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(CDPC)

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

DISGUISED EXTRADITION, I.E. SURRENDER BY OTHER MEANS
SOME IDEAS TO START A DISCUSSION

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Note: This paper is being delivered under the decision taken by the PC-OC Mod at its meeting of 16th-18th March, 2011. It is to be considered as a proposal of points for further discussion. I committed myself to put in writing some ideas after the Chair mentioned the ECHR case Bozano v. France, which is to be considered also an Italian case.

***Terminology**:*

- ***a.*** ***extradition** is the surrender of a fugitive who is sought by another jurisdiction for criminal justice purposes (see below);*
- ***b.*** ***expulsion** stays for the termination by a state of an alien's legal entry to remain, which is often based upon the ground that the alien is considered undesirable or a threat to the state;*
- ***c.*** ***deportation** is the removal from a state of a person who illegally entered the territory of that state. There might be some coincidence between the last two, according to domestic legislations; usually any decision under b and c may be challenged before a competent authority (normally a court); cases under b and c are usually provided for by domestic laws on immigration. [Within the EU the overall situation might be complex because of free movement of people].*

1. Extradition is the judicial rendition, by one state to another, of fugitives charged with having committed an extraditable offence and sought for trial or already convicted and sought for punishment[1]. Although Bassiouni and others date back the first extradition treaty to the Thirteen century BC[2], the first who studied the matter from an international law point of view where Bodin and Grotius (XVI and XVII centuries). Nowadays legal sources for extradition are bilateral or multilateral treaties. Nevertheless it is widely accepted that also extradition outside a treaty is possible, provided that the law of the requested State so provides and the law of the requesting State allows prosecution and punishment in such a case. When extradition outside a treaty is foreseen, then principle of reciprocity would normally apply.

2. Disguised extradition means that one state places a person in such a situation that he/she falls or might fall under the control of the authorities of another state which is interested in submitting that person to its jurisdiction for the purpose of prosecution or punishment[3]. When as a result of the said action the person comes under the control of agents of that other state, whether that person might be tried or punished or whether he/she may challenge such situation would depend on the law of the latter state. In the way just mentioned states would bypass the stringent regulation governing extradition. Usually procedures regulating these "other means", like expulsion are based on a discretionary power and where remedies to the government's decision are provided for by the law (which might not be always the case), said remedies are lengthy and sometimes the process will be however concluded after the physical delivery of the person concerned.

   It is for this very reason that human rights issues come at stake. As described below the ECHR decided on that.

   It is also to be mentioned that nowadays extradition procedures, which basically result in relationships between sovereign states aiming at accommodating their own interests, are also focused on the rights of the individual who is the object of the extradition request. Besides the rights enshrined in article 2 and 3 of the European Convention on HR, also other rights might come into scene, as article 5 (Right to liberty and security) or article 8 (right to private life and family). According to ECHR article 6 (fair trial) does not apply to extradition procedure.

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1 Usually is judicial, but it also could be a mixture of judicial and administrative or even purely administrative, e.g. in case of consented extradition. On extradition in general see BLAKESLEY, *The Law of International Extradition: A Comparative Study, in Extradition*, *International Review of Penal Law*, 1991, 381.

2 It was the treaty of peace between Hattusili King of Hittites and the Pharaon Ramses II of Egypt; see BASSIOUNI, *International Extradition, US Law and Practice*, Oceana Publications, 1996, on the basis of studies conducted by Langdon and Gardiner published in 1920.

3 The principle of 'male captus, bene detentus' is relevant. See

Of course when the issue of disguised extradition comes in, then all those rights (and even others) might be of importance.

3. The reasons why two states might agree on a shortcut (deviation, bypass) of formal extradition procedure through "other means" are various, i.a.: failure of an initiated extradition procedure; non extraditable offence; lengthy and complex procedures or too cumbersome ones.

