

## TREATMENT OF EXTRADITED PERSONS AND THEIR RIGHTS DURING PROCEDURES ON INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

Muhamet Berisha, Ma.sc.

PhD Cand. European University of Tirana,

Head of Administrative Affairs and Protocol, the General Directorate of the Kosovo Police.

metiberisha@gmail.com

Tel: +377 (45) 321 689

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### Abstract

*Role and respect for human rights in international law, is of particular significance. Human rights and fundamental freedoms have traditionally been treated with internal legal acts and over time their treatment and respect made the responsibility also based on international law. The importance and the respect of the human rights of citizens in different stages during their arrest make this process even more important. Large mobility of citizens in our time from one place to another place, except the good things has created the circumstances that citizens of different nationalities to commit different criminal offenses. In this process, different persons can be arrested by a state and to handed over in another state. States during international legal cooperation in criminal issues faced with conditions and proceedings which in the context of treatment of persons can also come to the violation or injury of the rights of extradited persons. During their arrest and in subsequent stages these persons are subject to the treatment of the competent state bodies. Therefore arises the needs also of the treatment and respect for their basic rights at all stages until their handover to the state which required. The issues as discrimination and standards of human rights during the process of extradition of a wanted person for the purposes of prosecution or punishment because of race, religion, gender, nationality, political opinion, ethnicity, language, handicapped, sexual orientation, will be treated in detail in this paperwork. Regulation of the proceedings and their respect for the category of these persons that are treated based on international convention and legal internal acts is a factor of enforcement of international standards.*

**Keywords:** human rights, international convention, state, request, cooperation, extradition.

### 1. Introduction

The issue of human rights today occupies an important place not only in domestic law but also in international law. Their treatment is regarded as one of the foundations of a healthy and democratic society. National legislations have advanced modern development practices instruments that control the implementation of human rights in state institutions. In parallel with the national law is well developed international law which has given a strong impetus to the advancement of human rights. But it should be noted that up to this advancement of the rights of individuals has gone a very long journey which has not been without various challenges. In their infancy their treatment was exclusively handling internal matters of states, and not left to the possibility of intervention and care from other states because regarded as interference in the internal affairs of the state concerned. The process generally marks a new phase transformation internationalization of human rights which start to become the subject of legal acts and conventions within the international system. It should be emphasized that the entry into force of an international convention not only provides national legislations, which will have the same instrument but also brings effects on other aspects of domestic legislations which match international norms.

By addressing human rights in general and the rights of people arrested and extradited to striking a particular interest in the care of extraordinary domestic legislative aspect but also the international norms which addressed these issues. But it should be noted that international law generally involves the idea of respecting human rights accumulated in acts of UN conventions also adopted within the European Council and the European Union. The European Convention on Extradition of 1957 expressly provides in Article (9), that extradition will not be granted if the person sought has been tried with a final decision by the authorities of the country where: which means that here comes in term application of the principle **ne bis in idem**, which recognizes and treats as a human right article (3) of protocol (7) additional European Convention of human

rights<sup>1</sup>. Another example could be the European Convention on the Transfer of Sentenced Persons of 1983, which in article 3.1 (d) provided that the inmate was transferred shall be deemed to give his consent<sup>2</sup>. It should be noted that the person wanted by another state for the purpose of criminal procedure or execution of sentence may be extradited from a certain state to another state, only under the conditions prescribed by law. Most recently, human rights have begun to extend into the field of politics and justice, which previously have been concerned by their influence.

Human rights in this context those persons that are in the extradition proceedings are handled by international law, namely conventions and other international acts of the United Nations, the Council of Europe and the European Union, which is provided through a contribution precious in their promotion and protection. Among the major international acts through which protected the rights and fundamental freedoms should be mentioned: the Universal Declaration of Human Rights (UN), the International Covenant on civil rights and liberties and political European Convention for the protection of freedoms and human rights etc.

