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The Extradition Treaty between Georgia and the United States – A Legal Analysis and Perspectives for Implementation

The Extradition Treaty between Georgia and the United States of America (hereinafter - “the Treaty”)¹ constitutes a pivotal legal instrument designed to regulate the extradition process and foster deeper legal cooperation between the two states. This article offers a critical analysis of the Treaty’s core provisions, with particular focus on the permissibility of extraditing nationals, the safeguards for the protection of human rights, and the role of judicial institutions within the extradition framework.

By examining the Treaty through the lens of international criminal cooperation, the article underscores Georgia’s enhanced capacity to engage effectively in cross-border legal processes, especially with respect to the transfer of individuals from the United States. It further investigates the legal and procedural challenges associated with harmonising the Treaty’s obligations with Georgia’s existing legislative framework and its binding international commitments.

A key focus of the analysis is the Treaty’s departure from previous legal norms by permitting the extradition of a party’s own nationals. This represents a significant shift in the legal landscape and has far-reaching implications for constitutional and human rights considerations in Georgian legislation.

Another notable innovation addressed in the article concerns the extradition of individuals charged with crimes punishable by the death penalty. The Treaty permits such extradition only upon assurances that the death sentence will not be carried out, thus aligning the practice with international human rights standards.

Additionally, the article discusses the evidentiary thresholds applicable in extradition proceedings and explores the institutional role of domestic courts in assessing compliance with the Treaty’s procedural and substantive guarantees. The analysis concludes by identifying potential friction points arising from the interplay of differing legal systems and offers recommendations for effective implementation within Georgia’s legal order.

Key words: *Extradition, Extradition of Georgian citizens, Extradition and human rights.*

1. Introduction

Since the restoration of its independence in the early 1990s, Georgia has cultivated a longstanding and multifaceted partnership with the United States of America.² This bilateral

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¹ Extradition Treaty between Georgia and the United States of America, see the joint statement: <<https://ge.usembassy.gov/u-s-georgia-joint-statement-on-extradition-treaty-negotiations/>> [02.05.2025].

² First bilateral international agreements between the Government of Republic of Georgia and the United States of America on Economic, Humanitarian and Investment Cooperation and Assistance, 48, 31/07/1992 (in Georgian).

relationship, underpinned by strategic cooperation and shared democratic values, extends to various areas of governance, including criminal justice and legal assistance. Despite over three decades of collaboration, however, the extradition relationship between the two states has, until recently, lacked a formal legal framework. In the absence of a bilateral international treaty, extradition between Georgia and the United States has been governed on an *ad hoc* basis, relying predominantly on unilateral undertakings and individual agreements.³ This arrangement has resulted in a significant asymmetry in legal rights and procedural guarantees, particularly for Georgia, given the United States' statutory requirement that extradition be conducted only according to a treaty.⁴

The formalisation of extradition arrangements through the conclusion of the Treaty constitutes a significant legal and diplomatic milestone, particularly in light of negotiations that have been ongoing since 2019. Although the Treaty has not yet entered into force,⁵ all of its provisions have been finalised, agreed upon, and initialled by both parties.⁶ Upon ratification, it will establish a binding legal basis for extradition between the two states and will, for the first time, enable Georgia to request the extradition of individuals from the United States – a right previously unavailable in the absence of an international treaty-based mechanism.

The Treaty introduces several significant legal innovations within Georgia's domestic legal system. These include: (i) the possibility of extraditing Georgian nationals; (ii) the admissibility of extradition requests in cases where the offence is punishable by the death penalty under U.S. law, provided that assurances are given regarding non-enforcement; and (iii) the application of a distinct evidentiary threshold, reflective of U.S. legal standards, in judicial review of extradition requests. These provisions represent a departure from established domestic practice and raise important questions regarding the compatibility of the Treaty with Georgia's constitutional order and its international human rights obligations.

This article seeks to critically examine the legal and institutional implications of the Treaty from the perspective of Georgian legislation. It aims, in particular, to assess the compatibility of the Treaty's core provisions with Georgia's constitutional framework, statutory extradition procedures, and obligations arising under international human rights law. Drawing on doctrinal legal methodology,⁷ the article further identifies the legislative reforms necessary to facilitate the Treaty's effective implementation and evaluates the procedural and institutional challenges likely to arise during its enforcement.

