Araştırma Makalesi | **Research Article** **ÇÜHAD 2025/7** | **e-ISSN:** 2822-4809
10.59399/cuhad.1640122

THE ISSUE OF THE EXTRADITION OF CRIMINALS IN LATE OTTOMAN LEGAL WORKS•

Son Dönem Osmanlı Hukuk Eserlerinde Suçluların İadesi Meselesi

Cihat TANIŞ*

ABSTRACT

Although the exact origins of international law remain uncertain, the cultural elements inherited from the historical experiences of societies have significantly influenced the legal systems and institutions they developed. In this context, examining the international legal system requires taking into account each society's unique historical and cultural background. From this perspective, the present study explores the topic along two developmental dimensions: historical and legal. The institution of extradition, in fact, has ancient roots. While it was initially applied primarily to political crimes, it began to be implemented predominantly for ordinary crimes from the 19th century onward. In Ottoman legal literature, the extradition of criminals (iade-i mücrimin) was typically carried out through bilateral agreements between states. Accordingly, the Ottoman Empire adopted the practice of incorporating extradition provisions into its treaties, thus formalizing the institution. As a result, extradition became a prominent subject of interest for Ottoman jurists and received extensive coverage in international law textbooks taught in Ottoman law schools. A review of these works reveals that various aspects of the institution were discussed in detail.

Anahtar Kelimeler: Extradition of Criminals, Ottoman Empire, International Law.

ÖZ

Uluslararası hukukun ne zaman ortaya çıktığı tam olarak bilinememesine rağmen toplumların tarihlerinden devraldıkları kültürel unsurlar, oluşturacakları hukuku ve kurumları etkilemiştir. Bu bağlamda uluslararası hukuk sistemi incelenirken her toplumun kendi tarihsel-kültürel birikimi göz önüne alınmalıdır. Bu düşünceden hareketle çalışmada konunun tarihi ve hukuki olmak üzere iki gelişim ekseni ele alınmıştır. Nitekim suçluların iadesi hususu eski tarihlere dayanan bir müessesedir. Esasında ilk devirlerde siyasi suçlar için uygulanan iade kurumu 19. yüzyıl ile birlikte çoğunlukla adi suçlar için uygulanır olmuştur. Osmanlı hukuk literatüründe iade-

• **Gönderi**: 14.02.2025 - **Kabul**: 22.05.2025 | **Received**: 14.02.2025 - **Accepted**: 22.05.2025.

* Doç. Dr., Kırşehir Ahi Evran Üniversitesi Fen-Edebiyat Fakültesi Tarih Bölümü, Kırşehir, Türkiye cihattanis@gmail.com • ORCİD 0000-0002-2000-731X.

Atıf Şekli / **Cite As**: TANIŞ, Cihat (2025). The Issue of the Extradition of Criminals in Late Ottoman Legal Works. ÇÜHAD, (7), 274-300.

İntihal / **Plagiarism**: Bu makale bir intihal engelleme yazılımı aracılığıyla denetlenmiş ve en az iki hakem incelemesinden geçmiştir. / This article has been checked via a plagiarism prevention software and reviewed by at least two referees.

i mücrimin olarak adlandırılan suçluların iadesi çoğu kez devletlerin aralarında yaptıkları ikili antlaşmalar sonucunda görülmekteydi. Bu bağlamda Osmanlı Devleti usul olarak imzaladığı antlaşmalara suçluların iadesine dair hükümler ekletmiş ve böylelikle müessesenin uygulanması yolu tercih edilmiştir. Neticede suçluların iadesi hususu Osmanlı hukukçuları tarafından üzerinde ehemmiyetle durulan konulardan biri olması sebebiyle Osmanlı hukuk mekteplerinde okutulan devletlerarası hukuk kitaplarının içerisinde kendisine genişçe yer bulmuştur. İncelenen eserlerde iade kurumunun tanımı, tarihçesi, işleyiş süreci gibi birçok hususun ayrıntılı şekilde anlatıldığı belirlenmiştir.

Keywords: Suçluların İadesi, Osmanlı Devleti, Uluslararası Hukuk.

INTRODUCTION

With the advent of civilization, the structure of the state progressively evolved into a complex social, political, and legal institution[1]. Although the exact origin of the concept of an international order associated with the state remains unclear, it can be assumed to be as ancient as the state itself. The cultural elements inherited from the histories of societies have shaped the legal systems they developed. Therefore, when studying international law, the social heritage of each nation must be taken into account. This study approaches the topic from two developmental perspectives: historical and legal. Additionally, as international law encompasses principles applicable in both war and peace, the institution of extradition has often been included in treaties. Over time, international law has increasingly focused on individuals rather than states. In this context, treaties have become essential tools for regulating inter-state relations within the framework of international law[2].

Throughout history, many societies and states have been involved in conflicts. While these conflicts often led to treaties, each peace agreement also set the stage for new disputes. The issue of repatriating soldiers captured by the opposing side, or exchanging prisoners between nations, has consistently been a key topic in post-war negotiations[3]. The earliest examples of international law practices can be traced back to ancient civilizations. In societies such as Sumer, Egypt, the Hittites, Greece, and Rome, practices related to key aspects of international law, such as envoy missions, the sanctity of treaties, and the extradition of criminals, were already in place. These interactions between societies contributed to the development of international treaties[4].

Throughout history, changing legal and social conditions have inevitably made it necessary for states to cooperate in the fight against crime and criminals. This cooperation has manifested itself under the heading of judicial assistance, in the recognition of a conviction issued in one state by another, or in the transfer of prosecution, as well as in the extradition of criminals. Since each state's sovereignty and

1 OKANDAN, p. 5.
2 KARAKOÇ, p. 200, 247.
3 YAŞAR, İÇER, p. 1487.
4 CİN, p. 36; SHEARER, p. 5.

the rights derived from it are limited by its own territorial boundaries, law enforcement authorities do not have the power to go into another country and apprehend criminals there. This situation, which limits sovereign powers, has been resolved through the institution of extradition, which is based on the principle of mutual assistance between states[5]. Also referred to as "surrender", this institution is based on the idea that no crime and no criminal should go unpunished, regardless of where the crime is committed[6]. In this sense, if a person who has committed a crime or has been convicted due to a crime flees or takes refuge in another country, this does not grant judicial authority to the state where the individual is located. At the same time, when it is considered that the state where the crime was committed does not have the opportunity to prosecute the person who has fled or taken refuge in another state, the possibility of criminals escaping punishment arises[7]. Although the institution of extradition serves such a purpose, at the beginning, states tried to obstruct this purpose as much as possible and offered protection within their own territories to individuals who had committed crimes against the laws of other states. While domestic criminals were prosecuted and punished, foreign criminals were generally not surrendered and were treated with special favor. There were even times when what was known as the "right of asylum" was used as a kind of bargaining chip in international law[8].

In Ottoman legal literature, the extradition of criminals, was an institution with deep historical roots in the Ottoman Empire, typically implemented through bilateral agreements. These agreements, however, were not exclusively focused on extradition; instead, they often included extradition clauses within broader treaties. In other words, while dedicated extradition treaties were not initially established, provisions regarding the extradition of criminals were incorporated into various agreements to facilitate its implementation.In the later years of the Ottoman Empire, however, the system of capitulations increasingly favored foreign nationals in financial and legal matters, rendering Ottoman courts less effective. As a result, criminal cases involving individuals of the same nationality were adjudicated in their respective embassies, while cases involving foreigners of different nationalities were handled by the embassy of the defendant's country. In contrast, criminal cases involving a foreigner and an Ottoman citizen fell under the jurisdiction of Ottoman courts. In summary, during the 19th century, capitulations helped to simplify the extradition process. If the case did not involve an Ottoman citizen, the Ottoman state would extradite the perpetrator, even if the crime had occurred on Ottoman soil. Furthermore, if an Ottoman citizen committed a crime within Ottoman territory and fled abroad, the Ottoman state would request the individual's extradition. Similarly, criminals who committed offenses abroad and sought refuge in Ottoman lands were extradited based on the obligations arising from the capitulations[9].