## 2. International cooperation in combating crime and extradition

In combating international crime today there is a necessary need for cooperation between countries, and in different forms, considering that large movements of people from one country to another have made the perpetrators of various offenses be mostly foreign nationals, not citizens of the state where the offense occurred. In this context are well established principles of international cooperation in the detection, arrest and punishment of persons guilty of committing various criminal acts. International cooperation in particular has been given priority in cases of war crimes and crimes against humanity, it is derived from the resolution of the General Assembly of the United Nations 3074 (XXVIII) of 3 December 1973, which provides Principles of International Cooperation the detection, arrest and punishment of persons guilty of War Crimes and Crimes against Humanity. In this context emerges as a form of extradition and international cooperation between states, which means the service of a criminal suspect usually under the provisions of a treaty or statute of an authority (as a country) to another that has jurisdiction to conduct the trial.

## 3. Treatment of persons based on principles and international acts

Known principle of legality or legitimacy expressed through Latin aphorisms: *nullum crimen, nulla poena sine lege*, which means that a work cannot be considered a crime and its perpetrator cannot be punished if the first is not prescribed by law, represents one of the fundamental principles by which protected the rights and fundamental freedoms and in particular when we are dealing with people who are at the stage of extradition from one state to another state. The principle of legality as one of the legal mechanisms to protect the freedoms and human rights extends his influence in the field of international criminal cooperation especially in extradition cases when it is required that the offense for which extradition is sought must be foreseen as a criminal offense, as in the state where the person, or in any state that requires extradited<sup>3</sup>. Harsh punishments and not humane international community has made some limits which must be respected in order to sanctions and actions of state bodies are not repressive to the freedoms and fundamental rights of persons who are in long procedure and final decisions.

Adhering to the basic principles to these inhumane acts are expressly provided for in international conventions. If we refer to article (5) of the Universal Declaration of Human Rights expressly states that no one may be subjected to torture, inhuman or cruel, inhuman or degrading treatment. Also it is envisaged by Article 7 of the International Covenant on Civil and Political Rights. International treaty expressly provides that prohibits the use of evidence which are the result of the implementation of torture, which is envisaged in the United Nations Convention against Torture<sup>4</sup>. The stop of applying the torture and severe punishments, inhumane and degrading treatment is set at the international level and applied as a criterion for international cooperation in criminal matters. In cases where we are dealing with a person who is required to be extradited and who may be exposed to punishment, torture or inhuman treatment or rude request will be rejected<sup>5</sup>. A similar criterion is also provided with internal acts of the Republic of Kosovo. The Law on International Legal Cooperation

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<sup>1</sup>Jean Pradel, Geert Corstwms & Gert Vermeulen, European Criminal Law, 2009, pg 31.

<sup>2</sup>Ibid.

<sup>3</sup>Ismet Salihi, International Criminal Law, 2005, pg. 65.

<sup>4</sup>UN Convention against Torture, 1984.

<sup>5</sup>Ismet Salihi, International Criminal Law, 2005, pg. 66.

in Criminal matters in section 15 relating to torture, inhuman, or degrading treatment or maltreatment does not allow extradition if there is reasonable suspicion that the person extradited will be treated or punished in a cruel or degrading<sup>1</sup>.

#### 4. Rights to extradition

Extradited person owns all the rights that are provided for in international conventions and the laws of the state of persons who are accused and who conducted the trial. In order to protect the rights of a person whose extradition is sought by any country or organization, are also provided when extradition is not allowed such as extradition for political offenses or offenses connected with political offenses, extradition for offenses purely military, extradition is not allowed when the prescription is made prosecution or execution of sentence in accordance with domestic law or the law of the requesting State<sup>2</sup>.

It should be emphasized that even in cases of re-extradition to a third country, the extradited owns all the rights provided by international conventions and the laws of the states to extradite person's cases. Among owns the rights to extradition include: presumption of innocence, the right to a fair and independent court, applies rules of *ne bis in idem*, which means that they cannot be punished twice for the same offense, the right to freedom of thought, conscience and religion, the prohibition of discrimination, prohibition of torture, etc. For all these rights we have given the explanations in particular.

