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EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
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(PC-OC)

COMITE D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES
SUR LA COOPERATION DANS LE DOMAINE PENAL
(PC-OC)

Information document based on a questionnaire of the PC-OC
on the relationship between asylum procedures and extradition procedures

*Document d'information basé sur un questionnaire du PC-OC
sur les relations entre les procédures d'asile et les procédures d'extradition*

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Questionnaire on the relationship between asylum procedures and extradition procedures

1. Does your national law contain provisions on the regulation of the relationship between extradition and asylum procedures (please provide details of the regulation)?
2. Under your national law, can a person sought for extradition be extradited to his country of origin when that person has applied for asylum/is the subject of asylum procedures in your country?
3. If so:
 - 3.1. What procedure has priority when a person having applied for asylum in your country is the subject of extradition proceedings?
 - 3.2. Is it possible to execute a request for provisional arrest of a person who is the subject of asylum procedures?
 - 3.3. Under what circumstances can the extradition of a person who has applied for asylum be allowed?
 - 3.4. Does the granting of an extradition request have an impact on pending asylum procedures?
 - 3.5. Is it possible to make extradition subject to conditions, by requiring human rights procedural guarantees from the requesting State, to be monitored by the requested State?
4. Does the granting of an extradition request lead to the revocation of asylum?
5. Does the fact that asylum was granted in your country entail a general prohibition to extradite a person, or is such prohibition limited to the State where the person fears persecution?
6. If the person sought has been granted asylum in your country and extradition has been refused, does the legislation of your country:
 - 6.1 allow for the transfer of criminal proceedings?
 - 6.2 include an obligation for initiating criminal proceedings in accordance with the principle of *aut dedere aut judicare* ?
 - 6.3 allow for the enforcement of a sentence or detention order issued by the requesting Party?
 - 6.4 consider requests concerning such persons as relating to political offences precluding any of the above solutions?
7. What effect does the granting of asylum or international protection by a third State have on extradition procedures in your country?
8. What is the impact of existing solutions dealing with repeated requests for asylum following the refusal of the first request on the possibility of extraditing a person?
9. How does your country ensure co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures?
10. Have you encountered any other problems in this area?

Questionnaire sur les relations entre les procédures d'asile et les procédures d'extradition

1. Votre législation nationale contient-elle des dispositions sur la réglementation des relations entre les procédures d'asile et les procédures d'extradition (veuillez fournir des détails sur cette réglementation) ?
2. Selon la législation de votre pays, une personne recherchée aux fins d'extradition peut-elle être extradée vers son pays d'origine lorsqu'elle fait l'objet d'une demande/procédure d'asile dans votre pays ?
3. Dans l'affirmative,
 - 3.1. quelle procédure a la priorité lorsqu'une personne a demandé l'asile dans votre pays et qu'elle fait l'objet d'une procédure d'extradition ?
 - 3.2. est-il possible d'exécuter une demande d'arrestation provisoire d'une personne lorsque celle-ci fait l'objet d'une procédure d'asile ?
 - 3.3. dans quelles conditions l'extradition d'une personne qui a demandé l'asile peut-elle être autorisée ?
 - 3.4. l'extradition accordée a-t-elle un impact sur les procédures d'asile en cours ?
 - 3.5. est-il possible de subordonner l'extradition à certaines conditions, en imposant à l'Etat requérant des garanties de procédure découlant des droits de l'homme et un monitoring du respect de ces conditions par l'Etat requis ?
4. L'extradition accordée entraîne-t-elle une révocation de l'asile ?
5. L'obtention de l'asile dans votre pays entraîne-t-elle une interdiction générale d'extrader une personne, ou cette interdiction est-elle limitée à l'Etat où la personne craint d'être persécutée ?
6. Au cas où la personne recherchée a obtenu l'asile dans votre pays et que l'extradition est refusée, la législation de votre pays:
 - 6.1. admet-elle une délégation de la poursuite pénale ?
 - 6.2. prévoit-elle une obligation d'engager de poursuites pénales conformément au principe *aut dedere aut judicare* ?
 - 6.3. admet-elle l'exécution d'une peine ou d'une mesure de sûreté délivrée par l'Etat requérant ?
 - 6.4. considère-t-elle les demandes concernant de telles personnes comme se rapportant aux infractions politiques, excluant les solutions énumérées ci-dessus ?
7. Quel sont les effets de l'octroi de l'asile ou de la protection internationale par un Etat tiers sur une procédure d'extradition dans votre pays ?
8. Quelle est l'impact sur la possibilité d'extrader une personne des solutions existantes pour faire face aux demandes répétées d'asile lorsque la première demande a été refusée ?
9. Comment votre pays assure-t-il la coordination et l'échange d'informations entre les autorités responsables des procédures d'asile et des procédures d'extradition ?
10. Avez-vous rencontré d'autres problèmes particuliers dans ce domaine ?

Summary of the replies
to the questionnaire on the relationship between asylum procedures and extradition procedures

Introduction:

At the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote), the Ministers of Justice adopted Resolution No. 1 on access to justice for migrants and asylum seekers. On the basis of paragraph 16c of this Resolution, the Committee of Ministers entrusted the CDPC with the task of examining “the relationship between asylum procedures and extradition procedures”. The CDPC Bureau decided to submit this part of the Resolution to the PC-OC and instructed it to take stock of the situation in different member States and to reflect on possible responses to common challenges.

At its 54th meeting (28-30 April 2008), the PC-OC discussed the question of the relationship between asylum and extradition procedures and adopted a questionnaire dealing with the various issues identified. It decided to address this questionnaire to all States Parties to the European Convention on Extradition.

27 member States have replied to the questionnaire. These replies are set out in their original language as from page 21 of this document.

The following is a summary of the replies to this questionnaire.

1. Does your national law contain provisions on the regulation of the relationship between extradition and asylum procedures (please provide details of the regulation)?

16 member States¹ have no provisions regulating the relationship between extradition and asylum procedures in their national law. In their replies to this question, 12 member States² referred to the fact that under their legislation extradition of a person who is rightfully afforded asylum is not possible to the country of his/her origin.

In most countries, the two procedures are governed by two separate sets of rules, although the outcome of the asylum procedure can influence the decision in the extradition procedure. Extradition matters often fall under the jurisdiction of the (criminal) courts whereas the granting of asylum and refugee protection is decided on by an administrative entity (for example, the Federal Office for Migration and Refugees in Germany, l’Office français de Protection des Réfugiés et Apatrides in France, and the Ministry of Interior in Slovenia).

Finland mentioned article 7 of the EU Asylum procedures Directive³, which states that applicants have the right to remain in the member State, while the asylum application is pending. Portugal mentioned Council Directives 2004/83/CE on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, and 2005/85/CE on minimum standards on procedures in member States for granting and withdrawing refugee status.

¹ Albania, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Latvia, the Netherlands, Norway, Russia, Slovenia, Sweden, Switzerland, Turkey.

² Armenia, Austria, Czech Republic, Hungary, Iceland, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, Spain.

³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

2. Under your national law, can a person sought for extradition be extradited to his country of origin when that person has applied for asylum/is the subject of asylum procedures in your country?

In 14 member States⁴ a person cannot be extradited before a final decision has been taken on his/her asylum application. France replied that although a person who has applied for asylum will not be extradited, the extradition and asylum procedures are carried out independently and in parallel. Hungary specified that extradition in this situation is only possible if such extradition is requested by a third country identified in the Act of Asylum as a safe country.

In 8 member States⁵ the extradition of an individual who has already applied for asylum is possible, at least in theory, even though the court dealing with the extradition matter may take into account that asylum procedures are ongoing.

3. If so:

(As their replies to the previous question were negative, Armenia, Denmark, Norway and Portugal did not reply to the following five questions. Latvia stated that its legislation has no special provisions on these matters.)

3.1 What procedure has priority when a person having applied for asylum in your country is the subject of extradition proceedings?

13 member States⁶ responded that the asylum procedure has priority when this situation occurs.

Germany and France specified that although the asylum and extradition procedure are two separate procedures which are carried out independently, suspension of the extradition procedure is possible awaiting the outcome of the asylum procedure.

5 member States⁷ have no regulation on which procedure has priority.

Austria stated that the extradition procedure has priority over other legal provisions concerning the removal of the person from Austria.

3.2 Is it possible to execute a request for provisional arrest of a person who is the subject of asylum procedures?

21 member States⁸ replied that it is possible to execute a request for provisional arrest of a person who is the subject of asylum procedures. Germany, Poland and Sweden specified that when assessing whether the preconditions for provisional arrest are met, a pending asylum procedure may be taken into account on a case-by-case basis. Switzerland stated that it is not possible to arrest a person who has been granted refugee status. The Netherlands mentioned that although it is legally possible, in practice a person will not be detained with a view to his extradition as long as extradition is not expected in the near future.

⁴ Armenia, Denmark, Estonia, Finland, Georgia, Latvia, Lithuania, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Turkey.

⁵ Austria, Czech Republic, Germany, Iceland, Italy, Poland, Sweden, Switzerland.

⁶ Albania, Estonia, Finland, Georgia, Hungary, the Netherlands, Norway, Lithuania, Russia, Slovakia, Slovenia, Spain, Turkey.

⁷ Czech Republic, Italy, Poland, Sweden and Switzerland.

⁸ Albania, Austria, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Lithuania, the Netherlands, Poland, Romania, Russia, Slovenia, Slovakia, Spain, Sweden, Switzerland

Turkey stated that it is not possible to execute a request for provisional arrest until the conclusion of the asylum procedure.

3.3 Under what circumstances can the extradition of a person who has applied for asylum be allowed?

7 member States⁹ replied that extradition is only allowed when the request for asylum has been denied (or when refugee status has been revoked), or that there are no circumstances that allow for extradition of a person while asylum procedures are ongoing.

Romania replied that asylum-seekers cannot be extradited, except where there are reasonable grounds to believe that they “intend to develop acts of terrorism or sustain such acts”, or that they can be considered a danger to the security of the Romanian State or to the public order.

For the majority of other responding States, this question seems to be decided on a case-by-case basis, provided that extradition is compatible with principles of international law, the ECHR, the Geneva Convention relating to the status of refugees or equivalent provisions in national law. Italian legislations specifically precludes extradition where death penalty is provided by the law of the requesting State.

Lithuania specifically referred to the exception to the principle of *non-refoulement* as provided in article 33(2) of the Geneva Conventions, as the sole circumstance which would allow the extradition of a person who has applied for asylum.

3.4 Does the granting of an extradition request have an impact on pending asylum procedures?

In 9 member States¹⁰, the granting of an extradition request has, at least in theory, no direct impact on the pending asylum procedures. Slovenia adds that if asylum is granted after a positive extradition decision, a new extradition decision will have to be issued.

Nevertheless, many States stated that the grounds of the extradition decision may, in practice, have an influence on the outcome of the asylum procedure.

Austria replied that when extradition is granted, asylum procedures are stayed. In Spain, in a similar situation, the Council of Ministers can decide on the revocation of asylum. France and Russia stated that the facts examined during the extradition procedure may constitute a ground for refusing asylum, according to Article 1.F of the Geneva Convention. France referred specifically to the case of Rwandan nationals who were refused asylum on the basis of arrest warrants issued by the International Criminal Court for Rwanda.

Switzerland specified that, where extradition has been granted before application for asylum, the person may be surrendered.

Lithuania and Turkey stated that a request for extradition can only be granted if asylum has been refused. Similarly in Georgia, asylum is decided on first.

Albania replied that this question would be decided on a case-by-case basis.

⁹ Albania, Estonia, Finland, the Netherlands, Slovenia, Switzerland and Turkey.

¹⁰ Czech Republic, Estonia, Finland, Germany, Iceland, Hungary, the Netherlands, Slovenia, Sweden.

3.5 Is it possible to make extradition subject to conditions, by requiring human rights procedural guarantees from the requesting State, to be monitored by the requested State?

11 member States¹¹ replied that it is possible to make extradition subject to certain guarantees (many specifying that this would apply only in a very limited number of cases or exceptional situations). Russia specified that this practice proved very effective.

Austria and France mention that procedural guarantees on human rights are already foreseen in applicable international treaties such as the ECHR, the European Convention on Extradition or bilateral treaties.

Italy, Iceland and Slovenia stated that, if there is any risk of an infringement of human rights, the extradition would not be granted.

Albania, Estonia, Lithuania and Poland stated that it is not possible, or feasible, to make extradition subject to certain conditions.

Poland and France drew attention to the unfeasibility of monitoring the respect of guarantees, as a sovereign State would not be willing to submit its criminal justice system to foreign scrutiny.

4. Does the granting of an extradition request lead to the revocation of asylum?

In the majority of the member States¹², the granting of an extradition does not lead to the revocation of asylum or of the recognition of refugee status. Georgia, Poland and Russia stated that extradition would never be granted with respect to a refugee, while the legal grounds for granting refugee status are still valid.

Albania and Turkey replied that revocation of asylum is possible in such cases. Switzerland mentioned that the reasons for granting extradition might influence the decision on the revocation of asylum. Lithuania stated that if a person has been recognized by an effective court judgment guilty of commission of a grave crime, the refugee status will be withdrawn.

5. Does the fact that asylum was granted in your country entail a general prohibition to extradite a person, or is such prohibition limited to the State where the person fears persecution?

In 19 member States¹³, the prohibition to extradite is limited to the State(s) where the person fears persecution, or to a third State which may return the person to her/his country of origin (*double refoulement*)¹⁴.

Finland specified that if questions related to the applicability of the *non-refoulement* principle would arise in the context of extradition of a person who has been granted asylum, the immigration service has to be consulted.

Iceland replied that granting of asylum does not entail any prohibition to extradite.

¹¹ Finland, France, Georgia, Germany, the Netherlands (not if an asylum application is pending), Slovakia, Slovenia, Hungary, Russia, Sweden, Switzerland, Turkey.

¹² Armenia, Austria, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Norway, the Netherlands, Slovenia, Sweden.

¹³ Albania, Austria, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, the Netherlands, Norway, Portugal, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland.

¹⁴ Albania, Czech Republic, France, Spain.

Lithuania, Poland, Romania and Turkey replied that the fact that asylum was granted entails a general prohibition to extradite a person, irrespective of the requesting State.

6. If the person sought has been granted asylum in your country and extradition has been refused, does the legislation of your country:

Estonia stated that it has no legislation dealing with the following 4 questions.

6.1 allow for the transfer of criminal proceedings?

In 21 member States¹⁵ transfer of criminal proceedings is possible if the person sought has been granted asylum and extradition has been refused. Poland specified that a prior decision on asylum has no impact on the possibility of such transfer.

Denmark mentions that this possibility only exists for offences which fall within the scope of the European Convention on the Transfer of Proceedings in Criminal Matters. Finland also stated that it applies Article 21 of this Convention, despite the fact that it has not ratified it. Sweden specifies transfer of criminal proceedings is possible on the condition that an offence has been committed according to Swedish criminal law and that Swedish courts have jurisdiction.

Georgia replied that this decision is made case by case.

Iceland, Italy and Lithuania do not allow for the transfer of criminal proceedings.

6.2 include an obligation for initiating criminal proceedings in accordance with the principle *aut dedere aut judicare* ?

In 12 member States¹⁶ the principle of *aut dedere aut judicare* is applied. 9 other member States¹⁷ replied that there is no obligation to initiate criminal proceedings when extradition is not granted. Lithuania mentioned that there is an obligation to prosecute particular international offences specified in internal laws.

6.3 allow for the enforcement of a sentence or detention order issued by the requesting State?

18 member states¹⁸ do allow for the enforcement of a sentence or detention order issued by the requesting State. 9 of these member States¹⁹ specified that this is under the condition that there is an international treaty in force.

Finland, Georgia (except for sentences against a Georgian national) and Lithuania replied the enforcement of a sentence issued by the requesting State is not allowed.

Italy specified that it has no legislation specifically dealing with enforcement of a sentence when extradition has been refused.

¹⁵ Albania, Armenia, Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Sweden, Switzerland, Turkey.

¹⁶ Albania, Armenia, Austria, Czech Republic, Germany (provided that German criminal law is applicable), the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland.

¹⁷ Denmark, Finland, France, Georgia, Hungary, Iceland, Italy, Latvia, Norway

¹⁸ Albania, Armenia, Austria, Czech Republic, Denmark, France, Germany, Hungary, Iceland, Latvia, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland.

¹⁹ Austria, Denmark, France, the Netherlands, Norway, Romania, Slovakia, Slovenia, Sweden.

6.4 consider requests concerning such persons as relating to political offences precluding any of the above solutions?

19 member States²⁰ do not necessarily preclude the above solutions, many of which specified that this will depend on the ground for refusal of the request for extradition and the circumstances of the case.

Switzerland, Germany and Denmark replied that if an offence is considered to be a political offence the above mentioned measures are precluded.

Armenia and Russia stated that their legislation does not define political offences.

7. What effect does the granting of asylum or international protection by a third State have on extradition procedures in your country?

11 member States²¹ consider that the granting of refugee protection or another form of international protection by a third State is not binding in the extradition procedure, but this can have an indicative effect on the decision. France specified that it does recognize international protection given by EU member States or member States of the Dublin Convention.

5 responding States²² replied that they have no legislation on this point. Another 5 States²³ replied that the granting of asylum or international protection by a third State would have no effect on the extradition procedures, and that the extradition request would be examined according to its own merits.

In Georgia, Hungary, Lithuania and Slovenia, if the third State is party to the UN Convention relating to the Status of Refugees, extradition will not take place. Hungary and Slovenia added that if the third State is not party to the Convention, the principle of *non-refoulement* will be applied.

Switzerland specified that, if international protection is granted by any third State, this person will not be extradited to his country of origin. Romania replied that on one occasion where this situation occurred, the person was not extradited to the State where he/she feared persecution.

8. What is the impact of existing solutions dealing with repeated requests for asylum following the refusal of the first request on the possibility of extraditing a person?

9 member States²⁴ consider that repeated requests for asylum do not significantly affect the extradition procedure. Switzerland referred to the fact that extradition can be carried out, if it was granted before the request for asylum.

Slovakia specifically referred to a recent amendment to its Code of Criminal Procedure, which allows the court to take a decision on extradition, provided that there was a final decision on the initial request for asylum.

7 States²⁵ specified that repeated requests for asylum are only admissible if there are new elements in the case.

²⁰ Albania, Austria, Czech Republic, Denmark, Finland, France, Georgia, Iceland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland.

²¹ Austria, Czech Republic, France, Germany, Italy, Latvia, Norway, Poland, Russia, Slovakia, Sweden.

²² Armenia, Czech Republic, Estonia, Iceland and Spain.

²³ Albania, Denmark, Finland, the Netherlands and Turkey.

²⁴ Armenia, Austria, France, Germany, Italy, Norway, Poland, Sweden and Switzerland.

²⁵ Armenia, Czech Republic, France, Hungary, Latvia, Russia and Slovenia.

Albania, Lithuania, the Netherlands and Portugal replied that a subsequent request for asylum will have the same impact on the extradition procedures as the initial request. Portugal added that, in a few cases, this may have a negative effect on the extradition procedure, in particular as far as lapse of time is concerned. Spain and Turkey also considered that the total length of the asylum procedures may cause delays for the extradition procedure.

Georgia specified that the impact would depend on each case.

Denmark, Estonia and Latvia have no experience with such cases.

In Finland, a decision on a “subsequent application” which does not contain any new grounds can be issued following an accelerated asylum procedure. Norway also stated that repeated requests for asylum are treated rapidly and do not have an impact on the request for extradition.

9. How does your country ensure co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures?

In reply to this question, Denmark, Italy, Latvia, and Slovakia mentioned that there are no rules on the coordination between the bodies responsible for extradition and asylum procedures.

21 member States²⁶ stated that some form of coordination between the different authorities responsible for extradition and asylum procedures exists. In many States, this co-ordination is of an informal nature. In some countries, the information often comes from the person in question or his lawyer (in Sweden, the person is even assigned a representative, who ensures the exchange of information between the two procedures).

Austria referred to a web-based information system, maintained by the Federal Asylum Office, which contains reliable information on the human rights situation worldwide and which is accessible by both the asylum authorities and the courts. In France, the judicial authorities cannot examine in detail the asylum file but can ask the Immigration service for information, whereas the Office responsible for asylum has full access to extradition decisions.

Germany replied that the coordination begins at the search stage; the federal criminal police office can transmit data from the central register for immigrants to the authorities, which will decide on the arrest for extradition. The public prosecution office will inform the Immigration office if this person has applied for asylum, and asks for relevant information.

10. Have you encountered any problems in this area?

19 member States²⁷ have not encountered any problems in this area.

Austria replied that the coordination between the extradition and asylum proceedings is difficult and that it often fails. Slovakia considers that there is a lot of misuse of the asylum system in extradition proceedings. According to Slovakia, requests for asylum have been submitted only after the reception of an extradition request in many cases, and repeated requests for asylum, without new grounds, were submitted in order to prolong extradition proceedings. Russia raised the question of the lack of transparency of asylum procedures due to confidentiality, which do not allow the State requesting extradition to be informed of and react to allegations of persecution and which in Russia's opinion may hamper international co-operation in criminal matters.

²⁶ Albania, Austria, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Romania, Russia, Slovenia, Spain, Sweden, Switzerland.

²⁷ Albania, Armenia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Italy, Iceland, Latvia, Lithuania, Norway, the Netherlands, Portugal, Romania, Slovenia, Sweden.

France specified that a problem arises when a person obtains refugee status before an extradition request is submitted. This may lead to the withdrawal of the refugee status.

Switzerland raised the question whether a person who has been granted asylum has a right to be informed that she/he is sought for extradition purposes.

SYNTHESE DES REPONSES

au questionnaire sur les relations entre les procédures d'asile et les procédures d'extradition**Introduction :**

A la 28^e Conférence des ministres européens de la Justice (25-26 octobre 2007, Lanzarote), les ministres de la Justice ont adopté la Résolution n°1 sur l'accès des migrants et des demandeurs d'asile à la justice. En vertu du paragraphe 16c de cette Résolution, le Comité des Ministres a demandé au CDPC d'examiner « les relations entre les procédures d'asile et les procédures d'extradition ». Le Bureau du CDPC a décidé de soumettre cette partie de la Résolution au PC-OC et l'a chargé de faire le bilan de la situation dans différents Etats membres et de réfléchir à des réponses possibles aux problèmes communs.

A sa 54^e réunion (28-30 avril 2008), le PC-OC a examiné la question des relations entre les procédures d'asile et les procédures d'extradition et adopté un questionnaire portant sur les différents points retenus. Il a décidé d'adresser ce questionnaire à tous les Etats parties à la Convention européenne d'extradition.

Vingt-sept Etats membres ont répondu. Leurs réponses sont reproduites dans la langue originale à partir de la page 21 de ce document.

Le présent document en fait la synthèse.

1. Votre législation nationale contient-elle des dispositions sur la réglementation des relations entre les procédures d'asile et les procédures d'extradition (veuillez fournir des détails sur cette réglementation)?

Seize Etats membres²⁸ n'ont pas de dispositions régissant les relations entre les procédures d'asile et les procédures d'extradition dans leur législation nationale. Dans leurs réponses à cette question, douze Etats membres²⁹ ont indiqué que leur législation ne permet pas l'extradition vers son pays d'origine d'une personne ayant à juste titre obtenu l'asile.

Dans la plupart des pays, les deux procédures obéissent à des règles distinctes, bien que l'issue de la procédure d'asile puisse influencer sur la décision prise dans la procédure d'extradition. Bien souvent, les questions d'extradition relèvent de la compétence des juridictions pénales, tandis que la décision d'octroi de l'asile et du statut de réfugié est prise par une entité administrative (par exemple, l'Office fédéral des migrations et des réfugiés en Allemagne, l'Office français de protection des réfugiés et apatrides en France, et le ministère de l'Intérieur en Slovaquie).

