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EXTRADITION WITHOUT JUSTICE

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Purpose of the document:

This report is prepared to analyze those situations in which extradition formally proceeds within the apparent boundaries of legal procedure, yet leads or may lead to an outcome incompatible with fair-trial guarantees, non-refoulement, protection against arbitrary detention, judicial independence and basic due process. The practical function of the report is to demonstrate that the existence of a request, hearings, formal guarantees and inter-state cooperation does not in itself amount to justice. In transnational practice, the most dangerous cases are often precisely those in which the procedure appears legally tidy while the underlying proceedings in the requesting state remain politically compromised, structurally unfair, coercive or functionally abusive. For ARGAs, this report has practical significance as a tool for early identification of cases in which extradition becomes not lawful cooperation, but a channel of injustice masked by procedural form. ([ECHR](#))

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1. Executive Summary

Extradition without justice arises where the legal form of inter-state cooperation is preserved, but substantive justice collapses at one or several decisive levels: a real risk of torture or ill-treatment, arbitrary detention, persecution through criminal process, flagrant denial of justice, lack of judicial independence, coercive use of prosecution, or disregard of non-refoulement obligations where surrender would expose the person to foreseeable grave harm. Contemporary European and international standards expressly accept that extradition may, exceptionally, engage Article 6 ECHR where the person risks a flagrant denial of a fair trial, while Article 3 and non-refoulement principles remain central where torture, ill-treatment or comparable grave harm is foreseeable. ([ECHR](#))

The main practical problem is that extradition proceedings are often assessed as though formal compliance were enough. If a court has checked the completeness of documents, the existence of a treaty, dual criminality, identification, a judicial warrant and minimal diplomatic exchanges, the impression arises that justice has been done. The legal reality is different. ECtHR materials, UNHCR guidance and recent OHCHR statements all point to the same structural danger: extradition may be procedurally tidy and substantively abusive at the same time. The strongest defense is therefore not built around procedural theatre, but around evidentiary demonstration that formal cooperation would produce an impermissible human-rights outcome. ([ECHR](#))

The practical conclusion of the report is this. In extradition-without-justice cases, defense must test not only extraditability in the narrow technical sense, but legitimacy of surrender in the broader rights-based sense: what are the post-transfer risks, how independent is the requesting judiciary, is there a real prospect of a fair trial, is the case being used as a vehicle of retaliation or transnational repression, are there asylum or refugee dimensions, and can the requesting proceedings still be described as genuine criminal justice rather than coercive state action in legal dress. Without this multi-level inquiry, extradition procedure too easily becomes an orderly delivery into injustice. ([OHCHR](#))

2. Context & Problem Statement / Why This Topic Has Legal and International Significance

Extradition is traditionally described as a lawful instrument of inter-state cooperation in criminal matters. That is only partly true. In real practice it is also the point at which sovereign cooperation, criminal enforcement, asylum protection, human-rights review and geopolitical pressure collide. For that reason, extradition cases cannot be treated as purely technical transfer proceedings. In deciding whether to surrender a person, the requested state decides not only whether it will cooperate, but whether it will participate in a foreseeable chain of rights violations beyond its own territory. ([Council of Europe](#))

The international significance of the topic is especially high in an era of transnational repression, politicized economic prosecutions and security-driven cooperation. Recent OHCHR materials on transnational repression expressly warn that extradition requests can compromise human rights where safeguards against refoulement to arbitrary deprivation of life, torture, persecution, denial of justice or arbitrary detention are weak. This matters because extradition requests are increasingly framed not in openly authoritarian language, but in the language of ordinary criminality, terrorism, corruption, fraud or public-order necessity. The formal neutrality of the charge too often masks the real function of surrender. ([OHCHR](#))

