

# New Aspects of Extradition to Russia and Belarus in the Context of the War in Ukraine

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**ABSTRACT:** Given the intensification of the fight against terrorism and also the obligation to respect the fundamental rights and freedoms of suspects or accused persons in criminal proceedings, including those involving requests for judicial cooperation, the analysis of the optional grounds for extradition shows that they arise whenever, as a result of surrender, the extraditable person's situation risks being substantially adversely affected, disregarding the factors giving rise to such a risk, such as, for example, the person's age or state of health, without, however, limiting the impediments to extradition to the latter two elements. Consequently, it is necessary for the court dealing with the extradition request to identify all the circumstances and risk factors relevant to the incidence of the optional grounds for refusal of extradition by examining all the relevant information, including the objective situation existing in the requesting State. In this context, data showing the existence of a significant risk as described by repeated assessments by competent bodies, which point to the violation of fundamental human rights in the requesting State and/or the subjection of the extraditable person to inhuman or degrading treatment, may be considered.

**KEYWORDS:** extradition, impediments, terrorism, military conflict, fundamental human rights, inhuman treatment

## 1. Introduction

International judicial cooperation, as a rapidly expanding and developing branch of law, governed by international normative acts (usually bilateral treaties) and, at European level, by Union acts, suffers from certain shortcomings in the context of military conflicts. These are likely to make it difficult to execute requests for judicial cooperation, which should normally be dealt with swiftly and in compliance with the legislation and deadlines imposed by the state executing the request on the basis of the principle of loyal cooperation provided for in Article 4(3) TEU (Pătrăuș 2021, 442).

In the context of a military conflict, the execution of requests for cooperation raises legal issues relating to the appropriateness and, in particular, to the existence of international rules with the force of law which have been designed to be applied under normal conditions, as well as to the real and concrete possibilities of conducting the necessary correspondence between the authorities involved, especially if electronic correspondence is not possible or accepted. For these reasons, the existence of the military conflict between the Russian Federation and Ukraine raises particular legal issues, in the context of the Russian Federation's notification of its intention to withdraw from the Council of Europe and its intention to denounce the European Convention on Human Rights and Fundamental Freedoms. Following this notification, on 16 March 2022, following the extraordinary meeting of the Committee of Ministers, the Russian Federation's membership of the Council of Europe ceased under Article 8 of the Statute of the Council of Europe (2022 - Resolution CM/Res(2022)2), although under Art. 58 of the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights retained jurisdiction to rule on applications against the Russian Federation concerning human rights violations falling within its competence (relevant Decision CM/Del/Dec(2024)1490/2.3).

In line with this perspective, there are particular legal problems and controversies in the execution of extradition requests from the Russian Federation and Belarus, arising from the latter's proximity to the former. The present study aims to identify both legal and practical solutions to the difficulties of applying the applicable law in the context of armed conflict and its legal consequences, including in situations where the requesting state might request the extradition of persons who may be guilty of serious crimes, such as terrorism (with reference to the attack on Crocus City Hall in Moscow, in which 144 people lost their lives and which was claimed by the Islamic State organization) and what possibilities the courts have in assessing such situations in conjunction with the application of legal provisions. Of course, relevant arguments can be put forward in support of the various solutions, which we will analyze in this scientific approach, both legal and jurisprudential, in which sense we note the landmark Petruhhin case (Judgment of the Court, 6 September 2016, Case C-182/15), as well as the Piscioti case (Judgment of the Court, 10 April 2018, Case C-191/16), to which we will refer throughout this study.

Given their geographical proximity, the Romanian courts are dealing with several extradition requests from the Russian Federation and Belarus concerning requested persons suspected or convicted of various offences, which are dealt with under the European Convention on Extradition (Paris, 1957) and its additional protocols.

## 2. Extradition requests made by the Russian Federation

A Romanian court (Decision No 339 of 2022 of the High Court of Cassation and Justice, Criminal Division) ordered the extradition and surrender to the authorities of the Russian Federation of A. (a Russian and Moldovan citizen), for the purpose of carrying out investigation - prosecution acts for the offences of "*participation in a criminal association created for the purpose of committing serious and particularly serious crimes*", "*smuggling, i.e. the illegal crossing of the customs border of the Customs Union within the limits of EurAsEC of narcotic substances, in large proportions, committed by an organized group*", "*attempted illegal marketing of narcotic substances committed by an organized group in large proportions*", offences referred to in Art. 210 para. (2); art. 229.1 para. (4) lit. a) of the Criminal Code. art. 30 par. (3); art. 228. 1 para. (4) (a) and (d) of the Criminal Code of the Russian Federation. The court ordered the arrest of the extraditable person for a period of 30 days with a view to surrender to the authorities of the Russian Federation.

