

## **UNHCR Comments to the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC)**

### **On the Replies to the Questionnaire on the relationship between asylum procedures and extradition procedures**

#### **1. Introduction**

The Office of the United Nations High Commissioner for Refugees ("UNHCR") welcomes the invitation extended to it to present its comments to the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters ("PC-OC") on the relationship between asylum procedures and extradition procedures, at the next plenary meeting of the PC-OC, to be held from 12 to 14 May 2009 in Strasbourg.

UNHCR welcomes the initiative undertaken by the PC-OC to examine the relationship between asylum procedures and extradition procedures, and the development to this end, of a Questionnaire addressed to States Parties to the European Convention on Extradition. UNHCR has examined the States' responses to the Questionnaire and noted that while positive developments have been achieved by most of the member States in this field, the responses provide an overview of some of the challenges still faced by States in dealing with extradition requests concerning asylum-seekers and refugees, as well as illustrate the need for a better understanding of the interrelation between international refugee protection and extradition.

This note sets out UNHCR's observations to the responses given to the Questionnaire by a number of States Parties to the European Convention on Extradition set out in documents PC-OC (2008)04 (13 February 2009) and PC-OC (2008) 18 Rev (28 October 2008). In particular, it presents UNHCR's position on substantive and procedural issues which arise where an extradition request concerns a refugee or asylum-seeker, and considers the ways in which information related to an extradition request may affect eligibility for international refugee protection.<sup>1</sup>

#### **2. Comments to the Questionnaire on the relationship between international refugee protection, asylum procedures and extradition procedures**

UNHCR's comments refer to the Questions which are relevant to UNHCR, namely: **Questions No. 1, 2, 3.1, 3.2, 3.3, 3.4, 3.5, 4, 5, 7, 8, 9, 10, and 11.**

<b>1. Does your national law contain provisions on the regulation of the relationship between extradition and asylum procedures?</b>
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UNHCR noted in **Question No. 1**, that in most of the member States, there were no provisions under national legislation regulating the relationship between extradition and asylum procedures. However, it noted with satisfaction that national legislation in 10 member States prohibit the extradition to the country of his [her] origin of a person who has been rightfully granted asylum. Likewise, in most countries, the two procedures are governed by two separate set of rules, although the outcome of the asylum procedure can influence the decision on the extradition procedure.

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<sup>1</sup> UNHCR's position on the intersection between international refugee law and extradition is elaborated in detail in UNHCR, *Guidance Note on Extradition and International Refugee Protection* ("UNHCR, *Guidance Note on Extradition*"), April 2008, available at: <http://www.unhcr.org/refworld/docid/481ec7d92.html>. The present comments should be read in conjunction with UNHCR, *Guidance Note on Extradition*.

In this context, it is essential that the asylum procedure offers **full procedural safeguards**; in particular, the following considerations need to be taken into account:

- (a) Firstly, extradition and refugee status determination are distinct procedures, which have different purposes and are governed by different legal criteria; it is UNHCR's position that the decision on the asylum claim and on the extradition request, respectively, should be made in separate procedures.
- (b) Secondly, in order to ensure a determination of the individual's international protection in line with the Convention relating to the Status of Refugees ("the 1951 Convention"), the asylum claim should be examined by the authority which is responsible for adjudicating applications for refugee status in the requested State.
- (c) Thirdly, the requested State is bound by its obligations under international refugee and human rights law, and in particular to ensure full respect for the principle of *non-refoulement*. As an asylum-seeker, the wanted person enjoys protection against *refoulement* to the country of origin for the entire duration of the asylum proceedings, including on appeal.
- (d) Fourthly, a request for extradition should not preclude an asylum-seeker from access to asylum procedures or have his [her] asylum claim examined in accordance with the criteria and standards set out in the 1951 Convention and its 1967 Protocol. An asylum application should not be rejected, or declared inadmissible or manifestly unfounded or abusive solely because it has been submitted after an extradition request has been received by the requested State, or because the asylum-seeker is subject to an extradition request.<sup>2</sup>
- (e) Fifthly, when dealing with an extradition request concerning an asylum-seeker, the responsible authorities need to ensure due respect for confidentiality. As a general rule no information regarding the asylum application, or the fact that such an application has been made, should be shared with the State requesting extradition, be it the wanted person's country of origin or a third country.<sup>3</sup>

