



Extradition Under the Legislation of the Russian Federation and Member States of the European Union

<https://doi.org/10.46398/cuestpol.3865.07>

Elena A. Kupryashina *
Snezhana S. Khalimonenko **
Aleksander A. Nasonov ***
Ekaterina A. Novikova ****
Sergey F. Shumilin *****

Abstract

The document analyzes the legislation of the Russian Federation and the member states of the European Union on extradition from the point of view of its compliance with the current European Convention on Extradition. It also makes proposals to improve the rules of the Criminal Procedure Code of the Russian Federation that regulates the extradition procedure. Methodologically, the work uses scientific methods of analysis and synthesis, as well as the historical, comparative method, all in an integrated approach. Among the conclusions, the fact that for the previous legal provisions to work, its consolidation only in the Code of Criminal Procedure of the Russian Federation is insufficient. The first step to put them into practice could be to discuss the issue of making the necessary amendments to the Convention on Legal Assistance and Legal Relations in Civil Matters, as well as in the Family and Criminal Affairs regulations of January 22, 1993, of which the countries of the European Convention on Extradition are parties.

* Belgorod State University, 85 Pobedy Street, Belgorod, Belgorod region, 308015, Russia. ORCID ID: <https://orcid.org/0000-0002-3574-1058>. E-mail: Kupryashina@bsu.edu.ru

** Federal State Budgetary Educational Institution of Higher Education Voronezh Institute of the Ministry of the Interior of the Russian Federation, 53 Patriots Avenue, Voronezh, Voronezh Region, Russia, 394065. ORCID ID: <https://orcid.org/0000-0002-2407-7948>. E-mail: S.S.Khalimonenko@gmail.com

*** Voronezh Institute (branch) of the Moscow State University for the Humanities and Economics, 26 Moskovsky Prospect, Voronezh, Voronezh Region, 394026, Russia. ORCID ID: <https://orcid.org/0000-0001-9978-3356>. E-mail: AA.Nasonov@gmail.com

**** Belgorod law Institute of MIA of Russia named after I. D. Putilin, 71 Gorky Street, Belgorod, Belgorod region, 308024, Russia. ORCID ID: <https://orcid.org/0000-0002-6572-7732>. E-mail: E.A.Novikova@gmail.com

***** Belgorod law Institute of MIA of Russia named after I. D. Putilin, 71 Gorky Street, Belgorod, Belgorod region, 308024, Russia. ORCID ID: <https://orcid.org/0000-0003-4760-5448>. E-mail: S.F.Shumilin@gmail.com

Keywords: criminal prosecution; Code of Criminal Procedure of the Russian Federation; European Convention on Extradition; reasons and conditions for extradition; European arrest warrant.

Extradición bajo la legislación de la Federación Rusa y los Estados miembros de la Unión Europea

Resumen

El documento analiza la legislación de la Federación de Rusia y los estados miembros de la Unión Europea sobre extradición desde el punto de vista de su cumplimiento con el Convenio Europeo de Extradición vigente. También formula propuestas para mejorar las normas del Código de Procedimiento Penal de la Federación de Rusia que regula el procedimiento de extradición. En lo metodológico el trabajo se sirve de métodos científicos de análisis y síntesis, así como del método histórico, comparativo, todo en un enfoque integrado. Entre las conclusiones destaca el hecho de que, para las disposiciones legales anteriores funcionen, su consolidación solo en el Código de Procedimiento Penal de la Federación de Rusia es insuficiente. El primer paso para ponerlos en práctica podría ser discutir el tema de hacer las enmiendas necesarias a la Convención sobre Asistencia Legal y Relaciones Jurídicas en lo Civil, así como en la normativa de Asuntos Familiares y Criminales del 22 de enero de 1993, de los cuales los países de la Convención Europea de Extradición son partes.

Palabras clave: enjuiciamiento penal; Código de Procedimiento Penal de la Federación de Rusia; Convención Europea sobre Extradición; motivos y condiciones para la extradición; orden de detención europea.