In terms of the facts, it was stated that "*since August 2012, the subject participated in the criminal community created by the Spanish citizen B. The criminal community was engaged in the smuggling of narcotics on a particularly large scale. From August 2012 to 2017, the subject smuggled cannabis and other substances on a particularly large scale on the territory of the Russian Federation (Moscow region). On 24.08.2017, the subject, as a member of the criminal community, received 885.4 grams of cannabis from the Moldovan citizen C., which he transported to the specially hidden place in the vehicle x registration number x from Ukraine, through the customs checkpoint T. to Russia. Moldovan citizen C. arrived in city X. and in a garage, removed the drugs from the aforementioned hiding place and handed them over to the subject. Thereafter, the subject hid the drugs in a secret place, which was camouflaged in the type of a car, with the aim of further transferring them to other members of the criminal community for a reward.*

*The requesting authority also submitted the necessary documents and the guarantees provided for in Article 14 of the 1957 European Convention on Extradition applicable in relation to the Russian Federation were provided.*

*The requested person has lodged an objection to extradition, stating that he has requested asylum in Romania; he claimed that human rights and procedural safeguards are not respected in Russia and that detention conditions are deplorable" (excerpt from the cited decision).*

The court found, in essence, that the legal conditions for extradition were met, that the request for asylum was rejected and that there were no grounds for refusing to execute the extradition request. The Romanian court emphasized that *“the purpose of the extradition procedure is precisely to enable the person to be extradited to participate in the criminal investigation conducted against him in the territory of the Russian Federation, in which context he has the right to contest the charges brought against him and to benefit, in this respect, from the guarantees granted by the judicial authorities of the requesting State regarding respect, during the judicial proceedings, for the fundamental rights laid down in the Convention. Examination of the legality of the procedure for the issue of the arrest warrant by the Russian judicial authorities and of the legality of the evidence adduced falls outside the competence of the judicial authorities of the requested State, since the courts seized of the extradition request are competent to rule exclusively on the substantive and formal conditions of the extradition procedure and not on questions of the legality or merits of the charges against the requested person.”*

Although the High Court of Cassation and Justice found that all the arguments of the first instance were correct, it nevertheless stressed the reason that led to the admission of the appeal brought by the extraditable person, namely: *“the optional ground for refusal of extradition provided for in Article 22 para. (2) of Law no. 302/2004, republished, which provides that “the extradition of a person may be refused or postponed, if his surrender is likely to have particularly serious consequences for him, especially because of his age or state of health”*.

The Supreme Court also pointed out that, as a contracting party to the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law No 30/1994, Romania must comply with the obligation enshrined in Article 1, namely to recognize the rights and freedoms defined in Title I of the Convention for all persons under its jurisdiction.

Examining all the relevant information, relating both to the particular situation of the person to be extradited and to the objective situation existing in the requesting State, the Supreme Court found that *“there is evidence of the existence of a significant risk of violation of fundamental human rights in the requesting State and/or of the person to be extradited being subjected to inhuman or degrading treatment”*.

Given that on 15 March 2022 the Russian Federation initiated the procedure for withdrawal from the Council of Europe, there is a denial of the jurisdiction of the European Court of Human Rights, the judicial body of the Council of Europe which provides protection in the event of violations of human rights and fundamental freedoms laid down in the Convention, *“which calls for increased caution in assessing the consequences of extradition to the Russian Federation. It is important to point out that the European Court of Justice still has jurisdiction to rule on claims against the Russian Federation concerning violations of the human rights laid down in the Convention.”*

Following this line of reasoning, of the existence of data supporting the uncertainty of respect for human rights and fundamental freedoms in the requesting State, the European Parliament Resolution of 07.04.2022 on the intensification of repression in Russia (2022/2622,RSP), which is based, inter alia, on the statement by the Council of Europe Commissioner for Human Rights of 24 March 2022 expressing appreciation for the courageous work of journalists and human rights defenders, including those in the Russian Federation and Belarus, the statement by the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe of 03.03.2022 on serious violations of the right to freedom of expression and freedom of the media in Russia in the context of the country’s military attack against Ukraine; statement by the UN High Commissioner for Human Rights on the latest developments in Russia and Ukraine.