**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 to asylum procedures in your country?**

UNHCR welcomes that in **Question No. 2**, in 14 member States, extradition cannot take place before a final decision has been taken on the asylum application. It was also noted that in Hungary, extradition was only permitted if the requesting State is considered as a "third safe country". However, in 8 of the member States, extradition of asylum-seekers is still possible, even if the court dealing with the extradition matter may take into account that the asylum procedures are ongoing.

If the extradition request was submitted by the authorities of the asylum-seeker's country of origin, the question of his/her refugee status needs to be resolved for the requested State to be in a position to decide whether the wanted person may be lawfully extradited. This follows from the requested State's obligation to ensure respect for the principle of *non-refoulement* under international refugee and human rights law, and the primacy of human rights obligations over the duty to extradite under extradition treaties within the international legal order. As a consequence, in cases which may result in the surrender of an asylum-seeker to his [her] country of origin, asylum proceedings must be conducted, and a final determination on the asylum claim made prior to the decision on the extradition request.

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<sup>2</sup> For detailed guidance on asylum procedures, see UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes ("Fair and Efficient Asylum Procedures")*, EC/GC/01/12, 31 May 2001, at para. 50(g), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3b36f2fca>. See also UNHCR Executive Committee Conclusion No. 15 (XXX) at 1979 on Refugees without an Asylum Country, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c960>.

<sup>3</sup> This also applies where an asylum-seeker may have been involved in criminal conduct, be it in his/her country of origin or in a third country. Should it exceptionally be deemed necessary to contact the authorities of that country, in case additional information which can only be obtained from these authorities is required to determine the extradition request or aspects of the asylum application which are related to an extradition request, there should be no disclosure of the fact that the individual has applied for asylum.

In UNHCR's view, it would generally be prudent to conduct extradition and asylum proceedings in parallel. This would be beneficial for reasons of efficiency and because the extradition process may result in the availability of information which has a bearing on the wanted person's eligibility for refugee status and would therefore need to be taken into consideration by the asylum authorities. It may however be necessary to withhold a decision on the extradition request until the asylum determination has become final.

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

With regard to **Question No. 3.1**, UNHCR welcomes that in most of the member States, the **asylum procedure has priority** over the extradition procedure, and that in two member States suspension of the extradition procedure was possible awaiting the outcome of the asylum procedure.

The principal concern, from the point of view of international refugee protection, is to ensure that a request for the extradition does not preclude an asylum-seeker from access to the asylum procedure or otherwise result in restrictions of essential procedural safeguards during the asylum process. This is particularly important in view of the fact that extradition may result in the return of an asylum-seeker to the country where he or she claims to be in danger of persecution.

As indicated in **Question 2**, in cases where the extradition request was submitted by the authorities of the asylum-seeker's country of origin, his[her] asylum claim should be determined prior to the decision on the extradition request, in order to decide whether the asylum-seeker can be lawfully extradited.

If the extradition of an asylum-seeker is sought by a country other than his [her] country of origin, the wanted person may, under certain circumstances, be extradited before his [her] asylum claim has been finally determined in the requested State. For this to be consistent with international refugee and human rights law, the requested State must: (i) establish that extradition to the requesting State would not expose the asylum-seeker to a risk of persecution, torture or other irreparable harm; and (ii) ensure that the asylum-seeker has access to asylum determination procedures which comply internationally accepted standards of fairness and efficiency and in line with the 1951 Convention.

If both conditions are fulfilled, asylum procedures which have already been initiated in the requested State may be suspended. In such cases, consideration of the asylum application would be resumed and brought to its final conclusion after the resolution of the prosecution, whether by conviction and sentence or by acquittal. This could be done either in the requested State where the asylum application was initially pending, through an agreement on re-admission to that State, or through transfer of responsibility for examining the asylum application to the State requesting extradition, provided similar procedural standards are in place there.

