



**Observatoire ARGA**

**ARGA Atlas**

**PROCEDURAL VIOLATIONS IN EXTRADITION: DEADLINES,  
EXTENSIONS, AND ABUSE OF PROCESS**

Author:

Sergei Khrabrykh — President of ARGA, PhD

Organization: Observatoire ARGA, ARGA Atlas

Mailing address: 21 route de l'Aviation, 12 C, 64600 Anglet, FRANCE

Contacts: [info@argaobservatory.org](mailto:info@argaobservatory.org), +33 7 58 49 62 27

Website: [www.argaobservatory.org](http://www.argaobservatory.org), <https://www.arga-atlas.com/>

Anglet, 9 avril 2026

## Purpose of the Document:

This report is intended to analyze procedural violations in extradition proceedings, primarily with regard to time limits, extensions, temporary detention, the pace of judicial review, and the availability of an effective remedy. Its purpose is to demonstrate that violations in extradition arise not only when a State disregards the substantive prohibition of surrender, but also when the procedure itself becomes an instrument of pressure through delay, uncertainty, repeated cycles of arrest, late submission of materials, opaque extensions of restrictions on liberty, and the substitution of judicial control by administrative inertia. In that sense, procedural violations in extradition are not merely secondary technical defects, but an autonomous zone of legal risk capable of affecting both the lawfulness of detention and the ultimate admissibility of surrender. The European Convention on Extradition provides for provisional arrest and the subsequent submission of a formal request within defined limits, while Article 5 ECHR requires lawfulness and speedy judicial control of detention, and Article 13 ECHR requires an effective remedy where Convention complaints are arguable. It is precisely at the intersection of these requirements that the principal practical conflict zone emerges. (rm.coe.int)

## CONTENTS

1. Executive Summary
  2. Why This Topic Has Legal and International Significance
  3. Normative and Institutional Framework
  4. Key Mechanisms of Procedural Violations
  5. Typical Scenarios and Patterns of Abuse
  6. Principal Risks, Conflict Zones, and Problem Areas
  7. International and European Standards
  8. Practical Conclusions and Model Legal Approach
  9. Conclusion
- Appendix A. Terminology  
Appendix B. Matrix of Risks / Powers / Legal Consequences  
Official Sources

### 1. EXECUTIVE SUMMARY

Extradition is almost always discussed through broad categories: political persecution, non-refoulement, fair trial, prison conditions. Yet in real practice, violations of process itself can be equally destructive: failure to comply with provisional arrest deadlines, delays after receipt of the formal request, extensions of detention without sufficient judicial scrutiny, gaps between judicial and executive stages, and situations where a remedy formally exists but is practically too slow to matter. The European Convention on Extradition expressly permits provisional arrest in urgent cases and at the same time provides that release may follow if the request and supporting documents are not received in time; explanatory materials of the Council of Europe emphasize that the requested State applies its own law when deciding on arrest and related timing. This means that procedural legality in extradition is never automatic and always depends on how treaty rules interact with domestic law. (rm.coe.int)

The central practical problem is that many extradition violations do not appear “dramatic” on the surface. A State may not deny defence rights, may not openly disregard the extradition treaty, and may not openly declare indefinite detention. Instead, it may proceed through a series of seemingly technical steps: first provisional arrest, then waiting for documents, then extension, then ministerial pause, then procedural adjournment, then re-arrest after release, then a new logic of urgency. Taken

together, such a structure may transform extradition into a prolonged coercive process before any final surrender decision. That is why procedural violations must be treated as an independent field of defence, rather than an accessory to the “real” rights. (ECHR-KS)

The principal conclusion of this report is that defence based on extradition time limits and procedure must operate simultaneously in two dimensions. First, it is necessary to challenge the specific violation: the provisional arrest deadline, delay in filing, excessive detention, lack of speedy review, failure to execute surrender within the applicable deadline. Second, it is necessary to demonstrate cumulative abuse: how a series of formally permissible procedural steps, taken together, becomes unlawful pressure, arbitrariness, or abuse of process. Without this, States can too easily conceal serious violations within administrative fog, which is routinely presented as the “normal course of procedure.” (rm.coe.int)