In the case-law of the Supreme Court, it has been pointed out in this regard that *“from the interpretation of the legal text provided for in Article 22 para. (2) of Law no. 302/2004,*

*republished, it follows that this optional impediment to extradition occurs whenever, as a result of the surrender, the situation of the extraditable person risks being substantially negatively affected, regardless of the factors that generate such a risk; the legal provision in question provides only by way of example, the age or state of health of the person, without, however, limiting the impediments to extradition to these two elements. Therefore, since the systemic nature of the inhuman or degrading conditions of pre-trial detention is revealed, as well as the violation of fundamental human rights in the requesting State, the effects of this finding inevitably spill over to individual cases of deprivation of liberty pending trial (Decision No 275 of 03.05.2022, ICCJ, Criminal Division)”.*

In another landmark decision (*Criminal Decision No 282/2022 of the High Court of Cassation and Justice, Criminal Division*) which contains aspects that could be considered as rendering the fight against terrorism ineffective, which we will analyze in detail, the Supreme Court upheld the appeal lodged by the extraditable person and rejected the extradition request made by the Russian Federation. The court of first instance (*criminal judgment No 34 of 18 April 2022 of the Suceava Court of Appeal*) granted the extradition request made by the General Prosecutor’s Office of the Russian Federation for the extradition of Ms A., against whom criminal proceedings are under way for the offence of participation in an armed formation on the territory of a foreign State not provided for by the law of that State for purposes contrary to the Russian Federation, and ordered her surrender to the requesting State and provisional arrest with a view to extradition.

In fact, in the extraditable person A., it was held that *“in the period from 08.2016 to 27.03.2018, sharing extremist ideas, he left Russia, moving to Syria and intentionally joined as a foreign fighter the armed terrorist formation “B.”, which is reported to be a part of the terrorist organization “Islamic State”, and to date has not voluntarily ceased to participate in this armed terrorist formation”.*

With regard to the defence’s claim that the extraditable person came to Romania accompanied by his 8-year-old minor child in order to save his life, being endangered by the war in Ukraine, and that the separation from the mother creates a serious condition for the minor, *“it was taken into account that on 11.03.2022, it was ordered that the extraditable person’s son, C., to be placed in the Centre “Children’s Universe” R. of the D.G.A.S.P.C. X., so that the minor is under the protection of the bodies authorized by law in this regard.*

*It was also noted that the extraditable person is not an asylum seeker and does not benefit from refugee or subsidiary protection status, having been identified by the border police of the P.T.F. S. on 11.03. 2022, at 19:12 on the way of entry into Romania, and following the checks carried out, it was found that the person is subject to an Interpol alert with the mention “ARREST”, issued by the Russian Federation on 24.04.2018 and to an alert under Article 24 of the SIS II Regulation 1987/2006, issued by Germany on 09.12.2019, with the crime type mention “terrorism - related activities”.*

The court also noted that *“the judicial authorities of the Russian Federation have given assurances in the extradition request that the application is not intended to persecute a person for political reasons, in relation to race, religion, nationality or political opinions, that the extraditable person A., in the Russian Federation, will be provided with every opportunity of defence, including the assistance of legal counsel, will not be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and that the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as the relevant conventions of the United Nations, the Council of Europe and their protocols, will be respected, and that, in accordance with Article 14 of the European Convention on Extradition of 13.12.1957, extraditable A. shall be punished only for the offences in connection with which extradition is carried out, and after the termination of the criminal prosecution or trial and in the event of a guilty verdict, after serving the sentence or after his release, shall be allowed to leave the territory of the Russian Federation, and if extradited to Russia,*

*extraditable person A. will be held in an institution that takes into account the standards set out in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and employees of the Romanian Embassy in the Russian Federation will be able to visit him or her in order to verify compliance with the guarantees.”*