La Finlande a fait référence à l'article 7 de la Directive européenne sur les demandes d'asile³⁰, qui énonce que les demandeurs sont autorisés à rester dans l'Etat membre dans l'attente d'une décision concernant leur demande d'asile. Le Portugal a mentionné les Directives du Conseil 2004/83/CE concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir prétendre au statut de réfugié ou les personnes qui, pour d'autres raisons, ont besoin d'une protection internationale, et relatives au contenu de ces statuts, et 2005/85/CE relative à des normes minimales concernant la procédure d'octroi et de retrait du statut de réfugié dans les Etats membres.

²⁸ Albanie, Danemark, Estonie, Finlande, France, Géorgie, Allemagne, Italie, Lettonie, Pays-Bas, Norvège, Russie, Slovaquie, Suède, Suisse, Turquie.

²⁹ Arménie, Autriche, République tchèque, Hongrie, Islande, Lituanie, Pologne, Portugal, Roumanie, Russie, Slovaquie, Espagne.

³⁰ Directive du Conseil 2005/85/CE du 1^{er} décembre 2005 relative à des normes minimales concernant la procédure d'octroi et de retrait du statut de réfugié dans les Etats membres.

2. Selon la législation de votre pays, une personne recherchée aux fins d'extradition peut-elle être extradée vers son pays d'origine lorsqu'elle fait l'objet d'une demande/procédure d'asile dans votre pays?

Quatorze Etats membres³¹ prévoient qu'une personne ne peut être extradée tant que sa demande d'asile n'a pas fait l'objet d'une décision définitive. En France, si une personne ayant fait une demande d'asile ne peut être extradée, les procédures d'extradition et d'asile sont toutefois menées en parallèle, de manière indépendante. La Hongrie a précisé que dans cette situation, l'extradition n'est possible que si elle est demandée par un pays tiers considéré comme sûr par la Loi sur l'asile.

Dans huit Etats membres³², l'extradition d'un individu ayant déposé une demande d'asile est possible, du moins en théorie, mais la juridiction compétente en matière d'extradition peut tenir compte du fait que des procédures d'asile sont en cours.

3. Dans l'affirmative,

(L'Arménie, le Danemark, la Norvège et le Portugal n'ont pas répondu aux cinq questions suivantes, ayant donné une réponse négative à la précédente question). La Lettonie a indiqué que sa législation ne contient pas de dispositions spéciales sur ces questions).

3.1 Quelle procédure a la priorité lorsqu'une personne a demandé l'asile dans votre pays et qu'elle fait l'objet d'une procédure d'extradition?

Treize Etats membres³³ ont répondu que la procédure d'asile a la priorité dans une telle situation.

L'Allemagne et la France ont précisé que les procédures d'extradition et d'asile sont deux procédures distinctes, menées indépendamment l'une de l'autre, mais qu'une suspension de la première est possible en attendant l'issue de la seconde.

Cinq Etats membres³⁴ n'ont pas de règles concernant la procédure prioritaire dans ce cas.

L'Autriche a affirmé que la procédure d'extradition a la priorité sur les autres dispositions juridiques relatives à l'expulsion d'une personne en dehors du pays.

3.2 Est-il possible d'exécuter une demande d'arrestation provisoire d'une personne lorsque celle-ci fait l'objet d'une procédure d'asile?

Vingt et un Etats membres³⁵ ont répondu qu'il est possible d'exécuter une demande d'arrestation provisoire d'une personne faisant l'objet d'une procédure d'asile. L'Allemagne, la Pologne et la Suède ont précisé qu'elles peuvent tenir compte, au cas par cas, de la procédure d'asile en cours lorsqu'elles déterminent si les conditions préalables à une arrestation provisoire sont remplies. La Suisse a affirmé qu'il n'est pas possible d'arrêter une personne dont la qualité de réfugié a été reconnue. Les Pays-Bas ont indiqué que même si cela est possible légalement, dans la pratique, une personne ne sera pas placée en détention en vue de son extradition si celle-ci n'est pas prévue à bref délai.

³¹ Arménie, Danemark, Estonie, Finlande, Géorgie, Lettonie, Lituanie, Pays-Bas, Norvège, Portugal, Slovaquie, Slovénie, Espagne, Turquie.

³² Autriche, République tchèque, Allemagne, Islande, Italie, Pologne, Suède, Suisse.

³³ Albanie, Estonie, Finlande, Géorgie, Hongrie, Pays-Bas, Norvège, Lituanie, Russie, Slovaquie, Slovénie, Espagne, Turquie.

³⁴ République tchèque, Italie, Pologne, Suède, Suisse.

³⁵ Albanie, Autriche, République tchèque, Estonie, Finlande, France, Géorgie, Allemagne, Hongrie, Islande, Italie, Lituanie, Pays-Bas, Pologne, Roumanie, Russie, Slovénie, Slovaquie, Espagne, Suède, Suisse.

En Turquie, il n'est pas possible d'exécuter une demande d'arrestation provisoire avant la conclusion de la procédure d'asile.

3.3 Dans quelles conditions l'extradition d'une personne qui a demandé l'asile peut-elle être autorisée?

Sept Etats membres³⁶ ont répondu que l'extradition d'une personne n'est autorisée qu'en cas de rejet de la demande d'asile (ou de révocation du statut de réfugié), ou qu'elle n'est jamais autorisée lorsqu'une procédure d'asile est en cours.

La Roumanie a répondu que les demandeurs d'asile ne peuvent pas être extradés, sauf lorsqu'il y a des motifs suffisants pour considérer qu'ils ont « l'intention de développer des actes terroristes ou de soutenir de tels actes », ou qu'ils constituent un danger à la sécurité de l'Etat roumain ou à l'ordre public.

Dans la majorité des autres Etats membres ayant répondu, cette question semble être tranchée au cas par cas, pour autant que l'extradition soit conforme aux principes du droit international, de la CEDH, de la Convention de Genève relative au statut des réfugiés, ou à d'autres dispositions équivalentes en droit interne. La législation italienne interdit en particulier toute extradition lorsque la peine de mort est inscrite dans le droit de l'Etat requérant.

La Lituanie a expressément indiqué que l'exception au principe de *non-refoulement* prévue à l'article 33(2) de la Convention de Genève est la seule situation dans laquelle l'extradition d'un demandeur d'asile est autorisée.

3.4 L'extradition accordée a-t-elle un impact sur les procédures d'asile en cours?

Dans neuf Etats membres³⁷, l'extradition accordée n'a, du moins en théorie, aucun impact direct sur les procédures d'asile en cours. En Slovénie, si l'asile est accordé après une décision d'extradition positive, une nouvelle décision d'extradition doit être rendue.

Cela dit, de nombreux Etats ont affirmé que les motifs de la décision d'extradition peuvent, dans la pratique, avoir une influence sur l'issue de la procédure d'asile.

L'Autriche a répondu que, lorsque l'extradition est accordée, les procédures d'asile sont suspendues. En Espagne, le Conseil des ministres peut, dans un tel cas, décider de la révocation de l'asile. La France et la Russie ont indiqué que les faits examinés lors de la procédure d'extradition peuvent constituer un motif de refus de l'asile, conformément à l'article 1f de la Convention de Genève. La France a cité en exemple le cas de ressortissants rwandais qui se sont vu refuser l'asile car ils faisaient l'objet de mandats d'arrêt émis par le Tribunal pénal international pour le Rwanda.

La Suisse a précisé que si l'extradition est accordée avant le dépôt de la demande d'asile, elle peut être exécutée.

La Lituanie et la Turquie ont déclaré qu'une demande d'extradition ne peut être acceptée que si l'asile a été refusé. De même, en Géorgie, c'est la question de l'asile qui est tranchée en premier.

L'Albanie a répondu que les décisions sur ce point sont prises au cas par cas.

³⁶ Albanie, Estonie, Finlande, Pays-Bas, Slovénie, Suisse, Turquie.

³⁷ République tchèque, Estonie, Finlande, Allemagne, Islande, Hongrie, Pays-Bas, Slovénie, Suède.

3.5 Est-il possible de subordonner l'extradition à certaines conditions, en imposant à l'Etat requérant des garanties de procédure découlant des droits de l'homme et un monitoring du respect de ces conditions par l'Etat requis?

Onze Etats membres³⁸ ont répondu qu'il est possible de subordonner l'extradition à certaines garanties (la plupart ont toutefois précisé que cela ne s'applique que dans un nombre très limité de cas ou dans des situations exceptionnelles). La Russie a précisé que cette pratique s'est avérée très efficace.

L'Autriche et la France ont fait remarquer que les traités internationaux applicables tels que la CEDH, la Convention européenne d'extradition ou les traités bilatéraux prévoient déjà des garanties procédurales en matière de droits de l'homme.

L'Italie, l'Islande et la Slovénie ont affirmé que l'extradition n'est pas accordée s'il existe un risque quelconque de violation des droits de l'homme.

L'Albanie, l'Estonie, la Lituanie et la Pologne ont affirmé qu'il n'est pas possible ou réalisable de subordonner l'extradition à certaines conditions.

Enfin, la Pologne et la France ont attiré l'attention sur l'impossibilité d'effectuer un contrôle du respect des garanties, expliquant qu'il était peu probable qu'un Etat souverain soit disposé à soumettre son système de justice pénale à la vérification d'un pays tiers.

4. L'extradition accordée entraîne-t-elle une révocation de l'asile?

Dans la majorité des Etats membres³⁹, l'extradition accordée n'entraîne pas une révocation de l'asile ou de la reconnaissance de la qualité de réfugié. La Géorgie, la Pologne et la Russie ont indiqué que l'extradition n'est jamais accordée en ce qui concerne un réfugié si les moyens de droit justifiant l'octroi du statut de réfugié restent valables.

L'Albanie et la Turquie ont répondu que la révocation de l'asile est possible dans de tels cas. La Suisse a indiqué que les motifs d'acceptation de l'extradition peuvent influencer sur la décision de révocation de l'asile. En Lituanie, une personne reconnue coupable d'une infraction grave par une décision de justice en bonne et due forme se verra retirer le statut de réfugié.

5. L'obtention de l'asile dans votre pays entraîne-t-elle une interdiction générale d'extrader une personne, ou cette interdiction est-elle limitée à l'Etat où la personne craint d'être persécutée?

Dans dix-neuf Etats membres⁴⁰, l'interdiction d'extrader se limite à/aux (l')Etat(s) où la personne craint d'être persécutée, ou aux Etat tiers susceptibles de renvoyer la personne dans son pays d'origine (*double refoulement*)⁴¹.

La Finlande a précisé que le service de l'immigration serait consulté s'il se posait des questions relatives au champ d'application du principe de *non-refoulement* dans le cadre de l'extradition d'une personne ayant obtenu l'asile.

³⁸ Finlande, France, Géorgie, Allemagne, Pays-Bas (sauf si une demande d'asile est en cours), Russie, Slovaquie, Slovénie, Hongrie, Suède, Suisse, Turquie.

³⁹ Arménie, Autriche, Estonie, Finlande, France, Allemagne, Hongrie, Islande, Italie, Lettonie, Lituanie, Norvège, Pays-Bas, Slovénie, Suède.

⁴⁰ Albanie, Autriche, République tchèque, Estonie, France, Géorgie, Allemagne, Hongrie, Italie, Lettonie, Pays-Bas, Norvège, Portugal, Russie, Slovaquie, Slovénie, Espagne, Suède, Suisse.

⁴¹ Albanie, République tchèque, France, Espagne.

L'Islande a répondu que l'octroi de l'asile n'entraîne aucune interdiction d'extrader.

La Lituanie, la Pologne, la Roumanie et la Turquie ont répondu que l'obtention de l'asile entraîne une interdiction générale d'extrader une personne, quel que soit l'Etat requérant.

6. Au cas où la personne recherchée a obtenu l'asile dans votre pays et que l'extradition est refusée, la législation de votre pays:

L'Estonie a déclaré qu'elle n'avait aucun texte de loi traitant des quatre questions suivantes.

6.1. admet-elle une délégation de la poursuite pénale?

Dans vingt et un Etats membres⁴², une délégation de la poursuite pénale est possible lorsque la personne recherchée a obtenu l'asile et que l'extradition est refusée. La Pologne a précisé que l'existence d'une décision d'asile antérieure n'a aucune incidence sur la possibilité de déléguer la poursuite pénale.

Le Danemark a indiqué que cette possibilité n'existe que pour les infractions qui entrent dans le champ d'application de la Convention européenne sur la transmission des procédures répressives. La Finlande a déclaré qu'elle applique l'article 21 de cette Convention, bien qu'elle ne l'ait pas ratifiée. La Suède a précisé que la délégation de la poursuite pénale n'est possible que pour les infractions relevant du droit pénal suédois et à condition que les tribunaux suédois soient compétents.

La Géorgie a répondu que les décisions en la matière sont prises au cas par cas.

L'Islande, l'Italie et la Lituanie ne prévoient pas la possibilité d'une délégation de la poursuite pénale.

6.2. prévoit-elle une obligation d'engager de poursuites pénales conformément au principe *aut dedere aut judicare*?

Douze Etats membres⁴³ appliquent le principe *aut dedere aut judicare*. Neuf autres⁴⁴ ont répondu qu'ils ne prévoient pas d'obligation d'engager des poursuites pénales lorsque l'extradition est refusée. La Lituanie a précisé qu'il existe une obligation d'exercer des poursuites pour certaines infractions internationales énumérées dans la législation interne.

6.3. admet-elle l'exécution d'une peine ou d'une mesure de sûreté délivrée par l'Etat requérant?

Dix-huit Etats membres⁴⁵ autorisent l'exécution d'une peine ou d'une mesure de sûreté délivrée par l'Etat requérant. Neuf d'entre eux⁴⁶ ont précisé que cette autorisation est subordonnée à l'existence d'un traité international.

La Finlande, la Géorgie (hormis pour les peines à l'encontre des ressortissants géorgiens) et la Lituanie ont répondu que l'exécution d'une peine prononcée par l'Etat requérant n'est pas autorisée.

⁴² Albanie, Arménie, Autriche, République tchèque, Danemark, Finlande, France, Allemagne, Hongrie, Lettonie, Pays-Bas, Norvège, Pologne, Portugal, Roumanie, Russie, Slovaquie, Slovénie, Suède, Suisse, Turquie.

⁴³ Albanie, Arménie, Autriche, République tchèque, Allemagne (à condition que le droit pénal allemand soit applicable) Pays-Bas, Pologne, Roumanie, Slovaquie, Slovénie, Suède, Suisse.

⁴⁴ Danemark, Finlande, France, Géorgie, Hongrie, Islande, Italie, Lettonie, Norvège.

⁴⁵ Albanie, Arménie, Autriche, République tchèque, Danemark, France, Allemagne, Hongrie, Islande, Lettonie, Pays-Bas, Norvège, Pologne, Roumanie, Slovaquie, Slovénie, Suède, Suisse.

⁴⁶ Autriche, Danemark, France, Pays-Bas, Norvège, Roumanie, Slovaquie, Slovénie, Suède.

L'Italie a précisé qu'elle n'a aucun texte de loi traitant spécifiquement de la question de l'exécution d'une peine en cas de refus de l'extradition.

6.4. considère-t-elle les demandes concernant de telles personnes comme se rapportant aux infractions politiques, excluant les solutions énumérées ci-dessus?

Dix-neuf Etats membres⁴⁷ n'excluent pas nécessairement les solutions énumérées ci-dessus ; ils ont précisé pour la plupart que cela dépend du motif de refus de la demande d'extradition et des circonstances de l'espèce.

La Suisse, l'Allemagne et le Danemark ont répondu que les mesures précitées sont exclues si une infraction est considérée comme une infraction politique.

L'Arménie et la Russie ont déclaré que leur législation ne définit pas les infractions politiques.

7. Quel sont les effets de l'octroi de l'asile ou de la protection internationale par un Etat tiers sur une procédure d'extradition dans votre pays?

Onze Etats membres⁴⁸ considèrent que la reconnaissance du statut de réfugié ou de toute autre forme de protection internationale par un Etat tiers n'a pas d'effet contraignant dans la procédure d'extradition, mais qu'elle peut être prise en compte dans la décision. La France a précisé qu'elle reconnaît la protection internationale accordée par les Etats membres de l'UE ou les Etats parties à la Convention de Dublin.

Cinq Etats⁴⁹ ont répondu qu'ils n'avaient pas de législation en la matière. Cinq autres⁵⁰ ont répondu que l'octroi de l'asile ou de la protection internationale par un Etat tiers n'a aucun effet sur les procédures d'extradition, et que la demande d'extradition est examinée sur le fond.

En Géorgie, en Hongrie, en Lituanie et en Slovénie, si l'Etat tiers est partie à la Convention des Nations Unies relative au statut des réfugiés, l'extradition n'est pas exécutée. La Hongrie et la Slovénie ont ajouté que si l'Etat tiers n'est pas partie à cette Convention, le principe de *non-refoulement* est appliqué.

La Suisse a précisé qu'une personne s'étant vu accorder la protection internationale par un Etat tiers, quel qu'il soit, ne sera pas extradée vers son pays d'origine. La Roumanie a répondu que dans un cas d'espèce correspondant à cette situation, la personne n'a pas été extradée vers le pays où elle craignait d'être persécutée.

8. Quelle est l'impact sur la possibilité d'extrader une personne des solutions existantes pour faire face aux demandes répétées d'asile lorsque la première demande a été refusée?

Neuf Etats membres⁵¹ considèrent que les demandes répétées d'asile n'ont pas d'impact significatif sur la procédure d'extradition. La Suisse a indiqué que l'extradition peut être exécutée si elle a été accordée avant le dépôt de la demande d'asile.

La Slovaquie a mentionné en particulier un amendement récent à son Code de procédure pénale qui autorise le tribunal à prendre une décision en matière d'extradition, à condition que la première demande d'asile ait fait l'objet d'une décision définitive.

⁴⁷ Albanie, Autriche, République tchèque, Danemark, Finlande, France, Géorgie, Islande, Italie, Lettonie, Lituanie, Pays-Bas, Norvège, Pologne, Slovaquie, Slovénie, Suède, Suisse.

⁴⁸ Autriche, République tchèque, France, Allemagne, Italie, Lettonie, Norvège, Pologne, Russie, Slovaquie, Suède.

⁴⁹ Arménie, République tchèque, Estonie, Islande, Espagne.

⁵⁰ Albanie, Danemark, Finlande, Pays-Bas, Turquie.

⁵¹ Arménie, Autriche, France, Allemagne, Italie, Norvège, Pologne, Suède, Suisse.

Sept Etats⁵² ont précisé que la présentation d'une nouvelle demande d'asile n'est possible que si de nouveaux éléments apparaissent dans l'affaire.

L'Albanie, la Lituanie, les Pays-Bas et le Portugal ont répondu qu'une nouvelle demande d'asile aura le même impact sur les procédures d'extradition que la demande initiale. Le Portugal a ajouté que dans certains cas, cela peut avoir un effet négatif sur la procédure d'extradition, notamment s'il y a prescription. L'Espagne et la Turquie considèrent que la durée totale des procédures d'asile peut entraîner des retards dans la procédure d'extradition.

La Géorgie a précisé que l'impact est variable selon les cas.

Le Danemark, l'Estonie et la Lettonie n'ont jamais été confrontés à ce type de situation.

En Finlande, une décision relative à une « nouvelle demande » ne contenant aucun élément nouveau peut être rendue dans le cadre d'une procédure d'asile accélérée. La Norvège a également indiqué que les demandes d'asile répétées sont traitées rapidement et n'ont pas d'impact sur la demande d'extradition.

9. Comment votre pays assure-t-il la coordination et l'échange d'informations entre les autorités responsables des procédures d'asile et des procédures d'extradition?

En réponse à cette question, le Danemark, l'Italie, la Lettonie et la Slovaquie ont indiqué qu'il n'existait aucune règle relative à la coordination entre les autorités responsables des procédures d'asile et des procédures d'extradition.

Vingt et un Etats membres⁵³ ont affirmé qu'il existe une coordination entre les différentes autorités responsables des procédures d'asile et d'extradition. Dans de nombreux Etats, cette coordination est de nature informelle. Dans certains pays, les informations proviennent souvent de la personne concernée ou de son avocat (en Suède, la personne se voit même attribuer un représentant, qui assure l'échange d'informations entre les autorités responsables de chacune des procédures).

L'Autriche a signalé l'existence d'un système d'information en ligne, géré par l'Office fédéral de l'asile et accessible tant aux autorités chargées de l'asile qu'aux tribunaux, qui contient des informations fiables sur la situation des droits de l'homme dans le monde. En France, les autorités judiciaires ne peuvent examiner en détail le dossier d'asile mais peuvent demander des informations au service de l'immigration, tandis que le service chargé de l'asile a pleinement accès aux décisions en matière d'extradition.

L'Allemagne a répondu que la coordination commence dès la phase de recherche ; l'Office fédéral de la police criminelle peut transmettre des données du registre central des immigrés aux autorités, qui décideront de l'arrestation en vue d'une extradition. Le ministère public indique à l'Office de l'immigration si la personne en question a présenté une demande d'asile et peut demander d'autres informations pertinentes.

10. Avez-vous rencontré d'autres problèmes particuliers dans ce domaine?

Dix-neuf Etats membres⁵⁴ n'ont rencontré aucun problème dans ce domaine.

L'Autriche a répondu que la coordination entre les procédures d'asile et d'extradition est difficile est qu'elle fait souvent défaut. La Slovaquie considère que l'utilisation abusive du système d'asile est

⁵² Arménie, République tchèque, France, Hongrie, Lettonie, Russie et Slovaquie.

⁵³ Albanie, Autriche, République tchèque, Estonie, Finlande, France, Géorgie, Allemagne, Hongrie, Italie, Lettonie, Lituanie, Pays-Bas, Norvège, Pologne, Roumanie, Russie, Slovaquie, Espagne, Suède, Suisse.

⁵⁴ Albanie, Arménie, République tchèque, Danemark, Estonie, Finlande, Géorgie, Allemagne, Hongrie, Italie, Islande, Lettonie, Lituanie, Norvège, Pays-Bas, Portugal, Roumanie, Slovaquie, Suède.

fréquente dans les procédures d'extradition. Elle affirme que dans bien des cas, les demandes d'asile ne sont présentées qu'après la réception d'une demande d'extradition, et que des demandes d'asile répétées, sans nouveaux éléments, sont présentées pour prolonger la procédure d'extradition. La Russie a soulevé la question du manque de transparence dans les procédures d'asile en raison de la confidentialité, qui ne permet pas à l'Etat requérant de l'extradition d'être informé des allégations de persécution le concernant et d'y réagir, ce qui peut, selon la Russie, entraver la coopération internationale en matière pénale.

La France a indiqué qu'il se pose un problème lorsqu'une personne obtient le statut de réfugié avant la soumission d'une demande d'extradition. Cela peut entraîner le retrait du statut de réfugié.

La Suisse se demande si une personne ayant obtenu l'asile a le droit d'être informée qu'elle est recherchée en vue d'une extradition.

ALBANIA

1. There is no such Law or any specific provision that regulates the relationship between extradition and asylum procedures. The procedures of asylum are regulated by Law Nr. Nr.8432, 14.12.1998 "On asylum in the Republic of Albanian" and the extradition procedures are regulated in Title X, Chapter I, Seksion I of the Criminal Procedural Law.
2. There are reasons to believe that a person who has applied for asylum in the Republic of Albania may not be extradited if the competent authorities grant his request for asylum.