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

UNHCR noted that in **Question No. 3.2**, the majority of the member States replied that it is possible to execute a request for provisional arrest of a person subject to asylum procedures. UNHCR would like to recall that, in such cases, asylum procedural and substantial guarantees must be provided.

International refugee protection and criminal law enforcement are not mutually exclusive. The 1951 Convention and its 1967 Protocol do not shield refugees or asylum-seekers who have engaged in criminal conduct from prosecution for their acts, nor does international refugee law preclude extradition in all circumstances. UNHCR has consistently emphasized that refugee status, or the fact of having applied for asylum does not mean that an individual involved in criminal conduct could not be prosecuted in the host State.

In the context of extradition, a provisional arrest warrant may be exercised against an asylum-seeker. However, in view of the precedence of human rights obligations over the obligations arising from the

principle of “*aut dedere aut judicare*” (extradite or prosecute), the requested State is bound by its obligations under international human rights and refugee law. This implies that the requested State must ensure that an extradition request, and an arrest warrant to that effect, does not preclude the asylum-seeker from access to a fair and efficient asylum procedure, or otherwise result in the restriction of essential procedural safeguards during the asylum process. In addition, the requested State is required to provide protection against *refoulement* in line with international refugee and human rights law during the entire duration of the asylum procedure, including at the appeal stage.

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

UNHCR noted in **Question No. 3.3** that in 7 member States, extradition was allowed when the request for asylum had been denied, or when refugee status has been revoked, or when there were no circumstances that allow for extradition of a person while asylum procedures are ongoing. It also welcomes the fact that in the majority of the member States, extradition was decided on a case-by-case basis, provided that extradition was compatible with principles of international law and refugee law. A positive note was also noted in the case of Lithuania, which specifically referred to the exception of non-refoulement under Article 33(2) of the 1951 Convention as the sole circumstance which would allow the extradition of an asylum-seeker.

In determining whether an asylum-seeker can be lawfully extradited, States have to look at whether the extradition request was submitted by his [her] country of origin or by a country other than the asylum-seeker’s country of origin (“third country”); and secondly, whether the extradition would be consistent with States’ obligations under international human rights and refugee law. Thus, as part of the process of determining whether an asylum-seeker can be lawfully extradited, the requested State would need to examine whether extradition would not expose the asylum-seeker to a risk of persecution, torture or other irreparable harm upon return, and whether the undertakings given by the requesting State (*i.e.*, “diplomatic assurances”)<sup>4</sup> will effectively eliminate the risk of such treatment or harm.

#### ***Extradition request from the asylum-seeker’s country of origin***

In UNHCR’s view, asylum-seekers are protected against *refoulement* by virtue of Article 33(1) of the 1951 Convention and customary international law. Such protection applies for the entire duration of the asylum proceedings and until a final decision on the asylum claim is made. Thus, the requested State may not extradite an asylum-seeker to his or her country of origin while his or her refugee claim is being considered, including at the appeal stage. This bar also applies if the requesting State has given “diplomatic assurances” regarding the treatment of the asylum-seeker in the event of return.

#### ***Extradition request from a country other than the asylum-seeker’s country of origin***

Where the country seeking the extradition of an asylum-seeker is not the country of origin (*i.e.*, “third country”), the requested State is required under international refugee and human rights law to evaluate any risks resulting from the person’s surrender to that country. Any diplomatic assurances with regard to the asylum-seeker’s treatment in the event of his or her surrender would need to be examined by the requested State as part of the process of determining whether extradition would expose the wanted person to a threat of persecution, torture or other irreparable harm. If it is established that surrender to the requesting State would not amount to a breach of the requested State’s *non-refoulement* obligations under international law, the asylum-seeker may be extradited.

