Chapter Two

The European Convention on Human Rights and Extradition

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Much has been written about the European Convention on Human Rights (ECHR) and extradition following the decision of the European Court of Human Rights (ECtHR) in the Soering case.¹ Since then the Court has heard a considerable number of complaints brought by individuals against their extradition. Renewed interest, nonetheless, is warranted in the subject given the burgeoning jurisprudence and the fact that several Member States of the Council of Europe (CoE) may have been involved in the rendition of individuals by clandestine or irregular procedures, also known as ‘extra-ordinary rendition’.² The principle established in the Soering case is equally applicable

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to this form of disguised extradition as well as all other forms of removal, and the principles extracted from one form of removal apply *mutatis mutandis* to all others. Examining the Convention from this perspective, this article will seek to identify how various rights within the Convention may effect the removal of a person from the jurisdiction of a Contracting State.

1. **Extradition Outside the Jurisdiction of the Convention**

As a preliminary point, it should be noted that in its jurisprudence, the ECtHR has made a significant distinction between removal within and outside the jurisdiction of a Contracting State. One reason for this is that, while a person may be moved from the territory of one State Party to another, such transfer does not remove him from the protection of the Convention. Thus after having been extradited, any affected person would be entitled to bring an application before the ECtHR. This pragmatic approach has some merit in relation to minor infringements of some rights but the irreversible nature, for instance, of capital punishment or the lasting effects of torture preclude this line of argument. Accordingly, in the *Saadi* case the ECtHR rejected the argument that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment inflicted by the authorities in a receiving State outside the jurisdiction of the Convention. In addition to this, some Member States of the CoE have refused extradition requests from other Party States, citing potential human rights violations as the reason for their

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4 See e.g. ECtHR, *K. and F. v. The Netherlands (Admissibility)*, (12 December 1986) Appl. No. 12543/86, p. 5; and ECtHR, *Tomic v. The United Kingdom (Admissibility)*, (14 October 2003), Appl. No. 17837/03, paragraph 1. See also decision of the German Federal Administrative Court, *BVerwG*, vol. 122, pp. 271–286.


6 ECtHR, *Saadi v. Italy* (28 February 2008), Appl. No. 37201/06, paragraphs 137–138. This is in line with other human rights bodies and cases: see, for example, CAT, *Alan v. Switzerland* (8 May 1996), Comm. No. 21/1995.