5 ALTUN, p. 5.
6 YAŞAR, İÇER, p. 1489.
7 ÖZMEN, p. 1.
8 MOORE, p. 749.
9 İÇEL, p. 701.

Until the Tanzimat period, the principles of international law in traditional Ottoman law were primarily grounded in the fundamental tenets of Islam. Although sultans exercised their authority based on customary law with greater flexibility in public administration, they did not act in opposition to Islamic principles. Following the Tanzimat reforms, while Islamic provisions were not entirely discarded, Western legal principles were also incorporated. In this context, international law courses were introduced into the curricula of institutions such as Darülfünun, Mekteb-i Hukuk, and Mülkiye[10]. The course was sometimes referred to as Hukuk-i Milel and at other times as Hukuk-i Düvel. During the conceptual debates of the 19th century, the term Hukuk-i Düvel began to gain prominence. The 1859 regulation of Mekteb-i Mülkiye included courses on international law and Ottoman treaties among its curriculum. In the Ottoman Empire, this course was first taught by Emin Efendi, the founder of Mekteb-i Hukuk. Between 1883 and 1929, the professors teaching the course under the name Hukuk-i Düvel included prominent figures such as Ali Şahbaz Efendi, Mahmut Esat Efendi, Hamayak Husrevyan, Nusret Metya, Mr. Mithat, Zeki Mesut (Alsan), Cemil (Bilsel), Sıddık Sami (Onar), and Mr. Resat. During the Second Constitutional Era, a distinction between Hukuk-i Duvel (public international law) and Hukuk-i Hususiye-i Düvel (private international law) became apparent. The newly introduced Hukuk-i Hususiye-i Düvel courses were taught by scholars such as Mr. Yusuf Kemal, Mr. Ahmet, and Mr. Nusret Metya[11].

This study is theoretically grounded in the relationship between state sovereignty, international legal cooperation, and the evolution of international legal norms. Within the framework of classical international law, sovereignty has traditionally been understood as the exclusive and absolute authority of a state within its territorial boundaries. However, the increasing complexity of international relations has made inter-state cooperation an essential element of contemporary legal practice. In this context, the institution of extradition has emerged as a mechanism based on the principles of mutual legal assistance and the universal obligation to combat impunity[12].

I. LEGAL DEFINITION OF EXTRADITION OF CRIMINALS

The extradition of criminals is a principle of international law, typically occurring between two or more states. This institution is invoked when an individual who has committed a crime flees their home country and seeks refuge in another[13]. Extradition, in its broadest definition, refers to the set of procedures through which a request is made for the return of a suspect or convicted individual who has committed a crime in one country to the country seeking their trial or the enforcement of a sentence[14]. In other words, extradition refers to the process of surrendering an individual accused or indicted of a

10 KARAKOÇ, p. 236-245

11 EROZAN, p. 56-62.

12 HIERRO, p. 429.

13 ALİ EDİP, p. 731-732.

14 ALTUN, p. 2-3; CİN, p. 4-5.

crime, such as murder, to either the state of their nationality or the state where the crime was committed[15]. However, no state is obligated to apply the criminal laws of another state, to try individuals accused of crimes committed outside its borders, or to enforce judgments made by a foreign court. This is due to the violation of the principles of independence and sovereignty. Nonetheless, in order to ensure the security of states and individuals, to punish crimes where they occur, and to maintain public order, states have adopted the method of extradition. In short, since all states regard maintaining order, upholding the validity of laws, and administering justice as fundamental interests, they generally view extradition procedures favorably[16].

The term 'extradition' essentially refers to the act of returning an individual or object that has been taken[17]. Although the term itself carries less political connotation, it is legally recognized within judicial agreements. The essence of extradition lies in the return of individuals who have sought refuge in one of the two states to avoid prosecution or conviction[18]. From a terminological perspective, it is noted that the word 'extradition' is derived from the Latin term 'extradere,' meaning to bring by force. The phrase 'extradition of criminals' first appeared in the literature in the French edict of February 19, 1791, and was later included in another treaty signed by France in 1828[19]. The concept of 'extradition of criminals' was introduced into Turkish through the translation of the word 'extradition.' In Ottoman law, the equivalent term for 'extradition' was first used in the 1874 treaty with the United States as 'istirdâd-ı mücrimin.' In the Ottoman Empire, this institution was referred to as 'iade-i mücrimin,' and today, the terms 'extradition of criminals' or 'return of criminals' are commonly used[20].

Extradition, in legal terms, refers to the process by which one state surrenders an individual who has committed a crime outside its territory to another state, which has the right to prosecute and punish the individual. Extradition treaties outline the procedures for this process, but there are no universally accepted or standardized rules. While the state requesting extradition has the right to seek it, the state surrendering the individual is not obligated to comply. Consequently, the rules governing extradition arise from agreements made within the framework of each state's sovereignty and independence. Better regulations on extradition may be established between states with similar penal codes. Otherwise, the domestic legal rules of one state may be subordinated to those of another. The primary purpose of extradition is to ensure that individuals who commit unlawful acts are held accountable, not to increase the severity of the punishment[21]. Some crimes may require punishment under the laws of the country where the criminal has sought refuge, yet extradition may not be necessary. Moreover, if an individual

15 ÖZMEN, p. 6.
16 BONFIL, FAUCHILLE, p. 374; İÇEL, p. 693
17 YAŞAR, İÇER, p. 1488.
18 BONFIL, FAUCHILLE, p. 520-521.
19 BAGHERI, p. 2; YERLİKAYA, p. 3; KÖPRÜLÜ, p. 1.
20 ERGÜL, p. 20; ÖZMEN, p. 5.
21 RUHİ, p. 498.

commits a crime in a foreign country and flees to their home country, they are not necessarily extradited to the state where the crime was committed. However, their home country will prosecute and punish them. If the individual is not punished, the state may be considered complicit in the crime. If the individual whose extradition is requested is a citizen of a third country, and the requested state is unwilling to extradite them, the individual's home state is notified, and assistance may be sought in the extradition process if necessary[22]. As a result, the sovereignty of states over their citizens is limited to their own territorial boundaries. If a citizen flees to another country, the state does not have direct authority to apprehend them, and no state is obligated to extradite individuals who seek refuge within its territory. This situation could allow criminals to evade justice, which is why extradition treaties are established between states[23]. However, historically, these treaties were only applicable to the signatory states, and other states could not benefit from them.

Extradition is a legal concept that has evolved over the course of the history of international relations. Nevertheless, it is not merely a byproduct of the routine interactions between international actors. Particularly in the context of the extradition of common criminals, the concept possesses a substantial intellectual foundation, shaped by influential thinkers such as Grotius and Beccaria[24]. In this regard, the historical development of extradition will be addressed as a starting point.

II. HISTORY OF EXTRADITION

Extradition law, normally thought of as primarily bilateral, in fact has a long and rich history of multilateral engagement[25]. Extradition is one of the oldest forms of judicial cooperation between states. In this regard, the institution of extradition has existed since ancient times[26]. Indeed, there are notable differences between the functioning of the extradition institution in the past and its modern practices. This is because extradition requires a well-developed body of state law and a suitable infrastructure for cooperation between states. However, in the pre-modern period, there was limited infrastructure to facilitate the application of state law among societies[27]. In this regard, it is known that before the 19th century, extradition was primarily applied to political offenses. Prior to the establishment of the nation-state, the state was synonymous with the sovereign. Since an offense committed against the state was viewed as an offense against the person of the sovereign, rulers saw it as mutually beneficial to extradite political criminals who had sought refuge in their territories[28].

22 SAİD, GREGOR, p. 25; YERLİKAYA, p. 9.
23 Müdde-i Umumi. May 24 1909. No. 1, p. 1.
24 BOZ, p. 495.
25 HIERRO, p. 429.
26 ÖZMEN, p. 7.
27 KÖPRÜLÜ, p. 11.
28 CİN, p. 74.