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<sup>4</sup> The term “diplomatic assurances”, as used in the context of the transfer of a person from one State to another, including extradition, refers to an undertaking by the receiving State to the effect that the person concerned will be treated in accordance with conditions set by the sending State or, more generally, in keeping with its human rights obligations under international law. For a more detailed discussion on diplomatic assurances, see UNHCR, *Note on Diplomatic Assurances and International Refugee Protection*, 10 August 2006, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=44dc81164>.

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

With regard to whether the granting of an extradition request had an impact on pending asylum procedures, States' responses varied when answering **Question No. 3.4**. UNHCR noted with satisfaction that in at least two member States, extradition can only be granted if asylum has been refused, and in one member State, asylum is decided first. However, in 9 of the member States, the granting of the extradition did not have any impact on the asylum application, although in practice, it may influence the outcome of the asylum procedure. In one member State, asylum procedures were stayed if extradition is granted, and in two others, refusal or revocation of asylum may be decided on the basis of an extradition request.

An asylum application should not be declared inadmissible solely because it has been submitted after an extradition request has been received by the authorities of the requested State, or after the asylum-seeker learned of a request for his or her extradition. Admission into asylum procedures may be denied only if it is established that the individual concerned has already found protection in line with the 1951 Convention in another country or that he [she] would have access to an asylum determination procedure and protection in another country.<sup>5</sup>

The fact alone that an extradition request has been submitted cannot as such form the basis for rejecting an asylum application submitted by the wanted person, nor should an asylum claim be regarded as manifestly unfounded or abusive solely because of the existence of an extradition request. This also applies where a person has submitted an asylum claim after learning of an extradition request, as this may well alert him [her] to a risk of persecution. The asylum application should be examined in the regular asylum procedure, unless it is manifestly unfounded for other reasons.<sup>6</sup>

### 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?

With regard to whether extradition requests were subject to certain conditions (*i.e.*, human rights guarantees), UNHCR noted that 10 member States replied to **Question No. 3.5** that although it was possible to make extradition subject to certain guarantees, this would apply only on exceptional and limited cases. Although a few stated that extradition will not be granted if there was a risk of an infringement of human rights, it was noted that monitoring of such implementation remains problematic.

In the context of refugee protection, in assessing the significance of “diplomatic assurances” (*i.e.*, human rights guarantees) given by the receiving country regarding the treatment of an asylum-seeker in the event of extradition to that country, it would need to be established that such assurances are: (i) a *suitable* means to eliminate the danger to the individual concerned; and that (ii) the requested State may, in good faith, consider them *reliable*.<sup>7</sup>

<sup>5</sup> Removal to a country where a person has already been recognized as a refugee (“first country of asylum”) is only appropriate where it has been first ascertained that the person will be accepted upon return and will continue to enjoy effective protection in that country. Return to a country of transit (“safe third country”) for purposes of submission of a refugee application there is appropriate only if responsibility for assessing the particular asylum application in substance is assumed by the third country, if the asylum-seeker will be protected from *refoulement* and will be able to seek and, if recognized, enjoy asylum<sup>5</sup> in accordance with accepted international standards. See UNHCR, *Fair and Efficient Asylum Procedures*, above footnote 2, at paras. 7-18 and 50(b)-(c). See also UNHCR Executive Committee Conclusion No. 15 (XXX) at 1979 on Refugees without an Asylum Country, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c960>.

<sup>6</sup> On the criteria which must be met for a claim to be considered “manifestly unfounded”, see UNHCR Executive Committee Conclusion No. 30 (XXXIV) – 1983 on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c6118>. See also UNHCR, *Fair and Efficient Asylum Procedures*, above footnote 2, at para. 50(g).

<sup>7</sup> These criteria have been developed in the jurisprudence of international, regional and national courts in cases involving extradition to a risk of capital punishment or serious violations of fair trial as well as expulsion or deportation to a danger of torture or other forms of ill-treatment. The issue has also been addressed by human

In cases where the requesting State is the asylum-seeker's country of origin, to meet the suitability criterion, diplomatic assurances must effectively remove all reasonably possible manifestations of persecution in the individual case. This assessment would need to take into consideration the fact that the notion of "persecution" in the context of international refugee law encompasses, but is not limited to, serious human rights violations such as arbitrary deprivation of life or liberty, torture or other cruel, inhuman or degrading treatment or punishment. When determining the reliability of the assurances provided, the requested State must consider the circumstances in the country concerned, including any past experience of compliance with such assurances, as well as the existence or otherwise of effective monitoring mechanisms.