Article 491/1/a and b of the Criminal Procedural Code regulates the circumstances when an extradition request is not granted, and as such :

1. The extradition may not be provided:
 - a) for an offence of a political nature or when it results that it is requested for political reasons.
 - b) when there are grounds to think that the person subject to extradition shall be subjected to persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights.
3. 3.1. There is no such priority regulated by law and there hasn't been any case law up to now in any Albanian court that a foreigner person who has been sought for extradition has applied at the same time for asylum, but we believe that the asylum procedures might have priority if the request for asylum is submitted to the competent authorities before the extradition request if filed in Albania.
- 3.2. Yes, Article 16/2/c of the Law Nr.8432, 14.12.1998 "On asylum in the Republic of Albanian" foresee;
 - "1. The asylum seekers who illegally enter the territory of the Republic of Albania shall not be prosecuted for illegal boarder crossing provided they appear before the respective authorities not later than 10 days from the day of the illegal boarder crossing.
 2. The asylum seekers who appear within the deadline may be detained only for the following reasons:
 - a) for the verification of their identity;
 - b) when they have disposed of the identity or travel documents and are supplied with forged documents, to deceive the respective authorities;
 - c) an international arrest warrant is issued for them;
 - ç) for the protection of national security and public order.
- 3.3. Most likely that person can be extradited if the request for asylum in not granted. And such a denial is regulated by Article 9 of Law Nr.8432, 14.12.1998 "On asylum in the Republic of Albanian", which foresee:
 1. The foreign citizens who are in the Republic of Albania are rejected the right for asylum in case there are sufficient evidence they:
 - a) have committed a crime against peace, war crimes or against mankind, according to the definitions provided for in the international conventions;
 - b) have committed out of the Republic of Albania a serious crime due to futile motives;
 - c) is guilty for actions that run counter to the aims and principles of the United Nations.
- 3.4. We can not say for sure, it might be a case by case situation.
- 3.5. There is no specific article that foresees such application and as mentioned in the answer of question 2, if the request for asylum is granted and the extradition denied on the bases of

Article 491/1/a and b of the Criminal Procedural Code, there would be no possibility to make extradition subject to conditions.

4. We believe that if the request for extradition is granted on the legal bases and that the court has found that article 491/2/a and b does not apply and Article 8/1/d of Law Nr.8432, 14.12.1998 "On asylum in the Republic of Albanian" applies, the asylum may be revoked. Article 8/1/d foresees:".....
5. According to Article 7/a, b and ç:
 1. "In the meaning of this law, notwithstanding the application of the article 8 and 9, the Republic of Albania recognizes and satisfies the obligation to not return and move out of its territory, the persons who have benefited or sought the right of asylum or provisional protection in the following cases:
 - a) In a state where their life or liberty is jeopardized due to considerations of race, belief, nationality, membership in a certain social groups or political beliefs;
 - b) in a state where they shall be subject to torture or inhuman and degrading treatment or any other treatment provided for in the international treaties where Albania is a party;
 - c) in their state of origin, in case they have been provided provisional protection, in accordance with the clauses of such law;
 - ç) in a third state which may return or send the person to one of the states specified in the point "a" and "b" of that article.
 2. The asylum seeker to whom the request for asylum is rejected by the refugees' office, is not evicted or returned out of the territory of the Republic of Albania, prior to the signature or the provision of legal opportunities for the exercise of procedural rights and safeguards provided for in that law."
6.
 - 6.1 Yes
 - 6.2 Yes
 - 6.3 Yes
 - 6.4 We believe that it is a case by case situation depending on the criminal file of the subject.
7. This question was explained in question Nr. 5
8. It depends on the outcome of the asylum procedure for the repeated request. But if the extradition is refused, according to Article 498/4 "The decision against the extradition prohibits the rendering of a successive decision in the favour of extradition as a result of a new request presented for the same facts by the same state, except when the request is based on elements that are not evaluated by the court".
9. Since the information of both asylum seekers and subject to extradition is managed by the Ministry of Interior, we presume that the other institutions competent for procedures of both extradition and asylum will be well informed, exchanging information and accuracy.
10. As explained above there hasn't been a case yet when the subject to extradition is a subject to asylum as well.

ARTICLE 4 REFUGEE

A refugee is a foreign citizen who because of the substantiated fear of persecution due to considerations of race, belief, nationality, membership in a certain social group or political beliefs, is out of the country of his citizenship and has no opportunity or due to

such fear does not wish to claim the protection of that country when he, without having a citizenship and being out of the previous country of his habitual residence as a consequence of such events, has no opportunity or does not wish to return there due to such fear.

ARTICLE 7 FAILURE TO RETURN

In the meaning of this law, notwithstanding the application of the article 8 and 9, the Republic of Albania recognizes and satisfies the obligation to not return and move out of its territory, the persons who have benefited or sought the right of asylum or provisional protection in the following cases:

- a) In a state where their life or liberty is jeopardized due to considerations of race, belief, nationality, membership in a certain social groups or political beliefs;
- b) in a state where they shall be subject to torture or inhuman and degrading treatment or any other treatment provided for in the international treaties where Albania is a party;
- c) in their state of origin, in case they have been provided provisional protection, in accordance with the clauses of such law;
- ç) in a third state which may return or send the person to one of the states specified in the point "a" and "b" of that article.

2. The asylum seeker to whom the request for asylum is rejected by the refugees' office, is not evicted or returned out of the territory of the Republic of Albania, prior to the signature or the provision of legal opportunities for the exercise of procedural rights and safeguards provided for in that law.

ARTICLE 8 REMOVAL OF ASYLUM

1. The refugee who has benefited asylum in conformity with the article 4, may be deprived of such a right in one of the following cases:

- a) When he requests upon his own will the protection of the state where he enjoys the citizenship;
- b) when he re-acquires, upon his own will, the citizenship which he had lost;
- c) when he acquires a new citizenship and enjoys the protection of the state of the new citizenship;
- ç) when he is re-settled, upon his own will, in the state he has left or out of which he has stayed for motifs of persecution;
- d) when the circumstances provided for in the article 4, have ceased to exist and there is no reason to refuse the protection of the state of his citizenship;
- dh) when he is a stateless person and the circumstances for which he is provided the asylum right, have ceased to exist and he has available opportunities and conditions to return to the state he had left.

2. The responsibility for the international protection of persons recognized as refugees in conformity with the Convention of the year 1951 and the Protocol of the year 1967, in the Republic of Albania may be considered as assigned to a third state, party to the above cited international instruments, in case the latter one has accepted that the refugee continuously stays as such in his territory and has notified the Republic of Albania on such an action.

3. The removal of asylum is effected by applying the same procedures provided for even for the award of the asylum.

ARTICLE 9 DENIAL OF THE RIGHT TO ASYLUM

1. The foreign citizens who are in the Republic of Albania are rejected the right for asylum in case there are sufficient evidence they :

- a) have committed a crime against peace, war crimes or against mankind, according to the definitions provided for in the international conventions;
- b) have committed out of the Republic of Albania a serious crime due to futile motives;
- c) is guilty for actions that run counter to the aims and principles of the United Nations.

ARTICLE 11 OBLIGATIONS OF ASYLUM SEEKERS AND REFUGEES

1. Each asylum seeker or refugee must respect the Constitution, the laws and other legal acts in the Republic of Albania.

2. No asylum- seeker or refugee in the Republic of Albania is allowed to be involved in such activities that disturb the public order, affect national security and may influence the relationships of Albania with other countries.

3. The asylum seeker or the refugee must not act against the principles and aims stemming from the UN treaties and conventions, accepted by the Republic of Albania.

ARTICLE 16 DETENTION OF ASYLUM SEEKERS

1. The asylum seekers who illegally enter the territory of the Republic of Albania shall not be prosecuted for illegal boarder crossing provided they appear before the respective authorities not later than 10 days from the day of the illegal boarder crossing.

2. The asylum seekers who appear within the deadline, may be detained only for the following reasons:

- a) for the verification of their identity;

- b) when they have disposed of the identity or travel documents and are supplied with forged documents, to deceive the respective authorities;
- c) an international arrest warrant is issued for them;
- ç) or the protection of national security and public order.

3. The coercive measures against an asylum seeker are taken in conformity with the rules and the procedures stipulated in the Code of Criminal Procedure of the Republic of Albania. In such case, the asylum seeker is guaranteed the contact with UNHCR and the exercise of criminal procedural rights.

4. In case of detention and arrest, if possible, the asylum seeker is kept in isolation, isolated from other persons, save the cases when such coercive measures are taken in conformity with the point 2, letter "b" of such article.

5. In accordance with the international norms on children's rights, which the Republic of Albania has ratified when it is about the unaccompanied juvenile asylum seekers under 16 years old, they are not imprisoned save the extreme cases. In any other case, proper and adequate measures for children are taken in terms of them.

ARMENIA

1. Various procedures are defined by the legislation of the Republic of Armenia for the political asylum and extradition. The procedures for extradition are defined by the Criminal Procedure Code regulating the issues on ensuring the legal assistance for criminal cases, as well as issues on extradition of persons committed crime in accordance with the International treaties and issues on providing political asylum are regulated by the Law of the Republic of Armenia on political asylum.

In accordance with the Criminal Procedure Code of the Republic of Armenia the extradition can be rejected if person is granted political asylum as defined by the law.

2. In accordance with the legislation of the Republic of Armenia a person can not be extradited if his/her application for political asylum is in process or at the stage of discussion or appropriate decision has been made .
3. If so:
 - 3.1. What procedure has priority when a person having applied for asylum in your country is the subject of extradition proceedings?
 - 3.2. Is it possible to execute a request for provisional arrest of a person who is the subject of asylum procedures?
 - 3.3. Under what circumstances can the extradition of a person who has applied for asylum be allowed?
 - 3.4. Does the granting of an extradition request have an impact on pending asylum procedures?
 - 3.5. Is it possible to make extradition subject to conditions, by requiring human rights procedural guarantees from the requesting State, to be monitored by the requested State?

4. No.

5. In accordance with the legislation of the Republic of Armenia the request on extradition of person may be rejected if person whose extradition is requested, have been granted right to political asylum in the Republic of Armenia by defined law.

6.
 - 6.1 Yes.
 - 6.2 Yes.
 - 6.3 Yes.
 - 6.4 Political offences,, are not defined in the Criminal Code of the Republic of Armenia.

7. Armenian legislation which regulates legal relationship concerning extradition does not specify special provisions in case of granting asylum or intenational protection by a third state.

8. According to the Law of the Republic of Armenia on political asylum, in case of application for political asylum has been once rejected a foreign citizen may reapply under the newly emerged circumstances.

The same procedure is applied in that case.

9. According to the Law of the Republic of Armenia on political asylum and the Criminal Procedure Code of the Republic of Armenia.

10. In practice there are no any collisions and problems between political asylum and extradition procedures.

AUSTRIA

1. The Austrian law contains only very few explicit regulations dealing with the relationship between extradition and asylum proceedings.

It would be considered a violation of fundamental principles of (inter)national law if a person who rightfully is afforded asylum or international protection was extradited to his/ her country of origin. Section 28 of the Federal Law of 4 December 1979 on Extradition and Mutual Legal Assistance in Criminal Matters (ARHG) provides that the Federal Minister of Justice may already refrain from offering extradition of a person sought to the requesting State if it can be gathered from the documents that extradition would have to be refused for one of the reasons stipulated in Sections 2 (ordre public) and 3 (lack of reciprocity) ARHG, especially because the person concerned is afforded protection under international law.

2. The courts have to decide on the admissibility of extradition. According to Austrian law extradition is inadmissible if there is reason to suspect that the criminal proceedings would not comply with or the punishment or preventive measure imposed by or to be expected in the requesting State would be enforced in a manner that is not consistent with fundamental principles of the Convention for the Protection of Human Rights and Fundamental Freedoms (Section 19 no. 1 and 2 ARHG). According to Section 19 no. 3 ARHG extradition is also inadmissible if there is reason to suspect that the person sought would be subject to persecution in the requesting State because of his/ her origin, race, religion, affiliation to a specific ethnic or social group, nationality, or political opinions, or would have to expect other serious prejudices for any of these reasons ("extradition asylum").

The courts have to decide on questions of the so-called "extradition asylum" on their own. Extradition proceedings don't have to be suspended awaiting the outcome of asylum proceedings. In order to avoid contradictory decisions the judicial authorities try to take into account parallel asylum proceedings as far as strict time-limits related to extradition proceedings so allow (e.g. Article 16 paragraph 4 of the European Convention on Extradition and Section 29 paragraph 6 ARHG: *"The person concerned shall be released in any event if he/ she has already spent one year in detention pending extradition, without the Federal Minister of Justice [after the final decisions of the courts on the admissibility of extradition] granting or refusing extradition. The period of detention pending extradition may only be maintained for more than six months if it is unavoidable due to the specific difficulties or the special scope of the proceedings, and if the punishable act underlying the extradition is a crime [punishable by a maximum deprivation of liberty of more than three years]"*).

3.
 - 3.1. Section 13 ARHG provides for a primacy of extradition: *"If extradition proceedings are pending against a foreign citizen, or if there are sufficient grounds to institute such proceedings, it shall not be admissible to remove him/her from Austria on the basis of other legal provisions."*
 - 3.2. Yes.
 - 3.3. The competent court has to decide on the admissibility of extradition, taking into account also questions of the so-called "extradition asylum". The decision by the competent Regional Court on the admissibility of extradition can be contested by appeal to the Higher Regional Court and finally an appeal with regard to an alleged infringement of fundamental rights can be lodged with the Supreme Court. After the courts have declared extradition by final decision admissible, the Federal Minister of Justice grants or refuses in accordance with international agreements and the principles of intergovernmental legal relations.
 - 3.4. Yes, asylum proceedings will be stayed.
 - 3.5. All members of the Council of Europe are parties to the European Convention for the Protection of Human Rights. All members of the Council of Europe (except Monaco and San Marino) as well as Israel and South-Africa are also contracting parties to the European

Convention on Extradition. Most members of the Council of Europe (except Andorra, France, Greece, Ireland, Liechtenstein, Luxemburg, Monaco, San Marino) and South-Africa have also ratified the Second Additional Protocol to the European Convention on Extradition. Diplomatic assurances as provided for in Article 11 of the European Convention on Extradition (that the death-penalty will not be carried out) or in Article 3 of the Second Additional Protocol to the European Convention on Extradition (right to a retrial which safeguards the rights of defence where a judgement has been delivered in absentia) were sought and obtained at times in relation to parties to these treaties.

Also bilateral treaties on extradition have only been negotiated with States, where the respect for the rule of law and for human rights is granted. In relation to countries, where bilateral or multilateral treaties on extradition are applicable, Austria does not deem it appropriate to seek for additional diplomatic assurances (for example in order to ensure the rule of speciality, etc.), as the parties are obliged to observe the contractual obligations undertaken by them. In any case diplomatic assurances are to be considered insufficient to protect against a real risk of torture, as there is no mechanism for their appropriate enforcement. In this case the court has to deny extradition.

4. No, not necessarily. However decisions to grant asylum are related to a situation in the country of origin at a specific time and these circumstances in connexion with which asylum was granted may cease to exist.
5. A person who has been granted asylum or international protection cannot be extradited to his/her country of origin. The courts have to decide on the admissibility of extradition to any other State according to the fore-mentioned principles (see answer to question 2).
6.
 - 6.1 Austrian jurisdiction is in principle established over foreign nationals, who have committed criminal offences abroad, are found in Austria and cannot be extradited to the other State due to other reasons than the nature and character of the criminal offence underlying extradition (Section 65 paragraph 1 no. 2 of the Austrian Penal Code). According to this provision Austrian jurisdiction is not established e.g. for minor offences (which are not considered under Austrian law as extraditable offences due to the expected low penalty) or for military/political offences.
 - 6.2 Yes. See answer to question 6.1.
 - 6.3 An enforcement of a sentence or detention order is only admissible inter alia if the decision of the foreign court was taken in proceedings complying with the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the decision was not taken for punishable acts of a political nature.
 - 6.4 No, not necessarily. See answer to questions 6.1. and 6.3.
7. The decisions of States parties to the 1951 Geneva Convention relating to the Status of Refugees are taken into account when deciding on extradition as far as possible. This principle applies in particular with regard to Member States of the EU, as the Dublin system adopted within the framework of the EU establishes a mechanism for determining a clear responsibility of a single Member State for asylum applications.
8. The courts when deciding on the admissibility of extradition don't have to suspend proceedings until a final decision on a request for asylum is taken.
9. The Ministry of the Interior when reporting that a person sought has been apprehended in Austria informs the judicial authorities immediately about pending asylum proceedings or the outcome of

such proceedings. The Ministry of Justice may refrain from offering extradition to the requesting State if asylum or subsidiary protection was already afforded to this person.

The public prosecutor competent for conducting the extradition proceedings on a regular basis moves that the file of the asylum proceedings be submitted for the decision on extradition. In order to prepare the final decision on extradition the Ministry of Justice gathers information on the stage of parallel asylum proceedings in order to ensure a co-ordinated approach.

The Federal Asylum Office has established according to Section 60 of the Austrian Asylum Act a web-based information system containing comprehensive information and reliable reports by Human Rights Agencies, State Authorities, etc. on the human rights situation worldwide. To this information both, the asylum authorities as well as the courts, have free access. This collection is the core, uniform information for asylum authorities and courts when deciding on (extradition) asylum/ international protection.

10. The duration of asylum proceedings is a major problem as here a co-ordination of asylum and extradition proceedings often fails. Sometimes it is difficult or even impossible to obtain information on asylum proceedings and their outcome in third countries.

CZECH REPUBLIC

1. The Czech law contains below-mentioned provisions on the regulation of the relationship between extradition and asylum procedures. According to Section 91 Paragraph 1 Letter b of the Act on International Judicial Cooperation in Criminal Matters (104/2013 Coll.), extradition of a person to a foreign country is impermissible if the person was granted international protection (includes asylum) in the Czech Republic, within the scope of protection provided to this person under special legal regulations or an international treaty.

2. According to the opinion of the Czech Constitutional Court, extradition cannot be granted before asylum proceedings is terminated (including judicial review). However, extradition proceedings before the court need not to be suspended awaiting the outcome of asylum proceedings. The judge dealing with the extradition matter in any case examines on his/her own the question whether the person sought faces risk of persecution in the requesting state. Extradition to a foreign country shall be granted by the Minister of Justice. He may only do so if the competent court decides that the extradition is permissible. Even if the court decides that extradition of a person to a foreign country is permissible, the Minister of Justice may decide not to grant extradition. As previously stated, the extradition is not granted by the Minister of Justice before final decision on asylum.

According to the Czech Act on Asylum (325/1999 Col.), the Ministry of Interior of the Czech Republic can reject an application for international protection if it is obvious that the person applied for international protection in order to avoid expulsion, extradition or surrender on the basis of the European arrest warrant, although he/ she could have made the application earlier, and unless the applicant proves otherwise. Furthermore, a person cannot apply for international protection after the Minister of Justice has granted extradition.

3. 3.1. The asylum procedure has priority.

3.2. Yes.

3.3. See the answer to the question 2.

3.4. See the answer to the question 2.

3.5. The Czech law does not contain specific provisions on this matter. However, the institute of diplomatic guarantees is often used to exclude human rights violation in specific cases.

4. No. The Czech law does not foresee the revocation of asylum if extradition is granted. However, if a person has been recognized by an effective court judgment guilty of commission of a grave crime, the asylum status will be withdrawn, if that person represents danger for the state.

5. If asylum was granted in the Czech Republic, the prohibition to extradite a person is limited to the state of origin of the person. Extradition to the third state is possible on condition that assurances have been made by the requesting third state that the person would not be extradited or expelled to the state of origin and principle of non-refoulement would be applied.

6. 6.1 Yes. See also answer to question 6.2.

6.2 According to Section 2 Paragraph 1 of the Czech Criminal Code (140/1961 Col.), the Czech law shall be applied to determine the liability to punishment for an act committed abroad by a foreigner (i.e. a citizen of another state) or a stateless person who is not authorised to reside permanently on the territory of the Czech Republic if the act is also punishable under the law in force on the territory where it was committed, and if the offender is apprehended on the territory of the Czech Republic and was not extradited for criminal prosecution to a foreign state.

According to Section 2 Paragraph 3 of the Czech Criminal Procedure Code, the public prosecutor is obliged to prosecute all criminal acts he/she learns about unless any law or promulgated international

agreement, by which the Czech Republic is bound, provides otherwise. Nevertheless, the aut dedere aut iudicare principle is applied upon request of the foreign state according to Section 8 Paragraph 1 Letter c) of the Criminal Code (40/2009 Coll.).

6.3 Yes, under conditions of the Section 120 of the Act on International Judicial Cooperation in Criminal Matters (104/2013 Coll.).

6.4 Not automatically. The Czech court must take into account factual circumstances of a case. See also answer to question 6.3.

7. There are not specific provisions in this regard in our national legislation. In general, the granting of asylum or another form of international protection by a third state is not legally binding in the extradition procedure. On the other hand, Czech authorities are not precluded to take into account such a decision of a third State when deciding on extradition request.

8. According to the Czech Act on Asylum the possibility of considering repeated requests for asylum is limited to the case, when the asylum seeker proves that in meanwhile (after the rejection of the previous application) the circumstances have significantly changed. Asylum and extradition procedures are independent. The judge dealing with extradition matter has to make its own assessment of the risk of political persecution. The Czech law does not provide any concrete rule solving the situation.

9. The authorities responsible for asylum procedures are requested for information on asylum status repeatedly in each extradition proceedings.

10. No significant problems with exchange of information itself between authorities concerned have been encountered so far. However, misuse of the asylum system in extradition proceedings can occur, for example when a request for asylum is submitted only after the reception of an extradition request, or when a repeated request for asylum is submitted without new grounds for it in order to prolong extradition proceedings.

DENMARK

Reply from the Danish Government to the questionnaire on the relationship between asylum procedure and extradition procedures

The Danish Act on Extradition does not contain provisions on the regulation between extradition and asylum procedures and in practice there does not seem to be a problem when administering the Act on Extradition.

This should probably be seen in the light that the Danish Act on Extradition precludes extradition for political offences as well as if the person sought for extradition is in danger of being persecuted on the basis of for instance his or hers origin or religious or political conviction. If there is a risk that the person sought will be submitted to torture or other inhumane or degrading treatment extradition is also precluded. Furthermore, extradition cannot take place if it is incompatible with humanitarian reasons such as age, health or other personal conditions

1. Does your national law contain provisions on the regulation of the relationship between extradition and asylum procedures (please provide details of the regulation)?

Danish national law does not contain provisions regulating the relationship between extradition and asylum procedures

2. Under your national law, can a person sought for extradition be extradited to his country of origin when that person has applied for asylum/is the subject of asylum procedures in your country?

The Danish Ministry of Refugee, Immigration and Integration Affairs does not have knowledge of cases where a person, who has applied for asylum in Denmark, has been sought for extradition

A person, who has applied for asylum, will only be returned to his country of origin when the asylum authorities have made a final rejection on his asylum application. Likewise, a person who is sought for extradition will presumably only be extradited to his country of origin when there is a final rejection of his asylum application

3. If so:

- 3.1. What procedure has priority when a person having applied for asylum in your country is the subject of extradition proceedings?
- 3.2. Is it possible to execute a request for provisional arrest of a person who is the subject of asylum procedures?
- 3.3. Under what circumstances can the extradition of a person who has applied for asylum be allowed?
- 3.4. Does the granting of an extradition request have an impact on pending asylum procedures?
- 3.5. Is it possible to make extradition subject to conditions, by requiring human rights procedural guarantees from the requesting State, to be monitored by the requested State?

No answer, since the answer to question 2 was negative

4. Does the granting of an extradition request lead to the revocation of asylum?

The Danish Ministry of Refugee, Immigration and Integration Affairs does not have knowledge of cases where persons who have received asylum are sought for extradition and, therefore, no knowledge of cases where an extradition request has led to the revocation of asylum.

Pursuant to section 19 (2) in the Danish Aliens Act a time-limited or a permanent residence permit may always be revoked if:

(i) the alien has obtained his residence permit by fraud;

(ii) information has been provided on circumstances that, under the rules of section 10(1), would exclude the alien from a residence permit; or

(iii) information has been provided on circumstances that, under the rules of section 10(2)(i) and (ii), would exclude the alien from a residence permit.