4. These "other means" might be divided in two: 1. legal procedures, i.e. formally provided for the law, like expulsion or deportation; 2. illegal actions (both from an international law or/and a domestic law point of view), like forcible abduction and unlawful seizure of the person. I will focus on the ones under no. 1 first and then I will elaborate a bit on no.2 also.

5. Expulsion and deportation are possibilities given to states (*recte*: the states provided themselves with) in order to secure their own interests, in particular public order/*ordre public*. Usually, but it appears that there are no stringent rules on that, expulsion is made to the state where the person came from or to the state which the person is a citizen of. The right to expel undesirable people is widely accepted and not disputed. The problem arises when such a system is used to circumvent extradition procedures. In some cases surrender would not be possible at all under extradition law; in other cases surrender might be possible but recourse to expulsion in order to avoid the judicial assessment deprives the person of his/her rights.

6. A couple of concrete cases (taken from Bassiouni, *Extradition* cited) might be of interest[4].

In the Doherty case (early Eighties) UK sought to extradite Doherty (participation to the killing of a British Security Forces captain in Belfast, Northern Ireland) from USA where he illegally entered. The competent Court denied extradition on the ground of the political offence and finally Doherty was deported to UK where he was to serve a life imprisonment sentence. What could not be achieved by extradition was accomplished via deportation.

Soblen case. It might be interesting citing the whole description of it made by Bassiouni. "*Dr. Soblen was accused of espionage in the United States. Released on bond, he fled to Israel, claiming asylum and citizenship as a Jew under the Israeli Law of Return. Israel…found that Dr. Soblen was not qualified for Israeli citizenship and placed him on a flight to New York. Interestingly, there were no other passengers aboard except US marshals. In flight, close to England, Dr. Soblen attempted suicide. The plane landed in Great Britain and Dr. Soblen was taken to hospital. The US wanted him but the offence was not an extraditable one (political offence) under the bilateral treaty of 1931. But Great Britain found that Dr. Soblen had not been legally admitted into the country and ordered his departure on the first available plane of the day, presumably to be returned to Israel. It so happened that there were no flights for Israel that day and the first flight out was to New York, aboard the same plane that took Soblen from Israel*". Just to conclude the story: Dr. Soblen committed suicide while being transported to the airport. The case mentioned is different from the Pinochet case (requested to UK from Spain): a regular extradition procedure was initiated but the Court found that former President Pinochet was not able to attend the hearings due to healthy reasons; he was then put on a plane (not a British one) and arrived to Chile.

Badalamenti case. Vito Badalamenti, an Italian citizen, was arrested in 1984 in Spain on a request of USA in order to stand trial in the famous "Pizza Connection" case (heroin trafficking). He was acquitted and sought to be released with a writ of *habeas corpus*. Spain did not want him back; Italy wanted him but Badalamenti could face there criminal charges. Paraguay

[4] Most cases reported by Bassiouni are related to major situations involving political offences and high sensitive cases. A landmark English case is Regina v. Secretary of State of Home Affairs ex parte Duke of Chateau Thierry, 1917 (deportation of the Duke to France). One other interesting case is the Klaus Barbie case, a former SS officer who was tried in absentia in Lyon (France) for war crimes. He changed identity and lived in South America, Bolivia; the Bolivia Court denied extradition, but after a change of Government he was expelled to French Guiana (Cayenne) and finally sent to France in order to tried. The French Court rejected his argument as to lack of jurisdiction because of his having been illegally expelled from Bolivia to France. The French Court of cassation (6th October 1983) asserted its jurisdiction (although Barbie excepted he had been the object of an *extradition déguisée*).

notified its willingness to receive that person, which later on withdrew; USA thought that "it would be inappropriate to have him at liberty in the United States" (Judge Griesa stated). Finally Badalamenti arrived to Italy because US applied the exclusion process (exclusion to be admitted in the country; as a matter of fact Badalamenti was in US as a paroled alien solely for the purpose of standing the Pizza Connection trial). Just for information: at the end of the story Mr Badalamenti was acquitted in Italy.