Although the defence has argued that the extraditable person A. is a victim of the repressive regime in the Chechen Republic of the Russian Federation, the case is a “made-up” criminal case in order to obtain the extradition of the extraditable person to Russia to be punished according to rules other than those laid down in the laws invoked by the extradition request, i.e. Criminal Code of Russia, the extraditable person feared that inhuman and degrading treatment against human dignity would be inflicted on him if he were extradited, the Court held that *“the extradition of the above-named person does not relate to a political offence or an offence connected with a political offence, nor is there any fear that the extradition of the above-named person would endanger his life or liberty or subject him to torture or inhuman and degrading treatment.*

*In relation to the submission of the asylum application (on 1.04.2022, almost 2 months after the arrest), although under the provisions of Article 19 para. (1) (b) of Law no. 302/2004, republished, according to which asylum seekers, beneficiaries of refugee status or of subsidiary protection in Romania may not be extradited from Romania in cases where extradition would take place in their country of origin or in any other State where their life or freedom would be endangered or where they would be subjected to torture, inhuman and degrading treatment, the Court takes into account that according to the provisions of Art. (2) of Art. 19 of Law no. 302/2004, “the quality of Romanian citizen, asylum seeker or beneficiary of refugee status or subsidiary protection in Romania is assessed on the date of the final decision on extradition. If this status is recognized between the date of the final extradition decision and the date agreed for the surrender, a new decision will be rendered in the case”.*

The court therefore found that no grounds for refusal of extradition had been identified in the case. The extraditable person lodged an appeal against the decision of the first instance, which was rejected by the supreme court, which upheld the decision, in view of several considerations that are relevant to our study:

First of all, the Supreme Court found that the conditions for ordering extradition were met, on the grounds that *“the facts motivating extradition (participation in an illegal armed group provided for in section 2, art. 208 of the Russian Criminal Code) have a corresponding legal basis in Romanian law as terrorist offences provided for in art. 35 para. (1) of Art. 33 para. (1) of the Law no. 535 of 25 November 2004 on preventing and combating terrorism, which are punishable by imprisonment from 5 to 12 years and prohibition of certain rights, and in this case, there are no optional or mandatory grounds for refusal of extradition, in accordance with Art. 18 et seq. of Law no. 302/2004, republished.*

*The Supreme Court also pointed out that there are no mandatory or optional grounds for refusing extradition, according to Articles 21 and 22 of the law, and that there are no indications of violation of the right to a fair trial provided for by the ECHR or any other relevant international instrument in this field, ratified by Romania, and that the requesting State has provided the guarantees provided for by the 1957 Convention on Extradition”.*

*In our opinion, the Supreme Court reasonably considered that “the Russian-Ukrainian military conflict cannot constitute a ground for refusing extradition, the admission of the extradition request being based on the documents in the file and not on circumstantial situations which do not imply a violation of the fundamental rights of the requested person, as there is no evidence in the file leading to this conclusion. Moreover, the arrest warrant and the INTERPOL alert were issued a long time ago, namely on 27.03.2018 and 24.04.2018, following the opening of a criminal file on the extraditable person by the Prosecutor’s Office of the Russian Federation, Prosecutor’s Office of the Chechen Republic, on 13.10.2017 and*

*the search acts carried out by this Prosecutor's Office for the extraditable person until 15.12.2017, when he was put on the international wanted list."*

One aspect worth noting in the perspective of this request is the nature of the offences for which the extraditable person is under investigation in the State of origin, as well as the existence of an alert pursuant to Article 24 of the SIS II Regulation 1987/2006, issued by Germany on 09.12.2019, with the mention "terrorism - related activities" under the heading of the type of offence, which excludes the extradition of foreign person A. for the purpose of prosecution for a crime of a political nature or for an offence connected with a political crime or for the purpose of prosecution or punishment on grounds of race, religion, political orientation or membership of a group, in the absence of data and information in the case file to this effect.

In that regard, the Supreme Court also noted that, under Article 24(2)(a) of the ECtHR's Rules of Procedure, the Court of First Instance had held that (2) of the SIS II Regulation 1987/2006, an alert is issued when the decision referred to in para. (1) is based on the threat to public policy, public security or national security which the presence of a third-country national on the territory of a Member State may pose.