For ARGAs, the topic is of special practical significance because extradition without justice rarely announces itself honestly. The requested state is usually confronted not with a text saying “we want an unjust result,” but with properly stamped documents, judicial formulas, treaty references and solemn assurances. The central task of the defense is therefore to expose what lies beneath the form: whether the requesting process is independent, whether the charges are instrumentalized, whether detention is likely to be arbitrary, whether a fair trial is realistically available, and whether surrender

would breach non-refoulement obligations in human-rights or refugee law. It is precisely at this point that legal work stops being routine and becomes a real test of the rule of law. ([ECHR](#))

3. Legal Framework / Normative and Institutional Framework

The legal framework of extradition without justice is built on at least three levels. The first level is the treaty-based extradition framework, including the European Convention on Extradition and related Council of Europe materials, which define the formal conditions of cooperation between states. These instruments matter, but they do not exhaust the analysis, because they do not by themselves answer whether surrender remains permissible when severe human-rights risk exists. Extradition law without a human-rights overlay is no longer sufficient for a lawful decision. ([Council of Europe](#))

The second level is the ECHR framework. Article 3 prohibits extradition where there is a real risk of torture or inhuman or degrading treatment. Article 6 may, exceptionally, be engaged where extradition would expose the person to a flagrant denial of justice. ECtHR materials on interim measures and related guides expressly restate this threshold, and case-law summaries confirm that extradition decisions may be scrutinized where the receiving trial would fall so far below Convention standards that the essence of fair-trial protection would be destroyed. This is a high threshold, but a real one, not a decorative formula. ([ECHR](#))

The third level is broader international human-rights and refugee law. UNHCR materials on non-refoulement emphasize that states must not return a person, in any manner whatsoever, to territories where life or freedom would be threatened or where serious harm is foreseeable. OHCHR and Special Procedures communications likewise connect extradition with risks of arbitrary detention, torture, persecution and denial of justice. This is especially important in cases where extradition intersects with asylum claims, refugee status or politically instrumentalized prosecution. Here surrender must be assessed not as an isolated bilateral obligation, but as an act constrained by overriding human-rights duties. ([UNHCR Emergency](#))

4. Mechanisms of Practice / Abuse / Key Mechanisms of Practice, Abuse, or Conflict

The first mechanism of extradition without justice is the substitution of substantive review with formal sufficiency. Courts and other authorities sometimes focus on the treaty checklist: offence, documents, identity, procedural regularity, specialty, assurances. But if substantive inquiry into post-surrender justice remains shallow, extradition becomes a legal delivery system rather than judicial protection. That is why the ECtHR accepts Article 6 scrutiny in exceptional extradition cases, and why UN materials connect extradition review with non-refoulement, torture and arbitrary-detention safeguards. ([ECHR](#))

The second mechanism manifests through overreliance on diplomatic assurances or formal prosecutorial representations. On paper, the requested state may receive assurances concerning humane treatment, access to counsel or fair-trial guarantees. But where the institutional context in the requesting state points to weak judicial independence, systemic coercion, politically directed prosecution or abusive detention practices, assurances may function more as ritual than as protection. The legal error is to treat the text of assurances as self-executing truth rather than evidence to be weighed against actual institutional conditions. ([OHCHR](#))

The third mechanism is criminal-law laundering of political or retaliatory purpose. An extradition request may be framed as fraud, terrorism, corruption or a national-security case, while its actual function is suppression, retaliation, asset pressure or silencing. In such cases, extradition without justice does not arise because the offence label is inherently illegitimate, but because the prosecution

machinery is instrumentalized. That is why due process, judicial independence and pattern evidence matter more than the requesting state's preferred narrative. ([OHCHR](#))

The fourth mechanism is fragmentation between extradition review and asylum/non-refoulement review. Where one authority looks only at extraditability and another separately at refugee protection, a person may fall into the gap if no forum treats the entire architecture of risk as integrated. UNHCR's work on the interface between extradition and asylum exists precisely because such fragmentation is not hypothetical. In practical terms, extradition without justice often occurs not through one openly unlawful act, but through several procedurally compartmentalized acts that never see the whole person and the whole risk at once. ([UNHCR](#))

