

International Judicial Cooperation. the Case of Extradition



Law

KEYWORDS :extradition, judicial cooperation, international cooperation.

Ph.D Nikolin Hasani

Department of Law, Faculty of Human Sciences, University "Ismail Qemali" Vlore, Albania

ABSTRACT

The movement of people between different countries gives the possibility to offenders, which sometimes are of foreign nationals, not citizens of the state where the offense occurred, to hide and to escape the punishment. That highlights the need for cooperation between countries in combating international crime. In this context, countries have agreed to establish rules for international cooperation to combat such crimes. These rules facilitate the work for detection, arrest and punishment of persons guilty of committing different criminal acts. Extradition is a form of such cooperation between countries in the judicial context.

INTRODUCTION

Any time there are evidences of the humanitarian law breaking, countries react by activating punishment mechanisms and the cooperation between them starts due to the fact that the whole international community is affected by the international humanitarian law breaking and because the persons or person responsible for this may be of different nationalities. This cooperation becomes of special importance when related evidences to such crimes are located in a country other than the prosecuting country or in different countries. International cooperation procedures are supported by international judicial cooperation and when needed ad-hoc international criminal tribunals and court. Extradition is the example of this cooperation. It consists in a formal process which includes two parts, requesting state and the requested state. The first one asks for the return of the individual(s) that is (are) in the requested state in order to stand trial or to serve a custodial sentence imposed in the requesting state.

A HISTORICAL VIEW OVER EXTRADITION PROCESS AND EXTRADITION TERM

Historians and the field research provide facts that extradition is one of the older forms of cooperation in criminal matters between countries. According to them, extradition origin can be found to ancient civilizations, such as the Egyptian, Chinese, Chaldean, and the Assyro- Babylonian (Bassiouni, 2001:29).

Other facts show that extradition procedure was present to the earliest political document, such as the peace treaty between Ramses II, Pharaoh of Egypt, and the Hittite King Hattusili III. This political document included an extradition provision (Bassiouni, 2001:32). According to Bassiouni, the term is also ancient. Due to the fact that the surrender of a fugitive was thought of as an unusual remedy, the term extradition is thought to be the shortened from extra-tradition. There are other suggestion about the origin of the term, like it derives from the Latin extrudere, which means forceful return of a person to his sovereign (Bassiouni, 2001:31). At first, extradition was used to obtain political offenders, heretics, refugees, and deserters. According to Bassiouni there are four distinct periods of extradition practice:

- The first period coincides with ancient times to the 17th century, where the emphasis was almost exclusively placed on religious and political offenders;
- The second period coincides with 18th century up through almost the first half of the 19th century, where the emphasis was almost placed on military offenders throughout Europe;
- The third period lays between 1833 and 1948, where the emphasis was on suppression of common crimes;
- The fourth period lays after 1948, where the emphasis was on th concern for individual rights and due process of law in regulating international relations (Bassiouni, 2001:33).

Other authors give different point of view in the evolution of the extradition. There are three essential phases, namely a contractual phase exclusively of administrative, governmental competency, a mixed legislative phase of governmental and judicial competency in the same time, and an international phase of preponderant judicial competency (Buneci, P. 2015).

The extradition was known in the Roman world towards the dependent states, the institution representing a manifestation of the Roman Empire supremacy, once with the conquests made by the Romans it was created an international law imposed by Rome and its allies, and the international relations begin to lose their hostile character (Buneci, P. 2015). For the first time the modern idea of extradition appears during the XIIIth century; in the doctrine of the natural law school and in practice, in the following centuries, the institution of extradition was depended of the sovereign' caprices (Buneci, P. 2015). The first modern convention of extradition having as object common law delinquencies is that concluded between France and the Netherlands on June 23 and August 17, 1736 (Buneci, P. 2015). The extradition was an act of government, an act of the central administration which had exclusively competency in this matter, clearly expressed competency and only exceptionally was mentioned the intervention of the jurisdictional bodies, of whose attributions were generally of verification of the validity of the demand for surrender of the denounced person (Buneci, P. 2015). For the first time the extradition concept was used officially in France on 19.02.1791 when the constituent assembly decreed the drawing up of a law project related to this institution. However, the term is of Latin origin and results from the adverbial of place ex - outside, on the surface, followed by the verb "tradiÑio" - to surrender, to deliver.

THE LEGAL FRAMEWORK FOR EXTRADITION IN ALBANIA

The possibility to move outside the country was given to Albanians since 1991. This was the beginning of a new era. The foreigners were permitted to enter Albania too. Negative consequences followed this free movement of people, especially in the area of crime. International cooperation in criminal matters became necessary. Referring to the Albanian Criminal Code Procedure, article 10, legal relations with foreign authorities mean the relationship created between states according to international agreements, bilateral or multilateral, on the basis of recognized principles and norms of international law and the provisions of the Criminal Code Procedure, in order to have an international cooperation in criminal matters (Hasani, N & Veizaj, U. 2013). Relationships mentioned in the above definition are based on the international and domestic laws. Albanian state has ratified a number of multilateral agreements, which have the major share of conventions within the Council of Europe and their additional protocols, which regulate legal relations with foreign authorities. The following can be mentioned as the most important (Hasani, N & Veizaj, U. 2013):

- Convention "On Extradition" and its two Optional Protocols, ratified on 02.04.1998;
- Convention "On the transfer of proceedings in criminal matters", ratified on 10.06.1999;
- Convention "On mutual legal assistance in criminal matters" and its Additional Protocol, ratified on 10.06.1999;
- Convention "On the Transfer of Sentenced Persons", ratified on 10.06.1999.

