A high bar to reach: due process and extradition in the jurisprudence of the ECtHR and the United Kingdom

Un alto estándar a alcanzar: el debido proceso y la extradición en la jurisprudencia del TEDH y del Reino Unido

Ben Keith, Barrister[1]

benkeith@5sah.co.uk

https://orcid.org/0009-0007-0016-9956

Abstract: This article examines the intricate relationship between due process rights under Article 6 of the European Convention on Human Rights (ECHR) and extradition procedures, with a focus on the case law of the European Court of Human Rights (ECtHR) and the United Kingdom. Extradition balances state sovereignty, reciprocity, and comity against the need to prevent impunity. However, it often intersects with human rights issues, especially the right to a fair trial.

The ECtHR has clarified that Article 6 does not directly apply to extradition proceedings, viewing them as administrative rather than judicial in nature, and not as a means of determining guilt or civil rights. However, Article 6 acts as an extraterritorial safeguard, preventing extradition if there is a real risk of a "flagrant denial of justice" in the requesting state—requiring serious breaches that undermine the core of a fair trial, such as widespread judicial corruption, denial of legal representation, or the admission of torture-obtained evidence.

Furthermore, diplomatic assurances from requesting states play a pivotal role in mitigating these risks. Still, their effectiveness depends on specificity, enforceability, and credibility, as illustrated in Japan v. Chappell and Wright versus failures in Bhandari v. Government of India. The article employs a dogmatic-legal methodology, analysing treaties, statutes, and case law to critique the high evidentiary burden placed on individuals and the imbalances in proceedings.

Ultimately, while this framework promotes international cooperation, it requires refinements to better protect rights amid evolving transnational cha-

1 The author wishes to thank Cristian González Ruiz, whose contributions to the research and drafting of this article were fundamental to the final outcome of the text.

llenges, ensuring that efficiency does not eclipse fairness.

Key Words: Extradition, Due Process, Article 6 ECHR, ECtHR Jurisprudence, Flagrant Denial of Justice, Diplomatic Assurances, United Kingdom Courts, Human Rights in Extradition

Resumen: Este artículo examina la relación entre los derechos al debido proceso bajo el Artículo 6 del Convenio Europeo de Derechos Humanos (CEDH) y los procedimientos de extradición, con énfasis en la jurisprudencia del Tribunal Europeo de Derechos Humanos (TEDH) y del Reino Unido. La extradición, como mecanismo de cooperación judicial internacional moderna, equilibra los principios de soberanía estatal, la reciprocidad y la cortesía contra la imperativa de prevenir la impunidad. Sin embargo, estos mecanismos de cooperación frecuentemente pueden dar lugar a violaciones o potenciales violaciones de los derechos humanos de los individuos a ser extraditados.

Aunque el TEDH ha establecido que el artículo 6 del CEDH no se aplica directamente a los procedimientos de extradición, considerándolos administrativos en lugar de determinativos de culpabilidad penal o derechos civiles, el Artículo 6 sirve como salvaguarda extraterritorial, impidiendo la extradición cuando existe un riesgo real de una "denegación flagrante de justicia" en el estado solicitante –un umbral alto que requiere violaciones que anulen la esencia de un juicio justo, como corrupción judicial sistémica, denegación de representación legal o admisión de evidencia obtenida mediante tortura.

Adicionalmente, las garantías diplomáticas de los estados solicitantes juegan un rol importante en los riesgos de las posibles violaciones al derecho al juicio justo y al debido proceso, pero su efectividad depende de la especificidad, claridad sobre la ejecución y credibilidad, como se ilustra en Japón v. Chappell y Wright versus fallos en Bhandari v. Gobierno de la India. Este artículo emplea una metodología dogmática-jurídica, analizando tratados, estatutos y jurisprudencia para criticar la alta carga probatoria sobre los individuos y los desequilibrios en los procedimientos de extradición, así como la relación entre la aplicación del artículo 6 del CEDH en los procedimientos de extradición.

Aunque el marco normativo existente en relación con la extradición sostiene la cooperación internacional, el mismo sistema demanda mejoras para proteger mejor los derechos en medio de desafíos transnacionales en evolución, asegurando que la eficiencia no eclipse la equidad y justicia.

Palabras clave*:* Extradición, Debido Proceso, Artículo 6 CEDH, Jurisprudencia TEDH, Denegación Flagrante de Justicia, Garantías Diplomáticas, Tribunales del Reino Unido, Derechos Humanos en Extradición

Introduction

Authorities have been transferring individuals wanted for crimes to other sovereigns since ancient times, well before the creation of institutions dedicated to justice cooperation and even before the modern idea of the nation-state emerged. Some historians have traced the earliest recorded case of extradition back over 4,000 years, to the remnants of a peace treaty between the Hittite Empire and the Egyptian Empire.[2] Other experts have identified simi-

2 Bryce, Trevor. "The 'Eternal Treaty' from the Hittite Perspective." British Museum Studies in Ancient Egypt

lar forms of extradition in the Chinese, Chaldean, and Assyrian-Babylonian civilisations, as well as during the Middle Ages in Western Europe.[3]

In its modern sense, extradition refers broadly to the transfer of an individual from one state (the 'receiving state' or 'host state') to another (the 'requesting state') for trial or the execution of a sentence.[4] Moreover, extradition is among the preferred mechanisms for state cooperation based on the principles of sovereign equality, reciprocity, and comity, as it allows states to prevent impunity, enhance law enforcement and crime prevention, while also supporting international cooperation and stability through the promotion of agreements for the transfer of custody.[5]

States regard extradition as an essential aspect of their international relations and have established a comprehensive legal framework to govern it. However, in practice, extra-legal factors related to extradition requests still influence proceedings. In many jurisdictions, extradition requests involve multiple branches of government, engaging both political and judicial actors, such as ministries of the interior, justice, and foreign affairs, as well as the equivalent of district or high courts. In some jurisdictions, even the head of state may participate in the decision on whether an extradition is approved or performed.[6]

and Sudan 6 (2006): 6-7. Accessed March 3, 2025. Available at https://webarchive.nationalarchives.gov.uk/ukgwa/20190801114433/https://www.britishmuseum.org/research/publications/online_journals/bmsaes/issue_6/bryce.aspx.