5. Case Patterns / Typical Scenarios, Patterns of Development, or Practice Models

The first typical scenario is formally regular extradition to structurally unfair proceedings. The requesting state provides recognizable charges and documentation; the requested state sees no immediate Article 3 emergency; yet the underlying judiciary lacks independence, defense access is compromised, detention is coercive, and conviction is functionally predetermined. This is the classic Article 6 extradition problem of flagrant denial of justice. Such cases are especially dangerous because on paper they do not initially look like humanitarian emergencies. ([ECHR](#))

The second scenario is extradition intersecting with refugee or asylum protection. A person already has a refugee-related protection claim, pending asylum process or recognition in another jurisdiction, yet extradition proceeds as if the protection dimension were merely collateral. UNHCR and OHCHR materials make clear that non-refoulement obligations do not disappear simply because the procedural vehicle is extradition rather than deportation. When this is ignored, surrender may become refoulement in formal legal costume. ([UNHCR Emergency](#))

The third scenario is urgent surrender under security, terrorism or public-order framing. In such cases, the political appetite to cooperate is often high, while tolerance for deep rights review becomes lower. Recent OHCHR materials warn specifically that extradition requests in security-sensitive contexts may pressure host states to cooperate despite insufficient safeguards. This is one of the most dangerous forms of extradition without justice: expedited legality replacing careful legitimacy review. ([OHCHR](#))

The fourth scenario is economic or corporate-conflict prosecution exported through extradition. Requesting states or influenced actors use criminal allegations to pursue leverage over a businessman, executive, former official or politically inconvenient actor. Formally the file speaks the language of fraud, embezzlement, tax or compliance violations. Functionally the surrender would place the person into a rights-deficient process designed less for justice than for coercion. That is why extradition defense in such cases must be linked to politico-economic persecution analysis rather than treated as a dry treaty dispute. ([OHCHR](#))

6. Risk Assessment / Main Risks, Legal Vulnerabilities, and Problem Areas

The first risk is conflating legality with justice. If the defense argues only formal bars to extradition and ignores downstream human-rights consequences, it may lose even in a morally strong case. Extradition law invites technical argument, but technical argument alone is often insufficient where the real danger lies in what happens after surrender. ([ECHR](#))

The second risk is underdeveloped Article 6 framing. Because the threshold of "flagrant denial of justice" is high, some representatives either abandon the argument entirely or invoke it rhetorically without evidence. Both approaches are weak. The proper task is to show why the requesting process is not merely imperfect, but so fundamentally compromised that surrender would destroy the essence

of fair-trial protection. That requires pattern evidence, judicial-independence material, detention context and procedural specifics, not indignation alone. ([ECHR](#))

The third risk is late integration of non-refoulement and asylum dimensions. If refugee-related arguments are raised too late or treated as separate from extradition, the person may face an accelerated surrender process before the protection logic is fully activated. UNHCR materials underscore that non-refoulement applies broadly and must be assessed individually. In extradition, late legal thinking is usually paid for at a ridiculous price. ([UNHCR Emergency](#))

The fourth risk is faith in assurances without institutional testing. Diplomatic or prosecutorial promises may sound sufficient, but absent a serious inquiry into actual institutional conditions they may become a substitute for review rather than part of review. This is especially dangerous in states where detention, trial access or judicial independence are already under credible question. ([OHCHR](#))

7. Institutional Gaps / Institutional Limitations, Gaps, Deficits of Safeguards, or Systemic Weaknesses

The first systemic weakness is compartmentalized review. Extradition courts, asylum bodies, ministries, border authorities and international mechanisms often assess overlapping pieces of the same crisis through separate legal lenses. The result is that no single institution necessarily performs a full-spectrum justice assessment before surrender occurs. This is exactly why the interface between extradition and asylum has long been recognized as a protection problem. ([UNHCR](#))