Thus, *"one State of the European Union, Germany, considered that the presence of extraditable person A. constitutes a threat to public policy or public security or to national security, there being serious grounds for believing that he has committed a serious crime or that there are real indications that he intends to commit such a crime in the territory of a Member State, indicating in the alert the same type of offences for which the extradition request was issued, namely offences of the "terrorism-related activities" type.*

*Similarly, although the extraditable person claims that the right to a fair trial has been infringed, the High Court found that "there is not enough information to assess that the right to a fair trial has been or will be disregarded, so that extradition can be refused, in accordance with Article 21(2) of the Convention. (1)(a) of Law 302/2002, republished.*

*In its case law, the European Court of Human Rights has held that an extradition or expulsion decision may exceptionally raise an issue under Article 6 of the European Convention on Human Rights where the person would risk suffering in the requesting State a flagrant denial of justice, i.e. going beyond mere irregularities or lack of safeguards in the trial, which would be likely to result in a violation of Art. 6 of the Convention if it were to occur in the requesting State itself and, consequently, result in the annulment or even the destruction of the right protected in that Article (Ahorugeze v Sweden, Othman - Abu Quatada v United Kingdom).*

*From a formal point of view, however, the extradition request corresponds to the content of Article 36(2) of the EC Treaty. (2) of Law No. 302/2004, republished, and in support of the request were submitted the extradition request, formulated by the Prosecutor General's Office of the Russian Federation, the decree of 28.10.2017, on the initiation of criminal proceedings, the investigation decision of 13.10.2017, on the initiation of criminal proceedings, the decision of 29. 10.2017, the decision on international prosecution dated 15.12.2017, the decision on taking the measure of preventive arrest, dated 27.03.2018, the conclusion on confirmation of Russian citizenship of the person sought, the request for replacement of the passport of the person sought."*

We agree with the conclusions of the Supreme Court, because the argument put forward cannot be contradicted: indeed, in order to verify whether there is a risk of flagrant denial of justice, all foreseeable consequences of sending the extraditable person to the country of origin must be taken into account, without omitting the general situation in that state and the specific circumstances of the case in question, as the European Court wisely pointed out in the grounds of the aforementioned judgments. However, the High Court noted that there is no evidence in the case-file to show that the general situation in the requesting State gives rise to a prima facie infringement of the right to a fair trial of the extraditable person.

Particularly relevant in this case is the fact that the requested person has lodged a complaint against Romania with the European Court of Human Rights, which, prior to his surrender to the requesting State, ordered, by order of 9 May 2022, pursuant to Article 39 of the Court's Rules of Procedure, that the extradition of that person be prohibited, so that he would remain on Romanian territory pending the outcome of the application before the Strasbourg court. It is worth noting that the European Court of Human Rights has not ruled on this case at the time of writing, although the Romanian State has provided all the information and documents requested by the European Court.

This case gives us the opportunity to analyze the way in which the interests of the requested persons should be analyzed and balanced in the component of respect for human rights and freedoms and procedural guarantees with the interest of states to fight against acts of terrorism, acts that have the potential to endanger the rights of a large number of persons, and what would be the optimal solution to balance these interests, in full compliance with the applicable legal provisions.

In our view, the terrorist and related activities, especially as the allegations were made well before the outbreak of the military conflict and to some extent confirmed by another alert entered into the SIS by another State (in this case Germany), should not be omitted, as they are likely to lead to the request for judicial cooperation being granted; in this context, the interim solution ordered by the European Court of Justice seems open to criticism, as it is based on emotion rather than on the legal texts. It should not be forgotten that, although the case should have been dealt with swiftly, even at the time of writing (although almost two years have elapsed) the European Court has still not given a ruling.

Of course, the facts of each case need to be analyzed very carefully, in addition to the aspects already mentioned, as it is necessary to check and balance the general interest (the fight against terrorism) with respect for the rights, freedoms and procedural guarantees of the persons who are the subject of such requests for judicial cooperation.

In relation to the Russian Federation, taking into account the current context, we agree with the opinion held in the doctrine according to which "*caution is required in the analysis of a case involving a request for extradition, which implies in concrete terms the verification of all objective, reliable, precise and updated elements, in order to provide each person subject to judicial investigation with the standards of protection required by European regulations on human rights*" (Pătrăuș 2023, 178).

### **3. Judicial cooperation in relation to Belarus**

With reference to the execution of requests for judicial cooperation in relation to that State, the Supreme Court issued a landmark decision (*Criminal Decision No 275 of 3 May 2022, High Court of Cassation and Justice, Criminal Division*) upholding the extraditable person's appeal and rejecting the extradition request made by the Republic of Belarus.