Introduction

The socio-political changes that have occurred in the Russian Federation and in the Member States of the European Union have not only positive, but also negative consequences. This applies, in particular, to the phenomenon of “transparency of borders”, which is a factor contributing to the evasion of criminal prosecution for crimes committed.

Member States of the European Union are no exception in this regard. The transformation of the European Union into a territory without internal

borders contributes to the process of internationalization of criminality, and enhances its negative consequences. As some European researchers note, the territory of the European Union is a “criminal paradise” in which, in order to avoid justice, it is enough to cross a border (Rance and Baynast, 2001).

In this situation, the institution of extradition i.e. the state’s actions provided by the norms of national legislation and international legal acts to take measures to return to the country of its citizens who have committed crimes for further criminal prosecution or the execution of a sentence over them, is of particular relevance.

Despite the fact that extradition issues are among the priority studies in various branches of legal science, many aspects of extradition require further reflection in order to find ways to increase the effectiveness of this criminal procedure institute. One of these aspects is the study of the procedure for the execution of requests for extradition, which is problematic in the practical activities of criminal justice authorities.

The purpose of this work is to analyse the norms of the Russian criminal procedural legislation regulating the extradition procedure in terms of their compliance with international legal acts, as well as the legislation of foreign states on extradition, and develop proposals for improving the Criminal Procedure Code of the Russian Federation based on the results obtained.

The methodological basis of the work is scientific methods of analysis and synthesis, as well as private scientific methods, such as historical, comparative method and an integrated approach.

1. Discussion and Results

Extradition in international law is one of the most important and ancient institutions dating back to slave-owning times.

The first documented mention of the extradition of persons is found in the Peace Treaty signed in 1268 BC by Pharaoh Ramses II and the Hittite king Hettushil III. The most ancient extradition treaties include the 1242 AD treaty concluded between the Dutch prince Wilhelm II and the Count of Brabant Henry II, the 1376 treaty between King Charles V and the Count of Savoy, the 1303 treaty between the English king Edward III and the French king Philip the Beautiful (Rolin, 1923).

In the Middle Ages in France, a special idea of extradition was formed. Initially, French law adhered to the fact that it was impossible to extradite

one's own subjects and that a king had the responsibility to protect their interests; we could only talk about the extradition of foreigners (Holtzendorff, 1884).

The extradition institute did not bypass the declarations of the Paris Parliament of 1555 and 1778, which also touched upon the issue of surrender their own subjects (Billot, 1874).

As for Russia, the first signs of the emergence of this legal institution can be found in the agreements of Prince Oleg (911) and Prince Igor (944) with Byzantium. So, according to these agreements, "the Russians who committed a crime in Byzantium should be extradited for punishment to the motherland," and, conversely, the Greeks should be sent to Byzantium" (Khuruhnova, 2001).

The beginning of the formation of the national legislation in the Russian Federation on extradition as in a sovereign state is the adoption in 2001 of the Code of Criminal Procedure of the Russian Federation (Official Internet portal of legal information, 2020), the structure of which includes chapter 54 "Extradition of a person for criminal prosecution or execution of a sentence" (Lyudmila *et al.*, 2017). An analysis of the norms included in Chapter 54 of the Code of Criminal Procedure of the Russian Federation leads to the conclusion that the content of this chapter was influenced by bilateral legal assistance treaties concluded by the Russian Federation with a number of foreign states in 1992-2000, as well as existing legal assistance treaties concluded between the USSR and other foreign states. However, it should be recognized that the most significant influence on the formation of Chapter 54 included in the Code of Criminal Procedure of the Russian Federation was provided by the 1957 European Convention on Extradition (Ministry of Justice of the Russian Federation, 2020).

A comparative analysis of the content of the norms included in chapter 54 of the Code of Criminal Procedure and the provisions of the Extradition Convention leads to the conclusion that there is a close correlation between them, which consists in the fact that the provisions of the Extradition Convention are fixed and specified in the norms of chapter 54 from the Code of Criminal Procedure of the Russian Federation.