3 See *inter alia* Bassiouni, M. Cherif. "Chapter I: The Legal Framework of Extradition in International Law and Practice." In *International Extradition*, 6th ed., 2. 2014.

4 Julié, William, Sophie Menegon, and Juliette Fauvarque. "From a Political to a Judicial Approach to Extradition: A Case for the Consolidation of the Requesting State's Rights in Domestic Extradition Procedures." *New Journal of European Criminal Law* 12, no. 3 (2021): 326–349. Accessed March 3, 2025. https://doi.org/10.1177/20322844211026378; Wells, Colin, and Emma Stuart-Smith. "Extradition." In *Research Handbook on International Financial Crime*, edited by Colin Wells, Emma Stuart-Smith, and Barry Rider, 647. United Kingdom: Edward Elgar Publishing, 2015. https://doi.org/10.4337/9781783475797.00068; Malkani, Bharat, Jordan M. Steiker, and Carol S. Steiker. "Extradition and Non-Refoulement." In *Comparative Capital Punishment*, 76–77. United Kingdom: Edward Elgar Publishing, 2019. https://doi.org/10.4337/9781786433251.00013

5 See ex. Silva-Garcia, German, Cirus Rinaldi, and Bernardo Pérez-Salazar. "Expansion of Global Rule by Law Enforcement: Colombia's Extradition Experience, 1999–2017." *Contemporary Readzings in Law and Social Justice* 10, no. 1 (2018): 104–29. https://doi.org/10.22381/CRLSJ10120185; *United States v. Álvarez-Machaín*, 504 U.S. 655, 672 n.4 (1992) (Stevens, J., dissenting op.) ("Extradition treaties prevent international conflict by providing agreed-upon standards so that the parties may cooperate and avoid retaliatory invasions of territorial sovereignty."), on remand, 971 F.2d 310 (9th Cir. 1992), reprinted in 31 ILM 902 (1992).

6 For example, in the United States, the executive branch makes the final decision regarding an extradition request, but the Courts may review these decisions, see U.S. Code, Title 18, Sections 3181-3195. "Extradition Procedures, *Specialist v. Warden*, 454 F.2d 587 (4th Cir. 1972); In the United Kingdom, the decision to extradite is also judicially controlled, see Extradition Act 2003,

Given its importance for international judicial cooperation, extradition law has become an intriguing area where complex issues, such as national criminal law, international human rights law, and international criminal law, intersect. In practice, judges, prosecutors, and defence attorneys face challenges arising from the intersection of these fields, requiring a comprehensive approach to address all the nuances that may emerge during the proceedings.

Among the challenges that commonly arise during extradition proceedings is undoubtedly the issue of due process violations. This is particularly relevant in European jurisdictions, where Article 6 of the European Convention on Human Rights (ECHR) is extensively employed as a tool to prevent or condition extradition to specific jurisdictions, given the fact that there are serious grounds to believe that, if extradited, an individual would have their rights violated as stipulated by the convention.

The fact that the European Court of Human Rights (ECtHR) has explicitly stated that Article 6 does not apply to extradition and removal proceedings themselves has limited the ability to challenge potential abusive extradition decisions within the European human rights system. Nevertheless, despite this limitation, Article 6 submissions remain significant in the extradition process.

This article aims to explore the complexities of the relationship between the European Human Rights System and how courts interpret the scope and analysis of Article 6 violations in extradition proceedings, both at the European and national levels, with particular emphasis on the United Kingdom. To achieve this, the article will first critically review the jurisprudence of the ECtHR to establish the legal standards relevant to cases of Article 6 breaches; subsequently, it will evaluate how these legal developments influence national jurisdictions and the approach taken by courts in the United Kingdom.

Methodology

This study employs a legal approach, based on a detailed and systematic analysis of positive law in both extradition law and international human rights law.[7] Its dual aims are to clarify the protections provided to individuals under Article 6 of the European Convention on Human Rights in extradition cases, and critically, to evaluate how these legal protections function in practice. The research offers a comprehensive assessment of how these rules operate in litigation, their impact on the effective enjoyment of rights throughout extradition procedures, and examines potential violations of Article 6 if an individual is extradited.

c. 41, UK Statute Law. Accessed March 3, 2025. https://www.legislation.gov.uk/ukpga/2003/41/contents/enacted, Sections 2, 14; In Colombia, the decision to extradite is made by the President, but this decision is reviewed by the Supreme Court, see Código de Procedimiento Penal [Criminal Procedure Code], Ley 906 de 2004, Congreso de la República de Colombia. Accessed March 3, 2025. https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=7187, art. 442-445.

7 Smits, Jan M. "What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research." In Rethinking Legal Scholarship: A Transatlantic Dialogue, edited by Rob van Gestel, Hans-W. Micklitz, and Edward L. Rubin, 207–228. New York: Cambridge University Press, 2017.

The research methods used will focus on a thorough review and critical analysis of primary and secondary sources. Primary sources include authoritative legal documents, such as international treaties, statutes, and judicial decisions from global and regional courts and tribunals, like the European Court of Human Rights (ECtHR). Secondary sources comprise scholarly works, including academic commentaries, monographs, and peer-reviewed articles, in the fields of extradition law, international human rights law, and comparative criminal justice.

The Role of Human Rights in Extradition Proceedings

Human Rights clauses in extradition treaties play a critical role in safeguarding against abuses, ensuring that individuals facing extradition are protected from mistreatment, political persecution, or sham criminal processes. The inclusion of such protections within both bilateral and multilateral treaties illustrates the broader effort to integrate human rights considerations into the legal frameworks governing international police and judicial cooperation.

International human rights law is relevant because states, as the primary subject of international law, have incorporated human rights clauses into the extradition treaties they ratify. The scope of these human rights provisions depends on the specific treaty under analysis. It may range from fundamental guarantees of fair treatment and a fair trial to more sophisticated protections, such as provisions relating to capital punishment or the rights of a minor facing extradition.