Legal scholars divide the procedure for the extradition of criminals into three phases in its modern sense. According to this classification, the first treaties were made in the early 14th century, primarily addressing political criminals, heretics, and immigrants. The second phase spans from the 18th century to the first half of the 19th century, during which treaties were predominantly focused on the extradition of deserters. As a result, civilized states began to recognize the necessity of joint measures against ordinary criminals. Some countries even enacted regulations regarding the extradition of criminals[29]. In this context, the earliest examples of extradition can be found in ancient societies. For instance, the Treaty of Kadesh between Egypt and the Hittites included a provision for the mutual extradition of criminals. Similarly, the practice of extradition can also be observed in the Roman EmpireThe institution of extradition in Rome was applied differently and often served as a symbol of superiority over other societies[30]. In short, Rome used this institution as a leverage against other societies[31]. In the Middle Ages, the numerous states in Italy and their geographic proximity made it easy for criminals to flee from one state to another. As a result, the Italian states found it necessary to establish treaties to combat such crimes[32]. Consequently, although the institution of extradition was not yet modern in form before the 17th century, it existed in practice[33].

In addition to bilateral treaties concerning the extradition of criminals, more comprehensive agreements have also been established. Beginning in the early 19th century, it became evident that bilateral treaties were insufficient to meet the demands of the extradition process, thereby necessitating the development of general extradition treaties. Initially, bilateral treaties were predominantly concluded between neighboring states. This was largely due to the limitations of transportation at the time, which made it feasible for criminals to flee only to adjacent countries. As a result, treaties between neighboring states were deemed adequate for addressing cross-border criminal activity, and there was little need for broader agreements. However, advancements in transportation during the 19th century enabled criminals to escape to more distant countries, rendering bilateral arrangements inadequate. Consequently, there emerged a growing trend toward the establishment of general multilateral extradition treaties[34]. During this period, states enacted their own extradition laws and regulations, thereby establishing a legal framework for extradition within their domestic legal systems[35]. In this regard, the modern concept of extradition began to be employed in a general sense in the early 19th century. Prior to this period, the institution was primarily utilized for the extradition of political offenders. The term 'extradition' was first officially mentioned in legal terminology in the French code

29 ŞUAYB, p. 15; ALİ, p. 393.
30 KÖPRÜLÜ, p. 12; GÜNAY, p. 7; ULUTAŞ, p. 49; SHEARER, p. 5.
31 İÇEL, p. 697-698; BOZ, p. 500.
32 ALTUN, p. 14.
33 İÇEL, p. 702.
34 KÖPRÜLÜ, p. 17.
35 ÖZMEN, p. 8.

dated February 19, 1791, as previously noted. Furthermore, it is widely acknowledged that the institution of extradition was first employed in its contemporary legal sense in a treaty signed in 1828, in which France was a party[36]. Thus, the institution of extradition evolved into a more general and systematic mechanism, moving beyond its earlier application to temporary and politically motivated offenses. Consequently, what was once a case-by-case practice began to impose binding obligations on contracting states, provided that certain conditions for extradition were met. The first specialized law concerning the extradition of criminals was enacted in Belgium in 1833[37].

As a result, the legal framework for extradition previously regarded as a governmental and political act was formalized through treaties signed in the early 19th century. Prior to this period, extradition was predominantly applied to political offenders. However, in the 19th century, political offenses began to constitute a major exception to extradition procedures. The first instance of this exception appeared in the extradition treaty signed between France and Belgium in 1834, which subsequently served as a model for future international agreements[38]. There are many documents on extradition in the Ottoman archives[39]. These documents prove that extradition was actively practiced in the Ottoman Empire throughout the 19th century.

III. OPINIONS ON EXTRADITION OF CRIMINALS

As previously mentioned, the Ottoman Empire occasionally concluded treaties concerning the extradition of criminals as a legal necessity. In this context, the institution referred to by the Ottomans as the 'extradition of criminals' became increasingly integrated into European legal practices during the 19th and 20th centuries[40]. In this context, if an individual committed a criminal act within Ottoman territory and subsequently fled to a foreign state, the Ottoman Empire could request the extradition of the perpetrator. Similarly, the extradition of individuals who committed crimes in a foreign country and later sought refuge in the Ottoman Empire was also possible. However, such extradition procedures required the existence of a formal agreement between the requesting state and the Ottoman Empire[41]. Prior to the 19th century, although there were no treaties specifically dedicated to extradition, the implementation of the institution was made possible by incorporating relevant provisions into broader agreements. Notable examples include the Treaty of Passarowitz (1718), the Treaty of Belgrade (1739), and the Treaty of Küçük Kaynarca (1774). The first treaty explicitly concerning extradition during the Ottoman period was signed with the United States in 1874[42]. However, this agreement was established

36 ALTUN, p. 15.

37 ARMAOĞLU, p. 1598; CİN, p. 17; KÖPRÜLÜ, p. 1.

38 ORHAN, p. 8, 38.

39 See: BOA, HR.TH., 7/43; BOA, HR.İD., 1896/9; BOA, DH.MKT., 2346/64; BOA, HR.HMS.İSO., 4/20.

40 KÖPRÜLÜ, p. 1.

41 CİN, p. 20-21.

42 ARMAOĞLU, p. 12; SELVİ, DEMİRKOL, p. 332; DÖŞKAYA, p. 781.

in the form of a capitulation and was not based on the principle of reciprocity. According to its terms, the United States consul was granted the right to request the extradition of a criminal from the Ottoman Empire at any time. Another extradition-related agreement during the Ottoman period was concluded with Germany in 1917[43]. In addition to these, there were other agreements as well. Moreover, states that benefited from Ottoman capitulations already possessed the right to prosecute their own citizens.

The issue of criminal extradition has been extensively discussed in Ottoman legal literature and addressed by numerous jurists. In this regard, Ahmet Şuayb, an Ottoman jurist from the period of the Second Constitutional Era, stated that the issue primarily falls within the domain of international criminal law when evaluating the institution of extradition. He asserted that, for extradition to take place, the criminal must first be apprehended in the state where they sought refuge and then handed over to their country of citizenship. According to Şuayb, it is one of the necessities of justice for all governments to assist each other in this manner to prevent crimes. He believed that this practice is essential both morally and legally. After emphasizing that such assistance is a necessary consequence of human relations, Şuayb stated that states, in essence, form a kind of secret community among themselves. He argued that criminals would be deterred from committing crimes if they knew they could not evade punishment anywhere. Theoretically, this view positions the extradition of criminals as one of the mutual duties of states. However, according to Şuayb, in practice, if no treaty exists concerning the extradition of criminals, this obligation is not binding. States have the discretion to decide on this matter and may act according to their preferences. Thus, even in the absence of a treaty, a state can choose whether or not to extradite criminals based on its sovereignty[44].

Extradition is a topic addressed by figures such as Ali Efendi. Ali Efendi began by legally defining the concept of extradition. According to him, extradition refers to the situation in which a criminal is handed over by the government of the country to which they have fled, to the state where the crime was committed. However, no state is obligated to apply the criminal laws of another state or enforce its court decisions. Additionally, no state has the authority to prosecute individuals who commit crimes outside its borders. This is because each state’s sovereignty and independence prevent such actions. According to Ali Efendi, states often resorted to the institution of extradition because they believed that leaving crimes such as murder and theft unpunished was legally unacceptable. Regarding the permissibility and legitimacy of extradition, Ali Efendi supported the view that it was legitimate due to the general interests of the international community that is, the states' shared goal to maintain order and security within their territories and to implement laws. He then raised the question in his work of whether extradition is a legal necessity or a moral duty and explored the debates surrounding this issue. In this context, he mentioned that some legal experts regarded extradition as an obligation for states.

43 BOA, HR.TO., 606/47; BOA, HR.HMS.İSO., 96/20; BOA, HR.HMS.İSO., 155/10; ÖRİKAĞASIZÂDE, p. 76; DONAY, p. 9.

44 ŞUAYB, p. 14-15, 17

According to this view, criminals, fraudsters, and thieves should be punished as they deserve. Moreover, preventing criminals from escaping punishment by fleeing from one country to another was considered to be in the public interest. Ali Efendi believed that states were obligated to assist one another in order to ensure individual security and protect public order. According to this perspective, extradition also holds moral significance for states. In other words, each extradition case depends on the situation and mutual interests. However, while facilitating extradition, it is crucial to respect states' sovereignty rights[45].

