



The Concept of Extradition Procedural-Criminal Aspects

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Abstract: Extradition is an act of interstate legal assistance in criminal matters that pursues the purpose of transferring a person who is under criminal investigation or is criminally convicted from the area of judicial sovereignty of one state to the area of the other state. Extradition can be characterized by the following features: a) relations between two states, one of which is the applicant, the other the requested; b) all issues related to extradition fall within the competence of the states that have national legal provisions on extradition, are party to international treaties in this field and carry out practical work on extradition issues; c) the subject of extradition is a natural person, who is outside the territory of the state requesting extradition; d) extradition can only take place after the commission of a crime that gives grounds for extradition, violations that attract contravention or civil liability cannot serve as grounds for requesting the extradition of a person; e) extradition assumes that the extradited person is an accused, defendant or a convicted person.

Keywords: extradition; extradited person; the criminal process; extradition conditions; specialty rule

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1. Introduction

Extradition is the formal process by which a state requests and obtains from another state the surrender of a citizen suspected or accused of a crime. Between nation-states, extradition is regulated by treaties.

Extradition, as a form of international legal-criminal assistance, represents an important international legal instrument whose value exceeds bilateral relations between states, and which must be examined in the context of the consolidation and improvement of the international legal order. For persons who commit crimes and hide in the territory of a foreign state, in accordance with international law. Mechanisms should be immediately implemented to ensure their detention and extradition to the national state or the state on whose territory the crime was committed, or to a other interested state for the purpose of criminal prosecution, conviction or execution of sentence.

2. Result and Discussion

Extradition conditions can be highlighted in terms of substance and conditions of form. The substantive conditions are divided into conditions that refer to the person; to the criminal act and to the punishment.

The substantive conditions regarding the person are:

- a) non-extradition of one's own citizens pursuant to art. 17 para. (3) from the constitution;
- b) non-extradition of own litigants, so persons who are under criminal investigation or in trial in the requested state will not be extradited;
- c) the person will not be extradited who, for the deed that is the subject of the extradition request, has been definitively tried by the national court or by the court of a third country, or the criminal prosecution has been terminated for this deed.

The substantive conditions related to the act are:

- a) the sanction provided by the national criminal law for the respective act must be greater than one year's imprisonment;
- b) the penalty for the execution of which the extradition of the person is requested cannot be less than 4 months,

- c) the act must be committed on the territory under the jurisdiction of the requesting party;
- d) the act must be criminalized by the criminal legislation of both states involved in the extradition process - the principle of double criminality;
- e) the extradited person will be tried only for the act for which the extradition was exercised - the specialty rule.

Conditions that refer to the punishment are:

- a) the punishment, established by the criminal law or pronounced against the person whose extradition is requested, must be deprivation of liberty with the minimum limit stipulated by the international treaties;
- b) the punishment must not have the character of torture, inhuman or degrading treatment;
- c) the person will not be subject to capital punishment.

The formal conditions regarding the extradition request are provided in the national legislation and in the international treaties on the basis of which the extradition is carried out.

Regarding the persons under criminal investigation, the prosecutor who leads or, as the case may be, directly conducts the criminal investigation in the respective case draws up the extradition request. The request for extradition regarding the persons who are under trial is drawn up by the court that hears the case.

The international treaty on the basis of which the extradition is requested must be indicated in the request, and if the states involved in the extradition process are party to several international treaties that regulate extradition, all these treaties must be mentioned, in order to verify the provisions them.

When preparing the extradition request, the conditions of form and content provided for in paragraph (4) of art. 541 of the CPP. In the request, all the data available to the criminal investigation body regarding the person to be extradited, data that will facilitate its identification, ascertainment and extradition, are to be presented in detail.

All the documents that will be necessary in the process of solving the extradition request are to be attached to the extradition request.