Pursuant to section 10 (1) in the Danish Aliens Act an alien cannot be issued with a residence permit under sections 6 to 9f, if:

(i) the alien must be deemed a danger to national security;

(ii) the alien must be deemed a serious threat to the public order, safety or health; or

(iii) the alien is deemed to fall within Article 1 F of the Convention relating to the Status of Refugees (28 July 1951).

According to section 10 (2) (i-ii) – in cases other than those mentioned in subsection (1) – an alien cannot, unless particular reasons make it appropriate, including regard for family unity, be issued with a residence permit under sections 6 to 9f, if:

the alien has been convicted abroad of an offence that could lead to expulsion under section 22, 23 or 24 if his case had been heard in Denmark; or there are serious reasons for assuming that the alien has committed an offence abroad which could lead to expulsion under section 22, 23 or 24

5. Does the fact that asylum was granted in your country entail a general prohibition to extradite a person, or is such prohibition limited to the State where the person fears persecution?

The Danish Ministry of Refugee, Immigration and Integration Affairs has no response to the questions since the Ministry does not have any knowledge of asylum cases where the person has been sought for extradition. However, as noted above, the Danish Act on Extradition precludes extradition for political offences as well as if the person

sought for extradition is in danger of being persecuted on the basis of for instance his or hers origin or religious or political conviction

6. If the person sought has been granted asylum in your country and extradition has been refused, does the legislation of your country:

allow for the transfer of criminal proceedings?

The Danish Act on Transfer of Criminal Proceedings lay down the conditions for taking over criminal proceedings. There are no special provisions for the case where extradition of a person who has been granted asylum has been denied. According to section 1 in the aforesaid act offences comprised by the European Convention on the Transfer of Proceedings in Criminal Matters can be prosecuted in Denmark according to part I-IV of the convention. The Ministry of Justice can on the basis of reciprocity also decide that the act can be applied in relation to countries, which are not party to the convention

6.2. include an obligation for initiating criminal proceedings in accordance with the principle of *aut dedere aut judicare*?

*According to section 8 (6) in the Danish Criminal Code, acts committed outside the Danish territory are - in accordance with the principle of *aut dedere aut judicare* - submitted to Danish criminal jurisdiction where the transfer of the accused for legal proceedings in another country has been rejected. However, there is no obligation to initiate criminal proceedings according to this provision*

6.3 allow for the enforcement of a sentence or detention order issued by the requesting Party?

According to the Danish Act on International Enforcement of punishment it is possible to enforce a sentence rendered by the requesting Party. It thus follows from chapter 2 a that a decision covered by the European Convention on the International Validity of Criminal Judgments from 1970 may be enforced in Denmark. However, according to article 6 in the convention enforcement may be refused where the requested State considers the offence for which the sentence was passed to be of a political nature or a purely military one or where there are substantial grounds for believing that the sentence was brought about or aggravated by considerations of

race, religion, nationality or political opinion.

In relation to countries not party to the convention, the Ministry of Justice can decide to allow the enforcement of a sentence rendered in another country when humanitarian reasons or other special considerations indicate it

6.4. consider requests concerning such persons as relating to political offences precluding any of the above solutions?

If an offence is considered to be a political offence the above-mentioned measures is precluded. Whether this is considered to be the case depends on a case-by-case judgement

7. What effect does the granting of asylum or international protection by a third State have on extradition procedures in your country?

The granting of asylum or international protection by a third State does not in itself have an effect on the legal conditions in the Danish Extradition Act. However, section 6 of the act stipulates that extradition cannot take place if the person sought for extradition is in danger of being persecuted on the basis of his or hers ethnic or national origin, religious or political beliefs or otherwise for political reasons. The risk of torture of or other inhumane or degrading treatment also precludes extradition. Furthermore, extraction cannot take place if it is incompatible with humanitarian reasons such as age, health or other personal conditions cf. section 7

8. What is the impact of existing solutions dealing with repeated requests for asylum following the refusal of the first request on the possibility of extraditing a person?

The Danish authorities have no experiences of such cases

9.

How does your country ensure co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures?

There are no rules or agreements concerning coordination and exchange of information between the asylum authorities and the extradition authorities

10.

Have you encountered any other problems in this area?

No

ESTONIA

1. No
2. The person cannot be extradited before the final decision on asylum.
3.
 - 3.1. Priority goes to asylum procedure.
 - 3.2. In general it is possible.
 - 3.3. When the application for asylum has been denied and this decision is final.
 - 3.4. No
 - 3.5. Most possibly NO.
4. No
5. In general yes.
6.
 - 6.1
 - 6.2
 - 6.3
 - 6.4

There is no legislation in Estonia on this subject.
7. No specific regulation in Estonia on this subject.
8. No practice so far in Estonia.
9. Just a very good co-operation between different authorities.
10. No

FINLAND

1. There are no specific provisions in Finnish national legislation on the relationship between extradition and asylum procedures in Finland.

Article 7 of the EU Asylum Procedures Directive⁵⁵ deals with the right to remain in the Member State pending the examination of the asylum application. The Article also contains a provision on the relationship between this right and extradition.

According to Article 7,

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant (1) or otherwise, or to a third country, or to international criminal courts or tribunals.

As Article 7(2) is not of mandatory nature, its transposition into the national law has not been proposed in Finland.

It is also worth noting that in the Commission's amended proposal for the Asylum Procedures Directive⁵⁶, there was a provision concerning the relationship between extradition and asylum procedures (Article 25). However, this provision was deleted in the discussions within the Council's Asylum Working Party. The basis for the Commission proposal on Article 25 can be found in the Commission Working Document - The relationship between safeguarding internal security and complying with international protection obligations and instruments [COM (2001) 743 final].

2. There are no specific provisions in this regard in our national legislation. In theory, extradition procedures would have to be suspended until the outcome of an asylum procedure is final.

In the asylum procedure, the application of exclusion clauses (Article 1 F of the Geneva Convention⁵⁷ included in sections 87(2) and 88(2) of the Aliens Act 2004) and the principle of non-refoulement (Article 33 of the Geneva Convention⁵⁸ included in section 147 of the Aliens Act⁵⁹ and section 9 of the Constitution of Finland 1999⁶⁰) are thoroughly examined.

⁵⁵ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁵⁶ Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status; COM(2002) 326 final/2 (03.07.2002).

⁵⁷ **Article 1 F of the Geneva Convention:**

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

⁵⁸ **Article 33 of the Geneva Convention:**

Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

If, due to the application of exclusion clauses, an applicant is not granted asylum or a residence permit on the basis of need for protection, he or she may be issued with a temporary residence permit for a maximum of one year at a time, if he or she cannot be removed from the country because he or she is under the threat of death penalty, torture, persecution or other treatment violating human dignity (cf. section 89 of the Aliens Act).

When considering the possible extradition of a person, section 7 of the Extradition Act of 1970 must also be taken into account. Under section 7 of the Extradition Act, no one can be extradited if there is a fear of persecution on the basis of race, nationality, political opinion, religion or a membership of a particular social group. The wording of this section reflects the wording of Article 1 A (Definition of the term "refugee") and Article 33 (Principle of non-refoulement) of the Geneva Convention.

3. 3.1. As stated above, there are no national provisions in this regard nor have there been any concrete cases. In theory, however, asylum procedures would have priority.
- 3.2. As there are no rules forbidding this, it would seem to be possible. Travel ban is also possible. Asylum seekers can be taken into detention during the asylum application procedure as well.
- 3.3.1. In theory, in case where the asylum application is left unprocessed or the application on asylum (and possible appeal) as well as the application to suspend the expulsion has been denied.
- 3.4. In theory it does not have to have an impact but in practice it would, yes.
- 3.5. Yes.
4. The grounds for withdrawing or cancelling refugee status are laid down in sections 107 and 108 of the Aliens Act.

According to section 107,

A person's refugee status is withdrawn if he or she:

- 1) voluntarily re-avails him or herself of the protection of his or her country of nationality;
- 2) having lost his or her citizenship, regains it of his or her own free will;
- 3) acquires citizenship of another State and may avail him or herself of the protection of the new country of nationality;
- 4) voluntarily settles in the country from which he or she fled and outside which he or she stayed for fear of persecution; or
- 5) is manifestly no longer in need of protection as the circumstances under which he or she became a refugee no longer exist.

According to section 108,

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2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

59

Section 147 of the Aliens Act:

Non-refoulement

No one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.

60

Section 9 (4) of the Constitution of Finland:

The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Refugee status is cancelled if the applicant has, when applying for asylum or, in some other manner, refugee status, deliberately or knowingly given false information which has affected the outcome of the decision, or concealed a fact that would have affected the outcome of the decision.

5. If questions related to the applicability of the non-refoulement principle would arise in the context of extradition of a person who has been granted asylum, the Ministry of Justice would consult the Finnish Immigration Service.

The Extradition Act complies in this regard with the Aliens Act. Decisions will however have to be made *in casu* taking into consideration the grounds for the extradition request.

6. 6.1 Yes, even though Finland has not ratified the European Convention on the Transfer of Proceedings in Criminal Matters, we apply art 21 of the 1959 convention.

6.2 There is no legal obligation, it is a matter of discretionary matter.

6.3 No.

6.4 Basically no. Any such decision would have to be made *in casu*.

7. From the point of view of international protection, relevant instruments are the Geneva Convention (Article 28) and its annexes (Article 11), as well as the European Agreement on Transfer of Responsibility for Refugees. The grounds for transferring responsibility for refugees are different in these instruments. There is no corresponding instrument providing for the transfer of responsibility for a person enjoying subsidiary protection.

Under the Aliens Act, an application for international protection may be dismissed if the applicant has arrived from a safe country of asylum (defined in section 99 of the Aliens Act) where he or she enjoyed international protection.

It is worth noting that the definition of the term "international protection" within the EU covers asylum (refugee status) and subsidiary protection status. Under Article 2(a) of the EU Qualification Directive, "international protection" is defined as follows:

(a) «international protection» means the refugee and subsidiary protection status as defined in d) and f);

Each extradition request is examined individually according to the national laws of Finland.

8. Under section 103(2) of the Aliens Act, it is possible to issue a decision on an application for international protection in an accelerated procedure if the applicant has filed a subsequent application referred to in section 102⁶¹, which does not contain any new grounds for staying in the country that would influence the decision on the matter.

61

Section 102:

Subsequent applications

- 1) A subsequent application means an application for international protection filed by an alien after his or her previous application was rejected by the Finnish Immigration Service or an administrative court while he or she still resides in the country, or if he or she has left the country for a short time after his or her application was rejected. (973/2007)
- 2) If a new application is filed while the matter is still being processed, the information given by the applicant is submitted to the authorities processing the matter to be considered as a new statement in the matter.
- 3) A decision on a subsequent application may be issued without an asylum interview.

9. Co-ordination and exchange of information between authorities responsible for asylum procedures (under the Ministry of the Interior) and extradition procedures (under the Ministry of Justice) are ensured by raising awareness among authorities responsible for these procedures and the relationship between them.
10. No.

FRANCE

1. Notre législation nationale ne contient pas de dispositions particulières sur la réglementation des relations entre les procédures d'asile et les procédures d'extradition.

Il convient en outre de rappeler à titre liminaire qu'en France les demandes d'extradition sont traitées par les autorités judiciaires, elles donnent ensuite lieu à un Décret pris par le premier ministre et sont susceptibles d'un recours devant le Conseil d'Etat.

Les demandes d'asile sont instruites par un établissement public doté de l'autonomie administrative et financière, l'Office français de Protection des Réfugiés et Apatrides (OFPRA).

2. Une personne dans cette situation, de la même manière qu'un national, ne peut pas faire l'objet d'une extradition vers son pays d'origine. Toutefois, lorsqu'une demande d'extradition est concomitante à l'instruction d'une demande d'asile les deux procédures se poursuivent en parallèle.
3. 3.1. Les procédures se poursuivent en parallèle. La procédure d'asile n'interrompt pas la procédure d'extradition. L'individu qui fait l'objet d'une procédure d'extradition ou de remise peut, quand il encourt des risques dans son pays, avoir déposé une demande d'asile auprès de l'Office Français de Protection des Réfugiés et Apatrides (OFPRA).

Dans l'attente de la décision de l'OFPRA, la juridiction française peut surseoir à statuer, ce qu'elle fait en pratique, même si elle n'y est pas contrainte.

Cependant, le droit commun français de l'extradition, à l'instar des conventions d'extradition auxquelles la France est liée en Europe ou ailleurs, prévoit que l'extradition pourra être refusée si elle demandée pour des faits de nature politique ou à des fins politiques ou si l'intéressé risque de subir des traitements inhumains et dégradants.

La chambre de l'instruction, tout comme le gouvernement avant de prendre un décret, s'assure de ces éléments. Aussi, les arguments pouvant fonder une demande d'asile constitue souvent le fondement d'un refus d'extradition avant même l'obtention formelle du statut.

- 3.2. La personne qui a déposé une demande d'asile se trouvant encore en cours d'examen peut être placée sous écrou extraditionnel dans le cadre d'une demande d'arrestation provisoire.

En revanche, elle n'est pas interpellée si elle bénéficie déjà du statut de réfugié politique.

- 3.3. Le Conseil d'Etat a réaffirmé que constituaient des libertés fondamentales :
 - le droit constitutionnel d'asile (*CE, 12 janvier 2001, Hyacintehe ; 15 février 2002, Hadda*)
 - le droit de solliciter le statut de réfugié et de rester en France le temps nécessaire à l'examen de cette demande (*CE, 2 mai 2001, Dziri*)

En France, les principes généraux du droit applicables aux réfugiés, résultant notamment de la Convention de Genève, font obstacle à ce qu'un réfugié soit remis, de quelque manière que ce soit, par un Etat qui lui reconnaît cette qualité, aux autorités de son pays d'origine.

En effet, le Conseil d'Etat dans un arrêt d'Assemblée du 1er avril 1988 s'est prononcé contre l'extradition d'un réfugié vers son pays d'origine en fondant sa décision d'annulation du décret d'extradition sur le non-respect des principes généraux du droit applicables aux réfugiés déduits de la Convention internationale signée à Genève le 28 juillet 1951 qui stipule à l'article 33 : "*Aucun des États contractants n'expulsera de quelque manière que ce soit un réfugié sur les frontières des territoires où sa vie ou liberté seraient menacées*".

Cet article, qui n'interdit pas, par lui-même, l'extradition d'un réfugié, est interprété par le Conseil d'État pour se prononcer contre l'extradition d'un réfugié vers son pays d'origine.

En outre, les autorités françaises considèrent que le statut de réfugié peut s'étendre, après appréciation du cas d'espèce, à la famille immédiate.

En cas de procédure en cours, ces règles impliquent que la personne peut voir son extradition accordée mais que la remise sera suspendue dans l'attente de la décision relative au statut de réfugié.

Une décision de l'OFPRA accordant le statut de réfugié, émise postérieurement à un avis favorable à la remise par la chambre de l'instruction aurait pour effet de faire encourir la nullité à un Décret du gouvernement pris postérieurement.

Il est à préciser qu'en tel cas le premier ministre dans le souci de la protection de la personne, ne prend pas de décret en cas d'obtention du statut, ou ne procède pas à la remise, en vertu de l'application des règles jurisprudentielles émises par le Conseil d'Etat.

- 3.4. La procédure d'extradition peut avoir un impact sur les procédures d'asile en cours dans le sens où les faits peuvent constituer un motif d'exclusion.

En effet, en vertu de l'article F de la convention de Genève l'Office peut exclure du bénéfice du statut les personnes dont on aura des raisons sérieuses de penser qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité au sens des instruments internationaux (ressortissants ex-Yougoslavie ou Rwanda par exemple) **[1 Fa]**, un crime grave de droit commun en dehors du pays d'accueil (exemple des actes de terrorisme) **[1 Fb]**, ou qu'elles se sont rendues coupables d'agissements contraires aux buts et principes des Nations Unies **[1 Fc]**.

Ainsi, plusieurs ressortissants rwandais ont été exclus du bénéfice du statut de réfugié en raison des demandes d'arrestation provisoire émises à leur encontre par le TPIR ou le Rwanda pour des faits d'actes de génocide.

Il est également arrivé que l'OFPRA sursoie à statuer dans l'attente de la décision de la chambre de l'instruction.

- 3.5. De manière générale, l'article 696-4 du code de procédure pénale prévoit que l'extradition n'est pas accordée lorsque la personne réclamée serait jugée dans l'Etat requérant par un tribunal n'assurant pas les garanties fondamentales de procédure et de protection des droits de la défense.

L'extradition n'est pas accordée non plus lorsque le fait à raison duquel l'extradition a été demandée est puni par la législation de l'Etat requérant d'une peine ou d'une mesure de sûreté contraire à l'ordre public français, lequel englobe les travaux forcés et la peine de mort.

L'extradition est ainsi subordonnée à l'obtention de garanties.

Toutefois, lorsque le statut de réfugié est octroyé, l'extradition ne saurait être accordée vers le pays à l'égard duquel le statut de réfugié est obtenu (cf. supra).

Les droits de la défense

Est contrôlé le respect des droits de la défense : le droit d'être rejugé, le droit à un conseil, le droit à un procès équitable, conformément à la Convention Européenne de sauvegarde des Droits de l'Homme et des libertés fondamentales. L'extradition peut être refusée en l'absence de garanties octroyées en la matière.

Le risque de traitements inhumains et dégradants

La remise de l'intéressé est ainsi soumise à l'octroi de garanties sérieuses en cas de risque de non-respect des droits ou d'atteinte à son intégrité. L'extradition est en effet interdite « si elle est susceptible d'avoir des conséquences d'une gravité exceptionnelle pour la personne réclamée, notamment en raison de son âge ou de son état de santé ». (notamment réserve de la France à la Convention européenne d'extradition de 1957, dont la formulation permet de protéger le majeur, autant que le mineur).

Ces considérations humanitaires se développent également au sein d'accords bilatéraux (avec l'Australie, le Canada, le Mexique, Monaco, Djibouti, cette dernière convention faisant également référence à « tout autre motif d'ordre personnel »).

Si la preuve du risque de traitements inhumains incombe à l'intéressé, le ministère de la justice, avant de prendre le décret, recherche à peine de nullité auprès des autorités requérantes des garanties écrites, précises et appropriées de nature à faire en sorte que l'extradition n'ait pas de conséquences graves pour la personne.

Le risque de torture

Les autorités françaises s'attachent au respect du Pacte relatif aux droits civils et politiques du 19 décembre 1966, dans son article 10, et de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 10 décembre 1984, dans son article 3, en ce qu'il dispose qu'« aucun Etat partie n'expulsera, ne refoulera ni n'extradera une personne vers un autre Etat où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture ».

Pour déterminer s'il y a de tels motifs, les autorités compétentes tiennent compte de toutes les considérations pertinentes, y compris, le cas échéant, de l'existence, dans l'Etat intéressé, d'un ensemble de violations systématiques des droits de l'homme, graves, flagrantes ou massives.

Il faut indiquer que le principe de dignité de la personne humaine est une composante de l'ordre public français, considéré aussi par le juge constitutionnel comme un principe à valeur constitutionnel. Toute mesure d'extradition, ou de remise dans le cadre du mandat d'arrêt européen, ne peuvent porter atteinte à l'ordre public.

Il faut par ailleurs noter que, si le décret d'extradition est comme tout acte administratif exécutoire même en cas de recours, le ministère de la Justice, dans la pratique, sursoit à la remise dans cette circonstance, afin que le Conseil d'Etat puisse procéder à l'examen de la situation et ne pas exposer inutilement la personne à des risques qui s'avèreraient vérifiés.

Le cas de la peine de mort

Au plan international la France est partie à la Convention européenne de sauvegarde des droits de l'homme ainsi qu'à son protocole additionnel du 28 avril 1983 qui stipulent que la peine de mort est abolie et que nul ne peut être condamné à une telle peine ni exécuté.

Dans un arrêt du 27 février 1987 relatif à une extradition, le Conseil d'Etat a indiqué que la question de la non-application de la peine de mort relève de l'ordre public de la France et que cet ordre public ne permet pas à la France d'apporter son aide en matière pénale, en l'absence de garanties suffisantes, aux Etats dans lesquels une personne mise en cause est exposée à la peine capitale.

Au plan national, ces garanties ont été renforcées par la loi constitutionnelle n°2007-239 du 23 février 2007 relative à l'interdiction de la peine de mort. Aux termes de l'article 66-1 de la Constitution, le prononcé même de la peine de mort est ainsi contraire à notre ordre juridique.

En application de ces règles la France sollicite systématiquement, quel que soit le pays concerné, des garanties sur la non-application de la peine de mort lorsqu'elle est susceptible d'être encourue. La formule consacrée et adoptée systématiquement est celle de la garantie que la peine capitale ne sera ni requise, ni prononcée, ni exécutée.

Sur la question d'un monitoring

Rien ne nous permet de faire usage de cette méthode, dans le respect de la souveraineté des Etats.

4. Non.

5. La personne peut être extradée vers un autre Etat, toutefois, des garanties doivent être demandées (cf. réponse au point 3.5).

La Cour de cassation a été amenée à plusieurs occasions, à censurer des chambres de l'instruction qui n'avaient pas, alors que le moyen était soulevé, sollicité de l'autorité judiciaire de l'Etat requérant "*des informations complémentaires sur le sort qui serait réservé à l'intéressé à l'issue de sa peine au regard tant des dispositions de l'article 3 de la CEDH que de la Convention de Genève du 28 juillet 1951*".

Par ailleurs, pour être ensuite ré-extradée vers un Etat tiers, l'accord de ré-extradition de la France est nécessaire et ne pourra être donné (vers son pays d'origine) si la personne bénéficie du statut de réfugié politique.

6. 6.1. Si la personne qui bénéficie du statut de réfugié politique ne peut être ainsi extradée *pour des infractions politiques* ou pour des demandes présentées à *des fins politiques*, elle peut toutefois être poursuivie en France sur délégation de la poursuite pénale par l'Etat requérant, selon le principe *aut dedere aut judicare* et dans la mesure où la France dispose d'au moins un critère de compétence lui permettant d'exercer ces poursuites ou si cette faculté résulte de la mise en oeuvre d'une Convention internationale le prévoyant.

6.2. Non, le ministère public garde le monopole de la décision de poursuite.

6.3 La France peut accepter de faire exécuter une peine ou une mesure de sûreté délivrée par l'Etat requérant à trois conditions :

- une convention bilatérale ou multilatérale prévoit cette éventualité entre la France et l'Etat requérant
- l'infraction visée doit exister en droit français
- la peine doit le cas échéant faire l'objet d'une adaptation devant le tribunal correctionnel du lieu de détention de l'intéressé en France (réduction en fonction des maximums encourus en France, ou en cas de peine contraire à l'ordre public [peine de mort ou travaux forcés], une adaptation en peine d'emprisonnement.

6.4. Si la France n'extrade pas pour des infractions politiques ou à des fins politiques, le caractère politique de l'infraction reprochée ne se déduit pas automatiquement de l'octroi du statut de réfugié, mais est appréciée au cas par cas. Des poursuites pourraient donc toujours être engagées dans les conditions déjà évoquées (cf.6.1).

7. La France ne reconnaît pas en tant que telles ces décisions (sauf entre Etats Membres de l'UE en application de la Convention de Dublin II), toutefois, cet état de fait est nécessairement pris en compte pour l'appréciation des risques que présenterait pour l'intéressé une extradition vers son état d'origine, de même que la nature politique de la demande.

Dans ce dernier cas s'il s'avère que l'extradition est demandée pour des crimes ou délits ayant un caractère politique ou lorsqu'il résulte des circonstances que l'extradition est demandée dans un but politique, elle ne saurait être accordée (art 696-4 du code de procédure pénale).