Additionally, in cases where human rights clauses are not expressly included in extradition treaties, they still play a role in extradition proceedings when the requested state has ratified one or several human rights instruments. Particularly relevant in this regard for the European context is the European Convention on Human Rights ("ECHR"). However, other instruments, such as the American Convention on Human Rights or the African Convention on Human and Peoples' Rights, may also be relevant in specific circumstances and jurisdictions.

A common feature regarding human rights in extradition treaties is the legal rights and fair treatment clause, which is often contained in extradition treaties.[8] These provisions generally encompass two distinct safeguards: guarantees of fair treatment and guarantees of a fair trial. Fair treatment guarantees protect the requested person from arbitrary detention, inhumane conditions, or discriminatory treatment during the extradition process, generally upholding the same standards as for nationals of the requesting state. Fair trial guarantees, however, focus on the legal proceedings in the requesting state, ensuring rights such as access to legal representation,

8 Interamerican Convention on Extradition, art. 16; Convention on Legal Aid and Legal Relations in Civil Family and Criminal Cases [Minsk Convention], art. 1; Riyadh Agreement for Judicial Cooperation, art. 3-4; United Nations Convention Against Corruption, art. 44(14); International Convention Against the Taking of Hostages, art. 8(2); Convention on the Physical Protection of Nuclear Material, art. 12; International Convention for the Suppression of the Traffic of Woman and Children, art. 5.

the presumption of innocence, and due process protections.[9]

Another critical human rights provision in extradition treaties is the guarantee of non-refoulement. This is especially crucial when the person involved faces, if extradited, potential risks such as torture, cruel treatment, or the death penalty. The non-refoulement principle prevents states from extraditing or sending individuals back to a country where they are at substantial risk of serious human rights violations.[10] This safeguard is firmly established in international human rights and refugee law, notably in the UN Convention Against Torture[11] and the 1951 Refugee Convention.[12] Some extradition treaties explicitly include non-refoulement protections, requiring the requested state to evaluate the human rights conditions in the requesting state before granting extradition. When such risks are present, extradition must be denied unless credible guarantees are given that the individual's fundamental rights will be upheld.[13]

In a similar vein, regarding capital punishment, some treaties, such as the ECOWAS Convention on Extradition, only permit extradition if both the requesting and requested states allow the death penalty.[14] Others, like the European Convention on Extradition, require assurances that the death penalty will not be imposed or carried out if one of the states has abolished it.[15] Similarly, the Inter-American Convention on Extradition stipulates that extradition should not be granted unless the requesting state receives reliable assurances that neither the death penalty nor any other inhuman or degrading punishment will be applied to the requested person.[16]

The third type of human rights clauses in extradition treaties is the prohibition of extradition where there are substantial grounds to believe that the request is made for the purpose of prosecuting or punishing a person based on discriminatory grounds, such as race, tribe, religion, nationality, political opinion, sex, or status. This safeguard aims to prevent the misuse of extradition as a tool for persecution. It is enshrined in

9 See ex. Universal Declaration on Human Rights, art. 10, 11(1); International Covenant on Civil and Political Rights, art. 14(1), 14(3); In the context of regional instruments of human rights, See European Court of Human Rights. *Guide on Article 6 of the European Convention on Human Rights – Right to a Fair Trial (Criminal Limb)*. Updated August 31, 2022. Council of Europe. Accessed March 3, 2025. https://icct.nl/sites/default/files/import/publication/guide_art_6_criminal_eng.pdf.; Inter-American Court of Human Rights. *Jurisprudence Notebook No. 12: Due Process*. San José, Costa Rica: IACtHR. Accessed March 3, 2025. https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo12.pdf.

10 For Non-Refoulement, See *below* Asylum considerations in the framework on extradition proceedings.

11 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3(1), 3(2).

12 Convention Relating to the Status of Refugees, art. 33(1).

13 Interamerican Convention on Extradition, art. 9.

14 ECOWAS Convention on Extradition, art. 17.

15 European Convention on Extradition, art. 11.

16 Interamerican Convention on Extradition, art. 9.

various legal instruments, including the ECOWAS Convention on Extradition[17], the Inter-American Convention on Extradition[18], and the European Convention on Extradition.[19] Additionally, several United Nations conventions incorporate this protection, including the UN Convention Against Corruption[20], the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[21], the International Convention Against the Taking of Hostages[22], the UN Convention Against Transnational Organised Crime[23], and the Convention on the Physical Protection of Nuclear Material.[24]

Interestingly, the ECOWAS Convention on Extradition has the most detailed human rights provisions, including a requirement that appears to permit the extradition of minors between member states. However, it explicitly obligates the member states involved to consider the best interests of the minor, as well as their prospects for rehabilitation and reintegration.[25] The ECOWAS Extradition Treaty includes an explicit clause prohibiting extradition in cases where a person would be subjected to torture or cruel, inhuman, or degrading treatment or punishment in the requesting state, or where they would not receive the minimum guarantees in criminal proceedings as set out in the African Charter on Human and Peoples' Rights.[26]

Another notable aspect of human rights clauses in extradition treaties can be found in the Rome Statute of the International Criminal Court. Although the ICC does not conduct extradition proceedings in the traditional sense, since member states are required to surrender the requested individual to the Court, the Statute establishes a detailed procedure for carrying out such actions, as well as rules for resolving jurisdictional conflicts between the Court and other authorities. However, a systematic reading of Article 21(3) of the Rome Statute suggests that human rights may serve as an interpretative tool for the whole Statute, including in the surrender and extradition procedures it governs.

The existence of several human rights clauses in extradition treaties demonstrates the importance that the protection of the individual has in these kinds of proceedings. However, explaining the interrelation of all these guarantees requires an extensive analysis that falls far over the scope of this article. Therefore, this article focuses on the guarantee of due process and a fair trial, as stated in several extradition treaties, and most importantly, in Article 6 of the

17 ECOWAS Convention on Extradition, art. 4(2).

18 Interamerican Convention on Extradition, art. 4(5).

19 Interamerican Convention on Extradition, art. 3(2).

20 UN Convention Against Corruption, art. 44(15).

21 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art. 6(6).