In order to resolve the extradition, only documents with appropriate legal force are required: the arrest warrant issued in the order provided by the national legislation of the requesting state; the court decision by which the detention of the person in question was ordered, the court sentence by which the person was sentenced to prison. The mentioned court rulings must be enforceable, that is, they must be final, or as the case may be, irrevocable.

The mentioned documents must be accompanied by the text of the criminal law regarding the act that gave grounds to adopt them, in the case of the sentence, a certificate regarding the part of the punishment that has not yet been executed must be attached.

If, according to the meaning of the international treaty, it is required that, within the framework of the settlement of the extradition request, the fact of the existence of reasonable grounds to believe that the accused has committed the crime for which the accusation has been brought, the extradition will only be granted upon presentation of the evidence that confirms the probability of committing the crime.

If the extradition of the person is required to execute the sentence of a third state, it is necessary to present the final court decision of the requesting state by which the sentence of the third state was recognized and the other documents mentioned in paragraph. (3) from the respective article of the CPP.

Specialty rule

The specialty rule represents some strict guarantees to be provided to the person extradited by the requesting state against accusations or punishments other than those that were indicated in the extradition request and accepted by the court of the requested state that resolved this request. Thus, the person who was extradited by a foreign state to the national court cannot be held criminally liable and convicted, as well as sent to a third state for punishment, for the crime committed by him before the extradition, for which he was not extradited, if regarding this cause, the consent of the foreign state that extradited her is missing.

The person's guarantees are set out in para. (2) of the respective article of the CPP and are to be ensured by the court that will judge the case in the requesting state, and the Ministry of Justice has the function of verifying compliance with these guarantees following the request and receipt of the sentence adopted by the court in the requesting state.

The requesting state may waive compliance with the specialty rule in the cases provided for in paragraph (3) of the respective article of the CPP, namely:

- a) when the national court that resolved the extradition request admitted the additional request requesting consent to the pursuit or trial of the person in the basis of other crimes or the execution of a different punishment than those that were the object of the initial extradition,
- b) if the person did not leave the country to which he was extradited within 40 days after the conclusion of the procedure for which he was extradited, even though he had the real possibility and the right to leaves this country,
- c) if the person, after leaving the territory of the requesting state, returned or was sent back by a third state;
- d) if the extradition was granted through the simplified procedure, provided for in art. 545,
- e) as well as if the extradited person committed a crime in the requesting state after his extradition.

The request for the extradition of a person can be addressed to the competent court, in the Republic of Moldova both by the state that carries out the criminal investigation or has adopted a sentence regarding this person for a crime committed on its territory, as well as by the state that has taken over either the criminal investigation and trial of the case or execution of the sentence regarding this person.

When resolving the extradition request, the national court will verify all the extradition conditions of form and content, provided by the national law and the respective international treaties, set out in the commentary to art. 541.

If the extradition of a person is requested in competition by several states, either for the same act or for different acts, the national court will decide on the extradition taking into account all the circumstances, including the seriousness and the place of commission of the crimes. The respective dates from requests, the citizenship of the requested person and the possibility of a subsequent extradition to another state, as well as the conditions on this issue provided for in the international treaty based on which the extradition is requested.

If the Prosecutor General or, as the case may be, the Minister of Justice considers that there are circumstances that prevent the extradition of the person requested by the foreign state or the international court, they refuse the extradition through a

reasoned decision. If the Prosecutor General or the Minister of Justice considers that the person can be extradited, they will make an approach in the court in the territorial area of which the Ministry of Justice is located, where the request and the documents of the requesting state will be examined.

Thus, any case of admission of the extradition request must be resolved by the court, this person being assured of all the procedural rights guaranteed by the Code of Criminal Procedure of the Republic of Moldova. Which is also applied in the appropriate manner by the international treaties to which RM is a party and based, on which the extradition of the person is requested. The extradition request is examined by the court based on the approach with the participation of the prosecutor, the person whose extradition is requested, his defense attorney and his legal representative. In the event that the person for whom extradition is requested does not have a chosen defense attorney, he is provided with an ex officio defense attorney. The extradition process regarding the arrested person is solved urgently and with priority. The extradition request is examined in the manner provided in art. 471 and 472, which apply accordingly.