## 2. WHY THIS TOPIC HAS LEGAL AND INTERNATIONAL SIGNIFICANCE

This topic is of particular importance because extradition by its nature lies at the intersection of several intensive interferences with individual rights: deprivation of liberty, cross-border transfer, exposure to foreign criminal jurisdiction, possible separation from an asylum or residence process, and sometimes the risk of torture, unfair trial, or political targeting. In such a structure, procedural defects cannot be dismissed as mere technicalities. If a State deprives a person of liberty on the basis of an extradition request, it must not only eventually decide something, but must do so in a lawful, prompt, and reviewable manner. That is why Article 5 ECHR and the related case law on speedy judicial control remain central even where the dispute has not yet reached the actual surrender stage. (ECHR-KS)

Its international significance is reinforced by the fact that extradition is governed by a layered system. There are treaty time limits, above all under Article 16 of the European Convention on Extradition; there are national rules on arrest and detention; there are the general standards of Articles 5 and 13 ECHR; there are UN model standards, including the Model Treaty on Extradition, which expressly provides for release upon expiry of a defined period, commonly forty days, if the formal request has not been received. As a result, the same case may be formally “correct” under one instrument and problematic under another. For the defence, this means the need to work simultaneously across several levels rather than relying on a single elegant norm. (UNODC)

The legal significance of the topic is particularly high in cases where the State does not directly violate the prohibition of surrender, but instead turns the procedure into punishment before decision. Long provisional detention, repeated re-arrest after release, vague extensions, slow judicial handling, and delayed executive action may all be used as independent coercive tools. That is why procedural violations in extradition often matter not only as grounds to challenge detention, but as evidence of arbitrariness and broader institutional bad faith. In such cases, procedure is no longer a neutral framework. It becomes part of the problem itself. (UNODC)

## 3. NORMATIVE AND INSTITUTIONAL FRAMEWORK

The basic treaty framework derives from Article 16 of the European Convention on Extradition. In cases of urgency, the requesting State may seek provisional arrest, and the requested State decides the matter in accordance with its own law. The Council of Europe explanatory report expressly emphasizes that the requested State applies its domestic law to the arrest decision, even though urgency is assessed by the requesting Party. Article 16(4), as reflected in explanatory materials and related Council of Europe compilations, links provisional arrest with receipt of a formal extradition request within a defined period, classically up to 18 days and never more than 40 days if no longer bilateral arrangement applies. This creates a fundamental structure: provisional arrest is temporary

by design and cannot legitimately slide into open-ended detention pending bureaucratic convenience. (rm.coe.int)

The UN framework proceeds in the same direction. The Model Treaty on Extradition provides that an arrested person shall be set at liberty upon expiry of a defined period, often formulated as forty days, if the extradition request supported by the relevant documents has not been received, while also allowing re-arrest if the request is later submitted. In revised UNODC manuals it is separately explained that provisional arrest exists to preserve the possibility of extradition, but only for a specified period and not as a substitute for timely formalization. This is important because many States seek to use temporary coercion as though urgency itself justified indefinite procedural improvisation. It does not. The international model is specifically designed against that. (UNODC)

At the human rights level, Article 5 ECHR requires that any deprivation of liberty be lawful, connected to a permissible ground, and reviewable speedily by a court, while Article 13 requires an effective remedy for arguable Convention complaints. Current ECtHR guides on Articles 5 and 13 emphasize that speediness and effectiveness are not ornamental values. If a person remains in extradition detention while review drags on or a remedy is too slow to prevent the harm, the formal possibility of complaint ceases to be sufficient. Accordingly, detention time limits, extensions, and review structures are not peripheral matters. They are the point at which Convention compliance is actually tested. (ECHR-KS)

At the national level, time limits and procedure vary. Council of Europe materials on national procedures indicate that in Spain, under Act 4/1985 on Passive Extradition, if the person is not taken over on the established date and place, release may be ordered fifteen days later and must in any event be ordered thirty days later; separate materials also link Spanish practice with a short initial judicial presentation window. For Italy, official Council of Europe country templates state that once the judicial decision becomes final, the Minister has 45 days to issue the extradition decree, failing which the person is released; after the decree, surrender must be fixed and executed within the following 15 days, subject to limited extension. In France, the official Code de procédure pénale establishes short deadlines for appearance before the chambre de l'instruction, namely 5 working days where the person consents and 10 working days where the person does not consent, after presentation to the procureur général. This demonstrates the essential point: even within Europe, procedural violation analysis is jurisdiction-specific. (rm.coe.int)

#### 4. KEY MECHANISMS OF PROCEDURAL VIOLATIONS

The first mechanism is unlawful prolongation of provisional arrest. Provisional arrest exists to bridge the gap between urgency and the formal request, not to create a parallel detention regime with blurred boundaries. A violation arises when supporting documents are not received in time, yet the person remains in custody; when deadlines are calculated opaquely; when authorities attempt to reset the clock through procedural maneuvers; or when release is treated as an optional courtesy rather than a legal consequence. Both Council of Europe materials and UN model standards proceed from the opposite premise: release is built into the design once the request does not arrive in time. (rm.coe.int)