##### 4.1. Presumption of innocence

Presumption of innocence is considered among the basic principles and guarantees for the protection of fundamental freedoms and human rights. It is clear that under this maxim no one can be considered guilty of the offense unless concluded with a final judgment of the court in the procedure prescribed by law. Presumption of innocence is regulated by international conventions of human rights, e.g. European convention on human rights and fundamental freedoms that "any person charged with a criminal offense shall be presumed innocent until proven guilty legally"<sup>3</sup>. Naturally, this applies to proceedings in international cooperation in the extradition of persons from one country to another. In this context, countries should pay attention and care when it comes to the treatment of persons extradited.

##### 4.2. The right to a fair and independent court

As a principle, of special importance for freedoms and rights of the persons in the procedure is accepted as a fundamental principle in many important international acts. In Article 10 of the Universal Declaration of Human Rights states: "Everyone has the right to full equality, that his case be treated fairly and publicly by an independent court and impartial ..."<sup>4</sup> This principle also dealt with international pact for freedom and civil and political rights in ninin14 European Convention for Human Rights in Article 6.

Regarding gravity extradite persons connected with the guarantee of a fair trial and impartial regarded as one of the conditions which must be met to allow extradition. Such a postulate is also stipulated in the Model Convention on Extradition approved by the United Nations, which will not allow extradition if there is a fair and impartial. United have this right guaranteed by the constitution, e.g. Kosovo's Constitution states in Article 31: "Everyone is guaranteed equal protection of rights before courts, other state bodies and holders of public powers. Everyone has the right to public scrutiny fair and impartial decisions regarding the rights and obligations or of any criminal charge that rises against him / her within a reasonable time by an independent court and impartial, established by law".

##### 4.3. Ne bis in idem rule

This principle of justice is known in all countries of the world, and is also recognized in international criminal law in cases of international cooperation between states. In the dictionary<sup>5</sup> is a Latin phrase that means "not twice for the same thing", a legal rule that says one cannot be prosecuted twice for the same crime. This rule is also provided by international

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<sup>1</sup>Law on International Legal Cooperation in Criminal Matters of the Republic of Kosovo, NR.04/L-31, neni 15.

<sup>2</sup> These cases of detention and extradition are provided by the European Convention on Extradition of 13 December 1957, as well as state laws for international judicial cooperation

<sup>3</sup> Article 6.2 of the European Convention on Human Rights and Fundamental Freedoms, Rome, 4.XI.1950

<sup>4</sup>Universal Declaration of Human Rights

<sup>5</sup> See electronic dictionary website, <http://www.urbandictionary.com/>.

conventions and local laws, e.g. Code of Criminal Procedure has this rule provided for in Article 4, which states: "No one can be prosecuted and punished for the offense if released or for which he was sentenced by final judgment, if criminal proceedings against it is terminated by a final decision of the court or the indictment was dismissed by a final decision of the court ". This rule of law has also provided for international judicial cooperation in criminal matters in Article 13 which states that "extradition is not allowed if given a final decision by the local court against the person sought for the offense or offenses for which the ". Of international conventions relevant to this matter is referred to the Council of Europe Convention "for the transfer of proceedings in criminal matters" which the *ne bis in idem* rule has provided in Article 35 which states: a person, in connection with which is given to a criminal court decision final and binding, for the same act, cannot be prosecuted, punished or subjected to a sanction in another Contracting State:

- a) if it is forgiving;
- b) if the sanction is required to be implemented:
  - i. has been fully implemented or is being implemented, or
  - ii. has been subjected to pardon or amnesty, in full or in connection with the unmitigated, or
  - iii. cannot be enforced because of lapse of time;
- c) If the court convicted the defendant without requiring the application of a sanction.

From this it is clear that the *ne bis in idem* rule applies in another state if that person is given a final injunction and mandatory in any state and is the same offense in that country. So *ne bis in idem* rule is a rule and universal right of every person who is prosecuted for an offense, and is respected by all countries of the world, from here it follows that the *ne bis in idem* rule applies to persons who extradited from one state to another state under international legal cooperation procedures.