Ali Edip Efendi, while addressing the topic, first discussed the general functioning of the institution of extradition in Europe, noting that Italian criminal law had developed in this regard. He then expressed the view that, in terms of extradition, the nature of the crime should be considered as if it had been committed in the territory of the state that suffered the damage, rather than focusing on the location where the crime was actually committed. He also argued that if this principle was not mutually guaranteed by the states, it could jeopardize public security. Continuing his views, Ali Edip Efendi stated that most civilized states did not limit the application of their criminal laws solely within their borders, but rather extended them to cover certain crimes committed outside their territories. According to him, if a criminal who could not be extradited sought refuge in another country, that criminal should be apprehended and brought to justice immediately. He emphasized that this could only be achieved through cooperation between states in the extradition process. Furthermore, he insisted that the principle of reciprocity should be observed in these matters[46].

In terms of the extradition of criminals, a notable work that has been translated into Ottoman legal literature from Western authors is that of the Bonfil-Fauchille duo. These individuals are renowned French jurists who made significant contributions to the field of international law. The translation and study of the works of such important jurists into Ottoman Turkish is a key indicator of how closely Ottoman law followed developments in the West. This work extensively addresses the issue of the extradition of criminals, which is the subject of this study. In this context, the Bonfil-Fauchille duo initially raised the question in their work: 'Is the extradition of criminals a necessity under state law, or merely a moral obligation?' This question is, in essence, one of the fundamental debates surrounding the issue of criminal extradition. According to the authors, who acknowledge that there is disagreement among jurists on this matter, any state should either surrender the criminal seeking asylum or punish them. Public interest necessitates such actions. According to this view, states are obligated to assist one another in maintaining order and security. Within this framework, the authors argue that the extradition of criminals should be considered both a moral and ethical duty[47].

45 ALİ, p. 390-392.

46 ALİ EDİP, p. 735, 856.

47 BONFIL, FAUCHILLE, p. 375.

IV. CONDITIONS REQUIRING THE EXTRADITION OF CRIMINALS

In Ottoman legal studies, the conditions for the extradition of criminals are discussed. Ahmet Şuayb, who provides information on this matter, focuses on the following points. According to him, for extradition to take place, the presence of a guilty party is required. While all criminals who have essentially sought refuge in a state are considered extraditable, there may be exceptions. For instance, some legal scholars argue that if a prisoner escapes to a foreign country in order to gain freedom, they should not be extradited. However, if the perpetrator is a slave and committed the crime to obtain freedom, they should not be handed over. If the individual has committed any other criminal acts, then extradition is justified. The second exception is the principle that states should never extradite their own citizens to another state[48]. In short, Şuayb said that the conditions requiring extradition are not fixed but that the situation of the crime must be acted upon.

Another significant condition for the extradition of criminals is the treaties made between states, as mentioned above. In fact, the rules and methods applied by states without an extradition treaty may differ. In this context, some states extradite ordinary criminals even in the absence of a treaty, while others refuse to hand over criminals[49]. Therefore, the surrender or extradition of criminals who sought refuge in a state's territory to their state of citizenship became a duty only through special treaties. However, it was the right of each state to grant asylum to individuals accused of political crimes, and there was never an obligation to extradite or deport them. The only condition was that political criminals should not violate the public order or general security of other states. When a citizen of a country commits a crime abroad, the state of which they are a citizen does not extradite them to the foreign state but is obligated to try them itself. This made it necessary for the Ottoman Empire to establish agreements with other states regarding extradition[50].

It has been previously mentioned that the acts requiring the extradition of criminals are determined by laws and treaties. Ali Efendi stated that, in general, the acts requiring extradition should include ordinary crimes such as murder. He also noted that the scope of extradition could be expanded with each new treaty. The states involved in the agreement could, if desired, decide to extradite a criminal who had committed an offense other than those specified. In this context, according to Ali Efendi, the decision was entirely at the discretion of the states[51].

Another controversial aspect of extradition is the effect of the offender's nationality on their return. In this regard, according to the penal procedure adopted by England, criminal laws applied only to offenses committed within its borders. Thus, acts punishable under English law were those prohibited

48 ŞUAYB, p. 8

49 Müdde-i Umumi, May 24 1909, No. 1, p. 1.

50 ÖRİKAĞASIZÂDE, p. 75.

51 ALİ, p. 398.

within England, and the offender's nationality was not considered significant. On the other hand, Ottoman penal laws were valid and binding by virtue of sovereign authority in all territories under Ottoman rule, meaning they applied to all individuals residing within the empire. In this context, there should have been no fundamental distinction between Ottoman subjects and foreigners. However, for this principle to be fully applied, it would have been necessary to establish that criminal laws were uniformly valid and enforceable across Ottoman territories. This raises two key questions: First, what constituted Ottoman territory? And second, in which cases was an act considered to have been committed in a foreign country[52]?

Since sovereignty is indivisible, a state could not be compelled to comply with the demands of another. In this context, the state receiving the extradition request had the discretion to evaluate whether the request was justified. If a state rejected an extradition request without justification or reason, it risked facing the same treatment for its own requests. This was the only course of action in such matters. However, if there was a treaty between the states, they were not free to decide whether to grant extradition or not, but were obligated to comply with the terms set forth in the treaty[53].

For an offender to be extradited, the crime they committed must be punishable under the laws of both states. If the act committed under the law of the country in which the offender sought refuge was not prohibited, their surrender could not be considered appropriate. For example, polygamy is prohibited under French civil law, and it would incur a heavy penalty for a Frenchman to marry another woman while having only one wife under French law. Therefore, if a Frenchman who had married several women sought refuge in the Ottoman Empire, he would not be extradited, as polygamy was not forbidden under Ottoman law. In another example, a landlocked state may not have maritime laws. For instance, the fact that a pirate was not punished in Switzerland did not mean that the act was legitimate under international law[54]. Additionally, Mr. Ali Edip believed that the interpretation of a crime in the place where it was committed may differ from the interpretation in the country to which the offender should be extradited. This discrepancy was primarily due to differences in the political, social, and legal systems of each society.

Another topic that was emphasized regarding the extradition of criminals was how to proceed in the event of a change in citizenship after a crime has been committed. In this context, Germany and Belgium would treat a person as if they were their own citizens if they acquired citizenship after committing a crime. However, this directly contradicted the principle that changes in citizenship do not have retroactive effects. Some states explicitly stated that changes in citizenship would be taken into account. For instance, countries like Italy would consider both the seriousness of the crime and the

52 ALİ EDİP, p.736.

53 ALİ, p. 393.

54 ALİ EDİP, p. 764; ŞUAYB, p. 23.

responsibility of the perpetrator in the agreements they made regarding the extradition of criminals. Extradition agreements are broad in terms of the variety of crimes. Therefore, rather than specifying which crimes would be extraditable, it should only be stated what punishment the extradited crime would warrant. A person accused of specific crimes would not be extradited due to their reputation or violations of rules. On the other hand, states would often refuse to extradite deserters. However, sailors on merchant and warships were exceptions to this rule and would be extradited, provided they were those responsible for managing the ship. Other soldiers, however, would not be extradited. The International Law Society, convened in Oxford, reserved the issue solely for the victims. The reason for not extraditing soldiers was explained by states following a natural monitoring policy in this regard. Desertion from military service was viewed negatively because it was associated more with a sense of loyalty to the state than with a universal concept of human rights. For example, a French soldier who fled to England could be seen as a bad Frenchman, but this would not imply that he was a bad person[55].

The criminal law of the Ottoman Empire is civil and personal in nature. In this context, it is understood that the application of Ottoman criminal law to certain crimes may not be appropriate, considering the place and nature of the crime. Therefore, any individual who was a subject of the Ottoman Empire and was accused of violating state security, or of counterfeiting official seals, coins, public shares, bonds, stamps, and all forms of criminal documents belonging to the state, as well as bank bonds legally permitted for circulation, should be punished according to Ottoman law, even if they were tried in foreign lands and found not guilty[56].

