# *Castaño* dampens tensions between the two European Courts but erodes *Soering’s* human rights approach to cooperation in criminal matters

*“The (EU Charter) rights of citizenship, which presuppose movement, also provide the basis for the movement of coercive state powers. These powers enter into networks to extend their reach and in so doing exceed the national settlements of civil liberties and police powers. A similar extension of civil liberties into a network of accumulating rights is not occurring or apparently intended. The result then is an imbalance which favours extension of coercive powers and diminishes the force of protections of the individual.”* E Guild, ‘Citizenship, Immigration and the EU Charter’, Paper Presented at Experts’ brainstorming meeting on: Complementarity and conflicts between security and civil liberties, Brussels, 18 March 2002.

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## Introduction: silence in human rights law about cooperation in criminal matters

This piece is about the balance between human rights and cooperation in criminal matters. It is about the fact that the European Convention on Human Rights (ECHR)[[1]](#footnote-2) remain mostly silent on the issue of the human rights of extradited persons. It is also about how the Soering*[[2]](#footnote-3)* case introduced safeguards for human rights in extradition proceedings that were absent from the Convention. It is about how the European Court of Human Rights (ECtHR) later appeared to have changed its policy priorities in the *Güzelyurtlu[[3]](#footnote-4)* and *Castaño[[4]](#footnote-5)* rulings, and how this brought it closer to the position of the Court of Justice of the European Union (CJEU) concerning human rights filters to extradition. In short, this piece is about the priorities of the Court between human rights protection and easing judicial cooperation among states, and in particular about the dangers of automatising extraditions in the name of human rights protection.

The first section will address the question of whether and how the human rights of extradited persons are protected by the European Convention on Human Rights (Section 2). The next section will then turn to how, with the Soering case, the European Court of Human Rights (ECtHR) subordinated extraditions to human rights concerns (Section 3). The third section will then scrutinise the *Güzelyurtlu* and *Romeo Castaño* cases where the Court established that in fact proper respect of human rights requires, in some cases, a positive obligation to extradite (Section 4). The ensuing section will then briefly discuss how these developments mirror to some extent the rationale traditionally followed by the CJEU and how the two Courts have come to resolve the growing tension between their different approaches (Section 5). The final section will eventually contrast the approach in *Güzelyurtlu* and *Romeo Castaño* with that in *Soering* and draw the relevant conclusions as to the Court pushing towards an automatisation of extradition procedures.

## Need for specific fundamental rights for individuals caught in transnational cooperation. Going beyond *ne bis in idem*?

Treaty-based provisions protecting the human rights of people facing extradition or international investigations are not exactly lining up in the ECHR. Admittedly, the 1957 Convention on Extradition[[5]](#footnote-6) lists a number of grounds for refusal, or principles regulating extradition, which could potentially be construed as individual rights of the person whose extradition is being requested. These include the *ne bis in idem* principle, in Article 9 of the Convention on Extradition, which is a commonly agreed principle enshrined in the criminal law of most States and according to which one cannot be tried for the same offence twice.[[6]](#footnote-7) This rationale follows two objectives: the protection of people against the *ius puniendi* of the states,[[7]](#footnote-8) and respecting the *res judicata* of the final judgment.[[8]](#footnote-9) Other examples include the rule of specialty, enshrined in Article 14 of the Convention on Extradition, and the prohibition to extradite someone in the case of capital punishment, protected by Article 11. Last but not least, Article 3 of the Convention hits two birds with one stone, as it includes both a political offence exception clause (Art.3§1) and a discrimination clause (Art.3§2):

1. *Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.*
2. *The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.*

These principles can be indirectly connected to the protection of fundamental rights, such as the right to a fair trial when it comes to non-extradition in the event of capital punishment. However, only the *ne bis in idem* principle has explicitly been elevated to the status of being a fundamental right. Although the initial text of the European Convention on Human Rights did not actually foresee anything regarding the *ne bis in idem* principle, its 1984 Protocol 7 did; the latter included a right not to be tried or punished twice.[[9]](#footnote-10) This principle is traditionally and mostly applied at the national level, but not without complications, however, as the question of how to understand both the *bis* and *idem* parts of the clause continues to torment judges. The European Court of Human Rights provided guidance on how to apprehend them, as well as the general scope of the principle[[10]](#footnote-11) so as to facilitate its domestic application and harmonise its understanding as much as possible. The ratification rate of the Protocol being shockingly low, however, this principle is in fact not so much protected by the ECHR as it is by the European Convention on Extradition.[[11]](#footnote-12)

This is disappointing. One would have expected more fundamental protection for individuals caught in transnational litigations than just a *ne bis in idem* principle that is not even properly protected by the ECHR. Current developments in Europe call into question the reigning optimism about progress in terms of the rule of law, democracy and human rights; and thus similarly cast doubt on the idea that extradition and mutual assistance can smoothly take place between European Countries without concerns for the fundamental rights of extradited and suspected people. A case in point is that over a fifth of the Council of Europe Contracting Parties are today on the monitoring list of the General Assembly for “persistent failure to honour commitments freely entered into”,[[12]](#footnote-13) the latter referring to the respect of the values of the Council of Europe: democracy, the rule of law and the respect of human rights.[[13]](#footnote-14)

Classic principles from extradition law, such as the political offence exception or the discrimination clause, are therefore far from outdated. The Council of Europe could have taken the idea of Europe more seriously in its most banal sense: its scope, its differences in legal cultures and languages. Can extradition between states and a displacement of a person within a state really be put on an equal footing? Can moving a suspect from Paris to Rouen be compared with moving a suspect from Lisbon to Oslo? Hardly. In terms of social-economic rights and the effective exercise of defence rights, intra-state and inter-state transfers cannot be compared. More attention to the different fundamental rights protection that each scenario requires was thus necessary at the moment of drafting the ECHR.[[14]](#footnote-15) None of the drafting authors seem to have had the courage to break with or to innovate the state-based human rights tradition that we know from the French Revolution and early modernity. What was drafted was a catalogue of rights, and extradition between these countries was deemed possible on the assumption that each country would respect those rights. Thinking transnationally – namely of the rights of those individuals caught between two jurisdictions which might apply the ECHR standards differently – proved to be a bridge to far.[[15]](#footnote-16) Human rights protection in extradition and mutual assistance cases is thus left to be dealt with at the domestic level, as the *ne bis in idem* safeguard presented above is not enough to protect the rights of an extradited person.

