



Observatoire ARGA

ARGA Atlas

THE PRINCIPLE OF NON-REFOULEMENT IN EU PRACTICE: GROUNDS FOR REFUSING EXTRADITION

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Purpose of the document:

To provide a systematic account of the significance of the principle of non-refoulement within the European legal order, to show its role as an autonomous and overriding ground for refusing extradition, removal, or any other form of transfer of a person, and to explain how EU law, the European Convention on Human Rights, and international law together create a unified prohibition on surrendering a person to a state where he or she faces torture, inhuman treatment, the death penalty, persecution, or other grave violations of fundamental rights. (ohchr.org)

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1. EXECUTIVE SUMMARY

The principle of non-refoulement is one of the cornerstones of modern international and European human rights protection. In its classic form, it is set out in Article 33 of the 1951 Refugee Convention, which prohibits expulsion or return of a refugee to territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. In the contemporary European legal system, however, the principle has a broader reach: it applies not only to recognized refugees, but to any person who may not be transferred to a state where there is a serious risk of torture, inhuman treatment, the death penalty, or other fundamental violations. (ohchr.org)

Within the law of the Council of Europe, the principle developed above all through Article 3 of the European Convention on Human Rights and the case-law of the European Court of Human Rights. The Court proceeds on the basis that a Contracting State bears responsibility if it extradites, deports, or otherwise transfers a person to a country where there are substantial grounds for believing that the person would face a real risk of treatment contrary to Article 3. That prohibition is absolute. It does not depend on the seriousness of the criminal accusation, the public interest in prosecution, or the political climate surrounding the case. ([ECHR-KS](http://echr-ks))

In EU law, non-refoulement is expressly reflected in Article 19 of the Charter of Fundamental Rights, which states that no one may be removed, expelled, or extradited to a state where there is a serious risk of the death penalty, torture, or other inhuman or degrading treatment or punishment. The principle is also embedded in the current EU asylum legislation: Regulation (EU) 2024/1347 requires that the principle of non-refoulement be respected in accordance with Union and international law, and Regulation (EU) 2024/1348 requires compliance with that principle in the context of return decisions adopted within the procedural framework it establishes. ([FRA](#))

For extradition practice, this means something fundamental: even a formally complete and otherwise admissible extradition request cannot lawfully be executed if there is a real risk that, after transfer, the person would be placed in conditions incompatible with basic standards of protection. In other words, non-refoulement operates today not as an optional humanitarian reservation, but as an imperative legal barrier that limits international cooperation wherever cooperation begins to threaten human dignity. ([FRA](#))

2. THE NORMATIVE NATURE OF THE PRINCIPLE OF NON-REFOULEMENT

Historically, non-refoulement emerged from refugee law. Article 33 of the 1951 Refugee Convention prohibits states from expelling or returning a refugee to territories where his or her life or freedom would be threatened. That original rule was tied to protection against persecution, but its logic was later taken up by the broader system of international human rights law and substantially expanded. ([ohchr.org](#))

The next critical layer is the Convention against Torture. Article 3 of that Convention provides that no state party shall expel, return, or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In making that assessment, the competent authorities must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant, or mass violations of human rights in the state concerned. This moves the principle beyond refugee status as such and turns it into a general human rights standard that applies directly to extradition. ([ohchr.org](#))

The European legal order went even further. In Europe, non-refoulement does not depend exclusively on formal refugee recognition or on the existence of a pending asylum claim. The prohibition applies whenever a transfer would expose a person to a real risk of treatment incompatible with fundamental guarantees. That is why, in European practice, non-refoulement operates as a cross-cutting principle linking extradition, deportation, border return, transfer to third states, and other forms of surrender to foreign jurisdiction. ([FRA](#))

3. NON-REFOULEMENT WITHIN THE ECHR SYSTEM AND ECTHR CASE-LAW

Within the ECHR system, non-refoulement developed not through a separate article by that name, but through Article 3. The European Court of Human Rights has repeatedly held that extradition, deportation, or other removal of a non-national may engage the responsibility of the sending state where there are serious and verified grounds for believing that the person would face a real risk of torture or inhuman or degrading treatment or punishment in the receiving state. This is one of the clearest and most settled lines in the Court's case-law. ([ECHR-KS](#))