8. Il n'y a pas de difficultés particulières liées à l'existence de demandes répétées, dans la mesure où d'une part le traitement des demandes est centralisé par un service unique l'OFPRA et que d'autre part, la possibilité de demandes multiples est réduite puisque lorsque le recours à l'encontre de la décision de refus est épuisé, seule demeure une possibilité de réintroduire une demande en cas d'éléments nouveaux.

Il n'y a donc pas de ce point de vue d'impact négatif sur la procédure d'extradition.

9. Les autorités judiciaires peuvent solliciter par le biais de complément d'information auprès de l'OFPRA des informations quant à l'état d'avancement de la procédure d'asile ou quant à l'application du statut en cas de difficulté.

Les motivations et les éléments du dossier ne peuvent être communiqués en vertu du principe de confidentialité des informations.

L'OFPRA peut en revanche avoir accès aux décisions judiciaires rendant un avis favorable ou défavorable à l'extradition.

10. La difficulté réside parfois dans les cas d'obtention du statut de réfugié politique antérieurement à l'engagement d'une procédure d'extradition pouvant entraîner l'activation d'un cas d'exclusion du statut et partant de là d'un accord à l'extradition vers le pays d'origine.

Par ailleurs, s'il est vrai que l'introduction d'une demande d'asile est susceptible de suspendre de fait la procédure d'extradition et de la ralentir, il ne s'agit pas cependant d'une difficulté majeure.

georgia

1. There is nothing that specifically regulates the interrelation of the two procedures.
2. The Georgian law does not provide any concrete rule solving the situation. In practice the extradition is not granted until the asylum procedures are over. However, where the person is in the extradition custody the competent Georgian authorities grant extradition after that the asylum seeker is refused refuge following the administrative procedures notwithstanding the administrative decision is disputed before court. In such cases it is taken into account that under Georgian law the extradition detention may not be longer than 7 months and the administrative court dispute may last more than a year. Even in these cases the requirement of Article 42 of the Georgian Constitution that all the allegedly infringed rights can be claimed before court is duly observed. In particular, the judge dealing with the extradition matter in any case examines independently from the opinion of the authority competent in asylum matters whether the person sought faces risk of persecution in the requesting state.

In other cases, where the person sought for extradition is released on bail or on any measure of constraint other than detention the authorities dealing with the extradition file always bring out the final decision on extradition after all procedures on asylum including disputes are ended.

3. If so:
 - 3.1. The asylum procedures have priority (if not disputed before court).
 - 3.2. Yes.
 - 3.3. Not strictly defined under Georgian law.
 - 3.4. As usual, the asylum matter is decided earlier (if not appealed before court).
 - 3.5. The law does not provide anything concerning this matter. However, in general under the Constitution the government and all the judiciary have a duty to duly ensure the protection of human rights and at the meantime fulfil the international obligations (the obligation to extradite) taken by the country. When the two obligations are in conflict the Georgian government have discretion to seek possible solutions. One of the resorts addressed in this situation might be the diplomatic assurances but only in very exceptional cases. Those cases exist where Georgia has sufficient grounds to believe that the assurances will be fully enforced and its officials would not be prevented from effective monitoring of the observance of them. Nonetheless, if a person sought for extradition has already been granted the refugee status cannot be surrendered on any assurance.
4. It is absolutely impossible under Georgian law to grant extradition for a refugee. In the situation where no longer exists legal grounds for refugee status, most likely the refugee status would be revoked firstly and the extradition would be granted afterwards.
5. It is limited to the state where the refugee faces risk of persecution.
6.
 - 6.1 In general the Georgian national law does not provide any rule allowing that. However, according to Article 4 of the Law of Georgia on Legal Acts the provisions of international treaties constitute the part of Georgian law and have a self-executing power. The stipulation concerned allows the competent Georgian authorities to directly apply Article 21 of the European Convention on Mutual Assistance in Criminal Matters and transfer the proceedings subsequently but the decision would probably be made case by case.

- 6.2 There is no specific rule establishing this obligation under national law. However, in general if the extradition is refused by the Georgian authorities due to *non refoulement* obligation Georgia would try the person sought under its national law if it has a jurisdiction over that case.
- 6.3 No. According to Article 619 of the Georgian Code of Criminal Procedure the sentence of a foreign court may only be enforced in Georgia if it is rendered against a Georgian national.
- 6.4 There is no specific prohibition similar that under Georgian law.

In relation to pure political offences (espionage, rebellion, *coup d'état* etc) the Georgian authorities would probably decide this matter case by case. As regards the cases of relative political offences of atrocious nature (terrorism etc) Georgia would most likely institute proceedings.

We have had no similar practice so far.

7. Under Georgian law, there is no specific reference to the cases where the foreign countries granted asylum. However, in practice where a person enjoyed the UNHCR protection the Georgian authorities refused extradition based on Article 35 of 1951 UN Convention on Refugees. The competent Georgian authority suggested in that case that according to the provisions concerned the UNHCR is an international supervisory authority in the refugee matters. Based on that rule the authority further asserted in its decision that the findings of the UNHCR that the person sought would face the serious risks of persecution was established *ipso facto* and did not require further judgment.

There has been no practice in relation to the third countries recognitions so far.

8. It may have a sort of impact but it depends on each case.
9. An authority competent in extradition matters (Office of the Prosecutor General (Ministry of Justice in the nearest future), Courts) regularly updates the extradition file with the information obtained from the authority competent in refugee issues (Ministry of Refugees). As usual the latter authority submits information at the request of the authorities dealing with the extradition matter. However, automatic regular updates can be done by the Ministry of Refugees depending on the necessities of a particular case.

There has been no problem regarding co-ordination between the abovementioned authorities so far.

10. No.

GERMANY

Under German law, extradition matters fall within the jurisdiction of the criminal courts, whereas the granting of asylum and refugee protection is decided on by the Federal Office for Migration and Refugees and – in case of dispute – by the administrative courts. The question of political persecution⁶² is examined both in the decision on the permissibility of extradition by a criminal court and in the decision on granting asylum or refugee protection. A parallel assessment thus takes place. The criminal courts are, however, not bound by the decision in the asylum procedure according to the procedural arrangement in section 4 sentence 2 of the Asylum Procedure Act (Asylverfahrensgesetz - AsylVfG). As a rule, the facts from the asylum procedure and the decision taken in these proceedings (insofar as such a decision has already been reached) are known at the time the decision on extradition is handed down, so that the results are to be included in the weighting and assessment of facts for the decision on extradition.

The answers to Questions 1 to Question 4 below are in each case based on the assumption that the request for extradition is made by the country in respect of which the individual concerned has been granted asylum or refugee protection.

1. Section 4 sentence 2 of the Asylum Procedure Act directly affects the relationship between the asylum procedure and the extradition procedure. According to said provision, the decision reached in the asylum procedure has no fundamental binding effect on the extradition procedure. This differentiation between the two procedures results from the special character of the extradition procedure as a form of international legal assistance and on the interest of the community of states in combating crime in an efficient manner. As a result of the absence of a binding effect within the meaning of section 4 sentence 2 of the Asylum Procedure Act, not every individual entitled to asylum or every refugee within the meaning of the Geneva Refugee Convention is protected against extradition to the persecuting state from the outset, since in view of the essence of extradition the circumstances of political persecution may have to be assessed differently in an extradition procedure and an asylum procedure. In this context, however, it should be noted that the decision in the asylum procedure does have an indicative effect regarding the extradition procedure. Recognition of the entitlement to asylum or refugee status within the meaning of the Geneva Refugee Convention requires the court with which the extradition request was filed to employ particular care in examining the question of whether the individual to be extradited is sufficiently protected against political persecution on grounds of diplomatic assurances. In this context, the court has to consider amongst other things and in particular the reasons for granting recognition. If entitlement to asylum or refugee status within the meaning of the Geneva Refugee Convention is however recognised only after the court has handed down its decision on permissibility, said recognition constitutes a condition which may justify an additional and perhaps different decision on the permissibility of extradition.
2. The submission of an application for asylum and/or the circumstances underlying the application for asylum are aspects to be considered when examining the permissibility of extradition. Under German law, however, the extradition of an individual who has already applied for asylum is basically possible.
3. 3.1 The asylum procedure and the extradition procedure are legally independent from one another; there is no prejudicial effect. Therefore, the decision on the permissibility of extradition by the court having jurisdiction is not subject to compulsory suspension until termination of the asylum procedure. However, suspension of the permissibility procedure is possible. Extradition is thus permissible while an asylum procedure is still pending. In addition - following an affirmative decision on permissibility – the political decision on approval of the extradition can be deferred until termination of the asylum procedure. However, if the

⁶² Defined here as persecution linked to one of the elements mentioned in the Geneva Refugee Convention (race, religion, nationality, affiliation to a specific social group or political conviction).

individual concerned is held in detention, it must be examined at each stage whether such detention continues to be proportionate in the event of a suspension of the permissibility procedure or of a deferral of the decision on approval. If this is not the case, the individual concerned must be released from detention.

What is more, recognition of entitlement to asylum or the award of refugee status within the meaning of the Geneva Refugee Convention is a circumstance which may justify a renewed and perhaps a different decision on the permissibility of the extradition decision.

3.2 Yes. In accordance with section 15 of the Act on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen - IRG), the issuance of a warrant of arrest for the purposes of extradition is possible where a request for extradition has already been received. Where no such request has been received, provisional arrest for the purposes of extradition is possible (section 16 of the Act on International Mutual Assistance in Criminal Matters), provided that a competent agency has requested provisional arrest for the purposes of extradition and the person concerned is, due to certain circumstances, strongly suspected of an offence giving cause for their extradition. Provisional arrest for the purposes of extradition is furthermore linked to the preconditions mentioned in section 15 of the above Act. According to section 15 subs. 2 of the above Act, this is not possible where extradition appears to be impermissible from the outset. A pending asylum procedure can be taken into consideration in this context. A crucial aspect in the careful investigation of the individual case is whether the facts from the pending asylum procedure render arrest for the purposes of extradition or extradition impermissible.

3.3 First of all, the general substantive preconditions for extradition must apply. In the context of the extradition of an asylum-seeker, political persecution as an obstacle to extradition and its interpretation play a pivotal role. As mentioned above (Question 1), extradition is impermissible where extradition is requested in respect of a political offence (except for conviction for genocide, murder or manslaughter) or whenever political persecution is to be seriously feared. Where political persecution is feared, extradition of an individual, also in view of the protection provided by the fundamental rights laid out in Article 16a of the Basic Law (Grundgesetz - GG), can only be possible in individual cases on condition of appropriate diplomatic assurances having been made by the requesting state, which ensure that the threat of political persecution can be ruled out in the individual case. The assurances of the requesting state must be reliable on the basis of the overall circumstances. Consequently, this will also depend in each case on the reason why the persecuted individual is seeking asylum. It may also be relevant whether persecution by the government, or non-governmental persecution, is being asserted. In this regard, the court charged with handing down the decision on extradition is to make its own assessment of the entire circumstances.

In addition, extradition of persecuted individuals is prohibited under the German Constitution pursuant to Articles 102 and 2 para. 2 sentence 1 of the Basic Law (GG) if said individuals are threatened with the death penalty. Finally, the generally-accepted core of the rule of law, which is binding under international law, must be ensured so that the ban on retroactivity and the ban on increased penalty, the ban on inhumane treatment and the principles of the statute of limitations must be followed.

3.4 In principle, no, as the asylum procedure continues. However, once extradition has been effected, this indicates that the need for legal protection regarding the application for asylum has expired.

3.5 A wide variety of diplomatic assurances can be requested under German law. This would for example include assurances regarding the possibility of regular prison visits, regarding the conditions of detention or the assurance not to move the persecuted individual to certain regions where he/she could be exposed to particular risks.

In addition, extradition may be permissible in certain cases on grounds of a specialty assurance. The requirements in respect of the specialty assurance are standardized in section 11 of the Act on International Mutual Assistance in Criminal Matters. It emerges from this that the persecuted individual may not be sentenced or subjected to limitations of personal freedom for any reason which occurred prior to his/her transfer without Germany's consent, except for the offence underlying extradition. Moreover, the persecutee may not be prosecuted by any measures, except for measures that can be effected in the absence of the persecutee. In addition, the persecutee may not be extradited, transferred or deported to a third state without German consent. It must furthermore be possible for the persecuted individual to leave the requesting state once the procedure underlying extradition has been finally concluded.

4. No, the granting of an extradition request alone does not lead to the revocation of asylum once it has been granted, or of the recognition of refugee status within the meaning of the Geneva Refugee Convention.
5. The German legislature has not provided for any standard by which the asylum granted would have such a binding effect as to make extradition impermissible.

Extradition to a third state is basically compatible with Article 16a of the Basic Law, which contains the fundamental right to asylum, since a right to an unlimited stay is not covered by the core stock of the Basic Law. Neither does the granting of refugee protection within the meaning of the Geneva Refugee Convention provide protection against extradition to a third state in which there is no political persecution. The prohibition of further extradition based on a specialty assurance in accordance with section 11 of the Act on International Mutual Assistance in Criminal Matters ensures that the extradited individual is neither subjected to political persecution in the receiving state nor extradited or deported to a persecuting state. Criminal prosecution in the third state may give rise to a review of the entitlement to asylum or of recognition of refugee status with regard to Article 1 F and Article 33 section 2 of the Geneva Refugee Convention.

6.
 - 6.1. In principle, yes. Following the principle of vicarious criminal justice, the domestic power of sentence engages as an alternative wherever the competent foreign criminal justice with territorial jurisdiction is prevented for factual or legal reasons from enforcing its right to punish. The principle of vicarious criminal jurisdiction takes effect particularly when section 7 subs. No. 2 of the Criminal Code (Strafgesetzbuch - StGB) applies where no extradition was effected in a specific case, although it would have been possible in view of the type of offence. In this case, the applicability of German criminal law is contingent on the offence also being threatened with punishment under the law at the place of the offence.
 - 6.2. The principle of mandatory prosecution, expressed in section 152 subsection 2 of the Code of Criminal Procedure (Strafprozessordnung - StPO), only obliges the public prosecution office to intervene in all prosecutable criminal offences. It consequently applies only on condition that German criminal law is applicable.

The decision as to whether the public prosecution office itself has to/can prosecute a criminal offence under the international law principle of "aut dedere aut judicare" consequently requires applicability of German criminal law. As a rule, applicability ensues from section 7 subs. No. 2 of the Criminal Code (cf. Question 6.1 above). If German criminal law is applicable, the public prosecution office has to prosecute the offence, unless otherwise provided for by law.

- 6.3 Yes, insofar as the competent Regional Court has declared the foreign judgment enforceable (cf. section 55 of the Act on International Mutual Assistance in Criminal Matters) and mutual assistance is approved (section 56 of the Act).

- 6.4 Yes. The precondition for vicarious criminal justice in accordance with section 7 subs. 2 No. 2 of the Criminal Code is that extradition would be permissible based on the actual type of offence. However, this is governed by German law on extradition, i.e. the Act on International Mutual Assistance in Criminal Matters, so that in particular the obstacle to extradition of a political offence applies.
7. The granting of refugee protection or of another form of international protection by a third state is not binding in the extradition procedure, insofar as no other agreement exists under international law. It is rather to be examined solely on the basis of the relevant standards whether any facts apply which may constitute an obstacle to extradition. This even applies where the responsibility for a refugee within the meaning of the Geneva Refugee Convention has been transferred to Germany in accordance with the relevant standards, given that the binding effect of the foreign decision cannot exceed the decision reached in the German asylum procedure. However, recognition has an indicative effect in respect of actual risks of persecution.
8. The asylum procedure and the extradition procedure are legally independent from one another. The court with jurisdiction in the extradition procedure has to make its own assessment of the risk of political persecution. It has to take note and take account of facts ascertained in the asylum procedure and to verify further knowledge gained, where justified. Apart from that, repeated applications for asylum do not affect the extradition procedure.
9. Co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures already take place at the search stage. The Federal Criminal Police Office (Bundeskriminalamt) transmits data from the central register of immigrants to the authorities, which have to decide unanimously on the question of whether an individual should be declared wanted for the purpose of arrest for extradition in response to a relevant request.

The following applies to the court proceedings initiated to examine the permissibility of extradition:

As the decision regarding an application for asylum has no binding effect on the extradition procedure, as explained above, there is as a rule no reason to suspend the extradition procedure until the asylum procedure has been concluded. The question of political persecution has to be assessed independently in the extradition procedure.

If the persecutee has applied for asylum, the public prosecution office at the Higher Regional Court informs the competent agency, that is the Federal Office for Migration and Refugees. It furthermore asks the Federal Office to supply any facts or evidence that may be relevant concerning the question of political persecution.

10. The exchange of information is as a rule trouble-free in concrete cases of a pending asylum or extradition procedure.

Hungary

1. YES. *Act 38 of 1996 on international legal assistance in criminal matters, Section 14.*

“(1) Extradition of refugees shall be refused save such extradition is requested by a third country identified in the Act of Asylum as a safe country.

(2) Temporarily protected persons, persons authorized to stay, as well as persons applying for recognition as refugee or asylum seeker, respectively can not be extradited to the State from which they have fled.”
2. NO; except if such extradition is requested by a third country identified in the Act of Asylum as a safe country. According to Article 2 point i) of the Act on Asylum a safe third country is a country where the applicant stayed or travelled through prior to his/her arrival in the territory of the Republic of Hungary and had the opportunity to submit an application for recognition as a refugee or for subsidiary protection, provided that the refugee authority ascertained that in the given country
 - a) the applicant’s life and liberty are not jeopardised for racial or religious reasons or on account of his/her ethnicity, membership of a social group or political conviction and the applicant is not exposed to the risk of serious harm;
 - b) the principle of non-refoulement is observed in accordance with the Geneva Convention;
 - c) the rule of international law, according to which the applicant may not be expelled to the territory of a country where s/he would be exposed to death penalty, torture, cruel, inhuman or degrading treatment or punishment, is recognised and applied, and
 - d) there is protection available in accordance with the Geneva Convention.
3. 3.1. Asylum procedure.
 - 3.2. YES.
 - 3.3. *Act 80 of 2007 on Asylum; Section 54*

“If the same applicant has submitted an application after having two previous applications refused or dismissed by final decision, and the refugee authority did not apply the obligation of non-refoulement:

 - a) implementation shall not be suspended upon receipt of the application:
 - aa) pertaining to the applicant’s obligation to leave the country;
 - ab) pertaining to expulsion of the applicant upon his/her non-compliance with the obligation to leave the country;
 - ac) pertaining to the alien’s transfer under extradition proceedings;
 - b) the alien in question shall not be entitled to the rights listed under Paragraphs a)-c) of Subsection (1) of Section 5.”
 - 3.4. It has no legal effects, but it can be taken into consideration as one of the circumstances during the asylum procedure.
 - 3.5. YES; but only in exceptional cases.
4. NO. The asylum procedure has priority before deciding on the extradition request or before the person is surrendered during the extradition procedure.
5. NO. It is limited to the State where the person fears persecution.

6. *Act 38 of 1996 on international legal assistance in criminal matters, Section 28:*

“If extradition is refused by the Minister of Justice, or the Requesting State fails to take over the extradited person, the Minister of Justice shall send the documents to the Chief Public Prosecutor for consideration of initiation of criminal proceedings or other measures.”

“47. § (1) The final sentence of a foreign court corresponds to a sentence passed by a Hungarian court, if the criminal procedure conducted against the perpetrator, and the sentence imposed, or the measures applied against the person are not inconsistent with Hungarian law.” The Metropolitan Court is competent to proceed in such cases.

7. According to the detailed explanation of the Act on international legal assistance in criminal matters, Article 14 Paragraph 1 of the Act shall be interpreted to include refugees who have been recognized by any other State Party to the 1951 Convention relating to the Status of Refugees as well as refugees who have been recognized by Hungary. Therefore the extradition request shall be denied if the person in question was recognized as a refugee in a third country, unless it was issued by a country that can be regarded as safe third country.

It is unclear what the question refers to as “international protection” because the meaning of this term known in Hungary is that of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. However by virtue of Article 2 Point a) of this Directive international protection means the refugee status and the subsidiary protection status as defined in the Directive. The effect of recognition as a refugee on the extradition procedure in Hungary is explained above, therefore all that remains from the answer is the effect of recognition as a beneficiary of subsidiary protection by a third country on the extradition procedure in Hungary.

The status of beneficiaries of subsidiary protection is governed by the rules of the above-mentioned Directive and the Act LXXX of 2007 on Asylum that implements the rules of the Directive into Hungarian law. According to Article 17 of the Act on Asylum beneficiaries of subsidiary protection have the same rights and obligations in Hungary as refugees unless a law or a governmental decree expressly provides otherwise. Therefore the above-mentioned extradition ban in Article 14 Paragraph 1 of the Act on international legal assistance in criminal matters is also relevant to persons who have been recognized as beneficiaries of subsidiary protection by Hungary.

If the person in question was recognized as a beneficiary of subsidiary protection by another State, the extradition procedure shall be conducted with respect to the international obligations of Hungary including the obligations arising from Article 3 of the European Convention on Human Rights and the principle of non-refoulement.

8. *Act 80 of 2007 on Asylum:*
Section 51

“(2) An application shall be considered inadmissible if:
d) the applicant has lodged an identical application after a final decision for refusal.

Section 53

- (1) The refugee authority shall refuse an application outright, without any substantive investigation, if:
 - a) it finds that any of the criteria listed under Subsection (2) of Section 51 applies.”
- (2) A ruling adopted for the outright refusal of an application without any substantive investigation may be subject to judicial review.
- (3) The petition for judicial review shall be submitted to the refugee authority within three days following the date of delivery of the ruling. The refugee authority shall forthwith forward the petition for judicial review to the competent court together with the documents of the case and

- any cross-complaint attached. Upon receipt of the petition for judicial review, enforcement of the ruling of the refugee authority shall be suspended.
- (4) The petition for judicial review shall be adjudged by the Municipal Court of Budapest - within eight days following receipt of the petition for judicial review - in non-judicial proceedings, relying on the available documents. In the proceedings personal interviews may be conducted if deemed necessary.
 - (5) The court may alter the decision of the refugee authority. The court's decision is final, and it may not be appealed.

Section 54

If the same applicant has submitted an application after having two previous applications refused or dismissed by final decision, and the refugee authority did not apply the obligation of non-refoulement:

- a) implementation shall not be suspended upon receipt of the application:
 - aa) pertaining to the applicant's obligation to leave the country;
 - ab) pertaining to expulsion of the applicant upon his/her non-compliance with the obligation to leave the country;
 - ac) pertaining to the alien's transfer under extradition proceedings;
 - b) the alien in question shall not be entitled to the rights listed under Paragraphs a)-c) of Subsection (1) of Section 5."
9. The Ministry of Justice and Law Enforcement coordinates between the competent authorities.
 10. NO.

ICELAND

1. Section 25 of the Refugee Act 1996 (as amended) states that:

'Nothing in this Act shall be construed as preventing the extradition of a person in accordance with the provisions of the Extradition Acts 1965 to 1994.'

There are no other legal provisions on the regulation of the relationship between extradition and asylum procedures.
2. Yes.
3. 3.1. The legislation is silent on this issue.
3.2. Yes
3.3. There is a prohibition on extradition in all cases where there are substantial grounds for believing that the extradition request has been made for the purpose of prosecuting or punishing a person on account of race, religion, nationality, political opinion, sexual orientation, or ethnicity, or where it is likely that the person's human rights would be infringed. Otherwise, if the criteria applying to extradition were met, the person would be extradited.
3.4. The legislation is silent on this issue. However, the Refugee Act 1996, as amended, makes no provision for the termination of an examination of an application on the basis that the person's extradition has been ordered.
3.5. In general, an extradition request would be refused if the Court felt that the person's human rights would be infringed.
4. The Refugee Act 1996 (as amended) and a Statutory Instrument deal with the revocation of refugee status. These make no reference to status following extradition.
5. The granting of asylum does not entail any prohibition to extradite a person.
6. 6.1 No.
6.2 No
6.3 Section 7 of the Transfer of Execution of Sentences Act 2005 allows for the execution of a sentence imposed in the sentencing country on a person who fled to the State before s/he had commenced serving that sentence or had completed serving that sentence.
6.4 No
7. The legislation is silent on this issue.
8. See response to 1 above.
9. As both authorities are located in the same Government Department, there is a ready exchange of information and co-ordination between authorities should an issue arise.
10. No

ITALY

1. Italian national law does not contain provisions regulating the relationship between extradition and asylum procedure.