In essence, the Court of Appeal of Iasi admitted the request made by this State and ordered the extradition of the requested person, noting that "*the named A. is wanted by the Belarusian judicial authorities for criminal investigation in connection with the commission of the offence of "large-scale fraud" provided for in Article 209 of the Criminal Code of Belarus, for which the maximum penalty provided for by law is 10 years' imprisonment, an arrest warrant (without number) having been issued in his name on 6 May 2015 by the Prosecutor's Office of the Z. district, city of Minsk.*"

*Under the aspect of the factual situation, it was shown that in the period from 30 September 2014 to 20 December 2014, by cheating and violating people's trust, under the pretext of organizing the "Moto-freestyle" show in the city of Minsk, A sold tickets worth approximately 52,000 USD and then fled."*

The court found that the conditions for ordering the extradition and surrender to the authorities of the Republic of Belarus of A. were met and that no grounds for refusing

extradition had arisen in the case. In deciding the appeal brought by the extraditable person, the Supreme Court found that the appeal was well founded and allowed the appeal, ordering that the extradition request be rejected. In essence, the Supreme Court proceeded, as a matter of priority, to establish the legal framework governing the case, finding that Romania and the Republic of Belarus had not concluded a bilateral convention on extradition and that the latter State was not a party to the European Convention on Extradition concluded in Paris on 13 December 1957.

Consequently, extradition between Romania and the Republic of Belarus operates on the basis of rules of international comity, ensuring reciprocity, in which context, according to Article 5 para. (2) of Law no. 302/2004, republished, the common law on the matter for the Romanian judicial authorities is the aforementioned normative act. Consequently, the execution of the request for cooperation, namely the extradition of the person named A. (Israeli citizen) from Romania, at the request of the judicial authorities of the Republic of Belarus, is subject to the fulfilment of the requirements laid down in Articles 18 to 60 contained in Chapter I of Title II of the Romanian Framework Law. However, the Supreme Court found, contrary to the first instance, that the optional ground for refusal of extradition provided for in Article 22(2) of the Romanian Criminal Code applies in this case. (2) of Law No 302/2004, republished, according to which *“the extradition of a person may be refused or postponed if his surrender is likely to have particularly serious consequences for him, in particular because of his age or state of health”*.

It is obvious from an interpretation of this legal text that *“the optional ground for refusal of extradition arises whenever, as a result of the surrender, the situation of the person to be extradited is likely to be substantially adversely affected, regardless of the factors giving rise to such a risk; the legal provision in question indicates, by way of example only, the age or state of health of the person, without, however, limiting the grounds for refusal of extradition to the latter two elements. Consequently, it is for the court hearing the extradition request to identify all the circumstances and risk factors relevant to the optional ground for refusing extradition under consideration, and it is for that court to examine all the relevant information relating both to the particular situation of the person to be extradited and to the objective situation existing in the requesting State. The latter category of information may also include data showing the existence of a significant risk - based on repeated assessments by the competent bodies - of a violation of fundamental human rights in the requesting State and/or of the extraditable person being subjected to inhuman or degrading treatment in the requesting State”*.

The fact that the legal hypothesis laid down in Article 19(1)(b) of the Framework Law is not applicable in this case does not exempt the Romanian judicial authority from the obligation to carry out such an examination.

In this regard, we agree with the conclusions of the Supreme Court which correctly observed that *“as a contracting party to the Convention for the Protection of Human Rights and Fundamental Freedoms (ratified by Law No 30/1994), Romania must comply with the obligation enshrined in Article 1 of this legal instrument, namely, to recognize the rights and freedoms defined in Title I of the Convention to everyone within its jurisdiction.*

*However, as has been consistently held in the case-law of the European Court of Human Rights, the extradition of a foreign national by a State party to the Convention may raise problems under Article 3 where there are substantial grounds for believing that extradition would expose that person to a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting State (mutatis mutandis, Ahmed v. Austria, no. 25964/94, judgment of 17 December 1996).*

*The scope of treatment under Article 3 includes inhuman or degrading conditions of detention reaching a certain level of severity, the Convention prohibiting in absolute terms torture or inhuman or degrading treatment. Behavior that humiliates and degrades a person,*



