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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

Information received from states  
on practical problems encountered as regards the interaction between extradition and  
asylum procedures

## Contents

Introduction.....	3
Belgium.....	4
Croatia .....	5
Estonia.....	6
Finland .....	7
Greece .....	8
Netherlands.....	9
United Kingdom .....	10

## **Introduction**

During its 64th meeting, the PC-OC discussed the interaction between extradition and asylum proceedings on the basis of a discussion paper prepared by Mr Erik Verbert (Belgium) and a presentation by Mr Olivier Beer (UNHCR) and decided to:

- take stock of the most important practical problems encountered in this field by inviting experts to send a paper to the Secretariat by 15 September at the latest;
- instruct the PC-OC Mod to reflect on the information gathered and make proposals for possible follow-up.

## Belgium

The past years, we have had significant issue surrounding the extradition – asylum problem. In a very general fashion and looking back to our discussion with the UNHCR's representative, I am more than ever convinced that asylum and extradition represent two intrinsically worlds that rather function next to each other than together. Our respective legal frameworks, purposes (*raison d'être*) and terminologies – including their legal meanings) are very different, even to the extent that there are essentially no bridges between them.

In the end the matter should be addressed at the level of domestic legislation. Bridges – all to avoid conflicts and to “marry” two incompatible “legal systems” in function of the respective conventional obligations – should be built in our domestic legal provisions. In that respect I most welcome the information that was provided by Switzerland. Also Canada has made most interesting changes in the extradition legalization on the one hand and the asylum legislation on the other hand. Only through proper legislation both procedures can be managed in such a way that (1) excessive delays are avoided and (2) an exchange of relevant information can be guaranteed such as that (3) both procedures can take into account all relevant information and take into account the respective obligations under the respective conventional frameworks and corresponding institutions.

Next to that I would like to stress the importance of transnational / international exchange of information between the immigration and / or asylum instances. This is a kind of cooperation that falls outside the scope of our committee since it is to some extent police to police cooperation and / or administrative cooperation. I am more than ever convinced that many asylum requests are made on the basis of incomplete or wrong information. The exact identity of the applicant is often incorrect, in some cases even the nationality of the applicant is not the nationality he or she claims to have. This very preliminary yet essential information may avoid asylum issues in a very early stage of the extradition procedure even long before an extradition request is being made.

I leave it to these quite preliminary remarks, but I will certainly come back to this complicated and sensitive issue. About the latter characterization, I would say that in far more cases than we can imagine, there is no reasonable ground to make the issue ‘sensitive’. A reasonable approach based on adequate multi-level cooperation can and will avoid the kind of sensitivities that only complicate cooperation and thus, in the end the proper administration of the law.

## **Croatia**

The Republic of Croatia has specific problems related to extradition and asylum.

A person who is in detention usually submits the request for asylum after the Minister has granted the extradition and that is only delaying execution.

It is purposely obstructing justice.

## **Estonia**

The longest ever extradition case between Estonia and state X lasted 8 years and 4 month. And from that time to solve asylum procedure took nearly 8 years. The case was so complicated and from other hand so funny and finally after eight and almost half a year we extradited the person from Estonia to state X. If you want, I can tell the “story” during next PC-OC session.

Despite that one case where the extradition and asylum procedures interacted Estonia still do not have any specific laws on this point.

## **Finland**

In response to your query on the interaction between extradition and asylum procedures please be advised of the following.

In Finland these two procedures are regulated by two different sets of rules administered by different branches of government and having no point of convergence whatsoever. Asylum procedures fall within the competence of the Ministry of the Interior whereas extradition is handled by the Ministry of Justice. Communication between these two agencies is haphazard; on general level problems arise when one hand doesn't know what the other is doing.

A specific problem arises when the person whose extradition is being requested applies for asylum or has already previously done so with respect to the requesting country. Naturally, asylum procedures take precedence and extradition is frozen until further notice. Asylum procedures can be prolonged into eternity by appealing each decision all the way up even to the Supreme Administrative Court, appeal in the last instance being however subject to leave of appeal. Now, that becomes a problem where the asylum application is clearly without merit as sometimes is the case. There is no way to shorten the path of justice even when an asylum application has been submitted for no other reason than to delay extradition. What exacerbates this problem is that more and more extraditees become aware of this last resort. I'm sure that this is not exclusively a Finnish problem but probably deserves to be mentioned just as well.

## **Greece**

According to article 5 of the Presidential Decree (P.D.) no 114/2010 which refers to the status of refugees “asylum applicants are allowed to remain in the country until the administrative procedure for the examination of their application is concluded and they shall not be removed, in any way”.

When the Minister of Justice, Transparency and Human Rights orders the extradition, the surrender of the person will be postponed for the abovementioned reason.

According to the Hellenic legislation, the person who is under extradition remains in custody for 2.5 years maximum.

Given the fact that the asylum procedures require a significant amount of time, there is a strong possibility that the 2.5-year period expires and as a result the extradited person must be released.



## **Netherlands**

Furthermore I would hereby like to contribute to your question about asylum and extradition. In the Netherlands we have not solved the question about what information can be shared with the Immigration Service. I think it would help to get information about what other countries share in these kind of cases.

The second issue is that the problem that can occur when a person has been accepted in the Netherlands as a refugee. In some cases this person can get the Dutch nationality eventually. If after a few years more becomes clear about the situation in a country for example in a country which was involved in a civil war, the country involved will sometimes request the extradition of the person. In some cases this can be a bottleneck. The extradition will be refused because of the refugee-status a person has. In some cases however, there is more information about the wrong the person has done, and we would like to extradite the person. Based on his Asylum (refugee)-status that is not possible. We would start a new Immigration-procedure, but this can take forever.

Or on the other hand, the problem can rise that we still do not want to extradite a person, but we don't have a formal ground of refusal, because the person has become a Dutch national (after his refugee status), but formally we cannot use this reason to extradite a person. I think Erik Verbert already mentioned this situation in an earlier paper.

If necessary, I can get more information about the way we treat these situations.

## **United Kingdom**

The UK's extradition legislation includes a significant number of human rights safeguards for those individuals subject to extradition requests from other states. Asylum and related protection issues form a key part of these. A person will not be extradited if he has been recognised as a refugee on account of a well founded fear of persecution in the requesting state (this would also be the case if they had international protection on a basis outside the scope of the Refugee Convention, i.e. under Articles 2/3 of the ECHR). The UK will extradite a refugee to a third country. In such circumstances, the UK may require assurances from the requesting state that the person will not be refouled to the state from which they have protection.

Where a person's asylum application has not been concluded the extradition process will be deferred pending the outcome of the application. Asylum applications can, of necessity, be complex and are subject to appeals. This means that they can take a long time to complete with a knock on effect to extradition matters. There are numerous examples of this. We would be very interested in discussing this further (if possible with examples) at a future plenary.