One could invoke the age of the 1950 ECHR as a justification for this lack of transnational thinking. However, when we look to the other Europe – the European Union – and its 2000 EU Charter of Fundamental Rights,[[16]](#footnote-17) legally binding since the Lisbon Treaty,[[17]](#footnote-18) things are only marginally better. The EU Charter replicates the catalogue of rights we find in the ECHR with a number of additions, but we do not find any additional specific safeguard for extradited people or persons caught in international investigations either.

Like in the Convention, we do find the *ne bis in idem* principle mentioned in the EU. Therefore, this one ground for refusal of extradition, which is meant to protect, among other aspects, the position of the extradited person, has also been elevated to a human right in the EU law catalogue of fundamental rights. Interestingly, the integration of the Schengen Acquis into the EU legal framework, via the Convention on the Implementation of the Schengen Agreement, coupled to the development of the mutual recognition principle, and of the Area of Freedom, Security and Justice went even further than in the Council of Europe framework and gave the *ne bis in idem* principle a more transnational scope. [[18]](#footnote-19) Article 3 of the Convention indeed states that

*A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.*

So, when applying the *ne bis in idem* principle, including when considering whether the application of this principle can stop the extradition of a person present on its territory, a domestic judge must consider convictions not only in one state, but in all states of the Schengen Area. The EU thus shaped the *ne bis in idem* principle, taking into account free movement of persons across the EU and the general idea of mutual recognition, which requires states to consider judicial decisions taken by foreign authorities as equivalent to the ones taken by domestic authorities.[[19]](#footnote-20)

Although there is still no common European standard on the application of the *ne bis in idem* principle,[[20]](#footnote-21) this basic observation stands: with the recognition of *ne bis in idem* as a transnational right in the Charter and the European Convention on Human Rights, we – the Western legal system – finally obtained the first fundamental or human right that is genuinely transnational and meant to address possible injustices to individuals confronted with transnational cooperation mechanisms between states. Beside this principle however, there is no provision in either the ECHR or the EU Charter explicitly proscribing specific protection for individuals caught in extradition or mutual assistance proceedings.

One would have expected more fundamental protection for these individuals caught in transnational litigations than just the *ne bis in idem* principle, from the ECHR and even more so from the EU Charter, which is the foundation text for a transnational community. Most of its content represents no more than a copy-paste of the human rights legacy as developed at the state level in the eighteenth and nineteenth century. This, however, strikes as being both peculiar and or uninspired, especially at the level of the European Union that developed a more ambitious programme of creating a single European justice space: is *ne bis in idem* really all that can be said at the level of fundamental rights for this unique project of thinking a larger than large space, transcending state levels and building on the transcending and transnational constitutionalism?[[21]](#footnote-22) The first time this question of transnational fundamental rights protection was addressed in a non-superficial way was in in 1989, by the European Court of Human Rights in *Soering*.

## Introducing human rights filters to extradition (*Soering*)

The *Soering* case concerned a German national, who was a student at the University of Virginia. In 1985, he was accused of having killed his girlfriend’s parents in Bedford County, Virginia. Soering and his girlfriend disappeared in October 1985 and they were later arrested for cheque fraud in the United Kingdom in 1986. Following their arrest, they were interviewed by the Bedford County police in the UK, which led to Soering’s indictment for murder.[[22]](#footnote-23) The United States then issued an extradition request to the United Kingdom under the Extradition Treaty of 1972 between the two countries,[[23]](#footnote-24) an extradition that the United Kingdom accepted after American authorities gave assurances that, in the event of his extradition, Soering would not face the death penalty or that, if that sentence is passed, it would not be executed.[[24]](#footnote-25) During the course of the proceedings, however, the Virginia authorities notified the United Kingdom that the Attorney for Bedford County did intend to seek the death penalty for Soering.[[25]](#footnote-26) In March 1989, Soering seized the ECtHR and contended that, if executed, his extradition would lead to a breach of Article 3 ECHR on the prohibition of torture;[[26]](#footnote-27) Article 6 ECHR on the right to a fair trial;[[27]](#footnote-28) and Article 13 ECHR on the right to an effective remedy.[[28]](#footnote-29)

In examining the case, the Court considered the assurances given by the Virginia authorities to the United Kingdom authorities that accepted it. The Court noted, in this regard, that never in the past had the effectiveness of such assurances been tested by UK authorities.[[29]](#footnote-30) The Court further scrutinised the criminal law applicable in Virginia, as well as the prison conditions in the prison where Soering would be serving his sentence. Because German authorities had also tried to get Soering back to Germany due to his nationality, the Court then looked at the German practice in terms of extradition. It noted that where there is a risk that a death sentence will be carried out, German authorities only granted extradition in the case of unequivocal assurances that the death sentence would not be imposed or carried out. Finally, the Court considered the alleged breaches of human rights of which Soering claimed he would be the victim, if extradited to the United States.

As mentioned, Soering argued that, should it take place, his extradition to the United States would lead to a breach of Article 3 ECHR. More specifically, he contended that he would be subject to the “death row phenomenon” if sentenced to death in Virginia. The “death row phenomenon” refers to the circumstances surrounding the death sentence that subject the prisoner to such a level of distress that it is considered to be, in some cases, comparable to torture and/or inhumane and degrading treatment under Article 3 of the ECHR.[[30]](#footnote-31) The Court clarified, however, that the Convention does not foresee or at least should not be understood as providing a right to prohibit extradition in the case of a potential death sentence. In the present case, however, the Court did consider that due to the way post-sentence procedures take place in the specific context of Virginia, a prisoner “has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death”.[[31]](#footnote-32) Adding to this the personal circumstances of Soering (his young age – he was 18 years old at the moment of the murder – and his mental state at the time of the offence – about which psychologists have said that he was suffering from an “abnormality of mind due to inherent causes as substantially impaired his mental responsibility for his acts”[[32]](#footnote-33)) and the fact that Germany was willing to take him back (meaning that there was, in fact, a scenario where he could undergo punishment and where the risk of suffering linked to the death row phenomenon would be eliminated), the Court decided to rule that the extradition of Soering would give rise to a breach of Article 3 ECHR.[[33]](#footnote-34) The Court rejected, however, the claims linked to potential breaches of his right to a fair trial (Article 6 ECHR) and to an effective remedy (Article 13 ECHR) that the applicant had also raised.