The reason to mention the said cases is to show that these other procedures do not have the same guarantees of the extradition one, although guarantees might be equivalent in substance. The problem is that often the said procedure are very speed, definitely more than the ordinary procedure ones. But, above all, these cases show that decisions are taken on the basis of (sometime high level) political evaluations.

7. Hand over of persons sought might be accomplished by mean of abduction or seizure of the person. Once again citing Bassiouni: a. abduction means that agents of State A other than those of State B where the action is being conducted, apprehend the person, with or without the knowledge or the consent of State B; b. seizure means that agents of State A (where the person is) apprehend that person and surrender him/her to the agents of State B outside formal or legal process. Of course one might have a mixture of the two hypothesis (i.e. agents of both states acting in co-operation). Italy had a recent case concerning an Imam suspected of being involved in terrorism taken in Milan in co-operation with US agents and finally transported to Egypt.

   Of course *modus operandi* might be of a certain variety. The case of Öcalan, leader of the separatist Kurdi Party, was quite interesting and it would be too long to tell. However it demonstrates that the interests of states do prevail over international legal instruments (extradition) and over individual rights. Although arrested in Italy after an international arrest warrant of Germany, that subsequent to strong reaction of the Kurdi population in Germany withdrew the request for provisional arrest and therefore gave the green light for the extradition request by Turkey, Mr Öcalan was then informally permitted to take a plane to Bielorus. Finally he was hosted by the Greek ambassador in Nairobi, Kenya; after some talk with the Minister of interior of Kenya he was informed that probably the Netherlands would have accepted him. So he was taken to the airport where, in the free zone, he was arrested by Turkish agents who were waiting him and taken to Turkey. The ECHR, Öcalan v. Turkey, 12th March 2003, although assessing the violation of article 6 of the Convention on the fact that he had not been triad by an impartial court, stated that his arrest did not amount to a violation of a state's sovereignty.

8. One of major issue related to abduction and other illegal/non provided by any law means, is whether the state where the trial is to be carried out or the punishment to be executed is legally placed in a position to proceed. The principle that has been followed for a significant period of time is the maxim *male captus bene bene detentus*, i.e. "although unlawfully taken nevertheless legally detained"; that would include cases of disguised extradition *sub specie* of expulsion and/or abduction or equivalent. Whether that state has jurisdiction would depend very much on its domestic law, in particular whether the individual might challenge the competence of that jurisdiction. It would perhaps be opportune mentioning the most recent trend –at least clearly visible at the level of the Council of Europe due to the European Convention of Human Rights and the ruling of the Court in Strasbourg- consisting in putting the individual at the centre of the extradition procedure while respecting his/her fundamental rights[5]. Still is not completely solved any problem concerning the effect of possible violations of the law in the requested state as to the possibility of challenging them in the requesting state. Of course that would also depend on whether states are party to the European convention or other equivalent instrument, like the International Pact on Civil and Political Rights, New York, 1966.

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5 To that extent it might be worth mentioning the Resolutions of the *Institut de droit international* since 1980. See also Van den Wyngaert, *Applying the European Convention on Human Rights to Extradition: Opening Pandora's Box*?, in International Comparative Law Quarterly, 1990.

While the question whether a state has or not jurisdiction was disputable and still now one might find opposite conclusions[6], it is not disputed at all that the requesting state cannot check and evaluate the correctness and legality of the extradition procedure in the requested state. The latter only would be responsible for possible violation of fundamental rights, while the requested state has no responsibility, having based its action on the *bona fide* principle governing international relationships[7].

Once again a distinction is to be made depending on whether the issue at stake relates to an expulsion case or to a case where the forcible abduction was carried out.

9. The case of Bozano was mentioned as a clear example of a disguised extradition, as described by the ECHR. It was mentioned as an Italian case but it should be recorded as an Italo-French-Swiss case; as a matter of fact the case involved France, Switzerland and Italy but the ECHR decision is Bozano v. France, 18th December, 1986 (no. 9990/82).

