

ECBA panel on extradition

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- **Very short explanation of how the extradition works in your country. We might not go through it in detail, but you should be able to explain it in 1 minute if there is need.**

In Germany, extradition proceedings are governed by the International Mutual Legal Assistance Act (IRG). Extradition is decided in judicial proceedings by the locally competent Higher Regional Court and additionally in administrative proceedings by the Ministry of Justice, which must still grant extradition if the Higher Regional Court declares extradition admissible.

In the area of the European arrest warrant, the Ministry of Justice has delegated the task of authorising extradition to the relevant Attorney General's Offices.

The person concerned can only defend himself in judicial proceedings before the Higher Regional Court; the administrative procedure for granting the permit remains largely closed to him.

If the Higher Regional Court decides that extradition is admissible, the person concerned can only proceed with the constitutional complaint to the Federal Constitutional Court.

- **An example of an extradition case you have worked on where you challenged the extradition (serious risk of violation of human rights) and the court refused the extradition or granted it to your astonishment. How did you prepare the case? What types of information did you gather to convince the court? What seems to have a real impact?**

A difficult case of mine in which extradition was ordered is a Bulgarian case where our client's extradition was ordered in 2018 by the Higher regional Court in Nürnberg. Basis of this decision was a general assurance from Bulgarian Authorities dated 13. August 2015. The Bulgarian authorities generally guaranteed at the time that they would treat all persons extradited from Germany in their detention centres in accordance with human rights.

The Higher Regional Court in Nuremberg considered this general guarantee to be sufficient.

And it got worse: The German Federal Constitutional Court did not accept my constitutional complaint on the grounds that I could not justify why I expected that the general Bulgarian guarantee would not be respected. I could not name any case in which the general Bulgarian guarantee was not complied with.

I then asked members of ECBA for help by email and received quite a lot of answers and the hint that there are some decisions from UK Courts, which state that in particular cases the general Bulgarian guarantee was not complied with.

Since last week, I have again two constitutional complaints pending at the German Federal Constitutional Court and I expect the first decision the next days. I will keep you updated.

I have been successful with two constitutional complaints in recent months (one concerning Hungary, the other Romania) where I complained that the Higher Regional Court did not properly clarify the conditions of detention in the requestin state. In both cases, the Federal Constitutional Court stopped the extradition with a temporary injunction, which in one case

had already been confirmed by a final decision. That is why I am now also optimistic for the Bulgarian cases.

- **Do you think that the European Union should provide a list of “safe” countries (extradition in principle, refusal in particular cases), a list of “doubtful” countries (case by case, high level of doubt) and a list of “blacklisted” countries (no extraditions allowed until further notice)?**

No, I think such a list is contrary to the basic idea of international mutual legal assistance, which should be based on reciprocity.

The list would probably also prove too often to be an obstacle to defence.

- **Should there be a minimum standard of extradition proceedings, with a strict timeline to take the final decision?**

I'm sceptical about the time limit for the extradition procedure. It is precisely the difficult cases that I handled with success before Higher Regional Courts that have all taken a relatively long time. If a court wishes to refuse extradition, it must give the requesting State the opportunity to comment once again on the Court's concerns. The necessary time must be given to the Court, especially if the client is not in detention.

- **What is your opinion on trial via video conference, refusing to surrender the requested person and following up on the trial from the requested state, possibly even executing the sentence if the person is convicted (and prison conditions are doubtful)?**

I am not in favour of this, criminal trials via video conference don't work, I think we would experience great disappointments.

- **Do you have any ideas on how to harmonize or improve the extradition to third countries? Less uncertainty, more guidelines for member states,...**

I see this from the point of view of the criminal defence lawyer and therefore the question for me is how I can improve the defence against extradition requests .

In this respect, I had a wonderful experience this year when I asked all ECBA members by email about their experiences with arrest warrants from Bulgaria. I received an extraordinary amount of information. I believe that we can all benefit greatly from the exchange of our experience at any time, especially in extradition cases.