The reason why this ruling was so revolutionary at the time (and still is today) is because the Court, for the first time, conditioned an extradition upon the respect of the fundamental rights of the person to be extradited, and this in a rather far-reaching way. Indeed, it did not suffice that the United Kingdom sought diplomatic assurances, it was also irrelevant that the potential breach would be committed by a third state and not by a Contracting Party, and it did not matter that Soering was sent to a State that the Court viewed as democratic:[[34]](#footnote-35) the ruling effectively extended the responsibility of Contracting Parties with regards to the fundamental rights of the person they have in their hands all the way until the very last result of their action has revealed itself. The responsibility of the Contracting Parties is thus engaged not only until the person leaves their jurisdiction, but until all consequences deriving from their action have unfolded. This ruling thus introduced major human rights filters to extradition. The Court was very careful, however, in clarifying that this should not be understood as a prohibition to extradite unless the Convention standards are respected by all countries who wish to cooperate with the Council of Europe’s Contracting Parties. The purpose of this ruling was thus by no means to “impose Convention standards on other States”.[[35]](#footnote-36) It was to engage the Contracting Parties’ responsibility “for all and any foreseeable consequences of extradition suffered outside their jurisdiction” so as to “make the safeguards [of the Convention] practical and effective”.[[36]](#footnote-37) This rationale not only applies to extradition, but also to deportations where other articles of the Convention are potentially engaged, as has been demonstrated by subsequent cases, the most notable of which being the one of *Othman (Abu Qatada) v. The United Kingdom*.[[37]](#footnote-38)

With *Soering*, the Court did not impose clear transnational standards as to when fundamental rights can actually come in the way of extradition either. Although it stated that extradition can be hampered if a “flagrant denial of a fair trial” is observed by the requested Contracting Party,[[38]](#footnote-39) it gave no indication as to what constitutes a flagrant denial of respect of fundamental rights. Furthermore, the Court only mentioned Articles 3 and 6 of the Convention in that respect, which raises questions over potential denials of other rights in the course of extradition proceedings. The threshold established by the Court in this judgement for fundamental rights to impede extraditions thus remains very high and unclear overall, despite its groundbreaking character.[[39]](#footnote-40)

The unprecedented nature of this ruling also derives, and this should not be overlooked, from its *exceptionality*, in the sense that it is unusual for the Court to adopt such a position. There is, more often than not, a bargain between the ideal application of the Convention and the pragmatic situations faced by the Contracting Parties in their application of the Convention, leading the Court to position itself somewhere in between, usually drawing a line that should not be passed, but also refraining from hampering cooperation altogether.

And yet, in the 2019 *Güzelyurtlu and Castaño* judgments, the Court actually used the human rights argument to *create* an obligation to cooperate, thus envisaging a different relation between fundamental rights and cooperation than the one which had guided the judges when delivering the S*oering* judgement.

## Using human rights to create an obligation to extradite (*Güzelyurtlu* and *Castaño*)

### Güzelyurtlu and others V Cyprus and Turkey

The case of *Güzelyurtlu* concerned the killing of a family of Turkish Cypriots in the Cypriot-government controlled part of Cyprus in 2005. The Republic of Cyprus subsequently launched an investigation and identified eight suspects, all of which fled to the “Turkish Republic of Northern Cyprus” (‘TRNC’ hereafter). The ‘TRNC’, also started parallel investigations, which identified and arrested the same eight suspects. Both investigations reached a stalemate, however, when the Cypriot authorities refused to hand over the casefile containing this evidence so that ‘TRNC’ authorities could prosecute the suspects. Conversely, when the Cypriot authorities sent an extradition request to ‘TRNC’ authorities to prosecute these suspects, the requests were returned completely unanswered.[[40]](#footnote-41) As Nasia Hadjigeorgiou puts it, the situation was therefore one where “the suspects were in the north of the island, while the physical evidence linking them to the murder was in the south. There was no way of bringing the two together and beginning the prosecution process.”[[41]](#footnote-42) There was an attempt at building bridges for this case through the United Nations Peacekeeping force in Cyprus (UNFICYP), but it was not exactly crowned with success, as both sides systematically rejected any proposition put forward by the UNFICYP.[[42]](#footnote-43)

It is against this backdrop, one where the geopolitical situation on the island came in the way of justice being delivered, that the family of the victims seized the Court both against Cyprus and Turkey (due to the fact that the Northern part of Cyprus is effectively controlled by Turkey). The family argued that because governing authorities on the island had failed to cooperate to investigate the death of their relatives, the procedural obligations of the States involved had not been fulfilled (Art.2 ECHR), and the right of the family of the victims to an effective remedy (Art. 13 ECHR) had also been denied.

In its decision, the Court started by recalling that the obligation to undertake an investigation is normally the responsibility of the authorities under whose jurisdiction the case falls. This situation was thus complicated by the fact that the effective control over the whole territory was not in the hands of the Cypriot government. While it is true that this case was spread across two jurisdictions, namely the Cypriot and Turkish ones,[[43]](#footnote-44) the Court nevertheless reminded both sides that the transnational nature of the case did not absolve any of the authorities involved from their duty to cooperate. The responsibility and obligations of both parties were thus initially engaged.[[44]](#footnote-45) The Court noted, in this regard, that when the investigations were being conducted separately and the suspects identified, both parties were actually fulfilling their obligation under Article 2 of the Convention.

The violation, as aforesaid, started when both sides obstinately refused to cooperate, leaving what the Court called a rather ‘straightforward case’ to remain open and unsolved since 2005.[[45]](#footnote-46) This failure to collaborate was, according to the Court, all the more shocking that the UNFICYP not only offered its mediation to help the cooperation, but actually tried to provide practical solutions. The proposed solutions required, however, both sides to meet each other half-way. Because all suggestions were turned down and as neither side made any compromise, all suspects were released.[[46]](#footnote-47)

In light of the above, the Chamber initially found both Cyprus and Turkey in breach of their procedural obligation under Article 2 (right to life) but also of Article 13 (right to an effective remedy) taken in conjunction with Article 2.[[47]](#footnote-48) The Grand Chamber, however, went another way and ruled that the Cypriot authorities, by sending an extradition request that had been denied, had done everything that could be reasonably expected from them, while it also understood that, in the context of the frozen conflict between Cyprus and Turkey, expecting Cypriot authorities to recognise a request from the ‘TRNC’ for mutual legal assistance would have taken them too far down the path of recognising the ‘TRNC’ authorities. If Cyprus had indeed answered to the request of the ‘TRNC’, it would have in fact meant that the latter had waived its “criminal jurisdiction in favour of the [unrecognised] “TRNC” courts.”[[48]](#footnote-49) As a result, only Tukey was found in breach of Articles 2 and 13 because Turkish authorities had not even replied to the extradition request. Hadjigeorgiou contends, in this regard, that if Turkey had simply answered the request, even by the negative, the Court would have perhaps not reached that conclusion (although, she rightfully argues, “it would not have actually resulted in a more effective investigation of the deaths”).[[49]](#footnote-50)

