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Extradition of refugees and the obligation of "non-refoulement of member states of the Council of Europe

Written question No 510 to the Committee of Ministers

Reply from the Committee of Ministers
adopted at the 988th meeting of the Ministers' Deputies (21 February 2007)

I. Written Question No. 510 by Mrs Vermot-Mangold (Doc. 11095)

Having noted that there exists examples of extradition procedures by member states of the Council of Europe affecting recognised refugees;

Ms Gaby Vermot-Mangold

To ask the Committee of Ministers

What steps are being taken to ensure that member states of the Council of Europe effectively comply with their "non-refoulement" obligations under international refugee and human rights law in the context of extradition of refugees.

II. Reply by the Committee of Ministers

1. The Honourable Parliamentarian asks if the obligations laid down by international law concerning the non-return ("non-refoulement") of refugees and respect for human rights in the context of the extradition of refugees are fully complied with by Council of Europe member states.

2. The Committee of Ministers wishes to point out that member states, as Parties to the European Convention on Human Rights, are obliged to comply with the requirements of the Convention with regard to this category of persons as well, as the constant case law of the European Court of Human Rights has emphasised.

3. Article 2 and 3 of the Convention imply, *inter alia*, the obligation not to expel any person to a country where substantial grounds have been shown for believing that the person concerned faces a real risk of being executed or subjected to torture or to inhuman or degrading treatment or punishment in the receiving country. The protection afforded by Article 3 is of absolute character and supplements that provided by Article 33 of the 1951 Geneva Convention relating to the Status of Refugees.

4. Article 8 of the Convention guarantees respect for private and family life. It applies to recognised refugees and to persons benefiting from temporary protection, and it offers protection against expulsion measures when these would constitute unlawful or disproportionate interference with their family life. Article 4 of Protocol No. 4 to the Convention prohibits the collective expulsion of aliens. Article 1 of Protocol No. 7 contains important procedural safeguards relating to the expulsion of aliens.

F – 67075 Strasbourg Cedex, tel: +33 3 88 41 20 00, fax: +33 3 88 41 27 76, http://assembly.coe.int, e-mail: assembly@coe.int

5. In pursuance of Article 13 of the Convention, any person who has an "arguable complaint" that any of his or her rights and freedoms under the Convention have been violated is entitled to an effective domestic remedy before a national authority with power to examine the substance of the complaint and to grant appropriate relief. In this context, the European Court of Human Rights has stressed the importance of having remedies with suspensive effect.[1] Article 13 requires a remedy capable of preventing the execution of measures that are contrary to the Convention and the effects of which are potentially irreversible. Consequently, it would be inconsistent with Article 13 for such measures to be executed before their compatibility with the Convention has been assessed by the competent national authorities.

6. In the sphere of expulsions and extraditions, the Court has, since its judgment in the *Soering* case of 7 July 1989, developed the practice of asking governments to suspend execution of measures potentially jeopardising the purpose of the application.[2] In this context, the Rules of the European Court of Human Rights also play an important role. In pursuance of Rule 39, the Court may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it. In practice, interim measures are indicated only in very limited fields (right to life, right not to be subjected to torture or to inhuman or degrading treatment), when there is an imminent risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention. The most significant details so far given about interim measures appear in the *Mamatkulov and Askarov* judgment of 4 February 2005 (binding character of Article 39).

7 The Committee of Ministers wishes to point out that its Recommendation R (98) 13 to member states on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights provides that: "An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment".

8. The Committee of Ministers draws the Honourable Parliamentarian's attention to the Guidelines on forced return which it adopted in May 2005, and which also provide for the exercise of a remedy against a removal order to have a suspensive effect when the returnee has an arguable claim that he or she might be subjected to treatment contrary to his or her human rights as referred to in guideline 2.1.

9. Furthermore, in its Guidelines on human rights and the fight against terrorism, adopted in July 2002, the Committee of Ministers pointed out that in the fight against terrorism human rights must be respected and it could not serve as a pretext for calling into question the principle of "non-refoulement" or of the absolute prohibition of ill-treatment. Guidelines XII (Asylum, return ("refoulement") and expulsion) and XIII (Extradition) were drawn up in the light of the case law of the Court, according to which a person may not be returned or extradited to a state where he or she risks the death penalty or ill-treatment, whatever the seriousness of his or her behaviour.[3]

10. The Committee of Ministers wishes to inform the Honourable Parliamentarian that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also plays an important role in this context. Its remit extends to all places of detention, and the Committee has visited numerous countries where asylum seekers are detained. It notes in its reports that this category of vulnerable persons encounters difficulties in relation to language and interpretation, access to a lawyer and contact with families. The CPT's comments on the Guidelines on forced return, as contained in its 15th report (see CPT/Inf(2005)17, paragraphs 43 to 48), are relevant.

11. Finally, it should be pointed out that since the early 1990s, the Council of Europe has been running assistance programmes intended to guarantee that universal principles and Council of Europe standards relating to the protection of refugees are adequately taken into consideration by states whose national asylum systems are currently under elaboration or development.

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[1] *Mamatkulov and Askarov v. Turkey,* judgment of 4 February 2005, § 124*; Čonka v. Belgium,* judgment of 5 February 2002, § 79.

[2] Also cf *Cruz Varas and others*, of 20 March 1991; *Vilvarajah*, of 30 October 1991; *Chacal*, of 15 November 1996; *Čonka*, of 5 February 2002.

[3] *Soering*, of 7 July 1989; *Tomasi*, of 27 August 1992: "The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals" (§ 115).