These two institutions are both mentioned in Art. 10 of the Constitution of the Italian Republic, but there is no connection between them. In fact after reaffirming that Italian law complies with the rules of international law which are generally recognised and that the legal position of foreigners is governed by the law in accordance with the rules of international treaties, in paragraph 3, the Constitution provides that “a foreigner who is not granted the democratic freedoms established by the Italian Constitution in his own country, has right to asylum in the territory of the Republic under the conditions laid down by the law”. Paragraph 4 is worded as follows: “a foreigner’s extradition is not admitted for political offences”.

2. In Italy an individual whose extradition is requested by his country of origin, can be extradited although he lodged a claim for asylum or there is an ongoing procedure to grant his asylum. There is no express prohibition with this regard, in that there is no regulation on the relationship between the two procedures and in general if a procedure to grant the asylum of an individual is initiated, he is extraditable. In practice each situation has to be considered one by one, keeping into account that extradition cannot be granted for a political offence and if fundamental rights are not safeguarded. The violation of these rights is the condition to initiate an asylum procedure. On the contrary, the impossibility to grant extradition pending an asylum procedure could enable the asylum procedure to become an instrument to avoid extradition itself.

Nevertheless it must be added that the recent regulation transposing the European directive on the status of refugee, in particular Art. 7 of the Legislative Decree 28 January 2008 n. 25, established the right to stay on the territory of the State during the examination of the claim for asylum, except for those who are to be extradited in compliance with an European Arrest Warrant or surrendered to an international criminal Court or Tribunal or sent to an other State of the Union in view of the examination of an international protection request.

We have not applied the recent law to a special case, yet.

3. 3.1 There is no priority set by the law in that the extradition and asylum procedure follow quite different paths and are managed by different authorities: extradition procedure is regulated by the code of criminal procedure and is mostly jurisdictional, whereas asylum procedure is governed by *ad hoc* rules and is an administrative procedure. Extradition procedure is characterised by quite strict time limits, under penalty of release of the detained person, whereas at least in the past, asylum procedure was generally quite long and without time limits. Nonetheless recent provisions transposing the European directives on asylum and namely the Legislative Decrees 19 November 2007 n. 251 and 28 January 2008, n. 25 provide for a quite speedy procedure with short time limits, not mandatory though.
- 3.2. It is possible to place a person submitted to an asylum procedure under provisional arrest. Each single case is assessed keeping into account if fundamental rights are granted in the State requesting provisional arrest. We should also make a distinction between those countries with which there is an extradition treaty and those with which there are no agreement in force. Actually as to the formers it is unquestionable that fundamental rights are safeguarded in that the reliability of those countries which are bound by the Convention itself has already been assessed.
- 3.3. A person who has lodged a claim for asylum can be extradited under the limits set by Art. 698 of the Code of Criminal Procedure and it is the Judicial Authority who considers if the conditions provided for by this rule are met. Art. 698 provides that:

- “1. *Extradition cannot be granted for a political offence and when there are grounds to believe that the defendant or the sentenced person will be submitted to persecutory or discriminatory acts due to race, religion, sex, nationality, language or political opinions or personal or social conditions reasons or that he will be submitted to cruel, inhuman or degrading treatments or in any case to acts for which a violation of one of a person’s fundamental rights can be assumed.*
2. *If death penalty is provided by the law of the foreign State for the fact for which extradition is requested, extradition can be granted only if this same State gives guarantees, which are considered sufficient both by the Judicial Authority and by the Ministry of Justice, that this penalty will not be imposed or, if it has already been imposed, it will not be executed.”*
- 3.4. Extradition can have an impact on a still pending asylum procedure although it is a distinct procedure, as we said. This because it implies that the Judicial Authority has already assessed that the country which was granted extradition offers enough guarantees that fundamental rights are safeguarded.
- 3.5. Under the aforesaid Art. 698 of the Code of Criminal Procedure extradition cannot be granted subject to the condition that human rights are complied with, in that any doubt on the violation of these rights prevents the granting of extradition itself.
4. There is no rule imposing the revocation of asylum if extradition is granted, and there is not even a homogenous regulation of the relationship between extradition and asylum procedure. Each single case is considered also with regard to the kind of offences committed in the State requesting the extradition.
5. Once asylum is granted, extradition is prohibited as far as the State where the person sought is afraid he will be persecuted is concerned.
6. 6.1. Our law does not impose the transfer of criminal proceedings against a person whose asylum has already been granted. The rule under art. 6, paragraph 2, of the European Convention on extradition is limited to nationals.
- Art. 10 of the Criminal Code about crimes committed by foreigners abroad provides that if the foreigner is in Italy, he/she is judged according to the Italian criminal law when the Ministry of Justice asks for that, provided that :he/she is in Italy; the punishment for the crime he/she has committed is at least of three years of imprisonment and the extradition has not been granted or not accepted by the Country where he/she has committed the crime.
- 6.2 Accordingly the principle “*aut dedere aut judicare*” (“extradite or prosecute”) is linked to the safeguard of nationals and therefore there is no obligation to initiate a proceedings;
- 6.3. There is no a special rule allowing the execution of a penalty or a detention order issued by the State requesting the extradition which has been rejected.
- 6.4. No
7. A decision granting asylum made by a third State is not binding, except for the influence that the assessment of the risk of violating fundamental rights already made can have on our extradition procedure. Towards the States belonging to the European Union there are still the rules set by Dublin II. In any case the principle of *non refoulement* under Art. 33 of the Geneva Convention of 28 July 1951, is to be safeguarded.

8. refusal of asylum does not affect extradition procedure. The same applies to repeated claims for asylum.
9. There is no privileged channel for the exchange of information between the authorities in charge of extradition and asylum procedures. They generally exchange information through ordinary means such as mail, fax, etc, as they do with other Ministries and government agencies.
10. No.

LATVIA

1. Latvian law contains very few provisions on the regulation of the relationship between extradition and asylum procedures. Please see below an extract from the Asylum Law.

Asylum Law

Chapter I
General Provisions

Article 1 Purpose of this Law

The purpose of this Law is to ensure the rights of persons to receive asylum, receive refugee status, temporary protection and subsidiary protection status in the Republic of Latvia in accordance with generally accepted international principles of human rights.

Article 2 Principle of Non-Refoulement

- (1) A person recognised as an asylum seeker in the Republic of Latvia shall not be deported or extradited to a country where the threats referred to in Articles 23 or 35 of this Law exist.
- (2) A person who has been granted refugee status in the Republic of Latvia shall not be deported or extradited to a country where the threat of persecution referred to in Article 23 of this Law exists.
- (3) A person who has been granted subsidiary protection status in the Republic of Latvia shall not be deported or extradited to a country where the threats referred to in Article 35 of this Law exist.

Article 3 Status of Asylum Seeker

A person shall be considered to be an asylum seeker if he or she, in accordance with procedures prescribed by this Law, has submitted an application for granting of refugee or subsidiary protection status (hereinafter – application). Applications, from the moment of their submission to the taking of a final decision, shall be examined in accordance with the procedures and time periods prescribed by this Law (hereinafter – asylum procedure).

Chapter III
Refugee Status in the Republic of Latvia

Article 23 Persons Who May Claim Refugee Status as Asylum Seekers

- (1) Refugee status as asylum seekers may be claimed by persons who are not citizens of Latvia, subjects of the Law On the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or That of Any Other State, or subjects of the Law On the Status of Stateless Persons in the Republic of Latvia, and who arrive or reside in the Republic of Latvia because of well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion in the country of their citizenship or, if the persons are stateless, in the country of their former residence, and who due to such fears are unable or unwilling to avail themselves of the protection of the relevant country.
- (2) A person who is a citizen of more than one foreign country shall not claim refugee status as an asylum seeker if the person fears without a reason the persecution referred to in Paragraph one of this Article and does not avail himself or herself of legal protection in one of his or her countries of citizenship. The country of citizenship of a person shall be each country of which the person is a citizen.

Chapter V
Subsidiary Protection Status in the Republic of Latvia

Article 35 Persons Who May Claim Subsidiary Protection Status as Asylum Seekers

(1) Subsidiary protection status shall be granted to a person to whom refugee status may not be granted in accordance with Article 23 of this Law, but only if there is reason to believe that:

1) this person is under threat of the death penalty, corporal punishment, torture, inhuman or degrading treatment, or degrading punishment in the country of his or her citizenship or, if the person is a stateless person, in the country of his or her former residence; or 2) due to external or internal armed conflict this person needs protection and he or she cannot return to the country of his or her citizenship or, if the person is a stateless person, to the country of his or her former residence.

(2) A person may not claim subsidiary protection status if he or she:

1) is a citizen of Latvia, or a subject of the Law On the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or that of Any Other State, or of the Law On the Status of Stateless Persons in the Republic of Latvia; or

2) is a citizen of more than one foreign country and if the person, without justified cause, fears the persecution referred to in Paragraph one of this Article and does not avail himself or herself of legal protection in one of the countries of his or her citizenship.

2. The person cannot be extradited before the final decision on asylum (please see the answer to the first question -Article 2 (1) of the Asylum Law and Article 3).

3. There are no specific provisions in this regard in our national legislation.

4. No, it does not.

5. No, such prohibition is limited to the state where the threats of persecution exist.

6. 6.1 Yes.

6.2 No.

6.3 Yes.

6.4 No.

7. There are no specific provisions in this regard in our national legislation.

It can, however, be taken into account when deciding on extradition since Latvia is a party to the Convention relating to the Status of Refugees and has responsibility not to violate Article 33 (2) of the said convention.

8. No practice so far in Latvia.

The possibility for repeated requests for asylum is limited. The asylum seeker may repeatedly request for asylum provided there are newly-discovered circumstances. In such a case the application is to be lodged with the Administrative Court of Appeal instead of the asylum authority -Refugee Affairs Department. Extradition is not possible until a new final decision refusing international protection is taken.

9. No particular information exchange system is provided for between the asylum authority (Refugee Affairs Department) and extradition authority (Prosecutor General's Office). If extradition is sought, the Prosecutor General's Office may check up whether the person has applied for international protection. In our opinion the Prosecutor General's Office would normally be informed about asylum procedures either by the person him/herself, her/his legal counsel or Interpol.

10. No.

LITHUANIA

1. National law that contains provisions on the regulation of the relationship between extradition and asylum procedures is the following:

Criminal Code of the Republic of Lithuania

Article 9. Extradition of Offenders

/.../

4. Persons who have been granted asylum in accordance with the laws of the Republic of Lithuania shall not be punishable under the laws of the Republic of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign states, except in cases provided for by Article 7 of this Code.

Article 7. Criminal Liability for Crimes Specified in International Agreements

Persons who commit the following crimes, specified in international agreements, abroad shall be criminally liable under the criminal statutes of the Republic of Lithuania regardless of their citizenship, their place of residence, the place of commission of the crime, or the punishability of the committed act under the laws of the place where the crime was committed:

- 1) crimes against humanity and war crimes (Articles 99 to 113);
- 2) trafficking in human beings (Article 147);
- 3) purchase or sale of a child (Article 157)
- 4) production, Possession or Sale of Counterfeit Money or Securities (Article 213);
- 5) legalisation of money or property obtained in a criminal way (Article 216)
- 6) act of terrorism (Article 250)
- 7) hijacking of an aircraft, ship or fixed platform in continental shelf (Article 251);
- 8) taking of hostages (Article 252);
- 9) unlawful handling of nuclear or radioactive materials or other sources of ionising beam (Articles 256, 256¹ and 257);
- 10) crimes related to possession of drugs or psychotropic substances, poisonous or heavily affecting substances (Articles 259 to 269);
- 11) environmental crimes (Articles 270, 270¹, 271, 272 and 274);

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Art. 71 Extradition of Persons from the Republic of Lithuania or Their Transfer to the International Criminal Court

/.../

4. Persons who, under the laws of the Republic of Lithuania, have been granted asylum, shall not, under the criminal law of the Republic of Lithuania, be punished for criminal acts for which they were prosecuted abroad and shall not be extradited to foreign states, with the exception of cases provided for in Article 9 of the Criminal Code of the Republic of Lithuania.

The bilateral agreements of the Republic of Lithuania on legal assistance and legal relations in civil, family and criminal cases (with Armenia, Azerbaijan, Uzbekistan, Kazakhstan, Ukraine, Moldova, Poland, Belarus and the Russian Federation) and the extradition agreement with China, as well as the agreement with Estonia and Latvia on legal assistance and legal relations contain provisions prohibiting extradition of a person who has been granted the right of asylum in the Republic of Lithuania. In addition, Article 130(1) of the Law on the Legal Status of Aliens of the Republic of Lithuania prohibits “to expel or to return an alien to a country where his life or freedom is under threat as he may be subjected to persecution on the grounds of race, religion, nationality, political opinion or membership of a social group” (this automatically coincides with the requirements for the granting of the refugee status). Article 130(2) of this law prohibits to expel or return an alien to a country “where there are serious grounds to believe that in the country the alien will be tortured, subjected to cruel, inhuman or degrading treatment or punishment”. This is one of the grounds for providing additional protection in the Republic of Lithuania. Therefore, although the provisions of the Law on the Legal Status of Aliens do not directly establish a relative link between the procedures of extradition and asylum, under Article 130 extradition should not be applied to persons who have been granted (or are likely to be granted) asylum on the grounds of a threat of persecution or torture in the country requesting such extradition.

2. Under the national law of Lithuania, a person sought for extradition cannot be extradited to his country of origin when that person has applied for asylum or he is a subject of asylum procedures because, as it is established in Article 76 of the *Law on the Legal Status of Aliens*, the Migration Department, having analysed the documents and evidences submitted to it, and having established that none of the Member States of the EU is responsible for the examination of the request to grant an asylum, takes a decision of granting a temporary territorial asylum to an asylum applicant and provision of the asylum applicant with accommodation within the Republic of Lithuania pending his application is examined in all essentials and the final decision is taken. Such a decision shall be taken within 48 hours from the moment of lodging of the asylum application or from the moment it appeared that the asylum applicant cannot be transferred to any EU Member State. In some cases an extension of the deadline is possible.
3.
 - 3.1. The question is not explicitly addressed in either extradition or asylum legislation. In such cases, the two procedures can be carried out independently. In view of the implications which a positive refugee status determination has with respect to extradition, however, it is frequently the practice to suspend the extradition process.
 - 3.2. Yes.
 - 3.3. The only exceptions to the principle of *non-refoulement* are those provided for in Article 33(2) of the 1951 of the Convention relating to the Status of Refugees:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment.

- 3.4. Following the provisions of national and international legislation, in Lithuania an extradition request can be granted only if the Migration Department takes a decision not to grant a refugee status to a person. Article 88 of the Law on the Legal Status of Aliens which determines the reasons why the refugee status cannot be granted: there are serious grounds to believe that the alien has committed a serious non-political crime prior to his arrival in the Republic of Lithuania or has been accused of the commission of acts contrary to the purpose and principles of the United Nations Organisation; there are serious grounds to believe that the alien has committed a war crime or crime against humanity or committed genocide within the meaning defined in the laws of the Republic of Lithuania, international treaties and other sources of international law; there are serious grounds to believe that the alien's presence in the Republic of Lithuania may pose a threat to the state security or public policy or he has been recognised by an effective court sentence guilty of commission of a grave or a very grave crime, when the asylum applicant applies to grant refugee status; the alien's presence in the Republic of Lithuania may constitute a threat to state security or public policy or he has been recognised by an effective court sentence guilty of commission of a grave or a very grave crime, when the asylum applicant applies to grant subsidiary protection. In these cases the asylum is not granted, so, the person can be extradited.

3.5. No.

4. Usually the asylum status is not revoked. However, the granting of an extradition request leads to the revocation of asylum only in the cases determined in the Article 7 of the Criminal Code and in the Article 90 of the Law on the Legal Status of Aliens which says that if a person has been recognised by an effective court judgement guilty of commission of a grave or a very grave crime, the status of refugee shall be withdrawn.
5. The fact that asylum was granted in the Republic of Lithuania entails a general prohibition to extradite a person.
6. If the person sought has been granted asylum in the Republic of Lithuania and extradition has been refused, the legislation:
 - 6.1. Does not allow for the transfer of criminal proceedings.
 - 6.2. Includes an obligation to prosecute for particular international offences specified in Art. 7 of the Criminal Code (see above) to ensure that individuals

- who perpetrate harms inimical to fundamental interests of the international community are brought to justice.
- 6.3. Does not allow for the enforcement of a sentence or detention order issued by the requesting Party.
 - 6.4. It depends on the circumstances of every separate case.
 7. The Decision to grant an asylum status to an asylum seeker that is made by the competent institution of the State, which is the Party to the Convention Relating to Status of Refugees, has an extraterritorial effect, i.e. obliges other Parties to the said Convention to recognise the rights of the refugees present in their territory on the same conditions and extent as it is established in the Convention.
 8. The same procedure is applied for examination of the repeated requests for asylum as it was used when dealing with the initial request for asylum.
 9. In the order established by the national and international legislation.
 10. -

NETHERLANDS

1. No.
2. A person is not extradited to his country of origin if he has applied for asylum and if this application has not yet been dealt with by the Immigration service. The Immigration service examines if the person faces a violation of the ECHR or the Convention relating to the Status of Refugees.
3.
 - 3.1. The asylum procedure has priority.
 - 3.2. Legally it is possible, but in practice a person will not be detained with a view to his extradition as long as extradition is not expected in the near future.
 - 3.3.
 - If:
 - the application for asylum in the Netherlands has been rejected, and if there is no risk of an Article 3 EHRM violation following a return of the person to his country of origin
 - if the refugee status is revoked as a result of new information concerning the person and if there is no risk of an Article 3 EHRM violation following a return of the person to his country of origin, or if
 - the extradition request is filed by another State than the State from which the person has sought protection (see also question 5).
 - 3.4. No. The asylum application is judged on its own merits.
 - 3.5. Not if an asylum application is pending. In other cases, if there is a possibility of a human rights breach, extradition may take place following guarantees from the requesting state.
4. No, it does not.
5. The latter. If asylum was granted for a national of State X he cannot be extradited to State X. However, he can be extradited or surrendered to another State, provided all conditions (including ensuring the ECHR-rights) are met.
6.
 - 6.1 Yes, that is possible.
 - 6.2 This depends on the treaty and the facts on which the request for extradition is based, but *aut dedere aut judicare* is indeed a basic principle in our extradition practice.
 - 6.3 If there is a treaty upon which a request for the transfer of execution can be based, a request can be taken into consideration.
 - 6.4 No. Only if the offence as such is considered as a political offence.
7. None, but the Netherlands has its own responsibility not to violate Article 33, section 2 ('non-refoulement') of the Convention relating to the Status of Refugees.
8. An asylum application is an obstacle for extradition, even when it concerns a repeated request for asylum.
9. Both extradition and asylum applications are dealt with by the Ministry of Justice. If extradition is sought, it is checked if the person has (applied for) a residence permit in the Netherlands.
10. No.

NORWAY

1. There are no specific provisions in the Norwegian national law that regulates the relationship between extradition and asylum procedure.
2. As there are no specific provisions regulating the relationship between those two procedures, theoretically the two procedures can be carried out independently. However, in practice the extradition process will be suspended awaiting the outcome of the asylum procedure.

Pursuant to The Norwegian Extradition section 6, extradition may not take place if there may be presumed to be a serious risk, by reason of race, religion, nationality, political opinion or other political circumstances, of the person in question becoming subjected to persecution aimed against his life or freedom or is of an otherwise serious nature.

This provision is interpreted in accordance with Norway's international obligations relating to Refugee Law.

According to the principle of non-refoulement, Norway cannot return a refugee to the country where he or she fears persecution. The principle of non-refoulement is also applicable when the person concerned is an asylum seeker. Thus, no person who has applied for asylum can be extradited to the country where he or she fears persecution.

Hence, the outcome of an asylum procedure will in practice have an impact on the decision regarding the question on extradition, and in particular the assessment on whether the conditions set out in the Extradition Act section 6 are fulfilled.

3. As we understand this question, it presupposes a positive answer to question 2. As mentioned under question 2, the extradition procedure will in practice be suspended awaiting the asylum procedure, thus we have no further comments on this point.
4. The granting of an extradition request do not lead to the revocation of asylum, unless Norway receives information during the extradition process that implies that the person who is granted asylum has deliberately given incorrect information in an application or suppressed matters of considerable material relevance to the decision, or if this otherwise follows from general rules in public administrative law, cf the Norwegian Immigration Act section 13.
5. In general, granting asylum does not prohibits extradition. However, in practice it will prohibit extradition to the State where the person fears persecution, reference is made to the Extradition Act section 6 as mentioned under question 2.

A request from a third State will be processed after normal extradition procedures.

6. 6.1 allow for the transfer of criminal proceedings?

Yes, Norwegian legislation allows for the transfer of criminal proceedings.

Provisions on the transfer of proceedings are given in the Act on the Transfer of Proceedings in Criminal Matters from or to other European Countries (1977). The Act applies only to the transfer of criminal proceedings from or to the states that have acceded to the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

Further, the transfer of proceedings can be carried out pursuant to other conventions that contain provisions regarding the latter.

A request for the transfer of proceedings can also be enforced even in the absence of a convention.

6.2 include an obligation for initiating criminal proceedings in accordance with the principle of aut dedere aut judicare?

Norway recognises the principle of aut dedere aut judicare in several respects. However, the obligation for initiating criminal proceedings with regards to the individual case depends on the treaty and the facts on which the request for extradition is based.

6.3 allow for the enforcement of a sentence or detention order issued by the requesting Party?

If there is a treaty upon which a request for the transfer of execution can be based, a request can be taken into consideration.

6.4 Not automatically. It depends on the circumstances in the case.

7. What effect does the granting of asylum or international protection by a third State have on extradition procedures in your country?

According to the Norwegian Immigration Act section 20, any foreign national who has been granted asylum by any foreign state shall be regarded as a refugee with fixed abode in that state. If such a refugee applies for asylum in Norway, the previous determination of refugee status shall not be overruled unless it is obviously wrong or there are other particular reasons for overruling it.

The granting of asylum will be taken into account when deciding upon whether the conditions for extradition are fulfilled, reference is made to question 2.

8. If the first request for asylum has been rejected, the person cannot be said to be at risk of persecution in his country of origin. Hence, it is possible to evaluate the extradition request. New and repeated requests for asylum will be handled rapidly and will, once they are processed and denied, not have an impact on the request for extradition.

9. The central authority in Norway for the purpose of the European Convention on Extradition is the Ministry of Justice and the Police. When the person sought for extradition under this Convention is a refugee or an asylum seeker, the Ministry work in close collaboration with the Norwegian immigration authorities.

10. No.

POLAND

1. The only regulation that deals with the interdependence of both extradition and asylum is the provision of art. 604 § 1 (1) of the Polish Code of Criminal Procedure dated 6th June 1997. This provision details obligatory bars for extradition and goes as follows:

Article 604. § 1. The extradition is inadmissible if:

- (1) *the person to whom such a motion refers, is a Polish national or has been granted the right of asylum in the Republic of Poland,*
- (2) (...)

Due to the Polish law, extradition and asylum procedures are separate proceedings, one being independent from the other and they are governed by separate sets of rules.

The former is dealt with by the Code of Criminal Procedure of 1997 in Chapters 64 and 65. The latter is governed by Constitution on the 2nd April 1997 (art. 56) as well as the Act on the protection of aliens in the territory of the Republic of Poland dated 13th June 2003.