If the criminal whose extradition is requested is not a citizen of the requesting government or the country of residence, but rather a citizen of a third state, it is a diplomatic requirement to obtain the consent of that third state. International law mandates that a criminal who is extradited between other states be protected by the government of the country of which they are a national. Many treaties include special provisions in this regard. The procedure followed in such cases is divided into three main parts:

1. The extradition of an offender who is a national of a third state is voluntary.

2. Extradition is also voluntary, but if the consent of the government of which the offender is a national is sought, extradition becomes compulsory only with the consent of that government.

3. Extradition is compulsory, but subject to the consent of the government of which the criminal is a citizen[57].

In many agreements made between the governments of Italy, France, and other states, the third method was preferred. When the extradition of a criminal is requested by both the government of their

55 ŞUAYB, p. 19-20.

56 ŞUAYB, p. 24-25.

57 ALİ, p. 397.

country of citizenship and the government of the country where the crime was committed, most agreements stipulate that the criminal will be handed over primarily to the government of their country of citizenship[58]. However, this method has not been deemed appropriate by many legal scholars. This is because the connection to the crime belongs to the country where it was committed. At its meeting in Oxford in 1880, the International Law Society decided that if the extradition of a criminal was requested by different parties, the criminal should be handed over to the government of the country where the crime was committed. The second article of the extradition agreement signed between Belgium and the Netherlands in 1877 aligns with this decision[59]. In fact, even if there is no statute of limitations according to the laws of the requesting state, an important issue arises in determining to which of the two states the criminal should be handed over upon a request for extradition, in accordance with the laws of the state where the criminal has sought refuge. Although there is no specific rule for resolving this issue, the state to which the criminal has fled retains the discretion in this matter. In exercising this discretion, the type and seriousness of the crime may be considered. It is also significant which of the requesting states has laws that facilitate and support the extradition process after the criminal serves their sentence.

Another issue concerns the provision that prosecuting or convicting an individual for ordinary crimes cannot prevent their extradition. For example, when the extradition of a criminal who committed an offense in France and sought refuge in Italy is requested, it is not possible to withhold the individual's extradition on the grounds that they were tried or convicted in Italy, even if the crime was committed on Italian soil or in accordance with religious law. This is because, in no case, can issues related to law prevent the execution of punishment in the field of penalties. In this context, Ali Edip Efendi, an Ottoman jurist, argued that matters related to punishment should always take precedence over legal issues. Furthermore, he stated that the view that prosecuting or convicting a fugitive for legal matters does not prevent their extradition has been accepted by many legal scholars[60].

V. METHODS APPLIED IN EXTRADITION PROCESS

The extradition of criminals is a mixed institution due to its administrative and judicial aspects[61]. In this context, extradition was sometimes requested by states through the bureaucrats responsible for carrying out their jurisdiction, and the decision to extradite the criminal was made by them. However, there are legal opinions opposing this approach. Some lawyers support the involvement of administrative bureaucrats in the process, arguing that extradition often intersects with political matters. From this

58 ALİ, p. 397.

59 BONFIL, FAUCHILLE, p. 380-381, 397; ALİ, p. 397; ALTUN, p. 16.

60 ALİ EDİP, p. 785-786.

61 ÖZMEN, p. 5.

perspective, the extradition process could influence interstate relations, depending on the specific circumstances and the solution at hand[62].

Extradition is, in fact, a sovereign act. The submission and acceptance of an extradition request can only be made by a competent authority responsible for executing sovereign acts on behalf of the state. In this context, only the executive power can request extradition, and only it has the authority to extradite a criminal. Therefore, extradition requests are submitted diplomatically[63]. After the extradition request is submitted to the Ministry of Foreign Affairs, it is determined whether the situation will be examined by the administrative or judicial bureaucracy in the country of asylum. The key issue here is whether the judicial bureaucracy will only provide an opinion or make a decision that is binding on the executive branch. The method adopted by the French is to conduct the procedure administratively and in secret. However, after the criminal's arrest and the prosecutor's request for their surrender, no decision will be made by the head of state before hearing the criminal's defense against the extradition request[64].

There were differences between the British and French methods during the extradition process. In the French system, the process was administrative and confidential. In this context, the suspect was detained and brought before the prosecutor, and no correspondence was signed by the head of government on this matter before the suspect was given the opportunity to defend against the extradition request. The suspect was allowed to prove that the legal conditions for extradition were not met. The prosecutor would then forward the summary of the investigation to the Minister of Justice, and the head of government would notify the Ministries of Internal Affairs and Foreign Affairs. The Ministry of Foreign Affairs would subsequently inform the requesting state of the extradition request through diplomatic channels. In the British system, the responsibility for extradition lay with the administration of justice. The suspect or defendant would be detained and brought before the presiding judge in London. The courts were open to the public, and the suspect could appoint a lawyer. The process was conducted through mutual negotiation, and the judge would issue a ruling. Afterward, the defendant could appeal the decision, and the situation would be reported to the Ministry of Foreign Affairs. If judicial authorities ruled in favor of extradition, the relevant state was not necessarily obliged to extradite the suspect. This procedure offered serious guarantees for personal freedoms. However, it could disrupt the expected rapid procedures and grant British judges the unusual authority to decide on acts committed in foreign countries, as the judge would examine the matter on its merits and make a determination of guilt[65]. In the United States, extradition was governed by rules established through congressional decisions in 1848, 1860, and 1869. There, too, it was the judicial system that resolved extradition issues. In the Belgian and Dutch procedures, the judicial authority would only provide opinions, which were not

62 ALİ EDİP, p. 404-405.

63 BONFIL, FAUCHILLE, p. 390

64 ALİ EDİP, p. 405.

65 BONFIL, FAUCHILLE, p. 391; Ali Edip, p. 406.

binding on the government. The court of appeal prosecutors' board would examine whether the request adhered to legal requirements. It would not assess the suspect's guilt, but would only grant the suspect the right to defend whether the extradition request could be accepted. The decision would then be reported to the Ministry of Foreign Affairs. A similar approach was followed in Italy. In this system, the state worked in harmony with the judicial powers to address demands and requirements. It did not accept the principles of jurisdiction and foreign jurisdiction as in the British system. In Switzerland, after questioning the refugee, the Federal Council would decide on the extradition of the criminal. The refugee could present issues related to the validity of Swiss laws or treaties to the Federal Council. However, the assembly would not rule on the question of guilt[66]. In addition, both the USA and the UK would not consider the arrest warrant and court decision alone as sufficient; they would request all evidence, written documents, and witness statements, as if the crime were being tried again. These demands from the governments were based on the legal grounds for the extradition of the criminal. For example, France signed an extradition treaty with England in 1843. According to this treaty, France extradited many criminals to England from 1843 to 1865, while France was able to extradite only one criminal from England during this period. As a result, France annulled the treaties of 1843 and 1852. Consequently, based on decisions made in 1870 and 1873, England entered into new agreements with France and other states in 1876[67].

The state requesting the extradition of the offender was required to provide documents that establish the identity and nature of the accused, the charge or previous conviction, the nature of the act, and the jurisdiction of the court responsible for the criminal case. Treaties generally specified the documents through which these pieces of evidence would be collected. There were three methods in this regard. According to the first method, supported by many treaties, an arrest warrant or a similar document alone was sufficient to ensure extradition, without the need to present additional documents or reasons that would require the suspect to appear before a criminal court. The second method stipulated that extradition would only occur upon submission of documents proving the suspect's appearance before a criminal court. In the third method, states were not satisfied with a document merely referring the suspect to a criminal court after interrogations. They also required written and oral testimonies to be submitted. If a new crime committed by the same suspect was discovered, a new extradition request would need to be submitted. However, the suspect could still be tried for actions related to the crime for which extradition was initially requested, without the need for a new request. The defendant might be willing to stand trial for other crimes attributed to them, which could sometimes benefit them by exempting them from future prosecutions. However, to ensure that the suspect's rights were safeguarded, it would be more appropriate to inform the surrendering state[68].