22 International Convention Against the Taking of Hostages, art. 9(1).

23 United Nations Convention Against Transnational Organized Crime, art. 16(14).

24 Convention on the Physical Protection of Nuclear Material, art. 11(b).

25 ECOWAS Convention on Extradition, art. 2(2).

26 ECOWAS Convention on Extradition, art. 5; African Charter on Human and Peoples' Rights, art. 7.

European Convention of Human Rights. The following section will analyse the extent to which Article 6 of the ECHR is applied in extradition proceedings and the jurisprudence of the ECtHR.

The nature of Article 6 in extradition proceedings

Article 6 of the European Convention on Human Rights is a fundamental safeguard of legal fairness. It guarantees every person the right to a fair and public hearing within a reasonable timeframe by an independent and impartial tribunal established by law when resolving civil rights, obligations, or criminal charges. Furthermore, this legal norm also ensures protections such as the presumption of innocence until proven guilty, timely and understandable information about accusations, sufficient time and facilities for preparing a defense, the right to self-representation or chosen legal counsel (with free assistance if necessary), equal opportunity to examine witnesses, and free interpretation services in case the processed person speaks a foreign language.

This right is essential to democratic societies and represents a cornerstone for the European Human Rights system, as it fosters trust in the justice system and prevents unfair convictions through robust procedural safeguards. However, extradition hearings do not directly determine guilt or civil rights and therefore fall outside the full scope of Article 6. In fact, in its continuous jurisprudence, the ECtHR has clarified that these proceedings are administrative, focusing on legal formalities such as double criminality or evidence sufficiency, rather than the merits of the case.[27]

Despite not directly applying in extradition proceedings, Article 6 still plays a critical role extraterritorially in extradition. Extradition and Human Rights courts have understood equally that a state cannot extradite the requested person if there's a substantial risk of a 'flagrant denial of justice' in the requesting state.[28] In fact, states have recognised the need to ensure that when surrendering a person to a third state, they must guarantee the rights of the person, as enshrined in the ECHR.[29]

The application of Article 6, in removal cases is examined through prism, which holds the requested state accountable for foreseeable violations that occur outside its territory. This was established in the 1989 case Soering v. The United Kingdom before the ECtHR. Mr Soering was a German man arrested in the UK in 1986 following an extradition request by the United States for two capital murders he allegedly committed in Virginia the previous year. The applicant, who was 18 at the time, initially confessed to his crime but later rejected his own admission of guilt, citing mental health issues.[30]

27 European Court of Human Rights. Maaouia v. France, no. 39652/98, ECHR 2000-X, October 5, 2000, para. 40.

28 European Court of Human Rights. Soering v. United Kingdom, no. 14038/88, ECHR 1989, July 7, 1989, para. 113.

29 For the doctrine of effective control see more broadly, European Court of Human Rights. 2011. *Al-Skeini and Others v. United Kingdom*, no. 55721/07, ECHR 2011, July 7, 2011, paras. 130–139.

30 See *Soering, supra* note 27, para 49-51.

Soering's case was complex, due to the severity of the charges against him, which initially led U.S. prosecutors to seek the death penalty contingent upon his conviction, although to ensure the effective extradition by the requested state, it had assured the United Kingdom that such a penalty would not be applied. Although these asurances were deemed sufficient by the UK and his extradition was initially granted, Soering contested the extradition because he would endure the 'death row phenomenon,' characterised by prolonged, brutal detention under inhumane conditions, which he argued contravened Article 3's prohibition of inhuman or degrading treatment.[31] Furthermore, the applicant contended that his extradition would violate Article 6 (3)(c), since Virginia did not provide legal aid for post-conviction appeals, and Article 13, due to the absence of effective remedies.

Given these circumstances, the ECtHR identified a substantial risk under Article 3 ECHR due to prolonged detention periods –averaging six to eight years–as well as the conditions of isolation and fear at Mecklenburg Correctional Centre.[32] However, the Court rejected the Article 6 claim, citing the absence of a 'flagrant denial' of fairness, as the facts of the case did not meet the threshold to declare a violation of Article 6.[33] Despite the brief considerations around Article 6 in *Soering*, the ECtHR made it clear for the first time that a potential breach of the fair trial guarantees, as enshrined in the Convention, may bar extradition in cases where the wanted individual may face serious violations of their fair trial rights.

This high threshold, however, became the standard practice of the tribunal in cases involving extradition and removal proceedings, as the subsequent jurisprudence confirms. In the latter case of Chahal v. the United Kingdom, which involved an Indian Sikh activist and his family who arrived in the UK in 1971 and obtained indefinite leave to remain by 1974, the applicant was detained in 1990 on grounds of national security, with allegations of connections to terrorism. Although released on bail in 1992, his deportation was again contemplated in 1994.[34]

Given these circumstances, Mr Chahal argued that there were violations of several Articles of the European Convention on Human Rights: Article 3, Articles 5 (1) and 5(4), Article 8, and Article 13. Considering these facts, the ECtHR found that there was a substantial risk of torture if the individual was effectively deported to India, constituting a violation of Article 3. Additionally, the Court identified a breach of Article 5 (4) due to inadequate judicial oversight, as well as violations of Articles 13 and 3, owing to the ineffectiveness of the UK safeguards.[35]

In this case, however, article 6 appeared in dissenting opinions, with Judge De Meyer examining the protections of Article 6 with those of Article 5 due to its relevance to court access.[36]). Article

31 Ibid, para. 76.

32 Ibid, paras. 106-111.

33 Ibid, paras. 112-113, 116-124.

34 European Court of Human Rights. Chahal v. United Kingdom, no. 22414/93, ECHR 1996-V, November 15, 1996, para. 12-24.

35 European Court of Human Rights. Chahal v. United Kingdom, no. 22414/93, ECHR 1996-V, November 15, 1996, para. 124-133.