The extradition request is settled by conclusion. The judicial decision is to be motivated, mentioning all the conditions for extradition that have been verified by the court. The parties with an appeal in the hierarchically superior court can challenge the decision of the court and the appeal is judged in the appropriate manner. The decision of the court that has become final is sent to the Prosecutor General or the Minister of Justice for execution or for informing the requesting state.

With the consent of the person whose extradition is requested on the basis of an arrest warrant, the extradition request can be resolved through a simplified procedure. The person can give consent in court, after all procedural rights have been explained to him by the investigating judge, including the right to examine the extradition request in full procedure and what the full procedure consists of, as well as explanations of the simplified procedure of extradition. The explanation of the mentioned rights and the person's renunciation of the specialty rule are recorded in the minutes of the meeting. The waiver can be made by the person in question only in the presence of the defense counsel and after consulting the matter in question with him.

The person's consent to waiving the specialty rule cannot be revoked by the person in question after it has been confirmed by the court.

The respective article of the CPP sets out the cases in which the Prosecutor General, the Minister of Justice or the court can refuse to extradite the person.

In the decision to refuse extradition, one or more of the grounds for refusal provided by the law or the international treaty on the basis of which the extradition request is being resolved must be motivated.

The grounds provided for in points 6) and 8) para. (2) of the respective article of the CPP are to be motivated, bringing arguments and evidence to confirm them.

If the criminal law of the requesting state provides for capital punishment for the crime for which extradition is requested, the requesting state must attach to the request relevant documents that would convince the national court that such a penalty will not be applied, or executed, in case of otherwise, the national court will refuse extradition on this basis.

Because the person for whom extradition is requested must be available to the requested state in order to be handed over if the request is accepted, he or she can be arrested.

The person may be arrested in execution of an arrest warrant attached to the extradition request. The arrest warrant can only be issued by the requesting state, and the requested state will take measures for its execution.

After receiving the request for extradition, the Prosecutor General or, as the case may be, the Minister of Justice will immediately take measures, under the terms of this code, to arrest the person whose extradition is requested.

In case of emergency, when the person was announced as wanted and was found on the territory of the Republic of Moldova, at the request of the state that announced him as wanted, he can be arrested on the basis of an arrest warrant for a period of up to 18 days, until the extradition request is received. If the foreign state or the international court has requested the arrest and the request contains data about the presence of a legal arrest warrant or about the final decision adopted regarding this person, the assurance that the extradition request will be sent later. As well as the mention about the crime, that gives grounds for extradition, data about the person in question and his characteristic signs. The arrest request can be made by post, telegraph, telex, and fax or by any other means that leaves a written trace. If within the 18-day period the request with the necessary documents has not arrived, but it is an additional request to keep the person under arrest with the justification of not presenting the extradition request or to present an additional request. The national court can decide to extend the detention of the person in question under arrest but not later than 40 days, conditions provided by international extradition treaties.

About the actions of the respective bodies and the national court regarding the submitted request, the requesting authority will be informed as soon as possible.

The person arrested under the terms of this article benefits from all the rights provided by the Code of Criminal Procedure, which are applied accordingly. Thus, the arrested person must be provided with an ex officio defense attorney: if he does not have a chosen defense attorney, with an interpreter, he must be brought before the investigating judge within 72 hours at the most for him to check; if it is such a request; if there are no grounds to refuse extradition immediately; if there are no grounds to release the person provisionally; if other measures can be taken regarding him in order to avoid his evasion from the settlement of the extradition request.

If in these 40 days the respective documents have not arrived that would confirm the necessity of holding the person under arrest, he is released, but later he can be arrested again if the extradition request and the respective documents have subsequently arrived.