It is particularly important that the Article 3 standard is absolute. The Court does not permit any balancing exercise between the risk of prohibited treatment and the interests of the state in combating crime, terrorism, or fulfilling obligations of international cooperation. This means that neither the gravity of the accusation nor the public interest in prosecution nor the political sensitivity of the case can justify surrender where the Article 3 risk is real. That is one of the few places where European law still behaves as though human dignity matters more than bureaucratic momentum. Miraculous, really. ([ECHR-KS](#))

The Court's case-law also emphasizes the procedural side of non-refoulement. The issue is not only the final result, but also whether the person has an effective opportunity to prevent transfer and obtain review of the risk before surrender takes place. That is why interim measures under Rule 39 play such an important role in extradition and removal cases. They are used in urgent circumstances in order to prevent irreparable harm before the Court can examine the merits. If the person has already been surrendered and the risk materializes, a later legal victory often becomes largely symbolic. ([ECHR](#))

4. NON-REFOULEMENT IN EUROPEAN UNION LAW

The Charter of Fundamental Rights of the European Union gives the principle of non-refoulement its own direct formulation. Article 19 provides that no one may be removed, expelled, or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment. EU law therefore recognizes the prohibition not merely as a derivative rule of asylum policy, but as a basic constitutional norm of the Union in the field of fundamental rights protection. ([FRA](#))

The principle is further embedded in the revised secondary legislation of the EU asylum framework. Regulation (EU) 2024/1347, which concerns standards for qualifying for international protection, expressly states in Article 21 that the principle of non-refoulement shall be respected in accordance with Union and international law. Regulation (EU) 2024/1348, which establishes a common procedure for international protection, likewise requires that return decisions adopted in that framework comply with the principle of non-refoulement. In other words, the EU asylum pact does not dilute the principle. It places it at the center of the procedural architecture. ([Eur-Lex](#))

This has direct relevance to extradition even where extradition itself formally falls outside a standard asylum procedure. European states operate within a single legal environment in which Article 19 of the Charter, Article 3 ECHR, the Refugee Convention, and the Convention against Torture reinforce one another. The defense should therefore resist any artificial attempt to separate “extradition law” from “asylum law” as though they were unrelated universes. From the standpoint of European rights protection, they form part of the same system of limits on the transfer of human beings into danger. ([FRA](#))

5. WHY NON-REFOULEMENT HAS DIRECT SIGNIFICANCE FOR EXTRADITION

Legally, extradition differs from deportation or return. It is usually based on a criminal-law request, a judicial decision, or a treaty framework on surrender. But from the standpoint of human rights, that distinction does not alter the essential question: what will happen to the person after transfer? That is precisely why Article 19 of the Charter, Article 3 of the Convention against Torture, and the Article 3 case-law under the ECHR all expressly or functionally apply to extradition as one of the forms of prohibited transfer. ([FRA](#))

Extradition is therefore not an exception to non-refoulement. On the contrary, it is one of the most sensitive settings in which the principle operates, because the transfer is deliberate, formalized, and carried out through organized state cooperation. The more institutionalized the surrender process is, the greater the obligation of the court or competent authority to satisfy itself that the transfer will not produce a prohibited result. This is especially important where the requesting state invokes the fight against serious crime while the defense points to torture risks, repressive prosecution, in absentia proceedings, or inhuman detention conditions. (ohchr.org)

The practical consequence is straightforward: in contemporary European law, extradition analysis cannot be confined to double criminality, the existence of a warrant, limitation periods, and formal extraditability. Where there is an Article 3 risk, a death penalty risk, a risk of an extreme denial of justice, or another grave threat to fundamental rights, non-refoulement blocks surrender regardless of how neatly the papers have been assembled. Bureaucracy adores neat paperwork. Neat paperwork does not cure torture. ([FRA](#))