66 BONFIL-FAUCHILLE, p. 392.

67 ALİ EDİP, p. 407-409.

68 BONFIL-FAUCHILLE, p. 393, 395.

VI. HOW THE EXTRADITION PROCESS WORKS

Extradition does not rely on specific and precise conditions, as it is a matter of interstate relations. These conditions were determined and reiterated, sometimes by custom, sometimes by local laws, and sometimes by treaties. Until the 19th century, there was no special law regarding the extradition of criminals, either in the Ottoman Empire or in most Western states[69]. During the extradition process, if the extradited offender was tried for a crime that was not included in the extradition documents, they could request that the court postpone the proceedings until the government officials made a decision regarding the nature of the documents. The courts could not issue a definitive verdict based solely on the government's notification without knowing the content of the necessary documents. The International Law Society held meetings on these matters in Oxford in 1880, Heidelberg in 1887, Lausanne in 1888, Hamburg in 1891, Geneva in 1892, and Paris in 1894[70]. Thus, joint decisions were made to find a solution to the problems experienced.

The process in the Ottoman Empire was different. In this context, Western states had claims over their citizens due to capitulations. As a result, many states did not feel the need to make independent agreements with the Ottoman Empire regarding the extradition of criminals. Another reason for this was the inclusion of extradition-related articles in treaties made from time to time. For example, the Treaty of Küçük Kaynarca (1774) with Russia contained provisions regarding the extradition of criminals. In this framework, for instance, when a crime was committed in the Ottoman Empire and the perpetrator fled to France, once the prosecutor became aware of the situation, the necessary investigation and follow-up procedures would begin. After it was determined that the perpetrator had sought refuge in a foreign country, the situation would be reported to the appellate prosecutor's office along with the necessary evidence and documents. The appellate prosecutor's office would then forward the relevant report, along with the summons or invitation letter issued by the investigating judge (or its own opinion), to the Ministry of Justice. The Ministry of Justice would send the documents to the Ministry of Foreign Affairs, which would request the extradition of the criminal from the authorities of the country where the criminal had sought refuge through the Ottoman ambassador. The methods and treaties applied varied depending on the country to which the extradition was requested, as each state had its own unique procedure. For example, as mentioned earlier, in England, the issue of extradition was entirely a matter for the judiciary[71]. Some states would temporarily detain the criminal based on a warrant or telegram. In England and the United States, however, for temporary detention, the government had to be certain of the person's guilt according to local laws. The requesting state had to identify the criminal, as the person could also be a citizen of another country. Additionally, the requesting state had to determine the crime committed and ascertain whether its courts had the jurisdiction to try the criminal. Some legal

69 ALİ EDİP, p. 732.

70 ALİ, p. 412; BONFIL, FAUCHILLE, p. 397.

71 ŞUAYB, p. 25-26.

scholars argue that the issue of criminal extradition is a political matter. Therefore, leaving the extradition process solely to the courts could lead to complications, as courts are independent in most European countries. If necessary, they could decide against extraditing the criminal, thereby damaging relations between the two states. Consequently, Şuayb stated that the most common method was for the administration to make the decision at the outset of the process. In this case, without the intervention of the courts, the government would decide whether or not to extradite the criminal[72]. In France, the process of extraditing criminals was considered entirely an administrative procedure. In this case, without the intervention of the courts, the executive body would decide on the extradition or non-extradition of the criminal. According to this method, when a request for the extradition of criminals was made to the French Ministry of Foreign Affairs, the request and related documents would be sent from the Ministry of Foreign Affairs to the Ministry of Justice. The Ministry of Justice, in coordination with the Ministry of Interior, would first ensure the arrest of the individual whose extradition was requested. The process would continue until a decision was made regarding the arrested individual. After the initial process, that is, after the arrest, the arrested person would be informed in the presence of the prosecutor about the extradition request, the act that formed the basis of the request, and the charges made against them. Their defense would then be heard. The reasons for defense could vary. For example, if the wanted person could prove that they were not the person being sought, that they were not the perpetrator of the act, or that the laws of the country of which they were a citizen prevented extradition, the French government could release the individual[73].

The method adopted by most European states worked as described above. During the extradition process, if the criminal was in the provincial center, they would be examined by a prosecutor in the presence of the governor or their deputy. This process focused on three main points. First, the identity of the criminal was confirmed. Second, the nature of the perpetrator's crime was taken into consideration. Third, an investigation was conducted to determine whether the crime was indeed committed by that person. The document containing the results of the investigation would then be presented to the Ministry of Justice by the prosecutor. The Ministry of Justice would evaluate the document and officially forward it to the head of government. If the Ministry of Foreign Affairs decided to proceed with the extradition, in coordination with the Ministry of Internal Affairs, the decision would be presented to the head of state for final approval. The third method was followed in Belgium and the Netherlands. In these states, the extradition issue was resolved with the approval of both the court and the administration. For example, when the extradition of a criminal was requested, the Belgian state would send the necessary documents to the court. The court would review the validity and form of the summons from the state requesting extradition and decide whether the criminal should be apprehended. After the criminal was captured, they, along with their lawyer, would be brought before the court. A hearing would take place where both

72 ŞUAYB, p. 27.

73 ALİ EDİP, p. 776.

parties would present their arguments and defenses regarding the extradition request. The court would then decide whether the extradition request was legitimate. However, the final decision rested with the head of state in this case as well. Furthermore, criminals had the right to object after extradition. Additionally, the criminal would only be tried for the act for which they were extradited. In some cases, a criminal who had fled to another country could apply to be tried in the place where they personally committed the crime[74]. These were common practices experienced during the extradition process in 19th century Europe.

The extradition process sometimes involved multiple states claiming a person. If the requesting state's claim was deemed legitimate under international law, it had to be exercised reasonably and without violating international law. If the claim was not accepted and the matter needed to be resolved according to international law, the International Law Society, meeting in Oxford, argued that the person should be extradited to the state where the crime was committed, rather than the state of their nationality. However, most extradition treaties stipulated otherwise, meaning the person was typically extradited to their home country. Another view held that the person should be extradited to the government of the state where the most serious crime was committed, out of courtesy. A state generally sought the other state's opinion before extraditing a suspect, but this was not mandatory. This was optional because it could benefit the suspect by avoiding future prosecution. However, the suspect's consent had to be genuine, not coerced. In such cases, informing the extraditing government would be a proper and cautious action. The extradited person could raise various objections to the extradition, such as violations of the requesting government's laws and treaties. However, the extradited person could not object to the method of arrest and extradition by the extraditing government. This was due to two reasons. First, the suspect's extradition was simply the extraditing government exercising its sovereign right. The government could extradite the suspect even outside the circumstances specified in extradition treaties. Second, if the extraditing government violated its own laws by extraditing the suspect, the determination of this violation fell outside the jurisdiction of the requesting government. The general consensus in the literature was that courts did not have the authority to assess the legality of the extradition process. This assessment was the responsibility of the government itself[75]. The reason for this approach was, as mentioned before, to prevent political crises between states.

In international law, no state would extradite its own citizens who committed crimes in foreign countries. This rule was present in treaties made by many European states, such as Germany, Belgium, France, the Netherlands, Italy, and Russia in the 19th century. Special laws also supported this rule. However, England and the United States were exceptions in this regard. These states would agree to the extradition of their own citizens, a practice fundamentally based on the legal precedents of these countries, which considered penal laws to be national. Nevertheless, the extradition of citizens was

74 ŞUAYB, p. 28-30.

75 ALİ, p. 411; ŞUAYB, p. 31.

generally not applied in practice. For example, when England and the United States made agreements with states that did not extradite their own citizens, they would include provisions in those agreements stating that they, too, would not extradite their own citizens. An example of this is the agreement made between France and England in 1786. Similarly, a similar provision was included in the agreement made between France and the United States on November 9, 1843. An interesting situation arose in the agreement made between England and Spain in 1878. According to this agreement, while Spain made an exception for its own citizens, England committed to extraditing all individuals. This was also the case in the agreement between England and Switzerland. According to another agreement made by Switzerland with the United States in 1850, the Swiss Federal Court consented to the extradition of a criminal in a decision made in 1891. The Swiss National Assembly accepted and confirmed the principle of non-extradition of nationals in its meeting in 1891[76].