*showing disrespect for the dignity of the human being or giving rise to feelings of fear, anguish or inferiority such as to break down his or her moral or physical resistance may be characterized as degrading, The European Court has, by way of example, subsumed in this category cases of overcrowding of places of detention (including pre-trial detention), non-existent or limited access to natural light, sources of ventilation or heating, objects of hygiene (mutatis mutandis, Ananyev and Others v. Russia, no. 42525/07 and 60800/08, judgment of 10 January 2012).”*

In the light of these theoretical considerations, the High Court noted that in the particular case of the extraditable person, these elements have already been the subject of a previous final judicial ruling by a foreign court, namely the Budapest Court of Appeal which, by judgment of 3 June 2020, rejected a similar request by the Belarusian judicial authorities to extradite that person for prosecution for the acts described in the request to the Romanian authorities. In reasoning this decision, noting the findings of the Commission against Torture in the 2020 Report of the United Nations Human Rights Council on the deplorable conditions and practice of torture and ill-treatment in detention facilities in Belarus and the lack of fundamental safeguards for persons detained in that State, the Hungarian court found that, on the basis of the documents submitted, the requesting State had not provided specific information as to how fair trial rights would be ensured in the event of the requested person’s extradition and the conditions which he would enjoy if placed in detention.

The requested Hungarian court concluded that: *„in the course of the proceedings, on the basis of the additional information requested and received, the Belarusian judicial authority did not exclude with unequivocal certainty the possibility that the extradited person would be subjected to torture or inhuman or degrading treatment in the requesting State. For this reason, and on the basis of the information available, there may be a real risk that the accused person will not be guaranteed the application of the requirements of Article 3 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at the XXXIXth Session of the General Assembly of the United Nations (promulgated in Hungary by Legislative Decree no. 3 of 1988), further, the application of the requirements of Article 3 of the Convention signed on 4 November 1950 in Rome for the Protection of Human Rights and Fundamental Freedoms - and the eight Additional Protocols thereto - (promulgated in Hungary by Act No XXXI of 1993). The court relied on objective, reliable, accurate and sufficiently up-to-date information on the conditions of detention in the issuing Member State, in accordance with the above-mentioned UN Protocol, which specifically demonstrates a systemic or widespread disorder.*

*Comparing the contents of the international document with the lack of additional information requested, the court finds that the assurance given in Case A is not sufficient to remedy the systemic deficiency in an individual case.”*

Following this line of reasoning, the Romanian court dealing with the request for extradition of the same person cannot disregard the above-mentioned definitive findings of the Hungarian court, since no new elements have come to light, from which a significant change in the situation of persons subject to preventive deprivation of liberty on the territory of the requesting State can be credibly inferred, as the Romanian Supreme Court rightly noted. In this regard, the High Court noted that all the circumstances that justified the refusal of extradition from Hungary are also confirmed by the data on file with the Romanian authority, from which similar conclusions of international fora monitoring the situation in Belarus, both before 2020 and afterwards, can be drawn.

In this regard, it was noted, on the one hand, *“the conclusions of the Report on Prison Conditions in the Republic of Belarus prepared by the International Federation for Human Rights in June 2008, according to which “prison conditions in Belarus are highly unsatisfactory and amount to inhuman treatment prohibited by the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or*

*Degrading Treatment or Punishment and other international treaties ratified by the Republic of Belarus:*

- *detainees do not have access to basic legal documents defining their rights and obligations;*
- *detainees are virtually without legal protection;*
- *administrative conditions are particularly harsh for detainees: no beds, showers, walks, overcrowded cells, poor sanitation, poor quality of food and water, no parcels etc.;*
- *detention conditions at the Ministry of the Interior are also poor: overcrowding, high humidity, low temperatures in winter and high temperatures in summer, poor food quality, widespread tuberculosis;*
- *detainees placed in punitive isolation wards are kept without communication, in cold temperatures and without the possibility to move around; the quality of food is low and the quantities are insufficient, leading to serious diseases;*
- *transport conditions for detainees are extremely unsatisfactory, as they can go without food or water for days;*
- *death row inmates are kept in complete isolation from the world and are unaware of their fate;*
- *mass arrests at times of political tension led to totally unacceptable conditions of detention”.*

*As for pre-trial detention conditions, it was concluded that they are the same as those in detention: “most frequently, respondents complained of overcrowded cells, widespread anti-hygiene, poor food quality and unsatisfactory medical care”; “possibly such conditions in pre-trial institutions are the result of lack of funding and lack of any control over prison establishments”. In light of these findings, the International Federation for Human Rights has recommended that third states refuse to extradite suspects to Belarus as the conditions of detention are inhumane and make it impossible to provide adequate legal defence in criminal proceedings.*