The second weakness is excessive deference to requesting-state formality. Where the requesting state produces recognizably judicial documents, the executing state may become overly deferential to form. But fair-trial and judicial-independence standards exist precisely because legal documents do not prove legal integrity by themselves. The more polished the paper, the easier it is for institutions to confuse procedure with justice. Civilisation, predictably, remains vulnerable to embossed paper. ([Council of Europe](#))

The third weakness is emergency bias. Security narratives, political pressure to cooperate, diplomatic sensitivities and domestic fear of appearing soft on crime or terrorism can all compress the space for deep rights review. In such settings, legal safeguards may formally remain available while institutionally becoming harder to trigger in practice. ([OHCHR](#))

The fourth weakness is remedial lag. International mechanisms such as Rule 39 interim measures, UN urgent procedures or refugee-law interventions may be effective, but only if activated in time and with sufficient evidentiary structure. Where domestic extradition schedules move faster than rights-protection mechanisms, institutional timing itself becomes a decisive weakness. ([ECHR](#))

8. Practical Guidance / Practical Recommendations and Model of Legal Action

The first step is to reframe the case from “can they extradite?” to “what would extradition do?” This is a fundamental shift of perspective. Instead of a narrow treaty checklist, the defense should build a consequence-based matrix: torture risk, arbitrary detention risk, fair-trial collapse, political retaliation, asylum conflict, prison conditions, judicial dependence, ulterior purpose and irreparable harm. Without this, the defense argues about the mechanics of transfer and loses the meaning of transfer. ([ECHR](#))

The second step is to develop a dual evidentiary record. One layer should cover formal extradition issues: identity, documents, charges, treaty questions, dual criminality and specialty. The second should cover rights-based downstream risks: material on judicial independence, detention reports, UN communications, asylum records, refugee recognition, patterns of retaliation, comparator cases,

and prison or torture evidence. It is the combination of these layers that makes extradition without justice legally demonstrable rather than morally intuitive. ([OHCHR](#))

The third step is early activation of parallel mechanisms. Where relevant, counsel should simultaneously prepare extradition submissions, asylum/non-refoulement arguments, urgent international notifications and, where needed, Rule 39 applications or UN Special Procedures outreach. Waiting until the domestic extradition track is lost is strategically unsound. By then, the timetable may belong to the state rather than to the defense. ([ECHR](#))

The fourth step is testing assurances against reality. Any diplomatic or prosecutorial assurances should be examined against the requesting state's actual record, institutional credibility and the specific vulnerability of the person concerned. Assurances are evidence, not sorcery. If the surrounding system is rights-deficient, the defense must say so directly and with proof. ([OHCHR](#))

9. Policy Recommendations / Recommendations on Legal and Institutional Approach

First, extradition authorities should institutionalize consequence-based review rather than formal-compliance review alone. The inquiry should not stop at whether treaty conditions are met, but extend to whether surrender would predictably expose the person to torture, arbitrary detention, persecution or flagrant denial of justice. This is already implicit in current human-rights law; what is needed is more disciplined operationalization. ([ECHR](#))

Second, the interface between extradition and asylum/non-refoulement should be treated as a core legal junction, not an administrative afterthought. UNHCR's longstanding work on that interface shows that fragmentation creates protection failures. States should ensure that extradition decisions cannot outrun unresolved refugee or serious-protection claims. ([UNHCR](#))

Third, legal practice should adopt an extradition-without-justice doctrine for hybrid and politically sensitive files. Such a doctrine should proceed on the basis that formally regular extradition may still be impermissible where the requesting process is functionally abusive, retaliatory or fundamentally unfair. For ARGAs, this is particularly important as a bridge between extradition defense, INTERPOL strategy, asylum work and broader anti-transnational-repression practice. ([OHCHR](#))

10. Conclusion

Extradition without justice is not rhetorical overstatement. It is a recurring legal reality wherever surrender is treated as orderly transfer while the receiving process is marked by persecution risk, arbitrary detention, structural unfairness or flagrant denial of justice. European and international standards do not require states to become omniscient; they do require states not to hide behind formalism where severe rights risks are sufficiently foreseeable. ([ECHR](#))

