, the exposure to the so-called death row phenomenon in the United States. In this case, extradition was to be configured as an act that may involve the human rights of the given state extraterritorially in case the foreseeable effects of extraction would lead to inhuman treatment.

The contemporary human rights discussions, as well as state practice, still highlight the centrality of Article 3. To illustrate this, human rights activists have called on governments to oppose the idea of reinterpreting ECHR protections to allow them to weaken the absolute bar against torture and other forms of ill-treatment, as they are concerned with the possible consequences of such changes: e.g. eroding the core protections by the Convention and undermining the universality of the prohibition.

Article 5 safeguards the right to liberty and security, which states that the act of depriving liberty should be lawful and be subject to immediate judicial review. This implies that in the extradition case, detention before the surrender needs to be in

---

<sup>12</sup> FOMINA, T. H., GALAGAN, V. I., UDOVENKO, Z. V., ABLAMSKYI, S. Y., & KONIUSHENKO, Y. Y. (2023). EXTRADITION: THE EUROPEAN COURT OF HUMAN RIGHTS AND THE UKRAINIAN EXPERIENCE. *Brazilian Journal of Law & International Relations/Relações Internacionais no Mundo*, 3(41).

<sup>13</sup> Franguloiu, S., Hegheş, N. E., & Pătrăuş, M. (2023). Interference and effects of European Court of Human Rights judgments in extradition proceedings between Romania and the United States of America. *Scientia Moralitas-International Journal of Multidisciplinary Research*, 8(1), 136-150.

<sup>14</sup> Matic Bošković, M. (2020). Human Dignity in the Criminal Proceedings-Interpretation of the European Court of Human Rights.

<sup>15</sup> Efrat, A., & Newman, A. L. (2020). Defending core values: Human rights and the extradition of fugitives. *Journal of Peace Research*, 57(4), 581-596.

<sup>16</sup> Efrat, A. (2019). Assessing mutual trust among EU members: evidence from the European Arrest Warrant. *Journal of European Public Policy*, 26(5), 656-675.

<sup>17</sup> Willems, A. (2019). The court of justice of the European Union's mutual trust journey in EU criminal law: from a presumption to (room for) rebuttal. *German Law Journal*, 20(4), 468-495.

<sup>18</sup> Lehto, E. (2018). Applicability of article 3 of the European Convention on Human Rights at the borders of Europe. *Helsinki Law Review*, 12(1), 54-77.

<sup>19</sup> Asta, B. (2023). International Extradition Law-European Court of Human Rights Develops Adapted Test for Life Sentence in International Extradition Context-Sanchez-Sanchez v. United Kingdom. *Suffolk UL Rev.*, 56, 811.

accord with procedural protection and cannot be arbitrary. The latest procedural guides issued by ECtHR indicate that extradition arrests should be supported and expeditiously checked by a court, with the detainees advised about the purpose of their arrest and able to argue that it was made lawfully<sup>20</sup>.

Article 6 guarantees fair trial, which includes access to an independent and objective court and fairness of arms. Although this is mostly applied with reference to criminal proceedings in the requesting state, Article 6 has been used by the ECtHR to determine that extradition would lead to a flagrant denial of justice in the receiving state- where the fundamental principles of due process are nonexistent or not applied effectively. Previous case law like the *Othman (Abu Qatada) v. United Kingdom* (2012); but this was not new in 2023, and academic commentators indicate that the procedural aspect of extradition continues to play a pivotal role in modern extradition and fair trial impact analysis<sup>21</sup>.

A combination of Article 3, 5 and 6 forms a trilogy of human rights inspection in the field of extradition: Article 3 offers substantive security against torture and ill-treatment, Article 5 against arbitrary detention during the process of extradition and Article 6 against fair procedure in their homeland and, were critical, in the anticipated trial in their destination country. This framework makes it core business of extradition that the national courts must effectively put the law and judicial test to the truth of whether the extradition is proper, i.e. whether the risk that individuals will face on removal is real as opposed to what the law provides<sup>22</sup>.