The second mechanism is excessive delay after receipt of the formal request. Receipt of documents does not give the State carte blanche for indefinite waiting. Once the case has been formalised, requirements of national procedure, judicial listing, ministerial decision-making, and execution within the applicable statutory framework arise. If unjustified pauses emerge between these stages, detention may become disproportionate or arbitrary, especially where there is no genuinely speedy court review. Italy illustrates particularly clearly that even after the judicial decision becomes final, the Minister's role is time-bound. France similarly embeds short appearance deadlines in the judicial

stage. Time in extradition is therefore legally structured, not merely administratively managed. (rm.coe.int)

The third mechanism is abusive extensions and fragmented responsibility. Often no single authority assumes full responsibility for the duration of the procedure. The court says it is waiting for materials or a ministerial step; the executive says it is waiting for the final judicial outcome; detention continues because everyone is waiting for everyone else. This is precisely how institutional delay arises without a visible villain. For the defence, this means attacking the chain of delay, not merely one isolated act. Otherwise, the procedure remains formally ownerless while the person remains physically in custody. (ECHR-KS)

The fourth mechanism is an ineffective remedy against extradition detention or timing abuse. If a person can theoretically challenge detention, but the review is not speedy, or cannot realistically prevent surrender or continued detention, the remedy may fail Convention standards. Article 13 guide materials and Article 5 guide materials emphasize effectiveness and speed as substantive requirements, not polite aspirations. In extradition this is especially critical, because time lost in review cannot be fully repaired after surrender or after months of coercive detention. (ECHR-KS)

The fifth mechanism is re-arrest after release as a tactic rather than a genuine procedural consequence. International models do allow re-arrest once the formal request later arrives. But there is a legal difference between good-faith use of a treaty mechanism and a pattern where authorities rely on serial arrest-release-re-arrest to maintain pressure despite their own failure to proceed in time. This is where the abuse of process argument emerges: individually each step may appear facially lawful, cumulatively the sequence may become coercive arbitrariness. (hrlibrary.umn.edu)

## 5. TYPICAL SCENARIOS AND PATTERNS OF ABUSE

The first typical scenario is classic provisional arrest without timely formalisation. The person is arrested urgently, the requesting State promises imminent documents, time runs, the defence repeatedly asks whether the formal request has arrived, and authorities respond in vague administrative language. When the deadline expires, release is delayed or contested. Article 16 structure and the UN model approach are specifically designed against this: temporary arrest cannot lawfully turn into waiting for paperwork whenever paperwork feels like arriving. (rm.coe.int)

The second scenario is receipt of the formal request, but judicial handling moves slowly while detention continues almost by inertia. Here the problem is no longer absence of documents, but the tempo of proceedings: hearing dates drift, supplementary materials are requested serially, courts take time to assess, executive authorities pause after the judicial decision, and nobody treats elapsed detention as an independent rights issue. Materials from France and Italy show that national systems do contain time-structured steps. Therefore, when the case drifts without clear legal reason, the defence should frame the delay as a violation, not as unfortunate weather. (Légifrance)

The third scenario is delay in surrender after extradition has effectively been allowed. Spanish and Italian official materials show concrete surrender-related deadlines after the key decision point, including release consequences where the person is not taken over or where the minister fails to act within the statutory period. This matters because States sometimes behave as though once extradition is “granted in principle,” the person may remain detained while authorities sort out logistics at leisure. But surrender logistics are also governed by time. Failure at that stage may itself justify release. (rm.coe.int)

The fourth scenario is interaction between extradition detention and other procedures, such as asylum, immigration detention, or parallel criminal proceedings. Even if each individual procedure has its

own logic, combined use of overlapping restraints can produce de facto excessive coercion. The legal trap here is compartmentalisation: each authority sees only its fragment, while the person experiences one continuous deprivation of liberty. Article 5 logic points in the opposite direction and requires scrutiny of actual lawfulness and speed of review, not bureaucratic fragmentation. (ECHR-KS)

## 6. PRINCIPAL RISKS, CONFLICT ZONES, AND PROBLEM AREAS

The first risk is normalization of delay. In extradition, people somehow become quickly accustomed to the idea that an “international procedure is inherently lengthy.” This is partly true and entirely dangerous. The international element does not eliminate legal time structure. Where a provisional arrest deadline, appearance deadline, ministerial deadline, or surrender deadline exists, it cannot be transformed into a soft recommendation. Otherwise, the entire safeguard architecture collapses into discretion. (rm.coe.int)