Finally, if it was later determined that the person to be extradited had committed another crime, a separate extradition request would need to be made for that crime. However, if it was evident that the offender had committed a crime related to the act for which extradition was requested, they could be tried for that crime without the need for a second extradition request[77]. If the defense could not be sufficiently proven, the prosecutor could examine the terms of the extradition treaty between the two states. However, there were generally some exceptions upon which extradition was based. For example, according to the laws of the state where the criminal had sought refuge, the local government could refrain from handing over the criminal if it was proven that the crime attributed to them or the sentence imposed had been reduced due to the statute of limitations[78]. As can be understood, the extradition process was largely similar in many countries, with some differences. The variations in the process were influenced by the differing judicial and administrative structures of the countries involved.

VII. SITUATION OF POLITICAL PRISONERS AND DESERTERS

It is not easy to provide a complete, clear, and accurate definition of political crimes. Many efforts have been made by legal scholars in this regard. However, it can be said that this issue remains one of the most challenging in criminal law. Except for totalitarian regimes, no clear definition of political crime is provided in any legislation. Due to the complexities and challenges in offering a full legal description of political crimes, some laws settle for listing specific political offenses instead[79]. Before the 19th century, the institution of extradition was primarily applied to political criminals. At that time, since government structures were viewed as continuous and divine, political criminals were considered the most dangerous individuals, and agreements between states were made for their

76 BONFIL, FAUCHILLE, p. 378-379.

77 ALİ, p. 410.

78 ALİ EDİP, p. 778-779.

79 RUHİ, p. 504; ARMAOĞLU, p. 10; ALTUN, p. 43.

extradition rather than their protection. Until the 19th century, the extradition process could include political criminals. In short, the principle of non-return for political criminals began in the 19th century[80].

Assuming that many crimes were committed by malicious individuals, these criminals should have been arrested for the sake of humanity. On the other hand, ordinary crimes related to political crimes emerged by evaluating the same act as both a political and an ordinary crime. For example, crimes committed to draw attention to a political cause could be classified as both political and ordinary crimes. Looting weapons depots during a secret revolution is one such act. In practice, the extradition of criminals for any ordinary crime, typically of a political nature, was often avoided. However, there were exceptions. For instance, according to agreements made between France and Belgium, individuals who killed or poisoned the president and his family were subject to mutual extradition. Similarly, the states of Switzerland, Italy, and England generally avoided extraditing individuals involved in assaults and rapes targeting the lives of heads of state. However, in the treaty signed in Prussia in 1893, it was stated that individuals who attacked the head of state would be extradited[81]. As it can be understood, there was no unity in the practices between the states.

What types of crimes are considered political crimes? How should an ordinary crime be treated when it is linked to a political crime? How strong must the link to the political offense be in order to justify the postponement of extradition for the ordinary offense? The solution to these questions lies in criminal law. Just as legal historians offer different perspectives, so do scholars of criminal law provide varied answers to these questions. However, the majority of jurists oppose the political characterization of ordinary crimes linked to political crimes. Nevertheless, it cannot be denied that there is also a contrary current of thought. The non-extradition of ordinary criminals who were somewhat politically motivated led to negative consequences. For instance, the refusal to extradite common criminals who fled to England, Austria, Belgium, and Switzerland during the Paris Commune of 1871, on the grounds that their crimes were politically linked, provoked public reaction and resentment, highlighting the need for careful consideration of this issue[82].

The country that made the greatest efforts to enforce the principle that extradition should not apply to political crimes was England. In this regard, Britain defended the rights of many political refugees who fled from the pursuit of European governments in 1848. In fact, it went so far as to deny the civil rights of the state in which the political refugees had sought refuge. The governments of Germany, Austria, Denmark, Norway, and Russia made agreements among themselves for the extradition of traitors and state criminals. Additionally, the Belgian law of 1856 excluded the

80 ARMAOĞLU, p. 1596.

81 ŞUAYB, p. 16, 22

82 BONFIL, FAUCHILLE, p. 384; ALİ, p. 401-402.

assassination of heads of state from the scope of political crimes[83]. According to Ottoman criminal procedure law, the principle of not extraditing political criminals was upheld for a long time. The request for the surrender of Hungarian and Polish nationalists who entered Ottoman territory in 1848 was firmly opposed[84].

According to a decision made in England in 1878, it was decided to extradite political offenders connected with ordinary crimes. Press crimes related to this issue were also addressed. However, since not all press crimes are of a political nature, the International Law Society made the following decisions on the matter:

1. Only those who commit political crimes will not be extradited.

2. Political crimes, unless they are connected with serious common crimes such as murder, poisoning, arson; their perpetrators will not need to be extradited.

3. Crimes committed during civil wars and insurrections shall not be extradited unless they involve unnecessary brutality, destruction, and hatred under military law.

4. It is decided that crimes committed against the entire social structure, not against a government or form of government, cannot be counted as political crimes[85].

In Swiss and German laws, press crimes were recognized as political crimes[86]. In 1885, as a result of the treaties concluded between Germany and Belgium, and later between Belgium and France, the principle of non-extradition and non-surrender of political criminals was accepted by almost all jurists. This rule was confirmed by many laws and treaties. However, as mentioned earlier, in the extradition treaties concluded before the 19th century, the extradition of political criminals was the main issue. After the second half of the 19th century, however, most European states flatly rejected extradition requests for political crimes. In most treaties, even the extradition of ordinary criminals linked to political crimes was excluded. In this regard, Germany, Austria, Denmark, Norway, and Russia concluded treaties among themselves[87].

Some legal scholars argue that political crimes do not actually constitute a crime when examined from the perspective of human conscience. According to this view, political offenders would not pose as significant a danger as those who committed common crimes in their countries of refuge. Furthermore, returning political criminals could lead to great injustice, as it would be incompatible with the ideals of freedom and humanity. In political crimes, the state is not neutral; the crime is committed against the state itself. Often, there is no impartial tribunal to judge these individuals. Therefore, they

83 BONFIL, FAUCHILLE, p. 384.
84 ALİ EDİP, p. 764.
85 ALİ, p. 402-403; ŞUAYB, p. 22.
86 ŞUAYB, p. 23.
87 ALİ, p. 400.

should not be returned. However, some lawyers disagree with this perspective. According to them, it is in the best interest of states that political criminals should not be extradited. States are rivals of each other, and they would like to weaken their competitors. The activities of political criminals could destabilize a country's political life, provoke public opinion, and potentially lead to riots. This would benefit rival states, so they would choose not to return political criminals[88]. In the end, although both views were valid, the prevailing opinion was that political criminals should not be extradited.

The return of deserters and merchant ship crews was mutually agreed upon by states to protect international maritime trade. Their return was not subject to the same procedures as the return of ordinary criminals. Deserters from warships or merchant ships were arrested and handed over only upon the request of a consul or consular representative, or, in their absence, upon the request of the ship's commander or captain. The return of deserters from war and merchant ships was sometimes regulated by special agreements or by specific provisions added to general trade and shipping consular agreements. By the second half of the 19th century, almost all European states had made agreements regarding the return of military deserters. The costs of arresting and detaining the crews of returned war and merchant ships were covered by the requesting government. If the deserters were not handed over within a specified period after being arrested at the request of government officials, they would be released and could not be arrested again, even if another request was made. This period was generally outlined in the agreements. While deserters were in the territory of a foreign country, they could not be arrested by the requesting government officials. Their arrest could only be carried out by the authorities of the country in which they were located[89].