These basic rights still remain influential in the approach that states and courts use to strike a balance between international cooperation and the protection of individuals by human dignity, as acknowledged in the recent legal literature, which still considers human dignity as the necessary prerequisite to lawful extradition.

#### 4. Jurisprudence of the European Courts

The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have taken a leading role in establishing the balance between mutual recognition and protection of fundamental rights in the Europe extradition law. Their jurisprudence has changed European Arrest Warrant (EAW) system into an efficiency system into a human rights scrutinizing system.

##### 4.1 ECtHR: Human Rights as a Limit on Extradition

The ECtHR has repeatedly ruled that Article 3 of the European Convention on Human Rights (ECHR) that says that no person should face extradition or surrender in the event of real danger of torture or inhuman or degrading treatment, is an absolute bar to extradition or surrender. In *Soering v. United Kingdom* (1989), the Court held that extradition that involved application of such a death row conditions can be in itself a violation of Article 3. This principle was further developed in *M.S.S. v. Belgium and Greece* (2011) where the Court concluded that sending an asylum seeker to Greece contravened Article 3 because of institutional failures in its asylum and detention regime.

This course of action was reiterated by the ECtHR in *Othman (Abu Qatada) v. United Kingdom* (2012), which considered, on the ground of the use of torture, extradition to Jordan would violate Article 6 ECHR. These decisions formed the basis of the idea that extradition could not just involve the physical protection under Article 3, but also pertained to procedural fairness guarantees; the doctrine, which remains influential to the European extradition law.

##### 4.2 CJEU: Conditional Mutual Trust

Under the EU reference, the CJEU has redefined the principle of mutual trust by means of human rights duties. In its landmark decision of *Aranyosi and Căldăraru* (2016), the Court ruled that the executing judicial authority should suspend the surrender through the EAW in case there is a significant threat of infringements of rights in the state of enforcement.

---

<sup>20</sup> Pozneacova, C. V. (2025). Arrest as an exception from exercise of the right to liberty and security in the light of ECtHR jurisprudence. *Legea și Viața*, (S), 273-282.

<sup>21</sup> Masri, F. A., Md Said, M. H., & Nordin, R. (2025). A Scoping Review of the Right to a Fair Trial in Extradition. *Pakistan Journal of Life & Social Sciences*, 23(1).

<sup>22</sup> Sinha, M. (2025). Death Penalty and Human Rights: A Legal and Ethical Dimensions regarding Capital Punishment. *LawFoyer Int'l J. Doctrinal Legal Rsch.*, 3, 817.

This two-step test, which presupposes evaluation of both general deficiencies of the systems and individual risk, was in line with EU law and ECHR standards. This was overturned later in the case of *Minister for Justice and Equality v. In Poland*, this rule was further applicable to the matters of judicial independence, with LM (Celmer) (2018) stating that mutual recognition does not apply to the fair trial guarantees of Articles 47 of the EU Charter of Fundamental Rights.

### 4.3 Convergence of Jurisprudence

Recent studies by EU Agency Fundamental Rights (2024) and Eurojust (2024) prove that both courts get closer in safeguarding rights in an extradition process. The combination of the substantive guarantees of the ECtHR and the procedural guarantees of the CJEU has made such a cooperation of European courts a conditional trust system where efficiency has to give way to human dignity, due process, and the rule of law.

## 5. Legal Obstacles and Doctrinal Tensions

However, regardless of the attempts to align extradition with judicial cooperation by the European Arrest Warrant (EAW) Framework Decision (2002/584/JHA), there are still a number of legal challenges as well as tensions between the doctrines that precondition its functioning. These difficulties are related to the fact that the principle of mutual recognition, on which the EAW is based, and the protection of fundamental rights conflict, as well as to the growing discretion of the judiciary and to the occasional conflict of the national constitutional guarantees.