The second risk is treating detention as merely accessory to extradition. In practice, detention often becomes the principal source of pressure while the extradition decision remains pending. Article 5 guide materials make clear that detention has its own legality requirements and judicial review guarantees. Therefore, a defence that argues only about future surrender and not present custody often misses the most tangible point of attack. (ECHR-KS)

The third risk is over-formalised courts and under-accountable executives. A court may carefully observe hearing formalities while ignoring the cumulative coercive effect of delay. The executive may rely on pending judicial stages while itself causing postponement. As a result, nobody openly violates the law, yet the person remains in a prolonged state of uncertainty and custody. This is where abuse of process arguments and cumulative arbitrariness framing become especially important. (ECHR-KS)

The fourth risk is remedy without effect. If a complaint about detention or timing abuse is examined only after the decisive harm has occurred, such as prolonged unlawful custody or imminent surrender, its existence may not cure the problem. Article 13 materials emphasize effectiveness in practice, not merely availability in theory. In extradition this matters brutally: a slow remedy against a fast coercive process is often no remedy at all. (ECHR-KS)

## 7. INTERNATIONAL AND EUROPEAN STANDARDS

At least five firm standards emerge from international and European materials. First, provisional arrest in extradition is exceptional and temporary, not a substitute for the formal request. Second, if the formal request does not arrive within the applicable period, release must follow, subject to the treaty and national law framework. Third, any deprivation of liberty in extradition proceedings must remain lawful and subject to speedy judicial review under Article 5 ECHR. Fourth, remedies against extradition-related rights complaints must be effective in practice under Article 13 ECHR. Fifth, national timelines after judicial decisions or before surrender also matter, because detention cannot be prolonged merely for administrative convenience. (rm.coe.int)

These standards show that procedural integrity is not secondary to extradition law. It is part of extradition law. A State cannot honestly claim to respect treaty obligations while simultaneously turning deadlines into an elastic substance. Nor does it comply with Convention standards if judicial review is formally available but not speedy enough to matter. In extradition, process is not the wrapping around the substance. It is one of the substances. (ECHR-KS)

## 8. PRACTICAL CONCLUSIONS AND MODEL LEGAL APPROACH

The first practical task for the defence is to build a procedural chronology immediately. A precise map is needed: moment of arrest, legal basis invoked, deadline for the formal request, actual date of receipt, first judicial appearance, detention orders, extensions, ministerial steps, final judicial decision, surrender scheduling. Without this chronology, the violation almost always dissolves into a narrative of ordinary administration. With the chronology, it becomes a justiciable structure. (rm.coe.int)

The second task is to separate but connect the detention challenge and the extradition challenge. It is necessary simultaneously to contest the unlawfulness or disproportionality of custody and the defects of the extradition procedure itself. If only the latter is argued, the State will say the procedure is still ongoing. If only the former is argued, the State will say the extradition request remains valid. Combining both attacks is usually more effective because it prevents the system from hiding one problem behind the other. (ECHR-KS)

The third task is to use deadlines offensively, not defensively. Deadlines in extradition are not merely calendar information. They are legal triggers: release trigger, invalidity argument, abuse marker, disproportionality factor, evidence of arbitrariness. If the State missed the formal-request window, delayed surrender beyond statutory limits, or prolonged detention without speedy review, these are not side notes. They are leverage points. (rm.coe.int)

The fourth task is to frame cumulative abuse where needed. Even if each individual delay can be rationalised, the sequence may reveal something larger: coercive waiting, procedural oppression, or bad-faith use of re-arrest possibilities. Courts are often more comfortable addressing isolated defects than patterns. Unfortunately for them, patterns are where the truth usually lies. Protection strategy should therefore document not only missed dates, but the logic connecting them. (UNODC)

The fifth task is to tie procedural defects to broader rights where relevant. Delay and unlawful detention should be linked, where facts permit, to Article 3 vulnerabilities, asylum overlap, health deterioration, family life disruption, or inability to prepare a defence. This prevents the State from downgrading a serious violation into a clerical inconvenience. Procedural abuse becomes legally stronger when shown as part of a wider rights impact. (ECHR-KS)