As indicated in **Question 3.3.**, where the country seeking the extradition of an asylum-seeker is not the country of origin (i.e., "third country"), the requested State is required under international refugee and human rights law to evaluate any risks resulting from the person's surrender to that country. Any diplomatic assurances with regard to the asylum-seeker's treatment in the event of his or her surrender would need to be examined by the requested State as part of the process of determining whether extradition would expose the wanted person to a threat of persecution, torture or other irreparable harm.<sup>8</sup>

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

Regarding **Question No. 4**, UNHCR noted positively that, in the majority of the member States, the granting of an extradition does not lead to the revocation of asylum or the recognition of refugee status.

In UNHCR's views, the granting of an extradition request does not automatically lead to the revocation of refugee status. However, information related to the request for the extradition of a person whom the requested State previously determined to be a refugee may raise questions with regard to his or her eligibility for refugee protection; and depending on the circumstances, this may trigger a re-examination of the wanted person's refugee status through cancellation or revocation proceedings.<sup>9</sup>

Not every extradition request concerning a refugee triggers cancellation or revocation considerations. Whether or not a re-examination of the wanted person's refugee status is required depends on the nature of the information available. The authorities of the requested State need to assess the reliability of the extradition request and any information submitted in connection with it, as well as its significance with regard to the wanted person's eligibility for international protection as a refugee. In all such cases, the reliability of information related to the extradition request as well as its significance with regard to the eligibility criteria for refugee status must be evaluated in light of all circumstances of the case.

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rights treaty bodies and experts mandated by the United Nations Commission on Human Rights, among others. For a more detailed discussion, see UNHCR, *Note on Diplomatic Assurances*, above footnote 4.

<sup>8</sup> This assessment would need to consider the suitability and reliability of the assurances given. See UNHCR, *Note on Diplomatic Assurances*, above footnote 4.

<sup>9</sup> "Cancellation" refers to a decision to invalidate a refugee status recognition which should not have been granted in the first place because the individual concerned did not meet the eligibility criteria at the time of the original decision (i.e., this may be because he or she did not have a well-founded fear of persecution for reason of race, religion, nationality, membership of a particular social group or political opinion, or because one of the grounds for exclusion from refugee protection set out in the 1951 Convention should have been applied at that time). Cancellation affects determinations which have become final, that is, they are no longer subject to appeal or review, and it takes effect from the time of the initial, incorrect decision (*ab initio* or *ex tunc* – from the start or from then). A detailed discussion of the standards and criteria for the cancellation of refugee status can be found in UNHCR's *Note on the Cancellation of Refugee Status* of 22 November 2004, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=41a5dfd94>.

"Revocation" means withdrawal of refugee status in situations where a person who was properly recognized as a refugee has incurred individual responsibility for acts within the scope of Article 1F(a) or 1F(c) of the 1951 Convention after recognition. This has effect for the future (*ex nunc* – from now). See UNHCR's *Guidelines on Exclusion* and the accompanying *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3f5857d24>.



**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 States where the person fears persecution?**

UNHCR has observed that in replying to **Question No. 5**, 18 member States indicated that extradition of refugees is prohibited to countries where they would face persecution; and in one country, immigration authorities have to be consulted when the principle of *non-refoulement* may be invoked. However, UNHCR has observed that under the national legislation of one of the countries, the extradition authorities are not bound by a determination on refugee status made by the asylum authorities.