### 5.1 Mutual Recognition vs. Fundamental Rights

The EAW system is designed based on the principle of mutual recognition whereby the Member States have the trust in each other and their legal systems and are ready to surrender requested persons in an efficient and judicial manner. The Framework Decision assumes that implementing authorities are expected to take EAWs issued by other Member States, which is done based on mutual adherence to the rule of law and basic rights. But this supposition of equality of standards has been over and over again refuted by experience. Recent evaluations by the EU Agency of fundamental Rights (FRA) reiterate the fact that even in the wake of the centrality of mutual recognition, fundamental rights must not be breached even in situations where the judicial independence or fair trial principles are at stake. According to the update of the FRA, mutual recognition does not find exception to the need to safeguard rights secured under EU law and Charter of Fundamental rights of the European Union which Member States are bound to respect even in adopting an EAW<sup>23</sup>.

The mutual trust presupposes that the judicial protection levels are similar in all the EU Member States. However, there has been evidence of bad conditions of detention, overcrowding of prisons or even a lack of rule-of-law in certain jurisdictions, which have brought about doctrinal tension. In case law like *Aranyosi and Căldăraru*, the issuing executive authority has to consider that there is a real risk of inhuman or degrading treatment because of the conditions in the state of issuance, and thus, in effect restrain mutual recognition where the fundamental rights risks are established<sup>24</sup>. Consequently, some Member States have been found to resort more and more to fundamental rights issues to justify the suspension or denial of execution of EAWs to which there is reasonable evidence of rights abuses in the issuing states. This tendency shows an absence of overlap between the hypothetical assumption of the mutual trust and the actualities of the uneven rights protections in different jurisdictions<sup>25</sup>.

### 5.2 Discretionary Refusal Grounds and Judicial Discretion

There are few refusal grounds in the EAW Framework Decision, and the general fundamental rights safeguard is not specifically mentioned in it as an autonomous non-execution ground<sup>26</sup>. However, in a growing number of cases, national

---

<sup>23</sup> European Agency for Fundamental Rights (FRA). (2025). *European Arrest Warrant and fundamental rights: ECtHR and CJEU case-law developments*. Publications Office of the European Union. <https://fra.europa.eu/en/publication/2025/european-arrest-warrant-fundamental-rights-ecthr-cjeu-case-law>

<sup>24</sup> European Parliament. (2025). *The European Arrest Warrant: Evaluation and reform challenges*. EPRS Briefing 779181. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/779181/EPRS\\_BRI\(2025\)779181\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/779181/EPRS_BRI(2025)779181_EN.pdf)

<sup>25</sup> EU Court of Justice. (2021). *Case C-480/20, Openbaar Ministerie (Judicial independence in Poland)*. ECLI:EU:C:2021:930. <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249155>

<sup>26</sup> Bozhinovski, A. (2025). Optional Grounds for Refusal in the European Arrest Warrant Instrument: A Jurisprudential Analysis. *SPLITLAW*, 233.

courts have resorted to the reference to human rights principles, relying on the jurisprudence of ECtHR and the requirements of the EU Charter, to affirm discretionary refusals or suspensions. An example is the situation where detention terms in the issuing state create a real danger of inhuman treatment, courts have stopped the execution of EAW to request further guarantees or refuse surrender. This development in the doctrine is not directly stated in the Framework Decision, but it is an effort by the judiciary to balance mutual recognition with protection of fundamental rights.

This judicial discretion, which has been stressed by the scholars, is an indication of a change in the direction of automatic surrender to a more rights-sensitive approach. Although this discretion strengthens the human protections, it creates legal ambiguity and operational dissimilarity among the Member States - some courts are more willing to administer fundamental rights tests than others, which results in inconsistent case law. Furthermore, the lack of clear and harmonized requirements of fundamental rights-based refusals implies that the execution of courts usually falls on initial referrals to the Court of Justice of the European Union (CJEU) to specify the responsibilities, which further prolongs the process and complexity of EAW processes<sup>27</sup>.