With this case, the Court therefore established a direct link between the lack of cooperation and the violation of the right to life protected under Article 2 of the Convention. While the Court had already established in previous rulings that the Contracting Parties have a duty to conduct proper investigations when the right to life of a person has been violated as a result of the use of force,[[50]](#footnote-51) this procedural obligation was more specifically the one of the State under whose jurisdiction the killing took place.[[51]](#footnote-52) As for the other States where evidence might be located, for example, the Court had also established an obligation to provide assistance to the requesting State within its competences when such a request is made.[[52]](#footnote-53) The novelty brought by this case is that, for the first time, the Court found a violation of Article 2 that it solely attributed to the lack of cooperation between the Cypriot and Turkish authorities. The Court indeed described Article 2 as, in certain circumstances, generating a *“*two-way obligation to cooperate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance”.[[53]](#footnote-54) It more specifically linked this obligation to using the international treaties and agreements offering venues for cooperation, such as the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters that both Parties had ratified and that thus bound them.[[54]](#footnote-55) The takeaway from this ruling is therefore that, under certain circumstances, a failure to cooperate in criminal matters can amount to a breach of fundamental rights.

Looking at the specificities of the case, one understands where the Court comes from in its judgement, but this line of reasoning opens the way to what has the potential of being a very slippery slope. Some wondered, for example, if this obligation to collaborate using existing tools of cooperation in criminal matters would also extend to EU instruments, such as the European arrest warrant. This is a particularly efficient system for extradition, adopted in the context of the war on terror, that only allows a very limited possibility for refusing a request to surrender, and for this reason raises particularly important human rights concerns.[[55]](#footnote-56) One thus cannot help but wonder if, after *Güzelyurtlu*, EU Member States could find themselves in a situation where they would be in breach of fundamental rights while trying to protect them by refusing cooperation. This was precisely the question that the Court answered in *Castaño* v. Belgium.

### *Romeo Casta*ñ*o v. Belgium*

The case concerned the father of Romeo Castaño who was murdered in 1981 by a commando unit of the ETA terrorist organisation. All members of the unit were tried in 2007, short of N.J.E. who fled to Mexico and later to Belgium. The Spanish judge thus issued two European arrest warrants in 2004 and 2005 to get her back, but these were both turned down because the Indictments Division of the Belgian Court considered that there were good reasons to believe that, should she be surrendered back to Spain, the fundamental rights of N.J.E. would be jeopardised.[[56]](#footnote-57) The Indictments Division indeed argued that:

*“the punishable acts needed to be viewed in the broader context of Spain’s contemporary political history and the personal background of N.J.E., who, having been active in the “Basque armed resistance movement” in her twenties, was now a 55-year-old professional woman living a normal life in Ghent. Furthermore, basing its finding in particular on a report by the European Committee for the Prevention of Torture (CPT) concerning the latter’s periodic visit to Spain from 31 May to 13 June 2011, the Indictments Division held that there were substantial reasons for believing that execution of the European arrest warrant would infringe N.J.E.’s fundamental rights under Article 6 of the Treaty on European Union.”[[57]](#footnote-58)*

The Belgian Federal Prosecutor’s Office appealed specific points of the decision, and more specifically insisted on the principle of mutual trust governing the relations of EU Member States. In simple terms, this principle implies that Member States trust that the founding values of the EU, one of which being the respect of fundamental rights,[[58]](#footnote-59) are shared and upheld by all of the EU Member States.[[59]](#footnote-60) Judicial cooperation between Member States is therefore meant to work smoothly, and the Court insisted that only substantiated evidence about the risk of a fundamental rights violation will call into question the presumption of observance of fundamental rights, and has therefore the potential of halting cooperation.[[60]](#footnote-61)

The Belgian Court of Cassation, however, dismissed the appeal in 2013, arguing that, based on the 2011 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, there were indeed

*“substantial reasons for believing that the execution of the European arrest warrants would infringe the defendant’s fundamental rights because persons charged with punishable offences with an alleged terrorist motive are held in Spain under a different custodial regime, in degrading conditions possibly accompanied by torture, and with very limited contact with the outside world (family, lawyer and assistance)’.”[[61]](#footnote-62)*

The case was thus temporarily closed in 2013, but only until 2015, when Spain issued another European arrest warrant against N.J.E. Paul Bekaert, the Belgian lawyer of N.J.E., argued that the issuance of this last European arrest warrant was partly owed to the fact that Spanish authorities realised that the case would soon become statute-barred under Spanish law. Therefore, Spanish authorities wanted to prosecute her before they would be prevented legally from pursuing the case. This is coupled with the fact that the Association of Victims of Terrorism, already very vocal and influent in Spain, had been further encouraged by the family of the victim to urge Spanish authorities to re-issue the European arrest warrants for N.J.E.[[62]](#footnote-63) This time, however, in light of the accusations that were previously made, the investigating judge in Spain, who issued the European arrest warrant, also explained in what way the concerns raised for the refusal of the first warrant had been addressed.[[63]](#footnote-64) The Committals Division of the Ghent Court of First Instance did not, however, find these reassurances enough and turned the request down again. The Federal Prosecutor’s Office appealed that decision, but the Indictments Division upheld the ruling, saying that the assurances were indeed not enough to rule out the risk of human right abuses if the defendant was surrendered to Spain. It more specifically based itself upon reports of the United Nations Human Rights Committee’s submitted by N.J.E., which highlighted that Spain had still not addressed the issue of the incommunicado detentions that had repeatedly been pointed out by the UN Human Rights Committee, as being problematic for the respect of human rights. Following this decision, the Federal Prosecutor’s Office lodged an appeal, claiming that the references to the report of the Human Rights committee were insufficient to sustain their case. In July 2016, the Court of Cassation again dismissed the appeal because the ground on which the Federal Prosecutor’s Office based it was considered to have “been based on an incomplete reading of the impugned judgment.”[[64]](#footnote-65)

The case was consequently brought to the European Court of Human Rights. The applicant, the son of the victim, contended that, because of the Belgian refusal to surrender N.J.E., Spanish authorities were prevented from prosecuting her and from carrying out an effective investigation on this murder case.[[65]](#footnote-66) Basing itself on *Güzelyurtlu*, the Court assessed, in a two-step fashion, whether Belgian authorities “responded properly to the request for cooperation”, and then if “the refusal to cooperate was based on legitimate grounds”.[[66]](#footnote-67)