36 European Court of Human Rights. Chahal v. United Kingdom, no. 22414/93,

6 of the European Convention on Human Rights (ECHR) stipulates the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal" in matters concerning civil rights and criminal charges, including fundamental rights such as legal aid under Article 6 § 3 (c). The dissenting opinions employed Article 6 by analogy: Judge De Meyer argued that it guarantees access to courts, contrasting with Article 5's focus on detention reviews, while Judge Pettiti referenced Lawless v. Ireland (1961) to emphasize that Article 6 does not extend to non-criminal detention but pertains to procedural safeguards.[37]

Therefore, despite the possibility that due process concerns may bar the extradition of an individual, the threshold to reach is high, requiring a breach so severe that it nullifies the essence of a fair trial.[38] Under the current standards of the ECtHR, minor procedural flaws are insufficient, as the unfairness must be fundamental. However, in certain circumstances, the accumulation of minor breaches that, on their own, would be dismissed as violations of Article 6 may be considered as such if their combined effect is deemed significant. This is also evidence in the adoption of such criteria by national extradition courts.

For example, in the UK, the *Popoviciu v. Romania* case,[39] a case involving allegations of a corrupt judge's ties to a key witness, raising doubts about impartiality, the High Court of Justice of the United Kingdom held that multiple procedural deficiencies, like judicial bias, could collectively amount to a flagrant denial of justice, even if no single issue met the threshold alone.[40]

This position, however, puts individuals resisting extradition in a difficult position. The high evidential burden is placed on the individual to demonstrate such risks, often requiring concrete evidence of systemic or case-specific failures, which poses a significant hurdle.[41] This standard typically demands robust proof of either widespread systemic shortcomings (e.g., documented patterns of judicial corruption, political interference in the courts, or human rights abuses as reported by credible international bodies like Amnesty International or the United Nations) or case-specific vulnerabilities (e.g., evidence that the individual's political affiliations, ethnicity, or prior activism would expose them to targeted mistreatment).

Compounding this are the practical challenges applicants encounter in gathering the required evidence. Individuals fleeing persecution might have limited or no access to documents, witnesses, or records from their home cou-

ECHR 1996-V, November 15, 1996, Partly Concurring, Partly Dissenting Opinion of Judge De Meyer; Partly Dissenting Opinion of Judge Pettiti.

37 Ibid.

38 European Court of Human Rights. 2012. Othman (Abu Qatada) v. United Kingdom, no. 8139/09, ECHR 2012, January 17, 2012., paras 258–260.

39 Popoviciu v. Romania. 2021. [2021] EWHC 1584 (Admin), [2021] WLR(D) 330, Divisional Court, England and Wales

40 Ibid, para 146.

41 Dugard, John, and Christine van der Wyngaert. 1998. "Reconciling Extradition with Human Rights." American Journal of International Law 92, no. 2: 187–212. https://doi.org/10.2307/2997918, p. 205.

ntry due to ongoing political unrest, censorship, or threats to their safety and that of their associates. For example, in authoritarian regimes, obtaining affidavits from former detainees or official reports on prison conditions could endanger sources or be entirely impossible without risking further reprisals. Furthermore, the political and legal environment in the requesting state, such as suppressed media, controlled judiciary, or limited NGO activities, often conceals or destroys potential evidence, leaving applicants dependent on indirect sources like exiled dissidents' testimonies or third-party human rights reports, which courts may consider insufficiently precise or too broad to satisfy the burden.

The application of Article 6 of the European Convention on Human Rights in extradition processes highlights a complex balance between procedural efficiency and safeguarding fundamental rights. Although Article 6 offers strong protections for fair trials within national contexts, its limited scope in extradition hearings restricts individuals from fully invoking these protections. This exclusion, combined with the high evidential burden to prove a "flagrant denial of justice" in the requesting country, creates significant hurdles for applicants. Given the substantial resources of the state, individuals often struggle to gather concrete evidence of systemic or specific risks, especially when political unrest, censorship, or limited access to information hinders the collection of evidence. Although cases like Popoviciu v. Romania demonstrate that multiple procedural faults can meet the standards for denying extradition, the strict rules and practical obstacles often leave individuals vulnerable to expedited procedures that may overlook real risks.

Article 6 as an assessment of potential violations of rights owed to the requested individual

Article 6 of the ECHR serves as a crucial safeguard against extradition when the legal proceedings in the requesting country could seriously compromise the right to a fair trial of the individual being requested. Assessing the fairness of these proceedings involves a comprehensive review that considers both systemic issues and specific case details to evaluate whether extradition violates the core principles of the ECHR. This process, however, reveals a tension between respecting state sovereignty, maintaining mutual trust in judicial cooperation, and safeguarding fundamental rights.

As briefly addressed in the previous section, the conceptual foundation for employing Article 6 to deny extradition dates to the landmark judgment in *Soering v. United Kingdom*, in which the ECtHR extended the Convention's protections beyond territorial boundaries. Although primarily concerned with Article 3's prohibition on inhuman treatment, the Court acknowledged that extradition could exceptionally implicate Article 6 if the fugitive risked a "flagrant denial of a fair trial" in the requesting country.[42] Concretely, the ECtHR held:

> "The right to a fair trial in criminal proceedings, as embodied in Article 6, holds a prominent place in a democratic society (…). The Court does not exclude that

42 European Court of Human Rights. Soering v. United Kingdom, no. 14038/88, ECHR 1989, July 7, 1989, para. 113.

> an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country".[43]

The Court further noted:

> "The Convention does not govern the actions of States not Parties to it (…) However, extradition may engage the responsibility of the sending State where substantial grounds exist for believing there is a real risk of a flagrant denial".[44]

The threshold was further elaborated by the Court in Othman (Abu Qatada) v. *United Kingdom*. In this case, the ECtHR analysed the situation of Mr Omar Othman, known as Abu Qatada, an individual who faced extradition from the UK to Jordan for terrorism charges. Before the Court, the applicant argued that evidence obtained through torture would be used against him in the underlying proceedings in Jordan, therefore violating his Article 6 rights.[45]

Despite these circumstances, in the national proceedings, extradition was availed by the respondent state. Concretely, the UK relied on diplomatic assurances from Jordan to guarantee a fair trial and alleged that these assurances would be enough to avoid the applicant's Article 6 being violated if effectively extradited.[46] Given these conditions, the ECtHR was called to determine whether the circumstances surrounding the extradition of Mr Othman would amount to a flagrant denial of justice, and whether the assurances provided by the requesting state would suffice to avoid the applicant's rights being violated if effectively extradited.