After the French court of appeals in Limoges denied Italy's request for Bozano's extradition, he was picked up without any formal process in the streets of Grenoble by French police[8] and then handed over to a Swiss police officer and finally extradited to Italy. It might be interesting to note that extradition to Italy was denied by the French court under the circumstance that Bozano was acquitted at his first instance trial in Italy and then found guilt on appeal, *in absentia*, which is a procedure that does not exist in France (in case of trial *in absentia* a new trial is carried out once the person is arrested); although Italian and French police authorities agreed to have Bozano returned to Italy, there was no way in which that could have been accomplished. The ECHR found that there had been a violation of article 5 of the Convention in that Bozano's deprivation of liberty in view of delivering him to the Swiss authorities was not lawful and "amounted in fact to a disguised form of extradition designed to circumvent the negative ruling" of the French court, that denied extradition (§ 60 of the ECHR decision).

10. The ECHR also ruled on expulsion, in particular in reference to article 3, torture and inhuman treatment (and 2, right to life) and to article 8 (right to respect for private and family life, where expulsion affected an individual who had his/her family in the expelling state). As to Italian cases I will quote the Saadi v. Italy case, Grand Chamber, 28th February 2008, Ben Khemais v. Italy, 24th February, 2009 and Trabelsi v. Italy, 13th April 2010 (Toumi v. Italy, 5 April 2011, application no. 25716/09) as recent cases; the European court found a violation of article 3 in that the appellants run a concrete risk of being subjected to torture once they arrived to Tunisia and reaffirmed the obligation of *non refoulement* on states party to the convention.

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6 The following cases were quoted in some commentaries: Queen's Bench Division, Regina v. Governor of Brixton Prison ex parte Soblen (1962) in favour of affirming jurisdiction; Divisional Court, R. v. Bow Street Magistartes ex parte Mackeson (1981), opposite to the previous.

7 In recent cases the ECHR decided the way described above: Stephens v. Malta, 21 April 2010 and Stapleton v. Ireland, 4 May 2010, both cases were related to EAW, but the basic argument is the same as in extradition.

8 Bassiouni (International extradition cit., p. 226) comments as follows: "by connivance between the Italian, French and Swiss police" and "the conspiracy between the three police authorities resulted in the forcible expulsion of Bozano from France, his delivery to Swiss police and his subsequent extradition to Italy".

11. While is to be noted that there should be a wide consensus on the fact that abduction and unlawful seizure of individuals, for any reason, including the one of securing them to justice, is not compatible with international law and in any case with human rights requirement[9], it appears from the above that the relationships between expulsion and extradition are not easy to define. In the Bozano case the European court found that there had been an use of disguised extradition, but the substance of the violation was having deprived Bozano's liberty for a certain period of time, which might not always occur in analogue circumvention of extradition procedure. It is also to be considered that expulsion and deportation, in principle, are the expression of a basic right of sovereign states (as said above things might be different in the EU) and often it could be difficult to check whether expulsion or deportation were made in order to circumvent extradition. Even putting a yardstick in the case where extradition had been refused, it would not be easy to exclude the right of a state to expel or deport an individual. The only thing that could be stated is that once the extradition procedure is initiated, then states should refrain from expelling or deporting. It is also to be mentioned that most jurisdiction now have a system where expulsion comes with the sentence on a person, once that person served his/her sentence.

    One other problematic point is that there are no precise rules on where a person is to be expelled, once the decision is taken. Usually that person would be sent back to his/her own country; but also it happens that return is addressed to the state here he/she came from before entering the other country.

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9 See, as to a recent case, Iskandarov v. Russia, 13d September 2010. Iskandarov, a Tajikistani national was put on an international "wanted" list and Tajik Prosecutor General's Office sought him from Russia under an extradition request. The Russian Prosecutor General's Office dismissed the extradition request for the reason that Mr Iskandarov had filed an asylum application; Mr Iskandarov was then released. He was picked up, handcuffed and brought to an airport and finally handed over to Tajik law-enforcement agencies. The ECHR concluded that from the time of his arrest until his transfer to the Tajik authorities Iskandarov was arbitrarily deprived of his liberty by Russian State agents.