In the Constitution of the Republic of Albania, Article 39/2 is sanctioned that extradition may be allowed only when it is provided in international agreements to which Albania is a party, and only if there is a court decision. the International Criminal Police Organization, known mostly by the name of INTERPOL (Hasani, N & Veizaj, U. 2013).

Interpol National Central Bureau - Tirana, is a special structure, in the General Directorate of State Police, responsible for relations with the central structures of the Interpol National Central Bureaus and counterparts. It implements the service standards of a National Central Office. Its activity is conducted in accordance with the Constitution of the Republic of Albania, Interpol's Constitution, the law "On accession of the Republic of Albania at the International Criminal Police Organization - INTERPOL" National Criminal Law and Criminal Procedure, Law "On State Police" and any international agreements to which Albania is party. But, as the legal basis on which is based the National Central Office Interpol Tirana, for its operations, will serve the basic documents of Interpol, general rules, financial regulations, standards of operation of the national headquarters, and the regulation on international cooperation and control of Interpol's archives. These documents are required to be implemented by each state. Anyway, in case of provisional arrest with a view toward extradition of a citizen of our country by a homologous National Central Office, Interpol Tirana, upon notice, cooperating with the Ministry of Justice and the General Prosecutor's Office to send the necessary documentation in the diplomatic route for the extradition of nationals, respecting the time limit prescribed in the Convention or bilateral agreements.

CONCLUDING REMARKS

Establishment of international relation between countries, have make possible the development of states and nations and that of human society as a whole. Countries have development cooperation activities in different areas through bilateral or international relations. This is especially true for the cooperation in the criminal matters. These kinds of cooperation have existed since ancient times. A special form of this cooperation is the process of extradition. There are different definitions for extradition, but all of them include the legal part of it. As a legal process which allows transferring a person from one country to another with the excuse of the suspicion or conviction for a criminal offence in order to be prosecuted or to serve a sentence already imposed.

In this process there are three main parties:

- the requesting country which is the country that makes the extradition request;
- the requested country which has been asked to extradite a person on their territory;
- the subject of extradition who is the person whose extradition is sought.

Different countries have signed bilateral and multilateral agreement for extradition treatment because each of them does not have obligation to surrender a person who is within its territory. There are cases that extradition happens even if there is no agreement between two countries. These cases depend to the law of the country to which is requested extradition. There are international laws and domestic laws that regulate the extradition procedures between two or more countries.

Suggestions that should be taken in consideration in order to improve legal and institutional framework in Albania, regarding the extradition of people may be:

- to strengthen the institutional cooperation between responsible institutions of Albania and other countries for a correctly completion of the documentations needed in this process. Such institutions may be Ministry of Justice, Ministry of Foreign Affairs and Ministries of other counterpart countries;
- to accelerate the identification of the by police in circles, after overcoming the delays which result into the release the person;
- to sign bilateral agreement with those countries that do not have yet such a one.

REFERENCE

- [1] Berisha, M. (2014). Treatment of extradited persons and their rights during procedures on international judicial cooperation in criminal matters. *Mediterranean Journal of Social Sciences* MCSER Publishing, Rome-Italy. Vol 5 No 19. August 2014. ISSN 2039-2117 (online), ISSN 2039-9340 (print). [2] Buneci, P. (2015). Legal regulation of the extradition in Romania. *Law review - International Journal of Law and Jurisprudence Online* Semiannually Publication published by Union of Jurists of Romania and Universal Juridic Publishing House. e-ISSN 2246-9435. [3] European Convent on extradition, 1957. [4] Hasani, N. & Veizaj, U. (2013). *International Criminal Law and Extradition of Persons with Penal Responsibility. Albanian Experience. Academic Journal of Interdisciplinary Studies*, MCSER Publishing, Rome-Italy. Vol 2 No 8, pg. 746 -748. E-ISSN 2281-4612, ISSN 2281-3993. [5] Interpol Constitution, year 1956, article 2, 1 & 2, page 1. [6] Koutoulakou, S. (2003). *The judicial cooperation in criminal matters*. [7] Law nr. 8427, December 14. "For the adhere of the Republic of Albania in Interpol". [8] Law nr. 9749, June 04.2007, "For State Police". [9] Parrillo, R.L. (2009). *Extradition: A test of international cooperation in the enforcement of domestic criminal law*. [10] Penal Code of Republic of Albania, approved by the Law nr. 7895, January 27.1995, changed by the Law nr. 9188, February 12, 2004.