The central research question guiding this inquiry is whether the existing Georgian legal system is adequately prepared – both normatively and institutionally – to ensure the effective and rights-

³ Law of Georgia on International Cooperation on Legal Matters, Article 2, Part 2, 09/08/2010 (in Georgian).

⁴ 18 USC §§ 3181–3196. see: *Factor v. Laubenheimer*, (1933), 290 US 276, 287; *United States v. Rauscher*, (1886), 119 US 407, 414.

⁵ According to the Organic Law of Georgia on Normative Acts and the Law of Georgia on International Treaties, the entry into force of the Treaty requires its submission to the Parliament of Georgia for ratification, along with an accompanying package of legislative amendments.

⁶ A corresponding decree of the Government of Georgia (No. 2205; 8 December 2023) has also been issued regarding the signing of the Treaty.

⁷ *Hutchinson T., Duncan N.*, Defining and Describing What We Do: Doctrinal Legal Research, (2012) 17 *Deakin Law Review*, Vol. 17, №1, 2012, 83.

compliant implementation of the Treaty. The article is structured into an introduction, three main chapters, and a concluding section. Each chapter presents a legal analysis that shows the key innovations introduced into the Georgian legal framework by the Treaty. The concluding section offers recommendations for aligning Georgia's domestic legal framework with the obligations introduced by the Treaty, while preserving constitutional safeguards and adherence to international standards.

2. Extradition of Citizens under the Treaty

This section examines the regulation of the extradition of nationals by the contracting parties within the context of the Treaty,⁸ with a focus on the specific legal and constitutional framework of Georgia. The extradition of nationals remains a complex and often contentious issue in international law, as its permissibility is typically determined by a state's constitutional principles, legal traditions, and international commitments. Accordingly, this section evaluates the compatibility of this provision with Georgia's domestic legal order.

In the context of the United States, the extradition of nationals is a common feature of the majority of its bilateral treaties.⁹ According to the U.S. Department of State, the United States retains the discretion to extradite its own citizens when it deems such action necessary, in the interest of justice.¹⁰ By contrast, Georgia's position is more constrained. Article 32(5) of the Constitution of Georgia prohibits the extradition of a Georgian citizen to a foreign state, except where otherwise provided by an international treaty.¹¹ This constitutional clause does not constitute an absolute bar, but rather makes extradition contingent upon the existence of a treaty obligation.

While the extradition of nationals is standard practice in the United States, reflecting its common law tradition,¹² it represents a significant legal innovation for Georgia. Extradition treaties may include provisions that exempt states from the obligation to extradite their own nationals.¹³ Such

⁸ Pursuant to Article 3 of the Treaty, "Extradition shall not be refused based on the nationality of the person sought."

⁹ The U.S. uses a similar record in most bilateral agreements, compare.: Protocol on the application of the Agreement on Extradition between the United States of America and the European Union to the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Lithuania, signed 15 June 2005, Article 3; <<https://www.state.gov/wp-content/uploads/2019/02/10-201.14-Lithuania-EU-Extradition-Treaty.pdf>> [28.02.2025]. Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Latvia, signed 7 December 2005, Article 3; <<https://2021-2025.state.gov/wp-content/uploads/2019/02/09-415-Latvia-Extradition-Treaty.pdf>> [28.02.2025]. Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Estonia, signed 8 February 2006, Article 3. <<https://www.state.gov/wp-content/uploads/2019/02/09-407-Estonia-Extradition-Treaty.pdf>> [28.02.2025].

¹⁰ *Plachta M.*, (Non-)Extradition of Nationals: A Neverending Story?, *Emory International Law Review*, Vol. 13, №1 1999, 77, 97-98.

¹¹ Constitution of Georgia, Article 32, Paragraph 5, *The Legislative Herald of Georgia*, 31-33, 24.08.1995 (in Georgian).

¹² *Kester J.G.*, Some Myths of United States Extradition Law, *Georgetown Law Journal* Vol. 76, №4, 1998, 1441, 1443.