*On the other hand, the Supreme Court also noted in the decision under review, the shortcomings described above persisted beyond 2020, “having been noted by the UN Human Rights Council in its 2021 report, the Special Rapporteur on the situation of human rights in Belarus, which stated that it is deeply alarmed by the unprecedented escalation of human rights violations in Belarus that it witnessed during the period under review (2020 and early 2021). While the political crisis and social events once again proved the cyclical nature of the increase in human rights violations during election periods in Belarus, they also revealed deep-rooted institutional weaknesses of the state machinery, especially the police and the justice system, used not to protect human rights but rather to curtail them. Of particular concern is that the situation continues to worsen in a climate of fear, impunity and lack of accountability for perpetrators.”*

*The same report noted that: “persons in pre-trial detention or serving administrative detention sentences were held in inhumane conditions, in overcrowded cells with no ventilation, access to water or toilets. Combined with delays in access to health care, such poor sanitary conditions have been a source of additional concern in the context of the coronavirus disease pandemic (COVID-19)”.*

*In the same sense, the Romanian court also noted the report of the United Nations High Commissioner for Human Rights (OHCHR) of 4 March 2022, which “provides an overview of the human rights situation in Belarus with regard to the elections of 9 August 2020, including the application of arbitrary detention, torture and other cruel, inhuman or degrading treatment, the failure to effectively investigate allegations of such violations and the lack of respect for due process and fair trial rights, noted that “the testimonies of victims and witnesses collected in the context of the review corroborated numerous accounts of torture, ill-treatment and inhuman conditions of detention documented and analyzed by other*

*organizations, including those of the Organization for Security and Cooperation in Europe (OSCE) and the Moscow Human Dimension Mechanism. These analyses lend further credibility to OHCHR findings that torture and ill-treatment have been systematically used as tools to punish and intimidate detainees.*

*In the context of these findings, the UN High Commissioner has recommended that other UN Member States fully respect the principle of non-refoulement, in particular with regard to human rights defenders, journalists and victims of human rights violations who have fled Belarus to their territories, and take measures to protect their rights and allow them to lead a dignified life (...)."*

The Romanian court also noted that such a conclusion is reinforced by *"the information transmitted to the first instance on 14 April 2022 by the Ministry of Foreign Affairs of Romania, from which it appears that according to "the assessments of all international organizations, the human rights situation in Belarus continues to be problematic. Political opponents, human rights activists and independent media are subjected to pressure and oppressive measures by the authorities. The government in Minsk has been criticized for human rights violations and persecution of non-governmental organizations (...) and for failing to meet electoral standards. Restrictive legislation on fundamental freedoms has not been amended and the authorities have not taken steps to remedy serious, systematic human rights violations."*

In the light of these overwhelmingly important arguments, the High Court found that the objective data at its disposal credibly substantiates the fear that surrendering the extraditable person to Belarus would expose him to a significant risk of being held in detention in inhuman or degrading conditions and of not having his fundamental rights respected on its territory during the criminal proceedings.

#### **4. Conclusions**

To those arguments, it is correct to add that the fact that the acts of which the extraditable person is accused do not constitute political offences or that he does not belong to the categories of domestic opponents or activists who are particularly exposed to the risk of pressure from the authorities is not such as to preclude such a conclusion. Since the authorities in the matter have revealed the systemic nature of the inhuman or degrading conditions of pre-trial detention, as well as the violation of fundamental human rights in the requesting State, the effects of that finding inevitably have repercussions on individual cases of deprivation of liberty pending trial, as in the case of the person in question. Consequently the Romanian Supreme Court found that there was an impediment to extradition and ordered the refusal of the extradition request made by the judicial authorities of the Republic of Belarus. We therefore consider that the optional grounds for refusing an extradition request must be analyzed in a balanced manner, in relation to the specific features of each case and respect for the rights recognized and guaranteed to persons subject to criminal proceedings, rights which are elevated to the level of principles of the criminal process, characteristic of any democratic state and the rule of law, so as to avoid the risk that persons subject to requests for cooperation may be subjected to cruel, inhuman or degrading treatment.

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