CONCLUSION

Extradition, a practice employed by many civilizations throughout history, is one of the oldest issues in interstate law. The primary reason this issue has preoccupied states is that their sovereignty is limited to their own territories, meaning that criminals who flee to foreign states cannot be prosecuted within their home countries. Thus, the institution of extradition emerged as a form of international legal assistance to prosecute individuals who fled to other countries. Although the history of extradition dates back to ancient times, its status and practice in antiquity differ significantly from its application in the 19th century. While extradition in ancient times generally involved political criminals, in the 19th century, ordinary criminals were often extradited, and political criminals were frequently excluded from the process. The underlying rationale for this change is the assumption that political criminals cannot be tried impartially by the states of which they are citizens.

Examples related to the extradition of criminals, referred to as "iade-i mücrimin" in Ottoman law, can be found even in the early periods of the state. However, until the 19th century, extradition was

88 BONFIL, FAUCHILLE, p. 385; ŞUAYB, p. 21.

89 ALİ EDİP, p. 414-415.

not an independent institutional structure and was primarily determined by bilateral treaties. In this context, many treaties signed by the Ottoman Empire included provisions regarding the extradition of criminals, thereby enabling the implementation of the extradition institution. The concept of extradition became a significant topic emphasized by Ottoman jurists in the late 19th and early 20th centuries. As part of this framework, extradition was extensively discussed in international law textbooks used in Ottoman law schools. These textbooks covered various aspects, such as the definition, history, and procedural workings of the extradition institution. In referencing the extradition process, Western law formed the core foundation. Developments and definitions from the West were thoroughly conveyed to students in these textbooks. As a result, this study primarily evaluates the issue through the lens of law of nations textbooks. Consequently, by examining the available and used textbooks in classes, it is clear that Ottoman jurists closely followed Western legal literature, and students in the Ottoman Empire were educated according to European legal norms.

REFERENCES

ALİ (1909). Hukuk-ı Düvel (C. 2). İstanbul: Ahmet Saki Bey Matbaası.

ALİ EDİP (1892). Hukuk-ı Düvel. İstanbul.

ALTUN, H. M. (2001). Suçluların Geri Verilmesi Hukuku. Marmara Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). İstanbul.

ARMAOĞLU, F. (2017). Türk-Amerikan İlişkileri 1919-1997. Kronik Yay. İstanbul.

ARMAOĞLU, F. H. (1951). Belçika Kaidesi ve Siyasi Suçluların İadesi Meselesi. Adalet Dergisi, (10), 1590-1607.

BAGHERI, S. (2013). Uluslararası Hukukta Suçluların İadesi ve Suçluları Kovuşturma Yükümlülüğü. AÜHFD, 62 (1), 1-40.

BİLSEL, C. (1940). Devletler Hukuku Giriş. İstanbul: İstanbul Üniversitesi Yay.

BOA, DH.MKT., 2346/64.

BOA, HR.HMS.İSO., 155/10.

BOA, HR.HMS.İSO., 4/20.

BOA, HR.HMS.İSO., 96/20.

BOA, HR.İD., 1896/9.

BOA, HR.TH.,7/43.

BOA, HR.TO., 606/47.

BONFILS, H., FAUCHILLE, P. (1909). Hukuk-ı Umumiye-i Düvel. Introduction, translated by Ahmet Salahaddin. Jirair Kiteon Matbaası. İstanbul.

BOZ, B. (2022). From The Past to The Future of Extradition: The Rise of a New Obligation As Reverse Extradition. ASBÜ Hukuk Fakültesi Dergisi, 4 (2), 494-539.

CİN, M. (1996). Suçluların Geri Verilmesi ve Türk Hukuku. İstanbul Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi), İstanbul.

ÇOBAN DÖŞKAYA, F. (2021). Osmanlı Devleti'nde Amerikalı Misyonerlerin Antlaşma Hakları. Akademik Tarih ve Düşünce Dergisi, 8 (3), 769-798.

DEL HIERRO, P., LIXINSKI, L. (2023). Writing a Transnational (Global?) History of Extradition Law in the Short Twentieth Century: Beyond Western-Centric Approaches. Journal of the History of International Law, 25(3), 429–466.

DONAY, S. (1981). Türkiye ile ABD Arasında Suçluların Geri Verilmesi ve Ceza İşlerinde Karşılıklı Yardım ve Ceza Yargılarının Yerine Getirilmesine İlişkin Anlaşmalar. MHB, 1 (1), s. 9-12.

ERGÜL, E. (2003). Teoride ve Uygulamada Suçluların İadesi ve Hükümlülerin Nakli. Ankara: Yetkin Yay.

EROZAN, B. (2014). Türkiye'de Uluslararası İlişkiler Disiplininin Uzak Tarihi: Hukuk-ı Düvel (1859-1945). Uluslararası İlişkiler, 11 (43), 53-80.

GÜNAY, E. (2022). Türk Ceza Hukukunda Suçluların İadesi. Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). İzmir.

HÜSREVYAN, H. (1910). Hukuk-ı Umumiye-i Düvel. İstanbul.

İÇEL, K. (1964). Suçluların Geri Verilmesi Üzerinde Bir İnceleme. İstanbul Üniversitesi Hukuk Fakültesi Mecmuası, 30 (3-4), 692-721.

KARAKOÇ, İ. (2004). Türk Hukuk Tarihi'nde Uluslararası Antlaşmaların Uluslararası Hukukun Gelişim Sürecindeki Yeri. Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, 6 (2), 199-254.

KEMALPAŞAZADE, S., GREGOR, C. (1881). Hukuk-ı Düvel. İstanbul: Ebuzziya Matbaası.

KÖPRÜLÜ, T. (2001). Suçluların Geri Verilmesi. Ankara Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). Ankara.

MOORE, J. B. (1896). Extradition. The American Law Register and Review, (44), 749-762.

Müdde-i Umumi. İade-i Mücrimin Meselesi. May 24 1909. (1), 1.

METYA, N. (1912). Hukuk-ı Hususiye-i Umumiye. İstanbul: Müşterekü'l-Menfaa Osmanlı Şirketi Matbaası.

OKANDAN, R. G. (1945). Devletin Menşei. İstanbul: Kenan Matbaası.

ORHAN, Z. C. (2019). Suçluların İadesi. Çankaya Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). Ankara.

OSMAN SERMED (1908). Hukuk-ı Hususiye-i Düvel (C. 2). İstanbul: Asır Matbaası.

ÖRİKAĞASIZÂDE, H. S. (1897). Hukuk-ı Hususiye-i Düvel (C. 1). İstanbul: Alem Matbaası.

ÖZMEN, N. (2020). Suçluların İadesi. Hasan Kalyoncu Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). Gaziantep.

RUHİ, A. C. (2003). Türk Hukukunda Suçluların İadesi. Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi, 7 (1-2), 497-521.

SELVİ, H., DEMİRKOL, K. (2012). Osmanlı Devleti'nde Amerika Birleşik Devletleri Vatandaşlarının Hukuku ve Karşılaşılan Bazı Problemler. History Studies. (4), 327-349.

SHEARER, I. A. (1971). Extradition in International Law. Manchester University Press / Oceana Publications Inc.

STOKTON (1912). Bahriye Zabıtanına Mahsus Hukuk-ı Umumiye-i Düvel, (Yüzbaşı Ahmed Vahid, Çev.). İstanbul: Bahriye Matbaası.

ŞUAYB, A. (1912). Hukuk-ı Umumiye-i Düvel. İstanbul: İkbal Matbaası.

ULUTAŞ, A. (2012). Avrupa İnsan Hakları Sözleşmesi Işığında Suçluların Geri Verilmesi. Ankara: Türkiye Barolar Birliği Yay.

ÜLKER, İ. (2023). Osmanlı Ceza Yargılamasında Müstantik (Sorgu Hâkimi). Ceza Hukuku ve Kriminoloji Dergisi, 11 (1), 41-57.

YAŞAR, Y., İÇER, Z. (2019). Tutuklu ve Hükümlülerin Takası ve İadesi. Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi. 25 (2), 1486-1519.

YERLİKAYA, M. (2010). Türk Ceza Hukuku'nda Geri Verme Kurumu ve Avrupa Tutuklama-Yakalama Müzekkeresi. İstanbul Üniversitesi Sosyal Bilimler Enstitüsü (Yüksek Lisans Tezi). İstanbul.