¹³ *Bassiouni M. C.*, *International Extradition United States Law and Practice*, 6th ed., Oxford, 2014, 744-45.

exemptions can be either absolute, prohibiting extradition categorically, or discretionary, allowing the requested state to decide on a case-by-case basis.¹⁴ In the latter case, states retain full discretion to deny or grant extradition of their nationals without breaching treaty obligations.¹⁵

International law offers further guidance on this matter. Article 6(1)(a) of the European Convention on Extradition¹⁶ grants parties the discretion to refuse extradition of their own nationals.¹⁷ Georgia, by way of declaration under Article 6(1)(b), has reserved the right to determine, at its own discretion, whether or not to extradite its citizens to foreign states.¹⁸ This reservation operates on the principle of reciprocity,¹⁹ thereby allowing Georgia to consider the extradition of its nationals where similar treatment is extended by the requesting state.

It is important to note that, notwithstanding the constitutional limitation, Georgian law permits the transfer of Georgian nationals to the International Criminal Court (ICC).²⁰ This indicates a broader interpretive space within Georgian law for the conditional surrender of nationals under international legal obligations.

Declarations attached to Conventions form an integral part of their legal framework. Pursuant to the Constitution of Georgia, an international treaty, if it does not contravene the Constitution or constitutional agreement, has primacy over domestic normative acts.²¹ Accordingly, such a declaration, theoretically, could serve as a legal basis for the extradition of nationals. However, extradition requests require close and careful examination at the national level to prevent violations of fundamental rights or political misuse of the process.²² The discretionary authority provided by the declaration is rooted in this concern.

Nonetheless, under the Law of Georgia on International Cooperation in Criminal Matters, if a person detained for extradition is found to be a Georgian citizen, they must be released immediately.²³

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¹⁵ Chhabra S., Nationality and Extradition, RGNUL Law Review, Vol. 4, №2, 2016, 1, 3.

¹⁶ Georgia participatory state since 22 March 2000, see the list of signatory and participatory states: <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=024>> [28.02.2025].

¹⁷ Staker C., Jurisdiction, in Evans M.D. (ed.), International Law, 5th ed., Oxford, 2014, 299-01.

¹⁸ In the declaration submitted alongside the instrument of ratification and deposited on 15 June 2001, it is stated that, for the purposes of the Convention, „the Government of Georgia reserves the right to decide on the extradition of its nationals on the basis of reciprocity and to refuse their extradition on the grounds of public morality, public policy and State security.” see.: <<https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=024&codeNature=10&codePays=GEO>> [02.05.2025].

¹⁹ Parisi F., Ghei N., The Role of Reciprocity in International Law, Cornell International Law Journal, Vol 36, №1, 2003, 93, 119-21.

²⁰ Law of Georgia on Cooperation of Georgia with the International Criminal Court, Article 20, Paragraph 3, 20/08/2003 (in Georgian).

²¹ Constitution of Georgia, Article 4, Paragraph 5, The Legislative Herald of Georgia, 31-33, 24.08.1995 (in Georgian). On the superior legal force of international treaties, see also: Cassese A., International Law, 2nd ed., Oxford, 2005, 213-22.

²² Blekxtoon R., Zsuzsanna D.R., The Decline of the Nationality Exception in European Extradition? The Impact of the Regulation of (Non-)Surrender of Nationals and Dual Criminality under the European Arrest Warrant, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 13, №3, 2005, 317, 318-20.

²³ Law of Georgia on International Cooperation in Criminal Matters, Article 30, Paragraph 13, 48, 09/08/2010 (in Georgian).

Furthermore, nationality is treated as a legal ground that precludes surrender to a foreign state, excluding the prosecutor from filing a motion for extradition with the competent court.²⁴ This position has been reinforced by domestic judicial practice.

Despite the constitutional interpretation and Georgia's declaration under the European Convention on Extradition, there is currently no operational legal or procedural mechanism for executing the extradition of Georgian nationals. Thus, for the Treaty to be effectively implemented, the relevant provisions of domestic law must be amended to bring them in line with the principle of extradition of nationals established by the Treaty.²⁵

This development also underscores the need to develop supplementary legal mechanisms to manage potential constitutional or human rights challenges. Such mechanisms may include the elaboration of detailed procedural guidelines for handling cases where the extradition of nationals may conflict with constitutional protections or international human rights obligations.²⁶ These safeguards are essential for ensuring the Treaty's effective and balanced implementation and for adapting it to the evolving legal, political, and practical landscape.²⁷ Ultimately, such efforts will strengthen the internal coherence and operational viability of Georgia's extradition regime.