### 5.3 Sovereignty Conflicts and Constitutional Resistance

There also exist tensions in the areas of sovereignty clashes in the domain of EU-level judicial cooperation requirements and the constitutional safeguards of Member States. In some cases, the execution of EAW has been found to be incompatible with the domestic constitutional courts asserting that the EU law should not ignore constitutional identity and guarantee of protection of rights. Although any particular constitutional issue might not be very popular in the open literature as of 2024-2025, the European Parliament briefing regarding EAW reform observes that there are still significant questions on the independence of the judiciary and the correlation between mutual recognition and constitutionality<sup>28</sup>. These anxieties indicate a wider apprehension by constitutional actors that they are yielding people to states that are seen to have poor rule-of-law institutions or judicial independence. Moreover, tensions regarding sovereignty can be witnessed when the national courts apply domestic norms of human rights to foreign mutual recognition requirements, at times resulting in the refusal on grounds of constitutional rights, which are more than the minimum provided by the Charter or ECHR. This is because the practice reinforces how, though the EAW is harmonizing in its motive, Member States have constitutional levers available to them in order to soften EU obligations in extradition issues.

## 6. Extraterritorial and Third-Country Considerations

When it comes to extradition and other removal process, human rights safeguards by European law are coming to be interpreted as being wider than the territorial boundaries of the European Union (EU), and its Member States. This has significant consequences on deportation, extradition and expulsion practices involving third countries- states that are not members of ECHR or those that are not members of EU law order. The extraterritorial application of the EU human rights means that the fundamental rights protections are still effective even when a state acts in collaboration, or sends people to states with a lower human rights track record. It is so regardless of whether it is an extradition process, expulsion or any other type of cross-border removal<sup>29</sup>.

The main feature of this extraterritorial approach is the principle of non-refoulement, which is a fundamental human right guarantee, which does not allow a person to be sent to a country where they are at risk of being tortured, subjected to inhuman or degrading treatment, or committing other grievous violation of human rights. This protection is very clearly defined in the EU Charter of Fundamental Rights: no person may be deprived, kicked out or extradited to a country where he or she will face a death penalty, torture or other inhuman or degrading treatment or punishment (Article 19(2), CFR)<sup>30</sup>.

---

<sup>27</sup> Novakovic, F. (2025). Harmonizing Justice: Unraveling the Complexities of the European Arrest Warrant in the Pursuit of Cross-Border Security and Human Rights Protection. *Ind. Int'l & Compar. L. Rev.*, 35, 411.

<sup>28</sup> Bloks, S. A., & van den Brink, T. (2021). The Impact on National Sovereignty of Mutual Recognition in the AFSJ. Case-Study of the European Arrest Warrant. *German Law Journal*, 22(1), 45-64.

<sup>29</sup> Bondegård, A. (2024). The Reach of the Principle of Non-Refoulement in Extraterritorial Asylum Processes: an International Law and Human Rights Perspective on the Proposal to Locate Asylum Processes Outside the EU.

<sup>30</sup> Sveaass, N., Gaer, F., & Grossman, C. (2020). Rehabilitation in Article 14 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. In *Research Handbook on Torture* (pp. 478-498). Edward Elgar Publishing.

This duty has been long established by the European Court of Human Rights (ECtHR) when it comes to the field of extradition and expulsion. While *Soering v. The UK*<sup>31</sup> established the foundations of extraterritorial human rights accountability within the extradition context by determining that extradition of persons to face their death row situations in foreign countries would derivatively infringe Article 3 of the ECHR, its rationale has found an echo in the expulsion and deportation cases, too. In other words a state cannot get away with its human rights obligations alleging that the negative conditions are just outside its territory.

A hierarchy of human rights has been posited, prioritising human dignity above extradition as a legal obligation: even under optimal norms of interstate cooperation, states must refrain from actions that would remove an individual if it may expose them to egregious human rights violations in another nation. The hierarchy indicates the notion that extradition and consequently expulsion should be restricted where vital rights risks exist in both cases, whether the host destination State is a Member State or a third country.

Practically, this has increased the questioning of the removal procedures that deal with third countries over recent years. There have been criticisms and complaints by human rights organisations against return practices where deported individuals are deported to nations that have been known to be abusive or have ineffective judicial safeguards. In borderline cases such as those of *Hirsi Jamaa and Others v. Italy*, the ECtHR reiterated<sup>32</sup> that deporting migrants intercepted in the sea to Libya against their will was contrary to Article 3 of the ECHR despite the fact that Libya was not a signatory to the Convention. This explains that the protection of human rights is not just attached to the mere extradition treaties but also to the real danger in the receiving country.