Thus, building upon the precedent in *Soering*, ECtHR clarified:

> "A flagrant denial of justice goes beyond mere irregularities or lack of safeguards (…) What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article" .[47]

Furthermore, when reviewing the assurances provided by Jordan, the Court stated that this kind of diplomatic means must be examined in a way that, in their practical application, provides a sufficient guarantee that the applicant will be protected against the risk of treatment prohibited by the Convention. Therefore, according to the Court, the weight to be given to assurances depends on the circumstances prevailing at the material time.[48] *Othman* de-

43 European Court of Human Rights. Soering v. United Kingdom, no. 14038/88, ECHR 1989, July 7, 1989, para. 113.

44 European Court of Human Rights. Soering v. United Kingdom, no. 14038/88, ECHR 1989, July 7, 1989, para. 86.

45 European Court of Human Rights. 2012. Othman (Abu Qatada) v. United Kingdom, no. 8139/09, ECHR 2012, January 17, 2012, paras 13 and fl.

46 Ibid., paras 21-24.

47 Ibid, para. 260.

48 Ibid, para. 187.

fined a "flagrant denial" as a fundamental breach that nullifies Article 6 rights and introduced a test for assurances, requiring courts to assess their specificity, reliability, and practical effectiveness. Furthermore, *Othman* clarified a first example of what the ECtHR would consider a gross denial of justice capable of barring extradition, which is the admission of torture-derived evidence.

However, this is not the only situation that Courts have recognised as sufficiently severe to prevent the extradition of an individual. Circumstances such as judicial practice demonstrates, could be the lack of an independent and impartial tribunal, which strikes at the heart of Article 6(1). This is regarded as such because systemic corruption within the judiciary can make all proceedings unreliable, as no tribunal can be trusted to deliver unbiased justice.

This was the case in *Kapri v. Lord Advocate*. Gentian Kapri, an Albanian national, faced extradition from the UK to Albania for murder. In this case, the requested person argued that Albania's judicial system was systemically corrupt, with widespread bribery and political interference preventing a fair trial. In response to these allegations, Lord Hope in the Supreme Court of the United Kingdom argued that in this case, the evidence of corruption in the Albanian judicial system was compelling, further adding that it is not a question of isolated incidents but a pervasive culture that affects everyone subjected to the system.[49] Thus, according to the UK Supreme Court, the systemic nature of corruption in the Albanian judicial system meant that no tribunal can be regarded as impartial or independent, rendering a fair trial impossible.[50]

The elaborations made by the UK Supreme Court closely resemble those of the ECtHR. In fact, although not adopting identical language, the blatant denial of justice test has been embraced by UK courts, which have considered the consequences as making a fair trial impossible.

A third factor that may amount to a breach of Article 6 barring extradition is judicial bias or external pressure, such as state influence in politically sensitive cases. In the *Russian Federation v. Igor Kononko* case, decided by Westminster Magistrates' Court, the requested person, Igor Kononko, faced extradition from the UK to Russia on embezzlement charges tied to an alleged fraud involving BTA Bank.[51]

The underlying charges highlighted that Mr Kononko had a tangential connection to Mukhtar Ablyazov, a Kazakh opposition figure who claimed the charges were politically motivated due to his opposition to Kazakhstan's President, Nursultan Nazarbayev. Kazakhstan had aggressively pursued Ablyazov and his associates through extradition requests worldwide, often with limited success. In Kononko's case, however, a prior Ukrainian extradition request in 2014 was discharged by the UK High Court after leaked emails exposed fabricated evidence.[52]

49 Kapri v. Lord Advocate (representing the Government of the Republic of Albania) [2013] UKSC 48 (UK Supreme Court, July 10, 2013)., paras. 28-34.

50 Ibid, para 33.

51 Russian Federation v. Kononko (Finding of Fact and Reasons), Westminster Magistrates' Court (Senior District Judge Howard Riddle, Chief Magistrate), 27 May 2015, p. 1-2.

52 Ibid, p. 1-2; 8; 10; 23-24.

For the Russian request, evidence included leaked communications showing Kazakh agents influencing Russian prosecutors and courts, including orchestrated high-level meetings between Presidents Putin and Nazarbayev to advance the case. These, combined with other facts established through expert testimony, revealed the systemic judicial issues in Russia that underscored bias and external interference by Kazakhstan.

Given these circumstances, the Court determined that extradition may be barred in cases where judges are politically appointed from state officials; in this concrete case, this is evidenced by the fact that most judges were former investigators or prosecutors, which impacted their independence.[53] Moreover, in this case, it was established that significant power was granted to politically appointed court chairmen to select and control subordinate judges, enabling effective control of case outcomes. Evidence of bribery and financial corruption also existed, and corporate raiding (seizure of private assets by the state) was a recognised phenomenon.[54] Lack of judicial independence and political interference in judicial decision-making, including interference at the highest levels known as 'hand control.' The courts also suffer from the entrenched practice of 'telephone justice', where a judge receives a telephone call informing them of the desired outcome of a case. No legislative or administrative framework protects judges from influence by state or private interests".[55] This evidence of Kazakh pressure on Russian judges, alongside documented judicial manipulation, met the 'flagrant denial' threshold under Article 6, and therefore effectively barred Mr Kononko's extradition.

Issues of this sort have also arisen before the ECtHR. In fact, the Strasbourg Court has recently addressed cases where concerns about objective impartiality may arise from close ties between judges and the parties involved. In *Kezerashvili v. Georgia*, the case of Mr David Kezerashvili, a former Georgian defence minister who faced extradition from the UK to Georgia for corruption charges, the applicant alleged judicial bias due to political motivations, as the presiding judge had previously served as a prosecutor in related cases.[56]

Faced with these circumstances, the ECtHR noted the violation of Article 6 that the presence of a former prosecutor on the bench, particularly in a politically sensitive case, raises objective doubts about the tribunal's impartiality.[57] Therefore, according to the ECtHR, evidence of state pressure in high-profile cases suggests a real risk of bias and was sufficient to meet the flagrant denial threshold.[58]

A fourth factor which may bar extradition based on an Article 6 violation is refusing access to legal representation, particularly during critical investigative phases. Concretely, systematic bans on lawyer access, especially for detainees held abroad, have been deemed sufficient to trigger a 'flagrant denial' of fair trial rights, barring extradition. UK courts studied that problem in the case of Japan v. Chappell and Wright, where

53 Ibid, p. 12.

54 Ibid, p. 17.

55 Ibid, p. Kononko, p. 14-17.

56 European Court of Human Rights. *Kezerashvili v. Georgia*. Judgment of 5 December 2024. Application no. 11027/22. Final 5 March 2025. paras 40-42.