Provided that the necessary legal framework is established, the extradition of Georgian citizens would not, in principle, violate Georgia's constitutional provisions or its international legal obligations.

3. Protection of Human Rights under the Treaty

The possibility of extraditing individuals for crimes punishable by the death penalty under U.S. law, provided that appropriate assurances are given, constitutes a second significant and precedent-setting development within Georgia's legal system. The protection of human rights remains among the most critical considerations in extradition proceedings. To mitigate the risk of potential violations, core rights such as the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the right to a fair trial, and the right to respect for private and family life must be rigorously assessed to ensure that extradition does not result in the infringement of fundamental rights.²⁸

This section evaluates the risks of human rights violations associated with the implementation of the Treaty and proposes mechanisms for their prevention and mitigation. While the Treaty does not, in itself, contain a dedicated section on human rights, the preamble acknowledges the need to afford

²⁴ Ibid, Article 34, Paragraph 3.

²⁵ Law of Georgia on Georgian International Treaties, Article 14, Paragraph 2, Sub-paragraph "e" and Article 15, Paragraph 4, The Legislative Herald of Georgia, 44, 11/11/1997 (in Georgian).

²⁶ Cassese A., International Law, 2nd ed., Oxford, 2005, 222-23.

²⁷ Sorensen, J. S., The Interplay Between the Executive and Judicial Branches in Extradition, Litigation, Vol. 40, №4, 2014, 60, 61.

²⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 2, 3, 5, 6 and 8, also *inter alia* following cases: *Soering v. United Kingdom* [1989] ECHR (Ser. A.), 161.; *Mamatkulov and Askarov v. Turkey* [2005] ECHR; *Othman (Abu Qatada) v. the United Kingdom* [2012] ECHR; *Kirkwood v. United Kingdom* [1984] ECHR; *Chahal v. the United Kingdom* [1996] ECHR.

appropriate attention to the rights of individuals as guaranteed under the respective legal systems of the contracting parties.²⁹

Notably, this Treaty will be the first international agreement through which Georgia does not explicitly exclude cooperation in criminal matters with a state where the offence for which extradition is requested may carry the death penalty.³⁰ The Treaty stipulates that, where the requesting state imposes the death penalty for the relevant offence, the requested state's executive authority may refuse extradition unless the requesting state provides adequate assurances that the death penalty will not be imposed, or, if imposed, will not be carried out.³¹

This provision raises several legal and ethical concerns. First, the power to refuse extradition in such cases lies within the discretion, but not the obligation, of the executive authority of the requested state. Second, Georgia is a party to the European Convention on Human Rights and its additional protocols abolishing the death penalty under all circumstances.³² In fact, Georgia abolished the death penalty under its domestic law as early as 1997,³³ prior to its formal assumption of international obligations in this area.

While the European Convention on Extradition allows for treaty language similar to that adopted in the Georgia–U.S. agreement,³⁴ Georgia has made no reservations or declarations clarifying the extent of such cooperation. Furthermore, current Georgian legislation explicitly prohibits extradition in cases where the offence in question is punishable by the death penalty in the requesting

²⁹ In various bilateral extradition treaties, the standard of human rights protection is regulated in different ways. see: Protocol on the application of the Agreement on Extradition between the United States of America and the European Union to the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Lithuania, signed 15 June 2005; <<https://www.state.gov/wp-content/uploads/2019/02/10-201.14-Lithuania-EU-Extradition-Treaty.pdf>> [02.05.2025] Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Latvia, signed 7 December 2005; <<https://2021-2025.state.gov/wp-content/uploads/2019/02/09-415-Latvia-Extradition-Treaty.pdf>> [02.05.2025]. Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Estonia, signed 8 February 2006. <<https://www.state.gov/wp-content/uploads/2019/02/09-407-Estonia-Extradition-Treaty.pdf>> [02.05.2025].