Since it is impossible to carry out a comparative analysis of the entire contents of chapter 54 included in the Code of Criminal Procedure of the Russian Federation and the Convention on Extradition within the framework of the paper, we note that the norms enshrined in this chapter establish the procedure for sending a request to a foreign state to extradite a person located in its territory (Article 460), the order of executing the request for extradition of a person located in the territory of the Russian Federation (Article 462), as well as the grounds for refusing extradition (Article 464) basically correspond to the provisions formulated in Articles

2, 3, 6, 7, 8, 9 10, 14 and the Convention on extradition. However, this does not mean a complete absence of discrepancies between individual norms of the Code of Criminal Procedure of the Russian Federation and the provisions of the Extradition Convention.

So, for example, in the Extradition Convention extradition is not carried out if the crime in respect of which it is requested is considered by the requested Party as a political crime or as a crime related to a political crime. However, in this article of the Convention on Extradition, there is no definition of a political crime, but there is only a reference to crimes specified in some international conventions of a crime that are not considered political. In this regard, in paragraph 2, Part 1 of Art. 464, the Code of Criminal Procedure of the Russian Federation, a norm has been enshrined in accordance with which “extradition of a person is not allowed if ... the person in respect of whom a foreign state has requested an extradition is granted asylum in the Russian Federation due to the possibility of persecution in that state on the basis of race, religion, citizenship, nationality, membership of a particular social group or political opinion” (Burtsev *et al.*, 2018).

In addition, the Code of Criminal Procedure of the Russian Federation enshrines the norm according to which extradition of a person is not allowed if the act in connection with which the request for extradition was sent, was committed on the territory of the Russian Federation or against the interests of the Russian Federation outside its territory, and the provision formulated in the Extradition Convention, according to which, in cases where the crime in respect of which extradition is requested was committed outside the territory of the requesting Party, is not accepted. Extradition can only be refused if the requested Party does not allow prosecution for the same category of offense when committed outside the latter’s territory or does not allow extradition for the offense.

In contrast to the Convention on Extradition, the Code of Criminal Procedure of the Russian Federation enshrines the rules according to which extradition can be refused on the following grounds:

- There is a court decision of the Russian Federation that has entered into legal force on the existence of obstacles to the extradition of this person in accordance with the legislation of the Russian Federation;

- The act that served as the basis for the request for extradition is not a crime in accordance with the criminal legislation of the Russian Federation (paragraph 6, part 1).

- The criminal prosecution of a person in respect of whom a request for extradition is being sent is instituted as a private prosecution (paragraph 4, part 2). The Convention on Extradition does not have a similar provision, however, such grounds for refusing extradition are enshrined in agreements on mutual legal assistance in civil, family and criminal matters concluded

by the Russian Federation with Azerbaijan, Iran, Latvia, Lithuania, Kyrgyzstan, Moldova, Poland, Estonia and other foreign states.

Legislation on the extradition of other States-parties to the Extradition Convention was formed somewhat differently. When signing and ratifying the Convention, a number of countries took advantage of the provision of the Extradition Convention that any Negotiating party may, when signing this Convention or depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention. The use of this provision seems to have become so widespread that the Committee of Ministers of the European Council has adopted a resolution in which it noted the large number of reservations made, and recommended that the governments of the member states that are Contracting Parties limit the scope of the reservations or withdraw them ... (Certificate of the Ministry of Natural Resources and Trade of the Russian Federation, 2020).

In 1980, the Committee of Ministers of the European Council recommended that the governments of member states that are not Negotiating Parties to the Extradition Convention “ratify it as soon as possible” and that those who are Negotiating Parties should be guided by the principles developed by the Committee regarding the use of extradition, procedures for extradition, simplified extradition and provisional arrest in their practical application (<http://www.consultant.ru/>).

At the same time, the Committee of Ministers of the European Council recommended that the governments of the member states “not to extradite when the request for extradition comes from a state that is not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and when there are significant grounds to believe that the request was made for the purposes of criminal prosecution and punishment of a person because of his\her race, religion, nationality or political opinion, or that his\her position could be harmed on any of these grounds ” (<http://www.consultant.ru/>).