Regarding the first part of the question, the Court found that Belgian authorities had indeed taken the necessary steps to honour the Spanish request, and that refusing to cooperate in the case of human rights abuse is an approach that the Court had sanctioned in previous rulings. So, the fact that Belgium invoked the human rights argument to turn down a request for surrender was not a problem *per se* for the Court, on the contrary. In this specific case, however, the Court noted that although the approach of the Belgian authorities not to automatically surrender the person was the right one, the factual grounds legitimising this position were insufficient and did not, overall, explain how the risk of human rights abuse pointed in the international reports Belgium referred to were specifically applicable to the case of N.J.E. In particular, the Court noted that Belgian authorities had surrendered numerous (former) ETA members requested by Spanish authorities through the European arrest warrant system without questioning the respect of human rights of those people.[[67]](#footnote-68) The Court further argued that Belgian authorities should have used their right to request additional information on the place and conditions of detention so as to determine if there would have been a “real and concrete risk of a violation of the Convention” in case she was to be surrendered.[[68]](#footnote-69) As a result of the above, and building on *Güzelyurtlu*,[[69]](#footnote-70) the Court concluded that Belgium had indeed “failed in its obligation to cooperate arising under the procedural limb of Article 2 of the Convention, and that there had been a violation of that provision.”[[70]](#footnote-71) The case thus took the obligation to cooperate established under Güzelyurtlu one step further. The Court established an obligation to cooperate not in relation to a self-standing obligation that would be based on Belgium’s application of the ECHR in its own jurisdiction. It rather derived this obligation from the fact that a “jurisdictional link” was created following the request for assistance (in this case, a European arrets warrant) from Spain and that engaged Belgium’s responsibility.[[71]](#footnote-72)

It should, however, be noted that this obligation to cooperate has only been established in relation of Article 2 of the ECHR, an article that the Court holds in especially high esteem.[[72]](#footnote-73) As Luc von Danwitz rightfully underlines, the obligation to cooperate “does not serve as a carte blanche to disregard the rights of the accused”.[[73]](#footnote-74) In this regard, despite establishing that obligation in this case and recognising Belgium guilty of a breach of the Convention, the Court nevertheless specified that :

*“this finding of a violation of Article 2 of the Convention does not necessarily entail a requirement for Belgium to surrender N.J.E. to the Spanish authorities. The reason which has prompted the Court to find a violation of Article 2 is the lack of sufficient factual basis for the refusal to surrender her. This in no way releases the Belgian authorities from their obligation to ensure that in the event of her surrender to the Spanish authorities N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention. More generally, this judgment cannot be construed as lessening the obligation for States not to extradite a person to a requesting country where there are serious grounds to believe that if the person is extradited to that country he or she will run a real risk of being subjected to treatment contrary to Article 3 (…), and hence to verify that no such risk exists”*.[[74]](#footnote-75)

## Convergence of ECtHR and CJEU approaches

The *Castaño* case encapsulated, and to a certain extent reconciled, a long-standing tension between the ECHR approach and the EU Law approach to human rights protection and extradition. Indeed, with *Soering*, the ECtHR had established the importance of prioritising concerns of human rights over cooperation. This prioritisation was not absolute, but the fact that the Court swam against the tide to set that standard tells us about the ambition of the Court in terms of human protection. The Court thus made a statement in reference to *Soering*.

The approach of the CJEU to the relation between concerns of human rights and cooperation in criminal matters had traditionally been a different one. The mutual trust principle was indeed supposed to enable EU Member States to bypass the human right screening process in extradition proceedings and pre-approve extradition requests. Because the mutual trust principle was in the DNA of the European arrest warrant in the sense that it was a *sine qua non* condition for the European arrest warrant to even exist in the first place, questioning the respect of fundamental rights of EU Member States in their application of the European arrest warrant would have amounted to casting doubt over the mutual trust principle itself. This had not been the option for the CJEU for a long time. The blind trust policy, however, proved to be unsustainable regarding the dual obligation of EU Member States towards both the CJEU and the ECtHR. EU Member States were indeed caught between their conflicting obligations deriving from the two jurisdictions.[[75]](#footnote-76) Had they surrendered people to a place where their human rights might be breached, they risked a condemnation before the ECtHR; had they not automatically surrendered these people, they risked a condemnation before the CJEU. As Irene Wieczorek pointed out, these paradoxical obligations resulted in a variety of responses by EU Member States confronted with such situations.[[76]](#footnote-77) This was not only problematic for the general coherence between the legal systems of the EU and the Council of Europe, it also resulted in a messy and inconsistent (non-)application of EU law.

This tension decreased in recent years, as the CJEU increasingly nuanced the automatisation of surrenders in the EU by subordinating them to human rights concerns.[[77]](#footnote-78) With cases like *Aranyosi* or *LM*, the CJEU indeed outlined the circumstances under which the principle of mutual trust can be rebutted and the application of European arrest warrants prevented.[[78]](#footnote-79) In Aranyosi, the CJEU designed a two-step approach to determine whether the human rights of the person would be endangered in the case of surrender. The first step consists of an assessment of whether or not there were systematic deficiencies observed in one EU Member State regarding the application of the EU Charter on fundamental rights. The second step then seeks to gauge how these deficiencies apply to the individual case of the person sought.[[79]](#footnote-80) To that purpose, the issuing Member State is encouraged to request supplementary information.[[80]](#footnote-81) This more compromising stance is said to contrast with the one it had adopted in the past, where it focused on automatising surrenders.[[81]](#footnote-82)

With the *Güzelyurtlu* and *Castaño* cases, the ECtHR also met the CJEU half-way and sought to ensure consistency across the two jurisdictions. The ECtHR judges in *Castaño* were indeed concerned with the symmetry between the two legal systems.[[82]](#footnote-83) As Judge Pavli outlines in his concurring opinion to the ECtHR’s ruling in *Castaño*, “the European Convention on Human Rights does not live in isolation within its regional context of application”.[[83]](#footnote-84) He further explains that “the ‘challenge of symmetry’ between Convention law and European Union law is an ongoing enterprise which requires carefully crafted interpretative solutions so as to retain, as far as possible, the principled character and integrity of the former without upsetting the delicate institutional balance and fundamental elements inherent in the latter”.[[84]](#footnote-85)

Accordingly, the ECtHR took a similar path to the one of the CJEU by establishing rather stringent standards as to when it can be considered that human rights are endangered with regard to the application of a European arrest warrant. Mirroring the approach of the CJEU in *Aranyosi*, the Court fashioned a two-step test to determine when a refusal to extradite is compatible with the ECHR. It first examined whether the extradition request granted a proper response. It then assessed if the refusal to cooperate was based on legitimate grounds.[[85]](#footnote-86) Doing so, it subordinated the application of European arrest warrants to the respect of human rights. The ruling, however, does not risk having a particularly high impact in practice, as the threshold is set very high for when European arrest warrant requests can be refused on human rights grounds.