For ARGAs, the main conclusion is simple and practical. In extradition cases, the defense must challenge not only the admissibility of surrender, but the legal meaning of surrender. If transferring a person means foreseeable entry into injustice, then the procedure has not saved legality. It has merely polished the route into abuse. That is no longer cooperation between states. It is a carefully formatted mistake of justice. ([Spcomm Reports](#))

11. Appendix A. Terminology

Extradition without justice. A working category for cases in which extradition is formally carried out within procedure, yet leads to a foreseeable result incompatible with fair trial, non-refoulement, freedom from arbitrary detention or other core rights guarantees. ([ECHR](#))

Flagrant denial of justice. An exceptionally severe violation of the right to a fair trial in which the very essence of fair-trial protection is destroyed; in exceptional cases it may bar extradition under Article 6 ECHR analysis. ([ECHR](#))

Non-refoulement. The obligation of a state not to return a person to a state or territory where they face persecution, torture, ill-treatment or other serious protected harm. It is relevant not only to deportation, but may constrain extradition as well. ([UNHCR Emergency](#))

Judicial independence risk. The risk that the requesting proceedings are handled by bodies insufficiently independent from executive or political power, thereby undermining the fairness and credibility of the proceedings. ([OHCHR](#))

Consequential review. An approach in which extradition is assessed by its foreseeable post-surrender consequences rather than only by formal compliance with inter-state procedure. ([OHCHR](#))

12. Appendix B. Risk / Powers / Legal Consequences Matrix

Task	Legal risk	Legal limit	Possible consequence	Practical comment
Check only treaty formalities	Ignoring downstream rights harm	Human-rights review must supplement extradition mechanics	Surrender into a structurally unfair system	Always add consequence analysis
Invoke Article 6 without factual foundation	Insufficient proof of “flagrant denial”	The threshold is exceptional and evidence-heavy	Court rejects the fair-trial argument as speculative	Build pattern evidence, not slogans
Fail to integrate asylum/non-refoulement	Protection gap	Extradition cannot outrun serious protection review	Refoulement through extradition	Link asylum and extradition from the start
Trust assurances uncritically	Ritual rather than real protection	Assurances must be tested against actual conditions	False comfort followed by real abuse	Evaluate credibility institutionally
Wait until the final domestic stage before international action	Loss of time	Rule 39 and UN mechanisms are time-sensitive	Surrender before protection engages	Parallel activation is essential
Treat economic or security labels as proof of legitimacy	Masked retaliatory or politicized prosecution	The offence label does not settle justice analysis	Extradition into abusive prosecution	Always test function, motive and institutional context

This matrix reflects recurring practical failures visible across ECtHR, OHCHR and UNHCR materials on extradition, non-refoulement and fair-trial risk. ([ECHR](#))

13. Official Sources

- ECtHR, Interim Measures Factsheet. A key source on Rule 39 practice and the Court’s statement that extradition may exceptionally raise an Article 6 issue where a flagrant denial of justice is at stake. ([ECHR](#))

- ECHR Knowledge Sharing / Guide materials on Article 6 and EU law in the Court's case-law. Important for confirming the fair-trial threshold and the doctrinal position on extradition-related Article 6 claims. ([Council of Europe](#))
- OHCHR, 9 March 2026 remarks on transnational repression. A current source expressly stating that extradition requests can compromise rights where safeguards against refoulement to arbitrary detention, torture, persecution or denial of justice are weak. ([OHCHR](#))
- UNHCR, Access to territory and non-refoulement. A basic current source on broad non-refoulement logic relevant to extradition contexts. ([UNHCR Emergency](#))
- UNHCR, The Interface between Extradition and Asylum. A classic but still practically important source on the structural protection gap between extradition and refugee law. ([UNHCR](#))
- OHCHR / Special Procedures communications referencing extradition and non-refoulement. Useful as contemporary illustrations of how UN mechanisms frame extradition-linked risk of torture, arbitrary detention and unfair trial. ([Spcomm Reports](#))