³⁰ Article 7 of the Treaty reads as follows: When the offence for which the extradition is sought is punishable by death under the laws in the requesting state and is not punishable by death under the laws in the requesting state, the executive authority of the requested state may refuse extradition unless the requesting state provides the executive authority of the requested state with an assurance that the death penalty shall not be imposed or, if for procedural reasons such an assurance cannot be provided by the requesting state, with an assurance that the death penalty, if imposed, shall not be carried out. If the requesting state provides an assurance pursuant to this article, the requested state shall grant the extradition and the requesting state shall comply with the assurance.

³¹ Ibid.

³² Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, European Treaty Series, 1983, 114, (Georgia signed in 1999 and is participatory state since 2000); Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, European Treaty Series, 2002, 187, (Georgia signed in 2002 and is participatory state since 2003).

³³ Law of Georgia on the Complete Abolition of the Special Measure of Punishment – Death Penalty, The Legislative Herald of Georgia, 45, 21/11/1997 (in Georgian).

³⁴ European Convention on Extradition, European Treaty Series, 1957, 24 (for Georgia entered into force 13 September 2001).

state.³⁵ This statutory prohibition would necessarily require amendment during the Treaty's ratification process.³⁶ However, it remains unclear whether such amendments will be narrowly tailored to apply solely to the extradition relationship with the United States, or whether they could extend to other states where capital punishment remains in effect.

It is also crucial to acknowledge that the death penalty is still actively carried out in certain U.S. states.³⁷ Therefore, careful scrutiny is required not only in relation to the legal guarantees presented by the requesting state, but also in assessing the broader human rights implications of such extraditions.³⁸ This includes evaluating whether the guarantees are legally binding, specific in content, and practically enforceable.

The responsibility of the requested state to ensure compliance with its human rights obligations – including its prohibition of the death penalty – is paramount, particularly where it has constitutionally or legislatively abolished such punishment.³⁹ The evaluation of assurances must go beyond mere formality and reflect a comprehensive understanding of the interplay between international legal norms, bilateral treaty obligations, and fundamental rights protections.⁴⁰ This involves balancing the principles of justice and accountability with the imperatives of human dignity and the absolute nature of certain rights, such as the right to life and the prohibition of cruel or inhuman punishment.⁴¹

Such assurances must therefore be specific, legally enforceable, and capable of practical implementation, to ensure that individuals are not exposed to the risk of serious human rights violations.⁴² This is essential for preserving the integrity of the requested state's legal obligations and fostering mutual trust and cooperation between the parties to the Treaty.⁴³ Importantly, this provision applies only to extraditions requested by the United States from Georgia, not vice versa. Accordingly, only the Georgian executive authority will be empowered to request assurances that the death penalty will not be imposed or enforced, and this provision will extend to the extradition of Georgian nationals as well.

³⁵ Law of Georgia on International Cooperation in Criminal Matters, Article 22, 48, 09/08/2010 (in Georgian).

³⁶ Law of Georgia on Georgian International Treaties, Article 15, Paragraph 4, The Legislative Herald of Georgia, 44, 11/11/1997 (in Georgian).

³⁷ *Clarke A.*, Terrorism, Extradition, and the Death Penalty, *William Mitchell Law Review*, Vol. 29, №3, 2003, 783, 793-98.

³⁸ *Drake S. K.*, Dangerous Precedents: Circumventing Extradition to Implement the Death Penalty, *Suffolk Transnational Law Review*, Vol. 36, №2, 2013, 333, 342-43.

³⁹ *Beltran M. B., Martin A. N.*, Post 9/11 Trends in International Judicial Cooperation Human Rights as a Constraint on Extradition in Death Penalty Cases, *Journal of International Criminal Justice*, Vol. 10, №3, 2012, 581, 584-87.

⁴⁰ *Gregg R.*, The European Tendency toward Non-Extradition to the United States in Capital Cases: Trends, Assurances, and Breaches of Duty, *Miami International and Comparative Law Review*, Vol. 10, №1, 2002, 113, 123-28.

⁴¹ *Harkins and Edwards v. United Kingdom*, [2012] ECHR140-41.

⁴² *Gregg R.*, The European Tendency toward Non-Extradition to the United States in Capital Cases: Trends, Assurances, and Breaches of Duty, *Miami International and Comparative Law Review*, Vol. 10, №1, 2002, 113, 123-25.