On the EU level, recent developments in policies, including the one proposing that the Member States would be able to deport asylum seekers to third countries that would be considered safe according to the EU, demonstrate the conflict between the goals of migration control and the extraterritorial human rights obligations. It is also criticized by some that these policies might roll back basic safeguards since they would make it easier to be returned to states where human rights practices are dubious, making the risk of refoulement or ill-treatment even more severe.

In addition, scholarly debate is coming to associate extraterritorial human rights duties with more far-reaching EU conduct outside of the removal procedures, and states that EU institutions and Member States are obliged to consider the effects on human rights whenever they engage in any act abroad such as in the case of external migration cooperation arrangements and in supporting third-country detention regimes. This is in tandem with what Carrera and Stefan highlighted that human rights protection must cut across all cross-border relationships that tamper with the rights of individuals, and not only formal extradition.

Overall, the extraterritorial and third-country factors in the areas of extradition and expulsion affirm the idea that European human rights standards which are based on the ECHR and the EU Charter, which serve as global protections. They bind states to evaluate actual risks of violations of rights in foreign countries and to make sure that the collaboration with the partners outside the EU does not bypass the basic safeguards.

## 7. Emerging Challenges: Ukraine and the Eastern Partnership

The current war of Ukraine and other current trends in the Eastern Partnership region have provided new legal and human rights issues of extradition and judicial cooperation in European law. The full-scale invasion of Russia in February 2022 has had significant impacts on the operation of the Ukrainian state and its justice system and extradition perspectives in and out of Ukraine.<sup>33</sup> These modifications illustrate how system instability, armed conflict, and human rights violations can impede extradition cases, compelling courts and international entities to reevaluate their assumptions regarding the predictability and equity of cross-border surrender during crises. One of the core emerging problems is that conflict affects the rule of law and the guarantees of fundamental rights in Ukraine. The war-related disruption, particularly the massive

---

<sup>31</sup> Arnell, P. (2022). The Universality of Human Rights in UK Extradition Law. *Transnat'l Crim. L. Rev.*, 1, 53.

<sup>32</sup> Van den Wyngaert, C. (1990). Applying the European Convention on Human Rights to Extradition: Opening Pandora's Box?. *International & Comparative Law Quarterly*, 39(4), 757-779.

<sup>33</sup> FOMINA, T. H., GALAGAN, V. I., UDOVENKO, Z. V., ABLAMSKYI, S. Y., & KONIUSHENKO, Y. Y. (2023). EXTRADITION: THE EUROPEAN COURT OF HUMAN RIGHTS AND THE UKRAINIAN EXPERIENCE. *Brazilian Journal of Law & International Relations/Relações Internacionais no Mundo*, 3(41).

displacement, destruction of infrastructure, and the continuing security challenge, has justified serious concerns as to whether the Ukrainian authorities may be able to guarantee that people surrendered on the basis of extradition requests enjoy their rights to fair trial, humane conditions of detention, and proper judicial control. In a recent case alone, the Swedish Supreme Court held that the extradition to Ukraine is not possible as of now under Article 3 of the European Convention on Human Rights (ECHR) because of the ongoing war and the negative impact it has on the prison conditions, and human rights considerations can directly prevent surrender. The Court in that ruling emphasized that extradition must not be granted where actual risk of inhuman or degrading treatment is high in the country requesting such extradition<sup>34</sup>.

This is a method of the larger jurisprudential tendency which was originally stated in *Soering v. United Kingdom* (1989), the European Court of Human Rights (ECtHR) decided that the extradition of a person to meet charges that would likely be in breach of Article 3 of the ECHR, might be a human right infringement by itself. Although *Soering* was about the threat of torture overseas, the reasoning is applicable to circumstances where there are systemic failures in the recipient state that generate similar human rights concerns, including those that are caused by armed conflict<sup>35</sup>. On the Eastern Partnership that encompasses such countries as Georgia, Moldova, Armenia, Azerbaijan, and Belarus, the Ukraine crisis has even more widespread consequences on judicial cooperation in the region. The issues of political instability, institutional pressure, and disparities in the process of conducting EU-oriented reforms have increased the level of concerns regarding the international human rights standards in the extradition scenarios. An example of this is that neighbouring States that are experiencing governance difficulty can be challenged regarding the fairness in their criminal justice practices in assisting or accepting extradition requests, in circumstances where armed conflict or lingering unrest are involved in determining the territorial jurisdiction of administrations.