#### **4.4. The right to freedom of thought, conscience and religion**

These rights are guaranteed by all international conventions and national laws. These rights are universal human rights that cannot be denied by anyone and in any form. In Article 18 of the Universal Declaration of Human Rights states that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, in public or private, to manifest religion or belief of his own, through education, practice, practice, worship and observance". Even the European Convention on Human Rights has provided these rights and in article 9, paragraph 1 and 2 of its clearly stated that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either individually or collectively, publicly or privately through worship, teaching, practice and observance. Freedom to manifest one's religion or beliefs may be subject to no limitations other than those prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals or for the protection of the rights and freedoms of others ".

Its right in the same way is guaranteed by international conventions on human rights. Special importance these rights were also given in the constitutions and laws of the states. Kosovo's constitution has the following rights provided in Section 38 where the first paragraph of this article says so decisive that: "Freedom of religion, conscience and religion is guaranteed", and in paragraph 2 of the same mother noted: "Freedom of religion, conscience and religion includes the right to receive and to manifest religion, the right to express personal beliefs and the right to accept or reject for being members of a religious community or group". In the context of international judicial cooperation and extradition should imply that for each person to be extradited from one state to another state, these rights are guaranteed and that person may exercise the right to freedom of thought, conscience and religion, and no one here cannot deny these rights. These rights, freedom to manifest one's religion, belief and conscience may be limited by law, if such a thing is necessary to protect the security and public order, health or rights of other persons.

#### **4.5. Prohibition of discrimination**

It should be emphasized that human rights are rights inherent to all human beings, without any distinction in terms of race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status other. To all of us equally entitled to human rights without any discrimination. All these rights are interrelated, interdependent and indivisible. The right to equality between men is a universal and inalienable. This right is guaranteed by international conventions and national laws. European Convention specifies that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political

or other opinion, origin national or social origin, association with a national minority, property, birth or other status"<sup>1</sup>. This right is so well protected in the Universal Declaration of Human Rights which provides that "all are equal before the law and are entitled without any discrimination, be equally protected by law. All are entitled to equal protection against any discrimination that would violate this Declaration and against any incitement to such discrimination"<sup>2</sup>. The statement also points out that there is no difference between people regardless of the status of the state to which the person belongs, in Section 2 of the statement that "no distinction shall be made on the basis of the political, jurisdictional or international status of the state or country which belongs to everyone, whether state or country is independent if under trust, non-self-governing or conditions contained in any other limitation of sovereignty". In all the constitutions of the states that matter is predicted by the Kosovo constitution provides direct application of conventions and international instruments have priority in case of conflict over provisions of laws and other public institutions<sup>3</sup>. In the context of the treatment of persons extradited, this right should be respected the same as the state that makes extradition also state that agrees to extradition. A person who cannot be extradited because of gender, race, color, language, religion, political or other opinion, national origin due to social or to be denied or violated rights. In this regard he has all the same rights as the citizens of that state, without distinction.

#### 4.6. Prohibition of torture

The prohibition of torture is a particularly important especially for extradition cases when we consider that person to be extradited will be under the supervision of two states, as the state that receives a request for extradition to the requesting state as well. "The term "torture" means any act whereby the person officials or their promotion, intentionally caused a person severe pain or suffering physical or psychological in order to get him or by another information or a confession, punishing him for an act he has committed or are suspected of having committed, or to intimidate him or to intimidate other persons"<sup>4</sup>. Torture is prohibited by many international norms and the constitution and criminal laws of the states. It is noteworthy Convention against Torture and Other Cruel, Inhuman or Degrading Adopted and opened for signature, ratification and accession by General Assembly in its resolution 39/46 of 10 December 1984, is also torture stop with all the international conventions on human rights.

European convention on human rights and fundamental freedoms in Article 3 provides that "no one shall be subjected to torture or inhuman or degrading treatment or punishment". European convention this mother has adapted in the same way the Kosovo Constitution in its Article 27. It should be understood that "any act of torture or any other cruel treatment or punishment, inhuman or degrading treatment is an affront to human dignity and should be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and freedoms promulgated basic Declaration of Human Rights"<sup>5</sup>. Regarding persons extradition case, apply the same rules to ban torture and other cruel, inhuman and degrading treatment as provided in international conventions and the laws of the states.