A quite different case is the Medvedyev and Others v. France case (29th March 2010). The applicants were members of a crew of a vessel who had been unlawfully detained on the high seas. These are the facts. The French authorities requested authorisation to intercept the *Winner*, a vessel registered in Cambodia, which was suspected of carrying significant quantities of drug. Under a diplomatic agreement between France and Cambodia, the French intervention was authorized. The French Navy, under the request of the French prosecutor in Brest apprehended the vessel after a tug rerouted it to Brest off the shores of Cap Verde and the crew was confined to their quarter on board under French military guard. As soon as they got to Brest they were immediately brought before the investigating magistrate. However the ECHR declared that there had been a violation of article 5 of the Convention because the crew remained under arrest for 13 days. Interestingly the Court noted that the agreement between France and Cambodia was limited to the control of the vessel but not included the arrest of the crew; it is also interesting to note that Cambodia was not a party to the Vienna convention on drugs nor of the Montego Bay on Law of Seas of 1982. The case appears to be very interesting from an international law point of view.

Suggested addition from Mr Miroslav KUBÍČEK

12. From the information above, it is clear that the relationship between extradition and deportation is very complex. When considering it, it is vital to distinguish between the legal situation of the State seeking the person's return to it for the purposes of prosecution or enforcement of a sentence on one hand (often the State of nationality of the person sought) and the legal situation of the State that is to return (in one way or the other) that person to the first State or at least the person's removal from its own territory. In relation to the State seeking the person's return to it, the following questions could come into consideration:

    a. Can that State actively request that the person is deported instead of extradited? Is it relevant that there is an extradition treaty in force between those two States? Is it relevant that such an extradition treaty would not apply on the case? Would the reason for which the treaty would not apply on the case be relevant (i.e. would there be difference between for example an offence expressly excluded from the scope of application of the treaty and an offence that "only" fails to meet the positive definition of extraditable offences - e.g. is not on the list of extraditable offences or the maximum applicable penalty fails to meet the threshold for extraditability)?

    b. If that State cannot actively request that the person is deported instead of extradited, can it at least provide necessary assistance to the State that is to return or remove the person for the purposes of facilitating the return/removal, if requested? This question is based on the postulate that it is the sovereign right of a State to decide in which way (if provided for in its own law) a person is to be removed from its own territory; the State seeking the person's return to it (even if it has requested the person's extradition) has in fact very limited (or rather none) possibility to influence the requested State's decision on the way in which to proceed.

In relation to the State that is to return or remove the person from its own territory to the first State, the following questions could come into consideration:

    a. Can that State, if extradition has been requested, decide not to follow the extradition proceedings and deport the person sought instead (provided that conditions for deportation set in its domestic law are met)? Is it relevant that there is an extradition treaty in force between those two States? Is it relevant that such an extradition treaty would not apply on the case? Would the reason for which the treaty would not apply on the case be relevant (i.e. would there be difference between for example an offence expressly excluded from the scope of application of the treaty and an offence that "only" fails to meet the positive definition of extraditable offences - e.g. is no on the list of extraditable offences or the maximum applicable penalty fails to meet the threshold for extraditability)?

    b. If that State can deport the person sought in lieu of extradition, are there any additional rights of the person to be observed in such deportation proceedings as compared to "normal" deportation proceedings in cases where there is no concurrence with extradition? If so, how do these rights differ from the rights observed in the "normal" deportation proceedings on one hand and from the rights observed in extradition proceedings on the other hand?"

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Comments by Mr Erik VERBERT

Both Eugenio's text and Miroslav's addition and comments provide for a solid basis for, I dare to predict, a most interesting discussion. I use the plural on purpose because there are several facets to the issue of what I would call 'alternatives to extradition'.