In our opinion, the given recommendations were prerequisites for differentiating the extradition legislation of the European states, which was enshrined in the Council of the European Union Framework Decision on the European Arrest Warrant and Procedures for the Transfer of Persons between Member States of June 13, (2002).

The preamble to the Framework Decision states that “from the moment the Framework Decision of the European Union enters into force, the provisions of the European Convention on Extradition, signed in 1957 will cease in relations between the member states within the framework of the Council of Europe. This also explains the reasons for the adoption of the Framework Decision: to eliminate such features inherent in the current extradition procedures as the complexity and danger of delays. To this

end, the classic cooperation relationship between the EU member states should be replaced by a system of free movement of court decisions in criminal matters (including both final decisions and decisions taken before sentencing) within the space of freedom, security and justice.

The advantages and disadvantages of the Framework Decision have been and remain the subject of discussion both in Russian (Biryukov, 2010; Voynikov, 2011; Alekseeva, 2014; Idiev & Radzhabov, 2015; Klyuchnikov, 2017), and in foreign literature (Peers, 2004; Sievers, 2006; Tomuschat, 2006), so we only note the consequences of the adoption of this document.

Fulfilling the injunction of the Framework Decision on bringing domestic law into line with the European arrest warrant no later than on December 31, 2003, the European Union Member States established two procedures for the extradition of a person for criminal prosecution or execution of a sentence in their criminal procedural law: 1) at the request of a foreign state that is not a member of the European Union and 2) on a European arrest warrant, i.e. according to a court judgment issued by a Member State of the European Union for the purpose of detaining and transferring a wanted person to another member state of the European Union for criminal prosecution or the execution of a sentence or security measure related to deprivation of liberty (paragraph 1, article 1 of the Framework decision).

For example, chapter 65 of the Code of Criminal Procedure in Poland establishes the first type procedure for the extradition of a person, and chapter 65b establishes the second type procedure (ArsLege, 2020).

Conclusion

The analysis carried out leads to the conclusion that the Code of Criminal Procedure of the Russian Federation with regard to the regulation of the extradition procedure is generally consistent with the 1957 European Convention on Extradition, which allows for cooperation with foreign states - parties to this Convention on extradition issues.

At the same time, the following provisions of the Framework Decision on a European arrest warrant and procedures for the transfer of persons between Member States dated June 13, 2002, deserve attention and need further reflection in terms of improving both national and international legislation:

- The provision according to which the decision to extradite a person with regard to a European arrest warrant is executed without checking for double criminality the acts listed in this paragraph (participation in a criminal organization, terrorism, human trafficking, etc.), if they are

punished in the state that issued the European warrant of arrest, or there are punishment or security measure related to imprisonment with an upper limit of at least three years (paragraph 2, Article 2);

- The provision that a judicial authority executing European arrest warrant refuses to execute it, if the crime serving as the basis for issuing the European arrest warrant is subject to amnesty in the state executing the warrant, and if the latter had the right to prosecute this crime according to own criminal law (paragraph 2, Article 3);

- The norm according to which a European arrest warrant can be sent directly to the judicial authority executing the warrant, provided that the location of the wanted person is known (paragraph 1, Article 9);

- The provision that “at the request of the judicial authority issuing the warrant, its assignment may be performed through a secure telecommunication system within the framework of the European network in the field of justice” (paragraph 2, Article 10);

- The rules that establish the following rights of any wanted person in the event of his/her detention: a) to give his/her consent to his/her transfer to the judicial authority that issued the warrant, as well as the right to use the services of a lawyer and translator (Article 11) and b) to be heard by the judicial authority, executing the warrant, in case of disagreement on his\her transfer (Article 14);

- The provision according to which “the European arrest warrant is subject to review and execution in a proceeding of special urgency” (paragraph 1, Article 17).

In order for the above provisions to function, their consolidation only in the Code of Criminal Procedure of the Russian Federation is insufficient. The first step to putting them into practice could be to discuss the issue of making the necessary amendments to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993, to which the CIS countries are parties.

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