⁴³ *Ibid.*

Scholarly opinions remain divided on the reliability of diplomatic assurances provided by the United States. Some legal scholars maintain that the U.S. has consistently fulfilled such assurances, particularly when required by treaty obligations.⁴⁴ Others argue that diplomatic assurances may be legally insufficient, citing documented instances in which extradited individuals were subjected to treatment tantamount to torture despite the existence of formal guarantees.⁴⁵ This raises broader questions about the extent to which law can effectively constrain executive power in politically asymmetric relationships and whether diplomatic assurances are a sufficient safeguard in such contexts.⁴⁶

At present, it is difficult to predict how these issues will play out in the Georgian context or what mechanisms may be developed to minimise associated risks. What is clear, however, is that the Georgian executive branch has committed itself to this framework and will bear the legal and political consequences of its implementation.

A legislative amendment removing the death penalty as an absolute bar to extradition will be a necessary precondition for the Treaty's entry into force. While such a change will not fully align with Georgia's existing legal framework, the introduction and reliable enforcement of death penalty assurances may serve to reconcile this legal inconsistency.

4. Institutional Mechanism for Extradition and Standard of Submission of Evidence

This section analyzes the institutional and procedural mechanisms involved in the implementation of extradition under the Treaty, with particular emphasis on the role of the judiciary and the evidentiary standards established for extradition requests to and from the United States. It also examines potential practical challenges that may arise during the implementation of the Treaty.

The Treaty marks Georgia's first bilateral extradition agreement with a common law jurisdiction, wherein the judicial system operates according to distinct structural and interpretative principles. In common law systems, courts perform a more proactive and interpretive role in adjudicating legal questions.⁴⁷ This structural divergence has significant implications for extradition processes, particularly regarding the assessment of evidence and the role of judicial discretion.

Under Georgian legislation, extradition proceedings are classified as semi-legal in nature.⁴⁸ However, there is ongoing debate as to whether their legal component is subordinate to or overshadowed by political considerations. A brief review of the decisions of the Supreme Court of Georgia in extradition cases reveals a high degree of uniformity: prosecutorial motions are almost

⁴⁴ Ibid 127-28.

⁴⁵ *Hawkins K. R.*, The Promises of Torturers: Diplomatic Assurances and the Legality of Rendition, *Georgetown Immigration Law Journal*, Vol. 20, №2, 2006, 213, 217.

⁴⁶ *Khutsishvili K.*, Extradition and Deportation under the European Convention on Human Rights, in *European Human Rights Standards and Their Impact on Georgian Legislation and Practice*, ed. *Korkelia K.*, Tbilisi, 2006, 313, 334 (in Georgian).

⁴⁷ *Lomio P. J., Spang-Hanssen H., Wilson G. D.*, Legal Research Methods in a Modern World: A Coursebook, 3rd ed., Copenhagen, 2011, 11.

⁴⁸ Law of Georgia on International Cooperation in Criminal Matters, Article 34, 48, 09/08/2010 (in Georgian).

invariably granted,⁴⁹ and the judicial decisions tend to follow a standard format, replicating identical reasoning across multiple cases.⁵⁰ This pattern suggests a formalistic approach in which procedural compliance and uniformity are prioritised over substantive legal analysis or case-specific considerations.

This tendency may be partly attributed to the nature of extradition proceedings themselves, which are not required to meet the full standards of fairness applicable to criminal trials, as they do not involve the adjudication of civil rights, duties, or criminal liability.⁵¹ The scope of judicial review in extradition cases is limited;⁵² the primary task of the court is to assess the legality of the extradition request and ensure the protection of fundamental rights, rather than to determine whether sufficient evidence exists to establish guilt.⁵³

Nevertheless, extradition proceedings, while not equivalent to standard criminal trials, must still adhere to the procedural safeguards established under Georgia's Criminal Procedure Code, which aligns with the standards set out in the European Convention on Human Rights.⁵⁴ This ensures that a minimum threshold of procedural fairness and legality is maintained, even in limited-scope proceedings.⁵⁵

In legal systems based on precedent, judicial decisions carry a different normative weight. It is important to distinguish between rules established by courts and rules imposed by statute.⁵⁶ Recognising this distinction underscores that judicially enforced rules may coexist with, or even operate independently from, statutory law.⁵⁷ In the extradition context, this distinction is especially relevant given that the final decision rests not with the judiciary, but with the executive branch, by a political person.⁵⁸ The non-final nature of court decisions in extradition cases resembles quasi-judicial procedures, where decision-makers operate within a limited mandate, focusing on legal compliance without engaging in substantive fact-finding or normative interpretation.⁵⁹ Even where the court

⁴⁹ There is no official statistical data to confirm this. However, experts with multiple years of experience cannot recall more than a single instance in which a court overturned a decision after recourse to the judiciary became mandatory in extradition cases.