Arising from the principle of the priority of the national court over its litigants, if the person, whose extradition is requested, in the Republic of Moldova is accused in a process in progress of criminal investigation or trial of the case. Or if he was convicted for a crime other than the one in connection with which extradition is requested, the execution of the extradition may be postponed until the end of the criminal trial or until the full execution of the sentence established by the national court or until the final release before the sentence expires.

At the same time, when resolving the extradition request, the court will check whether the postponement of the extradition will not result in the fulfillment of the statute of limitations of the criminal case for the crime for which the extradition is requested. Or if the postponement of the extradition will not be able to cause serious damage to the establishment of the facts. If, based on a reasoned request, such situations are found, the court will decide on the temporary extradition of the person, under conditions that will be determined by mutual agreement with the requesting party. In this case, the court will condition the extradition with the indication of a certain term or for the performance of certain procedural actions. After performing these actions, the temporarily extradited person is to be returned to the court of the national state.

After the entry into force of the conclusion regarding the admission of the extradition request, the General Prosecutor or, as the case may be, the Minister of Justice shall inform the requesting party about the place and date of the surrender of the extradited

person, as well as the duration of the detention of the person in a state of arrest in connection with the extradition.

If the requesting party does not take over the extradited person on the date set for surrender and if he has not requested a postponement of the extradition, the court will order the release of the person upon the expiration of the 15-day period from this date, and in the event that a request to postpone the surrender of the person has been received, and yet the person was not taken over, he will be set free at the expiration of the 30-day period, calculated from the date set for surrender, if the bilateral treaty does not provide for more beneficial conditions for this person.

A new request for extradition of the same person and for the same deed from the requesting state is to be refused.

Any state can request from another state the transmission of certain objects or documents, which are important for the legal resolution of a criminal case, based on an international treaty to which both states are parties or on the basis of reciprocity.

At the request of the requesting party, the court may order either simultaneously with the extradition, or after it, under the conditions of this title and the respective provisions of the Code, the collection and transmission to the requesting state:

- a) objects that may be important as evidence in the criminal case for which it was requested the extradition of the person, as well as
- b) the values that came from the crime for which the extradition is requested and which were discovered either before the extradition or after the extradition.

Art. 78 of the CIS Convention lists as objects the means of committing the crime, the objects acquired because of the commission of the crime or received as a reward for it, or the objects that the criminal received in exchange for those acquired in this way.

These objects and values can be transmitted even if the person's extradition cannot take place due to death or evasion of justice.

If the requested objects are needed as evidence in another case in which the criminal investigation bodies or the national courts are also competent, their transmission can be postponed until the case is finally resolved or they can be handed over temporarily on the condition that they be returned.

The rights over the objects or values transferred to another state are preserved after the RM and are to be transmitted to the requesting party on the condition that the

process is completed as soon as possible and without expenses, being then returned free of charge to the RM.

3. Conclusion

Extradition is the formal process by which a state requests and obtains from another state the surrender of a citizen suspected or accused of a crime. Between nation-states, extradition is regulated by treaties. The substantive conditions regarding the person are:

- a) non-extradition of one's own citizens pursuant to art. 17 para. (3) from the constitution;
- b) non-extradition of own litigants, so persons who are under criminal investigation or in trial in the requested state will not be extradited;
- c) the person will not be extradited who, for the deed that is the subject of the extradition request, has been definitively tried by the national court or by the court of a third country, or the criminal prosecution has been terminated for this deed.

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The extradition request is settled by conclusion. The judicial decision is to be motivated, mentioning all the conditions for extradition that have been verified by the court. The parties with an appeal in the hierarchically superior court can challenge the decision of the court and the appeal is judged in the appropriate manner. The decision of the court that has become final is sent to the Prosecutor General or the Minister of Justice for execution or for informing the requesting state.

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