#### 5. Language which is used

All documents must be extradited to behave in a language he understands, and with the language of the proceedings, the European Convention on Extradition is provided "that the documents that will be used in support of the request for extradition should be language of the requesting party or the party to which extradition is requested. The party, whose the extradition was asked, however, may require a translation in one of the official languages of the Council of Europe"<sup>6</sup>. Proceedings of international legal language and mode of communication, in this case of extradition, regulated by state laws e.g. Kosovo Law on International Legal Cooperation has provided that "requests for international legal cooperation transmitted through the Ministry. Communication through diplomatic channels is not excluded when deemed necessary"<sup>7</sup>. While the "request and accompanying documents are in a foreign language, they must be accompanied by a verified translation in Albanian or Serbian. Certified translations into English may be admitted on the basis of reciprocity"<sup>8</sup>.

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<sup>1</sup> Article 14 of the European Convention on Human Rights and Fundamental Freedoms, Rome, 4.XI.1950

<sup>2</sup> Article 7 of the Universal Declaration of Human Rights, December 10, 1948

<sup>3</sup> See Article 22 of the Constitution of the Republic of Kosovo, adopted on 9 April 2008

<sup>4</sup> Article 1 of the Declaration on the Protection of All Persons from Torture and Punishment or Treatment and Other Cruel, Inhuman or Degrading Adopted by the General Assembly of United Nations Resolution 3452 (XXX), dated December 9, 1975.

<sup>5</sup> Ibid, article 2

<sup>6</sup> Article 23 of the European Convention on Extradition, adopted on December 13, 1957

<sup>7</sup> Article 4.1 of the Kosovo Law on International Legal Cooperation, adopted by the Assembly on July 31, 2013

<sup>8</sup> IBID, article 4.3

## Conclusions

In our time human rights can easily be said to have become a "religion" itself, their importance is indisputable when we consider that the international community protects every possible form. In cases of violation of human rights, the international community intervenes and protects the force, and in these cases is out of the state or sovereignty of which is guaranteed under chapter seven of the United Nations charter. This shows clearly the importance of human rights gives the international community. One of the fundamental features of human rights is their universal character. This means that human rights apply everywhere and for all people, regardless of color, sex, country, religion, wealth or opinion. They are based on the values of dignity, freedom, equality and justice, which, being an ideal for humanity, are at the same time the principles that can guide the life of each. Except that universal human rights are indivisible. They form a single whole. None of rights or group rights cannot be evaluated more important than the others, without damaging the whole, therefore, the very concept of human rights. Indivisible nature of human rights clearly stated in the Universal Declaration of Human Rights, which gives the same importance as civil and political rights as well as economic, social and cultural. In the context of extradition all the rights provided by international conventions, constitutions and state laws apply to persons extradited. In addition there are specific issues the conventions that govern the extradition issue as the European Convention on Extradition, adopted on 13 December 1957.

International cooperation in particular has been given priority in cases of war crimes and crimes against humanity, it is derived from the resolution of the General Assembly of the United Nations 3074 (XXVIII) of 3 December 1973, which provides Principles of International Cooperation the detection, arrest and punishment of persons guilty of War Crimes and Crimes against Humanity. In this context emerges as a form of extradition and international cooperation between states, which means the service of a criminal suspect usually under the provisions of a treaty or statute of an authority (as a country) to another that has jurisdiction to conduct the trial. We should not forget that human rights are principles upon which individuals can do, to make laws and at the same time see the decisions that rely on them. But human rights are at the same time the values that express and reflect human desires and aspirations. As values, human rights and goals represent the highest ideals, which, although completely unfeasible, socially give life meaning.

## Reference

- 1) Jean Pradel, Corstéens Geert & Gert Vermeulen, *European Criminal Law*, 2009,
- 2) Ismet Salihu, *International Criminal Law*, 2005
- 3) UN Convention against Torture, 1984.
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- 6) European Convention on Human Rights and Fundamental Freedoms, Rome, 4.XI.1950
- 7) Statement General on Human Rights, December 10, 1948
- 8) Constitution of the Republic of Kosovo, adopted on 9 April 2008
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