The practice of extradition cooperation between Poland and Ukraine is a vivid example of the conflict in this situation. Following the conflict of 2014, local Polish courts were being presented with arguments that they could not provide fair trial rights to defendants who were being returned to Ukraine because of corruption or insecurity, though most courts the first cases were found to justify the refusal of extradition on such grounds. These outcomes of the case exemplify the current judicial balancing between easing cooperation and safeguarding the rights of individuals in the context of the prevailing instability. The internal Ukrainian measures in the situation of the war have also been in the focus of human rights organisations such as sanctions imposed on citizens by the means of national security. This, according to the critics, can lack adequate judicial supervision, and they are likely to weaken legal safeguards, a matter that might challenge the validity of the extradition procedures as other nations consider the human rights situation in Ukraine<sup>36</sup>.

In addition to Ukraine per se, the war has transformed legal dynamics in the region. When Ukraine and the Council of Europe signed an agreement in June 2025 to establish a special tribunal to try crimes of aggression, the concept of international accountability will be strengthened, but will complicate efforts to pursue extradition and criminal cooperation against larger conflict-related justice objectives<sup>37</sup>. To conclude, the context of the conflict in Ukraine and the Eastern Partnership puts under the scrutiny of the major assumptions of extradition law in Europe. They emphasize that the human rights standards, especially standards safeguarding against inhuman treatment and ensuring fair trials, should keep being at the center even in times when the states face exceptionally adverse circumstances. The judiciary and policymakers are becoming more aware of the fact that the instability of the system and political upheavals do not warrant a decline in human rights protection in extradition cases<sup>38</sup>.

---

<sup>34</sup> Asta, B. (2023). International Extradition Law-European Court of Human Rights Develops Adapted Test for Life Sentence in International Extradition Context-Sanchez-Sanchez v. United Kingdom. *Suffolk UL Rev.*, 56, 811.

<sup>35</sup> Gappa, D. L. (1990). European Court of Human Rights-Extradition-Inhuman or Degrading Treatment or Punishment, *Soering Case*, 161 Eur. Ct. HR (Ser. A)(1989). *Ga. J. Int'l & Comp. L.*, 20, 463.

<sup>36</sup> Grabowska-Moroz, B., Grogan, J., Bard, P., Basheska, E., Ganty, S., Kochenov, D., ... & Wojcik, A. (2025). Rule of Law beyond the EU Member States Assessing the Union's Performance 2025.

<sup>37</sup> Paulussen, C., Kemp, W., Helwig, J., Syniuk, O., Nadery, N., Kerr, V., ... & van Bergeijk, P. A. (2024). The War in Ukraine and its Long-Term Consequences for Security and Human Rights. *SECURITY AND HUMAN RIGHTS*.

<sup>38</sup> Olley, B. (2024). Prosecuting Putin: The Case for an Ad Hoc International Tribunal to Prosecute Russian Crimes of Aggression against Ukraine. *Temp. Int'l & Comp. LJ*, 39, 55.

## **8. Conclusion**

European extradition law has been developed to become a system in which human rights protection becomes its baseline and its restraint. Although European Arrest Warrant (EAW) was meant to enhance judicial efficiency by mutual recognition, the courts have indicated clearly that this kind of cooperation cannot be achieved at the cost of fundamental rights. The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have always reiterated that such principles as non-refoulement, fair trial, and protection against inhuman treatment are absolute. Systemic issues of inequality in the conditions of detention, ineffective rule of law in part of the Member States, and persistent conflicts such as the one in Ukraine prove that the risks to human rights are still at the center of extradition decisions. Finally, the European extradition has changed its form of procedure to a rights consistency of the law, restoring the argument that human dignity and justice take the priority over the administrative expediency.