⁵⁰ <<https://www.supremecourt.ge/ka/cases>> [02.05.2025].

⁵¹ *Langford P.*, Extradition and fundamental rights: the perspective of the European Court of Human Rights, *The International Journal of Human Rights*, Vol. 13, №4, 2009, 512, 516.

⁵² Procedural measures such as interrogating witnesses, cross-examining the case, presenting and requesting evidence, and other actions related to proving the charge during the hearing on the merits.

⁵³ *Arnell P., Davies G.*, The Forum Bar in UK Extradition Law: An Unnecessary Failure, *The Journal of Criminal Law*, Vol. 84, №2, 2020, 142, 143.

⁵⁴ *Kester J.G.*, Some Myths of United States Extradition Law, *Georgetown Law Journal*, Vol. 76, №4, 1988, 1441, 1444-47.

⁵⁵ See the statistics on violations of the European Convention by Georgia, including with respect to Article 6 of the Convention, available at: <https://www.echr.coe.int/documents/d/echr/cp_georgia_eng> [02.05.2025].

⁵⁶ *Lomio P. J., Spang-Hanssen H., Wilson G. D.*, Legal Research Methods in a Modern World: A Coursebook, 3rd ed., Copenhagen, 2011, 63.

⁵⁷ *Ibid.*

⁵⁸ Law of Georgia on International Cooperation in Criminal Matters, Article 34, 48, 09/08/2010 (in Georgian).

⁵⁹ *Koh S. A.*, Core Criminal Procedure, *Minnesota Law Review*, Vol. 105, №1, 2020, 251, 279.

approves an extradition request, the executive retains the authority to override the decision and decline to surrender the individual.⁶⁰

Another issue concerns the evidentiary standards applied in extradition proceedings.⁶¹ Extradition requests generally pertain to two categories of individuals: (i) accused persons whose cases have not yet been adjudicated, and (ii) convicted individuals who are sought for the purpose of serving their sentence.⁶² In this regard, judicial review is more relevant for accused individuals, as procedural protections related to trial rights are no longer applicable once a final judgment has been rendered.⁶³

Georgia's domestic legal framework does not currently provide for the evidentiary threshold that may be required by U.S. courts. According to the Treaty, the requesting state (in this case, Georgia) must submit documentation sufficient to establish a "basis" for believing that the individual committed the alleged offence.⁶⁴ However, this standard will not be reciprocally applied to requests from the United States. The justifications for this asymmetry include, first, the maximum duration of extradition detention under Georgian law, which is limited to nine months,⁶⁵ presumably identified as insufficient to accommodate complex evidentiary procedures, and second, the absence of such a requirement in Georgian legislation.

Georgian legislation imposes only limited obligations on courts involved in extradition procedures,⁶⁶ and there is currently no indication of legislative intent or a willingness to revise or

⁶⁰ Law of Georgia on International Cooperation in Criminal Matters, Article 34, Paragraphs 13-15, 48, 09/08/2010 (in Georgian).

⁶¹ There are three primary grounds for extradition: individuals who are accused, those who have been convicted, and persons subject to decisions rendered in absentia who may face trial upon extradition. This study focuses specifically on the extradition of individuals who are formally accused.

⁶² *Arnell P.*, The Contrasting Evolution of the Right to a Fair Trial in UK Extradition Law, *The international journal of human rights*, Vol. 22, №7, 2018, 869, 871-72.

⁶³ Ibid.