Given that the wanted person has already been determined to be a refugee, the authority responsible for deciding on the extradition request must have due regard to the prohibition of surrender to a risk of persecution provided for in Article 33(1) of the 1951 Convention and customary international law. This requires an examination, by the extradition authorities, of all circumstances pertaining to the individual case with a view to establishing whether a risk of persecution exists for the wanted person at any stage after his or her surrender, be it in connection with the criminal proceedings or independently thereof, including after the trial and/or serving of a sentence. This applies with regard to the asylum-seeker's country of origin, as well as a third country where such risk exists, or where there is a risk of subsequent removal to the asylum-seeker's country of origin, or to a third country where such risk exist. Irrespective of whether or not a refugee status determination by the asylum authorities is binding on the extradition authorities, the requested State is also bound to ensure compliance with its *non-refoulement* obligations under international human rights law.

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

In **Question No. 7**, UNHCR noted that 10 member States do not consider that the granting of international refugee protection by a third State is binding in extradition procedures; similarly, 5 other member States replied that they did not have legislation regulating this issue, and in another 5 member States, the granting of asylum or international protection by a third State would have no effect on the extradition procedures. However, in few member States, extradition will not take place if the person has been recognized by a third State, if that State is party to the 1951 Convention, or otherwise, the principle of *non-refoulement* will be applied.

In UNHCR's view, a determination by a State that a person is a refugee under the 1951 Convention has an extraterritorial effect, at the very least with respect to other States Parties to the 1951 Convention. Refugee status as determined in one State Party should only be called into question by another State Party in exceptional cases, when it appears that the person manifestly does not fulfill the requirements of the 1951 Convention. This may be the case, for example, if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned comes within the terms of an exclusion provision of the 1951 Convention.<sup>10</sup>

**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?**

UNHCR noted that in **Question No. 8**, two member States treat "repeated asylum claims" which do not contain any new grounds under the accelerated procedures; similarly, in 9 of the member States, such claims do not normally have an impact on the request for extradition, while for 4 of the member

<sup>10</sup> See UNHCR Executive Committee, *Conclusion No. 12 (XXIX) – 1978 on the Extraterritorial Effect of the Determination of Refugee Status*, at para. (g), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68c4447>; See also UNHCR, *Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, EC/SCP/9, 24 August 1978, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae68ccccc>.

States they have the same impact as the initial request. In addition, 3 member States also acknowledged that lengthy asylum procedures concerning such claims may have an impact on the extradition procedures.

In this respect, repeated requests for asylum submitted by an asylum-seeker subject to extradition proceedings should not be *per se* considered abusive or subject to accelerated procedures, unless there are no significant substantive changes to the asylum-seeker's individual situation or to the circumstances in the country of origin.<sup>11</sup>

<p><b>9. How does your country ensure co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures?</b></p> <p><b>10. Have you encountered any problems in this area?</b></p>
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In **Questions No. 9 and 10**, UNHCR welcomes the fact that in most of the member States, there is some form of co-ordination between the different authorities responsible for extradition and asylum procedures, although of an informal nature. A few countries found however that such co-ordination was difficult to achieve or that it often fails. UNHCR noted that in one Member State, the Asylum Office does have full access to the extradition decision, although the judicial authorities cannot examine in full the asylum files.

In UNHCR's view there is a need for a formal and continuous level of communication between the asylum authorities and the extradition authorities. This relationship should serve to stress the binding nature of asylum decisions on extradition authorities and facilitate the effective exchange of relevant information where necessary.

<p><b>11. Do you think that new Council of Europe standards are desirable on the relationship between asylum proceedings and extradition proceedings?</b></p>
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UNHCR welcomes the interest of some member States to undertake further work on the relationship between asylum procedures and extradition proceedings within the Council of Europe. In particular, UNHCR notes the proposal made by some member States on the need to work on a recommendation or to develop common guidelines regulating these two procedures.

UNHCR recognizes that additional to UNHCR's standard setting efforts at the international level, the Council of Europe has over the past decades played a very important role towards the elaboration of regional standards in Europe, in particular in the field of asylum. The Committee of Ministers of the Council of Europe adopted a number of recommendations regarding asylum procedures and related issues.<sup>12</sup> The Parliamentary Assembly of the Council of Europe also adopted a number of recommendations and resolutions in this field.<sup>13</sup> Most importantly, the European Court of Human Rights (ECtHR) has developed in its case-law a number of fundamental safeguards with regard to *non-refoulement* obligations under the European Convention on Human Rights, which are applicable to asylum-seekers and refugees in the context of forcible removal, including extradition.