2. Yes. As mentioned in answer to question one, both types proceedings are different, one being independent from the other. However, the extradition courts – but this is more a question of practice rather than the law – take into account the circumstance that the person sought for extradition has lodged an application for asylum. This is to some extent due to the fact that one of the bars for extradition is that the wanted person has been granted an asylum (see art. 604 § 1 (1) of the Code of Criminal procedure of the 6th June 1997).

On the other hand however, one should point out to the Supreme Court ruling of 11th January 2000 No II KO 289/99 (published in OSNKW 2000/3-4/38) which decided:

(ENG.)

„1. (...)

2. The issue of the legal admissibility of extradition should take into account the state of affairs in the moment of adjudicating and not situations which are not certain and belong to the future. Bearing that in mind the ongoing administrative procedure for granting the right of political asylum cannot constitute a bar for adjudicating in case of admissibility of extradition.”

(PL.)

“1 (...)

Kwestia prawnej dopuszczalności wydania powinna być oceniana przy uwzględnieniu realiów występujących w chwili orzekania, nie zaś zdarzeń przyszłych i niepewnych. W związku z tym toczące się postępowanie administracyjne w przedmiocie udzielenia osobie ściganej azylu politycznego nie może stanowić przeszkody orzekania w przedmiocie prawnej dopuszczalności wydania.”

3. If so:
 - 3.1. Both extradition and asylum procedures run in parallel and independently and are equal in terms of one not having priority before the other.
 - 3.2. Yes, provided there are grounds for provisional arrest stipulated in the Code of Criminal Procedure of 1997. The examination of these grounds may be influenced by the fact that the asylum application has been lodged but this depends on the court and the decision is taken on a case-by-case basis.
 - 3.3. The very fact that an asylum-seeker has lodged a relevant application for asylum does not mean that there exist grounds for an asylum. The asylum is granted by way of the decision of an appropriate administrative body – The Head of Office of Foreigners. From that moment – pursuant to art. 604 § 1 (1) of the Code of Criminal Procedure, the extradition shall not be

- allowed. Before the final decision on asylum is taken, the person in question may be extradited as any other individual whose extradition is sought provided there are no other grounds for refusal stipulated in our legislation or in the international instruments binding Poland.
- 3.4. Granting of an extradition request may have an impact on pending asylum procedures as this is one of the factors that the asylum administrative body will definitely take into account in the course of the proceedings. Depending on the case, it may also influence the asylum decision.
 - 3.5. We are of the view that the extradition in its traditional form is – as a rule – an unconditional and ultimate decision of the surrender of a person. Although desirable in some cases, we do not think that the requesting state would be willing to submit its subsequent internal procedures under any foreign scrutiny (monitoring) in terms of the observance of human rights procedural guarantees.
 4. No. It is impossible to grant extradition request in case a person has been granted asylum. If the latter is granted, an extradition cannot be in any instance allowed (see above).
 5. The fact that the asylum was granted has the universal application and hence it entails a general prohibition to extradite a person irrespective of the requesting state.
 6.
 - 6.1 Yes. In case the extradition was refused, Polish legislation – Chapter 63 of the Polish Criminal Procedure of 1997 - allows for the transfer of criminal proceedings. It is then up to the Polish prosecuting authorities to carry out the proceedings and make an independent assessment of the case on the basis of its merits as well as the applicable legislation. The preceding decision on asylum does not have an impact on the application of this procedure.
 - 6.2 Yes. In case Poland refuses extradition, it is obliged to initiate criminal proceedings domestically on the basis of art. 113 of the Polish Penal Code of 6th June 1997. This provision is as follows:

*“Article 113. Notwithstanding regulations in force in the place of commission of the offence, the **Polish penal law shall be applied** to a Polish citizen or **an alien, with respect to whom the extradition has not been granted**, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements.”*

Moreover, Poland is obliged to prosecute cases on the basis of art. 6 (2) of the European Convention on extradition dated 13.12.1957. Even though this provision relates to own nationals, Poland – by way of its declaration of 15th June 1993 – stated that persons granted asylum in Poland will be treated as Polish nationals.

The preceding decision on asylum does not have an impact on the application of this procedure.
 - 6.3 It is also possible to enforce the sentence or detention order issued by the requesting party. This is envisaged in Chapter 66 of the Polish Code of Criminal Procedure of 1997. The preceding decision on asylum does not have an impact on the application of this procedure.
 - 6.4 No. Such requests are not automatically considered as relating to political offences. Each and every request is processed on a case-by-case basis.
 7. Each and every factor that bears relevance to the case and that may have an impact on the court decision on extradition is taken into account in course of the proceedings. Granting of asylum or international protection by a third State is definitely one of these factors as it always sheds some light on the background of the case.

8. Repeated requests for asylum following the refusal for the first request do not have a major impact on the decision on extradition. Polish law treats such situation as one pending the decision on asylum so in such cases see answer to question 2.
9. Extradition courts and administrative body responsible for granting asylum – Head of Office of Foreigners may communicate with each other (and practically do so) if they are in the possession of any information that the other body is conducting its own proceedings relating to the same person. This information comes very often from the person in question (or his lawyer) and also other sources of information.
10. N/A

PORTUGAL

1. Yes, Law nº 27/2008, of 30 June lays down the conditions and procedures for the admissibility of an asylum request or a subsidiary protection. It transposes into the Portuguese legal order:
 - Council Directive 2004/83/CE, of 29 April, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
 - Council Directive 2005/85/CE, of 1 December, on minimum standards on procedures in Member States for granting and withdrawing refugee status.

It further consolidates transposition of Council Directive 2003/9/CE, of 27 January, laying down minimum standards for the reception of asylum seekers, first transposed by Law 20/2006, of 23 June hereby repealed.

Furthermore, relevant provisions regarding the stay and expulsion of foreigners can also be found in Law 23/2007, of 4 July, that lays down the legal regime of the entry, stay, departure and expulsion of foreigners from national territory.

The Constitution of the Portuguese Republic states the following:

Article 33

(Deportation, extradition and right of asylum)

1. Portuguese citizens shall not be deported from Portuguese territory.
2. Deportation of anyone who properly entered or is properly present in Portuguese territory, has been granted a residence permit, or has submitted a request for asylum that has not been refused may only be ordered by a judicial authority. The law shall ensure expedite forms of ruling in such cases.

(...)

8. The right of asylum shall be guaranteed to foreigners and stateless persons who are the object, or are under grave threat, of persecution as a result of their activities in favour of democracy, social and national liberation, peace among peoples, freedom or rights of the human person.

(www.parlamento.pt)

2. No. According to Article 48 of Law 27/2008, if a person applied for asylum, no final decision on the extradition procedures against him/her may be delivered while appreciation of his/her application is pending either in the administrative phase or in the jurisdictional phase. To that effect, the Alien and Borders Service informs the competent court of the existence of that application.

The current legislation entered into force in the 30th of August and applies to pending requests for asylum. However, similar provisions were contained in the legislation repealed by Law 27/2008, namely, in Article 5 of Law nº 15/98 of 26 March.

3. If so,
See previous reply.
4. According to Article 48 of Law 27/2008, above-mentioned, granting of asylum or subsidiary protection precludes any request for the extradition based on the facts for which such protection was granted.
5. That might be possible, in accordance with the combined provisions of article of Law 144/99 of 31 August, on international judicial cooperation in criminal matters, and of article 65 of Law 27/2008, of 30 June, if the legal requirements for the transfer are met in the case.

Article 80 of Law 144/99 of 31 August foresees, *inter alia*, as a specific requirement of the transfer of criminal proceedings to Portugal that recourse to extradition is excluded, provided that the person concerned has his/her habitual residence in Portugal.

Furthermore all the other conditions must be met, including those relating to the requirements of the fair trial, to the political offence exception or to the protection against persecution or punishment on account of the person's race, religion, sex, nationality, language, political or ideological beliefs, or his/her belonging to a given social group.

6.

7. The person concerned may produce a subsequent request whenever he/she is able to provide new evidence or whenever he/she considers that the grounds underlying the rejection or refusal of the request no longer subsist.

An accelerated procedure is provided to deal with requests that are considered inadmissible in certain cases expressly laid down in the law, including any subsequent request that is not founded in new and pertinent facts regarding the person's specific circumstances or regarding the situation in his/her country of origin.

The request is further considered inadmissible if deemed not to be instructed with new evidence. In such case, the decision declaring the inadmissibility of the request is taken by an administrative authority – the Director of the Aliens and Borders Service – after a preliminary assessment of the request (within 10 days counted from the date of the presentation of the request or of the evidence the applicant was asked to provide in support of the new request) and, notwithstanding the fact that it may be challenged before a court, such decision is immediately enforceable.

Thus, if the person is in Portuguese territory he/she must leave it voluntarily within the delay set out in the law or is subject to deportation under the legal regime of the entry, stay, departure and expulsion of foreigners (laid down in Law 23/2007, of 4 July).

Thus, we believe that a subsequent request for asylum will have the same impact on the extradition procedures as the initial request, provided that the extradition proceedings are still pending at the time the request is put forward. On the contrary, if the extradition proceedings have already come to an end, the appreciation of the request for asylum in such a situation would become purposeless.

However, an issue may arise if the person is still in the territory of the country granting extradition and if the country requesting it is the country where the person fears persecution. Reasoning from the point of view of the Portuguese legal system – where extradition may only be granted on the basis of a judgement having the force of *res judicata* –, and being not aware of any court decision delivered on this issue, we believe that the application of the general provisions of the Portuguese law concerning the possibility of an extraordinary revision of the judgement might apply in such situations.

8. As seen before, no final decision may be delivered in the extradition proceedings whilst a request for asylum is under consideration or if asylum is granted. This may have some negative implications on the extradition procedures, notably as far as lapse of time is concerned. However, given the short delays of the asylum procedure such cases appear to be residual.
9. None, so far.

10. Yes. It would be desirable to regulate, at the wider level of the Council of Europe, the impact of the asylum procedures on the decision on extradition drawing also on the experience gained at E.U. level.

ROMANIA

1. Yes. In the Romanian system, the extradition is regulated by the Law no. 302/2004 on the international judicial cooperation in criminal matters (hereinafter Law no. 302/2004). The relationship between asylum procedures and extradition procedures is regulated by the Law no. 302/2004 (art. 23) and also by the Law no. 122/2006 on the asylum (art.6).

In accordance with article 23 of the Law no. 302/2004, the following may not be extradited from Romania: a) Romanian citizens, if the conditions mentioned in Article 24 are not met; b) **persons who were afforded asylum by Romania**; c) foreign persons enjoying jurisdiction immunity in Romania, according to the conditions and limits established through conventions or other international agreements; d) foreign persons summoned from abroad for being heard as parties, witnesses or experts by a requesting Romanian judicial authority, subject to the immunities provided by international conventions.

2. Article 6 from the Law no. 122/2006 provides that the asylum-seeker shall not be expelled, extradited (*surrender*) or forcibly returned from the border or from the Romanian territory, except for the cases mentioned in article 44 of Law no. 535/2004 regarding the prevention and fight against terrorism.

The person who has been recognized as a refugee or who has been granted subsidiary protection is protected against expulsion, extradition or the return to the country of origin or any state in which one's life or liberty has been placed in danger or would be subjected to torture, inhuman or degrading treatment.

Without breaching the provisions above and without affecting, automatically, the form of protection that one is the beneficiary of, the person who has been recognized as a refugee or who has been granted subsidiary protection can be removed from Romanian territory if: a) there are founded reasons for the person in question to be considered a danger to the security of the Romanian state; or b) the person in question, being convicted of a serious criminal offence by final decision, is to be considered a danger to public order in Romania. In the sense of Law no. 122/2006, a *serious criminal offence* is considered any crime for which the law requires the punishment to deprivation of liberty with a special maximum sentence of over 5 years.

Art. 75 (2) from the Methodology for the application of the Law no. 122/2006 provides that the measure of extradition (*surrender*) is executed as soon as the decision on the asylum request was rejected is final and enforceable.

3. See the reply at question 2. If the person has applied for asylum is subject to art. 44 from the Law no. 535/2004 for the prevention and combating of terrorism, than the extradition can take place before a decision on asylum is taken. This is the case of the asylum seekers about which exists *data or reasonable grounds to*

believe that they intend to develop acts of terrorism or sustain such acts. In these cases it is also possible to execute a request for provisional arrest.

4. See the reply at question 3.
5. Article 23 from the Law no. 302/2004 does not distinguish of which state requested the extradition: state where the person fears prosecution or other state. The law reads as mentioned before: persons who were afforded asylum by Romania cannot be extradited from Romania.
6. According with article 25 from the Law no. 302/2004, a refusal to extradite an own citizen or a political refugee obliges Romania, upon request from the requesting State, to submit the case to its competent judicial authorities, in order for the criminal prosecution and trial to take place, if appropriate. For this purpose, the requesting State should send to the Ministry of Justice and Citizens Liberties free of charge, the files, information and objects that regard the offence. The Requesting State shall be informed of the results of its request.

Should Romania opt for the solution of refusing to extradite a foreign national who was accused or convicted in another State for one of the 32 offences (art. 2 from the FD on EAW) or for any other offence for which the law of the requesting State provides the penalty of imprisonment with a special maximum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action shall take place *ex officio*, without exception and without delay. The Romanian authorities shall decide according to the same conditions as those for any serious offence provided and punished by the Romanian law.

In case of a sentence, the rules from the Romanian law for the recognition and the execution of that sentence apply. Recognition in Romanian territory of a foreign criminal judgement or of a foreign judicial document may take place if: a) Romania has assumed such an obligation through an international treaty to which it is a party; b) the right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950 and ratified by Romania through Law No. 30/1994, has been observed; c) it has not been rendered for a political offence or for a military offence that is not an offence of ordinary competence; d) complies with the public policy of Romania; e) the judgment or document is capable of producing legal effects in Romania according to Romanian law; f) the same person has not been sentenced for the same acts in Romania; g) the same person has not been sentenced for the same acts in another state whose sentence has been recognized by Romania. Foreign criminal judgments may be recognized in Romania also if they do not meet the condition in a), based on reciprocity. The execution of a judgment is possible, regardless of the verification of the conditions mentioned before, also where it refers to a Romanian citizen whose extradition was previously granted by Romania to the foreign State that rendered the judgment.

7. Such situation has been already questioned by Romania when a person who has been granted with asylum by a third state was requested to be extradited by the state where the person feared prosecution. The decision was not to extradite that person.
8. The application to grant access to a new asylum procedure can be submitted only if the following conditions are fulfilled cumulatively: a) it must be submitted personally, the person should be on Romanian territory; and b) the previous resolution procedure of the asylum application should have been finalized or, by case, the application of granting access to a new asylum application, without the alien having obtained a form of protection or the cancellation or cessation procedure being finalized as a result of which the form of protection was cancelled or withdrawn. The previous procedure will be finalized on the date when the decision to close the file is communicated, on the expiry of the legal deadline to submit an appeal against the decision of the National Refugee Office, at the expiry of the deadline to submit a second appeal or, by case, the moment when the decision is pronounced by the Court of Appeals.
9. There is a co-ordination between both authorities. The status of the requested person in Romania is the first element that the Romanian authorities verify (to establish if he or she is a Romanian national or a person who was afforded asylum by Romania or who has applied for asylum). There is an exchange of information about the status of the requested person and each authority - one with the request for extradition and the other one with the asylum request - is notified about the existing procedures.
- 10.No.

RUSSIA

1. The legislation of the Russian Federation does not contain any specific provisions concerning regulation of relationship between extradition and asylum procedures.

Decision to extradite or not is made taking into account the fundamental principle, set in Article 63 of the Constitution of the Russian Federation: extradition of politically persecuted persons to other states is not allowed.

According to Article 464 of the Code of Criminal Procedure of the Russian Federation, extradition is not allowed, if the person, in respect of whom the request was received from a foreign state, had been granted asylum in the Russian Federation in connection with the possibility that this person would be persecuted for racial, religious, citizenship, national, social or political reasons in that state.

That's why in all cases, when extradition of a wanted person, who wishes to get asylum on the territory of the Russian Federation, is requested, the issue of existence of grounds to grant such asylum is considered first of all.

2. As provided in Article 10 of the 1993 Federal Law "On refugees", the person who has applied for recognition as a refugee or is recognized as a refugee or lost his/her refugee status, can not be returned against his/her will to the territory of state of his/her citizenship (or – for a person who has no citizenship – to the territory of the state of his/her last habitual residence), if upon return to that state this person will become a victim of persecution for racial, religious, citizenship, national, social or political reasons.

According to Article 12 of the Federal Law "On refugees" persons who have been granted provisional asylum on the territory of the Russian Federation are not subject to be returned to the state of origin.

The Russian Federation, in full compliance with its obligations under the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of (hereinafter referred to as the "1984 Convention"), considers a threat to a person to become victim of torture and other cruel, inhuman or degrading treatment or punishment in the state of his/her origin as a ground to grant provisional asylum.

As it follows from the aforementioned, despite the absence of specific provisions in the Russian legislation, directly regulating relations between asylum and extradition procedures, the above mentioned federal laws correspond with each other in cases of granting extradition and asylum.

3.
 - 3.1. Proceedings of extradition of the sought person, in case of her/his application for asylum on the territory of the Russian Federation, is to be suspended until the decision to refuse asylum becomes final (taking into account that this person has the right to appeal against this decision).
 - 3.2. Yes, it is possible. In the course of processing foreign requests for extradition, conditions and procedures of detaining persons who are internationally wanted and taking them into custody are defined by the applicable international treaties of the Russian Federation and the national legislation.

In this connection, the provisions of Chapter 54 of the Russian Code of Criminal Procedure concerning application of restrictive measures in the form of taking the sought person into custody or under house arrest in order to ensure her/his possible extradition are applied if it does not contradict with the applicable international treaties of the Russian Federation.

An application of a wanted person for asylum on the territory of the Russian Federation does not mean that this person has an immunity from taking any restrictive measures connected with the request for extradition of this person.

- 3.3.** The Russian Federation, being a Party to the 1951 Convention relating to the Status of Refugees (hereinafter referred to as the “1951 Convention”), assumed the obligation under Article 33 not to expel or return (“refouler”) refugees against their will to the states where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

However, according to this Article the benefit of the said provision may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. Deportation of such refugees is made in pursuance of court decisions.

Besides, the 1951 Convention, Article 1 F deprives of right to international protection any person with respect to whom there are serious reasons for considering that:

- (a) she/he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) she/he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) she/he has been guilty of acts contrary to the purposes and principles of the United Nations.

The obligation of the Russian Federation under the 1984 Convention may be an obstacle for extradition of the abovementioned persons, if these persons upon their return to the state of their origin will be victims of torture and other cruel, inhuman or degrading treatment or punishment.

In accordance with the Guidelines on granting asylum in the Russian Federation, approved by the Decree № 746 of the President of the Russian Federation of 21 July 1997, asylum is granted on the territory of the Russian Federation, if an asylum-seeker is, *inter alia*, prosecuted for committing acts recognized as criminal offences in the Russian Federation, or is guilty of committing acts contrary to the purposes and principles of the United Nations; or if she/he is being criminally prosecuted or is serving a sentence on the territory of the Russian Federation.

- 3.4.** A foreign request for extradition of an asylum-seeker does not suspend or stop procedures of considering her/his application for asylum.

In such a case, while taking a decision on the application for asylum to the person sought, the information connected with her/his extradition is examined to find any circumstances allowing to apply towards him/her the exclusion clauses provided for in Article 1, paragraph F and Article 33, paragraphs 1, 2 of the 1951 Convention, as well as Article 2, paragraph 1, subparagraphs 1-3 of the Federal Law “On refugees”.

- 3.5.** Yes, it is quite possible. The practice of giving or getting the so-called diplomatic assurances proved very effective.

- 4.** A) The decision to extradite a person sought cannot be made until the revocation of asylum status of that person, when the asylum was granted in relation to the State requesting the extradition. And as it was said, the reliable information contained in the extradition request may lead to the revocation of asylum.

- B) When the asylum was granted in relation to the State other than the State requesting the extradition, the reliable information contained in the extradition request may lead to the revocation of asylum if there are the grounds provided for in the 1951 Convention (e.g., in case of committing a crime against peace, a war crime, or a crime against humanity, or acts contrary to the purposes and principles of the United Nations).
5. Granting of asylum on the territory of the Russian Federation does not mean general restriction to extradite this person to another state (see reply to question 1).
 6. **6.1** According to many international treaties of the Russian Federation, if a person can not be extradited, the necessary materials of criminal prosecution against him/her may be forwarded to the competent authorities of the Russian Federation for considering of a possibility to initiate criminal proceedings in respect of this person.
 - 6.2 Only in accordance with the applicable international treaties of the Russian Federation.
 - 6.3 No, it does not.
 - 6.4 There is no such a notion as a “political offence” in the legislation of the Russian Federation.
 7. All cases of granting asylum in the Russian Federation are considered only in accordance with the applicable international treaties of the Russian Federation and the Russian legislation. Meanwhile the information that led to granting asylum in any foreign state may be taken into consideration, when this information is known and reliable.
 8. The possibility of considering any repeated request for asylum is limited to the case, when the asylum-seeker proves that after the rejection of the previous application some new serious reasons justifying the grounds for granting an asylum.
 9. Co-ordination and exchange of information between the Russian authorities responsible for asylum and extradition procedures are performed by forwarding of requests for and receipt of appropriate information in the course of their work.
 10. Absence of transparency of asylum procedures (confidentiality) and the fact that the State requesting extradition has no right to know concrete allegations against it as well as no right to appeal the decision to grant asylum may be referred to as other serious problems. These problems often lead to abuses of the right to get asylum. When asylum is granted, the state of origin is, in fact, “charged” with persecution of the person whose extradition has been requested. But the legal grounds of and evidence behind such decisions are not disclosed and this state can not reply to such “charges” in order to prove its “innocence”, although a natural person has enough legal possibilities to defend her/his rights. This creates conditions for serious abuses in the sphere of asylum (for example, by politically influencing submitting false information by the interested person). As a result, the principle of ensuring inevitability of liability for criminal offences committed is not enforced and the international co-operation in crime combating, as well as the relations between the requesting State and the requested State may be severely damaged. This conclusion is confirmed by the asylum practice of some Council of Europe Member States (in particular, Austria, the United Kingdom).

SLOVAKIA

1. Yes, the relationship between the two procedures is regulated by the relevant international treaties binding the Slovak Republic and by the Code of Criminal Procedure. The relevant provision of the Code of Criminal Procedure is as follows:

“Article 501

Inadmissibility of extradition

Extradition shall be inadmissible if:

- a) it concerns a Slovak national, unless the obligation to extradite own nationals is contained in an international treaty or a decision of an international organisation which is binding for the Slovak Republic,
- b) *it concerns a person who applied in the Slovak Republic for an asylum or who was granted asylum or an additional protection, to the extent of the protection provided to such persons by special legislation or by an international treaty; this does not apply if the person concerned applied in the Slovak Republic for asylum anew whereas a final decision on the request for asylum had been issued,*
- c) the criminal prosecution or the enforcement of the sentence are prescribed under the law of the Slovak Republic,
- d) the offence, for which the extradition is requested, is a criminal offence only under legal system of the requesting State, but not under legal system of the Slovak Republic,
- e) the criminal offence for which extradition is requested is solely of a political or military nature,
- f) the criminal offence was committed in the territory of the Slovak Republic, unless, due to the specific circumstances of the commission of the offence, priority shall be given to the criminal prosecution in the requesting State, for reasons of establishment of the facts, the degree of punishment or the enforcement of the sentence,
- g) the person has already been finally convicted or released by the Slovak court for the offence, for which the extradition is requested, or
- h) the person whose extradition is requested would not, under the law of the Slovak Republic, be considered criminally responsible at the time of the commission of the offence or there are other factors excluding his criminal responsibility.”.