⁶⁴ According to the Article 8(3) of the Treaty: "In addition to the requirements in paragraph 2 of this Article, a request for extradition of a person who is sought for prosecution shall also be supported by: (a) a copy of the warrant or order of arrest or detention issued by a judge or other competent authority; (b) a copy of the charging document, if any; and (c) such information as would provide a reasonable basis to believe that the person sought committed the offense or offences for which extradition is requested, where it is so required under the law of Requested State." The United States includes similar provisions in other bilateral extradition treaties as well; see, for example: Protocol on the application of the Agreement on Extradition between the United States of America and the European Union to the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Lithuania, signed 15 June 2005, Article 8(3); <<https://www.state.gov/wp-content/uploads/2019/02/10-201.14-Lithuania-EU-Extradition-Treaty.pdf>> [02.05.2025]. Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Latvia, signed 7 December 2005, Article 7(3); <<https://2021-2025.state.gov/wp-content/uploads/2019/02/09-415-Latvia-Extradition-Treaty.pdf>> [02.05.2025]. Extradition Treaty Between The Government of the United States of America and The Government of the Republic of Estonia, signed 8 February 2006, Article 8(3). <<https://www.state.gov/wp-content/uploads/2019/02/09-407-Estonia-Extradition-Treaty.pdf>> [02.05.2025].

⁶⁵ Law of Georgia on International Cooperation in Criminal Matters, Article 30, Paragraph 6, 48, 09/08/2010 (in Georgian).

⁶⁶ Ibid, Article 30.

expand judicial participation. Moreover, neither statutory provisions nor judicial practice provides detailed guidance on the principles that courts should apply during extradition hearings. In light of potential cooperation with the United States – where criminal sanctions may include severe penalties⁶⁷ such as life imprisonment,⁶⁸ it is essential that Georgia clearly define its procedural approach, including, for example, the provision of consular protection for Georgian citizens subject to extradition.

Strengthening the role of the judiciary in extradition proceedings would also provide long-term institutional benefits. The standards developed through the implementation of the Treaty with the United States could serve as a model for future extradition agreements with other common law jurisdictions, helping Georgia to harmonise its legal practice with international norms and to ensure the protection of fundamental rights in cross-border criminal cooperation.

5. Conclusion

This study has identified several legislative amendments that must be enacted prior to the Treaty's entry into force. In particular, amendments will be required to revise the normative content of provisions that currently prohibit the extradition of Georgian citizens and the extradition of individuals for offences punishable by the death penalty under the laws of the requesting state.⁶⁹

From the perspective of legislative drafting, such amendments could take either a general form or be limited in scope to the specific extradition relationship between Georgia and the United States. Among these options, the latter – targeted amendments limited to U.S.-Georgia cooperation – is recommended as the more prudent and contextually appropriate approach.

Whether Georgian authorities will be able to effectively obtain and monitor the enforcement of death penalty assurances remains an open question. The answer can only emerge through the practical application of the Treaty and the evolution of bilateral cooperation between Georgia and the United States in the field of criminal justice.

The analysis of the relevant Treaty provisions further reveals an asymmetry in the evidentiary standards required by the two parties. There is no indication of an intention to apply a uniform evidentiary threshold in both directions. As a result, Georgia's domestic legislation will remain unchanged in this respect, which in turn highlights the need to strengthen the role of the judiciary to ensure the Treaty's effective implementation in practice.

To address these challenges, it is advisable to establish clear guiding principles, develop detailed procedural instructions, and provide specialised training for judges on managing cases that involve different evidentiary standards. By addressing these institutional and procedural gaps, Georgia

⁶⁷ King K.F., *The Death Penalty, Extradition, and the War against Terrorism: U.S. Responses to European Opinion about Capital Punishment*, Buffalo Human Rights Law Review, Vol. 9, №1, 2003, 161, 167-70.

⁶⁸ Asta B., *International Extradition Law – European Court of Human Rights Develops Adapted Test for Life Sentence in International Extradition Context – Sanchez-Sanchez v. United Kingdom*, Suffolk University Law Review, Vol. 56, № 4, 2023, 811, 821-822.

⁶⁹ Law of Georgia on International Cooperation in Criminal Matters, Articles 21 and 22, 48, 09/08/2010 (in Georgian).

will not only reinforce its domestic mechanisms for extradition but also lay the groundwork for future cooperation with other common law jurisdictions and prepare for deeper integration into the European legal space.

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