57 Ibid, para. 14-35.

58 Ibid, paras. 93-95.

the appeals court addressed the extradition requests for Chappell and Wright, British nationals accused of violent robbery in Japan.[59]

The appellants alleged they would be denied legal representation during initial interrogations by Japanese authorities, and highlighting a lack of mandatory legal access during the first 72 hours of detention. Applying the test from *Othman v United Kingdom* (see above), the court required substantial grounds for believing there was a real risk of a 'flagrant denial of justice'. Therefore, the High Court acknowledged concerns in Japan's criminal justice system.[60] However, the High Court that despite these factors, extradition could still be performed by emphasising updated assurances from Japan (March 2024 and October 2024), which provided case-specific guarantees.

Evaluating the assurances under *Othman* criteria – including specificity, binding nature, good faith, and verifiability the court found them sufficient to eliminate any real risk of flagrant breach.[61] Furthermore, regarding Article 6(3)(c), the court recognised no lawyer being present during interrogations could be a problem but held this did not amount to a flagrant denial.

Ultimately, the High Court concluded there was no real risk of Article 6 violation, allowing the appeal on this ground, and it overturned the discharges, remitting the cases for further proceedings, given the content of the assurances given by the Japanese government.[62] The court noted potential risks in unassured cases but held the tailored guarantees protected those respondents.[63] This reasoning underscores the deference to diplomatic assurances in extradition, balancing human rights with international cooperation, which will be examined with greater detail in the section below.

A last factor that must be considered is that the accumulation of multiple deficiencies can amplify risks to a level that may bar extradition under Article 6, even if each issue alone might not suffice to meet the 'flagrant denial' threshold. This approach was indeed taken by the England and Wales High Court in *Popoviciu v. Romania*. In this case, which involved the extradition of a Romanian businessman sought by Romania for charges of bribery, abuse of office, and money laundering related to a land deal in Bucharest, Mr Popoviciu had been sentenced by a Romanian court, following a trial where he alleged systemic corruption.[64]

The court's analysis relied on a detailed assessment of evidence presented, including expert reports on Romania's judicial system. The judgment noted that the evidence before the court includes material suggesting that judicial decisions in high-profile cases can be influenced by corruption, with specific instances of payments alleged in this case. Moreover, witness testimony appears to have been manipulated to favour the prosecution.[65]

59 Government of Japan v Chappell and Wright, [2025] EWHC 166 (Admin), January 29, 2025, paras 17-20.

60 See ibid, *inter* alia, para 5-6, 110.

61 Ibid, para 77.

62 Ibid, paras 111, 129.

63 Ibid, para 112.

64 Ibid, paras 51-53; 87.

65 Ibid, paras. 69-71.

This holistic methodology taken by the High Court represents an interesting development in terms of Article 6 violations in the context of extradition proceedings and ensures nuanced evaluations, balancing systemic judicial problems with individual case-specific factors, and reflects a cautious approach to extradition where human rights are at stake. In fact, the Court emphasised that while no single flaw met the 'flagrant denial' standard alone, their combined effect created a substantial risk of a trial so unfair as to breach Article 6.[66] This principle underscores the need for courts to consider the broader context, including political pressures and historical patterns of judicial misconduct, ensuring protection against extradition where the risk of injustice is convincingly demonstrated.

Despite the recount of the cases made in this paper, academics and practitioners should be reminded equally that the threshold of flagrant denial of justice is high to reach, and that courts rarely accept it as a defence barring extradition. An example of this case is the *Minister for Justice v. Bailey* in Ireland. Ian Bailey, a British journalist, faced extradition from Ireland to France for a murder charge. He argued that prejudicial media coverage and procedural irregularities in France, including limited access to defence witnesses, would prevent a fair trial. Despite these circumstances, the Irish Supreme Court held that the applicant must demonstrate a real risk of a trial so unfair as to nullify the essence of Article 6 rights, further stating that prejudicial publicity alone is insufficient unless it directly compromises judicial independence.[67]

Article 6 emerges as an exceptional instrument for denying extradition following a comprehensive assessment of underlying proceedings, prioritising the prevention of fundamental injustices over expedited cooperation. Through evolving tests, such as aggregation and stringent assurance evaluations, courts navigate the delicate balance between rights and obligations. Nonetheless, the doctrine's high thresholds and proof demands underscore the need for ongoing refinement to ensure equitable application, particularly in the face of rising transnational prosecutions. As global judicial interactions intensify, Article 6's role in safeguarding fair trials abroad will likely face further scrutiny, potentially expanding to address emerging threats like digital evidence manipulation or AI-influenced judgments.

The role of assurances

A final, yet considerable factor regarding the issue of Article 6 of the ECHR and its application in extradition proceedings is the issue of assurances. In practice, assurances from requesting states play a crucial role in addressing potential breaches of Article 6 of the ECHR. Assurances, generally defined as formal commitments by the requesting state to uphold specific fair trial protections, are critical tools in the context of extradition proceedings, often determining whether extradition proceeds or is denied. Practice underscores their importance in balancing human rights safeguards with international cooperation, though their

66 Ibid, paras 142-155.

67 *Minister for Justice, Equality and Law Reform v. Bailey*, [2012] IESC 16, paras 94-110.

effectiveness hinges on specificity, enforceability, and the requesting state's credibility.[68]

Assurances primarily serve to counteract identified risks of egregious unfairness, which could undermine the essence of a fair trial and thus constitute a breach of Article 6 of the ECHR. Courts require assurances to be precise, binding, and verifiable, tailored to address case-specific concerns. This was pivotal in Othman, where Jordan's promises to exclude torture evidence and provide independent judicial review were scrutinised for enforceability, though ultimately deemed insufficient due to systemic issues.[69] Conversely, in cases like Brown v. Rwanda, assurances were evaluated "in the round" alongside other evidence, such as prior judicial practices, to determine whether they adequately addressed risks, including lack of impartiality or restricted witness examination.[70]

In practice, diplomatic assurances often tip the balance in favour of extradition.