These alternatives involve the 'physical transfer' of an individual from one state to another state. It's not about the transfer of the proceedings or the transfer of the execution of the sentence as alternatives for the extradition. In the latter cases the fugitive suspect or sentenced person stays put. Only the matter moves.

The physical *transfer*, the literal crossing the border by a person, is the common characteristic of both widely different concepts. Insofar that person is wanted for prosecution and / or the execution of an outstanding prison sentence, the extradition process may indeed collide with a removal process. Both may have the very same result, i.e. that particular person ending up being in the state of his / nationality were he happens to be the subject of pre-trial or post trial criminal proceedings. How and under what conditions that particular person 'gets' to his / her state is quite another issue. There is the sometimes *blurry boundary* between extradition and removal which serves unilaterally applied immigration law.

Under normal circumstances, an illegal alien is deported to his / her country of nationality because of immigration violations, a final decision not to grant the refugee status or the subsequent revocation of that status and / or on the grounds of being considered as an so-called unwanted person. Usually, the latter qualification is based on a criminal conviction for serious offences such as terrorism or related offences. The conviction may have as a consequence that the alien loses his / right to legally reside in the 'guest state'.

However, if a fugitive wanted by one state is located in another state and that fugitive entered that state either with a false identity and a false or forged passport that allowed him a visa and the right to legally reside in that state, the question arises whether the state that seeks that person has a legal *option* to try to obtain that person via the application of the other state's immigration law. Indeed, the question regarding this 'option' and the (legal) possibilities to 'provoke' the other state to apply its immigration rules in order to avoid an otherwise legally impossible extradition or a difficult and lengthy extradition procedure, is at the heart of the matter.

In order to grasp the issue to its, hopefully fullest extent, I provide two examples. These are real life cases, just in case one would suspect me of having a too lively fantasy.

The first example illustrates a fairly clear cut choice between removal and deportation. In this case deportation was 'instigated'. The reason for that choice can be summarized in two words: South Africa.

A Belgian national accumulated a combined prison sentence of 21-years in Belgium for drug offences. He could be located in Cape Town. A Red Notice was issued. As is the case with all common law countries, a Red Notice is not considered as a valid provisional arrest request in South Africa. Police to police cooperation revealed that the fugitive lived in Cape Town under a false identity. He entered SA using a false passport and obtained a visa.

Since obtaining an extradition from SA is a well documented near-impossibility, I have advised the police to pursue the possibility to have the wanted person *removed* from SA to his country of nationality, Belgium. Since he obviously defrauded SA's immigration services, we assumed that that would constitute sufficient ground to have him removed. During this process, the utmost care was taken to leave local law enforcement authorities (in Cape Town) out of the case. All communications were handled trough one reliable Interpol Pretoria officer. The fugitive was also transferred from Cape Town to Pretoria. Unfortunately, this is the only way to obtain a good result in SA. SA authorities did consent to go along this path. The immigration law was duly applied and the fugitive was put on a plane to Brussels, escorted by SA immigration officers. SA required Belgium to pay for the removal and the accommodation of the two officers in Brussels. Any reference to an extradition process was carefully avoided during the whole proceeding. We never requested the provisional arrest or the extradition. The fugitive was arrested at the airport. His lawyer never raised contested the legality of his 'rendition'.

Elements which make this case a clear cut example of a removal procedure is that the fugitive was removed to the state of his nationality and that he defrauded the immigration services of his 'guest state'. He clearly violated domestic immigration law. The discovery of that fact, albeit with the help of the Belgian authorities, warranted his removal. The Red Notice provided the necessary information to establish the true identity of the seemingly legal immigrant. Law enforcement information thus completed the foreign immigration file.

A second element which is I think essential to keep the removal procedure clearly distinct from an extradition procedure is the fact that SA does not apply the Red Notice system. The lack of even the mere beginning of an extradition procedure – in the widest sense of the word – avoided any argument that could be raised against the removal as a disguised extradition.