In addition to the provision of Article 501 lit. b) it should be mentioned that the court in extradition proceedings always waits for a final decision to be issued in an asylum proceedings. It should also be noted that provisions of international treaties have priority over the national law.

2. Please see the answer to the first question.
3. If so:
 - 3.1. As it is indicated in response to the first question the priority is given to the asylum proceedings. If an asylum or additional protection is granted, the extradition is inadmissible.
 - 3.2. Yes.
 - 3.3. Conditions are regulated in Article 501 lit. b) of the Code of Criminal Procedure (please see the answer to the first question).
 - 3.4. Not applicable.
 - 3.5. The extradition may be subject to the application of human rights guarantees. It is, however, not applicable if the asylum was granted.
4. Not applicable

5. No, in principle granting the asylum has only impact on the possibility of extraditing a person to the state where the risks justifying the granting of asylum exist.
6.
 - 6.1 The Slovak legislation provides for a possibility to transfer criminal proceedings in general. This possibility is not limited to cases where the extradition has been refused. Therefore a transfer under the circumstances described in the above question is not excluded.
 - 6.2 If the extradition is not granted by the Minister of Justice, the Ministry of Justice is obliged to submit the case to the General Prosecutor's Office for further consideration. It applies to all cases where the extradition is refused. However, there is an intention to delete such a provision from the statute for various reasons, one of the reason being that such provision is superfluous because of the existing general obligation to prosecute any criminal offence (subject to the jurisdiction of the Slovak authorities).
 - 6.3 The enforcement of a sentence or detention order requires the existence of an applicable international treaty regulating the enforcement of such sanctions.
 - 6.4 There is no specific legal provision or jurisprudence concerning this issue. The relevant treaties and conditions provided would be applied. As regards the enforcement of the sentence the recognition procedure is required. Such procedure is regulated by a national law. A decision can be recognized if a person was not tried for the offence which is solely of a political nature. However the conditions would be considered by the court in a different framework. The refusal of extradition for the reason that an asylum was granted to a particular person does not prevent the Slovak authorities to consider requests for transfer of criminal proceedings, transfer of the sentenced person (if there is an applicable treaty in place which allows for the "transfer" also in cases where a person is at the territory of the administering state) or even to initiate its own criminal proceedings.
7. The information on the granting of asylum or international protection by a third State may have an impact on a decision of an asylum authority. In principle it should not effect a decision of a court on admissibility of extradition. It can, however, be further considered by the Minister of Justice, while deciding on granting the extradition.
8. According to the recent amendment to the Code of Criminal Procedure the repeated request for asylum does not prevent the court to decide that the extradition is admissible provided that there was a final decision issued on the first request. The new regulation of this issue takes into account the rights of the person sought as well as the experience with a situation where these rights have been misused in order to prolong the extradition proceedings. The repeated request for asylum would be disregarded only if a final decision has been issued. It means that a person must have had a right to appeal against a decision of an administrative authority as well as the right to appeal against a decision of a court concerning the review of a decision of an administrative authority. The key element of a new solution is that a person had a possibility to appeal before an independent court. Nevertheless if new serious reasons justifying the grounds for granting an asylum would be provided concerning the new request for asylum, the Minister of Justice would most probably refuse extradition, although it is not specifically provided for by the law. The Minister of Justice is bound in its decision making by the Constitution of the Slovak Republic, where respect for fundamental rights is clearly regulated.
9. No particular information system is provided between the asylum and extradition authorities. In most cases defence lawyers provide important information or documents. UNHCR is also involved in some cases. The reports of Amnesty International or other internationally recognized bodies are publicly available. The authorities responsible for asylum procedures have various sources of information as well.
10. Yes, in number of cases. The misuse of asylum system in extradition proceedings was significant. In many cases request for asylum was submitted to the competent authorities only subsequent to

the request for extradition being received by the Slovak Republic. In order to prolong the extradition proceedings, requests were submitted repeatedly without new grounds. This experience has led to the recent amendment of the applicable legal provisions.

SLOVENIA

1. The question on the regulation of the relationship between extradition and asylum procedure is not explicitly addressed in either extradition or asylum legislation. The two procedures can be carried out independently and parallel. The asylum procedure is regulated in the Asylum act and lies within the competence of the Ministry of interior, while the extradition procedure is regulated in the Criminal procedure act and lies within the competence of the district court and Ministry of justice. In view of the implications which a positive refugee status determination has with respect to extradition, however, it is the practice to suspend the extradition process. Namely the second paragraph of the article 530 of the Criminal procedure act states that minister responsible for justice shall not permit the extradition of an alien if he/she enjoys the right of asylum in the Republic of Slovenia. There are also a few decision of the constitutional court of the Republic of Slovenia regarding the relationship between extradition procedure and asylum procedure. The Constitutional Court has stated that a decision on granting asylum prevents any forcible removal or return of a person and therefore also extradition, as well as that minister responsible for justice is bound by a final decision on the right of asylum as well as permission on residence in the Republic of Slovenia.
2. No, not before the decision of the asylum has become final. That conclusion can be made upon the decision of the article 34 of the Asylum act which determines that the applicant for asylum must leave the territory of the Republic of Slovenia when the decision in the asylum procedure has become final, which consequently means that the asylum seeker may not be exiled, deported or extradited before the final decision in asylum procedure is taken.
3. If so:
 - 3.1. As mentioned before the procedures are carried out independently and *parallel*.
 - 3.2. Yes.
 - 3.3. *Under no circumstances*.
 - 3.4. No. Even in cases where the extradition was granted, due to the fact that the Ministry of justice has not been formally informed about the asylum procedure against that person or if the person has filed the application for asylum after the decision on extradition, the person may not be extradited before the finalization on the asylum procedure. If the right to asylum is granted a new decision regarding the extradition is issued.
 - 3.5. Theoretically it is possible to make that precondition, because the article 531 of the Criminal procedure act allows that minister responsible for justice in the decision, by which he grants the extradition of an alien orders any precondition for extradition. However, we should point out, that normally the minister responsible for justice will not allow the extradition, if human rights including the right to a fair trial could be violated in the requesting state.
4. No.
5. According to the Slovenian system the fact that asylum was granted does not entail the general prohibition to extradite a person, but is limited to the states where the person fears prosecution.
6. 6.1 Yes, the transfer of proceedings may be allowed upon reciprocity or upon existence of the international legal instrument. The material legal basis represents the article 123 of the Criminal Code, which stipulates that the Criminal Code of the Republic of Slovenia shall be applicable to any foreign citizen who has in a foreign country committed a criminal offence against it or any of its citizens and has been apprehended in the Republic of Slovenia and is not extradited to foreign country. And the procedural basis could be found in the article 520 of the Criminal Procedure act. Upon the request of a foreign country, Slovenia can prosecute Slovenian nationals or foreign citizens for a criminal offence committed abroad. The request for prosecution must be transmitted, together with the files, to the competent public

prosecutor in whose territory that person has permanent residence. Refusal to prosecute can only be based on the same grounds as for an offence perpetrated in Slovenia.

- 6.2 Yes, as mentioned above the material precondition for the application of the principle of *aut dedere aut judicare* is article 123 of the Criminal Code. And the procedural precondition is principle of legality which is one of the fundamental principles of Slovenian criminal procedure and determines that the public prosecutor is bound to institute criminal prosecution if there is reasonable suspicion that a criminal offence liable to prosecution *ex officio* has been committed. According to cited principle Slovenian law enforcement authorities (jurisdiction for institution of criminal proceeding lies in the hand of district public prosecutors) must prosecute Slovenian nationals or persons having permanent residence in Slovenia for a criminal offence committed abroad, if extradition was declined. They must also prosecute foreign citizens who have, in a foreign country, committed a criminal offence against that country or any of its citizens and have been apprehended in the Republic of Slovenia and have not been extradited to foreign country.
- 6.3 Yes, according to the article 517 of the Criminal procedure act domestic courts may grant the request of a foreign body for execution of a judgment of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists. The domestic courts executes punishment imposed by a final judgment of a foreign court by imposing sanction in accordance with the criminal law of the Republic of Slovenia.
- 6.4 As regard to the enforcement of sentence issued by the requesting party, we should point out that despite the fact that the Criminal procedure act does not explicitly determines the violations of human rights and possibility of political prosecution as bar to recognition of the foreign judgment, that court jurisprudence is clear in that respect. It has been concluded that request for execution of a custodial sentence according to a final criminal judgment of the court of another country may only be granted if the decision does not indicate a violation of human rights, as well as that the decision has not been issued due to a political or military offence.

As regard to the institute of the transfer of criminal proceedings there is no legal provision which would regulate this question, however the transfer may only be permitted if all legal conditions for the transfer are fulfilled. That consequently means that the procedure before the Slovenian court may be initiated by the indictment of the public prosecutor, and he will probably not file it, if it arises from the facts and evidences transmitted by the requesting state that the act relates to political offence.

7. Due to the fact that Slovenia is also party of the Convention relating to the Status of Refugees the extradition of the person to which asylum has been granted by other states is rejected. The prohibition of *refoulement* of refugees or asylum-seekers is binding on States regardless of whether or not it is explicitly provided for in an extradition treaty or legislation. Article 33 of the 1951 Convention establishes a fundamental humanitarian norm, from which no derogation is permitted. For States Parties to the 1951 Convention or the 1967 Protocol, the obligation to protect refugees and asylum-seekers from *refoulement* prevails over any duty to extradite which they may have under a bilateral or multilateral extradition treaty with respect to a State requesting extradition.
8. According to the asylum act the asylum seeker may refill the application for the asylum only if he produces evidences that in meanwhile (from the rejection of the previous application) the circumstances have significantly changed. If this prerequisite is not fulfilled the competent authority does not initiate the procedure and the application is rejected. Also in the meanwhile the decision with which the extradition was granted may be executed, because the execution of the extradition is only suspended or prohibited within ongoing asylum procedure.

9. The Ministry of justice is normally informed with ongoing asylum procedures, either by the person himself, her legal counsel or INTERPOL.
10. *No*

SPAIN

1. The provisions about asylum and extradition in the Spanish Asylum Law (Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado) are the followings:
 - Article 5.2 related to the effects of the asylum application: the asylum application based on whichever cause contemplated by this Law shall mean, until the final decision has been taken, the non-extradition of the applicant that could remain or, in its case, the enforcement of it. For that purpose, the asylum application shall be informed immediately at the institution responsible for the extradition process.

The First Additional Disposition of the Law also foresee in cases, in which, in accordance with article 5 paragraph 2 of this Law, the extradition application is pending, the decision about the asylum application shall be communicated to the body dealt with the extradition procedure.

2. No until the decision of the asylum procedure has been taken.
3.
 - 3.1 The asylum procedure stops de extradition procedure till the decision of asylum has been taken.
 - 3.2 Yes. However, the extradition will depend on the decision taken in the asylum procedure.
 - 3.3 In any circumstances.
 - 3.4 In this cases, the revocation of asylum can be decide by the Council of Ministries when there is a situation foreseen in the article 14 paragraph 3.a), and paragraph 4 of the Qualification Directive 2004/83.
 - 3.5 No until the decision of the asylum procedure has been taken..
4. the principle of “non refoulement” granted by the asylum is only applied to country of origin, or residence in case of stateless person, and for the countries that could do a double refoulement.
5. If the reasons for the extradition are for criminal acts can be prosecuted for the Spanish Tribunals, the case is sending to the public prosecutor (Fiscal).
6. There is not legal provision, but in this case the refugee is sent to the country of asylum, not to the origin one.
7. The Spanish Asylum Law foresee the possibility of rejection in a screening phase the repeated asylum applications if not new circumstances have appeared in the country of origin that may signify crucial changes in the merits of the application.
8. There are enough data about the impact, however, the length of the asylum procedure could be a delate of the extradition.
9. In these cases the coordination between the Institutions of asylum and the Tribunals or Judges responsible for the extradition procedures should be reinforced.
10. No comments.

SWEDEN

1. No.
2. An application for asylum in Sweden does not bar extradition. However, according to the Swedish Extradition for Criminal Offences Act there is an explicit prohibition to extradite a person if he or she, on account of his or her origin, belonging to a particular social group, his or her religious or political views, or otherwise on account of political circumstances, would run the risk of being subjected in the foreign state to persecution which is directed against his or her life or liberty or is otherwise of a harsh nature, or if he or she does not enjoy protection against being sent to a state in which he or she would run such a risk.

This ground for refusal is tried independently of the asylum procedure but the information and the decisions in the asylum case might have an impact on the outcome of the extradition procedure.

Moreover, besides the explicit grounds for refusal in the Extradition for Criminal Offences Act, there may exist other grounds for refusal with reference to international commitments, for example if an extradition would conflict with the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

- 3.1 There is no regulation on what procedure has priority. However, the outcome of one procedure might have impact on the outcome of the other procedure.
- 3.2 Yes. However, if there are good reasons to believe that extradition will be denied with reference to a risk for persecution or torture or due to another ground for refusal, the arrest may be suspended or not permitted in the first place.
- 3.3 See our answer to question 2.
- 3.4 No, not per se. The Swedish Migration Board and the Swedish Migration Courts tries the asylum case independently of the extradition procedure. However, any evaluation from the Supreme Court in the extradition case about the risk for persecution might have an impact on the migration authorities' decisions.
- 3.5 The Extradition for Criminal Offences Act does not preclude the use of guarantees. However, the use of such guarantees would be subject to careful considerations and might not be appropriate or prohibited according to international undertakings. Therefore, the possibilities to extradite the person sought subject to such guarantees are limited.
4. No, not automatically but when the person sought has been extradited and no longer is in the territory of Sweden there is no ground to grant asylum in Sweden and the matter will therefore be dismissed. The person may however apply for asylum should he or she enter the territory of Sweden again.
5. No, granting asylum does not per se exclude extradition, but extradition to a country where the person would risk persecution or torture and other cruel, inhuman or degrading treatment or punishment or where he or she would not enjoy protection against being sent to a state in which he or she would run such a risk, would never be granted, see paragraph 2.
- 6.1. If Yes, on condition that an offence has been committed according to Swedish criminal law and that Swedish courts have jurisdiction. Swedish legislation provides an extensive extraterritorial jurisdiction for Swedish courts. Provided that the requirement of dual criminality is full-filled, Swedish courts have jurisdiction of any alien present in Sweden, if the crime under Swedish law can result in imprisonment for more than six months.

- 6.2. Sweden is bound by a large number of international treaties containing the principle of aut dedere aut judicare. This principle is not subject to any specific provision in our legislation but is manifested through our legislation on (extraterritorial) jurisdiction, extradition in general and the conditions for law enforcement agencies to initiate a preliminary investigation and for the prosecutors to institute a prosecution, if an offence has been committed according to our criminal law.
- 6.3. Yes, it will be possible to enforce a sentence if the requirements in the applicable treaties and Swedish legislation are met with.
- 6.4. Not automatically, it depends on the ground for refusal of the request for extradition and the circumstances in the case.
7. It will have effect on the evaluation of the possibilities to extradite, see paragraph 2.
8. The possibility for repeated requests for asylum is limited in Sweden. Repeated requests for asylum does not effect the extradition procedure but the outcome of the asylum requests might have influence on how to judge the extradition request.
9. The person sought will be assigned a representative which will assure that relevant information is exchanged in respective procedure. Moreover, should the need arise, the competent authorities can acquire information from other authorities in order to try the case.
10. No.

SUISSE

1. Non.
2. Oui, sous réserve des réponses qui suivent.
3. Dans l'affirmative,
 - 3.1. Aucune procédure n'a la priorité. Cependant, si le statut de réfugié a été octroyé dans la procédure d'asile, celui-ci s'oppose à une extradition.
 - 3.2. Oui. Toutefois si le statut de réfugié a été octroyé, la personne concernée ne peut pas être arrêtée.
 - 3.3. Elle peut être autorisée à condition que la demande d'asile soit rejetée et que le statut de réfugié ne soit pas reconnu.
 - 3.4. Si la demande d'asile a été déposée avant la décision d'extradition, il y a lieu d'attendre la décision finale qui aura été prise en matière d'asile avant d'exécuter la décision d'extradition. L'extradition n'a ainsi pas d'impact sur la procédure d'asile. Par contre, si l'extradition a été accordée avant le dépôt d'une demande d'asile, l'extradition peut être exécutée.
 - 3.5. Oui.
4. Il appartient à l'autorité compétente en matière d'asile de décider, au vu des faits à l'appui de la demande d'extradition ou d'autres faits qui se sont présentés depuis l'octroi de l'asile, si l'asile peut être révoqué.
5. Elle est limitée à l'Etat d'origine de la personne.
6.
 - 6.1. La législation suisse permet de satisfaire au principe « aut dedere aut judicare ». Elle prévoit explicitement un for suisse en cas de refus de l'extradition s'il s'agit d'une infraction pour laquelle une extradition est possible et si la personne poursuivie se trouve en Suisse et qu'elle n'est pas extradée.

en raison du statut de réfugié.
 - 6.2. Elle prévoit une telle obligation. Toutefois, une procédure ne peut être engagée que si des preuves suffisantes sont à disposition des autorités compétentes, ce qui implique dans le meilleur des cas une demande de délégation de l'Etat dans lequel les faits ont été commis.
 - 6.3. Oui, sur demande de l'Etat concerné.
 - 6.4. La qualification juridique dépend de la description des faits qui ont donné lieu à la demande de coopération. Dans la mesure où les faits ont un caractère politique, la poursuite pénale en Suisse est exclue. Cf. également la réponse à la question 6.1.
7. La personne concernée ne peut ni être arrêtée en vue d'extradition, ni être extradée vers son pays d'origine.
8. Aucun impact. voir aussi la réponse à la question 3.4
9. Par un simple échange d'informations entre les autorités concernées. En outre, une coordination se fait par le biais de la décision rendue en matière d'asile : cette décision déterminera si une personne pourra ou non être extradée

10. La question de savoir s'il existe un droit pour la personne ayant le statut de réfugié ou ayant obtenu l'asile d'être informée d'une recherche internationale à son encontre.

TURKEY

1. Turkish national law does not contain any special provision on the regulation of the relationship between extradition and asylum procedures.

Turkey is party to the 1951 UN Convention on the Status of Refugees (Geneva Convention) and its 1967 Additional Protocol with "geographical limitation" and also the European Convention on Extradition. Thus, the provisions of the 1951 Convention apply to those would-be refugees who arrive into the Turkish territory from the "European countries".

According to the Turkish legislation, all the responsibilities concerning refugees stipulated in the 1951 Geneva Convention are assumed and implemented vis-à-vis applicants from "European countries".

Those applicants coming from non-European countries are qualified as asylum-seekers. Responsibilities arising from the Geneva Convention such as international protection as well as other types of protection, non-refoulement principle and other liabilities towards refugees in terms of social assistance, education, employment etc. are assumed and extended by Turkey to asylum-seekers as well. Due to geographical limitation, however, asylum-seekers qualified as refugees are resettled into third countries by UNHCR in collaboration with International Organization for Migration (IOM).

Turkey extends protection to any individual who is entitled to benefit from it pursuant to international covenants irrespective of their country of origin. Social and medical assistance is also provided within the capacity of Turkey.

Turkey extends protection to persons (asylum-seekers) from "non-European" countries, who have acquired UNHCR's refugee status and allows them to stay in Turkey until they are resettled in a third country. UNHCR, in cooperation with IOM, organizes the resettlement process. Therefore, whether coming from a European or a non-European country each case is taken up and processed according to its own merits. No application is rejected solely on the basis of the fact that the applicant is from a non-European country.

2. No, a person sought for extradition can not be extradited during the asylum procedure.

Article 3 of the European Convention on Human Rights and Fundamental Freedoms foresees that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Furthermore, Article 14 of the Universal Declaration of Human Rights states: "Everyone has the right to seek and enjoy in other countries asylum from persecution"

In keeping with the principle of "non-refoulement" articulated in Article 33 of the 1951 Geneva Convention on the Status of Refugees, no asylum-seeker whose application is rejected in Turkey is sent back to the country of origin or anywhere else in which the life of this person is endangered.

Persons who are assessed to be under risk of persecution in their countries of origin are not deported, even if they are not qualified to be a refugee or asylum-seeker. The exclusion clauses are restrictively interpreted, individually assessed and resorted to only where there is clear and compelling evidence.

3.
 - 3.1. Asylum procedure has priority.
 - 3.2. No, it is not possible to execute a request for provisional arrest during the asylum procedure. Request for provisional arrest remains unexecuted till the end of the asylum procedure results.
 - 3.3. It is not possible to extradite a person who has applied for asylum.

- 3.4. Under all circumstances, we have to wait the asylum procedure to be concluded.
- 3.5. Yes, it is possible.
4. Yes, the fact that asylum was granted in our country entails a general prohibition to extradite a person.
5. Yes, we could take over the criminal proceedings
6. The granting of asylum by a third state has no effect on the extradition procedures. The third State's decision is not binding for Turkey.
7. Turkey has furnished a legal ground for the "Regulation on the procedures and principles related to population movements and aliens arriving in Turkey either as individuals or in groups wishing to seek asylum either from Turkey or requesting residence permits in order to seek asylum from another country" (1994 Asylum Regulation), with the Cabinet Decree No 6169 of 30 November 1994. This regulation is amended by the regulation accepted by the Cabinet Decree No 9938 of 16 January 2006.

According to the amended Article 4 of this regulation, "Individual aliens who are either seeking asylum in Turkey or requesting residence permission in order to seek asylum from another country shall apply without delay to the governorship of the place where they are present if they entered Turkey legally; and shall apply without delay to the governorship of the locality where they entered Turkey if they entered illegally."

The decisions on the applications of individual aliens who either seek asylum from Turkey or request residence permission in order to seek asylum from another country are concluded by the Ministry of Interior (Directorate-General for Security, Department of Aliens, Frontiers and Asylum) in conformity with the 1951 Geneva Convention pertaining to the Status of Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees and the above-mentioned Regulation.

Those aliens whose applications are accepted are accommodated in a guesthouse deemed suitable by the Ministry of Interior or freely reside in a locality determined by the Ministry of Interior.

Those aliens whose applications are not accepted may appeal to the relevant governorship within 15 days.

The cases of those whose appeals are definitely rejected, are assessed within the framework of the general provisions regarding the aliens.

Turkey informs the United Nations High Commissioner for Refugees (UNHCR) about the applicants coming from outside Europe and ensures that they are registered and interviewed by the said Office. Therefore, while a decision is to be made on the applications, UNHCR's opinion is also taken into consideration, the information contained in the applicant's case is mutually shared and the status of the applicant is collectively debated. Therefore, the decisions of UNHCR and of the Ministry of Interior are harmonized.

In principle, as for the proceedings associated with the applications and for issues such as accommodation, food and lodging, transfer, admission to third countries, provision of passports and visas in particular, cooperation is ensured with UNHCR and other relevant international organizations via the Ministry of Foreign Affairs. The activities concerning the transfer of such aliens, in particular, are carried out in cooperation with the International Organization for Migration (IOM).

If the asylum request is refused finally, the extradition procedure will be concluded. If the request is accepted, it is not possible to extradite the person.

8. Yes, it may take a long time to finalise the asylum procedure.

9. Yes. Since Turkey has cases mostly with the European Countries, European Convention on Extradition is applied almost in every extradition case. According to this Convention, refugee status is not a matter which should be taken into consideration for extradition.

Unfortunately a lot of Turkey's extradition requests are refused by various European countries on the basis of refugee status or asylum of the offender, especially when the offender is sought for crimes of terror. Turkey faces problems in outgoing extradition requests regarding terror offences. Requested state authorities refuses our extradition requests mostly on account of the fact that the requested person was granted refugee status or asylum right or the offence was political.

Although Article 33 of the UN Convention on Status of Refugees dated 1951 provides that "No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.", provisions of Article 1/f of the said Convention should not be ignored while granting refugee status. According to the Article 1/f ; the provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed certain serious offences.

10. -