## 9. CONCLUSION

Procedural violations in extradition are not minor secondary malfunctions. They affect the very lawfulness of deprivation of liberty, the pace and good faith of interstate cooperation, access to effective protection, and ultimately the legitimacy of the entire surrender process. International instruments clearly show that provisional arrest is limited in time, that release follows if formalisation fails, and that judicial control over detention must remain speedy and real. When these elements are blurred, extradition begins to function not as a legal procedure, but as managed waiting with a punitive effect. (rm.coe.int)

The principal conclusion is highly practical. In extradition, one must calculate not only the risks after surrender, but also the time before surrender. It is precisely in deadlines, extensions, pauses, and transitions between stages that what States prefer to call routine coordination most often reveals itself as what the defence should call by its proper name: procedural arbitrariness, unlawful detention, and abuse of process. If this is not challenged immediately, the system will readily explain that the person merely waited too long for their turn at legality. (rm.coe.int)

## APPENDIX A. TERMINOLOGY

Provisional arrest. Temporary detention for extradition purposes pending receipt of the formal request and supporting documents; under the international model it is urgent in nature and limited in time. (rm.coe.int)

Formal request for extradition. Official surrender request accompanied by the necessary materials, the receipt of which determines whether temporary detention may lawfully continue. (UNODC)

Speedy judicial review. Requirement under Article 5 ECHR that the lawfulness of detention be reviewed by a court promptly, not when it becomes convenient for the system. (ECHR-KS)

Effective remedy. A legal remedy capable of practically preventing or redressing the violation, rather than merely existing on paper. (ECHR-KS)

Abuse of process. A situation in which procedural mechanisms are formally used within the framework of the procedure, but cumulatively produce a result incompatible with the fair and lawful administration of extradition. This conclusion is often built from a cumulative pattern rather than one isolated defect. (ECHR-KS)

## APPENDIX B. MATRIX OF RISKS / POWERS / LEGAL CONSEQUENCES

Provisional arrest without timely request.

Legal risk: the person remains in custody after expiry of the treaty or statutory window.

Legal limit: provisional arrest is time-limited; release follows if documents do not arrive in time.

Consequence: unlawful detention and a strong release argument.

Practical comment: identify the exact deadline and do not allow the State to blur the moment of expiry. (rm.coe.int)

Delay after formal request.

Legal risk: detention continues while the case drifts between judicial and executive bodies.

Legal limit: detention must remain lawful and subject to speedy review; national post-request stages may also be time-bound.

Consequence: arbitrariness, disproportionality, challenge to continued custody.

Practical comment: attack the chronology of delay as a chain, not as isolated adjournments. (ECHR-KS)

Failure to execute surrender on time.

Legal risk: after extradition is allowed, the person remains detained because handover is delayed.

Legal limit: some national systems expressly require release if surrender is not executed within the applicable period.

Consequence: release must be sought even if extradition in principle was granted.

Practical comment: monitor the logistics deadline as carefully as the hearing date. (rm.coe.int)

Slow or ineffective remedy.

Legal risk: review formally exists but cannot prevent harm.

Legal limit: Article 5 requires speedy court review; Article 13 requires an effective remedy.

Consequence: Convention-based challenge to the procedural framework itself.

Practical comment: demonstrate why the complaint was too late in the functional sense. (ECHR-KS)

Serial arrest / release / re-arrest pattern.

Legal risk: authorities use re-arrest possibilities to maintain pressure after their own delay.

Legal limit: re-arrest may be allowed, but not as a bad-faith substitute for timely procedure.

Consequence: abuse of process argument and a stronger cumulative-rights narrative.

Practical comment: document the pattern, not only each warrant separately. (hrlibrary.umn.edu)

## OFFICIAL SOURCES

- European Convention on Extradition, especially Article 16, and the Council of Europe explanatory report. Core source on provisional arrest, urgency, receipt of the formal request, and the treaty logic of temporary detention. (rm.coe.int)
- UN Model Treaty on Extradition and UNODC revised manuals. Important for the international model of temporary arrest, the deadline for the formal request, and release in its absence. (UNODC)
- ECHR Guide on Article 5. Key source on lawfulness of detention and speedy judicial control, applicable also to extradition-related custody. (ECHR-KS)
- ECHR Guide on Article 13. Core source on effective remedy, especially where a procedural complaint must act in time to prevent real harm. (ECHR-KS)
- Council of Europe national procedures materials for Spain and Italy. Practically significant for specific national deadlines, release consequences, ministerial deadlines, and surrender execution rules. (rm.coe.int)
- France, Code de procédure pénale, extradition chapter. Important for judicial sequencing and appearance deadlines in French extradition procedure. (Légifrance)