An element that could be used against this removal is the fact that Belgium actually *paid* for the South African removal. This was a condition that SA put forward.

The second example offers a *sequential combination of a removal and an extradition*. The case is about an Australian fugitive wanted by Belgium for fraud and money laundering offences. An arrest warrant and an Interpol Red Notice were issued. The suspect was located in Dubai. He could maintain his position there for years. At some point, the UAE changed their mind and considered him an unwanted alien. He was arrested on the Belgian Interpol Red Notice. We first pursued to obtain his extradition from the UAE. Telephone contacts with a Dubai police officer revealed that the UAE were willing to extradite the fugitive *without any (written) extradition request*. We declined the offer since that would offer the fugitive chances to argue against such an 'paperless extradition'. We then managed to convince the UAE to remove the unwanted alien from their territory, logically to Australia, the country of his citizenship. We coordinated the operation with Australia's Attorney General's Department and the Australian Embassy in Brussels. The fugitive was put on an airplane to Perth and subsequently provisionally arrested there following our meticulously timed provisional arrest request, since *Australia does not apply the red notice*… The fugitive was arrested just when he was queuing to buy a one way ticket to Brazil. After legal battle that lasted over a year, he was extradited to Belgium. During the lengthy extradition procedure, he was never released (not even on bail), despite multiple *habeas corpus* filings.

First of all, for these cases, one cannot overstress the importance of optimum direct cooperation between domestic law enforcement, immigration and diplomatic services, as well as the same level of cooperation across borders. In the second case for instance, we benefitted from an *outstanding* cooperation with the Australian Attorney General's Department in Canberra, the Perth Director of Public Prosecutions and the Australian Consul in Brussels.

In the second case an 'offer' to extradite the fugitive in an informal manner *after the Red Notice provisional arrest* was respectfully declined since such an operation *could* have raised issues. We maintained a very cautious attitude. We might have prevailed on the basis of *male captus, bene detentus* - insofar the due application of the Red Notice can be considered as *male detentus*. In the end we could have 'blamed' the informality of the UAE's authorities and legislation. Instead we chose the hard way by going trough a common law based extradition procedure. In fact, we lost one point since Australia strongly recommended to leave out the money laundering indictment since there was no sufficient *prima facie evidence* to substantiate this indictment before the federal extradition court in Perth. Given the speciality rule, this actually harmed to some extent the prosecution and the ultimate range of confiscations the Belgian prosecutor and court would have liked to pursue or impose. The intensive exchange of draft extradition requests limited the scope of the initial draft request but greatly enhanced our chances before the Australian court considerably. The word 'our' covers both Belgian and Australian authorities. Like all forms of international cooperation in criminal matters, extradition is a dialogue, not a monologue. This case proved this thesis *beyond a reasonable doubt*. We have obtained everything we have asked for, despite the extreme persistence of the fugitive to fight his extradition.

This story ended with a cold shower. After his surrender, the court of appeal released the defendant after having 'served another month of pre-trial detention (remand). He became a fugitive once again, leaving Belgium on an airplane to Brazil. At least we had a most interesting legal battle, also for PC-OC.

In these cases, the person could have raised arguments against his removal / extradition. Claiming that the requesting state 'manipulated' the requested state to such an extent that the latter was forced to abuse or to ignore the applicable extradition treaty and domestic (extradition) legislation in favour of a removal on the basis of its immigration law, possibly also violating that legislation as well.

Such a claim seems obvious, but is not easily substantiated. This would imply a willingly and knowingly manipulation by the requested state, which means that not all available information on the fugitive was revealed. It also implies – to some extent – a violation of the law in the requested state. A generally accepted element to conclude to a violation of the *male captus, bene detentus* principle is that the requested state needs to formally *protest* the 'rendition'. Even in cases that border on *kidnapping* (cf. the Öcalan and Sanchez cases), the ECtHR has underlined the necessity of a formal protest by the requested state (see in general also *Extradition: European standards, p. 106-113).*