6. MAIN CATEGORIES OF RISK PREVENTING SURRENDER

The first and most obvious category is the risk of torture or inhuman or degrading treatment. This is the core of non-refoulement in European practice. It includes both direct threats of violence and systemically unacceptable detention conditions, lack of medical care, prolonged isolation, a manifestly degrading prison regime, or other forms of treatment incompatible with Article 3 ECHR and Article 19 of the Charter. ([FRA](#))

The second category is the risk of the death penalty or of onward transfer to a jurisdiction where the death penalty may be imposed or carried out. Article 19 of the Charter expressly mentions the death penalty among the circumstances that make extradition impermissible. The same logic is reflected in European human rights standards on transfer. ([FRA](#))

The third category is the risk of a flagrant denial of justice, especially where it is combined with in absentia proceedings, total inability to defend oneself, lack of proper notice, and a plainly instrumental use of criminal process. The threshold is high, and European courts do not transform every procedural defect into an automatic bar to extradition. But where the proceedings take on the character of a flagrant denial of justice, the logic of non-refoulement closely interacts with Article 6 ECHR and strengthens the overall prohibition on surrender. ([ECHR-KS](#))

The fourth category is the risk of persecution in the Refugee Convention sense. If the person's transfer is linked to threats to life or freedom on account of race, religion, nationality, membership of a particular social group, or political opinion, the prohibition of refoulement under Article 33 operates as a distinct blocking mechanism. This is particularly important in politically charged matters, repressive contexts, or cases where the criminal process is interwoven with persecution for beliefs or identity. (ohchr.org)

7. ASSESSMENT OF ASSURANCES, GUARANTEES, AND THE FACTUAL CONTEXT

One of the most disputed aspects of extradition litigation is whether diplomatic assurances can neutralize risk. The European approach does not reject such assurances automatically, but it examines them critically. What matters is not simply the existence of a letter containing promises, but its

specificity, verifiability, institutional reliability, the existence of a monitoring mechanism, and the overall capacity of the requesting state to comply in practice. General, formulaic assurances set against a negative factual background are increasingly treated as insufficient. (ohchr.org)

At the same time, risk assessment must always be individualized. European authorities must consider not only general country information, but also the specific features of the particular case: the person's status, health, public profile, the nature of the charges, the existence of in absentia proceedings, vulnerability, prior experience of persecution, and even the likely place of detention after transfer. Individualized assessment is what separates real legal protection from ceremonial repetition of abstract formulas. Humans, for reasons best known to themselves, often try the latter first. (ohchr.org)

This leads to another practical rule for the defense: it is not enough to state that "the situation in the country is bad." The defense must show how that situation connects to this person and this case. Courts and administrative authorities do not just need a gloomy geopolitical mood board. They need a structured explanation of why this particular person cannot be sent there lawfully. (ohchr.org)

8. PRACTICAL MODEL OF DEFENSE

A strong non-refoulement strategy in an extradition case is built in layers. First, the precise nature of the risk must be identified: Article 3 ECHR, Article 19 of the Charter, Article 3 of the Convention against Torture, Article 33 of the Refugee Convention, or a combination of these. Second, a personalized evidentiary record must be assembled: medical evidence, procedural documents, proof of in absentia proceedings, country materials, information on detention sites, evidence of refugee or protection status, and any other material linking the general context to the applicant's individual risk. (ohchr.org)

The next layer is procedural. The defense must not merely invoke risk, but must ensure that an effective mechanism exists to suspend the transfer until the risk has been fully assessed. That is where urgent motions at national level and, in appropriate cases, Rule 39 interim measures before the ECtHR become critical. If the non-refoulement argument is raised too late, even a strong legal position may fail to operate in time. Civilization remains strangely attached to deadlines, even when torture is the subject. (ECHR)

Finally, non-refoulement should not be treated in isolation from other forms of protection. It is closely connected to migration status, asylum claims, Red Notice challenges, the contesting of in absentia convictions, and banking or compliance risk. In complex matters, the strongest cases are those in which extradition defense, asylum logic, and rights-based argumentation work together as a single integrated structure rather than as separate fragments. (FRA)