However, relying on assurances can become a problematic issue due to inconsistencies in their application, as well as the disproportionate position it may put specific individuals in. Assurances have the potential to serve as diplomatic formalities, masking underlying systemic flaws in requesting states with questionable human rights.[71] For example, in politically sensitive cases, the burden falls on individuals to challenge the assurances and their veracity, often requiring extensive evidence from NGOs or experts, which can be daunting for those detained or resource-constrained.

Furthermore, assurances may be vague or unenforceable, providing merely formal protection without substantive effect. In Bhandari v. Government of India, according to the England and Wales High Court, the assurances offered failed to address the reverse burdens of proof imposed by the Indian Black Money Act, which risked undermining Article 6(2)'s presumption of innocence.[72]

In some instances, vague assurances may omit critical details about implementation, leaving room for arbitrary interpretation or selective enforcement, which undermines legal certainty. Similarly, unenforceable assurances –lacking mechanisms for oversight or accountability– may fail to bind the state to its commitments, rendering them ineffective against legislative deficiencies or systemic abuses. This not only erodes trust in legal safeguards but also perpetuates power imbalances, leaving individuals vulnerable to overreach by authorities. Consequently, such assurances serve as superficial remedies, incapable of addressing deep-seated legislative flaws or

68 European Court of Human Rights. 2012. Othman (Abu Qatada) v. United Kingdom, no. 8139/09, ECHR 2012, January 17, 2012., para 187.

69 European Court of Human Rights. Othman v. United Kingdom, no. 8139/09, ECHR 2012, January 17, 2012, para 267.

70 Brown and Others v Government of Rwanda, [2009] EWHC 770 (Admin), April 8, 2009, para. 66; 121.

71 *Dugard, John, and Christine van der Wyngaert. 1998. "Reconciling Extradition with Human Rights." American Journal of International Law 92, no. 2: 187–212. https://doi.org/10.2307/2997918.*

72 High Court of Justice (England and Wales). Bhandari v. Government of India, [2025] EWHC 452 (Admin), February 28, 2025, https://www.bailii.org/ew/cases/EWHC/Admin/2025/452.htm

ensuring robust protection of rights, thereby compromising the rule of law and the integrity of justice systems.

Assurances are indispensable in mitigating Article 6 risks, as they facilitate extradition by addressing specific concerns related to fair trial guarantees. Their structured evaluation fosters accountability; however, its efficacy is curtailed by over-reliance on state promises, evidential burdens on individuals, and enforcement gaps.

Conclusion

The case law from the European Court of Human Rights and UK courts establishes a detailed yet strict framework for integrating due process protections from Article 6 of the European Convention on Human Rights into extradition procedures. As highlighted in this article, extradition is vital for international judicial cooperation, grounded in the principles of sovereignty, reciprocity, and respect for the interests of other states. However, it often raises significant human rights concerns, notably the right to a fair trial. The ECtHR's position underscores that these hearings are procedural, focusing on formalities rather than substantive issues. Nonetheless, this does not render Article 6 irrelevant; instead, it extends extraterritorially, serving as a safeguard against extradition if there is a substantial risk of a "flagrant denial of justice" in the requesting country, a principle developed in Soering v. United Kingdom and further clarified in Othman v. United Kingdom.

This "flagrant denial" threshold indicates a high bar for individuals contesting their extradition, requiring evidence of severe breaches that threaten a fair trial. Such breaches include systemic judicial corruption, denial of legal representation, evidence obtained through torture, or biased tribunals. UK courts and the ECtHR have consistently applied this standard. While, in Popoviciu v. Romania, a combination of procedural flaws, including judicial bias and witness ties, fulfilled the criterion, resulting in an extradition refusal, in Kapri v. The Lord Advocate, widespread corruption was deemed to render the existence of a reliable tribunal impossible. These cases illustrate how courts evaluate risks by considering systemic issues, case-specific vulnerabilities, and overall deficiencies. However, the burden of proof on the individual remains high, often requiring concrete evidence from international reports or experts, difficult to obtain in authoritarian regimes due to restricted access to information.

Moreover, diplomatic assurances play a complex role, acting as a crucial mechanism to mitigate risks and enable extradition. Nonetheless, assurances are not infallible; their effectiveness depends on clarity, enforceability, and the credibility of the requesting state. In Othman, Jordan's pledges were rejected due to systemic issues. This reliance on assurances highlights a tension: they foster mutual trust but can also become superficial, masking deeper issues and perpetuating power imbalances. Courts must assess them comprehensively, as in Brown v. Rwanda[73] considering historical practices and oversight, although enforcement gaps persist, especially in politically sensitive cases.

Looking ahead, it is crucial to refine the process to ensure fair application. Enhancing applicants' access to

73 Brown and Others v Government of Rwanda, [2009] EWHC 770 (Admin), April 8, 2009.

investigative resources, implementing independent oversight of guarantees, and lowering the threshold for combined breaches can help address these gaps without undermining cooperation and trust. Additionally, as global threats such as transnational organised crime escalate, new challenges will test Article 6's adaptability. Continued collaboration between academics and practitioners, building on works like Dugard and van der Wyngaert's reconciliation of extradition with human rights, is essential for ongoing reform.

In summary, while the ECtHR and UK standards set a high bar for applying Article 6 in extradition cases, they also reaffirm the ECHR's extraterritorial jurisdiction as a means to prevent grave injustices. This case law not only supports international stability but also emphasises the need for vigilance in striking a balance between efficiency and fairness. As extradition procedures evolve in response to geopolitical shifts, maintaining robust due process protections will be crucial in safeguarding public trust in justice systems worldwide, ensuring that no individual is extradited to circumstances that threaten their fundamental rights.

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