The paths taken by both Courts thus seem to have eventually converged. That is perhaps good news, but the ECtHR, however, should be careful not to make too many concessions to the criminal policy ambitions of the EU. Indeed, the question is, can *Güzelyurtlu* and *Castaño* be reconciled with the revolutionary *Soering* judgement? What do these cases do for the rights of the extradited person?

Make no mistake, the Court has not explicitly overruled *Soering*. *Castaño* in particular reiterates the possibility of halting extradition to protect the fundamental rights of the accused. However, firstly, it sets a very high threshold for that. And secondly, more generally, *Güzelyurtlu* and *Castaño* highlight a different additional function for human rights, namely that justifying and actually requiring extradition. The priority for the Court seems to have changed, with the emphasis being put on what human rights can be protected by extradition (such as the right to life as at stake in *Güzelyurtlu* and *Castaño*), rather than on what human rights can extradition affect (such as fair trial rights, but also the right not to be subject to inhuman and degrading treatment like in *Soering*). One could therefore argue that *Güzelyurtlu* and *Castaño* have eroded the spirit of *Soering*.

## Advancing Human Rights to the detriment of the rights of defence (conclusion)

This article sought to unveil how, with the *Güzelyurtlu* and *Castaño* cases, the Court backtracked to some extent on the approach it had adopted under Soering, as far as the relation and hierarchy between extradition and fundamental rights are concerned; and how this brought it closer to the position of the CJEU. It started by outlining that the ne bis in idem principle was the sole provision contained in the ECHR (and the EU Charter) that explicitly protects human rights in transborder cases. It then outlined how, with the Soering case, the Court in part remedied that lacuna by subjecting cooperation to the respect of human rights. It then turned to the *Güzelyurtlu* and *Castaño* cases to show how the Court today sets cooperation, as a precondition for human rights protection. It then looked at how this new rationale was one that allowed it to align human rights protection in transborder criminal cases with the one of the CJEU, and how the latter also tempered its originally unbending approach to cooperation. It is against this general backdrop that this paper warns against a too compromising attitude with regards to human rights in the field of cooperation in criminal matters.

The different rulings of the European Court of Human Rights discussed above have not helped to shape clear transnational standards to human rights protection. Although Soering did establish a hierarchy between human rights protection and cooperation in criminal matters, favoring the former over the latter, it did not, however, create clear and unequivocal human rights standards to be applied in cooperation in criminal matters. The net result of Soering is a balancing act: allowing cooperation between states (even non-European states), while excluding actions that could result in flagrant violations of some very important human rights. The mere fact that this balance exists also enabled the Court to actually later turn away from the path it had initially followed, or at least to nuance it.

With *Güzelyurtlu* and *Casta*ño, for example, the Court has effectively established a positive obligation for States to cooperate flowing from the duty to respect fundamental rights. Here, the rationale is very much different than the one followed in Soering because, while in the latter human rights were prioritised over cooperation, with *Güzelyurtlu* and *Casta*ño, the logic followed by the Court is one where cooperation will enable human rights protection. The argument of the Court is that cooperation is necessary to protect human rights. The most cynical could even say that, here, human rights protection is put at the service of cooperation in criminal matters. The development of a supranational judicial supervision has therefore not led to a reconceptualisation of human rights in a truly transnational space.

Safeguards like the ne bis in idem principle or the ones deriving from Soering (or, for that matter, *Aranyosi*and*Căldăraru*) thus need to be commended, but one should be cautious regarding the positive obligation of the states to cooperate created by the Strasbourg Court, as the latter yields immense potential to reverse the initial relationship of human rights and cooperation in criminal matters set under Soering. Cooperation should happen if human rights are respected, not the other way around. Let us not forget, in this regard, that before cooperation was presented as paramount to human rights protection, the political offence exception conversely offered Contracting Parties the possibility to refuse extradition in cases where the requesting State was deemed to be unable to offer a fair trial for the person sought.[[86]](#footnote-87) A similar message lurks behind the discrimination clause.[[87]](#footnote-88) Unquestionably, States have and should have obligations to carry out a human rights check before sending suspects away. It is more questionable whether human rights can be the right source for creating extra layers of obligations to cooperate between states. Sending Basque political militants to Spain with the abundance of international evidence on poor detention conditions in that country can, in our view, not be justified as a positive human rights obligation.

Our plea for more conceptualisation of European fundamental rights in a truly European perspective transcending the state level, has very little to do with the new doctrine developed in *Güzelyurtlu* and *Casta*ño. Human rights should protect individuals, rather than regulate state cooperation. A hardcore defence lawyer like Scott Crosby would certainly comprehend this dangerous use of positive human rights obligations in the said cases. Later on in his career, Scott became a human rights law professor at the Vrije Universiteit Brussels. Students were privileged to benefit both from his knowledge of human rights broadly speaking, but also from his expertise and longstanding experience as a defence lawyer. Perhaps there is a need for more defence lawyers amongst the human rights judges in Strasbourg. Victims of crime, like Romeo Castaño and his father are, of course, entitled to human rights protection too, and this is the contribution of defence lawyers to human rights law, but this should never be at the expense of the rights of the accused.

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   \*\* The authors are grateful to Dr. Irene Wieczorek for her insightful review and comments that helped to improve this contribution.

   Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms 04 November 1950, ETS 005 [↑](#footnote-ref-2)
2. *Soering v UK*, App no 14038/88 (ECtHR 7 July 1989). [↑](#footnote-ref-3)
3. *Güzelyurtlu and Others v Cyprus and Turkey*, App no 36925/07 (ECtHR 29 January 2019). [↑](#footnote-ref-4)
4. *Romeo Casta*ño v Belgium, App no 8351/17 (ECtHR 9 October 2019). [↑](#footnote-ref-5)
5. Council of Europe, European Convention on Extradition, 13 December 1957, ETS 024. [↑](#footnote-ref-6)
6. M Wasmeier, ‘The principle of Ne bis in Idem’ (2006) 77 RIDP 121, 121. [↑](#footnote-ref-7)
7. Although the additional protocol to the European Convention on Extradition does say that the extradition can take place, even for a person against whom a final judgment has been passed, if “ the offence in respect of which judgment has been rendered was committed against a person, an institution or anything having public status in the requesting State; if the person on whom judgment was passed had himself a public status in the requesting State; if the offence in respect of which judgment was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory”. So, the protection of people from the *ius puniendi* of the states is only valid as long as these people do not attack the states’ special interests. Council of Europe, Additional Protocol to the European Convention on Extradition, 15 October 1975, ETS 86, art.2. [↑](#footnote-ref-8)
8. J A E Vervaele, ‘The transnational ne bis in idem principle in the EU Mutual recognition and equivalent protection of human rights’ (2005) 1 Utrecht Law Rev. 100, 100. [↑](#footnote-ref-9)
9. Council of Europe, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 22 November 1984, ETS 117, art. 4. [↑](#footnote-ref-10)
10. European Court of Human Rights, ‘Factsheet – Right not to be tried or punished twice (the *in idem* principle)’ (July 2020) <https://www.echr.coe.int/Documents/FS\_Non\_bis\_in\_idem\_ENG.pdf> Accessed 1 September 2020. [↑](#footnote-ref-11)
11. Council of Europe, ‘Chart of signatures and ratifications of Treaty 117’ (Status as of 31 August 2020) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/117/signatures?p\_auth=BZuc7XJZ> Accessed 31 August 2020. [↑](#footnote-ref-12)
12. Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), ‘The monitoring procedure of the Parliamentary Assembly’, AS/Mon/Inf(2017)03rev, 2017, 1. [↑](#footnote-ref-13)
13. Council of Europe, ‘Values’ <https://www.coe.int/en/web/about-us/values> accessed 1 September 2020. [↑](#footnote-ref-14)
14. N Subic, ‘Resisting a European Arrest Warrant: A social rights perspective’ (2020) 11 NJECL, 299. [↑](#footnote-ref-15)
15. The fundamental rights exercise can still be done. It is never too late. A simple analysis of the work done by the EU on procedural rights in recent years could be a start. It is time to promote upwards some of the good ideas in the directives providing a fundamental right to have a lawyer, the right to understand prosecutions originating from other Member States, or the right to have ‘foreign’ evidence examined by the domestic judge to avoid differences in scrutiny standards (comp. with A Van Hoek & M Luchtman, ‘Transnational cooperation in criminal matters and the safeguarding of human rights’ (2005) 1 Utrecht Law Rev. 1). There is clearly no consensus in human rights law about a general recognition of the exclusionary rule. But should that be a deadlock? Let us then start with finding a consensus and note that the ECHR and the Charter, contrary to Art. 15 of the UN Convention against Torture, do not contain an explicit rule excluding evidence in a court case with statements obtained under torture (comp. R A Lawson, 'Hoe exclusief dient de 'exclusionary rule' te zijn?', in P D Duys & P D J van Zeben, *Via Straatsburg. Opstellen ter gelegenheid van de benoeming van Prof. Mr. B.E.P. Myer* (Wolf Legal Publihers, 2004) 181-207, 189; P De Hert & S Gutwirth, ‘Grondrechten : vrijplaatsen voor het strafrecht? Dworkins Amerikaanse trumpmetafoor getoetst aan de hedendaagse Europese mensenrechten’ in R H Haveman & H C Wiersinga (red.), *Langs de randen van het strafrecht*, E.G. Mijers Instituut-reeks 91, (Wolf Legal Publishers, 2005) 141-175). [↑](#footnote-ref-16)
16. Charter of Fundamental Rights of the European Union [2012] OJ C 326/391. [↑](#footnote-ref-17)
17. Art. 6, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJC306/1. [↑](#footnote-ref-18)
18. Wasmeier (n 6) 121-22. [↑](#footnote-ref-19)
19. Ibid. 123-24. [↑](#footnote-ref-20)
20. Vervaele (n 8) 117. [↑](#footnote-ref-21)
21. The reply is of course ‘yes more can be said’. See our suggestions and preliminary ideas in footnote 15. On constitutionalism beyond the state, C Joerges, I-J Sand, G Teubner (eds.), *Transnational Governance and Constitutionalism*, (Hart 2004) 408; G C Guimarães, *Transnational Constitutionalism, Google and the European Union* (Routledge 2019) 226. On hesitations in the EU Charter between human rights and civil rights and between a constitutional logic and a treaty logic, see E. Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, (Kluwer Law International, The Hague, 2004) and E Guild, ‘Citizenship, Immigration and the EU Charter’ (Paper Presented at Experts’ brainstorming meeting on: Complementarity and conflicts between security and civil liberties, Brussels, 18 March 2002), Brussels. [↑](#footnote-ref-22)
22. *Soering* (n 2). [↑](#footnote-ref-23)
23. Extradition Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland, and related exchanges of letters 2003, of 31 March 2003, Treaty Series No. 13 (2007). [↑](#footnote-ref-24)
24. To be more precise, the assurances that were given were not so much about the fact that the death penalty would be ruled out as a sentence, they were rather about the fact that the wish of the United Kingdom for the death penalty to be discarded (or not executed) would be represented in Court. The assurance given by the Bedford County Attorney indeed reads as follows: "I hereby certify that should Jens Soering be convicted of the offence of capital murder as charged in Bedford County, Virginia ... a representation will be made in the name of the United Kingdom to the judge at the time of sentencing that it is the wish of the United Kingdom that the death penalty should not be imposed or carried out." *Soering* (n 2), para 20. [↑](#footnote-ref-25)
25. Ibid. [↑](#footnote-ref-26)
26. Because Soering argued there was a risk he would be exposed to the death row phenomenon if sentenced to death in Virginia. Ibid., para 25. [↑](#footnote-ref-27)
27. Soering indeed claimed that due to the lack of legal aid in Virginia, his right to a fair trial would be impeded because he could not challenge his decision in Federal Courts. Ibid., para 76. [↑](#footnote-ref-28)
28. This is linked to the fact that Soering introduced a request for judicial review that the British judge rejected because the decision to be reviewed had not been rendered yet at the time Soering introduced the request. The request was thus considered to be premature. In addition, the Court found that, contrary to what Soering claimed, English law indeed provided opportunities for an effective remedy with respect to his complaint under article 3. Ibid., paras 22-23, 122-124. [↑](#footnote-ref-29)
29. European Database of Asylum Law (EDAL), ‘ECtHR – Soering v. The United Kingdom, Application No. 14038/88, 7 July 1989’ <https://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989> Accessed 2 September 2020. [↑](#footnote-ref-30)
30. Ibid. [↑](#footnote-ref-31)
31. *Soering* (n 2), para 106. [↑](#footnote-ref-32)
32. Ibid., para 21. [↑](#footnote-ref-33)
33. Ibid., para 110. [↑](#footnote-ref-34)
34. Ibid., para 111. [↑](#footnote-ref-35)
35. Ibid., para 86. [↑](#footnote-ref-36)
36. Ibid*.,* paras 86-87. [↑](#footnote-ref-37)
37. *Othman (Abu Qatada) v UK*, App no 8139/09 (ECtHR 17 January 2012). [↑](#footnote-ref-38)
38. *Soering* (n 2), para 113. [↑](#footnote-ref-39)
39. See in detail on the international cooperation-friendly nature of the *Soering* flagrant denial test, Van Hoek & Luchtman (n 15). [↑](#footnote-ref-40)
40. *Güzelyurtlu* (n 3). [↑](#footnote-ref-41)
41. # N Hadjigeorgiou, ‘Güzelyurtlu and Others v. Cyprus and Turkey: An Important Legal Development or a Step Too Far?’ (*Crossroads Europe*, 27 November 2019) <https://crossroads.ideasoneurope.eu/2019/11/27/guzelyurtlu-and-others-v-cyprus-and-turkey-an-important-legal-development-or-a-step-too-far/> accessed 3 September 2020.