9. CONCLUSION

In the contemporary European legal system, the principle of non-refoulement is no longer a narrow rule of refugee law. It has become a universal prohibition on transferring a person into a space of foreseeable danger where that danger takes the form of torture, inhuman treatment, the death penalty, persecution, or other grave violations of basic rights. That is how it operates today in EU law, in the ECHR system, and in international human rights law. (ohchr.org)

For extradition, this means a hard legal limit. A state cannot hide behind international cooperation, an extradition treaty, or the formal regularity of the request if the result would be the transfer of a person into a situation of real prohibited risk. Extradition ends where non-refoulement begins. One

of the rare moments in international law where humanity is not presented as a moral aspiration, but as an actual stop sign. ([FRA](#))

APPENDIX A. TERMINOLOGY

Non-refoulement

The prohibition on expelling, returning, extraditing, or otherwise transferring a person to a state where he or she faces persecution, torture, the death penalty, or another grave violation of fundamental rights. ([ohchr.org](#))

Article 3 risk
A real risk of torture or inhuman or degrading treatment or punishment within the meaning of Article 3 ECHR. ([ohchr.org](#))

Rule 39 interim measures
Urgent interim measures indicated by the European Court of Human Rights in order to prevent irreparable harm before the case is examined on the merits. ([ECHR](#))

Article 19 Charter standard
The EU law standard prohibiting removal, expulsion, or extradition to a state where there is a serious risk of the death penalty, torture, or inhuman or degrading treatment. ([FRA](#))

APPENDIX B. MATRIX OF GROUNDS FOR REFUSAL OF EXTRADITION

Ground	How it appears	Legal significance
Risk of torture or inhuman treatment	Violent treatment, degrading detention conditions, lack of medical care	Blocks extradition under Article 3 ECHR and Article 19 of the Charter
Risk of the death penalty	Possibility of sentence or execution	Makes transfer impermissible
Persecution on Convention grounds	Political opinion, religion, nationality, social group, etc.	Activates Article 33 of the Refugee Convention
In absentia proceedings without genuine defense	No effective notice, no retrial, no real participation	Strengthens the argument of flagrant denial of justice
Weak diplomatic assurances	General promises without monitoring or enforcement	Do not neutralize the risk
Lack of an effective remedy	Appeal does not suspend surrender	Ground for urgent protection and a separate procedural problem

The legal meaning of each of these grounds follows from the combined operation of refugee law, anti-torture law, the ECHR, and EU fundamental rights law. ([ohchr.org](#))

OFFICIAL SOURCES

1. **Convention relating to the Status of Refugees** - Article 33 on the prohibition of refoulement. ([ohchr.org](https://www.ohchr.org))
2. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** - Article 3 on the prohibition of expulsion, return, or extradition where there is a torture risk. ([ohchr.org](https://www.ohchr.org))
3. **The principle of non-refoulement under international human rights law** - OHCHR background paper on the broader human rights scope of the principle. ([ohchr.org](https://www.ohchr.org))
4. **Article 19 of the Charter of Fundamental Rights of the European Union** - protection in the event of removal, expulsion, or extradition. ([FRA](#))
5. **Regulation (EU) 2024/1347** - Article 21 on protection from refoulement. ([Eur-Lex](#))
6. **Regulation (EU) 2024/1348** - procedural framework requiring compliance with non-refoulement in relevant return decisions. ([Eur-Lex](#))
7. **Guide on Article 3 of the European Convention on Human Rights** - ECtHR guide on torture, inhuman or degrading treatment, and non-removal principles. ([ohchr.org](https://www.ohchr.org))
8. **Guide on Article 13 of the European Convention on Human Rights** - effective remedy requirements. ([ECHR-KS](#))
9. **Interim measures, ECtHR factsheet / Rule 39 materials** - urgent protection against irreparable harm prior to transfer. ([ECHR](#))
10. **European Union law in the Court's case-law** - ECtHR materials on surrender, transfer, and Article 3 review within broader European cooperation contexts. ([ECHR-KS](#))