However, UNHCR believes that further clarification and legal guidance is still needed among States party to the European Convention on Extradition, on the inter linkages between extradition and asylum, notwithstanding the protection already afforded under international refugee law and extradition law, and in particular under the 1951 Convention and the European Convention on Extradition, respectively. As it has been observed through the examination of the member States'

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<sup>11</sup> When accelerated procedures are applied, it is important that appropriate procedural safeguards are in place. See UNHCR, *Global Consultations on International Protection*, above footnote 2, at paras. 22-33.

<sup>12</sup> See, among others, Recommendation 1727 on *Accelerated asylum procedures in Council of Europe member states*, adopted 20 June 2006; *Twenty Guidelines on Forced Return*, September 2005.

<sup>13</sup> See, among others, Recommendation 1703 on *Protection and assistance for separated children seeking asylum*, 28 April 2005; Recommendation 1475 on *Arrival of asylum seekers at European airports*, 26 September 2000; Recommendation 1327 on *The protection and reinforcement of the human rights of refugees and asylum-seekers in Europe*, 24 April 1997; Recommendation 1236 on *the right of asylum*, 12 April 1994. All these documents are available at <http://www.coe.int/>.



responses to the Questionnaire, national practice on asylum procedures in the context of requests for extradition of asylum-seekers and refugees diverges and, as observed, it may not always be in line with international legal standards of refugee protection.

In this respect, UNHCR would like to offer its support and assistance in the development of further guidance by the Council of Europe on the relationship between asylum and extradition, which would complement, among others, the existing guidance developed by UNHCR in its *Guidance Note on Extradition and International Refugee Protection*, and assist States to comply with their obligations under international refugee law and human rights law in the extradition context. Such guidance or recommendations would also contribute to the development and implementation by States of harmonized practice and standards in the field of asylum and extradition at the international and regional level.

As stated earlier, UNHCR's interest in assisting States in better understanding the relationship between asylum procedures and extradition procedures derives from its mandated work to ensure the protection of refugees and other persons of concern to it, and to assist States to meet their obligations under international refugee law, in the exercise of its supervisory role under the 1951 Convention and its 1967 Protocol. UNHCR's mandate also extends to ensuring that the core principles of refugee protection are not eroded or undermined by States, including in the extradition context.

In UNHCR's view, the proposed "guidelines" or "recommendations" could reflect and elaborate on the following aspects:

- Hierarchy of obligations in the international legal order (*i.e.*, the right to asylum in relation to the duty to extradite);
- Obligations under international refugee law and applicable legal standards of refugee protection in the context of extradition (*i.e.*, obligations and legal standards in relation to the right to asylum and the protection against *refoulement* under international refugee law);
- The duty to extradite and prosecute in relation to refugees and asylum-seekers;
- Clear differentiation between asylum procedures and extradition procedures;
- Sequencing and priority of procedures (*i.e.*, priority of asylum procedures);
- The need for co-ordination between asylum authorities and extradition authorities (*i.e.*, binding nature of asylum decisions on the extradition authorities);
- Conditions under which an asylum-seeker may be extradited: legal standards and asylum procedural guarantees applicable to asylum-seekers subject to extradition request either by the country of origin or a third country (*i.e.*, repeated asylum claims, claims lodged after an extradition request, etc);
- Conditions under which a refugee may be extradited: legal standards and procedural guarantees under international refugee law applicable to refugees subject to extradition request by the country of origin or a third country;
- Refugee status determination and extradition requests (applicable legal standards relating to the eligibility for refugee status, exclusion, and revocation of refugee status, etc);
- The principle of confidentiality;
- Role of UNHCR;
- Human rights protection under the European Convention on Human Rights and safeguards derived from the case-law of the European Court of Human Rights;
- International and regional co-operation between States.

**UNHCR, April 2009**