    [↑](#footnote-ref-42)
42. These more specifically refer to “meetings in the UN buffer zone between the police of both sides and the police of the British Sovereign Bases, the questioning of the suspects at the Ledra Palace Hotel in the UN buffer zone through “the video recording interview method”, the possibility of an ad hoc arrangement or trial at a neutral venue, the transfer of the suspects to a third State, and dealing with the issue on a technical services level”. *Güzelyurtlu* (n 3), para 256. [↑](#footnote-ref-43)
43. The suspects were indeed located in ‘TRNC’ as well as in mainland Turkey, both under Turkish jurisdiction (since the TRNC is only recognised by Turkey and that it is widely acknowledged that Turkey exercises effective control of the Northern part of the island). [↑](#footnote-ref-44)
44. European Court of Human Rights, ‘Lack of cooperation between Cyprus and Turkey resulted in an ineffective investigation in a murder case’ (press release), ECtHR 118 (2017) 3. [↑](#footnote-ref-45)
45. Ibid*.* [↑](#footnote-ref-46)
46. Ibid. 4. [↑](#footnote-ref-47)
47. Ibid. [↑](#footnote-ref-48)
48. *Güzelyurtlu* (n 3), para 253. [↑](#footnote-ref-49)
49. Hadjigeorgiou (n 41). [↑](#footnote-ref-50)
50. Mustafa Tunç and Fecire Tunç v Turkey*,* App no. 24014/05 (ECtHR 14 April 2015). [↑](#footnote-ref-51)
51. *Emin and others v Cyprus and others*, App no 34144/05 (ECtHR 27 March 2008), cited in: D Sartori, ‘Güzelyurtlu and others v. Cyprus and Turkey: the duty to cooperate under Article 2 ECHR’ (*International Law Blog*, 15 April 2019) <https://internationallaw.blog/2019/04/15/guzelyurtlu-and-others-v-cyprus-and-turkey-the-duty-to-cooperate-under-article-2-echr/> accessed 6 September 2020. [↑](#footnote-ref-52)
52. *Rantsev v Cyprus and Russia*, App no 25965/04 (ECtHR 7 January 2010), cited in Sartori (n 51) [↑](#footnote-ref-53)
53. *Güzelyurtlu* (n 3), para 233. [↑](#footnote-ref-54)
54. Although Turkey later partially contested their applicability regarding the territory of Cyprus. Ibid*.*, para 240. [↑](#footnote-ref-55)
55. Sartori (n 51). [↑](#footnote-ref-56)
56. *Romeo Casta*ño (n 4), paras 7-12. [↑](#footnote-ref-57)
57. Ibid., para 12. [↑](#footnote-ref-58)
58. Consolidated Version of the Treaty on European Union [2008] OJ C115/13, art. 2. [↑](#footnote-ref-59)
59. Case C‑220/18 PPU, ML v Generalstaatsanwaltschaft Bremen [2018] ECR – General, para. 48. [↑](#footnote-ref-60)
60. *Romeo Casta*ño (n 4), para 14. [↑](#footnote-ref-61)
61. Ibid.,para 15. [↑](#footnote-ref-62)
62. Interview with Paul Bekaert, Lawyer of N.J.E. (Tielt, Belgium, 29 November 2018). [↑](#footnote-ref-63)
63. *Romeo Casta*ño (n 4), para 17. [↑](#footnote-ref-64)
64. Ibid*.*, para 22. [↑](#footnote-ref-65)
65. Ibid., para 80. [↑](#footnote-ref-66)
66. Ibid., para 82. [↑](#footnote-ref-67)
67. Ibid., paras 83-88. [↑](#footnote-ref-68)
68. Ibid*.*, para 89. [↑](#footnote-ref-69)
69. Ibid., paras 40, 81. [↑](#footnote-ref-70)
70. Ibid*.*, para 91. [↑](#footnote-ref-71)
71. M Zamboni, ‘Romeo Castaño v Belgium and the Duty to Cooperate under the ECHR’ (*EJIL Talk!*, 19 August 2019) <https://www.ejiltalk.org/romeo-castano-v-belgium-and-the-duty-to-cooperate-under-the-echr/> accessed 8 September 2020. [↑](#footnote-ref-72)
72. L von Danwitz, ‘In rights we trust’ (*Verfassungsblog*, 21 August 2019) <https://verfassungsblog.de/in-rights-we-trust/> accessed on 7 September 2020. [↑](#footnote-ref-73)
73. Ibid. [↑](#footnote-ref-74)
74. *Romeo Casta*ño (n 4) para 92. [↑](#footnote-ref-75)
75. I Wieczorek, ‘The Implication of Radu at a national level: national courts’ diversified response to conflicting obligations’ in V Mitsilegas, A di Martino, L Mancano, *The European Court of Justice and European Criminal Law. Leading Cases in a Contextual Analysis* (Hart Publishing, 2019) 380, 380-381. [↑](#footnote-ref-76)
76. Ibid. [↑](#footnote-ref-77)
77. This was most famously visible in Case C-241/15 Niculaie Aurel Bob-Dogi [2016] ECR – General; Joined cases C-404/15 and C-659/15 PPU Pál Aranyosi and Robert Căldăraru [2016] ECR – General, Case C‑216/18 PPU LM [2018] ECR – General. [↑](#footnote-ref-78)
78. Ibid. [↑](#footnote-ref-79)
79. *Aranyosi* and *Căldăraru* (n 77), paras. 88-93. [↑](#footnote-ref-80)
80. Zamboni (n 71). [↑](#footnote-ref-81)
81. Ibid. [↑](#footnote-ref-82)
82. Ibid. [↑](#footnote-ref-83)
83. *Romeo Casta*ño (n 4) para 27. [↑](#footnote-ref-84)
84. Ibid., para 29. [↑](#footnote-ref-85)
85. Ibid, para 82. [↑](#footnote-ref-86)
86. European Convention on Extradition (n 5), art. 3§1. [↑](#footnote-ref-87)
87. Ibid., art. 3§2. [↑](#footnote-ref-88)